

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

San Francisco Bay Area Rapid Transit District
2150 Webster St., 9th floor

Oakland, CA 94612
Attention: Real Estate Division

Exempt from Recording Fees (Govt. Code §
27383) and from Documentary Transfer Tax
(Rev. & Tax. Code § 11922 and SF Bus. and
Tax Reg. Code § 1105)

Assessor's Block ("A.B.") _____

(Space above this line reserved for Recorder's use only)

EASEMENT AGREEMENT
Storm Drain Easement

This Easement Agreement ("**Agreement**") is made this ____ day of _____, 2021 by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Real Estate Division and the Mayor's Office of Housing and Community Development, and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district pursuant to Public Utilities Code Section 28500 et seq. ("**District**").

RECITALS

A. District owns certain real property located on _____ Street between _____ Street and _____ Street in San Francisco, California, and more fully described in **Exhibit A** to this Agreement (referred to in this Agreement as the "**Benefitted Property**"), which is adjacent to that certain real property owned by City, under the jurisdiction of the San Francisco Mayor's Office of Housing and Community Development ("**MOHCD**"), commonly known as [address], San Francisco, California more particularly described in attached **Exhibit B** (referred to in this Agreement as the "**Burdened Property**").

B. The City and Balboa Park Housing Partners, LP, a California limited partnership ("**Project Sponsor**") will enter into a long-term ground lease of the Burdened Property ("**Ground Lease**") for the purpose of developing and constructing a multifamily residential building affordable to low-income households (the "**Project**"). The Project Sponsor will own the Project in fee under the Ground Lease.

C. Under the Affordable Housing and Sustainable Communities Program ("**AHSC**"), District, MOHCD, and the Project Sponsor are collaborating on the development of improvements to the Benefitted Property ("**AHSC Project**"). In addition, District has agreed to

provide a no-build easement on a portion of the Benefitted Property that allows the Project to maintain compliance with the City's Building Code and Fire Code.

D. District has an existing storm drain lateral on the Burdened Property to connect the Benefitted Property to a sewer main in _____ Street ("**Existing Lateral**"). To construct the Project, the Existing Lateral must be relocated, and City desires to grant an easement to District to facilitate such relocation. The Project Sponsor will, at its sole cost and expense, relocate the Existing Lateral to the Easement Area (defined below) pursuant to that certain AHSC Agreement dated _____, 2021, by and among, City, District, and Balboa Park Transit Development Co., LLC ("**New Lateral**"). As used in this Agreement, the term "New Lateral" includes the lateral as it may be repaired, replaced, or relocated from time to time.

AGREEMENT

NOW, THEREFORE, City and District agree as follows:

1. **Grant and Nature of Easement.** City grants to District a perpetual, nonexclusive easement appurtenant to operate, maintain, repair, and replace the New Lateral (the "**Easement**") in, across, and through the portion of the Burdened Property described and depicted in attached **Exhibit C** (the "**Easement Area**"). The Easement Area is a portion of the Burdened Property. The Easement does not include the right to install or place any surface improvements related to the New Lateral (e.g., access points or cleanouts). The conditions and covenants contained in this Agreement will run with the land, burden the Easement Area and be binding on and benefit City and District and their respective agents, successors and assigns unless terminated.

2. **Commencement Date.** The Easement will commence on the start of construction of the New Lateral.

3. **Use of Easement Area.** District will, at its sole cost, operate, maintain, repair, and replace the New Lateral in the Easement Area (i) in a first-class manner and in accordance with all laws and regulations, and (ii) in a good, clean, safe, secure, and sanitary condition. District acknowledges that the surface of the Easement Area is intended to be used for public access to and near the Project.

4. **Work by District in the Easement Area.**

a. **Permits and Approvals.** Before beginning any work in the Easement Area, District will obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to undertake construction within the Easement Area. Promptly on receipt of such approvals, District will deliver copies of them to City and Project Sponsor. District recognizes and agrees that no approval by City for purposes of District's work under this Agreement will be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing in this Agreement will limit District's obligation to obtain all necessary regulatory approvals, at District's sole cost.

b. Exercise of Due Care. District will use, and will cause its agents to use, due care at all times to avoid any damage or harm to City's property or the Project Sponsor's property, including utilities and other facilities. Under no circumstances will District damage, harm or take any rare, threatened or endangered species on or about the Easement Area.

c. Notice of Planned and Emergency Work.

i. Planned Work. For planned work in the Easement Area, District will provide City and Project Sponsor at least thirty (30) days' notice. The notice will include plans and specifications or a work plan, as applicable. City or Project Sponsor's consent will be required prior to District commencing work in the Easement Area.

ii. Emergency Work. District will notify City, Project Sponsor, and Project Sponsor's onsite manager of emergency work in the Easement Area as soon as possible following commencement of the work.

d. Construction of New Lateral Excluded. For the avoidance of doubt, this Section 4 shall not apply to Project Sponsor's relocation of the Existing Lateral and the initial construction of the New Lateral.

