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OAKLAND
2012 MAY 31 PM 1:43

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Vitaly Troyan, P.E.

SUBJECT: East Bay Greenway Agreement

DATE: May 7, 2012

City Administrator
Approval

Date

5/31/12

COUNCIL DISTRICT: #6

RECOMMENDATION

Staff recommends adoption a resolution authorizing the City Administrator to negotiate and execute the Memorandum Of Understanding (MOU) between the City of Oakland, the Alameda County Transportation Commission (ACTC), and the San Francisco Bay Area Rapid Transit District (BART), regarding the administration, design, construction, maintenance and liability terms for the delivery of the East Bay Regional Parks District's Regional Trail Segment 7A (75th Avenue to 85th Avenue Under the BART tracks) of Urban Ecology's 2008 East Bay Greenway Plan, as it furthers the City's interests in providing safe, accessible, and multiple modes of access between East Oakland neighborhoods and the Coliseum BART station.

OUTCOME

City Council's adoption of this MOU before June 30, 2012 will conclude the process of planning, design, environmental review, and right-of-way activities necessary to ensure that \$1.16 million in funding from a 2010 Transportation Investment Generating Economic Recovery (TIGER II) grant will be applied toward construction of the East Bay Greenway Segment 7A in Oakland. This MOU is the last required step in securing right-of-way for the project. The MOU is a three-way agreement between the City, ACTC, and BART, as ACTC is administering the design and construction contract, and BART and the City both own land in fee and by easement in the project area. The City has reviewed the design of the project for conformance with City objectives and codes, and now needs to enter into an MOU (*see Attachment A*) with ACTC and BART to protect the City's interests regarding maintenance and liability issues associated with the project.

BACKGROUND/LEGISLATIVE HISTORY

The East Bay Greenway is a regional trail that is shown in Oakland's 2007 Bicycle Master Plan (General Plan Element). It was originally proposed for assessment by Urban Ecology, a

Item: _____
Public Works Committee
June 12, 2012

non-profit community group that commissioned a study in conjunction with the Alameda County Transportation Commission in 2008. They produced a Concept Plan for the entire 12-mile long regional path, consisting of Class I, II and III bicycle/pedestrian pathway segments that will eventually travel through Oakland, San Leandro, unincorporated Alameda County and Hayward. Alameda County then presented the conceptual trail project to the Oakland Bicycle and Pedestrian Advisory Committee (BPAC) in 2009. *(See Attachment B).*

With the support of Urban Ecology and Assembly Member Barbara Lee, the East Bay Regional Park District (EBRPD) applied for the TIGER II Federal stimulus grant for the construction of several regional trails, including a portion of the East Bay Greenway Concept Plan. On April 4, 2011, EBRPD signed a letter accepting the TIGER II grant for \$1.16 million for planning, design, and construction of Segment 7A of Urban Ecology's East Bay Greenway Concept Plan. This is the stretch of the trail that will eventually run underneath the BART from the Coliseum BART Station to 85th Avenue. *(See Attachment C).*

After acceptance of the TIGER II grant, EBRPD began to work with ACTC to administer the design and construction of the East Bay Greenway. However, the City and BART control in fee or through easements the land upon which this trail will be constructed. The City was contacted to join the design process in July of 2011, with the assumption that the City would approve final design, address the maintenance needs and assume liability for the new trail. However, the City has no funds for maintenance, and indicated it was unable to accept any additional liability for a new trail area that is not in our existing agreements with BART.

The schedule for resolving design, maintenance, and liability issues has been extremely short. The terms of the grant funding require that funds for Segment 7A be "obligated" by Caltrans prior to June 30, 2012. To become obligated the project must be delivered to Caltrans fully planned, 100% designed, and have all the necessary CEQA and right-of-way agreements in place. The City has worked to meet these requirements within the time that remained after the grant acceptance by EBRPD. The final design was presented for the Bicycle and Pedestrian Advisory Committee's approval on May 17, 2012.

The MOU attached to this report project was worked out with ACTC and BART over many months, and needs to be approved by City Council at a meeting prior to June 30, 2012 if the City wishes to meet the Caltrans deadline for funding and delivering the project.

ANALYSIS

The primary purpose of the MOU is to set forth the understandings and agreements in connection with the administration, design, construction, maintenance and liability agreements for Segment 7A. The premise of the MOU is that ACTC has agreed to retain contractors to construct and maintain Segment 7A, with the intent that these contractors and maintenance crews indemnify the City, ACTC, and BART from any liabilities or claims arising from their work on the Segment 7A path for a period of at least 20 years.

Although the terms and conditions set forth in this MOU are initially intended to apply only to the land comprising Segment 7A, the MOU acknowledges that construction and maintenance of further expansions of the East Bay Greenway, as well as the continued maintenance of Segment 7A beyond the 20-year term of this MOU, are intended to continue. However, funding for these activities could be dependent upon additional commitments of sales tax funds by Alameda CTC, which would require the approval of the ACTC.

The MOU also discusses the possibility that ACTC will appoint an East Bay Greenway Policy Advisory Committee ("PAC") to guide development and maintenance of future East Bay Greenway segments, to include maintenance of Segment 7A beyond the 20-year term of this MOU, and to develop protocols meant to apply to all segments. The PAC is to consider future decisions that are a consequence of the inter-jurisdictional nature of the facility, including pathway design, anticipated negotiations with third party property owners, and funding and responsibility for future maintenance needs. Elected officials of the jurisdictions through which the East Bay Greenway and other affected agencies, such as BART and Alameda CTC, will be invited to serve on the PAC.

In order to implement the PAC's recommendations, and prior to submitting grant applications, accepting funding, or commencing detailed design for additional segments of the East Bay Greenway, this MOU will need to be amended to apply its provisions to additional segments of the East Bay Greenway. An amendment would also be necessary to extend the term of maintenance of Segment 7A beyond the original 20-year term, and/or to enter into one or more subsequent agreements to guide and control the funding, design, construction and maintenance of such future segments of the East Bay Greenway.

PUBLIC OUTREACH/INTEREST

The East Bay Greenway was proposed by Urban Ecology, a nonprofit community group that commissioned the regional trail study in conjunction with the Alameda County Transportation Commission in 2008. The group produced a Concept Plan through extensive community engagement with the community, and Alameda County then presented the conceptual trail project to the Oakland Bicycle and Pedestrian Advisory Committee (BPAC) in 2009. The final design was presented for the Bicycle and Pedestrian Advisory Committee's approval on May 17, 2012.

COORDINATION

Public Works Agency staff has coordinated with the former Redevelopment Agency staff that were involved with Urban Ecology in creating the Plan and extensively with the City Attorney's office on the terms of the agreement. Coordination with BART, ACTC, and Caltrans has also been critical to completing this agreement.

Item: _____
Public Works Committee
June 12, 2012

COST SUMMARY/IMPLICATIONS

There are no cost implications to the City of Oakland. The purpose of the **MOU** is to ensure that ACTC administers the grant and construction of the project, and that ACTC agrees to fund the next 20 years of trail maintenance and to place liability on the contractors responsible for construction and maintenance of the facility.

SUSTAINABLE OPPORTUNITIES

Economic: Bicycle and pedestrian facilities such as the East Bay Greenway promote bicycling and walking, the most cost-effective forms of transportation. Bicycle and walking trips tend to be local and thus are more likely to contribute to local economic activity.

Environmental: The new path will provide a safe place to bike and walk. Bicycling is the most energy efficient form of transportation and both bicycling and walking create no emissions, contributing to the City's efforts to reduce air pollution and address climate change.

Social Equity: The East Bay Greenway project improves accessibility and safety for persons who depend on a secure connection to public transit (BART) to get to jobs, services, and recreational facilities. Bicycling and walking, which are supported by the path, are inexpensive and broadly accessible forms of transportation.

CEQA

The City does not need to make a CEQA or NEPA determination on this project, as Caltrans and ACTC are the lead agencies for the project. Caltrans has determined that Segment 7A is a Categorical Exclusion from the National Environmental Protection Act ("NEPA") pursuant to 23 CFR §771.117(c), construction of bicycle and pedestrian facilities. Accordingly, Caltrans executed an appropriate Categorical Exclusion Determination Form with respect to Segment 7A on February 12, 2012.

Alameda CTC has determined that Segment 7A is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15304, Minor Alterations to Land. Accordingly, on March 8, 2012, Alameda CTC filed a Notice of Exemption regarding Segment 7A with the Alameda County Clerk-Recorder and the State Office of Planning of Research.

For questions regarding this report, please contact Iris Starr, Infrastructure Plans and Programming Division Manager, at (510) 238-6229.

Respectfully submitted,


For VITALY B. TROYAN, P.E.
Director, Public Works Agency

Reviewed by:
Mike Neary, Assistant Director, Public Works Agency

Prepared by:
Iris Starr, AICP
Infrastructure Plans and Programming Division

Attachments:

A: Memorandum Of Understanding between the City of Oakland, the Alameda County Transportation Commission, and the San Francisco Bay Area Rapid Transit District, regarding the administration, design, construction, maintenance and liability terms for the delivery of the East Bay Regional Parks District's Regional Trail Segment 7A (75th Avenue to 85th Avenue Under the BART tracks (includes prior BART agreements as Exhibits to the MOU)

B: East Bay Greenway Project Location Map

C: East Bay Greenway Engineering Design

Item: _____
Public Works Committee
June 12, 2012

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

AMONG

THE ALAMEDA COUNTY TRANSPORTATION COMMISSION,

THE CITY OF OAKLAND

AND

THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

IN CONNECTION WITH

THE CONSTRUCTION, OPERATION AND MAINTENANCE

OF

THE INITIAL PHASE OF THE EAST BAY GREENWAY

This Memorandum of Understanding (the "MOU") is dated for reference purposes only as of this _____ day of _____, 2012, by and among the ALAMEDA COUNTY TRANSPORTATION COMMISSION ("Alameda CTC"), the CITY OF OAKLAND ("City"), a body politic and municipal corporation of the State of California, and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART"), a rapid transit district. Alameda CTC, City and BART are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

This MOU is intended to be binding upon the Parties, and shall become effective on the date when this MOU is fully executed by all of the Parties (the "Effective Date").

RECITALS

- A. The East Bay Greenway is a planned 12-mile long regional path, consisting of Class I, II and III bicycle/pedestrian pathway segments, that will travel through Oakland, San Leandro, unincorporated Alameda County and Hayward, as further defined hereinbelow. The East Bay Greenway was originally proposed by Urban Ecology, a nonprofit community group.
- B. The East Bay Regional Park District ("EBRPD") applied for a TIGER II federal stimulus grant for the construction of portions of the East Bay Greenway Concept Plan and other regional trails. EBRPD was awarded \$1.16 million of TIGER II federal stimulus funding for the half-mile segment of the East Bay Greenway between 75th and 85th Avenues.
- C. Alameda CTC's mission is to plan, fund and deliver a broad spectrum of transportation projects and programs to enhance mobility throughout Alameda County.
- D. Alameda CTC has agreed to accept the TIGER II grant from EBRPD and administer the design and construction of the East Bay Greenway.
- E. The EBRPD TIGER II Grant award is specifically designated for the planning, design, and construction of Segment 7A ("Segment 7A") of Urban Ecology's East Bay Greenway Concept Plan, consisting of the half-mile between 75th and 85th Avenues, adjacent to San Leandro Street and partially beneath the aerial BART tracks in the city of Oakland, California, within the area indicated as "Segment 7A" on Exhibit A attached hereto and by this reference incorporated herein.
- F. The terms of the TIGER II grant funding require that funds for Segment 7A be obligated by Caltrans prior to June 30, 2012.
- G. Caltrans has determined that Segment 7A is a Categorical Exclusion from the National Environmental Protection Act ("NEPA") pursuant to 23 CFR §771.117(c), construction of bicycle and pedestrian facilities. Accordingly, Caltrans executed an appropriate Categorical Exclusion Determination Form with respect to Segment 7A on February 12, 2012.
- H. Alameda CTC has determined that Segment 7A is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15304, Minor Alterations to Land. Accordingly, on March 8, 2012, Alameda CTC filed a Notice of

Exemption regarding Segment 7A with the Alameda County Clerk-Recorder and the State Office of Planning of Research.

I. To obtain right-of-way certification, the parties agree to enter in to this MOU in order to meet the June 30, 2012 Caltrans deadline to obligate funding for Segment 7A.

J. On June 21, 1966, BART and the City entered into the Oakland East Agreement, a copy of which is attached hereto as Exhibit B and by this reference incorporated herein (the "Oakland East Agreement"). The Oakland East Agreement memorialized BART and the City's understandings regarding the widening, modification, relocation and abandonment of certain City streets, the relocation or reconstruction of utility and sewer facilities owned by City or others, the use of certain City streets for BART purposes, landscaping along the BART System route, including maintenance responsibilities, and other relevant matters.

1. Section 4 of the Oakland East Agreement, Maintenance, stipulates that the City will, upon acceptance of the facilities, roadways or other structures, become responsibility for maintenance of the facilities, roadways or City structures from and after the effective date of the Oakland East Agreement.

2. Section 7 of the Oakland East Agreement, Landscaping, provided that landscaping and the maintenance thereof along the BART System route within the City would be the subject of a further agreement.

