FEE CREDIT VOUCHER FORM

The City of Hercules ("City") hereby issues to HERCULES BAYFRONT, LLC, a Delaware limited liability company ("Owner") fee credits against City imposed Development Impact Fees ("Credits") which may be imposed on the real property consisting of approximately 40.96 acres, with APN nos. 404-020-065, -083, -084, -085, -086; 404-670-016, -017, -018; 404-490-080, -100 located in the City of Hercules ("City"), State of California (the "Property") in the amount of Five Hundred Twenty Four Thousand Five Hundred Twenty Dollars ($524,520.00) pursuant to the Purchase Agreement and Escrow Instructions For Public Use Lands, ITC Right of Way Expansion and ITC Station and Plaza dated _____ (the "Agreement"), between City and Owner.

The Credits may be used by Owner, in its sole and absolute discretion, in any manner consistent with the Implementing Development Agreement for the Hercules Bayfront Project entered into by and between the City of Hercules and Hercules Bayfront LLC on _____. Among other uses, Owner may use the Credits to satisfy 100% of the Development Impact Fee obligation for each building permit, or such lesser amount as specified by Owner and City in writing, and Owner's remaining Credit balance hereunder shall be reduced by an equal amount. This Fee Credit Voucher shall not apply to, and may not be used for, any fees or charges imposed by City for the benefit of another agency.

EXHIBIT "D"
SCOPES OF WORK

ENGEO INCORPORATED

GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
P2010.000.040

November 1, 2011

James Anderson, President
Hercules Bayfront, LLC
c/o Anderson Pacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, CA 90045

Subject: Hercules Point – Waterside and Landside Properties
Hercules, California

PROPOSAL FOR ENVIRONMENTAL CONSULTATION SERVICES

Dear Mr. Anderson:

ENGEO is pleased to submit this environmental consultation services proposal for development Parcels 6, 7, 8, and Refugio Creek, also known as OU-8A, OU-3, OU-8B, and OU-7, respectively (hereafter referred to as the Site), of the proposed Hercules Bayfront development located in Hercules, California.

As currently contemplated, the ownership of the Site will be sold to the City of Hercules for development as public open space / park facility, Refugio Creek restoration, and a ferry terminal. located north of Bayfront Boulevard across the Union Pacific railway in Hercules, California.

The Site is part of the former Hercules Properties, Ltd. facility (HPL), which was the subject of extensive site characterization, risk assessment and remedial activated undertaken during the 1980s and 1990s. The environmental cleanup work was conducted under the oversight of the CAL-EPA Department of Toxic Substances Control (DTSC). The greater HPL property was granted a remedial certification and unrestricted land use designation in 1997. Operable Unit OU-8A and OU-8b are the waterside parcels adjacent to the "point", which is identified as OU-3. Operable Unit OU-7 consists of a portion of Refugio Creek. Operable Unit OU-3, has an existing deed restriction limiting it to a commercial/industrial land use designation. There is also an Operations and Maintenance program in place for the Site. The other Operable Units of the HPL property have since been developed for mixed use, including residential subdivisions.

ENGEO has been closely involved in the post-certification evaluation and cleanup of specific areas of the Hercules Village development area. ENGEO also assisted in the coordination of demolition and abatement activities associated with the Site.

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www.engeo.com

The purpose of our study is to support the project team, including Hercules Bayfront, LLC and Geosyntec to evaluate the status of the Site with the DTSC and determine the potential steps necessary to allow for redevelopment of a portion of the Site.

BACKGROUND

The Site is a small portion of the original 1300-acre HPL facility, which was used for the manufacturing of chemicals for explosives and fertilizer applications. A Remedial Action Plan (RAP) was developed for the HPL property in June 1994, which was approved by the DTSC. Operable Unit OU-3 included a power house building, an evaporation pond, a fuel storage tank farm, and a large ammonia tank. As a result of the past industrial operations, Site soils were impacted with metals (arsenic, lead, mercury) and total petroleum hydrocarbons (TPH).

State-approved cleanup levels were established for the HPL property in 1992 based on risk assessments conducted by McLaren/Hart Environmental. The following table summarizes the constituents of concern (COCs) and cleanup levels for OU-3. The table also provides the corresponding unrestricted land use cleanup level applied for the greater HPL property.

Hercules Properties, Ltd.
Soil Cleanup Levels (June 1995)

Chemical	Restricted Land Use (mg/kg)	Wetlands (mg/kg)	Unrestricted Land Use (mg/kg)
Arsenic	10	33	10
Lead	1000	1000	400
Mercury	4	4	1.4
Total Petroleum Hydrocarbons	1000	1000	100

Remediation in OU-3 was conducted in 1995 – 1996 and included both areas of drylands (uplands) and wetlands. Wetlands remediation work was conducted in two main areas, tidal wetlands located at the southwest of OU-3 and seasonal wetlands located along the west side of the overhead pedestrian bridge crossing.

The elevated arsenic is likely attributable to fungicides or herbicides sprayed along the rail lines. Sources of lead encountered in Site soils were believed to have resulted from fill containing brick and ceramic materials (construction rubble) and from a paint shop formerly located on the Site. The source of mercury was likely from the temperature and pressure gauges as well as fulminated mercury from explosives detonators.

The fuel tank farm, which consisted of four above-ground tanks and associated piping, was located to the east of the bridge. Soil in the vicinity of these tanks was contaminated with TPH as diesel, along with lead, arsenic and mercury.

Approximately 6,500 cubic yards of impacted soil was removed from the dryland area of OU-3. Approximately 8,500 cubic yards was removed from wetland area of the Site.

A *Covenant and Agreement to Restrict Use of the Property* (Deed Restriction) was recorded for OU-3 in June 1996. The deed restriction limits the development of the Site to commercial or industrial uses. The deed restriction also states that no significant disturbance of the soils, including excavation or drilling of water wells, shall be performed without notification to DTSC. The document specifies that impacted soil brought to the surface by excavation shall be managed as hazardous waste unless sampling and testing has demonstrated otherwise.

SCOPE OF SERVICES

Review and Compilation of Existing Data

An appreciable amount of exploration, laboratory testing, remediation, confimatory sampling, and monitoring has been conducted for the Site. Our first task will be to assist Geosyntec, where appropriate, to compile and review applicable data pertaining to the Site. We anticipate agency reviews conducted by Geosyntec/ENGEO will include the following:

- U.S Environmental Protection Agency, Region IX (USEPA)
- Cal-EPA Department of Toxic Substances Control (DTSC)
- San Francisco Regional Water Quality Control Board (SFRWQCB)
- Contra Costa County Helath Services Department (CCHSD)

We will also review our internal files for information related to OU-3. We will also request that you forward any other pertinent informaiton regarding the Site, including conceptual development plans.

Summary of Existing Data and Identification of Data Gaps

Once the available data has been reviewed and compiled, we will assist the project team, as appropriate, to determine if any data gaps exist pertaining to surface/subsurface conditions and contaminant delineation. This evaluation will allow for the identification of missing parameters that would be necessary to gain an understanding of Site conditions and develop conceptual strategies for further risk evaluations, exploration, data acquisition, and mitigation.

Preliminary Site Conceptual Model

Once we have assessed and summarized the available data, we will assist Geosyntec and the project team, as appropriate, to prepare a *preliminary* site conceptual model (PSCM). The PSCM will incorporate the surface/subsurface soils and will summarize potential sensitive receptors and exposure pathways to future land users. This model is considered preliminary because it may need to be refined at a later time if data gaps have been identified and addressed. The PSCM will

provide a preliminary understanding of the extent and magnitude of environmental impacts at the Site, allowing the identification of data gaps that need to be addressed to further our understanding of Site conditions. It will also serve as a basis to provide an evaluation of potential site remediation measures, including engineering controls and potential remediation costs.

Technical Document Review/Project Team Meetings

At the request of the project team, ENGEO will provide quality control/peer review services for documents prepared by Geosyntec in support of the project. We will also provide a review of DTSC correspondence, if applicable, related to the proposed recreational development. At the request of the project team, we will also attend meetings with the City of Hercules, DTSC and the project team.

PROJECT FEE AND SCHEDULE

We propose to perform the above-described services in accordance with our current fee schedule on a time-and-expense basis for a fee of **$5,000**. This fee includes the above services, along with an estimated 5 hours of meetings with City of Hercules, DTSC, and the project design team. If you are in agreement with the scope of services and fees outlined herein, please sign two copies of the attached Professional Services Agreement as authorization to proceed. A fully executed copy will be returned to you for your files. Work will not commence without prior receipt of an executed agreement.

We look forward to working with you on this project. If you have any questions on any portion of the scope of services or any other aspect of the agreement, please call and we will be glad to discuss them with you.

Very truly yours,

ENGEO Incorporated

Shawn Munger, CHG
Principal

Brian Flaherty, CEG
Principal

PROPOSAL

3 November 2011

Mr. James Anderson, President
Hercules Bayfront, LLC
c/o Anderson Pacific LLC
6701 Center Drive West, Suite 710
Los Angeles, California 90045

Subject: Proposal for Environmental Consulting Services
Hercules Bayfront Development, Parcel 6 (OU-8A), Parcel 7 (OU-3), Parcel 8 (OU-8B0, and Refugio Creek (OU-7)
Hercules, California

Dear Mr. Anderson:

Geosyntec appreciates the opportunity to present our proposal to provide environmental consulting services to Hercules Bayfront, LLC for Development Parcels 6, 7, 8, and Refugio Creek, also known as OU-8A, OU-3, OU-8B, and OU-7, respectively (hereafter referred to as the Site), of the proposed Hercules Bayfront development located in Hercules, California. This proposal was prepared on the basis of discussions between Mr. Randy Brandt, of Geosyntec and Mr. Jim Anderson of Hercules Bayfront, LLC on 26 January 2010, discussions and a site visit with Mr. William Silva of D'Oro Construction Management (representing Hercules Bayfront, LLC) on January 27, 2010, discussions with Hercules Bayfront, LLC representatives on 10 October 2011, and our preliminary review of some publicly available documentation regarding the Site. This proposal presents our understanding of the project, a proposed scope of services, tentative schedule, and estimate of charges.

BACKGROUND

The Site was once part of a 1300-acre manufacturing facility that was operated from 1879 to 1977. Previous operations at the facility included the manufacture of explosives and fertilizer chemicals. Manufacturing at the facility ceased in 1977 and the buildings and plant structures were demolished. As a result of the historical manufacturing activities, soil and groundwater have become contaminated with various metals and organic compounds. The former facility has undergone a significant level of investigation and remediation since the early 1980s under the auspices of the California Department of Toxic Substances Control (DTSC). For investigation

and remediation purposes, the facility was divided in to six operable units, designated OU-1 through OU-6. The Site, which is the subject of this proposal, is designated as OU-7, OU-3, OU-8A and OU-8B. Based on the results of remediation at these locations, the DTSC approved no further action at OU-7, 8A, and OU-8B subject to land use restrictions and a five-year review process at OU-3. Land uses in OU-3 are restricted to commercial and/or industrial land uses. No other land uses are allowed without the prior approval of the DTSC.

For development purposes, the former manufacturing property was divided into several parcels. Parcels south of the Union Pacific Railroad (UPRR) line were designated as Parcels A through D. Parcels north of the UPRR line were designated as Parcels 4, 5, 6, 7, and 8. According to the 2006 Grant Deed, Parcels A, D and 7 were sold to Hercules Bayfront, LLC for development as the Hercules Bayfront project.

It is our understanding that Parcels 6, 7, 8, and Refugio Creek (collectively referred to as the "Site") are planned to be sold to the City of Hercules for future development as public open space/park facilities, creek restoration, and a future ferry terminal. Parcels 6 and 8 are submerged mudflats. Parcel 7 comprises approximately 11 acres of land that is currently vacant and unpaved. Refugio Creek bisects Parcels B, C, and D and discharges into San Pablo Bay at Parcel 6. Foundation slabs remain in place on Parcel 7 from the former powerhouse building and ammonia storage tank. In addition, the former wastewater evaporation pond is present in the northeastern portion of Parcel 7.

OBJECTIVES AND PROPOSED SCOPE OF SERVICES

As currently contemplated, the ownership of the Site will be sold to the City of Hercules for development as public open space/park facility, Refugio Creek restoration, and a ferry terminal. Because the current DTSC land use restrictions prohibit development of Parcel 7 as public open space/park facilities along with other land use restrictions, Hercules Bayfront, LLC has requested Geosyntec to assist in developing and executing an environmental strategy to revise the land use restrictions to allow development of the Site consistent with the proposed land uses.

Based on the above understanding, it will be Geosyntec's objective to assist in addressing environmental issues associated with the purchase and sale of the Site. To meet this objective, Geosyntec proposes a scope of services consisting of several tasks as described in the following paragraphs.

Task 1 – Phase I Environmental Site Assessment (ESA)

To support Hercules Bayfront, LLC in performing environmental due diligence of the Site in anticipation of its purchase of the Site, Geosyntec will perform a Phase I ESA. Geosyntec's objective in performing the scope of work is to prepare a Phase 1 ESA for the Site that assists in meeting certain requirements of U.S. EPA's All Appropriate Inquiry (AAI) rule. By satisfying this rule, the purchaser may become eligible for one or more CERCLA defense conditions, including: i) innocent land owner defense; ii) bona fide prospective purchaser defense; and iii) contiguous land owner defense designations, as defined in the Brownfield Amendments to CERCLA (see CERCLA sections 101(35), 107(b)(3), 101(40), 107(r), and 107(q)).

Geosyntec will perform the Phase 1 ESA in general conformance with specific guidelines contained within the American Society for Testing and Materials (ASTM) Standard E 1527-05, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." Please note that the ASTM Standard and AAI also identify certain inquiries to be conducted by the prospective property owner or "user" of the Phase 1 ESA, such as recorded land title records and lien records, "specialized knowledge" of the property and adjacent properties, purchase price value information, and similar information. We understand that other consultants have been engaged for other phases of work on the project. Because of the institutional knowledge of these firms, particularly Engeo, Incorporated and HDR Environmental, Geosyntec will collaborate, as directed, with Engeo, HDR Environmental, and others, to obtain the most current information on historical and existing site conditions.

Geosyntec's proposed scope of work for the Phase I ESA consists of the following activities:

- Records review;
- Site reconnaissance;
- Interviews;
- Phase 1 ESA Reporting.

Each of these activities is described in more detail below.

Task 1a: Records Review

The objective of the records review is to obtain and review information that will help identify Recognized Environmental Conditions (RECs) at or in the vicinity of the Site. Geosyntec will review publicly available information regarding the former manufacturing as well as other records and technical reports (if any) for the Site provided by Hercules Bayfront, LLC. Geosyntec will contract with Environmental Data Resources (EDR) to obtain database records, historical topographic maps, historical aerial photos, Sanborn fire insurance maps, and an environmental lien search report. Geosyntec will use the data from EDR to identify the sites and adjacent properties that may have potentially impacted the Site, if any. Geosyntec will also contact various regulatory agencies by telephone regarding information pertaining to the Sites depending on the results of the EDR database search. Regulatory agencies that may be contacted include the United States Environmental Protection Agency (USEPA), the DTSC, the California Regional Water Quality Control Board (RWQCB), the local Department of Environmental Health Services, local Air Pollution Control District (APCD), local Fire Department, and/or local Building Department. Visits to these agencies and review of files at agency offices are not included as part of this scope of services but can be conducted for an additional fee, if warranted, and approved by the client. We have assumed that Hercules Bayfront, LLC will perform the title search and provide the results to Geosyntec for inclusion in the Phase 1 ESA report.

Our review of documents and reports related to the investigation and remediation of the Site will be more extensive and in-depth than typically conducted to support a Phase I ESA in an effort to create a database of information that will be necessary to develop and implement a strategy to revise the current land use restrictions on the Site (See Task 2).

Task 1b: Site Reconnaissance

Geosyntec will coordinate with Hercules Bayfront LLC to visit the Site to obtain information regarding current land use and features of the Site and surrounding properties. We understand that access to Parcels 6, 7, and 8 of the Site is limited to a waterfront landing accessible only by boat during high tide. Geosyntec will work with Hercules Bayfront, LLC to ascertain the most cost effective means to access the site. The cost estimate presented below does not include rental of a boat or other craft to access the Site and we will submit a change order for boat rental, if deemed necessary. The Site and adjacent properties will be observed for visible signs or indications of potential contamination or RECs as well as potential environmental issues or areas of environmental concern. The current Site features will be photographically documented.

Geosyntec assumes that Hercules Bayfront, LLC will arrange for access agreements and any other legal documents that may be required to allow Geosyntec staff to enter the Site.

Task 1c: Interviews

Geosyntec will interview the Site owners/managers and/or key facility employees, if any, to obtain information regarding the historical and current uses and physical characteristics of the Sites. The interviews will be conducted concurrently with the Site Reconnaissance activity. It is assumed that the client will make these people available for interview at the time of the Site visit.

Task 1d: Phase I ESA Report

Geosyntec will prepare a Phase I ESA Report for the Site that describes and presents the results of the ESA, including the identified RECs, as well as data gaps, if any. The report will include: an introduction; site description; summary of the scope of work including records review, site reconnaissance, and interviews; maps and photographs; findings; and conclusions. Supporting documentation will be provided as necessary. Our Phase I ESA Report will not include identification and/or sampling of suspect asbestos-containing materials, radon, wetlands, lead-based paint, mold, or lead in drinking water, which are generally considered outside the scope of a Phase I ESA. Geosyntec will provide a draft version of the report for review and comments by Hercules Bayfront, LLC. After receiving and resolving one round of comments from Hercules Bayfront, LLC, the report may be finalized. The final report will be provided in hard copy and electronic format for the exclusive use by Hercules Bayfront, LLC.

The following language will be included in the final reports: "This Phase I ESA report is intended for use only as a complete document and was prepared in accordance with the generally accepted level of skill and care exercised by other members of Geosyntec's profession for similar services. Use of this report, and reliance thereupon, is limited to Hercules Bayfront LLC, its lenders, and the City of Hercules as a potential land purchaser whose reliance shall also be subject to all of the terms and conditions of the contract and scope of work under which this Phase I ESA Report was prepared. No other third parties are entitled to rely upon this report without the express written consent of Geosyntec Consultants."

Task 2 – Revision to Land Use Restrictions

To assist the Hercules Bayfront, LLC in obtaining approval from the DTSC to develop the Site as public open space/park, a ferry terminal, and to restore Refugio Creek, Geosyntec will

develop and implement a strategy to negotiate a revision to the existing Covenant and Agreement to Restrict Use of Property (CRUP). To meet this objective, Geosyntec will conduct the scope of work outlined in the Tasks described below.

Task 2a: DTSC Meeting

Geosyntec will update the existing conceptual site model to incorporate use of the property as public open space/park facilities, creek restoration, and future ferry terminal and prepare a preliminary mitigation plan to address new exposure pathways that may exist. Geosyntec will solicit the assistance of ENGEO and HDR Environmental in involving appropriate individuals and to provide historical reference for prior remedial efforts on the site. Upon completion of this activity, Geosyntec will facilitate a meeting between the City of Hercules, the DTSC, Hercules Bayfront, LLC, and Geosyntec to inform the DTSC of development intentions and discuss the DTSC's requirements and process to modify the current land use restrictions, based on the updated conceptual site model. Following the meeting, Geosyntec will prepare and submit to Hercules Bayfront, LLC a technical memorandum summarizing the meeting and presenting our recommendations for a path forward to revising the current land use restrictions.

Task 2b: Technical Analysis and Report

Following the meeting, Geosyntec will conduct a technical analysis of existing data and information and prepare a technical report which will be presented to the DTSC presenting the technical justification, rationale, and revised mitigation, if any, to support a change in land use. At this time, we do not anticipate that additional field investigation will be necessary, however, this depends on the nature of existing information relative to the DTSC's requirements for information necessary to support a change in land use. We do anticipate that a revision or update the human health and ecological risk assessments will likely be required. The specific scope and estimated cost of this Task will be refined following the completion of Task 2a.

Task 2c: CRUP Revisions

Following the DTSC's acceptance of the Technical Report and the determination of the conditions required for allowing a change in land use, Geosyntec will work with the DTSC and the Hercules Bayfront, LLC to document and record the revised land use restrictions. Depending on the significance of the requirements, this may involve a public notice and possible a public information meeting. The specific scope and estimated cost of this Task will be refined following completion of Tasks 2a and 2b.

Task 3: Remediation Design Support

Geosyntec will work with Hercules Bayfront, LLC and its contractors and engineering consultants to provide support in designing the components of the remediation that are required by the DTSC to allow the change in land use. Our preferred approach for this Task is to provide the comprehensive design of the remediation components and provide them to the City's design engineer for incorporation into the project construction documents. As with Tasks 1 and 2, Geosyntec will collaborate with Engeo and other consultants familiar with the land (as and if necessary) to gain insights on the geotechnical condition of the site as well as the nature and condition of the civil infrastructure at the Site.

Alternatively, Geosyntec can provide a designated design engineer with a design basis for the remediation components. Upon completion of the draft design by the engineer, Geosyntec would provide review and comment of the construction document package to verify that the designs comply with the DTSC requirements. Because the nature of remediation elements are not know at this time, it is not possible to estimate the level of effort or cost to produce the design documents.

Task 4: Construction Management and Quality Assurance

During construction of the remediation components, Geosyntec will work on behalf of Hercules Bayfront, LLC and in collaboration with the geotechnical and civil engineers to manage the construction activity, assure the quality of the construction meets the design specifications, and provide appropriate documentation to the DTSC that the remediation components have been installed as approved. If a construction contractor is retained directly by Hercules Bayfront, LLC, Geosyntec will provide independent oversight and quality assurance monitoring. However, if desired, Geosyntec can provide turnkey construction, construction management, and quality assurance monitoring. Because the nature of remediation elements are not know at this time, it is not possible to estimate the level of effort or cost to manage the construction efforts and produce the regulatory documents.

PROJECT MANAGEMENT

Throughout the course of the project, we will conduct Project Management activities which will include:

- Monitoring the progress of scope, schedule, and budget expenditures;

- Managing subcontractor services, including contracting and invoicing;
- Preparing monthly invoices for the client;
- Meeting with and communicating with the client as part of the project team to discuss progress of the project, changes in scope and maintain an overall perspective of the development project progress as it pertains to Geosyntec's scope of services. This will include an initial project kickoff meeting with the client.

SCHEDULE

Geosyntec is prepared to initiate our services within five days of your authorization to proceed. We anticipate that Task 1 and Task 2a will be conducted concurrently. It will be our objective to obtain information from the DTSC regarding their requirements and process to modify the land use restrictions so that this information can be incorporated into the Task 1 activities. We anticipate that a draft of the Phase I ESA Report can be delivered to Hercules Bayfront, LLC within 5 weeks of the initiation of our services. Upon your authorization, we will produce a tentative project schedule.

We understand that this effort is part of a larger entitlement process and the information obtained from the Phase I ESA will be used as a component of the purchase and sale transaction as well as other aspects of the entitlement process. The estimated schedule for Tasks 2b through Task 4 will be developed as new information is obtained from Tasks 1 and 2a.

BUDGET, ASSUMPTIONS, AND CONDITIONS

We propose to provide our services on a time and expense basis in accordance with our 2011 Rate Schedule and mutually negotiated contract terms and conditions. For your consideration, we have included a copy of our rate 2011 Rate Schedule and Professional Services Agreement as Attachment A.

Due to the current uncertainty in the elements and process that the DTSC will require to modify the land use restrictions, it is not possible to provide a budget estimate for Tasks 2b through 4.

We recommend establishing an initial not to exceed budget of $15,000 for conducting Tasks 1 and 2a. Once we complete Tasks 1 and 2a, we will provide Hercules Bayfront, LLC with an update of the schedule and budget estimate to proceed with Tasks 2b through 2c. Upon DTSC's

concurrence with the proposed remediation components presented in Tasks 2b and 2c, we will provide you with our schedule and budget estimate to proceed with Tasks 3 and 4.

PROPOSED PROJECT TEAM

Geosyntec's project team will be lead by Mr. Randy Brandt, P.G., Principal. Mr. Brandt has over 24 years' experience in the field of hydrogeology with special emphasis on environmental and hazardous waste issues. Mr. Brandt has focused on development and implementation of site characterization programs for hazardous waste sites ranging in size from gasoline service stations to closed military bases. He is adept at developing creative and cost effective remediation strategies to meet objectives of project stakeholders, including responsible parties, regulatory agencies, and the public. He has particular experience with devising strategies to integrate site remediation with land development activities, supporting an end-state vision of land developers and municipalities.

Mr. Brandt has provided strategic consultation and technical direction for sites falling under the jurisdiction of the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), National Environmental Policy Act (NEPA) and numerous state lead programs in California, Washington, and Oregon. A copy of Mr. Brandt's resume is included as Attachment B.

Mr. Brandt will be supported by other scientists and technical experts, as necessary to complete the Tasks outlined above.

CLOSING

We appreciate the opportunity to present this proposal to you and we look forward to the opportunity to work with you on this challenging project. Please indicate your acceptance of this proposal by executing the attached Professional Services Agreement or by sending us a copy of your preferred contract terms for consideration.

If you have any questions regarding our proposal or our proposed approach, please feel free to call me at 510-285-2736. I will call you in the next few days to follow up on the next steps in this process.

Sincerely,

Randolph C. Brandt

Randolph C. Brandt
Principal

Attachments: Attachment A – **2011** Rate Schedule and Professional Service Agreement
Attachment B -- Resume

Attachment "A"
2011 Rate Schedule

CONFIDENTIAL

GEOSYNTEC CONSULTANTS
2011 RATE SCHEDULE

Engineer/Scientist	Rate/Hour
Staff Professional	$105
Senior Staff Professional	$122
Professional	$140
Project Professional	$158
Senior Professional	$178
Associate	$198
Principal	$215
Construction Services	
Engineering Technician I	$ 54
Engineering Technician II	$ 60
Senior Engineering Technician I	$ 65
Senior Engineering Technician II	$ 70
Site Manager I	$ 79
Site Manager II	$ 87
Construction Manager	$ 98
Design, Graphical, and Administrative Services	
Designer	$114
Senior Drafter/Senior CADD Operator	$ 100
Drafter/CADD Operator/Artist	$ 88
Admin Assistant/Tech Word Processor	$ 56
Clerical	$ 46
General	
Direct Expenses	Cost plus 12%
Subcontract Services	Cost plus 12%
Communications Fee	3% of Professional Fees
Specialized Computer Applications (per hour)	$ 15
Personal Automobile (per mile)	Current IRS Rate
Photocopies (per page)	$ .09

Rates are provided on a confidential basis and are client and project specific.
Unless otherwise agreed, rates will be adjusted annually based on a minimum of the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers.
Rates for field equipment, health and safety equipment, and graphical supplies presented upon request.

Attachment "B"
Resume

Geosyntec consultants

RANDOLPH C. BRANDT

hydrogeology
program management
operations management

EDUCATION

B.S., Geology/Oceanography, Humboldt State University, 1984

REGISTRATION

Professional Geologist (PG), California, No. 6105

CAREER SUMMARY

Mr. Brandt has over 25 years' experience in hydrogeology with special emphasis on environmental and hazardous waste issues. He has focused on development and implementation of site characterization and remediation programs for hazardous waste sites, ranging in size from gasoline service stations to closed military installations. He is adept at developing creative and cost effective remediation strategies to meet objectives of project stakeholders, including responsible parties, regulatory agencies, and the public. He has particular experience with devising strategies to integrate site remediation with land development activities, supporting an end-state vision which emphasizes reduced overall life-cycle cost and liability exposure.

Mr. Brandt has provided strategic consultation and technical direction for sites falling under the jurisdiction of the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), National Environmental Policy Act (NEPA) and numerous state environmental programs in California, Washington, and Oregon. He has provided consulting services at oil refineries, military installations (active and closed), chemical manufacturing plants, hard rock and aggregate mines, landfills, hazardous waste land treatment units, surface impoundments, waste piles, underground storage tanks, and non-point source areas of contamination.

Mr. Brandt's relevant project experience, organized by industry sector, is presented below:

Military Base Redevelopment

- ***Early Transfer Negotiation Support,*** *California.* Mr. Brandt was the Program Manager and Lead Consultant for performing environmental due diligence and negotiation the terms of the early transfer on behalf of various Local Reuse Authorities (LRA) and Master Developers at ten active and closed military installations. Work

under his direction was performed under the framework of the Department of Defense (DOD Base Realignment and Closure Act (BRAC) and Enhanced Use Leasing program. Work performed under his leadership included conducting environmental due diligence and critical review of Environmental Baseline Surveys, developing environmental closure strategies, preparing environmental remediation cost estimates for various closure scenarios, and preparing a financial assessment of the environmental liabilities remaining at the site. In consideration of the future impacts of the DOD's ongoing work, Mr. Brandt worked with the Master Developers to formulate plans to integrate remediation activities with development activities. Mr. Brandt provided oversight for the data review, developed an overall base-wide remediation program, and lead the discussions and negotiations between the DOD, local regulatory agencies, US EPA, Master Developers and LRAs to establish base-wide closure objectives. Work was performed at the following closed military bases:

- Alameda Naval Air Station, Alameda, California
- Hunters Point Naval Shipyard, San Francisco, California
- Treasure Island Naval Station, San Francisco, California
- Presidio of San Francisco, California
- Point Molate Naval Fuel Depot, Richmond, California
- Onizuka Air Force Base, Sunnyvale, California
- Fort Ord Army Base, Marina, California
- South Weymouth Naval Air Station, South Weymouth, Massachusetts
- Castle Air Force Base, Modesto, California
- Beale Air Force Base, Marysville, California

- ***Fort Ord Army Base, Marina, California.*** Mr. Brandt served as the Program Manager for a CERCLA remediation of Munitions and Explosives of Concern (MEC) at 4,000 acres of the former Fort Ord Army Base. In this role, Mr. Brandt managed a dedicated project team of over 20 Prime and Subcontracted staff to conduct environmental due diligence, prepare regulatory documentation, implement approved workplans, perform data analysis and interpretation, prepare reporting, and provide stakeholder interaction. Work was performed in anticipation of future commercial development under a guaranteed fixed-price contracting mechanism that was underwritten by environmental insurance policies through AIG Environmental Insurance. Mr. Brandt negotiated and prepared contract terms with the Army, Fort Ord Reuse Authority, and teaming partners. Through his leadership, he facilitated conflict resolution between the technical

team, the Army, and various stakeholders, and developed closure strategies and associated cost estimates. Mr. Brandt managed all aspects of the negotiation, policy development, and compliance with the environmental insurance policies.

- ***Hunters Point Shipyard Development,*** Lennar Urban, San Francisco, California. Mr. Brandt was the Program Manager and Lead Consultant for performing environmental due diligence and supporting the client in the negotiation the terms of the early transfer from the U.S. Navy. Mr. Brandt provided consultation to the client to establish a program that included a guaranteed fixed-price remediation (GFPR) program and served as the client representative to provide peer review and management direction to the selected GFPR contractor. Mr. Brandt provided valuable consultation with regard to integrating development and environmental remediation activities as well as procuring cost cap and pollution legal liability environmental insurance for the program.

Brownfield Redevelopment

- ***Environmental Due Diligence and Development Consultation, Proposed Campus at NASA Ames Research Center, Carnegie Mellon University,*** *Mountain View, California.* Mr. Brandt served as the Principal Consultant for performing environmental due diligence at Carnegie Mellon University's (CMU's) proposed campus at NASA Ames Research Center. Because the proposed site is located within the area of influence of a federal Superfund site and on a closed military base, CMU wanted to document current environmental conditions; identify potential long-term environmental liabilities from contaminated soil, groundwater, and indoor air; and develop mitigation measures to minimize and manage potential liabilities. Under Mr. Brandt's direction, the technical team conducted a review of documents pertaining to the military base closure and the Superfund site; interviewed representatives of NASA; conducted a site walkthrough; sampled indoor and atmospheric air; interpreted and evaluated the data collected; assessed human health risk; and participated in design review team meetings. Mr. Brandt was instrumental at helping CMU understand the potential risks from environmental conditions to their proposed campus development and incorporated cost effective mitigation measures into the lease and building retrofit design to mitigate and manage those risks in a manner that cost effectively supported the campus development program.

- ***Third Party Review of Remedial Actions at Former Paper and Pulp Mill,*** *Paul Hastings Janofsky & Walker, Antioch, California.* Performed third party review of remedial actions completed at a former paper and pulp mill to provide an opinion on the appropriateness and cost effectiveness of the services completed. Mr. Brandt prepared an opinion letter and advised the client on alternative approaches to develop an exit strategy for the closure activities. The alternative approaches included

recommendations to minimize costs for future work, which included alternative contracting mechanisms.

- ***Uptown Development Project,*** *Forest City Residential West Developments Oakland, California.* Mr. Brandt was the Principal in Charge and Project Manager for implementing the Remedial Action Plan/Risk Management Plan (RAP/RMP) at two large city blocks targeted for a residential brownfield redevelopment project. Work was conducted under a guaranteed fixed price contracting mechanism that was underwritten by environmental insurance policies through AIG Environmental Insurance. Under Mr. Brandt's direction, the project team assessed, quantified, and negotiated the transfer of environmental risk through the structure and implementation of a guaranteed fixed price remediation contract with the City of Oakland, Forest City, and AIG. Mr. Brandt was instrumental in developing the closure strategy in compliance with the RAP/RMP, negotiating the contract terms with the client and subcontractors, executing the project on time, under budget, and with no claims against the insurance policies.

- ***Proposed Auto Mall Development,*** *City of Long Beach, Long Beach Redevelopment Agency, Long Beach, California.* Mr. Brandt was the Project Manager for a multidisciplinary RI/FS and remediation project for crude oil and chlorinated solvent contaminated soils and groundwater at a proposed 80-acre auto mall in Long Beach, California. The project site encompassed three unproductive and abandoned oil production fields. With the Redevelopment Agency as his client, Mr. Brandt managed a team of staff representing various technical disciplines to conduct a site assessment, preliminary site characterization, remedial alternative technical and cost evaluation, remediation, and design and planning consultation to the Project civil and architectural engineers. As a key member of the project team, Mr. Brandt participated in crafting a strategic development phasing plan to incorporate the Auto Mall development project with the environmental remediation program.

- ***On-call Environmental Services,*** *City of Oakland, Oakland, California.* Mr. Brandt served as the Principal-in-Charge and Program Manager responsible for consultation with the City to establish scopes of work and work directives, contract management and compliance, and overall technical quality control. Mr. Brandt's technical team assisted the City with environmental (soil and groundwater quality) investigations of City-owned properties. Individual task orders included Phase I and II environmental assessments, brownfield site assessments, and third party review of other consultant work products.

- ***Environmental Due Diligence Consultation,*** various clients in California, Oregon, and Arizona. Mr. Brandt has provided consultation to numerous clients seeking to develop Brownfield and other contaminated properties. His consultation work has included

performing numerous Phase I and II Environmental Site Assessments, developing strategies for obtaining Bonafied Prospective Purchaser indemnities, procuring environmental insurance, navigating through regulatory requirements and regulations, and developing strategies to incorporate engineering and institutional controls into development concepts.

Industrial Facilities

- ***Groundwater Remediation,*** Whittaker Corporation, Hollister, California. Mr. Brandt serves as the Principal in Charge of a team of experts focused at remediation of groundwater conditions impacted by perchlorate, trichloroethylene, and chrome VI at a former ordnance manufacturing facility. The work is being conduted pursuant to a Cleanup and Abatement Order from the Central Coast Regional Water Quality Control Board. The work involves bench scale testing of various treatment technologies, system design and construction, long term operation and maintenance, groundwater monitoring and compliance with various documentation requirements of the Order.

- ***Residential Development Environmental Assessment,*** *William Lyon Homes, West Covina, California.* Mr. Brandt was the Principal Investigator and Lead Consultant to evaluate the potential human health impact of contaminated groundwater and landfill gas originating from the BKK Landfill on a nearby residential development project. The analysis was a critical component in the design and permitting of the mitigation system and resolving legal disputes with the owners of the neighboring properties.

- ***RI/FS, Confidential Client,*** *Ontario, California.* Mr. Brandt served as the Project Manager for a Remedial Investigation/Feasibility Study under a RCRA Consent Order with the State Department of Toxic Substances Control. The investigation was aimed at characterizing and remediating solvent contamination in soil and groundwater at a jet engine manufacturing facility in Ontario, California. Mr. Brandt negotiated terms of the Consent Order with the Department of Health Services and the Santa Ana Water Quality Control Board and managed implementation of a multidisciplinary RI/FS/RAP.

- ***Chevron Refinery,*** *Richmond, California.* Mr. Brandt was the Program Manager for a long-term CERCLA project involving hydrogeologic investigation and remediation services. Mr. Brandt managed a dedicated project team of technical and administrative staff to conduct investigations and remediation in response to state and federal orders. The agencies identified 55 sites requiring action including tank farms, process facilities, land farms, landfills, surface impoundments, and subsurface piping. Under Mr. Brandt's leadership, the technical team developed technical approaches to agency directives, worked with the client to integrate the refinery's position with respect to regulatory

directives, provided technical quality assurance, cost estimating and cost control, and coordinated all aspects of scheduling.

- ***Chevron Refinery,*** *El Segundo, California.* Mr. Brandt served as the Project Manager and Lead Consultant for a long-term CERCLA project involving hydrogeologic investigation and remediation services in response to state and federal clean-up orders. The orders encompassed numerous refinery operating units including tank farms, process facilities, landfills, surface impoundments, and subsurface piping. Under Mr. Brandt's leadership, the project team developed technical approaches to field investigations and feasibility studies, implemented and evaluated pilot test activities for various remediation technologies, worked with the client to integrate the refinery's position with respect to regulatory directives, provided cost estimating and control, and coordinated all aspects of scheduling.

- ***Chevron Refinery,*** *Pascagoula, Mississippi.* Mr. Brandt was the Project Manager and Lead Consultant for development of a hydrogeologic conceptual site model to support Chevron in preparation of a strategy to comply with complex regulatory directives regarding site assessment and remediation. Under Mr. Brandt's direction, the project team assessed the concerns and objectives of the stakeholders involved, developed a technical study and data analysis to compile the conceptual site model, and participated in presentation of the model to the various stakeholders.

- ***Remediation System Optimization Evaluation, Rijeka Refinery,*** *Ecoina Engineers/Croatian National Government, Rijeka, Croatia.* Mr. Brandt was the Project Manager and Lead Consultant responsible for evaluating the technical and economic effectiveness of an existing refinery-wide remediation system at a major government-owned oil refinery. Under Mr. Brandt's leadership, the technical team assisted the refinery operator in complying with new environmental regulations and reduced the operation and maintenance costs of the remediation system. Mr. Brandt's team conducted an audit of the refinery's operation and historical record of environmental incidents, assessed the adequacy of the site investigations completed to-date, and evaluated the adequacy and effectiveness of the remediation system operated by a local consultant.

- ***Chevron Chemical Company,*** *Richmond, California.* Mr. Brandt was the Project Manager for the development of a revised large-scale groundwater monitoring program at a pesticide manufacturing facility in Richmond, California. The plan was being revised in response to changing state environmental regulations and facility operating conditions. Under his direction, Mr. Brandt's technical team reviewed over ten years of hydrogeologic information; five years of comprehensive groundwater chemical data; provided review and explanation of revised environmental regulations; and prepared a

revised monitoring plan to justify a reduction in scope of services. To complete the assignment, Mr. Brandt coordinated geologists, environmental engineers, regulatory experts, and statisticians to develop and present a revised plan. Development of the plan included evaluation of natural degradation of ammonia and nitrates in soil through the upward migration of groundwater through affected soil. Mr. Brandt coordinated groundwater modeling and contaminant fate efforts with a team of hydrogeologists and mathematical modeling experts.

Power Industry

- ***Preliminary Endangerment Assessments, 3 former Manufactured Gas Plant Sites, Southern California Edison,*** *Los Angeles Area, California.* Mr. Brandt was the Project Manager and lead field investigator to collect soil and groundwater information to conduct a comprehensive characterization of each of the sites in support of a Preliminary Endangerment Assessment. His work included data collection, data quality assurance, data interpretation, and report writing.

- ***Environmental Due Diligence of a 50-mile electric transmission pipeline, Confidential Client,*** *Tehachapi to Lancaster, California.* Mr. Brandt was the Principal-in-Charge for conducting an environmental due diligence of a 50-mile electric transmission pipeline connecting a proposed wind turbine electricity generating station with a primary connection point to the main grid. Work involved extensive fied reconnaissance, focused subsurface investigation, and strategic analysis of various transmission route configurations.

- ***RI/FS of a former MGP plant, PG&E,*** *Oakland, California.* Mr. Brandt was the Principal-in-Charge to conduct a remedial investigation and feasibility study of a former MGP plant which had been converted to maritime shipping container port uses. Due to the varied history of land uses at the site, Mr. Brandt and his team was tasked with discerning what elements of site contamination was due to former MGP operations and what elements were the cause of other historical land uses. The feasibility study focused at supporting risk-based remediation scenarios. Mr. Brandt lead the discussion and negotiation with the California Department of Toxic Substances Control to arrive at a cost effective remediation solution that was protective of human health and the ecological receptors.

Mining Industry

- ***Groundwater Quality Assessment, Limestone Quarry, Mitsubishi Cement Corporation,*** *San Bernardino County, California.* Mr. Brandt was the Principal Consultant to design a groundwater monitoring program to evaluate water

quality and wastewater discharge issues associated with the operations at a major limestone quarry in San Bernardino County. Mr. Brandt's efforts included review of existing data, designing a comprehensive groundwater monitoring network, preparing a groundwater monitoring plan, providing consultation and negotiating with regulatory agencies.

