

**AGREEMENT FOR SALE OF REAL ESTATE**

**by and between**

**the CITY AND COUNTY OF SAN FRANCISCO,  
by and through its Public Utilities Commission,  
a California municipal corporation,**

**as Seller,**

**and**

**the CITY OF SAN BRUNO,  
a California municipal corporation,**

**as Buyer**

**for the sale and purchase of**

**Parcel No. 9,  
comprising approximately 1.54 acres  
of the  
former Market Street Railway Company  
Transportation System Properties Conveyed to  
the City and County of San Francisco  
located in San Bruno, California**

**\_\_\_\_\_, 20\_\_\_\_**

## TABLE OF CONTENTS

	<u>Page</u>
1. SALE AND PURCHASE	2
1.1 Property Included in Sale	2
2. PURCHASE PRICE	2
3. TITLE 2	
3.1 Conditions of Title	2
3.2 Intentionally Omitted.	3
3.3 Intentionally Omitted.	3
3.4 Buyer’s Responsibility for Title Insurance	3
4. “AS-IS” PURCHASE; RELEASE OF SAN FRANCISCO	3
4.1 Buyer’s Independent Investigation	3
4.2 Property Disclosures	4
4.3 Entry and Indemnity	4
4.4 “As-Is” Purchase	5
4.5 Release of San Francisco	5
5. CONDITIONS PRECEDENT	6
5.1 Buyer’s Conditions Precedent	6
5.2 Contingency Period	7
5.3 Seller’s Condition Precedent	7
5.4 Failure of Seller’s Conditions Precedent	7
6. ESCROW AND CLOSING	8
6.1 Escrow	8
6.2 Closing Date	8
6.3 Deposit of Documents	8
6.4 Prorations	8
6.5 Title Company as Real Estate Reporting Person	9
7. RISK OF LOSS	9
7.1 Loss	9
7.2 Self-Insurance	10
8. EXPENSES	10
8.1 Expenses	10
8.2 Brokers	10
9. RESERVED	11

10.	GENERAL PROVISIONS	11
10.1	Notices	11
10.2	Successors and Assigns	11
10.3	Amendments	12
10.4	Authority of Buyer	12
10.5	Buyer's Representations and Warranties	12
10.6	Governing Law	12
10.7	Merger of Prior Agreements	12
10.8	Parties and Their Agents	13
10.9	Interpretation of Agreement	13
10.10	Reserved	13
10.11	Time of Essence	13
10.12	No Merger	13
10.13	Non-Liability of San Francisco Officials, Employees and Agents	13
10.14	Conflicts of Interest	13
10.15	Notification of Limitations on Contributions	14
10.16	Sunshine Ordinance	14
10.17	Tropical Hardwood and Virgin Redwood Ban	14
10.18	No Recording	14
10.19	Effective Date	14
10.20	Severability	15
10.21	Acceptance by Buyer	15
10.22	Counterparts	15
10.23	Cooperative Drafting.	15

## **LIST OF EXHIBITS**

Exhibit A	Depiction of the Property
Exhibit B	Description of the Property
Exhibit C	Form of Quitclaim Deed
Schedule 1	Seller's Disclosures

## **AGREEMENT FOR SALE OF REAL ESTATE**

(Parcel No. 9 of the  
Former Market Street Railway Company  
Transportation System Properties conveyed to  
the City and County of San Francisco and  
located in San Bruno, California)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of \_\_\_\_\_, 20\_\_\_\_, is by and between the **CITY AND COUNTY OF SAN FRANCISCO** (“**San Francisco**” or “**Seller**”), a California municipal corporation, by and through its Public Utilities Commission (“**SFPUC**”), and the **CITY OF SAN BRUNO**, a California municipal corporation (“**San Bruno**” or “**Buyer**”). Seller and Buyer are sometimes collectively referred to in this Agreement as the “**Parties**” or singularly as “**Party**.”

### **RECITALS**

**A.** San Francisco owns approximately 1.54 acres of real property identified as San Mateo County Assessor’s Parcel Numbers 093-340-060 and 093-340-020 in San Bruno. This property is also designated Parcel No. 9 (“**Parcel No. 9**” or the “**Property**”) of the lands granted to San Francisco under that certain deed entitled “Market Street Railway Company to the City and County of San Francisco Transportation System Properties dated as of September 29, 1944.” The SFPUC refers to the lands conveyed under the deed as the “**Former Muni Right of Way**.”

**B.** San Francisco and San Bruno are parties to a Revocable Permit dated August 5, 1999 (“**1999 Permit**”) whereby San Francisco licenses to San Bruno portions of Parcel No. 10 and portions of Parcels No. 9, 11, and 12 of the former Muni Right of Way (“**Permit Area**”). Under the Permit, San Bruno uses the Permit Area, including Parcel No. 9, to maintain a roadway, landscaping, and underground utility facilities on Huntington Avenue in San Bruno.

**C.** San Bruno seeks to construct a two-way bicycle track (“**Project**”) on Parcel No. 9, among other properties not owned by San Francisco. The Project will narrow the existing roadway median and vehicle travel lanes on Huntington Avenue to accommodate the construction of the bicycle track while also maintaining a pedestrian sidewalk along the northbound direction of the roadway.

**D.** San Bruno seeks to install and maintain the Project improvements on Huntington Avenue between Forest Lane and San Bruno Avenue on Parcel No. 9. San Bruno desires to purchase from San Francisco, through the SFPUC, Parcel No. 9 described and depicted on the attached **Exhibit A** and **Exhibit B** respectively, to facilitate San Bruno’s Project.

**E.** San Bruno acknowledges and agrees that **(i)** time is of the essence regarding its obligations to complete this sale transaction no later than two (2) years from the Effective Date of the Memorandum of Agreement dated August 14, 2023 between the Parties (“**Transaction Deadline**”); and **(ii)** but for San Bruno’s express promise to complete the sale agreement by the Transaction Deadline, San Francisco would not agree to enter into the Agreement or issue a two-year revocable license to allow San Bruno to install permanent improvements on Parcel No. 9.

**F.** The SFPUC determined that conveying the Property is not required for its utility needs. On \_\_\_\_\_, 2024, the SFPUC Commission adopted Resolution No. \_\_\_\_\_ declaring the Property as “surplus land” and “exempt surplus land” under the State Surplus Lands Act (California Government Code Section 54220, *et seq.*). Because the

Parties are public agencies, the State Surplus Lands Act noticing requirements do not apply to the sale of the Property as contemplated in this Agreement.

**G.** San Bruno desires to purchase Parcel No. 9, and San Francisco is willing to sell Parcel No. 9, subject to approval by the SFPUC's Commission and San Francisco's Board of Supervisors and Mayor, on the terms and conditions set forth below.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

### **1. SALE AND PURCHASE**

#### **1.1 Property Included in Sale**

Subject to the terms, covenants and conditions set forth in this Agreement, San Francisco agrees to sell the Property to San Bruno, and San Bruno agrees to purchase the Property from San Francisco, further identified as San Mateo County Assessor's Parcel Numbers 093-340-060 and 093-340-020 in located in the City of San Bruno, County of San Mateo, State of California, as more particularly described in the attached **Exhibit B**.

### **2. PURCHASE PRICE**

The purchase price for the Property is Five Thousand Dollars (\$5,000) (the "**Purchase Price**"). San Bruno shall pay the Purchase Price as follows:

**(a)** Buyer has deposited into escrow with Fidelity National Title Company ("**Title Company**"), 2099 Gateway Place, Suite 500, San Jose, CA 95110, Attention: Kassi Gutierrez, the sum of Five Thousand Dollars \$5,000 as an earnest money deposit ("**Deposit**"). The Deposit shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Deposit. At the Closing (defined below), the Deposit shall be paid to San Francisco and credited against the Purchase Price.

**(b)** The Deposit covers the entire Purchase Price, and Buyer shall therefore not owe a balance at the consummation of the purchase and sale contemplated by this Agreement (the "**Closing**").

All sums payable under this Agreement including the Deposit, shall be paid in immediately available funds of lawful money of the United States of America.

### **3. TITLE**

#### **3.1 Conditions of Title**

At the Closing San Francisco shall quitclaim interest in and to the Property to Buyer by quitclaim deed in the form attached as **Exhibit C** ("**Deed**"). Title to the Property shall be subject to **(a)** liens of local real estate taxes and assessments, **(b)** all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Buyer pursuant to Section 5.1 below, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, and **(c)** all items of which Buyer has actual or constructive notice or knowledge. All of the foregoing exceptions to title shall be referred to collectively as the "Conditions of Title." Without limiting the foregoing, Buyer acknowledges receipt of a

preliminary report issued by the Title Company under Order No. 54606-21-00954, dated August 6, 2021, covering the Property and approves all of the exceptions contained therein.

### **3.2 Intentionally Omitted.**

### **3.3 Intentionally Omitted.**

### **3.4 Buyer's Responsibility for Title Insurance**

Buyer understands and agrees that the right, title and interest in the Property shall not exceed that vested in San Francisco, and San Francisco is under no obligation to furnish any policy of title insurance in connection with this transaction. Buyer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. San Francisco shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters that an accurate survey or inspection might reveal. It is Buyer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

## **4. "AS-IS" PURCHASE; RELEASE OF SAN FRANCISCO**

### **4.1 Buyer's Independent Investigation**

Buyer represents and warrants to San Francisco that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Buyer's choosing, including the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including the existence, quality, nature and adequacy of San Francisco's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property, including, but not limited to, the structural elements, foundation, landscaping, and the electrical, mechanical, plumbing, sewage and utility systems, facilities and appliances, and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter 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.

(e) The suitability of the Property for Buyer's intended uses. Buyer represents and warrants that its intended use of the Property is to facilitate San Bruno's Project.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting the Property.

## 4.2 Property Disclosures

(a) California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(b) According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>. Pursuant to California Public Resources Code Section 2694, the Property is in a seismic hazard zone. By execution of this Agreement, Buyer acknowledges the disclosures set forth above.

(c) Buyer acknowledges that San Francisco has disclosed the matters relating to the Property referred to in the attached Schedule 1. Nothing contained in such schedule shall limit any of the provisions of this Article or relieve Buyer of its obligations to conduct a diligent inquiry under this Agreement, nor shall any such matters limit any of the provisions of Section 4.4 ["As-Is" Purchase] or Section 4.5 [Release of San Francisco].

## 4.3 Entry and Indemnity

In connection with any entry by Buyer or its Agents (defined in Section 10.8 [Parties and Their Agents] below) onto the Property, Buyer shall give San Francisco reasonable advance written notice of such entry and shall conduct such entry and any inspections in connection therewith so as to minimize, to the extent possible, interference with uses being made of the Property and otherwise in a manner and on terms and conditions acceptable to San Francisco. All entries by Buyer or its Agents onto the Property to perform any testing or other investigations that could affect the physical condition of the Property (including soil borings) or the uses thereof will be made only pursuant to the terms and conditions of San Francisco's standard form of license. Without limiting the foregoing, prior to any entry to perform any on-site testing, Buyer shall give San Francisco written notice thereof, including the identity of the company or persons who will perform such testing, the precise time and location of the testing, and the proposed scope of the testing. San Francisco shall have the right to approve, disapprove, or condition and limit the proposed testing, in San Francisco's sole discretion, within ten (10) business days after receipt of such notice. If Buyer or its agents, employees or contractors take any sample from the Property in connection with any approved testing, Buyer shall provide to San Francisco a portion of such sample being tested to allow San Francisco, if it so chooses, to perform its own testing. San Francisco or its representative may be present to observe any testing or other inspection performed on the Property. Buyer shall promptly deliver to San Francisco copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its agents, employees or contractors, but shall not deliver copies of any such reports to any other person or entity without Buyer's prior written approval. Buyer shall keep all test results and information strictly confidential, and shall indemnify, reimburse, defend and hold San Francisco harmless from and against any loss, cost, expense, or damage resulting from Buyer's failure to keep any information obtained from an inspection or testing of the Property strictly confidential; provided, however, Buyer shall not be liable if and to the extent Buyer is required to disclose such information pursuant to a court order. Buyer shall comply



with all laws, ordinances, rules, regulations, orders and the like in connection with any entry onto or testing of the Property.

Buyer shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its Agents, arising out of any entry or inspection of the Property in connection with the transaction contemplated by this Agreement, and Buyer shall provide San Francisco with evidence of such insurance coverage upon request from San Francisco.

To the fullest extent permitted under law, Buyer shall indemnify, defend and hold harmless San Francisco, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims and expenses (including reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to any entry on, under or about the Property by Buyer, its Agents, contractors and subcontractors in performing the inspections, testing, or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including any injuries or deaths to any persons (including Buyer's Agents) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

#### **4.4 "As-Is" Purchase**

BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SAN FRANCISCO IS SELLING AND BUYER IS PURCHASING SAN FRANCISCO'S INTEREST IN THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SAN FRANCISCO OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. SAN FRANCISCO DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

#### **4.5 Release of San Francisco**

As part of its agreement to purchase the Property in its "As-Is With All Faults" condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, San Francisco, its officers, employees, agents, contractors, and representatives, and their respective heirs, successors, legal representatives, and assigns, from any and all demands, claims, legal, or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs, or expenses whatsoever (including attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (a) Buyer's and its Agents and customer's past, present and future use of the Property, (b) the physical, geological, or environmental condition of the Property, including any Hazardous Material in, on, under, above or about the Property, and (c) any federal, state, local, or administrative law, rule, regulation, order or requirement applicable thereto, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**", also commonly known as the "**Superfund**" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("**SARA**") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "**RCRA**") (42 U.S.C. Sections 6901-6987),

the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the “**Clean Water Act**”) (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act (“**TSCA**”) (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the “**California Superfund**” law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the “**Business Plan Law**”) (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “**Proposition 65**”) (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER: AM

## **5. CONDITIONS PRECEDENT**

### **5.1 Buyer's Conditions Precedent**

Buyer's obligation to purchase the Property is conditioned upon the following:

(a) Buyer's review and approval of an updated preliminary title report, together with copies of the underlying documents.

(b) Buyer's review and approval of the physical condition of the Property.

(c) Buyer's review and approval of all zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Property.

(d) Buyer's review and approval of soils reports and other documents of significance to the Property in San Francisco's possession. San Francisco shall make available to Buyer at San Francisco's Real Estate Division's offices, without representation or warranty of any kind whatsoever, all non-privileged items in its files relating to the Property for Buyer's review and inspection, at Buyer's sole cost, during normal business hours. Notwithstanding the foregoing, Buyer's review shall not include a review of any of San Francisco's internal memoranda or reports, any privileged or confidential information, or San Francisco's appraisals of the Property, if any.

