

**LEGISLATIVE FILE**

File ID No. 09-3123  
Introduction Date 11-10-2009  
Enactment No. 09-2353  
Enactment Date 11-18-09  
By *JS*

**OAKLAND UNIFIED SCHOOL DISTRICT**

Office of the Superintendent

November 18, 2009

*Robert J. Moore for  
Timothy E. White*

To: Board of Education  
From: Tony Smith, Ph. D, Superintendent  
Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services  
Subject: Approval by the Board of Education of the Temporary Construction Easement between Oakland Unified School District and Bay Area Rapid Transit District ("BART")

**ACTION REQUESTED**

Approval by the Board of Education of Resolution 0910-0099 for the Temporary Construction Easement between Oakland Unified School District and Bay Area Rapid Transit District ("BART") to allow BART to perform construction work and seismic repairs to the track line above A.S.C.E.N.D. Elementary.

**SUMMARY**

The District is the owner of certain property located at 3709 E. 12<sup>th</sup> Street Oakland, CA and is more commonly known as A.S.C.E.N.D. Elementary School and legally described Alameda County Assessor's Parcel Number 033-2159-001-004 and 033-2160-0015 and 033-2159-003-00 (the "Property").

Bay Area Rapid Transit District ("BART") desires to purchase from the District a temporary construction easement ("TCE") over a portion of the Property, as more particularly described in Exhibit A to the TCE, to obtain access to its property for the purposes of performing seismic work on the BART track line adjacent to A.S.C.E.N.D. Elementary School.

The appraised value of the TCE is \$26,600.00. From previous permit costs incurred during the construction of A.S.C.E.N.D. Elementary School, OUSD owes BART the amount of \$14,199.00. OUSD agrees to accept as partial consideration for the TCE the offset of the permit costs of \$14,199.00 from the TCE appraised value of \$26,600.00. The total cash consideration due to OUSD for the TCE is twelve thousand, four hundred one dollars (\$12,401.00).

Under the TCE, BART has agreed that it shall perform its construction activities solely during the period between the "Last Day of School for Students" and the "First Day of School for Students," as indicated on the Oakland Unified School District School Calendar published for the subject time period.

**RECOMMENDATION**

That the Board of Education approve the Temporary Construction Easement Agreement between Oakland Unified School District and Bay Area Rapid Transit District to allow BART to perform necessary construction work and seismic repairs to the track line above A.S.C.E.N.D. Elementary and to accept as payment for the TCE the reduced sum of \$12,401.00 in settlement of amounts previously owed to BART for permits required during the construction of A.S.C.E.N.D. Elementary School.

**FUNDING SOURCE:**

Not Applicable. BART is obligated to pay \$12,401.00 OUSD under this Agreement.

**ATTACHMENTS:**

Resolution No.: 0910-0099 approving Temporary Construction Easement; Executed Temporary Construction Easement Agreement; Executed TCE Deed.



ousd\_agt.pdf



ousd\_tce\_deed.pdf



**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

300 Lakeside Drive, P.O. Box 12688  
Oakland, CA 94604-2688  
(510) 464-6000

2009

Thomas M. Blalock, P.E.  
PRESIDENT

James Fang  
VICE PRESIDENT

Dorothy W. Dugger  
GENERAL MANAGER

**DIRECTORS**

Gail Murray  
1ST DISTRICT

Joel Keller  
2ND DISTRICT

Bob Franklin  
3RD DISTRICT

Carole Ward Allen  
4TH DISTRICT

John McPartland  
5TH DISTRICT

Thomas M. Blalock, P.E.  
6TH DISTRICT

Lynette Sweet  
7TH DISTRICT

James Fang  
8TH DISTRICT

Tom Radulovich  
9TH DISTRICT

By United Parcel Service

October 23, 2009

Catherine G. Boskoff, Esq.  
Miller Brown & Dannis  
71 Stevenson Street, 19<sup>th</sup> Floor  
San Francisco, CA 94105

Subject: Oakland Unified School Dist.: Temporary Construction Easement  
APN: 033-2159-001-04,-003-00,0332160-015  
BART Parcel # O-A288-3A, O-A048-18-3A, O-A48-20-3A

Dear Ms. Boskoff:

Thank you for your quick response to our conference call and transmittal of the final documents for the above-referenced transaction. I enclose BART's executed copies of the Agreement of Purchase and Temporary Construction Easement Deed (TCE). Please note that we have made one change from your previously-approved document: based on a recently-updated appraisal we have increased the total fair market value of the TCE to \$31,900 and the total cash compensation to \$17,701. A revised Appraisal Summary Statement is enclosed for your reference.

We are expecting these instruments would be brought before the Oakland Unified School District Board on November 18, 2009 for approval. If approved, please have both copies of the Agreement of Purchase signed, and the TCE Deed signed and notarized, and return one original Agreement of Purchase and the TCE Deed to Dan Fox. We will return to you a photocopy of the recorded TCE Deed.