- ***Water Quality Assessment, Proposed Apperson Quarry, DeSilva Gates Corporation,*** *Alameda County, California.* Mr. Brandt was the Principal Consultant to design a surfacewater quality monitoring program to establish pre-mining operations surfacewater quality conditions in support of an Environmental Impact Report for the proposed Apperson Quarry. The operator planned to mine construction materials (sand, gravel, rock, etc.) from the quarry to support local construction activities. Mr. Brandt's efforts included review of existing data, designing a comprehensive surfacewater monitoring network, preparing a surfacewater monitoring plan, providing consultation and negotiating with regulatory agencies.
- ***Groundwater Quality and Slope Stability Assessment, Richmond Quarry, Chevron Corporation,*** *Richmond, California.* Chevron Corporation retained Mr. Brandt to conduct an assessment of groundwater quality impacts at a quarry being operated under lease from Chevron on land adjacent to the Richmond Refinery. Mr. Brandt was the Principal-in-Charge to develop and implement a groundwater quality investigation to assess the nature and source of impacts to groundwater from the quarry operations and nearby refinery.

Construction/Project Management

- Mr. Brandt served as the Construction/Program Manager for a major oil company RCRA remediation site involving the construction, start-up, and operation/maintenance of a 5-mile long perimeter groundwater protection system. The project spanned ten years; he served as Construction Program Manager for eight years. Project costs were $3,000,000 to $5,000,000 per year.

- Mr. Brandt served as the Construction and/or Project Manager for various commercial tenant improvement projects ranging in size from $10,000 to $1,200,000. Responsibilities included initial project scoping; assembling the team members including the architect, engineers, general contractor, and subcontractors; contract negotiation and management; construction administration; and construction quality assurance.

PROFESSIONAL HISTORY

Geosyntec Consultants, Oakland, California, Principal, 2008 to present

LFR Levine Fricke (now Arcadis), Senior Vice President/NW Regional Manager, 2002-2008
Paradigm General Contractors, Vice President/Director of Business Operations, 2000-2002
Dames & Moore Consultants (now URS Corporation), Principal, 1985-1999

PUBLICATIONS

5-2008 "Integrating Environmental Remediation with Site Development Activities". *Proceedings, Battelle Institute.* Chlorinated Solvents and Recalcitrant Compounds Conference, Monterey, California.

1-1994 "Establishing Clean-up Goals using Statistically-based Analysis." *Proceedings,* Chlorinated Solvents Conference, Monterey, California.

1-1990 "Redevelopment of Oilfield Property: An Environmental Perspective." *Proceedings,* HazMat West, Long Beach, California.

EXHIBIT "B"

PROJECT SITE

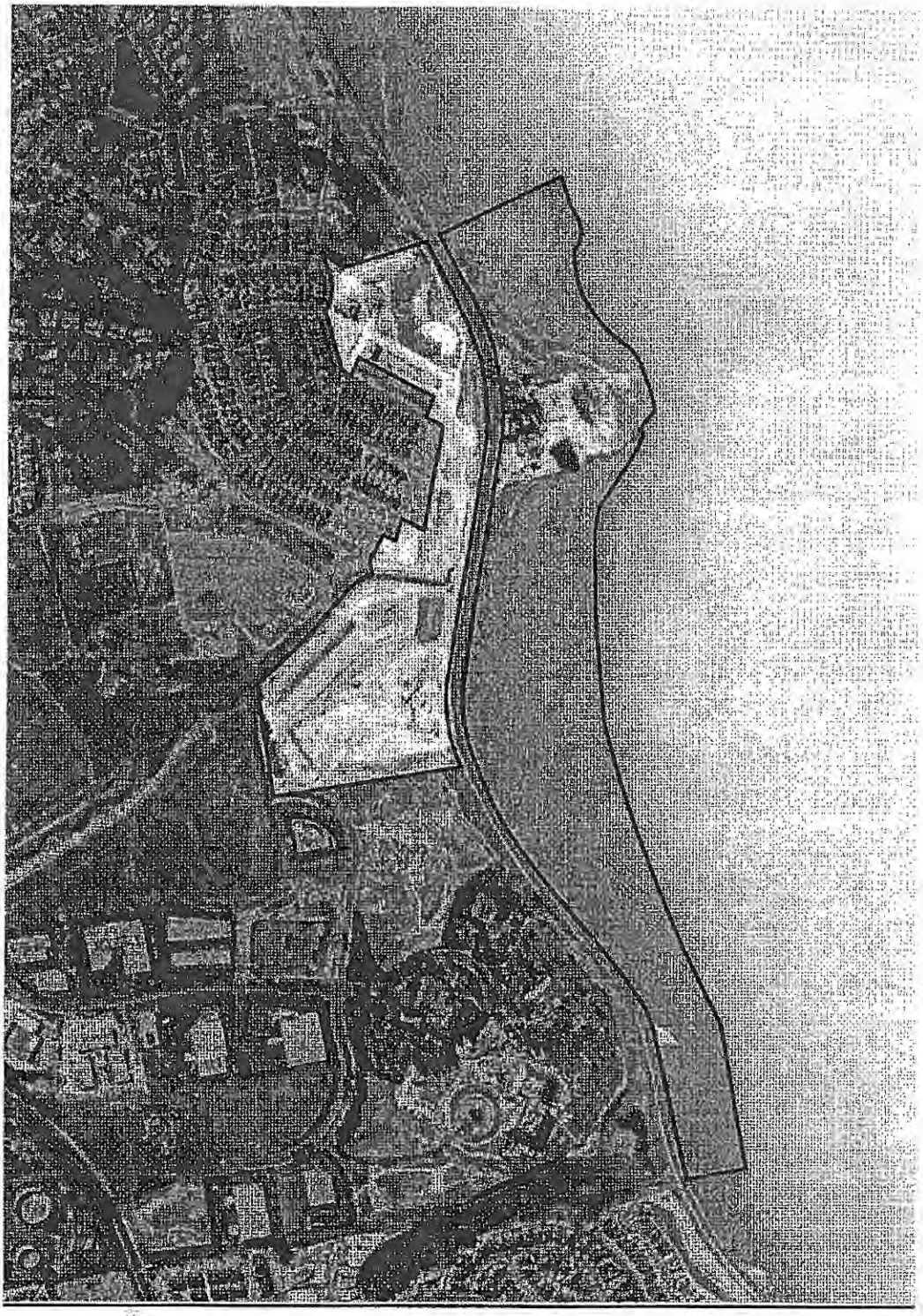


EXHIBIT A-2
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 13

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-2"
DESCRIPTION
(PARCEL 13)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(CREEKSIDE TRAIL):

A strip of land 14 feet in width, the perimeter of which is more particularly described as follows:

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 499.01 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet to the **POINT OF BEGINNING**;

THENCE North 74°39'05" West 578.17 feet;

THENCE along a curve to the right having a radius of 200.00 feet through a central angle of 37°41'14", an arc distance of 131.55 feet to the beginning of a compound curve having a radius of 270.00 feet;

THENCE along said compound curve through a central angle of 12°43'32", an arc distance of 59.97 feet to a point on an arc of a curve, concave northerly, from which the center bears North 00°43'59 East;

THENCE easterly along said curve having a radius of 367.00 feet through a central angle of 02°24'04", an arc distance of 15.38 feet to a point on an arc of a curve, concave northeasterly, having a radius of 256.00 feet, from which the center bears North 64°22'26 East;

THENCE southeasterly along said curve through a central angle of 11°20'17", an arc distance of 50.66 feet to the beginning of a compound curve having a radius of 186.00 feet;

November 4, 2011
BKF Job No.: 20075011-40
Parcel 13

THENCE along said compound through a central angle of 37°41'14", an arc distance of 122.34 feet;

THENCE South 74°39'05" East 539.71 feet to a point on a curve, concave northeasterly, having a radius of 373.00 feet, from which the center bears North 38°29'42 East;

THENCE along said curve through a central angle of 06°17'26", an arc distance of 40.95 feet to the **POINT OF BEGINNING**.

Containing an area of 10,361 square feet, more or less.

Subject to any easements of record.

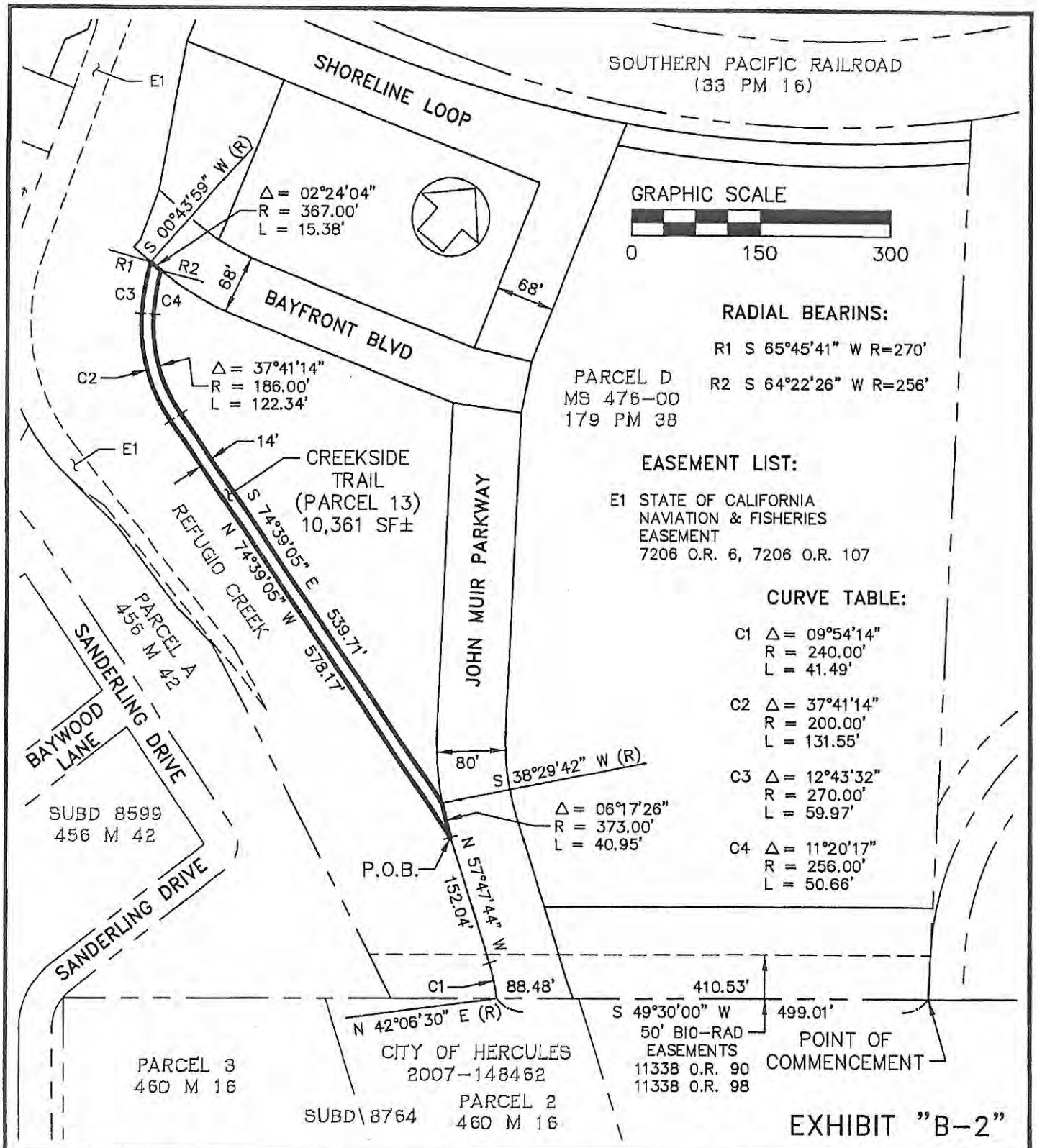
A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-2".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA



BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 13)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-3
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 16

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-3"
DESCRIPTION
(PARCEL 16)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(POWDER WORKS PLAZA):

COMMENCING at the westerly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE continuing along the last said line North 76°09'08" West 73.83 feet to a point on an arc of a curve, concave southeasterly, having a radius of 1405.69 feet, from which the center bears South 41°23'38" East; THENCE leaving said southerly line northeasterly along said curve through a central angle of 03°16'46", an arc distance of 80.46 feet to the **POINT OF BEGINNING**;

THENCE continuing along said curve having a radius of 1405.69 feet through a central angle of 14°19'25", an arc distance of 351.41 feet;

THENCE South 19°00'00" East 133.14 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line;

THENCE along said parallel line South 71°00'00" West 100.00 feet;

THENCE leaving the last said line North 19°00'00" West 104.30 feet;

THENCE South 61°34'51" West 121.12 feet to a point on an arc of a curve, concave southeasterly, having a radius of 1393.45 feet, from which the center bears South 32°59'18" East;

THENCE along said curve through a central angle of 05°07'33", an arc distance of 124.66 feet;

THENCE leaving said curve on a non-tangent line North 37°52'31" West 12.23 feet to the **POINT OF BEGINNING**.

Containing an area of 16,191 square feet, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 16

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-3".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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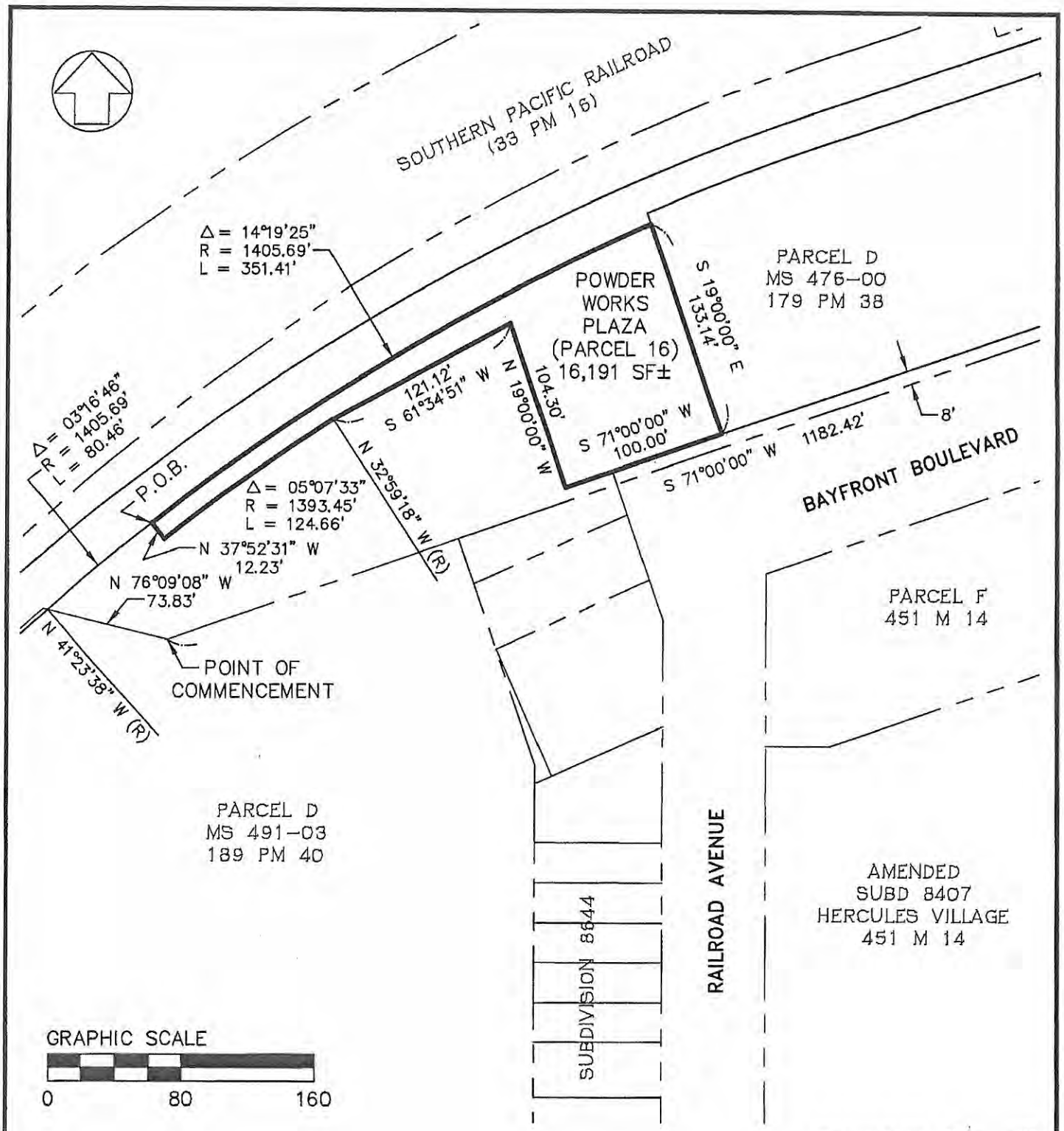

EXHIBIT "B-3"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 16)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-4
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 20

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-4"
DESCRIPTION
(PARCEL 20)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(EMERGENCY VEHICLE ACCESS):

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 102.77 feet; THENCE leaving said line North 18°49'46" West 8.00 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line; THENCE along said parallel line South 71°00'00" West 431.57 feet to the **POINT OF BEGINNING**; THENCE continuing along said parallel line South 71°00'00" West 40.00 feet; THENCE leaving the last said line North 19°00'00" West 144.66 feet; THENCE North 71°10'14" East 40.00 feet; THENCE South 19°00'00" East 144.54 feet to the **POINT OF BEGINNING**.

Containing an area of 5,784 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-4".

This description ~~has been~~ prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11-7-11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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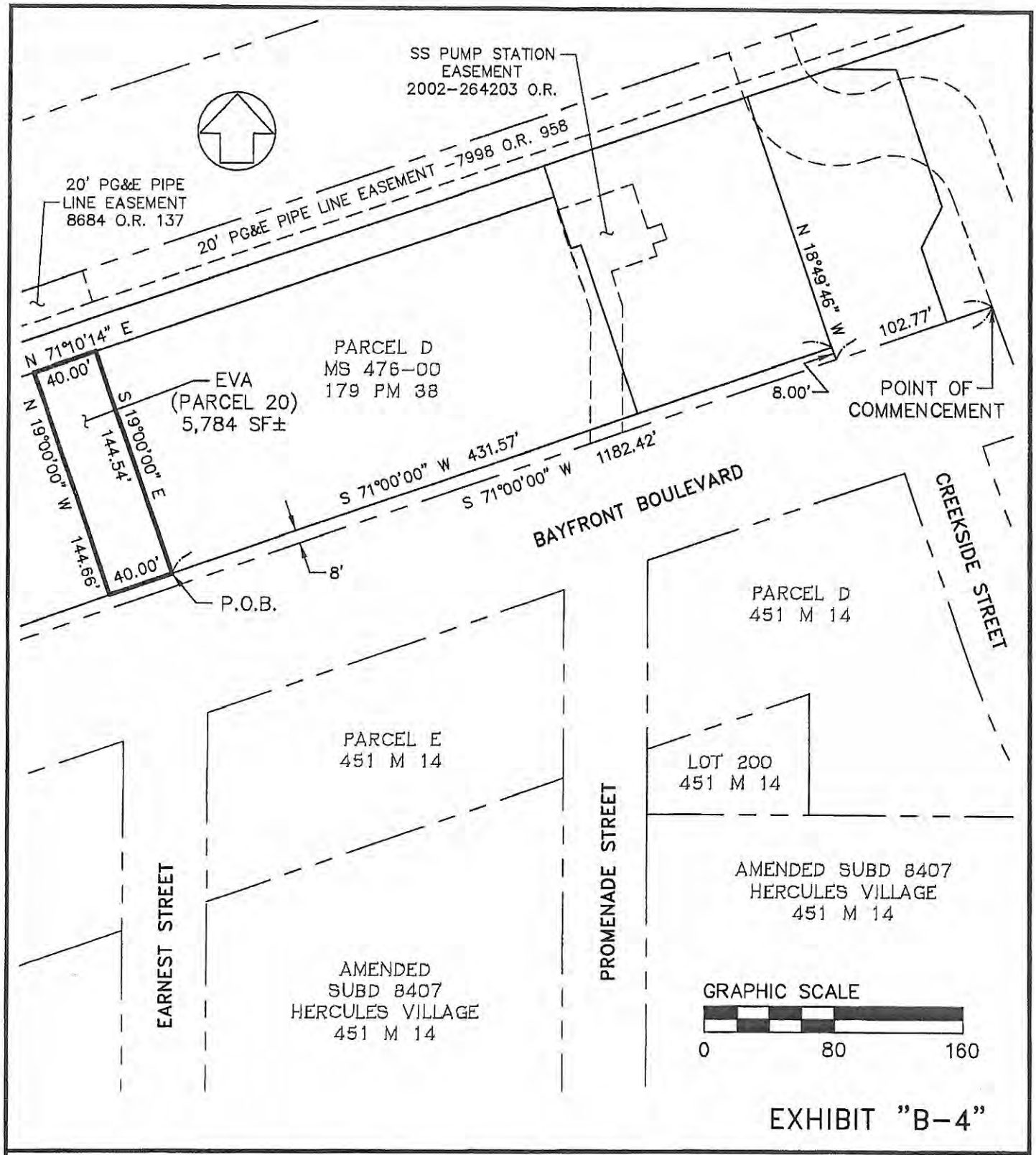

EXHIBIT "B-4"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 20)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-5
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 22

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-24

EXHIBIT "A-5"
DESCRIPTION
(PARCEL 22)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, and a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 491-03", filed March 10, 2004, in Book 189 of Parcel Maps at Pages 40 and 41 (189 PM 40), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(BAY TRAIL):

BEGINNING on the most easterly corner of said Parcel D (189 PM 40) on the northwesterly line thereof;

THENCE along said northwesterly line North 33°03'41" East 315.59 feet;

THENCE leaving said northwesterly line northeasterly along a curve to the right having a radius of 1432.69 feet through a central angle of 38°06'33", an arc distance of 952.93 feet;

THENCE North 71°10'14" East 468.81 feet;

THENCE South 19°00'00" East 20.00 feet;

THENCE South 71°10'14" West 468.87 feet;

THENCE along a curve to the left having a radius of 1412.69 feet through a central angle of 04°56'15", an arc distance of 121.74 feet;

THENCE leaving said curve on a non-tangent line South 19°00'00" East 7.02 feet a point on a curve, concave southeasterly, having a radius of 1405.69 feet, from which the center bears South 23°47'27" East;

THENCE along said curve through a central angle of 27°26'24", an arc distance of 673.21 feet to a point on a curve, concave northwesterly, having a radius of 508.00 feet, from which the center bears North 67°11'22" West;

November 4, 2011
BKF Job No.: 20075011-24
Parcel 22

THENCE along said curve through a central angle of 25°40'09", an arc distance of 227.59 feet to the beginning of a reverse curve having a radius of 162.00 feet;

THENCE along said reverse curve through a central angle of 15°25'06", an arc distance of 43.59 feet;

THENCE South 33°03'41" West 101.91 feet;

THENCE along a curve to the left having a radius of 1000.00 feet through a central angle of 04°53'39", an arc distance of 85.42 feet;

THENCE South 28°10'02" West 3.29 feet to the southwesterly line of said Parcel D (180 PM 40);

THENCE along said southwesterly line North 47°28'32" West 22.19 feet to the **POINT OF BEGINNING**.

Containing an area of 42,694 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-5".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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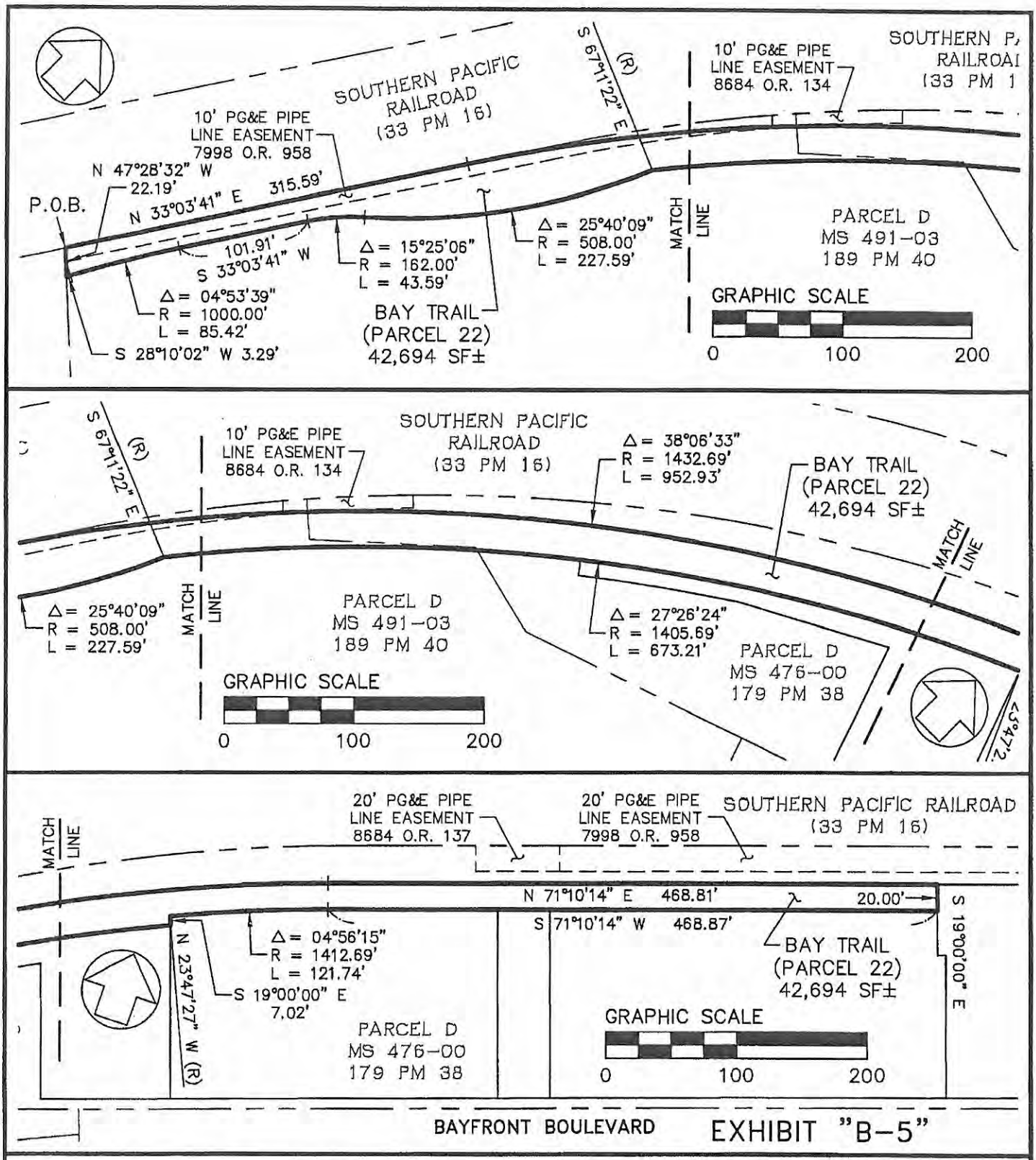

EXHIBIT "B-5"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 22)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-6
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 24

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-24

EXHIBIT "A-6"
DESCRIPTION
(PARCEL 24)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(BAYSIDE TRAIL):

A strip of land 27 feet in width, the perimeter of which is more particularly described as follows:

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to a point on a curve, concave northeasterly, having a radius of 238.00 feet, from which the center bears North 27°12'35" East; THENCE leaving said southeasterly line along said curve through a central angle of 04°59'41", an arc distance of 20.75 feet; THENCE North 57°47'44" West 198.90 feet; having a radius of 293.00 feet through a central angle of 20°00'45", an arc distance of 102.34 feet; THENCE North 37°46'59" West 364.55 feet; THENCE North 29°52'05" West 60.58 feet; THENCE North 18°51'36" West 297.00 feet to a point on a curve, concave northwesterly, having a radius of 1477.52 feet, from which the center bears North 30°26'47" West to the **POINT OF BEGINNING**;

THENCE along said curve through a central angle of 15°31'30", an arc distance of 400.35 feet to the northeasterly line of said Parcel D and a point distant South 37°46'59" East 23.44 feet from the most northerly corner of said Parcel D;

THENCE along said northeasterly line South 37°46'59" East 27.27 feet to a point on a curve, concave northwesterly, having a radius of 1504.52 feet, from which the center bears North 45°49'24" West;

THENCE leaving said northeasterly line along said curve through a central angle of 15°35'15", an arc distance of 409.31 feet;

THENCE North leaving said curve on a non-tangent line 18°51'36" West 27.55 feet to the **POINT OF BEGINNING**.

November 4, 2011
BKF Job No.: 20075011-24
Parcel 24

Containing an area of 10,930 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-6".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

K:\MAIN\2007\20075011-10 Hercules Waterfront\08 Survey\K Plats & Legal Descriptions\PARCEL-24-DESC.doc

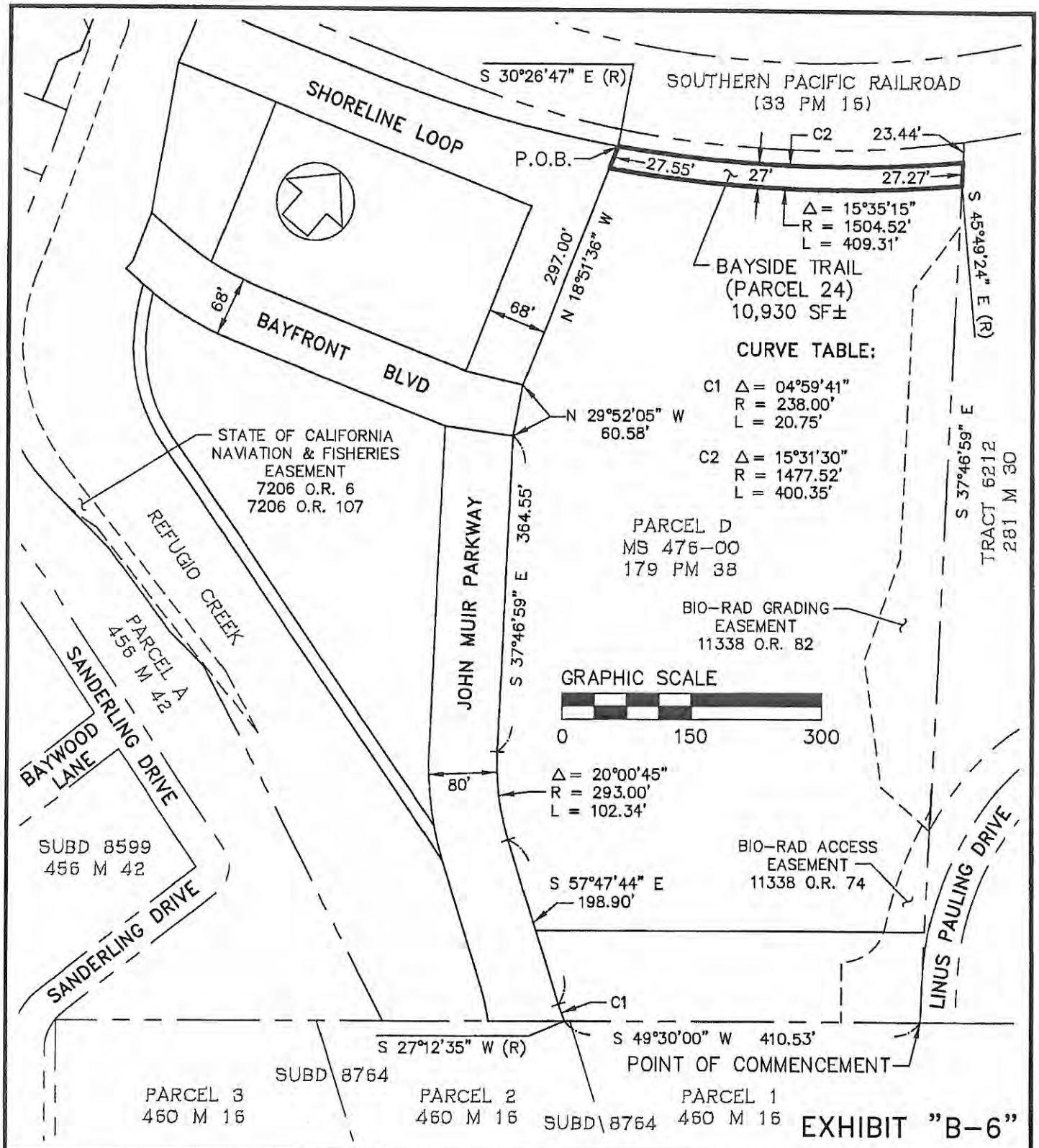

EXHIBIT "B-6"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 24)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-7
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 26

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-7"
DESCRIPTION
(PARCEL 26)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

RIGHT OF WAY DEDICATION (John Muir Parkway):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to the **POINT OF BEGINNING**; THENCE continuing along the last said line South 49°30'00" West 88.48 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet; THENCE along a curve to the right having a radius of 373.00 feet through a central angle of 20°00'45", an arc distance of 130.28 feet; THENCE North 37°46'59" West 372.32 feet; THENCE North 57°45'53" East 80.38 feet; THENCE South 37°46'59" East 364.55 feet; THENCE along a curve to the left having a radius of 293.00 feet through a central angle of 20°00'45", an arc distance of 102.34 feet; THENCE South 57°47'44" East 198.90 feet; THENCE along a curve to the left having a radius of 238.00 feet through a central angle of 04°59'41", an arc distance of 20.75 feet to the **POINT OF BEGINNING**. Containing an area of 55,388 square feet or 1.272 acres, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-7".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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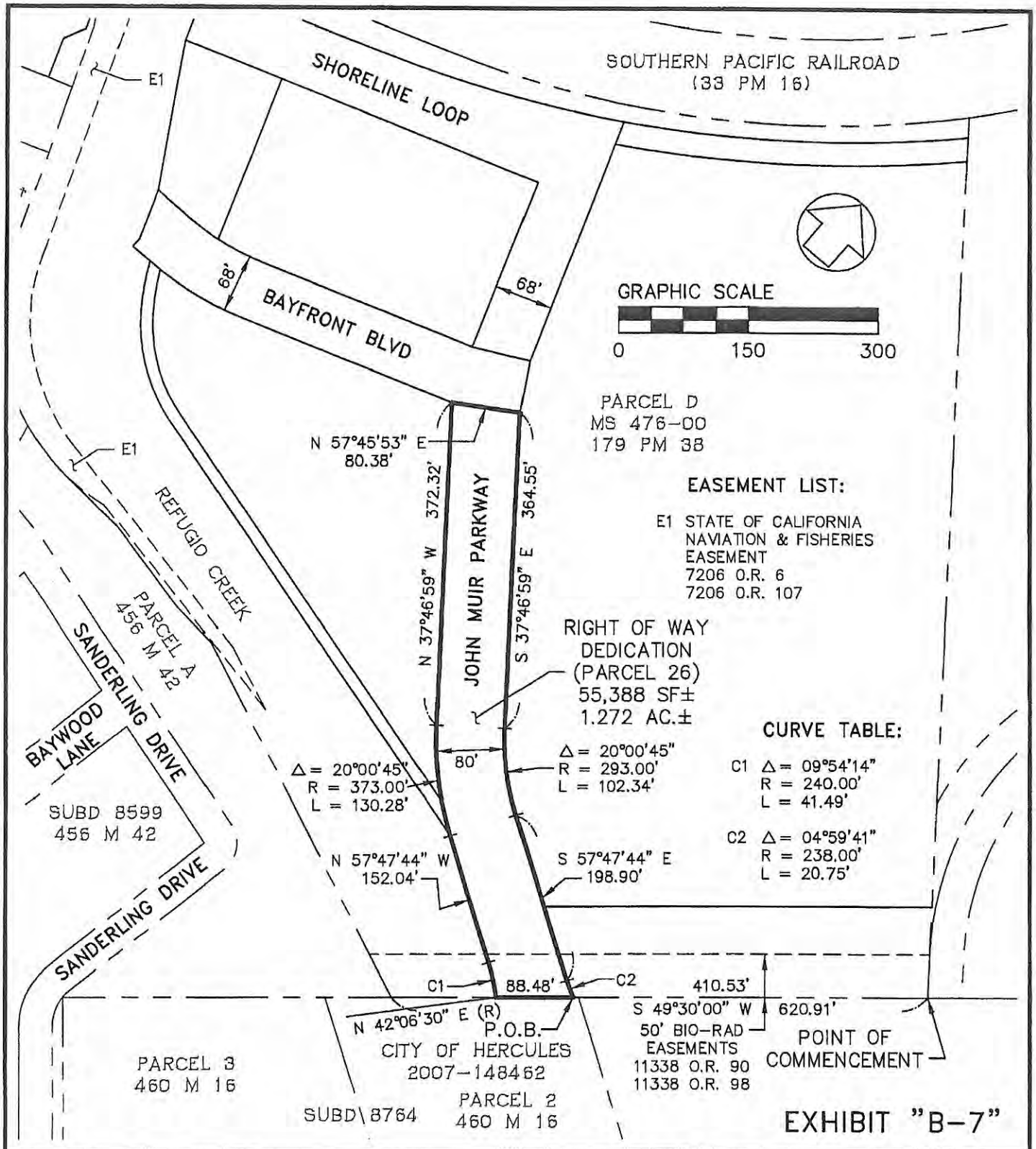

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY RIGHT OF WAY DEDICATION (PARCEL 26)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-8
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 31

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-8"
DESCRIPTION
(PARCEL 31)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(REFUGIO CREEK):

BEGINNING on the most southerly corner of said Parcel D on the general southerly line thereof; THENCE westerly along said southerly line the following seven (7) courses: 1) North 67°32'13" West 458.77 feet; 2) North 84°25'04" West 56.89 feet; 3) North 77°13'08" West 118.24 feet; 4) North 85°44'53" West 91.49 feet to a point on a curve, concave northeasterly, having a radius of 250.02 feet, from which the center bears North 06°00'36" East; 5) along said curve through a central angle of 63°29'24", an arc distance of 277.05 feet; 6) North 20°30'00" West 193.38 feet to the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38); 7) westerly along said course South 71°00'00" West 30.26 feet; THENCE leaving said southerly line North 19°00'00" West 48.57 feet; THENCE North 26°00'00" East 28.66 feet; THENCE North 18°49'46" West 89.14 feet; THENCE North 89°44'50" West 39.76 feet; THENCE North 71°10'14" East 186.07 feet; THENCE South 52°05'16" West 39.76 feet; THENCE South 18°49'46" East 59.06 feet; THENCE South 30°32'37" East 175.47 feet; THENCE South 19°32'03" East 60.23 feet; THENCE South 00°43'59" West 11.50 feet; THENCE South 89°16'01" East 26.42 feet to a point on a curve, concave northeasterly, having a radius of 270.00 feet, from which the center bears North 65°45'41" East; THENCE along said curve through a central angle of 12°43'32", an arc distance of 59.97 feet to the beginning of a compound curve having a radius of 200.00 feet; THENCE along said compound curve through a central angle of 37°41'14", an arc distance of 131.55 feet; THENCE South 74°39'05" East 578.17 feet; THENCE South 57°47'44" East 152.04 feet; THENCE along a curve to the left having a radius of 240.00 feet through a central angle of 09°54'14", an arc distance of 41.49 feet to the southeasterly line of said Parcel D and a point distant South 49°30'00" West 499.01 feet from the most easterly corner of said Parcel D; THENCE along said southeasterly line South 49°30'00" West 121.89 feet, more or less, to the **POINT OF BEGINNING.**

Containing an area of 172,662 square feet or 3.964 acres, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 31

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-8".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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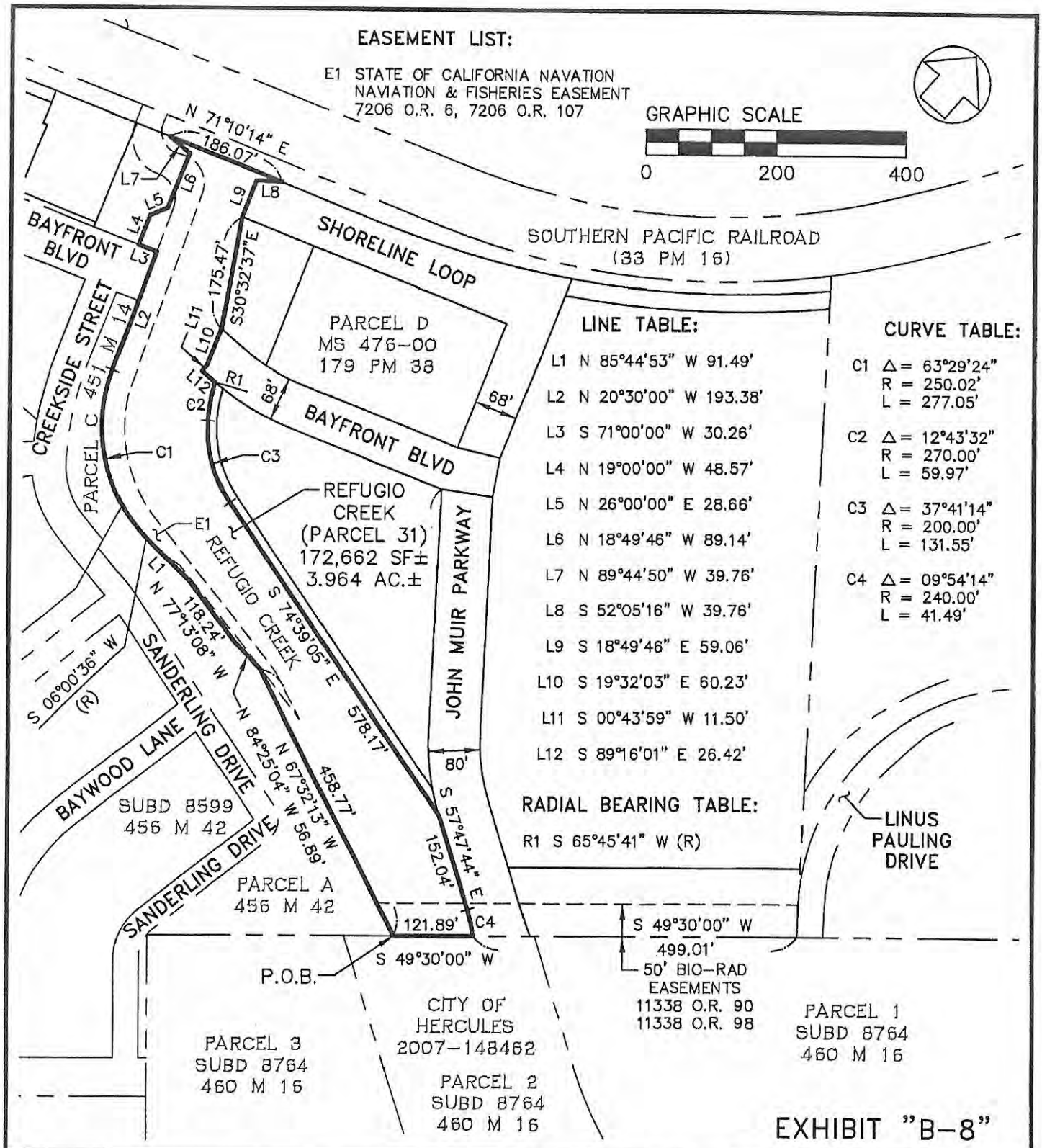

EXHIBIT "B-8"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 31)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-9
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 32

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-9"
DESCRIPTION
(PARCEL 32)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(PUBLIC ROADWAY):

A strip of land 8 feet in width, the perimeter of which is more particularly described as follows:

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 102.77 feet to the **POINT OF BEGINNING**; THENCE continuing along said line South 71°00'00" West 793.55 feet; THENCE leaving said line North 19°00'00" West 8.00 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line; THENCE along said parallel line North 71°00'00" East 793.58 feet; THENCE leaving the last said line South 18°49'46" East 8.00 feet to the **POINT OF BEGINNING**.