## 5.2 Contingency Period

Buyer shall have until 5:00 p.m. San Francisco Time on the date that is ten (10) business days after the Effective Date to review and approve or waive Buyer's Conditions (such period being referred to in this Agreement as the "**Contingency Period**"). If Buyer elects to proceed with the purchase of the Property, then Buyer shall, before the expiration of the Contingency Period, notify San Francisco in writing that Buyer has approved all such matters. If before the end of the Contingency Period Buyer fails to give San Francisco such written notice and fails to object to any of Buyer's Conditions, then Buyer shall be deemed to have waived Buyer's Conditions. Notwithstanding the foregoing, if Buyer objects to any of the matters contained within Section 5.1 within the Contingency Period, then San Francisco may, but shall have no obligation to remove or remedy any objectionable matter. If San Francisco agrees to remove or remedy the objectionable matter, it shall notify Buyer within ten (10) days following Buyer's notice of objection, and the Closing Date shall be delayed for so long as San Francisco diligently pursues such removal or remedy. If and when San Francisco elects not to remove or remedy the objectionable matter, which San Francisco may do at any time including following an initial election to pursue remedial or corrective actions, this Agreement shall automatically terminate, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations under this Agreement except as provided in Section 4.3 [Entry and Indemnity], Section 8.2 [Brokers], or Section 10.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

## 5.3 Seller's Condition Precedent

The following are conditions precedent to San Francisco's obligation to sell the Property to Buyer ("**Seller's Conditions Precedent**"):

(a) Buyer shall have performed all of its obligations pursuant to or in connection with this Agreement and all of Buyer's representations and warranties shall be true and correct.

(b) A resolution approving and authorizing the transactions contemplated by this Agreement and finding that the public interest or necessity demands or will not be inconvenienced by the sale of the Property, shall have been adopted by San Francisco's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted two weeks after SFPUC provides Buyer with documentation of the San Francisco Board of Supervisors' approval but no later than February 28, 2025.

(c) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (defined in Section 6.5 [Title Company as Real Estate Reporting Person] below).

## 5.4 Failure of Seller's Conditions Precedent

Each of Seller's Conditions Precedent are intended solely for the benefit of San Francisco. If any of Seller's Conditions Precedent are not satisfied as provided above, San Francisco may, at its option, terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations under this Agreement except as provided in Section 4.3 [Entry and Indemnity], Section 8.2 [Brokers], or Section 10.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

## 6. ESCROW AND CLOSING

### 6.1 Escrow

On the date within five (5) days after the Parties execute this Agreement, the Parties shall deposit an executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated by this Agreement. The Parties agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

### 6.2 Closing Date

The Closing shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Title Company on **(a)** the date which is thirty (30) days after the expiration of the Contingency Period and enactment of the Board of Supervisor's resolution referred to in Section 5.3(b) above, or if such date is not a business day, then upon the next ensuing business day, before 1:00 p.m. San Francisco time or **(b)** such other date and time as the Parties may mutually agree upon in writing (the "**Closing Date**"). Such date and time may not be extended without the prior written approval of both the Parties.

### 6.3 Deposit of Documents

**(a)** At or before the Closing, San Francisco shall deposit into escrow the following items:

**(i)** the duly executed and acknowledged Deed conveying the Property to Buyer subject to the Conditions of Title;

**(ii)** duly executed and acknowledged Easements;

**(b)** At or before the Closing, Buyer shall deposit into escrow the following items:

**(i)** the funds necessary to close this transaction; and

**(ii)** an original Certificate of Acceptance of Property ("**Certificate of Acceptance**") executed by Buyer and to be attached to the Deed prior to recordation.

**(c)** The Parties shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

**(d)** San Francisco shall deliver to Buyer originals (or to the extent originals are not available, copies) of any items that San Francisco is required to furnish Buyer copies of or make available at the Property pursuant to Section 5.1(e) above, within five (5) business days after the Closing Date.

### 6.4 Prorations

On or after the Closing Date, any real property taxes and assessments, water, sewer, and utility charges, amounts payable under any annual permits and/or inspection fees (calculated on the basis of the period covered), and any other expenses normal to the operation and maintenance

of the Property, shall all be prorated as of 12:01 a.m. on the date the Deed is recorded, on the basis of a three hundred sixty-five (365)-day year. The Parties by this Agreement agree that if any of the above described prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party.

## **6.5 Title Company as Real Estate Reporting Person**

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the “**Reporting Requirements**”) require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to San Francisco, in connection with the Closing. The Parties agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is by this Agreement designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and the Parties shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

## **7. RISK OF LOSS**

### **7.1 Loss**

San Francisco shall give Buyer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned or destroyed or damaged by fire or other casualty prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of San Francisco’s notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms hereof. If Buyer elects to terminate this Agreement or fails to give San Francisco notice within such ten (10)-day period that Buyer will proceed with the purchase, then this Agreement shall terminate at the end of such ten (10)-day period, the Title Company shall return the Deposit to Buyer, and neither party shall have any further rights or obligations under this Agreement except as provided in Section 4.3 [Entry and Indemnity], Section 8.2 [Brokers], or otherwise expressly provided in this Agreement. If Buyer elects to proceed with the purchase of the Property, then upon the Closing, Buyer shall receive a credit against the Purchase Price payable under this Agreement equal to the amount of any insurance proceeds or condemnation awards actually collected by San Francisco as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by San Francisco toward the restoration or repair of the Property. If the proceeds or awards have not been collected as of the Closing, then San Francisco shall assign such proceeds or awards to Buyer, except to the extent needed to reimburse San Francisco for sums expended to collect such proceeds or repair or restore the Property, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards.

### **(a) Minor Loss**

In the event there occurs any partial damage to the Property or destruction of any of the improvements thereon, or any condemnation proceeding with respect to a portion of the Property or improvements, between the date this Agreement is fully executed and the Closing Date, Buyer shall nonetheless be bound to purchase the Property for the full Purchase Price pursuant to the terms hereof, without regard to the occurrence or effect of any such damage,

destruction or condemnation proceeding, provided that the following conditions are satisfied: (i) the cost to repair any damage or destruction, or the diminution on the fair market value of the remaining Property, as the case may be, does not exceed Five Thousand Dollars (\$5,000), and (ii) upon the Closing, Buyer shall receive a credit against the Purchase Price equal to the amount of any insurance proceeds or condemnation awards that San Francisco collects as a result of any such event, plus the amount of any insurance deductible, but less any sums San Francisco expends toward the restoration or repair of the Property. If San Francisco has not collected the proceeds or awards as of the Closing Date, then San Francisco shall assign such amounts to Buyer, except to the extent necessary to reimburse San Francisco for sums San Francisco has expended to repair or restore the Property.

### **(b) Major Loss**

If the amount of the damage or destruction or condemnation as described above exceeds Five Thousand Dollars (\$5,000), then Buyer may, at its option to be within ten (10) business days of San Francisco's notice of the occurrence of such event, either terminate this Agreement or consummate the purchase for the full Purchase Price pursuant to the terms hereof. If Buyer elects to terminate this Agreement or fails to give San Francisco notice within such ten (10)-day period the Buyer will proceed with the purchase, then the Deposit shall be returned to Buyer and neither party shall have any further rights or obligation under this Agreement except as provided in Section 4.2 [Property Disclosures], Section 8.1 [Expenses], or Section 10.4 [Authority of Buyer] or otherwise expressly provided in this Agreement. If Buyer elects to proceed with the purchase of the Property, then upon the Closing, there shall be a credit against the Purchase Price due under this Agreement equal to the amount of any insurance proceeds or condemnation awards collected by San Francisco as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, but less any sums expended by San Francisco toward the restoration or repair of the Property. If San Francisco has not collected the proceeds or awards as of the Closing Date, then San Francisco shall assign such sums to Buyer, except to the extent necessary to reimburse San Francisco for any sums San Francisco expended to repair or restore the Property.

### **7.2 Self-Insurance**

Notwithstanding anything to the contrary above, Buyer acknowledges that San Francisco self-insures and shall not be obligated to purchase any third-party commercial liability insurance or property insurance.

## **8. EXPENSES**

### **8.1 Expenses**

Buyer shall pay the cost of the premium of a title insurance policy, all escrow and recording fees for the sale and San Francisco's cost of obtaining a General Plan Referral from the San Francisco Planning Department. San Francisco shall pay any applicable documentary transfer taxes on the recordation of the Deed and other closing costs customarily paid by sellers of real property in the City and County of San Francisco.

### **8.2 Brokers**

The Parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or San Francisco, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the

indemnified party from, and hold the indemnified party against, any and all costs, damages, claims, liabilities, or expenses (including reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

## **9. RESERVED**

## **10. GENERAL PROVISIONS**

### **10.1 Notices**

Any notice, consent, or approval required or permitted to be given under this Agreement shall be in writing and shall be given by (a) hand delivery, against receipt, (b) reliable next-business-day courier service that confirms the delivery, or (c) 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):

#### **SELLER:**

San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director  
Re: Parcel No. 9 Sale, San Bruno

#### **BUYER:**

Alex McIntyre, City Manager  
City of San Bruno  
567 El Camino Real  
San Bruno, CA 94066

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: Real Estate Transactions Team  
Re: Parcel No. 9 Sale, San Bruno

and

Trisha Ortiz  
City Attorney  
Richards, Watson & Gershon  
One Sansome Street, Suite 2850  
San Francisco, CA 94104  
tortiz@rwglaw.com

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. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one party to the other shall be for convenience of communication only; neither party may give official or binding notice orally or by e-mail or facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an oral notice or an e-mail or facsimile copy of the notice.

### **10.2 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and their respective successors, heirs, legal representatives, administrators and assigns. Buyer's rights and obligations under this Agreement shall not be assignable without the prior written consent of San Francisco; provided, however, even if San Francisco approves any such proposed assignment, in no event shall Buyer be released of any of its obligations under this Agreement.

### **10.3 Amendments**

This Agreement may be amended or modified only by a written instrument signed by the Parties.

### **10.4 Authority of Buyer**

Buyer represents and warrants to San Francisco that Buyer is a California municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of California. Buyer further represents and warrants to San Francisco that this Agreement and all documents executed by Buyer, which are to be delivered to San Francisco at Closing: **(a)** are or at the time of Closing will be duly authorized, executed and delivered by Buyer; **(b)** are or at the time of Closing will be legal, valid, and binding obligations of Buyer; and **(c)** do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained in this Agreement or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date.

### **10.5 Buyer's Representations and Warranties**

Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

**(a)** Buyer is a California municipal corporation, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Buyer has duly authorized by all necessary action the execution, delivery, and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

**(b)** Buyer represents and warrants to San Francisco that it has not been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it shall immediately notify San Francisco of same and the reasons therefore together with any relevant facts or information requested by San Francisco. Any such suspension, debarment, discipline, or prohibition may result in the termination or suspension of this Agreement.

**(c)** No document or instrument furnished or to be furnished by the Buyer to San Francisco in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

### **10.6 Governing Law**

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and San Francisco's Charter and Administrative Code.

### **10.7 Merger of Prior Agreements**

This Agreement, together with the exhibits hereto, contain any and all representations, warranties, and covenants made by the Parties and constitutes the entire understanding between the Parties to this Agreement with respect to the subject matter hereof. Any prior



correspondence, memoranda, or agreements are replaced in total by this Agreement together with the exhibits to this Agreement.

### **10.8 Parties and Their Agents**

The term “**Buyer**” as used in this Agreement shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer shall be joint and several. As used in this Agreement, the term “**Agents**” when used with respect to either party shall include the agents, employees, officers, contractors, and representatives of such party.

### **10.9 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 in this Agreement. 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 in this Agreement. In addition, each party has been 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. Use of the word “including” or similar words will not be construed to limit any general term, statement, or other matter in this Agreement, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

### **10.10 Reserved**

### **10.11 Time of Essence**

Time is of the essence with respect to the performance of the Parties’ respective obligations contained in this Agreement.

### **10.12 No Merger**

The obligations contained in this Agreement shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

### **10.13 Non-Liability of San Francisco Officials, Employees and Agents**

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

### **10.14 Conflicts of Interest**

Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of Article III, Chapter 2 of San Francisco’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 which constitute a violation of said

provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify San Francisco.

### **10.15 Notification of Limitations on Contributions**

Through its execution of this Agreement, Buyer 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 San Francisco for the selling or leasing of any land or building to or from San Francisco whenever such transaction would require the approval by a San Francisco elective officer, the board on which that San Francisco elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to **(a)** San Francisco elective officer, **(b)** a candidate for the office held by such individual, or **(c)** a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Buyer further acknowledges that the prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer. Additionally, Buyer acknowledges that Buyer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Buyer further agrees to provide to San Francisco the names of each person, entity or committee described above.

### **10.16 Sunshine Ordinance**

Buyer understands and agrees that under San Francisco'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 San Francisco under this Agreement are public records subject to public disclosure. Buyer by this Agreement acknowledges that San Francisco may disclose any records, information and materials submitted to San Francisco in connection with this Agreement.

### **10.17 Tropical Hardwood and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

### **10.18 No Recording**

Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer.

### **10.19 Effective Date**

As used in this Agreement, 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 Buyer, **(b)** by a duly adopted resolution of San Francisco's Public Utilities Commission, and **(c)** if required by San Francisco's Charter, a duly adopted resolution of San Francisco's Board of Supervisors and Mayor.

## **10.20 Severability**

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

## **10.21 Acceptance by Buyer**

This Agreement shall be null and void unless it is accepted by Buyer and two (2) fully executed copies of this Agreement are returned to San Francisco on or before 5:00 p.m. San Francisco time, two weeks after SFPUC provides Buyer with documentation of the San Francisco Board of Supervisors' approval but no later than February 28, 2025.

## **10.22 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.

## **10.23 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF SELLER HAS AUTHORITY TO COMMIT SELLER TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF SELLER'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF SELLER UNDER THIS AGREEMENT ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF SELLER'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF SELLER SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON SELLER.

*[SIGNATURES ON FOLLOWING PAGE]*

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

SELLER:

CITY AND COUNTY OF SAN FRANCISCO,  
a California municipal corporation

By: \_\_\_\_\_  
Dennis J. Herrera, General Manager  
San Francisco Public Utilities  
Commission

BUYER:

CITY OF SAN BRUNO,  
a California municipal corporation

By: \_\_\_\_\_  
DocuSigned by:  
*Alex McIntyre*  
B0012F785CCB4C4...  
Alex McIntyre, City Manager

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Anna Parlato Gunderson  
Deputy City Attorney

APPROVED AS TO FORM:

TRISHA ORTIZ, City Attorney

By: \_\_\_\_\_  
DocuSigned by:  
*Trisha Ortiz*  
60CEDB7661684C2...

