

File No. 101374

Committee Item No. 2  
Board Item No. 29

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: December 8, 2010

Board of Supervisors Meeting

Date 12/14/10

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ethics Form 126
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contract/Agreement *
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

#### OTHER

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<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Victor Young

Date: December 3, 2010

Completed by: Victor Young

Date: 12-9-10

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



1 [Purchase Agreement - Subsurface Easements - Bay Division Pipeline Reliability Upgrade  
2 Project - Bay Tunnel - \$650]

3 **Resolution approving and authorizing an Agreement for Purchase and Sale of Real**  
4 **Estate to obtain two permanent, exclusive, subsurface easements from Cargill,**  
5 **Incorporated, for the purpose of constructing the San Francisco Public Utilities**  
6 **Commission Water System Improvement Program-Funded Project CUW36801, Bay**  
7 **Division Pipeline Reliability Upgrade - Bay Tunnel for a purchase price of \$650;**  
8 **adopting environmental findings under the California Environmental Quality Act**  
9 **(CEQA), CEQA Guidelines, and Administrative Code Chapter 31; adopting findings of**  
10 **consistency with City Planning Code Section 101.1; and authorizing the General**  
11 **Manager of SFPUC to execute documents, make certain modifications and take certain**  
12 **actions in furtherance of this resolution.**

13  
14 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) plans to  
15 construct Project CUW36801 Bay Division Pipeline Reliability Upgrade Project-Bay Tunnel  
16 (the Project) under the Water System Improvement Program (WSIP) for improvements to the  
17 regional water supply system, a public use, and in connection therewith will require interests  
18 in certain real property described herein; and,

19 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline  
20 (BDPL) Reliability Upgrade projects, are to provide a seismically reliable conduit between  
21 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and  
22 configure the BDPL transmission system for transmission of water across the Bay distribution  
23 to residents of San Mateo County and the City and County of San Francisco, (the City) to  
24 replenish local reservoirs, and to contribute toward meeting estimated average annual  
25 demand under conditions of both planned and unplanned facility outages; and,

1 WHEREAS, A Final Program Environmental Impact Report (PEIR) was prepared for  
2 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.  
3 17734; and

4 WHEREAS, Thereafter the SFPUC approved the WSIP and adopted findings and a  
5 Mitigation Monitoring and Reporting Program as required by the California Environmental  
6 Quality Act (CEQA) on October 30, 2008 by Resolution No. 08-0200; and

7 WHEREAS, An environmental impact report (EIR) as required by CEQA was  
8 prepared for the Project in Planning Department File No. 2005.01 64E; and

9 WHEREAS, The Final EIR (FEIR) for the Project was certified by the San Francisco  
10 Planning Commission on July 9, 2009 by Motion No. 17918; and

11 WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as  
12 authorized by and in accordance with CEQA and the CEQA Guidelines; and

13 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-0120, a copy of  
14 which is on file with the Clerk of the Board of Supervisors of the City (Board) in File  
15 No. 090979 and which is incorporated herein by this reference and is considered part of the  
16 record before this Board: (1) approved the Project; (2) adopted findings (CEQA Findings),  
17 including the statement of overriding considerations, and a Mitigation Monitoring and  
18 Reporting Program (MMRP) required by CEQA; (3) authorized the General Manager to  
19 seek Board approval of, and if approved, to execute certain necessary agreements and  
20 deeds for acquisition of interests in specified parcels of real property, including the real  
21 property commonly known as San Mateo County Assessor's Parcels No. 537-0551-028  
22 and 537-0852-008-03 (the Subject Property), owned by Cargill, Incorporated (Seller); and

23 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.  
24 09-0120 have been made available for review by the Board and the public, and those files  
25 are considered part of the record before this Board; and

1 WHEREAS, The Board has reviewed and considered the information and findings  
2 contained in the FEIR, PEIR and SFPUC Resolution No. 09-0120, and all written and oral  
3 information provided by the Planning Department, the public, relevant public agencies,  
4 SFPUC and other experts and the administrative files for the Project; and

5 WHEREAS, This Board, by Resolution No. 371-09 adopted on September 22, 2009,  
6 a copy of which is on file with the Clerk of the Board in File No. 090979 and which is  
7 incorporated herein by this reference and considered part of the record before this Board,  
8 adopted findings under CEQA related to the Project, including the statement of overriding  
9 considerations and the MMRP; and

10 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found  
11 the acquisition of subsurface property interests in specified properties, including the Subject  
12 Property, for the Project to be in conformity with the General Plan and consistent with the  
13 Eight Priority Policies of City Planning Code Section 101.1 to the extent applicable; and

