



File

March 15, 2001

Mr. Michael Burns
General Manager
Municipal Transportation Agency
401 Van Ness Avenue, #334
San Francisco, CA 94102

**Re: Memorandum of Understanding No. M-12654
Western Pacific Railroad Yard Parcel**

Dear Mr. Burns:

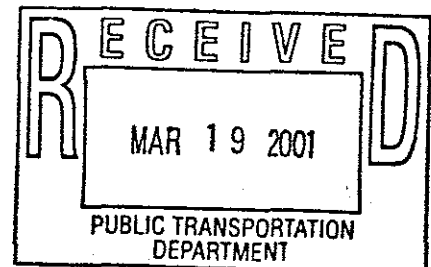
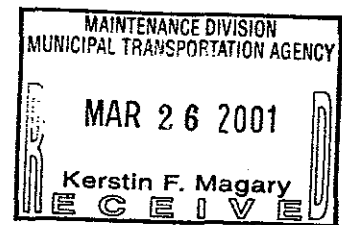
Enclosed is your fully executed original of the Memorandum of Understanding No. M-12654 by and between the City and County of San Francisco through the San Francisco Port Commission and the Municipal Transportation Agency, affecting 17 acres of the Western Pacific Railroad yard Parcel.

Congratulations on this very significant transaction for both Muni and the Port. I look forward to a long and mutually beneficial relationship between our two agencies.

If you have any questions, please call me at (415) 274-0401.

Sincerely,

Douglas Wong
Executive Director



cc: Neil Sekhri
Mark Lozovoy
Alex Tourk

GALETTERS 2001\MOU M-12654.doc

CITY AND COUNTY OF SAN FRANCISCO

ORIGINAL

WILLIE L. BROWN, JR., MAYOR

MEMORANDUM OF UNDERSTANDING

NO. M-12654

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

**THE CITY AND COUNTY OF SAN FRANCISCO
THROUGH THE MUNICIPAL TRANSPORTATION AGENCY**

SAN FRANCISCO PORT COMMISSION

**Douglas F. Wong
Executive Director**

**Kimberly Brandon, President
Brian McWilliams, Vice President
Denise McCarthy, Commissioner
Michael Hardeman, Commissioner
Pius Lee, Commissioner**

MUNICIPAL TRANSPORTATION AGENCY

**Michael Burns
General Manager**

**H. Welton Flynn, Chair
Enid Lim, Vice Chair
Shirley Breyer Black, Director
Jim Bourgart, Director
Mike Casey, Director
Jose Cisneros, Director
Cleopatra Vaughns, Director**

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (herein "Agreement") dated for reference purposes only as of January 25, 2001, is made by and between the San Francisco Municipal Transportation Agency ("MUNI"), an agency of the City and County of San Francisco ("City") and the San Francisco Port Commission ("Port"), an agency of the City and County of San Francisco.

Port and MUNI enter into this Agreement on the basis of the following facts, intentions, and understandings:

RECITALS

A. Pursuant to the Mission Bay Port Land Transfer Agreement, dated November 16, 1998, the Port acquired from Catellus an approximately 27 acre site commonly known as the Western Pacific Railroad Yard. The Port holds the portion of the Western Pacific Railroad Yard outside the 150 foot shoreline band free and clear of the public trust.

B. MUNI is presently undertaking planning and development of a Third Street Light Rail System, which will extend light rail service along the Third Street Corridor across the Peter R. Maloney (Fourth Street) Bridge to Bay View/Hunters Point. The Third Street Light Rail will significantly benefit the Port by providing improved public transportation and access to Port property located in the Southern Waterfront area, including the Mission Bay open space located within Port jurisdiction, the Port's opportunity area at Pier 70, the Port's marine terminals at Pier 80 and 94-96 and Port open space at Islais Creek and Heron's Head Park.

C. An essential component of the Third Street Light Rail System is the MUNI Metro East Maintenance and Operations Facility, which will serve as the maintenance and storage yard for cars along the Third Street Light Rail line. The Port and MUNI have identified an approximately 17 acre site of the Western Pacific Railroad Yard as the optimum site for the MUNI Metro East Maintenance and Operations Facility.

D. MUNI has offered to pay the Port the appraised fair market value of the property as set forth below in exchange for the permanent right to use a portion of the Western Pacific Railroad Yard in accordance with the further terms and conditions set forth in this MOU.

NOW, THEREFORE, IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Port and MUNI hereby agree to the following:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Premises.** The premises consist of approximately seventeen (17) acres, the western portion of Western Pacific Railroad Yard parcel of real property, bounded by Illinois, Cesar Chavez, Maryland and 25th Streets ("Premises"), all as more particularly shown on Exhibit A, attached hereto.

