

## **AHSC IMPLEMENTATION AND COOPERATION AGREEMENT**

THIS AHSC IMPLEMENTATION AND COOPERATION AGREEMENT (the “Agreement”) is made and entered into as of 02/09/2019, between the San Francisco Bay Area Rapid Transit District (“District”), City and County of San Francisco, a municipal corporation, acting by and through the Mayor’s Office of Housing and Community Development (“City”) and Tenderloin Neighborhood Development Corporation (“Developer”, and collectively with the District and City, the “Parties”, or individually, a “Party), upon the basis of the following facts, understanding and intentions of the parties:

A. The State of California, the Strategic Growth Council (“SGC”) and the Department of Housing and Community Development (“HCD”) issued a Notice of Funding Availability dated November 1, 2018 (the “AHSC NOFA”), under the Affordable Housing and Sustainable Communities (“AHSC”) Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200.

B. Developer and City, as co-applicants are applying for AHSC Funds in response to the AHSC NOFA to provide funding for (A) construction of the affordable housing project located at 500 Turk Street in the City of San Francisco (the “Housing Project”); (B) the construction of certain transportation-related improvements to be constructed by the District (the “Transportation Project”); and (C) the construction of certain transportation-related improvements to be constructed by other parties (“Non-BART Transportation Projects”). These improvements are described in more detail in the Final Application to be submitted by February 11, 2019 (collectively, the “AHSC Application”). The District is not a co-applicant, but controls the property on which the Transportation Project will take place (the “Transportation Property”).

C. The AHSC Application seeks an award to the Developer in an aggregate amount of \$20,000,000 in AHSC Funds consisting of: (A) \$13,700,000 of AHSC loan Funds for a permanent loan (“AHSC Loan”) which will be disbursed to the limited partnership to be formed for the development and operation of the Housing Project; (B) \$1,000,000 of the AHSC grant funds for the purpose of reimbursing the cost of the Transportation Project; and (C) \$5,300,000 of AHSC grant funds for the purpose of reimbursing the cost of Non-BART Transportation Projects. The AHSC grants shall be referred to collectively as the “AHSC Grants”. The AHSC Loan and the AHSC Grants are collectively referred to herein as the “AHSC Financing.”

D. The District, City and Developer are required to enter into this Agreement in order to comply with the specific AHSC Program Threshold Requirements, including, without limitation, the requirement that the Developer and City establish “site control” over the land on which the Transportation Project will be constructed, and the requirement that grant recipients demonstrate prior experience with similar transportation projects.

E. As set forth herein, the District affirms its control of the Transportation Property.

F. The guidelines dictate that applicants must demonstrate prior experience by providing evidence of at least two prior projects that are similar to the proposed AHSC project in scope and size, which have been completed by the applicant, or joint applicant, during the ten (10) years preceding the application due date. The guidelines also state that applicants may

demonstrate this requisite experience by using the past experience of work completed of a non-applicant so long as the applicants can provide an executed agreement with that specific non-applicant for the completion of the related work in the AHSC Application for which funding is sought. The District is a non-applicant, but, as set forth herein, will have obligations to complete the following Transportation Project:

1. Canopy covering entrance to Civic Center BART Station at Market Street and Hyde Street

G. The District can demonstrate prior experience and provide evidence of at least two prior projects that are similar in scope and size which have been completed during the ten (10) years preceding February 11, 2019. Below is a list of these projects:

1. Phase I Market Street Canopies covering entrances at Powell Street (Market Street and Ellis Street) and Civic Center (Market Street and 7<sup>th</sup> Street) BART Stations (Completed November 2018)
2. Downtown Berkeley BART Plaza and Station entrance canopies (Completed November 2018)

H. The District shall be responsible for developing and constructing the Transportation Project, and for all costs and expenses related thereto, Developer shall be responsible for developing and constructing the Housing Project (together, the “Developer Obligations”), and for all costs and expenses related thereto, and other parties shall be responsible for developing and constructing Non-BART Transportation Projects. In connection with the AHSC Grants and AHSC Loan, Developer and City are required to enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where Developer and City will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project and completion of the Transportation Project and Non-BART Transportation Projects, as described in the AHSC Application. The AHSC Application and all standard agreements, disbursement agreements, regulatory agreements and any other agreements required by HCD in connection with the AHSC Financing shall be collectively referred to herein as the “AHSC Documents”.