14 WHEREAS, This Board, by Resolution No. 0471-09 adopted on November 24, 2009,  
15 (1) adopted findings of public necessity and other findings under California Code of Civil  
16 Procedure Sections 1240.030, 1240.510, 1240.610 and 1245.230, (2) authorized  
17 acquisition of subsurface tunnel easements in specified properties, including the Subject  
18 Property, by eminent domain, and (3) adopted CEQA Findings, including the statement of  
19 overriding considerations, and the MMRP required by CEQA, with respect to approval of  
20 such resolution; and

21 WHEREAS, A copy of the proposed Agreement for Purchase and Sale of Real  
22 Estate (the Agreement) between the City and Cargill, Incorporated, as Seller, is on file with  
23 the Clerk of the Board of Supervisors under File No. 101374, which is incorporated herein  
24 by this reference and is considered part of the record before this Board; and  
25

1 WHEREAS, The Director of Property has determined, based on an independent  
2 appraisal, that the purchase price of \$650 reflects the fair market value of the subsurface  
3 easements; and

4 WHEREAS, In recognition that the purchase price of \$650 will not cover Seller's  
5 costs reasonably incurred in the sale of the tunnel easements, including costs of title  
6 searches, appraisals and attorneys' fees, the proposed Agreement provides for the City to  
7 reimburse the Seller for such costs up to a maximum amount of \$8,000; now therefore, be  
8 it

9 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,  
10 finds that the FEIR is adequate for its use as the decision-making body for the action taken  
11 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.  
12 371-09; and be it

13 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted  
14 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be  
15 it

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

22 FURTHER RESOLVED, That the Board hereby adopts as its own and incorporates  
23 by reference herein, as though fully set forth, the findings of the Planning Department that  
24 acquisition of subsurface property interests for the Project is consistent with the Eight  
25 Priority Policies of City Planning Code Section 101.1; and, be it

1 FURTHER RESOLVED, That in accordance with the recommendations of the Public  
2 Utilities Commission and the Director of Property, the Board of Supervisors hereby  
3 approves the Agreement and the transaction contemplated thereby in substantially the form  
4 of such Agreement presented to the Board; and, be it

5 FURTHER RESOLVED, That the Board authorizes the Director of Property and/or  
6 the General Manager of the SFPUC to enter into any additions, amendments or other  
7 modifications to the Agreement (including, without limitation, the attached exhibits) that the  
8 Director of Property and/or the General Manager determines are in the best interest of the  
9 City, that do not materially increase the obligations or liabilities of the City, and are  
10 necessary or advisable to complete the transaction contemplated in the Agreement and  
11 effectuate the purpose and intent of this resolution, such determination to be conclusively  
12 evidenced by the execution and delivery by the Director of Property or the General  
13 Manager of the Agreement and any additions or amendments thereto; and, be it

14 FURTHER RESOLVED, That the Director of Property is hereby authorized and  
15 urged, in the name and on behalf of the City and County, to execute the Agreement for the  
16 purchase of easements in accordance with the terms and conditions of the Agreement, and  
17 to take any and all steps (including, but not limited to, the execution and delivery of any and  
18 all certificates, agreements, notices, consents, escrow instructions, closing documents and  
19 other instruments or documents) as the Director of Property deems necessary or  
20 appropriate pursuant to the Agreement, or to otherwise effectuate the purpose and intent of  
21 this resolution, such determination to be conclusively evidenced by the execution and  
22 delivery by the Director of Property.

23 RECOMMENDED:

24 

25 Amy L. Brown  
Director of Property

FUNDS AVAILABLE



Controller  
Appropriation: Index Code 737312

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):  Mayor Gavin Newsom; Members, SF Board of Supervisors	City elective office(s) held: Mayor, City and County of San Francisco; Members, SF Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name: CARGILL, INCORPORATED	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. See Attached	
Contractor address: 7220 Central Avenue, Newark, CA 94560	
Date that contract was approved: Upon approval of the Board and Mayor	Amount of contract: \$650.00
Describe the nature of the contract that was approved: Purchase of tunnel easements for the Hetch Hetchy Seismic Upgrade Project	
Comments:	

This contract was approved by (check applicable):

- ☐ the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- ☐ a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board
- ☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number:
Address:	E-mail:

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed





*Amy L. Brown*  
*Director of Real Estate*




October 27, 2010

PUC  
Tunnel Easement Acquisition  
Bay Division Pipeline Reliability  
Upgrade Project  
Alameda County

Through Edwin M. Lee  
City Administrator

Honorable Board of Supervisors  
City & County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 NOV - 1 AM 9:51  
BY 

Dear Board Members:

Enclosed for your consideration is a Resolution authorizing an Agreement for Purchase and Sale of Real Estate between Cargill, Incorporated ("Seller") and the City and County of San Francisco ("City") acting by and through its Public Utilities Commission ("PUC"). Two tunnel easements through Seller's property are required for the PUC's Bay Division Pipeline Reliability Upgrade Project to provide a seismically reliable water transmission system between Mission Boulevard in the City of Fremont and the Pulgas Tunnel in San Mateo County.