5. Relocation. If District's use of the Easement Area is incompatible with later improvements to the Burdened Property, City will provide no less than one hundred and eighty (180) days' prior written notice to District of the need to relocate the New Lateral. If City is reasonably able to provide a relocated easement area within the Burdened Property, City will have the right to relocate the New Lateral at no cost to District, and City and District will amend (or terminate and replace if needed) this Agreement to provide for the new location within the Burdened Property, provided that the City ensures the new location is (a) adequate to serve the same purpose of the New Lateral under this Agreement, and (b) maintain District's compliance with its NPDES Permit. City will provide District with a work plan prior to commencement of any relocation and will use good faith efforts to minimize any unreasonable disruption to District's operations. Otherwise, subject to the parties agreeing upon the location and terms for an alternative means of stormwater drainage from the Benefited Parcel, the New Lateral may be relocated outside of the Burdened Property and the Easement will terminate in accordance with Section 7 (Termination). In the event that the parties are not able to agree on the location and terms for establishing an alternate means of stormwater drainage outside of the Burdened Property, this Agreement shall remain in full force and effect.

6. Rights Reserved to City. Notwithstanding anything to the contrary in this Agreement, City reserves and retains all of the following rights relating to the Easement Area: (i) all water, timber, mineral and oil rights of any kind; (ii) all rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any of the City's facilities; (iii) the right to grant future easements and rights of way over, across, under, in and on the Easement Area as City determines, provided the easements and rights of way do not interfere with District's rights; and (iv) the right to maintain or install telecommunication facilities or other City facilities or property.

7. **Termination.** On termination of the Easement, District will execute and deliver a quitclaim deed to City within ninety (90) days following termination. The Easement will continue until the District terminates its use of the New Lateral within the Easement area, or the parties reach a mutual agreement for relocation of the New Lateral outside of the Burdened Property pursuant to Section 5.

8. **Notices, Demands and Communications.** Whenever any notice or any other communication is required or permitted to be given under any provision of this Agreement (as, for example, where a party is permitted or required to “notify” the other party), such notice or other communication will be in writing, signed by or on behalf of the party giving the notice or other communication, and will be deemed to have been given on the earliest to occur of (i) the date of the actual delivery, or (ii) if mailed, on the delivery date shown on the return receipt, in each case to the respective address(es) of the party to whom such notice is to be given as set forth below, or at such other address of which such party will have given notice to the other party as provided in this Section. Legal counsel for any party may give notice on behalf of the represented party.

If to City, to: Mayor’s Office of Housing and Community Development
City and County of San Francisco
Attn: Director of Housing Development
RE: Balboa Park Upper Yard
1 South Van Ness, 5th Floor
San Francisco, California 94103
Main (415) 701-5500

with copies to Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Attn: Real Estate/Finance Team
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton R. Goodlett Place
San Francisco, California 94102

Ann Silverberg
Chief Executive Officer
44 Montgomery Street, Suite 1300
San Francisco, California 94104
asilverberg@related.com
Main (415) 677-9000
asilverberg@related.com

If to District, to: Sean T. Brooks, Director
Real Estate & Property Development

San Francisco Bay Area Rapid Transit District
2150 Webster St., 9th floor
Oakland, CA 94612SBrooks1@bart.gov
510-464-6114

9. **Use of Adjoining Land.** District acknowledges that the privilege given under this Agreement will be limited strictly to the Easement Area. District will not use any adjoining lands owned by City.

10. **Ponding; Water Courses.** District will not cause any ponding on the Easement Area or any flooding on adjacent land. District will 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 Easement Area, nor will District engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

11. **Insurance.**

(a) District shall procure and keep in effect at all times during the term of this Agreement, at District's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Easement Area, 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), Broad Form Property Damage, fire legal liability coverage with limits no less than \$1,000,000, Sudden and Accidental Pollution, 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 District uses or causes to be used any vehicles in connection with its use of the Easement Area, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident.

