

File No. 111025

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 10/20/11

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Stipulation for Entry of Judgment in Condemnation</u> |
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Completed by: Linda Wong

Date 10/14/11

Completed by: _____

Date _____

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

1 [Settlement of Lawsuit – City to Pay \$500 for Sub-Surface Easement in San Mateo County]

2
3 **Ordinance authorizing settlement of a lawsuit filed by the City and County of San**
4 **Francisco against San Mateo County Transit District; Union Pacific Railroad Company;**
5 **State of California, Department of Transportation; and Does 1 through 100, to condemn**
6 **and take by right of eminent domain a permanent sub-surface easement of**
7 **approximately 27,829 square feet in property owned by San Mateo County Transit**
8 **District, located in Menlo Park, California, commonly known as SBE 872-41-20P; filed**
9 **June 3, 2010, in San Mateo County Superior Court, Case No. CIV 495644; entitled City**
10 **and County of San Francisco v. San Mateo County Transit District; Union Pacific**
11 **Railroad Company; State of California, Department of Transportation; and Does 1**
12 **through 100.**

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

14 Section 1. The City Attorney is hereby authorized to settle the action entitled City and
15 County of San Francisco v. San Mateo County Transit District; Union Pacific Railroad
16 Company; State of California, Department of Transportation; and Does 1 through 100, San
17 Mateo County Superior Court, Case No. CIV 495644 by the payment by the City and County
18 of San Francisco ("City") to Defendant State of California, Department of Transportation of
19 \$500 for a permanent subsurface easement of approximately 27,829 square feet on property
20 owned by San Mateo County Transit District, located in Menlo Park, California, commonly
21 known as SBE 872-41-20P, and in accordance with other material terms as set forth in the
22 Stipulation for Entry of Judgment in Condemnation contained in Board of Supervisors File No.
23 111025, or such amended terms as do not materially increase the City's obligations or
24 decrease the City's benefits, for the purpose of constructing the San Francisco Public Utilities
25 Commission's Water System Improvement Program-Funded Project CUW36801, Bay Division

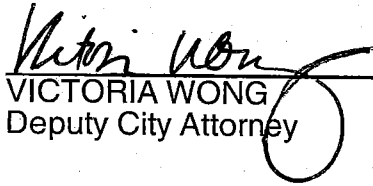
1 Pipeline Reliability Upgrade—Tunnel. The payment of \$500 to Defendant State of California,
2 Department of Transportation shall be made from the appropriation in Water System
3 Improvement Program-Funded Project CUW36801, Bay Division Pipeline Reliability
4 Upgrade—Tunnel.

5
6 Section 2. The above-named action was filed in San Mateo County Superior Court on
7 June 3, 2010, and the following defendants were named in the lawsuit: San Mateo County
8 Transit District; Union Pacific Railroad Company; State of California, Department of
9 Transportation; and Does 1 through 100.

10
11 APPROVED AS TO FORM AND
12 RECOMMENDED:

13 DENNIS J. HERRERA, City Attorney

14 By:


VICTORIA WONG
Deputy City Attorney


RECOMMENDED:

SAN FRANCISCO REAL ESTATE DIVISION

By:


JOHN UPDIKE
Director

16
17 FUNDS AVAILABLE:


BEN ROSENFELD
Controller
Index Code: 736846
Sub-object Code: 05314

Exempt from Filing Fees per
Government Code § 6103

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13
14 Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO
15
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF SAN MATEO
19

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

21 Plaintiff,

22 vs.

23
24 SAN MATEO COUNTY TRANSIT DISTRICT,
a public agency; UNION PACIFIC RAILROAD
25 COMPANY, a Delaware Corporation; STATE
OF CALIFORNIA, DEPARTMENT OF
26 TRANSPORTATION; and DOES 1 through
100, inclusive,
27

28 Defendants.

Case No.: CIV 495644

SBE No.: 872-41-20P

STIPULATION FOR ENTRY OF
JUDGMENT IN CONDEMNATION

1 IT IS HEREBY STIPULATED by and among Plaintiff City and County of San Francisco,
2 a municipal corporation (the "City") and Defendants San Mateo County Transit District, a
3 public agency ("Transit District") and Defendant State of California by and through the
4 Department of Transportation ("CalTrans") dated for reference purposes only this 1st day of
5 August, 2011 as follows:

6 **RECITALS**

7 WHEREAS, the City has brought the above-entitled action to acquire a permanent
8 interest in the real property located east of University Avenue, in the City of Menlo Park,
9 County of San Mateo, known as SBE 872-41-20P, as further described in **Exhibit "A"**
10 attached hereto and incorporated herein by this reference (the "**Property**");

11 WHEREAS, the City seeks to acquire a permanent interest in the Property for a public
12 use, as described in **Section B** below;

13 WHEREAS, pursuant to Government Code sections 25350.5, 37350.5, and 38730, and
14 Code of Civil Procedure sections 1240.010, *et seq.*, the City is entitled to condemn the
15 property interest identified in the Complaint and described in **Section A** below;

16 WHEREAS the Property is owned in fee by Defendant Transit District, and Defendant
17 CalTrans is the beneficiary under a deed of trust encumbering the Property, recorded
18 November 9, 1994, as Instrument Number 94-172453 of official records, County of San Mateo;

19 WHEREAS Defendant Union Pacific Railroad Company has filed a disclaimer in
20 accordance with Code of Civil Procedure section 1250.325;

21 WHEREAS all of the Parties by and through counsel, have been engaged in global
22 settlement negotiations and have reached a tentative settlement, subject only to approval by
23 the governing bodies of the Parties;

24 WHEREAS the Parties have stipulated to, and the Court has issued, an Order for
25 Prejudgment Possession, signed January 13, 2011;

26 NOW, THEREFORE, the City, the Transit District and CalTrans hereby acknowledge
27 and, intending to be legally bound hereby, agree as follows:
28

1 **A. Property to be Condemned.** The property interest condemned by the City in
2 this action is a perpetual subsurface easement (the “**Easement**”) through that portion of the
3 Property described in both horizontal and vertical dimensions in **Exhibit “B”** and depicted
4 approximately on **Exhibit “C”** attached hereto and incorporated by this reference (the
5 “**Easement Area**”). Concurrently with the execution of this Stipulation counsel for each party
6 hereto shall sign, approving as to form, a Judgment in Condemnation, subject to the terms and
7 conditions set forth herein.

8 **B. Water Tunnel Project.** The Easement is being acquired by the City for the San
9 Francisco Public Utilities Commission Water System Improvement Program – Funded Project
10 CUW36801, Bay Division Pipeline Reliability Upgrade-Tunnel, which will improve the regional
11 water supply system (the “**Water Tunnel Project**”). For purposes of the Project, the City will
12 install a tunnel and pipelines within the tunnel, and all necessary braces, connection,
13 fastenings, fittings and other appliances, appurtenances and fixtures including underground
14 telemetry and electrical cables for use in connection therewith or appurtenances thereto, for
15 the distribution of potable and non-potable water (the “**Water Tunnel Facilities**”) within and
16 through the Easement Area.

17 **C. Use of the Easement Area.** The City may use the Easement Area for the
18 purpose of constructing, reconstructing, removing, replacing, repairing, operating, inspecting,
19 accessing and using the Water Tunnel Facilities from time to time as the City may see fit,
20 subject to the following:

21 **1. Construction, Maintenance, Structural Repair and Reconstruction of**
22 **Water Tunnel Facilities.**

23 **1.1. Water Tunnel Improvements.** The Water Tunnel Project entails
24 the installation of those improvements within the Easement Area
25 (the “**Water Tunnel Improvements**”) described and shown in
26 those plans and specifications which are described in **Exhibit D**,
27 which is attached hereto and incorporated herein by this reference
28 (the “**Water Tunnel Plans**”). Any material change to such Water

1 Tunnel Plans shall be subject to Transit District's prior written
2 consent, in accordance with **Sections 9.2** and **9.3**. A change shall
3 be considered material only if it would result in all or a portion of the
4 Water Tunnel Improvements being located outside of the portion of
5 the Easement Area designated as "**Zone C**" on **Exhibit E**, which is
6 attached hereto and incorporated by this reference. Transit
7 District's consent to or approval of the Water Tunnel Plans or any
8 other plans and specifications or drawings with respect to the Water
9 Tunnel Facilities shall not relieve the City or its contractors from any
10 liability for negligence, errors or omissions associated with the
11 design and construction thereof. The City shall provide Transit
12 District with as-built drawings for the Water Tunnel Improvements
13 or any subsequently installed Water Tunnel Facilities, within sixty
14 (60) days after receipt of written request from Transit District
15 following completion of the project under which they were installed,
16 provided that Transit District executes a confidentiality agreement
17 in form acceptable to the City in order to protect security-sensitive
18 information.

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1.1.1. Contractor Requirements.

- (a) The City shall include in the specifications for the Water Tunnel Facilities requirements to ensure that the Water Tunnel Facilities Project is performed and monitored by appropriately experienced personnel using means and methods that comply with all applicable laws and regulations and that minimize risk of harm to the Transit District facilities.
- (b) Key contractor personnel must possess the appropriate qualifications (i.e., must have worked on one or more projects serving in a similar capacity).
- (c) Contract shall not contain a waiver of the right to recover consequential or incidental damages from the City's Contractor.

1.1.2. Insurance. The Water Tunnel Facilities Contract shall require the City's Contractor to maintain in force during the course of the contract insurance in the amounts and coverages specified in attached **Exhibit F**, and to name the San Mateo County Transit District, the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally, as additional insured under the liability policies and any excess or umbrella policies, and, if obtained by City, to provide a waiver of subrogation in favor of the San Mateo County Transit District, its officers, agents, volunteers and employees under the workers compensation, commercial

1 general liability, automobile liability, and property policies
2 and any excess or umbrella policies. The City shall provide
3 to Transit District insurance certificates that provide evidence
4 that the City's Contractor has the kinds of insurance
5 described in **Exhibit F**.

6 **1.1.3.** The parties shall designate individuals to be the central point
7 of contact for communications relating to the Water Tunnel
8 Project.

9 **1.2. Repairs and Maintenance.** Should the City desire or need to
10 perform any work that would potentially affect Transit District's rail
11 facilities or operations on the Property outside of the Easement
12 Area (the "**Remaining Property**") or Transit District's Train Tunnel
13 Facilities or operations located within the Train Tunnel Zone in
14 accordance with **Section 4.2**, the City shall submit detailed plans
15 and specifications for such work (or the drawings or other
16 description of a planned installation, if such installation would not
17 ordinarily be made pursuant to plans and specifications) ("**Repair**
18 **Plans**") to Transit District for its approval in accordance with
19 **Sections 9.2 and 9.3**. Any change to approved Repair Plans that
20 would affect Transit District's rail facilities or operations on the
21 Remaining Property or Transit District's Train Tunnel Facilities or
22 operations located within the Train Tunnel Zone in accordance with
23 **Section 4.2** shall be subject to Transit District's prior approval,
24 which shall not be unreasonably withheld or delayed. The City
25 agrees to give Transit District sixty (60) calendar days' written
26 notice prior to commencement of any maintenance activities on the
27 Water Tunnel Facilities that could affect rail operations,
28 maintenance, tracks or other facilities on the Remaining Property or

1 Transit District's Train Tunnel Facilities or operations, if any,
2 located within the Train Tunnel Zone in accordance with **Section**
3 **4.2**, except in the event of an emergency, in which case the City
4 shall, concurrently with dispatching a repair crew to such
5 emergency, contact Transit District's Stephen Chao at 650-508-
6 6301 to advise of same. The City, at the City's sole cost and
7 expense, shall cause all work in connection with the use, operation,
8 maintenance, structural repair, reconstruction, or replacement of
9 the Water Tunnel Facilities within the Easement Area to be
10 performed in a good and workerlike manner, in compliance with all
11 applicable laws and lawful ordinances, regulations and orders of
12 any federal, state, county or municipal authority, and substantially
13 in compliance with any approved Repair Plans. Following
14 completion of the Water Tunnel Facilities, the City will own,
15 maintain, repair, reconstruct, or replace the Water Tunnel Facilities
16 at its sole cost. The City agrees to keep the Water Tunnel Facilities
17 in a good and safe condition, and the Easement Area, so far as
18 affected by the City's operations, free from waste, to the reasonable
19 satisfaction of the Transit District.

- 20 **2. Terms for Surface Entry onto Remaining Property.** In conjunction with
21 the Water Tunnel Project or future work on the Water Tunnel Facilities, the
22 City may, from time to time, require access to the surface of the
23 Remaining Property in order to make inspections and install, read and
24 remove monitoring equipment. Transit District shall allow such entry
25 provided that the City or its consultant applies for a permit from Transit
26 District, satisfies the reasonable conditions for issuance of such a permit,
27 and complies with the terms of the permit, including any required safety
28 procedures the City must follow relative to entry onto an active Transit

1 District right of way and any applicable environmental protocols related to
2 or required as a result of such entry.

3 **3. Service Agreement.** The City has entered into a Service Agreement to
4 reimburse Transit District's costs in reviewing the Water Tunnel Project,
5 preparing documents and providing necessary oversight for the Water
6 Tunnel Project. In the event that, after the initial installation of the Water
7 Tunnel Improvements, the City performs work that requires Transit District
8 to perform additional services or furnish additional materials to the City,
9 Transit District may require the City to enter into a new Service
10 Agreement; provided, however, such agreement shall not require
11 reimbursement of any legal fees or costs incurred by Transit District
12 related to threatened or filed litigation between Transit District and the
13 City. Further, the City's obligations with respect to costs incurred by
14 Transit District in connection with any proposed Train Tunnel Facilities
15 and/or Protective Improvements on the Property shall be limited to those
16 obligations described in **Section 4.**

17 **4. Transit District's Reserved Rights.** The Easement is made subject to
18 the reserved right and obligation of Transit District, its successors and
19 assigns, to use the Easement Area and Remaining Property in the
20 performance of its transportation operations as described herein.