K. In accordance with Section 7 of the Oakland East Agreement, on June 11, 1970, BART and the City entered into the Oakland Landscaping Agreement, a copy of which is attached hereto as Exhibit C and by this reference incorporated herein (the "Landscaping Agreement"). Pursuant to Section 3 of the Landscaping Agreement, the City assumed responsibility for all maintenance of landscaping within and adjacent to City right-of-way along the BART System route within the City, at no cost to BART, as such improvements were originally constructed.

L. The East Bay Greenway Project represents a significant departure from the original improvements described in the Landscaping Agreement and the City is unable to assume responsibility for maintenance obligations for these new improvements in Segment 7A at this time, although the City will continue to maintain the areas adjacent to Segment 7A of the East Bay Greenway pursuant to the Landscaping Agreement.

M. Alameda CTC has included \$264 million in funding for the completion of the Iron Horse Trail, Bay Trail and the East Bay Greenway within the 2012 Transportation Expenditure Plan, which Plan would be funded if Alameda County voters approve the expansion and extension of Measure B in November 2012. Such funds can be used for the construction and maintenance of these paths/trails, as well as local connectors and access routes, with funding allocation decisions subject to the discretion of the governing body of Alameda CTC (the "Commission"). The City will own and operate Segment 7A.

N. The purpose of this MOU is to set forth the Parties' understandings and agreements in connection with the maintenance and liability for Segment 7A, and all improvements related thereto.

O. Alameda CTC has agreed to retain contractors to construct and maintain Segment 7A, and has agreed that such contractors shall indemnify the Parties for any liabilities or claims arising from their respective work.

P. BART holds fee or easement interests in portions of the property on which Segment 7A is to be constructed, but is not a party in the design, construction, maintenance and/or operation of Segment 7A, other than having the opportunity to review the design and construction plans and provide inspections during construction to determine impacts, if any, to BART facilities or operations, as set forth in this MOU.

Q. Although the terms and conditions set forth in this MOU are initially intended to apply only to the land comprising Segment 7A, the Parties acknowledge that construction and maintenance of further expansions of the East Bay Greenway, as well as the continued maintenance of Segment 7A beyond the 20-year term of this MOU, could be dependent upon additional commitments of sales tax funds by Alameda CTC, which would require the approval of the governing body of Alameda CTC (the "Commission"). BART may or may not participate in discussions regarding such future commitments, depending on whether the additional commitments affect real property or facilities in which BART holds an interest.

R. The Parties anticipate that Alameda CTC will appoint an East Bay Greenway Policy Advisory Committee ("PAC") to guide future development and maintenance of the East Bay Greenway, including maintenance of Segment 7A beyond the 20-year term of this MOU, and to develop protocols meant to apply to all segments. The PAC will consider future decisions that are a consequence of the inter-jurisdictional nature of the facility, including pathway design, anticipated negotiations with third party property owners, and funding and responsibility for future maintenance needs. Elected officials of the jurisdictions through which the East Bay Greenway, and other affected agencies, such as BART and Alameda CTC, will be invited to serve on the PAC.

S. The City and Alameda CTC intend to enter into one or more subsequent amendments or agreements to extend the term of maintenance for Segment 7A beyond the original 20 year term and/or to guide and control the funding, design, construction and maintenance of such future segments of the East Bay Greenway. BART may or may not participate in such future amendments or agreements, depending on whether the additional segments affect real property or facilities in which BART holds an interest.

AGREEMENT

NOW, THEREFORE, Alameda CTC, the City, and BART, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

SECTION A. DEFINITIONS

The following defined terms apply throughout this MOU in addition to the terms defined hereinabove:

A.1. "Accept" or "Acceptance": The written acceptance by the Oakland City Council of Alameda CTC's design and construction work on and within the limits of Segment 7A including all related improvements and property interests.

A.2. "Concept Plan": The East Bay Greenway Concept Plan published by Urban Ecology in September 2008.

A.3. "Contract": The contract for construction of Segment 7A and the improvements therein.

A.4. "Contract Drawings": The official plans, profiles, typical cross sections, general cross sections, elevations, schedules and details listed or referenced in Alameda CTC's contract for construction of Segment 7A or amendments thereto which show the locations, character, dimensions, and details of Segment 7A to be constructed by Alameda CTC.

A.5. "East Bay Greenway": A bicycle and pedestrian facility that, as described in the Concept Plan, is intended to be developed over approximately twelve miles underneath and parallel to the elevated BART tracks, from 18th Avenue in Oakland south through San Leandro into unincorporated Alameda County, and then terminating in Hayward, the purpose of which is to join together these urban neighborhoods and provide bicycle and pedestrian access to and from these neighborhoods, as well as to and from public transportation locations and land uses, as further described in the Concept Plan.

A.6. "Segment 7A": The first phase in the construction of the East Bay Greenway, which extends from 75th Avenue to 85th Avenue, adjacent to San Leandro Street and underneath the aerial BART tracks in the city of Oakland, California, as designated as "Segment 7A" on Exhibit A and as shown on the Contract Drawings.

A.7. "Path Maintenance Area": The portion of Segment 7A intended to be maintained pursuant to this MOU, as shown on Exhibit D attached hereto and by this reference incorporated herein, including the asphalt pathway surface, fences/railing, pedestrian-scale lighting, bollards, curb ramps, painted pathway striping, and pathway signs. The Path Maintenance Area does not include any traffic or pedestrian signals and appurtenances, street lighting, curbs, gutters, crosswalks or other on-street pavement markings, or roadway signs, regardless of when such improvements are installed or constructed.

SECTION B. ALAMEDA CTC AGREEMENTS

B.1. Prior to advertising the Contract, Alameda CTC shall provide City and BART with the Contract Drawings for review and approval, which approval shall not be unreasonably withheld. City review and approval shall be limited to confirming whether the Contract Drawings of Segment 7A are consistent with the description of Segment 7A in **Exhibit A**, reflect prior decisions made by the Parties with respect to earlier drafts of the Contract Drawings, and are consistent with all applicable City standards, codes, and ordinances, as determined by the City Engineer or designee. BART review and approval shall be limited to review of the portions of the Contract Drawings that directly affect BART aerial, at-grade or sub-grade facilities and/or operations.

B.2. Alameda CTC agrees to advertise, award and administer the Contract, and cause such construction to be performed in accordance with the Contract Drawings as approved by the City and BART. Alameda CTC agrees that all improvements to be constructed under the Contract that will be accepted by City will be designed and constructed in full compliance with the Contract Drawings, as potentially modified by any change orders, subject to City's and BART's review rights as described in this MOU. Alameda CTC shall cause the construction contractor and its subcontractors to indemnify each of the Parties with respect to any liability or claims arising at any time out of the construction of Segment 7A, and shall cause the construction contractor and its subcontractors to name each of the Parties as additional insured parties on the companies' respective liability insurance policies. BART's insurance requirements are more fully set forth in the Permit to Enter.

B.3. Alameda CTC shall provide City and BART with drafts of any Change Orders to the Contract that affect City or BART facilities, for such affected party's review and approval. City review and approval shall be limited to confirming whether each such Change Order is consistent with the description of Segment 7A in **Exhibit A**, reflect prior decisions made by the Parties with respect to design of any improvements affected by the Change Order (if any), and is consistent with City construction standards. BART review and approval shall be limited to review of the portions of the Change Orders that directly affect BART facilities and/or operations.

B.4. Alameda CTC agrees to obtain a Permit to Enter to Construct from BART prior to entering upon BART property to construct Segment 7A. Prior to completion of construction of Segment 7A, Alameda CTC agrees to obtain a one-time Permit to Enter from BART, allowing Segment 7A to be maintained and operated on BART property for the 20-year term hereof

B.5. Alameda CTC agrees to retain one or more qualified maintenance firms to maintain the Path Maintenance Area as defined above and as shown on **Exhibit D**, for a period of twenty (20) years following the completion of Segment 7A. Any contract with such maintenance firm shall require the firm and its subcontractors, if any, to indemnify each of the Parties with respect to any liability or claims arising at any time out of the maintenance of Segment 7A, and shall cause such maintenance firm and its subcontractors, if any, to name each of the Parties as additional insured parties on the companies' respective liability insurance policies. BART's insurance requirements are more fully set forth in the Permit to Enter. Maintenance duties shall include maintenance of the entire Path Maintenance Area including

removal of all litter and graffiti therein. The maintenance firm will be provided contact information for BART and City in order to advise such Parties regarding any maintenance the firm believes should be accomplished in or near Segment 7A but outside the Path Maintenance Area.

B.6. It is understood and agreed that, pursuant to Government Code Section 895.4, Alameda CTC will fully indemnify, hold harmless and defend in any claim or litigation, City and BART, and their respective directors, officers, agents and employees, from any damage or liability occurring by reason of the negligence or willful misconduct by Alameda CTC, its directors, officers, agents and employees with respect to Alameda CTC's obligations hereunder. The duty of Alameda CTC to indemnify and hold harmless, as set forth above, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require Alameda CTC to indemnify City and BART, or their respective officers, agents and employees, against any responsibility or liability in contravention of Section 2782 of the California Civil Code. Further, in no event shall Alameda CTC be obligated to indemnify any party hereunder for any liability arising from the design, construction or maintenance of Segment 7A, it being understood by the Parties that such indemnification is provided directly by the respective contractors therefor.

SECTION C. CITY AGREEMENTS

C.1. City agrees to issue all permits and to provide all approvals required for construction of Segment 7A in a timely manner and in accordance with applicable City codes and ordinances.

C.2. Prior to issuing a Notice of Completion for construction, Alameda CTC will notify City of substantial completion of construction, at which time City will inspect project for compliance with the terms of this agreement, including all construction elements to be accepted by City. City will give notice to Alameda CTC within fifteen (15) working days following this notice that the work has or has not been performed in accordance with the approved Contract Drawings as modified by any Change Orders. Alameda CTC will evaluate the work and, if appropriate, cause the contractor to correct any deficiencies prior to City Acceptance. Once defects are corrected, City shall Accept those areas of Segment 7A within City Right-of-way or other City property in a timely manner, which Acceptance shall not be unreasonably withheld. Upon City Acceptance, City shall be responsible for the operation of Segment 7A.

C.3. City agrees to continue maintenance responsibility for the areas outside the Path Maintenance Area, pursuant to Section 3 of the 1970 Landscape Agreement with BART. City further agrees to provide contact information to the maintenance firm in order to allow the firm to advise the City regarding any maintenance the firm believes should be accomplished by City in or near Segment 7A but outside the Path Maintenance Area.

C.4. It is understood and agreed that, pursuant to Government Code Section 895.4, City will fully indemnify, hold harmless and defend in any claim or litigation, Alameda CTC and BART, and their respective officers, agents and employees, from any damage or liability (a) arising out of or otherwise related to City's ownership and/or operation of Segment 7A, including but not limited to any property, roadway, sidewalk or other facility within the

boundaries of or in the vicinity of Segment 7A, or (b) occurring by reason of the negligence or willful misconduct by City, its directors, officers, agents and employees with respect to City's obligations hereunder. The duty of City to indemnify and hold harmless, as set forth above, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require City to indemnify Alameda CTC and BART, or their respective officers, agents and employees, against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

SECTION D. BART AGREEMENTS

D.1. BART agrees to issue in a timely manner all permits necessary to Alameda CTC's contractor to construct, operate, and maintain Segment 7A on BART right-of-way.

D.2. BART agrees to provide any BART-required inspection services in connection with such permits and authorizations.

D.3. BART agrees to provide a contact name and telephone number to the maintenance firm in the event the firm wishes to advise BART regarding any conditions on BART's property or facilities.

D.4. The Parties acknowledge and agree that BART maintains all rights of entry to Segment 7A in order to alter, repair, maintain and operate BART's rail facilities as and when necessary. In the event of such alteration, repair or maintenance of BART's facilities that require temporary closure of Segment 7A, BART shall place signs or other information directing pedestrians and bicyclists to use safe multi-modal detour routes around any such closure, and BART must comply with all applicable City encroachment requirements. BART shall restore to good use any portion(s) of Segment 7A that were damaged or removed as a result of BART's alteration, repair, maintenance and operations activities.

D.5. It is understood and agreed that, pursuant to Government Code Section 895.4, BART will fully indemnify, hold harmless and defend in any claim or litigation, Alameda CTC and City, and their respective officers, agents and employees, from any damage or liability (a) arising out of or otherwise related to BART's operations, alteration, repair or maintenance activities on its aerial structures, foundations, columns, and trackway within the boundaries of or in the vicinity of Segment 7A, or (b) occurring by reason of the negligence or willful misconduct by BART, its directors, officers, agents and employees with respect to BART's operations, alteration, repair or maintenance activities on its aerial structures, foundations, columns, and trackway within the boundaries of or in the vicinity of Segment 7A. The duty of BART to indemnify and hold harmless, as set forth above, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require BART to indemnify Alameda CTC and City, or their respective officers, agents and employees, against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

SECTION E. MUTUAL AGREEMENTS

E.1. Nothing in this MOU is intended to nor does establish the Parties as partners, co-venturers or principal and agent with one another.