I. The District and Developer each acknowledge and agree that the inability or failure by either party to fully and timely complete each party’s respective improvements required by the AHSC Documents may affect the timing and right of the other party to receive disbursement of AHSC funds due the other party notwithstanding the other party’s full and timely performance of its obligations.

NOW, THEREFORE, in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### AGREEMENT

1. Obligations. The District shall, in its sole responsibility, complete the Transportation Project in accordance with the terms of the AHSC Documents and the approved

design and construction documents and in accordance with the terms of this Agreement. The Developer shall, in its sole responsibility, complete the Housing Project in accordance with the terms of the AHSC Documents and the approved design and construction documents. Each Party will provide the other Party with copies of all requisitions for work related to their respective work, the notice of completion, and other documents related to their respective work that another party may reasonably request.

2. Schedule of Performance; Progress Reports. Developer and District shall comply with the schedule of performance to be mutually agreed upon, as shall be set forth in the AHSC Documents (the "Schedule of Performance"), provided, however, the District shall not be obligated to comply with any changes to the Schedule of Performance included within the AHSC Documents unless the District has consented to such changes. The District and Developer agree to give the other party a written quarterly status report on the progress toward the milestones listed in the Schedule of Performance, i.e., the Developer will report on the Developer's progress on the Developer Obligations and the District will report on the District's progress on the Transportation Obligations. If any Party anticipates not meeting the targeted construction and grant disbursement milestones as established in the AHSC Documents, that Party will promptly notify the other parties in writing and will meet with the other Party to discuss the reasons why the milestone dates may not be met and what actions the delayed party intends to take to meet the milestones or otherwise rectify the work schedule in order to maintain good standing with the terms and conditions established in the AHSC Documents.

3. Site Control. The District hereby represents and warrants that it has the required control of Transportation Property shown in Exhibit 1 to complete the Transportation Project, the evidence of which is contained in Exhibit 2. The City will issue the District a construction permit for any encroachment on the City sidewalk during the Transportation Project construction period.

4. Delegation. Notwithstanding the obligations of each party under this Agreement, each party shall be entitled to enter into sub-agreements with each other or with other parties to provide any assistance or services needed for each party to perform its obligations under this Agreement and the AHSC Documents.

5. Cost Overruns. Developer shall be responsible for paying all costs required to complete the Housing Project, irrespective of whether such costs exceeds the AHSC Loan. District shall be responsible for paying all costs required for the Transportation Project, irrespective of whether such costs exceed the portion of the AHSC Grant designated for the Transportation Project. Neither party is responsible for cost overruns on the Non-BART Transportation Projects, which are the subject of separate agreements.

6. Disbursement of AHSC Grant Funds. The Parties agree that the AHSC Grants for the Transportation Project shall be reimbursed to District from the City. The Parties further agree that all of the AHSC Loan funds shall be disbursed directly to the Partnership. The District shall submit to the City all draw requests for AHSC Grant funds for the costs associated with the Transportation Project and the City shall reimburse the District for such costs. District shall apply any such proceeds received to pay the expenses submitted in connection with the draw request.

7. Implementation Agreements. The District, City and the Developer recognize that each party may need additional assurances from the other party regarding the AHSC Grant and AHSC Loan before commencement of construction of the Housing Project and the Transportation Project, including assurances for lenders and investors. The parties agree to cooperate with each other to reach mutual agreement on amendments to this Agreement, Implementation Agreements or estoppel certificates necessary to provide reasonable assurances and indemnifications. The Developer recognizes that any such amendments to this Agreement, Implementation Agreements or estoppel certificates may require District Board approval.