21 **4.1. Transit District's Reserved Rights On Remaining Property.**

22 There is reserved unto Transit District, its successors and assigns,
23 the right to construct, reconstruct, maintain and use on the
24 Remaining Property existing and future facilities and appurtenances
25 related to the performance of its transportation operations,
26 including, without limitation, existing and future transportation,
27 communication, Transit District tracks and pipeline facilities and
28 appurtenances in, upon, over, under, across and along the

1 Remaining Property.

2 The City has caused the Water Tunnel Project to be designed such
3 that the portion of the Water Tunnel Facilities located within the
4 Property can accommodate a Cooper E80 loading above the upper
5 elevation of the Easement Area (i.e., on the surface of the
6 Remaining Property and within "Zone A" as shown on attached
7 Exhibit E). The Transit District shall not cause or allow the
8 improvements and operations on the surface and within Zone A of
9 the Remaining Property to exceed such loading, or cause or allow
10 to be constructed on the Remaining Property any improvements
11 such as deep foundations that would transfer load from the
12 Remaining Property to the Easement Area, or cause or allow to
13 occur on the Remaining Property blasting, percussion drilling or
14 other operations that would transmit vibration to the Water Tunnel
15 Facilities, or cause or allow a release of Hazardous Materials that
16 would affect the Easement Area.

17 Subject to the foregoing restrictions, Transit District, its successors
18 and assigns, may, in the future, construct additional Transit District
19 tracks or other transportation facilities on the Remaining Property,
20 which may require the use of all or a portion of the Remaining
21 Property. The City and Transit District acknowledge that this work
22 may increase the City's costs of repair, reconstruction and/or
23 replacement of the Water Tunnel Facilities, and agree that,
24 provided that Transit District complies with the restrictions
25 described above, any additional costs of such repair, reconstruction
26 or replacement resulting from such construction of additional tracks
27 or facilities outside of the Easement Area shall be borne by the
28 City.

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4.2. Transit District's Reserved Rights Within the Easement Area.

The City shall have the exclusive use and occupancy of the Easement Area subject only to Transit District's rights under this Section 4.2. There is reserved unto the Transit District, its successors and assigns, the following rights and obligations with regard to the Easement Area.

4.2.1. Right to Construct Train Tunnel Facilities. In the event that Transit District proposes to construct and operate a train tunnel on the Remaining Property, such tunnel improvements including all necessary appurtenances (the "Train Tunnel Facilities") may be located within a portion of the Easement Area, but subject to, and only to the extent permitted by, the terms and conditions of this **Section 4.2.**

4.2.2. Acknowledgment of Uncertainties. The parties acknowledge that: (a) Transit District has no present plans to construct a train tunnel on the Remaining Property; (b) the parties cannot predict when, if ever, such a project may be undertaken; (c) the parties have done the best they can, based on information available to them at the time of this Stipulation, to define the process and the parties' respective rights and duties with respect to coordinating, planning, designing and constructing the Train Tunnel Facilities and any Protective Improvements (as defined in **Section 4.2.3**) within the Train Tunnel Zone; (d) the parties cannot predict the planning and environmental impact review processes that may be required by law in the future if and when such a project is proposed; and (e) circumstances may change in ways that are not possible to predict, including without

1 limitation significant changes in technology, engineering
2 standards, environmental standards, construction methods
3 and legal requirements applicable to transportation and
4 water supply infrastructure. In the event of a material
5 change in circumstances rendering any process,
6 performance of obligations or exercise of rights hereunder
7 impossible, unlawful, impractical, or excessively onerous, the
8 parties will diligently engage in good faith negotiations to
9 adopt a mutually acceptable amendment to this Stipulation,
10 construing or defining the process, rights and obligations in
11 light of such changed circumstances, taking into account
12 equitable considerations and the intention of the parties in
13 entering into this Stipulation. If the parties are unable to
14 agree on the terms of such an agreement within thirty (30)
15 days after either party requests such negotiations, the
16 parties may follow the dispute resolution process set forth in
17 **Section 4.2.14**. In that event, the parties agree that any
18 such determination of the process, rights and obligations
19 through the dispute resolution process, including any judicial
20 determination if the parties fail to reach agreement through
21 mediation, may take into account equitable considerations
22 and the intention of the parties in entering into this
23 Stipulation.

24 **4.2.3. Responsibility for Protective Improvements.** The City
25 shall bear the responsibility for designing, at the City's
26 expense, any reasonable modifications or additional
27 improvements that would be necessary or prudent, in the
28 City's sole judgment, to protect the Water Tunnel Facilities

1 from damage or interference from the Train Tunnel Facilities
2 (“**Protective Improvements**”) and funding the construction
3 of such improvements, as provided in this **Section 4**; and
4 Transit District shall bear the responsibility for complying
5 with the provisions of this **Section 4** in the planning, design,
6 construction, operation, maintenance and repair of the Train
7 Tunnel Facilities.

8 **4.2.4. Train Tunnel Zone.** The only portion of the Easement Area
9 that may be penetrated by any Train Tunnel Facilities,
10 Protective Improvements and train tunnel construction
11 activity (including without limitation pre-construction
12 geotechnical investigations) is that portion of the Easement
13 Area designated as “Zone B” on attached **Exhibit E** (the
14 “**Train Tunnel Zone**”). In no event shall Transit District
15 cause or permit any penetration of the area identified as
16 “Zone C” on such Exhibit. When designing the Train Tunnel
17 Facilities, Transit District shall keep in mind that any
18 Protective Improvements will have to be located above Zone
19 C, and Zone C must be kept clear of all improvements,
20 excavation, construction and testing operations.

21 **4.2.5. Planning and Design.** The parties acknowledge that it will
22 be in the best interest of both parties, their respective
23 customers and the general public, to design, construct and
24 operate any train tunnel project potentially affecting the
25 Property (“**Train Tunnel Project**”) in such a way as to be
26 compatible with and avoid damaging the Water Tunnel
27 Facilities. Accordingly, Transit District shall keep the City
28 informed of its plans for any Train Tunnel Project and shall

1 provide the City with reasonable opportunities to be involved
2 in the planning, review, design and construction monitoring
3 process for any such project, which involvement shall
4 include without limitation the following:

5 (a) At the initial planning stage when Transit District is
6 considering project alternatives for the Train Tunnel
7 Project, Transit District shall consult with the City.
8 Such consultation shall include providing to the City a
9 written description or depiction of all project
10 alternatives on the Property that could potentially
11 affect the Water Tunnel Facilities, responding to the
12 City's reasonable requests for information, requesting
13 comments from the City, and providing a reasonable
14 opportunity for Transit District's and the City's
15 representatives to meet to discuss the proposed
16 project as it may affect the Water Tunnel Facilities.

17 (b) Transit District shall cause the Train Tunnel Facilities
18 to be designed in accordance with then-current,
19 applicable design codes and standards.

20 (c) The Protective Improvements, if any, shall be
21 considered part of the Train Tunnel Project for
22 purposes of environmental review under the California
23 Environmental Quality Act and the National
24 Environmental Policy Act and any applicable
25 successor legislation governing the review of
26 environmental impacts of public projects (any such
27 review, "**Environmental Impact Review**"). No later
28 than sixty (60) days before the earlier of

1 (i) preparation of an initial study or (ii) publication of a
2 notice of intent to prepare a draft environmental
3 impact report, environmental impact statement or
4 applicable documentation under laws then governing
5 Environmental Impact Review of public projects,
6 Transit District shall provide the City with sufficient
7 information about Transit District's proposed Train
8 Tunnel Project to enable the City to determine (A)
9 whether any Protective Improvements might be
10 needed, and (B) the nature of such Protective
11 Improvements in detail sufficient for Environmental
12 Impact Review purposes. Following receipt of such
13 information, the City will provide a description of
14 potential Protective Improvements sufficient for such
15 purposes.

16 (d) Upon request, the City shall provide Transit District
17 with copies of any archaeological, geological,
18 geotechnical or related studies it has that pertain to
19 the Property, it being understood that the City makes
20 no warranty as to the accuracy or completeness of
21 such materials.

22 (e) If the Train Tunnel Project is to be a design/build
23 project;

24 (i) Transit District shall furnish to the City a copy
25 of the preliminary design package that is to be
26 provided to potential bidders, on or before the
27 earlier of (i) the date Transit District advertises
28 the request for bids ("RFB") or (ii) 24 months

1 before issuing the notice to proceed (or
2 equivalent) for the design/build contract.

3 (ii) The RFB for the design/build contract shall
4 inform potential bidders that: (A) the City will be
5 designing the improvements, if any, for
6 protection of the Water Tunnel Facilities,
7 (B) the selected design/build contractor will be
8 required to coordinate with the City,
9 incorporate the City's detailed plans and
10 specifications for the Protective Improvements
11 (the "PI Drawings") into the plans and
12 specifications for the Train Tunnel Project (the
13 "Train Tunnel Drawings") as provided herein,
14 and, to the extent possible, separately track the
15 costs of incorporating the PI Drawings and
16 constructing the Protective Improvements,
17 (C) the Train Tunnel Improvements and
18 Protective Improvements must be designed
19 and constructed so that no improvements or
20 construction activities will penetrate Zone C of
21 the Easement Area as shown on attached
22 Exhibit E, (D) the City shall have 21 months to
23 complete the design of the Protective
24 Improvements; and (E) blasting, percussion
25 drilling or other activities that would transmit
26 shock or persistent vibration to the Water
27 Tunnel Facilities are prohibited.
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(f) If the Train Tunnel Project is to be a design-bid-build project, then no later than 24 months before advertising the request for bids, Transit District shall provide the basic design data (i.e., 35% design drawings including design criteria and loading data) to the City for review and analysis.

(g) Following receipt of the basic design data or the preliminary design package, as the case may be (the "Initial Design Package"), the City shall commence and diligently pursue the process of analyzing the Initial Design Package and designing any Protective Improvements that the City or its engineering staff or consultant deems necessary or desirable. As soon as the City makes the decision to design Protective Improvements or that Protective Improvements are not needed, the City shall notify Transit District. If the City determines that Protective Improvements are necessary or desirable, the City shall provide to Transit District its PI Drawings within twenty-one (21) months after receipt of the Initial Design Package (the "PI Design Period"). The City shall pursue this process with reasonable diligence and may deliver the PI Drawings sooner, but the parties recognize that it is reasonable to allow approximately nine months for the City to comply with public contracting process to retain an outside engineering firm, if necessary, four months for the engineers to analyze the Initial

1 Design Package, and eight months for designing the
2 Protective Improvements.

3 (h) During the PI Design Period, the parties shall cause
4 their engineering and project management staff to
5 cooperate in good faith and share information as
6 needed for the design of the Protective
7 Improvements. At each major design milestone
8 (35%, 65% and 100%) and in the event of any re-
9 design of the Train Tunnel Project or revision of
10 previously submitted drawings or specifications,
11 Transit District shall provide the City with copies of the
12 pertinent Train Tunnel Project design drawings and
13 specifications. Such drawings and specifications shall
14 be considered pertinent to the Water Tunnel Facilities
15 insofar as they reflect improvements or construction
16 activities within, above or in the vicinity of the
17 Easement Area, reflect improvements or construction
18 activities that could affect the loading above or within
19 the Easement Area, reflect construction methods that
20 could impact the Water Tunnel Facilities, or contain
21 information that would otherwise be necessary or
22 useful for the design of the Protective Improvements.

23 (i) If any such submittal by Transit District includes a
24 material change to the design data, drawings or
25 specifications previously delivered to the City, Transit
26 District shall identify the material change(s) in the
27 transmittal letter to the City, and the PI Design Period
28 shall be extended if requested by the City for a

1 reasonable period to allow the City sufficient time to
2 analyze the new information and make adjustments to
3 its design.

4 (j) Once the City submits the PI Drawings to Transit
5 District, Transit District and the City shall cause their
6 respective design staff and consultants to coordinate
7 as necessary to incorporate the PI Drawings into the
8 overall Train Tunnel Project.

9 (k) If the Train Tunnel Project is a design-bid-build
10 project, the PI Drawings will be incorporated into the
11 RFB for the Train Tunnel Project. To the degree
12 possible, the RFB will be prepared so that
13 construction of the Protective Improvements (the
14 "SFPUC Work") will be separately itemized by the
15 bidder. The request for bids for the construction
16 contract shall inform potential bidders that (i) the Train
17 Tunnel Improvements and Protective Improvements
18 must be constructed so that no improvements or
19 construction activities will penetrate Zone C of the
20 Easement Area as shown on attached **Exhibit E**, and
21 (ii) blasting, percussion drilling or other activities that
22 would transmit shock or persistent vibration to the
23 Water Tunnel Facilities are prohibited.

24 (l) The parties shall designate individuals to be the
25 central point of contact for communications relating to
26 the Train Tunnel Project and the SFPUC Work.

27 **4.2.6. Contractor Requirements.**

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(a) Transit District shall include in the specifications for the Train Tunnel Project requirements to ensure that the Train Tunnel Project is performed and monitored by appropriately experienced personnel using means and methods that comply with all applicable laws and regulations and that minimize risk of harm to the Water Tunnel Facilities. Transit District shall provide the City with a reasonable opportunity to review and comment on the RFB, which shall include, without limitation, specifications of the following type:

- (i) Key contractor personnel must possess the appropriate qualifications (i.e., must have worked on one or more projects serving in a similar capacity).
- (ii) Contractor shall retain an experienced licensed surveyor to perform preconstruction survey, survey during construction, and post construction survey of the ground within 500 feet of the Water Tunnel Facilities and submit to the City survey deliverables for each stage of survey completion (such as, preconstruction survey, survey during construction, and post construction survey), survey field notes and calculations, and a copy of site and alignment as-built drawings prepared, stamped and signed by the Surveyor.
- (iii) Contractor shall employ a tunnel surveyor with extensive, appropriate tunnel surveying

1 experience (including without limitation,
2 experience in TBM laser guidance systems or
3 equivalent successor system).