Provided the School Board approves these documents, how quickly do you anticipate they would be executed on behalf of the District and returned to BART? Due to procedural requirements, BART must have these final documents before it can advertise the construction contract for this project, and therefore time is of the essence.

File ID Number: 09-3123  
Introduction Date: 11/10/09  
Enactment Number: 09-2353  
Enactment Date: 11-18-09  
By: [Signature]

Catherine G. Boskoff, Esq.

October 23, 2009

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Thank you in advance for your time and attention. If you have any questions please call BART's attorney, Ken Odell, at 510-287-4961, or your staff may call Dan Fox at 510-464-6139.

Sincerely yours,

San Francisco Bay Area Rapid Transit District

A handwritten signature in black ink that reads "B. Lambert". The signature is written in a cursive, slightly slanted style.

Bernadette J. Lambert

Principal Right of Way Officer

Enclosures

cc: T. White (with enclosures)

K. Odell, S. Ng, V. Lee, D. Fox (by email, w/o enclosures)

**RESOLUTION  
OF THE  
BOARD OF EDUCATION  
OF THE OAKLAND UNIFIED SCHOOL DISTRICT  
NO. 0910-0099**

**APPROVING  
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
BAY AREA RAPID TRANSIT DISTRICT**

**WHEREAS**, the District is the owner of certain property located at 3709 E. 12<sup>th</sup> Street Oakland, CA and is more commonly known as A.S.C.E.N.D. Elementary School and legally described Alameda County Assessor's Parcel Number 033-2159-001-004 and 033-2160-0015 and 033-2159-003-00 (the "Property") and;

**WHEREAS**, Bay Area Rapid Transit District ("BART") desires to purchase from the District a temporary construction easement ("TCE") over a portion of the Property, as more particularly described in Exhibit A to the TCE, to obtain access to its property for the purposes of performing seismic work on the BART track line adjacent to A.S.C.E.N.D. Elementary School, and;

**WHEREAS**, the appraised value of the TCE is \$26,600.00. From previous permit costs incurred during the construction of A.S.C.E.N.D. Elementary School, OUSD owes BART the amount of \$14,199.00. OUSD agrees to accept as partial consideration for the TCE the offset of the permit costs of \$14,199.00 from the TCE appraised value of \$26,600.00. The total cash consideration due to OUSD for the TCE is twelve thousand, four hundred one dollars (\$12,401.00) and;

**WHEREAS**, under the TCE, BART has agreed that it shall perform its construction activities solely during the period between the "Last Day of School for Students" and the "First Day of School for Students," as indicated on the Oakland Unified School District School Calendar published for the subject time period, and;

**WHEREAS**, it is the recommendation of Staff that the Board of Education approve the Temporary Construction Easement Agreement between Oakland Unified School District and Bay Area Rapid Transit District to allow BART to perform necessary construction work and seismic repairs to the track line above A.S.C.E.N.D. Elementary and to accept as payment for the TCE the reduced sum of \$12,401.00 to offset amounts previously owed to BART for permits required during the construction of A.S.C.E.N.D. Elementary School.

**RESOLUTION  
OF THE  
BOARD OF EDUCATION  
OF THE OAKLAND UNIFIED SCHOOL DISTRICT  
NO. 0910-0099**

**Page 2 of 2**

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Education of the Oakland Unified School District hereby finds, determines, declares, orders and resolves as follows:

**Section 1.** That the above recitals are true and correct.

**Section 2.** That the District's Board of Education hereby approves the Temporary Construction Easement Agreement between Oakland Unified School District and Bay Area Rapid Transit District to allow BART to perform necessary construction work and seismic repairs to the track line above A.S.C.E.N.D. Elementary.

**Section 3.** That the Board of Education hereby accepts as payment for the Temporary Construction Easement Agreement the reduced sum of \$12,401.00 to offset amounts previously owed to BART for permits required during the construction of A.S.C.E.N.D. Elementary School.

**PASSED AND ADOPTED** by the Board of Education of the Oakland Unified School District this 18<sup>th</sup> day of November, 2009; by the following vote, to wit:

AYES: Jody London, Jumoke Hodge, Christopher Dobbins, Alice Spearman,  
Vice President Gary Yee and President Noel Gallo

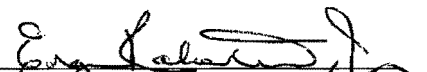
NOES: None

ABSTAINED: None

ABSENT: David Kakishiba

**CERTIFICATION**

I, Edgar Rakestraw, Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 18<sup>th</sup> day of November, 2009 with a copy of such Resolution being on file in the Administrative Office of said district.

