

File No. 120088

Committee Item No. 2

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: February 22, 2012

Board of Supervisors Meeting

Date \_\_\_\_\_

### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget & Legislative Analyst Report          |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |

### OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Revocable Permit Gen-2000-11</u> |
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Completed by: Victor Young

Date: February 17, 2012

Completed by: Victor Young

Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Revocable Permit - Union Sanitary District - Bay Division Pipeline Nos. 3 and 4. Seismic  
2 Upgrade Project]

3 **Resolution authorizing issuance of a Revocable Permit by the San Francisco Public**  
4 **Utilities Commission to Union Sanitary District for the improvements to the regional**  
5 **water supply system, otherwise known as Project No. CUW35302 Seismic Upgrade of**  
6 **Bay Division Pipeline Nos. 3 and 4 for a term in excess of ten years, pursuant to**  
7 **Charter Section 9.118, and adopting findings pursuant to the California Environmental**  
8 **Quality Act.**

9  
10 WHEREAS, The San Francisco Public Utilities Commission ("SFPUC") has developed  
11 a project description under the Water System Improvement Program ("WSIP") for the  
12 improvements to the regional water supply system, otherwise known as Project No  
13 CUW35302 Seismic Upgrade of Bay Division Pipeline ("BDPL") Nos. 3 & 4 (the "Project").  
14 The Project is located in Alameda County, and its key features include construction of up to  
15 2,360 feet of a new pipeline (BDPL No. 3X) to replace a section of the existing BDPL No.3  
16 where it crosses three traces of the Hayward fault in order to accommodate movement along  
17 the fault traces, and improvements to existing BDPL No. 4 to seismically strengthen the  
18 pipeline to control where failures would occur and prevent damage to the new BDPL No. 3X  
19 should failures occur; and

20 WHEREAS, The objectives of the Project are to reduce the potential effects of a  
21 catastrophic failure of BDPL Nos. 3 & 4 where they cross the Hayward fault in order to protect  
22 these vital lifelines (Mission Boulevard, I-680, and the new BDPL 3X), to design the proposed  
23 BDPL No. 3X to be functional within 24 hours of a seismic event, to deliver basic service to  
24 the East/South Bays, Peninsula, and San Francisco within 24 hours of a major earthquake,  
25

1 and design and upgrade facilities to meet average-day demand for the Bay Division regional  
2 system of up to 300 mgd within 30 days of a major earthquake; and

3 WHEREAS, On January 27, 2011, the SFPUC, by Resolution No. 11-0014, a copy of  
4 which is included in Board of Supervisors File No. 110176 and which is incorporated herein by  
5 this reference: (1) approved the Project; (2) adopted findings, including a statement of  
6 overriding considerations, and a Mitigation Monitoring and Reporting Program required by  
7 CEQA; and (3) authorized SFPUC staff and the SFPUC's General Manager ("General  
8 Manager") to proceed with actions necessary to implement the Project consistent with the  
9 SFPUC Resolution No. 11-0014; and

10 WHEREAS, This Board has previously reviewed and considered the information and  
11 findings contained in the Final Environmental Impact Report ("FEIR") for the Project and  
12 adopted Board Resolution No. 136-11, all as contained in Board of Supervisors File No.  
13 110176, which resolution is incorporated herein by reference as though fully set forth, together  
14 with all written and oral information provided by the Planning Department, the public, relevant  
15 public agencies, SFPUC and other experts and the administrative files for this action as  
16 identified above; and

17 WHEREAS, Although the Project is a WSIP capital improvement project, it was  
18 determined to have independent utility because, among other reasons, the Project is  
19 necessary irrespective of any other WSIP project, the Project will not increase the normal  
20 operating capacity of the water supply system or change the manner in which the water is  
21 dispersed and any potential cumulative impacts associated with implementation of the Project  
22 are addressed in the FEIR prepared for the Project; and

23 WHEREAS, The Project files, including the FEIR, and SFPUC Resolution No. 11-0014  
24 have been made available for review by the Board and the public, and those files are  
25 considered part of the record before this Board; and

1           WHEREAS, In order to construct and implement the Project, the SFPUC has  
2 determined that it is necessary to relocate a sewer line owned and maintained by the Union  
3 Sanitary District ("USD") from a parcel of land located in Fremont, California owned by the  
4 State of California to an adjacent parcel (the "City Parcel") owned by the City as part of the  
5 SFPUC right of way; and

6           WHEREAS, In order to induce USD to relocate its sewer line to the City Parcel, USD  
7 requires that SFPUC issue a Revocable Permit (the "Permit"), a copy of which is on file with  
8 the Clerk of the Board of Supervisors in File No. 120088, that will provide, inter alia: (1) for an  
9 indefinite term that is anticipated to exceed 10 years and (2) that, in the event City determines  
10 to revoke the Permit for reasons other than USD's material breach of the Permit or its  
11 abandonment of its sewer line, City shall provide USD with a reasonable alternative site for  
12 location of USD's sewer line and appropriate financial assistance to defray the costs of USD's  
13 relocation of its sewer line necessitated by such revocation; now, therefore, be it

14           RESOLVED, That this Board reaffirms the findings adopted in Board Resolution No.  
15 136-11, and finds that the FEIR for the Project is adequate for its use as the decision-making  
16 body for action taken herein; having assessed the impacts associated with implementation of  
17 Project and determined that implementation of the Project will not involve any new significant  
18 impacts not addressed in the FEIR; and be it

19           FURTHER RESOLVED, That this Board finds that since the FEIR was finalized, there  
20 have been no substantial changes in the Project, and no substantial changes in  
21 circumstances relating to the Project that would require major revisions to the FEIR due to the  
22 involvement of new significant environmental effects or an increase in the severity of  
23 previously identified significant impacts, and there is no new information of substantial  
24 importance that would change the conclusions set forth in the FEIR; and be it  
25

1           FURTHER RESOLVED, That this Board hereby authorizes the General Manager of the  
2 SFPUC to execute the Permit; and be it

3           FURTHER RESOLVED, That the Board of Supervisors authorizes the General  
4 Manager to enter into any additions, amendments, or other modifications to the Permit and  
5 any other documents or instruments in connection with the Permit that the General Manager  
6 determines are in City's best interests, do not materially decrease City's benefits with respect  
7 to the Permit, do not materially increase the consideration or expense to be paid by City  
8 pursuant to the Permit or City's obligations or liabilities in connection with the Permit, and are  
9 necessary and advisable to implement the Project and effectuate the purpose and intent of  
10 this Resolution, such determination to be conclusively evidenced by the execution and  
11 delivery by the General Manager; and be it

12           FURTHER RESOLVED, That all actions prior to the adoption of this Resolution by  
13 City's or the SFPUC's officers with respect to the Permit are hereby approved, confirmed, and  
14 ratified.



# San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

1155 Market Street, 6<sup>th</sup> Floor  
San Francisco, CA 94103  
T 415.551.4514  
F 415.551.4695

January 27, 2012

Clerk of the Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, Ca 94102-4689

**Re: Resolution Approving Permit to Union Sanitary District**

Clerk of the Board:

This letter provides background on the attached item. Enclosed is a Board of Supervisor's Resolution that will authorize a revocable permit (pursuant to Charter Section 9.118) issued by the San Francisco Public Utilities Commission (SFPUC) to the Union Sanitary District (USD) with a term that is anticipated to exceed 10 years.

The Seismic Upgrade of Bay Division Pipeline Nos. 3 & 4 Project is critical for the reliability of the Hetch Hetchy Regional Water System as it will help strengthen two key pipelines that cross the Hayward Fault in Fremont, California. In order to install improvements designed to make those pipelines significantly less vulnerable to a major earthquake, an existing sewer line owned and maintained by the USD must be relocated to a nearby parcel owned by the City of San Francisco.

The SFPUC has offered to pay 76% of the proposed cost of relocation, while the USD will pay for approximately 24% of the costs. Before the USD will agree to such a relocation, however, the USD requires San Francisco's agreement that, in the event the City ever terminates the proposed permit, San Francisco will both (i) provide the USD with a reasonable alternative site for its sewer line, and (ii) pay for the costs of the consequent sewer line relocation.

Because the term of the proposed permit is expected to exceed 10 years, the Board of Supervisors must authorize its issuance. Relocation of the USD sewer line must be completed before project work can start and the USD is ready to award its construction contract for relocation of its sewer line. For these reasons, the SFPUC requests this item to be heard at the earliest available time so that the project can be initiated.

Please feel free to contact me at (415) 554-1856 if you have any questions or require any additional information on this resolution.

Sincerely,

Julie L. Labonte, P.E.  
WSIP Director

Edwin M. Lee  
Mayor

Anson Moran  
President

Art Torres  
Vice President

Ann Moller Caen  
Commissioner

Francesca Vietor  
Commissioner

Vince Courtney  
Commissioner

Ed Harrington  
General Manager



## SANITARY SEWER LINE RELOCATION AGREEMENT

This Sanitary Sewer Line Relocation Agreement (the "**Agreement**") dated \_\_\_\_\_, 2012 for reference purposes, is made by and between UNION SANITARY DISTRICT, a Public Sanitary District ("**USD**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Public Utilities Commission (collectively referred to hereafter as the "**City**"). USD and City are collectively referred to hereafter as the "**Parties**."

### RECITALS

A. City, acting by and through its Public Utilities Commission ("**SFPUC**") owns and operates a regional water system that serves San Francisco and twenty-seven (27) wholesale water customers located in San Mateo, Santa Clara, and Alameda counties in the Bay Area.

B. City's water system includes Bay Division Pipelines 3 and 4 ("**BDPL3 and 4**"), which are located in City's right of way, including the portion of the right of way that is located near the intersection of Interstate 680 (I-680) and Mission Boulevard, in Fremont, California as shown approximately on the attached **Exhibit A** (the portions of BDPL3 and 4 and the area depicted in Exhibit A are sometimes referred to in this Agreement as the "**Project Area**"). A portion of City's right of way in the Project Area consists of land owned by the State of California ("**State**") and used for a state public highway (the "**Mission Street Strip**"). Currently, pursuant to an unwritten license and/or franchise rights arising under applicable law, BDPL3 and 4 are installed in and under the Mission Street Strip.

C. SFPUC has developed a Water System Improvement Program ("**WSIP**") with the goals of increasing the system's ability to withstand major seismic events and prolonged droughts and to reliably meet future water demands. As part of WSIP, SFPUC proposed the BDPL3 and 4 Seismic Upgrade Project (the "**Project**"), which primarily consists of the installation of improvements and modifications to portions of BDPL3 and 4 located in the Project Area, including the construction of a new 2,360-foot-long pipeline parallel to BDPL No. 3 that would incorporate design features such as an articulated concrete vault to encase the new pipeline to reduce the vulnerability of the pipeline to earthquakes and reinforcements to BDPL No. 4 to strengthen the pipelines at the locations where they cross traces of the Hayward Fault.

D. USD owns, operates, and maintains a 10-inch sanitary sewer line (the "**Current Line**") that, pursuant to a permit granted by the State, is installed in and under the Mission Street Strip and crosses under BDPL3 and 4 as shown in **Exhibit A**. The Current Line conflicts with the proposed improvements and modifications to BDPL3 and 4 contemplated pursuant to the Project.

E. City has requested that USD undertake certain construction work (the "Work") to relocate, remove, and/or abandon portions of the Current Line installed in the Mission Street Strip and construct and install a replacement, new 10-inch line (the "New Line") around the articulated vault, and reconnect the New Line with USD's existing sanitary sewer lines on either side of the Mission Street Strip. The Work is more particularly described in the attached **Exhibit B** and the proposed alignment for the New Line is indicated on the attached **Exhibit A**.

F. USD is willing to perform the Work, provided that City

(i) pays Seventy-six Percent (76%) of the actual total cost of the Work, including, but not limited to, costs incurred in design, construction, construction management, permitting, and all incidentals of the Work, in accordance with the terms and conditions of this Agreement, but excluding the costs associated with the first 489 feet of pipe that will be constructed to accommodate Alameda County Water District (ACWD's portion)

(ii) pays an additional Fifty-six Thousand One Hundred Forty-seven Dollars (\$56,147) for:

(a) Upfront maintenance costs for the additional maintenance associated with the new sewer alignment (\$11,338)

(b) Storm Water Pollution Prevention Plan (SWPPP) required as a result of the City Project (\$7,069), and

(c) Additional environmental measures required by the City (\$37,740);

and

(iii) constructs, as part of the Project and at its sole cost, a permanent compressed gravel access road upon City's right of way, as shown in **Exhibit A** that shall be approximately fifteen (15) feet wide and approximately seven hundred (700) feet long (the "Access Road") for USD's nonexclusive use for the purpose of maintaining the New Line.

G. On December 23, 2009, City published a Draft Environmental Impact Report ("DEIR") for the Project. After the close of a forty-five (45)-day public review period on February 8, 2010, City prepared responses to comments on environmental issues received at the public hearings and in writing during the public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document ("C&R"), published on December 22, 2010. A Final Environmental Impact Report ("FEIR") was prepared by City's Planning Department (the "Department"), consisting of the DEIR and the Comments and Responses document, and several errata sheets, which made minor clerical corrections. Project files on the FEIR are available for public review at the Department offices at 1650 Mission Street, 4<sup>th</sup> floor, San Francisco, California. Copies of the DEIR and associated reference



materials as well as the C&R are also available for review at public libraries in the City and County of San Francisco and Alameda County.

