

File No. 110049

Committee Item No. _____
Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee _____

Date March 3 2011

Board of Supervisors Meeting

Date March 8 2011

Cmte Board

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Completed by: Arthur Klos
Completed by: _____

Date March 3 2011
Date _____

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1 [Settlement of Lawsuit - Garcia, et al. - \$191,000]

2
3 **Ordinance authorizing settlement of a lawsuit filed by the City and County of San**
4 **Francisco against Carolyn Marie Garcia, Successor Trustee of the Garcia Family Trust**
5 **Dated October 11, 1994; Bank of America, N.A.; and Does 1 through 100, to condemn**
6 **and take by right of eminent domain a permanent sub-surface soil nail easement of 492**
7 **sq ft. and a 51-month temporary construction easement ("TCE") over portions of real**
8 **property located in Sunol, California, APN 096-0080-004; filed May 24, 2010, in Alameda**
9 **County Superior Court, Case No. RG-10516576; entitled City of San Francisco v.**
10 **Stanley A. Garcia and Carolyn Marie Garcia, Trustees of the Garcia Family Trust Dated**
11 **October 11, 1994; Bank of America, N.A.; and Does 1 through 100.**

12
13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. The City Attorney is hereby authorized to settle the action entitled City of
15 San Francisco v. Stanley A. Garcia and Carolyn Marie Garcia, Trustees of the Garcia Family
16 Trust Dated October 11, 1994; Bank of America, N.A.; and Does 1 through 100, Alameda
17 County Superior Court, Case No. RG-10516576 by the payment by the City and County of
18 San Francisco to Defendant Carolyn Marie Garcia, Successor Trustee of the Garcia Family
19 Trust Dated October 11, 1994, of \$191,000 for a permanent soil nail easement and a 51-
20 month temporary construction easement and in accordance with other material terms as set
21 forth in the Stipulation for Entry of Judgment in Condemnation contained in Board of
22 Supervisors File No. 110049, for the purpose of constructing the San Francisco Public
23 Utilities Commission's Water System Improvement Program-Funded Project CUW35901, New
24 Irvington Tunnel Project. The payment of \$191,000 to Defendant Carolyn Marie Garcia shall
25

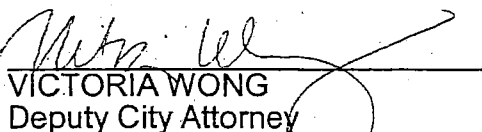
1 be made from the appropriation in Water System Improvement Program-Funded Project
2 CUW35901, New Irvington Tunnel Project.

3 Section 2. The above-named action was filed in Alameda County Superior Court on
4 May 24, 2010, and the following defendants were named in the lawsuit: Stanley A. Garcia
5 and Carolyn Marie Garcia, Trustees of the Garcia Family Trust Dated October 11, 1994; Bank
6 of America, N.A.; and Does 1 through 100.

7
8 APPROVED AS TO FORM AND
9 RECOMMENDED:

10 DENNIS J. HERRERA, City Attorney

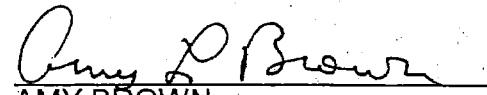
11 By:


VICTORIA WONG
Deputy City Attorney


RECOMMENDED:

SAN FRANCISCO REAL ESTATE DIVISION

By:


AMY BROWN
Director

13 FUNDS AVAILABLE:


BEN ROSENFELD
Controller
Index Code: 735914

Exempt from Filing Fees per
Government Code § 6103

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Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CITY AND COUNTY OF SAN FRANCISCO,
municipal corporation,

Plaintiff,

vs.

STANLEY A. GARCIA, and CAROLYN
MARIE GARCIA, Trustees of the Garcia
Family Trust Dated October 11, 1994; BANK
OF AMERICA, N.A.; and DOES 1 through
100, inclusive,

Defendants.

