

1 [Settlement of Lawsuit]

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3 **Ordinance authorizing revised settlement of litigation brought by the San Francisco**
4 **Bay Area Transit District against City and County of San Francisco in the eminent**
5 **domain action entitled San Francisco Bay Area Transit District v. City and County of**
6 **San Francisco, et al. (Alameda County Superior Court No. HG03-099024, filed July 7,**
7 **2003), for the principal amount of \$2,367,570.**

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Be it ordained by the People of the City and County of San Francisco:

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10 Section 1. The City Attorney is hereby authorized to settle with San Francisco Bay
11 Area Transit District ("BART") for the taking of the City's property in the eminent domain action
12 entitled San Francisco Bay Area Transit District v. City and County of San Francisco, et al.,
13 Alameda County Superior Court No. HG03-099024, by accepting payment to the City of
14 \$2,367,570.00, plus interest as agreed through March 11, 2005, such other material terms as
15 are set forth in a stipulation substantially in the form of the Stipulation for Entry of Judgment in
16 Condemnation and attachments thereto, contained in Board of Supervisors File No.
17 _____, and on such other terms as shall be negotiated and approved by the City
18 Attorney's Office.

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Section 2. The plaintiff filed its eminent domain action entitled San Francisco Bay Area
20 Transit District v. City and County of San Francisco, et al. in Alameda County Superior Court
21 on July 7, 2003.

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Section 3: The action was brought by BART seeking fee ownership of certain property
23 located in the County of Alameda, owned by the City and County of San Francisco ("CCSF")
24 under the jurisdiction of the San Francisco Public Utilities Commission ("SFPUC") and
25 occupied, in part, by SFPUC above-ground water transmission lines (the "Property").

1 Section 4: SFPUC and BART initially reached a settlement during the course of a
2 judicially supervised settlement conference by which BART agreed to make payment in the
3 amount of \$2,750,000, plus interest according to law, to CCSF for acquisition of the Property
4 for use in connection with a BART Project, subject to a reserved permanent easement in favor
5 of CCSF. The initial settlement was then submitted to the SFPUC and the Board of
6 Supervisors ("Board") for approval. The Board authorized the City Attorney's Office to
7 negotiate the settlement on the financial terms set forth above by its Ordinance No. 220-05.

8 Section 5: Following the Board's adoption of a settlement ordinance, the parties
9 discovered that a material disagreement existed as to the scope of the property rights to be
10 acquired by BART and reserved by CCSF under the settlement. BART subsequently filed a
11 motion with the Alameda County Superior Court to enforce the settlement on terms that
12 SFPUC and the City Attorney's Office believed would not protect the integrity of present or
13 potential future SFPUC water delivery facilities on the Property, and the Superior Court
14 granted that motion. The parties then subsequently agreed to negotiate a revised settlement.

15 Section 6: By the terms of the revised settlement, BART will take fee ownership of
16 portions of the Property, for a payment in the principal amount of \$2,367,570.00, plus
17 negotiated interest, and CCSF will receive an easement that provides it with sufficient
18 property rights to maintain its existing facilities, relocate its existing facilities underground, as
19 well as locate potential future facilities, at an alternate location on the Property. The terms of
20 the easement in favor of CCSF will be in substantially the form reflected in Exhibit A,
21 contained in the Board of Supervisors File No. _____. The City of Fremont, Union
22 Pacific Railroad Company, Alameda County Water District, and the Alameda County Flood
23 Control District, each of which currently operates or will operate facilities over the Property,
24 will consent to the easement; such consents shall be recorded contemporaneously with the
25 easement in favor of CCSF; and

1 Section 7: By the terms of the revised settlement, the parties shall bear their own costs
2 and attorneys fees associated with the litigation.

3 Section 8: The SFPUC has approved this revised settlement by Resolution No. 07-
4 0031 on February 14, 2007. A copy of that resolution is contained in Board of Supervisors
5 File No. _____ and is incorporated herein by this reference.

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APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

APPROVED: Public Utilities Commission

By: _____
KRISTEN A. JENSEN
Deputy City Attorney

Susan Leal
General Manager