

File No. 110175

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance SUB-Committee

Date: March 9, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
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| <input type="checkbox"/> | <input type="checkbox"/> | Application |

OTHER

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****Confidential Settlement Report****

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Completed by: Victor Young

Date: March 4, 2011

Completed by: Victor Young

Date: _____

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

1 [Settlement of Unlitigated Claims - East Bay Regional Park District - Public Utilities
2 Commission Calaveras Dam Replacement Project]

3 **Resolution approving the settlement of the unlitigated claims between the City and**
4 **County of San Francisco and the East Bay Regional Park District (EBRPD) related to**
5 **the San Francisco Public Utilities Commission (SFPUC) Water System Improvement**
6 **Program, Calaveras Dam Replacement Project, in Alameda County, calling for SFPUC**
7 **to pay EBRPD \$2,000,000 related to project construction activities, and including other**
8 **material terms and conditions in a settlement and release agreement.**

9
10 WHEREAS, In response to concerns of the California Department of Water Resources,
11 Division of Safety of Dams (DSOD), the SFPUC proposed the Calaveras Dam Replacement
12 Project, in Alameda County, which entails rebuilding the dam in order to eliminate the seismic
13 safety concerns associated with the original dam. The Project would replace the existing dam
14 with a new dam to accommodate a public water supply reservoir of the same size as the
15 original plans (96,850 AF) and meet current seismic safety design requirements. Completion
16 of the proposed project would help the SFPUC achieve the Water System Improvement
17 Program (WSIP) Level of Service goals and objectives adopted by the SFPUC in 2008.

18 WHEREAS, An environmental impact report (EIR) as required by the California
19 Environmental Quality Act (CEQA) was prepared for the Project in Planning Department File
20 No. File No. 2005.0161E; and

21 WHEREAS, The Project is a capital improvement project approved by the SFPUC as
22 part of the WSIP; and

23 WHEREAS, The Final EIR (FEIR) was certified by the San Francisco Planning
24 Commission on January 27, 2011 by Motion No. M-18261; and

1 WHEREAS, The FEIR prepared for the Project is tiered from the WSIP Program
2 Environmental Impact Report (PEIR) certified by the Planning Commission on October 30,
3 2008 by Motion No. 17734; and

4 WHEREAS, Thereafter, the SFPUC approved the WSIP and adopted findings and a
5 Mitigation Monitoring and Reporting Program (PEIR MMRP) as required by CEQA on October
6 30, 2008 by Resolution No. 08-200; and

7 WHEREAS, On January 27, 2011, the San Francisco Public Utilities Commission
8 (SFPUC), by Resolution No. 11-0015, a copy of which is included in Board of Supervisors File
9 No. 110187 (for the related Board Resolution adopting CEQA Findings for the Calaveras Dam
10 Replacement Project) and which is incorporated herein by this reference: (1) approved the
11 Project; (2) adopted findings (CEQA Findings), including a statement of overriding
12 considerations, and a Mitigation Monitoring and Reporting Program (MMRP) required by
13 CEQA; and

14 WHEREAS, The existing Calaveras Dam is located on Calaveras Creek upstream of
15 the Sunol Regional Wilderness operated by EBRPD, and EBRPD raised concerns related to
16 Project construction activities and EBRPD operations, reflected in comments submitted on the
17 Project Draft EIR, and the SFPUC seeks the cooperation of EBRPD with respect to ongoing
18 activities by both agencies in the Sunol Valley. By its Resolution No. 11-0015, the SFPUC
19 also authorized SFPUC's General Manager ("General Manager") to negotiate and execute
20 agreements with EBRPD to address coordination of the parties' respective operations, and
21 address issues related to construction of the CDRP, subject to approval of the Board of
22 Supervisors, as required, and in such form approved by the City Attorney. The EBRPD and
23 the SFPUC have executed a settlement and release agreement recommended by the City
24 Attorney (Agreement), on file with the Board of Supervisors in File No. 110175, subject
25

1 to this Board's approval of this Resolution and other conditions precedent to effectiveness;
2 and

3 WHEREAS, On February 14, 2011, EBRPD filed an appeal of the Planning
4 Commission's certification of the Project FEIR, to preserve its right to object to the Project
5 approval, pending Board approval of this Resolution approving the Agreement. If effective,
6 the Agreement provides that EBRPD will take action to terminate or withdraw its appeal of the
7 Project FEIR, and release the City from claims or actions related to approval of the Project or
8 related actions and all permits issued by other governmental agencies, as identified in the
9 Project FEIR, section 3.7.3. The Clerk of the Board of Supervisor has noticed a hearing on
10 the appeal of the certification of the Project FEIR for March 15, 2011; and

11 WHEREAS, The conditions precedent to the effectiveness of the Agreement include:
12 (a) The Board, acting in its sole discretion, adopts legislation approving this Agreement, and
13 the legislation becomes effective; and (b) The San Francisco Planning Commission's January
14 27, 2011 certification of the FEIR for the Calaveras Dam Replacement Project is final, and any
15 appeal of that determination to the Board has been rejected or withdrawn by all appellants,
16 and the 30 (thirty) day statute of limitations has run following posting of the Project Notice of
17 Determination without challenge to the FEIR or Project approval, pursuant to CEQA; and (c)
18 The Controller certifies the availability of funds appropriated for the Calaveras Dam
19 Replacement Project, as the source of the funding for the Settlement Amount under this
20 Agreement, which can not occur unless the Board first (i) adopts a resolution approving the
21 Final EIR for the Calaveras Dam Replacement Project, adopting findings as required under
22 CEQA, including the Mitigation Monitoring Program and statement of overriding
23 considerations, and (ii) the Board Budget and Finance Committee releases the reserve placed
24 on appropriations for the Project. Notwithstanding the foregoing, in the event of a third party
25 appeal or litigation challenging the certification of the FEIR, this Agreement shall become

1 effective upon the resolution of the third party appeal or litigation provided that a new EIR for
2 the Calaveras Dam Replacement Project is not required; and