8. Notices. Formal notices, demands, and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

District: Shirley Ng, Group Manager, Station Modernization  
300 Lakeside Drive, 21<sup>st</sup> Floor  
Oakland, CA 94612  
[sng@bart.gov](mailto:sng@bart.gov)  
510-287-4927

To Developer: Donald S Falk  
Tenderloin Neighborhood Development Corporation,  
201 Eddy Street,  
San Francisco, CA 94102  
[dfalk@tndc.org](mailto:dfalk@tndc.org)  
415-358-3923

To City: Mayor's Office of Housing and Community Development  
City and County of San Francisco  
Attn: Project Manager  
RE: 500 Turk Street  
1 South Van Ness, 5<sup>th</sup> Floor  
San Francisco, California 94103  
Main (415) 701-5500

9. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

(a) A Party fails to perform any of its obligations under this Agreement, and does not cure such failure within 30 days after written notice of such failure has been delivered to the defaulting party in accordance with Section 2 above; or

(b) A Party purports to revoke this Agreement or this Agreement becomes ineffective for any reason.

10. Termination. This Agreement shall terminate upon the earlier of: (i) completion of the all obligations under the AHSC Documents related to the Transportation Project; or (ii) mutual agreement of the parties hereto.

11. Third Party Beneficiary. The Partnership shall be a third party beneficiary of this Agreement and shall be entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party to this Agreement.

12. Assignment. District hereby acknowledges and approves the assignment by Developer and the Partnership to the Housing Project's senior lender ("Construction Lender") of all of their respective right, title and interest in, to and under the Agreement (the "Collateral") as collateral security for the Partnership's obligations to Construction Lender under, and in connection with Construction Lender's loan to the Partnership. In the event Construction Lender forecloses upon the Collateral, District hereby agrees that Construction Lender shall have all of Developer's rights and interests under the Agreement. Construction Lender is hereby made an express third party beneficiary of this Section 10, and the parties hereto shall not amend, modify or terminate the Agreement without Construction Lender's express written consent.

13. Miscellaneous.

(a) Nothing in this Agreement shall be construed to limit any claim or right which any Party may otherwise have at any time against an Indemnitor or any other person arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal or state environmental law or any other applicable law, regulation, or ordinance.

(b) If any Party delays in exercising or fails to exercise any right or remedy against a Party, that alone shall not be construed as a waiver of such right or remedy. All remedies of any Party against the other Party are cumulative.

(c) This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective representatives, heirs, executor, administrators, successors, and assigns. This Agreement may not be amended except by a written instrument executed by the Parties hereto.

(d) This Agreement shall be deemed to have been delivered and accepted in the State of California and governed exclusively by the internal substantive laws of the State of California as the same may exist at the date hereof. The Parties hereto hereby agree that any action hereon between the parties hereto and their successors in interest may be maintained in a court of competent jurisdiction located in the State of California, and consent to the jurisdiction of any such California court for the purposes connected herewith.

(e) Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties hereto.

(f) This Agreement may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Agreement.

(g) This Agreement shall be effective as of the date first written above, provided however that in the event that the parties do not receive an award of the AHSC Financing, this Agreement shall automatically terminate and be of no further force or effect.

*[Signatures on following page]*

Each of the undersigned hereby executes this Agreement in the spaces provided below to evidence their respective agreement to the terms of this Agreement.