District shall also procure and keep in effect at all times during the term of this Agreement, at District's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Easement Area, pollution legal liability, environmental remediation liability and other environmental insurance, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; Environmental Damages; property damage including but not limited to physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense costs, charges and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of Hazardous Materials into or upon City's property, the atmosphere or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Materials by District or District's agents, from the City's real property to the final

disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of the City's real property required to comply with all applicable Laws. Such insurance shall be endorsed to provide third party disposal site coverage that covers third party bodily injury, property damage and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by the District or District's agents. District shall maintain limits no less than: Four Million Dollars (\$4,000,000) per accident and Eight Million Dollars (\$8,000,000) annual aggregate for bodily injury and property damage. The City, its Agents and Employees shall be included as additional insureds on the policy as loss payees under the Pollution Legal Liability/Environmental Remediation/Cleanup Liability Insurance Policy.

District will have the right to self-insure with respect to any of the insurance requirements required under this Agreement, to the extent permitted by applicable law. In the event that District elects to self-insure with respect to any of the insurance requirements required under this Agreement, on or before the Commencement Date and upon written request by City, within thirty (30) days of the commencement of each year thereafter, District shall submit to City a certificate of self insurance signed by a duly authorized representative of District, such certificate evidencing that District's self-insurance program is adequately funded, in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this Agreement. If District elects to self-insure, District shall give City prompt written notice of any significant change in or the depletion of its self-insurance fund. Notwithstanding the foregoing, District is also responsible for causing any contractors, subcontractors and/or Agents to maintain commercially reasonable insurance coverages and coverage limits as required under this Agreement.

Any deductibles or self-insured retentions must be declared. All deductibles and self-insured retentions shall be paid by District.

With respect to any claim, loss or liability that would have been covered by the insurance policies (including but not limited to the City and County of San Francisco, its agents and employees' status as an "additional insured" thereunder) required by this Agreement to be maintained by District but within the self-insured retention or deductible amount, District shall cover such claim, loss or liability on the same basis as the insurance arrangements or deductibles on such insurance policies, including but not limited to such insurance carrier responsibility to protect the City and County of San Francisco, its agents and employees as an "additional insured."

(b) All policies required by this Agreement shall provide for the following: **(i)** be issued by one or more companies of recognized responsibility authorized to do business in the State of California with financial rating of at least a Class A- VIII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports;" **(ii)** name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its commissioners, officers, agents, and employees; **(iii)** 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 Agreement 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 **(iv)** include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of District'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 that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. [Sudden and Accidental Pollution coverage in the liability policies required by this Agreement shall be limited to losses resulting from District's activities (and District's agents and invitees) under this Agreement (excluding nonnegligent aggravation of existing conditions with respect to Hazardous Materials).]

(c) District shall provide thirty (30) days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Within one (1) business day of receiving any notice from its insurance provider or broker of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage, District shall provide a copy of such notice to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this **Section 8** (Insurance) from a different insurer meeting the qualifications of this Section. Notice to City shall be mailed to the address(es) for City set forth in **Section 31(a)** (Notices) below.

(d) Prior to the commencement of the Easement, District will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required by this Agreement, together with complete copies of the policies at City's request. District and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of District and contractor insurance coverage. If District shall fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of District, and District shall reimburse City for any costs so paid by City within five (5) business days after delivery to District of bills therefor.

(e) 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 be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

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

(g) Upon City's request, District 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 District for risks comparable to those associated with the Easement Area, then, at its sole discretion, City may require District to increase the amounts or coverage carried by District hereunder to conform to such general commercial practice.

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

12. **Liens.** District will keep the Easement Area and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for District. If District does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City will have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it deems proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) will be payable to City by District on demand. City will have the right at all times to post and keep posted on the Easement Area any notices permitted or required by Law or that City deems proper for its protection and protection of the Easement Area and City's property, from mechanics' and materialmen's liens. Notwithstanding the foregoing, District will have the right, on posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City will not seek to satisfy or discharge such lien unless District has failed to do so within ten (10) days after final determination of the validity thereof. District will indemnify City, its officers, agents, employees and contractors, against any and all Claims arising out of any such contest.

13. **Surrender.** Within thirty (30) days after any termination of the Easement, District will decommission or remove the New Lateral in accordance with standard utility practice. At such time, District will repair, at its cost, any damage to the Easement Area caused by the decommissioning or removal. District's obligations under this Section will survive any termination of the Easement.

14. **Repair of Damage.** If any portion of the Easement Area or any property of City located on or about the Easement Area is damaged by any of the activities conducted by District hereunder, District will immediately, at its sole cost, repair any and all such damage and restore the Easement Area or property to its previous condition.

15. **City's Right to Cure Defaults by District.** If District fails to perform any of its obligations under this Agreement, then City may, at its sole option, remedy such failure for District's account and at District's expense by providing District with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice will be required in the event of an emergency as determined by City). Such action by City will not be construed as a waiver of any rights or remedies of City under this Agreement, and nothing in this Agreement implies any duty of City to do any act that District is obligated to perform. District will pay to City on demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. District's obligations under this Section will survive the termination of this Agreement.