The tunnel easements are necessary for construction of the Bay Tunnel and a 9-foot diameter water transmission pipeline within the tunnel, under the San Francisco Bay. The purchase price for the easements is \$650 as determined by an independent appraisal prepared in March 2009 and approved by the Director of Property. Recognizing that this purchase price will not cover Seller's costs reasonably incurred in negotiating and closing the sale of the easements, such as title review expenses and attorney fees, the Agreement provides for the City to reimburse Seller for such costs up to a maximum amount of \$8,000.

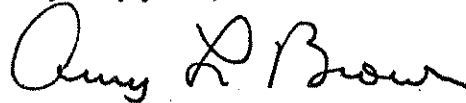
In addition to the Resolution, enclosed are:

1. Agreement for Purchase and Sale of Real Estate.

2. Public Utilities Commission Resolution No. 09-0120 approving the acquisition of these tunnel easements and all other property interests for the project.
3. City Planning's letter dated November 23, 2009 stating that the proposed acquisition of all the necessary property interests for the project are in conformity with the general plan and consistent with the Eight Priority Policies of Planning Code Section 101.1. In addition, an environmental impact report for the project was certified by the Planning Commission and subsequently approved by the Board by Resolution No. 371.09
4. Resolution No. 0471-09 adopted by the Board of Supervisors authorizing the acquisition through eminent domain.
5. Form SFEC – 126: Notification of Contract Approval

Should you have any questions or need additional information, do not hesitate to call Marta Bayol of our office at 554-9865.

Very truly yours,



Amy L. Brown  
Director of Real Estate

cc: Edwin M. Lee, City Administrator

w/ Resolution;  
Carolyn Stein, Deputy City Attorney  
Brian Morelli, PUC  
Gary Dowd, PUC  
Nathan Purkiss, PUC

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

by and between

CARGILL, INCORPORATED  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

permanent, exclusive tunnel easements under and across real property in  
the City of Newark, Alameda County, California

October 15, 2010

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#### LIST OF EXHIBITS

- EXHIBIT A-1 Easement Deed for SFPUC Parcel HH 15-02 (portion of APN 537-0551-028)  
with attached legal description and depiction of easement area.
- EXHIBIT A-2 Easement Deed for SFPUC Parcel HH 17-02 (portion of APN 537-0852-008-03)  
with attached legal description and depiction of easement area.
- EXHIBIT B-1 Preliminary Title Report for SFPUC Parcel HH 15-02
- EXHIBIT B-2 Preliminary Title Report for SFPUC Parcel HH 17-02

## AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

(Easements under and across  
Portions of APN 537-0551-028 and 537-0852-008-03)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this "Agreement") dated for reference purposes only as of October 15, 2010, is by and between CARGILL, INCORPORATED, a Delaware corporation (successor to Leslie Salt Co., a Delaware corporation) ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

IN CONSIDERATION of the respective agreements set forth below, Seller and City agree as follows:

### 1. PURCHASE AND SALE

#### 1.1 Purchase and Sale of Easements

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions set forth below and in the attached Deeds, the following easements in connection with City's Bay Tunnel Project (the "Easements") under and across portions of Seller's real property in Alameda County ("County"), California, described below:

(a) a permanent, exclusive tunnel easement, as described in **Section 1.2 and Exhibit A-1**, under and across a portion of Seller's real property located in the City of Newark, west of Hickory Street, between the SAMTRANS right of way and City's water system right of way, and commonly known as Assessor's Parcel 537-0551-028; and

(b) a permanent, exclusive tunnel easement, as described in **Section 1.2 and Exhibit A-2**, under and across a portion of Seller's real property located in the City of Newark, west of Hickory Street, abutting San Francisco Bay, and commonly known as Assessor's Parcel 537-0852-008-03.

#### 1.2 Easement Area; Terms of Easements

The specific locations of the Easements (collectively, the "Easement Area") are described and approximately depicted in the exhibits to the easement deeds attached to this Agreement as **Exhibits A-1 and A-2** (collectively, the "Deeds"). The nature, scope, terms and conditions of the Easements are set forth in the Deeds. The Easement Area is a portion of Seller's real property commonly known as Alameda County Assessor's Parcels 537-0551-028 and 537-0852-008-03 as described in the Deeds (collectively "Seller's Property").

### 2. PURCHASE PRICE

#### 2.1 Purchase Price

The total purchase price for the Easements shall be Six Hundred Fifty Dollars (\$650.00) (the "Purchase Price").

#### 2.2 Payment

On the Closing Date (as defined in **Section 5.2** [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of **Article 6** [Expenses], and reduced by any credits due City hereunder.