ATTEST:

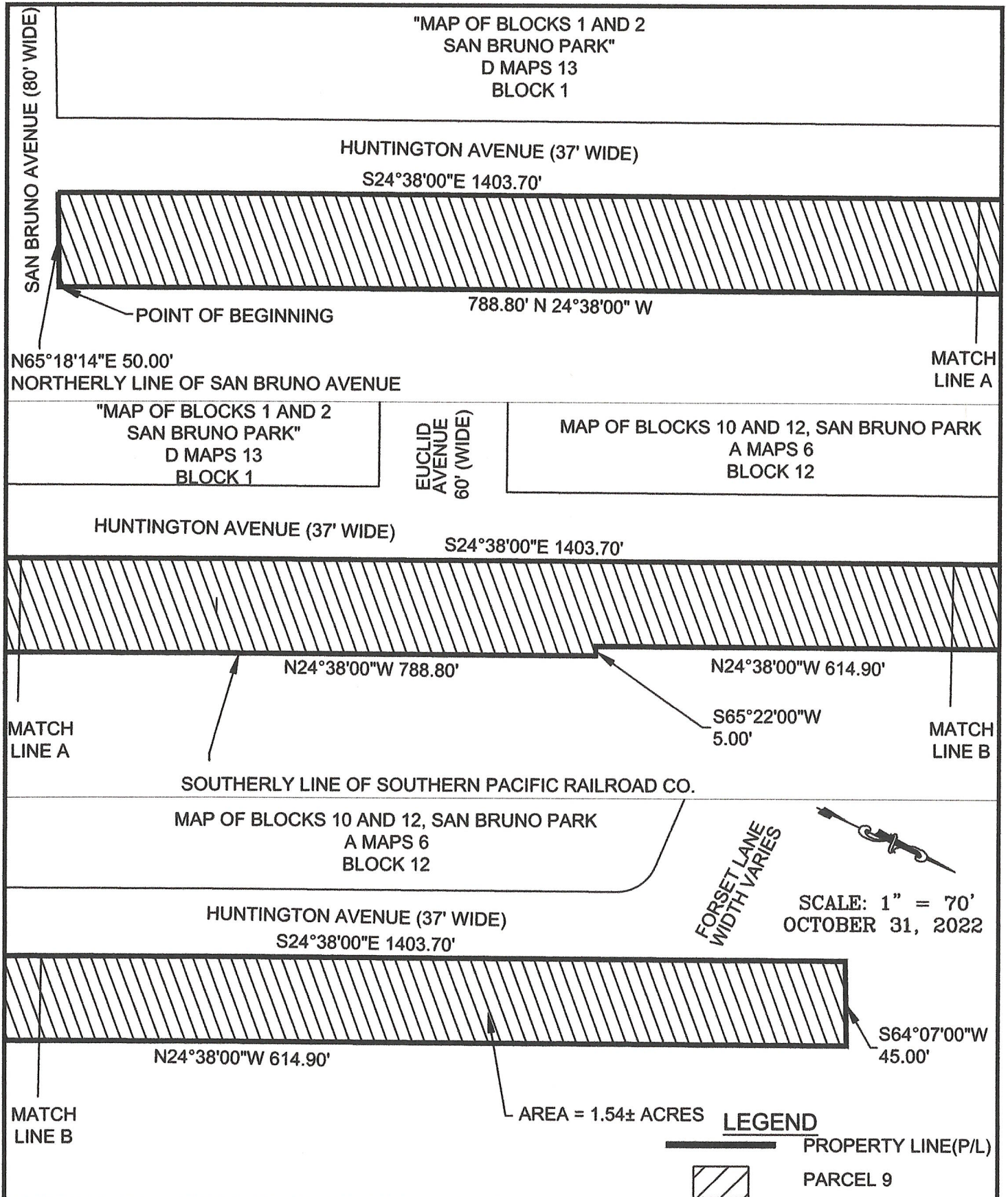
LUPITA HUERTA, City Clerk

By: \_\_\_\_\_  
DocuSigned by:  
*Lupita Huerta*  
B28CD14F91514ED...


**EXHIBIT A**

**DEPICTION OF THE PROPERTY**

*[see attached]*



PLAT TO ACCOMPANY DESCRIPTION  
PARCEL 9  
LANDS OF CITY AND COUNTY OF SAN FRANCISCO  
(FOR REAL ESTATE APPRAISAL PURPOSES)  
SAN BRUNO COUNTY OF SAN MATEO, CA

  
**Professional Land Services**  
LAND DEVELOPMENT SPECIALISTS

(650) 244-9667  
jgmahoney@pls-corp.com  
901 Sneath Ln, Suite 117  
San Bruno, CA 94066

**EXHIBIT B**

**DESCRIPTION OF THE PROPERTY**

*[see attached]*



**PROPERTY DESCRIPTION**  
**PARCEL 9-CITY AND COUNTY OF SAN FRANCISCO**  
**(FOR REAL ESTATE APPRAISAL PURPOSES)**

A Parcel of land designated as PARCEL 9 as described in Deed from Market Street Railway Company conveyed to City and County of San Francisco recorded in Book 1161 at Page 1 in the Official Records of San Mateo County on September 29, 1944, and said Parcel 9 being situate in the City of San Bruno, County of San Mateo, State of California described as follows:

BEGINNING at the point of intersection of the westerly boundary line of the right of way of the Southern Pacific Railroad Company with the northerly boundary line of San Bruno Avenue;

1. Thence along the easterly boundary line of said PARCEL 9 and the westerly boundary line of said Southern Pacific Railroad Company, N24° 38"W, 788.80 feet;
2. Thence continuing along the easterly boundary line of said PARCEL 9 and westerly boundary line of said Southern Pacific Railroad Company, S65° 22'00"W, 5.00 feet;
3. Thence along the easterly boundary line of said PARCEL 9 and the westerly boundary line of said Southern Pacific Railroad Company, N24° 38"W, 614.90 feet to the southerly boundary line of Tanforan Park;
4. Thence along the northerly boundary line of said PARCEL 9 and the southerly boundary line of PARCEL 8 as described in Deed from Market Street Railway Company conveyed to City and County of San Francisco recorded in Book 1161 at Page 1 in the Official Records of San Mateo County on September 29, 1944, S64° 07"W, 45.00 feet;
5. Thence along the westerly boundary line of said PARCEL 9, S24° 38"E, 1403.70 feet to the northerly boundary line of San Bruno Avenue;
6. Thence along the southerly boundary line of said PARCEL 9 and the northerly boundary line of San Bruno Avenue, N64° 07"E, 50 .00 feet to westerly boundary line of the right of way of the Southern Pacific Railroad Company and point of BEGINNING of this description.

**SUBJECT TO:** A CITY OF SAN BRUNO PUBLIC HIGHWAY EASEMENT AS DESCRIBED IN DEED FROM UNITED RAILROADS TO THE CITY OF SAN BRUNO AS RECORDED IN BOOK 262 OF DEEDS AT PAGE 289 IN THE OFFICE OF THE RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA.

**END OF DESCRIPTION**

Containing 1.54 acres, more or less



**PROPERTY DESCRIPTION**  
**PARCEL 9-CITY AND COUNTY OF SAN FRANCISCO**  
**(FOR REAL ESTATE APPRAISAL PURPOSES)**  
**(Continued)**

Also, all as shown on "PLAT TO ACCOMPANY PROPERTY DESCRIPTION" attached hereto and made apart hereof.

Prepared by:

Michael S. Mahoney  
Michael S. Mahoney 10/31/2022  
PLS # 5577



**EXHIBIT C**

**FORM OF QUITCLAIM DEED**

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

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

and

San Francisco Public Utilities Commission  
Real Estate Services Division  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director

MAIL TAX STATEMENTS TO:

City of San Bruno

\_\_\_\_\_  
Attn: \_\_\_\_\_

The undersigned hereby declares this instrument to be exempt  
from Recording Fees (CA Govt. Code § 27383) and  
Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and  
S.F. Bus. & Tax Reg. Code § 1105)

Assessor Parcel No. 093-340-060  
Assessor Parcel No. 093-340-020

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

**QUITCLAIM DEED**

(San Mateo County Assessor’s Parcel Numbers 093-340-060 and 093-340-020)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby  
acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a California municipal  
corporation, pursuant to Resolution No. \_\_\_\_\_, adopted by the Board of Supervisors  
on \_\_\_\_\_, 2024 and approved by the Mayor on \_\_\_\_\_, 2024, hereby  
RELEASES, REMISES AND QUITCLAIMS to the CITY OF SAN BRUNO, a California  
municipal corporation, any and all right, title and interest San Francisco may have in and to the  
real property located in the City of San Bruno, State of California, described on the attached  
Exhibit B and made a part of this quitclaim deed.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO PENICK  
Director of Property

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Anna Parlato Gunderson  
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: \_\_\_\_\_  
R. Edward Peterson  
Chief Surveyor

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

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

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)

**SCHEDULE 1**

**SELLER'S DISCLOSURES**

1. 1999 Permit
2. BART Easement

**1999 Permit**

*[see attached]*

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
REVOCABLE PERMIT**

\_\_\_\_\_  
(Permit #)

**THIS REVOCABLE PERMIT** (this "Permit") dated for reference purposes only as of August 5, 1998, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City"), acting by and through its Public Utilities Commission ("PUC"), and **CITY OF SAN BRUNO**, a municipal corporation ("Permittee").

City and Permittee agree as follows:

1. **License.** City confers to Permittee a revocable, personal, non-exclusive and non-possessory privilege to enter upon and use that certain real property owned by City situated in the County of San Bruno, State of California, more particularly described in Exhibit A attached hereto (the "**Permit Area**"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. The Permit Area is shown generally on Drawing No. B-4707 attached hereto as Exhibit B. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws.

THE PRIVILEGE GIVEN TO PERMITTEE UNDER THIS PERMIT IS EFFECTIVE ONLY INSOFAR AS THE RIGHTS OF CITY IN THE PERMIT AREA ARE CONCERNED, AND PERMITTEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE PERMIT AREA. WITHOUT LIMITING THE FOREGOING, THIS PERMIT IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN DEED DATED SEPTEMBER 29, 1944, AND RECORDED SEPTEMBER 29, 1944, IN VOLUME 1611, PAGE 1 OF OFFICIAL RECORDS OF SAN MATEO COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE PERMIT AREA, A COPY OF WHICH IS ATTACHED TO THIS PERMIT AS EXHIBIT C (THE "DEED"), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE PERMIT AREA (COLLECTIVELY, WITH THE DEED, THE "RECORDED DOCUMENTS"). PERMITTEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE PERMIT AREA, INCLUDING ANY APPROVALS, PERMITS, CONSENTS OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. PERMITTEE COVENANTS AND AGREES, FOR THE BENEFIT OF CITY, THAT PERMITTEE SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY PERMITTEE ON THE PERMIT AREA

PURSUANT TO THIS PERMIT, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PERMIT AREA FOR PERMITTEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON PERMITTEE'S RIGHTS UNDER THIS PERMIT, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, PERMITS, CONSENTS OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS PERMIT.

**2. Use of Permit Area.**

(a) **Permitted Acts.** Permittee may enter and use the Permit Area for the sole purpose of roadway, landscaping and installation of underground utility facilities in strict accordance with Section 3(a) hereof, and for no other purpose whatsoever.

(b) **Subject to City Uses.** Permittee is aware that the Permit Area constitutes a portion of City's water pipeline delivery system. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's existing and future use of the Permit Area for municipal and other purposes. City shall in no way be liable for any damage or destruction to Permittee's property and/or improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. Permittee shall, at City's request, immediately remove any property or improvements on the Permit Area to allow City access to the pipelines. In the event City deems it necessary, in City's sole discretion, City shall have the right to remove any such property or improvements and City shall not be responsible for restoring or returning same to its prior condition.

**3. Installation of Facilities.** Permittee may install certain facilities consisting of roadway, landscaping, and underground utility facilities which include electric, telephone, cable television and streetlight conduits and wires on the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of City:

(a) **Approval of Plans and Specifications.** Permittee shall install the permitted facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by PUC and attached hereto as Exhibit D. The plans and specifications may be revised or amended only with prior written approval of PUC after PUC'S Bureau of Environmental and Regulatory Management has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Permits and Approvals.** Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory



agencies and other third parties that are required to commence, complete and maintain the permitted work. Promptly upon receipt of such approvals, Permittee shall deliver copies of them to PUC. Permittee recognizes and agrees that no approval by PUC for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

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

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

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

(f) **Work Schedule.** Permittee must begin installation work, if at all, within ninety (90) days after the commencement of the term of this Permit. At least five (5) days prior to the commencement of any work on the Permit Area, Permittee shall notify Mr. Ben Ayala, Construction Inspector, at (415) 872-5908, of the date such work shall commence and the intended construction schedule. Notwithstanding the approval of such schedule by PUC, the Construction Inspector shall have the right to require Permittee to adjust such schedule from time to time. All work must be performed during regular working hours (Monday through Friday) between 8:00 a.m. to 4:30 p.m., exclusive of City holidays. Any work performed during any other time or day must be preapproved by the PUC at least forty-eight (48) hours prior to commencing such work. In connection with such approval, City shall have the right to charge Permittee additional inspection fees payable prior to

PUC's approval of the request. Permittee shall complete all work no later than 180 days after the commencement of the term of this Permit, subject to unavoidable delays. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, strikes, lockouts, other labor disputes, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of Permittee. Permittee shall have the right to apply to City for a one-time extension for a period not to exceed 90 days. City may charge a non-refundable fee of \$100 to process such application for an extension.]

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

(h) **Installation of Above-Ground Markers.** Permittee shall install above-ground markers identifying the location of any underground facilities installed pursuant to this Permit. The location, type and installation of markers and identifying information on the markers shall be subject to the prior written approval of PUC.

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

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

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

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

(m) **Cathodic and Other Protection.** City may adopt from time to time such rules and

regulations with regard to Permittee's facilities and operations hereunder as City may determine are necessary or appropriate, in City's sole discretion, to safeguard against corrosion of, or other damage to, City's pipelines and related facilities. Permittee shall immediately comply with all such rules and regulations upon receipt of a copy thereof.

(n) **Type of Pipe.** Permittee shall use steel, ductile iron or cast iron pipe for the entire right-of-way crossing.

(o) **Distance Between Pipes.** The clear distance between the bottom of Permittee's facilities and the top of City's existing and any proposed future water lines shall not be less than twelve inches (12") and Permittee's installed facilities shall be placed at a constant grade for the entire crossing over the Permit Area.

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

(a) **Improvements.** Except as otherwise expressly provided herein, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under or about the Permit Area, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Permit Area, unless Permittee first obtains PUC's prior written consent, which PUC may give or withhold in its sole and absolute discretion. For purposes hereof, asphalt, concrete and cementitious concrete driveways, sidewalks and parking areas, sheds and storage facilities, and fences shall be deemed "improvements."