Case No: RG10516576

APN 096-0080-004

**STIPULATION FOR ENTRY OF
JUDGMENT IN CONDEMNATION**

1 IT IS HEREBY STIPULATED by and among Plaintiff City and County of San Francisco,
2 a municipal corporation (the "City"), and Defendant Carolyn Marie Garcia, Successor Trustee
3 of the Garcia Family Trust dated October 11, 1994 ("Garcia"), as follows:

4 1. **Property To Be Condemned.** The property condemned by the City in this
5 action is a portion of a larger parcel of property, approximately 15.84 acres in size, owned by
6 Stanley A. Garcia (Deceased) and Carolyn Marie Garcia, Trustees of the Garcia Family Trust
7 dated October 11, 1994, located at 6503 Calavaras Road, Sunol, California, APN: 096-0080-
8 004 (the "Garcia Parcel"). The property to be acquired by the City is identified as follows:

9 (a) A permanent soil nail easement ("Permanent Easement") as more particularly
10 described and depicted in Exhibit "A" attached to the Complaint in Eminent
11 Domain in this action; and

12 (b) A temporary construction easement, for a duration of fifty-one (51) months, over
13 a portion of the Larger Parcel, approximately 2.97 acres in size (the "TCE") as
14 more particularly described and depicted in Exhibit "B" attached to the Complaint
15 in Eminent Domain in this action.

16 The Permanent Easement and the TCE are sometimes collectively referred to herein as
17 the "Subject Property."

18 2. **Use of the Subject Property.** The Subject Property is being acquired by the
19 City to use for purposes of constructing the San Francisco Public Utilities Commission Water
20 System Improvement Program-Funded Project CUW35901, New Irvington Tunnel Project,
21 which will improve the regional water supply system (the "Project"): Pursuant to an Order For
22 Prejudgment Possession entered on August 4, 2010, the term of the TCE commenced on
23 September 6, 2010 ("Commencement Date") and shall expire on December 5, 2014 (the "TCE
24 Term"). During the TCE Term the City agrees to the following terms and conditions on the use
25 of the TCE:

26 (a) **Soil Management.** The City shall direct its contractor(s) to remove, store and
27 replace original topsoil of any excavation within the TCE, which topsoil shall be
28 stored in staging area "A" or "C" defined on drawing C-203 in the construction

1 plans published November 2009. Prior to its removal, said topsoil shall be
2 subjected to testing for standard construction contaminants, which tests shall
3 follow standard San Francisco Public Utilities Commission ("SFPUC") procedures
4 as identified in Section 01062, Article 3.10.H, Section 01111 and Section 02111
5 of the construction specifications published December 2009. Said procedures
6 shall likewise be followed for soil testing before the topsoil is returned to the TCE.
7 If requested, the results of said tests will be provided to Garcia. The TCE will not
8 be used for stockpiling or testing of excavated materials that the City or its
9 contractor(s) has reason to believe may contain hazardous substances. Any
10 asphalt or gravel used as surfacing material within the TCE will be removed and
11 hauled offsite before the native topsoil is returned to fill in the excavation at the
12 end of the TCE Term. In addition, the City shall, at its sole cost and expense,
13 remove and remediate any hazardous substances brought onto the TCE by the
14 City or its contractor(s) and restore the property to substantially the same
15 condition it was in at the commencement of the TCE Term

16 (b) Air Quality Monitoring. During excavation of the Alameda West Portal, the City or
17 its contractor(s) shall establish an air monitoring station for naturally occurring
18 asbestos on the Property as a component of the baseline air quality monitoring
19 presently conducted in the Sunol Valley by the City.

20 (c) Waterline. Upon completion of the Project, the City agrees to relocate and
21 replace the waterline serving the Larger Parcel with a 2" steel line, at a location
22 to be mutually agreed upon by the City and Garcia. The City's obligation to
23 undertake said work is conditioned upon Garcia granting the City such additional
24 rights of entry as may be required to complete said work. While replacing and
25 relocating said waterline, City agrees to provide a backup water storage tank,
26 capable of two days water supply, to be used as an emergency supply in the
27 event of any disruption in water service to the Garcia residence located on the
28 Garcia Parcel.