## 2.3 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds to Escrow Holder, as the escrow agent.

## 3. CONVEYANCE OF EASEMENT

### 3.1 Easement Deeds

At the Closing Seller shall convey to City title to the Easements, without covenant or warranty, by duly executed and acknowledged Deeds in the form attached hereto as **Exhibit A-1** and **Exhibit A-2**, subject to the Accepted Conditions of Title (as defined in **Section 3.2** [State of Title]).

### 3.2 State of Title

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Chicago Title Company (the "**Title Company**") to issue to City a CLTA owner's policy of title insurance (the "**Title Policy**") in the amount of City's investment in the Easements, insuring title to the Easements in City free of the liens of any and all deeds of trust, mortgages, and all other exceptions, liens and encumbrances except solely for the following (such exceptions approved by City are collectively referred to herein as the "**Accepted Conditions of Title**"):

(a) With respect to SFPUC Parcel HH 15-02, as described in **Exhibit A-1**, the Accepted Conditions of Title are (i) the lien of real property taxes, not yet delinquent; (ii) exceptions 3 through 13 in the preliminary report dated July 21, 2010, bearing title no. 07-59014814-E-MF, attached hereto as **Exhibit B-1**; and (iii) such other exceptions as City may approve in writing before the Closing or that may be deemed Permitted Exceptions as described below in this **Section 3.2**.

(b) With respect to SFPUC Parcel HH 17-02, as described in **Exhibit A-2**, the Accepted Conditions of Title are (i) the lien of real property taxes, not yet delinquent; (ii) exceptions 4 through 10 shown in the preliminary report dated July 22, 2010, bearing title no. 07-59015506-C-MF, attached hereto as **Exhibit B-2**; and (iii) such other exceptions as City may approve in writing before the Closing or that may be deemed Permitted Exceptions as described below in this **Section 3.2**.

If, before the Closing, City identifies additional exceptions to title, not identified in the above referenced preliminary reports, City shall provide written notice of same to Seller within five (5) business days ("**Additional Exceptions Notice**") and shall state in such notice whether City accepts any such additional exceptions (in which event such accepted additional exceptions shall be deemed ("**Permitted Exceptions**") or disapproves such additional exceptions. Seller will have ten (10) business days from delivery of the Additional Exceptions Notice to notify City whether Seller is willing and able to remove from title, or otherwise address to City's satisfaction, at Seller's sole cost and expense ("**Remove**"), those exceptions, if any, disapproved in City's Additional Exceptions Notice (the "**Disapproved Exceptions**"). If Seller fails to provide notice to City within such ten (10) business day period, Seller shall be deemed to have notified City that it will not Remove the Disapproved Exceptions. If Seller timely notifies City that Seller is unwilling or unable to Remove any Disapproved Exceptions ("**Seller's Notice**"), or if Seller is deemed to have given such notice, then City may elect one of the following by giving notice to Seller ("**City's Election Notice**") within twenty (20) days after Seller gives or is deemed to have given Seller's Notice: (i) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder other than those that expressly survive

termination; or (ii) file an action in eminent domain to acquire either or both the Easements by condemnation, in which event the Closing shall automatically be suspended with respect to the Easement(s) that is/are the subject of the eminent domain action; or (iii) continue this Agreement in full force and effect and proceed with the Closing without filing an action in eminent domain, in which event the Disapproved Exceptions that Seller is unwilling or unable to Remove will be deemed to be Permitted Exceptions, without any reduction in the Purchase Price. The Closing Date shall be extended to the extent reasonably necessary to accommodate the notice and response periods described above.

If City elects pursuant to this Section to file an eminent domain action with respect to only one of the Easements, the Closing shall proceed with respect to the other Easement in accordance with the terms of this Agreement, with the purchase price reduced by an amount proportionate to the percentage reduction of the cubic footage of the Easement Area excluded from Closing. The Closing shall be suspended with respect to any Easement that is the subject of the eminent domain action (an "ED Easement") unless and until City dismisses the eminent domain lawsuit, in which event the Closing shall occur within twenty (20) days after such dismissal and the Disapproved Exception(s) that Seller was unwilling or unable to Remove will be deemed to be Permitted Exceptions except as otherwise agreed in writing by Seller and City. If City does not dismiss the eminent domain action, Seller's obligation to convey the ED Easement pursuant to this Agreement shall terminate upon entry of final judgment in the eminent domain action. With the exception of Pre-Closing Possession of the ED Easement pursuant to Section 5.7 and the terms specified in this Section 3.2, Seller's obligations under this Agreement in connection with an ED Easement shall be suspended for the duration of any eminent domain action brought by the City under this Section 3.2 and shall terminate upon entry of final judgment in such an action. In the event that City files an eminent domain action pursuant to this Section 3.2, it may take possession and make use of the ED Easement commencing on the Possession Date, pursuant and subject to the terms of Section 5.7.

