

**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**

399 Elmhurst Street • Hayward, CA 94544-1395
(510) 670-5480

July 3, 2008

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, California 94612

Dear Board Members:

**SUBJECT: DUBLIN – PLEASANTON TRANSPORTATION CORRIDOR –
R/W NO. 36170; FIND A PARCEL OF COUNTY-OWNED REAL
PROPERTY TO BE SURPLUS AND APPROVE AND AUTHORIZE
SALE TO CITY OF PLEASANTON FOR \$7,500,000**

RECOMMENDATION:

It is recommended that your Board adopt the proposed resolution to:

1. Find 8 acres of real property to be surplus and approve and authorize the sale of said parcel to the City of Pleasanton for a sale price of \$7,500,000; and
2. Authorize the President to execute a Purchase Agreement between the County of Alameda and the City of Pleasanton; and
3. Authorize the President to execute a Grant Deed to effect the conveyance.

SUMMARY/DISCUSSION:

In 1988 the County acquired portions of the Southern Pacific Railroad's Niles Canyon and San Ramon Branch lines that included approximately eight acres in downtown Pleasanton with monies from the Road Fund for future transit purposes and declared it part of the County system of highways. With the severing of the Southern Pacific rail corridor at Stanley Boulevard, it has made the County's property no longer usable for transportation purposes and, therefore, surplus. The City of Pleasanton has wishes to utilize the property for various public purposes, including parking to serve downtown businesses, parks and public trails.

In July 2007, a mediation was conducted to determine the fair market price of the parcel. The City and the County each had retained an appraiser to estimate the value of the properties. A

"To Serve and Preserve Our Community"

price was agreed upon between the parties of \$7,500,000, which was consistent with the two appraisals.

The attached purchase agreement was negotiated between the parties. Under the agreement the City would acquire the entire former right of way in two segments. The purchase price for the southern segment shall be \$5,500,000 payable as follows: \$2,100,000 at closing with \$3,400,000 to be paid in seven annual installments. The purchase price for the northern segment shall be \$2,000,000 payable in two annual installments.

The property is encumbered by two easements, one for pipeline and incidental purposes in favor of Southern Pacific Pipelines (Kinder Morgan Pipelines is the successor in interest) and the other for pipeline, communications and incidental purposes in favor of Southern Pacific. The County receives no compensation for these easements that are now of record. There are also three month-to-month License Agreements for parking and other uses, which will be transferred to the City upon sale. The County will be reserving an easement for telecommunications purposes.

The agreement contains penalties for the City's failure to acquire the property in a timely manner.

The properties should be found to be surplus and sold to the City of Pleasanton for the aforementioned sum outlined in the attached purchase agreement under the authority of Section 960 of the Streets and Highway Code.

FINANCING:

The proceeds from the sale will be deposited in County of Alameda Fund 21200, ORG 270401 (Road Department), Account 470110, Sale of Land, Program 00000.

Yours truly,



Daniel Woldesenbet, Ph.D., P. E.
Director of Public Works

DW/RM:mbc

State of California

County of Alameda

On _____, before me, Clerk of the Board of Supervisors of the County of Alameda, State of California, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Clerk, Board of Supervisors of the
County of Alameda, State of California

REVISED

Approved as to Form
RICHARD E. WINNIE, County Counsel

By Audrey Beaman Deputy
Audrey Beaman

THE BOARD OF SUPERVISORS OF THE
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

RESOLUTION NUMBER: R-

**FIND A PARCEL OF COUNTY-OWNED REAL PROPERTY TO BE SURPLUS AND
AUTHORIZE AND APPROVE THE SALE OF SAID PARCEL TO
THE CITY OF PLEASANTON FOR \$7,500,000; EXECUTE GRANT DEEDS,
SET TERMS AND CONDITIONS OF SALE; DEPOSIT PROCEEDS OF SALE.**

WHEREAS, the County of Alameda, a political subdivision of the State of California, is the fee simple owner of that approximately 8 acres of unimproved property located between Stanley Boulevard and Bernal Avenue in the City of Pleasanton, said parcel being more particularly designated and described as;