E.2. The Parties acknowledge and agree that as an express condition of this MOU, (i) Segment 7A is to be used solely as a bicycle and pedestrian pathway, and, for purposes of Section 4(f) of the Department of Transportation Act, now recodified at 49 U.S.C. § 303(c), said pathway is designated by the Parties as primarily non-recreational in nature, is not significant for recreational purposes and will be utilized for bicycle and pedestrian pathway and/or associated landscaping purposes as an integral part of the local transportation system; and (ii) none of the Parties will use or consent to the use of any grant funds pursuant to Section 6(f)(3) of the Land and Water Conservation Fund Act, codified at 42 U.S.C. § 4601-8(f)(3), for any development or improvements to Segment 7A.

E.3. This MOU shall be interpreted under and pursuant to the laws of the State of California. The Parties agree that the jurisdiction and venue of any dispute between the Parties to this MOU shall be the Superior Court of Alameda County.

E.4. The Parties shall not submit or participate in any grant applications, accept funding, or commence any design for additional segments of the East Bay Greenway within the boundaries of City unless and until the Parties have first entered into one or more subsequent agreements or amendments extending the terms of this MOU to guide and control the funding, design, construction and maintenance of such segments. BART may or may not participate in such future amendments or agreements, depending on whether the additional segments affect real property in which BART holds an interest. The Parties further acknowledge and agree that such future agreements or amendments are anticipated to be based on recommendations from the PAC.

E.5. The Parties acknowledge and agree that BART has a number of ongoing projects in the vicinity of Segment 7A, and that there will be a need to coordinate among BART, the City and Alameda CTC to ensure that construction and operation of Segment 7A does not interfere with or delay said projects.

E.6. This MOU represents the full, complete and entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings or agreements, whether written or oral, between the parties hereto with respect to such subject matter. This MOU may not be modified, amended, or revoked, in whole or in part, except in writing signed by an authorized officer or representative of each of the Parties hereto.

E.7. Any notices that may be required under this MOU shall be in writing and shall be delivered by hand delivery, electronic delivery with electronic confirmation of delivery or by certified or express mail, addressed to the primary contact for each Party to this agreement as follows.

Alameda CTC: Executive Director
Alameda County Transportation Commission
1333 Broadway, Suite 220
Oakland, CA 94612

CITY: City Administrator
City of Oakland
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

BART: Manager, Real Estate & Property Development Department
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 22nd Floor
Oakland, CA 94612

E.8. Alameda CTC, City, and BART agree to allow the work described in this MOU to proceed to completion in accordance with the terms set forth herein.

[Signatures on Following Page]

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AGREEMENT

THIS AGREEMENT, to be known and designated as the OAK-
LAND EAST AGREEMENT, entered into this 21 day of 1966,
1966, by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DIS-
TRICT (hereinafter called "District") and the CITY OF OAKLAND
(hereinafter called "City").

WITNESSETH:

WHEREAS, pursuant to its Resolutions No. 482 and No.
535 District has designed and will construct a portion of its
Southern Alameda County rapid transit line in the City of Oakland
along a route and in a manner generally described as follows:

A line and grade beginning near 7th Avenue between East 7th
Street and East 8th Street and proceeding easterly at grade
along the north side of the Western Pacific Railroad right
of way to the vicinity of 18th Avenue; thence rising on
aerial structure along the median of East 12th Street to
Fruitvale Avenue; thence southward on aerial structure located
on the east side of the railroad, curving westward near 44th
Avenue and crossing over the railroad at 47th Avenue to a
location west of and parallel to the railroad and east of
San Leandro Street; thence continuing southward on aerial
structure adjacent to the railroad to and through a station
located at 73rd Avenue; thence to the Oakland-San Leandro
city limits on aerial structure adjacent to the railroad,
crossing over the Southern Pacific tracks and San Leandro
Street at 105th Avenue; and

1 WHEREAS, pursuant to District Resolution No. 528, the
2 Fruitvale station parking area will include in general that area
3 adjacent to the northerly right of way line of the Western Pacific
4 bounded in general by Fruitvale Avenue, relocated East 12th Street
5 and 37th Avenue; and

6 WHEREAS, pursuant to District Resolution No. 535, the
7 73rd Avenue station (now designated and hereinafter referred to
8 as Coliseum Station) parking area will include in general that area
9 bounded by 70th Avenue, Hawley Street, the westerly right of way
10 line of Hegenberger Expressway and the northerly right of way line
11 of the Western Pacific; and

12 WHEREAS, it is in the best interests of the parties to
13 agree concerning the matter of widening, modification, relocation,
14 and abandonment of City streets, the relocation or reconstruction
15 of utility and sewer facilities owned by City or others, the use
16 of certain City streets for District purposes, landscaping along the
17 route and maintenance thereof, and other relevant matters.

18 NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND
19 THE MUTUAL UNDERTAKINGS OF THE PARTIES, IT IS AGREED AS FOLLOWS:

20 1. Widening and Modification of City Streets.

21 1.01 A general location plan entitled "Exhibit Drawings,
22 City of Oakland, Southern Alameda County Line, Exhibit A", indi-
23 cating the streets and other facilities of City, District's sta-
24 tions and other facilities and other relevant features within the
25 scope of this Agreement, is on file in the offices of the City
26 Clerk and District's Secretary and by this reference is made a

1 part hereof the same as if attached hereto. The details of con-
2 struction and modification of such streets will be shown on the
3 drawings attached to District's construction contract or contracts
4 therefor. All specifications and construction contract drawings
5 prepared by District will be subject to the review and approval
6 of City as to those facilities owned by City or which will be
7 conveyed to or maintained by City pursuant to the terms and con-
8 ditions hereof. All construction of City facilities will be in
9 accordance with Paragraph 5.01 below.

10 1.02 District will widen or modify and City will main-
11 tain the following streets as indicated.

12 (a) East 8th Street from 7th Avenue to 14th
13 Avenue including the intersection of East 8th Street and East 12th
14 Street with 14th Avenue will be relocated and widened to a four
15 and six lane facility under a construction contract administered
16 by District, and City's share of such costs thereof will be as
17 set forth hereinafter in Section 1.03.

18 (b) East 12th Street between 14th Avenue and 37th
19 Avenue will be relocated and reconstructed in part as a divided
20 highway to accommodate District's facilities in the median, and
21 to permit construction of a parking area at the Fruitvale Station
22 site. Roadway widths for the divided section will in general be
23 43 feet between curbs and the section bordering the Fruitvale
24 Station parking area will be constructed in general to provide
25 four 12 foot traffic lanes with left turn channelization, and
26 parking along the northerly side. Should City desire to have

1 a street lighting system included in District administered con-
2 struction contract, City will bear the entire cost of said system
3 between 14th and Fruitvale Avenues and District will pay the cost
4 of said system between Fruitvale and 37th Avenues. Safety lighting
6 at signalized intersections will be considered as included in the
6 costs of the traffic signal installation and not as a portion of
7 the street lighting systems.

8 (c) The 19th Avenue bridge will be extended to
9 provide a new span over relocated eastbound East 12th Street near
10 16th Avenue. During the construction of the new span, the 19th
11 Avenue overpass may be closed to traffic for a period not to ex-
12 ceed eight weeks.

13 (d) Fruitvale Avenue will be widened to pro-
14 vide a width of 75 feet between outside curb lines from the
15 northerly curb line of relocated East 12th Street southerly
16 for a distance of approximately 200 feet.

17 (e) 35th Avenue between relocated East 12th
18 Street and the southerly right of way line of the Western Pa-
19 cific will be widened to provide a roadway 44 feet in width
20 between curbs. (Minimum width of 36 feet of traveled way ex-
21 elusive of median)

22 (f) The westerly curb line on 37th Avenue between
23 the relocated East 12th Street and the Western Pacific Railroad
24 right of way will be set back 2 feet.

25 (g) San Leandro Street from near 47th Avenue to
26 near 105th Avenue will be relocated westerly to accommodate the

1 construction of District's facilities along the westerly side of
2 the Western Pacific Railroad right of way. Widths between curbs
3 will in general be 52 feet from 49th Avenue to Seminary Avenue,
4 except for left turn storage lanes at 50th Avenue and at Seminary
5 Avenue, and 76 feet from Seminary Avenue to near 105th Avenue,
6 except that from 71st Avenue to approximately 300 feet south of
7 75th Avenue in the vicinity of City's Hegenberger Expressway,
8 San Leandro Street will be widened to a width of 85 feet between
9 outside curb lines.

10 (h) 69th Avenue between San Leandro Street and
11 Snell Street will be widened to 40 feet between curbs.

12 (i) Snell Street between 69th Avenue and 71st
13 Avenue will be widened to 40 feet between curbs; between 71st
14 Avenue and near Arroyo Viejo Creek it will be constructed to pro-
15 vide two 14 foot through traffic lanes with bus turnouts; and
16 between near Arroyo Viejo Creek and 75th Avenue, it will be con-
17 structed to 32 feet between curbs with no parking on either side.

18 (j) 71st Avenue between Hawley Street and Snell
19 Street will be 34 feet between curbs with parking prohibited along
20 the easterly side.

21 (k) Hawley Street between 71st Avenue and 73rd
22 Avenue will be widened to provide a roadway 46 feet between curbs
23 with all such widening being on the westerly side of said Hawley
24 Street.

25 (l) An access road 40 feet between curbs will be
26 constructed between District's parking area and 75th Avenue

1 approximately 300 feet northerly of Snell Street.

2 (m) The existing 105th Avenue underpass of San
3 Leandro Street, including the ramps thereto and frontage roads,
4 will be modified to accommodate a City plan for the improvement
5 of said underpass at a future date, which improvement will be
6 undertaken by City at no expense to District. The underpass may
7 be closed to traffic during the time required to make the afore-
8 said modifications. District will construct its facilities on pier
9 spacings and depths which will accommodate said future widening of
10 the underpass. District will include in its construction contract
11 items of work, Modify existing lighting, clean and paint existing
12 underpass, and City will pay as the cost of these items a lump
13 sum of \$18,400.

14 (n) During the modification of the 105th Avenue
15 underpass, a detour approved by City will be constructed and main-
16 tained by District's contractor.

17 (o) At 85th Avenue, District will construct its
18 facilities on pier spacings which will permit future widening of
19 85th Avenue on an 80 foot wide right of way.

20 1.03 Costs, Credits, and Reimbursements.

21 It is estimated that City's share of the right of
22 way costs covered by this Agreement is \$13,200. It is estimated
23 that City's share of the engineering and construction costs covered
24 by this Agreement is \$454,000 and this amount will not be exceeded
25 without City's written consent. The actual amount of City's share
26 will be determined upon award of District's construction contract

1 or contracts and the completion of the acquisition of rights of
2 way and will be determined as follows:

3 (a) East 8th Street and East 12th Street.

4 (1) Rights of Way.

5 District will acquire the additional
6 rights of way over and above those now existing required to complete
7 the roadway right of way for the relocated street facility. On
8 Parcels Nos. O-A 090, O-A 093, O-A 094, O-A 095, O-A 096, and O-AB 04
9 as delineated on District Right of Way Map, Sheet ARW 9, portions
10 are needed to complete City's requirements for its widening without
11 regard to District's construction and other portions are needed by
12 District for the required relocation of East 8th Street. District
13 will make total takes on these Parcels and will convey to City all
14 excess portions of such Parcels. City will provide those portions
15 of City owned Parcels O-A 074, O-A 076, O-A 091, O-A 092, O-A 097,
16 O-A 099, and O-A 100 required for rights of way for the relocation
17 of East 8th Street. These Parcels are delineated on District Right
18 of Way Maps, Sheets ARW 6, ARW 7, and ARW 9. City will provide
19 those portions of City owned Parcels O-A 104, O-A 106, O-A 109,
20 O-A 111, and O-A 113 required for rights of way for the relocation
21 of East 12th Street. These Parcels are delineated on District
22 Right of Way Maps, Sheets ARW 10 and ARW 11.

23 Slope easements on Parcels O-A 102,
24 O-AB 03, and O-AD 39 as delineated on District Right of Way Map,
25 Sheet ARW 9, will be acquired by District and the cost thereof will
26 be distributed between City and District in the same proportions

1 as the roadway construction costs for East 8th Street between 7th
2 and 14th Avenues are prorated pursuant to Subparagraph (2) below.
3 City's estimated cost for these slope easements is \$6,000.

4 (2) Construction.

5 District will pay 50% and City will pay
6 50% of the actual construction costs required to complete the road-
7 way improvements for East 8th Street between 7th Avenue and 14th
8 Avenue. City will bear 85.9% of the costs of the street lighting
9 system and 10.9% of the traffic signal systems on East 8th and East
10 12th Streets between 7th and 37th Avenues to be included in a con-
11 struction contract administered by District. In addition to the
12 above construction costs, City will pay as its share of the en-
13 gineering and inspection costs a sum representing 10% of all said
14 construction costs.

15 The estimated construction costs to City
16 for East 0th and East 12th Streets from 7th Avenue to 37th Avenue
17 are as follows:

| | | |
|----|------------------------|---------------|
| 18 | Roadway Improvements | \$171,400 |
| 19 | Street Lighting System | 133,500 |
| 20 | Traffic Signal Systems | 5,000 |
| 21 | Contingencies 10% | 31,000 |
| 22 | Engineering 10% | <u>34,100</u> |
| 23 | Total | \$375,000 |

24 (b) San Leandro Street from 47th Avenue to 81st
25 Avenue.

