

COOPERATIVE AGREEMENT

BETWEEN

THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

AND

THE CITY OF OAKLAND

RELATING TO

THE OAKLAND INTERNATIONAL AIRPORT CONNECTOR

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This Agreement (the "Agreement") is made and entered into this _____ day of _____, 2006 (the "Effective Date") between the San Francisco Bay Area Rapid Transit District ("BART" or the "District") a California rapid transit district, and the City of Oakland (the "City"), a charter city of the State of California (collectively referred to as the "Parties") for the Oakland International Airport Connector Project ("Project").

RECITALS

- A. On March 28, 2002, BART certified a Final Environmental Impact Report ("FEIR") and adopted the Project pursuant to the California Environmental Quality Act ("CEQA") within the City of Oakland as shown on the Project Map appended hereto as Exhibit A. The adopted Project is a three-mile extension of BART passenger services from the Coliseum Station to Oakland International Airport ("OIA"), as described in the Project Limit Map attached hereto as Exhibit A. The projected alignment consists of elevated guideway located primarily in the median of Hegenberger Road between the Coliseum Station and Doolittle Drive, where the guideway crosses under Doolittle and then runs at-grade along Airport Drive until elevating again, over Airport Drive, to reach the OIA terminal area. The Oakland International Airport Connector ("OAC") will be an Automated Guideway Transit ("AGT") system with a dedicated guideway and stations separate from the existing BART system. The adopted Project consists of AGT stations to be constructed at the Coliseum BART station and the OIA terminal area, with the ability to construct two intermediate stations between Edgewater Drive and Doolittle Drive.
- B. BART and the City acknowledge that it will be necessary to develop procedures to ensure careful and continued cooperation between the Parties, including the following: (1)

procedures for finalizing any necessary design and construction options relating to City Infrastructure; (2) procedures for protecting in place and/or relocating certain City-owned facilities; (3) procedures to avoid all unnecessary delays to either the contracting or construction process; (4) procedures for inspecting the construction, relocation, and replacement, as necessary, of City Infrastructure; (5) procedures for conveyance of property interest rights by City to BART; and (6) procedures for securing necessary permits and reimbursement to the City.

- C. BART and the City acknowledge that the work performed under this Agreement shall be in conformance with all applicable Federal and/or State grant conditions and all applicable laws.
- D. The Parties recognize and agree that this Agreement may not reasonably anticipate all aspects of the Project and changes thereto which may occur due to unforeseen circumstances. Accordingly, the Parties acknowledge their respective obligations to act reasonably and in good faith and to modify the terms hereof when necessary to accomplish their mutual goals.
- E. BART and the City agree that this Agreement applies solely to work performed under the Project.

AGREEMENT

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

SECTION 1: DEFINITIONS

The following definitions relate to terms found in the entire Agreement, including, without limitation, all Attachments and Exhibits hereto:

- A. **"Acceptance"** - The written acceptance by the City of BART work on City Infrastructure.
- B. **"ACTIA"** - As defined in Section 15:F. of this Agreement.
- C. **"AGT"** - As defined in Recital A. of this Agreement.
- D. **"BART"** - See "District."
- E. **"Best Management Practices"** - As defined in Section 5.J. of this Agreement.
- F. **"Betterment"** - The replacement of any City Infrastructure with (1) infrastructure of greater capacity, durability, or efficiency than that replaced, unless (2) such replacement is required by the Project.
- G. **"CCIP"** - As defined in Section 10:A. of this Agreement.
- H. **"CCTV"** - Closed circuit television.
- I. **"CEQA"** - The California Environmental Quality Act, California Public Resources Code Section 2100 et seq.
- J. **"City"** - The City of Oakland, its officers, employees, agents, consultants and contractors.
- K. **"City Authorized Utilities"** - Utilities owned by third parties but supported by, encased in, or otherwise attached to City Infrastructure from which the City obtains revenue.
- L. **"City Infrastructure"** - City streets (including medians, curbs, gutters and sidewalks), traffic control devices, storm drains, sanitary sewers, fire hydrants, electroliers, video detectors, traffic loops, palm trees, landscaping, irrigation systems, telecommunications equipment, cable television system, signage, banner structures, roadway lighting and other public facilities and appurtenances owned by the City within the Public Right-of-Way.