(b) **Trees and Other Plantings.** Permittee shall not plant any trees or other vegetation in or on the Permit Area, except as otherwise expressly provided herein.

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

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

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

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

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

(g) **Use of Adjoining Land**. Permittee acknowledges that the privilege given under this Permit shall be limited strictly to the Permit Area. Permittee shall not traverse over or otherwise use any adjoining lands of City.

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

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

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

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

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

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

## 5. **Permit Fee(s).**

(a) Permittee shall pay to City a one-time non-refundable permit fee in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) to cover City's processing, inspection and other administrative costs. Such fee is payable at such time as Permittee signs and delivers this Permit to City. Payment shall be made by good check payable to the City and County of San Francisco and delivered to City in care of the Director of the Bureau of Commercial Land Management of the San Francisco Public Utilities Commission at the address for notices to City specified in Section 29 hereof or such other place as City may designate in writing. Without limiting its right to revoke this Permit or any of its other rights hereunder, City may at any time, upon not less than 30 days' written notice to Permittee, charge a use fee for the privilege given hereunder if City establishes a general policy

for charging fees for the use permitted hereunder, and City may increase such fee from time to time in accordance with such policy.

6. **Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on the date on which this Permit is executed and delivered by City following PUC authorization and approval and the receipt of all fees and security required to be provided hereunder (the "Commencement Date"), and shall immediately expire upon oral or written notice from City revoking this Permit. City may at its sole option freely revoke this Permit at any time without cause or liability, and without any obligation to pay any consideration to Permittee.

7. **Security for Performance.** INTENTIONALLY OMITTED.

8. **Insurance.**

(a) Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Permit Area insurance as follows: (i) General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations; (ii) Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and Sudden and Accidental pollution; and (iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than \$1,000,000 each accident. In lieu of the foregoing insurance, Permittee can elect to self-insure by providing City adequate evidence of its self-insurance program. If Permittee elects to self-insure, Permittee shall give PUC written notice of any significant change in or the depletion of its self-insurance fund.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its officers, agents and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Permittee's activities (and Permittee's Agents and Invitees) under this Permit (excluding nonnegligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to City.

(d) Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

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

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

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

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

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

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

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

**11. Monuments. INTENTIONALLY OMITTED.**

**12. Removal or Alteration of Facilities.** Without limiting City's rights hereunder, Permittee shall promptly, at City's written request, alter or remove at its sole expense any and all facilities, improvements, plantings or other property installed or placed in, on, under or about the Permit Area by Permittee, as may be necessary to avoid any actual or potential interference with any of City's pipelines, power lines, facilities or other structures now or later constructed, or with the maintenance thereof or with any other operations or land uses by City. In the request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice Permittee fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge Permittee all costs and expenses incurred by City in performing the work. Such amount shall be due and payable upon City's demand. In the event of an emergency City may, at its sole option and without notice, alter, remove or protect at Permittee's sole expense, any and all facilities, improvements, plantings or other property installed or placed in, on, under or about the Permit Area by Permittee. The owner of such utility facilities shall, upon written or oral notice by City that an emergency exists, take immediate action at its sole expense to protect, remove or relocate such facilities as required by City to meet the emergency.

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

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



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

**16. City's Right to Cure Defaults by Permittee.** If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area, remove or alter facilities or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' experts' and consultants' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

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

**18. Indemnity.** Permittee shall indemnify, defend, reimburse and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Claims**"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of Permittee, its officers, directors, members, employees, agents, consultants, contractors or subcontractors (collectively, "**Agents**"), its invitees, guests or business visitors (collectively, "**Invitees**"), or third persons, relating to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, its Agents or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about

the Permit Area, any improvements or into the environment, or (e) any failure by Permittee to faithfully observe or perform any terms, covenants or conditions of the Recorded Documents to the extent that such terms, covenants or conditions relate to or are triggered by the work to be performed or the facilities to be installed pursuant to this Permit; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

**19. Waiver of Claims.**

(a) Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by Permittee.

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

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

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not

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

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

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

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

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

**20. As Is Condition of Permit Area; Disclaimer of Representations.** Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Permit Area. Without limiting the foregoing, this Permit is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title

matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

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

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

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

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

**25. Burma (Myanmar) Business Prohibition.** Permittee is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Permittee to comply with any of its requirements shall be deemed a material breach of this Permit. In the event Permittee fails to comply in good faith with any such requirements, Permittee shall be liable for liquidated damages for each violation in an amount equal to Permittee's net profit under this Permit, or 10% of the total amount of the Permit fee, or \$1,000, whichever is greatest. Permittee acknowledges and agrees the liquidated damages assessed shall be payable to the City upon demand.

**26. Non-Discrimination in City Contracts.**

**Covenant Not to Discriminate.** In the performance of this Permit, Permittee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status

(AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Permittee, in any of Permittee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee.

**27. Tropical Hardwoods and Virgin Redwoods.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product.

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

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

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

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

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

<b>City or PUC:</b>	Bureau of Commercial Land Management Public Utilities Commission 1155 Market St., 5th Flr. San Francisco, CA 94103 Attn: Director
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**Permittee:** City of San Bruno  
 Department of Public Works  
 567 El Camino Real  
 San Bruno, CA 94066-4299  
 Attn: Abbas Masjedi

Notices herein shall be deemed given two (2) days after the date when they shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

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

**31. Pesticide Prohibition.** Permittee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Permittee to submit to the PUC an integrated pest management (IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the term of this Permit, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

**32. Conflict of Interest.** Permittee sates that it is familiar with the provisions of Section 15.103 and C8.105 of the San Francisco Charter and certifies that is knows of no facts which would constitute a violation of such provisions. Permittee further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Permittee believes any officer or employee of the City presently has or will have in this Permit or in the performance thereof.

**33. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No wavier shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. (c) Except as

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

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

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

**PERMITTEE:**

**CITY OF SAN BRUNO,**  
a municipal corporation

By: 

Name: Frank E. Hedley

Its: City Manager

**CITY:**

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

  
General Manager

Public Utilities Commission

Date: 7/28/99

**APPROVED AS TO FORM:**

**LOUISE H. RENNE**

City Attorney

By: 

Deputy City Attorney

**APPROVED AS TO FORM:**

  
CITY ATTORNEY

**Authorized by**

**Public Utilities Commission**

Resolution No. 98-0214

Adopted August 25, 1998

Attest   
Secretary  
Public Utilities Commission



**EXHIBIT A**

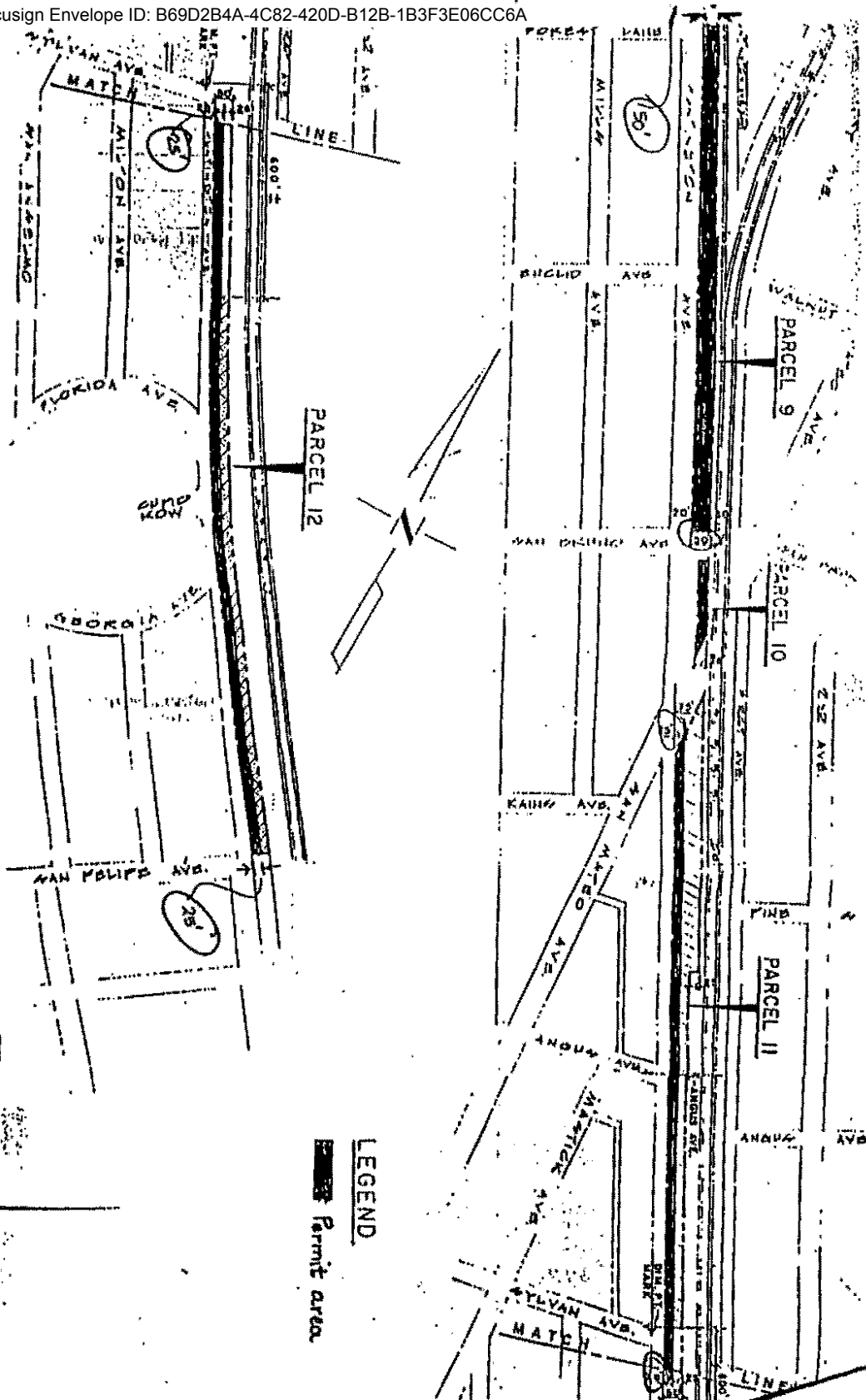
**DESCRIPTION OF PERMIT AREA**

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

Parcel 10 and a portion of Parcels 9, 11 and 12 of the  
former Muni Railway right of way, according to SFPUC  
records and as shown on Drawing No. B-4707 attached  
hereto as Exhibit B and made a part hereof.

**EXHIBIT B**

**DRAWING NO. B-4707**



**CITY AND COUNTY OF SAN FRANCISCO  
PUBLIC UTILITIES COMMISSION**

**REVOCABLE PERMIT TO CITY OF SAN BRUNO FOR ROADWAY,  
LANDSCAPING AND INSTALLATION OF UNDERGROUND UTILITIES**

**POR. OF PAR. 9, 10, 11 AND 12 MUNI RW**

**SAN MATEO COUNTY**

BY	REVIEWED	DRAWN BY	SCALE <i>NO SCALE</i>	DRAWING NO.
APPROVED		CH. BY	DATE <i>7/21/99</i>	<b>B-4707</b>
		REV BY	DATE	

**EXHIBIT C**

**DEED**

DEED

MARKET STREET RAILWAY COMPANY

TO

City & County of San Francisco

Transportation System Properties

Date of September 28, 1944

48

CLERK'S CERTIFICATE.

State of California,  
City and County of San Francisco.—ss.

I, DAVID A. BARRY, Clerk of the Board of Supervisors, of the City and County of San Francisco, do hereby certify that the annexed Resolution No. 4218 (Series 1939) is a full, true and correct copy of the original thereof on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the official seal of the City and County this 28 day of Sept. 1944.

(Seal) DAVID A. BARRY,  
Clerk of the Board of Supervisors,  
City and County of San Francisco.

RECORDING PARTICULARS.

Recorded in the office of the County Recorder of the City and County of San Francisco at 9 A.M., September 29, 1944, in Liber 4150 of Official Records at page 1.

Recorded in the office of the County Recorder of the County of San Mateo at 9 A.M., September 29, 1944, in Volume 1161 of Official Records at page 1.

**Parcel 9.**

Beginning at the point of intersection of the westerly line of the right of way of the Southern Pacific Railroad Company with the northerly line of San Bruno Lane; thence along the westerly line of the right of way of the Southern Pacific Railroad Company north  $24^{\circ} 38'$  west 788.8 feet; thence south  $65^{\circ} 22'$  west 5 feet; thence along the westerly line of the right of way of the Southern Pacific Railroad Company north  $24^{\circ} 38'$  west 614.9 feet to the southerly line of Tanforan Park; thence south  $64^{\circ} 07'$  west 45 feet; thence south  $24^{\circ} 38'$  east 1403.7 feet to the northerly line of San Bruno Lane; thence north  $64^{\circ} 07'$  east 50 feet along the northerly line of San Bruno Lane to the westerly line of the right of way of the Southern Pacific Railroad Company and the point of beginning.

Containing 1.54 acres, more or less.

**Parcel 11.**

In the Buri Buri Rancho, beginning at the point of intersection of the southwesterly line of the right of way of the Southern Pacific Railroad Company with the easterly line of the San Bruno Road; thence along said right of way south  $25^{\circ} 10'$  east 800 feet; thence at a right angle south  $64^{\circ} 50'$  west 25 feet; thence at a right angle south  $25^{\circ} 10'$  east 1126.50 feet to the point of intersection of said course with the northerly line of the 110 acre tract now or formerly belonging to D. O. Mills; thence along said northerly line south  $83^{\circ} 30'$  west 52.78 feet to a stake; thence north  $25^{\circ} 10'$  west 1732.72 feet to the easterly line of the San Bruno Road; thence along said road north  $1^{\circ} 10'$  west 184.38 feet to the point of beginning.

Containing 2.508 acres.

**EXHIBIT D**

**APPROVED PLANS AND SPECIFICATIONS**

**PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. 98-0214

WHEREAS, The City and County of San Francisco owns certain real property under the jurisdiction of the San Francisco Public Utilities Commission in San Mateo County; and

WHEREAS, The City of San Bruno has requested to enter into an agreement for roadway, landscaping, and installation of underground utility facilities which include placement of electrical conduits, CATV conduits, and telephone conduits within the Permit Area; and

WHEREAS, BERM has determined, and completed a certification, that the project described by the proposed agreement is categorically exempt from the requirements of the California Environmental Quality Act; and

WHEREAS, This project is a Rule 20A and Rule 32A.1, Overhead to Underground Conversion Project; now, therefore, be it

RESOLVED, That this Commission hereby approves the terms and conditions and authorizes the execution of that certain Permit to the City of San Bruno, as Permittee, for the purpose of roadway, landscaping, and installation of underground utility facilities which will include placement of electrical conduits, telephone conduits and CATV conduits within the Permit Area located in San Bruno, San Mateo County, as set forth in the Permit of certain real property under the jurisdiction of the Public Utilities Commission, as shown on Exhibit B of the Permit, commencing upon authorization and approval of said permit by Commission and expiring upon oral or written notice from City revoking this Permit; and be it

FURTHER RESOLVED, That all actions authorized by this resolution and heretofore taken by any City official in connection with such Agreement are hereby ratified, approved and confirmed by this Commission; and be

FURTHER RESOLVED, That upon approval by this Commission, the General Manager of Public Utilities is hereby authorized and directed to execute said Permit.