- 1 (d) Power. The City and its contractor(s) shall use commercially reasonable efforts
2 to ensure that there is no disruption of electrical power to the Garcia residence
3 on the Garcia Parcel during the TCE Term.
- 4 (e) Access. The City and its contractor(s) shall use commercially reasonable efforts
5 to ensure that access to the Garcia residence from Calaveras Road shall not be
6 materially interfered with at any time during the TCE Term.
- 7 (f) Right of First Offer. The City grants to Garcia a right of first offer to lease certain
8 real property as more fully set forth in the Right of First Offer Agreement between
9 the City and Garcia, executed concurrently herewith.

10 3. Indemnification

- 11 (a) General Indemnification. City, on behalf of itself and its successors and assigns,
12 shall indemnify Garcia and any successors in interest (collectively "Indemnitees")
13 from and against any and all claims by third parties incurred as a result of or
14 arising out of any: (i) accident, injury to or death of any person(s), including,
15 without limitation, agents and invitees of City, and (ii) loss of or damage to
16 property, including, without limitation, Garcia's home and out buildings on the
17 Garcia Parcel, occurring in, on or about the Garcia Parcel, to the extent caused
18 by the willful misconduct or negligent act of City, its agents, consultants or
19 contractors during the course of the construction or other work undertaken by
20 City on or about the Garcia Parcel, whether before, during or after the completion
21 of the Project, except to the extent such accident, injury, death, loss or damage is
22 caused by the negligence or willful misconduct of an Indemnitee or an
23 Indemnitee's agents, invitees, contractors or employees. The foregoing indemnity
24 shall include, without limitation, reasonable attorneys' fees, consultants and
25 experts and related costs as well as court costs and Garcia's costs of
26 investigating any loss. City specifically acknowledges and agrees that it has an
27 immediate and independent obligation to defend Garcia from any claim which
28 actually or potentially falls within this indemnity provision even if such allegation

1 is or may prove to be groundless, fraudulent or false, which obligation arises at
2 the time such claim is tendered to City by Garcia and continues at all times
3 thereafter. City's obligations under this section shall survive the expiration or
4 sooner termination of this Agreement.

5 (b) Hazardous Materials Indemnity. If City or any of its agents, including, but not
6 limited to contractors, engineers, architects, or sub-contractors, introduces any
7 hazardous material in, on, under or about the Garcia Parcel, without limiting
8 City's general indemnity contained in Section 3 (a), above, City, on behalf of itself
9 and successors and assigns, shall indemnify Garcia from and against all
10 Hazardous Materials Claims arising during or after the completion of the Project
11 to the extent arising out of such introduction of hazardous material. The term
12 "Hazardous Materials Claims" shall mean all costs associated with the
13 investigation and remediation of hazardous material and with the restoration of
14 the Garcia Parcel to its prior condition including, without limitation, any fines
15 and/or penalties imposed by regulatory agencies, third parties, natural resource
16 damages and losses, and revegetation of the Garcia Parcel. This indemnity shall
17 not extend to Hazardous Materials Claims arising from the presence of any
18 Hazardous Materials on the Garcia Parcel as of the Commencement Date,
19 unless City's handling, excavation, relocation, investigation, disposal or other
20 exercise of control over the Subject Property exacerbates hazardous materials
21 already present on the Garcia Parcel as of the Commencement Date which
22 results in Garcia incurring new or additional hazardous materials Claims that
23 Garcia would not otherwise have incurred in the absence of City's activities, in
24 which case City shall pay for and defend and indemnify Garcia from and against
25 such additional Hazardous Materials Claims only to the extent of such new or
26 additional Hazardous Materials Claims. "Exacerbates" means an act that causes
27 the increased migration of a plume of hazardous materials in sediments,
28 groundwater, or surface water or causes a release of hazardous materials that

1 had been contained until that act. City shall not be responsible or indemnify
2 Indemnitees for its mere discovery or reporting of hazardous materials which are
3 present on the Garcia Parcel as of the Commencement Date. City's obligations
4 under this section shall survive the expiration or sooner termination of this
5 stipulation. Notwithstanding the foregoing, this indemnification obligation shall
6 not apply to any release or environmental damage to the extent caused by the
7 negligence or willful misconduct of Garcia and/or her agents, invitees or assigns.