Containing an area of 6,349 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-9".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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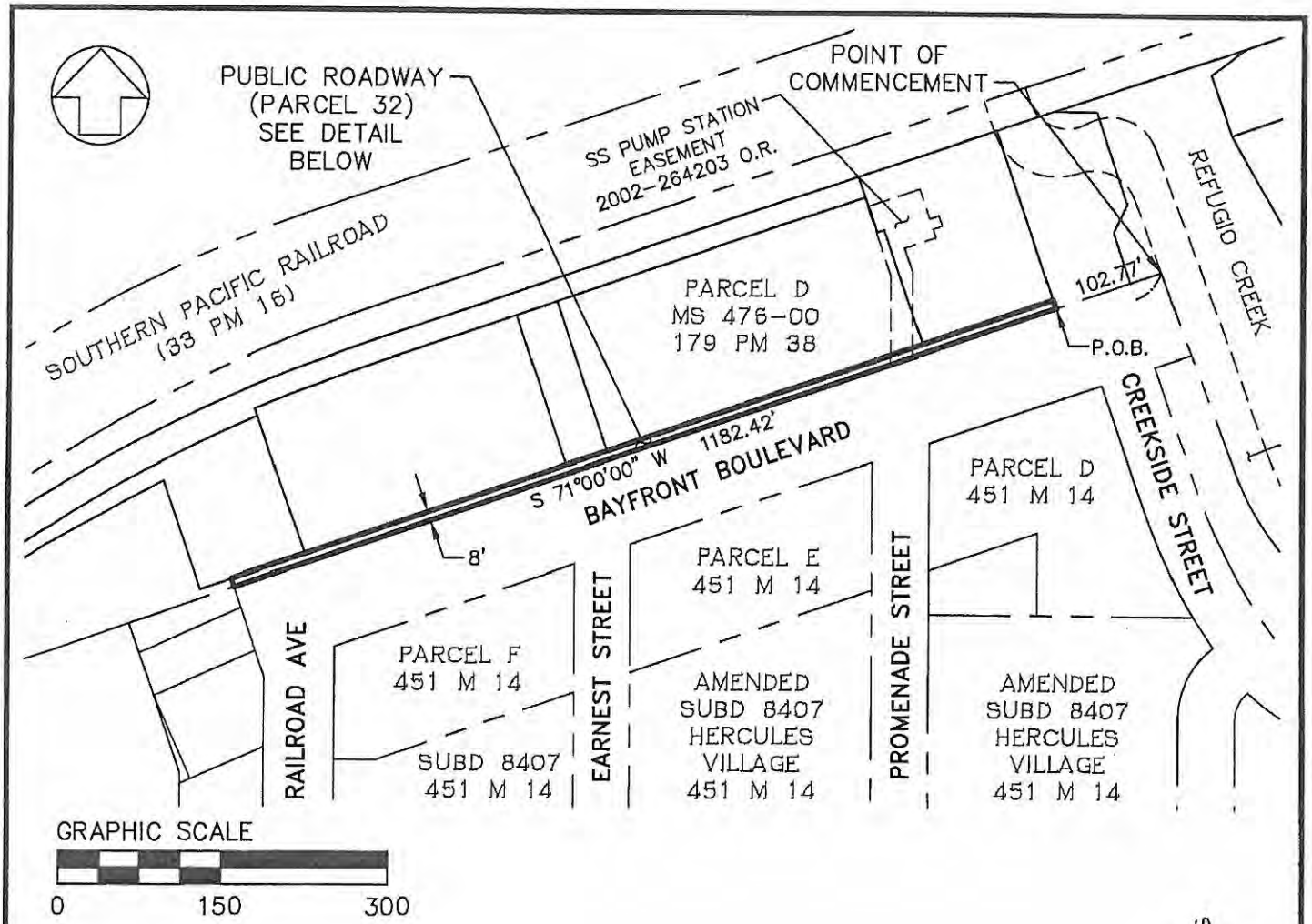

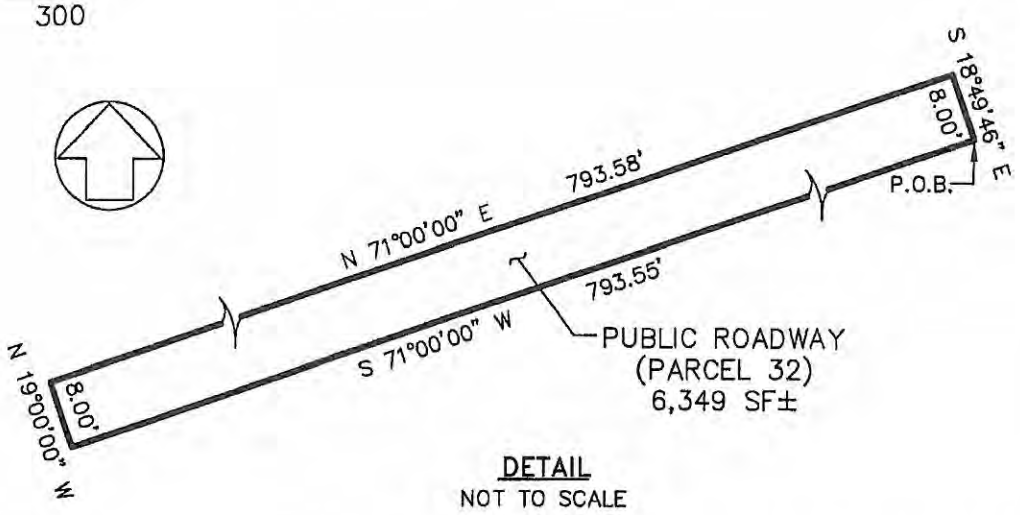

DETAIL
NOT TO SCALE

EXHIBIT "B-9"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 32)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-11
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 34

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-11"
DESCRIPTION
(PARCEL 34)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

RIGHT OF WAY DEDICATION (Bayfront Boulevard):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 499.01 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet; THENCE along a curve to the right having a radius of 373.00 feet through a central angle of 20°00'45", an arc distance of 130.28 feet; THENCE North 37°46'59" West 372.32 feet to the **POINT OF BEGINNING**;

THENCE South 71°08'24" West 261.47 feet;

THENCE along a curve to the right having a radius of 367.00 feet through a central angle of 19°35'35", an arc distance of 125.50 feet;

THENCE North 89°16'01" West 26.42 feet;

THENCE North 00°43'59" East 11.50 feet;

THENCE North 19°32'03" West 60.23 feet;

THENCE South 89°16'01" East 47.29 feet;

THENCE along a curve to the left having a radius of 299.00 feet through a central angle of 19°35'35", an arc distance of 102.25 feet;

THENCE North 71°08'24" East 260.10 feet;

THENCE North 62°43'41" East 68.74 feet;

THENCE South 29°52'05" East 60.58 feet;

November 4, 2011
BKF Job No.: 20075011-40
Parcel 34

THENCE South 57°45'53" West 80.38 feet to the **POINT OF BEGINNING.**

Containing an area of 32,614 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-11".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/3/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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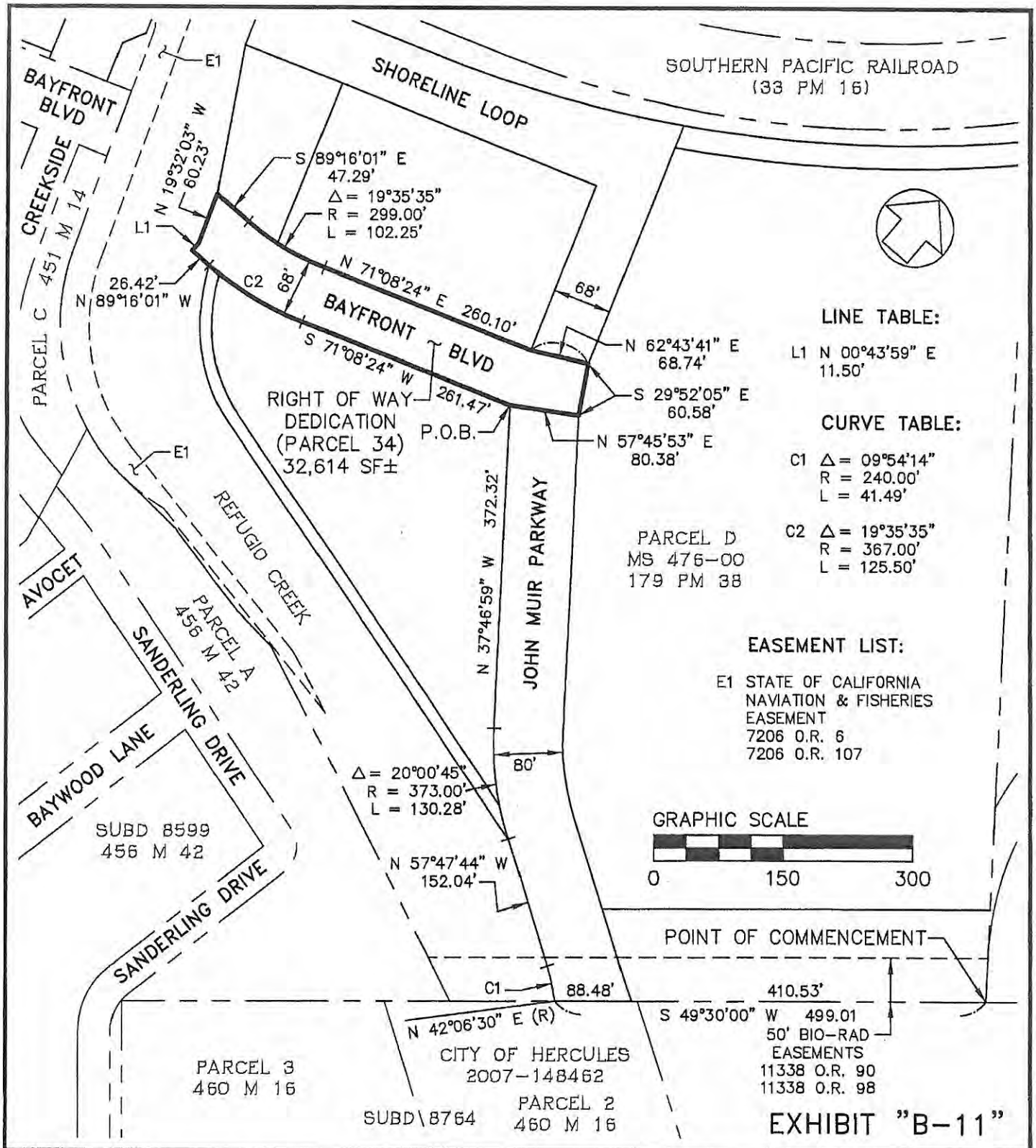

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY RIGHT OF WAY DEDICATION (PARCEL 34)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-12
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 35

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-12"
DESCRIPTION
(PARCEL 35)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(NORTH CHANNEL):

BEGINNING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to a point on a curve, concave northeasterly, having a radius of 238.00 feet, from which the center bears North 27°12'35" East; THENCE leaving said southeasterly line along said curve through a central angle of 04°59'41", an arc distance of 20.75 feet; THENCE North 57°47'44" West 89.76 feet; THENCE North 49°30'00" East 449.23 feet to the northeasterly line of said Parcel D; THENCE along said northeasterly line South 37°46'59" East 105.34 feet to the **POINT OF BEGINNING.**

Containg an area of 45,276 square feet or 1.039 acres, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-12".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/5/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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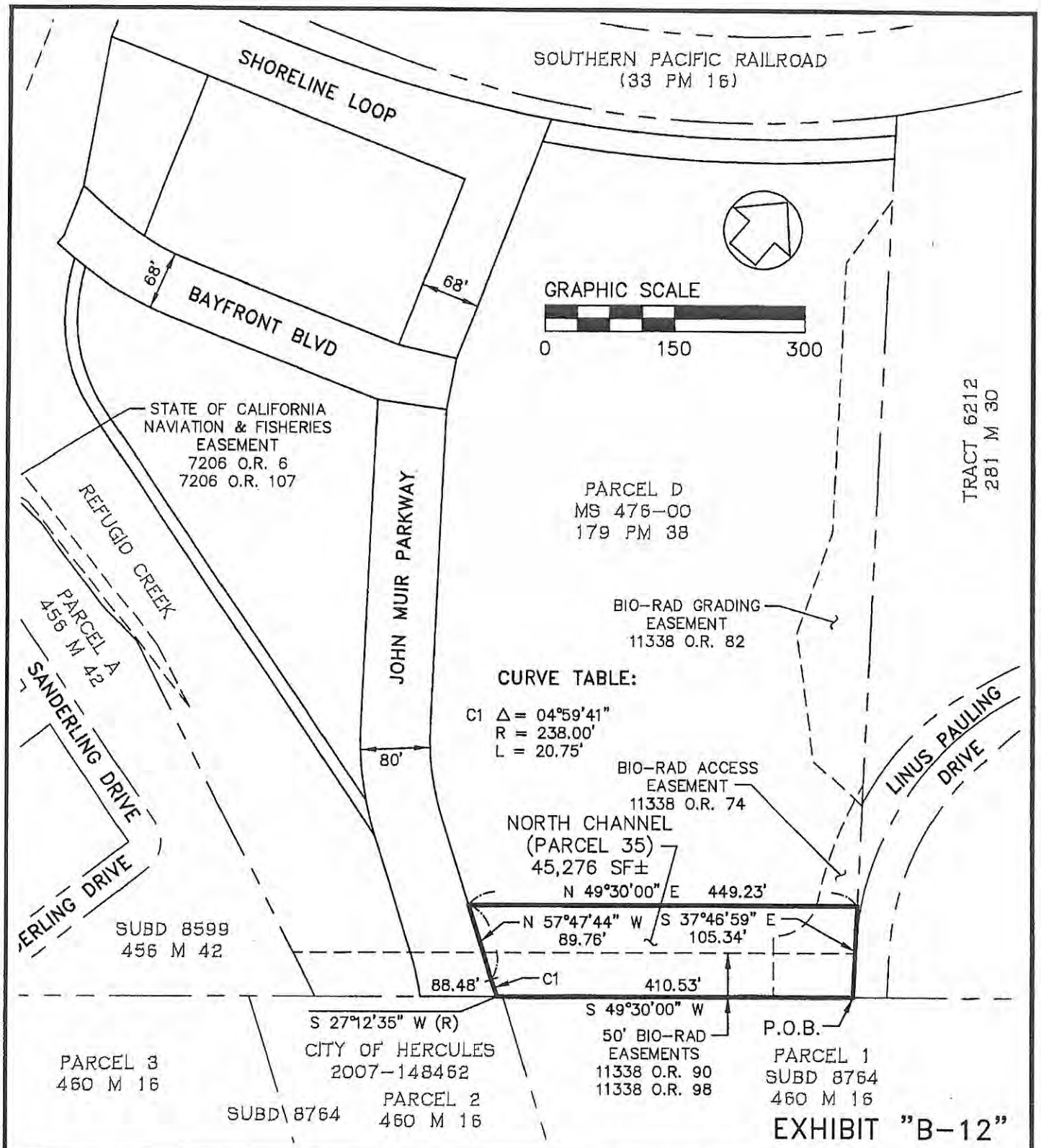

EXHIBIT "B-12"

BKF
ENGINEERS | SURVEYORS | PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 35)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-13
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 37

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-13"
DESCRIPTION
(PARCEL 37)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

RIGHT OF WAY DEDICATION (Shoreline Loop):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to a point on a curve, concave northeasterly, having a radius of 238.00 feet, from which the center bears North 27°12'35" East; THENCE leaving said southeasterly line along said curve through a central angle of 04°59'41", an arc distance of 20.75 feet; THENCE North 57°47'44" West 198.90 feet; THENCE along a curve to the right having a radius of 293.00 feet through a central angle of 20°00'45", an arc distance of 102.34 feet; THENCE North 37°46'59" West 364.55 feet; THENCE North 29°52'05" West 60.58 feet to the **POINT OF BEGINNING**;

THENCE South 62°43'41" West 68.74 feet;

THENCE North 18°51'36" West 205.00 feet;

THENCE South 71°08'24" West 440.45 feet;

THENCE North 18°49'46" West 59.06 feet;

THENCE North 52°05'16" East 39.76 feet;

THENCE North 71°10'14" East 173.29 feet;

THENCE along a curve to the left having a radius of 1477.52 feet through a central angle of 11°37'01", an arc distance of 299.57 feet;

THENCE leaving said curve on a non-tangent line South 18°51'36" East 297.00 feet to the **POINT OF BEGINNING**.

Containing an area of 52,914 square feet or 1.215 acres, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 37

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-13".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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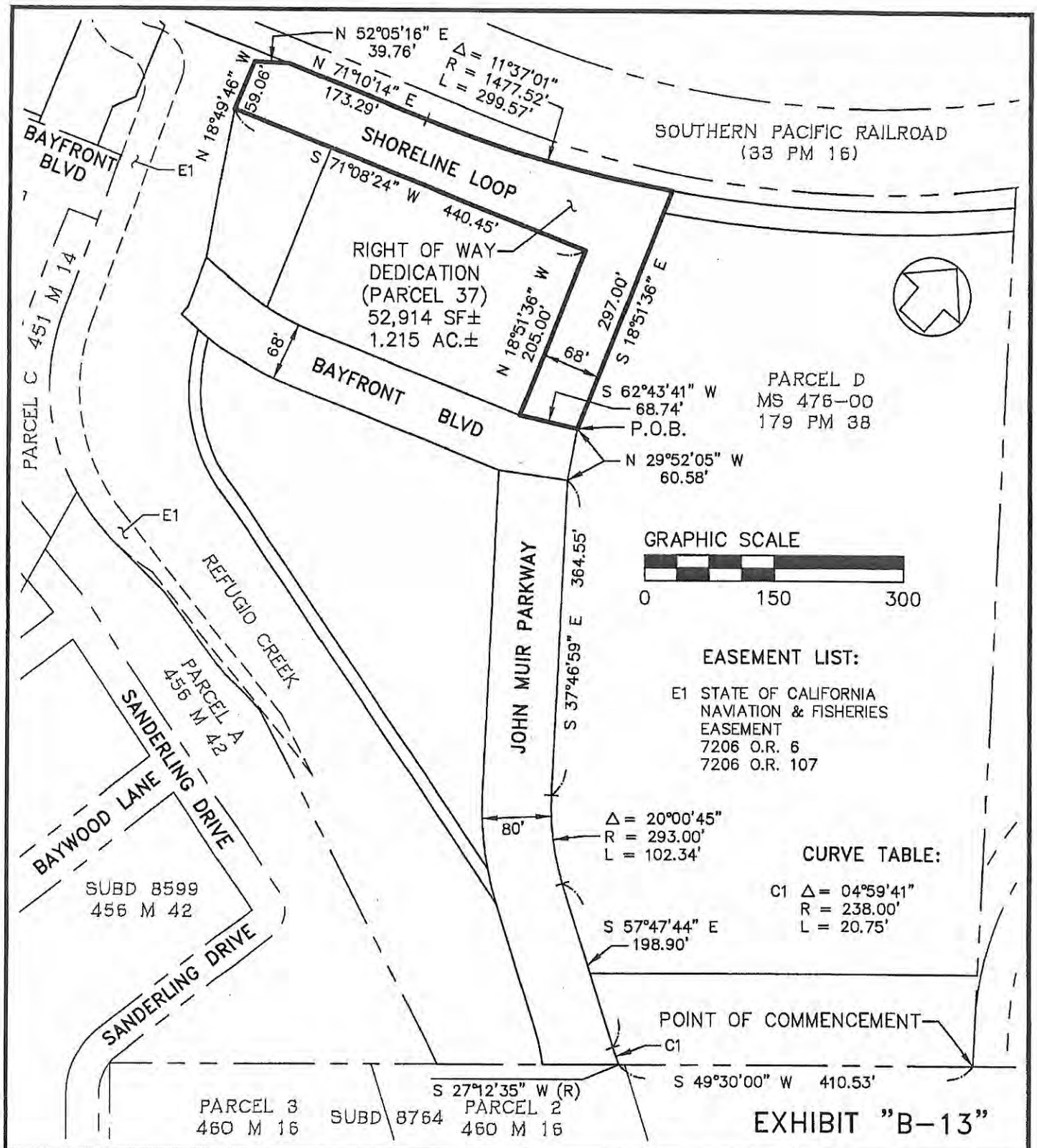

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY RIGHT OF WAY DEDICATION (PARCEL 37)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-14
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 38

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-14"
DESCRIPTION
(PARCEL 38)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(EDGEWATER PARK):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 499.01 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet; THENCE along a curve to the right having a radius of 373.00 feet through a central angle of 20°00'45", an arc distance of 130.28 feet; THENCE North 37°46'59" West 372.32 feet; THENCE South 71°08'24" West 261.47 feet; THENCE along a curve to the right having a radius of 367.00 feet through a central angle of 19°35'35", an arc distance of 125.50 feet; THENCE North 89°16'01" West 26.42 feet; THENCE North 00°43'59" East 11.50 feet; THENCE North 19°32'03" West 60.23 feet to the **POINT OF BEGINNING**;

THENCE North 30°32'37" West 175.47 feet;

THENCE North 71°08'24" East 120.45 feet;

THENCE South 18°51'36" East 198.94 feet to a point on a curve, concave northerly, having a radius of 299.00 feet, from which the center bears North 07°18'11" West;

THENCE along said curve through a central angle of 08°02'10", an arc distance of 41.94 feet;

THENCE North 89°16'01" West 47.29 feet to the **POINT OF BEGINNING**.

Containing an area of 18,884 square feet, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 38

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-14".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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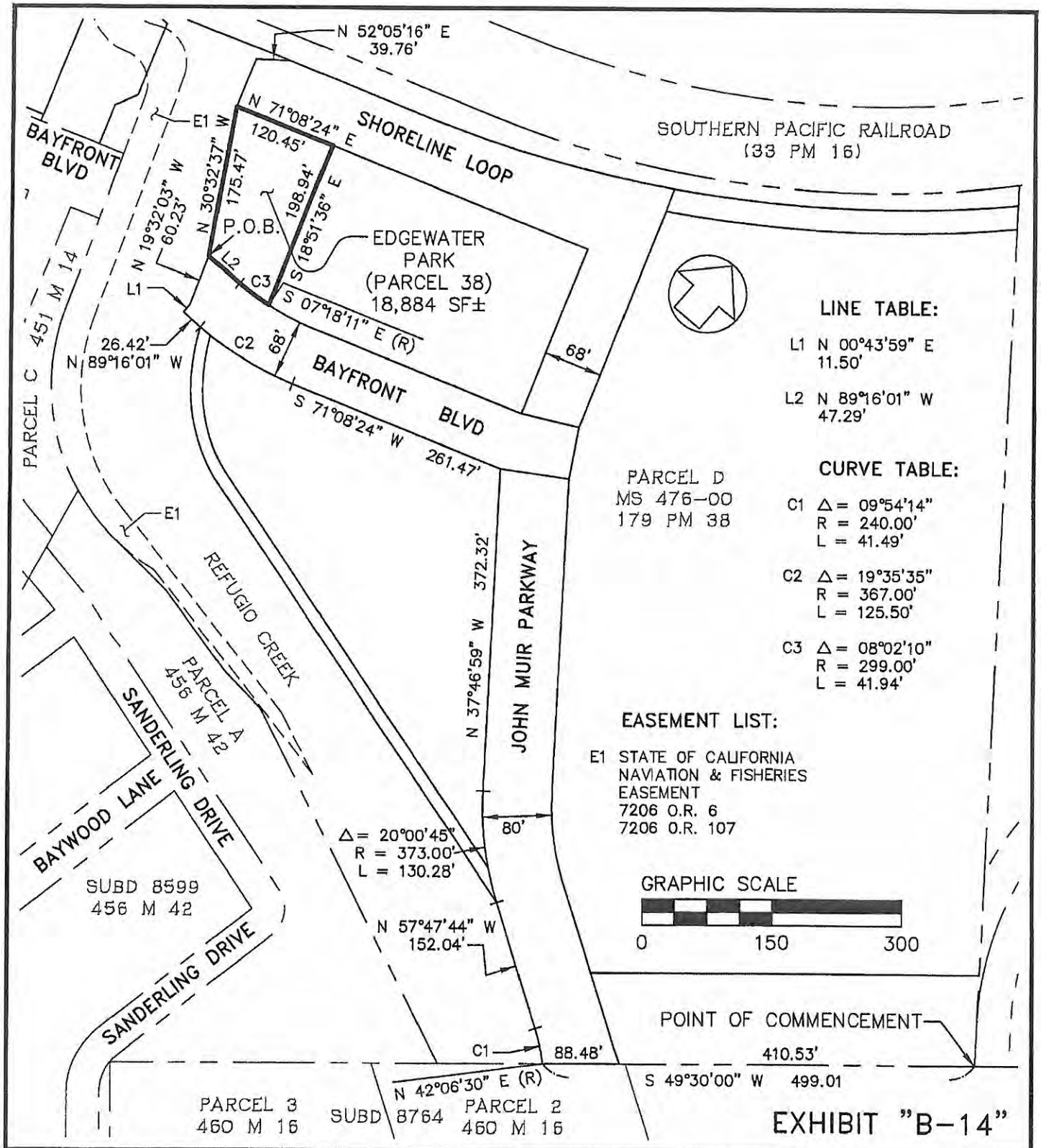

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 38)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-15
TO
GRANT DEED FOR CREDIT PROPERTY

LEGAL DESCRIPTION OF PARCEL 41

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-15"
DESCRIPTION
(PARCEL 41)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(SHORELINE LOOP):

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 30.26 feet to the **POINT OF BEGINNING**; THENCE continuing along said line South 71°00'00" West 72.50 feet; THENCE leaving said line North 18°49'46" West 171.25 feet; THENCE North 71°10'14" East 54.99 feet; THENCE South 89°44'50" East 39.76 feet; THENCE South 18°49'46" East 89.14 feet; THENCE South 26°00'00" West 28.66 feet; THENCE South 19°00'00" East 48.57 feet to the **POINT OF BEGINNING**.

Containing an area of 14,413 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-15".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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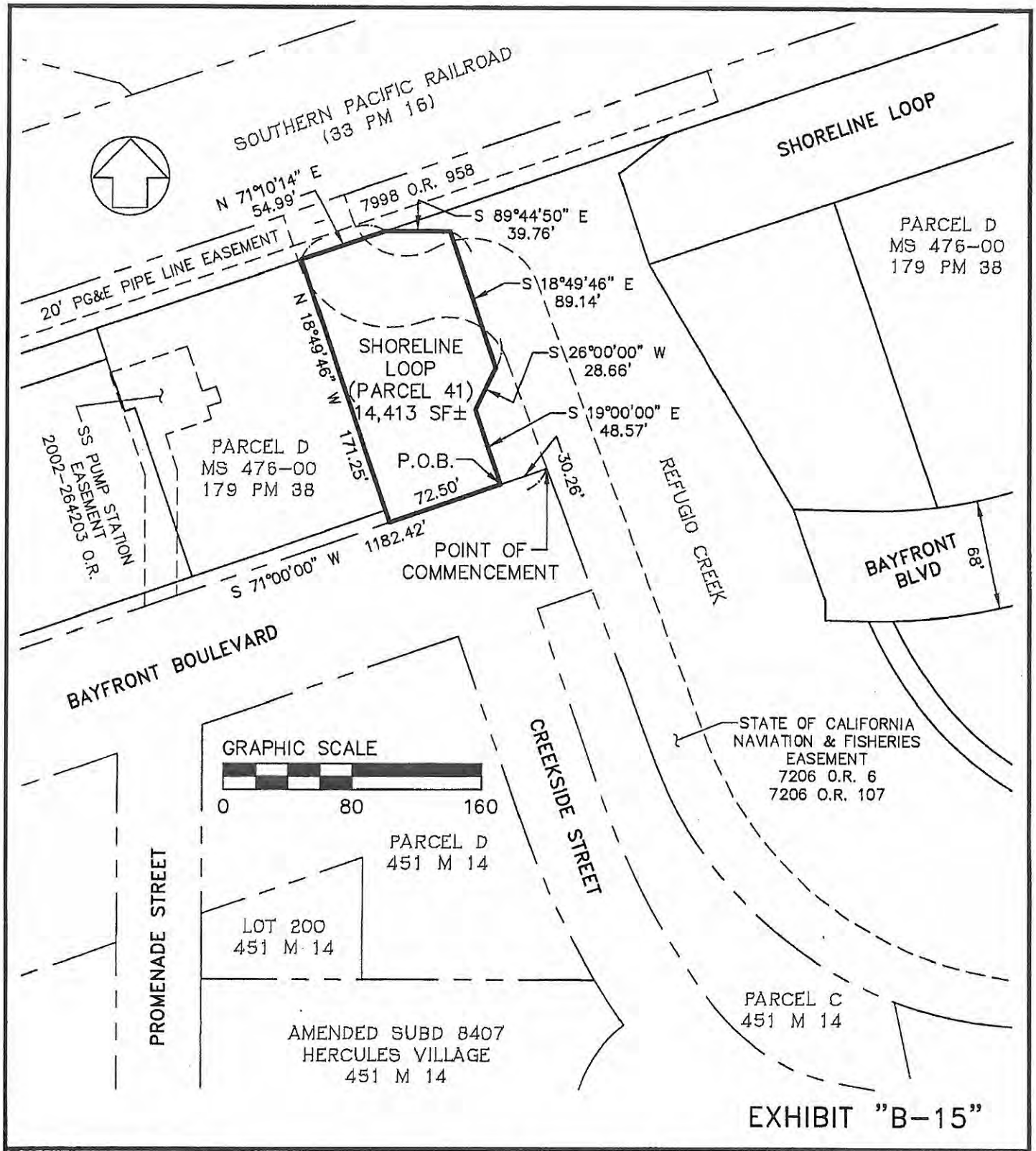


EXHIBIT "B-15"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 41)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

SEPARATE STATEMENT
OF
DOCUMENTARY TRANSFER TAX

Contra Costa County Recorder

Dear Sir/Madam:

In accordance with Section 11932 of the California Revenue and Taxation Code, it is requested that this Statement of Documentary Transfer Tax not be recorded with the attached deed, but be affixed to the deed after recordation thereof and before return as directed thereon.

The deed names HERCULES BAYFRONT, LLC, a Delaware limited liability company, as Grantor, and CITY OF HERCULES, as Grantee. The property being transferred is located in or about the City of Hercules, Contra Costa County, California. The amount of documentary transfer tax due on the attached deed is _____ Dollars ($_____), computed on the full value of the property (less the value of any liens and encumbrances remaining on the property at the time of the sale).

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT A-1
TO
GRANT DEED FOR CASH PROPERTY

LEGAL DESCRIPTION OF PARCEL 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-24

EXHIBIT "A-1"
DESCRIPTION
(PARCEL 1)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, and a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 491-03", filed March 10, 2004, in Book 189 of Parcel Maps at Pages 40 and 41 (189 PM 40), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(RAILROAD):

BEGINNING on the most northerly corner of said Parcel D (179 PM 38) on the northeasterly line thereof;

THENCE along said northeasterly line South 37°46'59" East 23.44 feet to a point on a curve, concave northwesterly, having a radius of 1477.52 feet, from which the center bears North 45°58'17" West;

THENCE leaving said northeasterly line southwesterly along said curve through a central angle of 27°08'31", an arc distance of 699.93 feet;

THENCE South 71°10'14" West 1016.75 feet;

THENCE along a curve to the left having a radius of 1432.69 feet through a central angle of 38°06'33", an arc distance of 952.93 feet to the northerly line of said Parcel D (189 PM 40);

THENCE along said northerly line North 33°03'41" East 65.54 feet to the northerly line of said Parcel D (179 PM 38);

THENCE along said northerly line of Parcel D (179 PM 38) the following three (3) courses:

1) along a curve to the right having a radius of 1379.53 feet through a central angle of 38°04'43", an arc distance of 916.83 feet;

November 4, 2011
BKF Job No.: 20075011-24
Parcel 1

2) North 71°08'24" East 1075.16 feet;

3) along a curve to the left having a radius of 1201.50 feet through a central angle of 29°24'47", an arc distance of 616.80 feet to the **POINT OF BEGINNING.**

Containing an area of 60,767 square feet, more or less.

Subject to any easements of record.

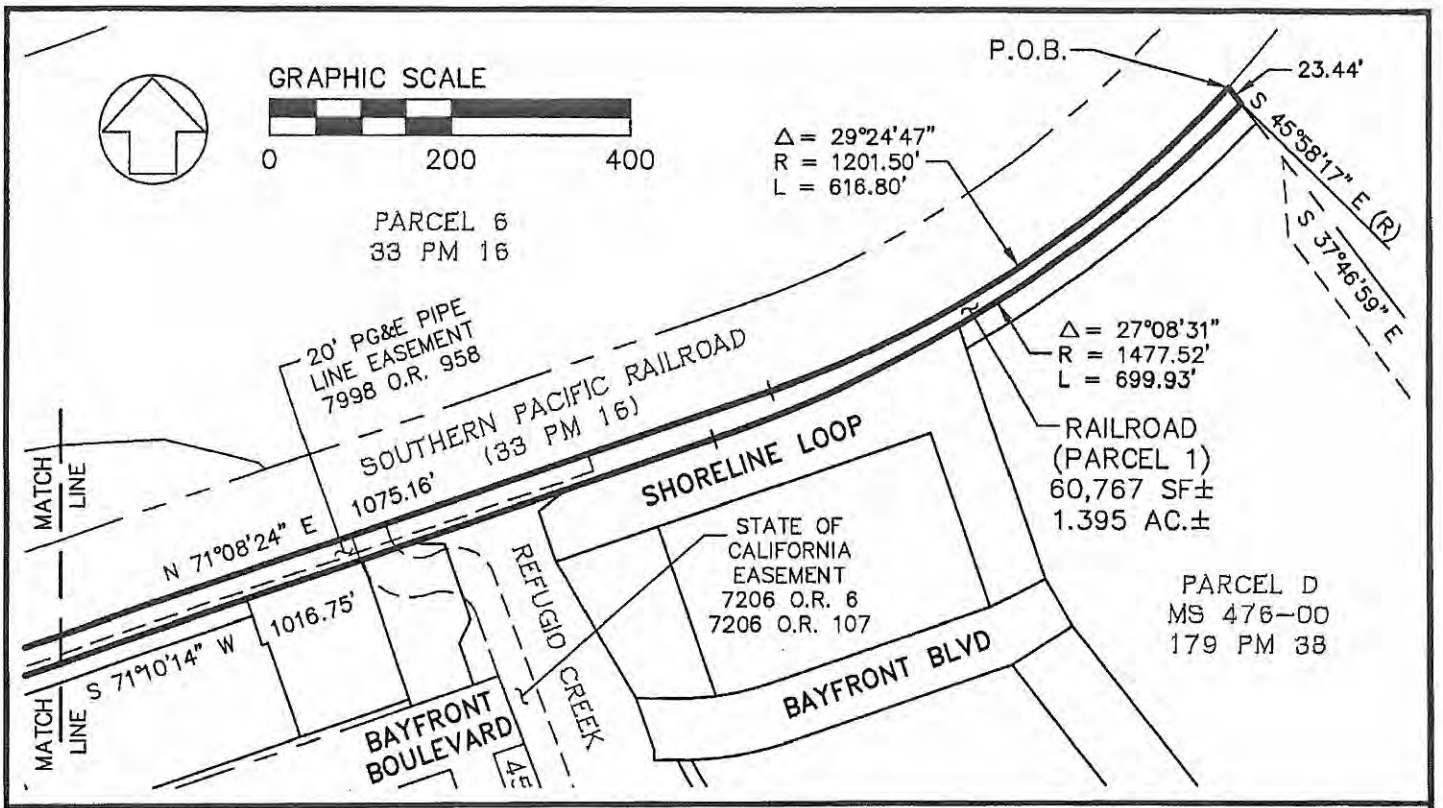
A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-1".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA



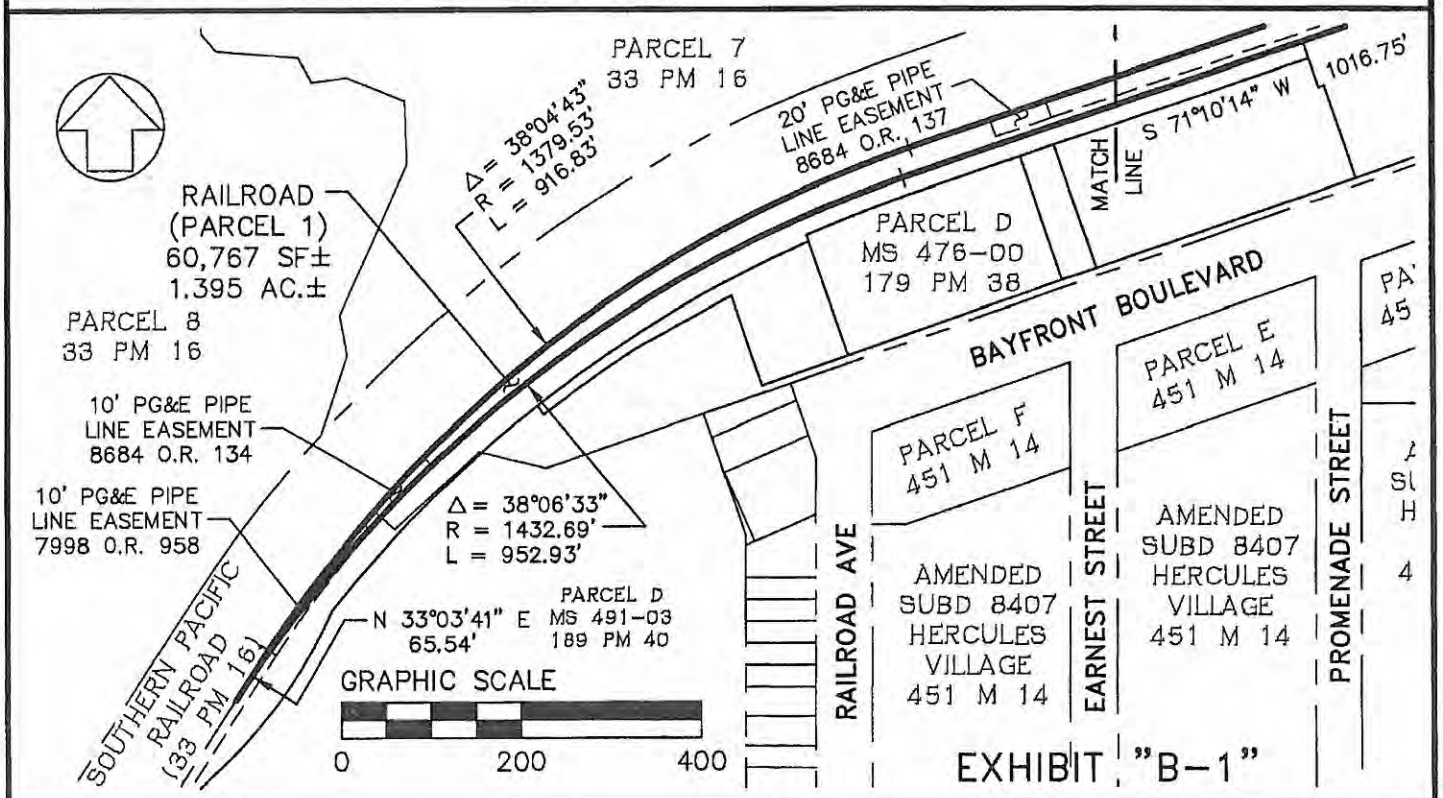


EXHIBIT "B-1"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 1)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT A-10
TO
GRANT DEED FOR CASH PROPERTY

LEGAL DESCRIPTION OF PARCEL 33

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-10"
DESCRIPTION
(PARCEL 33)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(SHORELINE CITY PLAZA):

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 102.77 feet; THENCE leaving said line North 18°49'46" West 8.00 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line and the **POINT OF BEGINNING**; THENCE along said parallel line South 71°00'00" West 126.57 feet; THENCE leaving the last said line North 19°00'00" West 109.60 feet THENCE South 71°00'00" West 6.53 feet; THENCE North 19°00'00" West 54.05 feet; THENCE North 71°10'14" East 133.59 feet; THENCE South 18°49'46" East 163.25 feet to the **POINT OF BEGINNING**.

