

DRAFT 7/10/18 RB

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AUTHORIZING THE CITY MANAGER
TO EXECUTE AGREEMENTS WITH HD DEVELOPMENT
OF MARYLAND, INC. FOR PURCHASE OF CERTAIN
PROPERTY RIGHTS, ACCEPTANCE OF FOUR
EASEMENT DEEDS AND ACCEPTANCE OF AT&T
APPLICATION OF CUSTOM WORK, IN RELATION TO
THE FAIR OAKS AVENUE OVERHEAD BRIDGE
REHABILITATION PROJECT**

WHEREAS, the City of Sunnyvale ("City") is undertaking the Fair Oaks Avenue Overhead Bridge Rehabilitation Project ("Project") to address several identified structural deficiencies in the overhead bridge and to expand bicycle and pedestrian amenities; and

WHEREAS, as part of the construction of the Project, the City is required to purchase a permanent Aerial Easement Deed ("AE"), a Public Utility Easement ("PUE"), a Foundation Easement ("FE") and a Temporary Construction Easement ("TCE") from the owner HD Development of Maryland, Inc. ("Home Depot"), for access, construction, reconstruction, inspection, maintenance, repair, operation and removal of an overhead freeway bridge, supporting columns and footings, including any and all appurtenant structures; and

WHEREAS, the Project is a federally-funded project and funds used for acquisition of the required easements are from the Federal Highway Bridge Program revenues; and

WHEREAS, the City ordered an appraisal of the required easements that was prepared by Integra Realty Resources, a California general certified appraiser in March 2016, in the amount of \$398,000 and an updated appraisal of \$405,000 in December of 2016, and the City made an offer to Home Depot in said amount; and

WHEREAS, the City revised the appraisal based on a longer 27-month duration for the TCE in the amount of \$614,000 in February 2018; and

WHEREAS, Home Depot presented the City with a counteroffer of \$737,480 in March 2018; and

WHEREAS, the City has reviewed the appraisers' determination of the fair market value of the land and its reports thereon; and

WHEREAS, the City and Home Depot have negotiated the final amount of \$680,000.00 as the purchase price of all the easements; and

WHEREAS, the City desires to enter into any necessary documentation for the Project, including Agreements for Purchase of Property and the Easements as described above as well as the AT&T application for custom work that will be performed on Home Depot property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The portions of property owned by Home Depot, as described above, are hereby determined to have a fair market value of \$680,000.00 based on the report by independent appraiser, Enright & Company, Inc., and as further negotiated by the City and Home Depot.
2. The purchase of said Easements, as described herein, in the amount of \$680,000.00, plus all related closing costs, is hereby approved.
3. The City Manager, or his designee, is hereby authorized:
 - a) To execute the Agreement for Purchase of Property with Home Depot, attached in substantial form hereto as Exhibit "A"; and
 - b) To execute or accept on behalf of the City the Aerial Easement Deed attached in substantial form hereto as Exhibit "B", the Public Utility Easement Deed attached in substantial form hereto as Exhibit "C", the Foundation Easement Deed attached in substantial form hereto as Exhibit "D", the Temporary Construction Easements attached in substantial form hereto as Exhibit "E", the Landscape Agreement attached in substantial form hereto as Exhibit "F", the AT&T Application for Custom Work attached in substantial form hereto as Exhibit "G", and any other documents to implement the purchase of property for the Project by the City.

Adopted by the City Council at a regular meeting held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Project: Fair Oaks Avenue Overhead
Bridge Widening Project
Grantor: HD Development of
Maryland, Inc., a Maryland
corporation
Parcel No.: 205-47-013
Federal Aid #: BHLS 5213 (039)

AGREEMENT FOR PURCHASE OF CERTAIN REAL PROPERTY RIGHTS

This Agreement for Purchase of Certain Real Property Rights (“Agreement”) is between the **City of Sunnyvale**, a municipal corporation (“Grantee”), and **HD Development of Maryland, Inc.**, a Maryland corporation (“Grantor”).

The parties hereby agree as follows:

1. **PROPERTY.**

The property rights being purchased and sold pursuant to this Agreement (collectively, “Property Rights”) are intended for the use by Grantee in connection with the Fair Oaks Avenue Overhead Bridge Widening Project (“Project”) as set forth in the terms and conditions of this Agreement and in the terms and conditions of the Foundation Easement Deed, Public Utility Easement Deed, Aerial Easement Deed and Temporary Construction Easement (collectively, the “Easements”), which encumber the real property more particularly described in such Easements (the “Property”).

2. **DELIVERY OF DOCUMENTS.**

This transaction shall be handled through an escrow with First American Title Company, 484 N. Prospect St., Suite C, Porterville, CA 93257, Escrow No. 5401225 (“Escrow Holder”). Within five (5) days after this Agreement is executed by Grantee and Grantor, (i) Grantor shall complete, execute and deliver to Escrow Holder (a) an affidavit executed by Grantor certifying that Grantor is not a “foreign person” within the meaning of Internal Revenue Code Section 1445(f)(3), and meeting the requirements of Internal Revenue Code Section 1445(b)(2); (b) an original Withholding Exemption Certificate (California Form 593C or 59, if applicable), fully executed by Grantor as required by the California Taxation and Revenue Code, certifying that Grantor is not subject to tax withholding under applicable California law; and (c) the Easements; and (ii) Grantee shall complete, execute and deliver to Escrow Holder Certificates of Acceptance for the Easements. The Easements shall be delivered in the manner described in the previous sentence solely for the convenience of the parties. The Easements shall not be effective until such time as the Easements are recorded in the Official Records of Santa Clara County, California in accordance with this Agreement and the written escrow instructions delivered to Escrow Holder by Grantee and Grantor.

EXHIBIT A

3. PURCHASE PRICE AND TITLE.

The just compensation for the Property Rights is in the amount of \$680,000.00 (Six Hundred Eighty Thousand Dollars, exactly) (the "Purchase Price"), which represents the total amount of compensation to Grantor. Grantor and Grantee hereby acknowledge that the fair market value of the Property Rights is, collectively, \$680,000.00.

Grantee shall pay all costs of escrow and recording fees incurred in this transaction. Within sixty (60) days after this Agreement is executed by Grantee and Grantor, provided that there are no outstanding liens or encumbrances on the Property Rights that Grantee requires to be cleared, Grantee shall deposit with Escrow Holder (i) such sum as is required to pay for all costs of escrow and recording fees incurred in this transaction, and (ii) the Purchase Price.

4. DEED OF TRUST.

If applicable, any monies payable under this contract up to and including the total amount of unpaid principal and interest on note secured by mortgage or deed of trust encumbering the Property Rights, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed or mortgage, shall upon demand be made payable to the mortgagee or beneficiary entitled thereunder; said mortgagee or beneficiary to furnish Grantor with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage or deed of trust.

5. SATISFACTION OF ALL CLAIMS.

The purchase price for the Property Rights and the other consideration set forth herein constitutes a complete settlement of all rights of Grantor to just compensation with respect to the Property Rights and to claim, assess or receive severance, inverse condemnation or other eminent domain damages arising from or related to the acquisition of the Property Rights by Grantee.

6. HAZARDOUS WASTE MATERIAL.

GRANTEE ACKNOWLEDGES THAT THE PROPERTY RIGHTS ARE BEING SOLD "AS IS, WHERE IS" AND "WITH ALL FAULTS" WITHOUT ANY OBLIGATION OF GRANTOR TO PERFORM ANY REPAIRS, IMPROVEMENTS, MAINTENANCE OR OTHER WORK TO THE PROPERTY OR ANY PART THEREOF, AND WITHOUT ANY WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, STATUTORY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY OR THE PROPERTY RIGHTS. GRANTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, STATUTORY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY OR THE PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS AND WARRANTIES AS TO ANY OF THE FOLLOWING

EXHIBIT A

MATTERS: (I) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF; (II) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES; (III) WHETHER, AND TO THE EXTENT TO WHICH, THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD-PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (IV) DRAINAGE; (V) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING; (VI) ZONING TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT; (VII) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE/WASTEWATER DISPOSAL, STORMWATER CONVEYANCE SYSTEMS, GAS AND ELECTRIC; (VIII) USAGES OF ADJOINING PROPERTY; (IX) ACCESS TO THE PROPERTY OR ANY PORTION THEREOF; (X) THE PRESENCE OF "HAZARDOUS SUBSTANCES" (AS DEFINED BELOW) IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY; (XI) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (XII) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS AND ANY CONTENTS THEREOF; (XIII) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PROPERTY; (XIV) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY; (XV) THE EXISTENCE OF LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY; OR (XVI) THE HABITABILITY, MERCHANTABILITY, OR SUITABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE. UPON CLOSING, GRANTEE SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, THE PRESENCE OF HAZARDOUS SUBSTANCES OR OTHER CONTAMINANTS, MAY NOT HAVE BEEN REVEALED BY GRANTEE'S INVESTIGATIONS, AND GRANTEE, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED GRANTOR (AND GRANTOR'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH GRANTEE MIGHT HAVE ASSERTED OR ALLEGED

EXHIBIT A

AGAINST GRANTOR (AND GRANTOR'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT PHYSICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, THE PRESENCE IN THE SOIL, AIR, STRUCTURES AND SURFACE AND SUBSURFACE WATERS, OF HAZARDOUS SUBSTANCES OR OTHER SUBSTANCES THAT HAVE BEEN OR MAY IN THE FUTURE BE DETERMINED TO BE TOXIC, HAZARDOUS, UNDESIRABLE OR SUBJECT TO REGULATION AND THAT MAY NEED TO BE SPECIALLY TREATED, HANDLED AND/OR REMOVED FROM THE PROPERTY UNDER CURRENT OR FUTURE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS OR GUIDELINES, VIOLATIONS OF ANY APPLICABLE LAWS, INCLUDING, WITHOUT LIMITATION, ANY APPLICABLE "HAZARDOUS SUBSTANCES LAWS" (AS DEFINED BELOW), AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY OR THE PROPERTY RIGHTS. GRANTEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

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

BY INITIALING BELOW, GRANTEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Grantee's Initials

For purposes of this Agreement, "**Hazardous Substances**" means any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. §§ 9601 et seq.), as amended ("**CERCLA**"), or the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), as amended ("**RCRA**"), or any other federal, state or local law, ordinance, rule or regulation applicable to the Property, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, radon gas, urea formaldehyde, asbestos, lead or electromagnetic waves. Without limitation of the other provisions of this Section 9, Grantee acknowledges to and agrees with Grantor that Grantor has not, does not and will not make any representation or warranty with regard to compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including, but not limited to, those

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pertaining to the handling, generating, treating, storing or disposing of any Hazardous Substances, including CERCLA and RCRA. Without limiting the foregoing, Grantor does not make and has not made and specifically disclaims any representation or warranty regarding the presence or absence of any Hazardous Substances at, on, under or about the Property or the compliance or non-compliance of the Property with CERCLA or RCRA, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, the Clean Air Act, any federal, state or local so-called "Superfund" or "Superlien" statute, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances (collectively, the "**Hazardous Substance Laws**").

The provisions of this Section 8 shall survive the Closing (as hereinafter defined) and shall not merge with any of the closing deliveries to be provided pursuant to this Agreement.

7. CONDITIONS PRECEDENT.

Notwithstanding anything to the contrary contained herein, for the benefit of Grantor, the closing of the transaction contemplated herein shall be expressly conditioned upon the occurrence and/or satisfaction of each of the following conditions (the "Conditions Precedent"), or Grantor's written waiver thereof, it being agreed that Grantor may waive any, all or none of such conditions, at its sole discretion:

- (a) Grantee shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Grantee; and
- (b) All covenants, representations and warranties made by Grantee in this Agreement shall be true and correct as of the Closing.

8. CLOSING.

- (a) The consummation of the purchase and sale of the Property Rights (the "Closing") shall occur within sixty (60) days following the satisfaction of the Conditions Precedent, but in no event later than ninety (90) days after City Council approval (the "Outside Closing Date"). If the Closing does not occur on or prior to the Outside Closing Date, this Agreement shall terminate, whereupon this Agreement shall be null and void and of no further force or effect, with Grantor and Grantee having no further rights, obligations or liabilities hereunder except as otherwise set forth herein.
- (b) On or prior to the Closing, Grantee shall deposit with Escrow Holder (i) evidence that the Grantee's City Council has conditionally vacated, subject only to recordation of the Aerial Easement Deed contemplated by this Agreement, all that portion located within Grantor's property ("Grantor's Portion") of that certain Easement in favor of the City of Sunnyvale dated as of September 9, 1966 and recorded on September 22, 1966 in Book 7512, Page 714 as Instrument No.

EXHIBIT A

3121093 of the Official Records of Santa Clara County ("City Easement") in accordance with applicable California law, (ii) a Summary Vacation from Grantee to Grantor, in form and substance satisfactory to Grantor, Grantee and Escrow Holder, vacating Grantor's Portion of the City Easement, and (iii) irrevocable escrow instructions from Grantor and Grantee to Escrow Holder, (A) documenting that the Summary Vacation is not effective until recordation; and (B) directing Escrow Holder to record such Summary Vacation in the Official Records of Santa Clara County immediately following recordation of the Aerial Easement Deed contemplated by this Agreement.

- (c) On or prior to the Closing, Grantee shall deposit with Escrow Holder (i) an Easement Termination from Pacific Bell Telephone Company, d/b/a AT&T California ("AT&T") to Grantor, in form and substance satisfactory to Grantor, AT&T and Escrow Holder, terminating that certain Easement in favor of The Pacific Telephone and Telegraph Company dated as of March 7, 1973 and recorded on March 30, 1973 in Book 0304, Page 226 as Instrument No. 4483389 of the Official Records of Santa Clara County, and (ii) irrevocable escrow instructions from Grantor and AT&T to Escrow Holder, (A) documenting that the Quitclaim Deed is not effective until recordation; (B) directing Escrow Holder to only record such Quitclaim Deed in the Official Records of Santa Clara County upon receipt of written notice from AT&T of completion of relocation of the utilities for the portion of the Project located on the Property; and (C) requiring AT&T to provide written notice to Grantor and Escrow Holder within ten (10) business days of completion of that relocation.
- (d) On or prior to the Closing, Grantee shall deposit with Escrow Holder a Landscape Modification Document from the Sunnyvale Planning Division exempting the Grantor from replacing the 73 sq. ft. of landscaping being removed due to the Project, and directing Escrow Holder to record such Landscape Modification Document in the Official Records of Santa Clara County.
- (e) On or prior to the Closing, Grantee shall demonstrate to Grantor's satisfaction that the Project Specifications and relevant Project plans conform to the copies of the same documents attached to this Agreement, and incorporated herein as Exhibit "A".

9. SEVERABILITY.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

10. GOVERNING LAW.

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

11. PUBLIC PURPOSE.

Grantee requires the Property Rights, which are not now appropriated to a public use, for the Project, and Grantee can acquire the Property Rights through the exercise of the power of eminent domain. Grantor is compelled to sell, and Grantee is compelled to acquire, the Property Rights.

Both Grantor and Grantee recognize the expense, time, effort and risk to both Grantor and Grantee in resolving a dispute over compensation for the Property Rights by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.

12. AUTHORITY AND EXECUTION.

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document.

13. ATTORNEYS' FEES.

In the event legal action is instituted by any of the parties to enforce the terms of this Agreement or arising out of the execution of this Agreement, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees and court costs actually incurred (without regard to statutory interpretation).

14. WAIVER.

Failure of either Grantor or Grantee to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Grantor's or Grantee's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

15. CAPTIONS.

All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

16. TIME IS OF THE ESSENCE.

Time is of the essence in all things pertaining to the performance of this Agreement.

EXHIBIT A

17. ENTIRE AGREEMENT.

This Agreement represents the full and complete understanding of the parties with respect to the conveyance of the Property Rights by Grantor to Grantee. Any prior or contemporaneous oral or written agreements by and between the parties or their agents and representatives with respect to the Property Rights or the Project are revoked and extinguished by this Agreement.

**ALL AGREEMENTS FOR PURCHASE OF PROPERTY RIGHTS ARE
CONTINGENT UPON THE APPROVAL OF THE CITY OF SUNNYVALE.**

EXHIBIT A

IN WITNESS WHEREOF, the parties have executed this Agreement on this

_____ day of _____, 20__

GRANTOR:

**HD Development of Maryland, Inc.,
a Maryland corporation**

BY: _____

Name:

Title:

BY: _____

Name:

Title:

GRANTEE:

**CITY OF SUNNYVALE,
a municipal corporation**

BY: _____

Name: Kent Steffens

Title: City Manager

ATTEST:

CITY CLERK

CITY OF SUNNYVALE

BY: _____

Name: Kathleen Franco Simmons

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CITY OF SUNNYVALE

BY: _____

Name: Robert L. Boco

EXHIBIT A

EXHIBIT “A”

EXCERPTS OF PROJECT SPECIFICATIONS AND PLANS

EXHIBIT A

FAIR OAKS OVERHEAD (REHABILITATION) HOME DEPOT RELATED SPEC LANGUAGE

GENERAL PROVISIONS:

7.07 Recording Existing Conditions

Existing conditions throughout the project site shall be photographed and video recorded by the Contractor. Recordings shall be submitted to the Engineer five (5) days before start of construction. Recording shall include and show every detail of existing improvements, including the current condition of the curb, gutter, sidewalk, signs, landscaping, streetlights, structures near the project including face of buildings, canopies, shades, fences and any other features within the limits of work. The Contractor shall notify the Engineer and Home Depot Project Manager not less than twenty-one (21) days prior to the walk-through, and the Home Depot Project Manager shall have the right to attend the walk-through.

8.14 Preservation of Property

The Contractor shall be responsible for the protection of public and private property adjacent to the work.

Due care shall be exercised to avoid damage to existing roadway improvements and facilities, adjacent property, roadside trees, lawn and shrubbery not designated for removal, pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water laterals, and any other improvements or facilities within or outside the limits of construction. As ordered and approved by the Engineer, the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the work, or as good as required by the Contract Documents. The Contractor is not permitted to utilize any other portions of private property outside of the Temporary Construction Easements (TCE). This includes driving of vehicles across private property.

Existing striping damaged during construction within and adjacent to the project site shall be replaced in kind. Partially damaged striping (such as what might occur trenching through a pavement legend), shall be replaced in their entirety. In areas where trenching has occurred or striping has been damaged, the Contractor shall slurry seal the complete area prior to restriping. All work on Home Depot's property must be completed in accordance with the specifications and details included within the project plans and specifications (see Special Provisions – Appendix F: Home Depot Site Specifications for specifications and details related to restoration of Home Depot facilities affected by the construction).

Any survey monuments that are damaged or removed as part of the construction shall be replaced by the Contractor and a Record of Survey, as required by State law, shall be filed by a licensed Land Surveyor at the Contractor's expense, or as specified above.

The fact that any such improvement or facility is not shown upon the plans shall not relieve the Contractor's responsibility under this Section. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities indicated on the plans, indicated by locating services, or as evidenced by facilities visible in the field.

8.16 Restoration of Adjacent and Existing Improvements

Contractor shall do all cutting, fitting, or patching of the work required to make all parts of the work come together properly with existing and adjacent conditions. Any cutting or patching of asphalt on the Home Depot property will require slurry seal of a suitable area so that the final visual of the parking lot does not appear to be a patchwork of saw-cuts and repairs. Limits of slurry sealing will be coordinated with the Engineer and the Home Depot Project Manager. If patchwork is unacceptable, the Engineer shall require the Contractor to overlay a portion of the parking lot.

EXHIBIT A

Unless otherwise provided, the Contractor shall repair or replace all existing improvements (e.g., curbs, sidewalks, driveways, fences, signs, utilities, street surfaces, structures, etc.) damaged or removed as a result of the Contractor's operations. Repairs and replacements shall be at least equal to existing improvements, and shall match in terms of condition, finish and dimension. Refer to Special Provisions – Appendix F: Home Depot Site Specifications for specifications and details related to restoration of Home Depot facilities affected by the construction.

All Underground Services Alert (USA) markings on concrete or asphaltic pavement or other structures shall be removed when they are no longer required. Acceptable means of removal include sand blasting or high pressure washing.

All traffic signs and street signs within the limit of work necessarily removed during the various phases of operations shall be temporarily reset by the Contractor at or near the original location upon completion of each phase of construction operations. Prior to removal of all traffic control signs, the Contractor shall take photographs of the site which show the existing location of these signs so that upon completion the photographs will aid in resetting the signs at or near their original location. Traffic control signs and street signs will be replaced upon completion of the work and the cost of removal and replacement will be included in various bid items and no separate payment will be made.

Rural type mail boxes shall be maintained by the Contractor in a manner satisfactory to the property owner and postal service, and the Contractor shall relocate the same as soon as possible to a permanent location in accordance with postal regulations and in a location acceptable to the property owner.

Any object to be removed and reused at other locations shall be removed with due care and delivered or stored at the project's construction storage area, or if approved by the Engineer, at any other site designated by the Engineer within the City. Such objects may consist of street light poles, signal mast arms and other objects directed by the Engineer. Items not approved by the Engineer for reuse purposes, and without salvage value, shall become the property of the Contractor, to be disposed of at Contractor expense, in an acceptable manner.

8.18 Access to Private Property

The Contractor shall schedule and perform operations so as to minimize disruption of access to private property. Prior to blocking access to any private driveway or parking lot entrance, the Contractor shall notify the resident, business owner or tenant of pending closure and allow residents to remove vehicles. During non-working hours no driveway, house or parking lot shall be denied access to a public roadway. Notwithstanding anything herein to the contrary, the Contractor shall not interfere, obstruct or delay any ingress, egress or access to or from the Home Depot property by way of the driveways along Kifer Road.

The Contractor shall coordinate with the adjacent property owners and businesses and maintain vehicle and pedestrian access to their properties at all times. Temporary access ramps, fencing, or other measures shall be provided as needed.

8.19 Notification and Relations with Property Owners

A two-week and a **72-hour** prior to construction public notification is required. Two weeks prior to beginning any work on the project, the Contractor shall deliver written notice to all adjoining residents, businesses, tenants and other applicable parties. Notice shall be given for general construction activity as well as specific activities that will inconvenience residents/property owners/tenants or, in any way, affect their operations or access to their property. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration, and the name, address, and an approved emergency contact number for the public to reference during the construction. A follow up notice shall be distributed 72-hours prior to the construction activity. Copies of all notices shall be submitted to the

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Engineer for review and approval prior to public distribution. In addition, 30-days prior to commencement of work affecting the Home Depot property, the Contractor shall deliver written notice to the Home Depot Project Manager.

All costs involved in providing notification and access shall be included in the amount bid for the various bid items and no additional compensation will be allowed.

8.20 Traffic Control and Public Convenience

The Contractor shall provide for safe movement of all vehicular, bicycle and pedestrian traffic through and around the construction operations with as little inconvenience and delay as possible. The Contractor shall have no amount of work under construction other than what the Contractor can properly prosecute with due regard to the rights and convenience of the public.

Proper conveyance of vehicular traffic and pedestrians through the work area depends upon navigating under unexpected situations. The means of clarifying such conditions to the public include the Contractor's use of signs, flagmen, pavement markings, barricades, lights, cones and delineators. No one standard sequence of signs or control devices will suit all conditions which may result from construction operations. Even for the same work, the conditions may vary from hour to hour, requiring adjustment and revisions of the traffic control in effect. The traffic control requirements specified herein are therefore intended to establish general principles to be observed in the control and regulation of traffic through and around the construction operations anticipated for this project. The requirements set forth in this Section represent the minimum traffic control requirements imposed and the Contractor shall be solely responsible for providing the full extent of traffic control measures that are necessary. Only individuals trained in the principles of implementing traffic control and/or traffic control flagging shall be assigned that responsibility at the work site.

The Contractor shall maintain sufficient safeguards against occurrence of accidents, injuries, or damage to any person or property including any reasonable safety requirements requested by the Engineer, and shall be responsible for same if such occurs. The Contractor shall also maintain adequate protection of its work and materials from destruction and loss and shall protect the City's property from damage arising in connection with this contract, and shall make good any such damage, destruction or loss.