  
Edgar Rakestraw, Jr.  
District Secretary

RECORDING REQUESTED BY  
AND  
WHEN RECORDED RETURN TO:

SF Bay Area Rapid Transit District  
300 Lakeside Drive, 22<sup>nd</sup> Floor  
Oakland, CA 94612

Attention: Real Estate Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned grantee hereby declares this instrument to be exempt from Recording Fees (Govt. Code §27383) and Documentary Transfer Tax (Revenue and Taxation Code §11922).

O-A288-3A  
O-A048-18-3A  
O-A048-20-3A

**TEMPORARY  
CONSTRUCTION EASEMENT  
DEED**

**OAKLAND UNIFIED SCHOOL DISTRICT**, a California public school district, hereinafter designated "Grantor", in consideration of value paid, the adequacy and receipt of which are hereby acknowledged, hereby grants to the **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**, a rapid transit district, hereinafter designated "Grantee", its successors and assigns, a temporary construction easement in gross for all general and public transit facility construction purposes, including, but not limited to, storage, ingress and egress, and other activities in, on, over and across all that real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL 1: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL # O-A288-3A as depicted on Exhibit 1 attached and incorporated by reference hereto.

PARCEL 2: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL # O-A048-18-3A as depicted on Exhibit 2, attached and incorporated by reference hereto.

PARCEL 3: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL # O-A048-20-3A. as depicted on Exhibit 3, attached and incorporated by reference hereto.

This Temporary Construction Easement is for a period of Forty five (45) months between October 1, 2009 and June 30, 2013. Possession and use of the temporary easement area is anticipated to be required for three periods not to exceed a total of nine (9) months within the said Forty Five (45) month period. The consideration paid includes, but is not limited to, full payment for such possession and use, including damages, if any, for said nine (9)-months. In the event Grantee occupies the temporary easement area beyond the specified time period, at the request of Grantor, Grantee shall make payment to Grantor for the additional time on the same basis of valuation. Upon expiration of this Temporary Construction Easement after said Forty Five (45) month period, BART's rights shall revert automatically to Grantor. Grantee shall give Grantor at least 30 days advance written notice prior to entry and shall restore the surface of the easement area if damaged during construction.

Dated this 16th day of December 2009

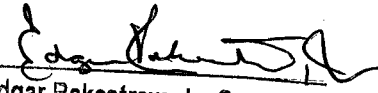
GRANTOR

OAKLAND UNIFIED SCHOOL DISTRICT,  
a California public school district

  
Name: Noel Gallo

Title: President, Board of Education

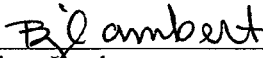
Date: 12/17/09

  
Edgar Rakestraw, Jr., Secretary  
Board of Education

GRANTEE

SAN FRANCISCO BAY AREA RAPID TRANSIT  
DISTRICT, a rapid transit district

RECOMMENDED BY:

  
Bernadette Lambert  
Principal Right of Way Officer

Date: 10-22-09

APPROVED BY:

  
Laura Giraud  
Real Estate Department Manager

Date: 10-22-09

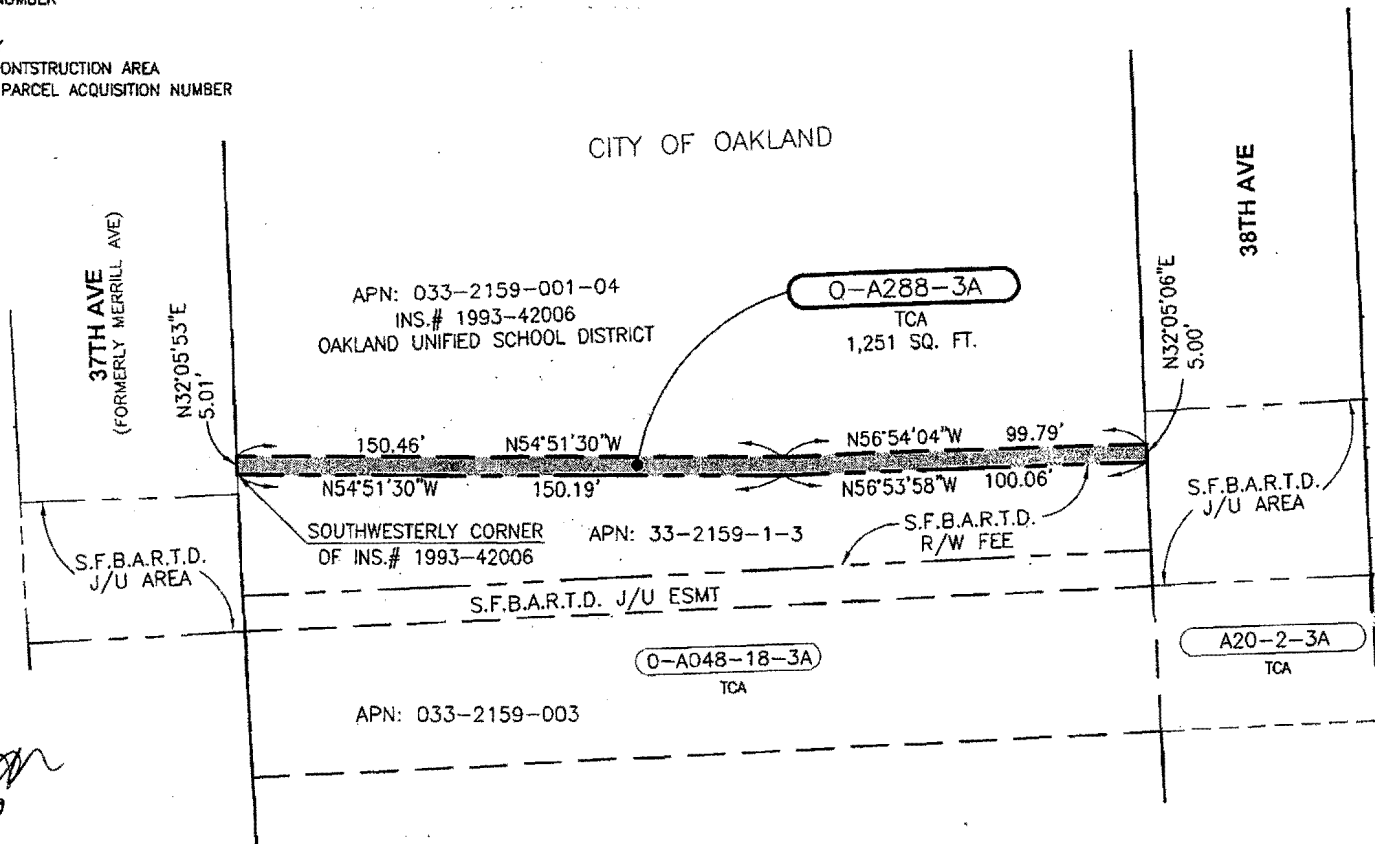


**LEGEND:**

- EXISTING S.F.B.A.R.T.D. RIGHT OF WAY
- EXISTING S.F.B.A.R.T.D. EASEMENT
- EXISTING PROPERTY LINE
- PROPOSED TEMPORARY CONSTRUCTION AREA
- S.F.B.A.R.T.D. SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
- INS.# INSTRUMENT NUMBER
- J/U JOINT USE
- R/W RIGHT OF WAY
- TCA TEMPORARY CONSTRUCTION AREA
- XXXXX S.F.B.A.R.T.D. PARCEL ACQUISITION NUMBER



CITY OF OAKLAND



*Julie Eckman*  
 DEC. 15, 2008

THIS PLAT WAS PREPARED BY ME OR UNDER MY SUPERVISION

ALL BEARINGS AND DISTANCES SHOWN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3 CA-CORS EPOCH 2004.00. ALL DISTANCES ARE BASED ON US SURVEY FEET AND ARE GRID DISTANCES UNLESS OTHERWISE NOTED. TO CONVERT THE GRID DISTANCES TO GROUND LEVEL DISTANCES. MULTIPLY GRID DISTANCE BY 1.0000723.



**EXHIBIT " 1 "**

CO. ALA	RTE. "A" LINE (N)	REF. W011
DR. NO. 0-A288-3A (SHEET 1 OF 1)		