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

AUG 25 1998



*Secretary, Public Utilities Commission*



DESIGNED: STAFF  
DRAWN: STAFF  
CHECKED: R.L.P.  
SCALE: AS SHOWN  
DATE: AUG 1988  
SHEET NO.  
**1** OF **59**  
JOB NO. 447



[illegible]

**COMPOSITE PLAN**

PUBLIC UTILITIES COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO (CCSF)  
LAND ENGINEERING

**51 SAN FELINO**

**IMPROVEMENT PLAN**  
**HUNTINGTON AVE., UNDERGROUNDING**  
**RULE 20**

### COMPOSITE PLAN

**CALIFORNIA**

# UDI-TETRAD

CONSULTING ENGINEERS, INC.

Engineers      Planners      Managers

**Civil - Power - Communications**

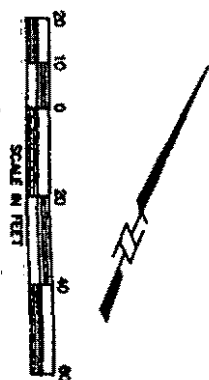
5525 PACIFIC BLVD. (925) 874-0218  
PACIFIC, CA 94653 FAX (925) 874-0243

[illegible]



[illegible]

**1ST AVENUE**



BIRMINGHAM COUNTY AND CLARK COUNTY										
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DATE	-	0	1	2	3	4	5	6	7	8
TIME	-	0	1	2	3	4	5	6	7	

**PINE STREET**

<div style="text-align: right;"> <b>PUBLIC UTILITIES COMMISSION</b>  <b>CITY AND COUNTY OF SAN FRANCISCO (CCSF)</b>  <b>LAND ENGINEERING</b> </div>	
<div style="text-align: right;"> <b>DATE RECEIVED</b>  <b>PROJECT KEY WORDS</b> </div>	<div style="text-align: right;"> <input checked="" type="checkbox"/> REVIEWED  <input type="checkbox"/> REVISED AS NOTED  <input type="checkbox"/> AMEND AND RESUBMIT  <input type="checkbox"/> UNACCEPTABLE                 </div>
<div style="text-align: right;"> <b>1</b> PROJECT DESCRIPTION AND SCOPE                 </div>	<div style="text-align: right;"> <input checked="" type="checkbox"/> REVIEWED, CORRECT  <input type="checkbox"/> AS NOTED  <input type="checkbox"/> UNACCEPTABLE                 </div>
<div style="text-align: right;"> <b>2</b> PROJECT'S TECHNICAL INFORMATION                 </div>	<p style="text-align: center;"> <b>THIS REVIEW IS ONLY FOR THE PROJECTANT, WITH CCSF'S FACILITIES AND INTERESTS IN MIND. WE DO NOT RELIEVE PROJECT SPONSOR, ENGINEER AND/OR CONTRACTOR OF RESPONSIBILITY TO COMPLY WITH THE DESIGN REQUIREMENTS, SPECIFICATIONS, POLICIES, STANDARDS AND/OR CONTRACTUAL OBLIGATIONS.</b> </p>
<div style="text-align: right;"> <b>3</b> TYPE OF EXISTENCE AND/OR PROPOSED                 </div>	
<div style="text-align: right;"> <b>4</b> PROJECT'S LOCATION AND SITE                 </div>	
<div style="text-align: right;"> <b>5</b> PROJECT'S DESIGN AND CONSTRUCTION                 </div>	
<div style="text-align: right;"> <b>6</b> PROJECT'S FINANCIAL INFORMATION                 </div>	
<div style="text-align: right;"> <b>7</b> PROJECT'S LEGAL INFORMATION                 </div>	<div style="text-align: right;"> <b>DATE</b> <i>2/24/99</i> </div>

**SEE SHEET 15**


PRELIMINARY

**IMPROVEMENT PLAN**  
**HUNTINGTON AVE., UNDERGROUNDING**  
**RULE 20**

**SAN BRUNO**

COMPOSITE PLAN

**CALIFORNIA**

 **UDI-TETRAD**  
CONSULTING ENGINEERS, INC.  
Signoria Planning Newspaper  
CIVIL -- POWER -- COMMUNICATIONS  
3025 PACHECO BLVD. (805) 674-0202  
PACHECO, CA 94653 FAX (805) 674-0203

[illegible]





**BART Easement**

*[see attached]*

## **BART EASEMENTS**



**RECORDING REQUESTED BY:**

John Pilkington  
ERICKSON, BEASLEY, HEWITT & WILSON LLP  
483 Ninth Street, Suite 200  
Oakland, California 94607

**WHEN RECORDED MAIL TO:**

John Pilkington  
ERICKSON, BEASLEY, HEWITT & WILSON LLP  
483 Ninth Street, Suite 200  
Oakland, California 94607

E/100  
ATPM/39A

2004-025111

03:41pm 02/11/04 COCO Fee: NO FEE

Count of pages ~~282~~ 292

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



BD

292p

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

282p

In favor of:  
San Mateo County Transit  
District.

**FINAL ORDER OF CONDEMNATION**  
DOCUMENT TITLE

**EXEMPT FROM RECORDER'S FEES UNDER GOVT. CODE §27383**

For: Perpetual, Exclusive, Subsurface  
Easements in Gross and rights-of-  
way for public transit purposes, and  
for construction and maintenance of  
Public Rapid transit facilities.

Affects: a Portion of said land, as  
described therein.

SEPARATE PAGE PURSUANT TO GOVT CODE 27361.6

190

**RECORDING REQUESTED BY:**

John Pilkington  
ERICKSON, BEASLEY, HEWITT & WILSON LLP  
483 Ninth Street, Suite 200  
Oakland, California 94607

**WHEN RECORDED MAIL TO:**

John Pilkington  
ERICKSON, BEASLEY, HEWITT & WILSON LLP  
483 Ninth Street, Suite 200  
Oakland, California 94607

E/100  
APPN/39A

2004-025111

03:41pm 02/11/04 COCO Fee: NO FEE

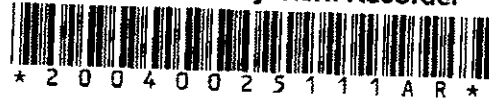
Count of pages ~~292~~ 292

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



BD

292p

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

In favor of: San Mateo County  
Transit District.

282p

**FINAL ORDER OF CONDEMNATION**

DOCUMENT TITLE

**EXEMPT FROM RECORDER'S FEES UNDER GOVT. CODE §27383**

For: A Permanent Surface Easement for  
Ingress, egress and Driveway Purposes.

Affects: A Portion of said land,  
as described therein.

SEPARATE PAGE PURSUANT TO GOVT CODE 27361.6

191

**RECORDING REQUESTED BY:**

John Pilkington  
ERICKSON, BEASLEY, HEWITT & WILSON LLP  
483 Ninth Street, Suite 200  
Oakland, California 94607

**WHEN RECORDED MAIL TO:**

John Pilkington  
ERICKSON, BEASLEY, HEWITT & WILSON LLP  
483 Ninth Street, Suite 200  
Oakland, California 94607

E/100  
ATPM/39A

**2004-025111**

03:41pm 02/11/04 COCO Fee: NO FEE

Count of pages ~~292~~ 292

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



BD

292p

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

282p

In favor of: San Mateo County  
Transit District.

**FINAL ORDER OF CONDEMNATION**  
DOCUMENT TITLE

**EXEMPT FROM RECORDER'S FEES UNDER GOVT. CODE §27383**

FOR: A Permanent Surface Easement  
for the purpose and use of a  
Public Highway.

Affects: A Portion of said land,  
as described therein.

SEPARATE PAGE PURSUANT TO GOVT CODE 27361.6

192

ALICE M. BEASLEY, No. 56523  
JOHN H. ERICKSON, No. 43996  
BRENDA AGUILAR-GUERRERO, No. 151257  
ALLISON D. DANIELS, No. 146126  
ERICKSON, BEASLEY, HEWITT & WILSON  
483 Ninth Street, Suite 200  
Oakland, California 94607  
(510) 839-3448; fax (510) 839-1622

Attorneys for Plaintiff  
San Mateo County Transit District

**FILED**  
SAN MATEO COUNTY

FEB - 5 2004

Clerk of the Superior Court

DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

SAN MATEO COUNTY TRANSIT  
DISTRICT,

Plaintiff,

v.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Defendants.

Case No. 405695

FINAL ORDER OF CONDEMNATION

Filed: July 28, 1998

Trial Date: None

Judgment in Condemnation having been entered in the above entitled action on July 18, 2003, in the office of the County Clerk of the County of San Mateo, State of California; that judgment having ordered, adjudged and decreed that plaintiff is entitled to take by condemnation the property described therein and more particularly described in Exhibits A-1 through A-51 attached hereto and incorporated herein by reference subject to the Stipulated Settlement Agreement for Entry of Judgment in Condemnation filed herein which contains the following provisions:

1. Stipulated Judgment. The parties agree that SamTrans has paid in full the agreed settlement amount of \$18,638,562 plus interest and that judgment may be entered containing the same terms and conditions as the attached Judgment in Condemnation, marked Exhibit A, and by this reference made a part of this agreement, and Statement of Decision and Notice of Entry of

193

Judgment are hereby waived. Upon entry of judgment, the parties agree to settle fully their dispute on the terms and conditions set forth in this Agreement.

2. Effective Date. This Agreement shall not become effective and shall not bind the parties unless it is fully executed by the parties. The Agreement shall become effective on the date that the Mayor of the City signs legislation approving this Agreement ("Effective Date").

3. Scope of Judgment. The amount of compensation set forth in the attached Judgment in Condemnation ("Exhibit A") is in full payment for the taking of the Subject Property, and includes but is not limited to compensation for land, improvements, severance damages, precondemnation damages, fixtures and equipment, loss of goodwill, attorneys' fees, costs and relocation benefits .

4. Notice. SamTrans or BART shall give notice of any matter affecting this Agreement to the City by contacting its Director of Property, City and County of San Francisco, 25 Van Ness Avenue, 4th Floor, San Francisco, CA 94102. The City shall give any notice affecting this Agreement to SamTrans by contacting its Manager of Real Estate, San Mateo County Transit District, San Carlos, CA 94070, and to BART by contacting its Manager of Real Estate Services, San Francisco Rapid Transit District, 800 Madison Street, Oakland, CA 94604

5. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and SamTrans. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer of other authorized representative, and only to the extent expressly provided in such written waiver. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (e) This Agreement shall be governed by California law and the Charters of the parties. (f) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

///

194

1 It appearing to the Court's satisfaction that all defendants have disclaimed or had default  
2 judgment entered against them as ordered, adjudged and decreed by the Judgment in  
3 Condemnation entered herein.

4 THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the property  
5 described in Exhibit A attached hereto and incorporated herein by reference, be and it hereby is  
6 condemned to and taken by plaintiff for the following public use, to wit, for use as a rail line  
7 upon which will be constructed, operated and maintained a rapid transit system.

8 IT IS FURTHER ORDERED AND ADJUDGED that on filing a certified copy of this  
9 Final Order of Condemnation with the County Recorder of the County of San Mateo, State of  
10 California, the real property described above, and title thereto, shall vest in plaintiff, its  
11 successors, and its assigns.

12 IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff's portion of any  
13 current taxes to be paid to the County of San Mateo are canceled as of August 3, 1998, pursuant  
14 to California Revenue and Taxation Code section 5081 *et seq.*

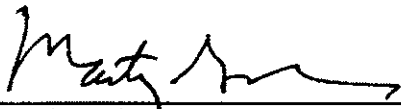
15  
16 Dated: 2-5-04

  
17 mark R. Forcum  
JUDGE OF THE SUPERIOR COURT

18 APPROVED AS TO FORM:

19  
20 Dated: 4-17-03

DENNIS J. HERRERA, City Attorney

21  
22 By   
23 Martin L. Greenman, Deputy City Attorney  
Attorneys for City and County of San Francisco

24 L:\SAMTRANS\San Francisco 811\Settlement\Final Order of Condemnation.wpd

195



**COPY**

ALICE M. BEASLEY, No. 56523  
 JOHN H. ERICKSON, No. 43996  
 BRENDA AGUILAR-GUERRERO, No. 151257  
 ALLISON D. DANIELS, No. 146126  
 ERICKSON, BEASLEY, HEWITT & WILSON  
 483 Ninth Street, Suite 200  
 Oakland, California 94607  
 (510) 839-3448; fax (510) 839-1622

Attorneys for Plaintiff  
 San Mateo County Transit District

**ENDORSED FILED**  
 SAN MATEO COUNTY

JUL 18 2003

Clerk of the Superior Court  
 By S. BOSTOW  
 DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN MATEO

SAN MATEO COUNTY TRANSIT  
 DISTRICT,  
  
 Plaintiff,  
  
 v.  
 CITY AND COUNTY OF SAN  
 FRANCISCO, et al.,  
  
 Defendants.

Case No. 405695

JUDGMENT IN CONDEMNATION

Filed: July 28, 1998  
 Trial Date: None

In the above-entitled cause, plaintiff San Mateo County Transit District ("SamTrans") and defendant City and County of San Francisco ("City"), having stipulated that judgment be entered as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that City having been paid compensation in the amount of \$21,314,607.57, which amount represents the settlement amount of \$18,638,562.00, plus interest in the amount of \$2,676,045.57, the property described in Exhibits A-1 through A-51 attached hereto is hereby condemned for the public use of plaintiff SamTrans.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the real property or property interests which SamTrans is authorized to acquire are situated in the cities of South San

197



Francisco, San Bruno, Millbrae, and Burlingame, State of California, and are identified as the fee simple or easement interests in Parcel Nos. D-3100-1, D-3100-6, D-3101-1, D-3102-1, D-3102-4, D-3103-1, D-3103-2A, D-3103-2B, D-3103-4A, D-3103-4B, D-3104-4, D-3106-1, D-3106-4A, D-3106-4B, D-3106-4C, D-3108-4, D-3109-1, D-3109-1B, D-3109-4, D-3111-1, D-3111-2A, D-3111-2B, D-3111-2C, D-3111-4, D-3112-2, D-3113-1, D-3113-2, D-3113-4, D-3114-1, D-3115-1, D-3116-1, D-3117-1, D-3118-1, D-3118-2, D-3120-2, D-3121-2, D-3122-2, D-3123-1, D3123-2, D-3124-1, D-3126-1, D-3127-1, D-3128-1, D-3128-1A, D-3128-1B, D-3128-4B, D-3128-4C, D-3108-2A, D-3106-2A, D-3118X-1A, and D3118X-2B as indicated below and in the descriptions attached hereto as Exhibit A-1 through A-51 which are incorporated herein by this reference.