Containing an area of 21,080 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-10".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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K Plats & Legal Descriptions\PARCEL-33-DESC.doc

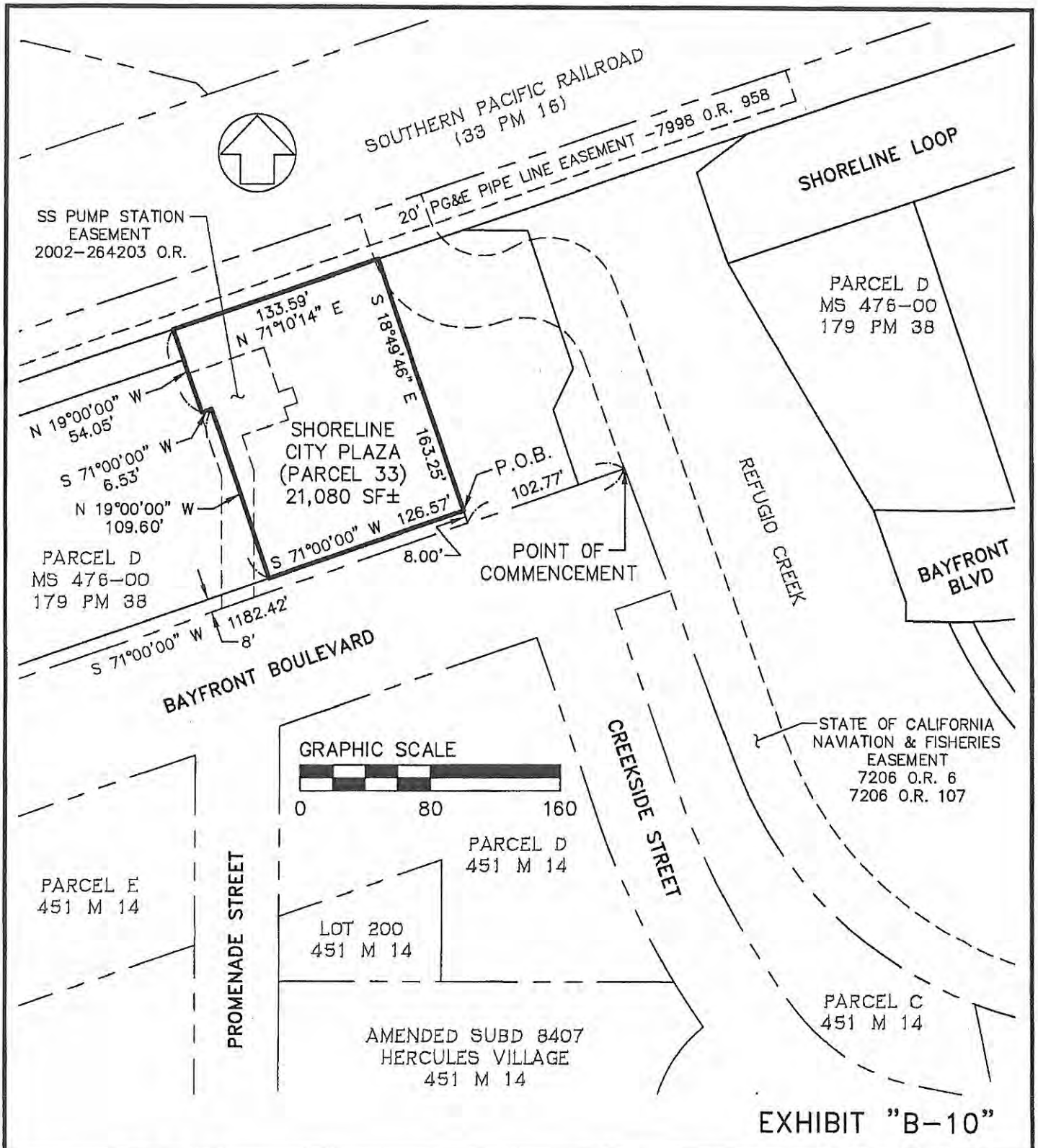


EXHIBIT "B-10"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 33)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

SEPARATE STATEMENT
OF
DOCUMENTARY TRANSFER TAX

Contra Costa County Recorder

Dear Sir/Madam:

In accordance with Section 11932 of the California Revenue and Taxation Code, it is requested that this Statement of Documentary Transfer Tax not be recorded with the attached deed, but be affixed to the deed after recordation thereof and before return as directed thereon.

The deed names HERCULES BAYFRONT, LLC, a Delaware limited liability company, as Grantor, and CITY OF HERCULES, as Grantee. The property being transferred is located in or about the City of Hercules, Contra Costa County, California. The amount of documentary transfer tax due on the attached deed is _____ Dollars ($_____), computed on the full value of the property (less the value of any liens and encumbrances remaining on the property at the time of the sale).

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT F

FORM OF TRANSFEROR'S CERTIFICATE

NON-FOREIGN AFFIDAVIT
(SECTION 1445 CERTIFICATE)

Section 1445 of the Internal Revenue Code provides that a transferee of an interest in real property located within the United States must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon a disposition of an interest in real property located within the United States by Hercules Bayfront, LLC ("Transferor"), the undersigned hereby certifies the following:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. Employer Identification Number is _____; and

3. Transferor's office address is do AndersonPacific, LLC, 6701 Center Drive West, Suite 710, Los Angeles, California 90045.

The undersigned acknowledges that this Certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could result in punishment by fine, imprisonment or both. Under penalty of perjury the undersigned declares that it has examined this Certificate and to the best of its knowledge and belief it is true, correct and complete.

DATED: _____, 2012

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT G

DUE DILIGENCE MATERIALS

- 2009-10-06 - Engeo - Topo (Railroad Plaza and Village)
- 1999-03-15 - Enviro Group - Hercules Properties - ACM & Lead Surveys
- 1999-05-28 - Engeo - Environmental Site Assessment
- 2000-05-01 - WRA - CRLF Survey
- 2003-06-10 - Engeo - Previous Grading Activities
- 2003-11-20 - Engeo - Her Railway + Station Improvements
- 2006-10-16 - Balance - Refugio Discharge Summary
- 2009-07-30 - Balance - Bayfront Bridge Flood Elevations
- 2009-08-25 - Engeo - RR Plaza Supp Geotech Surcharge
- 2010-09-01 - Engeo - Coverage Area Map
- 2010-10-25 - Engeo - Summary Published Geotech Reports
- 2010-12-06 - Engeo - Site Plan-Young Bay Mud Contours

EXHIBIT J(2)

Purchase & Sale Agreement – Hercules Point, Water Parcel North And Water Parcel South

PURCHASE AND SALE AGREEMENT
AND
ESCROW INSTRUCTIONS
FOR
HERCULES POINT, WATER PARCEL NORTH AND WATER PARCEL SOUTH

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is entered into effective as of March 14, 2012 (the "**Effective Date**") by and between HERCULES BAYFRONT, LLC, a Delaware limited liability company ("**Seller**" or "**HBL**"), the CITY OF HERCULES ("**Buyer**" or "**City**") with reference to the following facts:

RECITALS

A. Seller is the owner of those certain parcels of real property consisting of approximately 40.96 acres, with APN nos. 404-020-065, -083, -084, -085, -086; 404-670-016, -017, -018; 404-490-080, -100 located in the City of Hercules ("**City**"), State of California ("**Overall Property**"). The Overall Property is within the City's Waterfront District Master Plan and is approved for mixed use development pursuant to the Waterfront Master Plan Initiative ("**Project**").

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller that portion of the Overall Property consisting of approximately 50.55 acres, more or less, as legally described and depicted as follows: Parcel 7 (Hercules Point) attached as Exhibit A-1, Parcel 6 (Water Parcel North) attached as Exhibit A-2, Parcel 8 (Water Parcel South) attached as Exhibit A-3, (each a "Parcel" and collectively, the "**Parcels**"). Exhibits A-1 – A-3 are attached hereto and are incorporated herein by reference. The Parcels are generally depicted on Exhibit B-1, attached hereto and incorporated herein. The transfer of Title to the Parcels will be subject to reservations of easements for access, temporary construction, and utilities as generally described on Exhibit B-2; said easements will be created and reserved in favor of Seller prior to Closing. The Parcels, subject to the reservation of easements generally described and depicted in Exhibit B-2, is hereinafter referred to as the "**Property**." The Property is unimproved except for portions of the foundations of a former factory building located on the Land. Since the conveyance of the Property is to a public entity, the Property can be conveyed to the City through a metes and bounds description, and does not need to be legally subdivided parcels at the time of conveyance pursuant to Government Code sections 66428(a)(2) and 66426.5 and Hercules Municipal Code section 10-2.212. The Property and shall consist of the following:

(1) Real Property. The Land and all improvements and fixtures (if any) located thereon, together with all of Seller's right, title and interest in and to (i) all privileges, rights, easements and appurtenances which are appurtenant to the Land, (ii) all development rights, air rights, water, water rights and water stock, if any, relating to the Land, (iii) any streets, alleys, passages and other rights-of-way, if any, included within the Land, and (iv) all oil, gas and other mineral and related development rights, if any, appurtenant to the Land (collectively, the "**Real Property**").

(2) Intangible Property. All of Seller's right, title and interest in intangible property (the "**Intangible Property**"), if any, used in connection with the Real Property, including without limitation any licenses, permits, entitlements and other approvals, if any, issued by any federal, state or local authorities relating to the use, maintenance or operation of the Real Property.

(3) Service Contracts. All of the interest of Seller, if any, in all utility contracts, service contracts, maintenance contracts, management contracts and all other contracts utilized by Seller, if any, in connection with the Real Property which are not terminated as of the "**Closing Date**" (as defined in Section 1.2 below), all of which are collectively referred to as the "**Service Contracts**".

C Buyer and Seller intend to complete the conveyance of the Property in two independent phases. Parcel 7 (the "**Credit Property**") shall be conveyed by Buyer to Seller in exchange for four hundred ninety three thousand two hundred dollars ($493,200) in development impact fee credits, and said conveyance shall occur on the earlier of (*i*) date that the "Implementing Development Agreement" between the Buyer and Seller becomes effective, and (*ii*) April 15, 2012 (the "**Credit Property Closing Date**"). The remainder of the Property, Parcels 6 and 8 (the "**Cash Property**") shall be conveyed by Buyer to Seller in exchange for two hundred ninety six thousand none hundred thirty three dollars ($296,933) in cash or cash equivalent funds, and said conveyance shall occur on December 1, 2012 (the "**Cash Property Closing Date**").

D. Buyer and Seller desire to terminate and supersede in their entirety all prior offers, counteroffers, side letters, letters of intent and other arrangements between the parties or their representatives and/or agents concerning the purchase and/or condition of the Property.

E. Buyer acknowledges and agrees that Seller retains the right of repurchase pursue development of a private marina on the Waterside North (26.5 acres) parcel. Terms of that right of repurchase are specified in the Implementing Development Agreement between Seller and City.

F. Seller and Buyer are entering into this Agreement to convey the Property to the Buyer, all as more fully set forth below.

NOW, THEREFORE, in reliance upon the foregoing Recitals and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE 1
AGREEMENT; TERM; SELLER TERMINATION

1.1 AGREEMENT OF SALE. Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

1.2 TERM. The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated in accordance with the provisions hereof, until the

Property Closing Date. The Cash Property Closing Date may be extended by mutual consent of Buyer and Seller, or as provided in Section 3.1(c).

Buyer acknowledges and agrees that Buyer shall have no right or option whatsoever to extend the Credit Property Closing Date and/or the Cash Property Closing Date for any reason without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole and absolute discretion. Buyer further acknowledges and agrees that after the Credit Property Closing Date (for the Credit Property) and/or the Cash Property Closing Date (for the Cash Property) Buyer shall have no further right or option to purchase the Property and this Agreement shall be of no further force or effect in that regard.

1.3 CONDITION PRECEDENT TO SELLER TERMINATION. If not otherwise required in this Agreement, before Seller terminates pursuant to Sections 3.1(b) and 3.2(e) or any other section, Seller shall give Buyer written notice of Seller's intent to terminate. Seller and Buyer shall meet within 15 days following Buyer's receipt of such written notice, and at such meeting shall discuss and attempt to resolve Seller's concerns. If such issues are resolved, this Agreement shall remain in full force and effect.

ARTICLE 2
PURCHASE PRICE

2.1 PURCHASE PRICE. The purchase price for the Cash Property (the "**Cash Property Purchase Price**") shall be $296,933.00 for 39.56 acres of land. The purchase price for the Credit Property shall be $493,200 (the "**Credit Property Purchase Price**"), of credit against City's Development Impact Fees.

Buyer agrees that provided Seller has delivered the Non-Foreign Affidavit and required state and local affidavits required under Section 4.4(b) hereof, showing that Seller is not a foreign person and that no tax withholdings or deductions are required, Buyer shall not deduct or withhold, nor instruct First American Title Insurance Company ("**Escrow Holder**") to deduct or withhold, any part of the Cash Property Purchase Price pursuant to Section 1445 or any other provision of the Internal Revenue Code of 1986, as amended (the "**IRC**"), or pursuant to any state or local law.

2.2 PAYMENT OF PURCHASE PRICE. The Cash Property Purchase Price and the Credit Property Purchase Price shall be paid as follows:

(a) Deposit. Within three (3) business days of the Effective Date of this Agreement, City shall deliver Escrow Holder (as defined in Section 3.1(a), below) the sum of one hundred thousand and No/100 Dollars ($100,000.00) (the "**Deposit**"). Escrow Holder shall invest the Deposit in a federally-insured, interest-bearing demand trust account with a national banking association reasonably acceptable to Buyer and Seller with offices in Contra Costa County, California. All interest earned on the investment of such Deposit, if any, shall accrue to the benefit of Buyer and will be treated as an additional deposit hereunder. The Deposit shall be refunded to Buyer if prior to the expiration of the Contingency Date Buyer terminates this Agreement as a result of Buyer's disapproval or deemed disapproval of due diligence matters pursuant to Section 3.3 below, Buyer terminates this Agreement as a result of Buyer's disapproval or deemed disapproval of the condition of title to the Property pursuant to Section 3.1 below, or this

Agreement is terminated by Buyer or Seller prior to the Contingency Date as otherwise provided in this Agreement. Notwithstanding the foregoing, Seller may request partial releases of the Deposit to pay Due Diligence Costs (defined in Section 3.2(a), below). To obtain funds from the Deposit, Seller shall provide invoices for Due Diligence Costs from the Approved Consultants, along with supporting documentation, to Escrow Holder and Buyer. Unless within ten (10) days following the receipt of such invoices Buyer objects that such Due Diligence Costs are not within the Scopes of Work (or were not otherwise Due Diligence Costs incurred at the request of Buyer) Escrow Holder shall release such funds to Seller. The remaining funds in Escrow after each release of funds shall be considered the "Deposit" hereunder and shall remain in Escrow. Any provision of this Agreement requiring the return of the Deposit to Buyer shall apply only to the portion of the Deposit then remaining in Escrow, and Seller shall not be required to return any amounts previously released to Seller for Due Diligence Costs. Any provision of this Agreement requiring the release of the Deposit to Seller as liquidated damages shall apply only to the portion of the Deposit then remaining in Escrow, plus Seller's retention of the amounts released to Seller as Due Diligence Costs, and Buyer shall not be required to provide any additional amounts as liquidated damages, it being acknowledged by Seller that any such remaining Deposit amount and retention of the Due Diligence Costs is a reasonable estimate of damages that would be incurred by Seller. If the Deposit is fully exhausted through the payment of Due Diligence Costs, Seller shall have no further obligation to pay for any due diligence by or through the Approved Consultants, or otherwise, or to conduct any further due diligence unless such costs are paid by Buyer prior to such work being performed. Provided the Deposit is not returned to Buyer pursuant to the terms of this Agreement, the Deposit (less any released Due Diligence Costs) will remain in Escrow until the Closing Date, and will be applied towards the Purchase Price. In the event Buyer materially defaults under this Agreement, the remaining Deposit, and the Due Diligence Cost released to Seller, shall serve as liquidated damages to Seller in accordance with the terms of Section 2.2(b), below.

Seller's Initials: _____ **Buyer's Initials:** _____

(b) Balance of Purchase Price. Provided that all conditions to Buyer's obligations under this Agreement have been satisfied or expressly waived by Buyer, Buyer shall deliver to Escrow Holder (*i*) at least two (2) business days prior to the Credit Property Closing Date a Fee Credit voucher for credits against Development Impact Fees in the amount of $493,200.00 in the form attached hereto as Exhibit C, and (*ii*) at least two (2) business days prior to the Cash Property Closing Date, by wire transfer of immediately available funds, the balance of the Cash Property Purchase Price less the remaining Deposit and any interest accrued thereon, plus or minus Buyer's share of prorations and costs of Escrow hereunder.

2.3 INDEPENDENT CONTRACT CONSIDERATION. Contemporaneously with the execution of this Agreement, Buyer has delivered to Seller, and Seller hereby acknowledges the receipt from Buyer of the sum of One Hundred Dollars ($100.00) (the "**Independent Contract Consideration**"). The Parties have bargained for such amount as consideration for Buyer's exclusive option to purchase the Property pursuant to the terms of this Agreement and for Seller's execution of this Agreement, in addition to other consideration being described in this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Agreement, including any termination rights of

Buyer. The Parties agree that it is their intention that the amount of the Independent Contract Consideration is sufficient consideration, as such term is defined in Steiner v. Thexton, 48 Cal. 4th 411 (2010) for Buyer's right to purchase the Property pursuant to this Agreement. Buyer and Seller hereby acknowledge and confirm that they have had an opportunity to review this provision with their respective, independent counsel.

2.4 MUTUAL AGREEMENT OF THE PARTIES FOR STAGGERED CLOSE OF PURCHASE. Buyer shall purchase the Property from Seller in two phases. Subject to the conditions and requirements of this Agreement, the Credit Property shall be conveyed from Seller to Buyer on the Credit Property Closing Date. Subject to the conditions and requirements of this Agreement, the Cash Property shall be conveyed from Buyer to Seller on June 30, 2012. The failure to close on the Cash Property shall not affect the prior closing of the Credit Property, which shall remain closed and not subject to rescission or other claims that arise from the failure, if any, to close on the Credit Property.

ARTICLE 3
TITLE REVIEW; DUE DILIGENCE; "AS IS" SALE

3.1 TITLE TO THE LAND.

(a) Promptly after the Effective Date and its receipt of a fully-executed original of this Agreement, Escrow Holder shall cause to be delivered to Buyer and to Seller a current preliminary report issued by First American Title Insurance Company, Diane Burton, 6683 Owens Drive, Pleasanton, California ("**Title Company**") setting forth the condition upon which Title Company is willing to issue its Policy of Title Insurance (ALTA Extended Coverage) to Buyer with respect to the Property and, from time to time thereafter, supplemental reports as the same become available in the course of Title Company's standard business practices (all of such preliminary reports, as supplemented, being hereinafter referred to collectively as the "**PTR**").

(b) Buyer shall have the option until the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by Title Company then for five (5) days after its receipt of any supplemental title report and copies of any additional underlying documents, to notify Seller and Title Company in writing what exceptions to title first shown thereon, if any, are unacceptable to Buyer ("**Disapproved Exceptions**"); provided, however that (i) Buyer is not required to give notice of disapproval of debts, liens to secure debts, delinquent taxes, or assessments due as of the Closing Date, or other financing or monetary encumbrances on the Property ("**Monetary Disapproved Exceptions**"), and those items shall be considered as Disapproved Exceptions hereunder and either (a) removed from the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) (either through payment such amounts or Seller obtaining from any lenders a partial release and reconveyance of the Property from any deed of trust encumbering the Overall Property) or (b) if not removed from the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), shall result in the termination of this Agreement and the Deposit shall be returned to Buyer, and (ii) Buyer agrees that the following shall not be Disapproved Exceptions: all property taxes and supplemental taxes on the Land which are not delinquent; all nondelinquent assessments and bonds on the Land arising prior or subsequent to the date hereof; all public utility easements; all building or zoning

ordinances or regulations; all building or use restrictions, including without limitation that certain document recorded on June 28, 1996 as Document No. 96-121913 with the Contra Costa County Recorder entitled "Covenant and Agreement to Restrict Use of Property Applicable to Portion of the Hercules Properties, Ltd., Site, Hercules, California," (the "Recorded Covenant"); and all matters executed by Buyer or any agency or department of the Buyer, or which arise as a result of the acts or omissions of Buyer or its agents, employees or representatives, and (iii) with respect to any supplemental title reports delivered to Buyer after the Contingency Date, Buyer further agrees that the following shall not be Disapproved Exceptions: all matters which are not monetary liens and all matters previously constituting "**Approved Title**" (as defined in the following sentence). If Buyer provides any notice of Disapproved Exceptions, Buyer shall provide notice of all Disapproved Exceptions on or before the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within five (5) days after Buyer's receipt of any supplemental title report and copies of any underlying documents; provided, however, that Buyer is not required to include in its notice of Disapproved Exceptions notice of disapproval of any Monetary Disapproved Exceptions. If Buyer provides no notice of Disapproved Exceptions on or before the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within five (5) days after Buyer's receipt of any supplemental title report and copies of any underlying documents, then Seller shall may, in its sole discretion, deliver a written "Request to Identify Disapproved Exceptions" to Buyer on or before the date that is ten (10) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within seven (7) days after Buyer's receipt of any supplemental title report and copies of any underlying documents. Buyer shall have two business days to deliver a written response to the Request to Identify Disapproved Exceptions by identifying all Disapproved Exceptions, except Monetary Disapproved Exceptions. If Seller does not deliver a written Request to Identify Disapproved Exceptions to Buyer within the time specified in this paragraph, all matters shown on the PTR shall be conclusively deemed to be a Disapproved Exception. If Seller does deliver a written Request to Identify Disapproved Exceptions to Buyer, then only those items identified in Buyer's timely written response to the Request to Identify Disapproved Exceptions shall be Disapproved Exceptions.

(c) If Buyer gives timely notice under Section 3.1 (b) above of any Disapproved Exception, or such exceptions are deemed Disapproved Exceptions, Seller shall have five (5) days after receipt of such notice to notify Buyer and Escrow Holder in writing either (i) that Seller will cure such Disapproved Exception and will provide Buyer with evidence reasonably satisfactory to Buyer that such Disapproved Exception has been cured on or before the Closing Date or (ii) that Seller will not cure such Disapproved Exception ("**Cure/Non-Cure Notice**"). If Seller elects to cure a Disapproved Exception, it shall proceed to cure using commercially reasonably efforts, and if necessary to facilitate those efforts, Seller may extend the Cash Property Closing Date for a period, not to exceed sixty (60) days, without Buyer's written consent thereto. Seller's failure to give a Cure/Non-Cure Notice shall conclusively constitute an election not to cure a Disapproved Exception; provided, however, that Seller shall cure any Disapproved Exception which is a voluntary monetary lien encumbering the Property with Seller 's consent, along with any delinquent property taxes or assessments.

(d) If Seller elects or is deemed to elect not to cure a Disapproved Exception, Buyer shall have the option at any time within three (3) business days after such election or

deemed election to terminate this Agreement by notice to Seller and Escrow Holder to that effect, in which event Escrow Holder shall return the remaining Deposit to Buyer. If Seller elects to cure any Disapproved Exception but is unable, despite Seller's commercially reasonable efforts, to do so by the Closing, Seller shall not be in default hereunder and Buyer shall have the option at any time within five (5) business days after Seller's cessation of efforts to cure a Disapproved Exception to elect to terminate this Agreement by notice to Seller and Escrow Holder to that effect. Buyer's failure to give such notice to terminate with respect to any Disapproved Exception shall conclusively constitute Buyer's waiver of all of its objections thereto, in which case Seller shall have no obligation to cure such Disapproved Exception and it shall thereafter constitute part of approved title hereunder. Notwithstanding the foregoing, or anything herein to the contrary, in no event shall Buyer be deemed to have approved any monetary lien encumbering the Property (through a partial release and reconveyance of the Property or other means acceptable to Title Company to remove such liens), along with any property taxes or assessments as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property)(the parties recognizing that such Monetary Disapproved Exceptions will either be cured by Seller or cause the termination of this Agreement in accordance with Section 3.1(b)).

(e) At the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer's title to the Credit Property and the Cash Property (as the case may be) shall be insured by an Extended Coverage Owner's Policy of Title Insurance in the amount of the Credit Purchase Price or the Cash Purchase Price (as the case may be), insuring Approved Title to the Real Property in Buyer and including such endorsements as Buyer shall request, subject only to (1) Title Company s standard exceptions and exclusions, (2) the lien of supplemental taxes assessed pursuant to California Revenue and Taxation Code Sections 75, et seq., resulting from this transaction, (3) exceptions to title approved (or deemed approved) by Buyer pursuant to this Section 3.1, and (4) such deeds of trust or other exceptions to title created by or for the benefit of Buyer (the "**Title Policy**"). Buyer may, at Buyer s option, direct Escrow Holder to procure an extended coverage ALTA Owner s Policy of Title Insurance which eliminates some or all of the standard exceptions or which includes endorsements which expand coverage. Buyer acknowledges and agrees that, notwithstanding Sections 4.3(a)(1) and 4.9 below, the issuance of an ALTA extended coverage policy or any particular title endorsements requested by Buyer shall not be a condition precedent to Buyer s obligation to close Escrow.

3.2 DUE DILIGENCE; MATERIAL TO BE FURNISHED BY SELLER PRIOR TO CLOSING. To facilitate Buyer's due diligence and investigation of the Property, Seller shall make available to Buyer (at a mutually agreed location) for Buyer's review during normal business hours, but without representation or warranty by Seller as to any matter, including without limitation the accuracy, reliability or completeness of any document, except as specifically represented and warranted in Sections 3.4(d) and 5.2 of this Agreement, copies of any and all of the following (to the extent such items exist and are in the possession or control of Seller or Seller's representatives): the contracts, leases, soils and geologic reports, environmental surveys, reports and related documents, grading or engineering plans, drawings, surveys, maps, permits, licenses, certificates of use and occupancy and other documents, instruments and written materials that are applicable to the Property, all as listed on Exhibit G attached hereto ("**Reports**"). Buyer shall not have the right to obtain possession of or receive copies of the Reports unless and until the Closing occurs. If and when the Closing occurs, Seller shall provide copies of all Reports to Buyer through Escrow on the Closing Date, and as of the Closing such Reports shall become the property

of the Buyer. Prior to Closing, Buyer shall have no right to obtain copies of the Reports, and with respect to information reviewed by Buyer in the Reports, Buyer shall maintain the confidentiality of all such documents, materials and information pursuant to Section 9.9 below.

Notwithstanding anything to the contrary contained in this Agreement, Buyer acknowledges that it shall have no right to examine any of the following documents (and such documents shall not be considered Reports) in connection with its review of the Property: (i) limited liability company or corporate records of Seller or Seller's members, (ii) pro formas prepared by or for Seller, (iii) internal accounting or income tax records of Seller or Seller's members, (iv) similar proprietary, confidential or privileged information, and (v) any internal memoranda of Seller relating to any of the foregoing (collectively, the "**Confidential Seller Documents**").

Buyer's due diligence shall be subject to the following conditions and requirements:

(a) Each consultant, including without limitation the primary consultant and all environmental consultants, retained to perform due diligence shall be retained by Seller. The parties have agreed that Seller shall retain Geosyntec Consultants and Engeo Incorporated ("**Approved Consultants**") to perform the scopes of work for due diligence set forth on Exhibit D attached hereto ("**Scopes of Work**"). The consultant contract costs incurred for the Scopes of Work, and all modifications thereto, are hereinafter referred to as the "**Due Diligence Costs**." Buyer, and Buyer's consultants, shall have the right to review any and all work product of the Approved Consultants related to the Property, but shall not have the right to obtain possession of or receive copies of the Approved Consultants' work product unless and until the Closing on the Cash Property occurs. If and when the Closing on the Cash Property occurs, Seller shall provide all work product of the Approved Consultants related to the Property to Buyer through Escrow on the Cash Property Closing Date, and as of the Closing on the Cash Property such work product shall become the property of the Buyer. Buyer (and Buyer's consultants) shall have the right to contact the Approved Consultants only through Seller. Seller shall provide consent to the Approved Consultants to discuss any and all due diligence matters concerning the Property with Buyer and Buyer's consultants; provided, however, that Seller shall have the right to be in attendance at all such discussions. Seller shall have the right to request and/or review any modifications to the Scopes of Work. If Seller does not approve a modification to a Scopes of Work, it shall not be responsible for the incremental additional costs of the modification, and such incremental additional costs shall not be deducted from the Deposit. Upon receipt of a request from Buyer to modify the Scope(s) of Work, Seller shall have the right to either (i) request that the Approved Consultant(s) modify the Scope(s) of Work in the manner requested, (ii) continue with only the original Scope(s) of Work, or (iii) terminate this Agreement in accordance with Section 3.2(e). Seller shall use commercially reasonable efforts to cause all due diligence work within the Scopes of Work to be completed and available for Buyer's review not later than fifteen (15) days following the Effective Date hereof. In the event such Scope of Works is not completed by such date, the Contingency Date (defined in Section 3.3 below) and the Cash Property Closing Date shall be automatically extended the same number of days that it takes to complete the Scopes of Work in excess of such fifteen (15) day period.

(b) Other than the rights of Buyer (and Buyer's consultants) to review such Reports and work product as provided herein, Seller shall have the right, in the exercise of its sole

discretion, to approve the release or distribution of any of the Reports and work product of the Approved Consultants. Unless and until the Closing on the Cash Property occurs, Buyer shall not have the right to release the Reports or the information contained therein, except to the extent such release is otherwise required by applicable law, including without limitation the Public Records Act and the Ralph M. Brown Act, or court order (it being acknowledged by the Parties that Buyer shall not have possession or control of any such Reports or work product unless and until the Closing occurs).

(e) Seller shall have right to terminate if Seller develops good faith, commercially reasonable, concerns over the scope of the due diligence work, the results of the due diligence work, and/or Buyer's handling or disclosure of due diligence information. Prior to terminating on this basis, Seller shall give Buyer written notice of Seller's intent to terminate. Seller and Buyer shall meet within 15 days following Buyer's receipt of such written notice, and at such meeting shall discuss and attempt to resolve Buyer's concerns. If such issues are resolved, this Agreement shall remain in full force and effect.

3.3 CONTINGENCY DATE; INSPECTIONS; BUYER'S RIGHT TO TERMINATE.

(a) Subject to the procedures and limitations set forth in paragraph 3.2 and 3.3(b) and in the Scopes of Work (and any mutually approved modifications thereto), Buyer shall have the right from and after the Effective Date of this Agreement for a period of thirty (30) days thereafter until 5:00 p.m. P.S.T. on such date (the "**Contingency Date**") to conduct all visual inspections of the Property deemed necessary by Buyer, together with the investigations and testing of the Property identified in the Scope of Work (and any mutually approved modifications thereto), and to deliver written approval or disapproval of the due diligence matters to Seller. If Buyer fails to deliver a written notice of approval or disapproval by the Contingency Date, Seller may within two (2) business days thereafter deliver a written "Request for Confirmation of Approval/Disapproval" to Buyer, in which case Buyer may, within two (2) business days thereafter (i.e. four (4) business days after the Contingency Date) deliver to Seller a written confirmation as to whether Buyer does or does not approval the condition of the Property. If Buyer provides no initial written notice of approval or disapproval by the Contingency Date, and Seller does not timely deliver a Request for Confirmation of Approval/Disapproval, then Buyer shall be deemed to have disapproved the due diligence matters. If Seller timely delivers a Request for Confirmation of Approval/Disapproval, but Buyer does not timely respond to said Request for Confirmation of Approval/Disapproval, then Buyer shall be deemed to have approved the due diligence matters. If Buyer disapproves of (or is deemed to disapprove of) the due diligence matters this Agreement shall terminate, neither Seller nor Buyer shall have any further liability or obligation hereunder except for those provisions and obligations which expressly survive such termination, and Escrow Holder shall within five (5) business days thereafter return to Buyer the Deposit (less any appropriate deductions as specified in Section 2.2), and return to the Party entitled thereto (or, if not specified hereunder to the contrary, to the Party who deposited the same) all items and funds previously deposited with Escrow Holder in connection with this escrow.

(b) All inspections and tests on the Real Property, shall be conducted by Seller through the Approved Consultants, as set forth in Section 3.2 and 3.3(a), above.

(c) Buyer shall provide Seller at least 24 hours prior written notice of entry on the Property for visual inspection purposes, together with identification of the person or firm who will undertake the same. The written notice shall also include the general duration of the intended testing activities and the precise nature of the activities on the Property, together with evidence of the existence of public liability insurance covering all risks arising out of such entry. Such insurance shall have a combined single limit per occurrence of at least $2,000,000 for premises liability, bodily injury, personal injury and property damages, shall name Seller as an additional insured, and shall be maintained in effect at all times during the term of this Agreement.

(d) Buyer shall fully indemnify, defend and hold Seller harmless from and against any claim, action, cause of action, demand, liability, obligation, loss, cost, damage or expense (including actual attorneys' fees and costs) which may arise or which Seller may sustain or incur by reason of or in connection with any visual inspection or entry onto the Property, provided however that Buyer shall have no responsibility, indemnity obligation or liability for (i) any act of Seller and/or Seller's agents, employees, consultants and contractors, (ii) any adverse condition or defect on or affecting the Property not caused or made worse by Buyer or its agents, employees, consultants and contractors but merely discovered during their inspections, (iii) the mere discovery of the pre-existing presence of Hazardous Materials or claims resulting from the pre-existing presence of Hazardous Materials, and/or (iv) the results or findings of any test. If Buyer makes an existing adverse condition or defect on the or affecting the property worse as a result of or in connection with Buyer's inspection or entry, Buyer shall (i) have an immediate obligation to notify Seller in writing that Buyer has made an existing adverse condition or defect on or affecting the property worse, and (ii) Buyer's shall indemnify and defend Seller only to the extent of Buyer's contribution to the adverse condition or defect on or affecting the Property. The provisions of this Section shall survive Closing or termination of this Agreement for any cause for a period of six (6) months.

(e) Notwithstanding any provision of this Agreement to the contrary, in addition to termination of this Agreement for Buyer's failure to deliver the approval notice pursuant to Section 3.3(a) above, Buyer shall have the sole and absolute right to terminate this Agreement at any time prior to the Contingency Date upon giving written notice thereof (the "**Termination Notice**") to Seller with a copy to Escrow Holder, in which event this Agreement shall automatically terminate upon Seller's receipt or deemed receipt of the Termination Notice. In the event the Close of Escrow does not occur for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to Buyer the Deposit (less appropriate deductions as specified in Section 2.2) with accrued interest and shall return any other materials previously delivered to Escrow Holder to the depositor thereof, the Escrow shall be automatically terminated and of no force and effect, Buyer and Seller shall each pay one-half of any Escrow termination fees, and except as otherwise provided herein the parties will have no further obligation to one another.

3.4 "AS IS" SALE.

(a) Except for the express representations set forth in Article 5, below, Buyer acknowledges that Buyer has entered into this Agreement in reliance solely upon Buyer's ability to

make Buyer's own investigation of the physical, environmental, economic, financial and legal conditions of the Property, and that Buyer is not relying upon any representations and warranties of Seller concerning the Property other than those expressly set forth in Section 5.2 below. Buyer further acknowledges that Buyer has not received from Seller any accounting, tax, legal, architectural, environmental, engineering or other advice with respect to the Property or the transaction contemplated by this Agreement and that Buyer is relying solely upon the advice of Buyer's own advisors, if any, in entering into this Agreement. Accordingly, Buyer's failure to terminate this Agreement under Section 3.3(e) above shall constitute an acknowledgement that Buyer has considered, inspected and reviewed to Buyer's satisfaction all physical, environmental, economic, financial and legal aspects and conditions of the Property and the existing and potential future requirements imposed by Environmental Laws, as defined in Section 3.4(d) below, and that Buyer is acquiring the Property on the basis of Buyer's own evaluation, without the benefit of any representation or warranty from Seller except as specifically set forth in Section 5.2 below.

(b) Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement and the Implementing Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all such prior or contemporaneous oral or written representations, statements, documents or understandings and will remain unaffected by any representation, statement or understanding subsequent to the date hereof not constituting a duly executed amendment to this Agreement. Buyer further acknowledges that (i) except as expressly set forth in Section 5.2 below, neither Seller nor its constituent members, nor any of their respective members, partners, affiliates, officers, directors, employees, agents or representatives, have previously or does under this Agreement make any representation or warranty of any kind whatsoever, either express or implied, with respect to the Property or any related matter (and hereby disclaims any of the same that may exist), (ii) no person acting on behalf of Seller is authorized to make, and by its execution hereof Buyer acknowledges that no person acting on behalf of Seller has made, any representation, agreement, statement, warranty, guaranty or promise regarding the Property or the transaction contemplated herein except as set forth in this Agreement, and no such representation, warranty, agreement, guaranty, statement or promise, if any, made by any person acting on behalf of Seller shall be valid or binding upon Seller unless expressly set forth in this Agreement or in the documents and instruments to be executed by Seller and delivered at the Closing on the Cash Property pursuant to the terms of this Agreement, and (iii) the Property shall be sold to Buyer hereunder in its "**AS IS**" condition.

(c) In particular, but without limiting the foregoing, and except as set forth in Section 5.2 below, no representations or warranties have been made or are made by Seller hereunder with respect to the condition, habitability, suitability, size, usable area, zoning, development, occupation or management of the Property, the available uses of the Property, the boundary lines of or any encroachments or easements affecting the Land, the access or lack of vehicular and pedestrian access to the Land, the presence of wetlands, the presence or availability of water or sewage disposal on or to the Real Property, the Property's compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to development, zoning, subdivision, planning, building, fire, safety, health, leasing, hazardous material or environmental matters or the Property's compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws,

codes, ordinances, regulations or requirements, including without limitation any requirements under Environmental Laws.

Buyer, by executing this Agreement, acknowledges that Buyer has made or will make Buyer's own independent investigation as deemed necessary or appropriate concerning the use, sale, development or suitability of the Property, as open space or otherwise, and the status of the land use and other approvals, licenses and/or permits concerning the Real Property, including any requirements under Environmental Laws. Such investigations may include without limitation and, as deemed necessary by Buyer, any desired investigations or analyses of present or future laws, statutes, rules, regulations, ordinances, limitations, restrictions, requirements or approvals concerning the use, density, location or suitability of the Property and the existing or proposed development or condition thereof (collectively "**Regulations**"); any governmental permits, licenses, approvals or acts (collectively, the "**Permits**"); the effect of any governmental action on the issuance or continued effectiveness of any Permits; the necessity or existence of any dedications, fees, charges, costs, exactions or assessments that may be imposed in connection with any Regulations; the creation of any districts or the obtaining of any required Permits; the size, dimensions, location or topography of the Land; the availability or adequacy of vehicular and pedestrian access to the Land, or of water, sewage or any other utilities serving the Land; the presence or adequacy of infrastructure or other improvements on, near or affecting the Land; the presence on the Real Property of any threatened or endangered species, or any archaeological or paleontological significance; the extent or condition of any grading or other site work already performed or hereafter required for the present or proposed use or development of the Land; any surface, soil, soil vapor, subsoil, geologic or groundwater conditions or other physical conditions of or affecting the Real Property, including without limitation hazardous materials and drainage; and all other matters concerning the condition, use, development, operation and sale of the Property or any portion thereof.

Buyer further acknowledges that Buyer shall be responsible for payment of all costs of owning, operating, using and/or developing the Property from and after the Closing Date, including without limitation all governmental fees, taxes and assessments, and that Seller shall not be required to pay any funds or to dedicate, donate or grant any other property owned by Seller in order to satisfy a governmental permit or condition so that Buyer will be allowed to own, operate, use and/or further develop the Property. Buyer further acknowledges and agrees that, from and after the Closing Date, Buyer shall bear all costs and obligations in connection with the use of the Land, including without limitation any environmental clean-up/remediation costs, if any, and the costs, if any, of creating vehicular and/or pedestrian access to the Land by bridge, boardwalk or otherwise for the Property.

(d) As used in this Agreement, "**hazardous materials**" includes petroleum, asbestos, radioactive materials or substances defined as "**hazardous substances**," "**hazardous materials**" or "**toxic substances**" (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), under the applicable laws of the State of California or under any other law relating to human health or the environment. The laws described in the preceding sentence, all regulations promulgated thereunder, and all orders, judgments, decrees, licenses, permits and other governmental restrictions, covenants and

requirements relating to such laws, human health, the environment or any hazardous materials are collectively referred to herein as "**Environmental Laws**." Buyer shall rely solely upon its own investigation, testing and inspection of the Property and (at Buyer s option) upon the aid and advice of Buyer's independent hazardous materials and Environmental Laws expert(s) in purchasing the Property, and shall take title to the Property without any warranty, express or implied, by Seller or any employee or agent of Seller as to hazardous materials and Environmental Laws.