E. On January 20, 2011, the San Francisco Planning Commission, acting as lead agency on behalf of the City with respect to the Project, certified the FEIR. On January 27, 2011, the SFPUC approved the Project, and, in so doing, adopted findings under the California Environmental Quality Act ("**CEQA**"), Public Resources Code section 21000 *et seq.*, including a statement of overriding considerations for the Project's significant and unavoidable impacts, rejected project alternatives, and adopted a mitigation monitoring and reporting program.

## **AGREEMENT**

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

### **1. Design, Construction, and Installation of New Line, and Abandonment of Current Line.**

(a) **Design and Construction, Construction Schedule.** Subject to the terms and conditions of this Agreement, USD shall retain all construction professionals (singularly or collectively, the "**Contractor**") necessary to accomplish and complete the Work and provide or cause to be provided all related materials and services in connection with the performance of the Work, including all necessary design, construction, and construction management services. USD shall commence the Work as soon as reasonably possible after the date this Agreement is mutually executed and delivered by the parties (the "**Effective Date**"). Once Work is commenced, USD shall prosecute to completion the Work with all reasonable diligence to achieve Work completion as soon as reasonably possible and, in any event, by August 15, 2012, provided that such completion date may be extended by each day of delay caused by a Force Majeur Event (defined in Section 7 below. The New Line shall be installed as indicated on Exhibit A and, subject to delays caused by a Force Majeur Event, the Work shall be designed and constructed in accordance with the following estimated schedule:

- (i) Completion of approved Design Documents (defined in Section 2(a)) showing final design for the New Line shall be completed and approved by City as contemplated in Section 2 on or before December 12, 2011;
- (ii) All construction contracts necessary in connection with the Work to be entered into between USD and its Contractor shall be awarded on or before March 12, 2012;
- (iii) USD shall give a "Notice to Proceed" with the Work to its Contractor on or before April 2, 2012;

- (iv) The Work shall be fully completed on or before August 15, 2012.

USD shall provide a detailed work schedule once available and regularly provide updates on the progress of the Work throughout the design, contracting, and construction periods.

**(b) Permits and Other Governmental Authorizations.** USD shall, prior to construction of the New Line, obtain any necessary encroachment permits or other authorizations from City, the City of Fremont, the Department of Transportation of the State of California ("CalTrans"), the Alameda County Water District ("ACWD"), or any other governmental entity necessary or desirable in connection with the Work. To the extent that the Work will require construction or staging operations upon roadways or adjacent lands owned, occupied, or operated by CalTrans, USD shall coordinate directly with and obtain all necessary approvals from CalTrans and, if necessary, cooperate and approve any request prepared by or on behalf of City for any variance request required by CalTrans in connection with the Work. USD will coordinate directly with ACWD to relocate an additional manhole and sewer line to accommodate ACWD's water line in or adjacent to the Project Area. The effectiveness of this Agreement is subject to the execution and delivery of:

- (i) A cooperative agreement between USD and ACWD with respect to ACWD's portion of the Work;
- (ii) City's Revocable Permit to USD in substantially the form as the attached **Exhibit C** (the "New Line Permit") that grants USD a license to construct, access, maintain, and repair those portions of the Work and the New Line that will be located or occur on lands owned by City; and
- (iii) A CalTrans Variance Permit and CalTrans "Parent" Encroachment Permit, each issued to USD, with respect to the access to, and construction, maintenance, and repair of, those portions of the Work and the New Line that will be located or occur on lands owned or controlled by CalTrans.

**(c) Cooperation with City's Archeological Monitoring Plan.** USD acknowledges that, in connection with the Project, the Work, and the construction and installation of the New Line, City has adopted an Archeological Monitoring Plan ("AMP") that requires City to retain (i) a qualified archaeologist to be present during any Project and New Line excavation work that results in excavation from the bottom two feet of existing fill to the next six feet of native soil and (ii) an Archeological Monitor and Native American consultant to monitor any New Line excavation work that results in excavation from the bottom two feet of existing fill to the next six feet of native soil. City shall retain and compensate such individuals and USD shall provide City at least two (2) weeks' prior written notice before the commencement of any such excavation work. Further, USD shall take all measures to cooperate with the reasonable requests and instructions of City and City's archaeologist and monitors in connection with City's adherence to, and implementation of, the AMP.

2. **Design and As Built Drawings.**

(a) **Initial Design.** On or before November 11, 2011, USD shall submit to City for its approval, which will not be unreasonably withheld, complete and accurate final construction drawings and specifications depicting the proposed New Line and all material matters relating to the planning, design, and proposed construction of the Work (the "**Design Documents**"). The Design Documents plans must include, without limitation, items such as: pipe laying plans and profiles and specifications addressing the closure and/ or removal of the Existing Line and the start up and testing of the New Line. City acknowledges that City has approved USD's sewer line relocation plans dated April 29, 2011. Within twenty-one (21) days of its receipt of the complete Design Documents, City shall either provide USD with written approval of the Design Documents, or comments explaining the reasons for withholding approval. If City withholds its approval of the original submittal or any re-submittal of the Design Documents, the parties shall meet promptly and attempt in good faith to resolve any issues identified by City as the basis of its failure to approve the Design Documents.

(b) **Design Changes.** If, after City's approval of the Design Documents, USD requests changes to the Design Documents or any of the specifications incorporated into the Design Documents with respect to any portion of the New Line to be constructed within the Mission Street Strip, USD shall request such changes in writing. Such proposed changes shall be subject to City's approval, which will not be unreasonably withheld, provided that City's failure to approve will not be deemed unreasonable if the improvements to be constructed as a result of such proposed change will materially interfere with the construction or operation of City's existing or proposed water pipelines and related facilities located within or adjacent to the Mission Street Strip. City and USD will diligently and in good faith cooperate to review and agree on the response to the request and any related changes to the Design Documents. USD shall bear the sole expense of any and all additional costs, if any, resulting from any such change ("**USD Design Changes**") to the Design Documents except to the extent any such change is caused by (i) the application of any Applicable Laws (defined in Section 9) that become effective after the Effective Date. or (ii) field conditions discovered during the course of the Work that could not have been discovered by USD with the exercise of reasonable diligence prior to City's approval of the Design Documents.

If, after City's approval of the Design Documents, City requests changes to the Design Documents or any of the specifications incorporated into the Design Documents, it shall notify USD of the possible modification, including full information about the nature and scope of the proposed modification, the reasons for it, the expected impact on the construction schedule, and the cost of the Work. City shall bear the sole expense of any and all additional costs, if any, resulting from any such change to the Design Documents.

(c) **As-Built Drawings.** USD shall provide City with final As-Built drawings (both as hardcopies and in electronic AutoCAD file format) depicting the New

Line and all associated improvements constructed pursuant to the Work within thirty (30) days after the completion of all Work.

**3. Inspections.** City may inspect the progress and condition of the Work at any time during the course of construction. In conducting inspections, City shall not take any actions that unreasonably interfere with the Contractor's performance, direct the Contractor's performance in the field, or authorize any additional work. If City determines that any of the Work does not materially comply with the Design Documents approved by City, City may provide written notice to USD specifying the basis for such determination and USD shall take all necessary steps to cause its Contractor to ensure that the Work complies with Design Documents. Upon substantial completion of the Work, USD shall give City prompt notice of such completion and City shall have one week from its receipt of such notice to inspect and approve the completed Work. If City reasonably determines that the completed Work does not conform to the Design Documents in a manner that could materially affect its Project or the construction, operation, maintenance, or repair of its pipelines or related appurtenances located in or adjacent to the Project Area, City shall give USD prompt written notice specifying such nonconformance and USD shall promptly correct nonconformance at no additional cost to City. Upon completion of such corrective Work, USD shall again give City prompt notice of such completion and City shall have one week from its receipt of such notice to inspect and approve, or reject, such corrective work.

**4. City's Payment of Costs of the Work.**

**(a) Payment of Costs of Work.** City shall pay Seventy-six Percent (76%) (**City's Share**) of the actual total cost of the Work, including but not limited to, the cost of design, construction, construction management, permitting, and all incidentals of the Work, as depicted in the final Design Documents, excluding the costs associated with the first 489 feet of pipe that will be constructed to accommodate Alameda County Water District (ACWD's portion).

The City shall also pay USD an additional Fifty-six Thousand One Hundred Forty-seven Dollars (\$56,147) for:

1. Upfront maintenance costs for the additional maintenance associated with the New Line (\$11,338)
2. Storm Water Pollution Prevention Plan (SWPPP) required as a result of the Project (\$7,069), and
3. Additional environmental measures required by the City (\$37,740)

Except as specified in the Design Documents, City shall not be responsible for any costs that result from the replacement of pipes or appurtenances that comprise any part of the Current Line with a pipe or pipes of larger size, or new and additional appurtenances with respect to the New Line, that were not incorporated into the Current Line (collectively, "**New Line Improvements**"). The estimated reasonable total installed cost, including all costs of design, construction, and construction management, (the "**Estimated Cost**") of accomplishing the Work is Nine Hundred Eighteen Thousand Two

Hundred Twenty-one Dollars (\$918,221), which amount was computed in the manner set forth in USD's preliminary cost estimate previously submitted to City. Cost liabilities will be based on actual costs.

**(b) City's Payments.** City shall pay City's Share of the Estimated Cost in the following installments:

- (i) Eight Hundred Thousand Dollars (\$800,000) within thirty (30) days of USD's written notice to City of USD's award of a construction contract with respect to the Work to its Contractor; and
- (ii) Balance of the actual total cost, estimated at One Hundred Eighteen Thousand Two Hundred Twenty-one Dollars (\$118,221) within thirty (30) days of City's final inspection and approval of the Work as described in Section 3.

**(c) USD's Expenditures and Accounting of Construction Costs.** USD shall draw down on the funds deposited by City on a monthly basis solely for the purpose of reimbursing USD for its actual costs incurred or expended in connection with the Work (the "**Actual Costs**"). Prior to each monthly draw on the deposited funds, USD shall prepare and submit to City's Project construction manager monthly statements detailing USD's Actual Costs incurred, including a description of the work performed, hours expended, rates for such work, and material costs related to such work. Promptly after USD's completion of all Work and City's acceptance of such Work as described in Section 3, USD shall provide City a final cost summary, which shall include an accounting of the Actual Costs. If City's Share of the final total of Actual Costs is greater than the amount deposited by or on behalf of City with USD, then City shall remit the difference to USD within thirty (30) days of the date of sending the final cost summary to City, provided that City shall not be responsible to pay any Actual Costs to the extent resulting or attributable to (i) New Line Improvements, (ii) USD Design Changes, or (iii) additional work or delays caused by USD's Contractor to the extent not caused by a Force Majeur Event. If City's Share of the final total of Actual Costs is less than the amount deposited by or on behalf of City with USD then USD shall remit the difference to City within thirty (30) days of the date of sending the cost summary to City. Should there be a dispute regarding the final accounting of Actual Costs, the parties shall meet and attempt in good faith to promptly resolve the dispute.

## **5. City's Pre-Construction and Construction Obligations**

**(a) Assistance with Permits, Franchises, or other Governmental Authorizations.** Upon USD's request during the term of this Agreement, City shall use reasonable efforts to obtain, or assist USD in obtaining, any and all permits, franchises, or other governmental permits or authorizations that may be required for or in connection with the Work from the City of Fremont, CalTrans,

or any other governmental agency or entity with jurisdiction with respect to the Work.

(b) **Construction of Access Road.** As part of the Project and at its sole cost, City shall construct the Access Road in City's right of way, as shown in **Exhibit A**.

6. **Ownership.** The New Line to be installed hereunder and all improvements made by or on behalf of USD in connection with the Work shall be and remain at all times the sole personal property of USD, and City shall have no right, title, or interest whatsoever in or to the same. Further, at no time will City have any responsibility to maintain, operate, or replace any such facilities and any such maintenance, operation, and replacement shall be the solely USD's responsibility.

7. **Construction Delay.** Neither party shall be responsible for any delay in construction resulting from any cause beyond the control of such party, including, but without limiting the generality of the foregoing, any delay resulting from labor disturbances or shortages, the failure of governmental agencies to issue required agreements, permits, or consents to the extent not attributable to the negligence or delay caused by a party or its agents, weather conditions, or wet soil conditions (each, a "**Force Majeur Event**").

#### 8. **Indemnification and Insurance.**

(a) **Indemnification.** Neither City nor any of its directors, officers, agents, employees, or contractors shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by USD, its agents, employees, contractors, or consultants under or in connection with any Work or activities conducted by USD pursuant to this Agreement. USD shall defend, fully indemnify, reimburse, and hold harmless City, its directors, officers, agents, employees or contractors from any (i) damage, loss, costs, or liability occurring by reason of anything done or omitted to be done by USD, its directors, officers, agents, employees, or consultants relating to or in connection with any of the Work or (b) any failure by USD to faithfully observe or perform its obligations under this Agreement, including but not limited to its obligation to indemnify City. USD specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that falls within this indemnity provision. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs. Nothing herein shall be construed to require USD to indemnify City, its officers, agents, and employees against any liability (x) resulting from City's negligent acts or intentional malfeasance, or (y) in contravention of Section 2782 of the California Civil Code. USD's obligations under this Section shall survive the expiration or other termination of this Agreement.

(b) **Indemnification and Insurance to be Provided by City's Contractor.** In connection with the performance of the Project construction work, the construction contract between City and its general contractor (the "**City's Contractor**") to be engaged to perform the Project construction work shall require the City's Contractor to (i) name USD and its directors, officers, agents, and employees as co-indemnitees with respect to the City's Contractor's obligation to indemnify and hold harmless City and its directors,

officers, agents and employees from all for any damage or liability claims directly or indirectly arising out of, connected with, or resulting from the performance or nonperformance of the Project construction work and (ii) obtain and maintain insurance coverages in accordance with City's standard specifications, modified to require the City's Contractor's general liability insurance policy to name USD and its directors, officers, agents and employees as additional insureds under the terms of the policy.