1. The parcels described in Exhibit A-1 (Parcel No. D-3100-1), Exhibit A-3 (Parcel No. D-3101-1), Exhibit A-4 (Parcel No. D-3102-1), Exhibit A-6 (Parcel No. D-3103-1), Exhibit A-12 (Parcel No. D-3106-1), Exhibit A-17 (Parcel No. D-3109-1), Exhibit A-18 (Parcel No. 3109-1B), Exhibit A-20 (Parcel No. D-3111-1), Exhibit A-26 (Parcel No. D-3113-1), Exhibit A-29 (Parcel No. D-3114-1), Exhibit A-30 (Parcel No. D-3115-1), Exhibit A-31 (Parcel No. D-3116-1), Exhibit A-32 (Parcel No. D-3117-1), Exhibit A-33 (Parcel No. D-3118-1), Exhibit A-38 (Parcel No. D-3123-1), Exhibit A-40 (Parcel No. D-3124-1), Exhibit A-41 (Parcel No. D-3126-1), Exhibit A-42 (Parcel No. D-3127-1), Exhibit A-43 (Parcel No. D-3128-1), Exhibit A-44 (Parcel No. D-3128-1A), and Exhibit A-45 (Parcel No. D-3128-1B), Exhibit A-50 (Parcel No. D-3118X-1A) are to be acquired in fee together with the underlying fee interest, if any, appurtenant to such parcels in and to any adjoining streets, alleys, public ways, or railroad rights-of-way.

2. The interests to be acquired in the parcels described in Exhibit A-21 (Parcel No. D-3111-2A), Exhibit A-25 (Parcel No. D-3112-2), Exhibit A-27 (Parcel No. D-3113-2) are perpetual, exclusive, subsurface easements in gross and rights-of-way for public transit purposes and all purposes incident thereto for construction, installation, use, operation, maintenance, reconstruction, and replacement of public rapid transit facilities devised now and/or in the future including, but not limited to, tunnels, structures, rails,

198

Except  
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Affects

roadways, pedestrian walks, utilities, and appurtenances thereto ("Facilities"); including the right of surface entry for (a) initial construction and installation of Facilities, and (b) emergency repairs, restoration and reconstruction of Facilities; and precluding the owners, and any heirs, successors or assigns of the real property lying above the hereinbefore-described easements from making any use of said real property which would interfere with, damage, or endanger the Facilities therein or the possession, replacement, or use thereof.

3. The interest to be acquired in the parcel described in Exhibit A-7 (Parcel No. D-3103-2A) is a permanent surface drainage and access easement.

4. The interest to be acquired in the parcel described in Exhibit A-8 (Parcel No. D-3103-2B) is a permanent subsurface easement and right-of-way for the purpose of constructing, laying, maintaining, operating, using, altering, repairing, inspecting, and relocating therein and thereupon and/or removing therefrom a main, mains, pipe line, or pipe lines, with any and all connections and fixtures necessary or convenient thereto for the transportation, distribution, sale and/or supply of water and for all necessary purposes in connection therewith together with the right of ingress thereto and egress therefrom.

5. The interest to be acquired in the parcel described in Exhibit A-22 (Parcel No. D-3111-2B) is a permanent surface easement for ingress, egress and driveway purposes.

6. The interest to be acquired in the parcel described in Exhibit A-23 (Parcel No. D-3111-2C) is a permanent surface easement for the purpose and use of a public highway.

7. The parcels described in Exhibit A-5 (Parcel No. D-3102-4), Exhibit A-9 (Parcel No. D-3103-4A), Exhibit A-10 (Parcel No. D-3103-4B), Exhibit A-11 (Parcel No. D-3104-4), Exhibit A-13 (Parcel No. D-3106-4A), Exhibit A-14 (Parcel No. D-3106-4B), Exhibit A-15 (Parcel No. D-3106-4C), Exhibit A-16 (Parcel No. D-3108-4), Exhibit A-19 (Parcel No. D-3109-4), Exhibit A-24 (Parcel No. D-3111-4), Exhibit A-28 (Parcel No. 3113-4), Exhibit A-46 (Parcel No. 3128-4B), and Exhibit A-47 (Parcel No.

199

3128-4C) are to be acquired as temporary construction easements which shall expire upon completion of construction or July 27, 2000, whichever shall occur first.

8. The parcel described in Exhibit A-2 (Parcel No. D-3100-6) is to be acquired as a temporary access easement which shall expire upon completion of construction or July 27, 2000, whichever shall occur first.

9. The parcels described in Exhibit A-48 (Parcel D-3106-2A) and Exhibit A-49 (Parcel No. D-3108-2A) are to be acquired as permanent subsurface easements and rights-of-way for the purpose of constructing, laying, maintaining, operating, using, altering, repairing and relocating therein and thereupon and/or removing therefrom public utilities systems, including but not limited to water and electrical systems servicing the BART Facilities, with any and all connections and fixtures necessary or convenient thereto together with the right of ingress thereto and egress therefrom in, on, over, under and across said property; and precluding the owners, and any heirs, successors or assigns of the real property lying above the hereinbefore-described easements from making any use of said real property which would interfere with, damage, or endanger the facilities therein, or the possession, replacement, or use thereof.

10. The parcel described in Exhibit A-51 (Parcel No. D-3118X-2B) is to be acquired as an easement for the purpose of constructing, reconstructing, maintaining, placing, operating, inspecting, repairing, replacing and/or removing underground communications facilities consisting of cables, conduits, pipes, manholes, handholes, service boxes, above ground markers, risers, service pedestals, underground and above ground switches, fuses, terminals, terminal equipment cabinets, structures with electronic communication equipment therein and associated paving, fencing, associated concrete pads, associated electrical conductors, necessary fixtures and appurtenances necessary to any or all thereof together with the right of ingress thereto and egress therefrom; the right to trim such trees and other foliage and to cut such limbs and roots on such parcel as may be necessary for the protection of such facilities; the right to cut, fill or otherwise change the grade of such parcel and to place such drainage and retaining structures thereon as are necessary for the

protection of such facilities; the right to receive municipal service and commercial power service from the appropriate utility company serving the area, together with the right for such utility company to place their respective service facilities upon or within such easement; and precluding the owners, and any heirs, successors or assigns of the real property lying above the hereinbefore-described easements from making any use of said real property which would interfere with, damage, or endanger the facilities therein, or the possession, replacement, or use thereof.

11. The parcels described in Exhibit A-34 (Parcel No. D-3118-2), Exhibit A-35 (Parcel No. D-3120-2), Exhibit A-36 (Parcel No. D-3121-2), Exhibit A-37 (Parcel No. D-3122-2) and Exhibit A-39 (Parcel No. D-3123-2), are being acquired as non-exclusive easements to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove fiber optic communications systems and necessary related facilities, including but not limited to a subterranean conduit, manholes, regenerators, POP sites, splice boxes and warning markers, together with the right of ingress thereto and egress therefrom, in, on, over, under, through and across the property; and precluding the owners, and any heirs, successors or assigns of the real property lying above the hereinbefore-described easements from making any use of said real property which would interfere with, damage, or endanger the facilities therein, or the possession, replacement, or use thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants City of South San Francisco; City of San Bruno; City of Millbrae; Costco SSF L.L.C.; County of San Mateo; F.C. Creative, Inc.; Millbrae Lumber Company; San Mateo County Flood District; State of California, Department of Transportation; Edwin G. Silva, formerly Doe 3; Tracy Kimes, formerly Doe 11; Bruce M. Linscott, formerly Doe 12; Marc Linscott, formerly Doe 13; having filed disclaimers herein, true and correct copies of which are attached hereto as Exhibit B, that judgment is granted as to said disclaiming defendants, and that such defendants are not entitled to any further compensation under this judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following defendants are in default: R.H. Macy & Co., Inc.; South San Francisco Boys' Club; Macy Service

Center Corp.; Emilio Petrocchi and Charles Petrocchi and Louise A. Petrocchi, trustees under Trust Agreement dated December 8, 1989; Tom Koulouris; Grace Retail Corporation; Sunset Telephone and Telegraph Company; United Railroads of San Francisco; Market Street Railway Company; South San Francisco Land & Improvement Company; Spring Valley Water Works; Adeline Mills Taylor Howard, and Frederick P. Howard; Alice J. Cunningham; Robert V. Cunningham; Custodio Silva and Emelia Diaz Silva; D.O. Mills; Edward B. Mastick; Edward Taylor; Francis Euston Taylor; Frank D. Madison; Guillaume Cazares; H.H. Taylory; Henry Huntley Taylor; Henry Huntley Taylor, Henry T. Scott, as trustees under the will of Fanny Euston Taylor; Maye C. Muller; Maye C. Muller, guardian of the person and estate of Geo W. Cunningham; Robert L. Coleman, as trustee of the estate of Carrie M.P. Coleman; Alice B. McCully, formerly Doe 1; Barbara B. Bucquet, formerly Doe 2; Spencer H. Mastick, formerly Doe 5; Donald F. Mastick, formerly Doe 6; Jane R. Mastick, formerly Doe 7; Marilyn M. Sparrow, formerly Doe 8; Elena Walker, formerly Doe 9; Marilyn Murphy, formerly Doe 10; Margaret R. O'Neill, formerly Doe 14; James Dollar Dickson, formerly Doe 15; that judgment is granted as to said defaulting defendants, and that said defendants are not entitled to any compensation under this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that summary judgment has been entered as to defendant Flat Rate Rent -A-Car and that said defendant is not entitled to any compensation under this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that dismissal has been entered as to the following defendants Pacific Telephone and Telegraph, Artichoke Joe's; South San Francisco Unified School District; and Country Garden Nursery, Inc.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that pursuant to provisions of Section 5081 of the Revenue and Taxation Code and section 1268.410 et seq. of the Code of Civil Procedure, any current or delinquent real property taxes, penalties or assessments that are a lien against said property shall be prorated, apportioned, deducted and paid to the Tax Collector of the County of San Mateo as of the dates of possession set forth in Order Fixing Security and for Immediate Possession dated July 29, 1998, attached hereto as Exhibit C.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any taxes, penalties or  
2 assessments of the County of San Mateo or any other taxing agency accruing on the property  
3 actually taken in fee after the effective dates of possession set forth in Exhibit C, and not  
4 otherwise provided for herein, are hereby canceled, and the plaintiff shall take free and clear of  
5 any lien or encumbrances therefor on said parcel.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the use for which said  
7 real property is sought to be condemned, to wit, for development and construction of a rail  
8 station, is and was a public use, and the taking in condemnation by plaintiff SamTrans of said  
9 property is and was necessary for said public use.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court reserves  
11 jurisdiction to implement the terms of the Stipulation for Entry of Judgment in Condemnation  
12 and this Judgment in Condemnation.

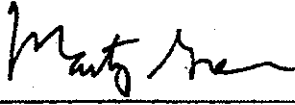
13  
14 Dated: JUL 18 2003

MARK R. FORCUM  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

15  
16 APPROVED AS TO FORM:

17  
18 Dated: 4-17-03

DENNIS J. HERRERA, City Attorney

19  
20 By   
21 Martin L. Greenman, Deputy City Attorney  
22 Attorneys for City and County of San Francisco

23 L:\SAMTRANS\San Francisco 811\Settlement\Judgment in Condemnation.wpd

BART SFO Airport Extension  
BKF Project No. 940060.50

June 12, 1997

**PROPERTY DESCRIPTION  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL D-3111-1**

Being all that real property situate in the City of San Bruno, County of San Mateo, State of California and described as follows:

BEING a portion of Parcel 9, San Mateo County Lands, as described in the deed from Market Street Railway Company to the City and County of San Francisco, dated September 29, 1944, recorded in Book 1161 of Official Records at page 1, in the Office of the Recorder of San Mateo County, State of California, more particularly described as follows:

BEGINNING at the most northeasterly corner of said Parcel 9, said point being on the westerly right of way line of the Southern Pacific Railroad Company, 60.00 feet wide, as described in the Decree of Partition of the Buri Buri Rancho, which Decree was recorded in Book 10 of Deeds at page 1 on June 17, 1868, in the Office of the Recorder of San Mateo County, State of California, said point being the **TRUE POINT OF BEGINNING** of this description;

THENCE along said westerly right of way line, South  $23^{\circ} 26' 14''$  East, 120.91 feet to a point on the northerly line of Parcel 1, as described in "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY IN THE CITY OF SAN BRUNO, ROAD 04-SM-380-4.7-6.1, REQUEST NO. 40256", recorded on December 2, 1975, in Book 6995 of Official Records at page 716, in the Office of the Recorder of San Mateo County, State of California, said point being on a non-tangent curve, concave southerly, having a radius of 2186.00 feet, from which point a radial line bears South  $02^{\circ} 22' 18''$  West;

THENCE leaving said westerly right of way line, along said northerly line of Parcel 1, westerly along said curve, through a central angle of  $01^{\circ} 18' 10''$ , for an arc length of 49.70 feet to a point on the westerly line of said Parcel 9;

THENCE leaving said northerly line of Parcel 1, along said westerly line of Parcel 9, North  $23^{\circ} 26' 14''$  West, 98.83 feet to the most northwesterly corner of said Parcel 9;

COPY

204

THENCE leaving said westerly line, along the northerly line of said Parcel 9, North 65° 20' 57" East, 45.00 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 4,938 square feet, more or less.

NOTE: Bearings and distances described herein are based on the California Coordinate System of 1983, Zone 3. Multiply herein described distances by 1.0000706 to obtain ground level distances.

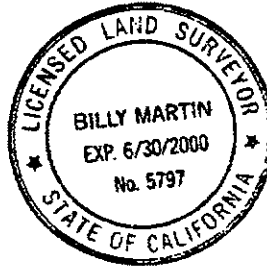
Subject to special assessments, if any, restrictions, reservations, easements and other matters of record.

Together with the underlying fee interest, if any, appurtenant to the above described parcel in and to any adjoining streets, alleys, public ways of railroad rights-of-way.

This description was prepared by me or under my direction in conformance with the Land Surveyor's Act.