- M. **"City Standards and Specifications"** - (1) Standard Specifications for Public Works Construction, current edition, as adopted by the City at the time of advertisement of the Project (the "Green Book"); (2) City of Oakland Public Works Agency Special Provisions for the Hegenberger Corridor, as adopted by the City at the time of advertisement of the Project; and (3) City of Oakland, Standard Details for Public Works Construction, current edition, as adopted by the City at the time of advertisement of the Project.
- N. **"Contract Documents"** - The executed design-build construction contract; contract drawings; contract book; design criteria; contract bonds; addenda; change orders; those portions of the Standard Specifications referenced in the contract specifications; City Standards and Specifications as applicable; and additional documents incorporated by express reference into the Contract Documents.
- O. **"Construction Plans"** - The drawings, documents, plans, specifications, maps, and related construction documents for the construction of the Project developed by BART or BART's contractor, and supplemental drawings approved by BART, which show the locations, character, dimensions, and details of the Project work to be performed by BART.
- P. **"District" or "BART"** - The San Francisco Bay Area Rapid Transit District, its officers, directors, employees, agents, consultants and contractors.
- Q. **"DTSC"** - As defined in Section 5:O. of this Agreement.
- R. **"Effective Date"** - As set forth in the caption to this Agreement.
- S. **"Environmental Laws"** - All laws, regulations, orders and decrees of any Federal, State or local government authority or court concerning environmental compliance including, but not limited to: (1) air pollution and emission of air

contaminants, including without limitation the regulations of the California Air Resources Board and the Bay Area Air Quality Management District; (2) management of waste water and groundwater, including without limitation the requirements of the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board and local sanitary districts; and (3) management and disposal of solid and hazardous wastes generated or discovered in connection with the work on the Project, including without limitation Title 22 of the California Code of Regulations, Title 40 of the Code of Federal Regulations and the requirements of the California Integrated Waste Management Board.

- T. "FEIR" - The Final Environmental Impact Report for the Project certified by BART on March 28, 2002.
- U. "FTA" - The United States Department of Transportation, Federal Transit Administration.
- V. "Hazardous Materials" - Those materials defined by applicable State or Federal law as "hazardous material", "hazardous substances", "reproductive toxins" or "toxic materials or substances", including without limitation those defined in any of the following: having a hazardous waste concentration exceeding screening levels established by the Regional Water Quality Control Board, San Francisco Bay Region, the Department of Toxic Substances Control, or the United States Environmental Protection Agency Region 9; or exceeding regional background concentrations of greater than the residential screening level; containing a hazardous waste at a level that would require additional personnel protective equipment, medical monitoring, or training in excess of two hours to comply with CalOSHA requirements; or meeting the definition of a hazardous waste

contained in (1) Section 25117 of the California Health and Safety Code and Title 22 of the California Code of Regulations; (2) the regulations adopted pursuant to such statutes at any time before the date of this Agreement and during the course of Project construction, and (3) any statute enacted after the date of this Agreement during Project construction and any regulation adopted after the date of this Agreement during Project construction pursuant to any such statute, relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances.

- W. **"Mediator"** - As defined in Section 12:B.1. of this Agreement.
- X. **"MTC - PCI Index"** - As defined in Section 4:D.2. of this Agreement.
- Y. **"Notice of Mediation"** - As defined in Section 12:B.1. of this Agreement.
- Z. **"NPDES"** - As defined in Section 5:J. of this Agreement.
- AA. **"OAC"** - As defined in Recital A. of this Agreement.
- BB. **"OIA"** - As defined in Recital A. of this Agreement.
- CC. **"OMC"** - As defined in Section 3:B. of this Agreement.
- DD. **"Parties"** - As set forth in the caption to this Agreement.
- EE. **"Pre-Existing Contamination"** - As defined in Section 5:O. of this Agreement.
- FF. **"Project"** - As described in Recital A. of this Agreement.
- GG. **"Public Right of Way"** - That portion of the real property owned by or dedicated to the City for public use.
- HH. **"Rearrangement"** - The relocation, replacement, modification, shoring or removal of facilities.

- II. "Request for Proposal" or "RFP" - The invitation to bid, instructions to bidders, forms for the submittal of proposals, drawings, performance criteria, general conditions and supplementary conditions, and all other documents provided to prospective bidders for construction of the Project.
- JJ. "Response Action" - As defined in Section 5:O. of this Agreement.
- KK. "State" - The State of California.
- LL. "SWPPP" - As defined in Section 5:J. of this Agreement.

SECTION 2: PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to define the Parties' respective rights and obligations and ensure cooperation between BART and the City in connection with construction of the Project.

SECTION 3: CITY REVIEW OF PROJECT PLANS AND SPECIFICATIONS

BART will administer the design, construction, and operation of the Project and employ a design-build procurement project delivery method, whereby BART will issue design criteria and preliminary design drawings for the Project, and the final plans, drawings, documents, construction, and testing will be completed by BART's design-build contractor.

A. Review of Request for Proposals

Prior to issuing the Request for Proposals ("RFPs") for the Project, BART will provide to City the Request for Proposal documents for its review and comments.

The City will provide its comments, in writing, within 15 working days of receiving the final draft of the RFP. Should BART not incorporate all or any portion of the City's comments into the RFP, BART shall provide the City with written reasons as to why the comments are not being included. BART will

secure the City's written concurrence for any changes related to the City's infrastructure that are not included as requested.