(c) **Insurance.** At all times in connection with the Work or any access onto or adjacent to the Project Area by USD or its Agents in connection with the Work, USD shall maintain, or cause its Contractor to maintain, in full force and effect, at no cost or expense to City, insurance in the amounts and coverages set forth on the attached **Exhibit D** (collectively, the "**Required Insurance**"). The general liability, environmental pollution liability, and automobile liability insurance policies to be obtained by USD and/or Contractor shall name City as an additional insured. With respect to the Required Insurance, USD shall provide City promptly upon receipt, or cause its Contractor to provide promptly upon receipt, with copies of certificates of insurance evidencing such coverage and copies of any notice from any issuer of the Required Insurance notifying USD or Contractor of the proposed cancellation, termination, or non-renewal of, or material reduction in coverage under, any Required Insurance.

9. **Compliance with Applicable Laws.** In all actions required under this Agreement in connection with the design and construction of the Work, USD and its Contractor shall comply with all Applicable Laws. For the purposes of this Agreement, the term "**Applicable Laws**" means any one or more of all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the parties, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to the Project Area or the Work or any part thereof, including, without limitation, any subsurface area, use thereof, and the buildings and improvements thereon.

10. **Notices.** Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, to the address(es) set forth below or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. The parties' initial addresses are:

**City:**

To: General Manager  
San Francisco Public Utilities Commission  
1155 Market Street, 11th Floor  
San Francisco, CA 94103  
Fax: (415) (415) 554-3161

and Bryan Dessaure, Project Manager  
San Francisco Public Utilities Commission  
1145 Market Street, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Fax: (415) 551-4689

and: Ben Leung, SFPUC Project Construction Manager  
San Francisco Public Utilities Commission  
1145 Market Street, 3rd Floor  
San Francisco, CA 94103  
Fax: (415) 554-1877

**USD:**

To: Sami Ghossain, Senior Engineer  
Union Sanitary District  
5072 Benson Road  
Union City, CA 94587

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax or e-mail. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed or e-mailed copy of a notice.

**11. Severability.** If any provision of this Agreement, or application thereof to any person or circumstance, shall to any extent be determined to be invalid, then such provision shall be modified, if possible, to fulfill the intent of the parties as reflected in the original provision. The remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**12. Certification of Controller.** The terms of this Agreement shall be governed by and subject to the budgetary and fiscal provisions of City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by City under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing,



if in any fiscal year of City after the fiscal year in which the term of this Agreement commences, sufficient funds for the funding of construction costs and any other payments required under this Agreement are not appropriated, then City may terminate this Agreement, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give USD reasonable advance notice of such termination.

**13. Nondiscriminatory Employment and Business Opportunities Practices.** In the performance of this Agreement, USD agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, height, weight, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, USD in any of USD's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by City.

**14. Conflicts of Interest.** USD acknowledges that it is aware of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code ("Conflict of Interest and Other Prohibited Activities"), and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California.

**15. Faith and Fair Dealing with the City.** Pursuant to Section 21.35 of the San Francisco Administrative Code ("**Administrative Code**") the covenant of good faith and fair dealing is incorporated into contracts with City as defined in Section 21.02 of the Administrative Code. Contractors and subcontractors shall at all times deal in good faith with City and shall submit claims, requests for equitable adjustments, requests for change orders, requests for contract modifications or requests of any kind seeking increased compensation on a City contract only upon a good-faith, honest evaluation of the underlying circumstances and a good-faith, honest calculation of the amount sought. USD acknowledges that it is aware of Section 21.35 of the Administrative Code.

**16. Notification of Limitations on Contributions.** USD acknowledges that it is aware of Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services or for the furnishing of any material, supplies, or equipment to City, from making any campaign contribution to (a) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 (fifty thousand dollars) or more. The prohibition on contributions applies to each prospective party to the contract; each member of contractor's board of

directors; contractor's chairperson, chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than 20 percent in contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by contractor. Additionally, USD acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**17. Sunshine Ordinance.** USD acknowledges that City is subject to the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, which inter alia, provides that (1) during the course of negotiations for sole source contracts, all documents, including draft contracts must be available to the public upon written request; (2) contracts and all other records of communications between City and persons seeking contracts shall be open to inspection immediately upon the award of the contract, and (3) drafts of contracts being negotiated must be made available for public review, upon request, ten (10) days prior approval by a policy body, unless the policy body finds that and articulates how the public interest would be unavoidably and substantially harmed by such disclosure.

**18. MacBride Principles.** Pursuant to San Francisco Administrative Code Section 12.F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**19. Tropical Hardwood and Virgin Redwood.** Pursuant to §804(b) of the San Francisco Environment Code, City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**20. General Provisions.** (a) This Agreement may be amended or modified only by a writing signed by City and USD. (b) No waiver by any Party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement. (d) The Recitals set forth above are true and correct and are incorporated into this Agreement. (e) This Agreement (including the exhibit(s) hereto) contains the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (f) The parties acknowledge that they each enter into this Agreement after having had an opportunity for thorough review by, and on advice of, their respective legal counsel. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement. (g) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (g) Time is of the essence in all matters relating to this Agreement. (h) This Agreement shall be governed by California law and City's Charter. (i) If either Party commences an action

against the other or a dispute arises under this Agreement, the prevailing Party shall be entitled to recover from the other reasonable attorney's fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys. **(j)** USD may not record this Agreement or any memorandum hereof. **(k)** Neither Party shall assign or transfer its rights or obligation under this Agreement without the other Party's consent. Notwithstanding this prohibition, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. **(l)** This Agreement does not create a partnership or joint venture between City and USD as to any activity conducted by USD on, on or relating to the property which is the subject of this Agreement. **(m)** City and USD agree to act in good faith and reasonably in all matters relating to the relocation of the Existing Line. **(n)** This Agreement may be executed in any number of counterparts, all of which together shall constitute one original Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

CITY AND COUNTY OF  
SAN FRANCISCO  
PUBLIC UTILITIES COMMISSION

UNION SANITARY DISTRICT  
a Public Sanitary District

By: \_\_\_\_\_  
General Manager,  
Public Utilities Commission

By: \_\_\_\_\_  
Name: Richard B. Currie  
Title: General Manager  
Date: \_\_\_\_\_

Approved: SFPUC Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Board Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By: \_\_\_\_\_  
Richard Handel  
Deputy City Attorney

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EXHIBITS:

- Exhibit A: Depiction of Project Area and Access Road Plan
- Exhibit B: Description of the Work
- Exhibit C: Form of New Line Permit
- Exhibit D: Insurance Requirements

**EXHIBIT A**

**Depiction of Project Area  
And  
Access Road Plan**

**(Attach Depiction of Project Area and Access Road plan)**

## **EXHIBIT B**

### **Description of the Work**

Subject to such further details and specifications to be incorporated into the Design Documents (as approved by City pursuant to the process stated in Section 2), the Work shall encompass the following work:

- Construction of 510 linear feet of 10-inch diameter sanitary sewer including 160 linear feet within 30-inch diameter casing by open cut method.
- Construction of 612 linear feet of 10-inch diameter sanitary sewer in 30-inch diameter steel casing by guided boring method.
- Construction of 20 linear feet of 8-inch diameter sanitary sewer by open cut method.
- Connection to and modification of three existing manholes.
- Construction of six standard manholes.
- Abandonment of two manholes.
- Abandonment of approximately 1,018 linear feet of 10-inch diameter sewer.
- Sewage flow control.

The Work shall also include, but not be limited to, the following procedures and tasks:

- mobilization and demobilization of all construction equipment and materials necessary for the Work,
- clearing and grubbing,
- tree removal,
- dewatering of all required excavation areas,
- shoring and bracing of all required excavations,
- traffic control,
- erosion and sediment control,
- cleaning and debris removal and disposal,
- all necessary inspection and testing to ensure conformance of the Work with the specifications incorporated into the Design Documents,
- all necessary treatment of discharged water or waste from the Project Area in connection with the Work,
- obtaining all required permits or other authorizations necessary in connection with the Work;
- all necessary site restoration required because of or in connection with the Work, and
- such other items or details that are required by the specifications, plans and standard specifications incorporated in the Design Documents.

**EXHIBIT C**

**Form of New Line Permit**

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
REVOCABLE PERMIT**

**Gen-2000-11**  
**(Permit # \_\_\_\_\_)**

**THIS REVOCABLE PERMIT** (this "Permit") dated for reference purposes only as of February \_\_, 2012, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City"), acting by and through its Public Utilities Commission ("PUC") Regional Water Division, and **UNION SANITARY DISTRICT**, a Public Sanitary District ("Permittee").

City and Permittee agree as follows:

1. **License.** City confers to Permittee a revocable, personal, non-exclusive, and non-possessory privilege to enter upon and use that certain real property owned by City situated in the County of Alameda, State of California, more particularly described in the attached **Exhibit A** (the "Permit Area"), for the limited purpose and subject to the terms, conditions, and restrictions set forth below. The Permit Area is shown generally on **Exhibit B**. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws.

THE PRIVILEGE GIVEN TO PERMITTEE UNDER THIS PERMIT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE PERMIT AREA ARE CONCERNED, AND PERMITTEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE PERMIT AREA. WITHOUT LIMITING THE FOREGOING, THIS PERMIT IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN **DEED**, DATED MARCH 28, 1950, AND RECORDED ON APRIL 13 1951 IN BOOK 6409, PAGE 255, OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE PERMIT AREA, A COPY OF WHICH IS ATTACHED TO THIS PERMIT AS **EXHIBIT C** (THE "**DEED**"), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE PERMIT AREA (COLLECTIVELY, WITH THE DEED, THE "**RECORDED DOCUMENTS**"). PERMITTEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE PERMIT AREA, INCLUDING ANY APPROVALS, PERMITS, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. PERMITTEE COVENANTS AND AGREES, FOR THE BENEFIT OF CITY, THAT PERMITTEE SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY PERMITTEE ON THE PERMIT AREA PURSUANT TO THIS PERMIT, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY

DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PERMIT AREA FOR PERMITTEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON PERMITTEE'S RIGHTS UNDER THIS PERMIT, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, PERMITS, CONSENTS, OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS PERMIT.

2. **Use of Permit Area.**

(a) **Permitted Acts.** Permittee may enter and use the Permit Area for the sole purposes of

(i) constructing, installing, reconstructing, removing, replacing, repairing, maintaining, operating and using, as Permittee may see fit for the transmission of wastewater, recycled water, or related substances, a 10-inch sanitary sewer, a 30-inch steel casing, and four manholes, (collectively, such sewer, casing, manholes and the Access Corridor referred to in subsection 2(a)(ii) below (to the extent located within the Permit Area) is referred to as the "**Permitted Facilities**") in strict accordance with Section 3(a) hereof and

(ii) repairing, maintaining, operating, and using, as Permittee may see fit, of an access road across the Permit Area and City's adjoining lands (the "**Access Corridor**") as depicted on the attached Exhibit E to allow Permittee periodic access to the Permitted Facilities.

3. **Subject to City Uses.** Permittee is aware that the Permit Area and the Access Corridor (defined in Section 4(g) below) constitutes a portion of City's water pipeline delivery system. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's existing and future use of the Permit Area for municipal and other purposes. Within one hundred eighty (180) days of receipt of City's written request, Permittee shall remove any property or improvements on the Permit Area to allow City access to the pipelines. In the event of Permittee's failure to timely remove any such property or improvements or in the event of an emergency that, in City's sole discretion (when no such notice shall be required) City deems it necessary to immediately move some or any of such property or improvements, City shall have the right to remove any such property or improvements and City shall not be responsible for restoring or returning same to its prior condition.

4. **Installation of Permitted Facilities.** Permittee may install the Permitted Facilities on the Permit Area only upon satisfaction of the following conditions, which are for City's sole benefit:

(a) **Approval of Plans and Specifications.** Permittee shall install the Permitted Facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by PUC (the "**Specifications**") and identified in the attached Exhibit D. Any repairs or replacements of the Permitted Facilities shall not materially deviate in any respect from the Specifications. The Specifications may be revised or amended only with PUC's prior written approval after PUC's Bureau of Environmental Regulation and Management has



determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Permits and Approvals.** Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses, and approvals (collectively, "**Approvals**") of all regulatory agencies and other third parties that are required to commence, complete, and maintain the permitted work. Permittee shall deliver copies of such Approvals to PUC promptly upon Permittee's receipt. Permittee recognizes and agrees that no approval by PUC for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

(c) **Exercise of Due Care.** Permittee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to City's water pipelines or other property and to native vegetation and natural attributes of the Permit Area and to minimize slope erosion. Permittee shall not disturb the surface of the Permit Area or perform any excavation work without City's prior, written approval (except in the case of an emergency whereupon Permittee shall notify City telephonically and in writing as soon as reasonably possible), which City may withhold in its sole discretion. City shall have the right to condition and/or oversee any permitted excavation work. Permittee shall mark, at its own expense, the location of the City's water transmission mains within the Permit Area and shall not use any pick, plow, or other sharp tool to remove the two feet of soil around the transmission mains, provided that Permittee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this Permit. Permittee shall immediately inform City of any actual or potential damage to the coating of the pipeline or any other damage to City's facilities within or adjacent to the Permit Area, and any such damage shall be promptly repaired by Permittee, at its own expense, to the satisfaction of City prior to backfilling; provided, City may elect, in its sole discretion, to make any necessary repairs itself, at Permittee's sole cost, by notifying Permittee of such fact. Upon completion of the repairs, City shall send to Permittee a bill therefor which Permittee shall pay within thirty (30) days following receipt. Under no circumstances shall Permittee damage, harm or take any rare, threatened or endangered species on or about the Permit Area.