3 WHEREAS, The Agreement requires the SFPUC to pay \$2 million dollars to EBRPD
4 ("Settlement Amount") for use, in its sole discretion, to assume the additional responsibilities
5 to coordinate with SFPUC and its Calaveras Dam Replacement Project contractor, address
6 visitor use, operational and maintenance issues, including cleaning and maintenance of
7 facilities within the Sunol Regional Wilderness during construction, produce public outreach
8 material related to Sunol Regional Wilderness operations during Project construction, and
9 improve recreational opportunities or facilities in Sunol Valley and the surrounding Alameda
10 Creek watershed. The Agreement contains other material terms, including but not limited to,
11 provisions whereby the SFPUC will, subject to compliance and the exercise of the parties'
12 reserved discretion under CEQA, where required: (1) accommodate EBRPD should it decide
13 to seek an alternative location for the deployment of Sunol Regional Wilderness park staff
14 during Project construction, by providing a lease option for the area shown on Exhibit 1 to the
15 Agreement at the SFPUC's property in the Sunol Valley, or another location subject to the
16 terms of the Agreement, including that the total cost to the SFPUC shall not exceed Five
17 Hundred Fifty Thousand dollars (\$550,000); (2) agree to a timetable and negotiated terms for
18 inclusion in the proposed renewal of the existing Sunol Regional Park Wilderness Lease
19 between the SFPUC and EBRPD, subject to further approval by EBRPD, the SFPUC and this
20 Board; (3) agree to install a system for the provision of potable water to Sunol Regional
21 Wilderness from the SFPUC water system as shown on Exhibit 2 to the Agreement, with
22 EBRPD ownership and operation of the system following completion of construction; (4)
23 assume sole responsibility for the replacement of the Geary Road bridge over Alameda Creek
24 serving EBRPD and SFPUC lands and facilities, and (5) releases of claims; and

1 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No. 11-
2 0015 have been made available for review by the Board and the public, and those files are
3 considered part of the record before this Board; and

4 WHEREAS, The Board of Supervisors has reviewed and considered the information
5 and findings contained in the FEIR, PEIR and SFPUC Resolution No. 11-0015, and all written
6 and oral information provided by the Planning Department, the public, relevant public
7 agencies, SFPUC and other experts and the administrative files for the Project; now,
8 therefore, be it

9 RESOLVED, That the Board of Supervisors has reviewed and considered the FEIR
10 and record as a whole, finds that the FEIR is adequate for its use as the decision-making
11 body for the action taken herein including, but not limited to, approval of the Project and this
12 Agreement, adopts and incorporates by reference as though fully set forth herein the CEQA
13 Findings, including the statement of overriding considerations, and the MMRP contained in
14 Resolution No. 11-0015; and be it

15 FURTHER RESOLVED, That the Board finds that the Project mitigation measures set
16 forth in the FEIR and the MMRP, including but not limited to the Mitigation Habitat Actions,
17 and adopted by the SFPUC and herein by this Board will be implemented as reflected in and
18 in accordance with the MMRP; and be it


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

1 FURTHER RESOLVED, That pursuant to Section 10.22 and 10.24 of the San
2 Francisco Administrative Code, settlement and compromise of said unlitigated claims by and
3 between the SFPUC and EBRPD, including the SFPUC's payment to EBRPD of \$2 million
4 dollars and other material terms, is hereby approved, subject to the terms and conditions in
5 the Agreement between the SFPUC and EBRPD, dated February 18, 2011, on file with the
6 Board of Supervisors in file no. 110175; and be it

7 FURTHER RESOLVED, That this Board authorizes the General Manager to enter into
8 any subsequent additions, amendments, or other modifications to this Agreement, that the
9 General Manager, in consultation with the City Attorney, determines are in the best interests
10 of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City,
11 and do not materially increase the obligations or liabilities of the SFPUC or the City, such
12 determination to be conclusively evidenced by the execution and delivery of any such
13 additions, amendments, or other modifications.

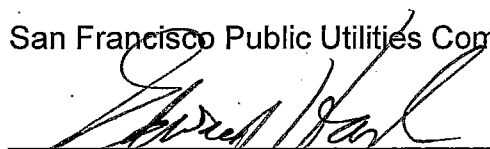
14
15 APPROVED:

16 DENNIS J. HERRERA
17 City Attorney

18 
19 _____
Noreen Ambrose
Utilities General Counsel

RECOMMENDED:

San Francisco Public Utilities Commission

20 
21 _____
Edward M. Harrington
General Manager, Public Utilities
Commission

22 AUTHORIZED BY SFPUC Resolution No.
23 11-0015
24
25

CITY AND COUNTY OF SAN FRANCISCO



RECEIVED
DENNIS J. HERRERA BOARD OF SUPERVISORS
City Attorney SAN FRANCISCO

2011 FEB 18 AM 11:54

BY _____

OFFICE OF THE CITY ATTORNEY

NOREEN AMBROSE
Utilities General Counsel

DIRECT DIAL: (415) 554-4256
E-MAIL: Noreen.Ambrose@sfgov.org

February 18, 2011

Angela Calvillo
Clerk, Board of Supervisors

Re: Resolution Approving Settlement Agreement between SFPUC and East Bay Regional Park District related to the Calaveras Dam Replacement Project

Dear Ms. Calvillo:

The City Attorney's Office is submitting a proposed Resolution approving a Settlement Agreement between SFPUC and East Bay Regional Park District (EBRPD) related to the Calaveras Dam Replacement Project. This action is related to two other matters pending at the Board concerning Calaveras Dam Replacement Project:

File #110187 [CEQA Findings - Public Utilities Commission Calaveras Dam Replacement Project]

Sponsor: Elsbernd

Resolution adopting findings under the California Environmental Quality Act (CEQA), including the adoption of a mitigation monitoring and reporting program and a statement of overriding considerations related to the Water System Improvement Program Calaveras Dam Replacement Project, in Alameda and Santa Clara Counties, including the Mitigation Habitat Actions at various sites; and directing the Clerk of the Board of Supervisors to notify the Controller of this action. RECEIVED AND ASSIGNED to Budget and Finance Committee.

File #110188 [Hearing - Reserved Funds, Public Utilities Commission - \$330,510,906]

Sponsor: Elsbernd

Hearing to consider release of reserved funds, Public Utilities Commission (File No. 100337, Ordinance No. 92-10) in the amount of \$330,510,906 to fund the construction for the Water System Improvement Program CUW374-01 - Calaveras Dam Replacement Project. RECEIVED AND ASSIGNED to Budget and Finance Committee.