Buyer expressly acknowledges that it has received a copy of the Recorded Covenant. Buyer acknowledges that the Recorded Covenant (*i*) restricts the use of the Parcel 7 portion of the Land to "commercial or industrial use" unless a different use is approved by the DTSC, and (*ii*) runs with the land described therein, which includes the Land, and passes with the land described therein and applies to and binds the respective successors in interest thereof. In accordance with the terms of the Recorded Covenant, upon the Closing and pursuant to Section 4.2 of the Recorded Covenant, Buyer and Seller must notify the DTSC of the sale of the Property to Buyer. Further, in accordance with Section 4.4 of the Recorded Covenant, the parties acknowledge the following:

- The Parcel 7 portion of "The Land described herein is subject to a Covenant and Agreement to Restrict Use of Subject Property. The Land or the Subject Property, and the owner, lessee, or other occupant of the Land or Subject Property may be subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists."

- Hazardous materials, including without limitation hazardous materials and substances as defined in the Environmental Laws, including without limitation California Health and Safety Code Section 25316, have previously been released at the Parcel 7 portion of the Land and have come to be located on and beneath the Land. The Parcel 7 portion of the Land has been listed by the State of California as a portion of a hazardous substance release site (a "State Superfund Site"), and has been the subject of an environmental investigation, assessment and remediation. Seller represents to Buyer that Seller's actual material knowledge relating to the release of hazardous substances, as defined in California Health and Safety Code Section 25316, is limited to the information set forth in the due diligence materials supplied to or made available to Buyer in accordance with the terms of this Agreement, as set forth in Exhibit D. Buyer acknowledges and agrees that the disclosure in this Section 3.4(d) satisfies any and all duties that Seller may have under California Health and Safety Code Section 25359.7, or any similar federal, state, local or other law regarding disclosure, investigation, remediation, notification regarding and management or control of hazardous substances and hazardous materials. To the extent permitted by law, Buyer hereby waives all rights against Seller under Health and Safety Code Section 25359.7 or any similar federal, state, local or other law (whether statute, regulation or common law) regarding disclosure, investigation, remediation, notification regarding and management or control of hazardous substances and hazardous materials under the Environmental Laws, excluding therefrom any claims resulting from or arising out of the intentional misrepresentation or fraud of Seller. Buyer acknowledges that from and after the Closing Date, Buyer shall bear all of the costs attributable to the owner of the Property of any additional clean-up or remediation required with respect to the Property arising or accruing

from and after the Closing Date, and Buyer shall defend, indemnify and hold harmless Seller and its members from any and all of such clean-up and/or remediation costs, together with all costs arising from any claim, including without limitation a claim by any third party, arising from or related, directly or indirectly, to any preexisting hazardous materials released at and/or located on or beneath the Parcel 7 portion of the Land and any alleged violation of Environmental Laws related thereto.

ARTICLE 4
CLOSING AND ESCROW

4.1 DEPOSIT WITH ESCROW HOLDER AND ESCROW INSTRUCTIONS. Upon execution of this Agreement, the parties shall deposit an executed counterpart hereof with Escrow Holder and this Agreement, together with the "**General Provisions**" of Escrow Holder's standard preprinted form of escrow instructions, shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, including such General Provisions, the terms of this Agreement shall control unless such supplemental escrow instructions specifically are stated to control.

4.2 CLOSING. The closing on the Credit Property and the closing on the Cash Property hereunder (the "**Closings**") and the execution and exchange of documents and the delivery of all items to be made at the Closings under the terms of this Agreement shall be made at the offices of Escrow Holder; provided, however, that all such actions shall be effective as of the Closing Dates, unless expressly indicated otherwise. In the case of the Credit Property, the Close of Escrow shall be the date the Grant Deed to the Credit Property is recorded in the office of the County Recorder. In the case of the Cash Property, the Close of Escrow shall be the date the Grant Deed to the Cash Property is recorded in the office of the County Recorder.

4.3 CONDITIONS PRECEDENT. Seller shall have no obligation to sell the Property to Buyer and Buyer shall have no obligation to purchase the Property from Seller unless and until the other party shall have complied with each and every condition of this Agreement applicable to it. Failure by either party to proceed to the Closings prior to the Credit Property Closing Date (for the Credit Property) or the Cash Property Closing Date (for the Cash Property), as a result of the failure by the other party to have satisfied or complied with a condition applicable to it shall not be deemed to be a breach of this Agreement.

(a) Conditions To Buyer's Obligation To Close. Buyer's obligation to close Escrow on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

(1) Title Company has committed to issue the Title Policy in the form prescribed in Section 3.1(a).

(2) Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(3) Seller shall not be in material default of any term or condition of this Agreement.

(4) Seller and Buyer shall have entered into the Implementing Agreement, and the Implementing Agreement shall have been recorded in the office of the County Recorder, and shall remain effective.

(b) Conditions To Seller's Obligation To Close. Seller's obligation to close Escrow on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

(1) Buyer shall not be in material default of any term or condition of this Agreement.

(2) Buyer s representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(3) Seller and Buyer shall have entered into the Implementing Agreement, and the Implementing Agreement shall have been recorded in the office of the County Recorder and shall remain effective.

If any of the foregoing conditions precedent are not satisfied on or before the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), or expressly waived in writing by the party for whose benefit the condition exists, then subject to the other terms and provisions of this Agreement, such party shall have the right to terminate this Agreement in accordance with Section 7.4.

4.4 CREDIT PROPERTY CLOSING

(a) **DELIVERY BY SELLER**. On or prior to the Credit Property Closing Date, Seller shall deposit with Escrow Holder the following:

(1) A Grant Deed in the form of Exhibit E-1 attached hereto (the "**Credit Closing Deed**"), duly executed by Seller and acknowledged;

(2) A Transferor's Certificate duly executed by Seller in the form of Exhibit F attached hereto (and/or any related form required by Escrow Holder, including without limitation California Form 597W); and

(3) All other documents and instruments called for hereunder which have not previously been delivered.

(b) **DELIVERY BY BUYER**. On or prior to the Credit Property Closing Date, Buyer shall deposit with Escrow Holder the following:

(1) The Purchase Price for the Credit Property in accordance with Sections 2.1 and 2.2 above; and

(3) All other documents and instruments called for hereunder which have not previously been delivered.

4.4 CASH PROPERTY CLOSING

(a) **DELIVERY BY SELLER**. On or prior to the Cash Property Closing Date, Seller shall deposit with Escrow Holder the following:

(1) A Grant Deed in the form of Exhibit E-2 attached hereto (the "**Cash Closing Deed**"), duly executed by Seller and acknowledged;

(2) A Transferor's Certificate duly executed by Seller in the form of Exhibit F attached hereto (and/or any related form required by Escrow Holder, including without limitation California Form 597W); and

(3) The Reports and all documents concerning the Property prepared by the Approved Consultants.

(4) All other documents and instruments called for hereunder which have not previously been delivered.

(b) **DELIVERY BY BUYER**. On or prior to the Cash Property Closing Date, Buyer shall deposit with Escrow Holder the following:

(1) The Purchase Price for the Cash Property in accordance with Sections 2.1 and 2.2 above; and

(2) All other documents and instruments called for hereunder which have not previously been delivered.

4.6 OTHER DELIVERIES. Seller and Buyer shall each deposit with Escrow Holder and Title Company such other instruments as are reasonably requested by such persons or entities or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof and to obtain the issuance of the Title Policy.

4.7 PRORATIONS AND APPORTIONMENTS. Subject to the following, all revenues (if any) and expenses of the Property shall be prorated and apportioned by Escrow Holder as of 12:01 a.m. of the Cash Property Closing Date, so that Seller shall bear all expenses and have the benefit of all income with respect to the Property through and including the period preceding that time, subject to the following:

(a) Any revenue or expense amount which cannot be ascertained with certainty as of the Cash Property Closing Date shall be prorated on the basis of the parties' reasonable estimates of such amount and shall be the subject of a final proration as soon thereafter as the precise amounts can be ascertained, but in no event later than thirty (30) days after the Cash Property Closing Date. A pre-Closing statement setting forth such agreed prorations shall be prepared by Escrow Holder and approved and executed by Seller and Buyer at the Cash Property Closing. Escrow Holder shall not make any proration except as set forth on such approved and executed pre-Closing statement.

(b) Income and expenses to be prorated shall include without limitation the following:

(i) Real Property Taxes, Bonds and Assessments. All nondelinquent general and special real property taxes, bonds and assessments with respect to the Real Property shall be prorated as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) based upon the latest available tax bills or tax information. Any bonds and assessments with respect to the Real Property, if any, shall not be paid in full by Seller, but the current installment of such bonds and assessments shall be prorated between Buyer and Seller as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), as provided above. All special taxes, supplemental taxes or assessments (including any escaped assessments) which are attributable for the period prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall be paid by the Seller. After the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) the Buyer shall be responsible for paying or cancelling, as applicable, the special taxes, property taxes, assessment and/or Mello Roos Bonds. If Seller has prepaid any taxes, assessments, or Mello-Roos bonds that are cancelled pursuant to California Revenue and Taxation Code Section 5086, Seller may seek any refunds to which it is entitled from applicable taxing agencies. Buyer will reasonably cooperate with Seller in Seller's efforts, if any, to seek such refunds. This Section 4.7 shall survive the Closing.

(ii) Supplemental Real Property Taxes. With respect to any supplemental taxes assessed against the Real Property pursuant to California Revenue and Taxation Code Sections 75, et seq., Seller shall be obligated to pay all such supplemental taxes assessed against the Real Property, if any, for any period prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), and Buyer shall be obligated to pay all such supplemental taxes assessed against the Real Property, if any, for any period from and after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(iii) Utilities. All payments with respect to any utilities servicing the Property shall be prorated as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property). Seller and Buyer shall attempt to obtain billings and meter readings as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) to aid in such prorations. Seller shall use Seller's commercially reasonable efforts to switch all utilities to Buyer's name as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash

Property) and to receive a direct bill from the providers of utilities outside of Escrow. In addition, all utility deposits posted by Seller prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall be the sole property of Seller and shall be retained by Seller, and Buyer shall be solely responsible to post any new utility deposits that are required from and after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(c) Seller shall pay the portion of the premium for the Title Policy related to issuance of a Standard Coverage Owner's Policy of Title Insurance (without endorsements). Seller shall pay the recording cost and any documentary or other transfer taxes applicable to the Deed and the reconveyance of any deed of trust encumbering the Real Property. Buyer shall pay all premiums, costs and charges in connection with the Title Policy not required to be paid by Seller, including any additional premium for ALTA Extended Coverage. Buyer shall pay all recording costs not applicable to the Deed or any reconveyance of any deed of trust encumbering the Real Property. Buyer shall pay all costs associated with obtaining a new or updated survey of the Land.

(d) Buyer acknowledges that Seller shall terminate all of its insurance coverage with respect to the ownership and operation of the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and agrees that Buyer shall be responsible for obtaining Buyer's own insurance as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and thereafter.

(e) Seller and Buyer shall share equally all escrow fees, costs and charges. All other costs and expenses not specifically provided for hereunder shall be apportioned or allocated between Buyer and Seller in the manner customary in Contra Costa County, California.

(f) Seller and Buyer shall each pay its own attorneys' fees in connection with the drafting, negotiation and execution of this Agreement and the exhibits hereto, and the Closing of the transaction contemplated hereby.

4.8 PAYMENT OF PRORATION ADJUSTMENTS. Either party owing the other party any sum based on adjustments made to prorations after the Cash Property Closing Date shall promptly pay the same to the other party within ten (10) days after delivery of a statement therefor. In the event such payment is not timely made, such sum shall accrue interest at the rate of ten percent (10%) per annum (or, if less, the maximum rate then permitted by law to be contracted for by the parties) from the date of demand until the date of payment.

4.9 CLOSE OF ESCROW.

(a) **Credit Property**: Provided that Escrow Holder has received the documents and funds related to the Credit Property described in Sections 2.2, 4.4, 4.5 and 4.6 above for the close of escrow on the Credit Property and has not received notice from any party either that an agreement of another party hereunder has not been performed, that a condition set forth herein has not been satisfied or waived or that this Agreement has terminated (by its terms or by an election duly made hereunder), and further provided that the issuance of, or an unconditional commitment

to issue, the Title Policy has been obtained, Escrow Holder is authorized and instructed on the Credit Property Closing Date to:

(1) Record the Deed for the Credit Property with the Contra Costa County Recorder;

(2) Deliver the DTSC Notice Letter to the DTSC; and

(3) Deliver the Title Policy and all items deposited by Seller in Escrow with respect to the Credit Property, other than the Reports, to Buyer.

(a) **Cash Property**: Provided that Escrow Holder has received the documents and funds related to the Cash Property described in Sections 2.2, 4.4, 4.5 and 4.6 above for the close of escrow on the Cash Property and has not received notice from any party either that an agreement of another party hereunder has not been performed, that a condition set forth herein has not been satisfied or waived or that this Agreement has terminated (by its terms or by an election duly made hereunder), and further provided that the issuance of, or an unconditional commitment to issue, the Title Policy has been obtained, Escrow Holder is authorized and instructed on the Cash Property Closing Date to:

(1) Record the Deed for the Cash Property with the Contra Costa County Recorder;

(2) Deliver the DTSC Notice Letter to the DTSC; and

(3) Title Policy and all items deposited by Seller in Escrow with respect to the Cash Property to Buyer.

4.10 DISBURSEMENT OF FUNDS. On the Credit Property Closing Date, Escrow Holder shall disburse to Seller fee credit voucher described in Section 2.2(b). On the Cash Property Closing Date, Escrow Holder shall disburse to Seller by wire transfer pursuant to wire instructions from Seller the Purchase Price, as adjusted to reflect Seller's share of prorations and costs of escrow hereunder.

4.11 NOTIFICATION; CLOSING STATEMENTS. In the event that Escrow Holder cannot comply with the instructions herein or to be provided, Escrow Holder is not authorized to cause the recording of the Deed, but instead shall notify Seller of such fact without delay. As soon as reasonably practicable after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Escrow Holder shall deliver to each party a true, correct and complete copy of such party's Closing Statement, in the form customarily prepared by Escrow Holder, and all other items in Escrow Holder's possession to which such party is entitled hereunder.

ARTICLE 5
REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

5.1 BUYER'S REPRESENTATIONS. In order to induce Seller to enter into this Agreement and the transaction contemplated hereunder, and in addition to Buyer's

representations, covenants and acknowledgements set forth elsewhere in this Agreement, including without limitation Section 3.4 above, Buyer hereby makes the following representations and warranties as of the date hereof and again as of the Closing Date, which representations and warranties shall survive after the Closing Date pursuant to Section 9.3 below:

(a) Buyer is duly organized and validly existing under the laws of the State of California and has full power and authority to enter into and comply with the terms of this Agreement.

(b) This Agreement and all documents executed by Buyer which are to be delivered to Seller hereunder are and will be duly authorized, executed and delivered by Buyer, are and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will be legal, valid and binding obligations of Buyer and do not and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will not violate any provisions of any governing statute, ordinance or regulation that affects Buyer, or any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(c) No authorization, consent, order, approval or license from, or filing with or other act by, any governmental authority or person or entity is or will be necessary to permit the valid execution and delivery by Buyer of this Agreement or the performance by Buyer of the obligations to be performed by Buyer under this Agreement.

5.2 SELLER'S REPRESENTATIONS. In order to induce Buyer to enter into this Agreement and the transaction contemplated hereunder, as qualified by the provisions of Section 3.4(d) above, Seller hereby makes the following representations and warranties as of the date hereof and again as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), which representations and warranties shall survive for ninety (90) days after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) pursuant to Section 9.3 below:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is registered and qualified to do business in the State of California, and has full power and authority to enter into and comply with the terms of this Agreement.

(b) This Agreement and all documents executed by Seller which are to be delivered to Buyer hereunder are and will be duly authorized, executed and delivered by Seller, are and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will be legal, valid and binding obligations of Seller and do not and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will not violate any provisions of any agreement or judicial order to which Seller is a party or to which it or the Property is subject. The person(s) who have executed this Agreement (and other instruments required hereunder) on behalf of Seller are duly authorized to execute the same on Seller's behalf and no other persons are required to execute this Agreement or such other instruments.

(c) To Seller's actual knowledge, no authorization, consent, order, approval or license from, filing with or other act by any governmental authority or person or entity is or will be necessary to permit the valid execution and delivery by Seller of this Agreement or the performance by Seller of the obligations to be performed by Seller under this Agreement.

(d) Neither Seller nor any member of Seller has commenced (within the meaning of any bankruptcy law) a voluntary case, consented to the entry of an order for relief against it in an involuntary case, or consented to the appointment of a custodian of it or for all or any substantial part of its property, nor has a court of competent jurisdiction entered an order or decree under any bankruptcy law that is for relief against Seller or its members in any involuntary case or appoints a custodian of Seller or its members or for all or any substantial part of Seller's property.

(e) To Seller's actual knowledge, Seller has received no written notice of and has no actual knowledge of any continuing, pending or threatened actions, suits, proceedings or governmental or administrative investigations against or affecting the Property, except that City and/or the Redevelopment Agency of the City of Hercules has previously indicated it/they may pursue condemnation proceedings to obtain all or some portion of the Property.

(f) To Seller's actual knowledge, except as specified in Section 5.2(e), Seller has received no other written notices and has no actual knowledge of any other pending or threatened proceedings for condemnation or other taking by any public authority affecting the Property or any portion thereof.

(g) Except as specified on Exhibit G, Seller has no actual knowledge of any existing oral or written leases, subleases, occupancies or tenancies, with Seller as lessor or landlord, of all or any portion of the Real Property.

(h) Except as specified on Exhibit G, Seller has no actual knowledge that there are any Service Contracts in effect as of the date of this Agreement.

(i) To Seller's actual knowledge, Seller has made available to Buyer, for Buyer's review pursuant to Section 3.2 above, all Reports within its possession or control concerning the Property.

As used in this Agreement and any Exhibit hereto, "Seller's knowledge", "Seller's actual knowledge", the "actual knowledge of Seller" or similar phrase means the actual present knowledge of James R. Anderson of AndersonPacific, LLC, the managing member of APL-Hercules, LLC, which is the manager of Seller. "Seller's knowledge", "Seller's actual knowledge", the "actual knowledge of Seller" or similar phrase expressly excludes any past, constructive, and/or imputed knowledge of James R. Anderson, and further excludes any knowledge of any other employee or agent of Seller or Seller's members or the members of such members. In connection with the foregoing, Seller has no duty of inquiry or to review files and records.

5.3 ADDITIONAL COVENANTS. The parties hereby further covenant and agree as follows:

(a) Indemnities. Buyer shall, in addition to any other indemnities set forth elsewhere in this Agreement, defend, indemnify and hold harmless Seller and its members and their respective members, officers, directors, shareholders, partners, employees, insurers, lenders, attorneys, agents and representatives, and predecessors in interest in the ownership of the Property (including but not limited to members of the Pankey family, Oso Trabuco, LLC and Hercules Properties, Inc.) from all loss, liability, damages, costs and expenses (including without limitation attorneys fees) (collectively, "Loss") arising from or related to any acts or omissions of Buyer, by and through its members, officers, directors, shareholders, partners, employees, insurers, attorneys, agents, and representatives, as owner of the Property accruing or occurring from and after the Closing Date. Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, employees, insurers, agents and representatives from all Loss arising from or related to any acts or omissions of Seller , by and through its members, officers, directors, shareholders, partners, employees, insurers, attorneys, agents, and representatives, as owner of the Property accruing or occurring prior to the Closing Date. Notwithstanding the foregoing, Buyer expressly acknowledges that Seller shall not indemnify Buyer pursuant to this Section nor shall Seller be responsible in any way for any environmental clean-up, testing, investigation, management or controls, or clean-up or remediation costs that Buyer may incur due to the condition of the Property, or for any costs incurred by Buyer in order to create pedestrian or vehicular access to the Property or to obtain any necessary approval from any government agency with jurisdiction over the Property, including without limitation the DTSC, or for any costs incurred in order to use the Property for as parkland, or for any other costs of a similar nature. Notwithstanding the foregoing, or anything herein to the contrary herein, in no event shall Buyer have any indemnity obligation or liability hereunder for any Loss occurring on or related to the Overall Property that is not included within the Property acquired by Buyer, unless such Loss is directly caused by a physical act to the Property by Buyer, its employees, or its agents.

With respect to the indemnity obligations of Buyer and Seller set forth above and elsewhere in this Agreement, promptly after the receipt by any indemnified party (an "**Indemnitee**"), of notice of the commencement of any action against such Indemnitee by a third party, such Indemnitee shall, if a claim with respect thereto is or may be made against Buyer or Seller, as the case may be (an "**Indemnifying Party**"), give such Indemnifying Party prompt written notice thereof, specifying in reasonable detail the Loss claimed and the amount of liability asserted against the Indemnifying Party as a result of the action. The failure to give such notice shall not relieve any Indemnifying Party from any obligation hereunder except where, and then solely to the extent that, such failure actually prejudices the rights of such Indemnifying Party. Such Indemnifying Party shall have the absolute right after the receipt of notice of the action to defend against, negotiate, settle or otherwise deal with such action, at such Indemnifying Party's expense and with counsel of its choice, provided that the Indemnifying Party so notifies the Indemnitee that it will defend such action within thirty (30) days after receipt of such notice and commences the defense of such action (or such lesser time period if, in the reasonable judgment of the Indemnifying Party, the nature and scope of the action so requires it); provided, however, that the Indemnitee may participate in any such proceeding with counsel of its choice and at its sole cost and expense and the Indemnifying Party shall not settle any such action unless the Indemnitee is fully released without any admission of liability and without the requirement that the Indemnified Party take any action or refrain from taking any action. If the Indemnified Party does not elect to assume the defense of such action in accordance with the terms of this Section 5.3(a), the Indemnitee shall have the right to defend such action with counsel of its choice and the

Indemnifying Party will reimburse the Indemnitee for the costs thereof, including reasonable attorneys' fees and expenses incurred. The Indemnifying Party will not be liable for any judgment or settlement with respect to such action effected without its prior written consent, which consent will not be unreasonably withheld. The parties agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such indemnity claim. Notwithstanding the foregoing, the Indemnitee shall have the right to employ separate counsel at the Indemnifying Party's expense and to control its own defense of such asserted Loss if an actual and material conflict exists between the interests of the Indemnifying Party and the interests of such Indemnitee with respect to the action that would require such separate representation. For purposes hereof, "action" shall mean any claim, action, cause of action or suit (in contract, tort or otherwise), arbitration, proceeding or investigation by any person or entity, including by or before any governmental entity.

Any claim by an Indemnitee for indemnification other than indemnification against a third party action as set forth above in this Section 5.3(a) (a "**Direct Claim**") will be asserted by giving the Indemnifying Party written notice thereof, and the Indemnifying Party will have a period of thirty (30) calendar days (the "**Response Period**") within which to respond in writing to such Direct Claim. If the Indemnifying Party does not respond (or does so respond but does not agree to pay such Direct Claim in full) within the Response Period, the Indemnifying Party will be deemed to have rejected such claim, and the Indemnifying Party or the Indemnitee may refer such dispute to arbitration by notice to the other party within ten (10) days after the expiration of the Response Period (the "**Arbitration Referral Period**"). If the matter is referred to arbitration, each party shall select an arbitrator and the two so selected shall agree on a third arbitrator from a panel of arbitrators selected by the American Arbitration Association. The arbitration shall be pursuant to the Rules of the American Arbitration Association and shall be conducted in Contra Costa, California. The parties shall be entitled to discovery in accordance with Section 1283.05 of the California Code of Civil Procedure. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction. As part of such award, the arbitrators shall establish their fees and expenses in connection therewith and allocate such fees and expenses between the parties, who shall promptly pay their allocable shares. Any award shall be a conclusive determination of the matter. If neither party properly refers the matter to arbitration prior to the expiration of the Arbitration Referral Period, then the Indemnitee will be free to pursue such remedies as may be available to the Indemnitee at law or in equity.

(b) Covenant Regarding Access Easement in Favor of Seller. Buyer and Seller acknowledge and agree that the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and in connection with the severance of Seller's present ownership of the Land and certain adjacent land, Buyer shall grant to Seller or Seller's designee a non-exclusive, perpetual easement (the "**Access Easement**") onto, over and/or across a portion of the Land, such portion to be determined by Buyer and Seller, in order to allow for ingress and egress by Seller to the waterfront from the adjacent land owned and being developed by Seller. Such Access Easement shall be recorded in the Official Records of Contra Costa County, California, with respect to both the Land and Seller's adjacent land, concurrently with such severance of such joint ownership. Seller and Buyer hereby covenant and agree that each will cooperate reasonably with respect to the grant of such Access Easement, including without limitation the exact location of the easement area on the Land and the form and content of the easement document. Buyer shall also grant in its reasonable discretion such other temporary or

permanent easements, licenses or similar rights on, over, through, under and across any needed portions of the Land for such access to the waterfront and for such other purposes as are reasonably necessary for the development, operation or maintenance of the adjacent land owned by Seller.

ARTICLE 6
CASUALTY OR CONDEMNATION

6.1 DAMAGE OR DESTRUCTION. Any improvements that may be now existing on the Property are irrelevant to this transaction. Therefore, all risk of loss with regard to such improvements shall be with the Buyer if this transaction closes, and shall remain with the Seller if this transaction does not close. In the event any such improvements are damaged or destroyed prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), the Buyer shall not be entitled to (i) terminate this Agreement, (ii) a reduction in the Purchase Price, or (iii) an assignment of any insurance proceeds payable to Seller.

6.2 CONDEMNATION.

(a) In the event a governmental entity other than the Buyer or the Redevelopment Agency of the City of Hercules commences eminent domain proceedings to take a material portion of the Property after the date hereof and prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), then either Buyer or Seller shall have the option to terminate this Agreement by written notice to the other and Escrow Holder within five (5) business days after Buyer and Seller receive notice of such commencement.

(b) In the event a governmental entity commences eminent domain proceedings to take a material portion of the Property after the date hereof and prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property)and this Agreement is not terminated pursuant to Section 6.2(a) above as a result thereof, then the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall occur as scheduled notwithstanding such proceeding.

6.3 NO DUTY TO RESTORE. Buyer acknowledges and agrees that in no event shall Seller have any obligation to repair or restore the Property or any portion thereof or any other liability hereunder as a result of any casualty or condemnation.

ARTICLE 7
DEFAULT AND TERMINATION

7.1 DEFAULT BY SELLER. In the event Seller fails to perform any of its obligations or is otherwise in default hereunder, Buyer shall have the right to give notice to Seller and Escrow Holder specifically setting forth the nature of such failure and stating that Seller shall have a period of ten (10) business days to cure such failure. If Seller has not cured such failure within such period (or, if such failure is not capable of being cured within ten (10) business days, Seller either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer shall have the right to exercise any of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Closing on the Cash Property or the Credit Property, as the case may be, with no reduction in the Purchase Price.

(b) Terminate this Agreement by notice to Seller and Escrow Holder to that effect, in which event (i) Escrow Holder shall automatically return all sums (including the Deposit, but excluding deductions from the Deposit authorized by Section 2.2) deposited by Buyer (provided that Seller shall retain the Independent Consideration), and (ii) this Agreement shall terminate and the parties shall have no further rights or obligations hereunder except for those that expressly survive termination.

(c) File an action in any court of competent jurisdiction for specific performance only, but subject to Section 9.11 below and provided that in no event shall Seller be liable for damages or monetary relief of any kind (including but not limited to general, special, punitive, or consequential damages) as the result of a default by Seller hereunder (except for attorneys fees pursuant to Section 9.6 herein).

(d) Except for matters included within Seller's representations and warranties expressly set forth herein, effective as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer and anyone claiming by, through or under Buyer, hereby waives its right to recover from and fully and irrevocably releases Seller, its members, employees, officers, directors, representatives, agents, servants, attorneys, lenders, insurers, affiliates, parent and subsidiary entities, predecessors in interest, successors and assigns ("**Released Parties**") from any and all claims that Buyer may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to any matter affecting the Property, or any portion thereof. Except for matters included within Seller's representations and warranties expressly set forth herein, and the fraud or intentional misrepresentation(s) of Seller, effective as of the Closing, this release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release to Seller. To the extent permitted by law, Buyer hereby agrees, represents and warrants, which representation and warranty shall survive the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown and unsuspected, and Buyer further agrees, represents and warrants, which representation and warranty shall survive the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller's performance hereunder. Buyer hereby expressly waives its rights under 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 suspect to exist in his favor at the time of executing the

release, which if known by him must have materially affected his settlement with the debtor.

Seller and Buyer have each initialed this Section 7.1(d) to indicate its awareness and acceptance of each and every provision hereof.

Buyer's Initials Seller's Initials

7.2 DEFAULT BY BUYER. In the event Buyer fails to perform any of Buyer's obligations or is otherwise in default hereunder, Seller shall have the right to give notice to Buyer and Escrow Holder specifically setting forth the nature of such failure and stating that Buyer shall have a period of two (2) business days to cure any failure either to pay money or perform by a date certain and a period of ten (10) business days to cure any other failure. If Buyer has not cured such failure within the applicable period (or, if any such other failure is not capable of being cured within ten (10) business days, Buyer either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall have the right to exercise any of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Credit Property Closing (for the Credit Property) and the Cash Property Closing (for the Credit Property).

(b) Terminate this Agreement by notice to Buyer and Escrow Holder to that effect, in which event (i) the liquidated damages provision in section 2.2 above shall apply, and (ii) this Agreement shall terminate and the parties shall have no further rights or obligations hereunder, except for those that expressly survive termination; provided, however, that termination of this Agreement after the close of escrow on the Credit Property will not impact the completion of the sale and conveyance of the Credit Property.

7.3 OUTSIDE CLOSING DATES. In the event either party has complied with the terms and conditions of this Agreement as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and the other party is not in a position to close, and provided that all conditions precedent to Closing on the Cash Property or the Credit Property (as the case may be) in favor of such non-complying party have been satisfied or waived in writing, such non-complying party shall be in material breach of this Agreement. For a period of thirty (30) days after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), the complying party shall have the same rights it would otherwise have under this Article 7 upon the occurrence of an uncured default on the part of the non-complying party. After that, the complying party shall be conclusively deemed hereunder to have irrevocably elected the remedy of termination under Sections 7.1(b) or 7.2(b), as applicable, and this Agreement shall be deemed to have been terminated.

7.4 EFFECT OF TERMINATION.

(a) Upon the termination of this Agreement for any reason, neither Buyer nor Seller shall have any further liability or obligation hereunder, except pursuant to Sections 3.2(a) and 5.3(a) above, this Article 7 and those provisions which survive such termination pursuant to

Section 9.3 below, and Escrow Holder shall within five (5) business days thereafter return to the party entitled thereto (or, if not specified hereunder to the contrary, to the party who deposited the same) all items previously deposited with Escrow Holder in connection with this escrow.

(b) In the event this Agreement is terminated pursuant to Section 7.1(b), 7.2(b) or 7.3 above, the party in default shall immediately upon demand from Escrow Holder pay all escrow costs and cancellation charges.

(c) In the event Buyer or Seller timely elects to terminate this Agreement in accordance with Sections 3.1(c), 3.3(e) or 6.2(a), Buyer and Seller shall split all escrow costs and cancellation charges equally and shall execute supplemental escrow instructions prepared by Escrow Holder canceling the escrow opened hereunder and unconditionally releasing each other from all past and future obligations and liabilities under this Agreement.

ARTICLE 8
MAINTENANCE OF THE PROPERTY

8.1 **MAINTENANCE**. Unless this Agreement is earlier terminated in accordance with its terms, from and after the date hereof through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall maintain the Cash Property and the Credit Property in its present condition, reasonable wear and tear excepted.

8.2 **CONTRACTS AFFECTING THE PROPERTY**. Unless this Agreement is earlier terminated in accordance with its terms, from and after the Effective Date through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall not materially amend or modify any existing agreements, and/or enter into any new agreements or voluntary encumbrances, relating to the Property which will not be terminable upon the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), or which would materially affect Approved Title hereunder, without first obtaining the prior written approval of Buyer, which approval shall not be unreasonably withheld or conditioned and which shall be granted or denied within five (5) days after written request is made therefor. Any such request shall include a copy or description of the proposed amendment or modification or the proposed new agreement or encumbrance. If Buyer fails to object within such five (5) day period, Buyer shall be deemed to have approved any such amendment, modification or new agreement. In the event Buyer disapproves any new agreements, amendments or modifications, such disapproval shall be in writing and shall state with particularity the reasons for the disapproval. Seller agrees to deliver to Buyer copies of any new or amended agreements or encumbrances relating to the Property whether or not Buyer was required to consent thereto.

8.3 **PAYMENT OF OBLIGATIONS**. Unless this Agreement is earlier terminated in accordance with its terms, from and after the date hereof through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) Seller shall timely perform and pay when due Seller's material obligations under all agreements relating to the Property to which Seller is a party, and shall timely pay when due all taxes, assessments and utility charges affecting the Property.

8.4 **IMPROVEMENTS.** Notwithstanding anything herein to the contrary, Seller acknowledges that Buyer has no obligation hereunder to cause the construction of any improvements to the Property, and, except as specified in the Implementing Development Agreement, Buyer has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever whether express or implied, oral or written, past present or future concerning the improvements, whether the improvements will be constructed, the timing of any construction or installation of the improvements, the condition of the improvements, maintenance of the improvements or any other matters whatsoever relating to the improvements.

ARTICLE 9
MISCELLANEOUS

9.1 **NOTICES**. Any notice, approval or other communication required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice, and shall be deemed to have been given: (a) upon delivery by a recognized private courier company, (b) one (1) day after being deposited with Federal Express or another reliable overnight courier service, (c) upon receipt if transmitted by facsimile or e-mail, provided that an additional notice is sent pursuant to clause (a), (b) or (d) herein, or (d) three (3) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

Seller:
Hercules Bayfront, LLC
c/o APL-Hercules, LLC
c/o AndersonPacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, California 90045
Attention: James R. Anderson
Fax No.: (310) 689-2305
E-mail: jra@andersonpacificl1c.com

With a copy to:
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1931
Attention: Dan Slater, Esq.
Fax No.: (714) 546-9035
E-mail: dslater@rutan.com

If to Buyer:
City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: Steve Duran, City Manager
Fax No.: (510) 799-2521
E-mail: Sduran@ci.hercules.ca.us

With a copy to:
City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: City Attorney

Fax No.: (510) 799-2521

If to Escrow Holder: First American Title Insurance Company
6683 Owens Drive
Pleasanton, California 94588
Attention: Diane Burton, Escrow Officer
Escrow No. _____
Fax No.: (866) 648-7806
E-mail: dburton@firstam.com

If to Title Company: First American Title Insurance Company
6683 Owens Drive
Pleasanton, California 94588
Attention: Sue Pratt, Title Officer
Order No. _____
Fax No.: (866) 648-7806
E-mail: spratt@firstam.com

or such other address as either party may from time to time specify in writing to the other in accordance with this Section 9.1.

9.2 BROKERS AND FINDERS.

(a) Buyer hereby represents and warrants that Buyer has not agreed to pay any broker's fee, finder's fee, commission or other similar compensation in connection herewith. Buyer has not acted through any broker or finder who could claim any commission or compensation. Buyer agrees to indemnify and hold Seller harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of any claim for any such fee or commission based upon agreement(s) by Buyer to pay a fee or commission.

(b) Seller hereby represents and warrants that Seller has not agreed to pay any broker's fee, finder's fee, commission or other similar compensation in connection herewith and Seller has not acted through any broker or finder who could claim any commission or compensation. Seller agrees to indemnify and hold Buyer harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorney's fees and costs) which Buyer may sustain or incur by reason of any claim for any such fee or commission based upon agreement(s) by Seller to pay a fee or commission.

9.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations, covenants and warranties of the parties contained herein or in any document, certificate or statement delivered pursuant hereto are intended to and shall remain true and correct at all times during the term of this Agreement and shall be deemed to be material. Each representation and warranty contained herein shall survive the Cash Property Closing Date and any other termination of this Agreement for a period of ninety (90) days only; provided, however, that Buyer's representations set forth in Section 5.1, above, shall survive without such limitation. All indemnities contained herein shall survive the Cash Property Closing Date, the Credit Property Closing Date and any other termination of this Agreement without such limitation, and Buyer's

obligations under Section 9.11 below shall survive any termination of this Agreement other than as a result of the Cash Property Closing Date without such limitation

9.4 FURTHER ACTS. Each party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

9.5 MERGER OF PRIOR AGREEMENTS; AMENDMENTS. This Agreement and the Exhibits hereto constitute the full and complete agreement and understanding, and supersede all prior and contemporaneous agreements and understandings, between the parties hereto relating to the subject matter hereof except the Implementing Development Agreement. Without limiting the foregoing, the parties acknowledge and agree that all prior offers, counteroffers, side letters, letters of intent and correspondence regarding the Property among the parties or their agents are null and void and of no further force or effect. This Agreement may be amended or modified only by a written instrument executed by the party asserted to be bound thereby.

9.6 ATTORNEYS' FEES. In the event either Buyer or Seller brings any suit or other proceeding with respect to the subject matter, or to enforce any provision, of this Agreement, the prevailing party (as determined by the court, agency or other authority which adjudicates such suit or proceeding) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, in establishing the right to indemnification or in any action or participation in, or in connection with, any state or federal bankruptcy or debtor relief case or proceeding).

9.7 VALIDITY. In the event of any finding of invalidity, the invalid portion of this Agreement shall be renegotiated so as to give effect to the original intent of the parties to the maximum extent permissible under law. Other portions of this Agreement shall remain unaffected, except to the extent that modification is necessary for consistency with renegotiated terms.

9.8 NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any waiver constitute a continuing waiver. Except as otherwise provided in this Agreement, no waiver shall be binding unless executed by the party making the waiver.

9.9 CONFIDENTIALITY. The parties agree to use their best efforts, within the requirements of applicable law including without limitation the Public Records Act and the Ralph M. Brown Act, to structure their due diligence analyses in such a manner as to establish and preserve the confidentiality of all information, studies and reports relating to the Property obtained by Buyer, either by the observations and examinations of Buyer's agents and representatives or as delivered, disclosed or made available for inspection to Buyer by Seller, shall remain confidential. Buyer shall include provisions in any and all consultant and sub-consultant contracts to ensure that data and results of analyses are maintained in a confidential manner and disclosed only to Buyer and Seller. If the transaction contemplated herein fails to close for any reason, Buyer shall deliver to Seller in accordance with Section 3.3(b) above, at no cost to Seller, all such information, reports

and studies and make no further distributions or disclosures thereof. Buyer and Seller further agree that, to the extent reasonably practical, prior to the Cash Property Closing Date they shall keep the contents of this Agreement confidential and that no publicity or press release to the general public with respect to this transaction shall be made by either party or its agents without the prior written consent of the other party hereto.

9.10 **POSSESSION**. Possession of the Property shall be delivered to Buyer on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

9.11 **NO PERSONAL LIABILITY OF MEMBERS/INDIVIDUALS**. The liability of Seller hereunder shall be limited solely to its interest in the Property. No member of Seller nor any officer, director, employee, broker, agent, member, lender, insurer or attorney of Seller or of Seller's members shall be personally liable with respect to any obligation or liability of Seller under this Agreement.

9.12 **Liquidated Damages.** If Buyer fails or refuses to complete the purchase of the Property on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) account of a material default or breach hereunder by Buyer, where such default or breach is not cured by Buyer within ten (10) business days of Buyer's receipt from Seller of written notice of such default or breach, the Deposit remaining in Escrow at the time of the default shall constitute liquidated damages as follows:

> **LIQUIDATED DAMAGES. BUYER AND SELLER EACH AGREE THAT IN THE EVENT OF A DEFAULT OF BUYER UNDER THIS AGREEMENT CAUSED BY BUYER'S FAILURE TO PURCHASE THE PROPERTY, WHEN REQUIRED TO DO SO PURSUANT TO THE TERMS OF THIS AGREEMENT, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THEREFORE, IN THE EVENT OF BUYER'S FAILURE TO PURCHASE THE PROPERTY ON ACCOUNT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER, WHICH DEFAULT OR BREACH IS NOT CURED WITHIN TEN (10) BUSINESS DAYS AFTER WRITTEN NOTICE IS GIVEN BY SELLER TO BUYER, THE DEPOSIT THEN IN ESCROW SHALL SERVE AS LIQUIDATED DAMAGES FOR SUCH DEFAULT BY BUYER, AS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER, INCLUDING THE INCREMENTAL COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. DELIVERY TO AND RETENTION OF THE DEPOSIT BY SELLER SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT THAT BUYER DEFAULTS UNDER THIS AGREEMENT BY NOT PURCHASING THE PROPERTY, AND SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE**

PAYMENT AND RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON BUYER'S FAILURE TO PURCHASE THE PROPERTY ON ACCOUNT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR THE RIGHT OF SELLER TO RETAIN SUCH LIQUIDATED DAMAGES.

Buyer's Initials	Seller's Initials

9.13 **SUCCESSORS AND ASSIGNS**. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that Buyer's interest hereunder may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Seller in its sole and absolute discretion. In the event of an approved assignment, Buyer shall not be released from any obligations hereunder.

9.14 **INTERPRETATION**. Words in the singular shall be deemed to include the plural and vice-versa and words in a particular gender shall be deemed to include the other gender. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof.

9.15 **GOVERNING LAW**. This Agreement shall be governed by and construed in accordance with the internal laws, and not the law of conflicts, of the State of California applicable to agreements made and to be performed in California.

9.16 **COUNTERPARTS**. This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

9.17 **REPORTING RESPONSIBILITY**. Escrow Holder shall be deemed to be the "**person responsible for closing**" this transaction for purposes of Section 6045(e)(2)(A) of the IRC and shall prepare and file all returns and statements required by law, if any.