(d) **Cooperation with Public Utilities Commission.** Permittee and its Agents shall work closely with City personnel to minimize any potential disturbance (even if temporary) of the natural features of the Permit Area and to avoid disruption (even if temporary) of City facilities, in, under, on or about the Permit Area and City uses thereof.

(e) **Heavy Equipment.** Permittee shall not use any heavy construction equipment over or about City's pipelines, except as otherwise expressly allowed in Section 4(i) hereof.

(f) **Work Schedule.** Permittee must begin installation work, if at all, within thirty (30) days after City's notification of the completion of all archaeological investigation work in the Permit Area, which investigation work is currently expected to be completed on or before August 5, 2011. At least five (5) days prior to the commencement of any work on the Permit Area, Permittee shall notify Mr. Albert Hao, Construction Inspector, at (650) 871-3015, of the date such work shall commence and the intended construction schedule. All work must be performed during regular working hours (Monday through Friday) between 7:00 a.m. to 4:30 p.m., exclusive of City holidays. Any work performed during any other time or day must

be preapproved by the PUC at least forty-eight (48) hours prior to commencing such work. In connection with such approval, Permittee shall complete all work no later than August 15, 2012, subject to unavoidable delay. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, strikes, lockouts, other labor disputes, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of Permittee. Permittee shall have the right to apply to City for a one-time extension for a period not to exceed thirty (30) days.

(g) **Restoration of Permit Area.** Immediately following completion of any work permitted hereunder, Permittee shall remove all debris and any excess dirt and shall restore the Permit Area to its condition immediately prior to Permittee's work hereunder, to the satisfaction of City. Permittee shall restore excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as requested by City.

(h) **Pipeline Depth/Installation of Above-Ground Markers.** Before commencing any excavation work in the Permit Area, Permittee shall measure the depth of City's pipelines located in the Permit Area and shall forward such information to City. Permittee shall install above-ground markers identifying the location of the Permitted Facilities. The location, type, and installation of markers and identifying information on the markers shall be subject to the prior written approval of PUC.

(i) **As-Built Drawings/Reports.** Upon completion of the installation of the Permitted Facilities, Permittee shall furnish PUC with (1) one Autocad Release 2010 file and two (2) complete copies of final as-built drawings for the Permitted Facilities, which drawings shall include sufficient detail so as to allow City to precisely locate the Permitted Facilities. In the event that Permittee or its agents or consultants prepares any environmental, seismic, geophysical, or other written report relating to the Permit Area and/or any work performed thereon, Permittee shall furnish to City a complete copy of such report, including any schedules, exhibits, and maps, promptly upon completion of the same.

(j) **Responsibility for Maintenance of Permitted Facilities.** Permittee shall be solely responsible for repairing and maintaining the Permitted Facilities in good and safe condition, and City shall have no duty whatsoever for any repair or maintenance of the Permit Area or the Permitted Facilities. Permittee shall notify City in writing not less than five (5) days before performing any repair or maintenance work in the Permit Area, except in the case of an emergency whereupon Permittee shall notify City telephonically and in writing as soon as reasonably possible.

(k) **Revocability.** Permittee acknowledges and agrees that the installation of the Permitted Facilities, regardless of cost, shall not in any way whatsoever limit City's right to revoke this Permit pursuant to the terms hereof or any of City's other rights hereunder.

(l) **Contractors.** Permittee shall not accept and release its contractor for work authorized or required by this Permit before securing the PUC's written approval.

(m) **Cathodic and Other Protection.** City may adopt from time to time such rules and regulations with regard to the Permitted Facilities and operations hereunder as City may determine are necessary or appropriate, at City's sole discretion, to safeguard against corrosion

of, or other damage to, City's pipelines and related facilities. Permittee shall immediately comply with all such rules and regulations upon receipt of a copy thereof.

(n) **INTENTIONALLY OMITTED**

(o) **Distance Between Pipes.** The clear distance between the top of the Permitted Facilities and the bottom of City's existing and any proposed future water lines shall not be less than eighteen inches (18").

(p) **Potholing.** The potholing authorized by this Permit shall be subject to the direction of the City's inspector. Potholing using the soft dig method (vacuum soil extraction system) is preferred. The use of other mechanical methods such as digging with a backhoe must be approved by PUC at least five (5) days prior to commencing such work. Notwithstanding the foregoing, the last two (2) feet above the top of the pipe must be dug manually, without the use of any machines.

5. **Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) **Improvements.** Except for the Permitted Facilities, Access Corridor, and temporary construction fencing acceptable to City in the course of the installation of the Permitted Facilities and Access Corridor, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under, or about the Permit Area, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Permit Area, unless Permittee first obtains PUC's prior written consent, which PUC may give or withhold at its sole and absolute discretion. For purposes hereof, asphalt, concrete, and cementitious concrete driveways, sidewalks and parking areas, shacks, and storage facilities, and fences shall be deemed "improvements."

(b) **Trees and Other Plantings.** Permittee shall not plant any trees or other vegetation in or on the Permit Area, except as otherwise expressly provided herein and except in accordance with detailed plans consistent with the PUC's vegetation management policy and as approved by the PUC in writing in advance.

(c) **Dumping.** Permittee shall not cause or permit the dumping or other disposal in, on, under or about the Permit Area of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the Permit Area, or transported to, from, or over the Permit Area. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under or about the Permit Area. Permittee shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts, and the like (collectively, "Laws") requiring notice of such releases or threatened releases to governmental

agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all Laws and using the highest and best technology available, promptly return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to negotiate and participate in any discussion with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material, and any other abatement or clean-up plan, strategy, and procedure. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, the following: any material or substance defined as a "hazardous substance, pollutant, or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas, or natural gas liquids, provided, the foregoing shall not prohibit Permittee from traversing to, from, and across the Permit Area in standard motor vehicles that do not exceed the weight limitations set forth below. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Permit Area.

(e) **Nuisances**. Permittee shall not conduct any activities in, on, under or about the Permit Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(f) **Damage**. Permittee shall not do anything in, on, under or about the Permit Area that could cause damage or interference to any pipelines or other property located in, on, under or about the Permit Area.

(g) **Use of Adjoining Land; Access Corridor**. Permittee acknowledges that the privilege given under this Permit shall be limited strictly to the Permit Area and, solely to allow Permittee access to the Permit Area for the purposes of constructing, installing, reconstructing, removing, replacing, repairing, maintaining, operating, and using the Permitted Facilities and the Access Corridor. Except for use of the Access Corridor as specified in this Permit, Permittee shall not traverse over or otherwise use any adjoining lands of City.

(h) **Ponding; Water Courses**. Permittee shall not cause any ponding on the Permit Area or any flooding on adjacent land. Permittee shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under, or about the Permit Area, nor shall Permittee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Heavy Equipment and Vehicles.** To prevent damage to City's underground pipelines, Permittee's use of vehicles and equipment within twenty feet (20') of each side of the centerline of City's pipelines (measured on the surface) shall be subject to the following restrictions:

(i) Equipment and vehicles shall use Access Corridor only.

(ii) The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in Item (ii). If any equipment with axle loading exceeds the loads stated in Item (ii) below or if the depth of soil cover is less than stated above, Permittee shall submit to PUC for review and approval, in PUC's sole discretion, engineering calculations prepared by a licensed Professional Engineer showing that City's pipelines will not be adversely affected by Permittee's proposed activities. In the event that City's pipelines may be adversely affected, Permittee shall submit remedial measures for City's approval to ensure that no adverse effect will occur.

(iii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying 8-tons (16,000 lbs.). Permittee shall be responsible to provide PUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(iv) Permittee shall not use vibrating compaction equipment without PUC's prior written approval, which approval may be withheld in PUC's sole discretion.

(v) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by PUC in writing, all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the pipeline (measured on the surface), Permittee shall submit a written proposal together with all supporting calculations and data to PUC for review and approval. In any case, the two feet (2') of soil around the pipeline shall be removed manually or by other methods approved by PUC with due care as provided in Section 3(c).

6. **Permit Fee(s).** There shall be no fee payable by Permittee for the use of the Permit Area as contemplated by this Permit.

7. **Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on the date on which this Permit is executed and delivered by City following PUC authorization and approval and the receipt of all fees and security required to be provided hereunder (the "**Commencement Date**"); provided that such privilege may be terminated at any time by City by delivery of at least one hundred eighty (180) days' written notice to Permittee and provided further that any such termination (other than a termination resulting from Permittee's material and uncured breach of this Permit or Permittee's abandonment of the Permitted Facilities), shall be not be effective until City provides to Permittee (a) an enforceable

license, permit, or other instrument that provides a reasonable alternative site for the location of Permittee's sewer line displaced by such termination and (ii) City's enforceable commitment to provide appropriate financial assistance to defray the costs of Permittee's relocation of its sewer line necessitated by such termination. Upon the effective date of any such termination, Permittee will immediately surrender the Permit Area in the condition required hereunder.

8. Security for Performance. INTENTIONALLY OMITTED

9. Insurance.

(a) During any construction activities on or use of the Permit Area or the Access Corridor, by Permittee or its agents, Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times insurance as follows: (i) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse and underground (XCU), Broadform Property Damage, Products Liability and Completed Operations; (ii) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired automobiles, as applicable, if Permittee uses or causes to be used any vehicles in connection with its use of the Permit Area and the Access Corridor, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident. In lieu of the foregoing insurance, Permittee can elect to self-insure by providing City adequate evidence of its self-insurance program. If Permittee elects to self-insure, Permittee shall give PUC written notice of any significant change in or the depletion of its self-insurance fund.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its officers, agents, and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. All policies shall be endorsed to provide thirty (30) days prior written notice to City of cancellation or intended non-renewal.

(c) Prior to the Commencement Date of this Permit, Permittee shall deliver to City certificates of insurance in form and with insurers reasonably satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. **The relevant permit number must be shown on the certificate.** In the event Permittee shall fail to procure such insurance, or to deliver such

policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

(d) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs shall be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(e) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration or termination, to the effect that should any occurrences during the Permit term give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

(f) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with its use of the Permit Area and the Access Corridor, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

(g) Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

**10. Compliance with Laws.** Permittee shall, at its expense, conduct, and cause to be conducted all activities on the Permit Area and the Access Corridor allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area and the Access Corridor any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and the Access Corridor and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by City for purposes of this Permit shall be deemed to constitute approval of any federal, state, City or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way City's exercise of its police power.

11. **Covenant to Maintain Permit Area.** In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area and the Access Corridor in a good, clean, safe, secure, sanitary, and slightly condition, so far as the Permit Area or the Access Corridor may be affected by Permittee's activities hereunder.
12. **Monuments.** INTENTIONALLY OMITTED
13. **Removal or Alteration of Improvements.** Without limiting City's rights hereunder, within one hundred eighty days (180) of City's written request, Permittee shall alter or remove at its sole expense any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Permit Area or the Access Corridor by Permittee to the extent any such facilities, improvements, plantings, or other property do not constitute a part of the Permitted Facilities. In any such request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice Permittee fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge Permittee all costs and expenses incurred by City in performing the work. Such amount shall be due and payable upon City's demand. City may, at its sole option and without notice, alter, remove, or protect at Permittee's sole expense, any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Permit Area or the Access Corridor by Permittee if an emergency reasonably requires any such alteration, removal, or protection.
14. **Signs.** Permittee shall not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the Permit Area or the Access Corridor without PUC's prior written consent, which PUC may withhold at its sole discretion; provided, however, Permittee may place in the Permit Area a temporary sign of less than thirty (30) days' duration that is necessary for Permittee's construction use and that does not extend below the ground surface without PUC's prior written consent.
15. **Surrender.** Upon the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Area in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, Permittee shall remove all of its property from the Permit Area and the Access Corridor and any signs and, upon City's request, other structures or improvements permitted hereunder, and shall repair, at its cost, any damage to the Permit Area or the Access Corridor caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.
16. **Repair of Damage.** If any portion of the Permit Area or the Access Corridor or any property of City located on or about the Permit Area is damaged or threatened by any of the activities conducted by Permittee or anyone acting by or through Permittee hereunder, Permittee shall immediately, at its sole cost, notify City by facsimile of such damage or threat. City may, but shall not be obligated, to remedy such damage or threat at Permittee's sole cost, or City may elect to witness Permittee's repair work. In the event City elects not to remedy such damage or threat, Permittee shall repair any and all such damage and restore the Permit Area or other property to its previous condition subject to City's inspection, review, and approval. City has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the Permit Area or the Access Corridor. Permittee has the sole responsibility to locate such utilities and other existing facilities and protect them from damage. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities



hereunder; provided, Permittee shall obtain City's prior written approval to the provision of such services or utilities in, on, under, or through the Permit Area.

**17. City's Right to Cure Defaults by Permittee.** If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area or the Access Corridor, remove or alter facilities, or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with ten (10) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys', experts', and consultants' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

**18. No Costs to City.** Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area and the Access Corridor, and shall keep the Permit Area and the Access Corridor free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area or the Access Corridor.