4 **(iv)** Contractor shall control tunnel line and grade.
5 Tolerances for maximum vertical movement
6 should be specified. Survey results showing
7 tunnel alignment and grade shall be provided
8 to the City.

9 **(v)** Contractor shall use geotechnical
10 instrumentation to monitor surface movement
11 in the vicinity of (i.e., within 500 feet of) the
12 Water Tunnel Facilities on a daily basis.
13 Copies of the results of settlement monitoring
14 surveys shall be provided to the City daily.

15 **(vi)** Set a maximum allowable movement
16 (maximum of 1") at which no further movement
17 of the ground will be acceptable and, if the
18 maximum allowable movement is reached,
19 require Train Tunnel work to be halted until the
20 acceptance by the City and Transit District of a
21 plan detailing corrective actions and restorative
22 measures.

23 **(vii)** Require errors and omissions insurance
24 coverage from the surveying firm in the form of
25 an insurance certificate.

26 **(viii)** Contract shall not contain a waiver of the right
27 to recover consequential or incidental damages
28 from the contractor.

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4.2.7. Funding.

(a) SFPUC shall bear 100% of the costs incurred by Transit District to incorporate the PI Drawings into the Train Tunnel Drawings, the net increase in project construction costs resulting from including the Protective Improvements in the Train Tunnel Project, and the incremental cost of any construction oversight or inspection required solely for the Protective Improvements. For purposes of this **Section 4.2.7**, the term "construction costs" shall mean the construction contractor's charges directly related to construction of the project (including but not limited to costs of labor, materials, equipment, utilities, insurance, overhead and contractor's profit), but excluding costs arising from modifications to the SFPUC Work not approved by SFPUC. If Transit District later receives reimbursement or a credit from its contractor ("**Train Tunnel Contractor**") or any supplier or other third party for any costs previously remitted to Transit District by the City, Transit District shall promptly notify the City and shall, at the City's election, either apply such reimbursed amount or credit against the next payment otherwise due from the City or deliver an amount equal to such reimbursed amount or credit to the City.

(b) **Payment for Incorporation of PI Drawings.** The City shall reimburse Transit District for the costs of including the PI Drawings in the Train Tunnel

1 Drawings within thirty (30) calendar days of receiving
2 Transit District's request for such reimbursement,
3 which request shall set forth in detail the work
4 performed, materials used, and the expenses incurred
5 by Transit District.

6 (c) **Payment for Construction.** If the contract for
7 construction of the Train Tunnel Project ("**Train**
8 **Tunnel Contract**") requires progress payments, each
9 time Transit District authorizes a progress payment to
10 the Train Tunnel Contractor pursuant to Train Tunnel
11 Contract procedures, it shall determine which portion,
12 if any, of the progress payment is for SFPUC Work.
13 Transit District shall then send a request for payment
14 to the City setting forth the amount due under the
15 progress payment (whether or not such payment will
16 be paid directly to Train Tunnel Contractor or
17 committed for payment but withheld by Transit District
18 under the terms of the Train Tunnel Contract) and any
19 other payments accrued and owing as of such date.
20 The request shall set forth in detail the work
21 performed, materials used, and the expenses incurred
22 by the Train Tunnel Contractor, as well as the amount
23 of total billings to date and the remaining balance in
24 the Train Tunnel Contract. The City shall, within 30
25 calendar days of receipt of the request for payment,
26 send a check to Transit District for the full amount
27 then due.
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(d) **Payment for Environmental Impact/Mitigation Measures.** The City shall reimburse Transit District for the incremental costs of any environmental mitigation measures required solely as a result of the construction of the Protective Improvements, within thirty (30) calendar days of receiving Transit District's request for such reimbursement, which request shall set forth in detail the work performed, materials used, and the expenses incurred by Transit District.

(e) **Relationship of Parties With Respect to Funding.** The obligation of each party to make payments or incur expenses under this Stipulation is an individual and severable obligation and not a joint obligation with those of any other party. Each party shall be individually responsible for its own obligations under this Stipulation. No party shall be under the control of or shall be deemed to control the other party or the parties collectively. No party shall be the agent of or have the right or power to bind the other party without such party's express written consent, except as expressly provided in this Stipulation.

4.2.8. Insurance. The Train Tunnel Contract shall require the Train Tunnel Contractor to maintain in force during the course of the contract insurance in the amounts and coverages specified in the RFB and to name the City and County of San Francisco, its officers, agents, volunteers and employees, as additional insured under the liability policies and any excess or umbrella policies, and, if obtained for

1 Transit District, to provide a waiver of subrogation in favor of
2 the City and County of San Francisco, its officers, agents,
3 volunteers and employees under the workers compensation,
4 commercial general liability, automobile liability, and property
5 policies and any excess or umbrella policies.

6 **4.2.9. Contractor Indemnity.** Train Tunnel Contractor's
7 indemnification obligation to Transit District under the Train
8 Tunnel Contract shall be expanded to include the City and
9 County of San Francisco and its subdivisions, officials,
10 employees and agents as indemnified parties.

11 **4.2.10. Cooperation Regarding Public Relations and Outreach.**
12 The parties will jointly review and approve all press releases
13 and other information created for public consumption
14 concerning the SFPUC Work, if any.

15 **4.2.11. Obligations During Construction.**

16 (a) Transit District agrees to require the Train Tunnel
17 Contractor to construct the SFPUC Work in
18 conformance with the PI Drawings, the Train Tunnel
19 Drawings (which shall conform to the submittals
20 furnished to the City during the PI Design Period) and
21 the Train Tunnel Contract, and agrees to perform all
22 necessary oversight to cause such construction.
23 Transit District further agrees to timely perform its
24 obligations under the Train Tunnel Contract, to ensure
25 the Train Tunnel Contract complies with the
26 requirements specified in the RFB and to comply with
27 all applicable laws, regulations and third party permits
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1 related to the performance of the Train Tunnel
2 Contract.

3 (b) Transit District shall provide the City, within five (5)
4 business days following receipt, a copy of each
5 material submittal (or any modification thereto) that
6 affects the SFPUC Work or the Train Tunnel Facilities
7 on the Property. No later than ten (10) business days
8 after the City's receipt from Transit District of a
9 request for review of such material submittals, the
10 City shall provide a written response to Transit District
11 identifying whether the submittal is approved or
12 rejected in accordance with the requirements of the
13 Train Tunnel Contract (with an explanation of the
14 basis for any rejection), and Transit District shall
15 promptly deliver such response to Train Tunnel
16 Contractor.

17 (c) No later than five (5) business days after the City's
18 receipt from Transit District of a request for
19 information related to the SFPUC Work, the City shall
20 provide a written response to Transit District providing
21 the requested information.

22 (d) If Transit District determines that it is necessary to
23 modify the PI Drawings and/or the Train Tunnel
24 Drawings affecting the Property due to any changed
25 or concealed conditions, it shall promptly provide
26 written notice to the City ("Modification Notice") as
27 follows: (i) Inform the City in writing as soon as
28 possible about the proposed modification; and

1 (ii) provide the City with full information about the
2 nature and scope of the proposed modification, the
3 reasons for it, the expected impact on Train Tunnel
4 Contract costs and schedule (including the SFPUC
5 Work), and how it proposes that any extra costs (or
6 cost reductions) be shared (i.e., by Transit District,
7 Train Tunnel Contractor, the City, other parties, etc.) If
8 the Modification Notice states that it is necessary to
9 modify the PI Drawings, or if the City determines in its
10 sole discretion that the PI Drawings must be modified
11 in light of information provided in the Modification
12 Notice, the City shall provide revised PI Drawings to
13 Transit District within ten (10) business days after
14 receiving from Transit District the Modification Notice
15 and any additional information about the changed
16 conditions or proposed drawing changes reasonably
17 requested by the City. If the City determines that any
18 modification to the PI Drawings proposed by Transit
19 District or necessitated by changes to the Train
20 Tunnel Drawings or other information in the
21 Modification Notice would adversely affect the safety,
22 maintainability or functionality of the SFPUC Work or
23 would not be acceptable to any third parties having
24 approval rights with respect to the SFPUC Work, or
25 the City objects to any extra costs (or cost reductions)
26 or allocations thereof, the City shall provide Transit
27 District with an explanation of the basis for its
28 determination to Transit District no later than ten (10)

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business days after receipt of the Modification Notice (“**Objection Notice**”). The parties shall work diligently and in good faith to resolve the matter. If the parties are unable to reach a mutually satisfactory resolution within five (5) business days after Transit District’s receipt of the Objection Notice and such disputed action must be made to prevent unreasonable delay, Transit District may take its preferred course in such disputed action, and the parties shall follow the dispute resolution procedure set forth in **Section 4.2.14** as to the allocation of extra costs or cost reductions for any such action, or its impact on the safety, maintainability, or functionality of the SFPUC Work or the acceptability of the SFPUC Work to any third parties having approval rights with respect to the SFPUC Work; however, the City reserves the right to seek a court order preventing such action if the City determines that the disputed action will materially impair the safety, maintainability, or functionality of the SFPUC Work or cause any required third party approvals to be withheld.

(e) No later than three (3) business days after receipt of Train Tunnel Contractor’s notice of a potential claim for additional compensation or a request for a change order related to the SFPUC Work, Transit District shall provide a copy of the notice to the City (“**First Notice**”). No later than five (5) business days after the City’s receipt of a First Notice, the City shall

1 provide Transit District with a written response
2 identifying whether the claim or request for change
3 order is recommended for approval or rejection in
4 accordance with the requirements of the PI Drawings
5 or the Train Tunnel Contract (with an explanation of
6 the basis for any rejection). If the parties do not agree
7 on the approval or rejection for the claim or request
8 for change order, the parties shall work diligently and
9 in good faith to resolve the matter. If the parties are
10 unable to reach a mutually satisfactory resolution
11 within ten (10) business days after the City's receipt of
12 the First Notice and such disputed action must be
13 made to prevent unreasonable delay, Transit District
14 may take its preferred course in such disputed action,
15 and the parties shall follow the dispute resolution
16 procedure set forth in **Section 4.2.14** as to the
17 allocation of extra costs or cost reductions for any
18 such action, or its impact on the safety,
19 maintainability, or functionality of the SFPUC Work or
20 the acceptability of the SFPUC Work to any third
21 parties having approval rights with respect to the
22 SFPUC Work; however, the City reserves the right to
23 seek a court order preventing such action if the City
24 determines that the disputed action will materially
25 impair the safety, maintainability, or functionality of
26 the SFPUC Work or cause any required third party
27 approvals to be withheld.
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(f) Transit District shall be responsible for the day-to-day inspection and approval for all components of the SFPUC Work; however, the City shall be responsible for inspecting the completed SFPUC Work. Prior to commencement of construction, the City and Transit District shall determine whether the City shall also be responsible for inspecting specific phases or elements of the work such as pre-fabricated components or critical welds. Transit District shall notify the City at least five (5) calendar days prior to each such portion of the SFPUC Work's readiness for inspection. Transit District shall cause the Train Tunnel Contractor to provide safe and proper facilities for access, inspection and ascertaining that the materials and workmanship are in accordance with the PI Drawings. If the City determines that any matter described in such notices does not comply with the Train Tunnel Contract, the City shall provide Transit District with written notice specifying its basis for such rejection within two (2) business days of the inspection. Transit District shall, in turn, communicate any such City rejections and comments to the Train Tunnel Contractor, and shall proceed under the Train Tunnel Contract to resolve the issue.

(g) To the extent inspections by the City or Transit District at any stage reveal a failure by the Train Tunnel Contractor to meet the requirements of the Train Tunnel Contract, Transit District shall forward all such

1 comments to the Train Tunnel Contractor, instruct the
2 Train Tunnel Contractor to take all appropriate actions
3 to correct its work, and shall not accept these
4 components of the SFPUC Work until the City
5 approves.

6 (h) In addition to the City's inspection rights and
7 obligations under **Section 4.2.11(f)**, the City shall
8 have the right to otherwise inspect the progress and
9 condition of the SFPUC Work, provided that the City
10 coordinates such inspection with Transit District and,
11 provided further, that the City shall not take any
12 actions that unreasonably interfere with Train Tunnel
13 Contractor's performance, direct the Train Tunnel
14 Contractor's performance in the field, nor authorize
15 any additional work, except in an emergency situation
16 to the extent necessary for the protection of persons
17 or property (in which case, the City shall contact
18 Transit District as soon as possible, and the City shall
19 document any such direction in writing to Transit
20 District).

21 (i) The City shall maintain all documents related to its
22 inspection of the SFPUC Work, including all daily
23 logs, inspector notes, testing, and correspondence,
24 and the City shall provide copies of all such
25 documents to Transit District upon request. Transit
26 District in return will provide a copy of its daily logs,
27 inspector notes, testing, and correspondence relating
28 to SFPUC Work to the City upon request by the City,

1 including information related to the administration of
2 the SFPUC Work.

3 (j) Transit District shall provide the City with at least ten
4 (10) business days prior written notice of each of the
5 following: (i) the commencement of the warranty
6 period for the SFPUC Work, and (ii) Transit District's
7 intent to accept all the work to be performed under the
8 Train Tunnel Contract.

9 (k) Transit District shall supply redline drawings of the
10 SFPUC Work to the City both monthly during
11 construction and upon the City's acceptance of the
12 SFPUC Work. The redline drawings shall be copies
13 of the PI Drawings showing (legibly marked in red) the
14 location and details of any changes made during
15 construction to the SFPUC Work. Transit District
16 shall supply the City with electronic (AutoCADD files)
17 versions of completed "As Built" drawings within thirty
18 (30) calendar days after Transit District acceptance of
19 all of the work to be performed under the Train Tunnel
20 Contract.

