

File No. 091472

Committee Item No. 1

Board Item No. 5

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date February 8, 2010

Board of Supervisors Meeting Date February 23, 2010

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input checked="" 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 checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
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#### OTHER

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Completed by: Alisa Somera Date February 4, 2010

Completed by: Alisa Somera Date February 10, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file and the online version.

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1 [Agreement to Purchase A Road Easement Over Portions of APN 011-001-028 Located in  
2 Stanislaus County]

3  
4 **Resolution approving and authorizing an agreement for the purchase of a 0.48 acre**  
5 **permanent road easement over portions of Assessor's Parcel No. 011-001-028 located**  
6 **in Stanislaus County, required for the San Joaquin Pipeline System Project No.**  
7 **CUW37301 for a purchase price of \$500; adopting findings under the California**  
8 **Environmental Quality Act; adopting findings that the conveyance is consistent with**  
9 **the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1;**  
10 **and authorizing the Director of Property to execute documents, make certain**  
11 **modifications and take certain actions in furtherance of this resolution.**

12  
13  
14 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) has developed  
15 a project known as the San Joaquin Pipeline System Project, (also commonly referred to as  
16 the SJPL System Project, Project No.CUW37301, and herein as the "Project"), a water  
17 infrastructure project included as part of the Water System Improvement Program (WSIP).  
18 The Project is located in Tuolumne, Stanislaus, and San Joaquin Counties, beginning at  
19 the Oakdale Portal in Tuolumne County, and ending at the Tesla Portal in San Joaquin  
20 County. The Project includes, among other related features, the construction of two new  
21 facility crossovers (Emery and Pelican), two new throttling stations (MP 50.57 Northeast of  
22 Willms Road and MP 55.32), Oakdale Portal improvements including a new valve house,  
23 upgrading the discharge valves at Cashman Creek and a new discharge valve at the  
24 California Aqueduct, construction of a fourth pipeline segment (Eastern Segment  
25 approximately 6.5 miles from Oakdale Portal (MP 49.84) to near Fogarty Road (MP 56.50)

1 and a tie-in vault), construction of a fourth pipeline segment (Western Segment  
2 approximately 11 miles from west of the San Joaquin River to Tesla Portal), a new truss  
3 bridge aerial structure to carry SJPL No. 4 over the California Aqueduct, and a discharge  
4 structure at the Pelican Crossover involving intermittent drainage to the San Joaquin River,  
5 and discharge of water to U.S. Fish and Wildlife Service San Joaquin River National  
6 Wildlife Refuge, to irrigate a managed wetland area; and

7 WHEREAS, The objectives of the Project are to improve delivery reliability and  
8 provide operational flexibility during maintenance activities or unplanned outages, as well  
9 as to replenish local reservoirs after such events; and

10 WHEREAS, The Project is an improvement facility project approved by the SFPUC as  
11 part of the Water System Improvement Program ("WSIP"); and

12 WHEREAS, A Final Program Environmental Impact Report ("PEIR") was prepared for  
13 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.  
14 17734; and

15 WHEREAS, Thereafter the SFPUC approved the WSIP and adopted findings and a  
16 Mitigation Monitoring and Reporting Program as required by the California Environmental  
17 Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-0200; and

18 WHEREAS, An environmental impact report ("EIR") as required by CEQA was  
19 prepared for the Project in Planning Department File No. 2007.01 18E; and

20 WHEREAS, The Final EIR ("FEIR") for the Project was certified by the San  
21 Francisco Planning Commission on July 9, 2009 by Motion No. 17917; and

22 WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as  
23 authorized by and in accordance with CEQA and the CEQA Guidelines; and

24 WHEREAS, On July 14, 2009, the San Francisco Public Utilities Commission  
25 (SFPUC), by Resolution No. 09-0119, a copy of which is included in Board of Supervisors

1 File No. 090980 and which is incorporated herein by this reference: (1) approved the  
2 Project; (2) adopted findings (CEQA Findings), including the statement of overriding  
3 considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") required by  
4 CEQA; and (3) authorized the General Manager to seek the Board of Supervisors' approval  
5 of and, if approved, to execute certain necessary agreements and deeds, which the  
6 SFPUC staff will pursue and submit to the Board of Supervisors at a later date; and

7 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.  
8 09-0119 have been made available for review by the Board and the public, and those files  
9 are considered part of the record before this Board; and

10 WHEREAS, The Board of Supervisors has reviewed and considered the information  
11 and findings contained in the FEIR, PEIR and SFPUC Resolution No. 09-0119, and all  
12 written and oral information provided by the Planning Department, the public, relevant  
13 public agencies, SFPUC and other experts and the administrative files for the Project; and

14 WHEREAS, This Board, by Resolution No. 369-09 adopted on September 22, 2009,  
15 a copy of which is on file with the Clerk of the Board of Supervisors in File No. 090980 and  
16 which is incorporated herein by this reference and considered part of the record before this  
17 Board, adopted findings under CEQA related to the Project, including the statement of  
18 overriding considerations and the MMRP; and

19 WHEREAS, A copy of the Agreement For Purchase and Sale of Real Estate (the  
20 "Purchase Agreement") between the City, as buyer, and Alida V. Ardis, Trustee of the  
21 Survivor's Trust created under The Richard B. Ardis and Alida V. Ardis Revocable Family  
22 Trust dated November 12, 2004 as to an undivided 89.055% interest, and Alida V. Ardis,  
23 Trustee of the Family Trust created under the Richard B. Ardis and Alida V. Ardis  
24 Revocable Family Trust dated November 18, 2004 as to an undivided 10.945% interest  
25

1 (collectively, "Seller"), as Seller, is on file with the Clerk of the Board of Supervisors under  
2 File No. 090980; and,

3 WHEREAS, The Director of Property has determined, based on an independent MAI  
4 appraisal, that the purchase price reflects the fair market value of the road easement; and,

5 WHEREAS, The Director of Planning, by letter dated June 29, 2009, found that the  
6 purchase of all the necessary property rights for the Project, is consistent with the City's  
7 General Plan and with the Eight Priority Policies of City Planning Code Section 101.1,  
8 which letter is on file with the Clerk of the Board of Supervisors under File No. 090980, and  
9 which letter is incorporated herein by this reference; now, therefore, be it

10 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,  
11 finds that the FEIR is adequate for its use as the decisionmaking body for the action taken  
12 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.  
13 369-09; and be it

14 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted  
15 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be  
16 it

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

23 FURTHER RESOLVED, That the Board of Supervisors of the City and County of  
24 San Francisco hereby finds that the Purchase Agreement is consistent with the General  
25 Plan and with the Eight Priority Policies of city planning Code Section 101.1 for the same

1 reasons as set forth in the letter of the Director of Planning dated June 29, 2009, and  
2 hereby incorporates such findings by references as though fully set forth in this resolution;  
3 and, be it

4 FURTHER RESOLVED, That in accordance with the recommendations of the  
5 Public Utilities Commission and the Director of Property, the Board of Supervisors hereby  
6 approves the Purchase Agreement and the transaction contemplated thereby in  
7 substantially the form of such agreement presented to this Board; and, be it