**19. Indemnity.**

**(a) General Indemnity.** Each party shall indemnify, defend, reimburse, and hold harmless the other party and its respective officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind arising from the use, occupancy, or activities upon the Permit Area ("**Claims**"), and arising from the negligence or willful misconduct of the indemnifying party or such party's officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, "**Agents**") or its invitees, guests, or business visitors (collectively, "**Invitees**"), including Claims resulting from (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the Permit Area and the Access Corridor, or any part thereof, or (ii) the use of the Permit Area or the Access Corridor or any activities conducted thereon by the indemnifying party, its Agents, or Invitees.

**(b) Environmental Indemnity.** Permittee shall indemnify, defend, reimburse, and hold harmless City and its officers, agents, employees, and contractors, and each of them, from any Claims resulting from any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents, or Invitees, on, in, under, or about the Permit Area or the Access Corridor, any improvements or into the environment, except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives.

**(c) Scope of Indemnity.** Each party's indemnification obligations hereunder shall include, without limitation, reasonable attorneys', experts', and consultants' fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and/or the Access Corridor and claims for damages or decreases in the value of adjoining property. Each party's obligations under this Section shall survive the expiration or other termination of this Permit.

(d) **Waiver of Claims.** Notwithstanding the foregoing, neither City nor any of its commissions, departments, boards, officers, agents, or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or the Access Corridor or its use by Permittee.

Permittee acknowledges that this Permit is revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that City exercises its right to revoke or terminate this Permit.

Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

Permittee expressly acknowledges and agrees that any fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits and arising out of disruption to the facilities or Permittee's uses hereunder. City would not be willing to give this Permit in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including, without limitation, lost profits and, covenants not to sue for such damages, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence and willful misconduct of City or its Agent.

As part of Permittee's agreement to accept the Permit Area and the Access Corridor in their respective "As Is" condition as provided below, and without limiting such agreement, Permittee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives, and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Permit Area, the Access Corridor, and any related improvements or any law or regulation applicable thereto or the suitability of the Permit Area and the Access Corridor for Permittee's intended use.

In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

**20. As Is Condition of Permit Area; Disclaimer of Representations.** Permittee accepts the Permit Area and the Access Corridor in their respective "AS IS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, and subject to all applicable laws, rules, and ordinances governing the use of the Permit Area and the Access Corridor. Without limiting the foregoing, this Permit is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the Permit Area or the Access Corridor, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

**21. No Assignment.** This Permit is personal to Permittee and shall not be assigned, conveyed, or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey, or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

**22. Cessation of Use.** Permittee will not terminate its activities on the Permit Area pursuant hereto without prior written notice to City.

**23. No Joint Ventures or Partnership; No Authorization.** This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in, or relating to the Permit Area or the Access Corridor. Permittee is not a state actor with respect to any activity conducted by Permittee on, in, under, or around the Permit Area or the Access Corridor. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in, around, or relating to the Permit Area or the Access Corridor.

**24. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**25. Non-Discrimination in City Contracts: Covenant Not to Discriminate.** In the performance of this Permit, Permittee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Permittee,

in any of Permittee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee.

**26. Notification of Limitations on Contributions.** Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

**27. Tropical Hardwoods and Virgin Redwoods.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

**28. Taxes, Assessments, Licenses, Permit Fees and Liens.**

(a) Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further recognizes and understands that any transfer or assignment permitted under this Permit and any exercise of any option to renew or extend this Permit may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Permittee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Permittee's usage of the Permit Area or the Access Corridor that may be imposed upon Permittee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Permittee agrees not to allow or suffer a lien for any such taxes or charges to be imposed upon the Permit Area or the Access Corridor or upon any equipment or property located thereon without promptly discharging the same, provided that Permittee, if so desiring, may have reasonable opportunity to contest the validity of the same by paying under protest or posting adequate (in City's sole discretion) security during any such contest.

**29. Notices.** Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor,

with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

**City or PUC:** San Francisco Public Commission  
Regional Water Division  
1000 El Camino Real  
Millbrae, CA 94030  
Attn: Land Engineering Manager

**Permittee:** Union Sanitary District  
5072 Benson Road  
Union City, CA 94587-2508

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Neither party may give official or binding notice by fax or e-mail. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed or e-mailed copy of a notice..

**30. No Tobacco Advertising.** Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**31. Pesticide Prohibition.** Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to the SFPUC an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Premises during the term of this Permit, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with Sections 303(a) and 303(b) of the Pesticide Ordinance.

**32. Conflict of Interest.** Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

**33. Disclosure.** Permittee understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records,

information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Permittee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Permit.

**34. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. (c) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by City hereunder may be made in the sole and absolute discretion of City. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence in all matters relating to this Permit. (g) This Permit shall be governed by California law and City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (l) Any sale or conveyance of the property burdened by this Permit by City shall automatically revoke this Permit. (m) Notwithstanding anything to the contrary contained in this Permit, Permittee acknowledges and agrees that no officer or employee of City has authority to commit City to this Permit unless and until a resolution of City's PUC shall have been duly adopted approving this Permit and authorizing the transaction contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon enactment of such resolution, and this Permit shall be null and void if City's PUC does not approve this Permit, in its sole discretion.

PERMITTEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS PERMIT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

**PERMITTEE:**

UNION SANITARY DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
General Manager  
Public Utilities Commission

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
Richard Handel  
Deputy City Attorney

Authorized by  
Public Utilities Commission

Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_

Attested: \_\_\_\_\_  
Secretary  
Public Utilities Commission

**EXHIBIT A TO REVOCABLE PERMIT**

**Description of Permit Area**

All that certain real property located in Alameda County, California, described as follows:

A portion of BDPL 3 & 4\_R/W, Parcel 34B, according to PUC records and as shown on Exhibit B.



**EXHIBIT B TO REVOCABLE PERMIT**

**Depiction of Permit Area**

**EXHIBIT C TO REVOCABLE PERMIT**

**Deed**

## EXHIBIT D TO REVOCABLE PERMIT

### Approved Plans and Specifications

Sheet No.	Drawing No.	Date of Drawing	Description
1	G01	November 2011	Cover Sheet
2	G02	November 2011	Location Map, Symbols, Abbreviations, Index of Drawings & Utility Contacts
3	G03	November 2011	General Notes & Pothole Table
4	G04	November 2011	Key Map & Survey Notes
5	G05	November 2011	Environmental and SFPUC Pipeline Protection
6	C01	November 2011	Plan and Profile STA 0+00 TO 4+00
7	C02	November 2011	Plan and Profile STA 4+00 TO 7+50
8	C03	November 2011	Plan and Profile STA 7+50 TO 11+22
9	C04	November 2011	Abandonment Plan
10	C05	November 2011	Bypass Schematic & Details
11	C06	November 2011	Details 1
12	C07	November 2011	Details 2
13	C08	November 2011	Details 3
14	C09	November 2011	Details 4
15	C10	November 2011	Details 5
16	CP01	November 2011	Cathodic Protection Details 1
17	CP02	November 2011	Cathodic Protection Details 2

**EXHIBIT E TO REVOCABLE PERMIT**

**Access Corridor Plan**

## EXHIBIT D

### INSURANCE REQUIREMENTS

#### 1.1 USD AND/OR CONTRACTOR'S LIABILITY INSURANCE

- A. At all times commencing from the initial entry of USD's Contractor or USD's employees or agents on the Project Area in connection with the Work until all such Work is completed, USD and /or its Contractor shall maintain in full force and effect, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by USD or the Contractor, and their respective employees, agents, and subcontractors.
  2. Commercial General Liability insurance with limits not less than \$5,000,000 each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, and completed operations.
  3. Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, hired, or non-owned vehicles, as applicable.
- B. Approval of any insurance required by this Agreement by the City will not relieve or decrease the liability of USD or Contractor under this Agreement.

#### 1.2 ADDITIONAL COVERAGES

- A. Professional Liability Insurance: In the event that USD or Contractor employs professional engineering or land surveyor services for performing field engineering or preparing design calculations, plans, and specifications, USD or Contractor shall require the retained engineers and land surveyors to carry professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. USD or Contractor's professional liability policy should not have an exclusion for environmental compliance management or construction management professionals.

- B. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and USD or Contractor or any of their respective subcontractors is required to perform abatement or disposal of such materials, then USD, Contractor, or any such sub-contractor, who performs abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Agreement, contractor's pollution liability insurance with limits not less than \$5,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third-party claims for bodily injury and property damage.
- C. General and Auto Liability policies shall:
  - 1. Name as Additional Insured the City and its officers, agents, and employees and must include coverage for bodily injury and property damage.
  - 2. USD and/ Contractor shall (a) waive subrogation which any insurer that provides coverage specified in this Agreement may acquire from USD or Contractor by virtue of the payment of any loss and (b) obtain any endorsement that may be necessary to effect this waiver of subrogation

### 1.3 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Before commencement of the Work, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from USD or Contractor's insurance carrier identifying City and its officers, agents, and employees as additional insureds shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request.
- B. USD, Contractor and their respective subcontractors shall comply with the provisions of California Labor Code Section 3700. Prior to commencing the performance of work, USD, Contractor, and all of their respective subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- C. Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

D. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated.

E. Should any of the required insurance be provided under a claims-made form, USD and/or Contractor shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 5 years beyond the date the Work is completed, to the effect that, should occurrences during the course of construction of the Work give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

F. Each such policy shall provide that no cancellation or non-renewal shall occur without the carrier giving to the City at least 30 days' written notice prior thereto. All notices shall be made to:

Manager, SFPUC Contract Administration Bureau  
City and County of San Francisco  
1155 Market Street, 9th Floor  
San Francisco, CA 94103.

G. USD or Contractor, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the effective date of such cancellation, change, or expiration, with a complete copy of new or renewed policy.

H. If, at any time during the life of this Contract, USD or Contractor fails to maintain any item of the required insurance in full force and effect, all Work may, at City's sole option, be discontinued immediately, and all payments by City due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Paragraph "G" that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.

I. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Agreement.

#### 1.4 QUALIFICATIONS

A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.





**SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
REVOCABLE PERMIT**

Gen-2000-11  
(Permit # \_\_\_\_\_)

**THIS REVOCABLE PERMIT** (this "Permit") dated for reference purposes only as of February \_\_, 2012, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City"), acting by and through its Public Utilities Commission ("PUC") Regional Water Division, and **UNION SANITARY DISTRICT**, a Public Sanitary District ("Permittee").

City and Permittee agree as follows:

1. **License.** City confers to Permittee a revocable, personal, non-exclusive, and non-possessory privilege to enter upon and use that certain real property owned by City situated in the County of Alameda, State of California, more particularly described in the attached **Exhibit A** (the "**Permit Area**"), for the limited purpose and subject to the terms, conditions, and restrictions set forth below. The Permit Area is shown generally on **Exhibit B**. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws.

THE PRIVILEGE GIVEN TO PERMITTEE UNDER THIS PERMIT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE PERMIT AREA ARE CONCERNED, AND PERMITTEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE PERMIT AREA. WITHOUT LIMITING THE FOREGOING, THIS PERMIT IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN **DEED**, DATED MARCH 28, 1950, AND RECORDED ON APRIL 13 1951 IN BOOK 6409, PAGE 255, OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE PERMIT AREA, A COPY OF WHICH IS ATTACHED TO THIS PERMIT AS **EXHIBIT C** (THE "**DEED**"), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE PERMIT AREA (COLLECTIVELY, WITH THE DEED, THE "**RECORDED DOCUMENTS**"). PERMITTEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE PERMIT AREA, INCLUDING ANY APPROVALS, PERMITS, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. PERMITTEE COVENANTS AND AGREES, FOR THE BENEFIT OF CITY, THAT PERMITTEE SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY PERMITTEE ON THE PERMIT AREA PURSUANT TO THIS PERMIT, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED,

CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PERMIT AREA FOR PERMITTEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON PERMITTEE'S RIGHTS UNDER THIS PERMIT, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, PERMITS, CONSENTS, OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS PERMIT.

2. **Use of Permit Area.**

(a) **Permitted Acts.** Permittee may enter and use the Permit Area for the sole purposes of

(i) constructing, installing, reconstructing, removing, replacing, repairing, maintaining, operating and using, as Permittee may see fit for the transmission of wastewater, recycled water, or related substances, a 10-inch sanitary sewer, a 30-inch steel casing, and four manholes, (collectively, such sewer, casing, manholes and the Access Corridor referred to in subsection 2(a)(ii) below (to the extent located within the Permit Area) is referred to as the "**Permitted Facilities**") in strict accordance with Section 3(a) hereof and

(ii) repairing, maintaining, operating, and using, as Permittee may see fit, of an access road across the Permit Area and City's adjoining lands (the "**Access Corridor**") as depicted on the attached Exhibit E to allow Permittee periodic access to the Permitted Facilities.

3. **Subject to City Uses.** Permittee is aware that the Permit Area and the Access Corridor (defined in Section 4(g) below) constitutes a portion of City's water pipeline delivery system. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's existing and future use of the Permit Area for municipal and other purposes. If City determines at any time that Permittee's property or improvements on the Permit Area interfere with City's use of its water pipeline delivery system installed in or about the Permit Area and elects not to terminate this Permit pursuant to Section 7, within one hundred eighty (180) days of receipt of City's written request, Permittee shall temporarily remove or relocate any property or improvements on the Permit Area identified, and for the period specified, in such notice to allow City access to the pipelines, and City shall thereafter reimburse USD for all costs necessarily incurred in connection with such move or relocation. In the event of Permittee's failure to timely temporarily remove or relocate any such property or improvements or in the event of an emergency that, in City's sole discretion (when no such notice shall be required), City deems it necessary to immediately move any of such property or improvements, City shall have the right, at its sole cost, to move or relocate any such property or improvements and shall be responsible for restoring or returning same to their prior condition..