#### 4. CONDITIONS TO CLOSING

##### 4.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Easements (collectively, "Conditions Precedent"):

(a) The physical condition of the Easement Area shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Article 8 [Risk of Loss]), and as of the Closing Date there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing could materially adversely affect the value of the Easements or the ability of City to use the Easement Area for its intended use, and no proceedings shall be pending or threatened that could or would cause the change, re-designation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Easement Area.

(b) Escrow Holder shall be committed at the Closing to issue to City a CLTA owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price, insuring title to the Easements vested in City free of all exceptions, liens and encumbrances except only the Accepted Conditions of Title, defined in Section 3.2 [State of Title]. The Title Policy shall contain such special endorsements as City may reasonably request.

(c) The transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the Public Utilities Commission, in their respective sole discretion, within sixty (60) days after Seller executes and delivers this Agreement to City.



## PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0120

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Projects CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel ("Bay Tunnel"), CUW36802 Bay Division Pipeline Reliability Upgrade Project-Pipeline ("Pipeline"), and CUW36803 Bay Division Pipeline Reliability Upgrade Project-Relocation of BDPL Nos. 1 & 2 ("Relocation") (collectively, the "Projects") under the Water System Improvement Program ("WSIP") for improvements to the regional water supply system; and

WHEREAS, The objectives of the Projects are to provide a seismically reliable conduit between Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and configure the Bay Division Pipeline (BDPL) transmission system for carrying water across the Bay for distribution to customers and to replenish local reservoirs, and to contribute toward meeting estimated average annual demand under conditions of both planned and unplanned facility outages; and

WHEREAS, On July 9, 2009, the Planning Commission reviewed and considered the Final Environmental Impact Report ("Final EIR") in Planning Department File No. 2005.0146E, consisting of the Draft EIR and the Comments and Responses document, and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the provisions of the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, and is adequate, accurate, and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its Motion No. \_\_\_\_\_; and

WHEREAS, This Commission has reviewed and considered the information contained in the Final EIR, all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project and the EIR; and

WHEREAS, The Project and Final EIR files have been made available for review by the SFPUC and the public, in File No. 2005.0146E at 1650 Mission Street, Fourth Floor, San Francisco, California, and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA ("CEQA Findings") in Attachment A to this Resolution and a proposed Mitigation, Monitoring, and Reporting Program ("MMRP") in Attachment B to this Resolution, which material was made available to the public and this Commission for the Commission's review, consideration, and action; and

WHEREAS, The Projects are capital improvement projects approved by this Commission as part of the WSIP; and

WHEREAS, A Final Program EIR ("PEIR") was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, this Commission approved the WSIP and adopted findings and a MMRP as required by CEQA on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The Final EIR prepared for the Projects tiers from the PEIR, as authorized by and in accordance with CEQA; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The SFPUC staff will comply with Government Code Section 7260 et seq. statutory procedures for possible (a) acquisition of interests in real property in: (1) Assessor's Parcels # 525-0784-018-00, 525-0784-015-00, and 525-0784-014-01 owned by the City of Fremont for the Pipeline, and real property owned by FMC Corporation, located adjacent to City and County of San Francisco ("City") fee-owned parcels west of Willow Street in the City of Newark; and (2) Assessor's Parcel # 537-0852-008, 537-0551-028 owned by Cargill, Incorporated, Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and Assessor's Parcel # 537-0551-021-01 in Alameda County and property located in San Mateo County where the SFPUC right of way crosses the SAMTRANS right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel; and (b) long-term Lease Agreements with United States Fish and Wildlife Service ("USFWS") and California State Lands Commission ("CSLC") for property within each agency's jurisdiction for the Bay Tunnel. The total combined purchase price for the acquisition of these property interests is estimated to not exceed \$500,000.; and

WHEREAS, A portion of the Pipeline Project will be located beneath a segment of Bay Road in Menlo Park, in lieu of following the alignment of Bay Division Pipeline Nos. 1 and 2 in that area, and SFPUC staff will seek to negotiate and enter into easement agreements with Menlo Park and San Mateo County with respect to that portion of the alignment; and

WHEREAS, The Pipeline Project includes work located in the Cities of Fremont, Newark, East Palo Alto, Menlo Park, and Redwood City, the County of San Mateo, and on SFPUC property either leased or under permit or license to the Fremont Unified School District, the Newark Unified School District, the Ravenswood City Elementary School District, and the Redwood City School District, and SFPUC staff will seek to enter into Memoranda of Agreement ("MOAs") with these local jurisdictions, , addressing such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective local jurisdictions (as further described in the proposed term sheets on file with the Commission Secretary), (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Pipeline construction, (c) the form of necessary encroachment permits or other property licenses for Project construction, and (d) the parties' respective indemnification and insurance obligations; and