FOR DESCRIPTION, SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
(No. 36170)

AND WHEREAS, said parcel of real property was acquired by the County of Alameda for potential public transit uses and with the construction of the Valley Avenue undercrossing to Stanley Boulevard by the City of Pleasanton, said parcel of real property is now no longer required by the County for transit uses; and

WHEREAS, the City of Pleasanton, have offered to purchase said parcel for the sum of Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00), which is the agreed upon fair market value thereof; and

NOW, THEREFORE, BE IT RESOLVED, that this Board of Supervisors does and it hereby finds and determines that the real property described in Exhibit "A" is no longer required for highway purposes and is not suitable for a non-motorized transportation facility; and

BE IT FURTHER RESOLVED, under the authority of Section 960 of the Streets and Highways Code of the State of California, that the sale of the hereinafter described parcel of real property to the City of Pleasanton is hereby authorized and approved; and

BE IT FURTHER RESOLVED, that the President of this Board of Supervisors be and he is hereby authorized to execute a Purchase Agreement, attached herewith as Exhibit "B" on behalf of the County of Alameda, a political subdivision of the State of California, GRANTOR, conveying the real property described in Exhibit "A" to the City of Pleasanton a municipal corporation; and

BE IT FURTHER RESOLVED, that the President of this Board of Supervisors be and he is hereby authorized to execute a Grant Deed on behalf of the County of Alameda, a political subdivision of the State of California, GRANTOR, conveying the real property described in Exhibit "A" to the City of Pleasanton, a municipal corporation; and

BE IT FURTHER RESOLVED, that said Grant Deed shall be executed under the following terms and conditions to wit:

1. The City of Pleasanton and the County of Alameda shall enter into a Purchase Agreement and the transaction shall close within thirty (30) days from the date when GRANTEE is notified in writing that the deed has been signed by the President of this Board of Supervisors.
2. All escrow and transfer fees to be paid as specified under the Purchase Agreement to be entered into between the parties.
3. The property is sold "as is".

AND BE IT FURTHER RESOLVED, that upon execution, said Grant Deed shall be forwarded to the Director of Public Works to be by him recorded upon receipt from GRANTEE of the agreed upon consideration; and

BE IT FURTHER RESOLVED, that the proceeds from said sale shall be deposited in County of Alameda Fund 21200, ORG 270401 (Road Fund), Account 470110, Sale of Land, Program 00000.

EXHIBIT "A"

COUNTY OF ALAMEDA DESCRIPTION

REAL PROPERTY TO BE GRANTED IN FEE

MAP: EE- 4820	DESC. NO. 36170
094-157-014-01 (Por.), 094-157-14-3, 094-102-6-1,	
APN: 094-103-11-3, 94-105-2-2,094-106-11, 094-110-46 (Por.)	DATE July 2, 2008

All that certain real property situate in the City of Pleasanton, County of Alameda, State of California, described as follows:

PARCEL 1

Being a portion of real property described in that certain Quitclaim Deed to the County of Alameda, a political subdivision of the State of California, dated February 2, 1989 , and recorded February 28, 1989 as Series No. 89-055743, Official Records of the County of Alameda, State of California, more particularly described as follows:

COMMENCING at the intersection of the center line of the Southern Pacific Transportation Company's Main Line, Alameda County (said center line is hereinafter referred to as "railroad centerline") with the northern line of County Road No. 1530, commonly known as Stanley Boulevard, at or near survey station 1515+97.02 of said railroad center line, and running thence along said northern line of Stanley Boulevard, South 89° 32' 15" East (the bearing of said northern line being taken as South 89° 32' 15" East for the purpose of making this description), 66.29 feet; thence leaving said northern line of Stanley Boulevard along a line drawn parallel with said railroad center line, and distant southeasterly 50.00 feet, measured at right angles thereto, South 41° 30' 00" West, 1,439.32 feet to a point on the center line of the realigned portion of Ray Street, as said line was established by the City of Pleasanton and shown on that certain map entitled "Right of Way Record Map First Street-Ray Street Intersection, City of Pleasanton, California", recorded June 13, 1972, in Book 73 of Maps at Page 19, Alameda County records, said point being hereinafter referred to as **Point "A"**, and the **TRUE POINT OF BEGINNING** of this description;

thence continuing along said line drawn parallel with said railroad center line, South 41° 30' 00" West, 2,022.75 feet to a point thereon, last said point being the most northern corner of PARCEL 3, as said parcel is delineated and so designated on that certain map entitled "Parcel Map No 2414" etc., filed November 29, 1978, in Book 107 of Maps at pages 17 and 18 thereof, Official Records of the County of Alameda;