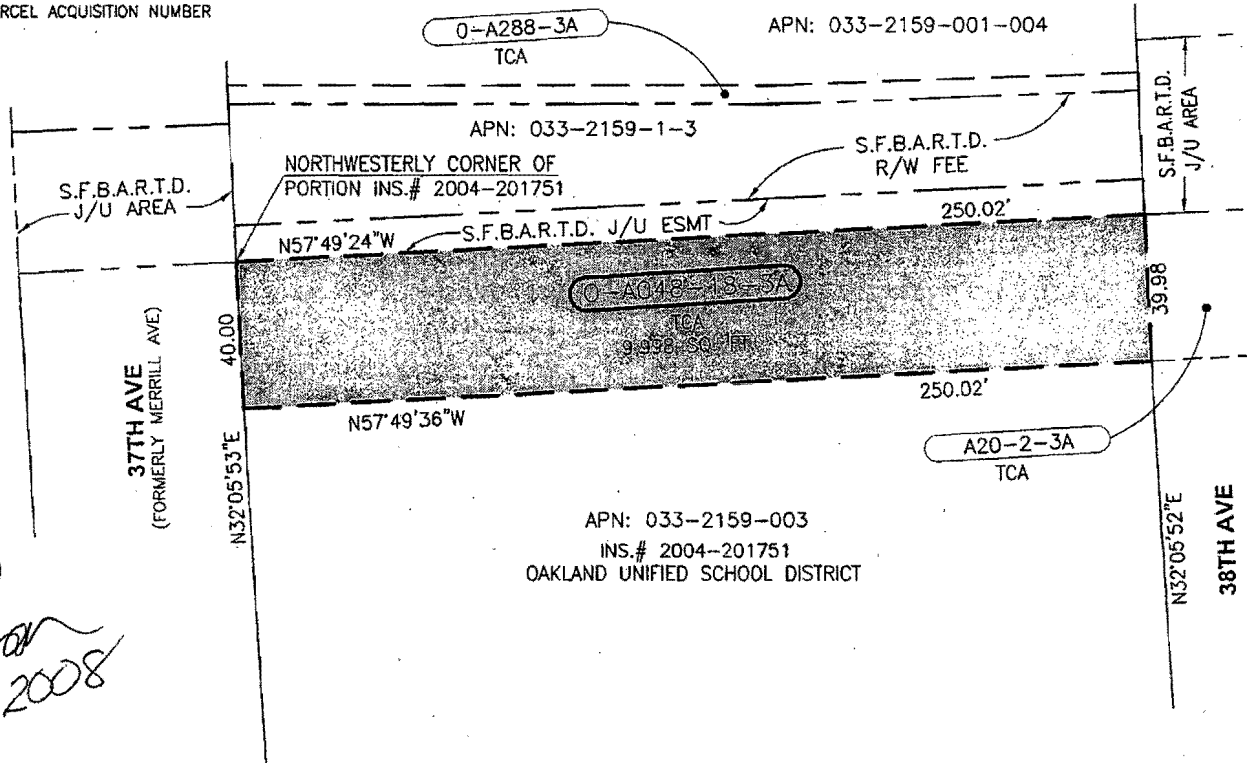
SCALE: 1" = 50'      DATE: 24OCT08

**LEGEND:**

- EXISTING S.F.B.A.R.T.D. RIGHT OF WAY
- EXISTING S.F.B.A.R.T.D. EASEMENT
- EXISTING PROPERTY LINE
- PROPOSED TEMPORARY CONSTRUCTION AREA
- S.F.B.A.R.T.D. SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
- INS.# INSTRUMENT NUMBER
- J/U JOINT USE
- R/W RIGHT OF WAY
- TCA TEMPORARY CONSTRUCTION AREA
- XXXXX S.F.B.A.R.T.D. PARCEL ACQUISITION NUMBER



CITY OF OAKLAND



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**EXHIBIT " 2 "**

CO. ALA    RTE. "A" LINE (N)    REF. W011

DR. NO. O-A048-18-3A (SHEET 1 OF 1)

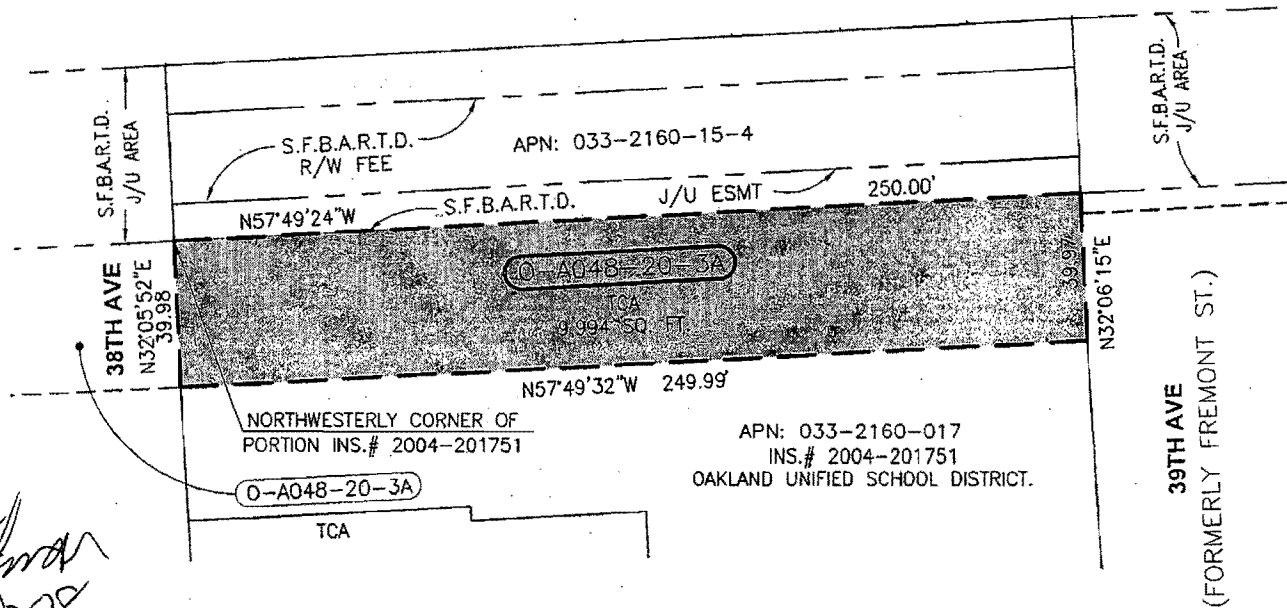
SCALE: 1" = 50'    DATE: 17OCT08

LEGEND:

- EXISTING S.F.B.A.R.T.D. RIGHT OF WAY
- EXISTING S.F.B.A.R.T.D. EASEMENT
- EXISTING PROPERTY LINE
- PROPOSED TEMPORARY CONSTRUCTION AREA
- SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
- S.F.B.A.R.T.D. INSTRUMENT NUMBER
- INS.# JOINT USE
- J/U RIGHT OF WAY
- R/W TEMPORARY CONSTRUCTION AREA
- TCA S.F.B.A.R.T.D. PARCEL ACQUISITION NUMBER
- XXXXX



CITY OF OAKLAND



*Julie Eckman*  
 Dec. 15, 2008

THIS PLAT WAS PREPARED BY ME OR UNDER MY SUPERVISION

ALL BEARINGS AND DISTANCES SHOWN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3 CA-CORS EPOCH 2004.00. ALL DISTANCES ARE BASED ON US SURVEY FEET AND ARE GRID DISTANCES UNLESS OTHERWISE NOTED. TO CONVERT THE GRID DISTANCES TO GROUND LEVEL DISTANCES. MULTIPLY GRID DISTANCE BY 1.0000723.



EXHIBIT " 3 "

CO. ALA    RTE. "A" LINE (N)    REF. W011

SCALE: 1" = 50'    DATE: 24OCT08

DR. NO. O-A048-20-3A (SHEET 1 OF 1)

State of California  
County of Alameda

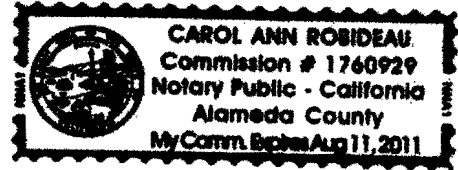
On 12-17-2009 before me, (here insert name and title of the officer), personally  
appeared Noel Gallo, Edgar M. Rakestraw

\_\_\_\_\_, 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 upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Carol Ann Robideau (Seal)



State of California  
County of Alameda

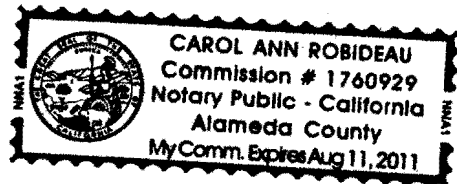
On 12-17-2009 before me, (here insert name and title of the officer), personally  
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\_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged 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 upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Carol Ann Robideau (Seal)



Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

**AGREEMENT OF PURCHASE (SUMMARY)**

**Grantor:** Oakland Unified School District

**Grantor's Address:** 1025 2<sup>nd</sup> Avenue #316, Oakland, CA 94606

**Grantee:** San Francisco Bay Area Rapid Transit District

**Grantee's Address:** 300 Lakeside Drive (LKS-22)  
Oakland, California 94612

**Assessor's Parcel:** APN No. 033-2159-001-04, 033-2159-003-00, 033-2160-015

**Property:** Grantor's whole parcel contains approximately: 100,192 square feet. Grantee proposes to acquire a temporary construction easement over a portion of the whole consisting of three parcels 9,998 square-feet , 9,994 square-feet and 1,251 square-feet each.

**Property Location:** 3709 E. 12<sup>th</sup> Street Oakland, California  
Alameda County

**Purchase Price:** Twenty six thousand six hundred dollars (\$26,600.00) payable as twelve thousand, four hundred one dollars (\$12,401) cash and fourteen thousand, one hundred ninety nine dollars (\$14,199) debt forgiveness.

**Exhibits:** Temporary Construction Easement Deed (TCE) with Exhibit maps.

Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

**AGREEMENT OF PURCHASE**

THIS AGREEMENT OF PURCHASE ("Agreement") is entered into as of the 22 day of October 2009, by and between **OAKLAND UNIFIED SCHOOL DISTRICT**, a California public school district ("Grantor"), and the **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**, a rapid transit district ("Grantee").

THE PARTIES ENTER INTO THIS AGREEMENT on the basis of the following facts, understanding, and intentions:

- A. Grantor is the owner of certain property located in the County of Alameda, State of California. The property is located at 3709 E. 12<sup>th</sup> Street Oakland, CA and is more commonly known as Alameda County Assessor's Parcel Number 033-2159-001-004 and 033-2160-0015 and 033-2159-003-00 (the "Property").
- B. Grantee desires to purchase from Grantor a temporary construction easement ("TCE") over a portion of the Property, more particularly described in Exhibit A, attached hereto and incorporated herein by reference. The performance of this agreement constitutes the entire consideration for the sale of the temporary construction easement over a portion of the Property and shall relieve Grantee of all further obligation or claim in connection with its purchase and use of the temporary construction easement.