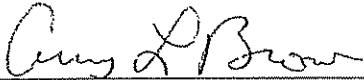
8 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
9 Property to enter into any additions, amendments or other modifications to the Purchase  
10 Agreement (including, without limitation, the attached exhibits) that the Director of Property  
11 determines are in the best interest of the City, that do not increase the purchase price for  
12 the road easement or otherwise materially increase the obligations or liabilities of the City,  
13 and are necessary or advisable to complete the transaction contemplated in the Purchase  
14 Agreement and effectuate the purpose and intent of this resolution, such determination to  
15 be conclusively evidenced by the execution and delivery by the Director of Property of the  
16 Purchase Agreement and any amendments thereto; and, be it

17 FURTHER RESOLVED, That the Director of Property is hereby authorized and  
18 urged, in the name and on behalf of the City and County, to accept the deed to the road  
19 easement from the Seller upon the closing in accordance with the terms and conditions of  
20 the Purchase Agreement, and to take any and all steps (including, but not limited to, the  
21 execution and delivery of any and all certificates, agreements, notices, consents, escrow  
22 instructions, closing documents and other instruments or documents) as the Director of  
23 Property deems necessary or appropriate in order to consummate the conveyance of the  
24 road easement pursuant to the Purchase Agreement, or to otherwise effectuate the  
25

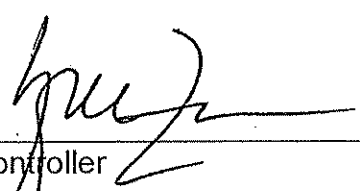
1 purpose and intent of this resolution, such determination to be conclusively evidenced by  
2 the execution and delivery by the Director of Property of any such documents.

3  
4  
5 RECOMMENDED:

\$500 Available

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7 Amy L. Brown  
8 Director of Property

9   
10 Controller

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Appropriation: Index Code

737312



AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

by and between

ALIDA V. ARDIS, Trustee of the Survivor's Trust created under the RICHARD B. ARDIS AND ALIDA V. ARDIS REVOCABLE FAMILY TRUST dated November 18, 2004 as to an undivided 89.055% interest; and ALIDA V. ARDIS, Trustee of the Family Trust created under the RICHARD B. ARDIS AND ALIDA V. ARDIS REVOCABLE FAMILY TRUST dated November 18, 2004 as to an undivided 10.945% interest

as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,

as Buyer

For the purchase and sale of

a road easement over, in and upon real property in  
Stanislaus County, California

October 21, 2009



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**LIST OF EXHIBITS**

**EXHIBIT A** – Easement Deed for a road easement with attached depiction and legal description of easement area.

**AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**  
(Easement Over, On and In  
Portions of APN 011-001-028)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this "Agreement") dated for reference purposes only as of October 21, 2009, is by and between ALIDA V. ARDIS, Trustee of the Survivor's Trust created under the RICHARD B. ARDIS AND ALIDA V. ARDIS REVOCABLE FAMILY TRUST dated November 18, 2004 as to an undivided 89.055% interest; and ALIDA V. ARDIS, Trustee of the Family Trust created under the RICHARD B. ARDIS AND ALIDA V. ARDIS REVOCABLE FAMILY TRUST dated November 18, 2004 as to an undivided 10.945% interest ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

IN CONSIDERATION of the respective agreements set forth below, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Purchase and Sale of Easement**

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions set forth below, a permanent road easement in connection with City's San Joaquin Pipeline Project (the "Easement") over, across, in and upon portions of Seller's real property in an unincorporated portion of Stanislaus County ("County"), California, located at 15050 State Route 120, and commonly known as Assessor's Parcel 011-001-028 ("Seller's Property"). Such portions of Seller's Property are referred to herein collectively as the "Easement Area."

**1.2 Easement Area; Nature of Easement**

The Easement Area consists of those portions of Seller's Property described in and approximately depicted on the exhibits to the easement deed attached as Exhibit A (the "Deed"). The nature, scope and conditions of the Easement are set forth in the Deed.

**2. PURCHASE PRICE**

**2.1 Purchase Price**

The total purchase price for the Easement is Five Hundred and No/100 Dollars (\$500.00) (the "Purchase Price").

**2.2 Payment**

On the Closing Date (as defined in Section 5.3 [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 6 [Expenses], and reduced by any credits due City hereunder.

**2.3 Funds**

All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds. Unless the parties elect to close the transaction without an escrow, payments shall be made to Escrow Holder, as the escrow agent.

### 3. CONVEYANCE OF EASEMENT

#### 3.1 Easement Deed

At the Closing Seller shall convey to City marketable and insurable title to the Easement, by duly executed and acknowledged Deed in the form attached hereto as Exhibit A, free and clear of all exceptions, liens and encumbrances except solely for the Accepted Conditions of Title (as defined in Section 3.2 [State of Title]).

#### 3.2 State of Title

"Accepted Conditions of Title" shall mean only (i) the lien of real property taxes, not yet due or payable; and (ii) exceptions to title which are acceptable to City.

### 4. CONDITIONS TO CLOSING

#### 4.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Easement (collectively, "Conditions Precedent"):

(a) The physical condition of the Easement Area shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Article 8 [Risk of Loss]), and as of the Closing Date there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing could materially adversely affect the value of the Easement or the ability of City to use the Easement Area for its intended use, and no proceedings shall be pending or threatened that could or would cause the change, re-designation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Easement Area.

(b) Seller shall have delivered signed originals of any documents required under Section 3.2, and, unless the parties elect to consummate the transaction without an escrow, Escrow Holder shall be committed at the Closing to issue to City a CLTA owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price, insuring title to the Easement vested in City free of all exceptions, liens and encumbrances except only the Accepted Conditions of Title, defined in Section 3.2 [State of Title]. The Title Policy shall contain such special endorsements as City may reasonably request.

(c) The transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the Public Utilities Commission, in their respective sole discretion, within sixty (60) days after Seller executes and delivers this Agreement to City.

(d) If required by City's Charter, the City's Mayor and the Board of Supervisors, in the sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions, within ninety (90) days after Seller executes and delivers this Agreement to City.

(e) Seller shall have delivered the items described in Section 5.4 below [Seller's Delivery of Documents] on or before the Closing.

The Conditions Precedent contained in the foregoing subsections (a) through (e) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and

proceed with the purchase (provided that the Conditions Precedent described in items (c) and (d) above may not be waived except insofar as City elects to extend the deadline for satisfying such item) or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. In addition, the Closing Date may be extended, at City's option, for a reasonable period of time specified by City, to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if any such Conditions Precedent remain unsatisfied.

If the sale of the Easement is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal and inspection fees incurred by City, and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending City's action for specific performance and/or damages hereunder, including, without limitation, City's costs and expenses incurred hereunder.

#### **4.2 Cooperation with City**

Seller shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition.

### **5. CLOSING AND POSSESSION**

#### **5.1 "Closing" Defined**

The consummation of the purchase and sale contemplated hereby (the "Closing") shall occur as provided in this Article 5.