3. **Effective Date.** This Agreement shall be effective upon approval by the Port Commission and the Board of Directors of the Municipal Transportation Agency, execution of this Agreement by the parties hereto and upon MUNI's payment of the fee set forth below ("Effective Date"). Promptly upon the occurrence of the foregoing, Port shall deliver to MUNI a notice substantially in the form of Exhibit B, attached hereto, confirming the Effective Date, but Port's failure to do so shall not affect the actual Effective Date.

4. **Payment.**

a. Use Fee. MUNI shall pay the Port Twenty-Nine Million, Seven Hundred Thousand and No/100 Dollars (\$29,700,000.00), in a one-time advance payment in exchange for the rights set forth herein.

b. Illinois Street Bridge Improvements. The Port agrees to dedicate no less than Four Million and No/100 Dollars (\$4,000,000.00) of the Use Fee to the construction of the Illinois Street Bridge. Construction of such bridge should mitigate traffic in the area and improve coordination with MUNI's Metro East and 3rd St. Light Rail Project. In the event the Port fails to expend the money toward construction of the Illinois Street Bridge within three (3) years after the Effective Date hereof, Port shall return \$4,000,000.00 to MUNI. Notwithstanding the foregoing, MUNI shall agree to reasonably extend such deadline for up to two (2) additional years provided that the Port has demonstrated good faith efforts toward construction of the bridge. Any such return of funds shall have no effect on the rights granted MUNI hereunder or the provisions set forth herein.

c. Transfer of STIP funds. The Port and MUNI agree to seek the transfer of Four Million and No/100 Dollars (\$4,000,000.00) in State Transportation Improvement Program funds from the Port to Muni for use on the 3rd Street Light Rail Project and Metro East facility construction.

5. **Grant of Use/Term.** Commencing upon the Effective Date, the Port grants to MUNI, and MUNI accepts, the right to use, occupy and improve the Premises (including all air, surface and subsurface rights) primarily for light rail vehicle storage, operations and maintenance facilities serving the 3rd St. Light Rail and for other incidental MUNI operational needs ("Permitted Uses"), including, but not limited to, a revenue collection center, training facility, and warehouse for the storage of equipment and vehicle parts, such right continuing in perpetuity for so long as the Premises are used for the Permitted Uses ("Term"). MUNI shall not use the Premises for other than the Permitted Uses without the prior written consent of Port, which shall not be unreasonably withheld.

6. **Condition of Premises.** MUNI acknowledges that Port has made no representations or warranties concerning the Premises, including without limitation, the seismological or environmental conditions thereof. By taking possession of the Premises, MUNI shall be deemed to have inspected the Premises and accepted the Premises in an "As-Is" condition and as being suitable for the conduct of MUNI's business.

7. **Restrictions on Use.** MUNI shall in its use of the Premises comply with the restrictions set forth in the Covenant and Environmental Restriction on Property recorded on January 11, 2001, against the Premises.

8. **Compliance with Laws and Regulations.** MUNI, at MUNI's sole cost and expense, promptly shall comply with all laws relating to or affecting the condition, use or occupancy of the Premises in effect at either the time of execution of this Agreement or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties ("Laws). MUNI understands and agrees that Port is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City with certain police powers. Port's legal status as an agency of City shall in no way limit the obligation of MUNI to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises. MUNI understands that MUNI's operations on the Premises, changes in use, or improvements or alterations to the Premises may require an authorization, approval or a permit from such governmental agencies having jurisdiction over the Premises ("Regulatory Approval"). MUNI, at MUNI's sole cost and expense, shall be solely responsible for obtaining any such Regulatory Approval and for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval. Any fines or penalties imposed as a result of the failure of MUNI to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by MUNI, and Port shall have no liability, monetary or otherwise, for said fines and penalties. MUNI shall be responsible for any and all items of loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Port may incur as a result of MUNI's failure to obtain or comply with the terms and conditions of any Regulatory Approval. Without limiting the foregoing, MUNI shall be responsible for compliance at no cost or expense to Port with all Mitigation Measures set forth in Attachment A to Port Commission Resolution No. 01-15, including without limitation, Mitigation Measures referenced under Section IV.A, entitled "Mitigation Measures within the Jurisdiction of the Port."

9. **Alterations and Repairs.**

a. **Regulatory Approvals Required.** MUNI shall not make, nor cause or suffer to be made, any alterations or improvements to the Premises until MUNI shall have procured and paid for all Regulatory Approvals required to be obtained for such alterations and improvements.

b. **Construction Requirements.** All alterations or improvements to the Premises made by or on behalf of MUNI shall be subject to the following conditions, which MUNI covenants faithfully to perform:

(i) All alterations and improvements shall be constructed in a good and workmanlike manner and in compliance with all applicable building, zoning and other applicable Laws, and compliance with the terms of and the conditions imposed in any Regulatory Approval.

(ii) At the completion of the construction of the alterations or improvements, MUNI shall furnish to Port one (1) set of "as-built" drawings of the same made on or to the Premises. Unless otherwise stated as a condition of the Regulatory Approval, this requirement may be fulfilled by the submittal after completion of the alterations or improvements of a hand-corrected copy of the approved permit drawing(s).