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thence along the direct production northwesterly of this northeastern line of said PARCEL 3, North 48° 30' 00" West, 25.00 feet to an intersection thereof with a line drawn parallel with the aforesaid railroad center line, and distant southeasterly 25.00 feet, measured at right angles thereto; thence along said parallel line South 41° 30' 00" West, 1190.53 feet to a point on the northern line of the realigned portion of Bernal Avenue, as said line was established by the City of Pleasanton, said line being also the northern terminus line of that certain parcel of land described as Parcel 1 in the deed from the southern Pacific Transportation Company, a Delaware corporation, to the County of Alameda, dated June 20, 1988, and recorded June 23, 1988, as Series No. 88-150572, Official Records of the County of Alameda;

thence along said realigned portion of Bernal Avenue, northwesterly on the arc of a curve to the left, tangent at last said point to a course which bears North 70° 13' 04" West, the radius of which curve is 554.00 feet, through a central angle of 08° 19' 12", a distance on said arc of 80.45 feet;

thence continuing along said northern terminus line of Parcel 1 (88-150572), tangent to last said curve, North 78° 32' 16" West, 3.10 feet to a line drawn parallel with said railroad center line, and distant northwesterly 50.00 feet, measured at right angles thereto,

thence North 41° 30' 00" East, 3,178.70 feet to the center line of said realigned portion of Ray Street as shown on said aforementioned map (Bk 73 Maps Pg 19);

thence along said center line of Ray Street, South 72° 43' 53" East, 6.15 feet;

thence southeasterly along curve to the left, tangent to last said course, the radius of which curve is 200.00 feet, through a central angle of 15° 17' 07", a distance on said arc of 53.36 feet;

thence South 88° 01' 00" East, 63.80 feet to the **TRUE POINT OF BEGINNING** of this description.

EXCLUDING THEREFROM, a strip of land 25.00 feet in width, the northwesterly line of which is parallel with and distant 25.00 feet, measured at right angles, from that certain course shown as having a bearing and distance of "North 41° 30' 00" East, 318.40 feet" in Parcel 5, as said course and Parcel 5 on the aforesaid map entitled "Parcel Map 2414".

Containing 280,965 Sq. Ft. (6.45 acres), more or less

RESERVING THEREFROM for the benefit of the Grantor, its successor and assigns, an easement and right of way to construct, re-construct, install, maintain operate, inspect and repair telecommunication facilities and related appurtenances thereto in, through, across and under the following described lands:

Being a portion of real property described in that certain Quitclaim Deed to the County of Alameda, a political subdivision of the State of California, dated February 2, 1989 , and recorded February 28, 1989 as Series No. 89-055743, Official Records of the County of Alameda, State of California, more particularly described as follows:

A strip of land, five feet in width, the centerline of which is described as follows:

Commencing at the hereinabove described **Point "A"**;

thence along the centerline of Ray Street, North 88° 01' 00" West, 63.80 feet;

thence northwesterly along curve to the right, tangent to last said course, the radius of which curve is 200.00 feet, through a central angle of 03° 49' 12", a distance on said arc of 13.33 feet to the **TRUE POINT OF BEGINNING**;

thence leaving said center line of Ray Street, South 41° 56' 50" West, 145.70 feet;

thence South 42° 47' 43" West, 209.87 feet;

thence South 38° 39' 21" West, 175.37 feet;

thence South 40° 17' 07" West, 377.24 feet;

thence South 46° 28' 30" West, 78.23 feet;

thence South 41° 32' 26" West, 293.54 feet;