B. City Review of Construction Plans

Prior to construction of any phase or portion of the Project within the City right-of-way, BART will provide the City for review and approval, which approval shall not unreasonably be conditioned, delayed or withheld, 9 sets of proposed Construction Plans, as set forth below, for all work requiring Rearrangement of City Infrastructure. The Construction Plans will include drawings of elements of the Project as they relate to City Infrastructure, together with drawings showing any necessary relocations of City Infrastructure (including but not limited to facilities, utilities, landscaping and appurtenances). City review and approval of the Construction Plans shall be limited to elements of the Project directly affecting City Infrastructure and/or appurtenances owned by or which will be conveyed to the City pursuant to the terms and conditions of this Agreement. Review and approval of the Construction Plans for Rearrangement of City Infrastructure will be based upon applicable City design standards, design guidelines, standard details, and the Oakland Municipal Code ("OMC"), including but not limited to OMC Chapter 12.12 of the Standard Specifications for Public Works Construction, and the Standard Details for Public Works Construction current at the time the construction contract for the Project is advertised. City review and approval of Construction Plans will also include fire life safety elements as they relate to the stations, guideway, and maintenance facility.

The City shall respond in writing to BART with approval or disapproval of the Construction Plans, and with comments, no later than 15 working days from the

date of City's receipt of such Construction Plans. On an exception basis only, if the City requires additional time to approve or disapprove the plans; the City shall notify BART in writing no later than 10 working days from the date that the plans were received from BART. In no case will the City review exceed 20 working days. In the event that the City does not provide said written approval or disapproval with written comments within the prescribed time, it will be deemed to have approved the Construction Plans in the form delivered to the City.

BART will provide ongoing and timely notice of progress to the City on the design of elements subject to City review, will make every effort to bring to the City's attention any construction details that may not meet current City standards, design guidelines, or standard details, and will provide opportunities to include City staff in discussions regarding public infrastructure as appropriate.

C. Permits

City agrees to issue BART an agency permit for the Project. This agency permit consolidates the City permitting requirements for the Project. BART understands that the agency permit for the project will not authorize BART to proceed with work that affects City Infrastructure. Therefore, during the progressive phases of the Project, BART shall submit Construction Plans to the City that reflect Rearrangement of City Infrastructure, which will reference the agency permit for the Project. Upon City's completing the Construction Plan review process outlined in Section 3:B., above, BART will be authorized to commence construction that affects City Infrastructure.

BART and the City acknowledge and agree that the City shall perform RFP and Construction Plan review, construction inspection, construction services, fire review and inspection, real estate review, and contract compliance work related to City Infrastructure. BART shall reimburse the City for all reasonable costs incurred by the City in its review of construction plans and inspection of the field work as described in Section 3:E., below.

D. Construction Management and Inspection

BART shall be responsible for all construction management, inspection, and testing necessary to ensure that all construction affecting City Infrastructure is performed in accordance with City Standards and Specifications. City shall provide inspection of construction affecting City Infrastructure under the agency permit. To allow for City inspection, BART shall provide the City at least 48 hours notice prior to commencing construction affecting City Infrastructure. BART shall provide access to the Project at all times as necessary for the City to perform its inspection and/or testing of work affecting City Infrastructure. City will coordinate its inspection and/or testing with BART. If BART requests City inspection for work affecting City Infrastructure and City does not perform inspection within 48 hours, BART will be authorized to inspect and certify any construction affecting City Infrastructure without requiring any further inspection by City. When BART performs inspection of work on or affecting City Infrastructure, BART shall provide test results and construction documentation to the City to ensure compliance with City Standards and Specifications and to allow for timely acceptance thereof.

The City has, and hereby retains, the right to exercise full control over the employment, compensation and discharge of its personnel assisting in the performance of said testing and inspection services. The City agrees to be solely responsible for all matters relating to payment of its employees or agents and all others assisting City inspectors in the performance of said testing and inspection services. BART shall reimburse the City for all costs incurred by the City as part of the construction management, inspection, and testing as described in Section 3:E., below.

E. Reimbursement for City Review and Construction Inspection and Testing Costs

BART will reimburse the City for its reasonable costs incurred in review of the RFP documents, Construction Plans, traffic control plans, right of way engineering, performance of construction inspections and testing, and all other associated costs, including, but not limited to, costs for services provided prior to execution of this Agreement currently estimated to be \$21,109.49. Said costs shall be based on time and material, or the reasonable costs paid to a consultant selected by the City to perform such review or inspection work. The City will use its best efforts to have such works performed in an economical fashion, consistent with good public works construction practice. City will prepare and submit invoices to BART for payment. Prior to payment, the City and BART shall jointly review the invoices submitted by the City. The City's cost estimate for review of the RFP, Construction Plans, traffic control plans, right of way engineering and performance of inspections and testing at 2005 rates are shown in Exhibit B. City shall provide to BART a written notification when the City costs incurred exceed 75% of the budget. Any change in scope or amounts to be

included in the City costs, which would cause the amount as shown in Exhibit B to be exceeded must be negotiated in advance.