26 (1) Rights of Way.

1 It is estimated that City's share of the
2 costs for the additional rights of way for the left turn storage
3 lanes at 50th Avenue and at Seminary Avenue is \$7,200. The actual
4 costs to City will be determined upon completion of the acquisitions
5 and will be the actual costs to District to obtain the additional
6 required six foot strips.

7 (2) Construction.

8 For the additional widening at 50th Avenue,
9 Seminary Avenue, and at Hegenberger Expressway, City will pay a lump
10 sum of \$10,850 which said amount includes engineering and inspection.

11 City will bear 39.8% of the costs of the
12 traffic signal systems to be included in a construction contract
13 administered by District. In addition to the above construction
14 costs, City will pay as its share of the engineering and inspection
15 costs a sum representing 10% of all said construction costs.

16 The estimated construction costs to City
17 for San Leandro Street from 47th Avenue to 81st Avenue are as follows:

| | |
|--------------------------------|---------------|
| 18 Street Lighting System | \$23,140 |
| 19 Traffic Signal Systems | 18,300 |
| 20 Contingencies 10% | 4,160 |
| 21 Engineering 10% | <u>4,550</u> |
| 22 | \$50,150 |
| 23 Roadway Improvements (L.S.) | <u>10,850</u> |
| 24 Total | \$61,000 |

25 (c) San Leandro Street from 81st Avenue to 105th
26 Avenue.

1 balance in the 1968 fiscal year.

2 1.04 All necessary modifications or installations of
3 traffic control signal, street lighting or communication systems
4 required because of District's construction in the immediate prox-
5 imity of District's facilities will be made by District in order to
6 provide proper protection for the traveling public. Plans and speci-
7 fications for such modifications or installations will be subject to
8 the review and approval of City.

9 2. Street Widening, Closure, Vacation, Modification, and
10 Detour Procedures.

11 2.01 City will take all necessary and incidental steps,
12 including but not limited to resolutions and ordinances that may be
13 required, for the widening, modification, vacation, or closure of
14 streets as provided herein. District will bear the expenses incurred
15 by City for the proceedings for such widening, modification, vacation,
16 or closure of streets except as waived by City. The reimbursable ex-
17 penses will be limited to City's cost of publication, mailing notices,
18 preparations of drawings, legal and administrative proceedings, docu-
19 ments and title searches.

20 2.02 Streets to be Vacated.

21 To permit their inclusion within District's station
22 parking areas, City will institute all necessary proceedings for the
23 vacation of the following City streets and upon completion of such
24 proceedings and City approval, District will physically close such
25 streets in a manner acceptable to City:

26 (a) 33rd, 34th, and 36th Avenues between relocated

1 East 12th Street and the southerly right of way line of the Western
2 Pacific.

3 (b) Existing East 12th Street from Fruitvale Avenue
4 to 37th Avenue.

5 (c) 72nd Avenue from Snell Street to Hawley Street.

6 (d) 73rd Avenue from Snell Street to Hawley Street.

7 2.03 Streets to be Permanently Closed Subject to Successful
8 Conclusion of Legal Closure Proceedings:

9 (a) 8th, 9th, 10th, 11th, 12th, 13th, 14th, 17th,
10 18th, and 19th Avenues will be closed at District's northeasterly
11 right of way line.

12 (b) 13th Avenue will be closed at its northeasterly
13 connection to East 8th Street.

14 (c) 53rd Avenue will be closed at the northerly
15 right of way line of the Western Pacific Railroad and at the northerly
16 right of way line of relocated San Leandro Street.

17 (d) 73rd Avenue will be closed at the northerly
18 right of way line of the Western Pacific Railroad and the northerly
19 right of way line of relocated San Leandro Street.

20 2.03 Temporary Street Closures, Detours, and Traffic
21 Control.

22 During the construction period, City agrees to Dis-
23 trict's partial or complete temporary closing to vehicular traffic
24 of streets in the construction areas and providing adequate detour
25 routes over adjacent streets, subject to the following limitations:

26 (a) Prior to the partial or complete closing of any

1 street, approval will be obtained from the appropriate City agency by
2 District's contractor. Notices will be filed with City at least 10
3 days prior to the time such closure is to be made in order to allow
4 verification by City that all necessary detours, signs, and other pro-
5 tective measures have been provided by District's contractor and in
6 order that City may approve all said measures, which approval will
7 not be unreasonably withheld.

8 (b) District's contractor will provide:

9 (1) Signs approved by City for the directing
10 of traffic around construction areas and through detours.

11 (2) Street closure barricades and the lighting
12 thereof at night.

13 (3) Personnel as may be required or necessary
14 for the protection of traffic.

15 3. Rearrangement and Replacement of City Utility and
16 Sewer Facilities.

17 3.01 District will rearrange and replace, with facilities
18 of equal capacity, durability, and efficiency, existing City owned
19 utility and storm and sanitary sewer facilities, the rearrangement
20 or replacement of which is necessitated by the construction of Dis-
21 trict's facilities, including any temporary rearrangement, support,
22 or replacement that may be necessary. If, for its own convenience,
23 City elects to better its utility or sewer facilities by replacement
24 or rearrangement in a manner or along a route which will be different
25 from that required solely to accommodate the construction of District's
26 facilities, City will be responsible for any increased costs resulting

1 therefrom.

2 3.02 City will review District's plans in order to deter-
3 mine major conflicts between City's utility and storm and sanitary
4 sewer facilities and District's facilities, and District and City
5 will consult, as necessary, to provide a solution of said conflicts
6 satisfactory to both parties. It is understood that City cannot
7 guarantee the exact location of its underground utilities and that
8 such determinations will be the responsibility of District's con-
9 tractor.

10 3.03 City will determine the size of replaced or rear-
11 ranged City utility, sanitary, or storm sewer facilities.

12 3.04 District will receive credit against the cost of
13 replacement, relocation, or rearrangement of City utility or sewer
14 facilities for the following:

15 (a) Betterments, which will be defined as replace-
16 ment with facilities of greater capacity, durability, or efficiency
17 than those replaced when such betterments are requested by City.

18 (b) Salvage value of facilities removed and retained
19 by City, the replacement or rearrangement cost of which is charged to
20 District.

21 3.05 District's contractor will test for specification com-
22 pliance all City utility, storm, and sanitary sewer facilities re-
23 placed or rearranged under a construction contract administered by
24 District pursuant to the terms and conditions of this Agreement, and
25 City will have an inspector present at such tests in order to verify
26 the results thereof.

1 3.06 City hereby grants to District permission to discharge
2 parking lot drainage and station sewerage into City's respective sewer
3 systems. City will permit authorized connections to City sewers when
4 requested by District's engineers. Parking lot drainage will be con-
5 nected to the storm drain system and station sanitary drainage will
6 be connected to City's sanitary sewer system..

7 3.07 District will deed to City easements for all sewer and
8 storm culverts replaced or rearranged by District when such facilities
9 are on locations outside dedicated street rights of way.

10 3.08 In the event any privately owned utility facilities,
11 or publicly owned utility facilities not under the jurisdiction of City,
12 must be relocated or rearranged to accommodate a street improvement
13 desired by City and included in a District administered construction
14 contract at City's request but which is not necessitated by the rapid
15 transit construction, it is understood and agreed that such relocation
16 or rearrangement will be accomplished at no expense to District and
17 that City will issue all necessary notices to relocate or remove such
18 facilities and pay all costs connected therewith that the affected
19 utility is not legally obligated to assume.

20 3.09 City will issue at no expense to District all neces-
21 sary permits, licenses, or franchises for the installation or reloca-
22 tion of utility facilities on, under, or over District property, in-
23 cluding rapid transit stations and parking lots, with the understanding
24 and agreement on the part of City that District's obligation will be
25 limited to rearrangement or replacement of said facilities in kind and
26 that any betterments, including but not limited to undergrounding of

1 facilities which are now on overhead structures, if ordered by City,
2 will not involve additional expense to District.

3 Street lighting along the easterly side of San Lean-
4 dro Street between Seminary Avenue and 105th Avenue will not be
5 deemed a utility under this section.

6 4. Maintenance.

7 4.01 District's contractor will:

8 (a) Maintain all traffic detours during the period
9 of construction in a manner acceptable to City..

10 (b) Maintain or cause to be maintained in service
11 all City utility, storm, and sanitary sewer facilities placed in tem-
12 porary locations and all City utility, storm, and sanitary sewer fa-
13 cilities within the construction area not required to be replaced, or
14 rearranged, but which are required to be shored or protected during
15 the construction period in a manner satisfactory to City.

16 4.02 Upon completion of the work on City's utility, storm,
17 and sanitary sewer facilities, roadways, or other structures, Dis-
18 trict's engineer will certify to City that said work has been com-
19 pleted and City will thereupon without undue delay inspect and accept
20 the facilities, roadways, or other structures if the work has been
21 performed in accordance with City's construction standards and this
22 Agreement. Upon acceptance of the facilities, roadways, or other
23 structures, City will become responsible for maintenance of the fa-
24 cilities, roadways, or City structures from and after that time. Dis-
25 trict will provide City with fee title for the necessary additional
26 rights of way required to complete the facilities to be maintained

1 by City.

2 5. Construction Standards and Inspection of City Facilities.

3 5.01 All construction of streets, street appurtenances,
4 drainage, sewer, and other facilities and structures constructed by
5 District pursuant to its various construction contracts which City is
6 obligated to maintain pursuant to the terms hereof, will be construc-
7 ted in accordance with the standards and specifications of City in
8 effect at the time of the execution of this Agreement.

9 5.02 City will assign inspectors to inspect those facili-
10 ties and structures which will be maintained by City. Payment by Dis-
11 trict of the costs of such inspections will be the subject of a sepa-
12 rate agreement.

13 6. Use of City Streets During the Construction Period.

14 City hereby grants to District and its contractor
15 reasonable use of portions of City street rights of way in connection
16 with District's construction activities, including but not limited to
17 the following:

18 (a) Traffic Maintenance and Construction Procedure.

19 District's contractor will submit working
20 drawings and schedules showing his proposed method of traffic main-
21 tenance and construction procedure to District's engineer for approval.
22 Such approval will not be given to contractor until said working
23 drawings have been approved by City.

24 (b) Prior to the temporary closing to traffic of part
25 of any street, sidewalk, or other access, approval will be obtained
26 from the appropriate City agency by District's contractor at least 10

1 days prior to the time such closures are to be made (deviation from
2 this 10 day requirement may be permitted in bona fide emergency situa-
3 tions by the office of the City Engineer). District will be respon-
4 sible for coordinating all closures with AC Transit operations.

5 (c) City's official liaison agency for all District
6 construction matters will be the office of the City Engineer.

7 (d) District's contractor will be responsible for
8 obtaining the approval of the City Fire Department pertaining to the
9 conditions listed below:

10 (1) Above-ground storage of flammable liquids,
11 including skid tanks.

12 (2) The stockpiling of construction material
13 in close proximity to wood frame buildings.

14 (3) The blocking of fire hydrants or impairing
15 their access to responding engine companies.

16 (4) The blocking of building entrances and ob-
17 structing the fire department due to barriers or street closures.

18 7. Landscaping.

19 Landscaping and the maintenance thereof along Dis-
20 trict's rapid transit system within City, will upon mutual consent
21 be the subject of an amendment hereto or of a further agreement.

22 8. District Guarantee.

23 As between District and City, District assumes res-
24 sponsibility for and will repair, or require District's contractor to
25 repair, any defects in facilities or other structures which will be
26 turned over to or maintained by City pursuant to the terms and

1 conditions hereof, discovered with one (1) year from acceptance there-
2 of by City.

3 9. Joint Exercise of Eminent Domain Powers.

4 Upon request of District, City and District will
5 jointly exercise the power of eminent domain in order to acquire all
6 or part of the right of way described in Paragraph 1.03 above. Upon
7 such request City and District will, as co-plaintiffs, file and dili-
8 gently prosecute such action or actions in eminent domain and City will
9 cooperate with District in all matters affecting said action or actions.
10 District will reimburse City for all costs and expenses incurred by
11 City in the participation with District in said action or actions pro-
12 vided City will strictly account for all said expenses and costs and
13 report all receipts and disbursements. Any joint exercise of the
14 power of eminent domain hereunder will be subject to the restrictions
15 imposed upon the exercise by City of the power of eminent domain.

16 10. Further Improvements.

17 In the event City requests improvements in excess of
18 those which District is obligated to provide hereunder, the parties
19 may enter into a mutually satisfactory amendment hereto or a separate
20 agreement concerning the extent of said improvements and the time and
21 amount of reimbursement of District therefor.

22 11. Reimbursement of City.

23 11.01 To the extent that any work hereunder may be per-
24 formed by City pursuant to a specific District Work Authorization, the
25 cost thereof and the billing therefor will be pursuant to customary
26 accounting bases. City's billing to District will not be made more

1 often than once each month nor for amounts less than \$500, except
2 where the specific Work Authorization is for an amount less than \$500,
3 in which case a single billing will be made upon completion of the
4 work. District will reimburse City within a period of 30 days from
5 the date of receipt of said billing. Billings will refer to the
6 applicable Work Authorization number and will be supported by such
7 evidence as District may reasonably require. District will have
8 reasonable access to City's books and records for the purpose of sub-
9 sequent auditing of said bills.