In addition, as you know, the EBRPD filed an appeal of the Project EIR, pending Board approval of the Settlement Agreement Resolution. Please have your staff contact me to coordinate and respond to questions concerning these matters. The Department hopes that all of these matters may be calendared for Finance Committee on March 9, 2011, and at the full Board meeting on March 15, 2011, together with the noticed hearing on the appeal of the EIR. Thank you for your assistance on this matter.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Noreen Ambrose
Utilities General Counsel

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RECEPTION: (415) 554-3800 • FACSIMILE: (415) 554-8793

SETTLEMENT and RELEASE AGREEMENT

This Settlement and Release Agreement ("**Agreement**") is dated for reference February 18, 2011, by and between the EAST BAY REGIONAL PARK DISTRICT, a California special district ("**EBRPD**"), and THE CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), acting through its San Francisco Public Utilities Commission ("**SFPUC**") and San Francisco City Attorney Dennis J. Herrera.

I. RECITALS

The parties enter into this Agreement with reference to the following facts and understandings:

A. The SFPUC operates a regional water system serving San Francisco, Alameda, San Mateo and Santa Clara counties, and the City is the owner in fee simple of certain real property in the Sunol Regional Wilderness that has been leased for several decades to EBRPD, and EBRPD owns three other regional parks located in the southern Alameda County area: Mission Peak Regional Preserve, Ohlone Regional Wilderness, and Del Valle Regional Park.

B. The SFPUC is undertaking a Water System Improvement Program ("**WSIP**") that includes multiple projects in the Sunol Region to improve water supply reliability and safety of the system. On January 27, 2011, at a duly noticed special meeting of the SFPUC, the SFPUC adopted Resolution No. 11-0015, approving the WSIP Calaveras Dam Replacement Project to improve water delivery reliability and provide a new, seismically sound earth dam to replace the existing Calaveras Dam, located on Calaveras Creek upstream of the Sunol Regional Wilderness operated by EBRPD ("**Calaveras Dam Replacement Project**" or "**Project**"). The duration of construction activities for said Project is expected to be four (4) years.

C. Construction of the Calaveras Dam Replacement Project will result in additional responsibilities for EBRPD staff working in the Sunol Regional Wilderness to (1) coordinate with SFPUC and its contractor, (2) address visitor use, park program, major events (collectively referred to as "**visitor use**"), and operational and maintenance issues and (3) work with SFPUC to jointly develop a public communications program addressing the anticipated four (4) year

Calaveras Dam Replacement construction project and other pending projects related to SFPUC's construction activities in Sunol Valley.

D. By its Resolution No. 11-0015, the SFPUC authorized SFPUC's General Manager ("**General Manager**") to negotiate and execute agreements with the EBRPD, as necessary, to address coordination of the parties' respective operations, and address issues related to construction of the Calaveras Dam Replacement Project, subject to any required approval by City's Board of Supervisors (the "**Board**"); provided, however, any such agreements must be consistent with SFPUC plans and policies, in compliance with the Charter and all applicable laws, and in such form as approved by the City Attorney.

E. As part of its water supply operations, the SFPUC owns and manages portions of the Alameda Creek watershed that are proximate to said EBRPD parklands, and SFPUC desires to facilitate coordination of its Water Enterprise projects with EBRPD park improvement projects and activities and to set forth a process for developing projects of mutual interest, and to memorialize their respective understandings regarding these matters.

F. The parties have reached a mutual understanding of certain terms to be included in a renewal of the existing Park Lease, Lease No. 3483A, dated November 1, 1982, entitled "2890 Acre Public Recreation Trail and Grazing Lease" as amended ("**Existing Park Lease**"), and desire to memorialize those terms for consideration by their governing bodies when the lease is brought forward for approval.

G. The parties negotiated to resolve all potential claims and legal disputes arising out of the approval and construction of the Calaveras Dam Replacement Project, including, without limitation, all claims and disputes concerning the City's Planning Commission certification of the Final Environmental Impact Report ("**FEIR**") pursuant to the California Environmental Quality Act ("**CEQA**") for the Calaveras Dam Replacement Project on January 27, 2011 by its Motion No. M-18261, and the SFPUC's approval of the Calaveras Dam Replacement Project approval by its Resolution No. 11-0015. Authorized representatives of the EBRPD, the SFPUC, and the City Attorney's Office executed this Agreement on March ____, 2011, subject to the understanding

and agreement that this Agreement, and all terms herein, are contingent upon the Board, acting in its sole discretion, approving a resolution authorizing the settlement, in addition to other conditions precedent to effectiveness of this Agreement, as described herein. The parties will affirm the effective date of this Agreement in writing.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions and promises contained herein, the parties agree as follows:

II. AGREEMENT

1. **City's Due Diligence.** The SFPUC shall make a good faith effort and use all due diligence to obtain prompt consideration of this Agreement by all necessary approval authorities, including the Board and City's Controller.

2. **Funding for EBRPD.** City shall cause to be delivered to the EBRPD a cash payment in the amount of two million dollars (\$2,000,000.00) ("**Settlement Amount or Settlement Funding**") as soon as reasonably practicable (but no later than sixty (60) days) after the Effective Date of this Agreement. The SFPUC provides the Settlement Funding to the EBRPD for use, in its sole discretion, to assume the additional responsibilities to coordinate with SFPUC and its Calaveras Dam Replacement Project contractor, address visitor use, operational and maintenance issues, including cleaning and maintenance of facilities within the Sunol Regional Wilderness during construction, produce public outreach material related to Sunol Regional Wilderness operations during Project construction, and improve recreational opportunities or facilities in Sunol Valley and the surrounding Alameda Creek watershed.

3. **EBRPD and SFPUC Coordination on WSIP Sunol Regional Projects.** The EBRPD and SFPUC agree to coordinate to manage issues arising during the construction of the Calaveras Dam Replacement Project, including, but not limited to issues related to traffic during construction of the Calaveras Dam Replacement Project, including communications with the public.

- a. The Final EIR for the Calaveras Dam Replacement Project, Mitigation Measure 5.12.4a, requires preparation of traffic control plans, subject to review and

approval by the SFPUC and Alameda County. The SFPUC will cause the traffic control plans to be provided to the EBRPD at the same time as the plans are provided to Alameda County, and the EBRPD shall provide timely review and comment on all such traffic control plans within fifteen (15) working days.