\_\_\_\_\_  
Billy Martin, P.L.S. 5797  
License expires: 06-30-00

Dated: 7/15/97



205



-----  
Lot name: D-3111-1

North: 2059084.0423 East: 6007482.3862  
Line Course: S 23-26-14 E Length: 120.91  
North: 2058973.1078 East: 6007530.4774  
Curve Length: 49.70 Radius: 2186.00  
Delta: 1-18-10 Tangent: 24.85  
Chord: 49.70 Course: N 88-16-47 W  
Course In: S 02-22-18 W Course Out: N 01-04-08 E  
RP North: 2056788.9803 East: 6007440.0173  
End North: 2058974.5999 East: 6007480.7962  
Line Course: N 23-26-14 W Length: 98.83  
North: 2059065.2761 East: 6007441.4871  
Line Course: N 65-20-57 E Length: 45.00  
North: 2059084.0450 East: 6007482.3861

Perimeter: 314.44 Area: 4,938 sq.ft. 0.113 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0027 Course: N 02-03-35 W

Error North: 0.00271 East: -0.00010

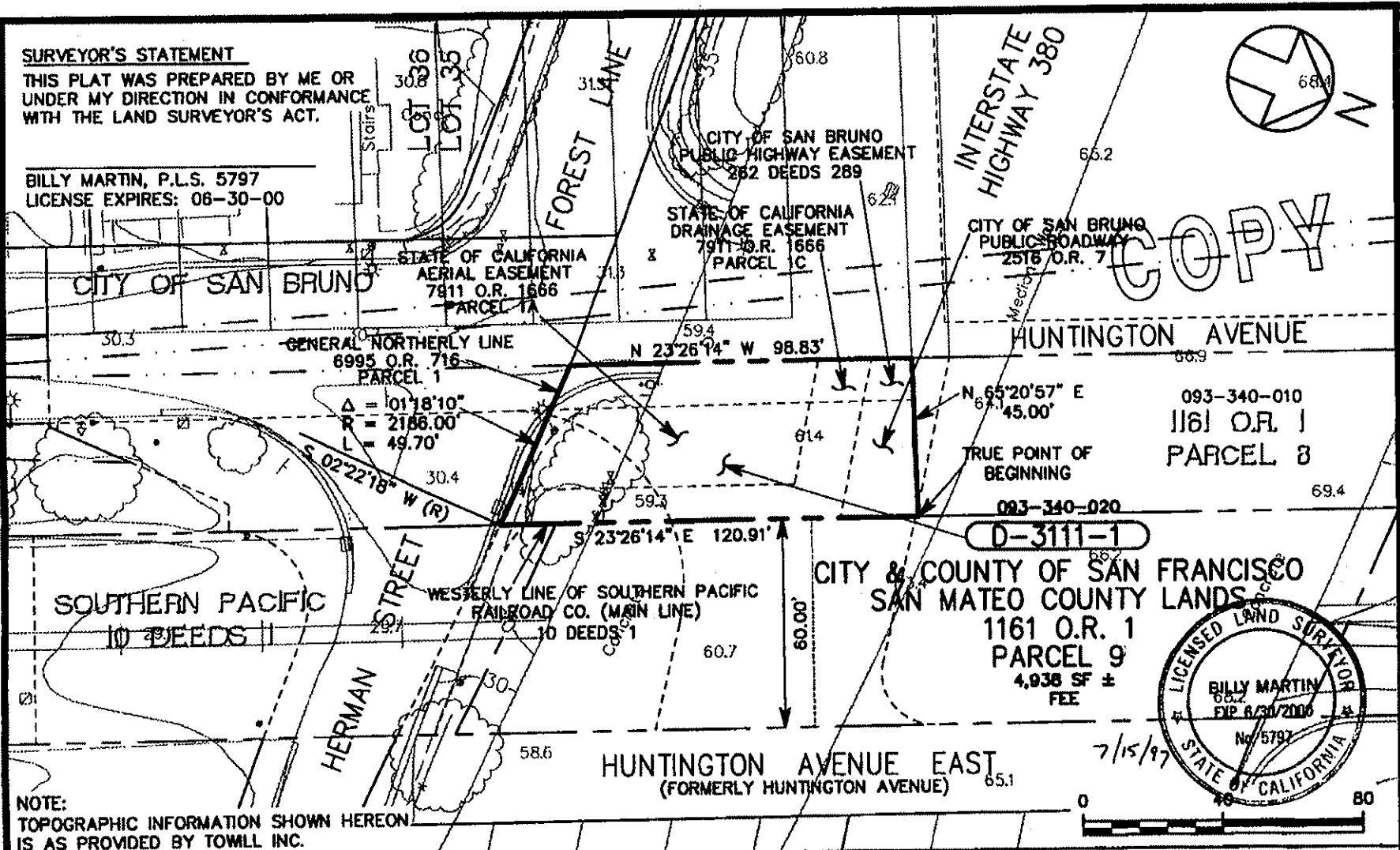
Precision 1: 115,855.82

206

**SURVEYOR'S STATEMENT**

THIS PLAT WAS PREPARED BY ME OR  
UNDER MY DIRECTION IN CONFORMANCE  
WITH THE LAND SURVEYOR'S ACT.

BILLY MARTIN, P.L.S. 5797  
LICENSE EXPIRES: 06-30-00



NOTE:  
TOPOGRAPHIC INFORMATION SHOWN HEREON  
IS AS PROVIDED BY TOWILL INC.

COORDINATES, BEARINGS AND DISTANCES SHOWN ARE ON  
THE CALIFORNIA COORDINATE SYSTEM ZONE 3, NAD 83.  
MULTIPLY DISTANCES SHOWN BY 1.0000706 TO OBTAIN  
GROUND LEVEL DISTANCES.  
ALL DISTANCES ARE IN FEET AND/OR DECIMALS THEREOF,  
EXCEPT AS NOTED.

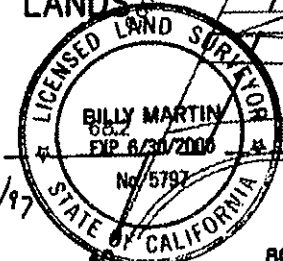


SCALE: 1" = 40' DATE: 06-18-97

**APPRAISAL PLAT**

CO. S.M. RTE. SFX P.M.

DR.NO. D-3111-1



201

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# Exhibit A-21

208

BART SFO Airport Extension  
BKF Project No. 940060.50

June 13, 1997

**PROPERTY DESCRIPTION  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL D-3111-2A**

Being all that real property situate in the City of San Bruno, County of San Mateo, State of California and described as follows:

BEING a portion of Parcel 9, San Mateo County Lands, as described in the deed from Market Street Railway Company to the City and County of San Francisco, dated September 29, 1944, recorded in Book 1161 of Official Records at page 1, in the Office of the Recorder of San Mateo County, State of California, more particularly described as follows:

BEGINNING at the most southwesterly corner of said Parcel 9, said point being on the northerly line of San Bruno Avenue (80.00 feet wide), as shown on the map entitled "MAP OF A SURVEY MADE FOR P.E. ILLER OF LANDS PURCHASED IN THE BURI BURI RANCHO AND SECTIONS 21, 22, 23, 24, 25, 26, 27, AND 28, T. 3 S., R. 5 W.", filed on March 10, 1891, in Book E of Maps at page 79, in the Office of the Recorder of San Mateo County, State of California;

THENCE along said northerly line, said line also being the southerly line of said Parcel 9, North 65° 18' 14" East, 19.59 feet to the most southeasterly corner of that certain right of way as described in the deed from United Railroads to the City of San Bruno, recorded in Book 262 of Deeds at page 289, in the Office of the Recorder of San Mateo County, State of California, said point being the **TRUE POINT OF BEGINNING** of this description;

THENCE leaving said lines, along the easterly line of said right of way, North 23° 44' 09" West, 588.18 feet to a point;

THENCE leaving said easterly line, North 25° 21' 58" West, 490.84 feet to a point on the westerly line of said Parcel 9;

COPY

209

THENCE along said westerly line, North 23° 26' 14" West, 240.34 feet to a point on the general northerly line of Parcel 1, as described in "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY IN THE CITY OF SAN BRUNO, ROAD 04-SM-380-4.7-6.1, REQUEST NO. 40256", recorded on December 2, 1975, in Book 6995 of Official Records at page 716, in the Office of the Recorder of San Mateo County, State of California, said point being on a non-tangent curve, concave southerly, having a radius of 2186.00 feet, from which point a radial line bears South 01° 04' 08" West;

THENCE leaving said westerly line, along the general northerly line of said Parcel 1, easterly along said curve, through a central angle of 01° 18' 10", for an arc length of 49.70 feet, to a point on the easterly line of said Parcel 9, said line also being the westerly right of way line of the Southern Pacific Railroad Company, 60.00 feet wide, as described in the Decree of Partition of the Buri Buri Rancho, which Decree was recorded in Book 10 of Deeds at page 1, on June 17, 1868, in the Office of the Recorder of San Mateo County, State of California;

THENCE along said lines, the following three (3) courses:

- 1) South 23° 26' 14" East, 508.63 feet to the southeasterly line of the land formerly occupied by F.P. Tracy, now deceased, as described in said 10 Deeds 1;
- 2) along said southeasterly line, being the Southern Pacific Railroad Company right of way, North 65° 31' 32" East, 5.00 feet;
- 3) leaving said southeasterly line, and continuing along said lines of Parcel 9 and Southern Pacific Railroad Company right of way, South 23° 26' 14" East, 788.74 feet to a point on the northerly line of said San Bruno Avenue, said line also being the southerly line of said Parcel 9;

THENCE leaving said lines of Parcel 9 and Southern Pacific Railroad Company right of way, along said lines, South 65° 18' 14" West, 30.41 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 48,141 square feet, more or less.

NOTE: Bearings and distances described herein are based on the California Coordinate System of 1983, Zone 3. Multiply herein described distances by 1.0000706 to obtain ground level distances.

Subject to special assessments, if any, restrictions, reservations, easements and other matters of record.

210

This description was prepared by me or under my direction in conformance with the Land Surveyor's Act.

Billy Martin, P.L.S. 5797  
License expires: 06-30-00

Dated: 7/15/97



Lot name: D-3111-2A

North: 2057772.1421 East: 6008023.4185  
 Line Course: N 23-44-09 W Length: 588.18  
 North: 2058310.5685 East: 6007786.6641  
 Line Course: N 25-21-58 W Length: 490.84  
 North: 2058754.0861 East: 6007576.3879  
 Line Course: N 23-26-14 W Length: 240.34  
 North: 2058974.6063 East: 6007480.7901  
 Curve Length: 49.70 Radius: 2186.00  
 Delta: 1-18-10 Tangent: 24.85  
 Chord: 49.70 Course: S 88-16-47 E  
 Course In: S 01-04-08 W Course Out: N 02-22-18 E  
 RP North: 2056788.9867 East: 6007440.0112  
 End North: 2058973.1142 East: 6007530.4714  
 Line Course: S 23-26-14 E Length: 508.63  
 North: 2058506.4480 East: 6007732.7759  
 Line Course: N 65-31-32 E Length: 5.00  
 North: 2058508.5195 East: 6007737.3266  
 Line Course: S 23-26-14 E Length: 788.74  
 North: 2057784.8533 East: 6008051.0433  
 Line Course: S 65-18-14 W Length: 30.41  
 North: 2057772.1479 East: 6008023.4147

Perimeter: 2701.85 Area: 48,141 sq.ft. 1.105 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

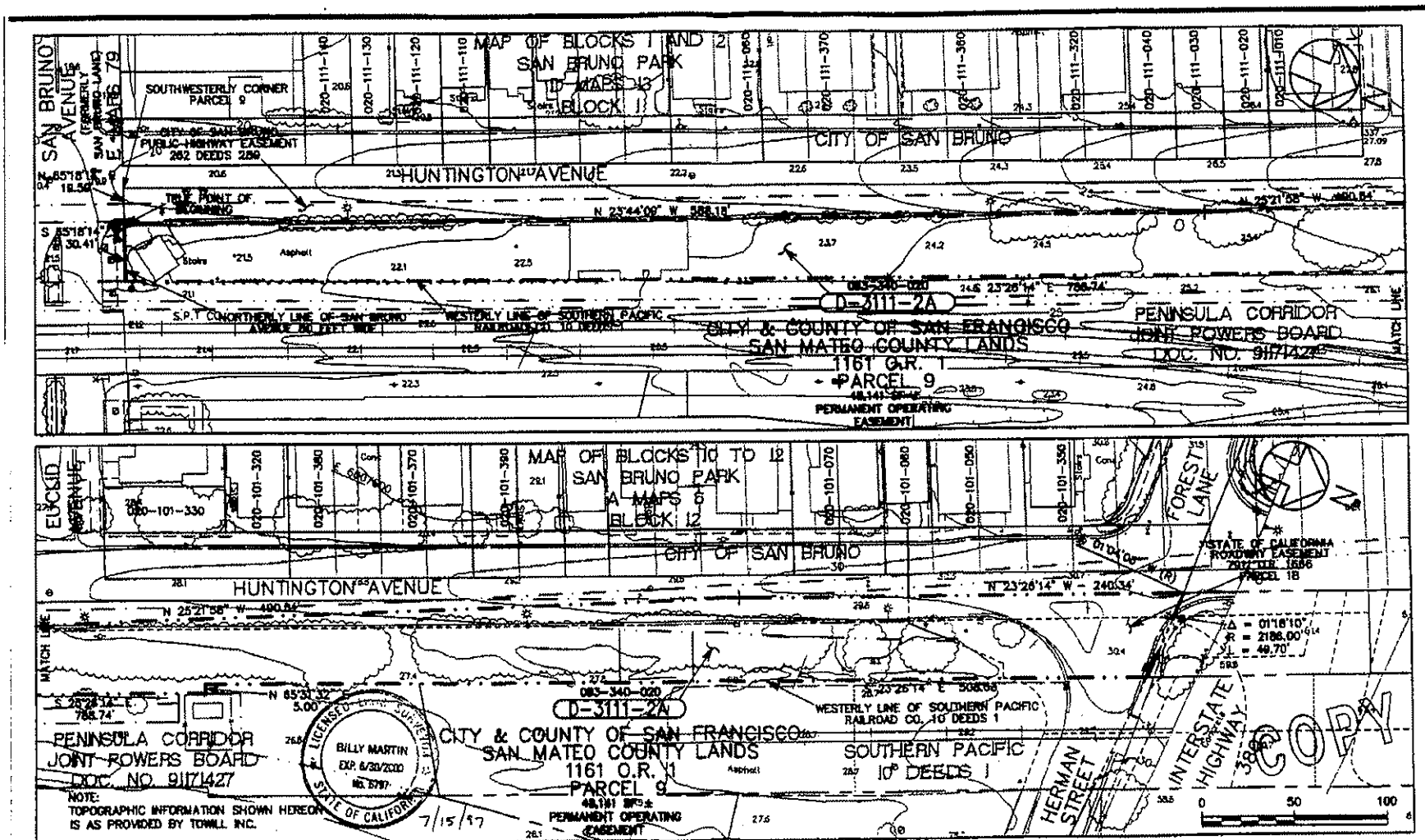
Error Closure: 0.0070 Course: N 33-35-30 W

Error North: 0.00581 East: -0.00386

Precision 1: 387,694.50

212

213



COORDINATES, BEARINGS AND DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM ZONE 3, NAD 83. (MULTIPLY DISTANCES SHOWN BY 1.0000706 TO OBTAIN (GROUND LEVEL) DISTANCES.  
 11. DISTANCES ARE IN FEET AND/OR DECIMALS THEREOF.  
 12. "P" AT NOTED.