9.18 **TIME OF ESSENCE**. Time is of the essence of each and every provision of this Agreement in which time is an element. The agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement shall not be waived or modified by any conduct of the parties, and the agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement may only be modified or waived by the express written

agreement of Buyer and Seller that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

9.19 **EXHIBITS**. All Exhibits to this Agreement are incorporated herein by this reference as though fully set forth in the body hereof.

9.20 **NO RECORDING**. Neither Buyer nor Seller shall, without the consent of the other, record this Agreement or a short form or memorandum hereof, or take any other action that would materially and adversely affect the marketability of Seller's title to the Property.

9.21 **AUTHORITY**. Each person signing this Agreement represents and warrants that (s)he has full power and authority to execute this Agreement on behalf of the entity for whom (s)he is signing this Agreement and that the execution of this Agreement by such person is binding on such entity.

9.22 **REQUIRED NOTICE TO DTSC; REQUIRED STATEMENT**. In accordance with the terms of the Recorded Covenant, upon the Closing and pursuant to Section 4.2 of the Recorded Covenant, Buyer and Seller shall notify the DTSC of the sale of the Property to Buyer. Further, in accordance with Section 4.4 of the Recorded Covenant, the parties acknowledge the following:

> "The Land described herein is subject to a Covenant and Agreement to Restrict Use of Subject Property. The Land or the Subject Property, and the owner, lessee, or other occupant of the Land or Subject Property may be subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists."

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

SELLER:

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

BUYER:

CITY OF HERCULES

By: _____
Name: Steve Duran
Title: City Manager

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (a) accept the foregoing Agreement as its Escrow Instructions, (b) be Escrow Holder under said Agreement for its normal and customary fees, and (c) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, that the undersigned Escrow Holder shall have no obligations, liabilities or responsibilities under this Consent or otherwise as to any amendment to said Agreement unless and until the same shall be accepted by the undersigned; and provided, further, that this Consent is conditioned upon the parties signing such separate supplemental escrow instructions as the undersigned may request in order to incorporate Escrow Holder s General Provisions, all as contemplated under Section 4.1 of this Agreement.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____ Date: _____, 2012
Diane Burton, Escrow Officer

LIST OF EXHIBITS

Exhibit	Description
Exhibit A-1:	Legal Description of Parcel 7 (Hercules Point)
Exhibit A-1:	Legal Description of Parcel 6 (Water Parcel North)
Exhibit A-3:	Legal Description of Parcel 8 (Water Parcel South)
Exhibit B-1:	Depiction of Land
Exhibit B-2:	Easements Areas To Be Reserved In Favor of Seller
Exhibit C:	Fee Credit Voucher
Exhibit D:	Scopes of Work
Exhibit E-1	Form of Grant Deed – Credit Property
Exhibit E-1	Form of Grant Deed – Cash Property
Exhibit F:	Form of Transferor's Certificate
Exhibit G:	Due Diligence Reports

EXHIBIT A-1

LEGAL DESCRIPTION OF PARCEL 7 (HERCULES POINT)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Hercules Point:

Being that certain 10.962 acre parcel of land described and shown on page 4 of 6, as Parcel 7 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT A-2

LEGAL DESCRIPTION OF PARCEL 6 (WATERSIDE PARCEL NORTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel North:

Being that certain 26.521 acre parcel of land described and shown on page 4 of 6, as Parcel 6 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT A-3

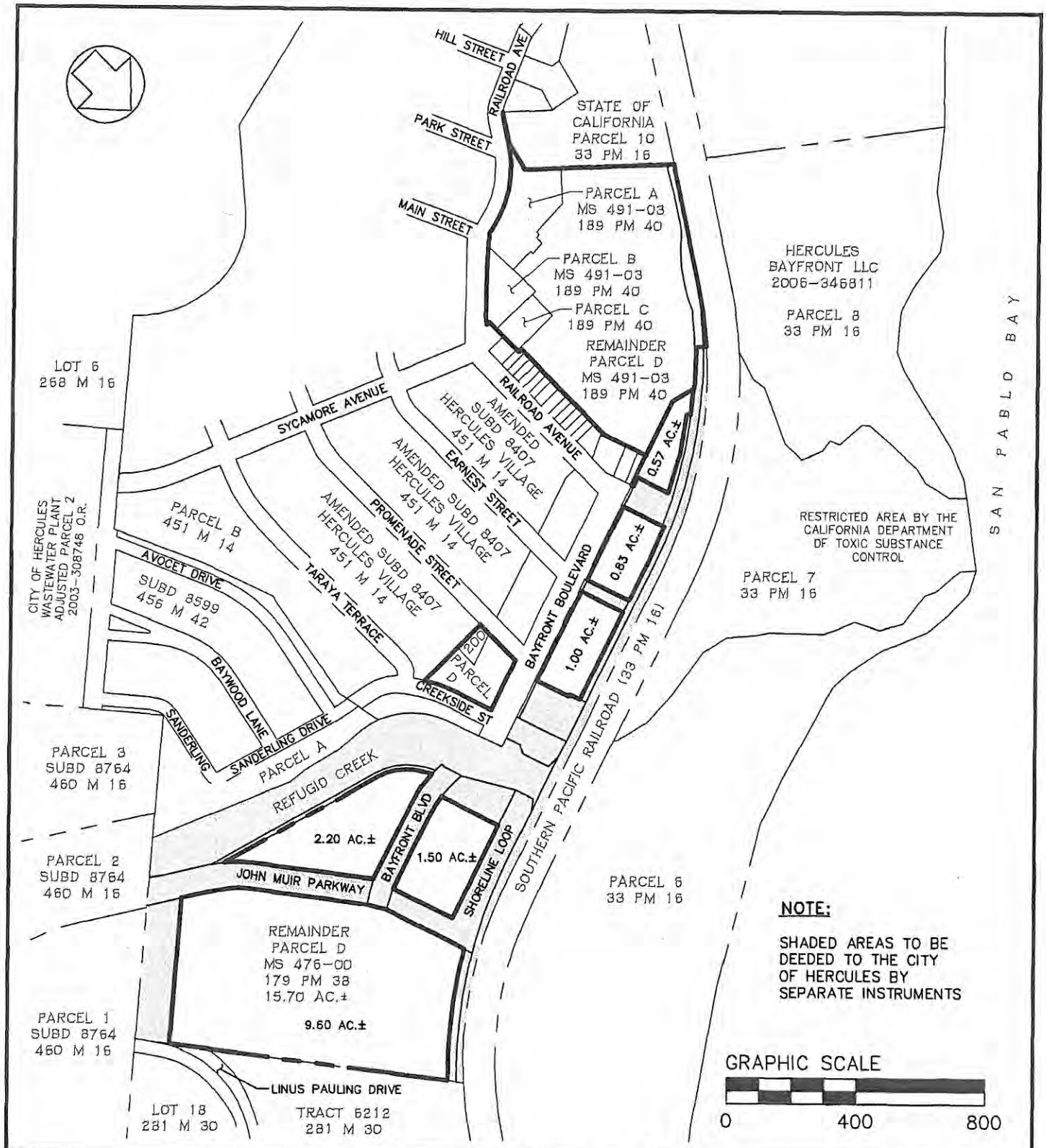
LEGAL DESCRIPTION OF PARCEL 8 (WATERSIDE PARCEL SOUTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel South:

Being that certain 13.066 acre parcel of land described and shown on page 4 of 6, as Parcel 8 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT "B-1"
DEPICTION OF THE PROPERTY



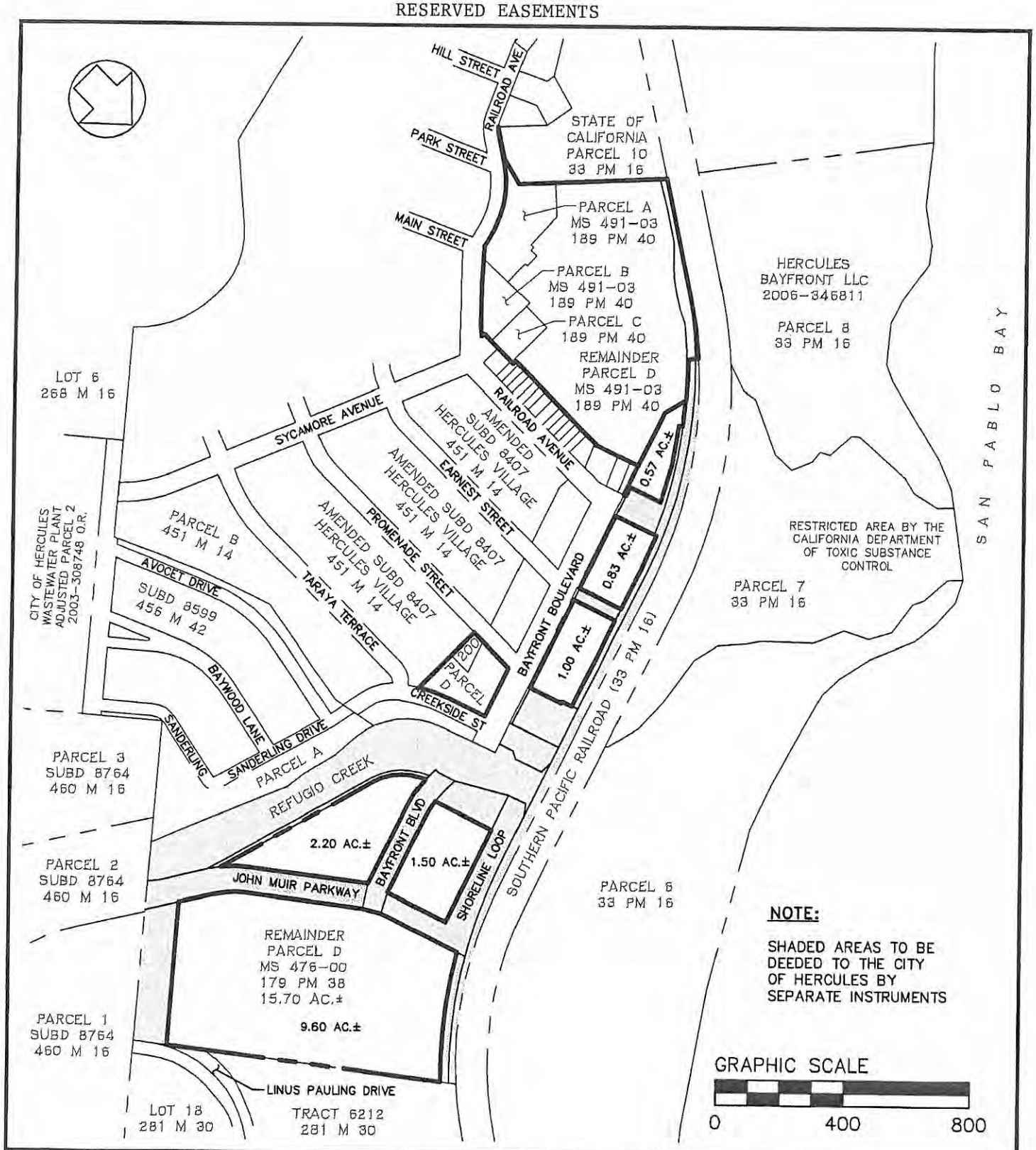
BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject EXHIBIT

Job No. 20075011-20
By MLM Date 11/15/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT "B-2"
RESERVED EASEMENTS



BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject EXHIBIT

Job No. 20075011-20
By MLM Date 11/15/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT "C"
FEE CREDIT VOUCHER FORM

FEE CREDIT VOUCHER FORM

The City of Hercules ("City") hereby issues to HERCULES BAYFRONT, LLC, a Delaware limited liability company ("Owner") fee credits against City imposed Development Impact Fees ("Credits") which may be imposed on the real property consisting of approximately 40.96 acres, with APN nos. 404-020-065, -083, -084, -085, -086; 404-670-016, -017, -018; 404-490-080, -100 located in the City of Hercules ("City"), State of California (the "Property") in the amount of Four Hundred Ninety Three Thousand Two Hundred Dollars ($493,200.00) pursuant to the Purchase Agreement and Escrow Instructions For Hercules Point, Water Parcel North and Water Parcel South dated _____ (the "Agreement"), between City and Owner.

The Credits may be used by Owner, in its sole and absolute discretion, in any manner consistent with the Implementing Development Agreement for the Hercules Bayfront Project entered into by and between the City of Hercules and Hercules Bayfront LLC on _____. Among other uses, Owner may use the Credits to satisfy 100% of the Development Impact Fee obligation for each building permit, or such lesser amount as specified by Owner and City in writing, and Owner's remaining Credit balance hereunder shall be reduced by an equal amount. This Fee Credit Voucher shall not apply to, and may not be used for, any fees or charges imposed by City for the benefit of another agency.

ENGEO INCORPORATED

GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
P2010.000.040

November 1, 2011

James Anderson, President
Hercules Bayfront, LLC
c/o Anderson Pacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, CA 90045

Subject: Hercules Point – Waterside and Landside Properties
Hercules, California

PROPOSAL FOR ENVIRONMENTAL CONSULTATION SERVICES

Dear Mr. Anderson:

ENGEO is pleased to submit this environmental consultation services proposal for development Parcels 6, 7, 8, and Refugio Creek, also known as OU-8A, OU-3, OU-8B, and OU-7, respectively (hereafter referred to as the Site), of the proposed Hercules Bayfront development located in Hercules, California.

As currently contemplated, the ownership of the Site will be sold to the City of Hercules for development as public open space / park facility, Refugio Creek restoration, and a ferry terminal. located north of Bayfront Boulevard across the Union Pacific railway in Hercules, California.

The Site is part of the former Hercules Properties, Ltd. facility (HPL), which was the subject of extensive site characterization, risk assessment and remedial activated undertaken during the 1980s and 1990s. The environmental cleanup work was conducted under the oversight of the CAL-EPA Department of Toxic Substances Control (DTSC). The greater HPL property was granted a remedial certification and unrestricted land use designation in 1997. Operable Unit OU-8A and OU-8b are the waterside parcels adjacent to the "point", which is identified as OU-3. Operable Unit OU-7 consists of a portion of Refugio Creek. Operable Unit OU-3, has an existing deed restriction limiting it to a commercial/industrial land use designation. There is also an Operations and Maintenance program in place for the Site. The other Operable Units of the HPL property have since been developed for mixed use, including residential subdivisions.

ENGEO has been closely involved in the post-certification evaluation and cleanup of specific areas of the Hercules Village development area. ENGEO also assisted in the coordination of demolition and abatement activities associated with the Site.

2010 Crow Canyon Place, Suite 250 • San Ramon, CA 94583 • (925) 866-9000 • Fax (888) 279-2698
www.engeo.com

The purpose of our study is to support the project team, including Hercules Bayfront, LLC and Geosyntec to evaluate the status of the Site with the DTSC and determine the potential steps necessary to allow for redevelopment of a portion of the Site.

BACKGROUND

The Site is a small portion of the original 1300-acre HPL facility, which was used for the manufacturing of chemicals for explosives and fertilizer applications. A Remedial Action Plan (RAP) was developed for the HPL property in June 1994, which was approved by the DTSC. Operable Unit OU-3 included a power house building, an evaporation pond, a fuel storage tank farm, and a large ammonia tank. As a result of the past industrial operations, Site soils were impacted with metals (arsenic, lead, mercury) and total petroleum hydrocarbons (TPH).

State-approved cleanup levels were established for the HPL property in 1992 based on risk assessments conducted by McLaren/Hart Environmental. The following table summarizes the constituents of concern (COCs) and cleanup levels for OU-3. The table also provides the corresponding unrestricted land use cleanup level applied for the greater HPL property.

Hercules Properties, Ltd.
Soil Cleanup Levels (June 1995)

Chemical	Restricted Land Use (mg/kg)	Wetlands (mg/kg)	Unrestricted Land Use (mg/kg)
Arsenic	10	33	10
Lead	1000	1000	400
Mercury	4	4	1.4
Total Petroleum Hydrocarbons	1000	1000	100

Remediation in OU-3 was conducted in 1995 – 1996 and included both areas of drylands (uplands) and wetlands. Wetlands remediation work was conducted in two main areas, tidal wetlands located at the southwest of OU-3 and seasonal wetlands located along the west side of the overhead pedestrian bridge crossing.

The elevated arsenic is likely attributable to fungicides or herbicides sprayed along the rail lines. Sources of lead encountered in Site soils were believed to have resulted from fill containing brick and ceramic materials (construction rubble) and from a paint shop formerly located on the Site. The source of mercury was likely from the temperature and pressure gauges as well as fulminated mercury from explosives detonators.

The fuel tank farm, which consisted of four above-ground tanks and associated piping, was located to the east of the bridge. Soil in the vicinity of these tanks was contaminated with TPH as diesel, along with lead, arsenic and mercury.

Approximately 6,500 cubic yards of impacted soil was removed from the dryland area of OU-3. Approximately 8,500 cubic yards was removed from wetland area of the Site.

A *Covenant and Agreement to Restrict Use of the Property* (Deed Restriction) was recorded for OU-3 in June 1996. The deed restriction limits the development of the Site to commercial or industrial uses. The deed restriction also states that no significant disturbance of the soils, including excavation or drilling of water wells, shall be performed without notification to DTSC. The document specifies that impacted soil brought to the surface by excavation shall be managed as hazardous waste unless sampling and testing has demonstrated otherwise.

SCOPE OF SERVICES

Review and Compilation of Existing Data

An appreciable amount of exploration, laboratory testing, remediation, confimatory sampling, and monitoring has been conducted for the Site. Our first task will be to assist Geosyntec, where appropriate, to compile and review applicable data pertaining to the Site. We anticipate agency reviews conducted by Geosyntec/ENGEO will include the following:

- U.S Environmental Protection Agency, Region IX (USEPA)
- Cal-EPA Department of Toxic Substances Control (DTSC)
- San Francisco Regional Water Quality Control Board (SFRWQCB)
- Contra Costa County Helath Services Department (CCHSD)

We will also review our internal files for information related to OU-3. We will also request that you forward any other pertinent informaiton regarding the Site, including conceptual development plans.

Summary of Existing Data and Identification of Data Gaps

Once the available data has been reviewed and compiled, we will assist the project team, as appropriate, to determine if any data gaps exist pertaining to surface/subsurface conditions and contaminant delineation. This evaluation will allow for the identification of missing parameters that would be necessary to gain an understanding of Site conditions and develop conceptual strategies for further risk evaluations, exploration, data acquisition, and mitigation.

Preliminary Site Conceptual Model

Once we have assessed and summarized the available data, we will assist Geosyntec and the project team, as appropriate, to prepare a *preliminary* site conceptual model (PSCM). The PSCM will incorporate the surface/subsurface soils and will summarize potential sensitive receptors and exposure pathways to future land users. This model is considered preliminary because it may need to be refined at a later time if data gaps have been identified and addressed. The PSCM will

provide a preliminary understanding of the extent and magnitude of environmental impacts at the Site, allowing the identification of data gaps that need to be addressed to further our understanding of Site conditions. It will also serve as a basis to provide an evaluation of potential site remediation measures, including engineering controls and potential remediation costs.

Technical Document Review/Project Team Meetings

At the request of the project team, ENGEO will provide quality control/peer review services for documents prepared by Geosyntec in support of the project. We will also provide a review of DTSC correspondence, if applicable, related to the proposed recreational development. At the request of the project team, we will also attend meetings with the City of Hercules, DTSC and the project team.

PROJECT FEE AND SCHEDULE

We propose to perform the above-described services in accordance with our current fee schedule on a time-and-expense basis for a fee of **$5,000**. This fee includes the above services, along with an estimated 5 hours of meetings with City of Hercules, DTSC, and the project design team. If you are in agreement with the scope of services and fees outlined herein, please sign two copies of the attached Professional Services Agreement as authorization to proceed. A fully executed copy will be returned to you for your files. Work will not commence without prior receipt of an executed agreement.

We look forward to working with you on this project. If you have any questions on any portion of the scope of services or any other aspect of the agreement, please call and we will be glad to discuss them with you.

Very truly yours,

ENGEO Incorporated

Shawn Munger, CHG
Principal

Brian Flaherty, CEG
Principal

EXHIBIT "D"
PROPOSAL

3 November 2011

Mr. James Anderson, President
Hercules Bayfront, LLC
c/o Anderson Pacific LLC
6701 Center Drive West, Suite 710
Los Angeles, California 90045

Subject: Proposal for Environmental Consulting Services
Hercules Bayfront Development, Parcel 6 (OU-8A), Parcel 7 (OU-3), Parcel 8 (OU-8B0, and Refugio Creek (OU-7)
Hercules, California

Dear Mr. Anderson:

Geosyntec appreciates the opportunity to present our proposal to provide environmental consulting services to Hercules Bayfront, LLC for Development Parcels 6, 7, 8, and Refugio Creek, also known as OU-8A, OU-3, OU-8B, and OU-7, respectively (hereafter referred to as the Site), of the proposed Hercules Bayfront development located in Hercules, California. This proposal was prepared on the basis of discussions between Mr. Randy Brandt, of Geosyntec and Mr. Jim Anderson of Hercules Bayfront, LLC on 26 January 2010, discussions and a site visit with Mr. William Silva of D'Oro Construction Management (representing Hercules Bayfront, LLC) on January 27, 2010, discussions with Hercules Bayfront, LLC representatives on 10 October 2011, and our preliminary review of some publicly available documentation regarding the Site. This proposal presents our understanding of the project, a proposed scope of services, tentative schedule, and estimate of charges.

BACKGROUND

The Site was once part of a 1300-acre manufacturing facility that was operated from 1879 to 1977. Previous operations at the facility included the manufacture of explosives and fertilizer chemicals. Manufacturing at the facility ceased in 1977 and the buildings and plant structures were demolished. As a result of the historical manufacturing activities, soil and groundwater have become contaminated with various metals and organic compounds. The former facility has undergone a significant level of investigation and remediation since the early 1980s under the auspices of the California Department of Toxic Substances Control (DTSC). For investigation

and remediation purposes, the facility was divided in to six operable units, designated OU-1 through OU-6. The Site, which is the subject of this proposal, is designated as OU-7, OU-3, OU-8A and OU-8B. Based on the results of remediation at these locations, the DTSC approved no further action at OU-7, 8A, and OU-8B subject to land use restrictions and a five-year review process at OU-3. Land uses in OU-3 are restricted to commercial and/or industrial land uses. No other land uses are allowed without the prior approval of the DTSC.

For development purposes, the former manufacturing property was divided into several parcels. Parcels south of the Union Pacific Railroad (UPRR) line were designated as Parcels A through D. Parcels north of the UPRR line were designated as Parcels 4, 5, 6, 7, and 8. According to the 2006 Grant Deed, Parcels A, D and 7 were sold to Hercules Bayfront, LLC for development as the Hercules Bayfront project.

It is our understanding that Parcels 6, 7, 8, and Refugio Creek (collectively referred to as the "Site") are planned to be sold to the City of Hercules for future development as public open space/park facilities, creek restoration, and a future ferry terminal. Parcels 6 and 8 are submerged mudflats. Parcel 7 comprises approximately 11 acres of land that is currently vacant and unpaved. Refugio Creek bisects Parcels B, C, and D and discharges into San Pablo Bay at Parcel 6. Foundation slabs remain in place on Parcel 7 from the former powerhouse building and ammonia storage tank. In addition, the former wastewater evaporation pond is present in the northeastern portion of Parcel 7.

OBJECTIVES AND PROPOSED SCOPE OF SERVICES

As currently contemplated, the ownership of the Site will be sold to the City of Hercules for development as public open space/park facility, Refugio Creek restoration, and a ferry terminal. Because the current DTSC land use restrictions prohibit development of Parcel 7 as public open space/park facilities along with other land use restrictions, Hercules Bayfront, LLC has requested Geosyntec to assist in developing and executing an environmental strategy to revise the land use restrictions to allow development of the Site consistent with the proposed land uses.

Based on the above understanding, it will be Geosyntec's objective to assist in addressing environmental issues associated with the purchase and sale of the Site. To meet this objective, Geosyntec proposes a scope of services consisting of several tasks as described in the following paragraphs.

Task 1 – Phase I Environmental Site Assessment (ESA)

To support Hercules Bayfront, LLC in performing environmental due diligence of the Site in anticipation of its purchase of the Site, Geosyntec will perform a Phase I ESA. Geosyntec's objective in performing the scope of work is to prepare a Phase 1 ESA for the Site that assists in meeting certain requirements of U.S. EPA's All Appropriate Inquiry (AAI) rule. By satisfying this rule, the purchaser may become eligible for one or more CERCLA defense conditions, including: i) innocent land owner defense; ii) bona fide prospective purchaser defense; and iii) contiguous land owner defense designations, as defined in the Brownfield Amendments to CERCLA (see CERCLA sections 101(35), 107(b)(3), 101(40), 107(r), and 107(q)).

Geosyntec will perform the Phase 1 ESA in general conformance with specific guidelines contained within the American Society for Testing and Materials (ASTM) Standard E 1527-05, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." Please note that the ASTM Standard and AAI also identify certain inquiries to be conducted by the prospective property owner or "user" of the Phase 1 ESA, such as recorded land title records and lien records, "specialized knowledge" of the property and adjacent properties, purchase price value information, and similar information. We understand that other consultants have been engaged for other phases of work on the project. Because of the institutional knowledge of these firms, particularly Engeo, Incorporated and HDR Environmental, Geosyntec will collaborate, as directed, with Engeo, HDR Environmental, and others, to obtain the most current information on historical and existing site conditions.

Geosyntec's proposed scope of work for the Phase I ESA consists of the following activities:

- Records review;
- Site reconnaissance;
- Interviews;
- Phase 1 ESA Reporting.

Each of these activities is described in more detail below.

Task 1a: Records Review

The objective of the records review is to obtain and review information that will help identify Recognized Environmental Conditions (RECs) at or in the vicinity of the Site. Geosyntec will review publicly available information regarding the former manufacturing as well as other records and technical reports (if any) for the Site provided by Hercules Bayfront, LLC. Geosyntec will contract with Environmental Data Resources (EDR) to obtain database records, historical topographic maps, historical aerial photos, Sanborn fire insurance maps, and an environmental lien search report. Geosyntec will use the data from EDR to identify the sites and adjacent properties that may have potentially impacted the Site, if any. Geosyntec will also contact various regulatory agencies by telephone regarding information pertaining to the Sites depending on the results of the EDR database search. Regulatory agencies that may be contacted include the United States Environmental Protection Agency (USEPA), the DTSC, the California Regional Water Quality Control Board (RWQCB), the local Department of Environmental Health Services, local Air Pollution Control District (APCD), local Fire Department, and/or local Building Department. Visits to these agencies and review of files at agency offices are not included as part of this scope of services but can be conducted for an additional fee, if warranted, and approved by the client. We have assumed that Hercules Bayfront, LLC will perform the title search and provide the results to Geosyntec for inclusion in the Phase 1 ESA report.

Our review of documents and reports related to the investigation and remediation of the Site will be more extensive and in-depth than typically conducted to support a Phase I ESA in an effort to create a database of information that will be necessary to develop and implement a strategy to revise the current land use restrictions on the Site (See Task 2).

Task 1b: Site Reconnaissance

Geosyntec will coordinate with Hercules Bayfront LLC to visit the Site to obtain information regarding current land use and features of the Site and surrounding properties. We understand that access to Parcels 6, 7, and 8 of the Site is limited to a waterfront landing accessible only by boat during high tide. Geosyntec will work with Hercules Bayfront, LLC to ascertain the most cost effective means to access the site. The cost estimate presented below does not include rental of a boat or other craft to access the Site and we will submit a change order for boat rental, if deemed necessary. The Site and adjacent properties will be observed for visible signs or indications of potential contamination or RECs as well as potential environmental issues or areas of environmental concern. The current Site features will be photographically documented.

Geosyntec assumes that Hercules Bayfront, LLC will arrange for access agreements and any other legal documents that may be required to allow Geosyntec staff to enter the Site.

Task 1c: Interviews

Geosyntec will interview the Site owners/managers and/or key facility employees, if any, to obtain information regarding the historical and current uses and physical characteristics of the Sites. The interviews will be conducted concurrently with the Site Reconnaissance activity. It is assumed that the client will make these people available for interview at the time of the Site visit.

Task 1d: Phase I ESA Report

Geosyntec will prepare a Phase I ESA Report for the Site that describes and presents the results of the ESA, including the identified RECs, as well as data gaps, if any. The report will include: an introduction; site description; summary of the scope of work including records review, site reconnaissance, and interviews; maps and photographs; findings; and conclusions. Supporting documentation will be provided as necessary. Our Phase I ESA Report will not include identification and/or sampling of suspect asbestos-containing materials, radon, wetlands, lead-based paint, mold, or lead in drinking water, which are generally considered outside the scope of a Phase I ESA. Geosyntec will provide a draft version of the report for review and comments by Hercules Bayfront, LLC. After receiving and resolving one round of comments from Hercules Bayfront, LLC, the report may be finalized. The final report will be provided in hard copy and electronic format for the exclusive use by Hercules Bayfront, LLC.

The following language will be included in the final reports: "This Phase I ESA report is intended for use only as a complete document and was prepared in accordance with the generally accepted level of skill and care exercised by other members of Geosyntec's profession for similar services. Use of this report, and reliance thereupon, is limited to Hercules Bayfront LLC, its lenders, and the City of Hercules as a potential land purchaser whose reliance shall also be subject to all of the terms and conditions of the contract and scope of work under which this Phase I ESA Report was prepared. No other third parties are entitled to rely upon this report without the express written consent of Geosyntec Consultants."

Task 2 – Revision to Land Use Restrictions

To assist the Hercules Bayfront, LLC in obtaining approval from the DTSC to develop the Site as public open space/park, a ferry terminal, and to restore Refugio Creek, Geosyntec will

develop and implement a strategy to negotiate a revision to the existing Covenant and Agreement to Restrict Use of Property (CRUP). To meet this objective, Geosyntec will conduct the scope of work outlined in the Tasks described below.

Task 2a: DTSC Meeting

Geosyntec will update the existing conceptual site model to incorporate use of the property as public open space/park facilities, creek restoration, and future ferry terminal and prepare a preliminary mitigation plan to address new exposure pathways that may exist. Geosyntec will solicit the assistance of ENGEO and HDR Environmental in involving appropriate individuals and to provide historical reference for prior remedial efforts on the site. Upon completion of this activity, Geosyntec will facilitate a meeting between the City of Hercules, the DTSC, Hercules Bayfront, LLC, and Geosyntec to inform the DTSC of development intentions and discuss the DTSC's requirements and process to modify the current land use restrictions, based on the updated conceptual site model. Following the meeting, Geosyntec will prepare and submit to Hercules Bayfront, LLC a technical memorandum summarizing the meeting and presenting our recommendations for a path forward to revising the current land use restrictions.

Task 2b: Technical Analysis and Report

Following the meeting, Geosyntec will conduct a technical analysis of existing data and information and prepare a technical report which will be presented to the DTSC presenting the technical justification, rationale, and revised mitigation, if any, to support a change in land use. At this time, we do not anticipate that additional field investigation will be necessary, however, this depends on the nature of existing information relative to the DTSC's requirements for information necessary to support a change in land use. We do anticipate that a revision or update the human health and ecological risk assessments will likely be required. The specific scope and estimated cost of this Task will be refined following the completion of Task 2a.

Task 2c: CRUP Revisions

Following the DTSC's acceptance of the Technical Report and the determination of the conditions required for allowing a change in land use, Geosyntec will work with the DTSC and the Hercules Bayfront, LLC to document and record the revised land use restrictions. Depending on the significance of the requirements, this may involve a public notice and possible a public information meeting. The specific scope and estimated cost of this Task will be refined following completion of Tasks 2a and 2b.

Task 3: Remediation Design Support

Geosyntec will work with Hercules Bayfront, LLC and its contractors and engineering consultants to provide support in designing the components of the remediation that are required by the DTSC to allow the change in land use. Our preferred approach for this Task is to provide the comprehensive design of the remediation components and provide them to the City's design engineer for incorporation into the project construction documents. As with Tasks 1 and 2, Geosyntec will collaborate with Engeo and other consultants familiar with the land (as and if necessary) to gain insights on the geotechnical condition of the site as well as the nature and condition of the civil infrastructure at the Site.

Alternatively, Geosyntec can provide a designated design engineer with a design basis for the remediation components. Upon completion of the draft design by the engineer, Geosyntec would provide review and comment of the construction document package to verify that the designs comply with the DTSC requirements. Because the nature of remediation elements are not know at this time, it is not possible to estimate the level of effort or cost to produce the design documents.

Task 4: Construction Management and Quality Assurance

During construction of the remediation components, Geosyntec will work on behalf of Hercules Bayfront, LLC and in collaboration with the geotechnical and civil engineers to manage the construction activity, assure the quality of the construction meets the design specifications, and provide appropriate documentation to the DTSC that the remediation components have been installed as approved. If a construction contractor is retained directly by Hercules Bayfront, LLC, Geosyntec will provide independent oversight and quality assurance monitoring. However, if desired, Geosyntec can provide turnkey construction, construction management, and quality assurance monitoring. Because the nature of remediation elements are not know at this time, it is not possible to estimate the level of effort or cost to manage the construction efforts and produce the regulatory documents.

PROJECT MANAGEMENT

Throughout the course of the project, we will conduct Project Management activities which will include:

- Monitoring the progress of scope, schedule, and budget expenditures;

- Managing subcontractor services, including contracting and invoicing;
- Preparing monthly invoices for the client;
- Meeting with and communicating with the client as part of the project team to discuss progress of the project, changes in scope and maintain an overall perspective of the development project progress as it pertains to Geosyntec's scope of services. This will include an initial project kickoff meeting with the client.

SCHEDULE

Geosyntec is prepared to initiate our services within five days of your authorization to proceed. We anticipate that Task 1 and Task 2a will be conducted concurrently. It will be our objective to obtain information from the DTSC regarding their requirements and process to modify the land use restrictions so that this information can be incorporated into the Task 1 activities. We anticipate that a draft of the Phase I ESA Report can be delivered to Hercules Bayfront, LLC within 5 weeks of the initiation of our services. Upon your authorization, we will produce a tentative project schedule.

We understand that this effort is part of a larger entitlement process and the information obtained from the Phase I ESA will be used as a component of the purchase and sale transaction as well as other aspects of the entitlement process. The estimated schedule for Tasks 2b through Task 4 will be developed as new information is obtained from Tasks 1 and 2a.

BUDGET, ASSUMPTIONS, AND CONDITIONS

We propose to provide our services on a time and expense basis in accordance with our 2011 Rate Schedule and mutually negotiated contract terms and conditions. For your consideration, we have included a copy of our rate 2011 Rate Schedule and Professional Services Agreement as Attachment A.

Due to the current uncertainty in the elements and process that the DTSC will require to modify the land use restrictions, it is not possible to provide a budget estimate for Tasks 2b through 4.

We recommend establishing an initial not to exceed budget of $15,000 for conducting Tasks 1 and 2a. Once we complete Tasks 1 and 2a, we will provide Hercules Bayfront, LLC with an update of the schedule and budget estimate to proceed with Tasks 2b through 2c. Upon DTSC's

concurrence with the proposed remediation components presented in Tasks 2b and 2c, we will provide you with our schedule and budget estimate to proceed with Tasks 3 and 4.

PROPOSED PROJECT TEAM

Geosyntec's project team will be lead by Mr. Randy Brandt, P.G., Principal. Mr. Brandt has over 24 years' experience in the field of hydrogeology with special emphasis on environmental and hazardous waste issues. Mr. Brandt has focused on development and implementation of site characterization programs for hazardous waste sites ranging in size from gasoline service stations to closed military bases. He is adept at developing creative and cost effective remediation strategies to meet objectives of project stakeholders, including responsible parties, regulatory agencies, and the public. He has particular experience with devising strategies to integrate site remediation with land development activities, supporting an end-state vision of land developers and municipalities.

Mr. Brandt has provided strategic consultation and technical direction for sites falling under the jurisdiction of the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), National Environmental Policy Act (NEPA) and numerous state lead programs in California, Washington, and Oregon. A copy of Mr. Brandt's resume is included as Attachment B.

Mr. Brandt will be supported by other scientists and technical experts, as necessary to complete the Tasks outlined above.

CLOSING

We appreciate the opportunity to present this proposal to you and we look forward to the opportunity to work with you on this challenging project. Please indicate your acceptance of this proposal by executing the attached Professional Services Agreement or by sending us a copy of your preferred contract terms for consideration.

If you have any questions regarding our proposal or our proposed approach, please feel free to call me at 510-285-2736. I will call you in the next few days to follow up on the next steps in this process.

Sincerely,

Randolph C. Brandt
Principal

Attachments: Attachment A – **2011** Rate Schedule and Professional Service Agreement
Attachment B -- Resume

Attachment "A"
2011 Rate Schedule

CONFIDENTIAL

GEOSYNTEC CONSULTANTS
2011 RATE SCHEDULE

Engineer/Scientist	Rate/Hour
Staff Professional	$105
Senior Staff Professional	$122
Professional	$140
Project Professional	$158
Senior Professional	$178
Associate	$198
Principal	$215
Construction Services	
Engineering Technician I	$ 54
Engineering Technician II	$ 60
Senior Engineering Technician I	$ 65
Senior Engineering Technician II	$ 70
Site Manager I	$ 79
Site Manager II	$ 87
Construction Manager	$ 98
Design, Graphical, and Administrative Services	
Designer	$114
Senior Drafter/Senior CADD Operator	$ 100
Drafter/CADD Operator/Artist	$ 88
Admin Assistant/Tech Word Processor	$ 56
Clerical	$ 46
General	
Direct Expenses	Cost plus 12%
Subcontract Services	Cost plus 12%
Communications Fee	3% of Professional Fees
Specialized Computer Applications (per hour)	$ 15
Personal Automobile (per mile)	Current IRS Rate
Photocopies (per page)	$ .09

Rates are provided on a confidential basis and are client and project specific.
Unless otherwise agreed, rates will be adjusted annually based on a minimum of the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers.
Rates for field equipment, health and safety equipment, and graphical supplies presented upon request.

Attachment "B"
Resume

Geosyntec consultants

RANDOLPH C. BRANDT

hydrogeology
program management
operations management

EDUCATION

B.S., Geology/Oceanography, Humboldt State University, 1984

REGISTRATION

Professional Geologist (PG), California, No. 6105

CAREER SUMMARY

Mr. Brandt has over 25 years' experience in hydrogeology with special emphasis on environmental and hazardous waste issues. He has focused on development and implementation of site characterization and remediation programs for hazardous waste sites, ranging in size from gasoline service stations to closed military installations. He is adept at developing creative and cost effective remediation strategies to meet objectives of project stakeholders, including responsible parties, regulatory agencies, and the public. He has particular experience with devising strategies to integrate site remediation with land development activities, supporting an end-state vision which emphasizes reduced overall life-cycle cost and liability exposure.

Mr. Brandt has provided strategic consultation and technical direction for sites falling under the jurisdiction of the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), National Environmental Policy Act (NEPA) and numerous state environmental programs in California, Washington, and Oregon. He has provided consulting services at oil refineries, military installations (active and closed), chemical manufacturing plants, hard rock and aggregate mines, landfills, hazardous waste land treatment units, surface impoundments, waste piles, underground storage tanks, and non-point source areas of contamination.

Mr. Brandt's relevant project experience, organized by industry sector, is presented below:

Military Base Redevelopment

- ***Early Transfer Negotiation Support,*** *California.* Mr. Brandt was the Program Manager and Lead Consultant for performing environmental due diligence and negotiation the terms of the early transfer on behalf of various Local Reuse Authorities (LRA) and Master Developers at ten active and closed military installations. Work

under his direction was performed under the framework of the Department of Defense (DOD Base Realignment and Closure Act (BRAC) and Enhanced Use Leasing program. Work performed under his leadership included conducting environmental due diligence and critical review of Environmental Baseline Surveys, developing environmental closure strategies, preparing environmental remediation cost estimates for various closure scenarios, and preparing a financial assessment of the environmental liabilities remaining at the site. In consideration of the future impacts of the DOD's ongoing work, Mr. Brandt worked with the Master Developers to formulate plans to integrate remediation activities with development activities. Mr. Brandt provided oversight for the data review, developed an overall base-wide remediation program, and lead the discussions and negotiations between the DOD, local regulatory agencies, US EPA, Master Developers and LRAs to establish base-wide closure objectives. Work was performed at the following closed military bases:

- Alameda Naval Air Station, Alameda, California
- Hunters Point Naval Shipyard, San Francisco, California
- Treasure Island Naval Station, San Francisco, California
- Presidio of San Francisco, California
- Point Molate Naval Fuel Depot, Richmond, California
- Onizuka Air Force Base, Sunnyvale, California
- Fort Ord Army Base, Marina, California
- South Weymouth Naval Air Station, South Weymouth, Massachusetts
- Castle Air Force Base, Modesto, California
- Beale Air Force Base, Marysville, California

- ***Fort Ord Army Base,*** *Marina, California.* Mr. Brandt served as the Program Manager for a CERCLA remediation of Munitions and Explosives of Concern (MEC) at 4,000 acres of the former Fort Ord Army Base. In this role, Mr. Brandt managed a dedicated project team of over 20 Prime and Subcontracted staff to conduct environmental due diligence, prepare regulatory documentation, implement approved workplans, perform data analysis and interpretation, prepare reporting, and provide stakeholder interaction. Work was performed in anticipation of future commercial development under a guaranteed fixed-price contracting mechanism that was underwritten by environmental insurance policies through AIG Environmental Insurance. Mr. Brandt negotiated and prepared contract terms with the Army, Fort Ord Reuse Authority, and teaming partners. Through his leadership, he facilitated conflict resolution between the technical

team, the Army, and various stakeholders, and developed closure strategies and associated cost estimates. Mr. Brandt managed all aspects of the negotiation, policy development, and compliance with the environmental insurance policies.