(iii) Except as permitted in Section 5 of this Agreement, Muni shall not construct any permanent improvements or alterations to the Premises, without the Port's prior written consent, which may be given or withheld in the Port's sole discretion, that both (a) are not able to be removed without substantial damage to the Premises and (b) are intended for uses not within the Permitted Uses hereunder. If Muni

fails to obtain Port's consent for such unpermitted improvements or alterations and Muni fails to remove such improvements or alterations within thirty days after Port's written notice directing it to do so, then without limiting any other remedy Port may have hereunder, Port shall have the right to enter the Premises and remove such improvements or alterations at Muni's cost.

c. Improvements. All alterations or improvements to the Premises made by or on behalf of MUNI shall remain the property of MUNI. In the event this Agreement terminates for any reason other than a transfer of jurisdiction under Section 15 hereof, MUNI shall be obligated at its own expense to remove and relocate or demolish and remove (as MUNI may choose) any or all alterations or improvements which MUNI has made to the Premises, including without limitation all rail facilities, tracks and buildings constructed by MUNI, unless otherwise directed by Port in writing. MUNI shall repair, at its own expense, in good workmanlike fashion any damage occasioned thereby.

10. Assignment and Subletting. MUNI shall not assign or hypothecate this Agreement or any interest herein or sublet the Premises, or any part thereof, nor allow any person or entity other than MUNI to occupy or use any portion of the Premises (collectively, "Transfer") without the prior written consent of the Port, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Port hereby assigns to MUNI the lease dated _____ for a portion of the Premises between Port and Pacific Cement Corporation and all Port's rights and obligations thereunder. MUNI may, in MUNI's sole discretion, allow the foregoing tenant to remain on the Premises on a month-to-month basis after expiration of the assigned lease on June 30, 2001.

11. Maintenance; Surrender of Premises. MUNI will be strictly responsible for the maintenance and security of the Premises. MUNI will pay for all utility services provided to the Premises, including but not limited to electricity, water, sewer, gas and telephone service and will provide any scavenger service necessitated by its use of the Premises. In the event this Agreement terminates for any reason other than a transfer of jurisdiction under Section 15 hereof, MUNI shall surrender the Premises in at least as good condition as when received, clean and free of any items stored on the Premises by MUNI, and shall repair any damage to the Premises occasioned by MUNI's use, and removal of such items as required under Section 9 hereof. Notwithstanding the foregoing, the Port shall maintain at no expense to MUNI any streets or utilities constructed by MUNI for Port which are not within the Premises.

12. Insurance. MUNI shall require any agent, contractor or subcontractor it hires in connection with its use of the Premises to secure such insurance as is recommended by the City Risk Manager, which shall name Port and the City and County of San Francisco and their respective officers, agents, commissioners, directors and employees as additional insureds.

13. Damages. Because the use fee due hereunder is not intended to cover risks associated with MUNI's use of the Premises, it is the understanding of the parties that Port shall not expend any funds due to or in connection with MUNI's use of the Premises. Therefore, MUNI shall be responsible for and indemnify, defend and hold Port harmless against, all costs, including without limitation, court costs and attorneys' fees, associated with all claims, damages, liabilities or losses which arise as a result of (i) the presence of Hazardous Materials on the Premises, except for Hazardous Materials for which MUNI has no obligation to Handle or remove pursuant to Section 14 below, or (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises after the Effective Date or prior to the Effective Date during MUNI's

occupancy of the Premises pursuant to a Permit to Enter from Port, from any cause other than the gross negligence or willful misconduct of Port. The foregoing obligation of MUNI shall survive the termination of this Agreement.

14. **Hazardous Materials.**

a. **Definitions.**

(i) "Environmental Laws" means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, soil, air, bay water and groundwater conditions.

(ii) "Handle" or "Handling" means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

(iii) "Hazardous Material" means any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property, including, but not limited to, all of those materials, wastes and substances designated as hazardous or toxic by the United States Environmental Protection Agency, the City and County of San Francisco, the United States Department of Labor, the United States Department of Transportation, the California Department of Environmental Protection or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

(iv) "Agents" means, when used with reference to either party hereto, the officers, directors, employees, agents and contractors of such party, and their respective heirs, legal representatives, successors and assigns.

b. **Risk Management Plan, Site Management Plans and Deed**

Restriction. Notwithstanding anything set forth herein to the contrary, MUNI and the Port and any subsequent owners, lessees, agents, or assignees shall each be responsible for implementing the risk management practices and site management activities described in the Risk Management Plan and Site Management Plans dated February 2000 for the Premises to the extent mandated in each of those Plans. Additionally, such parties shall adhere to the restrictions set forth in the Covenant and Environmental Restriction on Property recorded on January 11, 2001, at the Recorder's Office in the City and County of San Francisco, which is binding on the City and County of San Francisco as owner of the Premises.