- a. *Traffic Control Plan* – The Contractor shall submit a Traffic Control Plan to clearly describe proposed traffic control measures. The plan shall be generally in accordance with the Temporary Traffic Control (TTC) Guidelines of the City's Division of Transportation and Traffic.
- b. *Traffic Control Devices* - Traffic control devices shall be provided in sufficient quantities and types as required to provide safe and adequate traffic control. During hours of darkness, approved lights and/or flares shall be included, in proper working order, to illuminate signs and hazards and alert approaching traffic. Barricades shall be furnished and maintained along all open trenches in contact with traffic. No work may begin on any day or at any time before traffic control devices have been placed, test driven and, if required, adjusted and revised. All traffic control devices shall be placed in accordance with the Manual of Uniform Traffic Control Devices and the Contractor's favorably reviewed traffic control plans. Locations of devices shall be adjusted to suit the conditions and circumstances of each detour situation. In all cases, signs shall be placed to most effectively convey their messages to approaching traffic.

The Contractor shall maintain all traffic control devices, at proper locations and in proper working order, at all times during construction operations and whenever a hazard resulting from Contractor's operations exists. The Contractor shall adjust and revise traffic control devices, placement, etc., to suit changing conditions around construction operations. Traffic control devices shall remain in place at all times, as required to alert approaching traffic of upcoming hazards. After hazards have been removed, all traffic control devices shall be removed. Temporary signs shall be removed or their messages covered.

EXHIBIT A

Daily traffic control measures shall continue until cleanup activities have been satisfactorily completed and all of the Contractor's equipment has been removed from the traveled way.

- c. *Traffic Control Detours* - The Contractor shall direct, divert and detour traffic through, around and adjacent to construction operations in accordance with the traffic control plans specified in the Contract Documents or in accordance with the Contractor's favorably reviewed traffic control plans.
1. *Field Review of Detours* - Immediately after traffic control devices have been placed, the detour shall be test driven by the Engineer and the Contractor's Superintendent. The test drive shall include approaches to the detour from each possible direction, and traverse the full length of each detour route. The Contractor shall adjust and revise all traffic control devices as determined to be required by the test drive and the test drive shall be repeated, if determined necessary by the Engineer. The Contractor shall provide additional traffic control devices as required to maintain the flow of traffic throughout construction operation.
 2. *Diverting Bicycle and Pedestrian Traffic* – Whenever construction operations obstruct the flow of bicycle and pedestrian traffic or present a hazard to bicycles and pedestrians, the Contractor shall take appropriate action to protect and separate bicycles and pedestrians from the work area. Such action may include placement of barricades between bicycles and pedestrians and the work areas, placement of warning signs, and provisions utilizing personnel as required to protect and maintain access for bicycles and pedestrians as conditions warrant.
 3. *Diverting Vehicular Traffic* - Whenever construction operations obstruct the flow of vehicular traffic or present a hazard to vehicles operating in the vicinity of construction operations, the Contractor shall take appropriate action to warn, detour and otherwise protect approaching drivers and vehicles.
 4. *Flagmen* - The Contractor shall employ flagmen as required for each specific detour and at all locations where barricades and warning signs cannot control the movement of traffic. A warning sign shall be placed ahead of the flagman reading: "Flagman Ahead." The distance between the sign and the flagman should be based on the average traffic speed, allowing approximately 50 feet for each 10 miles per hour. During hours of darkness, flagman stations shall be illuminated such that the flagman will be clearly visible to approaching traffic. Lights for illuminating the flagman station shall receive favorable review by the Engineer. The flagman shall wear a red or orange warning garment when flagging. Flagmen shall be provided with approved red flags or STOP/SLOW hand paddles, and two-way radios for communication. When flagging during hours of darkness, the flagman shall signal with a red light or flare and shall have a belt and suspender harness fitted with reflectors or made from reflectorized cloth on the outside of the garment, unless the garment is well reflectorized in one of these ways.
 5. *Notice to Agencies* - The Contractor shall notify the Engineer and all agencies having jurisdiction over the work, in writing, at least seventy two (72) hours, excluding holidays and weekends, prior to instituting any lane closure or detour. At the end of each workday, the Contractor shall inform the Engineer, Police Department and Fire Departments of the status of all detours, lane restrictions, or road closures. The Contractor shall cooperate and coordinate with the various parties involved in the collection and removal of trash and garbage, the transit providers, the U.S. Postal Service, and others, as necessary, in order to maintain existing schedules and services.
 6. *Emergency Vehicle Access Through Detours* - During all detours and/or street closures the Contractor shall provide for the movement of emergency vehicles through the work area. It is essential that the Contractor's work and equipment does not impede emergency access.
 7. *Night Detours* - The Contractor shall not be permitted to maintain any lane closure or road closure during non-working hours without first obtaining written approval from the Engineer. During non-working hours the Contractor shall restore travel lanes to their original alignment

EXHIBIT A

and configuration by means of placing temporary asphalt pavement or bridging with steel plates. The Contractor shall place "ROUGH ROAD" signs conforming to the Manual of Uniform Traffic Control Devices at uneven temporary pavement or bridging locations. See General Provisions, Section 9.18 (b), "Trench Safety Requirements".

8. Temporary Traffic Lanes – Temporary traffic lanes shall be at least 10 feet wide, or 11 feet wide around curves. Provide an additional two (2) feet of clearance from curbs. The length of temporary lanes should be limited to the area under construction and the distance necessary to divert traffic.
- d. *Lane Closure Restrictions* - No lane closure will be permitted along any of the major commute streets during commute hours. Major commute streets are: North/ South Streets Mathilda Avenue, Saratoga-Sunnyvale Road, Wolfe Road, Fair Oaks Avenue, Mary Avenue and Remington Drive (between Saratoga-Sunnyvale and El Camino Real).

East/West Streets Homestead Road, Duane Avenue, Fremont Avenue, Arques Avenue and Maude Avenue.

Commute hours are defined as: "northbound" between 6:00 am and 10:00 am; "southbound" between 3:30 pm and 7:30 pm; "eastbound" Between 6:00 am and 9:30 am; "Westbound" Between 3:30 pm and 7:30 pm.

Subject to Section 8.18 hereof, additional lane closure restrictions may be imposed if there is evidence that excessive inconvenience to the public is observed during construction.

- e. *Parking Restrictions* - The Contractor shall post approved "No Parking" signs at all locations necessary to establish work areas and detour traffic. Signs shall read: "NO PARKING - CONSTRUCTION TOW - AWAY ZONE," show the actual day and hours of parking restriction and indicate the telephone number of the City's Police Department or agency having jurisdiction. Signs shall be placed at least forty hours (48) hours in advance of the restriction. The Engineer shall approve the location and duration of no parking limits and verify their placement. "No Parking" signs shall be removed when no work is under construction and must be reposted forty eight (48) hours before the resumption of construction activities.

For any violation of "No Parking" signs by motorists, the Contractor shall contact and coordinate directly with the City's Police Department for removal of vehicles in accordance with the California Vehicle Code. The Contractor shall also coordinate with the Police Department directly for enforcement and towing of parked vehicles.

EXHIBIT A

SPECIAL PROVISIONS:

25. **Working Hours** - Construction work shall not start before 8:00 a.m., and all construction work shall be completed before 6:00 p.m. or sunset, whichever is sooner, unless otherwise approved in writing by the Engineer. Night work is anticipated to be required within the Joint Powers Board/Caltrain right-of-way and during removal of the existing pedestrian overcrossing.
26. **Notification and Relations with Property Owners** A two-week and a **72-hour** prior to construction public notification is required. Two weeks prior to beginning any work on the project, the Contractor shall deliver written notice to all adjoining residents, businesses, tenants and other applicable parties. Notice shall be given for general construction activity as well as specific activities that will inconvenience residents/property owners/tenants or, in any way, affect their operations or access to their property. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration, and the name, address, and an approved emergency contact number for the public to reference during the construction. A follow up notice shall be distributed 72-hours prior to the construction activity. Copies of all notices shall be submitted to the Engineer for review and approval prior to public distribution. In addition, 30-days prior to commencement of work affecting the Home Depot property, the Contractor shall deliver written notice to the Home Depot Project Manager.

All costs involved in providing notification and access shall be included in the amount bid for the various bid items and no additional compensation will be allowed.

27. **Public Convenience and Safety** – The Contractor shall provide for the convenience and safety of traffic and the public in conformance with the provisions in Section 7-1.03 and Section 7-1.04 of the 2010 Caltrans Standard Specifications.
28. **Traffic Control** - The contractor is required to provide and maintain throughout the duration of the project adequate traffic control for all modes of traffic, including vehicles, pedestrians, and bicycles. This may include creation of temporary pathways for pedestrians utilizing physical barriers such as water-filled k-rail. Refer to General Provisions – Section 8.20 Traffic Control and Public Convenience. Contractors are directed to review the City's "Temporary Traffic Control Guidelines" document, located on the website at:
<http://sunnyvale.ca.gov/Portals/0/Sunnyvale/DPW/Transportation/Sunnyvale-TTC-Guidelines-FINAL.pdf>
29. **Staging Areas** - Areas used to store materials, supplies or equipment overnight shall be defined as a staging area. City streets shall not be used as staging areas unless specifically authorized in writing by the City Representative. Vacant and/or city controlled land may be used as staging area only with written permission of the City Representative. Privately owned lots shall not be used as staging areas without specific written consent of the property owner. A copy of such private property owner consent shall be submitted to the City Representative prior to use of private property as a staging area.

No equipment shall be left on residential streets on Saturday, Sunday or holidays unless work is active on the day, or as approved in advance by the Engineer.

The following are designated staging areas for the Contractors use (subject to stage construction and traffic handling requirements):

- a. Areas below and adjacent to the existing bridge within designated City right-of-way or temporary construction easement. Contractor shall be responsible for complying with all requirements and restrictions imposed by those temporary construction easements.
 - b. Closed portions of Hendy Avenue.
30. **Protection and Restoration of Existing Improvements** – Contractor shall protect in place, or

EXHIBIT A

remove and replace, existing improvements which may be damaged by Contractor's operations. Existing improvements may include, but are not limited to, irrigation lines, irrigation control wiring, landscaping, trees, pavement, drainage devices, lighting, roads and roadway markings, parking and trash enclosures, and pedestrian walkways. Any damage to existing facilities, landscape, or irrigation shall be corrected by the Contractor to original condition at no cost to the City. Refer to Special Provisions – Appendix F: Home Depot Site Specifications for specifications and details related to restoration of Home Depot facilities affected by the construction.

Contractor shall ensure resurfacing materials do not enter the storm drain system.

{Add the following at the end of the Special Provisions}

APPENDIX F CONTENTS

HOME DEPOT SITE SPECIFICATIONS

{Home Depot Site Specifications will be included here}

EXHIBIT A

TECHNICAL SPECIFICATIONS:

Add to section 10-1.02 of the RSS for section 10:

Do not close the Home Depot driveway on Hendy Avenue until which time Hendy Avenue is closed to perform the utility relocation and bridge and roadway modification work. The Home Depot driveway on Hendy Avenue and the portion of Hendy Avenue that provides access to that driveway shall be closed for the shortest feasible time periods.

Do not place temporary fencing within the TCE area of the Home Depot parking lot until the latest possible date at which time the work requiring the use of the TCE begins at the Home Depot parking lot.

Once Hendy Avenue roadway and utility improvements and bridge work above Hendy Avenue are completed such that Hendy Avenue can be opened to traffic, maintain a 20' minimum wide driveway access at the Home Depot driveway on Hendy Avenue during business hours between 6:00 a.m. to 9:00 p.m.

Replace "Reserved" in section 10-1.03 of the RSS for section 10-1 with:

No work is allowed in the temporary construction easement in the Home Depot parking lot along the JPB/Caltrain corridor, as denoted on Sheet C-9 labeled "TCE Area 1", except for the removal of the existing pedestrian overcrossing.

Do not place temporary fencing in "TCE Area 1" except during the removal of the pedestrian overcrossing.

Add to section 12-4.02A:

Personal vehicles of your employees must not be parked on the traveled way or shoulders, including sections closed to traffic.

For work at Hendy Avenue and Kifer Road, if work vehicles or equipment are parked within 6 feet of a traffic lane, close the shoulder area with fluorescent orange traffic cones or portable delineators. Place the cones or delineators on a taper in advance of the parked vehicles or equipment and along the edge of the traveled way at 25-foot intervals to a point not less than 25 feet past the last vehicle or piece of equipment. Use at least 9 cones or delineators for the taper. Use a W20-1, "Road Work Ahead," W21-5b, "Right/Left Shoulder Closed Ahead," or C24(CA), "Shoulder Work Ahead," sign mounted on a crashworthy, portable sign support with flags. The sign must be 48 by 48 inches and placed as ordered by the Engineer. If a cone or delineator is displaced or overturned, immediately restore the device to its original position or location.

EXHIBIT A

Replace "Reserved" in section 12-4.05G with:

Chart no. 3 CompleteEast Hendy Avenue Closure Hours																										
County: Santa Clara								Route/Direction: Northbound and Southbound East Hendy Avenue								PM:										
Closure limits: from Kifer Road to HE Sta. 34+00																										
Hour	24	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
Mon- Thu	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
Fri	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
Sat	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
Sun	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
Legend:																										
C	Subject to the terms and provisions of section 10-1.02 of the RSS for section 10, as set forth in the Technical Specifications herein, East Hendy Avenue may be closed completely																									
REMARKS:																										
1. See Detour Plan (Sheet CS2) and Traffic Handling Plans (Sheet TH1 through TH3). 2. Complete closure of E. Hendy Avenue is permitted during Stages 1, 2, and 3, only. 3. ADA compliant pedestrian accessibility crossing E. Hendy Ave (at Kifer Road and at Abutment 6) shall be maintained at all times during complete closure. 4. Access for emergency vehicles from E. Hendy Ave to the Home Depot driveway shall be maintained at all times during complete closure.																										

EXHIBIT A

Chart no. 4 Complete Northbound Fair Oaks Avenue Closure Hours																											
County: Santa Clara										Route/Direction: Northbound Fair Oaks Avenue										PM:							
Closure limits: From East Evelyn Avenue to Kifer Road																											
Hour	24	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24		
Mon- Thu											C	C	C	C	C	C											
Fri											C	C	C	C	C	C											
Sat											C	C	C	C	C	C											
Sun											C	C	C	C	C	C											
<p>Legend:</p> <div style="display: flex; margin-bottom: 10px;"> <div style="border: 1px solid black; width: 20px; height: 15px; display: inline-block; margin-right: 5px;"></div> C Northbound Fair Oaks Avenue may be closed completely </div> <div style="display: flex;"> <div style="border: 1px solid black; width: 20px; height: 15px; display: inline-block; margin-right: 5px;"></div> No complete conventional highway closure is allowed </div>																											
<p>REMARKS:</p> <ol style="list-style-type: none"> 1. This chart is for use between FO Sta. 19+00 to 32+00, for the purpose of moving traffic control devices (such as K-Rail) between stages, only. 2. Complete closure of NB Fair Oaks Avenue, is permitted for a total of 5 occasions (maximum) for the purpose of moving traffic control devices between stages only. 3. Simultaneous complete closure (NB and SB) of Fair Oaks Avenue for the purpose of moving traffic control devices between stages is permitted, however, for an aggregate total of 5 weekends (maximum). See Chart #5. 																											

EXHIBIT A

14 ENVIRONMENTAL STEWARDSHIP

Replace the 2nd paragraph of section 14-8.02A with:

Do not exceed 86 dBA LMax at 50 feet from the job site activities from 9 p.m. to 6 a.m. except you may perform the following activities during the hours and for the days shown in the following table:

Noise Restriction Exceptions				
Activity	Hours		Days	
	From	To	From	Through
Night work required within PCJPB right-of-way	9 p.m.	6 a.m.	TBD	TBD
Night work required for removal of pedestrian overcrossing and removal of ramp structure adjacent to Home Depot	9 p.m.	6 a.m.	TBD	TBD

TBD - To be determined subject to coordination with PCJPB and approval of the Engineer.

Do not operate construction equipment or run the equipment engines from 7:00 p.m. to 7:00 a.m. or on Sundays except you may operate equipment within the project limits during these hours to:

1. Service, adjust or relocate traffic control facilities
2. Service construction equipment

EXHIBIT A
HENDY AVENUE CLOSURE DETOUR PLAN



EXHIBIT B

Recording Requested by:
City of Sunnyvale
Public Works Department

When recorded, mail to:

City of Sunnyvale
Public Works Department
PO Box 3707
Sunnyvale, CA 94088-3707

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

APN: 205-47-013
Project: Fair Oaks Avenue Overhead Bridge Widening Project
Federal Aid #: BHLS 5213 (039)

AERIAL EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **HD Development of Maryland, Inc., a Maryland corporation** (“Grantor”) hereby GRANT(s) to the **City of Sunnyvale, a municipal corporation** (“Grantee”), a non-exclusive Aerial Easement for freeway purposes to replace, inspect, maintain, repair, operate or remove an overhead freeway bridge, the bottom of which shall be at least 14.5 feet above the finished grade of that certain property (the “Easement Area”) situated in the City of Sunnyvale, County of Santa Clara, State of California and more particularly described on Exhibit “A” and depicted on Exhibit “B” attached hereto and made a part hereof. Grantor is the owner of the property described on Exhibit “C” attached hereto and made a part hereof (the “Property”), and the Easement Area is located on that portion of the Property described on Exhibit “A”.

The foregoing grant of easement shall be subject to the terms, restrictions, limitations and conditions contained in the Addendum to Easement Deed attached hereto as Exhibit “D” and made a part hereof.

Dated this _____ day of _____, 20__

HD Development of Maryland, Inc.,
a Maryland corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____ } S.S.

On _____ before me, _____ Notary Public,
personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT B

**CITY OF SUNNYVALE
CERTIFICATE OF ACCEPTANCE**

- INSERT HERE -

EXHIBIT B

EXHIBIT "A"

LEGAL DESCRIPTION

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of the lands described in that certain Grant Deed (Corrective) recorded on March 14, 2001 as Document No. 15591890 of Official Records of said county:

Commencing at the northeasterly corner of Parcel 6 as shown on that certain Record of Survey filed for record October 7, 1966 in Book 215 of Maps at Page 22, being also the northerly corner of the lands described in said Document No. 15591890;

Thence along the northwesterly line of said lands South $56^{\circ}59'45''$ West, 64.92 feet to the beginning of a tangent curve to the left, having a radius of 189.00 feet;

Thence along said curve through a central angle of $11^{\circ}01'31''$, an arc length of 36.37 feet to the **True Point of Beginning** of this description;

Thence leaving said northwesterly line the following fourteen (14) courses:

- 1) South $14^{\circ}53'11''$ West, 44.66 feet;
- 2) South $75^{\circ}05'37''$ East, 1.50 feet;
- 3) South $14^{\circ}53'11''$ West, 14.00 feet;
- 4) North $75^{\circ}05'37''$ West, 1.50 feet;
- 5) South $14^{\circ}53'11''$ West, 81.00 feet;
- 6) South $75^{\circ}05'37''$ East, 1.50 feet;
- 7) South $14^{\circ}53'11''$ West, 14.00 feet;
- 8) North $75^{\circ}05'37''$ West, 1.50 feet;
- 9) South $14^{\circ}53'11''$ West, 31.52 feet to the beginning of a tangent curve to the right having a radius of 1239.83 feet;
- 10) Along said curve through a central angle of $2^{\circ}21'59''$, an arc length of 51.21 feet;
- 11) South $72^{\circ}35'33''$ East, 1.51 feet;
- 12) South $17^{\circ}34'35''$ West, 14.00 feet;
- 13) North $72^{\circ}35'33''$ West, 1.51 feet to the beginning of a non-tangent curve concave easterly, having a radius of 1239.83 feet, from the center of said curve a radial line bears South $72^{\circ}06'00''$ East;
- 14) Along said curve through a central angle of $3^{\circ}17'30''$, an arc length of 71.23 feet to the general easterly line of said Parcel 6 (215 M 22);

Thence along said general easterly line the following three (3) courses:

- 1) North $67^{\circ}33'09''$ West, 4.31 feet;
- 2) North $14^{\circ}52'00''$ East, 279.62 feet to the beginning of a tangent curve to the right having a radius of 77.00 feet;
- 3) Along said curve through a central angle of $30^{\circ}15'50''$, an arc length of 40.67 feet to the beginning of a compound curve having a radius of 189.00 feet, from the center of said curve a radial line bears North $44^{\circ}52'10''$ West;
- 4) Along said curve through a central angle of $0^{\circ}49'42''$, an arc length of 2.73 feet to the **True Point of Beginning**.

Containing an area of 3,366 square feet or 0.077 acres more or less.

EXHIBIT B

EXHIBIT “B”

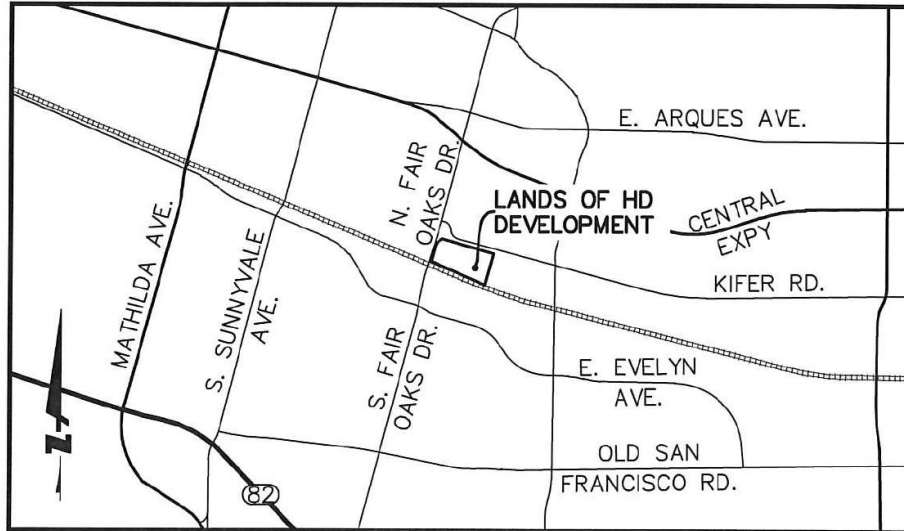
DEPICTION

[attached]

EXHIBIT B

AERIAL EASEMENT

BEING A PORTION OF THE LANDS OF HD DEVELOPMENT OF MARYLAND, INC. AS DESCRIBED
IN THAT CERTAIN GRANT DEED (CORRECTIVE) RECORDED AS DOCUMENT NO. 15591890



LINE TABLE		
	DIRECTION	LENGTH
L1	S14°53'11"W	44.66
L2	S75°05'37"E	1.50
L3	N75°05'37"W	1.50
L4	S75°05'37"E	1.50
L5	N75°05'37"W	1.50
L6	S14°53'11"W	31.52
L7	S72°35'33"E	1.51
L8	N72°35'33"W	1.51
L9	N67°33'09"W	4.31

CURVE TABLE			
	RADIUS	DELTA	LENGTH
C1	189.00	11°01'31"	36.37
C2	1239.83	2°21'59"	51.21
C3	1239.83	3°17'30"	71.23
C4	77.00	30°15'50"	40.67
C5	189.00	0°49'42"	2.73

BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF
FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN
PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985,
IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