10 11.02 Immediately upon execution hereof and thereafter
11 semiannually 30 days prior to January 1st and July 1st of each year,
12 City will submit its estimates of the expected expenditures, if any,
13 to be made by City hereunder for which District is required to re-
14 imburse City. Specific Work Authorizations will be issued by District
15 predicated upon such estimates.

16 12. Indemnification.

17 12.01 City agrees, as to the structures, streets, street
18 appurtenances, sewers, utility facilities, or other facilities or
19 parts thereof which it is required to maintain under the terms of this
20 Agreement, to defend, indemnify, and hold District harmless from all
21 liability, costs, damages, or expenses arising out of or incurred in
22 connection with City's maintenance after acceptance; and agrees at
23 its own cost, expense, and risk, to defend any and all actions, suits,
24 or other legal proceedings brought or instituted against District
25 arising out of the maintenance or alleged failure to maintain the
26 aforesaid structures, streets, street appurtenances, sewers, utility

1 facilities or other city facilities or parts thereof, or arising
2 out of changes in drainage conditions outside the construction
3 area, alleged to have resulted from construction under District
4 administered contracts, and to pay and satisfy any resulting judg-
5 ments.

6 12.02 District agrees to defend, indemnify, and hold
7 City harmless from all liability, costs, damages, or expenses
8 arising out of or incurred in connection with the performance of
9 District administered construction work, including, but not as a
10 limitation, defective construction work on city streets, street
11 appurtenances, sewers, and other city facilities within the con-
12 struction areas; and agrees at its own cost, expense, and risk, to
13 defend any and all actions, suits, or other legal proceedings
14 (except actions arising out of alleged changes in drainage condi-
15 tions outside the construction area after acceptance of the work by
16 City) brought or instituted against City arising out of District
17 administered construction work, or arising out of any claimed de-
18 nial of access or other claims for damage to private property in
19 connection therewith, and pay and satisfy any resulting judgments.

20 12.03 District agrees to defend, indemnify, and hold
21 City harmless from all liability, costs, damages, or expenses
22 arising out of or in any way connected with the location of Dis-
23 trict's facilities in the street areas or adjacent thereto. Dis-
24 trict will, at its own cost, expense, and risk, defend any and
25 all actions, suits, or other legal proceedings brought or insti-
26 tuted against City by reason of the location of the aforesaid

1 District facilities in the street areas or adjacent thereto.

2 12.04 The foregoing provisions regarding indemnification
3 are included pursuant to the provisions of Section 895.4 of the Govern-
4 ment Code and are intended by the parties to modify and supersede the
5 otherwise applicable provisions of Chapter 21, Part 2, Division 3.6,
6 Title I of the Government Code.

7 13. Railroad Agreements, Separations, and Grade Crossings.

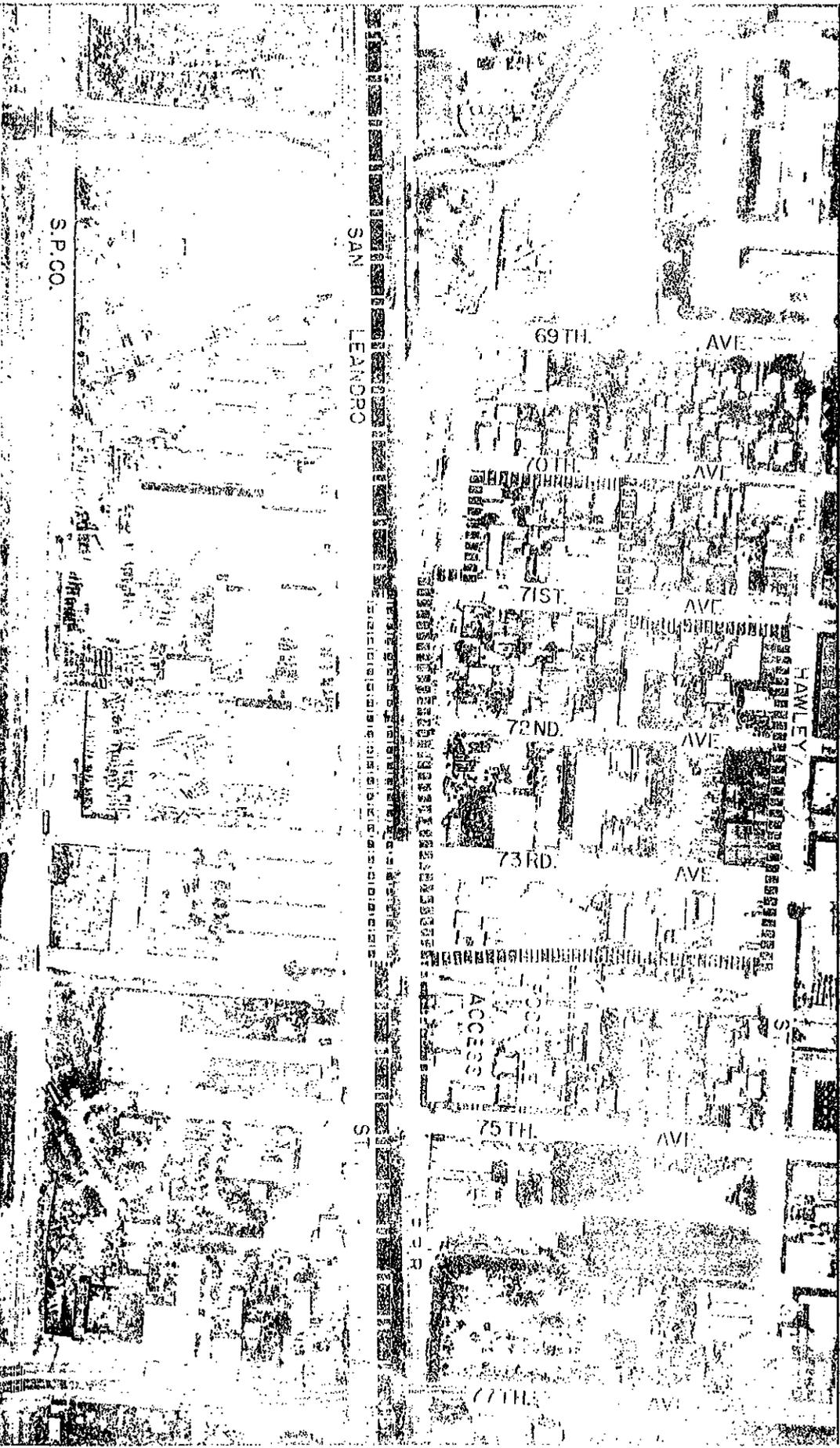
8 It is understood and agreed that any and all agree-
9 ments with railroads necessitated by District's construction, and any
10 and all proceedings before the Public Utilities Commission relative to
11 grade crossings, grade separation structures, or grade crossing protec-
12 tive devices, will be handled by separate agreements or by proceedings
13 before the Public Utilities Commission; it being further understood
14 that City and District will cooperate in the negotiation of such agree-
15 ments and in the conduct of such proceedings.

16 14. Right of Way Agreement.

17 It is further understood and agreed that the matter
18 of exchange of rights of way between City and District on San Leandro
19 Street, between 71st Avenue and approximately 300 feet south of 75th
20 Avenue, will be the subject of a separate agreement.

21 15. Fruitvale Avenue Grade Separation Pier Relocation.

22 Should City at any time prior to July 1, 1976, con-
23 struct the proposed Fruitvale Avenue Grade Separation Project, Dis-
24 trict agrees to reimburse City for any costs incurred by City in
25 connection with the relocation or reconstruction of District's pier
26 on East 12th Street at the Derby Street intersection.



GOLISEUM STATION & PARKING AREA

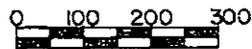
SCALE IN FEET





FRUITVALE STATION & PARKING AREAS

SCALE IN FEET



✓ 624347
6-11-70

OAKLAND LANDSCAPING AGREEMENT
(MARITIME STREET TO SAN LEANDRO CITY
LIMITS)

BY THIS AGREEMENT, dated this 11th day of June, 1970,
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district
(hereinafter called "District"), and the

CITY OF OAKLAND, a body politic and a municipal corporation of the
State of California (hereinafter called "City");

WITNESSETH:

WHEREAS, District, pursuant to its Resolutions Nos. 311, 320 and
482 has constructed portions of its Transbay, downtown and Southern Alameda
County Lines in the City of Oakland between Maritime Street and the Oakland -
San Leandro City Limits; and

WHEREAS, District's lines are alongside City streets or within City
street medians for most of their length; and

WHEREAS, District now proposes to landscape certain property within
and adjacent to its right of way, and

WHEREAS, District has applied to the Department of Housing and Urban
Development (hereinafter called DHUD) for a beautification grant to aid it in
landscaping its right of way; and

WHEREAS, City will provide coordination and assist in the development
of plans necessary for the completion of said landscaping; and

WHEREAS, District and City do mutually desire to cooperate in the
landscaping of properties owned or occupied by District and to provide for the
future maintenance of said landscaping subject to the terms and conditions herein
provided.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL UNDERTAKINGS OF THE PARTIES, IT IS AGREED AS FOLLOWS:

1. District will prepare plans, specifications, and estimates required for the construction of landscaping along District's facilities between Maritime Street and the Oakland-San Leandro City limit lines, all said plans and specifications to be subject to the review and approval of City. The areas to be landscaped are shown on Exhibit "A" which is on file in the offices of the City Clerk and District's Secretary and by this reference is made a part hereof the same as if attached hereto. Said Exhibit "A" shall be marked "Exhibit A to Oakland Landscaping Agreement - Maritime Street to San Leandro City Limits,"

2. District will administer the contract for the construction of the afore-said landscaping. City will perform such inspections as may be necessary to assure it of compliance with contract specifications.

3. Upon completion of the construction by District's contractor and approval by City and after acceptance of the work by District, City will assume all responsibility for maintenance at no cost to the District of said landscaping including all utility costs.

4. City agrees to maintain the landscaped areas in a condition equal to that existing at the time of acceptance. Dead plants will be replaced with new plants. The areas will be kept free of litter. Trash and abandoned automobiles will be removed.

If any of these conditions are not met within 10 days after a written complaint by District, District may perform necessary work and bill City for its cost.

5. To the extent that any work, other than landscaping maintenance, is performed hereunder by City, it shall be done pursuant to a specific District Work Authorization and the cost thereof and the billing therefor shall be in accordance with established District accounting procedures. Prior to doing any work,

City will furnish District with an estimate of cost. City's billing to District will not be made more often than once each month nor less often than once every 6 months. District will reimburse City within a period of 30 days from the date of receipt of said billing. Billings will refer to the applicable Work Authorization number and will be supported by such evidence as District may reasonably require. District and DHUD representatives will have reasonable access to City's books and records for the purpose of subsequent auditing of said bills.

6. Nothing in this Agreement shall restrict any rights of entry District may now have to any portion of the aforementioned landscaped areas; however, after City has assumed all responsibility for maintenance, District shall repair or pay the City to repair all damages to landscaping or irrigation systems caused by District, its agents or contractors.

7. City shall not fasten any item to structural piers of District's aerial structures. No street furniture, playground equipment or any other facilities shall be added to the landscaped areas without obtaining approval from the District.

8. It is understood and agreed that this Agreement is contingent on District's receiving a beautification grant from DHUD for landscaping under this Agreement.

IT IS UNDERSTOOD AND AGREED THAT neither District nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, City will fully indemnify and hold District harmless from any damage or liability

occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, District will fully indemnify and hold City harmless from any damage or liability occurring by reason of anything done or omitted to be done by District under or in connection with any work, authority, or jurisdiction not delegated to City under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized the day and year first above written.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By *Wm. Reedy*
PRESIDENT

By *Richard J. Shephard*
SECRETARY

Approved as to form:

For *Thomas Jackson*
General Counsel
San Francisco Bay Area
Rapid Transit District

Rep *R. R. Kuebler*
City Attorney

CITY OF OAKLAND

By *Lucile A. Riley*
acting CITY MANAGER

By *Robert C. Jacobsen*
acting CLERK

OAKLAND CITY COUNCIL

RESOLUTION No. 50844 C. M. S.

INTRODUCED BY COUNCILMAN _____

RESOLUTION APPROVING THAT CERTAIN AGREEMENT BY AND BETWEEN THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT AND THE CITY OF OAKLAND RELATIVE TO THE CITY'S MAINTENANCE OF THE LANDSCAPING TO BE INSTALLED BY SAID TRANSIT DISTRICT IN AND ALONG THEIR RIGHT OF WAY IN THE CITY OF OAKLAND; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT IN DUPLICATE, IN AND ON BEHALF OF THE CITY OF OAKLAND; AND DIRECTING THE CITY CLERK TO ATTEST TO SAID EXECUTION, AND TO ATTACH CERTIFIED COPIES OF THIS RESOLUTION TO THE DUPLICATE COPIES OF SAID AGREEMENT.

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RESOLVED: That that certain agreement, a copy of which is on file in the office of the City Clerk, by and between the San Francisco Bay Rapid Transit District and the City of Oakland, relative to the maintenance by the City of the landscaping to be installed by the Transit District in and along their right of way within the City of Oakland, be and the same is hereby approved on behalf of the City of Oakland.