- 8 (c) In any action or proceeding brought against any Indemnitee by reason of any
9 claim indemnified by City hereunder, City shall have the right to control the
10 defense and to determine the settlement or compromise of any action or
11 proceeding, provided that Garcia shall have the right to participate in the defense
12 of any such claim at her sole cost.

13 4. **Amount of Compensation.** The parties hereto agree that Garcia shall be
14 entitled to the sum of One Hundred and Ninety-One Thousand Dollars (\$191,000) as Total
15 Compensation (as that term is defined below) for the taking hereunder and for all of the
16 damages and claims for damages herein specified. The "Total Compensation" shall be the
17 total and full amount of compensation to which Garcia is entitled for any claims by reason of
18 the taking hereunder including, without limitation, those for the fair market value of the Subject
19 Property, loss of goodwill, loss of income, profits or rents, relocation benefits, precondemnation
20 damages, severance damages of all and any kind and any and all other claims for damages,
21 attorneys' fees, litigation expenses, interest, costs and recoverable costs of suit.

22 5. **Judgment and Final Order of Condemnation.** Based on the settlement and
23 compromise described above, and pursuant to this stipulation, the Court may immediately
24 make and enter a Judgment of Condemnation in the form set forth in Exhibit A. Upon receipt
25 of the Total Compensation, as hereinabove defined, counsel for Garcia shall sign, approving
26 as to form, a Final Order of Condemnation in the form set forth in Exhibit B.
27
28

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

7. **Headings.** The descriptive headings of this stipulation are for convenience only, and shall not control or affect the meaning or construction of any of the provisions hereof.

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

9. **Complete Agreement.** The parties agree that this is the full and entire agreement between them, that it supersedes any prior or contemporaneous written or oral agreements, promises, or representations, and that it may be amended only by a writing executed by each of the parties hereto.

10. **Survival of Stipulation.** The provisions of this stipulation shall survive the Entry of Judgment of Condemnation and the final Order of Condemnation.

IT IS SO STIPULATED:

Dated: October ²³, 2010
November

CITY AND COUNTY OF SAN FRANCISCO

By:

Amy D Brown

Its:

Director of Property

^{November}
Dated: October 9, 2010

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By:

Victoria Wong

Name:

VICTORIA WONG

Deputy City Attorney

1 Dated: October 22, 2010.

STANLEY A. GARCIA and CAROLYN MARIE
GARCIA, TRUSTEES OF THE GARCIA FAMILY
TRUST DATED OCTOBER 11, 1994:

2
3
4 By: Carolyn Marie Garcia
5 Carolyn Marie Garcia, Successor Trustee of
6 the Garcia Family Trust Dated
7 October 11, 1994

8 Dated: October 29, 2010

APPROVED AS TO FORM:
RANDICK O'DEA & TOOLIATOS LLP

9
10 By: Michael E. Kyle
11 Michael E. Kyle
12 Attorneys for Carolyn Marie Garcia, Successor
13 Trustee of the Garcia Family Trust Dated
14 October 11, 1994
15
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EXHIBIT A

Exempt from Filing Fees per
Government Code § 6103

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VICTORIA WONG (CA 214289)
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Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CITY AND COUNTY OF SAN FRANCISCO,
municipal corporation,

Plaintiff,

vs.

STANLEY A. GARCIA, and CAROLYN
MARIE GARCIA, Trustees of the Garcia
Family Trust Dated October 11, 1994; BANK
OF AMERICA, N.A.; and DOES 1 through
100, inclusive,

Defendants.