**District:**

By:  \_\_\_\_\_

Name: Carl Holmes

Its: Assistant General Manager, Planning, Development & Construction

**Developer:**

By: \_\_\_\_\_

Name: Donald S Falk

Its: Chief Executive Officer

**City:**

City and County of San Francisco, a municipal corporation  
acting through the Mayor's Office of Housing and Community  
Development

By: \_\_\_\_\_

Name: Kate Hartley

Its: Director, Mayor's Office of Housing and Community Development



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By: \_\_\_\_\_  
Name: Carl Holmes  
Its: Assistant General Manager, Planning, Development & Construction

**Developer:**

By: Donald S. Falk  
Name: Donald S Falk  
Its: Chief Executive Officer

**City:**

City and County of San Francisco, a municipal corporation  
acting through the Mayor's Office of Housing and Community  
Development

By: \_\_\_\_\_  
Name: Kate Hartley  
Its: Director, Mayor's Office of Housing and Community Development



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By: \_\_\_\_\_  
Name: Carl Holmes  
Its: Assistant General Manager, Planning, Development & Construction

**Developer:**

By: \_\_\_\_\_  
Name: Donald S Falk  
Its: Chief Executive Officer

**City:**

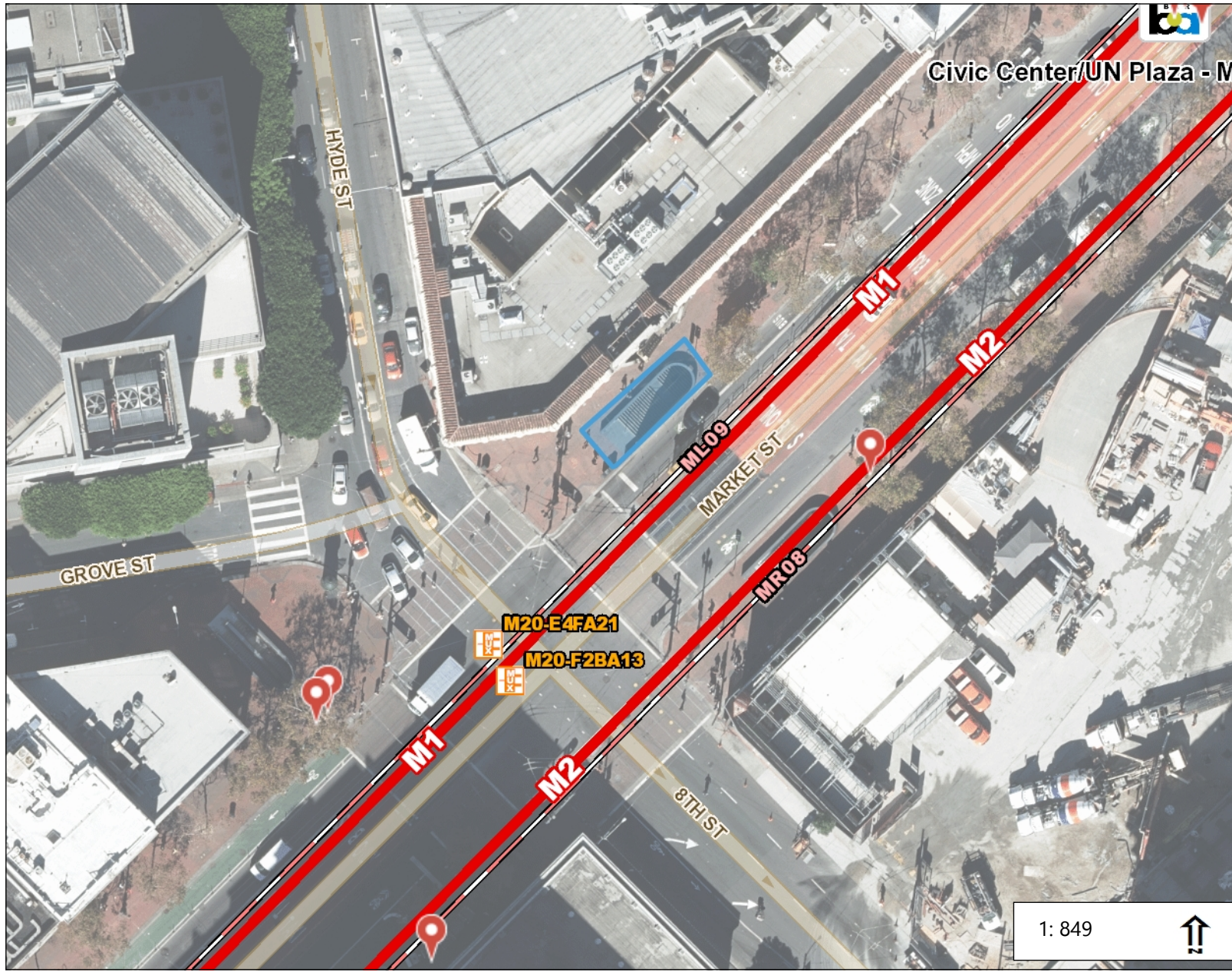
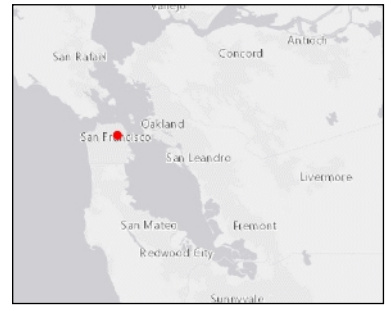
City and County of San Francisco, a municipal corporation  
acting through the Mayor's Office of Housing and Community  
Development