WHEREAS, The Projects will require the SFPUC General Manager to apply for and execute various necessary permits and encroachment permits with the City of Fremont, City of Newark,

City of East Palo Alto, City of Menlo Park, City of Redwood City, and County of San Mateo, which permits shall be consistent with SFPUC existing fee or easement interests, where applicable, and will include terms and conditions including, but not limited to, maintenance, repair and relocation of improvements and possibly indemnity obligations; and

WHEREAS, The construction of the Bay Tunnel will require the construction of a new substation that will connect to Pacific Gas and Electric's ("PG&E") 115 KV transmission line between the cities of Mountain View and Menlo Park, and SFPUC staff is negotiating an amendment to a Letter Agreement with PG&E, a draft of which is on file with the Commission Secretary; and

WHEREAS, SFPUC has issued leases, permits, or licenses to certain parties to use for various purposes portions of City-owned property along the SFPUC right of way where the Project work will occur, and in some instances, there is apparent use of City-owned property by other parties for which there is no evidence of SFPUC authorization, and it may be necessary for the Project for the General Manager to (a) exercise rights under any such deed, lease, permit, or license or (b) negotiate and execute new or amended lease, permit, license, or encroachment removal agreements (each, a "Use Instrument") with owners or occupiers of property on, or adjacent to, City property; and

WHEREAS, Implementation of the Project mitigation measures will involve consultation with, or required approvals by, state and federal regulatory agencies, including but not limited to the following: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California State Lands Commission, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, San Francisco Bay Regional Water Quality Control Board and Bay Area Air Quality Management District.; now, therefore, be it

RESOLVED, This Commission has reviewed and considered the Final EIR, finds that the Final EIR is adequate for its use as the decision-making body for the actions taken herein, and hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto, and authorizes a request to the Board of Supervisors to adopt the same CEQA Findings, Statement of Overriding Considerations and MMRP; and be it;

FURTHER RESOLVED, That this Commission hereby approves Project Nos. CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel, CUW36802 Bay Division Pipeline Reliability Upgrade Project-Pipeline, and CUW36803 Bay Division Pipeline Reliability Upgrade Project-Relocation of BDPL 1 & 2, and authorizes staff to proceed with actions necessary to implement the Projects; and be it,

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for possible: (a) acquisition of interests in real property in (1) Assessor's Parcels # 525-0784-018-00, 525-0784-015-00, and 525-0784-014-01 owned by the City of Fremont for the Pipeline, and real property owned by FMC Corporation,

located adjacent to City and County of San Francisco ("City") fee-owned parcels west of Willow Street in the City of Newark; and (2) Assessor's Parcel # 537-0852-008, 537-0551-028 owned by Cargill, Incorporated, Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and Assessor's Parcel # 537-0551-021-01 in Alameda County and property located in San Mateo County where the SFPUC right of way crosses the SAMTRANS right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel; and (b) long term lease agreements with the United States Fish and Wildlife Service (USFWS) and California State Lands Commission (CSLC) for property within each agency's jurisdiction for the Bay Tunnel project, and to work with the Director of Real Estate to seek Board of Supervisors' approval of, and if approved, to accept and execute final agreements, and any other related documents necessary to consummate the transactions contemplated therein, in such form, approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to negotiate and seek Board of Supervisors' approval of, and if approved, to accept and execute easement agreements with the City of Menlo Park and County San Mateo, as necessary to allow a portion of the Pipeline Project to be located beneath the segment of Bay Road described in the documents on file with the Commission Secretary, in lieu of following the alignment of Bay Division Pipeline Nos. 1 and 2 in that area, which easement agreements shall be in such form, approved by the City Attorney, that the General Manager determines is in the public interest, is acceptable, necessary or advisable to effectuate the purposes and intent of this Resolution and is in compliance with the Charter and all applicable laws, and shall include SFPUC indemnity obligations only if such obligations have been reviewed and approved by the San Francisco Risk Manager; and be it

FURTHER RESOLVED, The General Manager will confer with the Commission during the negotiation process on real estate agreements as necessary, and report to the Commission on all agreements submitted to the Board of Supervisors for approval; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to negotiate and execute Memoranda of Agreement to facilitate and coordinate the Project work with the City of Fremont, City of Newark, City of East Palo Alto, City of Menlo Park, City of Redwood City, County of San Mateo, Fremont Unified School District, Newark Unified School District, Ravenswood City Elementary School District, and Redwood City School District (collectively the "Project MOAs") in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, and in compliance with the Charter and all applicable laws, and approved as to form by the City Attorney. The Project MOAs will address such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective local jurisdictions, (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Project construction, (c) the form of necessary encroachment permits or other property licenses required to permit Project construction, and (d) the parties' respective indemnification and insurance obligations, subject to the San Francisco Risk Manager's approval; and, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his