The City through its redevelopment agency will allocate an amount not to exceed \$725,000 from Coliseum Tax Allocation Bonds, Series 2003, issued January 2003 to support the City Permit, engineering review, construction monitoring and administrative costs associated with the construction of the Project. Said amount shall be based on time and material, or the reasonable costs paid to a consultant selected by the City to perform such review or inspect the work. The City will use its best efforts to have such work performed in an economical fashion, consistent with good public works construction practice. The City's cost estimate for engineering review, performance of the inspections and testing at 2005 rates are shown in Exhibit B.

Periodic payments under this Agreement shall meet all applicable Federal and State funding guidelines, and shall be subject to audit pursuant to the provisions of Section 15, below.

SECTION 4: CITY INFRASTRUCTURE

The Parties acknowledge that the construction of the Project may result in damage, destruction, or relocation of City Infrastructure. City Infrastructure that could potentially be impacted by the Project includes but is not limited to roadway improvements, paving, curb, gutter, medians, sidewalks, pavement markings, lane striping, traffic control signs, traffic signals, traffic controllers, video detectors, loop detectors, interconnecting conduits, telecommunications equipment, roadway lighting and conduits, storm drain lines, banner signs and associated lighting, and landscaping.

A. Repair and Reconstruction of City Infrastructure

BART shall be responsible for repair, relocation, reconstruction or replacement as appropriate under the terms set forth in this Agreement of City Infrastructure determined by BART and the City to have been damaged or destroyed by BART during construction of the Project, to a condition at least equal to that which existed prior to construction, subject to the limitations of Section 4:F., below. Said repair, relocation, reconstruction, or replacement shall be performed in accordance with City Standards and Specifications. BART will repair, reconstruct, or replace City Infrastructure to its pre-construction condition as soon as practicable and subject to City's Acceptance of such repair, relocation, reconstruction or replacement of City Infrastructure. In the event that any construction-related damage poses a threat to public health, safety, or welfare, BART will repair such damage within 24 hours after written notice by the City or within a mutually agreed time period. Absence of the City's notification does not release BART from the correction or repair responsibility. If BART fails diligently to repair City Infrastructure damaged by the Project, the City may complete the work, and reasonable costs incurred by City will be reimbursed by BART.

B. City Infrastructure Pre-Construction Survey Procedures

Prior to construction, BART, in consultation with the City, will perform a pre-construction survey of the City Infrastructure anticipated to be affected by construction of the Project. Where appropriate, surveys may include photographs, videotape, lighting surveys and CCTV inspection of underground storm drain and sewer lines to assess the condition of City Infrastructure prior to construction of

the Project. Where pile driving or excavation during construction of the Project will be within ten feet of City storm drain or sewer lines, BART will perform CCTV inspection of such lines. The methods for CCTV inspection will be in accordance with the City Standards and Specification. BART and the City shall agree to the conditions established in the pre-construction survey prior to commencement of construction, which agreement shall not be unreasonably conditioned, delayed or withheld by either.

C. Acceptance of City Infrastructure

Upon completion by BART of repair, relocation, reconstruction or replacement of any City Infrastructure and before such time as the City becomes responsible for operation of such City Infrastructure; BART will notify the City that its work on said City Infrastructure has been completed. With BART's notice of completion BART will provide any certifications necessary in accordance with Section 3:D., below, and where any pre-construction CCTV surveys were performed on storm drain and sewer lines, BART shall provide post-construction CCTV surveys of the same utilities using methods in accordance with City Standards and Specifications. After notification from BART, the City will inspect such completed City Infrastructure or any useable portion thereof within 5 working days and in accordance with the City's usual and customary practices for accepting such Infrastructure. If, after inspection and any necessary post-construction survey by the City, it is determined that the work, including all work performed pursuant to a change order, has been performed in accordance with the City Standards and Specifications, the City shall accept such work. If, after inspection by the City, it is determined that the work has not been so performed,

the City shall notify BART of any claimed deficiency within 5 working days of such determination, BART will correct the work prior to City's Acceptance. Except for warranty work and landscaping maintenance responsibilities, the City will become responsible for these facilities upon Acceptance thereof. If the Parties cannot agree on the condition of the City Infrastructure or the responsibility for damage to City Infrastructure during the post-construction survey, such issues shall be resolved in accordance with the mediation process described in Section 12., below.

D. Construction Impacts to City Streets

The locations of certain elements of the Project are expected to require the use of certain City streets for construction operations. The City is willing to allow use of the City's streets for hauling and staging operations during construction of the Project, provided that, in the event City's streets are damaged during such operations, BART agrees (a) to repair construction-related damage in order to maintain the serviceability of City streets in accordance with City Standards and Specifications as set forth in Section D.1. below, and (b) if required by the terms set forth in Exhibit C to reimburse City for decline in the useful life of City streets due to excess wear and tear as a result of construction activities, as set forth in Sections D.2., D.3. and D.4. below.

When parking meters are located within staging areas, BART will pay the City the equivalent cost of an obstruction permit for lost revenue.

