



ACCESS LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.1 Workers' Compensation.

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

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

4.3 All Policies Requirements.

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

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

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

7. Miscellaneous Provisions.

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

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

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

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

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

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

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

AND

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

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

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

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

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

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

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

SIGNATURES ON FOLLOWING PAGE

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

PORT:

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

By: _____
Executive Director

Name: _____

Approved as to Form:

By: _____
Port Attorney

CITY:

CITY OF LEANDRO
a California charter City,

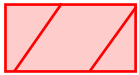
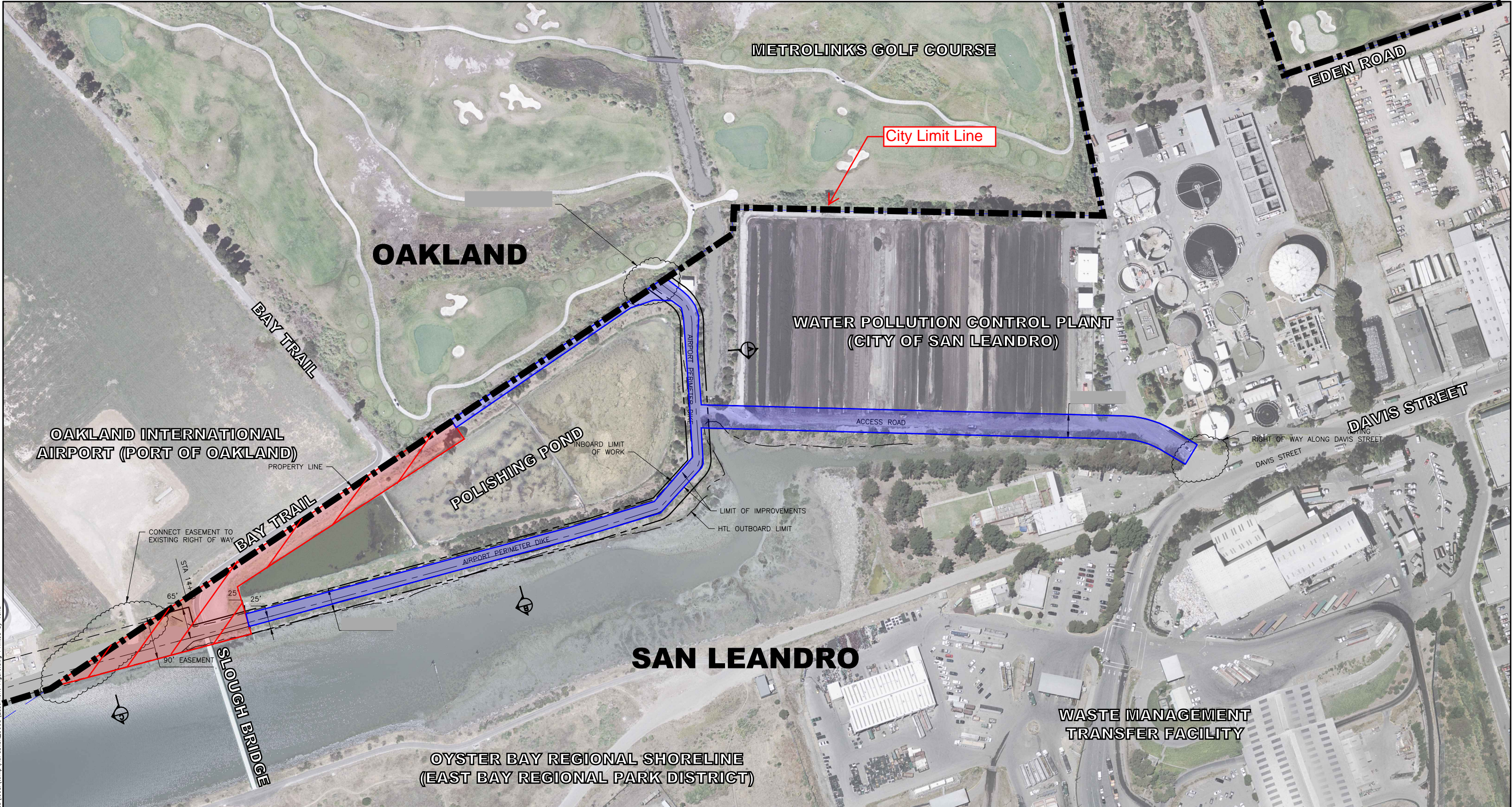
By: _____
Jeff Kay, City Manager

Attest:

Leticia Miguel, City Clerk

Approved as to Form:

Richard Pio Roda, City Attorney



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



SERVICE ROAD AREA SUBJECT TO ACCESS LICENSE AGREEMENT

EXHIBIT A

CAUTION: THIS PLAN MAY BE REDUCED

0 1 2 ORIGINAL SCALE

NO.	REVISIONS	DATE	REV'D	APP'D

DRAWN	_____
DESIGNED	_____
CHECKED	_____
REG. ENGINEER NO.	_____
REG. ENGINEER NO.	_____

**PORT OF OAKLAND**

530 WATER ST. OAKLAND, CALIFORNIA

CHIEF ENGINEER	OAKLAND INTERNATIONAL AIRPORT	DATE: MM/DD/20YY
REG. ENGINEER NO.	PERIMETER DIKE IMPROVEMENT PROJECT	SCALE:
APPROVED	REG. ENGINEER NO.	SHEET: OF SHEETS
RECOMMENDED	REG. ENGINEER NO.	EASMENT REQUEST – PLAN VIEW