designee, to apply for and execute various necessary permits and encroachment permits with the City of Fremont, City of Newark, City of East Palo Alto, City of Menlo Park, City of Redwood City and County of San Mateo, which permits shall be consistent with SFPUC's existing fee or easement interests, where applicable. To the extent that the terms and conditions of the permits will require SFPUC to indemnify the respective jurisdictions, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions, including but not limited to those relating to maintenance, repair and relocation of improvements, that are in the public interest, and in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested use as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to execute an amendment to the letter agreement with PG&E that is substantially similar to the form of the draft amendment on file with the Commission Secretary, providing for the construction of a new substation that will connect to PG&E's 115 KV transmission line between the cities of Mountain View and Menlo Park, with such amendments that the General Manager determines, in consultation with the City Attorney, are in the public interest and acceptable, necessary and advisable to effectuate the purposes and intent of this Resolution; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to exercise any right as necessary under any Use Instrument and negotiate and execute new or amended Use Instruments, if necessary for the Project, with owners or occupiers of property interests on, or adjacent to, the SFPUC right of way, in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, in compliance with the Charter and all applicable laws, and in such form approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to consult with, or apply for, and, if necessary, seek Board of Supervisors' approval, and if approved, to accept and execute permits or required approvals by state and federal regulatory agencies, including but not limited to: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California State Lands Commission, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, San Francisco Bay Regional Water Quality Control Board and Bay Area Air Quality Management District, including terms and conditions that are within the lawful authority of the agency to impose, in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested permit or approval, as necessary for the Project; and be it

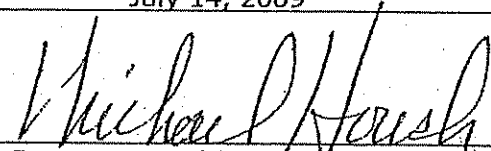
FURTHER RESOLVED, That this Commission authorizes the General Manager to work with the Director of Real Estate to seek Board approval, and if approved, to accept and execute the real property agreements authorized herein; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to enter into any subsequent additions, amendments or other modifications to the permits, licenses, encroachment removal agreements, pipeline crossing agreements, leases, easements and other

real property agreements, or amendments thereto, as described herein, that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City, and do not materially increase the obligations or liabilities of the SFPUC or the City, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications.

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*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of* July 14, 2009

  
Secretary, Public Utilities Commission



## SAN FRANCISCO PLANNING DEPARTMENT

November 23, 2009

Mr. Larry Ritter  
Department of Real Estate  
25 Van Ness Ave, Ste 400  
San Francisco, CA 94102

RE: Case No. 2009.0558R

*Note: This supersedes a general plan referral findings letter issued on October 30<sup>th</sup>. It clarifies that the project includes acquisition of temporary construction easements as well as permanent easements for installation of PUC pipelines/tunnels.*

Acquisition of permanent subsurface easements and temporary construction easements from several private and public property owners in San Mateo and Alameda Counties. These easements are necessary as part of the PUC's Water System Improvement program to repair, replace and upgrade the system's pipelines and tunnels.

Dear Mr. Ritter,

We are responding to your request for a General Plan Referral for the acquisition of permanent subsurface easements and temporary construction easements from several private and public property owners in San Mateo and Alameda Counties for the purpose of maintaining San Francisco Public Utility Commission's water system. While the initial application was scoped to also cover easements for the New Irvington Tunnel, we are in receipt of your request that these easements be considered separately upon the completion of the environmental review of that project. This referral, then, deals only with the easements associated with the Bay Division Pipeline. As these two projects are substantively the same for referral purposes, a separate letter will be issued on the New Irvington Tunnel following the completion of its environmental review.

### Project Description

The project is the Bay Division pipeline reliability upgrade, entailing 21 miles of new pipeline, including a five mile sub-bay portion. The referral is for the temporary easements associated with construction, as well as the permanent easements for the tunnel and pipeline conduits. The properties in question are in San Mateo and Alameda counties and thus outside the geographic boundaries of San Francisco.<sup>1</sup> The Bay Division Tunnel & Pipeline affects 8 ownerships.

<sup>1</sup> See Attachment 3 for a list of the parcels in question.

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Mr. Larry Ritter

Case No. 2009.0558R

Nov. 23, 2009

### Jurisdiction and Decision

The General Plan Referral is conducted pursuant to San Francisco Charter § 4.105 and § 2A.53 of the Administrative Code. We find the proposed project of temporary and permanent easements to be, on balance, in conformity with the General Plan as described in the attached Case Report.

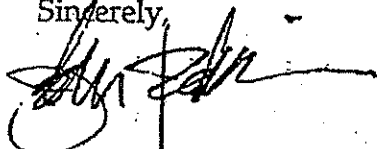
### Environmental Review

An environmental impact report for the Bay Division Reliability Upgrade Project (BDPL No. 5) was certified by the San Francisco Planning Commission on July 9, 2009, per motion number 17918.