thence South 42° 05' 22" West, 256.34 feet;

thence South 40° 51' 27" West, 274.07 feet;

thence South 85° 07' 48" West, 6.10 feet;

thence South 41° 50' 15" West, 5.50 feet;

thence South 24° 33' 44" West, 13.75 feet;

thence South 39° 45' 23" West, 165.26 feet;

thence South 42° 28' 35" West, 337.00 feet;

thence South 40° 25' 49" West, 153.19 feet;

thence South 37° 24' 50" West, 37.34 feet;

thence South 41° 17' 22" West, 264.27 feet;

thence South 39° 52' 53" West, 122.71 feet;

thence South 43° 37' 53" West, 182.45 feet;

thence South 14° 56' 19" West, 10.86 feet to a point on the aforementioned northern line of the realigned portion of Bernal Avenue, said point being hereinafter referred to as **Point "B"**.

The sidelines of the above described five foot strip shall be lengthened or shortened as necessary to begin at the centerline of Ray Street and terminate at the northerly right of way line of Bernal Avenue.

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PARCEL 2

Being a portion of real property described as Parcel 1 in that certain Quitclaim Deed to the County of Alameda, a political subdivision of the State of California, dated June 20, 1988, and recorded June 23, 1988 as Series No. 88-150572, Official Records of the County of Alameda, State of California, more particularly described as follows:

BEGINNING at the intersection of the center line of the Southern Pacific Transportation Company's Main Line, Alameda County (said center line is hereinafter referred to as "railroad centerline") with the northern boundary of Bernal Avenue, at or near survey station 1468+94.4 of said railroad center line; thence southeasterly along the arc of a curve to the right, tangent to a course which bears South 73° 01' 46" East, the radius of which curve is 554.00 feet, through a central angle of 05° 34' 09", a distance on said arc of 53.85 feet to a line drawn parallel with said railroad center line, and distant southeasterly 50.00 feet, measured at right angles thereto; thence along said parallel line, South 41° 30' 00" West, 57.47 feet to a point on the center line of the realigned portion of Bernal Avenue, as said line was established by the City of Pleasanton and shown on that certain map entitled "Right of Way Record Map Bernal Avenue Realignment", recorded October 11, 1965, in Book 43 of Maps at Page 99-A, Official Records of the County of Alameda; thence along said centerline, northwesterly along the arc of a curve to the left, tangent to a course which bears North 69° 36' 01" West, the radius of which curve is 500.00 feet, through a central angle of 08° 57' 05", a distance on said arc of 78.12 feet; thence North 78° 33' 06" West, 34.21 feet to an intersection thereof with a line drawn parallel with the aforesaid railroad center line, and distant northwesterly 50.00 feet, measured at right angles thereto; thence along said parallel line North 41° 30' 00" East, 62.39 feet to the northern boundary of Bernal Avenue as described in the aforementioned deed to the County of Alameda (88-150572); thence along said northern boundary line of Bernal Avenue, South 78° 32' 16" East, 3.07 feet; thence southeasterly on the arc of a curve to the right, tangent to last said course, the radius of which curve is 554.00 feet, through a central angle of 05° 30' 30", a distance on said arc of 53.26 feet, to a point on the railroad centerline, and the **POINT OF BEGINNING**.

Containing 6,010 Sq. Ft., more or less

RESERVING THERREFROM for the benefit of the Grantor, its successor and assigns, an easement and right of way to construct, re-construct, install, maintain operate, inspect and repair telecommunication facilities and related appurtenances thereto in, through, across and under the following described lands:

Being a portion of real property described as Parcel 1 in that certain Quitclaim Deed to the County of Alameda, a political subdivision of the State of California, dated June 20, 1988, and recorded June 23, 1988 as Series No. 88-150572, Official Records of the County of Alameda, State of California, more particularly described as follows:

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A strip of land, five feet in width, the centerline of which is described as follows:

Commencing at the hereinabove described **Point "B"**;

thence South 54° 25' 36" West, 14.36 feet;

thence South 40° 14' 20" West, 47.25 feet to the centerline of Bernal Avenue.