1. Repair of Construction Damage to City Streets. Correction of any damage to City streets shall commence as soon as practicable after written notice to BART by the City of any claim for damage. Absence of the City's notification

does not release BART from the correction and repair responsibility. Repairs to City streets shall be performed in accordance with City Standards and Specifications.

2. Pre-Construction Pavement Survey Procedures. Prior to commencement of construction of the Project, BART and the City shall identify all City streets potentially affected by construction traffic for the Project including but not limited to: Hegenberger Road from Baldwin Street to Pardee; San Leandro Street from Hegenberger Road Overcrossing to 73rd Avenue; Airport Drive from Doolittle Drive to Hegenberger Road; and Edgewater Drive at Hegenberger Road. After the streets have been identified, BART, in consultation with the City, shall perform a pavement condition survey in accordance with the November 2003 Metropolitan Transportation Commission Pavement Management System Users Guide (the "MTC PCI Index"). Detailed procedures for pavement surveys are described in Exhibit C. The purpose of the pre-construction pavement survey is to determine the condition of the pavement and sub-base sections and their remaining useful life. BART and the City shall agree to the conditions established in the pre-construction pavement survey for each phase or portion of the Project prior to commencement of construction of each such phase or portion, which agreement by either shall not be unreasonably conditioned, delayed or withheld.

3. Post-Construction Pavement Survey Procedures. Upon completion of construction of the Project, BART, in consultation with the City, shall perform a pavement condition survey of those streets actually used by BART during construction, in accordance with the MTC PCI Index. BART and the City shall

agree to the conditions established in the post-construction pavement survey for each phase or portion of the Project, which agreement by either shall not be unreasonably conditioned, delayed or withheld.

4. Reimbursement for Excess Wear and Tear to City Streets. BART and the City agree that, in accordance with the MTC PCI Index, BART will pay the City the dollar amount reflecting the decline in the MTC PCI Index directly attributable to excess wear and tear to City streets as a result of construction of the Project. The methodology for determining any such decline is set forth in Exhibit C. Payment shall be made based on current construction costs in effect as of the date of completion of BART's post construction survey within 30 days of determination of the cost of decline.

5. Excavations within City Streets. Where excavations are required within City streets BART shall comply with the provisions of the Contract Documents and Oakland Municipal Code Section 12.12.

6. Restoration of Hegenberger Road. Upon completion of construction activities that will impact paving and striping on Hegenberger Road, BART will slurry seal the full roadway section as shown on Exhibit D, followed by final striping from Airport/Pardee Drive to Baldwin Drive, where Hegenberger Road is affected by Project construction (i.e. foundation excavations, utility relocations, or lane striping modifications) in accordance with City Standards and Specifications.

E. Miscellaneous City Infrastructure

1. Lighting Levels. Prior to construction BART will perform a survey to identify the existing lighting levels where street lighting will be relocated or rearranged by the Project. Upon completion of the Project BART will restore roadway lighting

levels impacted by the Project to levels that existed prior to advertisement of the Project and provide lighting level calculations if required by the City.

2. Sign Relocation. BART will relocate and reinstall five of the airport gateway banner structures and associated lighting that are currently located in the median of Hegenberger Road to an area contiguous with the Project improvements as identified on Exhibit A. BART will perform engineering and construction associated with the relocation of these banner structures. City will be responsible for all administrative approvals and/or right-of-way agreements necessary for the relocation of the banner structures. BART will include in its design-build construction contract a bid item for the relocation of the banner signs based on the per-sign unit price. If City is unable to obtain administrative approvals and/or right-of-way agreements for relocation of banner signs by a date mutually agreed between BART and City, BART will deliver the banner signs to a location determined by City. BART will reimburse City with the remaining amount from the bid item for City to reinstall the banner signs at a later date. BART shall reimburse the City for all costs associated with the approvals and agreements from outside agencies required to relocate the signs, in an amount not to exceed \$2,000.00.

3. Landscaping Maintenance. After acceptance of landscaping BART shall maintain landscaping replaced as a result of the Project in accordance with City Standards and Specifications for a period of three years. If BART relocates any trees, BART shall maintain the trees for three years in accordance with City Standards and Specifications used for the Hegenberger Gateway Project (City Project C82640) including tree inspections and guarantees. Upon completion of

the maintenance period and the City's acceptance of the landscaping, which acceptance shall not be unreasonably conditioned, delayed or withheld, City will assume control of landscaping and any relocated trees.

F. Betterments

If the City and BART determine that any City Infrastructure should be improved beyond that which is required by the design-build construction contract, such work shall constitute a Betterment. The City shall reimburse or credit BART for the value of any such work or Betterment. In such event, BART and the City shall agree on the nature and extent of any Betterment, including related plans and specifications, and on the amount of credit due to BART prior to commencement of construction of any such Betterment. Credit for salvage value of any facilities which were either removed or retained by the City during repair, relocation, reconstruction or replacement shall be based on the resale value of such facilities, less selling expenses. The City shall reimburse BART for all Betterments within 30 working days from the date a BART invoice is submitted to the City. Notwithstanding the terms set forth in this Section F., BART and the City may agree in writing, with supporting documentation, on a case-by-case basis that, where construction of the Project will preclude future, economical access to City utilities, inclusion of methods to avoid such future detriment shall not be construed to be a Betterment.