FURTHER RESOLVED: That the City Manager is hereby authorized and directed to execute said agreement, in duplicate, in and on behalf of the City of Oakland.

FURTHER RESOLVED: That the City Clerk is hereby directed to attest to said execution, and to attach certified copies of this resolution to the duplicate copies of said agreement.

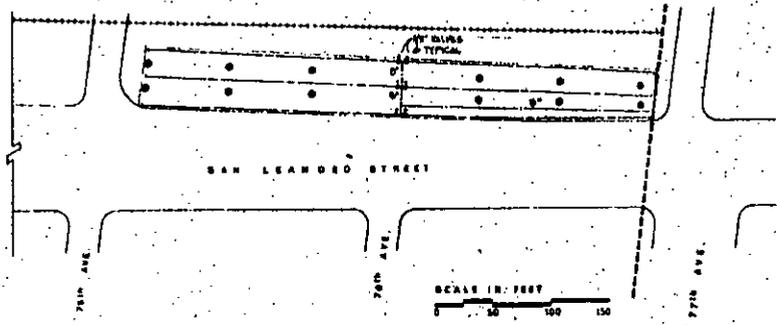
| ABBREVIATIONS | | SYMBOLS | | PLANT MATERIAL LIST | | | INDEX OF DRAWINGS | | | |
|---------------|--------------------------------|---------|----------------|---------------------------|--------------------|-------|-------------------|---------|-------------|--|
| SYMBOL | DESCRIPTION | SYMBOL | DESCRIPTION | SCIENTIFIC NAME | COMMON NAME | SIZE | NOTY BRID | REMARKS | DRAWING NO. | TITLE OF DRAWING |
| AC | ASPHALT CONCRETE | ⊕ | PLANT MATERIAL | TREES | | | | | | |
| AWG | AMERICAN WIRE GAUGE | ⊙ | PLANT MATERIAL | <i>Thuja occidentalis</i> | ARIZONA CEDAR | 1.500 | 2" x 2" | | LA-1 | KEY PLAN - LANDSCAPE CONSTRUCTION SITE PLAN |
| BART | BAY AREA RAIL TRANSIT DISTRICT | ⊙ | PLANT MATERIAL | <i>Quercus agrifolia</i> | WALNUT TREE | 1.500 | 2" x 2" | | LA-2 | INDEX OF DRAWINGS - PLANT SCHEDULE (ABBREVIATIONS & SYMBOLS) |
| CB | CATCH BASIN | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-3 | PLANTING - MARKET ST. TO AERIAL STRUCTURE |
| CL | CHAIN LINK | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-4 | GRID OF AERIAL STRUCTURE |
| CONC | CONCRETE | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-5 | GRID OF AERIAL STRUCTURE |
| CS | COMMERCIAL STANDARD | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-6 | PLANTING - IRRIGATION - 7 1/2' ST. MEDIAN WEST OF E Y ST |
| EXIST | EXISTING | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-7 | PLANT & IRRIGATION - 140' EAST OF CEDAR ST. TO WOOD ST |
| FIN | FINISH | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-8 | PLANT & IRRIGATION - WOOD ST. TO 10' EAST OF WILLOW ST |
| GALV | GALVANIZED | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-9 | PLANT & IRRIGATION - 10' EAST OF WILLOW TO RECALTA ST |
| GC | GALVANIZED STEEL | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-10 | PLANT & IRRIGATION - RECALTA TO CHESTER ST |
| GR | GRAVEL | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-11 | ST. ST. EAST OF CYPRUS ST |
| IR | IRON | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-12 | ST. ST. MIDWAY TO UNION ST |
| IRB | IRON PIPE | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-13 | PLANT & IRRIGATION - UNION ST. TO 30' EAST OF MAGNOLIA |
| IRP | IRON PIPE | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-14 | PLANT & IRRIGATION - 40' EAST OF MAGNOLIA TO CHESTNUT |
| IRW | IRON WIRE | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-15 | PLANT & IRRIGATION - CHESTNUT ST. TO FILBERT ST |
| IRY | IRON YARD | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-16 | PLANT & IRRIGATION - FILBERT ST. TO MARKET ST |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-17 | MARKET ST. TO 60' EAST OF BRUSH ST |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-18 | 60' EAST OF BRUSH TO 140' EAST OF CASTRO ST |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-19 | PLANTING - GROVE ST. TO EAST HARTS BOARDWALK |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-20 | IRIGATION - GROVE ST. TO EAST HARTS BOARDWALK |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-21 | PLANTING - EAST HARTS BOARDWALK TO WASHINGTON ST |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-22 | IRIGATION - EAST HARTS BOARDWALK TO WASHINGTON ST |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-23 | PLANTING AND PAVING - DETAILS |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-24 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-25 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-26 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-27 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-28 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-29 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-30 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-31 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-32 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-33 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-34 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-35 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-36 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-37 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-38 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-39 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-40 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-41 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-42 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-43 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-44 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-45 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-46 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-47 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-48 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-49 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-50 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-51 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-52 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-53 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-54 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-55 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-56 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-57 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-58 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-59 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-60 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-61 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-62 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-63 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-64 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-65 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-66 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-67 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-68 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-69 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-70 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-71 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-72 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-73 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-74 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-75 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-76 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-77 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-78 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-79 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-80 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-81 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-82 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-83 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-84 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-85 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-86 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-87 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-88 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-89 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-90 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-91 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-92 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-93 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-94 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-95 | |
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| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-98 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-99 | |
| IRZ | IRON ZINC | ⊙ | PLANT MATERIAL | <i>Pinus strobus</i> | ITALIAN STOVE PINE | 1.500 | 2" x 2" | | LA-100 | |

NOTE:
 [Drawings in this Exhibit "A" relate only to Segment 7 A defined within the MOU Among the Alameda CTC, the City of Oakland and BART in Connection with the Initial Phase of the East Bay Greenway]

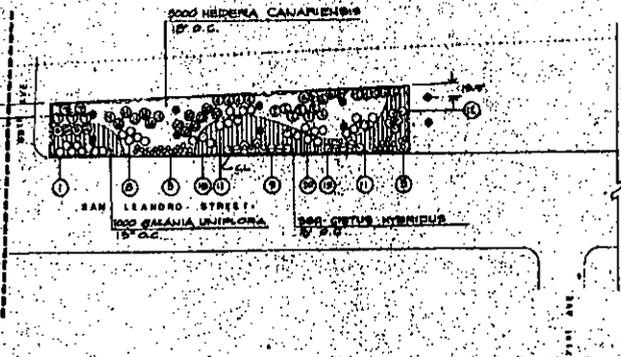
EXHIBIT "A" TO OAKLAND LANDSCAPING AGREEMENT



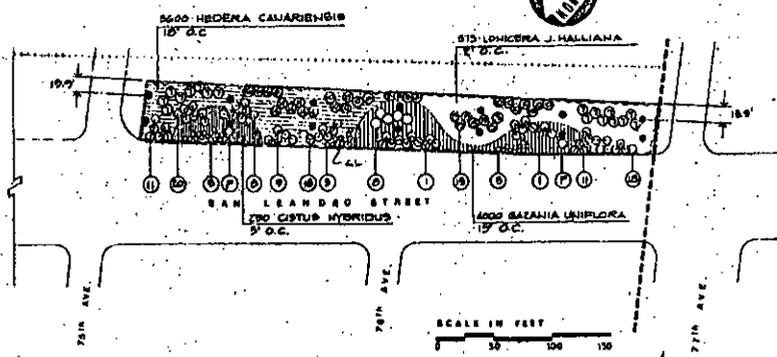
COLISEUM
STATION



Note: All Landscaping Maintenance
By City



COLISEUM
STATION



| | | | | |
|------|----|------|-------|-----|
| DATE | BY | CHKD | APP'D | REV |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

ANTHONY M. GUZZARDO • ASSOCIATES
LANDSCAPE ARCHITECTS • SITE PLANNERS
431 CALIFORNIA STREET, SUITE 200, SAN FRANCISCO, CA 94104
415-774-1111

PARSONS BRINCKERHOFF-TUDOR-BECHTEL
CONSULTING ENGINEERING COMPANY
1100 MARKET STREET, SUITE 200, SAN FRANCISCO, CA 94102
415-774-1111