The sidelines of the above described five foot strip shall be lengthened or shortened as necessary to begin at the northerly right of way line of Bernal Avenue and terminate at the center line of Bernal Avenue.

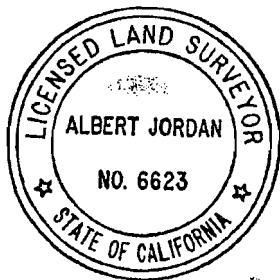
END OF DESCRIPTION

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

Russell Reid Penland, Jr.

County Surveyor

Reg. Expires 12/31/2009



By: _____

Albert Jordan
Albert Jordan

Professional Land Surveyor

LS 6623

Reg. Expires 12/31/2009

July 2, 2008

Date

EXHIBIT "B"

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made the day of _____, 2008 between the County of Alameda ("County") and the City of Pleasanton ("City").

RECITALS

A. The County owns property in the City of Pleasanton, identified on the attached Exhibit A. [For purposes of this Agreement Segments 1 through 6 shall be referred to as the Southern Property, Segments 7 through 10 shall be referred to as the Northern Property, and collectively the Southern Property and the Northern Property shall be referred to as the Properties]; the Properties are part of a former railroad property that the County purchased from Southern Pacific in 1988.

B. The Properties are encumbered by two easements of record, one for pipeline and incidental purposes in favor of Southern Pacific Pipelines (Kinder Morgan Pipelines is the successor in interest), and the other for pipeline, communications and incidental purposes in favor of Southern Pacific. For the pipeline and incidental purposes (Kinder Morgan) easement, the County receives no compensation from the easement holder. For the pipeline, communications and incidental purposes easement, this easement is of record but is not utilized by the easement holder as the easement was not reserved when those properties due north were sold and developed. The County receives no compensation from the easement holder for this easement.

C. Segment 7 (within the Northern Property) has beneath it petroleum hydrocarbon constituents that have migrated from property not owned by County and located east and south of Segment 7, at 4191 First Street, the presence of which represents a recognized environmental condition; an approved workplan for further investigation of this condition is on file with the Alameda County Health Care Services Agency but no investigation or remediation is being conducted at this time under that workplan. A long chain hydrocarbon mixture has also been detected beneath Segment 7. The Health Care Services Agency has directed Conoco Phillips Company and the owners of the property at 4191 First Street to determine, as part of the ongoing investigation and remediation of the identified fuel leak at 4191 First Street, whether a bunker fuel tank may still be in place on the site and whether long chain petroleum hydrocarbons are present near the location of the former fuel tank. The Agency has directed that any issues relating to the bunker fuel tank and long chain petroleum hydrocarbons identified in connection therewith, and remediation thereof, are to be addressed by Conoco Phillips Company and the owners of the property as part of pending Case No. RO0000361 relating to the 4191 First Street fuel leak.

D. There may also be petroleum hydrocarbon constituents beneath Segment 7 from property not owned by the County south and east of Segment 7, at 4226 First Street; based on the location of this property, the regional groundwater flow direction (northwest) and the proposed remediation activities in connection with this property, this condition likewise represents a recognized environmental condition.