G. As-Built Drawings

Upon final completion of any and all work by BART on City Infrastructure, and Acceptance by the City of such work, BART shall submit to the City, within 45 working days from the end of completion of all City Infrastructure, one set of as-

built drawings (including parts, operations, and maintenance manuals), and an electronic copy of AutoCAD file (current version of AutoCAD used by the City at time of acceptance) showing work performed on City Infrastructure. Such as-built drawings shall be in such sufficient detail, as the City customarily requires of the City's own public works contractors.

H. Coordination with City-Planned Improvements

In order to coordinate construction of the Project with construction of City-planned improvements, the City has provided BART with a copy of the "City of Oakland, Capital Improvement Program FY 2001-06". If the City's annual Capital Improvement Program is modified, City shall notify BART and provide a copy of the document reflecting revisions to the "City of Oakland, Capital Improvement Program FY 2001-06" or the City Capital Projects.

BART and the City agree to coordinate construction activities of the construction projects referenced above to allow for the successful completion of these projects.

I. City Authorized Utilities

In the event that BART activities associated with the Project should cause a City Authorized Utility to be taken out of service, which removal from service results in loss of revenue to the City, BART shall reimburse City for the actual value of revenue lost. City shall provide documentation to validate its claims of loss of revenue.

SECTION 5: GENERAL COMMITMENTS

A. Project Selection Committee

The Project selection committee will evaluate the proposals received in response to the RFPs for the Project. One member from the City shall be included as a non-voting advisor. The selection committee shall oversee the selection of the design/build contractor. The City's participation in the selection process will include participation in discussions with the selection committee voting members, review of proposals, and attendance at meetings, as required.

B. City Input

BART will consider the City's input during all design phases of the Project with regard to integration of architectural and engineering elements. BART will continue to meet regularly with the City to ensure that the design is an attractive addition to the Hegenberger Road Gateway and consistent with Hegenberger Road Gateway Project (City Project C82640). However, BART's decision on all design and engineering elements that do not materially affect City Infrastructure shall be final, provided these decisions comply with applicable provisions of the Municipal Code, the Standard Specifications for Public Works Construction, and the Standard Details for Public Works Construction current at the time the construction contract for the Project is advertised.

C. City Furnishings and Landscaping

BART shall submit to the City, for review and approval by City, plans and specifications for proposed City furnishings and landscaping.

1. Furnishings (including signage, light standards, and trash receptacles) shall be substantively similar to the same features included in the Hegenberger Road Gateway Project in terms of design style, materials and colors; and

2. The landscaping plant palette shall be substantively similar to the landscaping plant palette for Hegenberger Road Gateway Project and appropriate to site-specific conditions.

The City shall also continue to meet regularly with BART to ensure that the design is consistent with the design guidelines established by BART.

D. Joint Development

BART and City propose to discuss potential mutually beneficial uses of intermediate station area properties. Any subsequent joint development will be the subject of a separate agreement.

E. Elevated Guideway

City will be responsible for maintenance of surface areas and for any City Infrastructure located under the elevated guideway or within the surface areas above any BART depressed guideway, except for landscaping as set forth in Section 4.E.3., above. Damage to City infrastructure or BART facilities or any non-routine maintenance resulting from, or caused by, construction or maintenance by the other party, shall be repaired by the responsible party. BART and City both agree to notify the other party five working days in advance (excluding emergency repairs) on any non-routine maintenance, repair, or work that the other party will be performing within the right of way described above.

F. Fire Life Safety Issues and Emergency Procedures

1. BART and the City will work to reduce impacts of the Project on local police, fire, and emergency services within the City. BART shall (1) submit Construction Plans for review and approval by the City of Oakland Fire Department for fire life safety issues in accordance with Section 3:B., above; (2) submit changes to approved

Construction Plans that affect fire life safety issues; (3) obtain sign-off by the Oakland Fire Department on the Project prior to opening for revenue operation; and (4) prior to commencement of construction of the Project, provide the City with an emergency response plan outlining BART's general procedures for responding to an emergency on the Project construction site. Project specific fire life safety issues as identified by the City of Oakland Fire Department shall be implemented in accordance with the outline provided in BART's letter of December 10, 2003 to the City of Oakland Fire Marshal, attached hereto as Exhibit E.

2. BART shall provide a list of BART personnel to be contacted in the event of an emergency. A BART representative will be available for bona fide emergencies 24 hours a day, 7 days a week.

G. Rescue Equipment

BART shall provide the City with the equipment and training necessary to provide effective rescue response for the Project. This equipment will be subject to a separate agreement between the parties, which will be entered into prior to execution of the design-build construction contract.