LEGEND

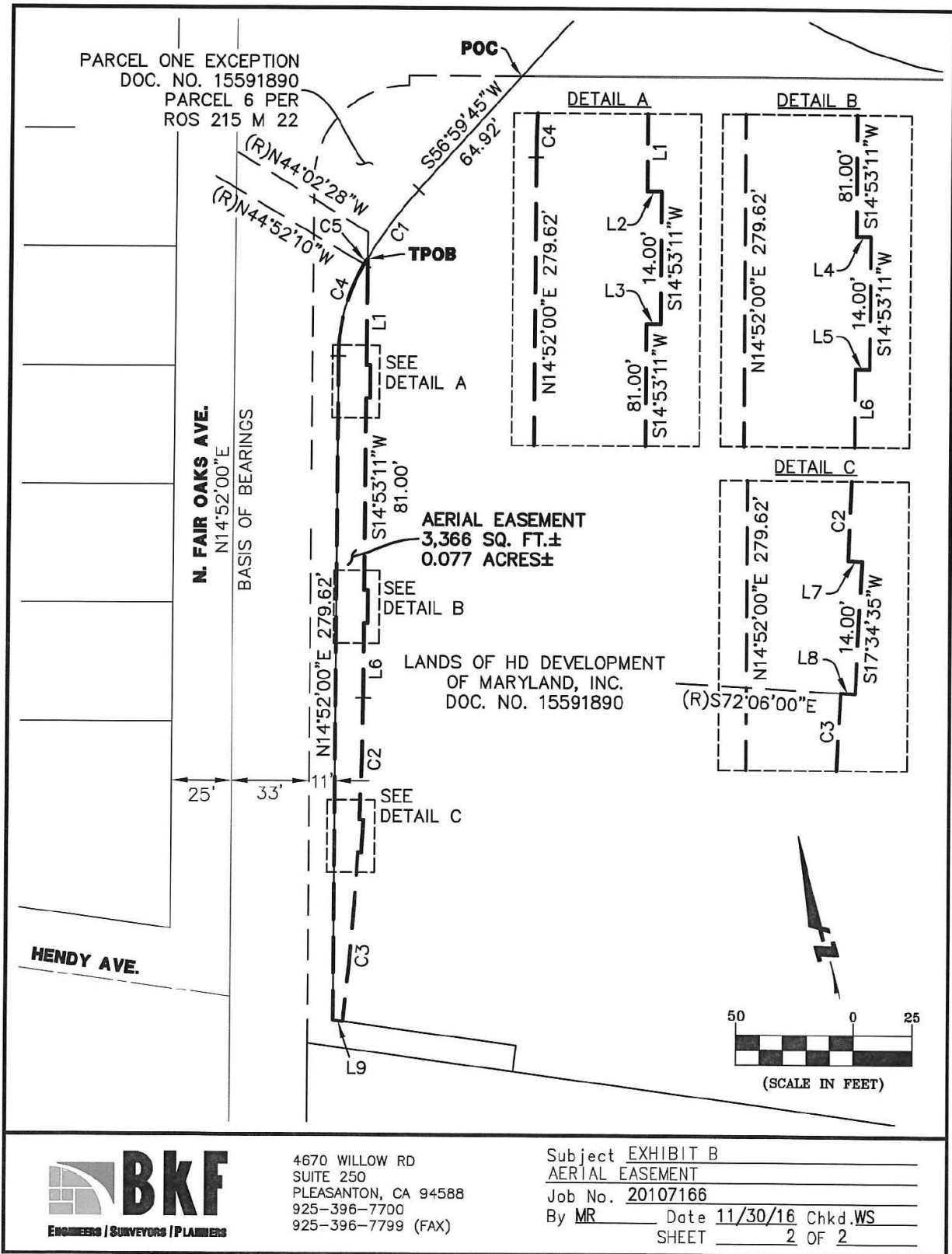
POC = POINT OF COMMENCEMENT
M = BOOK AND PAGE OF MAPS
TPOB = TRUE POINT OF BEGINNING



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
AERIAL EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 1 OF 2

EXHIBIT B



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
AERIAL EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 2 OF 2

EXHIBIT B

EXHIBIT "C"

LEGAL DESCRIPTION OF PROPERTY

REAL property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at the intersection of the center line of Hendy Avenue, with the center line of Fair Oaks Avenue; thence along said line of Fair Oaks Avenue North 14° 52' East 474.74 feet to the Northwesterly prolongation of the Southwesterly line of Tract No. 214 Victory Village Map No. 2, as said Map was filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on October 4, 1943 in Book 7 of Maps, page 37; thence leaving the centerline of Fair Oaks Avenue and running along the Southwesterly line of said Tract No. 214 Victory Village Map No. 2 and the Northwesterly prolongation thereof, South 75° 08' East 833 feet, South 14° 52' West 30 feet and South 78° 08' East 152.54 feet to the East line of the City of Sunnyvale; thence parallel with the center line of Fair Oaks Avenue, South 14° 52' West 575 feet more or less, to the center line of Hendy Avenue, thence along the center line of Hendy Avenue North 67° 32' West 994.58 feet to the point of beginning, being a part of Lot 17, 18, 19 and 20 as shown upon that certain Map entitled, "Map of Crossman Subdivision No. 4 Part of Lot 1 of the Murphy Partition, in the Rancho Pastoria De Las Borregas, as recorded in Book "G" of Maps, pages 74 and 75, Santa Clara County Records" and which said map was filed for record in the Office of the County Recorder of Santa Clara County, California, on December 21, 1909 in Book "M" of Maps, page 88, and including therein a portion of the Northeasterly half of Hendy Avenue, now abandoned.

Excepting therefrom so much thereof as conveyed by California Cannery and Growers, a non-profit cooperative Association, successor by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, Page 714 as follows:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT B

LEGAL DESCRIPTION: (Continued)

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, at page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line of 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West having a radius of 40.00 feet, a central angle of 90° 00' and an arc length of 62.83 feet; thence South 14° 52' West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue, 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South 67° 32' East, along said Northerly line 88.00 feet; thence North 22° 28' East, 11.00 feet; thence North 67° 32' West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North 14° 52' East along last said parallel line, 279.90 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of 30° 15' 50" and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of 11° 51' 13" and an arc length of 39.10 feet; thence North 56° 59' 03" East, tangent to last said curve, 64.93 feet to the true point of beginning.

Parcel Two:

Beginning at the point of intersection of the Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue with the center line of Hendy Avenue, as the same is shown on the Map of Crossman Subdivision No. 4 which Map is on file in the Office of the Recorder of the County of Santa Clara, State of California, in Book "M" of Maps, page 88; thence along said center line of Hendy Avenue South 67° 32' East 994.58 feet to the Southeasterly terminus thereof in the Easterly line of Lot 1 of the Murphy Partition in the Rancho Pastoria De Las Borregas according to the map thereof on file in Book "G" of Maps, pages 74 and 75, Santa Clara County Records; thence along the Easterly line of Lot 1, South

LEGAL DESCRIPTION: (Continued)

EXHIBIT B

LEGAL DESCRIPTION: (Continued)

13° 53' West 10 feet, more or less, to the Easterly corner of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation, to Southern Pacific Railroad Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records page 482, Santa Clara County Records; thence along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company, Northwesterly along a curve to the right, having a radius of 5470.56 feet from a tangent bearing North 70° 40' 38" West an arc distance of 104.44 feet; thence continuing along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company and along the Northeasterly line of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation to Southern Pacific Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records, page 480, Santa Clara County Records, North 68° 29' West 238.49 feet and North 67° 43' West 628.43 feet to said Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue; thence along said prolonged Southeasterly line of Fair Oaks Avenue, North 14° 52' East 15.14 feet to the point of beginning, and being a portion of the Southwesterly half of Hendy Avenue, now abandoned as shown on said Map of Crossman Subdivision No. 4 hereinabove referred to.

Excepting therefrom that portion thereof lying within the following described parcel of land conveyed by California Cannery and Growers, a non-profit Cooperative Association, successors by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, page 714, as follows:

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT B

LEGAL DESCRIPTION: (Continued)

having a radius of 40.00 feet, a central angle of $90^{\circ} 00'$ an arc length of 62.83 feet; thence South $14^{\circ} 52'$ West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South $67^{\circ} 32'$ East, along said Northerly line 88.00 feet; thence North $22^{\circ} 28'$ East, 11.00 feet; thence North $67^{\circ} 32'$ West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North $14^{\circ} 52'$ East along said parallel line, 279.00 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of $30^{\circ} 15' 50''$ and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of $11^{\circ} 51' 13''$ and an arc length of 39.10 feet; thence North $56^{\circ} 59' 03''$ East, tangent to last said curve, 64.93 feet to the true point of beginning.

APN: 205-47-013

ARB: 206-53-037

November 21, 1990

(K 504807 504807.C)

EXHIBIT B

EXHIBIT "D"

ADDENDUM TO EASEMENT DEED

The Aerial Easement Deed (the "Easement") to which this Addendum to Easement Deed (this "Addendum") is attached shall be subject to the terms, restrictions, limitations and conditions contained in this Addendum. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Easement. In the event of any inconsistency between the Easement and this Addendum, this Addendum shall govern and control.

1. No work pursuant to the Easement shall occur until the Temporary Construction Easement recorded concurrently herewith terminates. Grantee shall provide Grantor fifteen (15) days' prior written notice of Grantee's proposed commencement date for any work within the Easement Area, which notice shall include the name and contact information of the construction manager or other accountable construction person for Grantee or its contractor, a construction schedule, and any other information, materials and documentation reasonably requested by Grantor in connection therewith; provided, however, that for emergency repairs ("Emergency Repairs"), Grantee shall only be required to provide Grantor with as much notice as is reasonably possible. Notwithstanding the foregoing, so long as a home improvement store is being operated on the Property, in no event shall any work, except for Emergency Repairs, be performed on the Easement Area during the months of November, December, March, April or May without the prior written consent of Grantor, which consent may be withheld in Grantor's sole and absolute discretion. If Grantee requests such consent and Grantor does not respond to Grantee's request within twenty (20) days after Grantor's actual receipt of same, Grantee shall send a second request to Grantor requesting Grantor's approval, which request shall contain, in printed capital letters, the following statement: **"THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE DEEMED APPROVAL BY GRANTOR OF THE ACTION REQUESTED BY GRANTEE."** If Grantor does not respond to such second request for approval, within ten (10) days after Grantor's actual receipt of same, Grantee's request shall be deemed approved.

2. All work to be performed by Grantee and use of the Easement shall (a) be at Grantee's sole cost and expense, (b) be performed in accordance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof, (c) be performed in accordance with any reasonable safety requirements requested by Grantor, (d) not unreasonably interfere with the use, occupancy or enjoyment of any part of the Property or with normal operation of any business on the Property, (e) not unreasonably interfere, obstruct or delay any ingress, egress or access to or from the Property, or any part thereof, including, without limitation, ingress, egress and access for Grantor's customers or for the purposes of truck or vendor delivery, and (f) not cause or threaten to cause any of the Property or any building or other improvements located thereon to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

EXHIBIT B

3. Grantee shall indemnify and hold Grantor and its directors, officers, employees, agents, licensees, customers, invitees, lessees, concessionaires, successors and assigns (collectively, the "HD Indemnitees") harmless from and against all liabilities and claims, including any actions or proceedings brought against any of the HD Indemnitees, and all costs, expenses and liabilities (including reasonable attorneys' fees and costs) arising out of or resulting from any act or omission of Grantee or its agents, assigns, employees, contractors, subcontractors, or materialmen (and/or those claiming through any of them).

4. Grantee's project is a public works project governed by the Stop Payment Notice process pursuant to California Civil Code section 8044 *et seq.* for non-payment of work performed on Grantee's project. Accordingly, none of the project contractors, subcontractors or material suppliers shall be allowed to place a mechanics' lien on the Property, and the Stop Payment Notice procedure is the exclusive remedy for claims arising out of Grantee's project. Notwithstanding the foregoing, if a mechanics' or materialmans' lien is recorded against or becomes an encumbrance on the Property as a result of any act or omission of Grantee, Grantee shall, within thirty (30) days of the recording of such lien, obtain by discharge, bond or otherwise, the release of any such lien as an encumbrance on the Property. Grantee shall indemnify and hold Grantor harmless against any such liens and from any and all expense and liability in connection therewith including, but not limited to, attorneys' fees and court costs resulting therefrom. If Grantee fails to obtain the release of any such lien within said thirty (30) day period, Grantor may, at its option, bond for and/or otherwise obtain the release of any such lien, in which event Grantee shall, within ten (10) days of its receipt of a written request therefor, reimburse Grantor for all costs and expenses incurred by Grantor in obtaining such bond or release.

5. Grantee acknowledges that this Easement is non-exclusive and Grantor reserves the right to use the Easement Area in any manner not inconsistent with the Easement as provided herein.

6. Grantee hereby agrees that the rights hereunder shall not be assigned or sublet without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion.

7. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail (sent no later than 5:00 PM Pacific Standard Time, otherwise notice will be effective the following business day), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantor:	HD Development of Maryland, Inc. 2455 Paces Ferry Road, C-19 Atlanta, GA 30339 Attn: Property Management, Mary Beth Lamoree Telephone Number: (770) 433-8211 Email: Mary_Beth_Lamoree@homedepot.com
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EXHIBIT B

and to: HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-20
Atlanta, GA 30339
Attn: Suzanne Russo, Esq.
Telephone Number: (770) 384-2406
Email: Suzanne_Russo@homedepot.com

If to Grantee: City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086
Attn: Assistant Director/City Engineer Jennifer Ng
Telephone Number: (408) 730-7430

or to such other address as Grantor or Grantee may from time to time designate by notice in writing to the other party. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

8. The Easement and this Addendum shall be construed in accordance with the laws of the State of California, without regard to conflicts laws or choice of law rules thereof.

EXHIBIT C

Recording Requested by:
City of Sunnyvale
Public Works Department

When recorded, mail to:

**City of Sunnyvale
Public Works Department
PO Box 3707
Sunnyvale, CA 94088-3707**

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

APN: 205-47-013
Project: Fair Oaks Avenue Overhead Bridge Widening Project
Federal Aid #: BHLS 5213 (039)

PUBLIC UTILITY EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **HD Development of Maryland, Inc., a Maryland corporation** (“Grantor”) hereby GRANT(s) to the **City of Sunnyvale, a municipal corporation** (“Grantee”), a non-exclusive Public Utility Easement for the right to install, repair, maintain, operate, renew and replace below grade sanitary sewer and storm drain collection systems, water distribution systems, electric facilities, public utilities facilities, telecommunications, and appurtenances incidental thereto, in, across, and upon that certain property (the “Easement Area”) situated in the City of Sunnyvale, County of Santa Clara, State of California and more particularly described on Exhibit “A” and depicted on Exhibit “B” attached hereto and made a part hereof. Grantor is the owner of the property described on Exhibit “C” attached hereto and made a part hereof (the “Property”), and the Easement Area is located on that portion of the Property described on Exhibit “A”.

The foregoing grant of easement shall be subject to the terms, restrictions, limitations and conditions contained in the Addendum to Easement Deed attached hereto as Exhibit “D” and made a part hereof.

Dated this _____ day of _____, 20__

HD Development of Maryland, Inc.,
a Maryland corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT C
ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____ } S.S.

On _____ before me, _____ Notary Public,
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT C

**CITY OF SUNNYVALE
CERTIFICATE OF ACCEPTANCE**

- INSERT HERE -

EXHIBIT C

EXHIBIT "A"

LEGAL DESCRIPTION

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of the lands described in that certain Grant Deed (Corrective) recorded on March 14, 2001 as Document No. 15591890 of Official Records of said county:

Commencing at the northeasterly corner of Parcel 6 as shown on that certain Record of Survey filed for record October 7, 1966 in Book 215 of Maps at Page 22, being also the northerly corner of the lands described in said Document No. 15591890;

Thence along the northeasterly line of said lands South 75°08'00" East, 4.65 feet to the **True Point of Beginning** of this description;

Thence continuing along said northeasterly line, South 75°08'00" East, 13.74 feet;

Thence leaving said northeasterly line the following two (2) courses:

- 1) South 55°00'41" West, 103.48 feet;
- 2) South 14°48'44" West, 322.84 feet to the southerly line of the lands described in said Document No. 15591890;

Thence along said southerly line, North 67°33'09" West, 29.33 feet to the southeasterly corner of said Parcel 6 (215 M 22);

Thence continuing along said general easterly line, North 14°52'00" East, 65.86 feet;

Thence leaving said general easterly line and along said area the following eleven (11) courses:

- 1) South 72°35'33" East, 12.58 feet;
- 2) North 17°24'27" East, 7.00 feet;
- 3) South 72°35'33" East, 6.13 feet;
- 4) North 14°48'44" East, 138.86 feet;
- 5) North 75°11'16" West, 5.00 feet;
- 6) North 14°48'44" East, 21.50 feet;
- 7) South 75°11'16" East, 5.00 feet;
- 8) North 14°48'44" East, 90.24 feet;
- 9) North 55°00'41" East, 88.97 feet;
- 10) North 34°59'19" West, 0.50 feet;
- 11) North 55°00'41" East, 9.32 feet to the **True Point of Beginning**.

Containing an area of 5,676 square feet or 0.130 acres more or less.

EXHIBIT C

EXHIBIT “B”

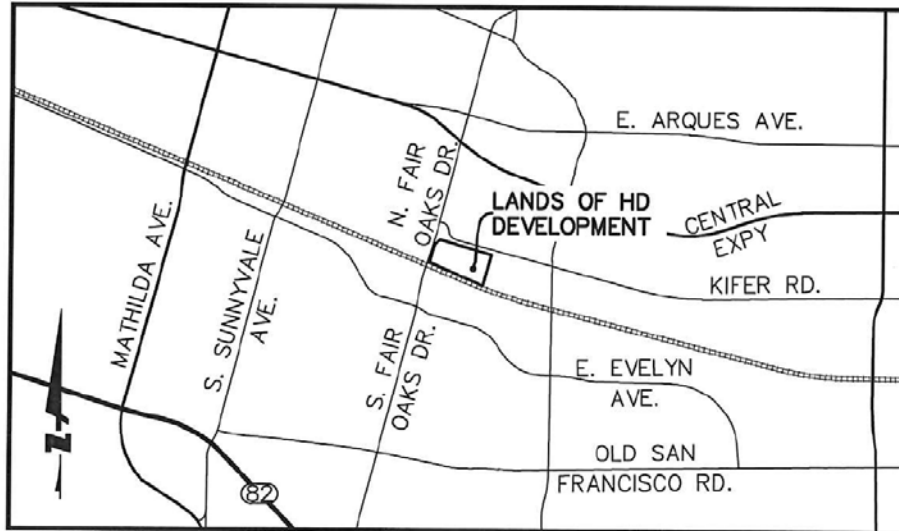
DEPICTION

[attached]

EXHIBIT C

PUBLIC UTILITY EASEMENT

BEING A PORTION OF THE LANDS OF HD DEVELOPMENT OF MARYLAND, INC. AS DESCRIBED
IN THAT CERTAIN GRANT DEED (CORRECTIVE) RECORDED AS DOCUMENT NO. 15591890



BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF
FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN
PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985,
IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

LEGEND

M = BOOK AND PAGE OF MAPS
POC = POINT OF COMMENCEMENT
P.U.E. = PUBLIC UTILITY EASEMENT
ROS = RECORD OF SURVEY
TPOB = TRUE POINT OF BEGINNING



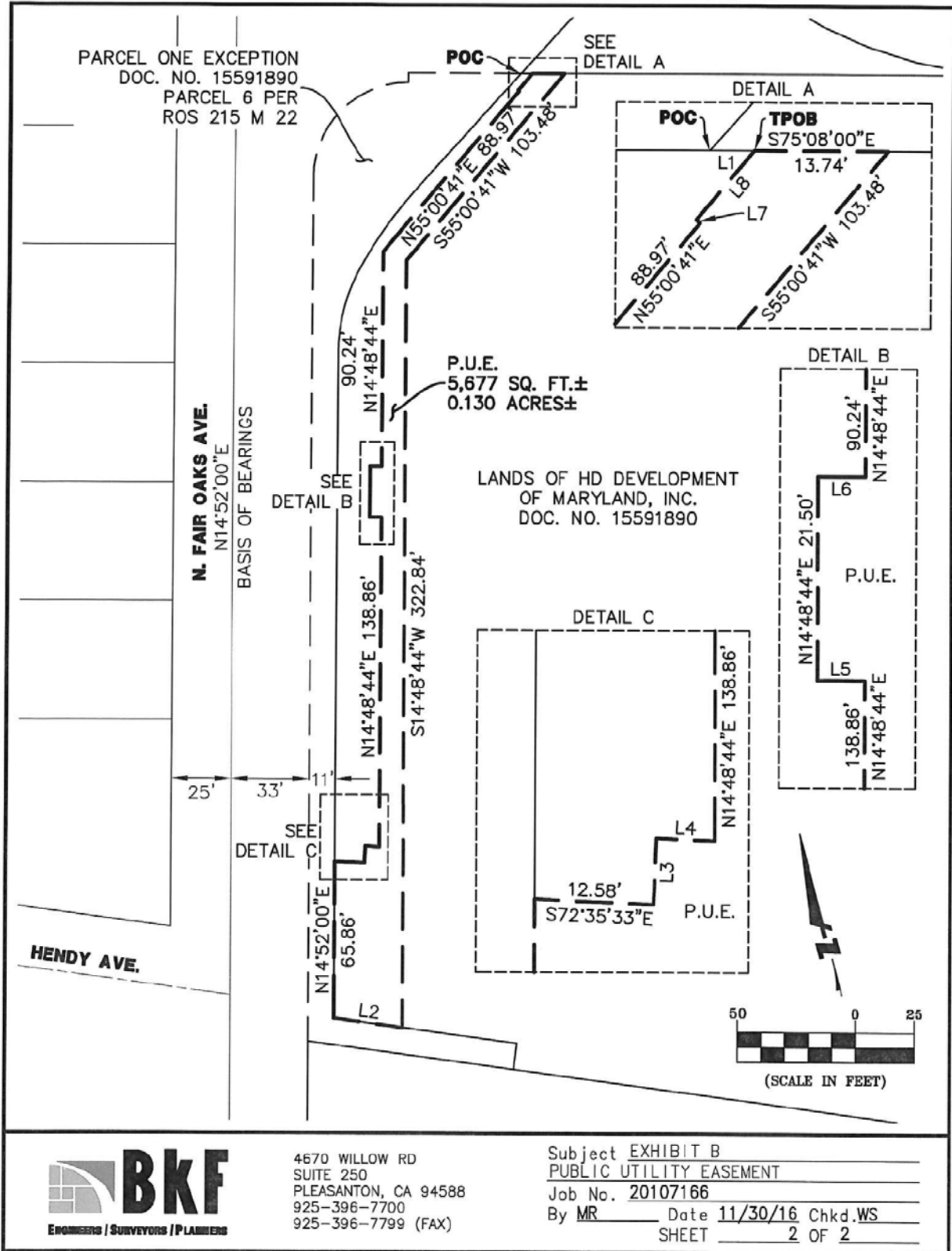
LINE TABLE		
	DIRECTION	LENGTH
L1	S75°08'00"E	4.65
L2	N67°33'09"W	29.33
L3	N17°24'27"E	7.00
L4	S72°35'33"E	6.13
L5	N75°11'16"W	5.00
L6	S75°11'16"E	5.00
L7	N34°59'19"W	0.50
L8	N55°00'41"E	9.32



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
PUBLIC UTILITY EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 1 OF 2

EXHIBIT C



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
PUBLIC UTILITY EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 2 OF 2

EXHIBIT C

EXHIBIT "C"

LEGAL DESCRIPTION OF PROPERTY

REAL property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at the intersection of the center line of Hendy Avenue, with the center line of Fair Oaks Avenue; thence along said line of Fair Oaks Avenue North 14° 52' East 474.74 feet to the Northwesternly prolongation of the Southwesterly line of Tract No. 214 Victory Village Map No. 2, as said Map was filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on October 4, 1943 in Book 7 of Maps, page 37; thence leaving the centerline of Fair Oaks Avenue and running along the Southwesterly line of said Tract No. 214 Victory Village Map No. 2 and the Northwesternly prolongation thereof, South 75° 08' East 833 feet, South 14° 52' West 30 feet and South 75° 08' East 152.54 feet to the East line of the City of Sunnyvale; thence parallel with the center line of Fair Oaks Avenue, South 14° 52' West 575 feet more or less, to the center line of Hendy Avenue, thence along the center line of Hendy Avenue North 67° 32' West 994.58 feet to the point of beginning, being a part of Lot 17, 18, 19 and 20 as shown upon that certain Map entitled, "Map of Crossman Subdivision No. 4 Part of Lot 1 of the Murphy Partition, in the Rancho Pastoria De Las Borregas, as recorded in Book "G" of Maps, pages 74 and 75, Santa Clara County Records" and which said map was filed for record in the Office of the County Recorder of Santa Clara County, California, on December 21, 1909 in Book "M" of Maps, page 88, and including therein a portion of the Northeastly half of Hendy Avenue, now abandoned.

Excepting therefrom so much thereof as conveyed by California Cannery and Growers, a non-profit cooperative Association, successor by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, Page 714 as follows:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT C

LEGAL DESCRIPTION: (Continued)

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, at page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line of 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West having a radius of 40.00 feet, a central angle of 90° 00' and an arc length of 62.83 feet; thence South 14° 52' West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue, 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South 67° 32' East, along said Northerly line 88.00 feet; thence North 22° 28' East, 11.00 feet; thence North 67° 32' West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North 14° 52' East along last said parallel line, 279.90 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of 30° 15' 50" and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of 11° 51' 13" and an arc length of 39.10 feet; thence North 56° 59' 03" East, tangent to last said curve, 64.93 feet to the true point of beginning.