- b. The SFPUC further agrees that its Calaveras Dam Replacement Project contract specifications shall prohibit the hauling of sand and gravel from commercially available sources in Sunol Valley on Calaveras Road between the entrance to the Surface Mining Permit No. 30 quarry operated by Oliver De Silva, Inc. and Geary Road on Saturdays, Sundays, and the holidays of Memorial Day, July 4th, and Labor Day.
- c. The parties will also coordinate with the SFPUC's Department of Homeland Security, Alameda County Sheriff, and California Highway Patrol concerning enforcement of traffic controls and other safety measures on Calaveras Road between I-680 and the entrance to Sunol Regional Wilderness.
- d. EBRPD, in its sole discretion, will review information concerning construction traffic and other activities and make determinations as to the operation of Sunol Regional Wilderness, but agrees to provide timely communication to SFPUC concerning those operational decisions.
- e. SFPUC will provide current results of all air quality monitoring within the vicinity of the Sunol Regional Wilderness on a weekly basis and will make SFPUC consultant(s) or staff members available to EBRPD staff and consultants for discussion purposes. EBRPD will be advised of any air quality monitoring results in the Sunol Regional Wilderness that exceed established risk-based trigger levels established in the Calaveras Dam Replacement Project FEIR and the comprehensive air quality monitoring program within twenty-four (24) hours of receipt of the monitoring data by SFPUC.

- f. SFPUC and EBRPD will identify primary on-site liaison contacts to address questions and concerns that may arise over the duration of the Project construction project.

4. **Lease Option.** EBRPD shall have the exclusive option to lease from the City portions of the real property in the Town of Sunol commonly known as the Hetch Hetchy Sunol Corporation Yard, which real property is shown on Exhibit 1 to this Agreement, subject to the terms set forth in this Section 4 ("**Lease Option**"). EBRPD may exercise the Lease Option in the event that EBRPD determines, in its sole discretion, that its operations during the period of Calaveras Dam Replacement Project construction would be better served by deploying its staff from facilities in Sunol Valley further away from the Calaveras Dam Replacement Project construction site. EBRPD shall exercise the Lease Option, if at all, only by providing written notice ("**Option Notice**") to the SFPUC contacts specified in Section 10, no later than 30 days after the SFPUC provides written notice to EBRPD of the award of a construction contract for commencement of Project construction. SFPUC shall provide written notice to EBRPD of the award of the construction contract within 5 days of the award, and only after such notice shall the District's 30 day Option Notice period begin to run. The Option Notice shall specify the date on which EBRPD desires to take possession of the leased premises ("**Target Commencement Date**"), which shall be the later of September 1, 2011 or 90 days after the SFPUC's receipt of the Option Notice. Provided that EBRPD exercises the Lease Option, the parties shall execute a lease containing substantially the terms and conditions set forth in this Section, on City's lease form (the "**Lease**"):

- a. EBRPD shall have the right of exclusive occupancy of the office trailer shown on Exhibit 1, along with the existing 2,100 square foot shop building "B" designated on Exhibit 1 (collectively, the "Premises"). EBRPD shall also have the right to use, in common with SFPUC and subject to SFPUC's reasonable rules and regulations, the following facilities: the access driveway and gate to the Premises from Main Street shown on Exhibit 1, and the portion of the parking area identified on Exhibit 1 for EBRPD parking (which shall be large enough for parking up to 14 passenger vehicles and light trucks). The SFPUC reserves the right to use the driveway across the EBRPD parking area for ingress and egress but shall not park vehicles in the area

labeled as "Shared Access" on Exhibit 1. The SFPUC reserves exclusive use and control of the existing 2,375 square foot shop building "C" and the portion of the Premises designated for the SFPUC's use on Exhibit 1. The layout of facilities shown on Exhibit 1 may be revised by mutual agreement of the parties so long as the areas reserved for the exclusive use of EBRPD include the proposed office trailer and Shop Building "B" shown on Exhibit 1, and shared parking that includes space for up to 14 EBRPD passenger vehicles , light trucks and the Sunol school bus.

- b. The term of the Lease shall be equal to the greater of (i) five (5) years or (ii) the period commencing on the Lease Commencement Date (as defined below) and ending sixty (60) days after the date that the SFPUC adopts a resolution certifying substantial completion of the Calaveras Dam Replacement Project, and such term may be extended by mutual written agreement. The "**Lease Commencement Date**" shall be the date the City tenders possession of the Premises to EBRPD. The City will use all reasonable efforts to tender possession to EBRPD on the Target Commencement Date specified in the Option Notice; however, the City shall not be obligated to tender possession before the parties execute and deliver the Lease, and before the later of (i) September 1, 2011 or (ii) 90 days after the SFPUC's receipt of the Option Notice. In addition, the City shall not be obligated to make the shop space "B" on Exhibit 1 available before the later of November 1, 2011 or 90 days after the SFPUC's receipt of the Option Notice (the "Earliest Shop Space Delivery Date").
- c. EBRPD shall pay nominal consideration of one dollar (\$1.00) annual rent during the term of the Lease.
- d. The SFPUC shall, in consultation with EBRPD, (i) provide and install a 36 x 40 foot office trailer at location "A" on Exhibit 1 that is suitable to accommodate up to eleven (11) EBRPD staff, including installation of all utility facilities for water, electricity, and sewage by no later than the Lease Commencement Date; (ii) make available for EBRPD's exclusive use the 2,100 square foot existing shop facility designated "B" on Exhibit 1 by the later of the Lease Commencement Date or the Earliest Shop Space Delivery Date, and (iii) make available a designated EBRPD parking area by the

Lease Commencement Date, all at SFPUC's sole cost (not to exceed \$500,000 for materials and labor), and provided that EBRPD will pay for all monthly utility service to these facilities, including the periodic pumping of sewage vaults installed by the SFPUC. Notwithstanding the above, should SFPUC choose to purchase an office trailer for EBRPD's use, the \$500,000 cap specified in this section shall be increased by \$50,000 to reflect the remaining salvage value of the office trailer to the SFPUC at the end of the Lease term. The SFPUC shall be responsible for paying for utility service to the existing shop building "C" reserved for the exclusive use of the SFPUC.