- ***Hunters Point Shipyard Development,*** Lennar Urban, San Francisco, California. Mr. Brandt was the Program Manager and Lead Consultant for performing environmental due diligence and supporting the client in the negotiation the terms of the early transfer from the U.S. Navy. Mr. Brandt provided consultation to the client to establish a program that included a guaranteed fixed-price remediation (GFPR) program and served as the client representative to provide peer review and management direction to the selected GFPR contractor. Mr. Brandt provided valuable consultation with regard to integrating development and environmental remediation activities as well as procuring cost cap and pollution legal liability environmental insurance for the program.

Brownfield Redevelopment

- ***Environmental Due Diligence and Development Consultation, Proposed Campus at NASA Ames Research Center, Carnegie Mellon University,*** *Mountain View, California.* Mr. Brandt served as the Principal Consultant for performing environmental due diligence at Carnegie Mellon University's (CMU's) proposed campus at NASA Ames Research Center. Because the proposed site is located within the area of influence of a federal Superfund site and on a closed military base, CMU wanted to document current environmental conditions; identify potential long-term environmental liabilities from contaminated soil, groundwater, and indoor air; and develop mitigation measures to minimize and manage potential liabilities. Under Mr. Brandt's direction, the technical team conducted a review of documents pertaining to the military base closure and the Superfund site; interviewed representatives of NASA; conducted a site walkthrough; sampled indoor and atmospheric air; interpreted and evaluated the data collected; assessed human health risk; and participated in design review team meetings. Mr. Brandt was instrumental at helping CMU understand the potential risks from environmental conditions to their proposed campus development and incorporated cost effective mitigation measures into the lease and building retrofit design to mitigate and manage those risks in a manner that cost effectively supported the campus development program.

- ***Third Party Review of Remedial Actions at Former Paper and Pulp Mill,*** *Paul Hastings Janofsky & Walker, Antioch, California.* Performed third party review of remedial actions completed at a former paper and pulp mill to provide an opinion on the appropriateness and cost effectiveness of the services completed. Mr. Brandt prepared an opinion letter and advised the client on alternative approaches to develop an exit strategy for the closure activities. The alternative approaches included

recommendations to minimize costs for future work, which included alternative contracting mechanisms.

- ***Uptown Development Project,*** *Forest City Residential West Developments Oakland, California.* Mr. Brandt was the Principal in Charge and Project Manager for implementing the Remedial Action Plan/Risk Management Plan (RAP/RMP) at two large city blocks targeted for a residential brownfield redevelopment project. Work was conducted under a guaranteed fixed price contracting mechanism that was underwritten by environmental insurance policies through AIG Environmental Insurance. Under Mr. Brandt's direction, the project team assessed, quantified, and negotiated the transfer of environmental risk through the structure and implementation of a guaranteed fixed price remediation contract with the City of Oakland, Forest City, and AIG. Mr. Brandt was instrumental in developing the closure strategy in compliance with the RAP/RMP, negotiating the contract terms with the client and subcontractors, executing the project on time, under budget, and with no claims against the insurance policies.

- ***Proposed Auto Mall Development,*** *City of Long Beach, Long Beach Redevelopment Agency, Long Beach, California.* Mr. Brandt was the Project Manager for a multidisciplinary RI/FS and remediation project for crude oil and chlorinated solvent contaminated soils and groundwater at a proposed 80-acre auto mall in Long Beach, California. The project site encompassed three unproductive and abandoned oil production fields. With the Redevelopment Agency as his client, Mr. Brandt managed a team of staff representing various technical disciplines to conduct a site assessment, preliminary site characterization, remedial alternative technical and cost evaluation, remediation, and design and planning consultation to the Project civil and architectural engineers. As a key member of the project team, Mr. Brandt participated in crafting a strategic development phasing plan to incorporate the Auto Mall development project with the environmental remediation program.

- ***On-call Environmental Services,*** *City of Oakland, Oakland, California.* Mr. Brandt served as the Principal-in-Charge and Program Manager responsible for consultation with the City to establish scopes of work and work directives, contract management and compliance, and overall technical quality control. Mr. Brandt's technical team assisted the City with environmental (soil and groundwater quality) investigations of City-owned properties. Individual task orders included Phase I and II environmental assessments, brownfield site assessments, and third party review of other consultant work products.

- ***Environmental Due Diligence Consultation,*** various clients in California, Oregon, and Arizona. Mr. Brandt has provided consultation to numerous clients seeking to develop Brownfield and other contaminated properties. His consultation work has included

performing numerous Phase I and II Environmental Site Assessments, developing strategies for obtaining Bonafied Prospective Purchaser indemnities, procuring environmental insurance, navigating through regulatory requirements and regulations, and developing strategies to incorporate engineering and institutional controls into development concepts.

Industrial Facilities

- ***Groundwater Remediation,*** Whittaker Corporation, Hollister, California. Mr. Brandt serves as the Principal in Charge of a team of experts focused at remediation of groundwater conditions impacted by perchlorate, trichloroethylene, and chrome VI at a former ordnance manufacturing facility. The work is being conduted pursuant to a Cleanup and Abatement Order from the Central Coast Regional Water Quality Control Board. The work involves bench scale testing of various treatment technologies, system design and construction, long term operation and maintenance, groundwater monitoring and compliance with various documentation requirements of the Order.

- ***Residential Development Environmental Assessment,*** *William Lyon Homes, West Covina, California.* Mr. Brandt was the Principal Investigator and Lead Consultant to evaluate the potential human health impact of contaminated groundwater and landfill gas originating from the BKK Landfill on a nearby residential development project. The analysis was a critical component in the design and permitting of the mitigation system and resolving legal disputes with the owners of the neighboring properties.

- ***RI/FS, Confidential Client,*** *Ontario, California.* Mr. Brandt served as the Project Manager for a Remedial Investigation/Feasibility Study under a RCRA Consent Order with the State Department of Toxic Substances Control. The investigation was aimed at characterizing and remediating solvent contamination in soil and groundwater at a jet engine manufacturing facility in Ontario, California. Mr. Brandt negotiated terms of the Consent Order with the Department of Health Services and the Santa Ana Water Quality Control Board and managed implementation of a multidisciplinary RI/FS/RAP.

- ***Chevron Refinery,*** *Richmond, California.* Mr. Brandt was the Program Manager for a long-term CERCLA project involving hydrogeologic investigation and remediation services. Mr. Brandt managed a dedicated project team of technical and administrative staff to conduct investigations and remediation in response to state and federal orders. The agencies identified 55 sites requiring action including tank farms, process facilities, land farms, landfills, surface impoundments, and subsurface piping. Under Mr. Brandt's leadership, the technical team developed technical approaches to agency directives, worked with the client to integrate the refinery's position with respect to regulatory

directives, provided technical quality assurance, cost estimating and cost control, and coordinated all aspects of scheduling.

- ***Chevron Refinery,*** *El Segundo, California.* Mr. Brandt served as the Project Manager and Lead Consultant for a long-term CERCLA project involving hydrogeologic investigation and remediation services in response to state and federal clean-up orders. The orders encompassed numerous refinery operating units including tank farms, process facilities, landfills, surface impoundments, and subsurface piping. Under Mr. Brandt's leadership, the project team developed technical approaches to field investigations and feasibility studies, implemented and evaluated pilot test activities for various remediation technologies, worked with the client to integrate the refinery's position with respect to regulatory directives, provided cost estimating and control, and coordinated all aspects of scheduling.

- ***Chevron Refinery,*** *Pascagoula, Mississippi.* Mr. Brandt was the Project Manager and Lead Consultant for development of a hydrogeologic conceptual site model to support Chevron in preparation of a strategy to comply with complex regulatory directives regarding site assessment and remediation. Under Mr. Brandt's direction, the project team assessed the concerns and objectives of the stakeholders involved, developed a technical study and data analysis to compile the conceptual site model, and participated in presentation of the model to the various stakeholders.

- ***Remediation System Optimization Evaluation, Rijeka Refinery,*** *Ecoina Engineers/Croatian National Government, Rijeka, Croatia.* Mr. Brandt was the Project Manager and Lead Consultant responsible for evaluating the technical and economic effectiveness of an existing refinery-wide remediation system at a major government-owned oil refinery. Under Mr. Brandt's leadership, the technical team assisted the refinery operator in complying with new environmental regulations and reduced the operation and maintenance costs of the remediation system. Mr. Brandt's team conducted an audit of the refinery's operation and historical record of environmental incidents, assessed the adequacy of the site investigations completed to-date, and evaluated the adequacy and effectiveness of the remediation system operated by a local consultant.

- ***Chevron Chemical Company,*** *Richmond, California.* Mr. Brandt was the Project Manager for the development of a revised large-scale groundwater monitoring program at a pesticide manufacturing facility in Richmond, California. The plan was being revised in response to changing state environmental regulations and facility operating conditions. Under his direction, Mr. Brandt's technical team reviewed over ten years of hydrogeologic information; five years of comprehensive groundwater chemical data; provided review and explanation of revised environmental regulations; and prepared a

revised monitoring plan to justify a reduction in scope of services. To complete the assignment, Mr. Brandt coordinated geologists, environmental engineers, regulatory experts, and statisticians to develop and present a revised plan. Development of the plan included evaluation of natural degradation of ammonia and nitrates in soil through the upward migration of groundwater through affected soil. Mr. Brandt coordinated groundwater modeling and contaminant fate efforts with a team of hydrogeologists and mathematical modeling experts.

Power Industry

- ***Preliminary Endangerment Assessments, 3 former Manufactured Gas Plant Sites, Southern California Edison,*** *Los Angeles Area, California.* Mr. Brandt was the Project Manager and lead field investigator to collect soil and groundwater information to conduct a comprehensive characterization of each of the sites in support of a Preliminary Endangerment Assessment. His work included data collection, data quality assurance, data interpretation, and report writing.

- ***Environmental Due Diligence of a 50-mile electric transmission pipeline, Confidential Client,*** *Tehachapi to Lancaster, California.* Mr. Brandt was the Principal-in-Charge for conducting an environmental due diligence of a 50-mile electric transmission pipeline connecting a proposed wind turbine electricity generating station with a primary connection point to the main grid. Work involved extensive fied reconnaissance, focused subsurface investigation, and strategic analysis of various transmission route configurations.

- ***RI/FS of a former MGP plant, PG&E,*** *Oakland, California.* Mr. Brandt was the Principal-in-Charge to conduct a remedial investigation and feasibility study of a former MGP plant which had been converted to maritime shipping container port uses. Due to the varied history of land uses at the site, Mr. Brandt and his team was tasked with discerning what elements of site contamination was due to former MGP operations and what elements were the cause of other historical land uses. The feasibility study focused at supporting risk-based remediation scenarios. Mr. Brandt lead the discussion and negotiation with the California Department of Toxic Substances Control to arrive at a cost effective remediation solution that was protective of human health and the ecological receptors.

Mining Industry

- ***Groundwater Quality Assessment, Limestone Quarry, Mitsubishi Cement Corporation,*** *San Bernardino County, California.* Mr. Brandt was the Principal Consultant to design a groundwater monitoring program to evaluate water

quality and wastewater discharge issues associated with the operations at a major limestone quarry in San Bernardino County. Mr. Brandt's efforts included review of existing data, designing a comprehensive groundwater monitoring network, preparing a groundwater monitoring plan, providing consultation and negotiating with regulatory agencies.

- ***Water Quality Assessment, Proposed Apperson Quarry, DeSilva Gates Corporation,*** *Alameda County, California.* Mr. Brandt was the Principal Consultant to design a surfacewater quality monitoring program to establish pre-mining operations surfacewater quality conditions in support of an Environmental Impact Report for the proposed Apperson Quarry. The operator planned to mine construction materials (sand, gravel, rock, etc.) from the quarry to support local construction activities. Mr. Brandt's efforts included review of existing data, designing a comprehensive surfacewater monitoring network, preparing a surfacewater monitoring plan, providing consultation and negotiating with regulatory agencies.
- ***Groundwater Quality and Slope Stability Assessment, Richmond Quarry, Chevron Corporation,*** *Richmond, California.* Chevron Corporation retained Mr. Brandt to conduct an assessment of groundwater quality impacts at a quarry being operated under lease from Chevron on land adjacent to the Richmond Refinery. Mr. Brandt was the Principal-in-Charge to develop and implement a groundwater quality investigation to assess the nature and source of impacts to groundwater from the quarry operations and nearby refinery.

Construction/Project Management

- Mr. Brandt served as the Construction/Program Manager for a major oil company RCRA remediation site involving the construction, start-up, and operation/maintenance of a 5-mile long perimeter groundwater protection system. The project spanned ten years; he served as Construction Program Manager for eight years. Project costs were $3,000,000 to $5,000,000 per year.

- Mr. Brandt served as the Construction and/or Project Manager for various commercial tenant improvement projects ranging in size from $10,000 to $1,200,000. Responsibilities included initial project scoping; assembling the team members including the architect, engineers, general contractor, and subcontractors; contract negotiation and management; construction administration; and construction quality assurance.

PROFESSIONAL HISTORY

Geosyntec Consultants, Oakland, California, Principal, 2008 to present

LFR Levine Fricke (now Arcadis), Senior Vice President/NW Regional Manager, 2002-2008
Paradigm General Contractors, Vice President/Director of Business Operations, 2000-2002
Dames & Moore Consultants (now URS Corporation), Principal, 1985-1999

PUBLICATIONS

5-2008 "Integrating Environmental Remediation with Site Development Activities". *Proceedings, Battelle Institute.* Chlorinated Solvents and Recalcitrant Compounds Conference, Monterey, California.

1-1994 "Establishing Clean-up Goals using Statistically-based Analysis." *Proceedings,* Chlorinated Solvents Conference, Monterey, California.

1-1990 "Redevelopment of Oilfield Property; An Environmental Perspective." *Proceedings,* HazMat West, Long Beach, California.

EXHIBIT "B"

PROJECT SITE

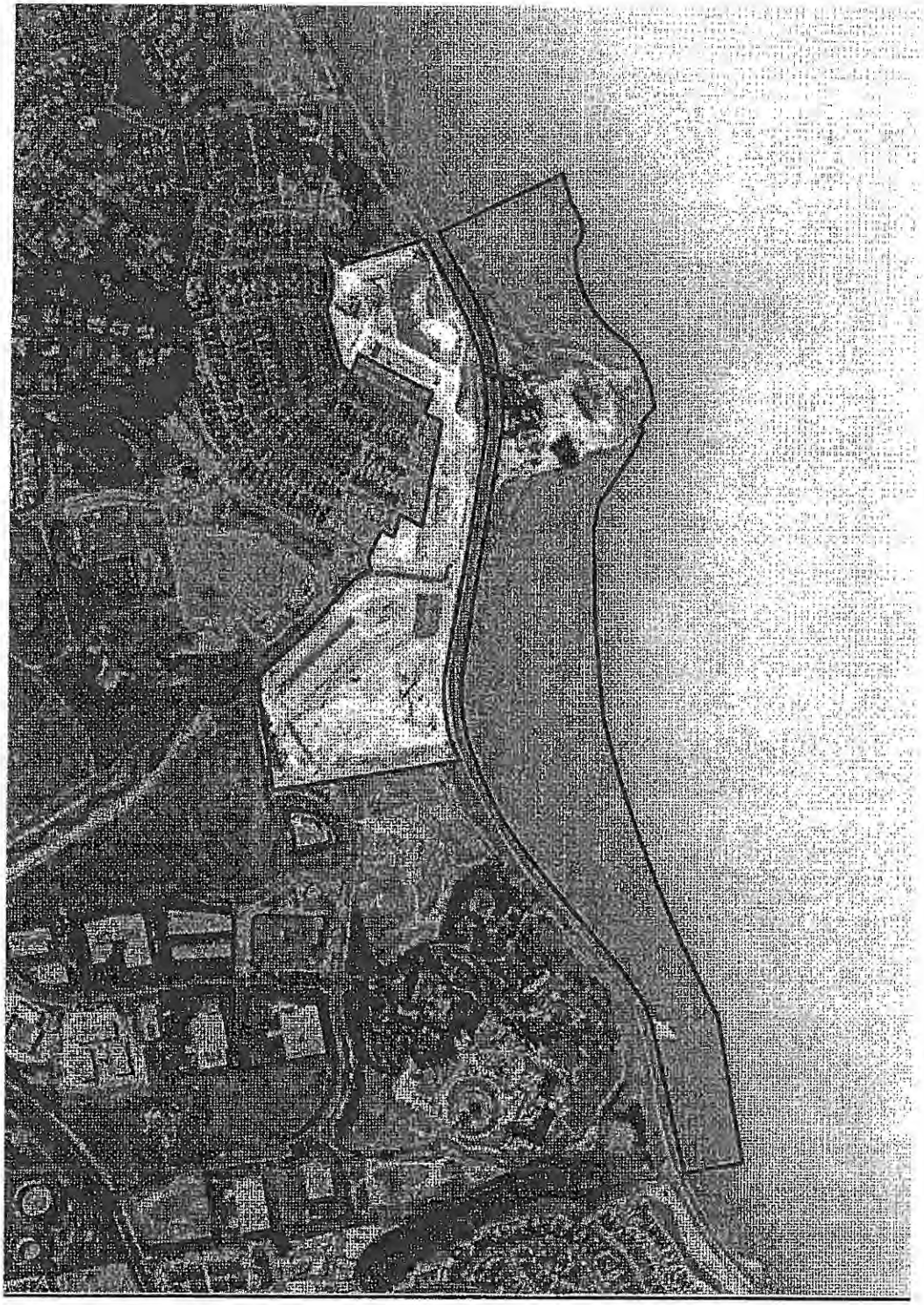


EXHIBIT A-1

LEGAL DESCRIPTION OF PARCEL 7 (HERCULES POINT)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Hercules Point:

Being that certain 10.962 acre parcel of land described and shown on page 4 of 6, as Parcel 7 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

SEPARATE STATEMENT
OF
DOCUMENTARY TRANSFER TAX

Contra Costa County Recorder

Dear Sir/Madam:

In accordance with Section 11932 of the California Revenue and Taxation Code, it is requested that this Statement of Documentary Transfer Tax not be recorded with the attached deed, but be affixed to the deed after recordation thereof and before return as directed thereon.

The deed names HERCULES BAYFRONT, LLC, a Delaware limited liability company, as Grantor, and CITY OF HERCULES, as Grantee. The property being transferred is located in or about the City of Hercules, Contra Costa County, California. The amount of documentary transfer tax due on the attached deed is _____ Dollars ($_____), computed on the full value of the property (less the value of any liens and encumbrances remaining on the property at the time of the sale).

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT A-2

LEGAL DESCRIPTION OF PARCEL 6 (WATERSIDE PARCEL NORTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel North:

Being that certain 26.521 acre parcel of land described and shown on page 4 of 6, as Parcel 6 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT A-3

LEGAL DESCRIPTION OF PARCEL 8 (WATERSIDE PARCEL SOUTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel South:

Being that certain 13.066 acre parcel of land described and shown on page 4 of 6, as Parcel 8 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

SEPARATE STATEMENT
OF
DOCUMENTARY TRANSFER TAX

Contra Costa County Recorder

Dear Sir/Madam:

In accordance with Section 11932 of the California Revenue and Taxation Code, it is requested that this Statement of Documentary Transfer Tax not be recorded with the attached deed, but be affixed to the deed after recordation thereof and before return as directed thereon.

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HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT F

FORM OF TRANSFEROR'S CERTIFICATE

NON-FOREIGN AFFIDAVIT
(SECTION 1445 CERTIFICATE)

Section 1445 of the Internal Revenue Code provides that a transferee of an interest in real property located within the United States must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon a disposition of an interest in real property located within the United States by Hercules Bayfront, LLC ("Transferor"), the undersigned hereby certifies the following:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. Employer Identification Number is _____; and

3. Transferor's office address is do AndersonPacific, LLC, 6701 Center Drive West, Suite 710, Los Angeles, California 90045.

The undersigned acknowledges that this Certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could result in punishment by fine, imprisonment or both. Under penalty of perjury the undersigned declares that it has examined this Certificate and to the best of its knowledge and belief it is true, correct and complete.

DATED: _____, 2012

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT G

DUE DILIGENCE MATERIALS

- 2009-10-06 - Engeo - Topo (Railroad Plaza and Village)
- 1999-03-15 - Enviro Group - Hercules Properties - ACM & Lead Surveys
- 1999-05-28 - Engeo - Environmental Site Assessment
- 2000-05-01 - WRA - CRLF Survey
- 2003-06-10 - Engeo - Previous Grading Activities
- 2003-11-20 - Engeo - Her Railway + Station Improvements
- 2006-10-16 - Balance - Refugio Discharge Summary
- 2009-07-30 - Balance - Bayfront Bridge Flood Elevations
- 2009-08-25 - Engeo - RR Plaza Supp Geotech Surcharge
- 2010-09-01 - Engeo - Coverage Area Map
- 2010-10-25 - Engeo - Summary Published Geotech Reports
- 2010-12-06 - Engeo - Site Plan-Young Bay Mud Contours

EXHIBIT K

STREAMLINED DESIGN REVIEW AND BUILDING PERMIT PROCESS

City and Owner mutually agree that the form-based code of the Waterfront District Master Plan—as amended by the Waterfront Now Initiative adopted by the City Council in July 2008—provides regulations that substantially address urban design elements and enables a standardized and detailed design review of individual buildings within the Project Site. The objective of City and Owner in establishing herein the Streamlined Design Review and Building Permit Process ("Streamlined Process") for the Project is to minimize delay, maximize efficiency, and expedite design permit processing and approval. City and Owner agree to work together through the Streamlined Process to facilitate open and transparent communication in support of an informed review by City staff, a qualified Town Architect, and an involved public.

The Streamlined Process outlined below identifies the steps required to process the necessary design and building permit applications ("Application(s)") with City to implement the Project as defined in the Implementing Development Agreement ("Agreement"). The Streamlined Process only applies to design and building permit applications and not other applications that may be required to implement the Project. The Streamlined Process combines steps and identifies shortened timelines to complete the analyses, recommendations, and considerations outlined in the City's Zoning Ordinance and Building Department requirements relating to the Applications. Applications subject to the Streamlined Process must be consistent with the Project. Applications shall not be subject to the Streamlined Process if they:

- are inconsistent with the Project Approvals;
- cause an amendment to the General Plan, Zoning Ordinance, or Waterfront District Master Plan;
- require additional environmental review; or
- are subject to concurrent review and approval by jurisdictional agencies other than the City and not otherwise identified below.
- are not for design review approval or building permits.

Applications not subject to the Streamlined Process will be processed in accordance with the City's existing rules and regulations.

Applicants are responsible for paying all customary and reasonable cost recovery application fees and costs incurred by City in processing the Applications; provided, however, that when such fees require the hiring of an outside third party consultant, City will (*i*) allow Owner to comment on the hiring of the consultant before the decision to hire is finalized; (*ii*) require that the outside consultant provide a cost estimate for all required services before the consultant is engaged; (*iii*) take affirmative steps to direct that the consultant stays within its original estimate; and (*iv*) seek approval from Owner prior to approving any expenses that exceed the original estimate.

The Streamlined Process consists of the following components, requirements, and binding timelines relating to design review and building permit applications.

A. For Individual Projects Exceeding Five (5) Gross Acres in Size:

Applications on property exceeding five (5) gross acres will be subject to the Final Plan Development Plan ("FPDP") approval process under City Zoning Ordinance Section 48.500. Below is the agreed-upon process to complete the design approval requirements for such Applications.

1. At its discretion and subject to applicable fees, Owner may request in writing a Pre-Submittal Review with City staff to discuss the Application and requirements. City shall provide a date to meet within 10 business days of receiving the request; if proposed date within 10 business days is not acceptable by Owner, meeting shall be held at soonest mutually agreeable date thereafter.

2. City shall determine completeness of submitted Applications within 10 business days of receipt of all the materials required under City Zoning Ordinance Section 48.500 and the Application fee.

3. City shall be responsible for soliciting and compiling staff-level comments on the Application from all applicable departments, agencies, and reviewing authorities, including but not limited to: Police, Fire, Engineering, Public Works, Building, Sanitation, Utility, Planning, Town Architect, and Design Review Subcommittee members. City shall provide compiled comments to the Applicant within 20 business days of determining the Application is complete.

4. After receiving from City comments on Application, Owner may, at its discretion, opt to:

    a. Request a Design Review Subcommittee meeting with City staff, Town Architect, and assigned Planning Commissioners to discuss comments and responses thereto. City shall provide a date to meet within 10 business days of receiving request; if proposed date is not acceptable, meeting shall be held at soonest mutually agreeable date thereafter.

    b. Submit to City responses to comments and/or a revised Application and request further feedback from City staff; or

5. Direct the City to schedule the Application for a Planning Commission hearing to be held no later than 30 calendar days after submitting request for hearing.

6. The Planning Director (or designee) shall submit the Application and a staff report to the Planning Commission for review at a public hearing.

    a. *If Planning Commission approves the Application*, City shall schedule a hearing at the soonest possible regular meeting of the City Council.

    b. *If Planning Commission denies the Application*, Owner may appeal the decision to the City Council, subject to the provisions of the City Zoning Ordinance, Chapter 44, "Hearings, Appeals, and Judicial Review."

B. For Individual Projects Less than Five (5) Gross Acres in Size:

Applications on property less than five (5) gross acres will be subject to the provisions of the City Zoning Ordinance, Chapter 42, "Design Review," except as provided for below in the agreed-upon steps to complete the design approval requirements for individual projects of less than five (5) gross acres in size.

1. At its discretion and subject to applicable fees, Owner may request in writing a Pre-Submittal Review with City staff to discuss the Application and Application requirements. City shall provide a date to meet within 10 business days of receiving request; if proposed date within 10 business days is not acceptable, meeting shall be held at soonest mutually agreeable date thereafter.

2. City shall determine completeness of submitted Applications within 10 business days of receipt of all the materials required under City Zoning Ordinance Section 48.300 and the Application fee.

3. City shall be responsible for soliciting and compiling staff-level comments from all applicable departments, agencies, and reviewing authorities, including but not limited to: Police, Fire, Engineering, Public Works, Building, Sanitation, Utility, Planning, Town Architect, and Design Review Subcommittee members. City shall provide compiled comments to the Applicant within 20 business days of determining the Application is complete.

   a. *Planning Director Review and Action.* The Planning Director (or designee) can approve additions to single-family homes, accessory structures of single-family homes, and fences (as provided for in Section 42.200 of the Hercules Zoning Ordinance) as well as minor modifications to existing approvals or permits (as provided for in Section 46.200 of the Hercules Zoning Ordinance), in which cases, the Planning Director (or designee) shall either approve, approve with conditions, or deny the Application within 10 business days after the Application has been found complete. All actions of the Planning Director shall take effect after expiration of the 10-business-day appeal period. Any action by the Planning Director may be appealed to the Planning Commission as per Section 44.600 of the City Zoning Ordinance. Such appeal shall be heard at the next available meeting of the Planning Commission.

4. After receiving City comments on the Application, Owner may, at its discretion, opt to:

   a. Request a Design Review Subcommittee meeting with City staff, Town Architect, and assigned Planning Commissioners to discuss comments and responses thereto. City shall provide a date to meet within 10 business days of receiving request; if proposed date is not acceptable by Applicant, meeting shall be held at soonest mutually agreeable date thereafter.

   b. Submit to City responses to comments and/or a revised Application and request further feedback from City staff; or

   c. Direct the City to schedule the Application for a Planning Commission hearing to be held no later than 30 calendar days after submitting request for hearing

5. The Planning Commission may approve, approve with conditions, or deny an Application. Any determination or decision made by the Planning Commission may be appealed to the City Council by filing a written appeal with the Planning Director within 10 business days of the mailing or posting of the notice of decision.

C. Building Permit Applications:

City shall make all reasonable effort to determine completeness and provide comments on Building permit applications to Owner within 20 business days of receipt of the materials required by the City's rules and regulations and the applicable Application fee.

After receiving City comments, Owner may, at its discretion, request to meet with City staff to discuss comments and responses thereto. City shall provide a date to meet within 10 business days of receiving request; if proposed date is not acceptable, meeting shall be held at soonest mutually agreeable date thereafter.

EXHIBIT L

Conditions of Approval

The following Conditions of Approval shall constitute a complete list of conditions of approval applicable to the Project, and shall be applied in the manner and at the time specified in this Exhibit L. Notwithstanding the foregoing, to the extent responsibility for any Condition of Approval has been modified through the Implementing Development Agreement ("Agreement"), the provisions of the Agreement shall control, and shall supersede the provisions of such Condition of Approval.

LEGEND: Police Dept. (PD)
City Manager's Office (CM)
Fire District (FD)
Engineering (E)
Building (B)
Design Review Committee (DRC)
East Bay Municipal Utility District (EBMUD)
Contra Costa County Flood Control District (CCCFCD)
Municipal Services (MS)
Planning (PL)
City Attorney (CA)
Parks & Recreation (PARKS)
Planning Commission (PC)
Public Works (PW)

1. Notwithstanding any other condition imposed in this Exhibit L, in every instance where these conditions, or the performance of these conditions, requires the acquisition of property that is not owned by Owner, City and Owner shall use commercially reasonable efforts to acquire the property necessary for the improvement. If the owner of the necessary property is unwilling to sell the property, City and Owner may mutually agree to acquire the necessary property through the power of eminent domain, in which case Owner shall pay the costs of the eminent domain proceeding and property acquisition. If the City does not elect to acquire the necessary property, the condition shall be deemed satisfied.
2. Vesting Tentative Map No. 9290 is subject to the Waterfront District Master Plan, Historic Town Center, Transit Village and Hercules Point Sub-District Amendments prepared for Hercules Bayfront, LLC by Opticos Design, Inc. dated May 27, 2008, and any approved amendments, including Building Form Standards, Architectural Styles, Civic Space Standards, and Street and Circulation Standards. (PL)
3. A subdivider may elect to file a Final Map for all or part of the approved Vesting Tentative Map No. 9290, in which case each final map which constitutes a part, or unit, of the approved Vesting Tentative Map shall provide for the construction of such improvements as may be required to constitute a logical and orderly development of the whole subdivision by units. (Section 10-2.404, "Filing Final Maps" from Hercules Municipal Code)
4. The Final Vesting Tract Map(s) shall be in accordance with Vesting Tentative Map No. 9290 as approved, and the form and content shall be in conformity with the State of California Subdivision Map Act and City of Hercules Municipal Code, Article 4. "Final Map" including the requirements described and listed in the following:

A. Section 10-2.401, "Form and Content of Final Map",

B. Section 10-2.402, "Documents to Accompany Final Map",

C. Section 10-2.403, "Review of Final Map and Accompanying Documents," and

D. Section 10-2.404, "Filing Final Map". (PL, PW)

5. A Final Planned Development that is consistent with the Waterfront District Master Plan shall be submitted for all development exceeding 5 acres showing the following:

A. Proposed off-street parking, including the location, number of stalls, dimensions, and circulation pattern;

B. Lot dimensions and all recorded easements;

C. Locations and dimensions of proposed bicycle, pedestrian and/or equestrian paths;

D. Details on the height, size, and location of proposed buildings;

E. Architectural elevations, schematic plans, and materials board for proposed buildings;

F. Areas proposed to be conveyed for parks, parkways, playgrounds, school sites, public or quasi-public buildings, and other such uses;

G. Areas proposed for any other uses to be established within the project;

H. Proposed location and elevations of buildings on land, including dimensions, the size of structure, height, setback, materials, and yard areas;

I. Proposed landscaping, walls, fencing, screening, trash collection areas, and usable open space areas;

J. If phasing is proposed, a construction schedule for the off-site improvements to be associated with each phase, the total number of acres in the proposed project and the number and percent thereof designated for various uses, and the number of dwelling units proposed by type of dwelling unit, for each phase;

K. A detailed grading plan showing cut/fill quantities, pad elevations, typical drainage pattern, top/toe of slope, retaining walls, with information as required by the City Engineer; and

L. Such additional and necessary information as may be required by the Planning Director and/or City Engineer.

6. All development less than five (5) acres shall require a Design Review permit subject to approval by the Planning Commission, in accordance with Exhibit K of the Agreement.

7. Development Rights Created. The approval of Vesting Tentative Map No. 9290 confers a vested right to proceed with development in substantial compliance with City's ordinances, policies and standards in effect at the date City determines the vesting tentative map is complete. The approval or conditional approval of Vesting Tentative Map No. 9290 shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards described in Section 66474.2 of the Government Code. However, if Section 66474.2 of the Government Code is repealed, the approval or conditional approval of Vesting Tentative Map No. 9290 shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and

standards in effect at the time the vesting tentative map is approved or conditionally approved. (Section 10-2.3.106 of the Hercules Municipal Code) (PL)

8. Subject to Owner's[2] vested rights under the Agreement, the provisions of these conditions of approval shall not:

   A. Limit City from imposing reasonable conditions on subsequently required approvals or permits necessary for the development and authorized by City's applicable ordinances, policies, and standards, and the Agreement.

   B. Diminish or alter the type of conditions, which may be imposed by City on a development or City's power to protect against a condition dangerous to the public health or safety. (PL)

9. At any time prior to the expiration of Vesting Tentative Map No 9290, the subdivider, his or her successor, or his or her assignee, may apply for a modification to such map. A public hearing shall be held by the Planning Commission on any application involving a modification to Vesting Tentative Map No. 9290 or by the development related thereto following procedures set forth for the modification of tentative maps in Article 3.1, "Vesting Tentative Maps" of the Hercules Municipal Code. Approval of a modification to Vesting Tentative Map No. 9290 or development related thereto shall not be evaluated for compliance with City regulations, standards, and policies in effect at the time the request for the modification is deemed complete. (PL)

10. Rights conferred under Project Approvals (as defined in the Agreement) shall expire in accordance with Section 4 of the Agreement. The phasing of Vesting Tentative Map No. 9290 may be allowed to deviate from processing parcels in numerical, sequential order, and vary the sequencing of developing the individual parcels or lots.

11. 12. The phasing of Vesting Tentative Map No. 9290 may be allowed to deviate from processing parcels in numerical, sequential order, and vary the sequencing of developing the individual parcels or lots. Prior to recordation of final map(s) for development on Lots Nos. 27, 28, 29, and/or 30, a feasibility study shall be prepared to explore circulation options relative to the potential extension of Linus Pauling Drive. The feasibility study shall consider the financial feasibility and feasibility of any necessary right of way acquisition(s). Upon its completion, the feasibility study will be presented to the Planning Commission for consideration and recommendations for implementing a feasible option. Subject to Condition No. 1, Owner or successors shall be responsible for utility relocations and roadway improvements associated with the approved feasible option. If for any reason connecting Street A to Linus Pauling is infeasible Owner or successors shall be responsible for constructing a gated, all-weather, 20-ft-wide emergency vehicle access (EVA) capable of supporting 68,000 pounds in the alignment as shown on Vesting Tentative Map No. 9290.

12. Owner shall improve all neighborhood streets and utilities within the Project area that are not related to the ITC Project. Owner's obligation to implement neighborhood streets that are not related to the ITC Project shall not accrue until a funding agreement is mutually agreed upon between Owner and City. Such funding agreement shall in no event require

that City contribute more money, or the equivalent of money, than is required to perform this condition, and such agreement shall not convey to City any proprietary interest in Owner's overall project.

13. Owner shall prepare urban design streetscape standards for the project's neighborhood streets that are not related to the ITC Project. Owner's obligation to prepare urban design streetscape standards for the project's neighborhood streets that are not related to the ITC Project shall not accrue until a funding agreement is mutually agreed upon between Owner and City. Such funding agreement shall in no event require that City contribute more money, or the equivalent of money, than is required to perform this condition, and such agreement shall not convey to City any proprietary interest in Owner's overall project.

14. For each and every condition of approval of Vesting Tentative Map No. 9290, or any subsequent entitlement approval issued for the project, that requires the Owner to perform construction, alteration, demolition, installation, or repair work on a public work or improvement (as defined in Labor Code Section 1720), City shall contribute no more money, or the equivalent of money, to the overall project than is required to perform such public improvement work, and City shall maintain no proprietary interest in the overall project.

15. Owner shall be required to prepare a lighting plan as part of the project architectural and landscape plans, for City Community Development Department review and approval prior to the issuance of building permits. As an existing standard City condition of project design approval, the lighting plan shall be required to demonstrate definitively how lighting spillover and glare would be minimized to City satisfaction. (Mitigation Measure 4-3 of Bayfront EIR, State Clearinghouse #2009112058)

16. For all discretionary (*e.g.*, requiring a permit) grading or construction activity associated with the project, require implementation of the following BAAQMD identified dust control measures by construction contractors, where applicable: (from Mitigation Measure 5-1, Bayfront EIR)

    During all construction phases:

    - Water all active construction areas as needed to prevent fugitive dust.
    - Water, apply (non-toxic) soil binders, or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
    - Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
    - Pave, apply water, or apply (non-toxic) soil stabilizers as needed on all unpaved access roads, access roads, parking areas, and staging areas at construction sites.
    - Sweep daily (with water sweepers) all active paved access roads, parking areas, and staging areas at construction sites, if visible soil material is carried onto adjacent public streets.
    - Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas.
    - Limit traffic speeds on unpaved roads to 15 miles per hour.

- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Consult with BAAQMD prior to demolition of any structures suspected to contain asbestos to ensure that demolition/construction work is conducted in accordance with BAAQMD rules and regulations.

17. To control emissions by diesel-powered construction equipment used by construction contractors, where applicable:

    - Develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction projects (i.e., owned, leased, and subcontractor vehicles) would achieve a project-wide fleet average 20 percent NOx reduction and 45 percent PM reduction compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
    - Limit grading to 6.5 acres per day or develop plans to demonstrate that average daily emissions during the grading period would not exceed 54 pounds of NOx per day.
    - Ensure that visible emissions from all on-site diesel-powered construction equipment do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired or replaced immediately.
    - The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).
    - Signs shall be posted to ensure that all diesel equipment and trucks standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks may keep their engines running continuously.
    - Properly tune and maintain equipment for low emissions.
    - Post a publicly visible sign with the telephone number and person to contact at City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

    (from Mitigation Measure 5-1 of the Bayfront EIR)

18. To support the pedestrian, bicycle, and transit-oriented provisions included in the proposed project and reduce associated potential ROG1, NOx, and PM10 emissions, the Project shall also include the following measures:

    - Develop and implement a comprehensive transportation demand management (TDM) plan that includes the following measures to further encourage alternative modes of transportation:

a. Construct transit amenities, such as bus pull-outs, bus shelters, and kiosks that provide transit information (these should be coordinated with the ITC project);
b. Work with 511 Contra Costa to provide transit incentives;
c. Support/coordinate ridesharing, including preferential parking for car or van pools at office facilities;
d. Provide bicycle amenities that include secure bicycle storage/parking for all uses and showers/lockers for commercial facilities;
e. Consider a pricing strategy for non-residential parking places; and
f. Work with Bay Area Car-Share programs to implement the program within the project.

- If commercially feasible, require that new buildings be energy efficient, by requiring Leadership in Energy and Environmental Design (LEED) certification, or demonstration of design to equivalent standards in terms of energy efficiency, that reduces energy consumption by at least 20 percent compared to typical new buildings.

- Provide exterior electrical outlets to encourage use of electric powered landscape equipment.

(from Mitigation Measure 5-2 of the Bayfront EIR; City / Owner shall each be responsible for their construction/building's compliance with this condition)

19. Implement the following measures to address project-related potential impacts on jurisdictional wetlands and waters:

- Where verified waters of the U.S. are present and cannot be avoided, authorization for project-related modifications to these features shall be obtained from the U.S. Army Corps of Engineers, Water Board, and California Department of Fish and game. All conditions required as part of the authorizations by the USACE, Water Board, and CDFG shall be implemented as part of the project. Consultation or incidental take permitting may be required under the California and federal Endangered Species Act. Owner for these project-related modification activities shall obtain all legally required permits or other authorizations from the United States Fish and Wildlife Service, NOAA Fisheries, and CDFG for the potential "take" of protected species under the Endangered Species Act.

- Prior to issuance of a grading permit for shared facilities construction that would potentially affect jurisdictional wetlands or waters, a consolidated Wetland Protection and Replacement Program shall be prepared by a qualified wetland specialist and approved by the jurisdictional agencies addressing the proposed onsite filling of scattered seasonal wetlands and depressions within shared facilities sites, including the Refugio Creek, and North Channel realignment and restoration related John Muir Parkway and Bayfront Boulevard extensions, and bay Trail extension. The Program shall include appropriate implementation measures for these construction activities to prevent inadvertent loss and degradation of jurisdictional waters to be protected, and replacement of jurisdictional waters to be protected, and replacement for those features eliminated or modified.

- Wetlands eliminated by offsite shared facilities construction shall be replaced at a minimum 1:1 replacement ratio and shall be established in suitable locations within protected open space areas. The wetland replacement component shall be replaced at a

minimum 1:1 replacement ratio and shall be established in suitable locations within protected open space areas. The wetland replacement component shall emphasize establishment of native brackish and freshwater marsh habitat to enhance existing habitat values, and shall preferably be consolidated with other existing wetlands to be retained as part of the ITC Project.

- All wetland features within or adjacent to construction areas to be protected shall be flagged by a qualified biologist prior to any grading, and initial onsite and project-related offsite construction activities shall be overseen by the qualified biologist, including installation of temporary protective fencing and silt fencing.
- The consolidated Wetland Protection and Replacement Program shall also define maintenance and long-term management responsibilities, monitoring requirements, and contingency measures. Monitoring shall be conducted by a qualified wetland specialist for a minimum of five years and continue until the success criteria are met.
- In addition, an offsite Stormwater Pollution Prevention Plan (SWPPP) shall be prepared and maintained for the Project addressing all water quality, sedimentation, and erosion aspects of the proposed project, as required with associated storm drainage storage, building elevation, and flood-proofing requirements.