c. **Requirements for Handling.** MUNI may Handle on the Premises only such Hazardous Materials as are required by MUNI in the performance of the Permitted Uses hereunder so long as such Handling is at all times in full compliance with all Environmental Laws.

d. **MUNI Responsibility.** Subject to the restrictions set forth in Section 14.b hereof, MUNI shall Handle all Hazardous Materials discovered on the Premises as a result of MUNI's intended use of the Premises or construction activities related to MUNI's alterations to the Premises, or introduced on the Premises by MUNI, its Agents or invitees, in compliance with all Environmental Laws. Notwithstanding the foregoing, MUNI shall not be responsible for the safe Handling of Hazardous Materials

introduced on the Premises during the Term of this Agreement by Port or its Agents. MUNI shall protect its employees and the general public in accordance with all Environmental Laws. Port may from time to time request, and MUNI shall be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner which complies with all Environmental Laws. Port shall have the right to inspect the Premises for Hazardous Materials at reasonable times.

e. Requirement to Remove. In the event this Agreement terminates for any reason other than a transfer of jurisdiction under Section 15 hereof, MUNI, at its sole cost and expense, shall remove any and all Hazardous Materials introduced in, on, under or about the Premises during MUNI's occupancy of the Premises. Further, MUNI, at its sole cost and expense, shall remove any Hazardous Material discovered on the Premises during the Term of this Agreement which is required to be removed by any governmental agency, including Port, which removal would not have been required except for MUNI's use of the Premises or MUNI's construction activities on the Premises. Notwithstanding the foregoing, MUNI shall not be obligated to remove any Hazardous Materials introduced onto the Premises during the Term of this Agreement by the Port or its Agents. Except as otherwise provided in this Section 14.e, MUNI shall not be obligated to remove any Hazardous Materials introduced onto the Premises prior to the Effective Date. Prior to the termination of this Agreement, Port and MUNI shall conduct a joint inspection of the Premises for the purpose of identifying those Hazardous Materials existing on the Premises which MUNI is required to remove.

f. MUNI's Environmental Condition Notification Requirements.

(i) Notification of Any Release or Discharge. MUNI shall immediately notify Port in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under the law the reporting of such release to a governmental or regulatory agency.

(ii) Notification of Any Notice, Investigation, or Claim. MUNI shall also immediately notify Port in writing of, and shall contemporaneously provide Port with a copy of, the following:

(A) Any written notice of release of Hazardous Materials in the Premises that is provide by MUNI or any subtenant of MUNI or other occupant of the Premises to a governmental or regulatory agency;

(B) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by MUNI or any subtenant of MUNI or other occupant of the Premises from any governmental or regulatory agency;

(C) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency against MUNI or subtenant of MUNI or other occupant of the Premises and that relates to the release or discharge of Hazardous Materials on or from the Premises;

(D) Any claim that is instituted or threatened by any third party against MUNI or any subtenant or other occupant of the Premises and that relates to any release or discharge of Hazardous Materials on or from the Premises; and

(E) Any notice of the loss of any environmental operating permit by MUNI or any subtenant or other occupant of the Premises.

(iii) **Failure to Comply.** Failure to comply with this Section 14 shall constitute a material default under the Agreement. In the event of such default, Port shall have all rights available under the Agreement and at law or equity including, without limitation, the right to:

(A) Collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from the cleanup of any Hazardous Materials released into the Premises, soil, or groundwater; or

(B) Require the cleanup of such Hazardous Materials at MUNI's sole expense.

g. **Survival.** The obligations within this Section shall survive the expiration or earlier termination of the Agreement.

15. **Public Trust/Transfer of Jurisdiction.**

a. **Public Trust.** For a period of seven (7) years from the Effective Date, Port may, in its sole discretion, formally initiate the process with the State Lands Commission to burden all or a portion of the Premises with the public trust and Burton Act Trust, so long as such designation will not interfere with MUNI's ability to use the Premises for the Permitted Uses or the Term hereof. MUNI will reasonably cooperate with Port in effecting the trust designation if requested by Port, including modifying this Agreement or executing further documents or assurances as may reasonably be requested by Port, provided that such modifications, further documents or assurances will not interfere with MUNI's ability to use the property for the Permitted Uses or the Term hereof. Port will provide MUNI with copies of all relevant correspondence regarding trust issues related to the Premises.

b. **Transfer of Jurisdiction.**

(i) **Trigger Events.** If any of the following events occur during the Term of this Agreement, Port will initiate proceedings and diligently seek approvals for an inter-departmental transfer of jurisdiction of the Premises to MUNI: (1) expiration of the time period set forth above for formal initiation of the process to place the public trust on the Premises; (2) at any time the Port Commission, in its sole discretion, formally determines that it will not place the public trust on the Premises; (3) either the State Lands Commission or Attorney General's office formally determines that the Premises is ineligible to receive the public trust or that MUNI's use of the Premises as permitted hereunder is inconsistent with the public trust.