Parcel Two:

Beginning at the point of intersection of the Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue with the center line of Hendy Avenue, as the same is shown on the Map of Crossman Subdivision No. 4 which Map is on file in the Office of the Recorder of the County of Santa Clara, State of California, in Book "M" of Maps, page 88; thence along said center line of Hendy Avenue South 67° 32' East 994.58 feet to the Southeasterly terminus thereof in the Easterly line of Lot 1 of the Murphy Partition in the Rancho Pastoria De Las Borregas according to the map thereof on file in Book "G" of Maps, pages 74 and 75, Santa Clara County Records; thence along the Easterly line of Lot 1, South

LEGAL DESCRIPTION: (Continued)

EXHIBIT C

LEGAL DESCRIPTION: (Continued)

13° 53' West 10 feet, more or less, to the Easterly corner of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation, to Southern Pacific Railroad Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records page 482, Santa Clara County Records; thence along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company, Northwesterly along a curve to the right, having a radius of 5470.56 feet from a tangent bearing North 70° 40' 38" West an arc distance of 104.44 feet; thence continuing along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company and along the Northeasterly line of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation to Southern Pacific Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records, page 480, Santa Clara County Records, North 68° 29' West 238.49 feet and North 67° 43' West 628.43 feet to said Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue; thence along said prolonged Southeasterly line of Fair Oaks Avenue, North 14° 52' East 15.14 feet to the point of beginning, and being a portion of the Southwesterly half of Hendy Avenue, now abandoned as shown on said Map of Crossman Subdivision No. 4 hereinabove referred to.

Excepting therefrom that portion thereof lying within the following described parcel of land conveyed by California Cannery and Growers, a non-profit Cooperative Association, successors by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, page 714, as follows:

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT C

LEGAL DESCRIPTION: (Continued)

having a radius of 40.00 feet, a central angle of $90^{\circ} 00'$ an arc length of 62.83 feet; thence South $14^{\circ} 52'$ West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South $67^{\circ} 32'$ East, along said Northerly line 88.00 feet; thence North $22^{\circ} 28'$ East, 11.00 feet; thence North $67^{\circ} 32'$ West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North $14^{\circ} 52'$ East along said parallel line, 279.00 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of $30^{\circ} 15' 50''$ and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of $11^{\circ} 51' 13''$ and an arc length of 39.10 feet; thence North $56^{\circ} 59' 03''$ East, tangent to last said curve, 64.93 feet to the true point of beginning.

APN: 205-47-013

ARB: 206-53-037

November 21, 1990

(K 504807 504807.C)

EXHIBIT C

EXHIBIT "D"

ADDENDUM TO EASEMENT DEED

The Public Utility Easement Deed (the "Easement") to which this Addendum to Easement Deed (this "Addendum") is attached shall be subject to the terms, restrictions, limitations and conditions contained in this Addendum. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Easement. In the event of any inconsistency between the Easement and this Addendum, this Addendum shall govern and control.

1. No work pursuant to the Easement shall occur until the Temporary Construction Easement recorded concurrently herewith terminates. Grantee shall provide Grantor fifteen (15) days' prior written notice of Grantee's proposed commencement date for any work within the Easement Area, which notice shall include the name and contact information of the construction manager or other accountable construction person for Grantee or its contractor, a construction schedule, and any other information, materials and documentation reasonably requested by Grantor in connection therewith; provided, however, that for emergency repairs ("Emergency Repairs"), Grantee shall only be required to provide Grantor with as much notice as is reasonably possible. Notwithstanding the foregoing, so long as a home improvement store is being operated on the Property, in no event shall any work, except for Emergency Repairs, be performed on the Easement Area during the months of November, December, March, April or May without the prior written consent of Grantor, which consent may be withheld in Grantor's sole and absolute discretion. If Grantee requests such consent and Grantor does not respond to Grantee's request within twenty (20) days after Grantor's actual receipt of same, Grantee shall send a second request to Grantor requesting Grantor's approval, which request shall contain, in printed capital letters, the following statement: **"THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE DEEMED APPROVAL BY GRANTOR OF THE ACTION REQUESTED BY GRANTEE."** If Grantor does not respond to such second request for approval, within ten (10) days after Grantor's actual receipt of same, Grantee's request shall be deemed approved. Notwithstanding the Grantee notification process detailed above, (a) Pacific Bell Telephone Company, d/b/a AT&T California ("AT&T") shall have unrestricted access to its two (2) manhole access points located within the Easement Area, and (b) Pacific Gas and Electric Company ("PG&E") shall have unrestricted access to its one (1) manhole access point located within the Easement Area, each as more particularly described in Attachment 1 of this Exhibit D, at all times throughout the year so long as AT&T or PG&E, as applicable, (i) delivers at least seventy-two (72) hours written notice to Grantor's Local Contact in accordance with the terms and provisions of Section 9 below and (ii) complies with Section 2 of this Addendum.

2. All work to be performed by Grantee and use of the Easement shall (a) be at Grantee's sole cost and expense, (b) be performed in accordance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof, (c) be performed in accordance with any reasonable safety requirements requested by Grantor, (d) not unreasonably interfere with the use, occupancy or enjoyment of any part of the Property or with normal operation of any business on the Property, (e) not unreasonably interfere, obstruct or delay any ingress, egress or access to or from the

EXHIBIT C

Property, or any part thereof, including, without limitation, ingress, egress and access for Grantor's customers or for the purposes of truck or vendor delivery, and (f) not cause or threaten to cause any of the Property or any building or other improvements located thereon to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

3. Grantee shall indemnify and hold Grantor and its directors, officers, employees, agents, licensees, customers, invitees, lessees, concessionaires, successors and assigns (collectively, the "HD Indemnitees") harmless from and against all liabilities and claims, including any actions or proceedings brought against any of the HD Indemnitees, and all costs, expenses and liabilities (including reasonable attorneys' fees and costs) arising out of or resulting from any act or omission of Grantee or its agents, assigns, employees, contractors, subcontractors, or materialmen (and/or those claiming through any of them).

4. Upon completion of any work in the Easement Area, Grantee shall, at its sole cost and expense, restore any area affected thereby using materials and design standards which equal or exceed those originally used for such affected area. Within thirty (30) days after the completion of such restoration, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor that the materials and design standards used with respect to such restoration equal or exceed those originally used and any other information, materials and documentation reasonably requested by Grantor in connection therewith. In the event Grantee fails to perform any restoration as required hereunder, Grantor may notify Grantee of the breach and/or the deficiencies in the restoration. If such breach is not cured, and/or such deficiencies are not corrected by Grantee within five (5) days after receipt such notice, then Grantor shall have the right to immediately cure such breach and/or correct such deficiencies and recover all costs and expenses related thereto from Grantee within ten (10) days after Grantor delivers written notice to Grantee of any claim for reimbursement of such costs and expenses. Notwithstanding the foregoing, in the event such breach and/or such deficiencies create an imminent danger of damage to persons or property, or jeopardizes the continuance of business operations on the Property, no such notice shall be required to be provided to Grantee prior to Grantor having the right to cure such breach and/or correct such deficiencies and recover all costs and expenses related thereto from Grantee pursuant to the foregoing sentence.

5. Grantee's project is a public works project governed by the Stop Payment Notice process pursuant to California Civil Code section 8044 *et seq.* for non-payment of work performed on Grantee's project. Accordingly, none of the project contractors, subcontractors or material suppliers shall be allowed to place a mechanics' lien on the Property, and the Stop Payment Notice procedure is the exclusive remedy for claims arising out of Grantee's project. Notwithstanding the foregoing, if a mechanics' or materialmans' lien is recorded against or becomes an encumbrance on the Property as a result of any act or omission of Grantee, Grantee shall, within thirty (30) days of the recording of such lien, obtain by discharge, bond or otherwise, the release of any such lien as an encumbrance on the Property. Grantee shall indemnify and hold Grantor harmless against any such liens and from any and all expense and liability in connection therewith including, but not limited to, attorneys' fees and court costs resulting therefrom. If Grantee fails to obtain the release of any such lien within said thirty (30) day period, Grantor may, at its option, bond for and/or otherwise obtain the release of any such

EXHIBIT C

lien, in which event Grantee shall, within ten (10) days of its receipt of a written request therefor, reimburse Grantor for all costs and expenses incurred by Grantor in obtaining such bond or release.

6. Grantee hereby agrees that its improvements will be constructed underground within the Easement Area and will not interfere with Grantor's use of the Property.

7. Grantee acknowledges that this Easement is non-exclusive and Grantor reserves the right to use the Easement Area in any manner not inconsistent with the Easement as provided herein, including, without limitation, for parking spaces, drive aisles, landscaping (excluding trees) and ingress and egress to and from public streets.

8. Grantee hereby agrees that the rights hereunder shall not be assigned or sublet without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion; provided, however, that Grantee may, after advance written notice to Grantor, assign the rights hereunder to public utility companies providing the same public utilities expressly authorized by this Easement.

9. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail (sent no later than 5:00 PM Pacific Standard Time, otherwise notice will be effective the following business day), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantor:

HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-19
Atlanta, GA 30339
Attn: Property Management, Mary Beth Lamoree
Telephone Number: (770) 433-8211
Email: Mary_Beth_Lamoree@homedepot.com

and to:

HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-20
Atlanta, GA 30339
Attn: Suzanne Russo, Esq.
Telephone Number: (770) 384-2406
Email: Suzanne_Russo@homedepot.com

If to Grantor's Local Contact:

HD Development of Maryland, Inc.
680 Kifer Road
Sunnyvale, CA 94086
Attn: Property Management, Store No. 0640
Telephone Number: (408) 245-3686

If to Grantee:

City of Sunnyvale

EXHIBIT C

456 W. Olive Avenue
Sunnyvale, CA 94086
Attn: Assistant Director/
City Engineer Jennifer Ng
Telephone Number: (408) 730-7430

or to such other address as Grantor or Grantee may from time to time designate by notice in writing to the other party. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

10. The Easement and this Addendum shall be construed in accordance with the laws of the State of California, without regard to conflicts laws or choice of law rules thereof.

EXHIBIT C

**ATTACHMENT “1”
TO EXHIBIT “D”
[see attached]**

LOCATION OF MANHOLE ACCESS POINTS

EXHIBIT C

FAIR OAKS AVE

HENDY AVE

AT&T MANHOLE
ACCESS LOCATION

PUE

PG&E MANHOLE
ACCESS LOCATION

AT&T MANHOLE
ACCESS LOCATION

205-47-013
HD DEVELOPMENT
OF MARYLAND, INC.



(SCALE IN FEET)



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

C-17

Subject **ATTACHMENT 1 TO EXHIBIT D**
MANHOLE ACCESS LOCATIONS

Job No. **20107166**

By **CC** Date **5/18/18** Chkd. **CC**

SHEET **1** OF **1**

EXHIBIT D

Recording Requested by:
City of Sunnyvale
Public Works Department

When recorded, mail to:

City of Sunnyvale
Public Works Department
PO Box 3707
Sunnyvale, CA 94088-3707

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

APN: 205-47-013
Project: Fair Oaks Avenue Overhead Bridge Widening Project
Federal Aid #: BHLS 5213 (039)

FOUNDATION EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **HD Development of Maryland, Inc., a Maryland corporation** (“Grantor”) hereby GRANT(s) to the **City of Sunnyvale, a municipal corporation** (“Grantee”), a non-exclusive Foundation Easement for the right to maintain and repair certain foundation infrastructure, including columns, footings and any and all appurtenances thereto, for the purpose of supporting an overhead freeway bridge, over, across, and upon that certain property (the “Easement Area”) situated in the City of Sunnyvale, County of Santa Clara, State of California and more particularly described on Exhibit “A” and depicted on Exhibit “B” attached hereto and made a part hereof. Grantor is the owner of the property described on Exhibit “C” attached hereto and made a part hereof (the “Property”), and the Easement Area is located on that portion of the Property described on Exhibit “A”.

The foregoing grant of easement shall be subject to the terms, restrictions, limitations and conditions contained in the Addendum to Easement Deed attached hereto as Exhibit “D” and made a part hereof.

Dated this _____ day of _____, 20__

HD Development of Maryland, Inc.,
a Maryland corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT D
ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____ } S.S.

On _____ before me, _____ Notary Public,
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT D

**CITY OF SUNNYVALE
CERTIFICATE OF ACCEPTANCE**

- INSERT HERE -

EXHIBIT D

EXHIBIT "A"

LEGAL DESCRIPTION

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of the lands described in that certain Grant Deed (Corrective) recorded on March 14, 2001 as Document No. 15591890 of Official Records of said county:

PARCEL 1

Commencing at the northeasterly corner of Parcel 6 as shown on that certain Record of Survey filed for record October 7, 1966 in Book 215 of Maps at Page 22, being also the northerly corner of the lands described in said Document No. 15591890;

Thence along the northwesterly line of said lands the following three (3) courses:

- 1) South 56°59'45" West, 64.92 feet to the beginning of a tangent curve to the left, having a radius of 189.00 feet;
- 2) Along said curve through a central angle of 11°51'13", an arc length of 39.10 feet to the beginning of a compound curve, having a radius of 77.00 feet, from the center of said curve a radial line bears North 44°52'10" West;
- 3) Along said curve through a central angle of 29°08'48", an arc length of 39.17 feet to the **True Point of Beginning** of this description;

Thence leaving said northwesterly line the following (3) courses:

- 1) South 75°05'37" East, 14.53 feet;
- 2) South 14°54'23" West, 24.00 feet;
- 3) North 75°05'37" West, 14.53 feet to said northwesterly line;

Thence along said northwesterly line, North 14°52'00" East, 22.50 feet to the beginning of a tangent curve to the right, having a radius of 77.00 feet;

Thence along said curve through a central angle of 1°07'02", an arc length of 1.50 feet to the **True Point of Beginning**.

Containing an area of 349 square feet more or less.

PARCEL 2

Commencing at the northeasterly corner of Parcel 6 as shown on that certain Record of Survey filed for record October 7, 1966 in Book 215 of Maps at Page 22, being also the northerly corner of the lands described in said Document No. 15591890;

Thence along the northwesterly line of said lands the following five (5) courses:

- 1) South 56°59'45" West, 64.92 feet to the beginning of a tangent curve to the left, having a radius of 189.00 feet;
- 2) Along said curve through a central angle of 11°51'13", an arc length of 39.10 feet to the beginning of a compound curve, having a radius of 77.00 feet, from the center of said curve a radial line bears North 44°52'10" West;
- 3) Along said curve through a central angle of 30°15'50", an arc length of 40.67 feet;
- 4) South 14°52'00" West, 22.50 feet to the southwesterly corner of the above described Parcel 2;
- 5) South 14°52'00" West, 71.00 feet to the **True Point of Beginning** of this description;

Thence leaving said northwesterly line the following three (3) courses:

EXHIBIT D

- 1) South 75°05'37" East, 14.51 feet;
- 2) South 14°54'23" West, 24.00 feet;
- 3) North 75°05'37" West, 14.50 feet to said northwesterly line;

Thence along said northwesterly line, North 14°52'00" East, 24.00 feet to the **True Point of Beginning**.

Containing an area of 348 square feet more or less.

PARCEL 3

Commencing at the northeasterly corner of Parcel 6 as shown on that certain Record of Survey filed for record October 7, 1966 in Book 215 of Maps at Page 22, being also the northerly corner of the lands described in said Document No. 15591890;

Thence along the northwesterly line of said lands the following seven (7) courses:

- 1) South 56°59'45" West, 64.92 feet to the beginning of a tangent curve to the left, having a radius of 189.00 feet;
- 2) Along said curve through a central angle of 11°51'13", an arc length of 39.10 feet to the beginning of a compound curve, having a radius of 77.00 feet, from the center of said curve a radial line bears North 44°52'10" West;
- 3) Along said curve through a central angle of 30°15'50", an arc length of 40.67 feet;
- 4) South 14°52'00" West, 22.50 feet to the southwesterly corner of the above described Parcel 2;
- 5) South 14°52'00" West, 71.00 feet to the northwesterly corner of the above described Parcel 3;
- 6) South 14°52'00" West, 24.00 feet to the southwesterly corner of the above described Parcel 3;
- 7) South 14°52'00" West, 72.24 feet to the **True Point of Beginning** of this description;

Thence leaving said northwesterly line the following three (3) courses:

- 1) South 72°35'33" East, 13.65 feet;
- 2) South 17°25'44" West, 24.00 feet;
- 3) North 72°35'33" West, 12.58 feet to said northwesterly line;

Thence along said northwesterly line, North 14°52'00" East, 24.02 feet to the **True Point of Beginning**.

Containing an area of 315 square feet more or less.

EXHIBIT D

EXHIBIT “B”

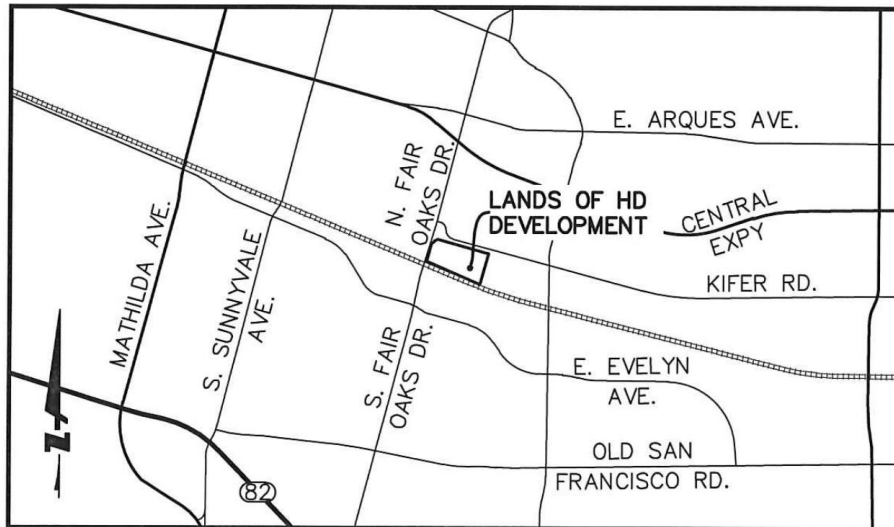
DEPICTION

[attached]

EXHIBIT D

FOUNDATION EASEMENT

BEING A PORTION OF THE LANDS OF HD DEVELOPMENT OF MARYLAND, INC. AS DESCRIBED
IN THAT CERTAIN GRANT DEED (CORRECTIVE) RECORDED AS DOCUMENT NO. 15591890



LINE TABLE		
	DIRECTION	LENGTH
L1	S75°05'37"E	14.53
L2	S14°54'23"W	24.00
L3	N75°05'37"W	14.53
L4	N14°52'00"E	22.50
L5	S75°05'37"E	14.51
L6	S14°54'23"W	24.00
L7	N75°05'37"W	14.50
L8	N14°52'02"E	24.00
L9	S72°35'33"E	13.65
L10	S17°25'44"W	24.00
L11	N72°35'33"W	12.58
L12	N14°52'00"E	24.02

CURVE TABLE			
	RADIUS	DELTA	LENGTH
C1	189.00	11°01'31"	36.37
C2	77.00	29°08'48"	39.17
C3	77.00	30°15'50"	40.67
C4	77.00	1°07'02"	1.50

BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF
FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN
PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985,
IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

LEGEND

F.E. = FOUNDATION EASEMENT
M = BOOK AND PAGE OF MAPS
POC = POINT OF COMMENCEMENT
ROS = RECORD OF SURVEY
TPOB = TRUE POINT OF BEGINNING



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
FOUNDATION EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 1 OF 2

EXHIBIT D

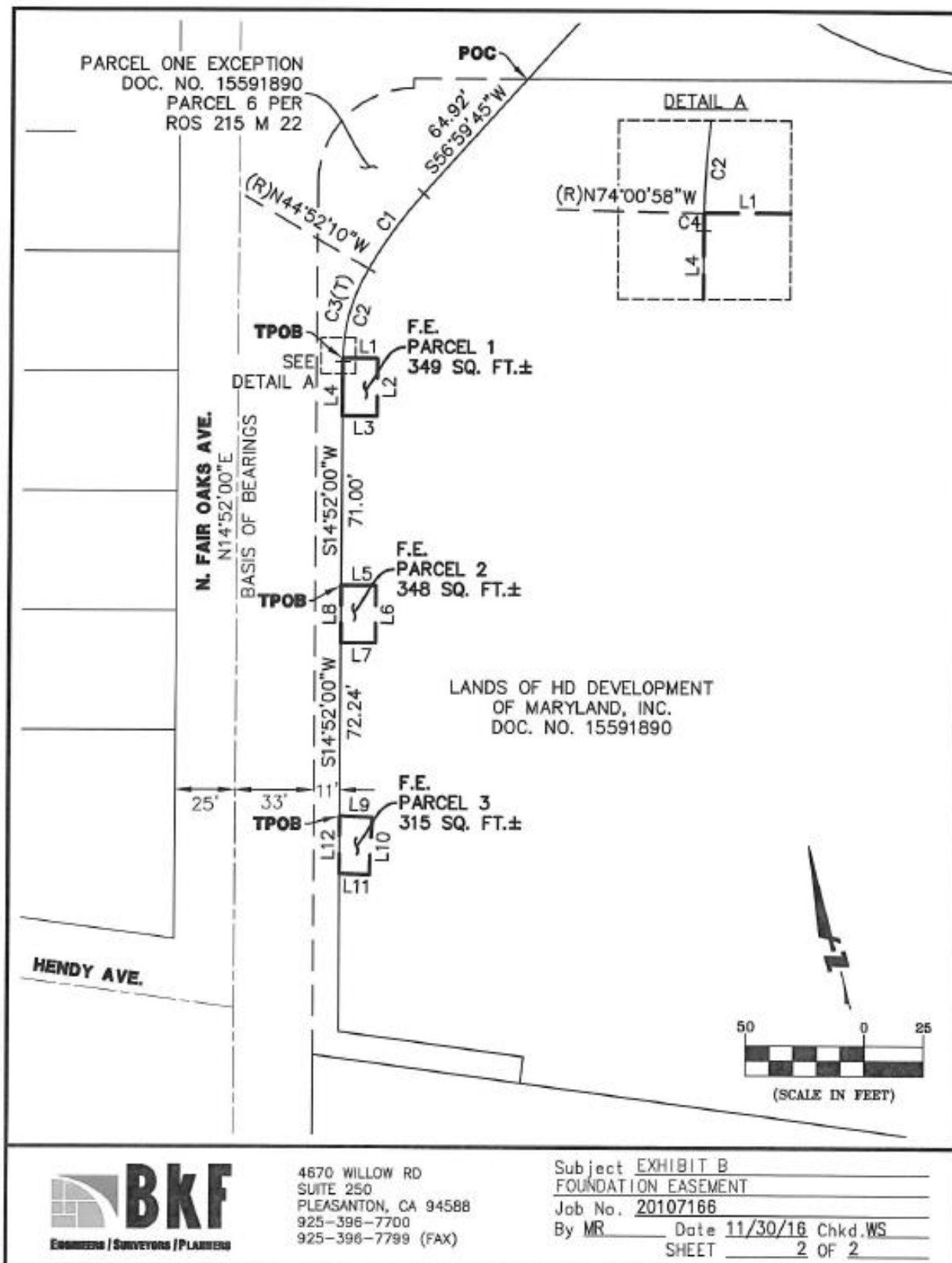


EXHIBIT D

EXHIBIT "C"

LEGAL DESCRIPTION OF PROPERTY

REAL property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at the intersection of the center line of Hendy Avenue, with the center line of Fair Oaks Avenue; thence along said line of Fair Oaks Avenue North 14° 52' East 474.74 feet to the Northwesterly prolongation of the Southwesterly line of Tract No. 214 Victory Village Map No. 2, as said Map was filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on October 4, 1943 in Book 7 of Maps, page 37; thence leaving the centerline of Fair Oaks Avenue and running along the Southwesterly line of said Tract No. 214 Victory Village Map No. 2 and the Northwesterly prolongation thereof, South 75° 08' East 833 feet, South 14° 52' West 30 feet and South 78° 08' East 152.54 feet to the East line of the City of Sunnyvale; thence parallel with the center line of Fair Oaks Avenue, South 14° 52' West 575 feet more or less, to the center line of Hendy Avenue, thence along the center line of Hendy Avenue North 67° 32' West 994.58 feet to the point of beginning, being a part of Lot 17, 18, 19 and 20 as shown upon that certain Map entitled, "Map of Crossman Subdivision No. 4 Part of Lot 1 of the Murphy Partition, in the Rancho Pastoria De Las Borregas, as recorded in Book "G" of Maps, pages 74 and 75, Santa Clara County Records" and which said map was filed for record in the Office of the County Recorder of Santa Clara County, California, on December 21, 1909 in Book "M" of Maps, page 88, and including therein a portion of the Northeasterly half of Hendy Avenue, now abandoned.