(from Mitigation Measure 6-7 of the Bayfront EIR; City / Owner shared responsibility)

20. Before development proceeds and as part of final development review, City shall ensure that the development complies with the most current City requirements for protection from flood hazards, consistent with Mitigation 11-4 in Chapter 11 (Hydrology and Water Quality) of the Bayfront EIR. These provisions would require compliance with associated storm drainage storage, building elevation, and flood-proofing requirements. In addition, if the City does not construct a shared Bay Trail facility retaining wall, the City shall require Applicant to construct a barrier adjacent to the railroad tracks, which would also act as a sea level rise protection wall. Project construction, including mitigation measures, shall not prevent or impede future construction of the Bay Trail and related retaining walls.
(from Mitigation Measure 7-1 of the Bayfront EIR).

21. Prior to construction, construction personnel shall be briefed regarding what to do in the event buried cultural materials are encountered. In accordance with policies and programs of the Open Space/ Conservation Element of the Hercules General Plan (specifically, Policy 12a and Program 12a.2), if cultural materials are encountered, Owner shall retain a qualified archaeologist approved by City to monitor any demolition, excavation, or construction activities on the project site. The archaeologist shall have the authority to temporarily halt activities in the vicinity of a find if significant or potentially significant cultural resources are exposed and/or may be adversely affected by construction operations. Other procedures identified in Program 12a.2 shall be followed. If a significant cultural resource is identified through these procedures, City and Owner shall seek to avoid damaging effects on the resource. Preservation in place to maintain the relationship between the artifact(s) and the archaeological context is the preferred manner of mitigating impacts on an archaeological site. Preservation may be accomplished by:

- planning construction to avoid the archaeological site;
- incorporating the site within a park, green space, or other open space element;

- covering the site with a layer of chemically stable soil; or
- deeding the site into a permanent conservation easement.

When in-place mitigation is determined by City to be infeasible, a Data Recovery Plan, which makes provisions for adequate recovery of culturally or historically consequential information about the site, shall be prepared and adopted prior to any additional excavation being undertaken. Such studies shall be submitted to the California Historic Records Information System (CHRIS). If Native American artifacts are indicated, the studies shall also be submitted to the Native American Heritage Commission. Identified cultural resources shall be recorded on form DPR 422 (archaeological sites). Mitigation measures recommended by these two groups and required by City shall be undertaken, if necessary, prior to resumption of construction activities.
(from Mitigation Measure 8-1 of the Bayfront EIR)

22. In accordance with policies and programs of the *Land Use Element* of the Hercules General Plan (specifically, Policy 8A and Programs 8A.1 through 8A.3), Owner shall develop plans to preserve and rehabilitate the two historic buildings on the project site. Working with a qualified architectural historian approved by City, meeting the Secretary of the Interior's professional "Historic Architecture" standards published in the Code of Federal Regulations (36 CFR part 61), Owner shall, to City satisfaction, incorporate measures that would improve the affected resources in accordance with either of the following publications:

    - The Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*; or
    - The Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.

    Prior to issuance of building permits for the historic building sites, Owner shall prepare and submit a Historic American Buildings Survey (HABS), including large and medium format photographic documentation. City shall use the California Historic Building Code (CHBC) for reviewing and issuing building permits.

    A qualified, City-approved architectural historian shall submit a report to City of Hercules Historical Architectural Review Board (HARB) finding conformance with the Secretary of the Interior's Standards. Pursuant to Chapter 20 of the Hercules Zoning Ordinance and the *Hercules Design Guidelines for Historic Preservation*, the City of Hercules HARB shall exercise its authority to review and approve/disapprove proposed alterations, enlargements, or rebuilding affecting the exteriors of the Administration and Clubhouse buildings, the landscaping associated with those buildings, and the site plans and proposed new buildings to be located within the Hercules Village Historic District portion of the project site (generally Blocks A and C2).(from Mitigation 8-2 of the Bayfront EIR)

23. City shall require Owner to carry out the following measures:

    a. *Education Program.* Owner shall implement a program that includes the following elements:

        - resource identification training procedures for construction personnel;

- spot-checks by a qualified paleontological monitor of all excavations deeper than seven feet below ground surface; and
- procedures for reporting discoveries and their geologic content.

b. *Procedures for Resources Encountered.* If subsurface paleontological resources are encountered, excavation shall halt in the vicinity of the resources, and the project paleontologist shall evaluate the resource and its stratigraphic context. The monitor shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts on paleontological resources. During monitoring, if potentially significant paleontological resources are found, "standard" samples shall be collected and processed by a qualified paleontologist to recover micro-vertebrate fossils. If significant fossils are found and collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage. Itemized catalogs of material collected and identified shall be provided to a museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a museum repository for permanent curation and storage. A report documenting the results of the monitoring and salvage activities, and the significance of the fossils, if any, shall be prepared. The report and inventory, when submitted to the lead agency, shall signify the completion of the program to mitigate impacts on paleontological resources.

(from Mitigation 8-3 of the Bayfront EIR)

24. Owner shall prepare a detailed, design-level geotechnical investigation performed by a City-approved licensed engineering geologist or geotechnical engineer. The investigation shall include analysis of project site seismic stability, differential settlement and liquefaction potential, and soil response characteristics with respect to ground acceleration, in accordance with current state requirements. The investigation shall be reviewed by a registered geologist acting on behalf of City (not by a third-party reviewer retained by the Owner). The detailed, design-level geotechnical investigation shall include the following:

- Seismic stability analysis of the existing on-site soil;
- Analysis of the potential for excessive total and differential settlements, and detailed results of the ongoing surcharge program and associated monitoring on portions of the project site;
- Evaluation of liquefaction potential through the performance of additional cone penetration tests, borings, and/or equivalent methods; and
- Determination of site-specific soil response characteristics and maximum credible ground acceleration for an earthquake recurrence interval specified by City.
- Recommendations from the investigation, including appropriate soil stabilization and foundation construction techniques, minimum setbacks around potentially unstable areas, and criteria for the compaction and treatment of on-site fills, shall be incorporated into the final project grading and foundation plans. In general, these recommendations are expected to include the following requirements:

a. That all construction comply with most current edition of the International Building Code;

b. That all project structural designs be based on proper estimates by the project geotechnical engineer of peak and maximum repeatable earthquake-induced ground surface accelerations expected to occur on the project site; and

c. That excavations be adequately sloped or shored in order to minimize ground movements.

(from Mitigation Measure 9-1 of the Bayfront EIR)

25. City shall require the preparation of a Preliminary Grading Plan and/or Preliminary Geotechnical Report prepared by a licensed geotechnical engineer, before approval of project grading permits. The project geotechnical engineer shall determine the extent of any necessary landslide and slope stability remediation and shall direct remediation activities during project construction to ensure that any existing or potential future landslides and unstable slopes are fully stabilized. Mitigation measures (e.g., soil replacement, setbacks, retaining walls and/or similar barriers shall be required if needed to protect against damage that might be caused by slope failure. Such mitigation measures shall comply with applicable provisions of Hercules General Plan Safety Element programs 2D.1 and 2D.2. The investigation shall be reviewed by a registered geologist acting on behalf of City (not by a third-party reviewer retained by Owner).

In addition, if the Project proceeds before the ITC Project, Owner shall ensure that the design of the Bay Trail and any associated retaining walls or similar barriers shall remediate any slope stability hazards identified in the detailed, design-level geotechnical investigation, through a combination of slope reduction, slope protection, and other geotechnical measures (e.g., retaining wall design, cut slopes) to the satisfaction of the City Engineer.
(from Mitigation Measure 9-2 of the Bayfront EIR)

26. The detailed, design-level geotechnical investigation required at City discretion under Mitigation 9-1 shall include analysis of expansive soil hazards and recommend stabilization measures as appropriate. Once grading plans have been developed, the actual use of expansive soils in engineered fill construction shall be further evaluated and the location of primary borrow source areas for fills shall be determined. Additionally, supplemental field and laboratory testing of potential cut materials shall be completed. In addition to observing all cut and fill slope construction, the project geotechnical engineer shall inspect and certify that any expansive soils underlying individual building pads and all roadway subgrades have been either removed or amended in accordance with City-approved construction specifications. If expansive soils are not fully remediated on each lot and in the area of all public and private improvements at the time of site development, the project geotechnical engineer shall make site-specific recommendations for grading, drainage installation, foundation designs, the addition of soil amendments, and/or the use of imported, non-expansive fill materials, as may be required to fully mitigate the effects of weak or expansive soils and prevent future damage to project improvements. In addition, since proper drainage, in particular, can improve the performance of expansive soils by significantly reducing their tendency to shrink and swell, deed restrictions shall be imposed to prohibit significant modification of finished lot grades that would adversely affect site

drainage. The recommendations and restrictions identified above shall be reviewed by a City-retained registered geologist and, following his or her approval, be incorporated into a report to be included with each building permit application and with the plans for all public and common area improvements.
(from Mitigation Measure 9-3 of the Bayfront EIR)

27. The detailed, design-level geotechnical investigation required at City discretion shall include analysis of the effects of grading plans on groundwater flow and recommend any necessary additional slope stabilization measures. On-site drainage systems shall be regularly maintained to ensure that storm water runoff is directed away from all slope areas.
(from Mitigation Measure 9-4 of the Bayfront EIR)

28. If additional contaminants are encountered, the affected areas would be remediated to the standards applicable to the proposed development on that property. Owner shall comply with all applicable existing state-and county-mandated site assessment, remediation, removal, and disposal requirements for soil, surface water and/or groundwater contamination. In particular, these include the requirements of Contra Costa County, the Regional Water Quality Control Board (RWQCB), and the California Department of Toxic Substances Control (DTSC). DTSC, as lead regulatory agency, would provide oversight of the clean-up.
(from Mitigation Measure 10-1 of the Bayfront EIR)

29. Ensure proper identification and removal of Asbestos-containing material (ACM), PCBs, and/or mercury requires the Owner to complete the following steps:

a. Step 1. Thoroughly survey the existing structures for the presence of ACM, PCBs, and mercury. The survey shall be performed by a person who is properly certified by OSHA and has taken and passed an EPA-approved building inspector course.

b. Step 2. Prepare a written Asbestos Abatement Plan describing activities and procedures for removal, handling, and disposal of these building elements using the appropriate procedures, work practices, and engineering controls.

c. Step 3. Provide the asbestos survey findings, the written Asbestos Abatement Plan (if necessary), and notification of intent to the City of Hercules and Contra Costa Health Services Department at least ten days prior to commencement of work.

d. Step 4. Remove any mercury-containing electrical equipment/plumbing prior to building renovation, in accordance with adopted regulations.

e. (from Mitigation Measure 10-2 of the Bayfront EIR)

30. City Design Review and CalOSHA regulations shall be applied, and Owner shall implement the following procedures in accordance with these CalOSHA regulations:

- Notify the City of Hercules Building Division prior to starting work, describing the nature, location, and schedule of the work; and
- Post a sign at all work locations where lead containment is required, stating that lead-based paint abatement is in progress and public access is prohibited.

Lead abatement performance standards are included in the *Guidelines for Evaluation and Control of Lead-Based Paint Hazards* (U.S. Department of Housing and Urban Development). Accordingly, HEPA vacuums may be required for abrasive blasting, water blasting, scraping, or sanding. Burning, torching, and similar activities are prohibited. Following completion of lead-based paint abatement, all visible lead-based paint particles must be removed from the site.

The City of Hercules Building Division may inspect lead-based paint abatement activities at any time during construction. The Building Division is also responsible for addressing citizen complaints related to lead-based paint abatement activities and may issue a Notice of Violation, a Stop Work order, or a fine.
(from Mitigation Measure 10-3 of the Bayfront EIR)

31. Owner shall comply with all applicable current state, regional, and City water quality provisions and, in particular, comply with the process of development plan review established in City's storm water management and discharge control ordinance and associated NPDES permit issuance requirements instituted to address short-term and long-term water quality issues, including construction period activities.

    Owner shall prepare to City satisfaction an updated Storm Water Pollution Prevention Plan (SWPPP) for the project site. Construction Best Management Practices (BMPs) shall include erosion control and dust control measures. To implement these measures, the construction contractors shall train all site employees in proper construction BMPs prior to beginning construction activity. In addition, Owner shall retain a construction manager familiar with national Pollution Discharge Elimination System (NPDES) permit requirements including applicable C.3 requirements to monitor construction activities. The site owners shall bear ultimate responsibility for compliance with the terms and conditions of the NPDES General Construction Activity Stormwater Permit.

    (from Mitigation 11-1 of the Bayfront EIR)

32. Any project-related Refugio Creek dredging will require issuance of a Dredging/Dredge material Reuse/Disposal Permit from the U.S. Army Corps of Engineers (Corps). The Corps permit process typically requires completion of a sampling analysis of proposed dredged materials. A Sampling and Analysis Plan (SAP) detailing sediment sampling and analysis is typically submitted to the San Francisco Bay Dredged Material Management Office (DMMO). If the results of the SAP indicate that water quality will not be impacted by dredging, a consolidated Dredging/Dredge Material Reuse/Disposal permit can be issued by the Corps. The permit would cover both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. If contaminated sediment is encountered, further sediment characterization and a sediment removal plan including upland disposal or beneficial reuse would be required by the Corps as a condition of permit issuance. (from Mitigation Measure 11-2 of the Bayfront EIR; City / Owner shared responsibility, subject to allocation of responsibility in the Agreement)

33. Pursuant to the federal Clean Water Act, the quality of storm water runoff discharging into creeks and sloughs is governed by the National Pollutant Discharge Elimination System (NPDES). NPDES permit issuance requires the preparation of a Stormwater Pollution Prevention Plan (SWPPP). As a condition of project approval, City shall ensure that Owner complies with applicable City storm water control plan and NPDES permit requirements

including applicable C.3 requirements.
(from Mitigation Measure 11-3 of the Bayfront EIR)

34. Construct finished floor elevations at least one foot above the flood elevations as determined by FEMA, along with improvements to Refugio Creek and review of individual development proposals to ensure that future development does not contribute to increased downstream flows. These requirements are reflected in Hercules General Plan policies and City's flood damage prevention ordinance (Title 10, Chapter 7 of the Hercules Municipal Code).

    Through its review of detailed storm drainage plans, City shall ensure that the project complies with (a) Hercules General Plan policies related to flood hazard protection including Open Space/Conservation Element policy 10A and program 10a.2, Safety Element policy 4B and program 4B.1, and Growth Management Element provisions related to flood control, and (b) all relevant provisions of City's flood damage prevention ordinance (Title 10, Chapter 7 of the Hercules Municipal Code)
    (from Mitigation Measure 11-4 of the Bayfront EIR)

35. If the Project construction is ultimately proposed to commence prior to the adjacent ITC Project, as a requirement for issuing a building permit for Blocks G, K, L, M, N, O, Q, and R, Owner's civil engineer/hydrologist shall demonstrate to City Engineer satisfaction, including final hydrologic monitoring, that the proposed interim Project creek channel grading plan, with tie-in and without replacement of the existing downstream dog-leg and culverts, will adequately protect the structure and operation of the new Bayfront Bridge and Railroad Bridge against damage from the 100-year flood, and ensure that people and structures in surrounding existing neighborhoods (which cannot be raised) are protected from significant flood risk.
    (from Mitigation Measure 11-5 of the Bayfront EIR)

36. Reduce project construction period noise impacts on nearby residences by incorporating conditions in project construction contract agreements that stipulate implementation of the following conventional construction-period noise abatement measures to the satisfaction of City:

    - *Construction Plan.* Prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with nearby noise-sensitive facilities so that construction activities and the event schedule can be scheduled to minimize noise disturbance.
    - *Construction Scheduling.* Ensure that noise-generating construction activities are limited to between the hours of 7:00 AM to 5:00 PM, Monday through Friday, and 9:00 a.m. to 5:00 p.m. on weekends and holidays and are approved by written request to the Department of Public Works (based on planned civic activity in the area).
    - *Construction Equipment Mufflers and Maintenance.* Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
    - *Equipment Locations.* Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near the construction site.

- *Construction Traffic.* Route all construction traffic to and from the construction sites via designated truck routes where possible. All construction traffic routes shall be approved by City.
- *Quiet Equipment Selection.* Use quiet construction equipment, particularly air compressors.
- *Temporary Barriers.* When possible, construct solid plywood fences around construction areas to shield residences, operational businesses, or noise-sensitive land uses.
- *Noise Disturbance Coordinator.* City may choose to require project designation of a "Noise Disturbance Coordinator" who would be responsible for responding to any local complaints about construction noise. The Disturbance Coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the Disturbance Coordinator at the construction site and include it in the notices sent to neighbors regarding the construction schedule. (The project sponsor should be responsible for designating a Noise Disturbance Coordinator, posting the phone number, and providing construction schedule notices. The Noise Disturbance Coordinator would work directly with an assigned staff member.)

(from Mitigation Measure 13-1 beginning of the Bayfront EIR)

37. For all proposed buildings where the exterior noise level at the façade exceeds 60 dBA Ldn, project-specific acoustical analyses shall be conducted and measures taken as necessary to meet the requirements of the State Building Code (SBC). Building sound insulation requirements may include the provision of sound-rated windows and doors, and forced-air mechanical ventilation for residential units so that windows could be kept closed at the occupant's discretion to control noise. The specific determination of what treatments are necessary shall be conducted on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to City, along with the associated building plans, for review and approval prior to issuance of a building permit.

    The final requirements for building noise controls would be determined by City during the detailed design process, pursuant to SBC requirements. During the individual project design review process, a qualified Acoustical Engineer shall peer review and verify residential structure noise abatement specifications for all residential units proposed within 200 feet from the railroad tracks.
    (from Mitigation Measure 13-2 of the Bayfront EIR)

38. The project design currently includes a retaining wall (as part of the ITC Project), which would also act as a noise barrier, along the railroad right-of-way (based on an acoustic analysis that has been performed in accordance with Title 24). The final design for the noise barrier (*i.e.*, retaining wall or other noise barriers that might be equally effective) shall be reviewed during the subsequent acoustical analyses required for Title 24 compliance, and incorporated into the final acoustical report for the project design prior to issuance of building permits to reduce noise in outdoor residential activity areas to below 70 dBA Ldn. If the retaining wall is not built as part of the ITC Project prior to

development of Project outdoor use areas, Owner shall prepare, to City satisfaction, the acoustical analysis required for Title 24 compliance in order to identify location-specific measures that will reduce noise impacts on outdoor use areas to a less-than- significant level (*i.e.*, below 70 dBA Ldn). The retaining wall, or any other noise barriers as deemed necessary, shall be constructed according to the noise-attenuation specification identified in the acoustical analysis, subject to City review and approval.
(from Mitigation Measure 13-3 of the Bayfront EIR; City / Owner shared responsibility, subject to allocation of responsibility in the Agreement)

39. Owner's fair share responsibility toward the following improvements and intersection mitigation measures is fully satisfied by its payment of Development Impact Fees to City in accordance with the Agreement:

- Measure 16-2-1: To mitigate the project impact on intersection #2, San Pablo Avenue/John Muir Parkway, signalize the intersection of San Pablo Avenue/Tsushima Street, allowing full access to Tsushima Street, and provide a 150-foot minimum eastbound left-turn storage pocket. This mitigation measure is currently planned by the City of Hercules, but it is not currently fully funded. This signalization measure and new eastbound left-turn will decrease volumes along San Pablo Avenue through downtown Hercules by providing an alternative route.

- Measure 16-2-2: To mitigate the project impact on intersection #4, San Pablo Avenue/Sycamore Avenue, widen Sycamore Avenue between Willow Avenue and San Pablo Avenue from six-lane to a seven-lane cross-section, allowing a full block (Willow Avenue to San Pablo Avenue) of left-turn storage for vehicles turning from northbound Sycamore Avenue to westbound San Pablo Avenue. (This mitigation requirement is also identified in the recent City-certified New Town Center Project EIR.)

  Implementation of this measure would result in acceptable LOS E operations during the AM peak hour, but the projected PM peak-hour delay would remain higher than under no-project conditions. No feasible additional mitigation has been identified for this project.

- Measure 16-2-3: To mitigate the project impact on intersection #3, San Pablo Avenue/Old Transit Center Driveway, implement Measures 16-2-1 and 16-2-2, plus the following additional measures:

  (a) Add a second right-turn lane from northbound San Pablo Avenue to eastbound John Muir Parkway. The added second right-turn lane shall be extended south to the Old Transit Center Driveway intersection. (This mitigation requirement is also identified in the recent City-certified New Town Center Project EIR).

  (b) Widen eastbound John Muir Parkway to four lanes from San Pablo Avenue to the SR 4 and I-80 ramps. This widened segment of John Muir Parkway would allow the two northbound San Pablo Avenue right-turn lanes to have exclusive receiving lanes serving the I-80 westbound on-ramp. The widening would also require widening of the I-80 westbound on-ramp from one to two lanes. (This mitigation requirement is also identified in the recent City-certified New Town Center Project EIR).

- Measure 16-2-4: To mitigate the project impact on intersection #6, Willow Avenue/Sycamore Avenue, implement Measures 16-2-2, which would reduce intersection delay at this intersection to below no-project levels.
- Measure 16-2-5: To mitigate the project impact on intersection #11, Sycamore Avenue/Tsushima Street, install a traffic signal at the intersection and construct a northbound right-turn lane to provide a northbound intersection approach with both a shared through/left-turn lane and a right-turn lane. (from Mitigation Measure 16-2 of the Bayfront EIR)

40. Owner shall establish and implement a Hercules Bayfront Project Transportation Demand Management Program that, at a minimum, incorporates all project-related property sales and leasing agreements, a requirement that all project homeowners associations and employees shall participate in the 511 Contra Costa Transportation Demand (TDM) Program.
(from Mitigation Measure 16-3 of the Bayfront EIR)

41. The Creekside Trail, which is identified as a City Public Improvement and is the responsibility of City under the Agreement, shall be constructed per the Civic Space Standards of the Hercules Waterfront District Master Plan (HWDMP), including grading, paving, lighting, remediation of impacts associated with the work, landscape improvements, and storm water treatment constructed on Parcels 13 and 38. Work will include construction of a flashing crosswalk at the street crossing from the off-street Refugio Creek bike path, which would be activated by bicyclist to help ensure a safe crossing. Owner shall coordinate with City and WestCAT to determine whether facilities such as bus turnouts shall be incorporated into the project (such facilities are City responsibilities under the Agreement), and the preferred locations for such facilities. Agreement on these facilities shall be reached prior to the approval of the Final Map.

42. Water main extensions will be required to serve the proposed development. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing water service to the development. Engineering and installation of water mains and meters requires substantial lead time, which should be provided for in the project sponsor's development schedule. Once the property is subdivided, separate meters for each lot will be required. No water meters are allowed to be located in driveways. Due to EBMUD's limited water supply, all customers should plan for shortages in time of drought. (EBMUD)

43. EBMUD owns and operates an 8-inch water distribution pipeline in an EBMUD right of way (R/W 48822-B) located within the boundary of the project area (Main Street). This pipeline provides water service to the existing property. The integrity of this pipeline needs to be maintained at all times. Any proposed construction activity within the right of way would need to be coordinated with EBMUD and may require relocation of the pipeline and/or right of way. No buildings or structures shall be constructed in EBMUD's right of way unless specific approval is given by EBMUD. (EBMUD)

44. Extensions of gas and/or electric facilities will be made in accordance with PG&E's and/or Hercules Municipal Utility (as applicable) gas and electric rules and regulations on file

with the State of California Public Utilities Commission at the time Owner applies for gas and/or electric services.

45. Buildings or portions of buildings or facilities exceeding thirty feet (30 ft) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Aerial apparatus access roads shall have a minimum unobstructed horizontal width from curb face to curb face of not less than twenty-six feet (26 ft), inclusive of travel lanes and parking stalls, in the immediate vicinity of any building or portion of building more than thirty feet (30 ft) in height. At least one of the required access routes meeting this condition shall be located within a minimum of fifteen feet (15 ft) and a maximum of thirty feet (30 ft) from any building which meets or exceeds the above-mentioned height minimum and shall be positioned to one entire side of the building with the largest horizontal and vertical dimension and allowing access to each floor of the building.

46. Fire truck shall have access as demonstrated by a vehicle turn simulation and rolled curbs or other means of access may be used to accommodate vehicles turn path. Fire and emergency apparatus access to and within the proposed blocks shall meet the requirements of current California Fire Code, (CFC) Section 503 Fire Apparatus Access Roads.

47. Upon receipt of more detailed plans fire and life safety requirements such as fire sprinklers, fire department connections, fire hydrants, alarm systems, smoke control systems, gates, egress and exiting will be reviewed for individual streets, blocks, and buildings.

48. Buildings with underground parking structures shall comply with Chapter 5 of the CFC – Public-safety radio amplification systems. Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to any building or structure or any part thereof, or cause the same to be done, that fails to support adequate radio coverage of public safety agencies, including but not limited to firefighters and police officers. For purposes of this section, adequate radio coverage shall include all of the following:

    a. A minimum signal strength of -95 dBm available in 90% of the area of each floor of the building when transmitted from the closest public safety communications system site;

    b. A minimum signal strength of -95 dBm received at the closest public safety communications system site when transmitted from 90% of the area of each floor of the building;

    c. The frequency range that must be supported shall be the current band of frequencies used by either the District or County communications systems;

    d. A 100% reliability factor. When measuring the performance of a bi-directional amplifier, signal strength measurements are based on one input signal adequate to obtain a maximum continuous output level.

f. *Exception:* This section may not apply to buildings less than 20,000 square feet (465 m2) or of wood frame construction, or buildings classified as Group R-3 without underground parking structures.

49. Buildings and structures that cannot support the required level of radio coverage shall be equipped with either a radiating cable system of an internal multiple antenna system with FCC type accepted bi-directional amplifiers as needed. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input. If used, bi-directional amplifiers shall include filters to reduce adjacent frequency interference. These filters shall be tuned to so that they will be 35 db below the communications system frequencies.

50. Subject to the provisions of the Agreement, Owner shall comply with all applicable sections of the City of Hercules Municipal Code relating to Subdivisions and the State of California Subdivision Map Act. (E)

51. Owner shall provide the Engineering Division with written evidence from the County Clerk's Office stating that the provisions of Sections 66492 and 66493 of the Subdivision Map Act have been met and satisfied prior to the approval of the final map. (E/MS)

52. "Hercules Standard Drawings and Design Policy for Public Works," latest edition and modifications thereto by City, shall be the project specifications except as modified and approved by Vesting Tentative Map No. 9290, or the approved Waterfront District Master Plan and amendments thereto, or an approved Final Planned Development plan and noted as such on the approved improvement plans. Subject to Owner's vested rights under the Agreement, City reserves the right to upgrade, add to, or revise said specifications and plates and all other City ordinances, policies and standards. (E/MS)

53. Prior to the release of the final map for recordation, Owner shall provide the Engineering Division with a 100-scale base map in digital form for the purpose of updating their base map. The map shall also be drawn on 18-inch by 24-inch mylar and shall show the title block, north arrow, street names, tract number, boundaries and lot numbers. (E/MS)

54. Prior to issuance of a building permit, the project sponsor shall secure approval by City and Fire District staff for a plan for addressing and identifying project buildings. Such a plan shall include directional signs and markings, as may be required by City or the Fire District. All unit numbers shall be illuminated. (PD/FD/PL/B)

55. Prior to issuance of a building permit, Owner shall secure approval by City and Fire District staff of a lighting plan for the project. Such a plan shall provide lighting at all pedestrian and parking areas, and shall not cause glare at adjoining properties. On-site lighting shall be positioned and shielded, as needed, to avoid causing increased light or glare at adjacent properties. (B/PL/PD)

56. Vesting Tentative Map No. 9290 is granted for the property as described in the application, shown as "Hercules Bayfront Project," and shall not be transferable to properties outside the boundaries of Vesting Tentative Map No. 9290. (PL)

57. Applicant agrees to defend and indemnity City against any Third Party Legal Challenge in accordance with the Agreement.

58. All public and private site utilities, site improvements and grading and drainage are subject to applicable City approval processes. (PL/B)

59. Owner shall pay all applicable plan check fees, processing fees, development fees, encroachment permit fees, and other miscellaneous applicable fees. (B)

60. A Preliminary Grading and Drainage Plan shall be submitted for review prior to approval of the Final Vesting Map. (E)

61. A grading plan prepared by a registered civil engineer which incorporates all recommendations from soil engineering and engineering geology reports shall be reviewed and approved by Public Works prior to the issuance of the building permit. Building pad elevations and landscaping shall be shown on the grading plan. (E)

62. Adequate drainage calculations and hydraulic design(s) shall be reviewed and approved by Public Works to insure that downstream areas and the site will drain to a safe point of discharge. (E)

63. All improvements adjacent to the project site that are damaged during construction shall be removed and replaced as directed by the Engineering Inspector. (E)

64. Any existing sewer and water service laterals to be used shall be inspected, tested, and repaired as necessary prior to connection, as determined by the Engineering Inspector. All existing water services shall comply with current Public Works standards or shall be upgraded to current standards. (E/FD)

65. An on-site sewer plan shall be submitted for wherever existing lateral is larger than four inches in diameter. (E/FD)

66. On-site water plans shall be submitted for wherever a separate loop or terminal line is required for fire hydrants and/or sprinkler system. All improvements plans, construction cost estimates, soils reports, geology reports and all pertinent engineering design calculations shall be submitted simultaneously. (FD)

67. Construction drawings shall be submitted for review and approval by the Engineering staff and shall include the following: (E)

    a. Site grading, drainage, utility and improvement plans.

    b. Hydrology and hydraulic calculations for the site.

68. Prior to construction the Engineering Division shall approve permits for the following: (E)

    a. Grading

    b. Encroachment

    c. Industrial waste discharge

    d. Sewer connection

69. Owner or successors of the project shall comply with the National Pollutant Discharge Elimination System (NPDES).

    a. Owner or project successors shall be required to comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction, and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay-Region 11). (E)

b. Improvement plans shall be reviewed to verify compliance with Provision C.3 of Contra Costa County's National Pollutant Discharge Elimination System (NPDES) Permit and the County's Stormwater Management and Discharge Control Ordinance (Section 1014).

c. A final Stormwater Control Plan (SWCP) shall be submitted to and approved by the Public Works Department for consistency with Provision C.3 prior to recordation of any Final Map for Subdivision No. 9290. (E)

d. For on-site stormwater retention and/or treatment, the property owner(s) shall enter into a standard Stormwater Management Facility Operation and Maintenance Agreement with the City of Hercules, in which the property owner(s) shall accept responsibility for construction, operation, and maintenance of the stormwater facilities and grant access to relevant public agencies for inspection of stormwater management facilities. Such an agreement shall be fully executed and recorded prior to recordation of a Final Map.

e. For public stormwater treatment facilities, Owner shall design and construct elements consistent with the version of Provision C.3 effective the date the Vesting Tentative Map No. 9290 is approved. When accepted by the City of Hercules, City shall accept maintenance of the facilities.

f. For regional stormwater treatment facilities, which may be constructed on City owned Property, and which may serve multiple private parcels and public rights of way, the property owner(s) shall participate in a financing mechanism in which the property owner(s) shall pay a fair-share contribution to pay for all land acquisition, construction, and maintenance costs associated with stormwater retention and treatment; provided, however, that the land acquisition price assessed against Owner shall be calculated at a rate equivalent to the per acre price for right of way lands set forth in the Landside PSA.

g. Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District. (E)

h. Compliance shall include developing long-term best management practices (BMPs) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible the following long-term BMPs in accordance with the Contra Costa Clean Water Program for the site's storm water drainage:

- Offer pavers for household driveways and/or walkways as an option to buyers.
- Minimize the amount of directly connected impervious surface area.
- Label all storm drains ("No Dumping, Drains to Creek") using approved markers.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Shallow roadside and on-site swales.
- Distribute public information items regarding the Clean Water Program to buyers.
- Other alternatives comparable to the above as approved by Public Works. (E)

70. Owner shall coordinate with Public Works and arrange a pre-construction conference at least 48 hours prior to the proposed construction to discuss the scope and extent of removal and replacement of any existing broken curb, gutter, sidewalk, or asphalt paving (patch, repair and/or overlay), and construction of access ramp for the physically handicapped adjacent to the project site. (E)

71. Curb cut widths and design shall conform to the City Code and current Public Works standards unless approved by the Planning Commission through Vesting Tentative Map No. 9290.

72. All streets, curbs, gutters, sidewalks, street lights, parkways, and associated improvements shall be constructed per the City of Hercules Standard Drawings Book unless modified and approved by Vesting Tentative Map No. 9290, or the approved Waterfront District Master Plan (and amendments thereto), or an approved Final Planned Development plan. (E)

73. On-site and off-site utility service shall be installed underground in accordance with the City Code. Utilities shall be undergrounded to the nearest suitable riser pole as determined by the appropriate utility company. (E)

74. An Encroachment Permit shall be obtained for equipment driving over City property and over public easements. A cash deposit of $1,000.00 shall be required to secure the repair of any damages and said deposit may be increased at the discretion of the City Engineer as necessary. (E)

75. A Grading Permit application shall be submitted and approved by the City Engineer. (E)

76. An Erosion Control Plan may be required should work occur during the rainy season. (E)

77. All construction material/equipment shall be placed outside City's rights-of-way. This condition may be modified by an encroachment permit or construction easements identified on Vesting Tentative Map No. 9290. (E)

78. Final Grading and Drainage Plans shall be designed to eliminate drainage from flowing across property lines. (E)

79. Owner shall pay City the fees currently in effect at the time permits are issued for the construction of sewer connections, sewer usage, and sewer upgrades for construction of any building in any lot, except where separately provided for under an Implementation/Development Agreement.

86. Prior to the scheduling of final maps before the City Council, the subdivider shall complete a Consent to Formation of Landscape Maintenance District form and submit it to the Public Works Director. By this action, the subdivider consents to the establishment of a maintenance district to assess properties in the subdivision for maintaining public landscape commensurate with the benefit to such properties. (E)

80. 87.After irrigation and landscape installation but before final acceptance of the Landscape and Lighting Maintenance District Improvements by the City, a Landscape and Lighting Maintenance District Plan (LLMD) drawn at an approved scale shall be provided to the Public Works Division for review and approval. The plan shall clearly designate areas of maintenance responsibility boundaries relative to: (1) Landscape and Lighting Maintenance District; (2) Homeowners Association, if one is formed; (3) Private Areas; and/or (4) City Landscape Maintenance Responsibilities. The Public Works Division shall be provided

with one set electronic and one set of mylar (minimum 3 mil) original drawings. The Landscape and Lighting Maintenance District Improvement drawings shall accurately reflect all "As Built" conditions and shall become City's record drawings of the Landscape and Lighting Maintenance District Area Improvements. (E)

81. Prior to the scheduling of final maps before the City Council, the subdivider shall create a homeowners association to maintain private landscaping and irrigation improvements within the residential and commercial and flex-unit portions of the subdivision. (MS, E)

82. Prior to the final map being recorded, Owner shall provide the Public Works Director with a copy of the Conditions, Covenants and Restrictions (CC&Rs) for the proposed residential and/or commercial condominiums for review and approval by the City Attorney, City Engineer, and Police Commander. All CC&Rs applicable to the subject property shall be consistent with the terms of this permit and the Hercules Municipal Code. Where a conflict exists between the CC&Rs and City regulations, City regulations shall prevail. (CA/E/PD)

83. Owner shall record with the Contra Costa County Recorder a "Notice of Land Use Restrictions and Conditions" in a form acceptable to the City Attorney's Office and City Manager's Office prior to the issuance of building permits or initiation of use. (CM, PL, CA)

84. All conditions of this permit including any off-tract and in-tract improvements, including building, paving, and landscape construction shall be completed prior to occupancy except as may be permitted by the Public Works or Municipal Services Director in consultation with other affected departments except that front yard landscaping must be completed within 30 days of dwelling unit occupancy. In the event early occupancy is permitted, Owner shall provide security or agreement to assure full completion of the project. (E/MS)

85. No burning of combustible refuse or other flammable materials is permitted on the property. (FD/FD)

86. A permit shall be obtained from the Rodeo-Hercules Fire Protection District for the handling, storage and use of all materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health. (FD/FD)

87. Landscape planting shall be maintained in a flourishing manner and all irrigation systems shall be continuously maintained as required by City Code and a specified by the Planning Department. Failure to do so may result in the revocation of any related Design Review Permit or the initiation of legal action. (PL)

88. A low water-use commercial landscape design and irrigation system shall be installed as approved by the Planning Department. Plans shall include a watering schedule. (PL)

89. The landscape contractor shall provide a watering schedule to the building owner or manager prior to issuance of a certificate of occupancy. A copy of this schedule shall be provided to the Building Division. The schedule shall include automatic rain shut-off devices or instructions on how to override the system during rainy periods. (B)

90. Owner/builder shall pay all applicable City of Hercules development impact fees at the time and in the manner specified in the Agreement.

91. All applicable sections of the Hercules Municipal Code or adopted Waterfront District Master Plan shall be complied with unless modified and approved through a Final Planned Development Plan review or the Agreement.

EXHIBIT M

COORDINATED PROJECT MANAGEMENT PLAN

City of Hercules
Hercules Bayfront, LLC

I. INTRODUCTION

City is undertaking a series of public improvements which include the development of an Intermodal Transportation Center, roadway construction and other pedestrian and traffic improvements, right-of-way improvements and utilities installation, one or more parking structures, restoration of Refugio Creek, and other components necessary for the effective use of the publicly owned land. City's public improvements are independent from Owner's private improvements described below and City intends to proceed with City's public improvements regardless of any private improvements Owner may undertake.

Owner is proposing to undertake a series of private improvements on its land which consist primarily of residential units and supporting infrastructure.

Because City's anticipated public improvement projects and Owner's private improvements are located on adjoining, adjacent, or proximate real property, City and Owner desire to coordinate their respective independent works of improvements. The mutual goals are to

- achieve timely commencement and completion of their respective projects;
- effect cost savings where achievable;
- attain organizational efficiencies to avoid project redesigns;
- implement construction scheduling to avoid conflicts; and
- effect a process to resolve construction issues that may arise.

City and Owner desire to implement this coordinated project management effort to achieve the goals set forth above.

II. PROJECT COORDINATION TEAM

1. **Team Components**: City and Owner agree to establish a project coordination team to coordinate the respective projects to be undertaken by City and Owner. The project coordination team shall consist of:

    - two City staff member appointed by the City Manager; and
    - two representative appointed by Owner.

2. **Construction Coordination Team Responsibilities**: The construction coordination team shall have the primary responsibility for:

- coordinating project construction schedules to prevent conflicts and effect efficiencies in the use of resources, access to construction sites, and related construction issues;
- identify scheduling issues and determine scheduling so that City's public improvements and Owner's private improvements are undertaken and completed in proper sequence and to avoid conflicts;
- lead and coordinate efforts to obtain permits from third party agencies including, but not limited to, the RWQCB, USACE, BDCD, and DFG;
- coordinate with City staff and consultants; coordinate efforts, including working with City's Grants Coordinator, to obtain governmental grants or other funding for components of City projects;
- assist City with issuance of bids for City projects, determination of the lowest responsible bidder, contract award;
- attending both Owner and City design meetings, construction meetings and other related meetings.
- communicating and coordinating with City and Owner;
- communications with the community and stakeholders on construction management, project timing and schedules, and related issues;
- communicating with the public funding and permitting agencies for City and Owner; and
- assuming primary responsibility for resolving project coordination issues as they arise.
- suggest redesigns of City project components and Owner project components to reduce the respective costs to City and Owner on their respective projects;
- update City and Owner on status of City and Owner's respective projects; and
- provide information to project management team on any conflicts or other issues so project management team can determine resolution of issue

Notwithstanding the above, any decisions made affecting City projects shall be in the sole discretion of City and any decisions made affecting the Owner projects shall be in the sole discretion of Owner. Notwithstanding the foregoing, however, and in recognition that failure of City and Owner, despite the construction manager's assistance, to reach agreement on any

project coordination or issues pertaining to implementation of City's and Owner's respective projects will affect both projects, City and Owner agree to engage in the following dispute resolution process should City and Owner fail to resolve issues through the project coordination process set forth above. The dispute resolution process shall be as follows:

- City and Owner agree, within ten (10) calendar days of the failure to resolve the disagreement, to engage the services of a third party mediator, selected jointly by City and Owner ("Independent Advisor"), to provide guidance to City and Owner in resolving the disagreement. City and Owner shall share equally in the cost of the Independent Advisor.

- If City and Owner cannot agree on the selection of the Independent Advisor, City and Owner, within ten (10) calendar days of failing to agree on the selection of the Independent Advisor, shall engage, each at their own cost, an independent third party experienced in construction management and those two persons shall jointly, within ten (10) calendar days, select a third party mediator experienced in construction management who shall serve in the role of the Independent Advisor.

- The Independent Advisor shall promptly, but in no event more than fifteen (15) calendar days after selection, meet and confer one or more times, as reasonably necessary, with City and Owner as to the issues resulting in the disagreement and shall thereafter promptly, but in no event greater than fifteen (15) calendar days after the final consultation, propose to City and Owner, in writing, a resolution of the disagreement. The proposed resolution shall not be binding on City or Owner, but City and Owner mutually agree to act in good faith to consider the proposed resolution for implementation.

- Nothing in the foregoing shall prevent City and Owner from meeting and conferring and resolving the dispute at any point during the above-described dispute resolution process.

III. PAYMENT FOR PROJECT COORDINATION

City and Owner shall each be responsible for their own costs incurred in the effort to coordinate their independent projects as described above.