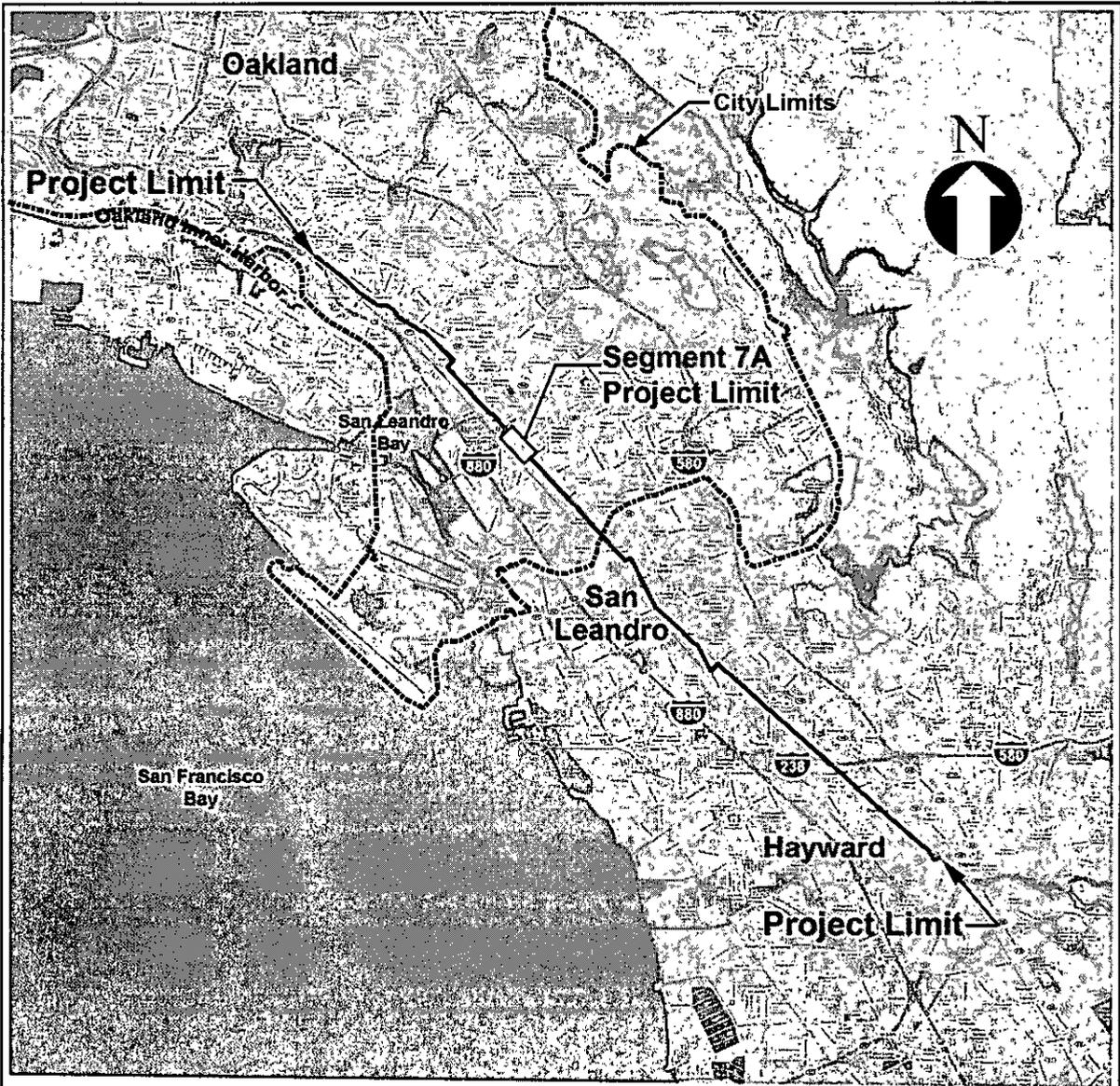
SOUTHERN ALAMEDA CO. LINE
LANDSCAPING

PLANTING & IRRIGATION PLANS

SCALE: 1" = 50'-0"
DATE: 10/20/01

A3401-A002
LA28-033

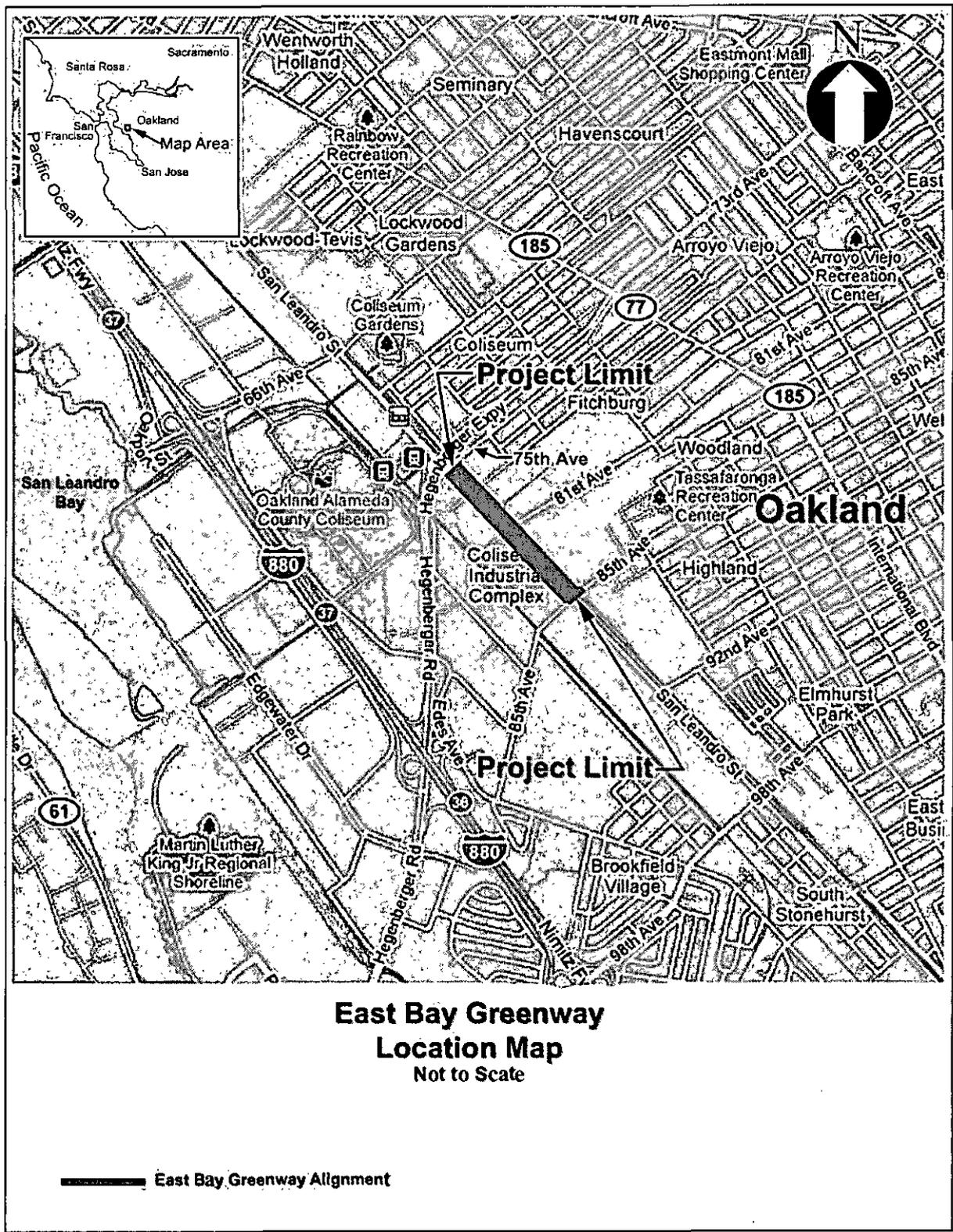
Exhibit A (page 1): East Bay Greenway Project Location Map



**East Bay Greenway
Location Map**
Not to Scale

———— East Bay Greenway

Exhibit A (page 2): Segment 7A Project Location Map



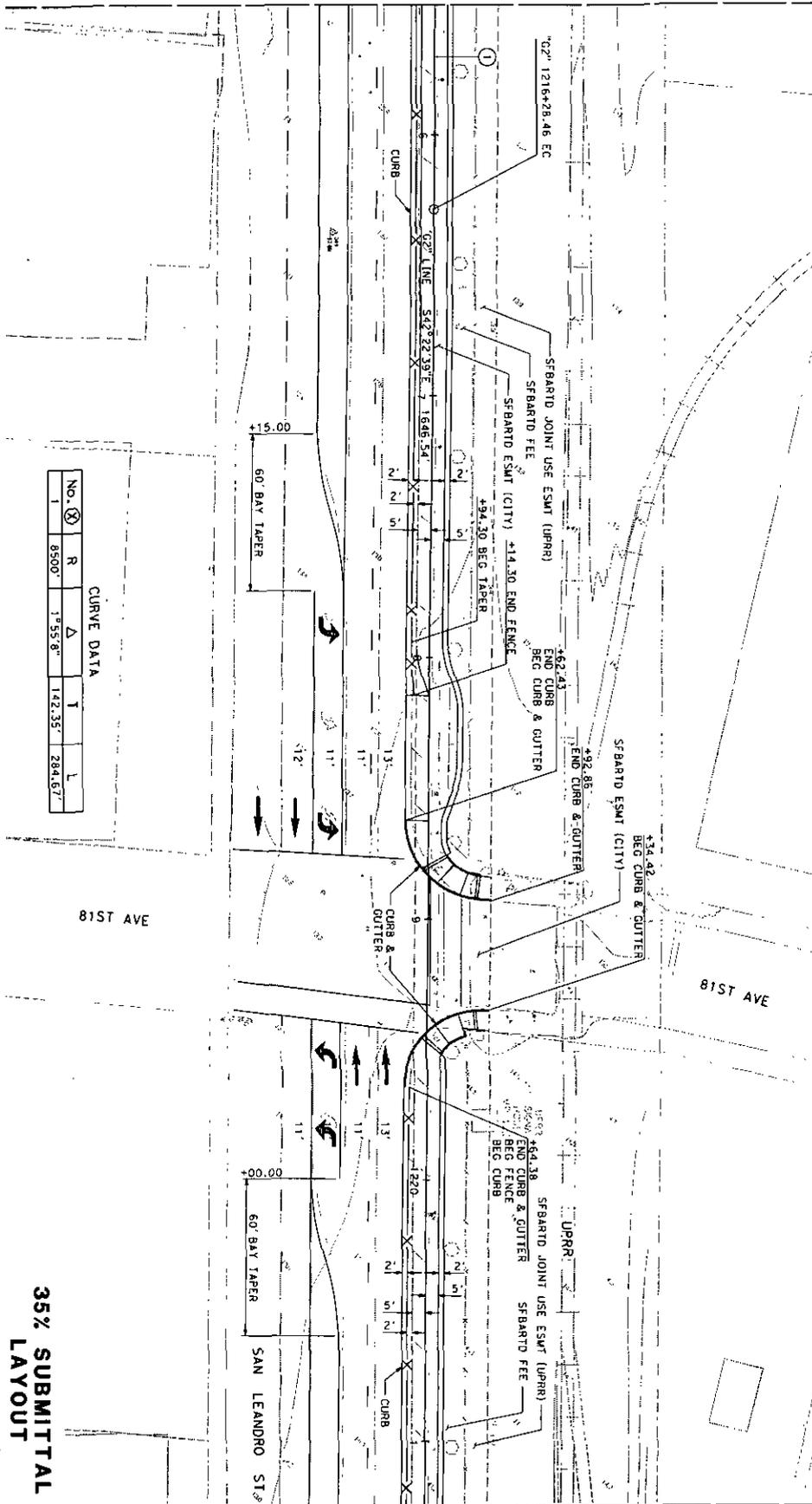
**East Bay Greenway
Location Map**
Not to Scale

— East Bay Greenway Alignment



BORDER LAST REVISED 3/1/2007

MATCH LINE (L-2)



CURVE DATA

| No. | Curve | R | Δ | T | L |
|-----|-------|-------|---------|---------|---------|
| 1 | R | 8500' | 1°55'8" | 142.35' | 284.67' |

81ST AVE

81ST AVE

SAN LEANDRO ST

35% SUBMITTAL LAYOUT

SCALE: 1" = 20'

L-3



| | | | | |
|---|--------|---------------|---------------|-------------|
| DIST | COUNTY | LOCATION CODE | POST MILEAGE | SHEET TOTAL |
| | | | TOTAL PROJECT | NO. SHEETS |
| REGISTERED CIVIL ENGINEER DATE | | | | |
| REGISTERED PROFESSIONAL ENGINEER DATE | | | | |
| PLANS APPROVAL DATE | | | | |
| I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA AND I HEREBY CERTIFY THAT I AM THE DESIGNER OF THE ABOVE PROJECT AND I AM NOT PROVIDING THESE PLANS TO ANY OTHER PARTY WITHOUT THE WRITTEN CONSENT OF THE CALIFORNIA DEPARTMENT OF TRANSPORTATION. | | | | |
| ALONSO CIC (ACTIN) 1333 BROADWAY, SUITE 300 OAKLAND, CA 94612 | | | | |

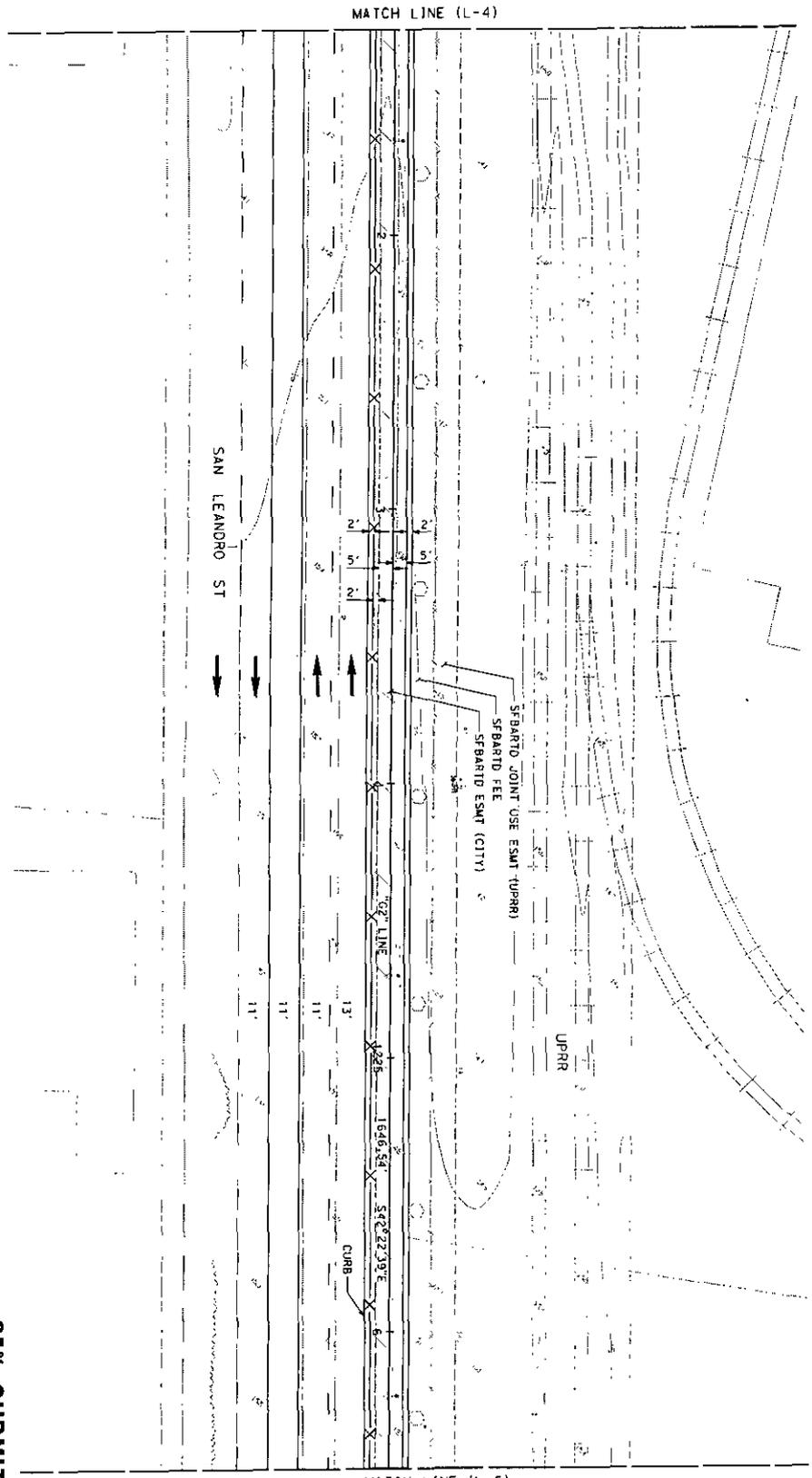
RELATIVE BORDER SCALE 15 IN INCHES

USE PRINTING PLOTTER FOR BEST RESULTS

CU 000000 EA 000000

BORBER LAST REVISED 3/1/2007

RELATIVE BORDER SCALE
0 1 2 3
JOB NAME: 03 AUG 08
JOB FILE: 03 AUG 08



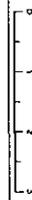
35% SUBMITTAL LAYOUT
SCALE: 1" = 20'
L-4

| | | | | |
|--------------------------------|--------|----------------|-----------|-----------|
| DATE | COUNTY | LOCATION CORN. | POST MILE | SHEET NO. |
| | | | | |
| REGISTERED CIVIL ENGINEER DATE | | | | |
| PLANS APPROVAL DATE | | | | |
| | | | | |

| | | | |
|--|-----------------------|------------------------|--------------|
| STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION | FUNCTIONAL SUPERVISOR | CALCULATED-DESIGNED BY | REVISED BY |
| Caltrans | | CHECKED BY | DATE REVISED |