By:   
Name: Kate Hartley  
Its: Director, Mayor's Office of Housing and Community Development

**EXHIBIT 1: Transportation Property**

**EXHIBIT 2: Evidence of Site Control**

# Exhibit 1 - Location of TRA - 500 TURK



### Legend

- Shops & Yards
- BART Station
- Switching Station
- BART Track Center Line**
- A Line
- C Line
- H Line
- K Line
- L Line
- M Line
- R Line
- S Line
- W Line
- Y Line
- Track Extension Station
- Track Extension Line**
- eBART Phase II & III
- Warm Springs to Berryessa
- Berryessa
- Gate
- Interlocking
- Multiplexer (Mux)
- Switch Track
- Third Rail
- Train Control Room
- Streets

1: 849



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

**Notes**  
All Data Displayed is provided by BART OCIO - EGIS Department





**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
 300 Lakeside Drive, P.O. Box 12688  
 Oakland, CA 94604-2688  
 (510) 464-6000

2019

February 4, 2019

Bevan Dufty  
 PRESIDENT

Rebecca Saltzman  
 VICE PRESIDENT

Grace Crunican  
 GENERAL MANAGER

Louise Bedsworth, Executive Director  
 Strategic Growth Council  
 1400 Tenth Street  
 Sacramento, CA 95814

RE: 500 Turk – Canopy 21 Confirmation of Site Control and Local Approvals

**DIRECTORS**

Debora Allen  
 1ST DISTRICT

Mark Foley  
 2ND DISTRICT

Rebecca Saltzman  
 3RD DISTRICT

Robert Raburn, Ph.D.  
 4TH DISTRICT

John McPartland  
 5TH DISTRICT

Elizabeth Ames  
 6TH DISTRICT

Lateefah Simon  
 7TH DISTRICT

Janice Li  
 8TH DISTRICT

Bevan Dufty  
 9TH DISTRICT

Dear Ms. Bedsworth:

The proposed project from the San Francisco Bay Area Rapid Transit District (“BART”) that is the subject of BART’s AHSC funding request application, is for the construction of a canopy (Canopy 21) that will protect the Civic Center BART/MUNI Station entrance located on the north side of Market Street east of the intersection with Grove and Hyde Streets in San Francisco. A new escalator is being installed at that location as part of a separate Contract and the canopy is required by Code to protect the escalator and adjacent stairs from weather.

Per this letter, and the side agreement between BART, the City of San Francisco, and Tenderloin Neighborhood Development Corporation, BART confirms it has the necessary site control for the construction of the project, via a subsurface easement with the City and County of San Francisco, as originally recorded on May 2, 1972. The location of this easement is shown in the attachment to this letter.