16. **No Costs to City.** District will bear all costs or expenses of any kind or nature in connection with its use of the Easement Area, and will keep the Easement Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Easement Area.

17. **District's Indemnity.** District will indemnify, defend, and hold harmless (“**Indemnify**”) City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the “**Indemnified Parties**”), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, “**Claims**”), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person (including District’s employees), or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Easement Area; (b) any default by District in the observation or performance of any of the terms, covenants, or conditions of this Agreement to be observed or performed on District’s part; (c) the use or occupancy or manner of use or occupancy of the Easement Area by District, its agents, its invitees, or any person or entity claiming through or under any of them; (d) the condition of the Easement Area; (e) any construction or other work undertaken by District on the Easement Area whether before or during the term of this Agreement; or (f) any acts, omissions, or negligence of District, its agents, or its invitees, in, on, or about the Easement Area or the Burdened Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the Indemnity is void or otherwise unenforceable under applicable law and further except only those Claims as are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing Indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and City’s costs of investigating any Claim. District expressly acknowledges that District has an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the Claim is tendered to District by City and continues at all times thereafter.

18. **District's Environmental Indemnity.** If District breaches any of its obligations contained in this Section, or, if any act or omission of District, its agents or invitees, results in any Release of Hazardous Material in, on, under or about the Easement Area in violation of any applicable Environmental Laws, then, without limiting District’s indemnity contained in Section 17 (District’s Indemnity), District shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Easement Area, the loss or restriction of the use of rentable or usable space or of any amenity of the Easement Area and sums paid in settlement of claims, attorneys’ fees, consultants’ fees and experts’ fees and costs) arising during or after the Term of this Easement Agreement and relating to such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Easement Area to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if District or any of its agents or invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the

Easement Area, District shall immediately and at no expense to City take any and all appropriate actions to return the Easement Area affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. District specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to District by the City and continues at all times thereafter. District shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

For purposes of this Section, the following terms are defined as:

“Environmental Laws” means any present or future federal, state, or local Laws or policies relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, Release, clean-up, or storage) or to human health and safety, industrial hygiene, or environmental conditions in, on, under, or about the Easement Area, including soil, air, and groundwater conditions.

“Hazardous Material” means any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any “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 structure of any existing improvements on the Easement Area, any alterations to be constructed on the Easement Area by or on behalf of District, or are naturally occurring substances on, in, or about the Easement Area; and petroleum, including crude oil or any crude-oil fraction, and natural gas or natural gas liquids.

“Investigation” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about any portion of the Easement Area or any alterations or that have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or about the Easement Area or any improvements.

“Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any alterations constructed by or on behalf of District, or in, on, under, or about any portion of the Easement Area.

“Remediation” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control any Hazardous Material located in, on, under, or about the Easement Area or that have been, are being, or threaten to be Released into the environment. Remediate includes those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

19. **Survival of Indemnities.** Termination of this Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof.

20. **Waiver of Claims.**

a. Neither City nor any of its commissions, departments, boards, officers, agents or employees will be liable for any damage to the property of District, 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 Easement Area or its use by District.

b. District 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, (i) any and all Claims for relocation benefits or assistance from City under federal and state relocation assistance laws, (ii) any and all Claims for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, (iii) any and all Claims for any interference with the uses conducted by District pursuant to this Agreement, regardless of the cause, and (iv) any and all Claims in any way connected with the physical or environmental condition of the Easement Area or any law or regulation applicable thereto or the suitability of the Easement Area for District's intended use.

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

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

District acknowledges that the releases contained herein includes all known and unknown, direct and indirect, disclosed and undisclosed, and anticipated and unanticipated claims. District realizes and acknowledges that it has entered into this Agreement 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 in this Agreement will survive any termination of this Agreement.

21. **As Is Condition of Easement Area; Disclaimer of Representations.** District accepts the Easement Area in its "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 Easement Area. Without limiting the foregoing, this Agreement is made subject to any and all covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

22. **No Joint Venturers or Partnership; No Authorization.** This Agreement does not create a partnership or joint venture between City and District as to any activity conducted by District on, in or relating to the Easement Area. District is not a State actor with respect to any activity conducted by District on, in, or under the Easement Area. The giving of this Easement by City does not constitute authorization or approval by City of any activity conducted by District on, in or relating to the Easement Area.