#### **5.2 Escrow; Closing Without an Escrow**

(a) Unless the parties agree to consummate the purchase and sale without an escrow as provided in subparagraph (b) below: (i) On or before the Effective Date (as defined in Section 11.17 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Chicago Title Company at its offices at 455 Market Street, 21<sup>st</sup> Floor, San Francisco, California 94105 ("Escrow Holder"); (ii) this Agreement shall serve as instructions to Escrow Holder as the escrow holder for consummation of the purchase and sale contemplated hereby; (iii) Seller hereby authorizes City to prepare and submit supplemental escrow instructions in accordance with this Agreement on behalf of both parties, as needed; and (iv) the Closing shall be held and delivery of all items to be made at the Closing under this Agreement shall be made at Escrow Holder's offices.

(b) Notwithstanding the foregoing, the parties may elect by mutual agreement to consummate the purchase and sale without an escrow, in which event the Closing shall occur as described in Section 5.7(b).

#### **5.3 Closing Date**

The Closing shall occur ninety (90) days after the Effective Date (as defined in Section 11.17) or on such earlier date as City and Seller may mutually agree (the "Closing Date"), subject to the provisions of Article 4 [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise

expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date and the parties have deposited documents or funds in escrow, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) business days after the Closing Date, return such items to the depositor thereof.

#### **5.4 Seller's Delivery of Documents**

(a) At or before the Closing, Seller shall deliver or cause to be delivered to City the following:

- (i) the duly executed and acknowledged Deed;
- (ii) such resolutions, authorizations, or other documents as City may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (iii) any documents needed in order to eliminate title exceptions other than Accepted Conditions of Title; and
- (iv) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City, countersigned by Seller, if the parties elect to consummate the transaction without an escrow).

(b) Seller shall deliver such items to Seller through escrow, unless the parties elect to close the transaction without an escrow in which event Seller shall deliver the items directly to City for a Closing in accordance with Section 5.7(b).

#### **5.5 City's Delivery of Documents and Funds**

(a) At or before the Closing, City shall deliver to Seller the following:

- (i) a certificate of acceptance, executed by City's Director of Property, to be attached to each Deed before recording;
- (ii) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City to Seller if the parties elect to consummate the transaction without an escrow);
- (iii) funds sufficient to pay City's share of expenses under Article 6; and
- (iv) the Purchase Price, as provided in Article 2 hereof.

(b) City shall deliver such documents and funds through escrow; however, if the parties elect to consummate the transaction without an escrow, City shall deliver the funds and documents as provided in Section 5.7(b).

#### **5.6 Other Documents; Cooperation**

Seller and City agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.



## 5.7 Closing

(a) **Closing through Escrow.** Subject to Section 5.7(b), at Closing, provided all the conditions to the parties' obligations have been satisfied or waived as provided and permitted by this Agreement, Escrow Holder shall perform the following acts in the following order:

(i) Perform such acts as are necessary in order to deliver title to City subject only to the Accepted Conditions of Title, including recording any deed of reconveyance, subordination agreement or other documentation as specified in supplemental escrow instructions submitted by City before Closing.

(ii) Record the Deed in the Office of the County's Recorder and obtain endorsed copies thereof for each party;

(iii) Deliver to Seller, or as Seller may instruct, the Purchase Price, less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations under Article 6;

(iv) Issue the Title Policy to City, if requested to do so by City;  
and

(v) Deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(b) **Closing without Escrow.** If the parties elect to consummate the purchase and sale without an escrow, City shall effect the Closing on the Closing Date as follows:

(i) City shall: (I) deliver to Seller, or as Seller may instruct, the Purchase Price (less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations, if applicable, under Article 6), and (II) cause the certificate of acceptance in each Deed to be executed, when:

(A) City has received Seller's documents in accordance with Section 5.4, and

(B) City is in a position to record the Deed conveying the Easement to City subject only to the Accepted Conditions of Title, obtain the Title Policy (if City elects to do so), and deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(ii) City shall provide Seller with a recordation conformed copy of the recorded Deed.

## 5.8 Possession and Use

The right of possession and use of the Easement Area by City and/or its designees, including the right to remove and dispose of improvements and install and connect utilities, shall commence on the date City's contractor first enters the Easement Area to commence staging for the Project (the "**Possession Date**"), which may occur before the Closing Date. The Purchase Price includes but is not limited to full payment for such possession and use, including interest and damages if any from such date, notwithstanding any other provision of this Agreement. City shall provide Seller with at least thirty (30) days' advance written notice of the Possession Date.

## 6. EXPENSES; PRORATIONS

### 6.1 City's Expenses

City shall pay all escrow fees, the recording fees for the Deed and title insurance charges, if any.

### 6.2 Seller's Expenses

Seller shall pay all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured in whole or part by the Easement Area including, without limitation, any prepayment or delinquency fees, penalties or charges. Seller shall also pay any delinquent taxes that may have become a lien against Seller's Property, at the Closing.

### 6.3 Other Expenses

Any other costs and charges of the escrow not otherwise provided for in this Article or elsewhere in this Agreement shall be allocated in accordance with the closing customs for the County, as determined by Escrow Holder.

## 7. REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to and covenants with City as follows:

(a) **Ownership of Property.** Seller is the sole fee owner of Seller's Property, and will own it at the time of the Closing, free and clear of all liens, leases, occupancy agreements, claims, encumbrances, easements and rights of way of any nature (whether disclosed in the public record or not), except only the Accepted Conditions of Title.

(b) **Signing Authority.** Seller and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of Seller.

(c) **No Leases.** There are now, and will be at the Closing, no oral or written leases, occupancy agreements, licenses or easements affecting the Easement Area or that would affect City's access to or use of the Easement Area.

(d) **No Property Defects or Legal Violations.** To the best of Seller's knowledge, there are now, and at the time of the Closing will be, no material physical defects of the Easement Area, and no violations of any laws, rules or regulations applicable to the Easement Area.

(e) **No Impediments to Use.** Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using the Easement after Closing in the normal manner in which it is intended.

(f) **No Lawsuits.** There are no lawsuits or proceedings pending or, to the best of Seller's knowledge, threatened against or affecting Seller, the Property or its use that would affect Seller's ability to consummate the sale contemplated by this Agreement or City's use and enjoyment of the Easement after the Closing.

(g) **No Known Hazardous Materials.** To the best of Seller's knowledge, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about Seller's Property. As used herein, "**Hazardous Material**" shall mean 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. "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 into or inside any of the improvements, or in, on, under or about the Easement Area.

## **8. RISK OF LOSS**

If any of the Easement Area is damaged or destroyed before the Closing Date, then the rights and obligations of Seller and City hereunder shall be as follows: City shall have the right, at its election, to terminate this Agreement in its entirety or terminate it only as to that portion of the Easement Area damaged or destroyed. City shall have thirty (30) days after Seller notifies City that an event described in this Article 8 has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Article 8, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Easement Area affected by such termination. If City elects not to terminate this Agreement in its entirety, Seller shall give City a credit against the Purchase Price at the Closing in an amount proportionate to the percentage reduction, if any, of the square footage of the Easement Area, and this Agreement shall remain in full force and effect.