- e. The Premises shall be used by EBRPD solely for (i) general office use, and (ii) routine maintenance activities currently conducted in the Sunol Regional Wilderness, including but not limited to carpentry; welding; painting; fabrication of signs and gates; storage of related materials, tools and equipment; and maintenance of equipment.
- f. EBRPD shall be responsible for maintaining the office trailer and shop space in good order, condition and repair, normal wear and tear excepted, at its sole cost.
- g. The SFPUC shall have the right, at its sole expense, to relocate EBRPD staff and the office trailer to a mutually agreed upon suitable alternative location in the event that the SFPUC requires the Premises for SFPUC utility purposes.
- h. The SFPUC will pay any property or possessory interest taxes assessed by Alameda County on the lease area and shall require no performance bonds or security for the Lease Option.
- i. The Lease would incorporate standard terms and conditions required pursuant to San Francisco City and County ordinances.
- j. The parties agree that the effectiveness of the Lease Option is subject to prior review and determinations, by both parties, in compliance with the California Environmental Quality Act (CEQA). At EBRPD election, one of the parties will serve as lead agency and complete any required environmental analysis, for review and consideration by the parties as lead and responsible agencies. Consistent with CEQA,

if, following completion of environmental review, all or a portion of the activities contemplated by the Lease Option are found to cause significant adverse environmental impacts that can not be mitigated to a level of insignificance, then the parties shall consider and discuss the following CEQA options: (1) modify the Lease Option to mitigate significant adverse environmental impacts, at SFPUC's sole expense, (2) identify or select feasible alternatives that avoid significant adverse impacts, (3) not approve or undertake the proposed Lease Option or related agreements, or (4) approve the proposed Lease Option upon a finding that the benefits of the Lease Option outweigh otherwise unavoidable significant adverse impacts.

- k. In the event that the parties cannot agree upon a CEQA option that would permit the exercise of the Lease Option, the SFPUC will provide EBRPD with funding in the total amount of one hundred thousand dollars (\$100,000.00) annually for the duration of the Calaveras Dam Replacement Project construction to fund its expenses of renting alternative office facilities for its staff, should EBRPD elect to establish a location outside of the Sunol Regional Wilderness to deploy its staff during construction of the Calaveras Dam Replacement Project.

5. Calaveras Dam Replacement Project Impacts on EBRPD Roads or Trails.

- a. In addition to the provision of Settlement Funding in the amount specified above, the SFPUC agrees that it will prepare, or cause its Contractor to prepare, in accordance with Mitigation Measure 5.12.4a, a written report ("**Condition Assessment Report**") of Geary Road and other roads, trails, or pathways within Sunol Regional Wilderness that may be used to access work proposed at Alameda Creek Diversion Dam included within the Calaveras Dam Replacement Project. The Condition Assessment Report prepared by the SFPUC or its contractor shall contain suitable location identifiers (e.g., survey stations used by EBRPD) to permit each party to document baseline conditions and to clearly identify locations needing repair as a result of activities by the SFPUC's contractor(s). The EBRPD and the SFPUC shall approve the accuracy of the Condition Assessment Report in writing. The SFPUC's Project contractor(s) shall repair damage to Geary Road and other EBRPD facilities resulting from

Calaveras Dam Replacement Project activities on an as-needed basis pursuant to the Specifications agreed to by the parties in advance, to a condition equal to that shown in the underlying Condition Assessment Report. The cost of such repairs shall be in addition to the Settlement Amount.

- b. EBRPD may request permission from Alameda County to periodically close Geary Road, a county roadway, for security purposes should EBRPD exercise the Lease Option or choose to relocate the Sunol Regional Wilderness office and shop. The SFPUC agrees to support any such closure request that EBRPD may make to Alameda County, subject to maintenance of access through the gate for the SFPUC, its contractors, and affected residents, who will be provided with keys. In the event that Alameda County approves EBRPD's request for periodic closure of Geary Road, the SFPUC agrees to provide funding not to exceed \$20,000 to EBRPD to fund the actual cost, based on invoices submitted by EBRPD to the SFPUC, of installing a lockable gate and any other facilities desired by EBRPD at or near the intersection of Geary and Calaveras Road. The SFPUC will coordinate with EBRPD during construction of the Calaveras Dam Replacement Project to provide reasonable assistance in opening and closing the Geary Road gate installed by EBRPD. EBRPD shall be solely responsible for operation and maintenance of the gate and appurtenant facilities following installation, and for eventual removal of the gate if required by Alameda County.

6. Park Lease Approval and Terms. SFPUC staff and EBRPD staff shall finalize the terms and conditions of a renewal Park Lease for a thirty (30) year term by December 31, 2011. At the earliest opportunity thereafter, EBRPD staff shall present the renewal Park Lease for approval by EBRPD's Board of Directors. Following approval by EBRPD's Board of Directors, SFPUC staff shall introduce the renewal Park Lease at the SFPUC Commission within thirty (30) days and introduce such matter at City's Board of Supervisors, if required, within thirty (30) days of SFPUC Commission action on such matter, subject in each instance to notice requirements and reasonable staff preparation time. EBRPD acknowledges that this Agreement shall not serve to amend the Existing Park Lease between the parties, and that only a fully executed lease or

lease amendment with authorizing legislation approved by SFPUC's Commission and City's Board of Supervisors shall bind the Parties with respect to any amendment of the Park Lease or any new Park Lease.

In addition to other terms and conditions of the renewal Park Lease, SFPUC staff agrees to support and recommend to the SFPUC and City's Board of Supervisors the following terms in the proposed renewal Park Lease:

- a. The SFPUC will fund and conduct all required water quality monitoring above and below Sunol Regional Wilderness in the event that water released from upstream SFPUC facilities is recaptured downstream of park boundaries for domestic use within the SFPUC Regional Water System.
- b. The SFPUC's draft Alameda Watershed Habitat Conservation Plan (HCP) prescribes a number of potential restrictions to protect water quality and/or native listed species in Alameda Creek. The SFPUC will be solely responsible for the cost of all fencing, gating, and other improvements required to implement the proposed Watershed Habitat Conservation Plan on Park Lease lands, consistent with the final HCP, if approved.
- c. The SFPUC will pay all property taxes assessed by Alameda County and currently paid by EBRPD on the leased premises. Additionally, the SFPUC shall require no performance bonds or security for the new Park Lease.

7. Road Bridge.

- a. Geary Road Bridge. The SFPUC will complete environmental review, and subject to compliance with CEQA, in the exercise of its sole discretion, if the SFPUC approves and obtains required permits for construction of a new Geary Road Bridge over Alameda Creek used by both parties on a regular basis to access the Upper Alameda Creek Watershed, the SFPUC will assume all costs for construction and maintenance of the bridge, and shall not seek contribution from EBRPD.