23. **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F are incorporated by this reference and made part of this Agreement. By signing this Agreement, District confirms that District has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

24. **Non-Discrimination.** District will not, in the operation and use of the Easement Area, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by reference and made a part hereof as though fully set forth herein. District agrees to comply with all of the provisions of such Chapters 12B and 12C that apply to parties contracting with the City and County of San Francisco.

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

26. **Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic.** City 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, District will not provide any items to the construction of District Improvements or the Alterations, or otherwise in the performance of this Agreement, that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. District may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment.

27. **Taxes.**

a. District recognizes and understands that the Easement may create a possessory interest subject to property taxation and that District may be subject to the payment of property taxes levied on such interest under applicable law. District further recognizes and understands that any transfer or assignment permitted under this Agreement 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. District agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on the interest created by the Easement and to pay any other taxes, excises, licenses, permit charges or assessments based on District's usage of the Easement Area that may be imposed on District by applicable law. District will pay all of such charges when they become due and payable and before delinquency.

c. District agrees not to allow or suffer a lien for any such taxes to be imposed on the Easement Area or on any equipment or property located thereon without promptly discharging the same, provided that District, if so desiring, may have reasonable opportunity to contest the validity of the same.

28. **No Tobacco Advertising.** District acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Easement Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, District acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Easement Area and such prohibition must be included in all subleases or other agreements allowing use of the Easement Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

29. **Restrictions on the Use of Pesticides.**

a. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. District may not use or apply or allow the use or application of any pesticides on the Easement Area or contract with any party to provide pest abatement or control services to the Easement Area without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that District may need to apply to the Easement Area

during the Term, **(ii)** describes the steps District will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and **(iii)** identifies, by name, title, address, and telephone number, an individual to act as the District's primary IPM contact person with City. District will comply, and will require all of District's contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if District were a City department. Among other matters, the provisions of the IPM Ordinance: **(i)** provide for the use of pesticides only as a last resort, **(ii)** prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), **(iii)** impose certain notice requirements, and **(iv)** require District to keep certain records and to report to City all pesticide use at the Easement Area by District's staff or contractors.

b. If District or District's contractor would apply pesticides to outdoor areas at the Easement Area, District will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

30. **Domestic Partners.** On the effective date of the Domestic Partners Benefits Ordinance originally enacted as Ordinance 440-96, which effective date was suspended by Ordinance 481-96 until June 1, 1997, District will comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code that prohibit discrimination in the provisions of benefits between employees with registered domestic partners and employees with spouses to the extent such provisions apply to District as a result of this Agreement.

31. **General Provisions.** (a) This Agreement may be amended or modified only by a writing signed by City and District. (b) No waiver by any party of any of the provisions of this Agreement will 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) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the Director of Property of the San Francisco Real Estate Department or other authorized City official. (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 Agreement are for convenience of reference only and will be disregarded in the interpretation of this Agreement. (f) Time is of the essence in each and every provision hereof. (g) This Agreement will be governed by California law and City's Charter. (h) If District consists of more than one person then the obligations of each person will be joint and several. (i) Notwithstanding anything to the contrary contained in this Agreement, District acknowledges and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until a resolution of City's Board of Supervisors will have been duly adopted approving this Agreement and authorizing the transaction contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent on

enactment of such a resolution, and this Agreement will be null and void if City's Board of Supervisors and Mayor do not approve this Agreement, each in their respective sole discretion.

[SIGNATURES ON THE NEXT PAGE]

Accepted and Agreed:

BAY AREA RAPID TRANSIT DISTRICT,
a _____

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

RECOMMENDED:

By: _____
Eric D. Shaw
Director
Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Shari Geller Diamant
Deputy City Attorney

EXHIBIT A

Description of Benefitted Property

DESCRIPTION

EXHIBIT A

PARCELS O-M395,
O-M397
Page 1 of 2

All that certain real property in the City and County of San Francisco, State of California, described as follows:

PARCEL O-M395

BEGINNING at a point on the southwesterly line of Geneva Avenue, distant thereon North $62^{\circ} 30' 11''$ West 72.31 feet from the northwesterly line of San Jose Avenue; thence, along said line of Geneva Avenue, North $62^{\circ} 30' 11''$ West 173.91 feet to the State of California right-of-way line; thence, along last said line, South $16^{\circ} 04' 59''$ West 173.96 feet; thence, South $7^{\circ} 32' 32''$ West 30.48 feet; thence South $14^{\circ} 24' 19''$ West 133.26 feet; thence South $10^{\circ} 56' 26''$ West 141.71 feet; thence, South $61^{\circ} 57' 11''$ East 20.47 feet; thence South $8^{\circ} 42' 02''$ West 63.59 feet; thence South $61^{\circ} 57' 11''$ East 40.10 feet to the northwesterly line of San Jose Avenue; thence, along last said line, North $28^{\circ} 02' 49''$ East 78.00 feet; thence, leaving last said line, North $61^{\circ} 57' 11''$ West 30.00 feet to a point being at coordinates $y=449,966.325$ feet and $x=1,436,981.281$ feet; thence, North $24^{\circ} 02' 49''$ East 126.28 feet; thence, on the arc of a tangent curve to the left, having a radius of 92.00 feet, a central angle of $6^{\circ} 42' 38''$ a distance of 10.78 feet; thence, North $17^{\circ} 20' 11''$ East 172.27 feet; thence, on the arc of a tangent curve to the right, having a radius of 92.00 feet, a central angle of $34^{\circ} 28' 37''$ a distance of 55.36 feet; thence, North $51^{\circ} 48' 48''$ East 95.34 feet to the Point of Beginning.

CONTAINING an area of 48,658 square feet, more or less.

RESERVING to the City and County of San Francisco two easements, "A" and "B", for existing underground water lines, including the right of access at any time for maintenance, repair, removal, or replacement thereof. Said two easements are described as follows:

EASEMENT "A"

A strip of land ten feet in width, five feet on each side of a centerline, described as follows:

COMMENCING at the intersection of the southwesterly line of Geneva Avenue with the northwesterly line of San Jose Avenue; thence along said northwesterly line of San Jose Avenue South $34^{\circ} 47' 19''$ West 381.09 feet; thence continuing along said northwesterly line of San Jose Avenue South $28^{\circ} 02' 49''$ West 87.61 feet to north line of Niagara Avenue (now vacated), vacation of which was approved by the Board of Supervisors, Resolution No. 103-69 dated February 10, 1969; thence continuing along said northwesterly line of San Jose Avenue South $28^{\circ} 02' 49''$ West 37.00 feet to the true point of beginning of this description; thence North $61^{\circ} 57' 39''$ West 48.14 feet to the northeasterly right-of-way line of Interstate Highway No. 280, known as the Southern Freeway; containing 481.40 square feet, more or less.

EASEMENT "B"

A strip of land, ten feet in width, five feet on each side of a centerline, described as follows:

COMMENCING at the intersection of the southwesterly line of Geneva Avenue with the northwesterly line of San Jose Avenue; thence along said northwesterly line of San Jose Avenue South $34^{\circ} 47' 19''$ West 381.09 feet; thence continuing along said northwesterly line of San Jose Avenue South $28^{\circ} 02' 49''$ West 87.61 feet to north line of Niagara Avenue (now vacated), vacation of which was approved by the Board of Supervisors, Resolution No. 103-69, dated February 10, 1969; thence continuing along said northwesterly line of San Jose Avenue South $28^{\circ} 02' 49''$ West 30.13 feet to the true point of beginning of this description; thence North $30^{\circ} 26' 53''$ West 11.73 feet;

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DESCRIPTION

EXHIBIT A

PARCELS O-M395,
O-M397
Page 2 of 2

thence North $61^{\circ} 57' 39''$ West 20.00 feet; thence South $89^{\circ} 25' 43''$ West 12.53 feet; thence South $63^{\circ} 34' 59''$ West 11.06 feet to the northeasterly right-of-way line of Interstate Highway No. 280, known as the Southern Freeway, containing 553.20 square feet, more or less.