## **9. MAINTENANCE; CONSENT TO NEW CONTRACTS**

### **9.1 Maintenance of the Easement Area**

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain Seller's Property in its current condition and shall make, at Seller's expense, all repairs necessary to maintain Seller's Property such condition. Seller shall make no changes to the Easement Area without City's prior written consent, which shall not be unreasonably withheld or delayed.

### **9.2 Contracts Affecting the Easement Area**

Except as otherwise provided herein or by express written permission granted by City, Seller shall not, after the date of execution of this Agreement, alienate, lien, encumber or otherwise transfer Seller's Property or any portion thereof or allow the same to occur, or enter into any lease or contract with respect to Seller's Property or any portion thereof that would survive the Possession Date and impair City's access to or use of the Easement Area.

## **10. DISMISSAL OF EMINENT DOMAIN ACTION**

Seller hereby agrees and consents to the dismissal of any pending action in eminent domain by City as to Seller's Property or any portion thereof and Seller also waives all claims to court costs and any money that may now be on deposit in the Superior Court in such action.

## **11. GENERAL PROVISIONS**

### **11.1 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, and addressed as follows (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):

City:

To: San Francisco Public Utilities Commission  
1145 Market Street, 7th Floor  
San Francisco, California 94103  
Attention: Brian Morelli  
Facsimile No.: (415) 487-5201

with copy to:

Hazel M. Brandt  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Facsimile No.: (415) 554-4755

Seller:

To: Alida V. Ardis  
P O Box 1927  
Oakdale, CA 95361

Facsimile No.: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Facsimile numbers are provided above for convenience of communication; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

**11.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Easement, or any communication in connection with the subject matter of this Agreement, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, subject to Section 9.2 [Contracts Affecting the Easement Area].

### **11.4 Amendments; Waivers**

Except as otherwise provided herein, (i) this Agreement may be amended or modified only by a written instrument executed by City and Seller, (ii) no waiver of any provision of this Agreement will be binding unless executed in writing by the party making the waiver, (iii) no waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision, whether or not similar, and (iv) no waiver will constitute a continuing waiver unless the written waiver so specifies.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

### **11.6 Governing Law**

This Agreement shall be governed by California law and City's Charter. There shall be no obligation for the payment 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.

### **11.7 Merger of Prior Agreements; No Inducement**

The parties intend that this Agreement (including all of the attached exhibits and schedules and any documents specifically described herein, which are hereby incorporated into this Agreement by reference) shall be the final, complete and exclusive expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, term sheets and prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements warranties or agreements other than those expressed herein.

### **11.8 Parties and Their Agents; Approvals**

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All

approvals, consents or other determinations permitted or required by City hereunder shall be made by or through the General Manager of City's Public Utilities Commission or the City's Director of Property, unless otherwise provided herein, subject to applicable law.

### **11.9 Interpretation of Agreement**

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented or had the opportunity to be represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

### **11.10 Attorneys' Fees**

The prevailing party in any action or proceeding to enforce or interpret, or otherwise arising out of or relating to, this Agreement or any provision thereof (including but not limited to any arbitration, trial, administrative hearing, bankruptcy or appeal) will be entitled to recover from the other party all of its costs and expenses, including but not limited to reasonable attorneys' fees and experts' fees. For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

### **11.11 Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforceable to the extent permitted by law.

### **11.12 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

### **11.13 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if Seller becomes

aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

#### **11.14 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller 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 the selling or leasing any land or building to or from the City whenever such transaction would require 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.

#### **11.15 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, agent or consultant of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

#### **11.16 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **11.17 Effective Date**

As used herein, the term "**Effective Date**" shall mean the date on which both parties shall have executed this Agreement provided the Agreement and the transactions contemplated by the Agreement shall have been authorized (a) in a manner required by law governing Seller, and (b) by a duly adopted resolution of the City's Public Utilities Commission, and (c) if required by City's Charter, by a duly adopted resolution of the City's Board of Supervisors and Mayor.

#### **11.18 Release of Claims**

Seller, for itself, its agents, heirs, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges City, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, expenses, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition or use of the property interest described in this Agreement and/or the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

Seller acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which

are not specifically exempted herein. In giving this release, Seller expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

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

If this Agreement is terminated this Section 11.18 shall have no force or effect.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S PUBLIC UTILITIES COMMISSION (AND, IF REQUIRED BY CITY'S CHARTER, APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS) SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION.

*[Signatures on next page]*



The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

By: Alida V. Ardis  
Alida V. Ardis, Trustee of the Survivor's  
Trust created under the RICHARD B.  
ARDIS AND ALIDA V. ARDIS  
REVOCABLE FAMILY TRUST dated  
November 18, 2004 as to an undivided  
89.055% interest

Date: Oct 21, 2009

By: Alida V. Ardis  
Alida V. Ardis, Trustee of the RICHARD B.  
ARDIS AND ALIDA V. ARDIS  
REVOCABLE FAMILY TRUST dated  
November 18, 2004 as to an undivided  
10.945% interest

Date: Oct. 21, 2009

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: Amy L. Brown  
AMY L. BROWN  
Director of Property

Date: 11 / 3 / 09

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Hazel M. Brandt  
Hazel M. Brandt  
Deputy City Attorney

**EXHIBIT A**

**EASEMENT DEED**

*[See following page]*

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

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

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

**EASEMENT DEED**  
(Road Easement)

(Portion of Assessor's Parcel No. 011-001-028)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, ALIDA V. ARDIS, Trustee of the Survivor's Trust created under the RICHARD B. ARDIS AND ALIDA V. ARDIS REVOCABLE FAMILY TRUST dated November 18, 2004 as to an undivided 89.055% interest; and ALIDA V. ARDIS, Trustee of the Family Trust created under the RICHARD B. ARDIS AND ALIDA V. ARDIS REVOCABLE FAMILY TRUST dated November 18, 2004 as to an undivided 10.945% interest ("**Grantor**") hereby grants to the City and County of San Francisco, a municipal corporation ("**San Francisco**") a perpetual, nonexclusive easement in gross for road purposes (the "**Easement**") over, across, in, and upon that portion of Grantor's real property described in attached Exhibit A and depicted approximately on attached Exhibit B (the "**Easement Area**"), on the terms and conditions set forth in this Deed. Such Exhibits are incorporated into this Deed.

1. **Nature of Easement.** The Easement includes the right to improve, inspect, maintain, repair, operate, and use a roadway, approximately twenty-five (25) feet in width (the "**Road**"). The Easement includes the right to modify, remove or replace the Road, provided that San Francisco obtains Grantor's approval of the proposed modification, removal and/or replacement, which approval shall not be unreasonably withheld, conditioned or delayed. However, in an emergency, San Francisco may, but shall not be obligated to, make such modifications as are reasonably necessary under the circumstances to preserve or restore the safe use of the Easement, without Grantor's prior approval, provided that San Francisco shall give Grantor such notice of the modifications as is reasonable under the circumstances, which may be retroactively. The Easement also includes the right to conduct road grading, clearing of culverts, and vegetation management and the right to do such other things as are necessary for the full enjoyment and accomplishment of the purposes of the Easement. San Francisco's rights under this Deed may be exercised by San Francisco's agents, contractors, subcontractors, suppliers, consultants, employees, licensees, invitees, or representatives, or by other authorized persons acting for or on behalf of San Francisco (collectively, "**Agents**").