21 **4.2.12. Acceptance of SFPUC Work; Transfer of Ownership and**

22 **Warranty.** Once Transit District and the City accept the
23 SFPUC Work as completed by Train Tunnel Contractor,
24 Transit District shall deliver a bill of sale and assignment of
25 warranties, together with any other documents reasonably
26 acceptable to Transit District and the City, to transfer title of
27 the SFPUC Work, and all related warranties, to the City.

28 Transit District and the City shall act in good faith to take all

1 steps reasonably necessary to transfer ownership of the
2 SFPUC Work and all related warranties to the City. If Transit
3 District is not permitted to assign any warranties related to
4 the SFPUC Work, Transit District shall make a warranty to
5 the City on the same terms and conditions of such warranty
6 made by Train Tunnel Contractor to Transit District, provided
7 that such warranty shall be conditioned on Train Tunnel
8 Contractor's performance of its warranty obligations to
9 Transit District. Transit District agrees that it shall make all
10 reasonable efforts to ensure that Train Tunnel Contractor
11 performs such warranty obligation to Transit District.

12 **4.2.13. Ownership, Operation and Maintenance of Train Tunnel**
13 **Facilities.**

- 14 (a) Following completion of the Train Tunnel Facilities,
15 Transit District will own, maintain, repair, reconstruct,
16 or replace the Train Tunnel Facilities at its sole cost.
- 17 (b) Transit District agrees to keep the Train Tunnel
18 Facilities in good and safe condition, and the
19 Easement Area, so far as affected by Transit District's
20 operations, free from waste, to the reasonable
21 satisfaction of the City.
- 22 (c) Following completion of the Train Tunnel Facilities,
23 should Transit District desire or need to perform any
24 work in the Train Tunnel Zone that would potentially
25 affect the City's Water Tunnel Facilities or the
26 Protective Improvements, Transit District shall submit
27 detailed plans and specifications for such work (or the
28 drawings or other description of a planned installation,

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if such installation would not ordinarily be made pursuant to plans and specifications) (“**Work Plans**”) to the City for its consent in accordance with **Sections 9.1 and 9.3**. Any change to approved Work Plans that could affect the City’s Water Tunnel Facilities or Protective Improvements shall be subject to the City’s prior consent, which shall not be unreasonably withheld or delayed. The City’s consent to or approval of the Work Plans or any other plans and specifications or drawings with respect to the Train Tunnel Facilities shall not relieve Transit District or its contractors from any liability for negligence, errors or omissions associated with the design and construction thereof. Transit District agrees to give the City sixty (60) calendar days’ written notice prior to commencement of any maintenance or construction activities in the Train Tunnel Zone that could affect the City’s Water Tunnel Facilities or Protective Improvements, except in the event of an emergency, in which case Transit District shall, concurrently with dispatching a repair crew to such emergency, contact the City’s Regional Water System Dispatcher at (650) 872-5900 to advise of same. Transit District, at Transit District’s sole cost and expense, shall cause all work in connection with the use, operation, maintenance, structural repair, reconstruction, or replacement of the Train Tunnel Facilities within the Easement Area to be performed in

1 a good and workerlike manner, in compliance with all
2 applicable laws and lawful ordinances, regulations
3 and orders of any federal, state, county or municipal
4 authority, and substantially in compliance with any
5 approved Work Plans. In no event shall Transit
6 District cause or allow blasting, percussion drilling or
7 other operations that would transmit vibration to the
8 Water Tunnel Facilities.

9 **4.2.14. Resolution of Disputes.** In the event disputes regarding
10 modifications or costs should arise under this **Section 4**,
11 either party may initiate the dispute resolution process
12 described in **Section 10**.

13 **5. Assumption of Risk/Waiver of Claims.**

14 **5.1.** Subject to **Section 5.3**, the City shall assume all risk of damage to
15 any and all improvements constructed as part of the Water Tunnel
16 Project and appurtenances thereto and to any other property of the
17 City, or any property under the control or custody of the City while
18 upon or near the Remaining Property incident to the construction of
19 the Water Tunnel Facilities, caused by or contributed to in any way
20 by the construction, operation, or maintenance of Transit District's
21 operations on the Remaining Property, and Transit District shall not
22 be liable therefor. Subject to **Section 5.3**, the City hereby releases
23 Transit District from any liability, including any claims for damages
24 or extra compensation (i) arising from reasonable construction
25 delays due to work by Transit District forces or Transit District
26 operations on the Remaining Property, (ii) as the result of the
27 failure or inability of Transit District to provide necessary flaggers or
28 inspectors, (iii) from any failure by Transit District to investigate or

1 identify the presence of Hazardous Materials or any other
2 environmental conditions, (iv) for work done by Transit District
3 forces on the Remaining Property, (v) for Transit District operations
4 on the Remaining Property, or (vi) from damage to the Water
5 Tunnel Facilities resulting from the presence or operation of the
6 Train Tunnel Facilities within the Train Tunnel Zone where such
7 Train Tunnel Facilities and operations conform to the criteria and
8 data furnished to the City in the Initial Design Package and
9 subsequent submittals by Transit District during the PI Design
10 Period and are constructed, maintained and operated in
11 compliance with this Stipulation.

12 **5.2.** Subject to **Section 5.3**, neither Transit District nor any of its
13 directors, officers, agents or employees shall be liable for any
14 damage to the property of the City, its officers, agents, employees,
15 contractors or subcontractors, or their employees, or for any bodily
16 injury or death to such persons, resulting or arising from the
17 condition of the Remaining Property or its use by the City.

18 **5.3.** Notwithstanding anything to the contrary above in this **Section 5**,
19 Transit District acknowledges that the assumption of risk, waivers
20 and releases contained in this Stipulation shall not apply to (i) any
21 Liability (as defined in **Section 6.1**) proximately caused by the
22 negligence, willful misconduct or criminal acts of Transit District or
23 its agents, employees, contractors, subcontractors, or invitees
24 and/or the Indemnitees, as defined in **Section 6**, or Transit
25 District's failure to comply with the provisions of this Stipulation, or
26 (ii) any claim or cause of action by the City for statutory or equitable
27 indemnity or contribution in connection with any claim against the
28 City relating to Hazardous Materials on the Property other than the

1 Liability assumed by the City in **Section 7.**

2 **6. Indemnity.**

3 **6.1.** The City shall hold harmless, defend (with counsel reasonably
4 satisfactory to Transit District) and indemnify the Peninsula Corridor
5 Joint Powers Board, the State of California in its capacity as holder
6 of a deed of trust on the Property, the San Mateo County
7 Transportation Authority, the San Mateo County Transit District, the
8 Union Pacific Railroad and the National Railroad Passenger
9 Corporation, any other rail operators using the Remaining Property,
10 and all of their respective officers, directors, employees, volunteers
11 and agents, the successors and assigns of any of them (all of the
12 above hereinafter collectively known as "**Indemnitees**"), from and
13 against all claims, causes of action, proceedings, losses, damages,
14 liability, cost, and expense (including, without limit, any fines,
15 penalties, judgments, litigation costs, reasonable attorneys' fees
16 and consulting, engineering and construction costs) for damage to
17 natural resources or other loss of or damage to property and for
18 injuries to or death of any person (including, but not limited to, the
19 property and employees of each party) ("**Liability**") to the extent
20 arising or resulting from the negligence, willful misconduct or
21 criminal acts of the City or its agents, employees, contractors,
22 subcontractors, or invitees in the use of the Property or construction
23 of the Water Tunnel Facilities, or the City's breach of the provisions
24 of this Stipulation, except to the extent such Liability is caused by
25 the negligence, willful misconduct or criminal act of an Indemnitee
26 or Transit District's breach of this Stipulation. The duty of the City
27 to indemnify and hold harmless includes the duties to defend as set
28 forth in Section 2778 of the California Civil Code. In any action or

1 proceeding brought against any Indemnitee by reason of any
2 Liability indemnified by the City hereunder, the City shall have the
3 right to control the defense and to determine the settlement or
4 compromise of any action or proceeding, provided that Transit
5 District shall have the right, but not the obligation, to participate in
6 the defense of any such Liability at its sole cost. The City shall not
7 be deemed to have waived any Liability arising from the
8 negligence, willful misconduct or criminal acts of Transit District or
9 any other Indemnitee or any of their respective agents, employees,
10 contractors, subcontractors, or invitees in the use of the Easement
11 Area or construction, use, maintenance, repair or operation of the
12 Train Tunnel Facilities, Transit District's breach of the provisions of
13 this Stipulation, or the failure of any of Transit District's
14 improvements or operations in the Train Tunnel Zone to conform to
15 the design criteria and loading data furnished to the City during the
16 PI Design Period or any changes to the Protective Improvements
17 made, without City's written approval, by Transit District or its
18 agents, employees, contractors, subcontractors, or invitees
19 (whether during or after construction of same); and the City shall
20 have the right to avail itself of all remedies available at law or equity
21 for any such Liability. It is the intention of the parties that should
22 any term of this paragraph be found to be void or unenforceable,
23 the remainder of the provision shall remain in full force and effect.

24 **7. Hazardous Materials.**

25 **7.1.** No Hazardous Materials (as defined below) shall be created,
26 stored, used, disposed of, brought to or handled at any time upon
27 the Property, except in compliance with all applicable laws,
28 statutes, ordinances, rules, regulations or orders of whatever kind

1 or nature. In conducting its operations on the Property, and in
2 arranging for the handling, transport and disposal of any Hazardous
3 Materials, the City shall at all times comply with all applicable laws,
4 statutes, ordinances, rules, regulations or orders of whatever kind
5 or nature and pay all costs of such compliance. The City shall
6 immediately notify Transit District when the City learns of, or has
7 reason to believe that, a release of Hazardous Materials has
8 occurred in, on or about the Property. The term "release" or
9 "threatened release" when used with respect to Hazardous
10 Materials shall include any actual or imminent spilling, leaking,
11 pumping, pouring, emitting, emptying, discharging, injecting,
12 escaping, leaching, dumping, or disposing in, on, under or about
13 the Property. The City shall further comply with all laws requiring
14 notice of such releases or threatened releases to governmental
15 agencies. In the event and to the extent that the City or its Agents
16 or Invitees cause a release of Hazardous Materials, the City shall,
17 at Transit District's discretion, either remediate, at the City's sole
18 cost, such contaminated property to the satisfaction of the
19 regulatory agency having jurisdiction thereto or reimburse Transit
20 District for its costs in performing such remediation. In connection
21 therewith, the City shall afford Transit District a full opportunity to
22 participate in any discussion with governmental agencies regarding
23 any settlement agreement, cleanup or abatement agreement,
24 consent decree or other compromise proceeding involving
25 Hazardous Materials.

26 **7.2.** Any Hazardous Materials introduced onto the Property by the City,
27 its agents, employees, contractors, subcontractors or invitees, shall
28 remain the property of the City, its agents, employees, contractors,

1 subcontractors or invitees, which shall be responsible for removing
2 and disposing of these materials at no cost to Transit District or any
3 Indemnitee, and the City shall be obligated to defend, indemnify
4 and hold Indemnitees harmless from any and all Liability to the
5 extent that such Liability arises directly from such introduction of
6 Hazardous Materials, regardless of whether such Liability arises
7 during or after the term of this Easement, unless such Liability was
8 proximately caused by the negligent act or omissions and/or the
9 willful misconduct of Transit District and/or the Indemnitees. This
10 indemnity shall not extend to Liability arising from the presence of
11 any Hazardous Materials on the Property as of the date of this
12 Stipulation, unless (i) such Hazardous Materials were introduced
13 onto the Property by the City, its agents, employees, contractors,
14 subcontractors or invitees, in which case this indemnity shall apply,
15 or (ii) the City's handling, excavation, relocation, investigation,
16 disposal or other exercise of control over the Property exacerbates
17 Hazardous Materials already present on the Property as of the
18 Effective Date which results in Transit District incurring new or
19 additional Liability that Transit District would not otherwise have
20 incurred in the absence of the City's activities, in which case the
21 City shall pay for and defend and indemnify Indemnitees from and
22 against such additional Liability only to the extent of such new or
23 additional Liability. "Exacerbates" means an act that causes the
24 increased migration of a plume of Hazardous Materials in
25 sediments, groundwater, or surface water or causes a release of
26 Hazardous Materials that had been contained until that act. The
27 City shall not be responsible or indemnify Indemnitees for its mere
28 discovery or reporting of Hazardous Materials which are present on

1 the Property as of the Effective Date.

2 **7.3.** For purposes of this Stipulation, "**Hazardous Materials**" means
3 material that, because of its quantity, concentration or physical or
4 chemical characteristics, is at any time now or hereafter deemed by
5 any federal, state or local governmental authority to pose a present
6 or potential hazard to public health, welfare or the environment.
7 Hazardous Materials includes, without limitation, any material or
8 substance defined as a "hazardous substance, pollutant or
9 contaminant" pursuant to the Comprehensive Environmental
10 Response, Compensation and Liability Act of 1980, as amended
11 (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and
12 Recovery Act (42 U.S.C. 6901 et seq.) or Section 25316 of the
13 California Health and Safety Code; a "hazardous waste" listed
14 pursuant to Section 25140 of the California Health and Safety
15 Code; any asbestos and asbestos-containing materials, whether or
16 not such materials are part of the Property or are naturally
17 occurring substances on the Property, and any petroleum,
18 including, without limitation, crude oil or any fraction thereof, natural
19 gas or natural gas liquids.

20 **8. Compliance with Laws.**

21 **8.1.** The City shall comply, at the City's expense, with all applicable
22 laws, regulations, rules and orders with respect to the City's use of
23 the Easement Area, including, without limitation, those relating to
24 construction, grading, signage, health, safety, noise, environmental
25 protection, Hazardous Materials, waste disposal and water and air
26 quality, and shall furnish satisfactory evidence of such compliance
27 upon request of Transit District. Before beginning work on the
28 Easement Area, the City shall also obtain, at the City's expense,

1 any and all permits, licenses and approvals required for
2 construction of the Water Tunnel Facilities.