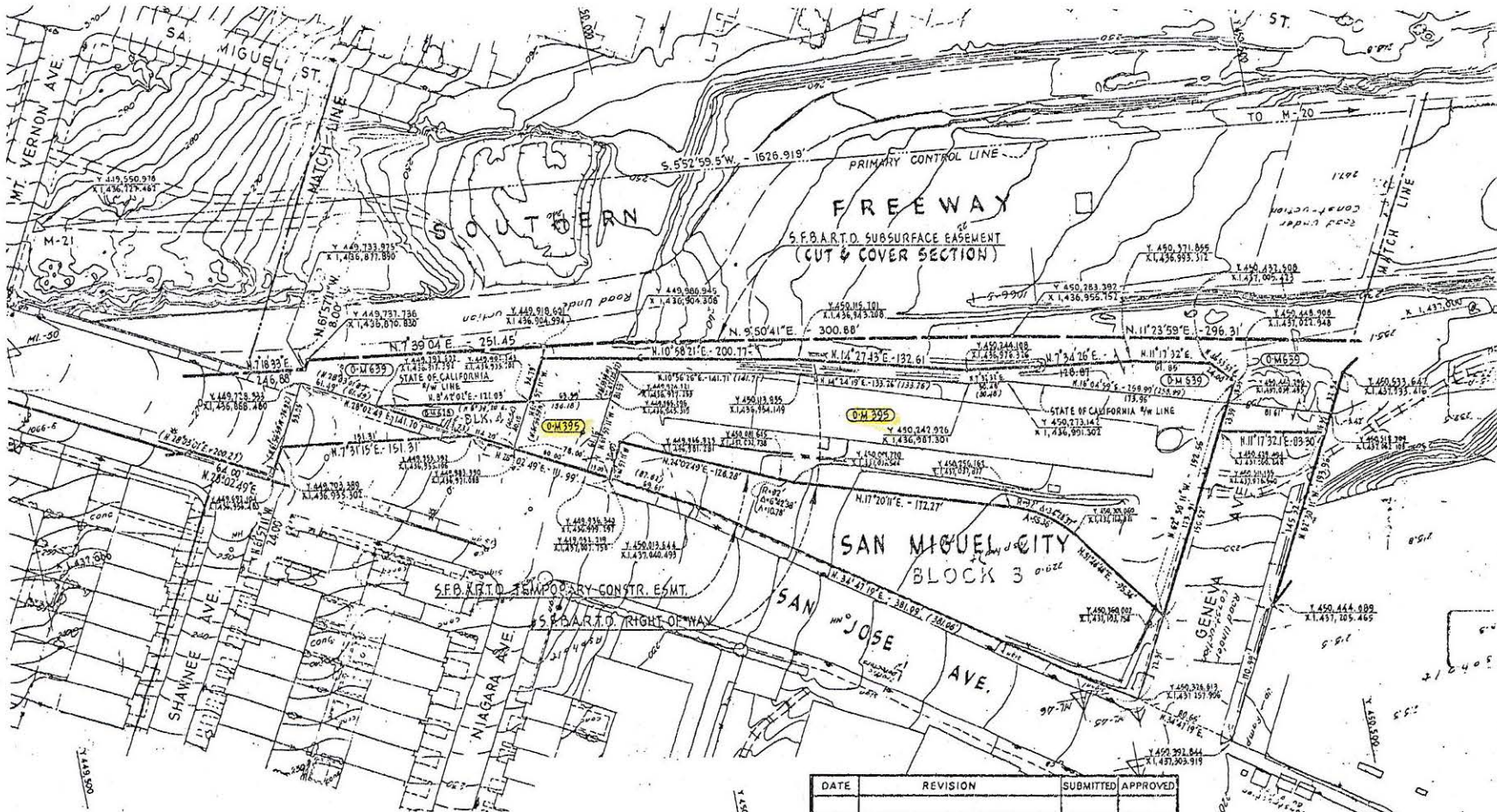
PARCEL O-M397

BEGINNING at a point on the northeasterly line of Geneva Avenue, distant thereon North $62^{\circ} 30' 11''$ West 110.99 feet from the northwesterly line of San Jose Avenue; thence, along said line of Geneva Avenue, North $62^{\circ} 30' 11''$ West 161.62 feet to the State of California right-of-way line; thence, along last said line, North $16^{\circ} 04' 59''$ East 3.42 feet; thence, North $12^{\circ} 02' 01''$ West 86.02 feet; thence North $7^{\circ} 20' 03''$ East 335.88 feet; thence, North $15^{\circ} 38' 24''$ East 180.11 feet; thence, South $89^{\circ} 02' 26''$ East 49.93 feet; thence, leaving said right-of-way line, South $11^{\circ} 17' 32''$ West 311.34 feet; thence South $78^{\circ} 42' 28''$ East 9.33 feet; thence South $11^{\circ} 17' 32''$ West 194.50 feet; thence South $78^{\circ} 42' 28''$ East 10.25 feet; thence South $11^{\circ} 17' 32''$ West 5.00 feet; thence on the arc of a tangent curve to the left, having a radius of 134.00 feet, a central angle of $27^{\circ} 52' 14''$, a distance of 65.18 feet; thence South $63^{\circ} 42' 28''$ East 25.25 feet; thence southeasterly on the arc of a curve to the left, the center of which bears North $64^{\circ} 58' 14''$ East, having a radius of 116.76 feet, a central angle of $18^{\circ} 16' 02''$, a distance of 37.22 feet; thence South $43^{\circ} 17' 48''$ East 77.85 feet to the Point of Beginning.

CONTAINING 36,910 square feet, more or less.

The California Coordinate System Zone III, is the basis of coordinates, bearings, and grid lengths used herein. Multiply grid lengths by 1.0000755 to obtain ground level lengths.