(ii) **Deed Restrictions.** Certain essential maritime and industrial uses currently exist on Port property in the vicinity of the Premises. Such uses generate certain impacts such as noise, parking congestion, truck traffic, rail traffic, auto traffic, odors, dust, dirt and visual obstructions. It is the intent of the Port that it retain the flexibility to maintain such uses and to expand or change such uses in the future without being subject to suits by adjacent property owners against the Port for nuisance, inverse condemnation or similar causes of action. Consequently, if an inter-departmental transfer is triggered pursuant to subsection 15.b(i) above, then as a condition to the effectiveness of an inter-departmental transfer, MUNI agrees to acknowledge the foregoing facts and understandings in a written instrument recorded against the Premises (the "Declaration") substantially in the form of Exhibit D attached hereto. Further, MUNI shall require, and the Declaration shall provide, that any transferee, successor, lessee or permittee of MUNI's that is granted the right to exclusive occupancy of a portion of the Premises for a

cumulative period of more than twenty-nine (29) consecutive days must acknowledge the contents of the Declaration in writing. In addition, any transferee that owns or is the lessee of a portion of the Premises for a term longer than five (5) years in the aggregate ("Significant Transferee") must agree in writing to waive its rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property with respect to the Premises or similar claims with respect to the Premises arising out of the existence of the Port's maritime/industrial uses and commercial/recreational uses on Port property within the Southern Waterfront Area, and any expansion, modification or addition to such uses. In addition, all such Significant Transferees shall be required to obtain a similar written agreement from any subsequent Significant Transferee. All agreement referred to in this special notice shall contain a provision conferring third party beneficiary status on Port. This obligation shall expire thirty (30) years from the date of the inter-departmental transfer.

16. Cooperation on Rail Issues. The parties acknowledge that potential conflicts may be created between the construction and operation of the MUNI 3rd Street Light Rail, and the Port's existing and anticipated maritime cargo rail and truck operations. The parties agree to cooperate and negotiate in good faith to resolve the issues so as to minimize adverse impacts on both the MUNI's rail operations and the Port's maritime operations and access to Pier 80.

17. Termination. This Agreement shall terminate upon MUNI's abandonment or vacation of the Premises, upon written notice from MUNI to Port or in the event MUNI ceases to use the Premises for the Permitted Uses set forth in Section 5 hereof.

18. Right of First Offer. The total area of the Port's Western Pacific parcel is approximately twenty-seven (27) acres, including the shoreline area reserved for wetlands preservation that is subject to the public trust. In the event Port decides to sell its fee interest in the remaining Western Pacific property (excluding the Premises), MUNI will have the right of first offer for the acquisition at fair market value based on the highest and best use of such property that is not subject to the public trust within the Western Pacific land parcel, as more specifically shown on Exhibit C, attached hereto.

MUNI shall have 60 days to notify Port that it intends to exercise its right after formal notice from the Port of the property's availability. Fair market value of the Western Pacific property shall be determined by an appraiser selected by the parties hereto and the appraisal shall be conducted upon appraisal instructions jointly agreed upon by Port and MUNI. The appraiser shall be instructed to submit his or her final appraisal within thirty (30) days of his or her appointment. If the parties cannot agree upon one appraiser or joint appraisal instructions within fifteen (15) days after MUNI's exercise notice, or if after the agreed-upon appraiser submits his or her final appraisal, one party disagrees with the fair market value determination of the selected appraiser, each party shall select one appraiser to determine the fair market value. All appraisers selected hereunder shall be competent, licensed, qualified by training and experience with not less than five (5) years' experience appraising commercial properties similar to the Western Pacific property in the Third Street Corridor, disinterested and independent, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions hereof. Neither party

shall communicate with the appraiser appointed by the other party regarding the instructions contained herein before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions herein, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. The parties shall not provide joint instructions to the two appraisers. Neither appraiser shall ask for interpretive guidance or ask questions of the other appointing party, nor shall the two appraisers ask questions jointly of either or both of the parties. There shall not be any arbitration or adjudication of the instructions to the appraisers contained herein. Each appraiser shall arrive at a determination of the fair market value and submit his or her conclusions to the parties within 30 days of selection of the appraiser(s). If only one appraisal is submitted within the requisite time period, it shall be deemed to be the fair market value. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the fair market value. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then each appraiser shall submit to the Port and MUNI a list of three appraisers meeting the qualifications set forth in subsection (i) above. The third appraiser chosen shall be the name of an appraiser common to both lists, or if none is common, the two appraisers, within the next 5 business day period shall resubmit a list with three more appraisers, and the third appraiser shall be the name of an appraiser common to both lists. If no name is common to both lists as of the second submittal, or if more than one name is common to both lists and the two appraisers are unable to agree on the third appraiser within 10 days after the second submittal of names, then either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an appraiser meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent appraiser meeting the foregoing qualifications. Such third appraiser shall consider the appraisals submitted by the Parties as well as any other relevant written evidence which the parties may choose to submit. If a party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other party at the same time it submits the same to the third appraiser. Neither Party shall conduct ex parte communications with the third appraiser regarding the subject matter of the arbitration. Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing, at which Port and MUNI may each make supplemental oral and/or written presentations, with an opportunity for testimony by the appraisers and questioning by the Parties and the third appraiser. Within thirty (30) days following the hearing, the third appraiser shall select the appraised fair market value determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual fair market value. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual fair market value. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Agreement.