Furthermore, the project is consistent with local rules, regulations, codes, policies and plans enforced or implemented by BART. Under CA Government Code sections 53090 and 53091, BART is exempt from local building and zoning ordinances for projects of this nature.

If you have any questions, please contact Tim Chan, Stations Planning Group Manager at [tchan1@bart.gov](mailto:tchan1@bart.gov).

Sincerely,

Sean Brooks  
 Department Manager  
 BART Real Estate & Property Development

Encl.



BAY AREA RAPID TRANSIT DISTRICT

# RECORD MAPS OF RIGHT OF WAY BAY AREA RAPID TRANSIT DISTRICT CITY & COUNTY OF SAN FRANCISCO

## COVER SHEET

RECORDED AT REQUEST OF  
COLEMAN ASSOC  
At 15 Min Past 3P M  
FEB 14 1977  
City & County of San Francisco, Calif.  
RECORDER

91455  
7073697  
FILED

Not Returnable

I HEREBY STATE THAT ANY REVISIONS MADE BY  
COLEMAN ASSOCIATES ON THESE MAPS WERE AT  
THE REQUEST OF THE SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT AND ARE CORRECT

Dominic J. Selmi 1/31/77  
DOMINIC J. SELMI, R.C.E. 9788  
CIVIL ENGINEER  
STATE OF CALIFORNIA

FILED FOR RECORD THIS 14th DAY  
OF February 1977, AT 3:00 P.M., IN PARCEL MAP BOOK  
5 AT PAGE 262 AT THE REQUEST OF THE SAN  
FRANCISCO BAY AREA RAPID TRANSIT DISTRICT.

THOMAS KEARNEY  
RECORDER IN AND FOR THE  
CITY AND COUNTY OF SAN FRANCISCO  
STATE OF CALIFORNIA

BY: Diana L...  
DEPUTY COUNTY RECORDER  
SHEET 1 OF 61 SHEETS

### SHEET INDEX

PORTION OF MRW 2-A thru MRW 32  
SAN MATEO AVE. TO COLTON ST.

SRW 14 thru SRW 29  
WEST PORTAL STATION AND  
DIAMOND ST. TO 2ND ST.

BRW 1 thru BRW 8  
2ND ST. TO S.E. - ALAMEDA COUNTY LINE

#### NOTE:

THESE RECORD MAPS OF RIGHT OF WAY ARE FOR THE  
PURPOSE OF DELINEATING ONLY THOSE PARCELS DESIGNATED  
BY THE LETTER "M", "S" OR "B" CONTAINED WITHIN AN ELLIPSE  
( SHOWN THUS: (M) (S) (B) ) AND APPROVAL OF SAID  
MAPS IS LIMITED THERETO.

By: Jeffrey Lee  
Title: City Engineer

These Record Maps of Right of Way have been prepared at the request  
of the San Francisco Bay Area Rapid Transit District.

Their purpose is to represent the acquisition data for, and the delinea-  
tion of, the right of way for the San Francisco Bay Area Rapid Transit  
District.

These Record Maps of Right of Way are based on the California Coor-  
dinate System, Zone III. The coordinates as shown on these maps  
were determined from points of known coordinates through use of the  
"Bay Area Rapid Transit District, Primary Control Scheme, City and  
County of San Francisco" on file in the office of the County Recorder  
of the City and County of San Francisco.

The maps are numbered in series for specific reaches. General loca-  
tion of the series numbers are indicated on this sheet.

Each sheet is certified by the registered civil engineer or licensed  
land surveyor responsible for preparing the original plat indicating the  
right of way configuration for San Francisco Bay Area Rapid Transit  
District, streets and facilities relating thereto. Certain of these maps  
have been revised in order to reflect subsequent modifications of the  
right of way. These revisions were delineated by Coleman Associates,  
Civil Engineers, at the request of San Francisco Bay Area Rapid  
Transit District.

By: Charles E. Hummer

Title: Manager of Real Estate





# Exhibit 2: Evidence of Site Control