2. **Maintenance.** San Francisco shall be responsible, at its expense, to repair and maintain the Road only as to wear and tear caused by the proportionate use of the Road by San Francisco and its Agents, and not wear and tear caused by use of the Road by others.

3. **Successors and Assigns.** The provisions of this Deed shall run with the land, burden the Easement Area, and inure to the benefit of and bind the respective successors and assigns of Grantor and San Francisco.

4. **Counterpart Signatures.** This instrument may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

By: \_\_\_\_\_  
Alida V. Ardis, Trustee of the Survivor's  
Trust created under the RICHARD B.  
ARDIS AND ALIDA V. ARDIS  
REVOCABLE FAMILY TRUST dated  
November 18, 2004 as to an undivided  
89.055% interest

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

By: \_\_\_\_\_  
Alida V. Ardis, Trustee of the RICHARD B.  
ARDIS AND ALIDA V. ARDIS  
REVOCABLE FAMILY TRUST dated  
November 18, 2004 as to an undivided  
10.945% interest

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

**SAN FRANCISCO:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
AMY L. BROWN  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:

Hazel M. Brandt

Deputy City Attorney

State of California )  
County of \_\_\_\_\_ ) ss

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_ from the Grantor to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
AMY L. BROWN  
Director of Property

**EXHIBIT A**  
**Description of Easement Area**

*[See following page]*



EXHIBIT "A"

A non-exclusive maintenance/construction access easement, over, across, and lying within a portion of the southeast quarter of Section 5, Township 2 South, Range 12 East, M.D.M., being a strip of land 25.00 foot wide, lying 12.5 feet on each side of a center line, to be constructed not more than 50 feet from the following described Survey line:

Commencing at the southeast corner of Section 5, Township 2 South, Range 12 East, M.D.M. as shown on Hetch Hetchy Water Supply Map C-1661, recorded February 9<sup>th</sup>, 1948 in Volume 8 of Maps at Page 52, Official Records, Stanislaus County, California, thence northwesterly along the east line of said Section 5, to a point of intersection being the east line of said Section 5 and the center line of Parcel "D" as shown on said Hetch Hetchy Water Supply Map, being the TRUE POINT OF BEGINNING;

Thence westerly along the prolongation of said center line of Parcel "D", a distance of 279.54 feet to the beginning of a curve, concave southeasterly and having a radius of 250 feet;

Thence, leaving said center line of Parcel "D", southwesterly along said curve thru a central angle of 78° 43' 02", an arc distance of 343.47 feet;

Thence South 5° 27' 58" West a distance of 210.66 feet to a point on the South line of said Section 5, also being the POINT OF TERMINUS of this Survey Line, from which the southeast corner of said Section 5 bears Easterly a distance of 533.11 feet.


The sidelines of said strip should be prolonged or shortened so as to begin at the East line of said Section 5 and end at the South line of said Section 5.

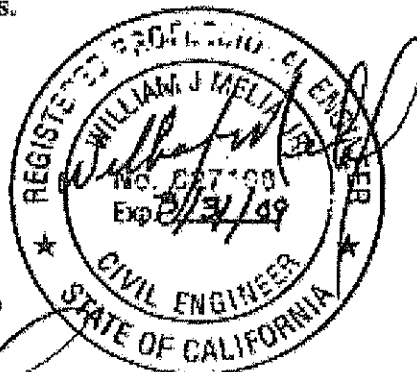
Containing 0.48 acres, more or less.

End of description.

Hetch Hetchy Water and Power

Prepared By:

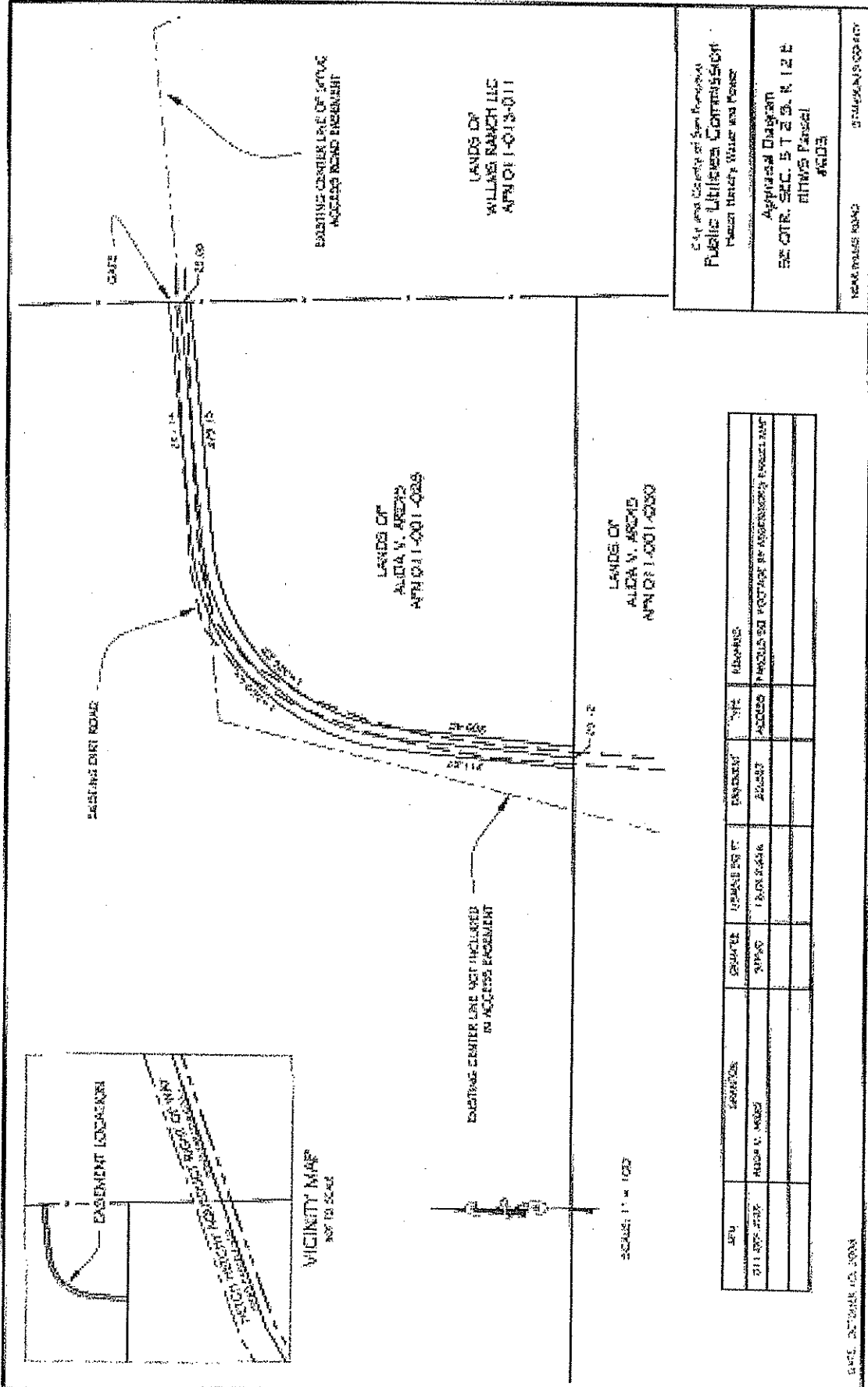
  
William J. Melia Jr. RCE 27168



Date: 11/21/08

**EXHIBIT B**  
**Depiction of Easement Area (Approximate)**

*[See following page]*



City and County of San Francisco  
**Public Utilities Commission**  
 Water Utility Water and Power  
 Approval Division  
 SECTR. SEC. 5 T 2 S. N. 12 E  
 RHWS Parcel  
 #603

APN	OWNER	STATUS	URBAN SQ FT	EXEMPT	NET	REMARKS
011 275 232	ALIDA V. ARDIS	UNAP	1,000,000	20,000	20,000	PARCELS FOR PORTAGE OF WASTEWATER

DATE: OCTOBER 10, 2009



## PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0119

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Project No. CUW37301 San Joaquin Pipeline System Project ("SJPL" or "Project") under the Water System Improvement Program ("WSIP") for the improvements to the regional water supply system, and

WHEREAS, The objectives of the Project are to provide for a SJPL System flow of 313 million gallons per day (mgd) with all pipelines in service, and an average flow of 271 mgd when any one segment of the system is taken out of service for maintenance or repairs, or during an emergency, and to meet current customer demands as well as replenish local reservoirs to allow for maintenance activities and for the capability of removing any second pipeline segment from service, after any other segment has already been removed from service for maintenance, without discontinuing deliveries; and

WHEREAS, On July 9, 2009, the Planning Commission reviewed and considered the Final Environmental Impact Report ("Final EIR") in Planning Department File No. 2007.0118E, consisting of the Draft EIR, the Comments and Responses document (including a Supplement to the Comments and Responses Document) and an Errata Sheet dated July 1, 2009, and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the provisions of the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate, and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its Motion No. 17198; and

WHEREAS, This Commission has reviewed and considered the information contained in the Final EIR, all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC, and other experts and the administrative files for the Project and the EIR; and

WHEREAS, The Project and Final EIR files have been made available for review by the SFPUC and the public, in File No. 2007.0118E, at 1650 Mission Street, Fourth Floor, San Francisco, California, and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA, ("CEQA Findings") and a proposed Mitigation, Monitoring, and Reporting Program ("MMRP"), which material was made available to the public and this Commission for the Commission's review, consideration and action; and

WHEREAS, The Project is a capital improvement project approved by this Commission as part of the Water System Improvement Program (WSIP); and

WHEREAS, A Final Program EIR (PEIR) was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, this Commission approved the WSIP and adopted findings and a MMRP as required by CEQA on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The Final EIR prepared for the Project is tiered from the PEIR, as authorized by and in accordance with CEQA and the CEQA Guidelines; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The SFPUC staff will comply with Government Code Section 7260 *et seq.* statutory procedures for possible acquisition of interests in real property (temporary or permanent) in: (1) Assessor's Parcel #010-015-062 owned by Ardis Family Partnership, (2) Assessor's Parcel #010-041-026 owned by Emilio Moran, (3) Assessor's Parcel #016-002-014 owned by Frank M. Bettencourt, (4) Assessor's Parcel #016-009-008 owned by Henry Bettencourt, (5) Assessor's Parcel #255-070-08 owned by Clifford W. & Onalee J. Koster, (6) Assessor's Parcel #253-280-03 owned by Triangle Properties, Inc., (7) Assessor's Parcel #011-013-006 owned by Willms Ranch, LLC, (8) Assessor's Parcel #011-013-011 owned by Willms Ranch, LLC, (9) Assessor's Parcel #011-001-028 owned by Richard B. and Alida C. Ardis, (10) Assessor's Parcel #016-002-017 owned by James W. Lopes, (11) Assessor's Parcel #016-002-018 owned by James W. Lopes, (12) Assessor's Parcel # 016-002-044 owned by James W. Lopes, (13) Assessor's Parcel #253-170-05 owned by Garry & Christine DeWolfe, (14) Assessor's Parcel #253-17-06-05 owned by Garry & Christine DeWolfe, (15) Assessor's Parcel #016-002-048 owned by Angela Bogetti-Dumlao, (16) Assessor's Parcel #016-002-012 owned by Gary Oosterkamp, (17) Assessor's Parcel #016-022-014 owned by Frank M. Bettencourt, and (18) Assessor's Parcel #253-270-24 owned by Tracy Golf and Country Club. The total combined purchase price of all such possible acquisitions is estimated to not exceed \$700,000; and

WHEREAS, The Project work is primarily located within the City-owned SFPUC right of way, however, several private or public property owners hold easement interests in portions of the right of way, including El Solyo Water District, Shell Oil, Standard/Chevron Oil, and California Department of Water Resources (California Aqueduct) and it may be necessary for the Project for the General Manager to negotiate and enter into agreements with respect to those easement interests; and

WHEREAS, SFPUC has issued leases, permits, or licenses to certain parties, to use for various purposes, portions of City-owned property along the SFPUC right of way where the Project work will occur, and in some instances, there is apparent use of City-owned property by other parties for which there is no evidence of SFPUC authorization, and it may be necessary for the Project for the General Manager to (a) exercise rights under any such deed, lease, permit, or license or (b) negotiate and execute new or amended lease, permit, license, or encroachment removal agreements (each, a "Use Instrument") with owners or occupiers of property interests on, or adjacent to, City property, including West Stanislaus Irrigation District, Blewett Mutual Water District, PAR Country Estates, Chevron/Getty/Tide Water Oil, Standard/Chevron Oil, and Tracy Golf and Country Club, or other property owners or occupiers of land on, or adjacent to, the SFPUC right of way; and

WHEREAS, The Project will require the SFPUC to obtain various necessary permits and encroachment permits from San Joaquin and Stanislaus Counties, which permits shall be consistent with SFPUC existing fee or easement interests, where applicable, and will include terms and conditions including, but not limited to, maintenance, repair, and relocation of improvements and, possibly, indemnity obligations; and

WHEREAS, The SFPUC intends to obtain a permit or enter into an agreement with the U.S. Fish and Wildlife Service for intermittent discharge (e.g., maintenance, emergency) of water from the Pelican Crossover facility to San Joaquin National Wildlife Refuge facilities; and

WHEREAS, The Project will require the SFPUC to augment or amend its existing easement rights, with respect to the proposed fourth pipeline crossing of Union Pacific Railroad (UPRR) land at UPRR milepost 93.61 in San Joaquin County, and, pending such amendment, enter into a pipeline crossing agreement with respect to such location with UPRR; and