Excepting therefrom so much thereof as conveyed by California Cannery and Growers, a non-profit cooperative Association, successor by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, Page 714 as follows:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT D

LEGAL DESCRIPTION: (Continued)

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, at page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line of 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West having a radius of 40.00 feet, a central angle of 90° 00' and an arc length of 62.83 feet; thence South 14° 52' West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue, 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South 67° 32' East, along said Northerly line 88.00 feet; thence North 22° 28' East, 11.00 feet; thence North 67° 32' West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North 14° 52' East along last said parallel line, 279.90 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of 30° 15' 50" and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of 11° 51' 13" and an arc length of 39.10 feet; thence North 56° 59' 03" East, tangent to last said curve, 64.93 feet to the true point of beginning.

Parcel Two:

Beginning at the point of intersection of the Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue with the center line of Hendy Avenue, as the same is shown on the Map of Crossman Subdivision No. 4 which Map is on file in the Office of the Recorder of the County of Santa Clara, State of California, in Book "M" of Maps, page 88; thence along said center line of Hendy Avenue South 67° 32' East 994.58 feet to the Southeasterly terminus thereof in the Easterly line of Lot 1 of the Murphy Partition in the Rancho Pastoria De Las Borregas according to the map thereof on file in Book "G" of Maps, pages 74 and 75, Santa Clara County Records; thence along the Easterly line of Lot 1, South

LEGAL DESCRIPTION: (Continued)

EXHIBIT D

LEGAL DESCRIPTION: (Continued)

13° 53' West 10 feet, more or less, to the Easterly corner of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation, to Southern Pacific Railroad Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records page 482, Santa Clara County Records; thence along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company, Northwesterly along a curve to the right, having a radius of 5470.56 feet from a tangent bearing North 70° 40' 38" West an arc distance of 104.44 feet; thence continuing along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company and along the Northeasterly line of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation to Southern Pacific Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records, page 480, Santa Clara County Records, North 68° 29' West 238.49 feet and North 67° 43' West 628.43 feet to said Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue; thence along said prolonged Southeasterly line of Fair Oaks Avenue, North 14° 52' East 15.14 feet to the point of beginning, and being a portion of the Southwesterly half of Hendy Avenue, now abandoned as shown on said Map of Crossman Subdivision No. 4 hereinabove referred to.

Excepting therefrom that portion thereof lying within the following described parcel of land conveyed by California Cannery and Growers, a non-profit Cooperative Association, successors by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, page 714, as follows:

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT D

LEGAL DESCRIPTION: (Continued)

having a radius of 40.00 feet, a central angle of $90^{\circ} 00'$ an arc length of 62.83 feet; thence South $14^{\circ} 52'$ West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South $67^{\circ} 32'$ East, along said Northerly line 88.00 feet; thence North $22^{\circ} 28'$ East, 11.00 feet; thence North $67^{\circ} 32'$ West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North $14^{\circ} 52'$ East along said parallel line, 279.00 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of $30^{\circ} 15' 50''$ and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of $11^{\circ} 51' 13''$ and an arc length of 39.10 feet; thence North $56^{\circ} 59' 03''$ East, tangent to last said curve, 64.93 feet to the true point of beginning.

APN: 205-47-013

ARB: 206-53-037

November 21, 1990

(K 504807 504807.C)

EXHIBIT D

EXHIBIT “D”

ADDENDUM TO EASEMENT DEED

The Foundation Easement Deed (the “Easement”) to which this Addendum to Easement Deed (this “Addendum”) is attached shall be subject to the terms, restrictions, limitations and conditions contained in this Addendum. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Easement. In the event of any inconsistency between the Easement and this Addendum, this Addendum shall govern and control.

1. Grantee shall provide Grantor fifteen (15) days’ prior written notice of Grantee’s proposed commencement date for any work within the Easement Area, which notice shall include the name and contact information of the construction manager or other accountable construction person for Grantee or its contractor, a construction schedule, and any other information, materials and documentation reasonably requested by Grantor in connection therewith; provided, however, that for emergency repairs (“Emergency Repairs”), Grantee shall only be required to provide Grantor with as much notice as is reasonably possible. Notwithstanding the foregoing, so long as a home improvement store is being operated on the Property, in no event shall any work, except for Emergency Repairs, be performed on the Easement Area during the months of November, December, March, April or May without the prior written consent of Grantor, which consent may be withheld in Grantor’s sole and absolute discretion. If Grantee requests such consent and Grantor does not respond to Grantee’s request within twenty (20) days after Grantor’s actual receipt of same, Grantee shall send a second request to Grantor requesting Grantor’s approval, which request shall contain, in printed capital letters, the following statement: **“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE DEEMED APPROVAL BY GRANTOR OF THE ACTION REQUESTED BY GRANTEE.”** If Grantor does not respond to such second request for approval, within ten (10) days after Grantor’s actual receipt of same, Grantee’s request shall be deemed approved.

2. All work to be performed by Grantee and use of the Easement shall (a) be at Grantee’s sole cost and expense, (b) be performed in accordance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof, (c) be performed in accordance with any reasonable safety requirements requested by Grantor, (d) not unreasonably interfere with the use, occupancy or enjoyment of any part of the Property or with normal operation of any business on the Property, (e) not unreasonably interfere, obstruct or delay any ingress, egress or access to or from the Property, or any part thereof, including, without limitation, ingress, egress and access for Grantor’s customers or for the purposes of truck or vendor delivery, and (f) not cause or threaten to cause any of the Property or any building or other improvements located thereon to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

3. Grantee shall indemnify and hold Grantor and its directors, officers, employees, agents, licensees, customers, invitees, lessees, concessionaires, successors and assigns

EXHIBIT D

(collectively, the "HD Indemnitees") harmless from and against all liabilities and claims, including any actions or proceedings brought against any of the HD Indemnitees, and all costs, expenses and liabilities (including reasonable attorneys' fees and costs) arising out of or resulting from any act or omission of Grantee or its agents, assigns, employees, contractors, subcontractors, or materialmen (and/or those claiming through any of them).

4. Upon completion of any work in the Easement Area, Grantee shall, at its sole cost and expense, restore any area affected thereby using materials and design standards which equal or exceed those originally used for such affected area. Within thirty (30) days after the completion of such restoration, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor that the materials and design standards used with respect to such restoration equal or exceed those originally used and any other information, materials and documentation reasonably requested by Grantor in connection therewith. In the event Grantee fails to perform any restoration as required hereunder, Grantor may notify Grantee of the breach and/or the deficiencies in the restoration. If such breach is not cured, and/or such deficiencies are not corrected by Grantee within five (5) days after receipt such notice, then Grantor shall have the right to immediately cure such breach and/or correct such deficiencies and recover all costs and expenses related thereto from Grantee within ten (10) days after Grantor delivers written notice to Grantee of any claim for reimbursement of such costs and expenses. Notwithstanding the foregoing, in the event such breach and/or such deficiencies create an imminent danger of damage to persons or property, or jeopardizes the continuance of business operations on the Property, no such notice shall be required to be provided to Grantee prior to Grantor having the right to cure such breach and/or correct such deficiencies and recover all costs and expenses related thereto from Grantee pursuant to the foregoing sentence.

5. Grantee's project is a public works project governed by the Stop Payment Notice process pursuant to California Civil Code section 8044 *et seq.* for non-payment of work performed on Grantee's project. Accordingly, none of the project contractors, subcontractors or material suppliers shall be allowed to place a mechanics' lien on the Property, and the Stop Payment Notice procedure is the exclusive remedy for claims arising out of Grantee's project. Notwithstanding the foregoing, if a mechanics' or materialmans' lien is recorded against or becomes an encumbrance on the Property as a result of any act or omission of Grantee, Grantee shall, within thirty (30) days of the recording of such lien, obtain by discharge, bond or otherwise, the release of any such lien as an encumbrance on the Property. Grantee shall indemnify and hold Grantor harmless against any such liens and from any and all expense and liability in connection therewith including, but not limited to, attorneys' fees and court costs resulting therefrom. If Grantee fails to obtain the release of any such lien within said thirty (30) day period, Grantor may, at its option, bond for and/or otherwise obtain the release of any such lien, in which event Grantee shall, within ten (10) days of its receipt of a written request therefor, reimburse Grantor for all costs and expenses incurred by Grantor in obtaining such bond or release.

6. Grantee acknowledges that this Easement is non-exclusive and Grantor reserves the right to use the Easement Area in any manner not inconsistent with the Easement as provided herein.

EXHIBIT D

7. Grantee hereby agrees that the rights hereunder shall not be assigned or sublet without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion.

8. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail (sent no later than 5:00 PM Pacific Standard Time, otherwise notice will be effective the following business day), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantor: HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-19
Atlanta, GA 30339
Attn: Property Management, Mary Beth Lamoree
Telephone Number: (770) 433-8211
Email: Mary_Beth_Lamoree@homedepot.com

and to: HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-20
Atlanta, GA 30339
Attn: Suzanne Russo, Esq.
Telephone Number: (770) 384-2406
Email: Suzanne_Russo@homedepot.com

If to Grantee: City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086
Attn: Assistant Director/City Engineer Jennifer Ng
Telephone Number: (408) 730-7430

or to such other address as Grantor or Grantee may from time to time designate by notice in writing to the other party. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

9. The Easement and this Addendum shall be construed in accordance with the laws of the State of California, without regard to conflicts laws or choice of law rules thereof.

EXHIBIT E

**RECORD WITHOUT FEE UNDER
GOVERNMENT CODE SECTION 27373**

RECORDING REQUESTED BY:

City of Sunnyvale
Public Works Department

WHEN RECORDED MAIL TO:

City of Sunnyvale
Public Works Department
PO Box 3707
Sunnyvale, CA 94088-3707

Project: Fair Oaks Avenue Overhead
Bridge Widening Project
Owner: HD Development of Maryland, Inc., a Maryland corporation
APN: 205-47-013
Federal Aid #: BHLS 5213 (039)

TEMPORARY CONSTRUCTION EASEMENT

For value received, receipt of which is hereby acknowledged, HD Development of Maryland, Inc., a Maryland corporation, hereinafter referred to as “Grantor”, grants to the CITY OF SUNNYVALE, a municipal corporation, hereinafter referred to as “Grantee”, a Temporary Construction Easement (the “Easement”) over, upon and across a portion of that real property (the “Easement Property”) situated in the City of Sunnyvale, County of Santa Clara, State of California, and more particularly described on **Exhibit “A”** and depicted on **Exhibit “B”** attached hereto and made a part hereof. Grantor is the owner of the property described in **Exhibit “C”** attached hereto and made a part hereof (the “Property”) and the Easement Property is located on that portion of the Property described in **Exhibit “A”**. References herein to the “Non-Easement Property” shall mean the Property less and except the Easement Property.

This Easement is granted under the express terms, conditions, restrictions and limitations listed below:

1. This Easement is for the purpose of constructing public improvements as part of the City of Sunnyvale’s Fair Oaks Avenue Overhead Bridge Widening Project and tying in Grantor’s property to the new public improvements, as necessary (the “Project”). Said Easement shall begin upon recordation hereof and continue in full force and effect for a duration of twenty-seven (27) months or until such time as the construction of public improvements has been completed as determined by Grantee, whichever comes first. Grantee shall give Grantor thirty (30) days’ written notice prior to commencement of any work on the Project. In case of unpredictable delays in construction, upon written notification, and provided Grantor and Grantee agree to such an extension in a writing recorded against the Easement Property, the terms of this Easement may be extended. Grantor shall be compensated based on the fair market value of the Easement Property at the time of the extension. Payment shall be made to Grantor for the extension prior to the expiration of the term.
2. The Easement Property shall not be used to stage or deposit tools, implements, and other materials for work being performed on any project other than the Project.
3. By accepting this Easement and undertaking work within the Easement Property, Grantee agrees:
(a) to perform all work undertaken by Grantee in a good and workmanlike manner and to promptly complete its work within the Easement Property; (b) to perform all work undertaken by Grantee in accordance with all applicable laws, rules, regulations, orders, and ordinances of the

EXHIBIT E

city, county, state, and federal government, or any department or agency thereof and the plans and specifications entitled "Fair Oaks Avenue Overhead Bridge Rehabilitation" dated February 14, 2017; (c) to perform all work undertaken by Grantee in accordance with any reasonable safety requirements requested by Grantor; (d) to restore the Easement Property to its condition that existed prior to the commencement of such work, including, without limitation, repairing Grantor's landscape irrigation sprinkler system, replacing trees and other landscaping, re-paving and restriping, if necessary, all in accordance with the standards identified in **Exhibit "D"** attached hereto and made a part hereof; (e) to not interfere with the use, occupancy or enjoyment of any part of the Non-Easement Property by Grantor or any of Grantor's tenants, invitees or guests or with the normal operation of any business thereon; (f) to not interfere, obstruct or delay any ingress, egress or access to or from the Non-Easement Property, or any part thereof, including, without limitation, ingress, egress and access for Grantor's customers or for the purposes of truck or vendor delivery; provided, however, that Grantee shall have the right to obstruct the area of ingress and egress located within the Easement Property as necessary to perform the work contemplated by this Easement; (g) to not cause or threaten to cause any of the Property or any building or other improvements located thereon to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof; and (h) to perform all work at Grantee's sole cost and expense, and that no cost or expense (excluding loss of business revenue) shall be incurred by Grantor in connection with any of Grantee's construction, removal, demolition, restoration, and/or maintenance pursuant to this Easement. Grantor acknowledges that access to the Property from East Hendy Avenue (under the Fair Oaks Avenue bridge) will be closed to ingress and egress during a portion of the term of this Easement and Grantee agrees that the closure shall be for the shortest feasible period of time. Grantee further agrees to issue Encroachment Permits to require the applicable parties performing the utility relocation work within the Easement Property to utilize best industry practices to allow Grantor and its invitees to maximize access to the Property through the Easement Property during business hours, as more fully set forth in the Encroachment Permit conditions.

4. Grantee is self-insured. Prior to commencing any activities within the Easement Property, Grantee shall require its contractor(s) to maintain adequate liability insurance during the term of this Easement with coverage equal or greater than the following: (i) commercial general liability insurance in the minimum amount of two million dollars (\$2,000,000.00) per occurrence and five million dollars (\$5,000,000) aggregate, and (ii) such other insurance coverage as may be reasonably requested by Grantor. Grantee shall require its contractors to name Grantor as an additional insured on all such insurance policies and shall provide Grantor with evidence of such insurance prior to commencing any construction activities within the Easement Property.
5. By accepting this Easement and undertaking work within the Easement Property, Grantee agrees to indemnify and hold Grantor and its directors, officers, employees, agents, licensees, customers, invitees, lessees, concessionaires, successors and assigns (collectively, the "HD Indemnitees") harmless from and against any and all liabilities and claims, including any actions or proceedings brought against any of the HD Indemnitees, and all costs, expenses, damages and liabilities (including reasonable attorneys' fees and costs) arising out of or resulting from, directly or indirectly, any act or omission of Grantee or its agents, assigns, employees, contractors, subcontractors, or materialmen (and/or those claiming through any of them) on the Property.
6. The Project is a public works project governed by the Stop Payment Notice process pursuant to California Civil Code section 8044 *et seq.* for non-payment of work performed on the Project. Accordingly, none of the Project contractors, subcontractors or material suppliers shall be

EXHIBIT E

allowed to place a mechanics' lien on the Property, and the Stop Payment Notice procedure is the exclusive remedy for claims arising out of the Project. Notwithstanding the foregoing, if a mechanics' or materialmans' lien is recorded against or becomes an encumbrance on the Property as a result of any act or omission of Grantee, Grantee shall, within thirty (30) days of the recording of such lien, obtain by discharge, bond or otherwise, the release of any such lien as an encumbrance on the Property. Grantee shall indemnify and hold Grantor harmless against any such liens and from any and all expense and liability in connection therewith including, but not limited to, attorneys' fees and court costs resulting therefrom. If Grantee fails to obtain the release of any such lien within said thirty (30) day period, Grantor may, at its option, bond for and/or otherwise obtain the release of any such lien, in which event Grantee shall, within ten (10) days of its receipt of a written request therefor, reimburse Grantor for all costs and expenses incurred by Grantor in obtaining such bond or release.

7. Grantee hereby agrees that the rights hereunder shall not be assigned or sublet without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion.
8. In the event legal action is instituted by any of the parties to enforce the terms of this Easement or arising out of the execution of this Easement, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees and court costs actually incurred (without regard to statutory interpretation).
9. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail (sent no later than 5:00 PM Pacific Standard Time, otherwise notice will be effective the following business day), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantor: HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-19
Atlanta, GA 30339
Attn: Property Management, Mary Beth Lamoree
Telephone Number: (770) 433-8211
Email: Mary_Beth_Lamoree@homedepot.com

and to: HD Development of Maryland, Inc.
2455 Paces Ferry Road, C-20
Atlanta, GA 30339
Attn: Suzanne Russo, Esq.
Telephone Number: (770) 384-2406
Email: Suzanne_Russo@homedepot.com

If to Grantee: City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086
Attn: Assistant Director/City Engineer, Jennifer Ng
Telephone Number: (408) 730-7430

or to such other address as Grantor or Grantee may from time to time designate by notice in writing to the other party. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the

EXHIBIT E

inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

10. This Easement shall be construed in accordance with the laws of the State of California, without regard to conflicts laws or choice of law rules thereof.

EXHIBIT E

Executed on this date: _____, 2018.

GRANTOR:

HD Development of Maryland, Inc.,
a Maryland corporation

By: _____

Name

Title

By: _____

Name

Title

EXHIBIT E

ACKNOWLEDGEMENT OF GRANTOR(S):

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____ } S.S.

On _____ before me, _____ Notary Public,
personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT E

**CITY OF SUNNYVALE
CERTIFICATE OF ACCEPTANCE**

- INSERT HERE -

EXHIBIT E

EXHIBIT "A"

LEGAL DESCRIPTION

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of the lands described in that certain Grant Deed (Corrective) recorded on March 14, 2001 as Document No. 15591890 of Official Records of said county:

Commencing at the northeasterly corner of Parcel 6 as shown on that certain Record of Survey filed for record October 7, 1966 in Book 215 of Maps at Page 22, being also the northerly corner of the lands described in said Document No. 15591890;

Thence along the northeasterly line of said lands South 75°08'00" East, 4.65 feet to the **True Point of Beginning** of this description;

Thence continuing along said northeasterly line, South 75°08'00" East, 19.42 feet;

Thence leaving said northeasterly line the following six (6) courses:

- 1) South 14°52'00" West, 31.00 feet;
- 2) North 75°08'00" West, 12.84 feet;
- 3) South 55°00'41" West, 84.22 feet;
- 4) South 14°52'00" West, 280.62 feet;
- 5) South 75°07'49" East, 127.89 feet;
- 6) South 14°52'11" West, 54.71 feet to the southerly line of the lands described in said Document No. 155919890;

Thence along said southerly line North 67°33'09" West, 86.42 feet to the southeasterly corner of said Parcel 6 (215 M 22);

Thence along the general easterly line of said Parcel 6 the following three (3) courses:

- 1) North 22°26'51" East, 11.00 feet;
- 2) North 67°33'09" West, 78.37 feet;
- 3) North 14°52'00" East, 68.77 feet to the beginning of a non-tangent curve concave westerly, having a radius of 92.00 feet, from the center of said curve a radial line bears South 66°02'32" East;

Thence leaving said general easterly line the following eight (8) courses:

- 1) Along said curve through a central angle of 9°18'09", an arc length of 14.94 feet;
- 2) North 14°39'19" East, 192.94 feet to the beginning of a tangent curve to the right, having a radius of 68.00 feet;
- 3) Along said curve through a central angle of 35°13'21", an arc length of 41.80 feet;
- 4) South 40°07'21" East, 0.50 feet to the beginning of a non-tangent curve concave southeasterly, having a radius of 67.50 feet, from the center of said curve a radial line bears North 40°07'21" West;
- 5) Along said curve through a central angle of 5°08'01", an arc length of 6.05 feet;
- 6) North 55°00'41" East, 91.94 feet;
- 7) North 34°59'19" West, 0.50 feet;
- 8) North 55°00'41" East, 9.32 feet to the **True Point of Beginning**;

Containing an area of 18,624 square feet or 0.428 acres more or less.

EXHIBIT E

EXHIBIT “B”

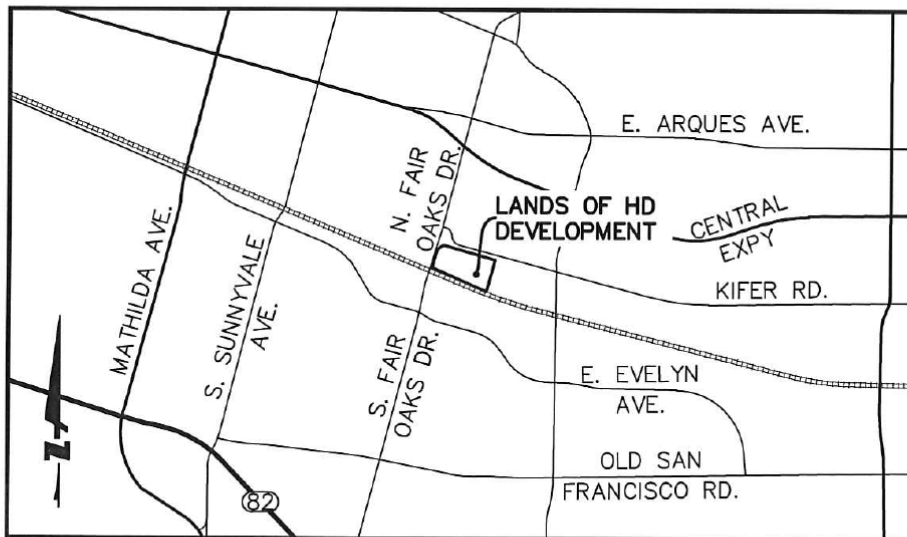
DEPICTION

[attached]

EXHIBIT E

TEMPORARY CONSTRUCTION EASEMENT

BEING A PORTION OF THE LANDS OF HD DEVELOPMENT OF MARYLAND, INC. AS DESCRIBED
IN THAT CERTAIN GRANT DEED (CORRECTIVE) RECORDED AS DOCUMENT NO. 15591890



LINE TABLE		
	DIRECTION	LENGTH
L1	S75°08'00"E	4.65
L2	S14°52'00"W	31.00
L3	N75°08'00"W	12.84
L4	N22°26'51"E	11.00
L5	S40°07'21"E	0.50
L6	N34°59'19"W	0.50
L7	N55°00'41"E	9.32

CURVE TABLE			
	RADIUS	DELTA	LENGTH
C1	68.00	35°13'21"	41.80
C2	67.50	5°08'01"	6.05

BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985, IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