4. **Installation of Permitted Facilities.** Permittee may install the Permitted Facilities on the Permit Area only upon satisfaction of the following conditions, which are for City's sole benefit:

(a) **Approval of Plans and Specifications.** Permittee shall install the Permitted Facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by PUC (the "**Specifications**") and identified in the attached **Exhibit D**. Any repairs or replacements of the Permitted Facilities shall not materially deviate in any respect from the Specifications. The Specifications may be revised or amended only with PUC's prior written approval after PUC's Bureau of Environmental Regulation and Management has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Permits and Approvals.** Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses, and approvals (collectively, "**Approvals**") of all regulatory agencies and other third parties that are required to commence, complete, and maintain the permitted work. Permittee shall deliver copies of such Approvals to PUC promptly upon Permittee's receipt. Permittee recognizes and agrees that no approval by PUC for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

(c) **Exercise of Due Care.** Permittee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to City's water pipelines or other property and to native vegetation and natural attributes of the Permit Area and to minimize slope erosion. Permittee shall not disturb the surface of the Permit Area or perform any excavation work without City's prior, written approval (except in the case of an emergency whereupon Permittee shall notify City telephonically and in writing as soon as reasonably possible), which City may withhold in its sole discretion. City shall have the right to condition and/or oversee any permitted excavation work. Permittee shall mark, at its own expense, the location of the City's water transmission mains within the Permit Area and shall not use any pick, plow, or other sharp tool to remove the two feet of soil around the transmission mains, provided that Permittee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this Permit. Permittee shall immediately inform City of any actual or potential damage to the coating of the pipeline or any other damage to City's facilities within or adjacent to the Permit Area, and any such damage shall be promptly repaired by Permittee, at its own expense, to the satisfaction of City prior to backfilling; provided, City may elect, in its sole discretion, to make any necessary repairs itself, at Permittee's sole cost, by notifying Permittee of such fact. Upon completion of the repairs, City shall send to Permittee a bill therefor which Permittee shall pay within thirty (30) days following receipt. Under no circumstances shall Permittee damage, harm or take any rare, threatened or endangered species on or about the Permit Area.

(d) **Cooperation with Public Utilities Commission.** Permittee and its Agents shall work closely with City personnel to minimize any potential disturbance (even if temporary) of the natural features of the Permit Area and to avoid disruption (even if temporary) of City facilities, in, under, on or about the Permit Area and City uses thereof.

(e) **Heavy Equipment.** Permittee shall not use any heavy construction equipment over or about City's pipelines, except as otherwise expressly allowed in Section 4(i) hereof.

(f) **Work Schedule.** Permittee must begin installation work, if at all, within thirty (30) days after City's notification of the completion of all archaeological investigation work in

the Permit Area, which investigation work is currently expected to be completed on or before August 5, 2011. At least five (5) days prior to the commencement of any work on the Permit Area, Permittee shall notify Mr. Albert Hao, Construction Inspector, at (650) 871-3015, of the date such work shall commence and the intended construction schedule. All work must be performed during regular working hours (Monday through Friday) between 8:00 a.m. to 4:30 p.m., exclusive of City holidays. Any work performed during any other time or day must be preapproved by the PUC at least forty-eight (48) hours prior to commencing such work. In connection with such approval, Permittee shall complete all work no later than August 15, 2012, subject to unavoidable delay. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, strikes, lockouts, other labor disputes, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of Permittee. Permittee shall have the right to apply to City for a one-time extension for a period not to exceed thirty (30) days.

(g) **Restoration of Permit Area.** Immediately following completion of any work permitted hereunder, Permittee shall remove all debris and any excess dirt and shall restore the Permit Area to its condition immediately prior to Permittee's work hereunder, to the satisfaction of City. Permittee shall restore excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as requested by City.

(h) **Pipeline Depth/Installation of Above-Ground Markers.** Before commencing any excavation work in the Permit Area, Permittee shall measure the depth of City's pipelines located in the Permit Area and shall forward such information to City. Permittee shall install above-ground markers identifying the location of the Permitted Facilities. The location, type, and installation of markers and identifying information on the markers shall be subject to the prior written approval of PUC.

(i) **As-Built Drawings/Reports.** Upon completion of the installation of the Permitted Facilities, Permittee shall furnish PUC with (1) one Autocad Release 2010 file and two (2) complete copies of final as-built drawings for the Permitted Facilities, which drawings shall include sufficient detail so as to allow City to precisely locate the Permitted Facilities. In the event that Permittee or its agents or consultants prepares any environmental, seismic, geophysical, or other written report relating to the Permit Area and/or any work performed thereon, Permittee shall furnish to City a complete copy of such report, including any schedules, exhibits, and maps, promptly upon completion of the same.

(j) **Responsibility for Maintenance of Permitted Facilities.** Permittee shall be solely responsible for repairing and maintaining the Permitted Facilities in good and safe condition, and City shall have no duty whatsoever for any repair or maintenance of the Permit Area or the Permitted Facilities. Permittee shall notify City in writing not less than five (5) days before performing any repair or maintenance work in the Permit Area, except in the case of an emergency whereupon Permittee shall notify City telephonically and in writing as soon as reasonably possible.

(k) **Revocability.** Permittee acknowledges and agrees that the installation of the Permitted Facilities, regardless of cost, shall not in any way whatsoever limit City's right to revoke this Permit pursuant to the terms hereof or any of City's other rights hereunder.

(l) **Contractors.** Permittee shall not accept and release its contractor for work authorized or required by this Permit before securing the PUC's written approval.

(m) **Cathodic and Other Protection.** City may adopt from time to time such rules and regulations with regard to the Permitted Facilities and operations hereunder as City may determine are necessary or appropriate, at City's sole discretion, to safeguard against corrosion of, or other damage to, City's pipelines and related facilities. Permittee shall immediately comply with all such rules and regulations upon receipt of a copy thereof.

(n) INTENTIONALLY OMITTED

(o) **Distance Between Pipes.** The clear distance between the top of the Permitted Facilities and the bottom of City's existing and any proposed future water lines shall not be less than eighteen inches (18").

(p) **Potholing.** The potholing authorized by this Permit shall be subject to the direction of the City's inspector. Potholing using the soft dig method (vacuum soil extraction system) is preferred. The use of other mechanical methods such as digging with a backhoe must be approved by PUC at least five (5) days prior to commencing such work. Notwithstanding the foregoing, the last two (2) feet above the top of the pipe must be dug manually, without the use of any machines.

5. **Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) **Improvements.** Except for the Permitted Facilities, Access Corridor, and temporary construction fencing acceptable to City in the course of the installation of the Permitted Facilities and Access Corridor, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under, or about the Permit Area, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Permit Area, unless Permittee first obtains PUC's prior written consent, which PUC may give or withhold at its sole and absolute discretion. For purposes hereof, asphalt, concrete, and cementitious concrete driveways, sidewalks and parking areas, shacks, and storage facilities, and fences shall be deemed "improvements."

(b) **Trees and Other Plantings.** Permittee shall not plant any trees or other vegetation in or on the Permit Area, except as otherwise expressly provided herein and except in accordance with detailed plans consistent with the PUC's vegetation management policy and as approved by the PUC in writing in advance.

(c) **Dumping.** Permittee shall not cause or permit the dumping or other disposal in, on, under or about the Permit Area of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as

defined below) to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the Permit Area, or transported to, from, or over the Permit Area. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under or about the Permit Area. Permittee shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts, and the like (collectively, "Laws") requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all Laws and using the highest and best technology available, promptly return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to negotiate and participate in any discussion with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material, and any other abatement or clean-up plan, strategy, and procedure. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, the following: any material or substance defined as a "hazardous substance, pollutant, or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas, or natural gas liquids, provided, the foregoing shall not prohibit Permittee from traversing to, from, and across the Permit Area in standard motor vehicles that do not exceed the weight limitations set forth below. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Permit Area.

(e) **Nuisances.** Permittee shall not conduct any activities in, on, under or about the Permit Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(f) **Damage.** Permittee shall not do anything in, on, under or about the Permit Area that could cause damage or interference to any pipelines or other property located in, on, under or about the Permit Area.

(g) **Use of Adjoining Land; Access Corridor.** Permittee acknowledges that the privilege given under this Permit shall be limited strictly to the Permit Area and, solely to allow Permittee access to the Permit Area for the purposes of constructing, installing, reconstructing, removing, replacing, repairing, maintaining, operating, and using the Permitted Facilities and the Access Corridor. Except for use of the Access Corridor as specified in this Permit, Permittee shall not traverse over or otherwise use any adjoining lands of City.

(h) **Ponding; Water Courses.** Permittee shall not cause any ponding on the Permit Area or any flooding on adjacent land. Permittee shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under, or about the Permit Area, nor shall Permittee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Heavy Equipment and Vehicles.** To prevent damage to City's underground pipelines, Permittee's use of vehicles and equipment within twenty feet (20') of each side of the centerline of City's pipelines (measured on the surface) shall be subject to the following restrictions:

(i) Equipment and vehicles shall use Access Corridor only.

(ii) The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in Item (ii). If any equipment with axle loading exceeds the loads stated in Item (ii) below or if the depth of soil cover is less than stated above, Permittee shall submit to PUC for review and approval, in PUC's sole discretion, engineering calculations prepared by a licensed Professional Engineer showing that City's pipelines will not be adversely affected by Permittee's proposed activities. In the event that City's pipelines may be adversely affected, Permittee shall submit remedial measures for City's approval to ensure that no adverse effect will occur.

(iii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying 8-tons (16,000 lbs.). Permittee shall be responsible to provide PUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(iv) Permittee shall not use vibrating compaction equipment without PUC's prior written approval, which approval may be withheld in PUC's sole discretion.

(v) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by PUC in writing, all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the pipeline (measured on the surface), Permittee shall submit a written proposal together with all supporting calculations and data to PUC for review and approval. In any case, the two feet (2') of soil around the pipeline shall be removed manually or by other methods approved by PUC with due care as provided in Section 3(c).

6. **Permit Fee(s).** There shall be no fee payable by Permittee for the use of the Permit Area as contemplated by this Permit.

7. **Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on the date on which this Permit is executed and delivered by City following PUC authorization and approval and the receipt of all fees and security required to be provided hereunder (the "**Commencement Date**"); provided that such privilege may be terminated at any time by City by delivery of at least one hundred eighty (180) days' written notice to Permittee and provided further that any such termination (other than a termination resulting from Permittee's material and uncured breach of this Permit or Permittee's abandonment of the Permitted Facilities), shall be not be effective until City provides to Permittee (a) an enforceable license, permit, or other instrument that provides a reasonable alternative site for the location of Permittee's sewer line displaced by such termination and (ii) City's enforceable commitment to pay the actual total cost of Permittee's relocation of its sewer line necessitated by such termination, which shall include, but not be limited to, all reasonable costs incurred in the design, construction, construction management, permitting, administration, and all incidentals of the relocation work. Upon the effective date of any such termination, Permittee will immediately surrender the Permit Area in the condition required hereunder.

8. **Security for Performance.** INTENTIONALLY OMITTED

9. **Insurance.**

(a) During any construction activities on or use of the Permit Area or the Access Corridor, by Permittee or its agents, Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times insurance as follows: (i) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse and underground (XCU), Broadform Property Damage, Products Liability and Completed Operations; (ii) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired automobiles, as applicable, if Permittee uses or causes to be used any vehicles in connection with its use of the Permit Area and the Access Corridor, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident. In lieu of the foregoing insurance, Permittee can elect to self-insure by providing City adequate evidence of its self-insurance program. If Permittee elects to self-insure, Permittee shall give PUC written notice of any significant change in or the depletion of its self-insurance fund.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its officers, agents, and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise



reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. All policies shall be endorsed to provide thirty (30) days prior written notice to City of cancellation or intended non-renewal.

(c) Prior to the Commencement Date of this Permit, Permittee shall deliver to City certificates of insurance in form and with insurers reasonably satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. **The relevant permit number must be shown on the certificate.** In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

(d) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs shall be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(e) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration or termination, to the effect that should any occurrences during the Permit term give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

(f) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with its use of the Permit Area and the Access Corridor, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

(g) Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

**10. Compliance with Laws.** Permittee shall, at its expense, conduct, and cause to be conducted all activities on the Permit Area and the Access Corridor allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area and the Access Corridor any and all business and other licenses or approvals necessary to conduct the activities allowed

hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and the Access Corridor and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by City for purposes of this Permit shall be deemed to constitute approval of any federal, state, City or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way City's exercise of its police power.

**11. Covenant to Maintain Permit Area.** In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area and the Access Corridor in a good, clean, safe, secure, sanitary, and sightly condition, so far as the Permit Area or the Access Corridor may be affected by Permittee's activities hereunder.

**12. Monuments.** INTENTIONALLY OMITTED

**13. Removal or Alteration of Improvements.** Without limiting City's rights hereunder, within one hundred eighty days (180) of City's written request, Permittee shall alter or remove at its sole expense any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Permit Area or the Access Corridor by Permittee to the extent any such facilities, improvements, plantings, or other property do not constitute a part of the Permitted Facilities. In any such request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice Permittee fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge Permittee all costs and expenses incurred by City in performing the work. Such amount shall be due and payable upon City's demand. City may, at its sole option and without notice, alter, remove, or protect at Permittee's sole expense, any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Permit Area or the Access Corridor by Permittee if an emergency reasonably requires any such alteration, removal, or protection.