NOW THEREFORE in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1.0 **ARTICLE 1 – TEMPORARY CONSTRUCTION EASEMENT**

- 1.1 Grantor shall grant to Grantee and Grantee shall acquire from Grantor on all of the terms and conditions set forth in Articles 2 and 3 hereof a TCE over the Property in accordance with the terms and conditions of the document attached as Exhibit A.
- 1.2 Grantee warrants that for each year the TCE is effective it shall perform its construction activities solely during the period between the "Last Day of School for Students" and the "First Day of School for Students," as indicated on the Oakland Unified School District School Calendar published for the subject time period.

2.0 **ARTICLE 2 - PURCHASE PRICE**

Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

- 2.1 Purchase Price. The appraised value of the TCE is \$26,600.00. From previous permit costs, Grantor owes to Grantee the amount of \$14,199.00. Grantee agrees to accept as partial consideration for the TCE the offset of the permit costs of \$14,199.00 from the TCE appraised value of \$26,600.00. The total cash consideration due to Grantor for the TCE therefore is twelve thousand, four hundred one dollars (\$12,401.00).
- 2.2 Payment of Easement/Recording. The cash consideration shall be payable to Grantor by check from Grantee following receipt of the properly executed and notarized TCE deed from Grantor. Grantee will record the TCE Deed at its own cost and expense.

3.0 ARTICLE 3 - CONDITIONS TO PURCHASE

- 3.1 Grantor Breach. Notwithstanding anything to the contrary elsewhere in this Agreement, in the event of a breach by Grantor of any of its covenants, representations, warranties, or other agreements set forth in this Agreement, Grantee may elect (i) nevertheless to proceed with the purchase of the easement interests, reserving all of its rights and remedies available to it under this Agreement and otherwise at law or in equity including, without limitation, the right to collect damages for such breach from Grantor and the right to indemnification as provided in Section 6.1, or (ii) to terminate this Agreement by written notice to Grantor delivered prior to closing, and upon such termination, Grantee shall be relieved of all further obligations hereunder.
- 3.2 Grantee Termination. In the event Grantee elects to terminate this Agreement pursuant to this Section 3.2, Grantor shall pay within five business days of Grantee's written demand, all title and escrow charges and all other of Grantee's costs incurred, refund any deposits theretofore paid by Grantee, and except as otherwise expressly provided in this Section 3.2, neither party shall have any further rights or obligations under this Agreement.

4.0 ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 Ownership of Property. Grantor represents and warrants that it owns the Property in fee simple, subject only to outstanding encumbrances, if any, now on record in the county in which the Property is located.
- 4.2 Authority. Each individual executing this Agreement on behalf of Grantee and Grantor, respectively, represents and warrants that such individual is

Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

duly authorized to execute and deliver this Agreement on behalf of Grantee and Grantor, respectively, and that this Agreement is binding upon Grantee and Grantor in accordance with its terms.

- 4.3 Environmental Compliance. Grantor represents and warrants as of the close of escrow, the TCE area will not be in violation of any federal, state, or local law, ordinance, or regulations relating to the environmental conditions on, under, or about the TCE area including, but not limited to, soil and ground water conditions. During the time in which Grantor owned the TCE area, neither Grantor nor, to the best of Grantor's knowledge (after due and diligent inquiry), any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the TCE area or transported to or from the Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively "Hazardous Materials"). There is no proceeding or inquiry by any governmental authority (including without limitation, the California State Department of Health Services) with respect to the presence of such Hazardous Materials on the TCE area or the migration thereof from or to other property. For the purpose of his Agreement, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances", "hazardous material", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Section 9601 et seq; The Hazardous Wastes Transportation Act 49 USC Section 1801, et seq.; the Research Conservation and Recovery Act, 42 USC Section 6901, et seq., and those substances defined as "hazardous wastes" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.

## 5.0 ARTICLE 5 – COVENANTS

- 5.1 Indemnification by Grantor. Grantor hereby agrees to defend, indemnify, and hold harmless, Grantee, its directors, officers, agents, and employees from and against all claims, demands, suits loss, damages, injury, liability and liens, direct or indirect (including any and all costs, expenses, and penalties in connection there with), including, without limitation, reasonable attorney's fees and costs suffered by Grantee, as a direct or indirect result of any misrepresentation or breach of warranty or breach of covenant made by Grantor in this Agreement or any document, certificate,



Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

or exhibit given or delivered to Grantee pursuant to or in connection with this Agreement.

- 5.2 Dust Control. BART will adhere to Bay Area Air Quality Management District dust control specifications.