3 **8.2.** Transit District shall comply, at Transit District's expense, with all
4 applicable laws, regulations, rules and orders with respect to
5 Transit District's use of the Train Tunnel Zone, including, without
6 limitation, those relating to construction, grading, signage, health,
7 safety, noise, environmental protection, Hazardous Materials,
8 waste disposal and water and air quality, and shall furnish
9 satisfactory evidence of such compliance upon request of the City.
10 Before beginning work within the Train Tunnel Zone, Transit District
11 shall also obtain, at Transit District's expense, any and all permits,
12 licenses and approvals required for construction of the Train Tunnel
13 Facilities.

14 **9. Approvals and Notices.**

15 **9.1. Transit District Approval Requests.** If Transit District requires
16 the City's approval or consent to any matters herein, Transit District
17 shall send the City written notice requesting such approval or
18 consent (a "**Transit District Approval Request**"). If a Transit
19 District Approval Request is for any proposed construction work,
20 such Transit District Approval Request shall be accompanied by the
21 plans and specifications or Work Plans (as defined in **Section**
22 **4.2.13**) for such work. The City shall respond to a Transit District
23 Approval Request within thirty (30) days of receiving such Transit
24 District Approval Request and notify Transit District of its approval,
25 conditional approval, disapproval, or need for additional
26 documentation regarding such Transit District Approval Request. If
27 Transit District must provide additional documentation for a Transit
28 District Approval Request, the City shall further respond to such

1 Transit District Approval Request within thirty (30) days of receiving
2 such additional documentation. If conditional approval of a Transit
3 District Approval Request is contingent on final approval by the
4 City's Public Utilities Commission (the "**Commission**") and/or the
5 City's Board of Supervisors (the "**Board**"), as applicable, the City
6 shall diligently perform the actions necessary to timely submit such
7 Transit District Approval Request to the Commission and/or the
8 Board for consideration. All Transit District Approval Requests
9 shall be sent to the following addresses:

10 Assistant General Manager for Operations
11 San Francisco Public Utilities Commission
12 1155 Market Street, 11th Floor
13 San Francisco, CA 94103

14 Manager, Land Engineering
15 San Francisco Public Utilities Commission
16 Water Supply and Treatment Division
17 1000 El Camino Real
18 Millbrae, CA 94030

19 **9.2. City Approval Requests.** If the City requires Transit District's
20 approval or consent to any matters herein, the City shall send
21 Transit District written notice requesting such approval or consent
22 (a "**City Approval Request**"). If a City Approval Request is for
23 any proposed construction work, such City Approval Request shall
24 be accompanied with the plans and specifications or Repair Plans
25 (as defined in **Section 1.2**) for such work. Transit District shall
26 respond to a City Approval Request within thirty (30) days of
27 receiving such City Approval Request and notify the City of its
28 approval, conditional approval, disapproval, or need for additional
documentation regarding such City Approval Request. If the City
must provide additional documentation for a City Approval Request,
Transit District shall further respond to such City Approval Request

1 within thirty (30) days of receiving such additional documentation.
2 If conditional approval of a City Approval Request is contingent on
3 approval by Transit District's authorizing body, Transit District shall
4 diligently perform the actions necessary to timely submit such City
5 Approval Request to such authorizing body for consideration. All
6 City Approval Requests shall be sent to the following addresses:

7 San Mateo County Transit District
8 1250 San Carlos Avenue
9 P.O. Box 3006
10 San Carlos, CA 94070-1306
11 Attn: Chief Engineer
12 Telephone: (650) 508-7922; Fax: (650) 508-7938

13 San Mateo County Transit District
14 1250 San Carlos Avenue
15 P.O. Box 3006
16 San Carlos, CA 94070-1306
17 Attn: Executive Officer, Planning & Development
18 Telephone: (650) 622-7843; Fax: (650) 508-7938

19 **9.3. Approval Standard.** Transit District shall have the right to
20 reasonably withhold its approval or consent to any action requested
21 by the City hereunder if the proposed action could materially
22 damage, endanger, harm or interfere with rail construction,
23 operations, or maintenance on the Remaining Property or with
24 Transit District's construction, use and operation, in accordance
25 with **Section 4**, of the Train Tunnel Facilities within the Train
26 Tunnel Zone. The City shall have the right to reasonably withhold
27 its approval or consent to any action proposed by Transit District
28 hereunder if the proposed action could materially damage,
endanger, harm or interfere with the Water Tunnel Facilities or the
full enjoyment by the City of its rights hereunder.

9.4. Dispute Resolution. In the event a second Approval Request by
either party is rejected or if additional documentation is requested

1 after a third Approval Request, the submitting party may initiate the
2 Dispute Resolution Process described in **Section 10**.

3 **9.5. Notices.** All notices required or permitted to be given under this
4 Stipulation, including City Approval Requests and Transit District
5 Approval Requests, shall be in writing and transmitted postage
6 prepaid by certified or registered mail, return receipt requested, or
7 by personal delivery or by commercial, next-business-day courier.
8 Notices comprising City Approval Requests and Transit District
9 Approval Requests shall be transmitted to the appropriate
10 addresses specified for such requests, above. All other notices
11 shall be sent to the appropriate addresses indicated below. Either
12 party may, from time to time, designate a different address or
13 addresses for notices, in a written notice given to the other.

14 If to the City: San Francisco Public Utilities Commission
15 1145 Market Street, 7th Floor
16 San Francisco, CA 94103
Attention: Director of Real Estate Services

17 With a copy to: San Francisco Public Utilities Commission
18 1145 Market Street, 7th Floor
19 San Francisco, California 94103
Attention: Assistant General Manager
for Operations

20 And: Office of the City Attorney
21 City Hall, Room 234
22 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attention: Real Estate Team

23 If to Transit District: San Mateo County Transit District
24 1250 San Carlos Avenue
25 P.O. Box 3006
26 San Carlos, California 94070-1306
Attention: General Manager/Executive Director

1 With a copy to: Hanson Bridgett LLP
2 425 Market Street, 26th Floor
3 San Francisco, CA 94105-2173
4 Attn: David J. Miller, Esq.

5 Day-to-day communications relating to construction of the Water
6 Tunnel Project or the Train Tunnel Project shall be directed to the
7 central points of contact designated by each party under
8 **Sections 1.1.3 and 4.2.5**. Other day-to-day communications shall
9 be directed to Transit District's Chief Engineer (Tel: (650) 508-
10 7922; Fax: (650) 508-7938), and to the City's Manager of the
11 Engineering Management Bureau, Infrastructure Division, San
12 Francisco Public Utilities Commission, currently Kathryn How,
13 telephone (415) 551-4354, email KHow@sfgwater.org.

14 **10. Dispute Resolution.**

15 **10.1. Dispute Resolution Matters.** Notwithstanding anything to the
16 contrary herein, each of the City and Transit District shall be
17 entitled , but not obligated, to initiate the dispute resolution process
18 described in this **Section 10** (the "**Resolution Process**"). The
19 Parties anticipate that the Resolution Process will be available to
20 the Parties with respect to any dispute under this Stipulation,
21 including those relating to operations and safety (each, a
22 "**Disputed Matter**"). Although this Section outlines a process for
23 resolving disputes, nothing herein shall prevent the Parties from
24 resolving a dispute with one another using an alternative process if
25 both Parties so desire at the time, or to pursue available legal
26 remedies.

27 **10.2. Process.** This dispute resolution procedure may be initiated by
28 either Party as provided in **Section 10.3.1**.

10.3. First Level.

1 **10.3.1 First Level Representatives.** Each Party will designate a
2 staff person to be the initial person or persons to discuss any
3 apparent dispute or disagreement between the Parties and
4 initiate this procedure. Each such designated First Level
5 person may contact his or her counterpart at the same level at
6 any time to raise any apparent disagreement related to the
7 Stipulation. Unless the Transit District shall designate
8 otherwise in writing, for Transit District the First Level person
9 shall be the Transit District's Chief Engineer, currently
10 Stephen Chao. Unless the City shall designate otherwise in
11 writing, for the City the First Level person for design and
12 construction shall be the Manager of the Engineering
13 Management Bureau, Infrastructure Division, San Francisco
14 Public Utilities Commission, currently Kathryn How, and the
15 First Level person for operations and maintenance shall be
16 the Water Supply and Treatment Division Manager, San
17 Francisco Public Utilities Commission, currently David Briggs.

18 **10.3.2 Response Time for Urgent Matters.** For any matter
19 designated by the initiating Party as "urgent," the other Party
20 shall make its first response within twenty-four (24) hours, or
21 within such other period as the First Level persons may
22 agree.

23 **10.3.3 Response Time for Non-Urgent Matters.** Unless a matter is
24 designated "urgent" by the initiating Party, the other Party
25 shall respond within five (5) working days, or within such other
26 period as the First Level persons may agree.

27 **10.4. Second Level.**
28

1 **10.4.1 Second Level Representatives.** Each Party will designate
2 an individual to whom matters not resolved at the First Level
3 shall be referred. Each such designated Second Level
4 person may contact his or her counterpart at the same level at
5 any time to raise any apparent disagreement related to the
6 Stipulation. Unless the Transit District shall designate
7 otherwise in writing, for Transit District the Second Level
8 person shall be the Deputy General Manager, currently Chuck
9 Harvey. Unless the City shall designate otherwise in writing,
10 for the City the Second Level person for design and
11 construction shall be the Assistant General Manager,
12 Infrastructure Division, San Francisco Public Utilities
13 Commission, currently Harlan Kelly, and the Second Level
14 person for operations and maintenance shall be the Assistant
15 General Manager for Water Enterprise, San Francisco Public
16 Utilities Commission, currently Steve Ritchie.

17 **10.4.2. Response Time for Urgent Matters.** For any matter
18 designated by the initiating Party as "urgent," the other Party
19 shall make its first response within twenty-four (24) hours, or
20 within such other period as the Second Level persons may
21 agree.

22 **10.4.3. Response Time for Non-Urgent Matters.** Unless a matter
23 is designated "urgent" by the initiating Party, the other Party
24 shall respond within three (3) working days, or within such
25 other period as the Second Level persons may agree.

26 **10.5. Third Level.**

27 **10.5.1. Third Level Representatives.** Each Party will designate an
28 individual to whom matters not resolved at the Second Level

1 shall be referred. These designated Third Level persons shall
2 constitute the final internal level within the Transit District and
3 the City for resolution of issues between the Parties. Unless
4 the Transit District shall designate otherwise in writing, the
5 Third Level Person shall be the General Manager/CEO,
6 currently Michael J. Scanlon. Unless the City shall designate
7 otherwise in writing, the Third Level person shall be the
8 General Manager, currently Ed Harrington or, in his absence,
9 the Deputy General Manager, currently Michael Carlin. Each
10 such designated Third Level person may contact his or her
11 counterpart at the same level at any time to raise any
12 apparent disagreement related to the Stipulation.

13 **10.5.2. Response.** The initiating Third Level person will request a
14 response from his or her counterpart, and that response will
15 be made within a time period agreed between the Third Level
16 persons.

17 **10.6. Alternative Dispute Resolution.** If the dispute is not resolved at
18 the Third Level, the General Manager / CEO of Transit District and
19 the General Manager of the City may agree to a method of non-
20 binding, alternative dispute resolution, including, but not limited to,
21 mediation or non-judicial arbitration.

22 **10.7. Judicial Remedies.** Nothing herein shall foreclose or limit the
23 ability of either Party to pursue judicial remedies.

24 **10.8. Replacement of Representatives.** Each Party may replace any of
25 its designated representatives above by giving notice to the other
26 Party.

27 **10.9. Attorneys' Fees.** If any legal proceeding should be instituted by
28 any of the parties to enforce the terms of this Stipulation or to

1 determine the rights of the parties under this Stipulation, whether
2 through alternative dispute resolution or litigation, the prevailing
3 party in the proceeding shall receive, in addition to all court costs,
4 reasonable attorneys' fees. For purposes of this Stipulation, the
5 reasonable attorneys' fees of the City's Office of the City Attorney
6 shall be based on the fees regularly charged by private attorneys
7 with the equivalent number of years of experience in the subject
8 matter or area of the law for which the City Attorney's services were
9 rendered for practice in the City of San Francisco in law firms with
10 approximately the same number of attorneys as employed by the
11 Office of the City Attorney.

12 **10.10. No Waiver.** No waiver of the default or breach of any covenant of
13 this Section C of this Stipulation by any party shall be implied from
14 any omission by any party to take action on account of such default
15 if such default persists or is repeated, and no express waiver shall
16 effect any default other than the default specified in the waiver, and
17 then the waiver shall be operative only for the time and as to the
18 extent as stated. Waivers of any covenant, term or condition by
19 either party shall not be construed as a waiver of any subsequent
20 breach of the same covenant, term or condition. The consent or
21 approval by either party to any act by either party requiring further
22 consent or approval shall not be deemed to waive or render
23 unnecessary their consent or approval to or of the subsequent
24 similar acts.

25 **10.11. Severability.** Each provision of this Section C of this Stipulation is
26 intended to be severable. If any term or provision shall be deemed
27 by a court of competent jurisdiction to be illegal or invalid for any
28 reason whatsoever, such provision shall be severed from this

1 Stipulation and shall not affect the validity of the remainder of the
2 Stipulation.

3 **D. Amount of Compensation.** Five Hundred Dollars (\$500) is the Total
4 Compensation (as that term is defined below), for the taking hereunder and for all the
5 damages and claims for damages herein specified. The "Total Compensation" shall be the
6 total and full amount of the compensation to which the Transit District is entitled for any claims
7 by reason of the taking hereunder including, without limitation, those for the fair market value
8 of the Easement Area, loss of business goodwill, loss of income, profits or rents, relocation
9 benefits, precondemnation damages, severance damages of all or any kind in any and all
10 other claims for damages, attorneys' fees, litigation expenses, interest, costs, and recoverable
11 costs of suit. The Transit District acknowledges that CalTrans, as the beneficiary under a deed
12 of trust encumbering the Larger Parcel, is entitled to receive the Total Compensation. The
13 payment of said Total Compensation shall be made by check payable as follows: "California
14 Department of Transportation."