E. County desires to sell, and City desires to purchase, the Properties on the terms and conditions set forth herein.

ARTICLE 1 – PURCHASE

- 1.1 **Purchase/Closing Date.** County shall sell the Properties to City, and City shall purchase the Properties from County, on all of the mutual terms, covenants and conditions hereinafter set forth. County and City shall mutually agree on the closing date; provided, however, in no event shall the Closing Date for the Southern Property (“the first Closing Date”) occur on a date later than July 31, 2008. The Closing Date for the Northern Property (“the second Closing Date”) shall occur as provided in Section 1.4 below.
- 1.2 **Purchase Price.** The purchase price for the Southern Property shall be Five Million Five Hundred Thousand Dollars (\$5,500,000), payable as follows: Two Million One Hundred Thousand Dollars (\$2,100,000) at the first Closing Date; the remaining Three Million Four Hundred Thousand Dollars (\$3,400,000) [“the Southern Property Balance”] paid in seven, roughly equal, installments on the next seven anniversary dates of the first Closing Date. The purchase price for the Northern Property (“the Northern Property Balance”) shall be Two Million Dollars (\$2,000,000) payable in roughly equal installments over the remaining anniversary dates of the first Closing Date or, if there are no remaining anniversary dates, at the second Closing Date. If none of the conditions of Section 1.4 are satisfied and the City is not obligated to purchase Segment 7, or if condition (a) of Section 1.4 has not been satisfied and the City does not purchase Segment 7, the purchase price for Segments 8-10 (“the Segments 8-10 Balance”) shall be \$1,687,250, payable in roughly equal installments over the remaining anniversary dates of the first Closing Date or, if there are no remaining anniversary dates, at the second Closing Date.
- 1.3 **Security for and Interest on the Southern Property Balance.** The City’s obligation to pay the installments on the Southern Property Balance (\$3,400,000) shall be by a promissory note secured by a deed of trust on the Southern Property. No interest shall accrue on the Southern Property Balance for two years following the first Closing Date. Interest on the Southern Property Balance (less any installments made by the City) shall accrue commencing two years following the first Closing Date at the Local Agency Investment Fund (LAIF) rate prevailing on the payment date. An example of the City’s installment payments, assuming a LAIF rate of 4.25% every year, is attached as Exhibit B. The City may pay the Southern Property Balance in full, or any amount of the Balance in excess of its installment payment, at any time without penalty. Once the City has paid the Southern Property Balance in full, County shall record a Notice of Reconveyance as to the deed of trust on the Southern Property.
- 1.4 **Conditions Precedent to the Second Closing Date.** County shall sell and City shall purchase the Northern Property, or just Segments 8-10, as set forth in this Section: (a) City shall purchase the Northern Property if within five years of the first Closing Date (or such later date as set forth in Section 1.8) the Alameda County Health Care Services Agency, or any other regulatory agency which might assume joint or individual regulatory responsibility for the matters described in Recitals C and D, issues Remedial Action Completion Certification Letters in connection with the recognized environmental conditions associated with the properties at 4191 First Street, Pleasanton, CA and at 4226

First Street, Pleasanton, CA; (b) City, in its sole discretion, may purchase Segment 7 if within five years of the first Closing Date (or such other later date as set forth in Section 1.8) no Remedial Action Completion Certification Letters are obtained but the Health Care Services Agency or other regulatory agency which might assume joint or individual regulatory responsibility for the matters described in Recitals C and D provides in writing one of the following:

1.4.1 The County (or subsequent owner of the Northern Property) is not required to undertake any remediation or clean up activity with respect to the identified environmental conditions described in the Recitals (other than providing access), notwithstanding any proposed or ongoing remediation efforts by third parties;

1.4.2 No contaminants or hazardous materials sourced within Segment 7 are located within or under Segment 7 which require any remediation or clean up activity, notwithstanding any offsite contamination and/or remediation activity off site; or

1.4.3 No further remediation or clean up activity is required by any party in connection with the identified recognized environmental conditions.

If none of the conditions identified in (a) or (b) has occurred within five years of the first Closing Date (or such later date as set forth in Section 1.8) the City's obligation to purchase Segment 7 shall terminate at no cost or penalty to the City. The failure of conditions (a) or (b) to occur, however, shall not affect City's obligation to purchase Segments 8-10 and if City does not purchase Segments 8-10, the forfeiture provisions of Section 1.7 shall apply. If there is disagreement concerning whether any of the conditions in (a) or (b) has occurred, the Dispute Resolution Procedures of this Agreement shall be employed.

If City does not purchase Segment 7, City will initiate an amendment to the land use designation of Segment 7 such that its designation is compatible with the land use designation of adjacent properties to allow the highest and best use of Segment 7.