6.0 ARTICLE 6 - GENERAL PROVISIONS

- 6.1 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and insure to the benefit of the successors and assigns of the parties hereto.
- 6.2 Entire Agreement. This Agreement contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.
- 6.3 Attorney's Fees. In the event either party to this Agreement institutes legal action to interpret or enforce the terms hereof, or to obtain money damages the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include without limitation a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding.
- 6.4 Notices. All notices or other communications required or permitted hereunder shall be in writing and either delivered by hand or deposited in the United States mail first-class, postage prepaid and addressed as follows:

To Grantor: OAKLAND UNIFIED SCHOOL DISTRICT  
1025 2<sup>nd</sup> Avenue  
Oakland, CA 94606  
Attention: Timothy White

Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

- 6.5 To Grantee: SAN FRANCISCO BAY AREA RAPID TRANSIT  
DISTRICT  
Real Estate Department  
300 Lakeside Drive (LKS-22)  
Oakland, CA 94612  
Attention: Laura Giraud

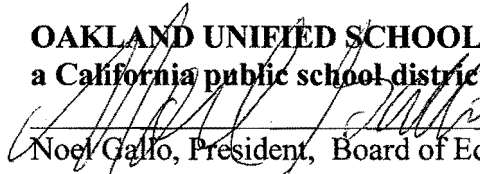
Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing. The foregoing addresses may be changed by notice to the other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

- 6.6 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California.
- 6.7 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.
- 6.8 Time. Time is of essence of every provision herein contained in this Agreement.
- 6.9 Counterparts. This agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.
- 6.10 Survival. The terms, covenants, and conditions of Articles 2, 3, 5, 6 and 7 shall remain true and correct as of the close of escrow, shall be deemed to be material and shall service the execution and delivery of this Agreement and the delivery of the Easement Deeds.

Project: Earthquake Safety Program  
Owner: Oakland Unified School District  
BART Parcel No. O-A288-3A,  
O-AO48-18-3A, O-A48-20-3A

IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written.

**GRANTOR**      **OAKLAND UNIFIED SCHOOL DISTRICT,**  
                         **a California public school district**

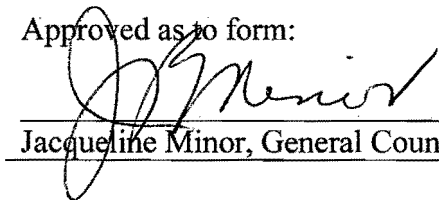
  
\_\_\_\_\_  
Noel Gallo, President, Board of Education

12/17/09  
Date

  
\_\_\_\_\_  
Edgar Rakestraw, Jr., Secretary, Board of Education

12/07/09  
Date

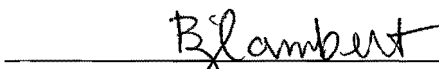
Approved as to form:

  
\_\_\_\_\_  
Jacqueline Minor, General Counsel

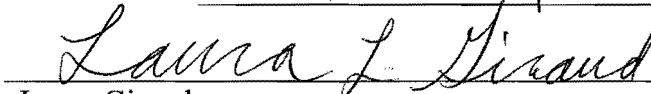
11/23/09  
Date

**GRANTEE**      **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a**  
                         **rapid transit district**

RECOMMENDED BY:

  
\_\_\_\_\_  
Bernadette Lambert  
Principal Right of Way Officer

Date: 10-22-09

  
\_\_\_\_\_  
Laura Giraud  
Real Estate Department Manager

Date: 10-22-09

STATE OF CALIFORNIA ) SS.  
COUNTY OF ALAMEDA )

On October 22, 2009 before me, Joseph M. Basuino, the undersigned, a Notary Public, personally appeared Laura Giraud, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

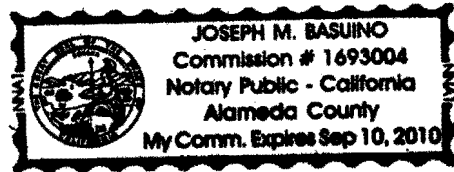
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

  
\_\_\_\_\_  
NOTARY'S SIGNATURE

(Seal)

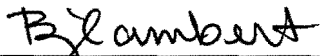


CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE, SEC. 27281

This is to certify that the interest in real property conveyed by the foregoing deed or grant to the San Francisco Bay Area Rapid Transit District is hereby accepted by the undersigned on behalf of the San Francisco Bay Area Rapid Transit District pursuant to authority conferred by resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District entitled "In The Matter of Authorizing Acceptance of Deeds and Grants," bearing No. 291, adopted on October 24, 1963, and the grantee consents to recordation thereof.

Dated this 22 day of October, 2009

Recommended for Acceptance:



Bernadette Lambert  
Principal Right of Way Officer

Accepted:  
San Francisco Bay Area Rapid Transit District

By:

Laura Giraud  
Manager, Real Estate Department