**14. Signs.** Permittee shall not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the Permit Area or the Access Corridor without PUC's prior written consent, which PUC may withhold at its sole discretion; provided, however, Permittee may place in the Permit Area a temporary sign of less than thirty (30) days' duration that is necessary for Permittee's construction use and that does not extend below the ground surface without PUC's prior written consent.

**15. Surrender.** Upon the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Area in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, Permittee shall remove all of its property from the Permit Area and the Access Corridor and any signs and, upon City's request, other structures or improvements permitted hereunder, and shall repair, at its cost, any damage to the Permit Area or the Access Corridor caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

**16. Repair of Damage.** If any portion of the Permit Area or the Access Corridor or any property of City located on or about the Permit Area is damaged or threatened by any of the activities conducted by Permittee or anyone acting by or through Permittee hereunder, Permittee shall immediately, at its sole cost, notify City by facsimile of such damage or threat. City may,

but shall not be obligated, to remedy such damage or threat at Permittee's sole cost, or City may elect to witness Permittee's repair work. In the event City elects not to remedy such damage or threat, Permittee shall repair any and all such damage and restore the Permit Area or other property to its previous condition subject to City's inspection, review, and approval. City has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the Permit Area or the Access Corridor. Permittee has the sole responsibility to locate such utilities and other existing facilities and protect them from damage. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder; provided, Permittee shall obtain City's prior written approval to the provision of such services or utilities in, on, under, or through the Permit Area.

**17. City's Right to Cure Defaults by Permittee.** If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area or the Access Corridor, remove or alter facilities, or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with twenty (20) business days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses, or liabilities incurred by City, including, without limitation, reasonable attorneys', experts', and consultants' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

**18. No Costs to City.** Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area and the Access Corridor, and shall keep the Permit Area and the Access Corridor free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area or the Access Corridor.

**19. Indemnity.**

**(a) General Indemnity.** Each party shall indemnify, defend, reimburse, and hold harmless the other party and its respective officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind arising from the use, occupancy, or activities upon the Permit Area ("**Claims**"), and arising from the negligence or willful misconduct of the indemnifying party or such party's officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, "**Agents**") or its invitees, guests, or business visitors (collectively, "**Invitees**"), including Claims resulting from (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the Permit Area and the Access Corridor, or any part thereof, or (ii) the use of the Permit Area or the Access Corridor or any activities conducted thereon by the indemnifying party, its Agents, or Invitees.

**(b) Environmental Indemnity.** Permittee shall indemnify, defend, reimburse, and hold harmless City and its officers, agents, employees, and contractors, and each of them, from any Claims resulting from any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents, or Invitees, on, in, under, or

about the Permit Area or the Access Corridor, any improvements or into the environment, except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives.

(c) **Scope of Indemnity.** Each party's indemnification obligations hereunder shall include, without limitation, reasonable attorneys', experts', and consultants' fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and/or the Access Corridor and claims for damages or decreases in the value of adjoining property. Each party's obligations under this Section shall survive the expiration or other termination of this Permit.

(d) **Waiver of Claims.** Notwithstanding the foregoing, neither City nor any of its commissions, departments, boards, officers, agents, or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or the Access Corridor or its use by Permittee.

Permittee acknowledges that this Permit is revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that City exercises its right to revoke or terminate this Permit.

Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

Permittee expressly acknowledges and agrees that any fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits and arising out of disruption to the facilities or Permittee's uses hereunder. City would not be willing to give this Permit in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including, without limitation, lost profits and, covenants not to sue for such damages, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, arising out of this Permit or

the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence and willful misconduct of City or its Agent.

As part of Permittee's agreement to accept the Permit Area and the Access Corridor in their respective "As Is" condition as provided below, and without limiting such agreement, Permittee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives, and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Permit Area, the Access Corridor, and any related improvements or any law or regulation applicable thereto or the suitability of the Permit Area and the Access Corridor for Permittee's intended use.

In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

**20. As Is Condition of Permit Area; Disclaimer of Representations.** Permittee accepts the Permit Area and the Access Corridor in their respective "AS IS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, and subject to all applicable laws, rules, and ordinances governing the use of the Permit Area and the Access Corridor. Without limiting the foregoing, this Permit is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the Permit Area or the Access Corridor, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

**21. No Assignment.** This Permit is personal to Permittee and shall not be assigned, conveyed, or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey, or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

**22. Cessation of Use.** Permittee will not terminate its activities on the Permit Area pursuant hereto without prior written notice to City.

**23. No Joint Ventures or Partnership; No Authorization.** This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in, or relating to the Permit Area or the Access Corridor. Permittee is not a state actor with

respect to any activity conducted by Permittee on, in, under, or around the Permit Area or the Access Corridor. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in, around, or relating to the Permit Area or the Access Corridor.

24. **MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

25. **Non-Discrimination in City Contracts: Covenant Not to Discriminate.** In the performance of this Permit, Permittee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Permittee, in any of Permittee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee.

26. **Notification of Limitations on Contributions.** Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

27. **Tropical Hardwoods and Virgin Redwoods.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

28. **Taxes, Assessments, Licenses, Permit Fees and Liens.**

(a) Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further recognizes and understands that any transfer or assignment permitted under this Permit and any exercise of any option to renew or extend this

Permit may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Permittee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Permittee's usage of the Permit Area or the Access Corridor that may be imposed upon Permittee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Permittee agrees not to allow or suffer a lien for any such taxes or charges to be imposed upon the Permit Area or the Access Corridor or upon any equipment or property located thereon without promptly discharging the same, provided that Permittee, if so desiring, may have reasonable opportunity to contest the validity of the same by paying under protest or posting adequate (in City's sole discretion) security during any such contest.

29. **Notices.** Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

**City or PUC:** San Francisco Public Commission  
Regional Water Division  
1000 El Camino Real  
Millbrae, CA 94030  
Attn: Land Engineering Manager

**Permittee:** Union Sanitary District  
5072 Benson Road  
Union City, CA 94587-2508

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Neither party may give official or binding notice by fax or e-mail. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed or e-mailed copy of a notice..

30. **No Tobacco Advertising.** Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

31. **Pesticide Prohibition.** Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain

notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to the SFPUC an integrated pest management (“IPM”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Premises during the term of this Permit, (b) describes the steps Permittee will take to meet the City’s IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee’s primary IPM contact person with the City. In addition, Permittee shall comply with Sections 303(a) and 303(b) of the Pesticide Ordinance.

**32. Conflict of Interest.** Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City’s Campaign and Governmental Conduct Code and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

**33. Disclosure.** Permittee understands and agrees that under the City’s Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov’t Code Section 6250 et seq.), apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City’s Sunshine Ordinance and the State Public Records Law. Permittee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Permit.

**34. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. (c) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by City hereunder may be made in the sole and absolute discretion of City. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence in all matters relating to this Permit. (g) This Permit shall be governed by California law and City’s Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys’ fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys’ fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City’s use of its own attorneys. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (l) Any sale or conveyance of the property burdened by this Permit by



City shall automatically revoke this Permit. (m) Notwithstanding anything to the contrary contained in this Permit, Permittee acknowledges and agrees that no officer or employee of City has authority to commit City to this Permit unless and until a resolution of City's PUC shall have been duly adopted approving this Permit and authorizing the transaction contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon enactment of such resolution, and this Permit shall be null and void if City's PUC does not approve this Permit, in its sole discretion.

PERMITTEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS PERMIT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

**PERMITTEE:**

UNION SANITARY DISTRICT

By: Richard B. Currie

Name: RICHARD B. CURRIE

Title: GENERAL MANAGER

Date: 2/1/2012

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
General Manager  
Public Utilities Commission

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**

City Attorney

By: Richard Handel  
Richard Handel  
Deputy City Attorney

**Authorized by  
Public Utilities Commission**

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attested: \_\_\_\_\_

Secretary  
Public Utilities Commission

**EXHIBIT A**

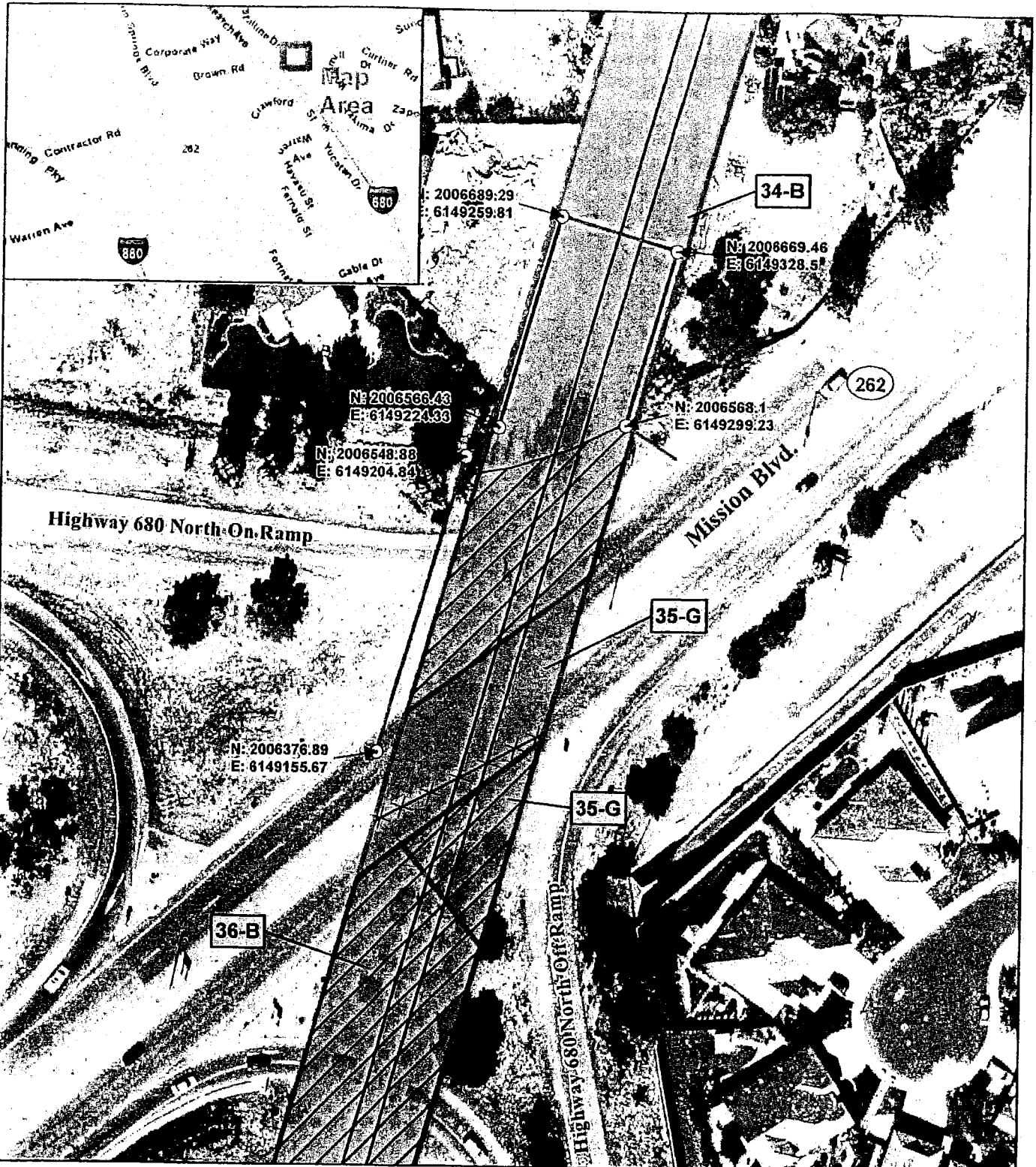
**Description of Permit Area**


All that certain real property located in Alameda County, California, described as follows:


A portion of BDPL 3 & 4\_R/W, Parcel 34B, according to PUC records and as shown on Exhibit B.


**EXHIBIT B**


**Depiction of Permit Area**





 SFPUC Fee Owned Right of Way

 Caltrans Easement on SFPUC Fee Owned Property

 Existing SFPUC Pipelines

 GPS Points (NAD 1983 StatePlane California III FIPS 0403 Feet)

 Location of Existing Union Sanitary District Pipeline to be Abandoned

 Location of New Union Sanitary District 10" Sanitary Sewer Line

Aerial Photo Flown October 2005

The City does not guarantee that the information is accurate or complete. The City provides this information on an "as is" basis and disclaims all warranties, express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. The City is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.