15 **E. Restoration of Electrical Service.** To accommodate construction of the Water
16 Tunnel Project, City required that certain electrical service lines, poles and related facilities be
17 removed from a portion of City's property near the Water Tunnel portal in San Mateo County.
18 Those electrical service facilities previously served facilities on property owned by Transit
19 District or its affiliate. If Transit District needs the electrical service to be restored after
20 completion of the Water Tunnel Project, City and Transit District will cooperate to restore it as
21 set forth in an Agreement Regarding Restoration of Electrical Service Line, executed
22 concurrently herewith.

23 **F. Judgment and Final Order of Condemnation.** Based on the settlement and
24 compromise described above, and pursuant to this Stipulation, the Court may immediately
25 make and enter a Judgment in Condemnation. Upon receipt of the Total Compensation by
26 CalTrans, as hereinabove defined, counsel for the Transit District and CalTrans shall sign,
27 approving as to form, a Final Order of Condemnation.
28

1 **G. Counterparts.** This Stipulation may be executed in counterparts, each of which
2 shall be deemed an original, but all which together shall be deemed one entire stipulation and
3 agreement.

4 **H. Headings.** The descriptive headings of this Stipulation are a convenience only,
5 and shall not control or affect the meaning or construction of any of the provisions hereof.

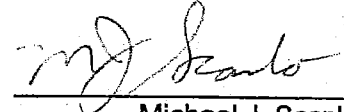
6 **I. Construction.** The parties hereto acknowledge that each party and his, her or
7 its counsel have reviewed and participated in the drafting of this Stipulation and that the normal
8 rule of construction, to the effect that any ambiguities are to be resolved against the drafting
9 party is inapplicable and shall not apply to any interpretation of this Stipulation. This
10 Stipulation shall be interpreted under the laws of the State of California.

11 **J. Complete Agreement.** The parties agree that this Stipulation (including the
12 Exhibits) is the full and entire agreement between them, and that it supersedes any prior or
13 contemporaneous written or oral agreements, promises or representations concerning the
14 subject matter hereof, which are not fully expressed in this Stipulation. This Stipulation may be
15 amended only in writing executed by each of the parties hereto.

16 **K. Survival of Stipulation.** The provisions of this Stipulation shall survive the Entry
17 of Judgment of Condemnation and the Final Order of Condemnation.

18 IT IS SO STIPULATED.

19 SAN MATEO COUNTY TRANSIT DISTRICT

20 By: 
21 Michael J. Scanlon,
22 General Manager/CEO

23 Date: 7/27/2011

1 APPROVED AS TO FORM:

2 Hanson Bridgett LLP

3
4 By: 
Michael N. Conneran

5 Date: 7/20/11

10 CITY AND COUNTY OF SAN FRANCISCO, a
11 municipal corporation

12 By: _____
13 John Updike
14 Acting Director of Property

15 Date: _____

16 APPROVED AS TO FORM:

17 DENNIS J. HERRERA, City Attorney

18
19 By: _____
Victoria Wong
20 Deputy City Attorney

21 Date: _____

1 APPROVED AS TO FORM:

2 Hanson Bridgett LLP

3
4 By: _____
Michael N. Conneran

5 Date: _____
6
7
8
9

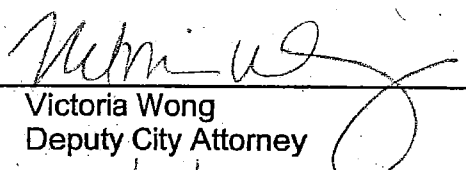
10 CITY AND COUNTY OF SAN FRANCISCO, a
11 municipal corporation

12 By: _____
13 John Updike
14 Acting Director of Property

15 Date: _____

16 APPROVED AS TO FORM:

17 DENNIS J. HERRERA, City Attorney

18
19 By: 
Victoria Wong
20 Deputy City Attorney

21 Date: 7/19/11
22
23
24
25
26
27
28

CALIFORNIA DEPARTMENT OF TRANSPORTATION
DEPARTMENT OF TRANSPORTATION

By: 

[signature]

Name: MARK WEAVER

Title: Deputy District Director
Division of Right of Way
Department of Transportation, District 4

Date: 7-19-2011

APPROVED AS TO FORM:

Beals, Gossage, Baca & Law

By: 

Samuel C. Law
Attorney

Date: 7/15/11

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT AREA

EXHIBIT C

PLAT OF EASEMENT AREA

EXHIBIT D

INDEX OF WATER TUNNEL PLANS

EXHIBIT E

DIAGRAM OF SUBSURFACE ZONES

EXHIBIT F

INSURANCE REQUIRED FOR WATER TUNNEL CONTRACTOR

EXHIBIT A

Description of Property

All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, being Tract 12 (D-12) "PARCEL ONE" as described in that certain Grant Deed from Southern Pacific Transportation Company, a Delaware corporation to San Mateo County Transit District, a public agency, recorded November 9, 1994, as Instrument No. 94-172451, Official Records of said County.



ENGINEERS
SURVEYORS
PLANNERS

November 11, 2010

EXHIBIT "B"
LEGAL DESCRIPTION
Property I.D. No. HH40-02
SFPUC Bay Division Pipeline
Subsurface Tunnel Easement

All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of Tract 12 (D-12) "PARCEL ONE" as described in that certain Grant Deed from Southern Pacific Transportation Company, a Delaware corporation to San Mateo County Transit District, a public agency recorded November 9, 1994, as Instrument No. 94-172451, Official Records of said county, being more particularly described as follows:

BEGINNING at the northwesterly corner of Parcel E-2 as said parcel is shown on that certain Record of Survey entitled "EXHIBIT A OF SETTLEMENT AGREEMENT EMBODIED IN JUDGEMENT ENTERED IN CASE OF: STATE vs. SAN MATEO COUNTY, ET AL, SAN MATEO COUNTY SUPERIOR COURT, ACTION NO.144,257" recorded July 28, 1977, in Volume 8 of L.L.S. Maps at Pages 76 through 88, Records of said county, thence along the westerly line of said Parcel E-2, South 30°06'20" East; 75.52 feet to the southerly line of said "PARCEL ONE", said point being the beginning of a non-tangent curve concave northwesterly, from which point a radial line, from the curve to the radius point, bears North 36°47'58" West; thence southwesterly along said non-tangent curve and along said southerly line having a radius of 11584.20 feet, through a central angle of 04°13'26" and an arc length of 853.99 feet to the **TRUE POINT OF BEGINNING**;

thence continuing southwesterly along said southerly line having said radius, through a central angle of 00°31'41" and an arc length of 106.76 feet;

thence leaving said southerly line, South 85°36'59" West, 562.04 feet to the northerly line of said "PARCEL ONE", said point being the beginning of a non-tangent curve concave northwesterly, from which point a radial line, from the curve to the radius point, bears North 29°31'47" West,

thence northeasterly along said northerly line and along said non-tangent curve having a radius of 11333.49 feet, through a central angle of 00°35'19" and an arc length of 116.43 feet;

thence leaving said northerly line, North 85°36'59" East, 551.25 feet to the **TRUE POINT OF BEGINNING**.

Containing 27,829 square feet or 0.64 acres, more or less.

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -45.0 feet and -120.0 feet, North American Vertical Datum of 1988 (NAVD 88).

255 Shoreline Drive
Suite 200
Redwood City
California 94065
phone 650.482.6300
fax 650.482.6399
www.bkf.com

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SHEET 1 OF 2

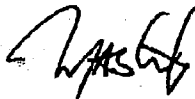


**ENGINEERS
SURVEYORS
PLANNERS**

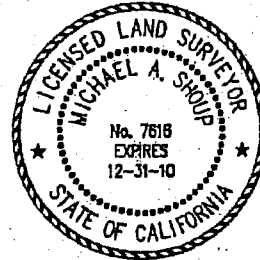
All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001177.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "C".

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

 11-11-10

Michael A. Shoup, PLS 7616
License Expires 12/31/2010



END OF DESCRIPTION

255 Shoreline Drive
Suite 200
Redwood City
California 94065
phone 650.482.6300
fax 650.482.6399
www.bkf.com

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SHEET 2 OF 2

NOTE:

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

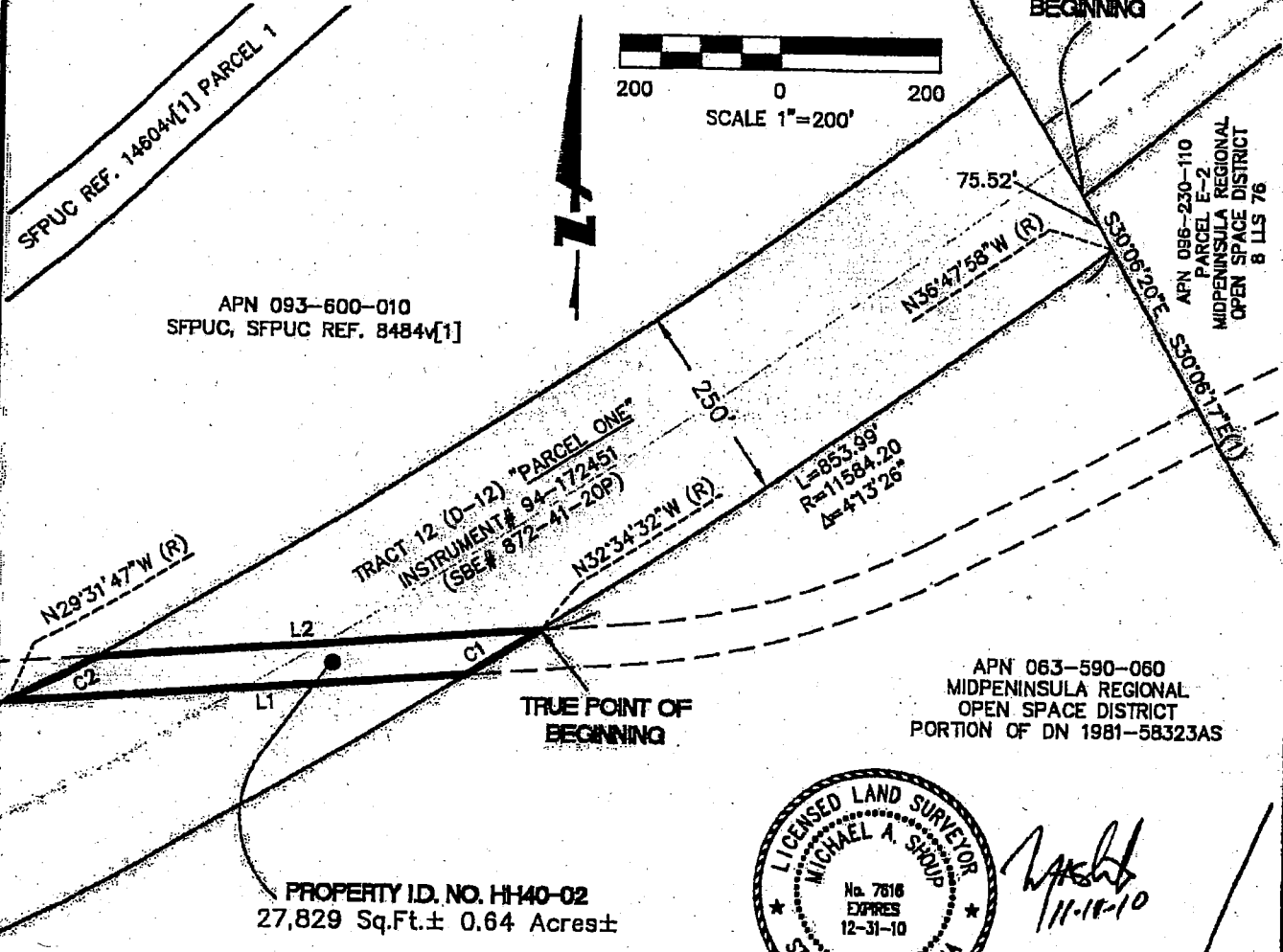
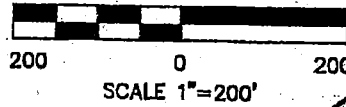
EXHIBIT "C"
SUBSURFACE TUNNEL EASEMENT

JA R/W LINE TABLE		
NO.	BEARING	DISTANCE
L1	S85°38'59"W	562.04
L2	N85°36'59"E	551.25

JA R/W CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	11584.20	0°31'41"	106.76
C2	11333.49	0°35'19"	116.43

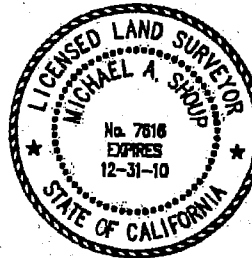
APN 093-600-030
SFPUC

POINT OF BEGINNING



APN 063-590-060
MIDPENINSULA REGIONAL
OPEN SPACE DISTRICT
PORTION OF DN 1981-58323AS

PROPERTY I.D. NO. HH40-02
27,829 Sq.Ft.± 0.64 Acres±



Michael A. Shoup
11-10-10

RECORD REFERENCES

(1) VOLUME 8 LLS 76-88

LEGEND

APN ASSESSOR'S PARCEL NUMBER
 DN DOCUMENT NUMBER
 LLS LICENSED LAND SURVEYOR
 SBE STATE BOARD OF EQUALIZATION
 (R) RADIAL

THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -45.0 FEET AND -120.0 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).