H. Graffiti and Trash

During Project construction BART shall remove all graffiti and trash from the Project construction area in a timely manner. In addition, BART shall remove all spray paint markings from streets and sidewalks used for construction from City Infrastructure prior to acceptance of the Project by the City.

I. Noise Standards

BART and its contractors shall comply with BART's noise standards for construction contracts. All noise limitations set forth therein for "daytime" (7:00 a.m. to 7:00 p.m.)

and “nighttime” (7:00 p.m. to 7:00 a.m.) construction activities shall be strictly adhered to.

J. Stormwater Hydrology and Water Quality; Best Management Practices

Specific mitigation measures for implementation by BART to reduce the impact of stormwater discharge will be defined by the requirements of the National Pollution Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges associated with Construction Activity, issued by the State Water Resources Control Board. Compliance is required to meet the requirements of the NPDES permit, including development of a Stormwater Pollution Prevention Plan (“SWPPP”). BART will provide the City with a copy of the SWPPP for review and comment. BART will coordinate the design of any post-construction Best Management Practices for management of stormwater discharges with the City to meet the intent of the Alameda County NPDES Municipal Stormwater permit during Project operation.

K. Site Security

During construction of the Project, BART will be responsible for maintaining security of all BART construction areas, including off-site construction staging and storage areas, within the City in consultation with the Oakland Police Department and Coliseum Airport Area Police, as necessary.

L. Work Hours

Normal work hours for on-site construction work shall be between 7:00 a.m. and 7:00 p.m., Monday through Saturday except for City-designated limited operations streets, where hours specified by the City for work in those streets will apply. In the event that on-site construction work needs to be performed outside of the above-specified normal work hours, BART will contact the City 72 hours in advance for approval of such work,

which approval shall be promptly given. BART shall observe the City's provisions within the City Standards and Specifications for restricted streets during the holiday season.

M. Liaison

BART shall provide a community relations liaison for the Project who will serve as the information point of contact. The liaison will inform the public about the status of the Project, using a variety of methods and techniques. Outreach to the community will include, but not be limited to, Oakland International Airport; local agencies; regional city staff; the media; and neighboring residential, commercial, and industrial neighbors, as well as to the broader general public regionally. BART shall be responsible for notifying all affected businesses and residences within 300 feet of the property involved prior to the commencement of construction activities.

N. Project Information Signage and Telephone

Project informational signage will be posted at key areas along the construction site as appropriate and as determined by BART, with appropriate input by the City. BART will operate a Project information telephone for questions, concerns, or complaints during normal business hours with access for emergencies 24 hours per day, 7 days per week.

O. Environmental Remediation

BART shall, at its sole expense, as and if applicable, promptly undertake and complete any and all investigation, treatment, removal, reuse, handling, transport and/or other remediation and monitoring (collectively "Response Action"), to the extent that Response Action to complete Project work authorized by this Agreement is required by Environmental Laws, (1) of any Hazardous Materials released by BART within the Project area, or (2) to the extent of any increase in the scope, boundaries or cost of

Response Action for Hazardous Materials present within the Project area prior to the date of this Agreement ("Pre-Existing Contamination") as a result of the acts or omissions of BART prior to or during the construction of the Project. BART shall perform all such Response Action in compliance with all applicable Environmental Laws and to the satisfaction of the Department of Toxic Substances Control ("DTSC") or as required by applicable regulatory agencies. BART will provide City with a schedule, testing data, workplan for Hazardous Materials remediation or removal operations or other information related to remediation that are reasonably requested by the City in a timely manner.

P. Meet and Confer

Except as provided in Sections 5:O. and 5:T. of this Agreement, if discovery of any Hazardous Materials within or adjacent to the Project area requires Response Action, BART and the City shall meet and confer on an appropriate course of action, including determining their respective responsibilities for required actions and associated costs.

Q. Notice to City

BART shall promptly give notice to City of any required Response Action and, to the extent required by law, to the applicable government agency, of its investigation. BART shall provide City with copies of any written reports of such investigation.

R. Cooperation Regarding Response Action

City and BART shall cooperate with one another and the applicable government agencies in connection with such Response Action to assist the party responsible for Response Action hereunder and/or the agency in identifying and pursuing third parties who may be liable for any Hazardous Materials contamination necessitating remediation by BART or City pursuant to this Agreement.

S. Hazardous Materials Information

City shall provide to BART all information, reports or knowledge City has, including all information, reports, or knowledge City's consultants have provided to City, with respect to any Hazardous Materials that may exist in, under or about the Project area.

T. City Action

City shall, at its sole expense, as and if applicable, promptly undertake and complete any and all Response Action within the Project area to the extent that Response Action is required by Environmental Laws for any Hazardous Materials hereinafter released in the area of the Project as a result of direct action of the City, its employees, consultants or contractors. City shall perform all such Response Action in compliance with all applicable Environmental Laws and to the satisfaction of the DTSC or as required by applicable regulatory agencies. City will provide BART with a schedule, testing data, workplan for Hazardous Materials remediation or removal operations or other information related to remediation that are reasonably requested by BART in a timely manner.