WHEREAS, The Project will require the SFPUC to obtain a permanent easement from Stanislaus County across River Road in Stanislaus County; and

WHEREAS, Implementation of the Project mitigation measures will involve consultation with, or required approvals by, state and federal regulatory agencies, including but not limited to the following: U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, and Central Valley Regional Water Quality Control Board; now, therefore, be it

RESOLVED, This Commission has reviewed and considered the Final EIR, finds that the Final EIR is adequate for its use as the decision-making body for the actions taken herein, and hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto, and authorizes a request to the Board of Supervisors to adopt the same CEQA Findings, Statement of Overriding Considerations and MMRP; and be it

FURTHER RESOLVED, That this Commission hereby approves Project No. CUW37301, San Joaquin Pipeline System Project, and authorizes staff to proceed with actions necessary to implement the Project; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for possible acquisition of interests in real property (temporary or permanent) in: 1) Assessor's Parcel #010-015-062 owned by Ardis Family Partnership, (2) Assessor's Parcel #010-041-026 owned by Emilio Moran, (3) Assessor's Parcel #016-002-014 owned by Frank M. Bettencourt, (4) Assessor's Parcel #016-009-008 owned by Henry Bettencourt, (5) Assessor's Parcel #255-070-08 owned by Clifford W. & Onalee J. Koster, (6) Assessor's Parcel #253-280-03 owned by Triangle Properties, Inc. (7) Assessor's Parcel #011-013-006 owned by Willms Ranch, LLC, (8) Assessor's Parcel #011-013-011 owned by Willms Ranch, LLC, (9) Assessor's Parcel #011-001-028 owned by Richard B. and Alida C. Ardis, (10) Assessor's Parcel #016-002-017 owned by James W. Lopes, (11) Assessor's Parcel #016-002-018 owned by James W. Lopes, (12) Assessor's Parcel #016-002-044 owned by James W. Lopes, (13) Assessor's Parcel #253-170-05 owned by Garry & Christine DeWolfe, (14) Assessor's Parcel #253-17-06-05 owned by Garry & Christine DeWolfe, (15) Assessor's Parcel #016-002-048 owned by Angela Bogetti-Dumlao, (16) Assessor's Parcel #016-002-012 owned by Gary Oosterkamp, (17) Assessor's Parcel #016-022-014 owned by Frank M. Bettencourt, and (18) Assessor's Parcel #253-270-24 owned by Tracy Golf and Country Club, and to work with the Director of Real Estate to seek Board of Supervisors' approval of, and if approved, to accept and execute final agreements, and any other related documents necessary to consummate the transactions contemplated therein, in such form approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to negotiate and subject to any applicable approvals, enter into agreements, if necessary for the Project, with parties holding existing easement interests on City property, including El Solyo Water District, Shell Oil, Standard/Chevron Oil, and California Department of Water Resources

(California Aqueduct) in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, and in compliance with the Charter and all applicable laws, and in such form approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to exercise any right as necessary under any Use Instrument and negotiate and execute new or amended Use Instruments, if necessary for the Project, with owners or occupiers of property interests on, or adjacent to, the SFPUC right of way, including West Stanislaus Irrigation District, Blewett Mutual Water District, PAR Country Estates, Chevron/Getty/Tide Water Oil, Standard/Chevron Oil, and Tracy Golf and Country Club, in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, and in compliance with the Charter and all applicable laws, and in such form approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to apply for and execute various necessary permits and encroachment permits with the San Joaquin and Stanislaus Counties, which permits shall be consistent with SFPUC's existing fee or easement interests, where applicable. To the extent that the terms and conditions of the permits will require SFPUC to indemnify the respective jurisdictions, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions, including but not limited to those relating to maintenance, repair, and relocation of improvements, that are in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested use as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to negotiate and, if necessary, to seek Board of Supervisors' approval of, and, if approved, accept and execute a permit or agreement with the U.S. Fish and Wildlife Service with respect to intermittent discharge of water into San Joaquin National Wildlife Refuge facilities, in such form approved by the City Attorney. To the extent that the terms and conditions will require SFPUC to indemnify other parties, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions that are in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested use as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to negotiate and seek Board of Supervisors' approval of, and if approved, to accept and execute an amended easement deed and, pending such acceptance and execution, a pipeline crossing agreement and any other related documents necessary to consummate the transactions contemplated therein, with UPRR, in such form approved by the City Attorney, with respect to the proposed pipeline crossing at UPRR milepost 93.61 in San Joaquin County; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to undertake the process, in compliance with Government Code Section 7260 *et seq.*, the San Francisco Charter, and all applicable laws, to seek Board of Supervisors' approval of, and if approved, to accept and execute an easement deed and any other related documents necessary to consummate the transactions contemplated therein, in such form approved by the City Attorney, for acquisition of a permanent easement from Stanislaus County across River Road in Stanislaus County; and be it



FURTHER RESOLVED, The General Manager will confer with the Commission during the negotiation process on real estate agreements as necessary, and report to the Commission on all agreements submitted to the Board of Supervisors for approval; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to consult with, or apply for, and, if necessary, seek Board of Supervisors' approval, and if approved, to accept and execute permits or required approvals by state and federal regulatory agencies, including but not limited to: U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, and Central Valley Regional Water Quality Control Board, including terms and conditions that are within the lawful authority of the agency to impose, in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested permit or approval, as necessary for the Project; and be it

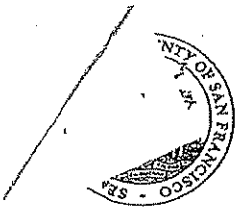
FURTHER RESOLVED, That this Commission authorizes the General Manager to work with the Director of Real Estate to seek Board approval, and if approved, to accept and execute the real property agreements authorized herein; and be it

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FURTHER RESOLVED, That this Commission authorizes the General Manager to enter into any subsequent additions, amendments, or other modifications to the permits, licenses, encroachment removal agreements, pipeline crossing agreements, leases, easements, and other real property agreements, or amendments thereto, as described herein, that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City, and do not materially increase the obligations or liabilities of the SFPUC or the City, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 14, 2009*

  
Secretary, Public Utilities Commission



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

June 29, 2009

Ms. Amy L. Brown  
Director of Real Estate  
Real Estate Division  
Department of Administrative Services  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Re: Case No. 2009.0202R  
Right of Way Acquisitions –  
SF Public Utilities Commission (PUC)  
PUC San Joaquin Pipeline Project

Dear Ms. Brown:

The Department received your request, dated March 12, 2009, for a General Plan Referral as required by Section 4.105 of the San Francisco Charter, and Section 2A.53 of the San Francisco Administrative Code. The project is the proposed acquisition of temporary and permanent easements from several private and municipal property owners. The Public Utilities Commission (PUC) proposes to acquire easements on 16 parcels, located in Stainslaus and San Joaquin counties. Acquisition of the temporary and permanent easements is, on balance, in conformity with the San Francisco General Plan.