LEGEND

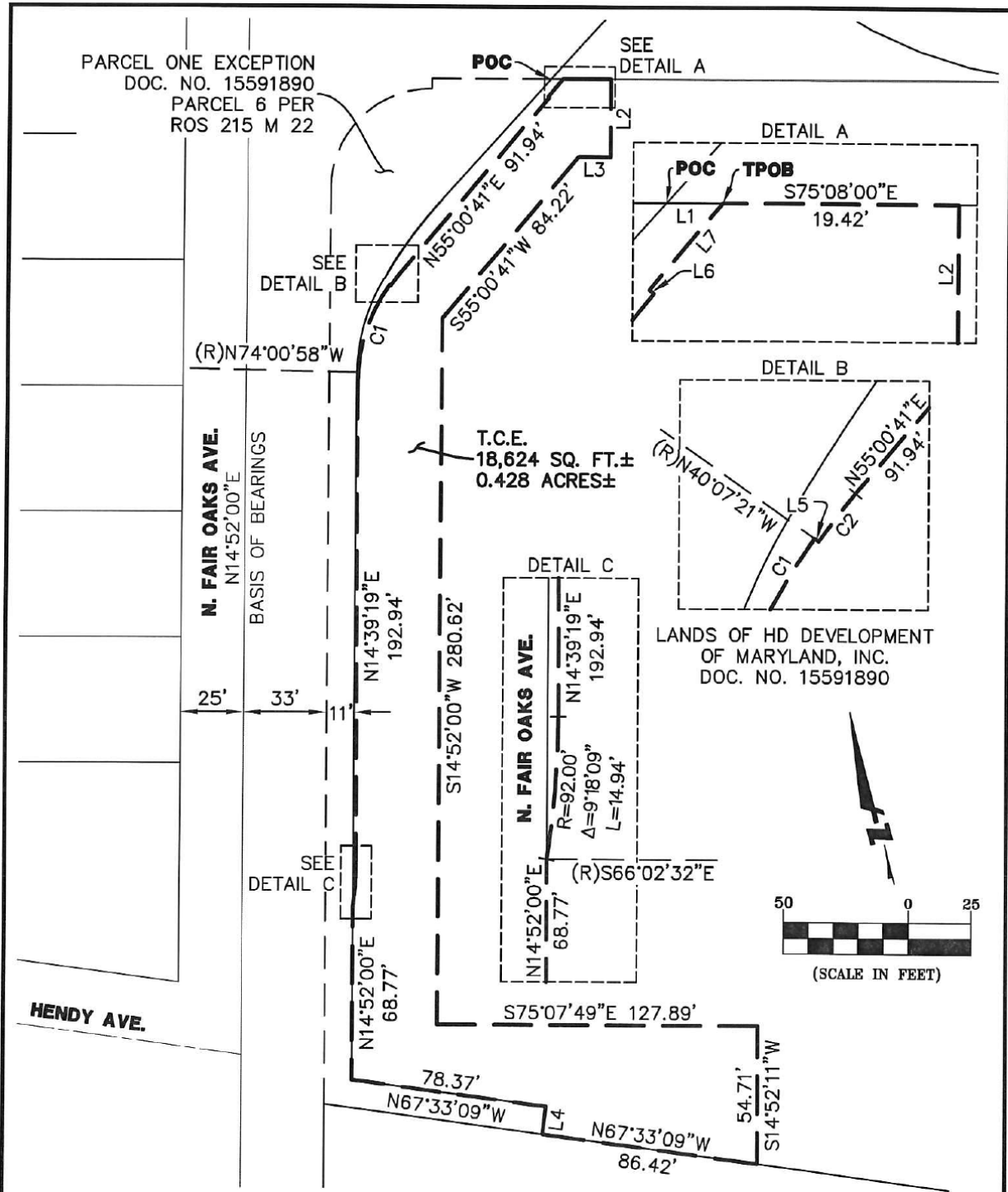
POC = POINT OF COMMENCEMENT
M = BOOK AND PAGE OF MAPS
ROS = RECORD OF SURVEY
T.C.E. = TEMPORARY CONSTRUCTION EASEMENT
TPOB = TRUE POINT OF BEGINNING



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
TEMPORARY CONSTRUCTION EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 1 OF 2

EXHIBIT E



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B
TEMPORARY CONSTRUCTION EASEMENT
Job No. 20107166
By MR Date 11/30/16 Chkd. WS
SHEET 2 OF 2

EXHIBIT E

EXHIBIT "C"

LEGAL DESCRIPTION OF PROPERTY

REAL property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at the intersection of the center line of Hendy Avenue, with the center line of Fair Oaks Avenue; thence along said line of Fair Oaks Avenue North 14° 52' East 474.74 feet to the Northwesternly prolongation of the Southwesterly line of Tract No. 214 Victory Village Map No. 2, as said Map was filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on October 4, 1943 in Book 7 of Maps, page 37; thence leaving the centerline of Fair Oaks Avenue and running along the Southwesterly line of said Tract No. 214 Victory Village Map No. 2 and the Northwesternly prolongation thereof, South 75° 08' East 833 feet, South 14° 52' West 30 feet and South 75° 08' East 152.54 feet to the East line of the City of Sunnyvale; thence parallel with the center line of Fair Oaks Avenue, South 14° 52' West 575 feet more or less, to the center line of Hendy Avenue, thence along the center line of Hendy Avenue North 67° 32' West 994.58 feet to the point of beginning, being a part of Lot 17, 18, 19 and 20 as shown upon that certain Map entitled, "Map of Crossman Subdivision No. 4 Part of Lot 1 of the Murphy Partition, in the Rancho Pastoria De Las Borregas, as recorded in Book "G" of Maps, pages 74 and 75, Santa Clara County Records" and which said map was filed for record in the Office of the County Recorder of Santa Clara County, California, on December 21, 1909 in Book "M" of Maps, page 88, and including therein a portion of the Northeastly half of Hendy Avenue, now abandoned.

Excepting therefrom so much thereof as conveyed by California Cannery and Growers, a non-profit cooperative Association, successor by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, Page 714 as follows:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT E

LEGAL DESCRIPTION: (Continued)

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, at page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line of 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West having a radius of 40.00 feet, a central angle of 90° 00' and an arc length of 62.83 feet; thence South 14° 52' West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue, 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South 67° 32' East, along said Northerly line 88.00 feet; thence North 22° 28' East, 11.00 feet; thence North 67° 32' West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North 14° 52' East along last said parallel line, 279.90 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of 30° 15' 50" and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of 11° 51' 13" and an arc length of 39.10 feet; thence North 56° 59' 03" East, tangent to last said curve, 64.93 feet to the true point of beginning.

Parcel Two:

Beginning at the point of intersection of the Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue with the center line of Hendy Avenue, as the same is shown on the Map of Crossman Subdivision No. 4 which Map is on file in the Office of the Recorder of the County of Santa Clara, State of California, in Book "M" of Maps, page 88; thence along said center line of Hendy Avenue South 67° 32' East 994.58 feet to the Southeasterly terminus thereof in the Easterly line of Lot 1 of the Murphy Partition in the Rancho Pastoria De Las Borregas according to the map thereof on file in Book "G" of Maps, pages 74 and 75, Santa Clara County Records; thence along the Easterly line of Lot 1, South

LEGAL DESCRIPTION: (Continued)

EXHIBIT E

LEGAL DESCRIPTION: (Continued)

13° 53' West 10 feet, more or less, to the Easterly corner of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation, to Southern Pacific Railroad Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records page 482, Santa Clara County Records; thence along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company, Northwesterly along a curve to the right, having a radius of 5470.56 feet from a tangent bearing North 70° 40' 38" West an arc distance of 104.44 feet; thence continuing along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company and along the Northeasterly line of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation to Southern Pacific Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records, page 480, Santa Clara County Records, North 68° 29' West 238.49 feet and North 67° 43' West 628.43 feet to said Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue; thence along said prolonged Southeasterly line of Fair Oaks Avenue, North 14° 52' East 15.14 feet to the point of beginning, and being a portion of the Southwesterly half of Hendy Avenue, now abandoned as shown on said Map of Crossman Subdivision No. 4 hereinabove referred to.

Excepting therefrom that portion thereof lying within the following described parcel of land conveyed by California Cannery and Growers, a non-profit Cooperative Association, successors by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, page 714, as follows:

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

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LEGAL DESCRIPTION: (Continued)

having a radius of 40.00 feet, a central angle of $90^{\circ} 00'$ an arc length of 62.83 feet; thence South $14^{\circ} 52'$ West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South $67^{\circ} 32'$ East, along said Northerly line 88.00 feet; thence North $22^{\circ} 28'$ East, 11.00 feet; thence North $67^{\circ} 32'$ West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North $14^{\circ} 52'$ East along said parallel line, 279.00 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of $30^{\circ} 15' 50''$ and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of $11^{\circ} 51' 13''$ and an arc length of 39.10 feet; thence North $56^{\circ} 59' 03''$ East, tangent to last said curve, 64.93 feet to the true point of beginning.

APN: 205-47-013

ARB: 206-53-037

November 21, 1990

(K 504807 504807.C)

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EXHIBIT “D”

STANDARDS

[attached]

EXHIBIT E

HOME DEPOT SITE SPECIFICATION REFERENCES for CARVE OUT'S

This document reflects typical Home Depot specifications for areas that may be affected by work abutting a Carve Out parcel. Said work may occur on The Home Depot property and it is expected that when complete will comply with The Home Depot specifications. The sections are as follows:

02200 EARTHWORK

- A. Fill materials shall conform to the following requirements, except as specifically indicated otherwise.
 - 1. Fill shall be earth, free of debris, cinders, combustibles, frost, ice, roots, sod, wood, cellulose, organic materials, rock larger than 6 inches, and materials that may be subject to termite attack.
 - 2. Top 18" of fills under topsoil of lawn and planted areas shall be earth, free of debris, cinders, frost, ice, sod, wood and roots over 1/4" in diameter. Fill shall be free of any toxic materials that will interfere with plant root development.
 - 3. Fill, within ten feet from buildings and other structures, shall be soil free of debris, cinders, combustibles, frost, ice, roots, sod, wood, cellulose, and organic materials.
- B. Topsoil: Relatively free of decomposed organic material, including roots, sticks, leaves, paper and other undesirable trash (glass, plastic or metal fragments) that could interfere with soil drainage and plant growth. Topsoil shall be free of any toxic materials that will interfere with plant root development.
- C. Provide the required minimum density and moisture content of compacted fill.
- D. The subgrade for lawn and planting areas shall be not less than 6" inches below final finish grade. Keep ditches free of an accumulation of leaves, sticks and other debris until final acceptance of the work.

02513 ASPHALT PAVING

APPLICATION OF BASE

- A. The base course shall be constructed in accordance with local jurisdictional requirements. All base shall have minimum compaction of 95% of the maximum density obtained by the test procedure presented to ASTM D-698- 70 Method D (Standard Proctor) at moisture content of not less than 1 percent below and not more than 3 percent above optimum content.. Maximum permissible lift thickness shall be 6" (compacted). A soils engineer selected and paid for by Developer shall make soil and compaction tests on the subgrade and base courses. Test results to be reviewed by The Home Depot ITC and Home Depot PM.
- B. The asphaltic paving material specified shall be placed at a temperature of 275°F. to 350° F. at the time of application, then the material must be mechanically rolled to compact topping to depths herein specified, after compaction which must not further settle or compact under the weight of a ten ton loaded truck when outside temperature is 90°F. The surface must be smooth, true to contours and elevations shown on the drawings and impervious to water.
- C. Light duty shall be used in all areas of SITE except where heavy-duty asphalt or concrete paving is required. Asphalt paving thickness shall match the existing pavement section and shall not be less than 2 1/2" and asphalt shall be placed in 2 lifts.
- D. Heavy Duty shall be used in all drive aisles, excluding adjacent parking areas. Asphalt paving thickness shall match the existing pavement section and shall not be less than 3" and shall be placed in 2 equal lifts.
- E. Curb and Gutter shall at a minimum match the existing curbing used on-site.
- F. When trenching through the parking field for a utility tie in it is preferred to use a concrete cap as the first lift vs. 2 lifts of asphalt. The concrete lift shall be completed immediately after the trench meets sub-grade elevation.
- G. When adjoining new pavement areas a straight sawcut line shall be made to butt pavement together. Sawcut line shall not be located on a drainage flow line.

02520 CONCRETE PAVING

ENVIRONMENTAL CONDITIONS

- A. Concreting in Hot, Dry and/or Windy Weather:
 - 1. Conform to ACI 305R when any combination of high air or concrete temperature, low relative humidity, and wind velocity tend to impair quality of concrete.
 - 2. Employ special precautions when evaporation rate as obtained from ACI 305R is expected to reach 0.2 pound per square foot per hour or more.
 - 3. Unless otherwise allowed, reject concrete if its temperature before placement is over 90°F.

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4. Unless otherwise allowed, during hot weather mixing and delivery (discharge) time to be shorter than specified in ASTM C 94 as follows:
 - a. When air temperature is between 85°F and 90°F, reduce allowable mixing and delivery time from 90 minutes to 75 minutes.
 - b. When air temperature is over 90°F, reduce allowable mixing and delivery time to 60 minutes.
5. Do not place concrete when forms, subgrade, base, or reinforcing bars are more than 120°F or more than 10°F hotter than ambient air temperature.
6. Cool with water or water-soaked burlap as necessary, but allow no standing water on surface on which concrete is placed.
- B. Concreting in Cold Weather:
 1. Conform to ACI 306.1 when temperature and other environmental conditions are as noted therein and following additional requirements.
 2. Frozen base and subgrade soils shall be thawed immediately before placing concrete.
 3. Do not place concrete on subgrade, or base that is more than 20°F cooler than concrete. Warm subgrade, or base to decrease temperature differential to 20°F or less.

MATERIALS FOR CEMENT

- A. Type I, II, or V
Use type appropriate for the sulphate exposure from subgrade or base materials in contact with concrete. Reference ACI 318 Building Code Requirements for Structural Concrete.
 1. Aggregate base materials must meet the minimum requirements of the State Department of Transportation.
 2. Base materials shall have negligible sulfate content with less than 0.1% soluble concentration by weight or less than 150 ppm in water.
- B. Joint Reinforcing - Heavy Duty Pavement.
- C. Applicable to primary drive lanes used by semi-trucks, delivery trucks and/or emergency vehicles. Doweled for vertical load transfer. Use smooth plate dowels, smooth round bar dowels, or square bar dowels of ASTM A 36 material. Do not shear. Remove burrs. Locate dowels at mid-depth of pavement unless noted otherwise.

CONTRACTION JOINTS

- A. Use pre-assembled wire baskets to support dowels at mid-depth of pavement. ASTM 108 wire proportions.
- B. Minimum 28-day compressive strength shall be 4,500 psi for pavement, curbs, or sidewalks subject to freezing, thawing and deicing salts/chemicals. Pavement, curbs, or sidewalks subject to periodic freezing and thawing but not exposed to deicing salts/chemicals shall have a 28-day compressive strength of 4,000 psi. All other pavements, curbs or sidewalks shall have a 28-day compressive strength of 3,500 psi.
- C. Workability: Must have proper consistency to be worked readily into forms and around reinforcement without segregation, voids or, excessive bleeding.

PAVEMENT JOINTS

- A. Construction and contraction joints shall match the joint layout provided on the existing site. No exceptions.

02550 SITE UTILITIES

EXISTING IMPROVEMENTS

- A. Maintain in operating condition all active utilities that serve The Home Depot and areas adjacent to this project. Repair to the approval of the utility or authority having jurisdiction any surface or subsurface improvement damaged during the course of the work, unless such improvement is shown to be abandoned or removed. Repairs to utilities shall be done immediately.
- B. All utilities shall be located and marked prior to construction.

PROPOSED CONNECTIONS

- A. Jack and bore of utilities is preferred unless approved otherwise by The Home Depot Project Manager*. If open cut connections are approved then the following specifications shall be followed:
- B. Grade the bottom of the trenches evenly to insure uniform bearing for full length of all pipes. Excavate all rock, cemented gravel, old masonry, or other hard material to at least 4 inches below the pipe at all points. Refill such space and all other cuts below grade with sand or fine gravel firmly compacted.
- C. Should soil conditions necessitate special supports for piping and/or appurtenances, including the removal of unsuitable material and refilling with gravel or other material such work shall be performed as necessary.
- D. Backfill trenches only after piping has been inspected, tested and the locations of pipe and appurtenances have been recorded. Backfill by hand around pipe and for a depth of 1 foot above the pipe. Use earth without rock fragments or large stones and tamps as specified in layers not exceeding 6 inches in thickness, taking care not to disturb the pipe or injure the pipe coating. Compact the remainder of the backfill as specified with a rammer of suitable weight or with an approved mechanical tamper, provided that under pavements, walks and other surfacing, the backfill shall be tamped as specified. Exclude all cinders, rubbish

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and scrap metal from trenches in which metal pipes are laid. Special care shall be used to properly tamp backfill under lower half of sewer pipe.

- E. Provide 6 inch wide locator tape 2 foot over each utility use APWA Color Standards.
- F. Provide steel plates to cover open trenches when construction has stopped for the day.

SITE LIGHTING

- A. Removal of site lighting shall be done where the same photometric levels are kept on the Home Depot property. Carve out to supply new foot-candle layout.
- B. Provide re-circuiting and routing of electrical service so remaining lighting fixtures and signs remain in operation with the Home Depot Circuit. Re-routing in pavement areas shall be done by Jack and Bore.

02580 PAVEMENT MARKINGS

ACCEPTABLE MANUFACTURERS

- A. Provide ready-mixed one component waterborne traffic line paint. Materials shall be 4800 Series Traffic Paint Water Reducible Acrylic from ICI Paints or equal*.
 - a. Colors:
 - i. Yellow: 1 Gallon 20087 & 5 Gallon 20088
 - ii. White: 1 Gallon 25524 & 5 Gallon 22683
 - iii. Blue : 1 Gallon 20089 & 5 Gallon 20090
 - iv. Red: 1 Gallon 43613 & 5 Gallon 43614
 - v. Black: 1 Gallon 26565 & 5 Gallon 26566

INSTALLATION

- A. Install pavement markings to match existing layout or revised site plan.
- B. Traffic paint shall be installed in two coats. First Coat shall be installed at the recommended DFT after paving is in place. Minimum 24 Hr cure time between coats.

PAINTING

- A. The Minimum Required total Dry Film Thickness (DFT): The DFT shall be the minimum required dry film thickness as measured in mils.
System Coverage Requirements:
 - 1st Coat - 3.0 mils DFT
 - 2nd Coat - 6.0 mils DFT
- B. Exterior Paint Systems: Provide the following paint systems as indicated:
 - 1. Parking stall, division and limit lines shall be 4" in width, true and straight. Color: White – DFT 6.0 mils.
 - 2. Pavement lettering "NO PARKING" shall be 2'-0" in height. Color: Red – DFT 6.0 mils.
 - 3. Compact lettering "COMPACT" shall be 1'-0" in height. Color: White – DFT 6.0 mils.
 - 4. Stop legends shall be as detailed on Drawing. Color: White - DFT 6.0 mils.
 - 5. Wheelchair legends shall be as detailed on Drawing. Color: Blue background with white symbols. Parking stall striping shall be Blue at Handicapped stalls only - DFT 6.0 mils.
 - 6. Diagonal striping Handicapped. Color: Blue - DFT 6.0 mils.
 - 7. Diagonal striping Loading Zone. Color: Yellow - DFT 6.0 mils.
 - 8. Directional signage shall be as detailed on Drawing. Color: White - DFT 6.0 mils.
 - 9. Centerline striping shall be 4" in width as detailed on Drawings. Color: White - DFT 6.0 mils.
 - 10. Concrete wheel stops. Color: Yellow - DFT 6.0 mils.
 - 11. Fire Lane striping as required by code. Color Red Lines, White Letters – DFR 6.0 mils.

02721 STORM DRAINAGE SYSTEM AND EROSION CONTROLS

TAP CONNECTIONS

- A. Make connections to existing conduits and underground structures, so that finished work will conform as nearly as practicable to requirements specified for new work.
- B. Take care while making tap connections to prevent concrete or debris from entering existing conduit or structure. Remove debris, sediment, concrete or other extraneous material, which may accumulate.
- C. Before de-commissioning existing storm lines new storm line shall be installed and in full operation.

BACKFILLING

- A. Conduct backfill operations of open-cut trenches closely following laying, jointing and bedding of pipe, and after initial inspection and testing are completed.

TESTING

- A. Perform testing of completed conduit lines in accordance with local authorities having jurisdiction. Provide testing results to The Home Depot ITC and The Home Depot Project Manager.

EROSION AND SEDIMENTATION CONTROLS

- A. Follow the governing agency standards of erosion and sediment control with the added requirement that no hay bales are allowed as a BMP control.
- B. Existing inlets that receive above ground runoff from the carve out parcel shall have inlet protection, i.e.

EXHIBIT E

dandy bags or equivalent.

- C. Conduct daily sweeping of sediment and debris, inspection of BMPs, and repairs. Area is not limited to the surrounding area of the carve out and may need to be inspected on a larger scale of area affected by the construction activities as indicated by the Home Depot Project Manager.

02810 FINE GRADING and GRASSING

TOPSOIL

- A. Topsoil shall be free from tree roots, stones, and other materials that hinder grading, planting, and maintenance operations, and free from noxious and other objectionable weed seeds and toxic substances.

MULCH

- A. Mulch shall be baled wheat, oat, rye, or hay or other grasses and be applied on all areas to be seeded unless they are hydro seeded. Mulch shall be applied at a rate of 1-1/2 to 2 tons per acre and shall be anchored to the soil to prevent it from being blown around on the site during periods of high winds. Asphalt emulsion application will not be acceptable. At any time the mulch becomes bunched it shall be re-spread and re-anchored.

HYDROMULCH

- A. Hydromulch shall be composed of wood cellulose fiber and contain no germination- or growth inhibiting factors. It shall be colored green to allow visual metering in its application and have the property of being evenly dispersed and suspended when agitated in water.

PREP

- A. Topsoil shall be uniformly distributed and evenly spread to a minimum thickness of 4 inches. Topsoil shall be spread so that planting can proceed with little additional soil preparation or tillage.
- B. Any finished grade that is not free from lumps and foreign material as described.

SLOPE PROTECTION AND STABILIZATION

- A. Slopes steeper than 3H: 1V shall be considered engineered slopes.
- B. Acceptable methods for protection shall be as follows:
 - 1. Sod Grass is preferred unless The Home Depot Project Manager approves alternate*. Vegetative controls (if soil conditions are appropriate) with deep rooting grasses or plant materials to protect from erosion and slope failures.
 - 2. Geofabric or Geosynthetic matting.
 - 3. Stone and/or rip-rap with Geofabric or Geogrid underlayment.
 - 4. Structural slope protection measures such as anchored shot-crete, engineered block networks, or Geoweb structures.
- C. Crown vetch shall be planted on slope in excess of one vertical to tree horizontal. Seed mix shall be K-31 tall fescue at 40 pounds per acre and crown vetch at 20 pound per acre. Inoculate seed with fresh inoculants as directed on package. Insure that crown vetch inoculants contains sticker supplement. Maintain temperature of between 50° and 75° during inoculation. When hydro seeding, use five times inoculants rate.

HYDROSEEDING

- A. Hydroseed shall be applied with hydraulic equipment at the rate of: 2,500 pounds on 5:1 slope or less, 3,500 pounds on grades greater than 5:1 slopes, of hydromulch per acre with the exception of any drainage swales. Hydromulch shall be added to the water slurry in the hydraulic seeder after the proportionate quantities of seed, fertilizer and other accepted materials have been added.
- B. The slurry shall be sprayed uniformly on the surface of the soil.
- C. Bare or thin spots in excess of 5 percent of any area will not be acceptable.

02920 SOIL PREPARATION

OFFSITE IMPORTED TOPSOIL:

- A. Composition: Fertile, friable, well drained soil, of uniform quality, free of stones over 1 in. diameter, sticks, oils, chemicals, plaster, concrete and other deleterious materials.

Analysis: Suggested to obtain an agricultural suitability analysis of the proposed topsoil from an approved Soils Testing Laboratory. Provide copy of analysis to The Home Depot ITC and The Home Depot Project Manager.

- B. Imported topsoil for the trees, shrubs, groundcovers, and perennials, as noted on the drawings and for the lawns.

PREPARATION OF AREAS TO RECEIVE TOPSOIL

Verifications: Verify that subgrades for installation of topsoil have been established. Provide copy of verification to The Home Depot ITC and The Home Depot Project Manager.

- A. Depth: Verify that subgrades are 6 in. minimum below finished grades, +/- 1 in., allowing for topsoil and soil amendments.
- B. Cultivation: Cross rip to 8" depth subgrade in planting areas prior to spreading topsoil.

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- C. Clearing of Debris: Clear all planting areas of stones 2 in. diameter and larger, weeds, debris and other extraneous materials prior to amending existing soil and prior to spreading topsoil.

02930 LAWNS AND SOD

PROJECT/SITE CONDITIONS

- A. Existing Conditions: For protection of existing plants to remain, refer to plans.

TYPES OF GRASSES

- A. Italian Rye (*Lolium Multiflorum*) Seed: Fresh, clean seed testing 90% for purity and 70% for germination, 0.5 maximum weed content.
- B. Bermuda (*Cynodon Dactylon*) Seed: Fresh, clean hulled, new seed crop; 90% minimum purity, 70% minimum germination, 1% maximum weed content.
- C. Bermuda (*Cynodon Dactylon*) Sprigs: Stolongs, healthy and vigorous without weeds or other foreign material.
- D. Bermuda (*Cynodon Dactylon*) Sod: Nursery grown, certified, approved sod furnished in supplier's standard size square or rectangular pads, 1/2" in. thickness (+1/4" -), excluding growth and thatch.
1. Mowing Height: 3/4" maximum
 2. Thatch: 1/2" uncompressed
 3. Inspected and free of diseases, nematodes, pests and pest larvae by an entomologist of the State Department of Agriculture.
 4. Free of common Bermuda grass, quack grass, Johnson grass, poison ivy, nutsedge, nimblewill, Canadian thistle, bindweed, bent grass, wild garlic, ground ivy, perennial sorrel and broom grass.
 5. Having not more than five jimsonweed, mustard, lambs' quarter, chickweed, cress or crabgrass per 100 sq. ft.
- E. Red Fescue (*Festuca Rubra* Var.) Seed: Fresh, clean, new seed testing 90% for purity and 70% for germination.
- F. Straw Bales: Clean bales of straw of hay, wheat, rye, oats or barley.
- G. Hydro mulch: Wood cellulose fiber containing no germination inhibiting or growth inhibiting agents. Characteristics shall be as follows:
1. Percent moisture content: 9.0% (+3.0%).
 2. Percent organic matter: 99.2% (+0.8).
 3. Percent ash content: 0.8% (+0.2%).
 4. pH: 4.8 (+0.5).
 5. Water Holding Capacity: 1150 grams water/100 grams fiber, minimum.
- H. Mulch: Clean, seed free stray of hay, wheat, rye, oats or barley.
- I. Staking Pegs: 3/4" diameter by 8" long softwood.
- J. Water: Clean, potable.