CITY OF MENLO PARK
 COUNTY OF SAN MATEO
 STATE OF CALIFORNIA



255 SHORELINE DRIVE
 SUITE 200
 REDWOOD CITY, CA 94085
 650-482-8300
 650-482-8399 (FAX)

Subject **HETCH HETCHY CORRIDOR**
 Property I.D. No. **HH40-02**
 Job No. **20060212-03**
 By **RAB/AMC** Date **11-11-10** Chkd. **MAS**
 SHEET **1** OF **1**

3/15/08/080212-03/Plate C Legal/HH40-02/HH40-02/Plate C

EXHIBIT D

Index of Water Tunnel Plans

[See following page]



CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT



REDACTED

CONTRACT NO. WD-2531

BAY DIVISION PIPELINES RELIABILITY UPGRADE
BAY DIVISION PIPELINE NO. 5 - BAY TUNNEL

DECEMBER 2009

ISSUED FOR CONSTRUCTION

AT THE TIME OF THE BID OPENING, THE CONTRACTOR SHALL POSSESS A VALID CALIFORNIA CLASS A, GENERAL, DIVISIONS CONTRACTORS LICENSE.

00-00 E-17366

DRAWING INDEX

DRAWING NO.	PLAN TITLE NO.
	GENERAL
E-17367	G0-00 PROJECT COVER SHEET
E-17368	G0-01 DRAWING INDEX SHEET 1 OF 2
E-17368	G0-02 DRAWING INDEX SHEET 2 OF 2
E-17370	G0-03 LOCATION AND VICINITY MAP, GENERAL NOTES AND CONTROL POINTS
E-17371	G0-04 LEGEND
E-17372	G0-05 ABBREVIATIONS
E-17373	G0-06 SURVEY CONTROL POINTS
E-17374	G0-07 HYDRAULIC PROFILE AND DESIGN CRITERIA
E-17374	G0-08 BAY DIVISION PIPELINE 5 SYSTEM
	CIVIL
E-17375	C0-01 PERMANENT ACCESS ROAD TYPICAL SECTIONS AND DETAILS
E-17376	C1-01 RAVENSWOOD SHAFT SITE PLAN
E-17377	C1-02 RAVENSWOOD SHAFT CONSTRUCTION STAGING AREAS AND TEMPORARY ACCESS ROAD
E-17378	C1-03 RAVENSWOOD SHAFT DEMOLITION, GRUBBING & DEMOBILIZATION PLAN
E-17379	C1-04 RAVENSWOOD SHAFT GRADING AND SECURITY FENCING SHEET 1 OF 2
E-17380	C1-05 RAVENSWOOD SHAFT GRADING SECTIONS
E-17380.1	C1-06 RAVENSWOOD SHAFT GRADING AND SECURITY FENCING SHEET 2 OF 2
E-17381	C1-10 RAVENSWOOD SHAFT PERMANENT ACCESS ROAD STA. 0+00 TO 14+00
E-17382	C1-11 RAVENSWOOD SHAFT PERMANENT ACCESS ROAD STA. 14+00 TO 24+30
E-17383	C1-12 RAVENSWOOD SHAFT PERMANENT ACCESS ROAD STA. 0+00 TO 24+30
E-17384	C1-20 RAVENSWOOD SHAFT ANCILLARY FACILITIES SITE PLAN
E-17385	C1-21 RAVENSWOOD SHAFT ANCILLARY FACILITIES WATER SUPPLY PIPE PLAN AND PROFILE
E-17386	C1-22 RAVENSWOOD SHAFT ANCILLARY FACILITIES ENERGY DISSIPATOR DETAILS
E-17387	C1-23 RAVENSWOOD SHAFT ANCILLARY FACILITIES MECHANICAL DETAILS
E-17387.1	C1-30 RAVENSWOOD SHAFT SITE SOUNDWALL PLAN AND DETAILS
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E-17390	C2-03 NEWARK SHAFT GRADING AND SECURITY FENCING
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E-17392	C2-20 NEWARK SHAFT BDFL1&2 PIPELINE PROTECTION SITE PLAN
E-17393	C2-21 NEWARK SHAFT BDFL1&2 PIPELINE PROTECTION DETAILS
	TUNNEL
E-17384	T0-01 GENERAL PLAN, PROFILE AND INDEX
E-17385	T0-02 TUNNEL PLAN AND PROFILE STA. 10+00 TO STA. 15+00
E-17386	T0-03 TUNNEL PLAN AND PROFILE STA. 15+00 TO STA. 25+00
E-17387	T0-04 TUNNEL PLAN AND PROFILE STA. 25+00 TO STA. 35+00
E-17388	T0-05 TUNNEL PLAN AND PROFILE STA. 35+00 TO STA. 45+00
E-17389	T0-06 TUNNEL PLAN AND PROFILE STA. 45+00 TO STA. 95+00
E-17400	T0-07 TUNNEL PLAN AND PROFILE STA. 95+00 TO STA. 145+00
E-17401	T0-08 TUNNEL PLAN AND PROFILE STA. 145+00 TO STA. 195+00
E-17402	T0-09 TUNNEL PLAN AND PROFILE STA. 195+00 TO STA. 245+00
E-17403	T0-10 TUNNEL PLAN AND PROFILE STA. 245+00 TO STA. 255+00
E-17404	T0-11 TUNNEL PLAN AND PROFILE STA. 255+00 TO STA. 285+00
E-17405	T0-12 TUNNEL PLAN AND PROFILE STA. 285+00 TO STA. 271+92.52
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E-17408	T1-03 RAVENSWOOD SHAFT FINAL LINING PLAN AND SECTION BOTTOM OF SHAFT
E-17409	T1-10 NEWARK & RAVENSWOOD SHAFTS FINAL LINING DETAILS 1
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E-17411	T2-01 NEWARK SHAFT GENERAL ARRANGEMENT PLANS AND SECTION
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E-17415	T3-02 SEGMENTAL TUNNEL LINING REINFORCEMENT DETAILS 1
E-17416	T3-03 SEGMENTAL TUNNEL LINING REINFORCEMENT DETAILS 2
E-17417	T3-04 SEGMENTAL TUNNEL LINING JOINT DETAILS
E-17418	T3-05 SEGMENTAL TUNNEL LINING FABRICATION TOLERANCES
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E-17420	T4-02 FINAL TUNNEL LINING STEEL PIPE FIELD JOINT DETAILS
E-17421	T4-03 FINAL TUNNEL LINING GROUTING DETAILS

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E-17423	10-02 GEOTECHNICAL INSTRUMENTATION GENERAL PLANS
E-17424	10-03 GEOTECHNICAL INSTRUMENTATION DETAILS 1
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E-17430	PO-03 TYPICAL BEND, STULLING, COATING & LINING DETAILS
E-17431	PO-04 NOZZLE LAYOUT AND DETAILS
E-17432	PO-05 TYPICAL RIVETED STEEL PIPE TO WELDED STEEL PIPE CONNECTION DETAILS
E-17433	PO-06 STANDARD ALUMINUM COVER FOR CONCRETE RISER IN UNPAVED AREA
E-17434	PO-07 LADDER, VALVE STEM EXTENSION AND GUIDE DETAILS FOR CONCRETE RISER
E-17435	PO-08 TOP BLOWOFF WITH MANHOLE IN UNPAVED AREA
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E-17440	PO-11 TYPICAL VALVE CONNECTION ELECTRICAL ISOLATION PLAN AND PROFILE
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E-17442	PO-13 TYPICAL VALVE CONNECTION ELECTRICAL ISOLATION PLAN AND PROFILE
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E-17446	S0-02 GENERAL STRUCTURAL NOTES 2
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E-17448	S0-04 GENERAL STRUCTURAL TYPICAL DETAILS
E-17449	S0-05 DESIGN CRITERIA FOR SHAFTS
E-17450	S0-06 DIRECT BURIED VALVE PAD AND ENCLOSURE DETAILS
E-17451	S0-07 PIPELINE MANIFOLD ENCASEMENT SECTION
E-17452	S0-08 SOFT EYE DETAILS
E-17453	S1-01 RAVENSWOOD SHAFT EXCAVATION SUPPORT SLURRY WALL PLAN
E-17454	S1-02 RAVENSWOOD SHAFT EXCAVATION SUPPORT SLURRY WALL SECTIONS
E-17455	S1-03 RAVENSWOOD SHAFT EXCAVATION SUPPORT SLURRY WALL DETAILS
E-17456	S1-10 RAVENSWOOD SHAFT BREAK-OUT STRUCTURE PLAN
E-17457	S1-11 RAVENSWOOD SHAFT BREAK-OUT STRUCTURE SECTIONS
E-17458	S1-20 RAVENSWOOD SHAFT ACCESS STRUCTURE PLANS AND SECTIONS
E-17459	S1-21 RAVENSWOOD SHAFT ACCESS STRUCTURE REINFORCING DETAILS
E-17460	S1-22 RAVENSWOOD SHAFT ACCESS STRUCTURE SECTIONS AND DETAILS 2
E-17481	S2-01 NEWARK SHAFT EXCAVATION SUPPORT SLURRY WALL PLAN
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E-17483	S2-03 NEWARK SHAFT EXCAVATION SUPPORT SLURRY WALL DETAILS
E-17484	S2-04 NEWARK SHAFT EXCAVATION SUPPORT CAISSON PLAN
E-17485	S2-05 NEWARK SHAFT EXCAVATION SUPPORT CAISSON WALL REINFORCEMENT AND SEAL
E-17486	S2-06 NEWARK SHAFT EXCAVATION SUPPORT CAISSON WALL REINFORCEMENT DETAILS
E-17467	S2-20 NEWARK SHAFT ACCESS STRUCTURE PLANS AND SECTIONS

DRAWING
NO.

PLAN TITLE
NO.

ARCHITECTURAL

E-17468	A0-01 SYMBOLS, LEGEND, ABBREVIATIONS, GENERAL NOTES AND PROJECT DATA
E-17469	A0-02 DISABILITY ACCESS
E-17470	A0-03 SHAFT ACCESS STRUCTURES DETAILS 1
E-17471	A0-04 SHAFT ACCESS STRUCTURES DETAILS 2
E-17472	A1-01 RAVENSWOOD ACCESS STRUCTURE FLOOR PLAN
E-17473	A1-02 RAVENSWOOD ACCESS STRUCTURE ROOF PLAN
E-17474	A1-03 RAVENSWOOD ACCESS STRUCTURE EXTERIOR ELEVATIONS
E-17475	A1-04 RAVENSWOOD ACCESS STRUCTURE BUILDING SECTIONS
E-17476	A1-05 RAVENSWOOD ACCESS STRUCTURE INTERIOR ELEVATIONS
E-17477	A1-06 RAVENSWOOD ACCESS STRUCTURE REFLECTED CEILING PLAN
E-17478	A1-07 RAVENSWOOD ACCESS STRUCTURE FINISH, DOOR, WINDOW, AND LOUVER SCHEDULES
E-17479	A1-08 RAVENSWOOD ACCESS STRUCTURE WALL SECTIONS
E-17480	A2-01 NEWARK ACCESS STRUCTURE FLOOR PLAN
E-17481	A2-02 NEWARK ACCESS STRUCTURE ROOF PLAN
E-17482	A2-03 NEWARK ACCESS STRUCTURE EXTERIOR ELEVATIONS
E-17483	A2-04 NEWARK ACCESS STRUCTURE BUILDING SECTIONS
E-17484	A2-05 NEWARK ACCESS STRUCTURE INTERIOR ELEVATIONS
E-17485	A2-06 NEWARK ACCESS STRUCTURE REFLECTED CEILING PLAN
E-17486	A2-07 NEWARK ACCESS STRUCTURE FINISH, DOOR, WINDOW, AND LOUVER SCHEDULES
E-17487	A2-08 NEWARK ACCESS STRUCTURE WALL SECTIONS

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E-17489	M1-02 RAVENSWOOD SHAFT ACCESS STRUCTURE ANCILLARY PIPING PLAN & SECTIONS
E-17490	M1-03 RAVENSWOOD SHAFT ANCILLARY FACILITIES/PIPING SECTIONS
E-17491	M1-04 RAVENSWOOD SHAFT ANCILLARY FACILITIES/PIPING DETAILS
E-17492	M1-10 RAVENSWOOD VALVE LOT MECHANICAL SITE PLAN
E-17493	M1-11 RAVENSWOOD VALVE LOT PLAN & SECTIONS

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E-17495	ED-02 INSTRUMENTATION AND CONTROL SYSTEM LEGEND
E-17496	ED-03 VALVE CONTROL WIRING DIAGRAM
E-17497	ED-04 ELECTRICAL DETAILS
E-17498	ED-05 VAULT CONDUIT INSTALLATION DETAILS
E-17499	ED-06 CONDUIT INSTALLATION DETAILS
E-17500	ED-07 PULL BOX MOUNTING DETAILS
E-17501	ED-08 MISCELLANEOUS ELECTRICAL DETAILS
E-17502	E1-01 RAVENSWOOD SHAFT ANCILLARY FACILITIES ELECTRICAL SITE PLAN
E-17503	E1-02 RAVENSWOOD SHAFT ANCILLARY FACILITIES ELECTRICAL SINGLE LINE DIAGRAM
E-17504	E1-03 RAVENSWOOD SHAFT ACCESS STRUCTURE ELECTRICAL PLANS
E-17505	E1-04 RAVENSWOOD SHAFT ACCESS STRUCTURE PANELBOARD AND CONDUIT SCHEDULES
E-17506	E1-05 RAVENSWOOD SHAFT PROCESS AND INSTRUMENTATION DIAGRAM
E-17507	E1-06 RAVENSWOOD SHAFT UNWATERING PUMP AND FLOW CONTROLLER SCHEMATIC DIAGRAM
E-17508	E1-10 RAVENSWOOD VALVE LOT SINGLE LINE DIAGRAM
E-17509	E1-20 RAVENSWOOD SHAFT ANCILLARY FACILITIES ELECTRICAL SUBSTATION SITE PLAN
E-17510	E1-21 RAVENSWOOD SHAFT ANCILLARY FACILITIES SINGLE LINE METER & RELAY DIAGRAM
E-17511	E1-22 RAVENSWOOD SHAFT ANCILLARY FACILITIES ELECTRICAL SUBSTATION LAYOUT
E-17512	E2-01 NEWARK SHAFT ELECTRICAL SITE PLAN
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E-17514	E2-03 NEWARK SHAFT ACCESS STRUCTURE PANELBOARD AND CONDUIT SCHEDULE