### Planning Code Section 101.1 Priority Policies

The project has been reviewed for consistency with the Eight Priority Policies of the Planning Code Section 101.1 and the findings are attached.

Sincerely,



John Rahaim

Director of Planning

### Attachments:

1. Case Report including General Plan Referral Findings
2. Planning Code Section 101.1 Priority Policies Findings
3. List of Affected Parcels

Cc: Aksel Olsen, Planning  
Brian Morelli, PUC



## General Plan Referral—Case Report

## Attachment 1

Case Number: 2009.0558R  
Location: San Mateo County, Alameda County  
Description: Acquisition of permanent subsurface easements and temporary construction easements from several private and public property owners  
Staff reviewer: Aksel Olsen  
Date: 11/23/2009

### GENERAL PLAN POLICY FINDINGS

Note: General Plan Objectives are in **BOLD CAPS**, and Policies are in bold font, General Plan text is in regular font, and staff comments are in *italic font*.

### Environmental Protection Element

#### OBJECTIVE 5

**ASSURE A PERMANENT AND ADEQUATE SUPPLY OF FRESH WATER TO MEET THE PRESENT AND FUTURE NEEDS OF SAN FRANCISCO.**

Hetch Hetchy and the Water Department should continue their excellent planning program to assure that the water supply will adequately meet foreseeable consumption demands. To this end, the City should be prepared to undertake the necessary improvements and add to the Hetch Hetchy/Water Department system in order to guarantee the permanent supply. Furthermore, San Francisco should continually review its commitments for the sale of water to suburban areas in planning how to meet future demand.

*The pipeline extension is consistent with this objective.*

#### POLICY 5.2

**Exercise controls over development to correspond to the capabilities of the water supply and distribution system.**

*Securing permanent easements will afford SFPUC the present and future ability to maintain its pipeline system in order to supply drinking water to San Francisco.*

#### POLICY 5.3

**Ensure water purity.**

*On balance, the proposal is in conformity with the General Plan. Any development schemes proposed for the subject parcels after acquisition of the easements for the SFPUC for construction of water supply pipeline and related facilities will be subject to separate General Plan Referrals to the Planning Department. Any development proposals would also have to comply with local ordinances and policies.*

*I:\Cases\2009\2009.0558\2009.0558r\_BayDivisionPipeline\_amended\_subsurface.doc*

## General Plan Referral—Case Report

## Attachment 2

### PLANNING CODE SECTION 101.1 PRIORITY POLICIES FINDINGS

*Note: The priority policies have little bearing on issues such as acquiring temporary construction easements and subsurface pipeline easements in other counties, for which reason the N/A rating has been used throughout.*

The following Priority Policies are hereby established. They shall be included in the preamble to the General Plan and shall be the basis upon which inconsistencies in the General Plan are resolved:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

N/A

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

N/A

3. That the City's supply of affordable housing be preserved and enhanced;

N/A

4. That commuter traffic not impede Muni transit services or overburden our streets or neighborhood parking;

N/A

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

N/A

6. That the City achieve the greatest possible preparedness to protect against injury and the loss of life in an earthquake.

N/A

7. That landmarks and historic buildings be preserved; and

N/A

8. That our parks and open space and their access to sunlight and vistas be protected from development.

N/A

## List of Affected Parcels

## Attachment 3

Bay Division Pipeline Reliability Upgrade - Tunnel (San Mateo and Alameda Counties)		
OWNER	APN	County
SAMTRANS	537-0551-020	Alameda
SAMTRANS	537-0551-021-01	Alameda
Leslie Salt Co.	537-0551-028	Alameda
Leslie Salt Co.	537-0852-008	Alameda
USFW	537-0551-014-003	Alameda
USFW	537-0601-007-03	Alameda
CSLC	537-0601-007-1	Alameda
CSLC	537-0651-001-01	Alameda
USFW	537-0601-008	Alameda
USFW	537-0601-009-02	Alameda
CSLC	537-0601-009-01	Alameda
CSLC	537-0601-010	Alameda
CSLC	537-0601-011	Alameda
CSLC	096-220-150	San Mateo
CSLC	096-220-130	San Mateo
CSLC	096-220-170	San Mateo
CSLC	096-220-110	San Mateo
CSLC	096-230-140	San Mateo
Mid Peninsula Open Space	096-230-110	San Mateo
Mid Peninsula Open Space	063-590-060-8	San Mateo
SAMTRANS	Unidentified	San Mateo
Bay Division Pipeline Reliability Upgrade - Pipeline		
OWNER	APN	
UPRR	525-0784-014-01 & 525-0784-015-00	Alameda
City of Menlo Park - Bay Road	NO APN	San Mateo