## Project Description

The primary goal of the project is to improve the reliability of water delivery, quality and supply and drought management and seismic reliability per the SFPUC's Water System Improvement Program. The San Joaquin Pipeline Project (SJPL) will consist of constructing two new crossover facilities, installation of pipelines, and the construction of a new vault. The project construction is anticipated to impact several private and municipal properties. Temporary Construction Easements and Staging Areas and Temporary and Permanent access roads will be needed.

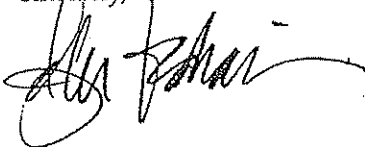
## Environmental Review

The Department has determined that the proposed easement acquisition is Categorically Exempt from Environmental Review pursuant to CEQA Guidelines, Section 15060(c)(2).

Memo

A case report listing relevant General Plan Objectives and Policies is included as Attachment 1. The project has also been reviewed for consistency with the Eight Priority Policies of Section 101.1 of the Planning Code, included as Attachment 2.

Sincerely,



John Rahaim  
Director of Planning

cc: Brian Morelli, PUC ✓  
cc: Gary Tom, Real Estate Division, Accounting  
cc: Kathy Wood, ARWS  
cc: Claudia Flores, Planning Department

Attachments:

1. General Plan Case Report
2. Eight Priority Policies Findings- Planning Code Section 101.1
3. Exhibit A - Private and Municipal Properties Potentially Impacted by Project

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Case Number: 2009.0202R

Assessor's Parcel  
Number: Location outside of San Francisco County

Location, Description: Various municipalities and private properties along the San Joaquin Pipeline, see Exhibit Acquisition of vacant properties in unincorporated areas of Alameda and Santa Clara Counties for use by the PUC.

Staff Reviewer: Claudia Flores

Date: June 19, 2009

GENERAL PLAN POLICY FINDINGS

Note: General Plan Objectives and Policies concerning the project are in **bold font**, and General Plan text is in regular font. Staff comments are in *italic font*.

**ENVIRONMENTAL PROTECTION ELEMENT**

**OBJECTIVE 5**

**ASSURE A PERMANENT AND ADEQUATE SUPPLY OF FRESH WATER TO MEET THE PRESENT AND FUTURE NEEDS OF SAN FRANCISCO.**

Hetch Hetchy and the Water Department should continue their excellent planning program to assure that the water supply will adequately meet foreseeable consumption demands. To this end, the City should be prepared to undertake the necessary improvements and add to the Hetch Hetchy/Water Department system in order to guarantee the permanent supply. Furthermore, San Francisco should continually review its commitments for the sale of water to suburban areas in planning how to meet future demand.

**POLICY 5.2**

Exercise controls over development to correspond to the capabilities of the water supply and distribution system.

**POLICY 5.3**

Ensure water purity.

San Francisco's drinking water must meet State and Federal water quality standards. Ensuring water quality means continuing the present water purification process and monitoring storage facilities and transmission lines for threats to the water supply.

*Comment: The proposed acquisition of easements for the upgrade of the San Joaquin Pipeline System will permit the PUC to protect the land from development or land uses that might impact the PUC's ability to supply high-quality drinking water to San Francisco water users and the PUC's clients in the East Bay and on the Peninsula. Acquisition of the easements is consistent with the PUC's Water System Improvement Program and with the cited General Plan policies. .*

#### OBJECTIVE 6

#### CONSERVE AND PROTECT THE FRESH WATER RESOURCE.

The fresh water resource, like all natural resources, is finite and measurable. While San Francisco's water supply seems vast in relation to current demands, it should not be wasted. Supplementary sources should also be investigated.

On balance, the proposal is in conformity with the General Plan. Any development schemes proposed for the subject parcels after acquisition of the easements for the SFPUC will be subject to separate General Plan Referrals to the Planning Department. Any development proposals would also have to comply with the local zoning ordinance and pertinent land use policies of the area.

The Project is XX in conformity with the General Plan.

Planning Code Section 101.1(b) establishes the following eight priority planning policies and requires review of permits for consistency with said policies. The Project and this General Plan Referral application are consistent or inconsistent with each of these policies as follows:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

*The project would not affect neighborhood serving retail uses or opportunities for employment in or ownership of such businesses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The Project would not affect the City's housing stock or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced.

*The Project would not affect the City's supply of affordable housing.*

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.

*The Project would not affect Muni transit service, streets, or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The Project would not affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project would not affect preparedness against injury and loss of life in an earthquake and would comply with applicable safety standards.*

7. That landmarks and historic buildings be preserved.

*The Project would not affect any of the City's historic resources.*

8. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project would not have any adverse effect on the City's park system.*

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REV 4-14-09

EXHIBIT A  
San Joaquin Pipeline System (SJPL)

PRIVATE AND MUNICIPAL PROPERTIES POTENTIALLY IMPACTED BY PROJECT

OWNER	APN/P.M.	LOCATION	MAP PAGE
The Ardis Family Partnership	010-015-062 59.42	Warnerville Rd. Oakdale, GA Stanislaus County	22
Emilio Moran	010-041-026 59.50	Warnerville Rd. Oakdale, CA Stanislaus County	22
Frank M. Bettencourt	016-002-014 87.33	813 S. River Rd. Vernalis, CA Stanislaus County	18 & 31
Henry Bettencourt	016-002-014 87.34	2400 River Rd. Patterson, CA Stanislaus County	18
Clifford W. & Onalee J. Koster	255-070-08 93.10	3310 W. St. RT 132 Hwy Tracy, CA San Joaquin County	8
Triangle Properties, Inc	253-280-03 93.93	35555 S. Bird Rd Tracy, CA San Joaquin County	6
USA – USACE	016-009-037 86.40	Pelican Rd. Vernalis, CA Stanislaus County	20
Willms Ranch, LLC	011-013-006 011-013-011 53.25-53.40	Willms Road Salida, CA Stanislaus County	32
Richard B. Ardis	011-001-028 53.85	Willms Road Salida, CA Stanislaus County	32
James W. Lopes	016-002-017 016-002-018 016-002-044 87.75-88.80	Blewett Road Vernalis, CA Stanislaus County	31
Garry & Christine DeWolf	253-170-05 96.10	Chrisman Road Tracy, CA San Joaquin County	30
Union Pacific Railroad Co.	Stationing 89+51 89.51	Hwy 33 between McCracken & Welty Roads Vernalis, CA Stanislaus County	14



Stanislaus County	Stationing 87+33 87.33	River Road Vernalis, CA Stanislaus County	18
Tony Ramos and Mary Rocha Meirinho (209) 578-1403	012-058-005 012-058-006 012-058-008 012-058-009 012-058-011 012-059-001 012-059-008 81.40-82.58	1685 Dunn Road Modesto, CA 7956 Shackelford Road Modesto, CA Gates Road Modesto, CA Stanislaus County	33
Angela Bogetti-Dumlao	016-002-48	McCracken Rd Patterson, CA Stanislaus County	33
Gary Oosterkamp	016-002-012	Maze Blvd. Patterson, CA Stanislaus County	33