EXAMINATION

Verification of Conditions:

- A. Stones, Weeds, Debris: Verify that all areas to receive hydro seeding and sodding are clear of stones larger than 1/2 in. diameter, weeds, debris and other extraneous materials.
- B. Grades: Verify that grades are within 1 in. plus or minus of the required finished grades. Verify that fertilization have been installed in another section. Report all variations in writing.

CLEANING

- A. Hydroseed Overspray: Immediately after application, thoroughly wash off any plant materials, planting areas, or paved areas not intended to receive slurry mix.
- B. Erosion: Immediately restore eroded areas. Keep all adjacent paved surfaces cleaned of dirt, mud or stains and organic debris.

SODDED LAWN INSTALLATION

- A. Sod Bed Preparation:
1. Rolling: Roll amended soil with 200 pound water ballast roller.
 2. Moistening: After all unevenness in the soil surface has been corrected, lightly moisten the soil immediately prior to laying the sod.
 3. Timing: Sod immediately thereafter, provided the sod bed has remained in friable condition.
- B. Sodding Operations:
1. Starter Strip: Lay the first row of sod in a straight line, with subsequent rows parallel to and tightly against each other, with no spaces between strips. Stagger lateral joints. Do not stretch or overlap sod. Butt all joints tightly to eliminate all voids.
 2. Cutting: Use a sharp knife to cut sod to fit curves and paving.
 3. Tamping and Rolling: Thoroughly tamp and roll sod to make contact with sod bed. Roll each entire section of completed sod.

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4. Watering: Thoroughly water sod immediately after installation to wet the underside of the new sod pad and the soil immediately below to a depth of 6 in.
5. Top-Dress Fertilizer: Apply at the rate of six (6) pounds per 1,000 square feet at 25 days and at 50 days after sodding.

02940 LANDSCAPING PLANTING

QUANTITIES AND TYPES:

- A. Furnish plants in the quantities and/or spacing as shown or noted for each location, and of the species kinds and sizes as indicated on the drawings, or matching and replacing existing materials currently on the site.
- B. Verification of dimensions and quantities: Scaled dimensions are approximate. Before proceeding with any work, carefully check and verify dimensions and quantities look for any discrepancy between the drawings and/or specifications and actual conditions.

INERT GROUND COVER MATERIALS

- A. "Walk-On-Bark", as supplied by Sequoia Forest Products.
 1. Shall be a shredded wood and bark residual from pine and/or fir.
 2. Grading:

Sieve Size	Percent Passing
1"	95%
3/8"	50%
6 mesh	25%
 3. Shall be acid in relation with PH percent based on dry weight.
 4. Ash content not exceed 7 percent based on dry weight.
 5. Moisture shall vary from 12 percent to 35 percent based on fresh material.
 6. Shall be free of soluble salts such that the saturation extract conductivity shall not exceed 1.5.

GUYING AND STAKING MATERIALS

- A. Wood Tree Stakes: Pressure-treated pine, 2" x 2" diameter, and ±18" long.
- B. Steel Pipe Tree Stakes: Schedule 40 steel pipe, 1" diameter x approximately 18" long with cap, vinyl coated and pre-drilled with three holes near end as manufactured by Calsak Corporation, 15001 S. Main, Gardena, CA 90248, or approved equal.
- C. Ties: Cinch-Ties or ½" new rubber wire hose with 10 gauge or approved equal.
- D. Steel Guy Anchor: ¾" diameter x 36" steel vane as manufactured by Maxwell Steel Company, (213)944-6619, or approved equal.
- E. Guying Hardware:
 1. Wire: Pliable 3/32" galvanized braided cable.
 2. Wire Guard: ½" diameter white PVC tubing, full length of wire.
 3. Turnbuckles: Galvanized, or dip-painted, ½" x 6" long.
 4. Cable Clamps: Galvanized, size as required.

CLEANUP

- A. After planting operations have been completed, remove trash, excess soil, empty plant containers and rubbish from the property. Scars, ruts, or other marks in the ground caused by this work shall be repaired and the ground left in a neat and orderly condition throughout the site.
- B. Leave the site broom-clean and wash down paved areas within the contract area, leaving the premises in a clean condition. Walks shall be left in a clean and safe condition.
- C. Plants shall be vigorous, of normal growth, free from disease, insects, insect eggs and larvae. Plants shall equal or exceed the measurements specified in plant list.

PLANTING SEASON

- A. Contractor to use discretion based on current weather conditions.
- B. Deciduous Trees and Shrubs: In the fall after leaf drop occurs but before soil freezes, in the spring before growth begins.
- C. Evergreen Trees, Shrubs and Vines: Early Fall or late spring.

PROJECT/SITE CONDITIONS

- A. Protection of Existing Plants to Remain:
 1. Operations: Do not store materials of equipment, permit burning, or operate or park equipment under the branches of all existing plants to remain.
 2. Barriers: Provide temporary fences at the drip line to protect existing plants to remain from damage during construction.
- B. Correct Species: Warrant that all plant materials are true to species and variety.

EXAMINATION

- A. Verification of Conditions:
 1. Soil Preparation: Do not commence planting work prior to completion and acceptance of soil preparation.

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2. Finish Grades: Finish grades for planting areas shall have been established in another section. Verify that all grades are within 1 in. plus or minus of required finish grade and that all soil amendments have been installed as specified under Section on Soil Preparation.
3. Irrigation: Verify that irrigation system has been installed and accepted.

MULCHING

- A. Install a 2 in. deep layer of mulch over all tree pits.
- B. Install a 2 in. deep layer of mulch over all shrub areas including tree and shrub watering basins.
- C. Install a 2 in. deep layer of mulch over groundcover areas prior to planting groundcover.

02960 LANDSCAPE IRRIGATION

Locating and identifying existing irrigation system. The Contractor shall create a drawing of the existing system mark any changes made to original layout.

The Contractor shall use materials consistent with the existing system or match with approved equal*.

- A. If, within one year from the date of completion, settlement occurs, and adjustments in pipes, valves, and sprinkler heads, lawn areas or paving are necessary to bring the system, grade, or paving to the proper level of the permanent grades, the Contractor, as part of the work under this Contract, shall make all adjustments without extra cost to The Home Depot, including restoration of all damaged planting, paving, or other improvements of any kind.
- B. All control valves, controller and related controller accessories shall be of like manufacturer to ensure full compatibility.
- C. All piping shall be from virgin parent material. The pipe shall be homogenous throughout and free from visible cracks, holes, foreign materials, blisters, deleterious wrinkles, and dents. All pipe shall be National Sanitation Foundation (NSF) approved.

Trenching

- A. When two (2) pipes are to be placed in the same trench, a six-inch (6") space is to be maintained between the pipes. The Contractor shall not install two pipes with one directly above the other.
- B. Jack and bore under pavement is preferred unless The Home Depot Project Manager approves exception*. Trenches located under paving shall be backfilled with sand (a layer six inches (6") below the pipe and three inches (3") above the pipe) and compacted in layers of 95% compaction. Depth of trenches shall be sufficient to provide the minimum cover above the top of the pipe as follows:
 1. 12" over non-pressure lateral lines
 2. 18" over non-pressure lateral lines under paving
 3. 18" over control wires
 4. 18" over sprinkler main line
 5. 24" over sprinkler main line under paving
- C. The Contractor shall cut trenches for pipe to required grade lines and compact trench bottom to provide accurate grade and uniform bearing for the full length of the line.

BACKFILL AND COMPACTING

- A. After system is operating and required tests and inspections have been made, backfill excavations and trenches.
 1. Backfill for all trenches, regardless of the type of pipe covered, shall be compacted to minimum 95% density under pavements, 85% under planted areas.
 2. Backfill material shall be approved soil. Unsuitable materials, including clods and rocks over two inches (2") in size shall be removed from the site.
 3. A fine granular material shall be placed initially on all lines with a minimum of three inches (3") cover. No foreign matter.
 4. Larger than one-half inch (½") in size shall be permitted in the initial backfill.
 5. Compact trenches in areas to be planted, by thoroughly flooding the backfill.
 6. Within all planting and lawn areas the existing six-inch (6") layer of topsoil shall be restored to its original condition and finish grade.
 7. The Contractor shall dispose of surplus earth remaining after backfilling off-site.

***SUBSTITUTIONS/EXCEPTIONS**

THE HOME DEPOT PROJECT MANAGER WILL DETERMINE IF CHANGE IS APPROVED *.

- A. Making formal request for substitution represents that Contractor
 1. Has investigated proposed product and had determined that it is equal to or superior in all respects to that what was specified or existing.
 2. Will produce the same warranties for substituted products as product specified.
 3. Will coordinate installation of accepted substitution into the work.
 4. Provide an itemized comparison of the proposed substitution with product specified or existing and list significant variations.
 5. Provide samples if applicable, and manufactures information and specifications, or data.

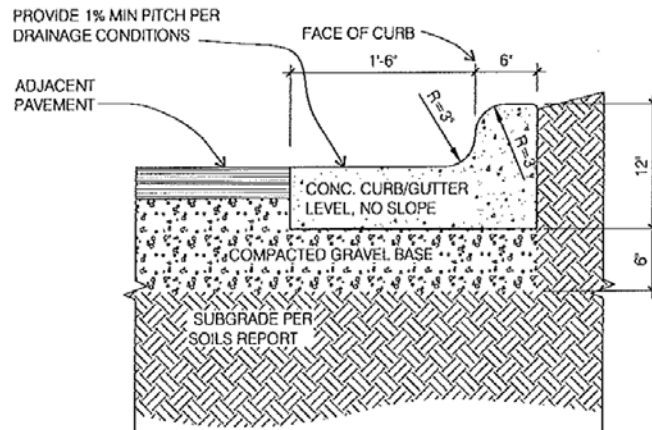
Rev-01-06-2010
Page 7 of 10

The following detail sheets depict typical sections for curbs, valve boxes, and pipe trenching.

EXHIBIT E

Section 7: CIVIL DRAWING REQUIREMENTS

Figure 26-C2



CURB AND GUTTER NOTES

- A. PROVIDE #6 x 18" LONG, SMOOTH DOWELS AT ALL EXPANSION JOINTS
- B. $\frac{3}{4}$ " EXPANSION JOINTS WITH BITUMINOUS SEALANT AT INTERVALS PER ACI RECOMMENDATIONS, AT ALL RADII AND AT DRAINAGE STRUCTURES.
- C. CONCRETE SHALL HAVE A MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 4,000 PSI
- D. LIGHT BROOM FINISH ON ALL SURFACES, ALL RADII TO BE TRUE ARCS.
- E. PROVIDE (2) #4 BARS, 10'-0" LONG, CENTERED OVER ALL TRENCH CROSSINGS
- F. PROVIDE (2) #6 x 2'-6" LONG BARS TO CONNECT EXISTING AND NEW CURBS
- G. GUTTER SHALL PITCH AS REQUIRED TO CONVEY DRAINAGE
- H. PROVIDE 4" PVC / HDPE WHEN RECOMMENDED BY THE GEOTECHNICAL REPORT. CONNECT TO THE STORM

DESIGNER NOTE: USED ONLY WHEN DRAINAGE CONDITIONS, DEVELOPER REQUIREMENTS, OR JURISDICTION REQUIRES CURB AND GUTTER



26-C2 CONCRETE CURB AND GUTTER

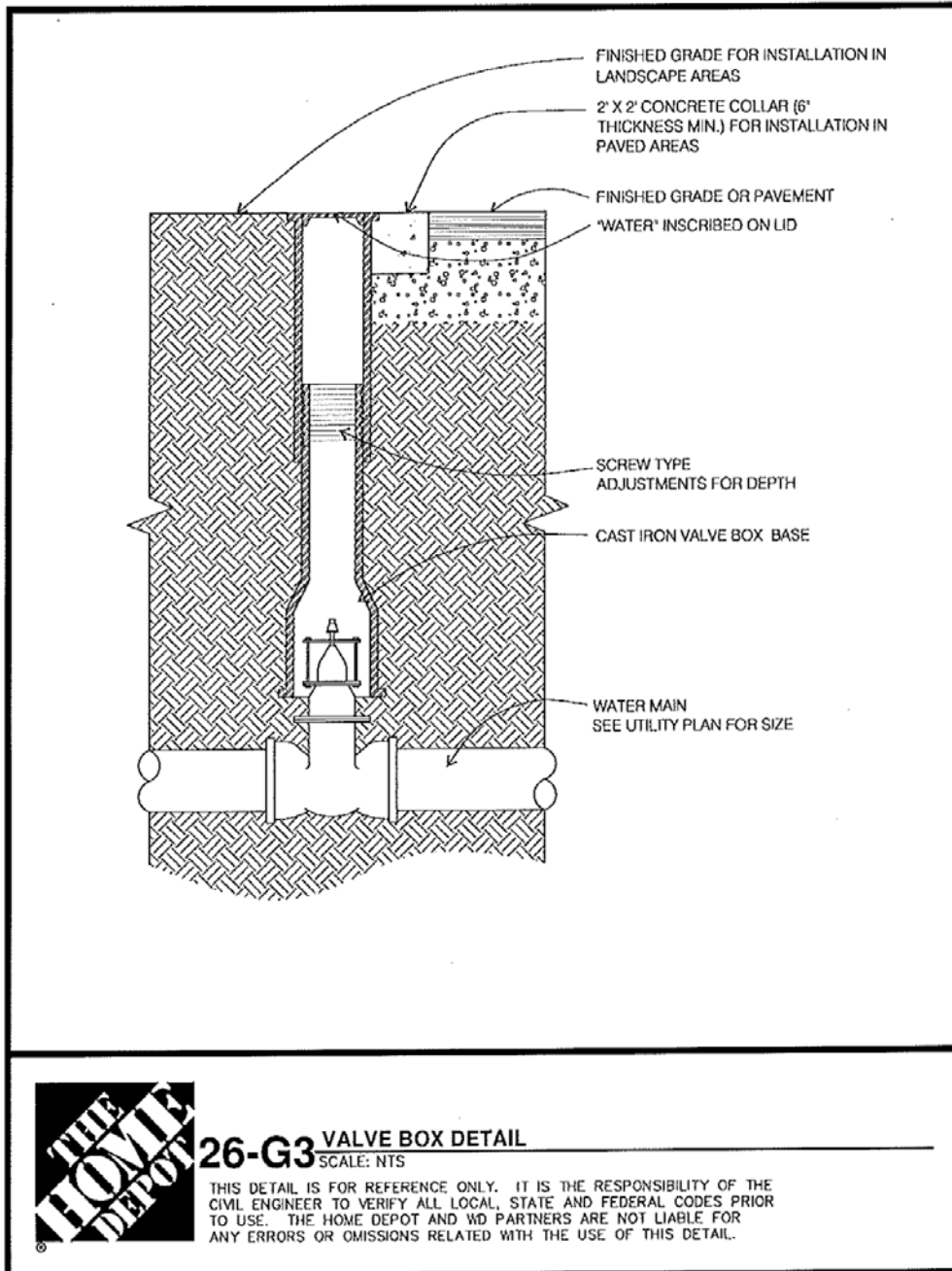
SCALE: NTS

THIS DETAIL IS FOR REFERENCE ONLY. IT IS THE RESPONSIBILITY OF THE CIVIL ENGINEER TO VERIFY ALL LOCAL, STATE AND FEDERAL CODES PRIOR TO USE. THE HOME DEPOT AND WD PARTNERS ARE NOT LIABLE FOR ANY ERRORS OR OMISSIONS RELATED WITH THE USE OF THIS DETAIL.

EXHIBIT E

Section 7: CIVIL DRAWING REQUIREMENTS

Figure 26-G3



SECTION 7
Page 25

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Rev-01-06-2010
Page 9 of 10

EXHIBIT E

Section 7: CIVIL DRAWING REQUIREMENTS

Figure 26-K

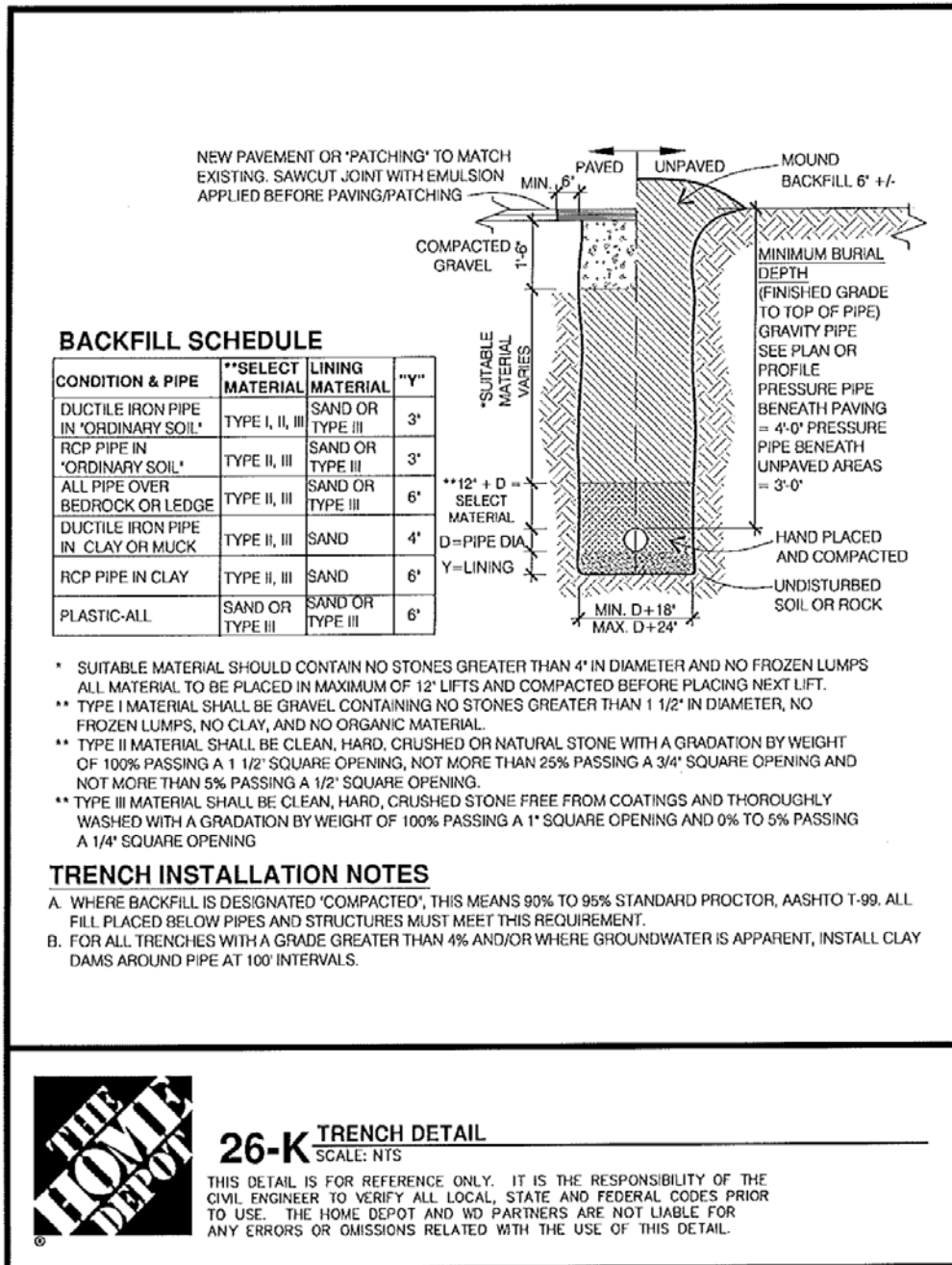


EXHIBIT F

Recording Requested By
City of Sunnyvale

When Recorded Return To:

City of Sunnyvale
Planning Division
P. O. Box 3707
Sunnyvale, CA 94088-3707

Document exempt from Recording
Fees Pursuant to Govt. Code §27383

(Space above for Recorder's Use)

DECLARATION REGARDING FAIR OAKS AVENUE OVERHEAD BRIDGE REHABILITATION PROJECT LANDSCAPE MODIFICATION AT 680 KIFER ROAD CITY OF SUNNYVALE

All that real property commonly known as 680 KIFER ROAD, Sunnyvale, California, APN: 205-47-013, more fully described in the legal description attached as Exhibit "A." ("Site")

As part of the Fair Oaks Avenue Overhead Bridge Rehabilitation Project ("the Project"), the City of Sunnyvale has been in discussion with Home Depot related to the Project and the impacts of the improvements along the Hendy Avenue frontage of the Site.

The Project will remove 73 sq. ft. of landscaping to accommodate three new columns for the overhead bridge (See Sheets L4 and L5 – Layout Hendy Avenue attached as Exhibit "B"). Seven trees will also be removed and replaced within the landscaped right-of-way area surrounded by Hendy, Kifer and Fair Oaks Ave (See Exhibit "C") by the City as part of the Project. Home Depot, and any successor owners or users of the Site, will not be required to replace the 73-sq. ft. of landscaping removed by the Project.

In 1994, a Special Development Permit (#8083) was approved by the Planning Commission to allow expansion of the retail store at the Site including an outdoor garden area. City records show that this approval was the last significant improvement which required Planning entitlement on the Site. The records from this SDP approval states that the required landscaping at the time was 78,030 sq. ft. (approximately 17.6% of the lot size); however, a landscaping deviation was approved for the SDP allowing for only 44,825 sq. ft. (approximately 10% of the lot size).

As partial consideration for Home Depot agreeing to allow construction of the Project on the Site, City acknowledges and agrees that the proposed reduction of 73 sq. ft. of landscaping removed by the City for the Project is not required to be replaced on the Site nor does that reduction cause the Site to be out of compliance with applicable City landscape requirements or the Site approvals. If future redevelopment or significant land use change or modification to the Site were proposed, landscaping, amongst other development standards, may be required to comply with the applicable City codes at that time, unless a deviation is granted, less the 73 sq. ft. of landscaping removed by the City as part of this Project. This Declaration is a covenant running with the land for the benefit of the Site and its current and future owners and users.

[SIGNATURES ON FOLLOWING PAGE]

All signatures require notarization

EXHIBIT F

Dated: _____

CITY OF SUNNYVALE

By: _____

Andrew Miner
Asst. Director of Community Development

The undersigned does (do) hereby accept this agreement.

HD Development of Maryland, Inc.
a Maryland corporation

Dated: _____

By: _____

Name:
Title:

Attachments

105966011\W-1

EXHIBIT F

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

REAL property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at the intersection of the center line of Hendy Avenue, with the center line of Fair Oaks Avenue; thence along said line of Fair Oaks Avenue North 14° 52' East 474.74 feet to the Northwesterly prolongation of the Southwesterly line of Tract No. 214 Victory Village Map No. 2, as said Map was filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on October 4, 1943 in Book 7 of Maps, page 37; thence leaving the centerline of Fair Oaks Avenue and running along the Southwesterly line of said Tract No. 214 Victory Village Map No. 2 and the Northwesterly prolongation thereof, South 75° 08' East 833 feet, South 14° 52' West 30 feet and South 78° 08' East 152.54 feet to the East line of the City of Sunnyvale; thence parallel with the center line of Fair Oaks Avenue, South 14° 52' West 575 feet more or less, to the center line of Hendy Avenue, thence along the center line of Hendy Avenue North 67° 32' West 994.58 feet to the point of beginning, being a part of Lot 17, 18, 19 and 20 as shown upon that certain Map entitled, "Map of Crossman Subdivision No. 4 Part of Lot 1 of the Murphy Partition, in the Rancho Pastoria De Las Borregas, as recorded in Book "G" of Maps, pages 74 and 75, Santa Clara County Records" and which said map was filed for record in the Office of the County Recorder of Santa Clara County, California, on December 21, 1909 in Book "M" of Maps, page 88, and including therein a portion of the Northeasterly half of Hendy Avenue, now abandoned.