Case No: RG10516576

APN 096-0080-004

JUDGMENT IN CONDEMNATION

1 Plaintiff CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City")
2 and Defendant STANLEY A. GARCIA and CAROLYN MARIE GARCIA, Trustees of the Garcia
3 Family Trust dated October 11, 1994 by and through CAROLYN MARIE GARCIA, Successor
4 Trustee ("Garcia"), have heretofore entered into a Stipulation for Entry of Judgment in
5 Condemnation and Final Order of Condemnation (the "Stipulation"), fully, finally and forever
6 settling this action.
7

8 The City and Garcia agreed in said Stipulation that the Court may make and enter this
9 Judgment of Condemnation and that the property to be condemned shall be the property more
10 particularly described and depicted in the complaint in this action and Exhibits "A" and "B"
11 attached hereto and incorporated herein by this reference.
12

13 Based on the foregoing facts, and this Stipulation among the parties, and all of the
14 records, papers and files herein, and good cause appearing therefore,

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the City and County of
16 San Francisco shall have judgment against Stanley A. Garcia and Carolyn Marie Garcia,
17 Trustees of the Garcia Family Trust dated October 11, 1994 and all other persons condemning
18 to the City and County of San Francisco, for purposes of the San Francisco Public Utilities
19 Commission Water System Improvement Project – Funded Project CUW35901, New Irvington
20 Tunnel Project, as follows:
21

- 22 (a) A permanent soil nail easement as more particularly described and depicted in
23 Exhibit "A" attached hereto and incorporated herein by this reference; and
- 24 (b) A temporary construction easement, for a duration of fifty-one (51) months as
25 more fully described and depicted in Exhibit "B" attached hereto and incorporated
26 herein by this reference.
27
28

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Total
2 Compensation to Garcia shall be One Hundred Ninety-One Thousand Dollars (\$191,000),
3 which shall be paid by the City within thirty (30) days after entry of judgment.

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the total sum
5 of Seventy-Eight Thousand Seven Hundred Dollars (\$78,700) now on deposit with the
6 Treasury of the State of California be distributed to the City and County of San Francisco, and
7 the State Treasurer is hereby directed to cause a warrant to be drawn on the condemnation
8 deposit fund for such sum, and the State Treasurer is directed to pay the same with the
9 warrant to be mailed to the City and County of San Francisco, City Hall, Room 324, 1 Dr.
10 Carlton B, Goodlett Place, San Francisco, CA 94102, attention: Victoria Wong, Deputy City
11 Attorney.
12

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the default of
14 Bank of America, N.A., having been entered on August 25, 2010, said Defendant shall not be
15 entitled to any portion of the Total Compensation paid in accordance herewith.
16

17 Dated: _____, 2010

18
19 _____
20 Judge of the Superior Court
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EXHIBIT B

Exempt from Filing Fees per
Government Code § 6103

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Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CITY AND COUNTY OF SAN FRANCISCO,
municipal corporation,

Plaintiff,

vs.

STANLEY A. GARCIA, and CAROLYN
MARIE GARCIA, Trustees of the Garcia
Family Trust Dated October 11, 1994; BANK
OF AMERICA, N.A.; and DOES 1 through
100, inclusive,

Defendants.

Case No: RG10516576

APN 096-0080-004

FINAL ORDER OF CONDEMNATION

1 Judgment and Condemnation having been entered in the above-entitled action on
2 _____, 2010, in the Office of the County Clerk, of the County of Alameda, State of
3 California, and it appearing to the satisfaction of the Court, that Total Compensation due and
4 owing under said Judgment has been paid by Plaintiff, City and County of San Francisco in
5 accordance with the Stipulation for Judgment and Condemnation on file herein;
6

7 IT IS ORDERED AND ADJUDGED that the real property interests, situated in the
8 County of Alameda, State of California, as more particularly described and depicted in
9 Exhibits "A" and "B" attached hereto, are hereby condemned to and taken for the San
10 Francisco Public Utilities Commission Water System Improvement Program – Funded Project
11 CUW35901, New Irvington Tunnel Project.

12 IT IS FURTHER ORDER AND ADJUDGED that upon the recording of a certified copy
13 of this Final Order of Condemnation with the County Recorder of the County of Alameda, State
14 of California, the real property interests described in Exhibits "A" and "B", shall vest in Plaintiff
15 City and County of San Francisco, its successors and assigns.
16

17 The Plaintiff has taken possession of the real property described above in accordance
18 with the provision of California Code of Civil Procedure sections 1255.410 – 1255.470, this
19 possession having been authorized on September 7, 2010.

20 Dated: _____
21
22

23 _____
24 Judge of the Superior Court
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26
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