Each party shall bear the fees, costs and expenses of the appraiser it selects hereunder and of any experts and consultants used by the appraiser. The fees, costs and expenses of the third appraiser and the costs and expenses of the arbitration proceeding, if any, shall be shared equally by Port and MUNI. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

Before MUNI's right is exercised, the parties shall notify the Mayor of their intended use for the property so that the Mayor may provide any comment on the proposed use. MUNI's offer to acquire the property shall be subject to the approval of the Municipal Transportation Agency Board of Directors and, if necessary, the Board of Supervisors and the Mayor, within ninety (90) days of execution of an agreement to acquire the property and otherwise upon the other business terms contained herein.

If MUNI does not exercise its right, then this right of first offer shall terminate and Port shall be free to dispose of the property to any person whomever and upon any terms whatsoever without any obligation to MUNI. This first right of offer shall terminate and be of no further effect if a sale of the property to a third party is consummated in accordance with the foregoing provisions.

19. Entry for Inspection. Port and its authorized agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that MUNI or MUNI's Agents are present on the Premises, for the purpose of inspecting the Premises to determine whether the Premises are in good condition and whether MUNI is complying with its obligations under this Agreement.

20. Notices. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by regular mail, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Address for Port: Commercial Property Manager
Port of San Francisco
Pier 1
San Francisco, CA 94111

FAX No: (415) 274-578
Telephone No: (415) 274-0510

Address for MUNI General Manager
Municipal Transportation Agency
401 Van Ness Avenue, Suite 334
San Francisco, CA 94102

FAX No: (415) 554-3176
Telephone No: (415) 554-3199

21. Miscellaneous Provisions.

a. California Law. This Agreement shall be construed and interpreted in accordance with the Laws of the State of California and the City's Charter.

b. Entire Agreement. Subject to any subsequent agreements authorized pursuant to this Agreement, this Agreement contains all of the representations and the entire agreement between the parties with respect to the subject matter of the Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of the Agreement shall be introduced as evidence in any litigation or other dispute

resolution proceeding by any party or other person, and no court or other body should consider those drafts as in interpreting this Agreement.

c. **Amendments.** No amendment of this Agreement or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

d. **Severability.** Except as is otherwise specifically provided for this Agreement, invalidation of any provision of this Agreement, or of its application to any person, by judgment or court order, shall not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement.

e. **No Party Drafter; Captions.** The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties. Any caption preceding the text of any; section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement.

f. **Singular, Plural, Gender.** Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine genders, and vice versa.

g. **Successors.** The terms, covenants, agreements and conditions set forth in the Agreement shall bind and inure to the benefit of the Port and MUNI and, except as otherwise provided herein, their personal representatives and successors assigns.

h. **Waiver.** No failure by Port to insist upon the strict performance of any obligation of MUNI under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Agreement consideration during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant, or condition. Port's consent to or approval of any act by MUNI requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by MUNI. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.

i. **Further Assurances.** The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this Agreement.

j. **Incorporation of Exhibits.** All exhibits to this Agreement are incorporated herein by this reference and made a part hereof as set forth in full.

This Agreement shall not be effective unless approved by the San Francisco Port Commission and the San Francisco Municipal Transportation Agency Board of Directors, each in its sole and absolute discretion.

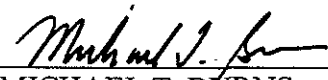
IN WITNESS WHEREOF, PORT and MUNI execute this Memorandum of Understanding No. M-12654 at San Francisco, California, as of the last date set forth below.