Excepting therefrom so much thereof as conveyed by California Cannery and Growers, a non-profit cooperative Association, successor by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, Page 714 as follows:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT F

LEGAL DESCRIPTION: (Continued)

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, at page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line of 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West having a radius of 40.00 feet, a central angle of 90° 00' and an arc length of 62.83 feet; thence South 14° 52' West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue, 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South 67° 32' East, along said Northerly line 88.00 feet; thence North 22° 28' East, 11.00 feet; thence North 67° 32' West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North 14° 52' East along last said parallel line, 279.90 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of 30° 15' 50" and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of 11° 51' 13" and an arc length of 39.10 feet; thence North 56° 59' 03" East, tangent to last said curve, 64.93 feet to the true point of beginning.

Parcel Two:

Beginning at the point of intersection of the Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue with the center line of Hendy Avenue, as the same is shown on the Map of Crossman Subdivision No. 4 which Map is on file in the Office of the Recorder of the County of Santa Clara, State of California, in Book "M" of Maps, page 88; thence along said center line of Hendy Avenue South 67° 32' East 994.58 feet to the Southeasterly terminus thereof in the Easterly line of Lot 1 of the Murphy Partition in the Rancho Pastoria De Las Borregas according to the map thereof on file in Book "G" of Maps, pages 74 and 75, Santa Clara County Records; thence along the Easterly line of Lot 1, South

LEGAL DESCRIPTION: (Continued)

EXHIBIT F

LEGAL DESCRIPTION: (Continued)

13° 53' West 10 feet, more or less, to the Easterly corner of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation, to Southern Pacific Railroad Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records page 482, Santa Clara County Records; thence along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company, Northwesterly along a curve to the right, having a radius of 5470.56 feet from a tangent bearing North 70° 40' 38" West an arc distance of 104.44 feet; thence continuing along the Northeasterly line of said parcel of land conveyed to Southern Pacific Railroad Company and along the Northeasterly line of that certain parcel of land conveyed by Schuckl & Co., Inc., a corporation to Southern Pacific Company, a corporation, by Deed dated February 13, 1953 and recorded May 4, 1953 in Book 2634 of Official Records, page 480, Santa Clara County Records, North 68° 29' West 238.49 feet and North 67° 43' West 628.43 feet to said Southwesterly prolongation of the Southeasterly line of Fair Oaks Avenue; thence along said prolonged Southeasterly line of Fair Oaks Avenue, North 14° 52' East 15.14 feet to the point of beginning, and being a portion of the Southwesterly half of Hendy Avenue, now abandoned as shown on said Map of Crossman Subdivision No. 4 hereinabove referred to.

Excepting therefrom that portion thereof lying within the following described parcel of land conveyed by California Cannery and Growers, a non-profit Cooperative Association, successors by merger to Schuckl & Co., Inc., a corporation, to the City of Sunnyvale, a municipal corporation, by Deed dated September 9, 1966 and recorded September 22, 1966 in Book 7512 of Official Records, page 714, as follows:

Commencing at the intersection of the centerline of Fair Oaks Avenue (50.00 feet wide) with the Westerly prolongation of the Southerly line of Lot 138 of Tract No. 214, Victory Village Map No. 2, as said Map was filed for record in Book 7 of Maps, page 37 in the Office of the Recorder of said County; thence South 75° 08' East along said prolongation and Southerly line and the Easterly prolongation of said Southerly line 121.09 feet; thence South 14° 52' West, 86.00 feet to the true point of beginning; thence North 75° 08' West along a line parallel with and distant 86.00 feet Southerly measured at right angles from said Southerly line of Tract No. 214 a distance of 48.09 feet; thence South 14° 52' West, 4.00 feet to a curve to the left; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing of North 75° 08' West

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

EXHIBIT F

LEGAL DESCRIPTION: (Continued)

having a radius of 40.00 feet, a central angle of $90^{\circ} 00'$ an arc length of 62.83 feet; thence South $14^{\circ} 52'$ West along a line parallel with and distant 33.00 feet Easterly, measured at right angles from said centerline of Fair Oaks Avenue 364.00 feet (363.52 feet record) to the Northerly line of the right-of-way (90.00 feet wide) of the Southern Pacific Company; thence South $67^{\circ} 32'$ East, along said Northerly line 88.00 feet; thence North $22^{\circ} 28'$ East, 11.00 feet; thence North $67^{\circ} 32'$ West, 78.37 feet to a line parallel with and distant 44.00 feet Easterly measured at right angles from said centerline of Fair Oaks Avenue; thence North $14^{\circ} 52'$ East along said parallel line, 279.00 feet to the beginning of a tangent curve to the right; thence Northeasterly along said curve having a radius of 77.00 feet, a central angle of $30^{\circ} 15' 50''$ and an arc length of 40.67 feet to a point of compound curvature; thence Northeasterly along a curve to the right having a radius of 189.00 feet, a central angle of $11^{\circ} 51' 13''$ and an arc length of 39.10 feet; thence North $56^{\circ} 59' 03''$ East, tangent to last said curve, 64.93 feet to the true point of beginning.

APN: 205-47-013

ARB: 206-53-037

November 21, 1990

(K 504807 504807.C)

EXHIBIT F

EXHIBIT “B”

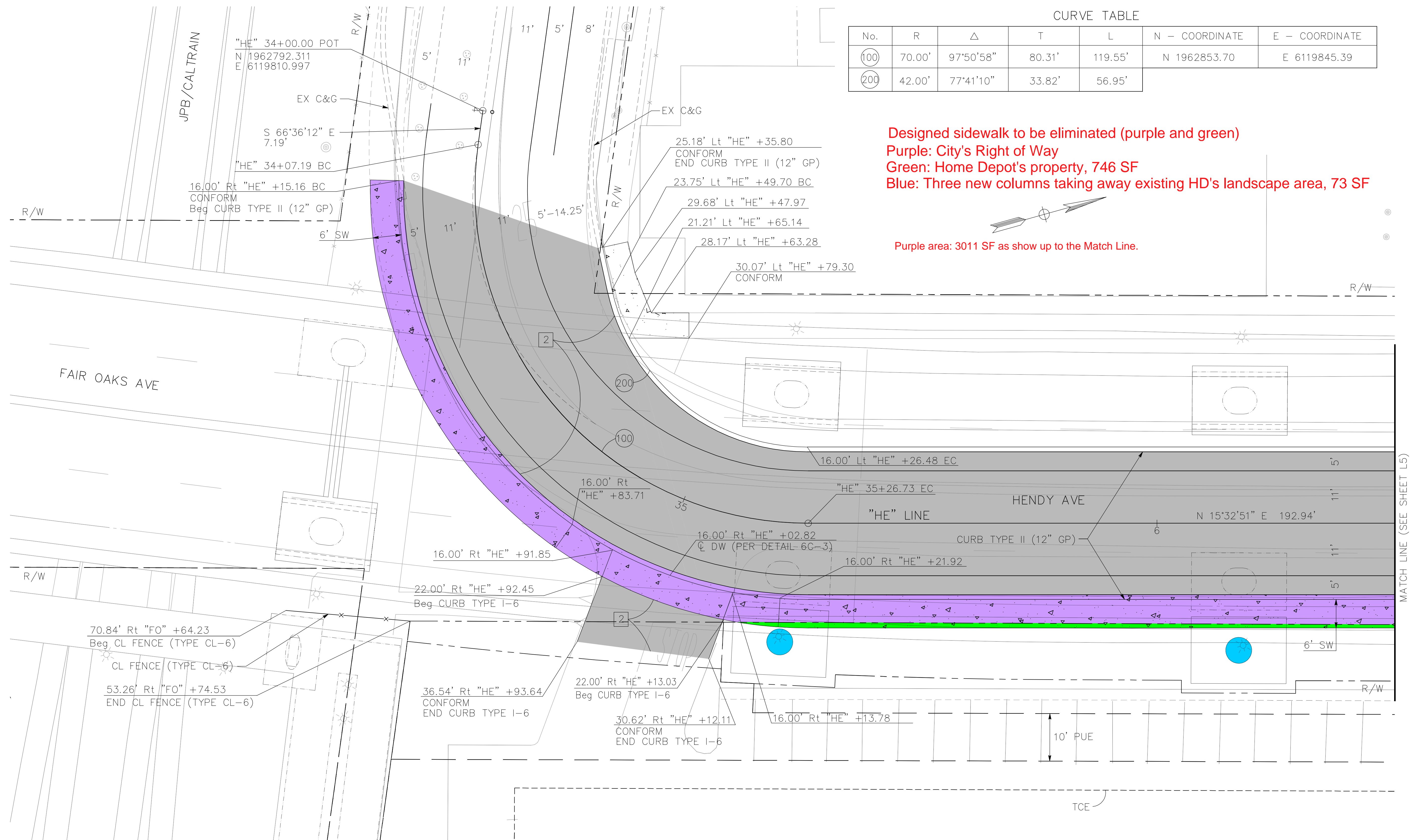
Hendy Avenue Layout

[attached]

No.	R	△	T	L	N - COORDINATE	E - COORDINATE
100	70.00'	97°50'58"	80.31'	119.55'	N 1962853.70	E 6119845.39
200	42.00'	77°41'10"	33.82'	56.95'		

Designed sidewalk to be eliminated (purple and green)
 Purple: City's Right of Way
 Green: Home Depot's property, 746 SF
 Blue: Three new columns taking away existing HD's landscape area, 73 SF

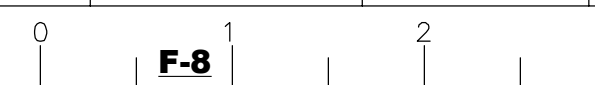
Purple area: 3011 SF as show up to the Match Line.

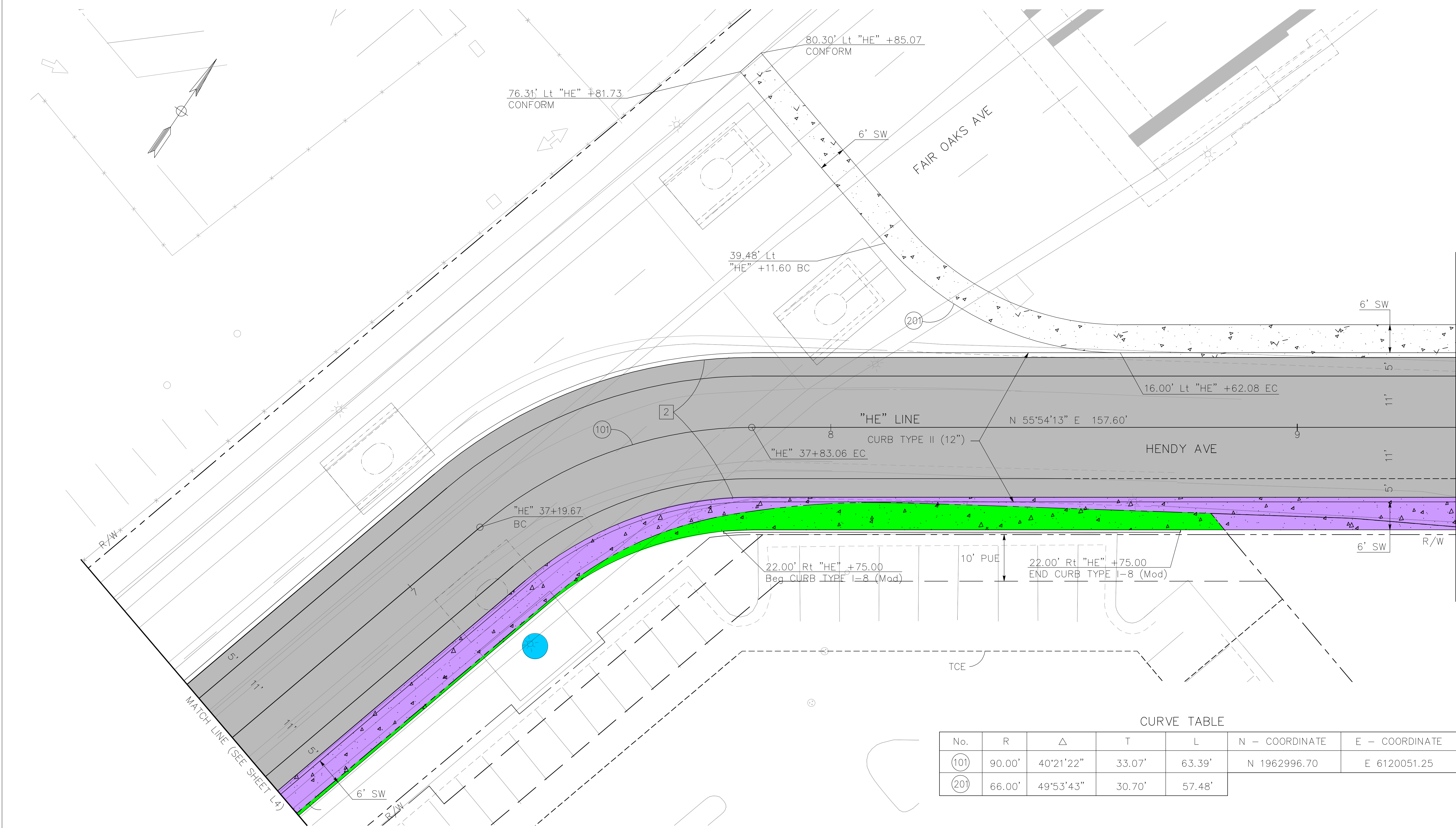


FOR NOTES AND LEGEND, SEE SHEET L1.
FOR ABBREVIATIONS, SEE SHEET X1.

[illegible]

FOR REDUCED PLANS
ORIGINAL SCALE IS IN INCHES





CURVE TABLE							
No.	R	Δ	T	L	N — COORDINATE	E — COORDINATE	
(101)	90.00'	40°21'22"	33.07'	63.39'	N 1962996.70	E 6120051.25	
(201)	66.00'	49°53'43"	30.70'	57.48'			

FOR NOTES AND LEGEND, SEE SHEET L1.
FOR ABBREVIATIONS, SEE SHEET X1.

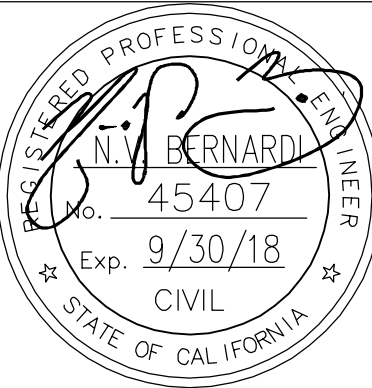
0	FINAL PS&E SUBMITTAL	2/14/17
Rev.	Description	Date

BIGGS CARDOSA ASSOCIATES INC
 STRUCTURAL ENGINEERS

865 The Alameda
 San Jose, California 95126
 408-296-5515

BKF
 ENGINEERS / SURVEYORS / PLANNERS

4670 WILLOW Rd. Suite 250
 PLEASANTON, CA 94588
 925-396-7700
 925-396-7799 (FAX)



Scale	1"=10'
Designed By:	JDR
Drawn By:	AGL
Checked By:	GCS
Consultant's Job No.	2012238

FAIR OAKS AVENUE OVERHEAD BRIDGE REHAB

LAYOUT
HENDY AVENUE
SHEET 2 OF 2



City of Sunnyvale
Santa Clara County
California

Department of Public Works
456 West Olive Avenue
P.O. Box 3707
Sunnyvale 94088-3707

City of Sunnyvale Project No.	TR-13/01-16
Drawing No.	L5
Sheet	19 of 178

EXHIBIT F

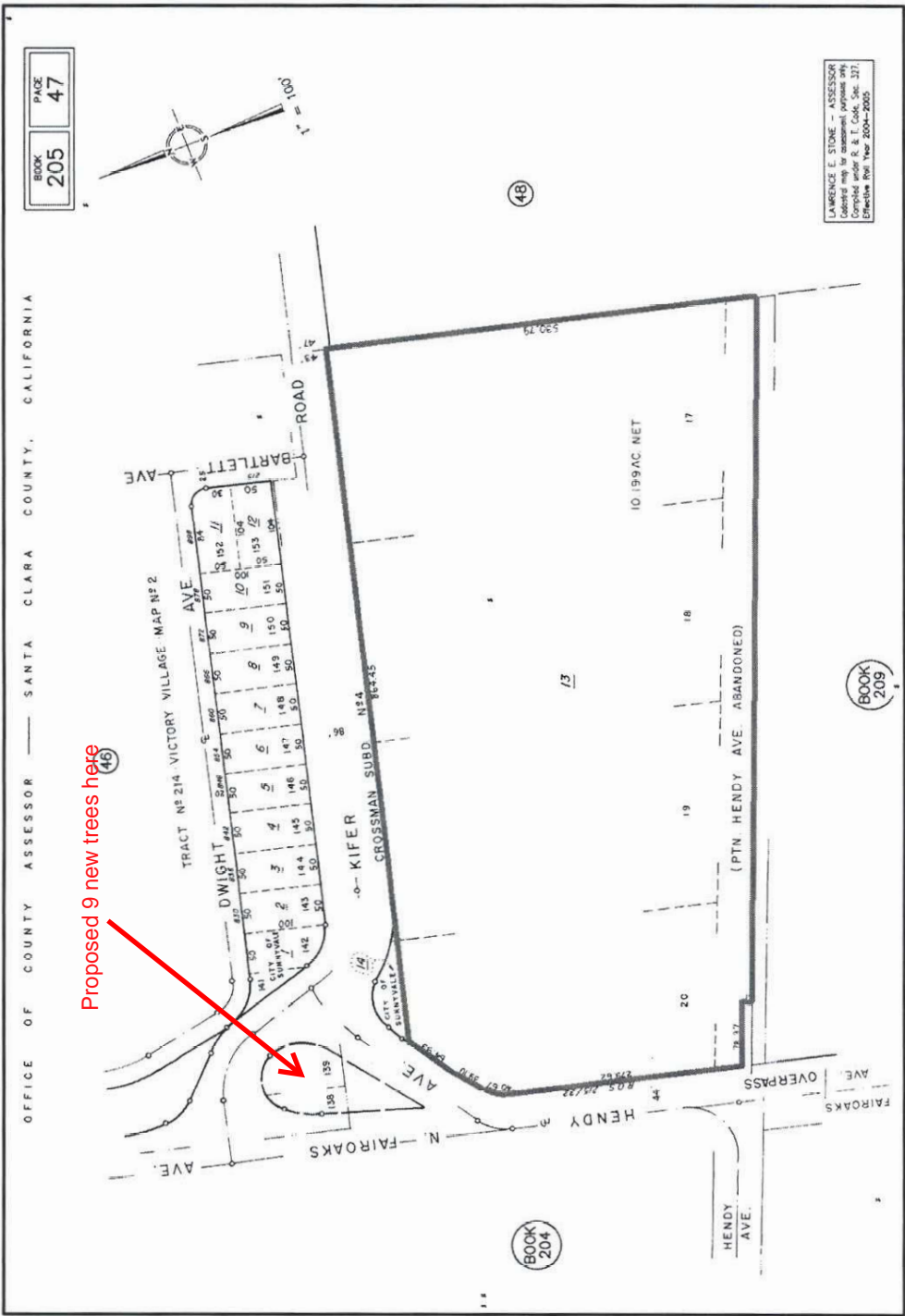
EXHIBIT “C”

Landscaped

Right-of-Way

[attached]

Plat Map





**Estimate of Cost and Authority for Work
Special Construction Charge and Invoice**

Customer Request Number : 174918
Project Number : 9572010

Date : 06/29/2018
Customer ID : 134272

Billing Information

Billing Party's Name : RICHARD CHEN, P.E.

Phone : (408) 730-7414

Billing Address : PO BOX 3707

DEPT OF PUBLIC WORKS

SUNNYVALE, CA 94088

Contact Name : RICHARD CHEN

Phone : (408) 730-7414

Work Description & Engineering Remarks : THIS IS FOR THE COMPLETE SCOPE OF WORK - PH 1 AND PH 2 COMBINED & ALSO INCLUDES THE REMOVAL AND HAZARDOUS MATERIAL REMEDIATION REQUIRED FOR REMOVAL OF OLD C-CEM DUCT OUT OF EXISTING EASEMENT TO BE ABANDONED.
FOR THE PLACEMENT OF 2 MANHOLES (1 @ HENDY & FAIR OAKS & THE OTHER @ HENDY APPROX 100' WEST OF KIFER), APPROXIMATELY 600 FT OF 16 CONDUIT BETWEEN THESE 2 MANHOLES, REPLACEMENT OF 10 FIBER OPTIC CABLES AND 3 COPPER CABLES AND ALL ASSOCIATED SPLICING.
THIS IS A BEST CASE SCENARIO COST ESTIMATION - IF THERE IS NOT A CLEAR PATH TO REPLACE THE EXISTING FIBER OPTIC CABLES FROM SPLICE POINT TO SPLICE POINT (BEYOND THE 600 FT OF STRUCTURE AND MANHOLES BEING REPLACED), THERE WOULD BE ADDITIONAL TRENCHING AND SUBSTRUCTURE PLACEMENT REQUIRED.

Expenses	Amount
Engineering Labor	\$ 431,912.88
Material Cost	\$ 240,768.25
Construction Labor	\$ 899,070.30
Contractor Cost	\$ 469,526.91
Salvage Credit	\$ 18,452.56
CIAC	\$ 0.00
Total Estimated Costs	\$ 2,022,825.78
Advanced Payment	\$ 0.00
Total Amount Due	\$ 2,022,825.78

OSPE Representative: LAURA WENDOVER

Title: OSP DESIGN - AND ASSIGNMENT -
NETWORK CAPACITY PROVISIONING

Phone #: (408) 635-8835



AT&T CR : 174918
AT&T Project : 9572010

Make check payable to:
Return signed Application with Payment to:

AT&T
AT&T
2700 Watt avenue, Room 3012
Sacramento, CA 95821
Attn: Debbie Beck

APPLICATION FOR CUSTOM WORK - ACTUAL COST BASIS

June 29, 2018

RICHARD CHEN, P.E.
PO BOX 3707
DEPT OF PUBLIC WORKS
SUNNYVALE, CA
94088
ATTN: Mr./Ms. RICHARD CHEN

DESCRIPTION OF CUSTOM WORK:

THIS IS FOR THE COMPLETE SCOPE OF WORK - PH 1 AND PH 2 COMBINED & ALSO INCLUDES THE REMOVAL AND HAZARDOUS MATERIAL REMEDIATION REQUIRED FOR REMOVAL OF OLD C-CEM DUCT OUT OF EXISTING EASEMENT TO BE ABANDONED.

ESTIMATED COST FOR CUSTOM WORK: \$2,022,825.78

Applicant has asked AT&T to perform the above-described custom work for which Applicant shall pay AT&T the estimated contract price of Two Million Twenty-Two Thousand Eight Hundred Twenty-Five Dollars And Seventy-Eight Cents/ \$2,022,825.78 in advance of the start of any AT&T work.

Applicant shall pay for the work on an "Actual Cost" basis. Upon completion of the work, AT&T will compute the actual cost of the work. Any difference between the amount of advance payment and the actual cost will be either paid by Applicant to AT&T or refunded to Applicant by AT&T as the case may be. Applicant understands that this amount is only an estimate of approximate costs, and that the actual cost incurred by AT&T and for which the Applicant is responsible may be different.

Charges are calculated in accordance with AT&T's ordinary accounting practices under the Uniform System of Accounts for Class A telephone companies and includes allocated costs for labor, engineering, materials, transportation, motor vehicles, and tool and supply expenses and corporate overhead loadings, if applicable, a 0 percent tax component collected for State and Federal Income Tax purposes in accordance with CPUC decision 87-09-026.

The estimated amount of \$2,022,825.78 is valid for only sixty (60) days and is therefore subject to change after August 28, 2018 if AT&T has not received an executed copy of the Application and the advance payment by that date.

The Advanced Payment Received is \$ 0.00

The Total Amount Due is \$ 2,022,825.78

If the applicant cancels the work prior to completion, Applicant shall pay AT&T for all costs AT&T has incurred before being notified in writing to cease work.

ACCEPTED FOR CUSTOMER: _____

BY: _____

Printed Name: _____

Title: _____

Date Signed: _____

ACCEPTED FOR AT&T:

BY: _____

Printed Name: LAURA WENDOVER

Title: OSP DESIGN - AND ASSIGNMENT -
NETWORK CAPACITY PROVISIONING

Date Signed: _____