**SURVEYOR'S STATEMENT**  
 THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT.

**BILLY MARTIN, P.L.S. 5797**  
 LICENSE EXPIRES: 06-30-00



**APPRAISAL PLAT**

CO. S.M. RTE. SFX P.M.

DR.NO. 0-3111-2A



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# Exhibit A-22

214

BART SFO Airport Extension  
BKF Project No. 940060.50

June 5, 1997

**PROPERTY DESCRIPTION  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL D-3111-2B**

Being all that real property situate in the City of San Bruno, County of San Mateo, State of California and described as follows:

BEING a portion of Parcel 9, San Mateo County Lands, as described in the deed from Market Street Railway Company to the City and County of San Francisco, dated September 29, 1944, recorded in Book 1161 of Official Records at page 1, in the Office of the Recorder of San Mateo County, State of California, more particularly described as follows:

BEGINNING at the most northeasterly corner of said Parcel 9, said point being on the westerly right of way line of the Southern Pacific Railroad Company, 60.00 feet wide, as described in the Decree of Partition of the Buri Buri Rancho, which Decree was recorded in Book 10 of Deeds at page 1 on June 17, 1868, in the Office of the Recorder of San Mateo County, State of California;

THENCE along said westerly right of way line, South 23° 26' 14" East, 365.00 feet to a point, said point being the **TRUE POINT OF BEGINNING** of this description;

THENCE continuing along said westerly right of way line, South 23° 26' 14" East, 40.00 feet;

THENCE leaving said westerly right of way line, South 66° 33' 46" West, 28.47 feet;

THENCE North 20° 48' 13" West, 40.04 feet;

THENCE North 66° 33' 46" East, 26.63 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 1,102 square feet, more or less.

COPY

215

**NOTE:** Bearings and distances described herein are based on the California Coordinate System of 1983, Zone 3. Multiply herein described distances by 1.0000706 to obtain ground level distances.

Subject to special assessments, if any, restrictions, reservations, easements and other matters of record.

This description was prepared by me or under my direction in conformance with the Land Surveyor's Act.

\_\_\_\_\_  
Billy Martin, P.L.S. 5797  
License expires: 06-30-00

Dated: 7/15/97



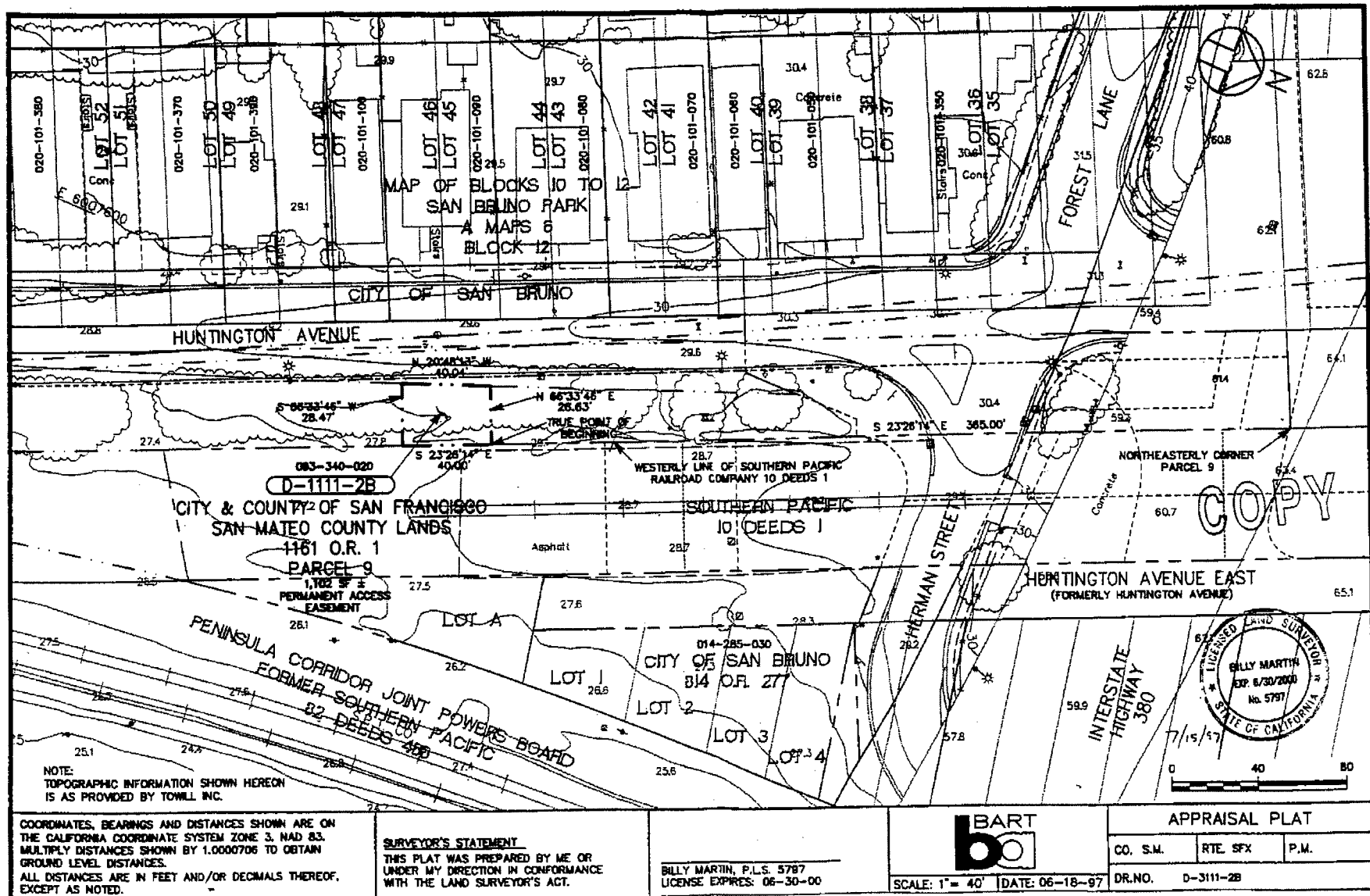
-----  
Lot name: D-3111-28

North: 2058749.1562 East: 6007627.5629  
Line Course: S 23-26-14 E Length: 40.00  
North: 2058712.4563 East: 6007643.4726  
Line Course: S 66-33-46 W Length: 28.47  
North: 2058701.1326 East: 6007617.3515  
Line Course: N 20-48-13 W Length: 40.04  
North: 2058738.5621 East: 6007603.1307  
Line Course: N 66-33-46 E Length: 26.63  
North: 2058749.1540 East: 6007627.5636

Perimeter: 135.15 Area: 1,102 sq.ft. 0.025 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0023 Course: S 18-23-52 E  
Error North: -0.00218 East: 0.00073  
Precision 1: 58,765.13



218

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# Exhibit A-23

219

BART SFO Airport Extension  
BKF Project No. 940060.50

June 6, 1997

**PROPERTY DESCRIPTION  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
PARCEL D-3111-2C**

Being all that real property situate in the City of San Bruno, County of San Mateo, State of California and described as follows:

BEING a portion of Parcel 9, San Mateo County Lands, as described in the deed from Market Street Railway Company to the City and County of San Francisco, dated September 29, 1944, recorded in Book 1161 of Official Records at page 1, in the Office of the Recorder of San Mateo County, State of California, more particularly described as follows:

BEGINNING at the point of intersection of the general southerly line of Parcel 1, as described in "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY IN THE CITY OF SAN BRUNO, ROAD 04-SM-380-4.7-6.1, REQUEST NO. 40256", recorded on December 2, 1975, in Book 6995 of Official Records at page 716, in the Office of the Recorder of San Mateo County, State of California, with the easterly line of that certain right of way as described in the deed from United Railroads to the City of San Bruno, recorded in Book 262 of Deeds at page 289, in the Office of the Recorder of San Mateo County, State of California, said point being the **TRUE POINT OF BEGINNING** of this description;

THENCE along said easterly line, South 23° 44' 09" East, 200.00 feet to a point;

THENCE leaving said easterly line, North 20° 48' 13" West, 223.05 feet to a point on said general southerly line;

THENCE along said southerly line the following two (2) courses:

- 1) South 00° 42' 26" West, 25.00 feet;
- 2) South 66° 34' 25" West, 1.06 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 1,129 square feet, more or less.

COPY

220

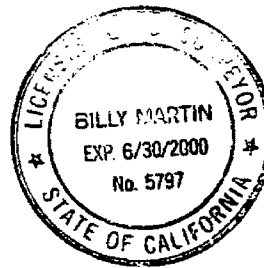
NOTE: Bearings and distances described herein are based on the California Coordinate System of 1983, Zone 3. Multiply herein described distances by 1.0000706 to obtain ground level distances.

Subject to special assessments, if any, restrictions, reservations, easements and other matters of record.

This description was prepared by me or under my direction in conformance with the Land Surveyor's Act.

Billy Martin, P.L.S. 5797  
License expires: 06-30-00

Dated: 7/15/97





-----  
L ame: D-3111-2C

North: 2058843.7451 East: 6007552.2205  
Line Course: S 23-44-09 E Length: 200.00  
North: 2058660.6629 East: 6007632.7246  
Line Course: N 20-48-13 W Length: 223.05  
North: 2058869.1708 East: 6007553.5049  
Line Course: S 00-42-26 W Length: 25.00  
North: 2058844.1727 East: 6007553.1963  
Line Course: S 66-34-25 W Length: 1.06  
North: 2058843.7513 East: 6007552.2237

Perimeter: 449.11 Area: 1,129 sq.ft. 0.026 acres

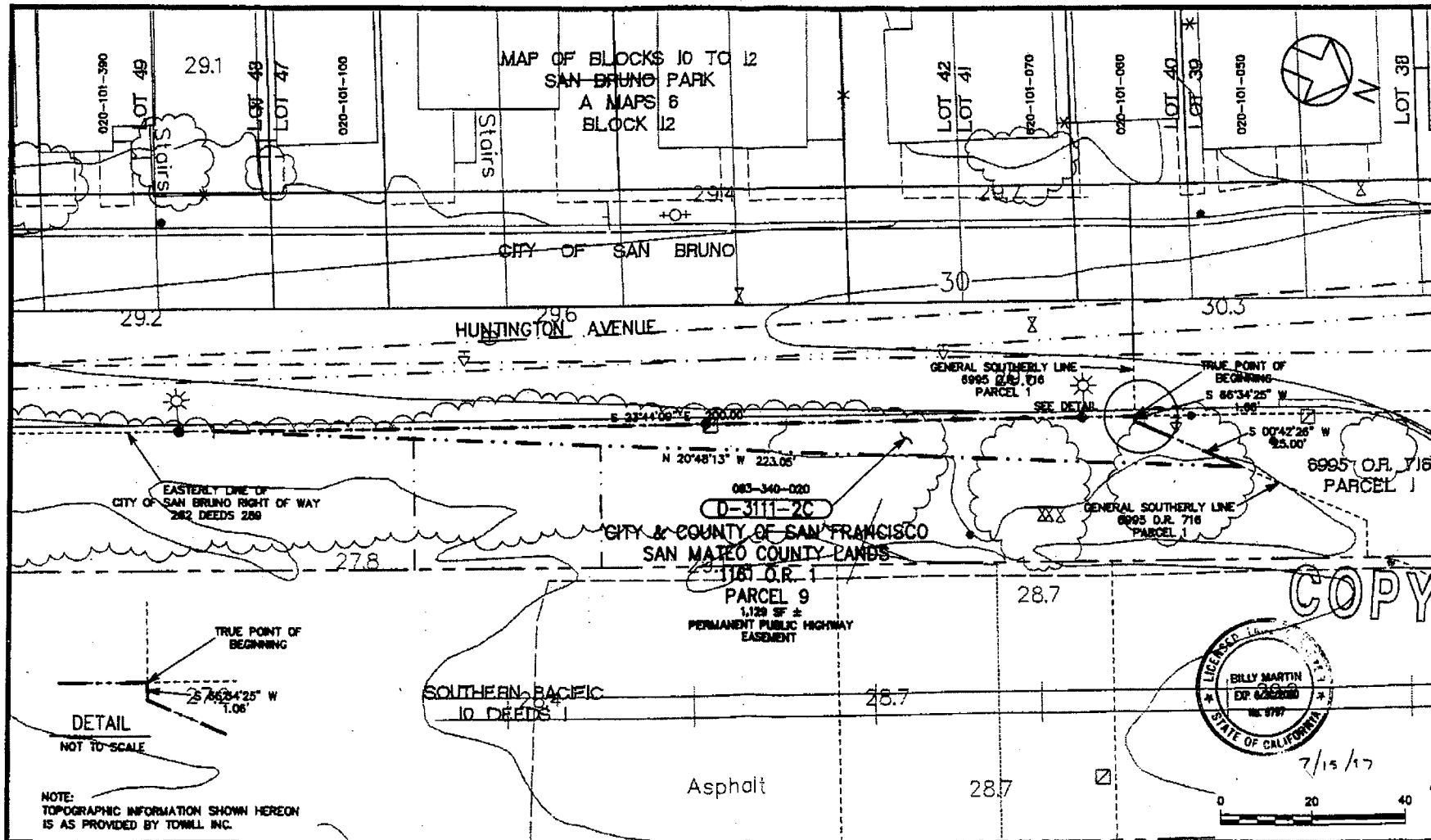
Mapcheck Closure - (Uses listed courses, radfi, and deltas)

Error Closure: 0.0069 Course: N 26-54-53 E

Error North: 0.00615 East: 0.00312

Precision 1: 65,138.46

222



COORDINATES, BEARINGS AND DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM ZONE 3, NAD 83. MULTIPLY DISTANCES SHOWN BY 1.0000706 TO OBTAIN GROUND LEVEL DISTANCES. ALL DISTANCES ARE IN FEET AND/OR DECIMALS THEREOF, EXCEPT AS NOTED.

**SURVEYOR'S STATEMENT**  
THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT.

BILLY MARTIN, P.L.S. 5797  
LICENSE EXPIRES: 06-30-00



SCALE: 1" = 20' DATE: 06-18-97

APPRAISAL PLAT

CO. S.M. RTE. SFX P.M.

DR.NO. D-3111-2C

223