CITY AND COUNTY OF
SAN FRANCISCO, a municipal
corporation operating by and through
THE SAN FRANCISCO PORT
COMMISSION

By: 
DOUGLAS F. WONG
Executive Director

Date: MARCH 9, 2001
Resolution No.: 01-15

CITY AND COUNTY OF
SAN FRANCISCO, a municipal
corporation operating by and through
THE MUNICIPAL
TRANSPORTATION AGENCY

By: 
MICHAEL T. BURNS
Director of Transportation

Date: March 6, 2001
Resolution No.: 01-018

EXHIBIT A

Map of the Premises

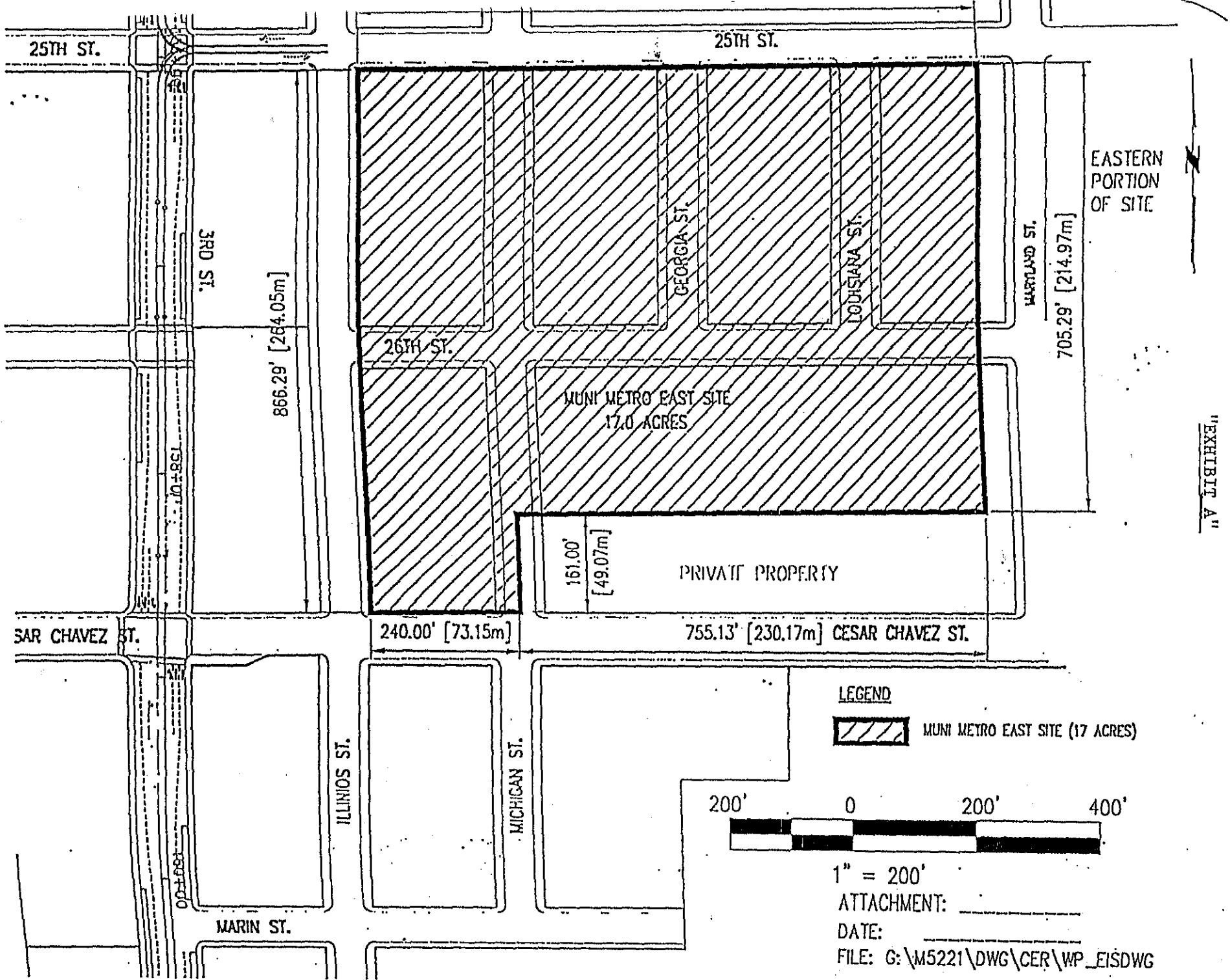

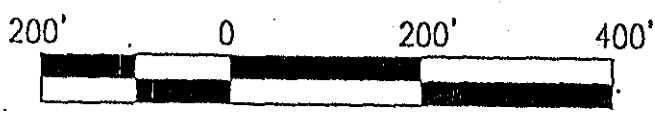


EXHIBIT A

LEGEND

 MUNI METRO EAST SITE (17 ACRES)



1" = 200'

ATTACHMENT: _____

DATE: _____

FILE: G:\M5221\DWG\CER\WP_EISDWG

EXHIBIT B

[Date]

General Manager
Municipal Transportation Agency
401 Van Ness Avenue, Suite 334
San Francisco, CA 94102

RE: Acknowledgement of Effective Date of Term under Memorandum of Understanding No. M-12654 ("MOU") Between the San Francisco Port Commission and the Municipal Transportation Agency

Dear Mr. Burns:

This letter will confirm that for all purposes of the MOU, the Effective Date (as defined in Section 3 of the MOU) is _____, 2001.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