Hetch Hetchy Regional Water System

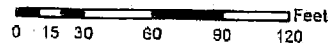
Right of Way



Exhibit B

1:960

1 inch = 80 feet



6/27/2011

**EXHIBIT C**

**Deed**

0709 233

11136-255

Par. 34B

43-886  
AF- 31136

(No documentary stamps required)  
Ala. Co. E.B.T. Co. 418989

DEED

BRUCE E. MICHAEL and LUCRETIA H. MICHAEL, his wife, the first parties, hereinafter referred to as the Grantors, hereby grant to CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the second party, hereinafter referred to as the City, the following described real property, situated in the County of Alameda, State of California:

A strip of land 80 feet wide lying 40 feet either side of the following described line and extensions thereto across that certain parcel of land designated as parcel 2 in that certain Deed from John J. Gordon et ux, to Bruce E. Michael et ux, by Deed dated January 30, 1948 and recorded February 4, 1948 in Volume 5399 at page 89, Official Records, Alameda County, hereinafter referred to as the Michael Parcel; said strip of land being more particularly described as, COMMENCING at a point in the common boundary between the above mentioned Michael Parcel and that certain parcel of land designated as parcel 1 in that certain Deed from Frank Gomez et ux, to Richard Johnson et ux, dated December 29, 1944 and recorded January 16, 1945 in Volume 4603 at page 485, Official Records, Alameda County, hereinafter referred to as the Johnson Parcel, said point being distant along said common boundary south 88° 04' 20" west 333.90 feet from its intersection with the northwesterly boundary of the existing State Highway IV-Ala-5C, leading from Niles to San Jose; thence from said point of commencement south 15° 10' 20" west 744.84 feet to a point in said northwesterly boundary of State Highway IV-Ala-5C leading from Niles to San Jose; said point being distant north 52° 08' 20" east 34.38 feet and north 15° 10' 20" east 99.76 feet from the most westerly corner of that certain parcel of land conveyed by R. M. Egan to Jose Silveira Braia et al, by Deed dated July 9, 1938 and recorded July 12, 1938 in Volume 3660 at page 143, Official Records, Alameda County; the northerly end of said strip being the above mentioned common boundary between the Michael and Johnson Parcels and the southerly end of said strip being the above mentioned northwesterly boundary of State Highway IV-Ala-5C, leading from Niles to San Jose: CONTAINING 1.368 Acres.

Together with all right, title and interest of the first parties in and to that portion of said State Highway IV-Ala-5C adjoining the above described land.

ALSO the right of ingress to and egress from said parcel of real property across adjacent lands of the Grantors over any available private roadway or over such route as may be agreed upon, the right to cut any and all existing fences and to install gates therein at such points as may be necessary for the convenience of the City in the use of said parcel of real property, and the right to protect pipes and other structures or improvements

of the City by means of fences or otherwise; provided, however, that the City shall not construct any other fences upon or with respect to said parcel of real property without the consent of the Grantors. If the City should damage the Grantors' roads or fences, the City shall, at its own expense, repair such damage.

THIS DEED IS MADE SUBJECT TO THE FOREGOING AND THE FOLLOWING COVENANTS:

1. The Grantors are permitted the right to plant, cultivate, irrigate, harvest and retain crops from the parcel of land herein described, and to use said land for pasturage, until such time as the City requires said land for construction purposes, and thereafter to cultivate, plant, irrigate, harvest and retain crops from, and to use for pasturage, such parts of said parcel of land as are not actually needed by the City for the construction, maintenance, repair, operation, renewal and replacement of its aqueduct pipe lines and other structures or improvements, appurtenances and appliances; provided, that the Grantors shall not plant any trees on said above described parcel of real property.

2. The Grantors are permitted the right to construct, maintain, use, repair, replace, and renew, over and across said parcel of land, (but not along in the direction of the City's pipe line or lines), fences, roads, streets, earth fills, sewers, water pipes, gas pipes, electric power lines, telephone lines, telegraph lines; provided, however, that the locations and grades of such improvements and structures of the Grantors, and the amount of any earth fill, proposed to be placed on said parcel of real property by the Grantors, shall first be approved by the City's Public Utilities Commission; provided further, that the Grantors shall not use said parcel of land, or permit the same to be used, for any purpose or in any manner which will interfere with, damage, or endanger in any way any aqueduct pipe lines, and other structures and improvements, appurtenances or appliances, of the City. The Grantors shall install gates in any additional fences which he may construct across said parcel of real property sufficient in width to allow passage of trucks and other equipment.



3. After installation of the City's first pipe line, the City's Public Utilities Commission shall give the Grantors at least six months' written notice before commencing construction of any additional aqueduct pipe lines, utilities, and other structures or improvements on said parcel of real property.

4. All notices to be given between the parties hereto shall be in writing and served personally or by depositing the same in the United States mail, postage prepaid and addressed to City at the office of its Manager of Utilities, City Hall, San Francisco, California; and to Grantors at R.F.D. Box 440, Irvington, California, and the said notice shall be binding upon any successor in interest of the Grantors unless the City is notified in writing of the address of said successor in interest, in which case said notice of the City is to be sent thereto.

5. The tops of all of City's pipe lines and conduits shall be laid below the surface of the ground and covered to a depth of not less than 18 inches, excepting pipe line appurtenances which may be constructed flush with or above the surface of the ground, but where it is not practicable for the City to lay its pipe line or lines to such a minimum depth on account of ditches, ravines, swamps, or poor soil conditions, the same may be installed partially or wholly above the surface of said parcel of land, or upon trestles or other structures.

6. The covenants herein set forth shall inure to the benefit of, and bind, the heirs, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the first parties have executed this conveyance this 28th day of March, 1949.

Bruce E. Michael

Lucretia H. Michael

State of California }  
County of Alameda }

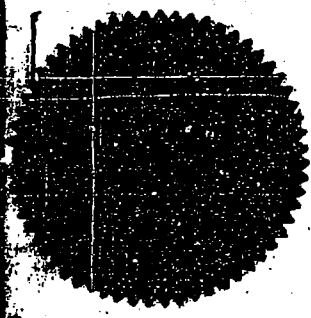
ACKNOWLEDGMENT—General

On this 28th day of March, A. D. 1949 before me  
Allan R. Hirsch Notary Public in and for the said  
County and State, residing therein, duly commissioned and sworn, personally appeared  
Bruce E. Michael and  
Lucretia H. Michael

knows to me to be the persons whose names are subscribed to the within  
Instrument, and acknowledged to me that they executed the same.  
In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and  
year in this Certificate first above written.

Allan R. Hirsch  
Notary Public in and for said County and State of California.

My Commission Expires June 2, 1952



6100-253

AF- 31136

RECORDED at REQUEST OF  
ALAMEDA COUNTY  
EAST BAY TITLE INS. CO.

AL... 10:30 AM

APR 13 1951

OFFICIAL RECORDS OF  
ALAMEDA COUNTY, CALIFORNIA  
*Thomas W. Fitzsimons*  
COUNTY RECORDER

DH

25F

LAND PURCHASES - BAY DIVISION  
PIPE LINE NO. 1.

Resolution No. 9194  
(Series 1939)

RESOLVED, in accordance with the written offers on file in the office of the Director of Property and the recommendation of the Public Utilities Commission, that the City and County of San Francisco, a municipal corporation, accept deeds from the following named parties, or the legal owners, to certain parcels of land in Alameda County, California, required for the Bay Division Pipe Line No. 1, and that the sums set forth opposite their names be paid for said real property from Appropriation No. 89-508-64:

Teresa Galasso, et al	13,254.00
Samuel Metzger, et al	2,708.00
Bruce E. Michael, et ux	1,200.00
Lillian D. Tibbitts, et ux	480.00
John H. Urr	480.00
Joseph F. Varza, et ux	750.00
Chang Cho Yum	1,475.00

The sum of \$10,879.00 required for the purpose of this resolution was previously certified for the acquisition of said real property through eminent domain proceedings, and inasmuch as it now appears that said proceedings will not be necessary with respect to said property, the Controller is authorized to release this amount from the previous certification and make said amount available for the purpose herein set forth. In the event that it should become necessary to proceed under eminent domain proceedings, the Controller is authorized to make the necessary adjustment of funds.

The City Attorney shall examine and approve the title of said property.

I hereby certify that the foregoing resolution was adopted by the Board of Supervisors of the City and County of San Francisco at its meeting of Oct. 24, 1949.

JOHN W. McGRATH, Clerk.  
Approved, Oct. 25, 1949.  
ELMER E. ROBINSON,  
Mayor.

oct 25-49

*APPROVED*  
*John W. McGrath*  
General

STATE OF CALIFORNIA }  
City and County of San Francisco } 55.

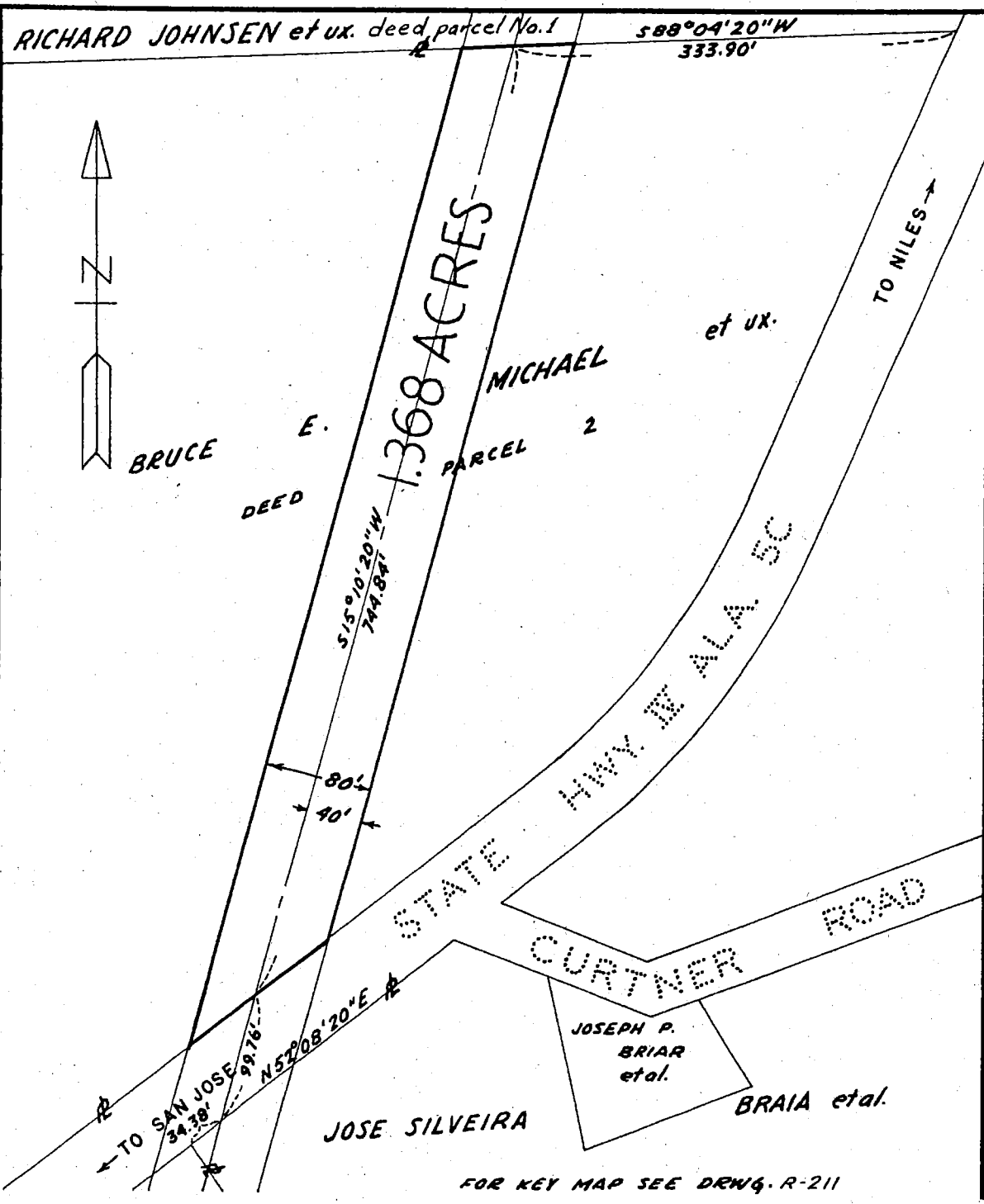
CLERK'S CERTIFICATE

I, Robert J. Dolan, Acting Clerk of the Board of Supervisors of the City and County of San Francisco, do hereby certify

that the annexed Resolution No. 9194 (Series of 1939) is a full, true and correct copy of the original thereof on file in the office of the Clerk of the Board of Supervisors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City and County this 1st day of November 1949.

*Robert J. Dolan*



CITY AND COUNTY OF SAN FRANCISCO  
 PUBLIC UTILITIES COMMISSION  
 SAN FRANCISCO WATER DEPARTMENT

BAY DIVISION PIPE LINE NO.3  
 PARCEL NO. 34 B  
 ALAMEDA COUNTY

APPROVED	SCALE 1" = 100'	BY C.W.	DR. W.L.	DRAWING NO. B437A
APPROVED		TR. M.R.P.	CH. D.I.	
GENERAL MANAGER AND CHIEF ENGINEER		DATE 5-18-49	REVISED	

## EXHIBIT D

### Approved Plans and Specifications

Sheet No.	Drawing No.	Date of Drawing	Description
1	G01	November 2011	Cover Sheet
2	G02	November 2011	Location Map, Symbols, Abbreviations, Index of Drawings & Utility Contacts
3	G03	November 2011	General Notes & Pothole Table
4	G04	November 2011	Key Map & Survey Notes
5	G05	November 2011	Environmental and SFPUC Pipeline Protection
6	C01	November 2011	Plan and Profile STA 0+00 TO 4+00
7	C02	November 2011	Plan and Profile STA 4+00 TO 7+50
8	C03	November 2011	Plan and Profile STA 7+50 TO 11+22
9	C04	November 2011	Abandonment Plan
10	C05	November 2011	Bypass Schematic & Details
11	C06	November 2011	Details 1
12	C07	November 2011	Details 2
13	C08	November 2011	Details 3
14	C09	November 2011	Details 4
15	C10	November 2011	Details 5
16	CP01	November 2011	Cathodic Protection Details 1
17	CP02	November 2011	Cathodic Protection Details 2

**EXHIBIT E**

**Access Corridor Plan**