1.5 Security for and Interest on the Northern Property Balance. If at the time of the second Closing Date the Northern Property Balance is to be paid in installments, (a) the City's obligation to pay installments on the Northern Property Balance (\$2,000,000) shall be by a promissory note secured by a deed of trust on the Southern Property, and (b) interest on the Northern Property Balance shall accrue at the LAIF rate prevailing on the payment date; provided, however, that if the second Closing Date is within two years of the first Closing Date, no interest shall accrue on the Northern Property Balance until two years after the first Closing Date. The City may pay the Northern Property Balance in full, or any amount of the Northern Property Balance in excess of its installment payment, at any time without penalty. If a deed of trust has been recorded against the Southern Property for the Northern Property Balance, once the Northern Property Balance has been paid in full, County shall record a Notice of Reconveyance as to the deed of trust on the Southern Property.

1.6 Security for and Interest on the Segments 8-10 Balance. If at the time of the second Closing Date the City is obligated to purchase only Segments 8-10 and the Segments 8-10 Balance is to be paid in installments, (a) the City's obligation to pay installments on

the Segments 8-10 Balance (\$1,687,250) shall be by a promissory note secured by a deed of trust on the Southern Property and (b) interest on the Segments 8-10 Balance shall accrue at the LAIF rate prevailing on the payment date; provided, however, that if the second Closing Date is within two years of the first Closing Date, no interest shall accrue on the Segments 8-10 Balance until two years after the first Closing Date. The City may pay the Segments 8-10 Balance in full, or any amount of the Segments 8-10 Balance in excess of its installment payment, at any time without penalty. If a deed of trust has been recorded against the Southern Property for the Segments 8-10 Balance, once the Segments 8-10 Balance has been paid in full, County shall record a Notice of Reconveyance as to the deed of trust on the Southern Property.

1.7 Deposit of Security for City's Purchase of the Northern Property; Forfeiture and Land Use Designations. At the first Closing Date, City shall deposit into an escrow account One Million Dollars. Except as provided in sections 1.7.1 and 1.7.2, these funds, plus accrued interest, shall be returned to the City on the second Closing Date.

1.7.1 If condition (a) of Section 1.4 has been satisfied and the City, for whatever reason, elects not to purchase the Northern Property, the City (a) will forfeit the One Million Dollars to the County in lieu of all other remedies available to the County and (b) will initiate an amendment to the land use designations applicable to the Northern Property such that their designations are compatible with land use designations of adjacent properties to allow the highest and best use of the Northern Property.

1.7.2 If condition (a) of Section 1.4 has not been satisfied and the City elects not to purchase Segment 7, and whether or not conditions (a) or (b) of Section 1.4 have been satisfied, if City, for whatever reason, does not purchase the balance of the Northern Property (i.e., Segments 8-10), , City (a) will forfeit \$843,625 (of its One Million Dollars in escrow) to the County in lieu of all other remedies available to the County (with the remainder of the escrow account returned to City) and (b) will initiate an amendment to the land use designations applicable to the Northern Property such that their designations are compatible with the land use designations of adjacent properties to allow the highest and best use of the Northern Property.

THE PARTIES AGREE THAT THE AMOUNTS FORFEITED BY CITY AND PAID TO COUNTY UNDER THIS SECTION 1.7 CONSTITUTE LIQUIDATED DAMAGES PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES AND THAT THE FOREGOING AMOUNTS ARE REASONABLE ESTIMATES OF THESE DAMAGES, AND THAT COUNTY SHALL RETAIN THE AMOUNTS AS COUNTY'S SOLE AND EXCLUSIVE REMEDY. THE PARTIES WITNESS THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION BY INITIALING BELOW.

CITY'S INITIALS: _____ COUNTY'S INITIALS: _____

1.8 Extension of Time. The County may, at its discretion, extend the date of the Second Closing Date for two additional years beyond the five years provided in Section 1.4 if progress is being made towards satisfying the conditions identified in Section 1.4. The parties must agree to extensions of time to satisfy the conditions identified in Section 1.4 beyond the two additional years.