BORDER LAST REVISION 3/1/2007

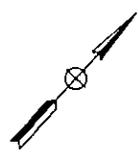
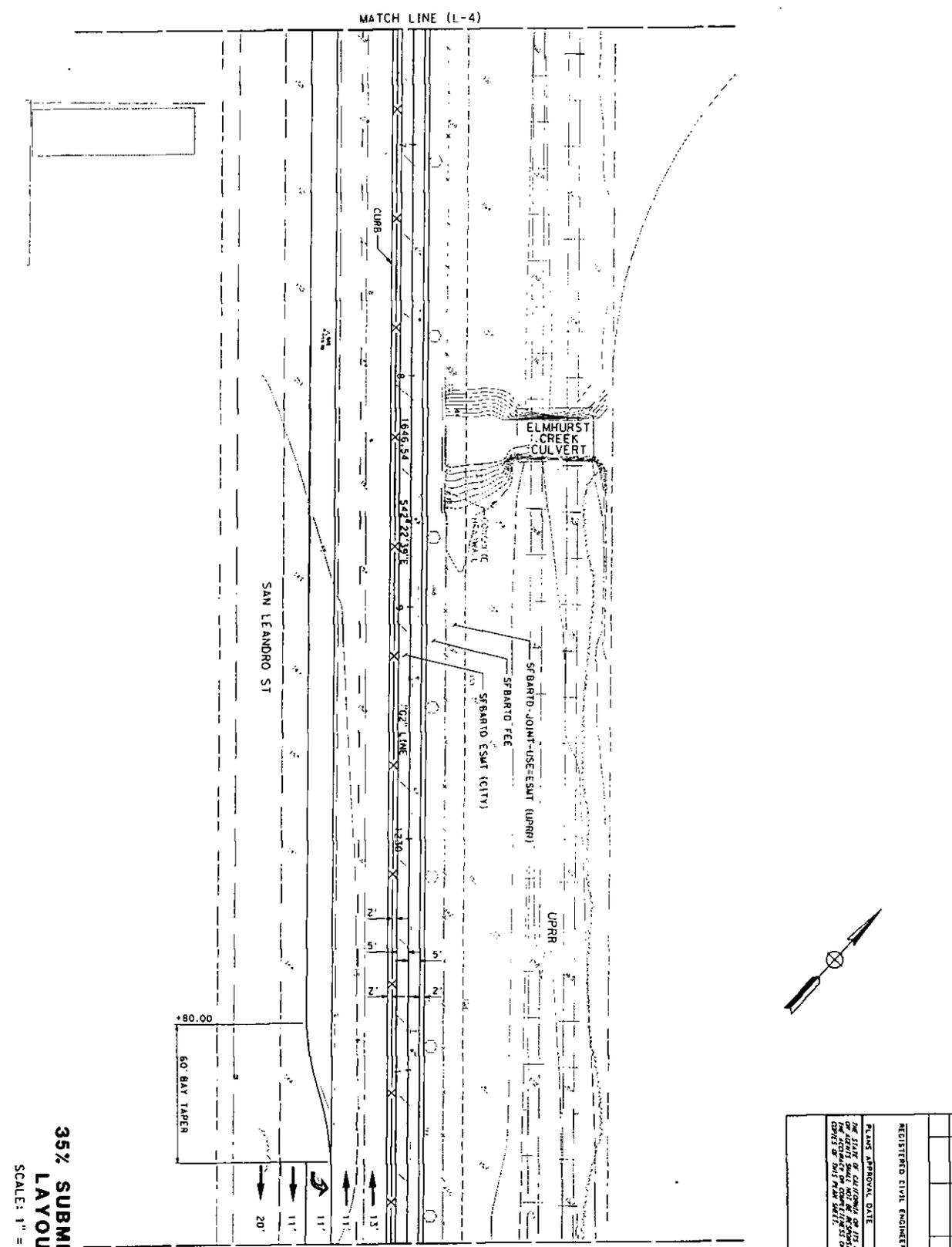
RELATIVE BORDER SCALE
1/8" IN INCHES



USING: * * * * *
DWG FILE: * * * * *

CU 00030

EA 00000



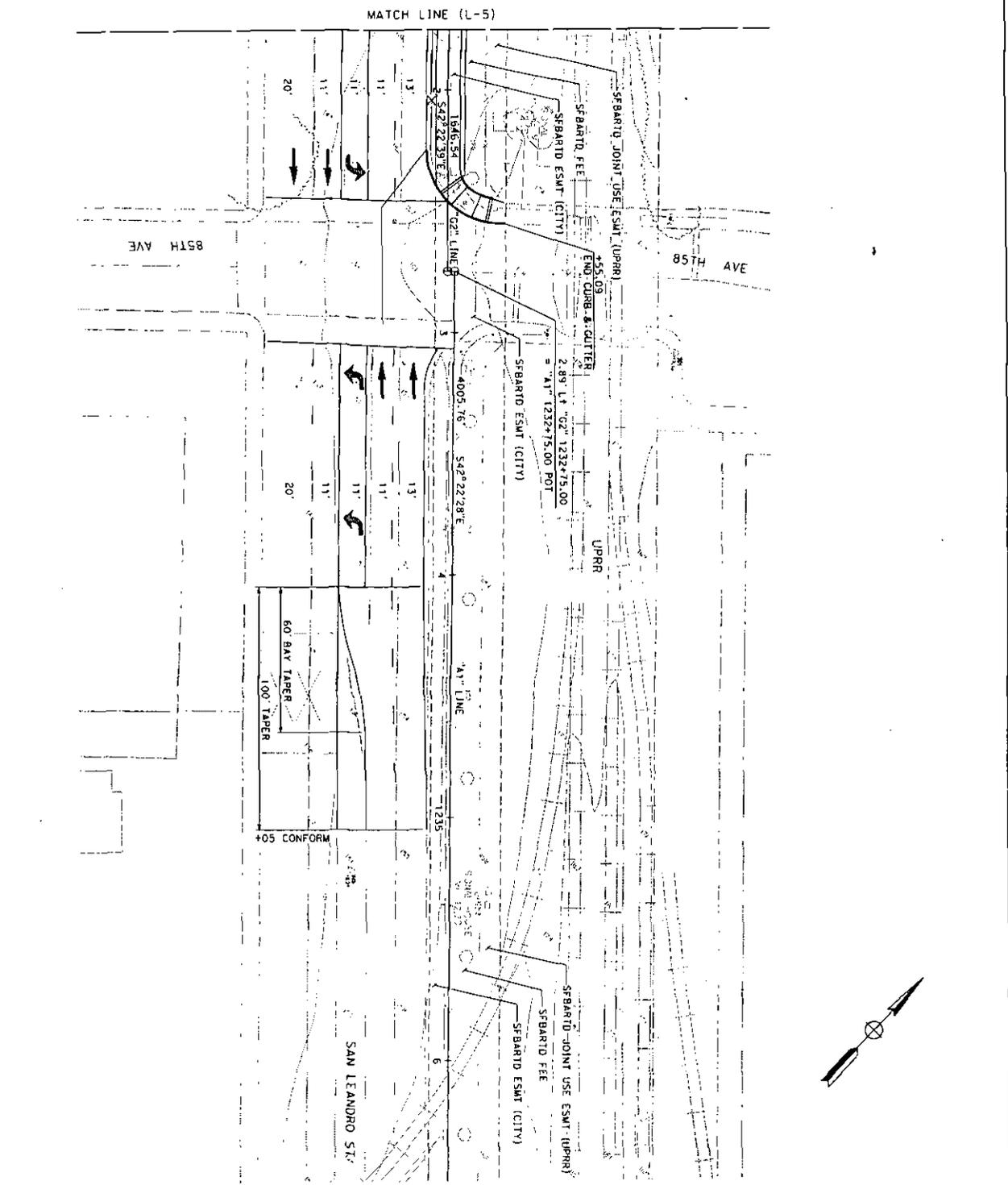
**35% SUBMITTAL
LAYOUT**
SCALE: 1" = 20'

| | | | |
|---|--------|---------------|-------------|
| DIST | COUNTY | LOCATION CODE | SHEET TOTAL |
| | | | |
| REGISTERED CIVIL ENGINEER DATE | | | |
| PLANS APPROVAL DATE | | | |
| | | | |
| The State of California, by its Registrar of Public Works, has approved the design of this project as shown on the sheets of this plan sheet. | | | |
| 4160000 CJC (ACT14) 1313 Broadway, Suite 500 Oakland, CA 94612 | | | |

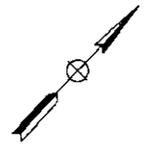
BORDER LAST REVISED 3/1/2007

RELATIVE BORDER SCALE
1/2" = 1' IN INCHES SCALE

CU 00000 EA 000000



35% SUBMITTAL LAYOUT
SCALE: 1" = 20'
L-6



| | | | | |
|--|--------|-------------|-----------------------------|--------------------|
| DATE | COUNTY | COUNTY CODE | POST MILESTOTAL PROJECT NO. | SHEET TOTAL SHEETS |
| REGISTERED CIVIL ENGINEER DATE | | | | |
| PLANS APPROVAL DATE | | | | |
| | | | | |
| Armando L. Garcia 1333 Broadway, Suite 300 Oakland, CA 94612 | | | | |

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 1:44

OAKLAND CITY COUNCIL

City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF OAKLAND, THE ALAMEDA COUNTY TRANSPORTATION COMMISSION (ACTC), AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART), REGARDING THE ADMINISTRATION, DESIGN, CONSTRUCTION, MAINTENANCE AND LIABILITY TERMS FOR THE DELIVERY OF THE EAST BAY REGIONAL PARKS DISTRICT'S REGIONAL TRAIL SEGMENT 7A (75TH AVENUE TO 85TH AVENUE UNDER THE BART TRACKS) OF URBAN ECOLOGY'S 2008 EAST BAY GREENWAY PLAN, AS IT FURTHERS THE CITY'S INTERESTS IN PROVIDING SAFE, ACCESSIBLE, AND MULTIPLE MODES OF ACCESS BETWEEN EAST OAKLAND NEIGHBORHOODS AND THE COLISEUM BART STATION

WHEREAS, The East Bay Greenway was originally proposed by Urban Ecology, a nonprofit community group that commissioned the regional trail study in conjunction with the Alameda County Transportation Commission in 2008; and

WHEREAS, Urban Ecology produced a Concept Plan for the entire 12-mile long regional path, consisting of Class I, II and III bicycle/pedestrian pathway segments, that will travel through Oakland, San Leandro, unincorporated Alameda County and Hayward; and

WHEREAS, with the support of Assembly Member Barbara Lee, the East Bay Regional Park District applied for a 2010 **TIGER II** federal stimulus grant for the construction of portions of the East Bay Greenway Concept Plan and other regional trails, and on April 4, 2011, signed a letter accepting the **TIGER II** grant for \$1.16 million for planning, design, and construction of Segment 7A of Urban Ecology's East Bay Greenway Concept Plan; and

WHEREAS, after acceptance of the **TIGER II** grant, EBRPD then began to work with ACTC to accept and administer the design and construction of the East Bay Greenway; and

WHEREAS, although ACTC is accepting the grant and responsibility for design and construction, the City and BART own in fee or through easements the land upon which this trail will be constructed, and

WHEREAS, the 1966 and 1970 BART/City agreements that were created to address maintenance of the landscape under the BART tracks do not address this new trail area; and

WHEREAS, the City has no funds for maintenance, and cannot accept any additional maintenance or liability for a new trail area that is not in our existing agreements with BART; and

WHEREAS, the City is entering into the attached Memorandum of Understanding (MOU) to set forth the understandings and agreements in connection with the maintenance and liability agreement for Segment 7A, under the premise that ACTC has agreed to retain contractors to construct and maintain Segment 7A, with the intent that these contractors and maintenance crews indemnify the City, ACTC, and BART from any liabilities or claims arising from their work on the Segment 7A path for a period of at least 20 years; and

WHEREAS, the new agreement for maintenance and liability must be approved by the City, BART, and ACTC, prior to June 30, 2012; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) have been satisfied through the actions Caltrans and ACTC, lead agencies for the East Bay Greenway; now, therefore be it

RESOLVED, that based on the determinations contained in the City Administrator's report Accompanying this resolution the city council of the City of Oakland finds as follows: that the Memorandum of Understanding between the City of Oakland, the Alameda County Transportation Commission, and the San Francisco Bay Area Rapid Transit District, regarding the administration, design, construction, maintenance and liability terms for the delivery of the East Bay Regional Parks District's regional trail segment 7a (75th avenue to 85th avenue under the BART tracks) of Urban Ecology's 2008 East Bay Greenway plan furthers the city's interests in providing safe, accessible, and multiple modes of access between East Oakland neighborhoods and the Coliseum BART station; and be it

FURTHER RESOLVED, that the Memorandum of Understanding supports the City's interests in making this improvement while ensuring that the City does not assume additional responsibilities for maintenance or liability; and be it

FURTHER RESOLVED, that the City Administrator, or her designee, is authorized on behalf of the City of Oakland to execute and submit all documents, Memoranda of Understanding, payment requests, and related actions to complete the project as needed; and be it

FURTHER RESOLVED, that should future Segments of the East Bay Greenway in Oakland become eligible for funding, design, and construction, the City Administrator, or her designee, is hereby authorized to negotiate similar terms for trail areas for the purposes described above.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California