8. Sunol Regional Wilderness Water Supply. The Sunol Regional Wilderness currently has no reliable potable water supply. SFPUC agrees to evaluate existing improvements and to design and construct a water supply, storage tank(s), and distribution system that will provide a reliable supply of potable water capable of meeting the water demand and storage needs for existing park uses and structures in the developed core area of the Park identified on Exhibit 2. The potable water system shall be designed to provide a maximum water supply of 1,500 gallons per day, and will not include any interior plumbing within the structures identified on Exhibit 2. The SFPUC will continue to maintain the availability of the existing hydrants on the Calaveras Pipeline in the Sunol Regional Wilderness for the purpose of supplying water to extinguish structural fires at the existing park facilities shown on Exhibit 2, or, in the alternative, will include fire flow requirements for extinguishing structural fires in the design of the potable water system. The potable water supply and distribution system shall be operative on or before December 31, 2015. The SFPUC will evaluate providing untreated water (either groundwater and/or water from the SFPUC water system, or a combination of both sources) to EBRPD as source water, along with any water treatment required to meet federal and state drinking water standards for potable use. SFPUC shall consult with EBRPD on design of the system and EBRPD shall approve the final design, which approval shall not be unreasonably withheld, conditioned or delayed. The San Francisco Planning Department shall serve as lead agency for preparation of any CEQA documentation required for approval of the Sunol Regional Wilderness water system project by the SFPUC and EBRPD. In the event a new potable water system is approved by the parties after completion of any required CEQA process, and designed and constructed using contractors hired by the SFPUC, EBRPD will (1) assume sole ownership of and be responsible for all operation, maintenance, monitoring, future permitting and facility replacement costs associated with the supply of potable water to the public provided that the water supply improvements have been constructed by the SFPUC in accordance with all contract specifications and legal requirements and (2) hold the Sunol Regional Wilderness water system permit issued by the California Department of Public Health (CDPH), and comply with any CDPH operational requirements imposed as a result of holding the water system permit. In the event that the SFPUC approves and delivers untreated water to the Park water system, the SFPUC will bill the Park at the SFPUC's established untreated water rate based on monthly meter readings. The design of the potable water system shall include a meter to be installed at

the point of connection to the SFPUC water system, and following acceptance of the completed water system, EBRPD will own and be responsible for the operation and maintenance of all facilities located downstream of the meter. The potable water system shall be installed and operational before the Calaveras Dam Replacement Project is completed or December 31, 2015, whichever is earlier. In the event that the SFPUC does not complete the potable water system by December 31, 2015, the SFPUC will reimburse EBRPD for the actual costs of continued potable water deliveries to Sunol Regional Wilderness in an amount not to exceed \$30,000 per calendar year. EBRPD's acceptance of reimbursement funding from the SFPUC shall not be construed as a waiver of any rights that EBRPD may have to enforce the SFPUC's obligation to develop the water system set forth in this Agreement.

9. Coordination of Efforts for Future Long Term Planning Initiatives. The Parties will continue to jointly evaluate the feasibility of the following long-term future projects:

- a. Reuse of portions of the SFPUC's Sunol Aqueduct in Niles Canyon as a multi-use non-motorized trail serving visitors to EBRPD's Vargas Plateau Regional Park and the Regional Trail System.
- b. Coordination of planning efforts for regional trails using the SFPUC's lands and proposed Alameda Creek Watershed Center in Sunol, on a basis consistent with the SFPUC's Alameda Watershed Management Plan.

10. Cooperation Regarding Public Relations and Outreach. The Parties will work cooperatively with each other to jointly review and approve all press releases and other information created for public consumption concerning Projects and programs implemented pursuant to this Agreement. For purposes of this Agreement, the following persons are authorized representatives of their respective agencies.

EBRPD: Assistant General Manager, Operations, and Assistant General Manager,
Public Affairs.

SFPUC: Assistant General Manager, Water Enterprise and Assistant General
Manager, External Affairs

1155 Market Street, 11th Floor

11. **Withdrawal of CEQA Appeal.** The EBRPD shall take all necessary action to terminate and withdraw any appeal to the San Francisco Board of Supervisors instituted or filed by or on behalf of the EBRPD of the City's Planning Commission determination on the Calaveras Dam Replacement Project FEIR, within 10 (ten) days of the Effective Date of this Agreement.

12. **Conditions Precedents to Effectiveness.** This Agreement shall take effect on the last date on which all of the following events have occurred, to be acknowledged promptly by the parties in writing ("**Effective Date**"):

- a. The City's Board, acting in its sole discretion, adopts legislation approving this Agreement, and the legislation becomes effective; and
- b. The San Francisco Planning Commission's January 27, 2011 certification of the FEIR for the Calaveras Dam Replacement Project is final, and any appeal of that determination to the Board has been rejected or withdrawn by all appellants, and the 30 (thirty) day statute of limitations has run following posting of the Project Notice of Determination without challenge to the FEIR or Project approval, pursuant to CEQA; and
- c. City's Controller certifies the availability of funds appropriated for the Calaveras Dam Replacement Project, as the source of the funding for the Settlement Amount under this Agreement, which can not occur unless the Board first (i) adopts a resolution approving the Final EIR for the Calaveras Dam Replacement Project, adopting findings as required under CEQA, including the Mitigation Monitoring Program and statement of overriding considerations, and (ii) the Board Budget and Finance Committee releases the reserve placed on appropriations for the Project. The SFPUC shall provide 3 (three) days' written notice to EBRPD of the satisfaction of the conditions precedent set forth above.
- d. Notwithstanding the foregoing, in the event of a third party appeal or litigation challenging the certification of the FEIR, this Agreement shall become effective upon

the resolution of the third party appeal or litigation provided that a new EIR for the Calaveras Dam Replacement Project is not required.

- e. Until satisfaction of each of the foregoing conditions precedent, this Agreement shall have no force or effect.

13. Representations, Warranties, and Indemnification. Each party represents and warrants to the other party, effective as of the Effective Date, that:

- a. To the extent applicable to such party, it is duly organized and existing and is in good standing in its state of formation.
- b. It has the full right and authority to enter into this Agreement, enter into the other agreements and instruments contemplated by this Agreement to which it will be a party, and to undertake and consummate such party's obligations under this Agreement, including, without limitation, the releases, indemnification, and other obligations and transactions contemplated by this Agreement.
- c. The person or persons signatory to this Agreement and any document executed pursuant to this Agreement on behalf of such party have full power and authority to bind such party.
- d. Upon due execution and delivery by the respective parties to this Agreement and each of the other agreements and instruments contemplated by this Agreement to which it will be a party, each of this Agreement and such other agreements and instruments to which it will be a party will be the valid, binding, and enforceable obligation of such party in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.
- e. Each party agrees to indemnify, protect, and defend the other party against and hold them harmless from any and all claims, liabilities, losses, damage, costs, and expenses, including all reasonable attorney fees, asserted against or suffered by them, or either of them, resulting from (i) any breach by such party of this Agreement or (ii) the

inaccuracy or breach of any of the representations, warranties, and covenants made by such party pursuant to this Agreement.