- 1.9 Creation of New Easements/License. County will reserve an easement for fiber optics purposes and telecommunications purposes for the purpose of a fiber optics license agreement with Time Warner, and/or its successors or assigns with County permission. This reservation shall be in the Grant Deed whereby the Properties are conveyed. The language of the easement reservation and the legal description thereof are attached hereto as Exhibit C. If County grants an easement and/or license to third parties in connection with the remediation or clean up activities on Segment 7, City shall review and approve the form of this easement/license.
- 1.10 Retention of Revenue from Easements. Notwithstanding the County's sale of the Properties to City, County shall retain the revenues from the fiber optic and telecommunication easement described in Paragraph 1.9. Kinder Morgan Pipeline, Inc. or its successors and assigns, will retain all revenues from the pipeline and incidental purposes easement.
- 1.11 Assignment of License Agreements. There exists on the Properties certain license agreements between the County and Hap's Restaurant, the Old Ice House, Pleasanton Specialty Cars and various cable television companies. Each of these license agreements may be terminated with 30 days written notice to the licensee. The City has reviewed each of these license agreements. County assigns to City its right, title and interest to such license agreements and City accepts same.
- 1.12 Exceptions to Title. County has provided to City preliminary title reports to the Properties. The City has reviewed such reports and agrees to take title subject to the exceptions listed therein.
- 1.13 Closing Costs. Closing costs shall be shared as follows: Each party shall pay its own attorneys' fees in connection with negotiating this Agreement and closing the escrow. City shall pay recording costs, any escrow fees, and if City chooses to acquire title insurance, the title insurance premiums associated with such insurance. County shall pay the documentary transfer taxes, if any, incurred in connection with this transaction. There will be no brokers fees or commissions paid on this transaction. An escrow has been opened at North American Title in Pleasanton, CA, Escrow #54606-709644.

ARTICLE 2- "AS IS" SALE

2. "As-Is" Sale. City shall acquire the Properties in their "as-is" condition with no representations or warranties from County.

ARTICLE 3 – MISCELLANEOUS

- 3.1 Binding on Successors. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- 3.2 Dispute Resolution Procedures. The parties shall follow the procedures set forth in this section to try and resolve any disputes under this Agreement. Any party may provide written notice to the other party requesting to meet and confer on any issue of dispute. Within 15 days after delivery of such notice, the parties shall meet and confer in an effort to try and resolve the issue. The parties shall engage the services of a mediator if they are

unable to resolve the issue themselves. The costs of the mediator shall be shared equally by the parties.

3.3 Attorneys' Fees. In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees (including those of in-house counsel) and court costs. Prior to filing litigation, the parties will follow the dispute resolution procedures set forth in Section 3.2 of this Agreement.

3.4 Notices. All notices or other communications required or permitted hereunder shall be in writing and either delivered by hand delivery (including receipted express courier or delivery service) or electronic mail (e.g., telecopy) or deposited in the United States mail first-class, postage prepaid and addressed as follows:

To County: Alameda County
 Public Works Agency
 399 Elmhurst Street
 Hayward, CA 94544-1307
 Attention: Public Works Director
 Facsimile: (510) 670-5247

To City: City of Pleasanton
 123 Main Street
 Pleasanton, CA 94566
 Attn: City Manager
 Facsimile: (925) 931-5482

Notices which are delivered by hand or electronic mail shall be deemed received upon delivery; notices which are deposited in the United States mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing. The foregoing addresses may be changed by notice to the other party as herein provided.

3.5 Authority. Each individual executing this Agreement on behalf of County or City represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of County or City, respectively, and that this Agreement is binding upon County or City, respectively, in accordance with its terms.

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

3.7 Time of the Essence. Time is of the essence of every provision herein contained in this Agreement.

3.8 Further Assurances. County and City shall make, execute, and deliver such documents and undertake such other and further acts as may be reasonably necessary to carry out the intent of the parties hereto.

3.9 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto. Regardless of which party prepared or communicated this Agreement, this Agreement shall be of binding effect only upon its execution by an authorized representative of each party hereto. This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by County and City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE CITY OF PLEASANTON,
a California municipal corporation

COUNTY OF ALAMEDA,
a public subdivision of the State of California

By _____
Its: City Manager

By _____
Its:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

MICHAEL H. ROUSH, CITY ATTORNEY



RICHARD E. WINNIE, COUNTY COUNSEL

ATTEST

ATTEST

Karen Diaz, City Clerk

Clerk of the Board of Supervisors