DRAWING NO. PLAN TITLE
SECURITY

- ~~E-17515 SED-01 SECURITY ABBREVIATIONS, LEGEND & GENERAL NOTES~~
- ~~E-17516 SED-02 SECURITY DOOR, GATE, AND PANEL ELEVATIONS~~
- ~~E-17517 SED-03 SECURITY DEVICE INFORMATION DETAILS~~
- ~~E-17518 SED-04 SECURITY CONDUIT SCHEDULES~~
- ~~E-17519 SED-05 SECURITY FLOORING INSTALLATION DETAILS~~
- ~~E-17520 SED-01 RAVENSWOOD SHAFT SECURITY DTC PLAN~~
- ~~E-17521 SED-02 RAVENSWOOD SHAFT ACCESS STRUCTURE SECURITY PLAN~~
- ~~E-17522 SED-01 NEWARK SHAFT SECURITY DTC PLAN~~
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TRAFFIC CONTROL

- E-17524 TC1-01 RAVENSWOOD SHAFT HAUL ROUTE ALTERNATIVES
- E-17525 TC1-02 UNIVERSITY AVE STAGE CONSTRUCTION AND TRAFFIC HANDLING - STAGE 1
- E-17526 TC1-03 UNIVERSITY AVE STAGE CONSTRUCTION AND TRAFFIC HANDLING - STAGE 2
- E-17527 TC1-04 UNIVERSITY AVE PAVEMENT DELINEATION PLAN
- E-17528 TC2-01 NEWARK SHAFT HAUL ROUTE ALTERNATIVES

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- ~~E-17529 L5-01 UNIVERSITY AVE SHWIN LHM FENCE DETAILS~~
- ~~E-17530 L5-02 UNIVERSITY AVE SHWIN LHM GATE DETAILS~~
- ~~E-17531 L3-01 ENCLAVATION FENCING DETAILS~~
- ~~E-17532 L4-01 SHWIN LHM FENCE DETAILS~~
- ~~E-17533 L4-02 FENCE GATE DETAILS~~
- E-17533.1 L5-01 RAVENSWOOD VALVE LOT LANDSCAPE PLAN
- E-17533.2 L6-01 NEWARK VALVE LOT LANDSCAPE PLAN

SFPUC REFERENCE DRAWINGS

- X1-01 PG&E SUBSTATION SINGLE LINE METER AND RELAY DIAGRAM
- X1-02 PG&E SUBSTATION RELAY CABINET FOUNDATION
- X1-03 PG&E SUBSTATION SIMPLIFIED CABLE BLOCK DIAGRAM
- X1-04 PG&E SUBSTATION ARRANGEMENT OF CONTROL AND RELAY EQUIPMENT
- X1-05 PG&E SUBSTATION SCHEMATIC DIAGRAM 115KV HVCB 112, AC CIRCUITS
- X1-06 PG&E SUBSTATION SCHEMATIC DIAGRAM 115KV HVCB 112, DC CIRCUITS
- X1-07 PG&E SUBSTATION CONTACT TABLE AND SWITCH DEVELOPMENT

ISSUED FOR CONSTRUCTION

CONTRACT NO. WD-2531

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
 INFRASTRUCTURE DIVISION
 ENGINEERING MANAGEMENT BUREAU

BAY DIVISION PIPELINES RELIABILITY UPGRADE
 BAY DIVISION PIPELINE No. 5 - BAY TUNNEL
DRAWING INDEX SHEET

JACOBS ASSOCIATES
 Engineers/Consultants

NAME: J. CLUGSTON
 REVIEWER: S. SPRENG
 DRAWN BY: L. PAWLIK

DATE: 12/1/09

12/1/09

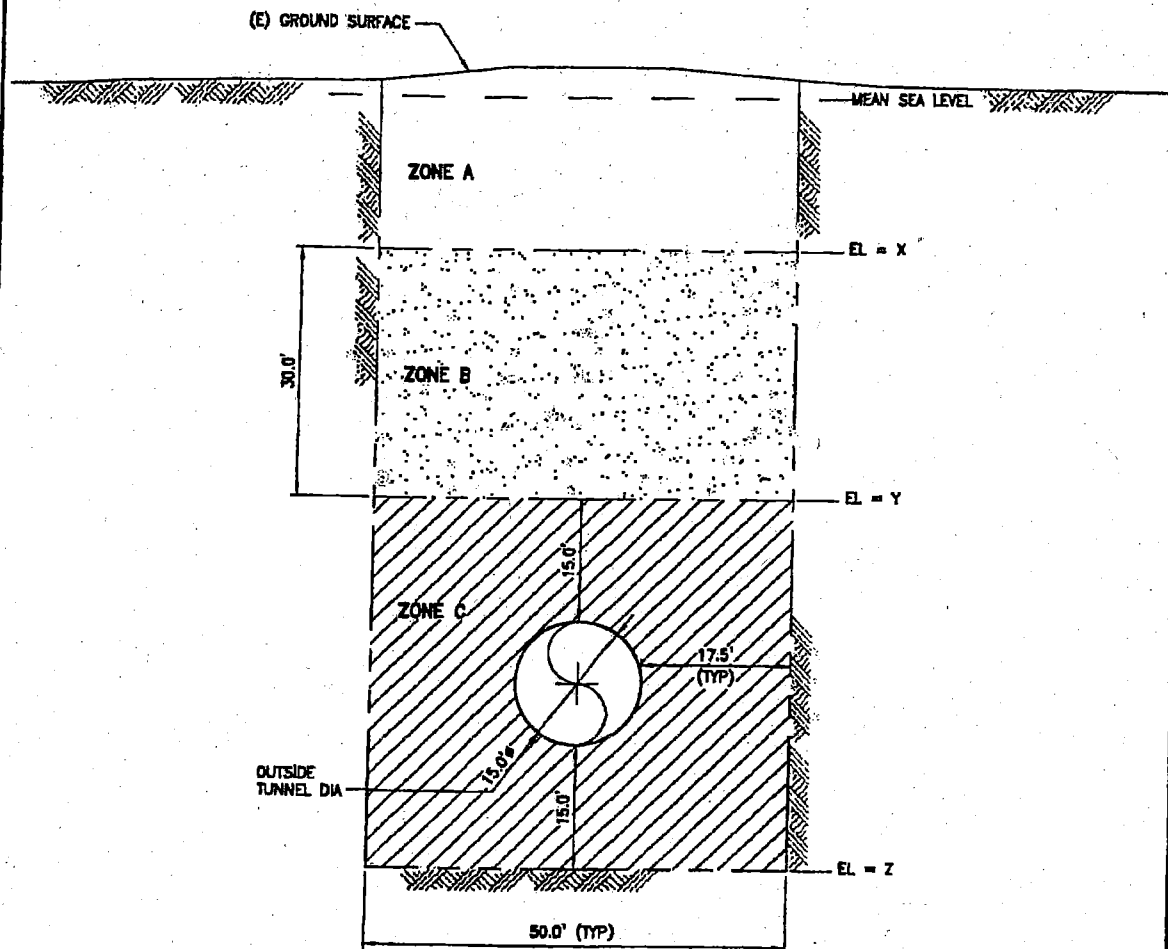
DESIGNED / APPROVED	DRAWN	SCALE
REVISION MARKED	DATE	DATE 12/1/09
APPROVED	APPROVED	
MANAGER, ENGINEERING MANAGEMENT BUREAU	MANAGER, BAY DIVISION PIPELINES RELIABILITY UPGRADE	
PROJECT NO.	PLIN NO.	DRAWING NO.
2 OF 172	GO-01	E-17367
		A

OR THE SOLE USE OF THE DOCUMENT
 ECIPIENT - DO NOT CITE, COPY, OR
 IRCULATE WITHOUT THE EXPRESSED
 ERMISSION OF THE SFPUC.

ELEVATION
 DATUM
 NAVD83



EXHIBIT E



BAY TUNNEL UNDERGROUND EASEMENT
1"=20'-0"

LOCATION	TUNNEL STATION	SURFACE EL.	X	Y	Z
RAVENSWOOD	21+22	+18±	-45.08	-75.08	-120.08
NEWARK #1	257+26	+12±	-15.57	-45.57	-90.57
NEWARK #2	268+52	+13±	-14.17	-44.17	-89.17

NOTE: DATUM USED IS NAVD 88

CITY AND COUNTY OF SAN FRANCISCO PUBLIC UTILITIES COMMISSION INFRASTRUCTURE DIVISION ENGINEERING MANAGEMENT BUREAU	BAY DIVISION PIPELINES RELIABILITY UPGRADE BAY DIVISION PIPELINE No. 5 - BAY TUNNEL	SHEET
	BAY TUNNEL EASEMENT AT SAMTRANS RAIL CROSSINGS	DATE DEC 2009

Exhibit F Insurance Terms

INSURANCE. The insurance requirements specified in this exhibit shall apply to City's contractors or any other persons, firms or corporations that City contracts with to work within the Easement Area under this Agreement (hereinafter collectively referred to as "Agents"). Agents are required to procure and maintain at their sole cost and expense the insurance coverages set forth below, subject to all of the listed requirements. Such insurance shall remain in full force and effect throughout the term of the Agent's work in the Easement Area. To the extent that any Agent does not procure and maintain such insurance coverage, City shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling City's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event City or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Agent's insurance be primary without any right of contribution from the Railroad. Prior to beginning work within the Easement Area, City shall provide the Railroad with satisfactory evidence of compliance with the insurance requirements of this section.

1. Minimum Types And Scope Of Insurance

A. Workers Compensation and Employers' Liability Insurance.

- 1) Workers Compensation with Statutory Limits for employees, as required by Section 3700 et seq of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
- 2) Agents shall also maintain Employer's Liability coverage with minimum limits of \$ 1 million.
- 3) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

B. Commercial General Liability Insurance.

Commercial General Liability Insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$ 10 million per occurrence or claim and a general aggregate limit of at least \$ 10 million. Such insurance shall cover all of Agent's operations both at and away from the project site.

- 1) This insurance shall include coverage for, but not be limited to:

- Premises and operations.
- Products and completed operations.
- Contractual liability.
- Personal injury.
- Advertising injury.
- Explosion, collapse, and underground coverage (xcu).
- Broad form property damage.

2) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Cross Liability or Severability of Interests Clause.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

C. Business Automobile Liability Insurance.

Business Automobile Liability Insurance providing bodily injury and property damage with a combined single limit of at least \$ 2 million per occurrence.

1) This insurance shall include coverage for, but not be limited to:

- All Owned vehicles.
- Non-owned vehicles.
- Hired or rental vehicles.

2) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

D. Property Insurance.

Property Insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

1) This insurance shall include coverage for:

- Materials or property to be purchased and/or installed on behalf of the Railroad, if any.
- Debris removal.
- Builders risk for property in the course of construction.

2) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

E. Railroad Protective Liability Insurance.

Prior to commencing demolition, construction or remodeling, Agent shall contact the Railroad. Agent shall obtain, at Agent's sole cost and expense, Railroad Protective Liability Insurance with limits of liability of \$ 2 million per occurrence and \$ 6 million in the aggregate. The named insureds shall be the San Mateo County Transit District and the Union Pacific Railroad Company.

- 1) Coverage shall be on the RIMA policy form and include, but not be limited to:
 - Claims arising out of injury to or death of any person
 - Physical loss or damage to or destruction of property including the Railroad's rolling stock and any resulting loss of use thereof
 - Coverage for supervisory acts of railroad employees
 - FELA coverage for railroad employees
 - All other railroads operating on the right-of-way
 - Pollution extension for fuels and lubricants brought onto the job location

ENDORSEMENTS

A. Additional Insured.

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the San Mateo County Transit District and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

B. Waiver Of Subrogation.

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the San Mateo County Transit District and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally, if such a waiver of subrogation is also obtained in favor of City.

C. Primary Insurance.

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(-ies) providing such policy(-ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the Railroad.

D. Severability Of Interests Or Cross Liability.

The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the San Mateo County Transit District and the Union Pacific Railroad Company as Additional Insureds shall not in any way affect the Railroad's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Agent. Said policy shall protect Agent and the Railroad in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

EVIDENCE OF INSURANCE

A. All Coverages Except Railroad Protective.

Prior to commencing work or entering onto the Easement Area, Agent shall provide the Risk Manager of the Railroad with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the Agents' policy(-ies) will not be cancelled or coverage altered without 30 days prior written notice to the Railroad's Risk Manager.

B. Railroad Protective.

Prior to commencing work or entering onto the Easement Area, Agent shall confirm that it

has paid the premium for said insurance. If the Railroad Protective coverage has not been purchased under the Railroad's program, the original policy, or insurance binder with the policy to follow, must be delivered to the Railroad's Risk Manager prior to work beginning within the Easement Area under this Agreement.

4. GENERAL PROVISIONS

A. Notice Of Cancellation.

The policies shall provide that the Agents' policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to the Railroad's Risk Manager.

B. Acceptable Insurers.

All policies will be issued by insurers acceptable to the Railroad (generally with a Best's Rating of A-, VIII or better).

C. Failure To Maintain Insurance.

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Agent's personnel and equipment have been removed from the Railroad property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

D. Claims Made Coverage.

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- 1) Policy retroactive date coincides with or precedes the Agent's start of work (including subsequent policies purchased as renewals or replacements).
- 2) Agent shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named Insureds.
- 3) If insurance is terminated for any reason, Agent agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- 4) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Deductibles And Retentions.

Agent shall be responsible for payment of any deductible or retention on Agent's policies without right of contribution from the Railroad.