14. Release.

- a. Release By the EBRPD. The EBRPD, in its own capacity and on behalf of its board, officers, directors, agents, employees, successors, and assigns, (collectively, "**EBRPD Releaser**") hereby fully and forever releases and discharges City, together with its elective and/or appointive boards, supervisors, commissioners, officers, agents, employees, consultants, and departments, including, without limitation, the San Francisco Public Utilities Commission ("**City Releasees**") from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses, and costs (including, without limitation, court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, that have existed or may have existed, or that do exist, or that hereafter shall or may exist, and that arise out of or are in any way related to (i) any action taken by the SFPUC or the City and County of San Francisco to approve the Calaveras Dam Replacement Project or related actions and any and all permits that may be issued by other governmental agencies as identified in section 3.7.3 of the Project FEIR with respect to the Calaveras Dam Replacement Project, including without limitation any EBRPD Claims challenging the sufficiency of the FEIR or the legality or sufficiency of any other approvals granted, permits issued or other actions taken by such governmental agencies with respect to the Calaveras Dam Replacement Project, and (ii) any of the transactions, occurrences, acts, or omissions related to the sufficiency of the FEIR or the legality or sufficiency of any other approvals granted, permits issued or other actions taken by such governmental agencies with respect to the Calaveras Dam Replacement Project (collectively, "**EBRPD Claims**"); provided, however, notwithstanding the foregoing, such release and discharge shall not extend to the rights of the EBRPD arising out of personal injury or property damage claims attributable to construction activities by the City or its contractors ("**Construction Related Claims**") performing work on the Calaveras Dam Replacement Project. Further, such release and discharge shall not apply to the rights of EBRPD arising out of personal injury or property damage

claims attributable to the operation and maintenance of the Calaveras Dam after the Calaveras Dam Replacement Project is completed.

- b. Except as otherwise expressly stated in this Section 14, this Agreement will fully and finally settle all the EBRPD Claims related to the Calaveras Dam Replacement Project.

15. Exercise of Independent Judgment. Each party acknowledges that, in executing this Agreement, it is acting on its own, independent judgment informed by its legal counsel. Each party acknowledges having read this Agreement and having been advised by its attorney as to its meaning and effect. Each party acknowledges and warrants that its execution of this Agreement is free and voluntary.

16. Entire Agreement. Each party acknowledges that this Agreement contains and constitutes the entire agreement between the parties with respect to the Disputes. The terms of this Agreement are contractual and not a mere recital. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Agreement, other than as expressly set forth herein.

17. Modification of Agreement. This Agreement may be modified by written instrument executed and approved by the General Managers of the SFPUC and EBRPD.

18. No Admission. No aspect of this Agreement or the settlement which led to it is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by either party of liability, or wrongful actions, for any purpose.

19. Severability. If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.

20. Attorney's Fees. Each party understands and acknowledges that it shall bear its own legal expenses and costs incurred in connection with prosecuting or defending against any of the EBRPD Claims released hereby, provide, however, that if any person or entity brings or

commences any action or proceeding on any claim released hereby or to enforce or interpret any provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to receive its reasonable attorney's fees and costs therein incurred from the party not prevailing. For purposes of this Agreement, reasonable fees of attorneys of City's Office of City Attorney or the EBRPD shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

21. Interpretation of Agreement. For purposes of interpreting this Agreement, the parties hereto shall be deemed to have participated equally in its drafting. This Agreement and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

22. Counterparts. This Agreement may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

IN WITNESS WHEREOF, the parties hereto and their respective attorneys of record have approved and executed this Agreement on the dates specified below:

AGREEING AND RELEASING PARTIES:

CITY AND COUNTY OF SAN FRANCISCO

Dated: _____, 2011

By: _____

Edward M. Harrington
SFPUC General Manager

EAST BAY REGIONAL PARK DISTRICT

Dated: _____, 2011

By: _____

Robert E. Doyle

General Manager

APPROVED AS TO FORM

DENNIS HERRERA

City Attorney

Dated: 2 - 18, 2011

By: Noreen Ambrose

Noreen Ambrose

Deputy City Attorney

APPROVED AS TO FORM

Attorney for

East Bay Regional Park District

Dated: _____, 2011

By: _____

Ted C. Radosevich, District Counsel

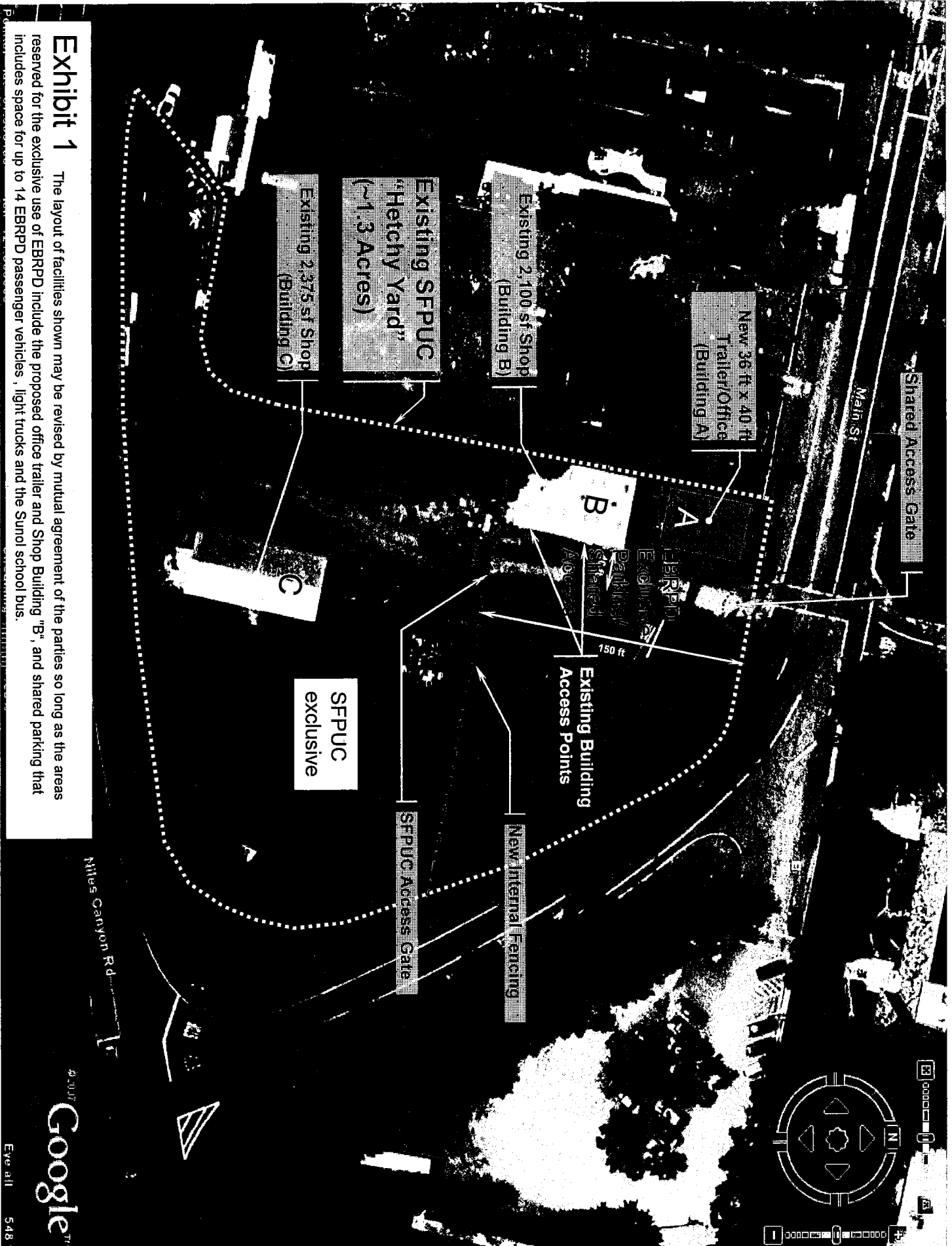
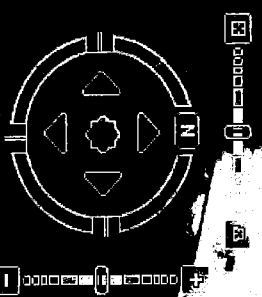


Exhibit 1 The layout of facilities shown may be revised by mutual agreement of the parties so long as the areas reserved for the exclusive use of EBRPD include the proposed office trailer and Shop Building "B", and shared parking that includes space for up to 14 EBRPD passenger vehicles, light trucks and the Sunol school bus.



Potable Water Service to Structures Shown

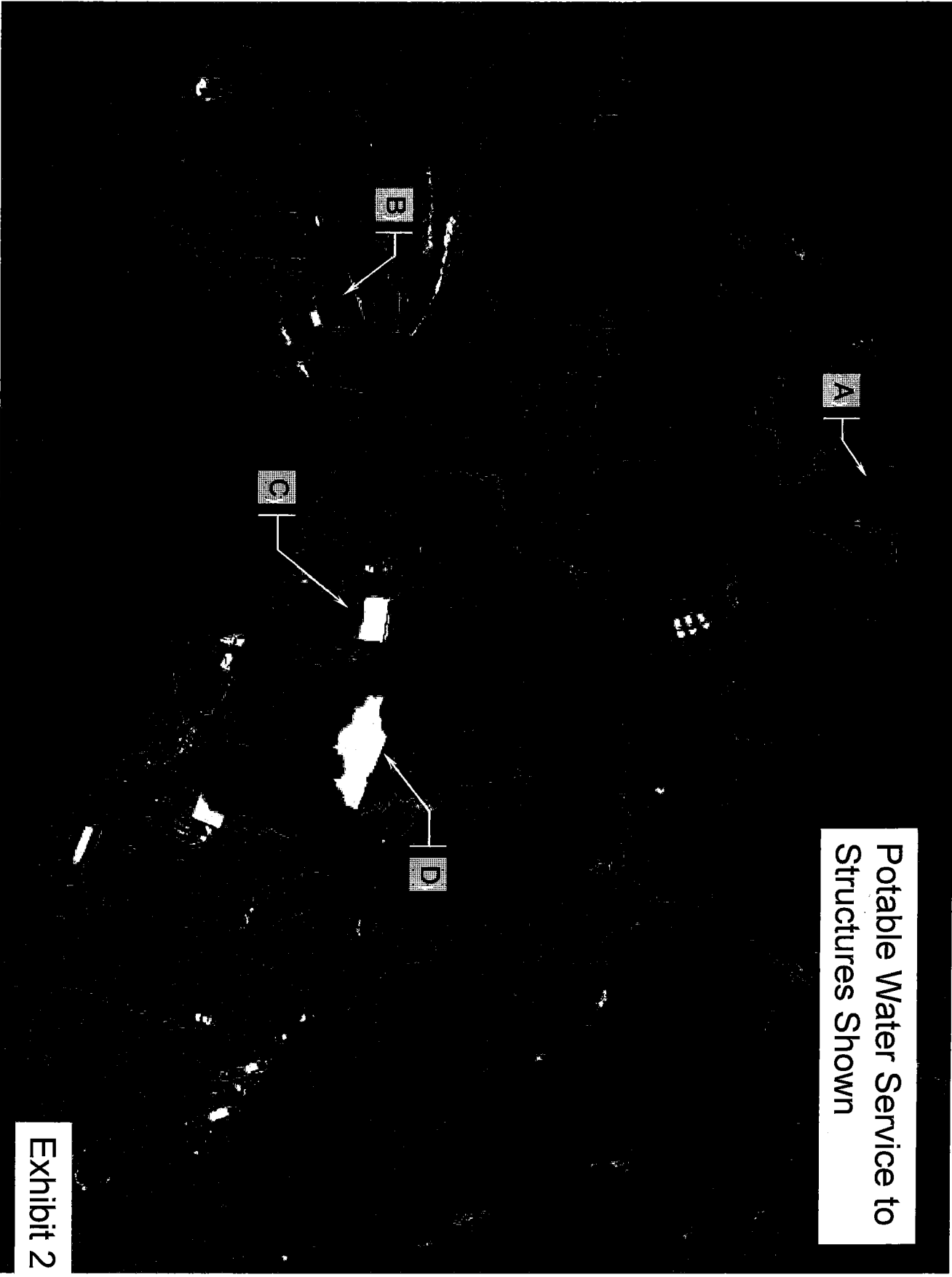


Exhibit 2