Said parcels being part of an entire parcel.



PARCEL No	NAME	TOTAL AREA	TAKE	REMAINING AREA LEFT	AREA RIGHT
O-M 395	City & County of San Francisco Temporary Construction Esmt.	79,361 sf	48,658 sf		
O-M 639	See Sheet M.R.W. 9		30,703 sf		
O-M 628		2,290 sf	2,290 sf		

DATE	REVISION	SUBMITTED	APPROVED
2-10-66	Changed Title		O.L.
1-18-66	Added Temp. Constr. Esmt. Pcl. O-M 395		O.L.
8-25-61	Revised Pcl. O-M 628		O.L.
8-17-61	Added Pcl. O-M 628		O.L.
7-25-61	Changed Dimension O-M 639		O.L.
7-6-61	Changed Right of Way-Niagara to Geneva Ave.		O.L.
9-14-66	Corrected Coordinate - "112.315.30"		O.L.
8-29-66	Added Note "Cut & Cover Sect." to Subsurface Esmt.		O.L.
8-1-66	Changed Sub-Surface Esmt. bet. Shawnee & Niagara Ave.		O.L.
8-13-66	Revised Pcl. Area Schedule		O.L.
1-18-66	Changed Right of Way-Niagara to Geneva Ave.		O.L.
11-2-65	Changed Patches No.		O.L.
8-16-66			

Bearings and distances are in the California Coordinate System. Multiply distances by 1.0000759 to obtain ground level.

SAN FRANCISCO BAY AREA RAPID TRANSIT SYSTEM
RIGHT OF WAY MAP

SAN FRANCISCO - MISSION
MODOC AVE. TO COLONIAL WAY

PRIMARY TRAVERSE STA TO STA
 PARSONS BRINCKERHOFF - TUDOR - BECHTEL ENGINEERS
 DATE APRIL 30, 1966 SCALE 1" = 40'
 DANIEL COLEMAN ENGINEERING CO.

LIBER D936 PAGE 421



EXHIBIT B

Description of Burdened Property

EXHIBIT "B"
(NO-BUILD AREA)

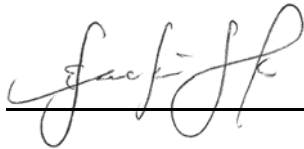
All that real property situated in the City and County of San Francisco, State of California, being a portion of PARCEL O-M395 as described in that certain Final Order of Condemnation, recorded October 02, 1974 in Liber B936, at Page 417, Official Records of City and County of San Francisco, more particularly described as follows:

BEGINNING at the most Easterly corner of said PARCEL O-M395; thence along the Northeasterly line of said PARCEL O-M395, North 62°30'38" West, 32.92 feet to a line parallel with, distant 30.00 feet Northwesterly of, measured at right angles from the general Southeasterly line of said PARCEL O-M395; thence along said parallel line the following five (5) courses: 1) South 51°48'21" West, 81.80 feet, 2) along a tangent curve to the left with a radius of 122.01 feet, through a central angle of 34°28'37", an arc length of 73.42 feet, 3) South 17°19'44" West, 172.24 feet, 4) along a tangent curve to the right with a radius of 62.01 feet, through a central angle of 06°42'38", an arc length of 7.26 feet, and 5) South 24°02'22" West, 126.29 feet; thence along a tangent curve to the left with a radius of 30.00 feet, through a central angle of 86°00'00", an arc length of 45.03 feet; thence South 61°57'38" East, 30.00 feet to said general Southeasterly line; thence along last said line the following seven (7) courses: 1) North 28°02'22" East, 30.00 feet, 2) North 61°57'38" West, 30.00 feet, 3) North 24°02'22" East, 126.29 feet, 4) along a tangent curve to the left with a radius of 92.01 feet, through a central angle of 06°42'38", an arc length of 10.78 feet, 5) North 17°19'44" East, 172.24 feet, 6) along a tangent curve to the right with a radius of 92.01 feet, through a central angle of 34°28'37", an arc length of 55.36 feet, and 7) North 51°48'21" East, 95.35 feet to the POINT OF BEGINNING.

CONTAINING 15,391 square feet, more or less.

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

Prepared by Luk and Associates



Jacqueline Luk, PLS 8934

Date: May 16, 2018



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

EXHIBIT C

Description and Depiction of Easement Area

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Easement Agreement, dated _____, 20__, to the Bay Area Rapid Transit District, is hereby accepted pursuant to _____, approved _____, and the District consents to recordation thereof by its duly authorized officer.

Dated: _____, 20__

BAY AREA RAPID TRANSIT DISTRICT,
a _____

By: _____