By _____
Title _____


Accepted and Agreed:


By _____
General Manager


Dated _____

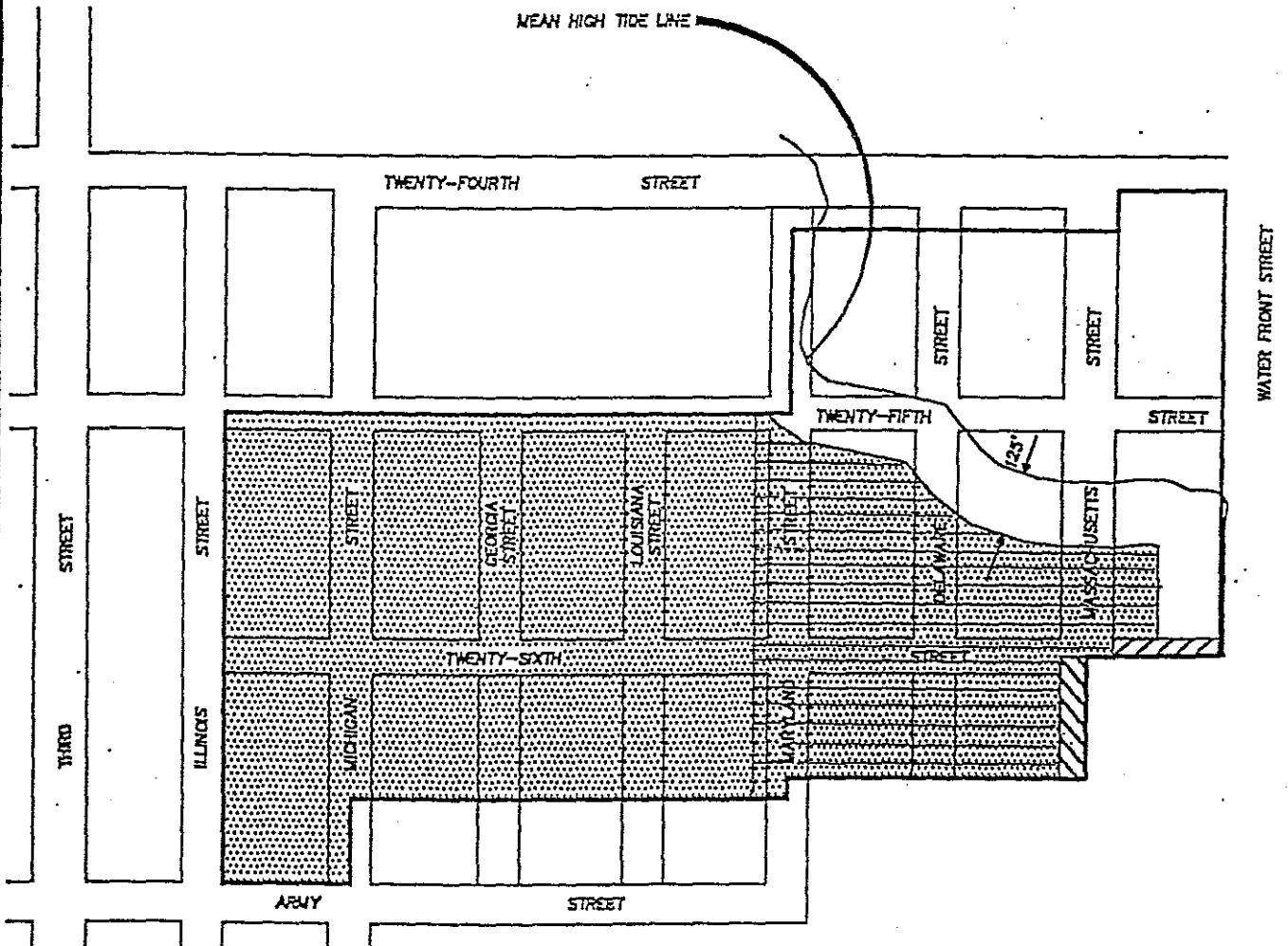
**AMENDED
PORT LAND TRANSFER AGREEMENT
MAP OF WESTERN PACIFIC TRANSFER PARCEL**

EXHIBIT C

 AREA EXCEPTED FROM WESTERN PACIFIC PROPERTY
AS DESCRIBED IN INSTRUMENT A805 OR 815
CITY AND COUNTY OF SAN FRANCISCO

 Right of First Refusal
Property

 AREA EXCEPTED FROM WESTERN PACIFIC PROPERTY
AS DESCRIBED IN INSTRUMENT B52 OR 698
CITY AND COUNTY OF SAN FRANCISCO



GRAPHIC SCALE

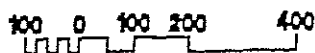


EXHIBIT 0-1
SHEET 1 OF 1

EXHIBIT D
[DECLARATION, ACKNOWLEDGMENT AND WAIVER]
[to be attached]