U. Dust Abatement Program

BART shall develop and maintain a dust abatement program in accordance with the requirements of the Bay Area Air Quality Management District and the Contract Documents.

V. Right-of-Way

At the request of BART, the City agrees to convey to BART, for such consideration as the City Administrator or her designee determines is in the best interests of the City, any (1) temporary or permanent easements, (2) fee title, (3) leasehold interests, (4) licenses and (5) other interests for rights of way necessary to the Project, without requiring BART

to comply with the City's customary right of way acquisition processes. BART has the right to use City-owned land within the public street rights-of-way at no cost. The City land outside of the street rights-of-way will be appraised at fair market value as determined by an appraisal and conveyed to BART at a negotiated value. BART will prepare, or cause to be prepared, required title documents and documents of conveyance and other instruments as appropriate and will submit such instruments to the City's designated agent. The City shall approve and execute Project right-of-way instruments without undue delay pursuant to Section 15:A. of this Agreement.

W. Public Art Program

BART will develop and administer a public art program for the Project in accordance with Federal Transit Administration Circular No. 9004.1A. BART's allocation to the public art program will be in accordance with the FTA guidelines for such art programs. During the public art program BART will collaborate with City on identifying public art opportunities, outreach to the artist community, the process for selection of artist(s) and the design, fabrication, and installation phases. A representative from BART will provide regular updates on the Project's public art program to City.

X. Telecommunications Equipment

While only Project-related telecommunications equipment is currently contemplated by the Parties, any future installation of telecommunications equipment in City Infrastructure for data transmission not intended for the Project will be subject to a separate agreement between BART and City.

Y. Disadvantaged Business Enterprise (DBE) Program

The District has adopted a Disadvantaged Business Enterprise (DBE) program which complies with the requirements of 49 CFR Part 26, as amended, and which will cover all work engaged in pursuant to this Agreement to the extent applicable.

Z. Maintenance of the Project

Upon completion of the Project, BART agrees to assume total control and responsibility for the Project, including, without limitation, repair and maintenance and the expense thereof, in perpetuity, including water and all utility costs for the Project, including all associated landscaping on BART property.

AA. Recycling

The District will require its contractor, to the extent reasonably possible, to recycle all construction debris from the Project.

BB. Project Inoperability

Should BART abandon operation of the Project system and/or Project facilities, BART and the City shall meet and confer on an appropriate course of action. BART and City acknowledge that funds for demolition or alternate uses of the Project system and/or Project facilities will require BART to seek funding for any such work. City and other affected parties/agencies will cooperate with and assist BART in applying for the required funding for the demolition or conversion of the system to alternate uses.

CC. Doolittle Station

The City has requested that BART evaluate the development of an intermediate station in the area of Doolittle Drive. During the RFP process BART will evaluate the feasibility of financing and constructing an intermediate station in the area of Doolittle Drive with the pre-qualified design-build contractors.

SECTION 6: CITY STREETS, TRAFFIC MAINTENANCE AND DETOURS

A. Traffic Plans

BART shall submit traffic plans, prepared by a registered Civil Engineer or Traffic Engineer, showing haul routes, detours, staging areas, temporary closures, and the method of traffic maintenance (including traffic control facilities/devices and personnel) to the City for approval prior to commencement of any construction requiring such actions, which approval shall not be unreasonably conditioned, delayed or withheld. Approval or disapproval of the plans will be delivered in writing to BART no later than 10 working days from the receipt of such plans. Failure by the City to provide a written approval or disapproval within such 10 working day period shall be deemed to be approval by the City. BART and the City may agree in writing to mutually convenient time extensions.

BART will assume responsibility for maintaining in service, or causing to be maintained in service, all traffic detours (including traffic control facilities/devices used during detours) during BART construction in a manner reasonably satisfactory to the City, subject to all applicable City and California Department of Transportation requirements. All traffic control, lane closure, and detour plans shall specify the length of time that portions of City streets will likely be closed. Traffic control plans will include elements for nighttime traffic control and emergency vehicle access at all times. BART intends to develop and obtain City approval of traffic control plans that minimize traffic impacts and delays to OIA and businesses in the Hegenberger corridor. However, if BART and the City determine that an approved traffic control plan has resulted in unacceptable impacts, BART will make adjustments to detour to reduce impacts. If unacceptable traffic impacts cannot be resolved, upon the City's written request, BART will shut down

such traffic control plan and re-submit a revised traffic control plan to mitigate the unacceptable impact.

B. Notice of Closure

BART will, prior to temporary closure to traffic of any street, sidewalk, or other public access, provide at least 10 working days notice of such closure to the City's Public Works, Police, and Fire Departments, and to AC Transit. Deviation from this 10 working day requirement may be permitted in an emergency situation or as determined by BART and the City.

C. Posting of Notices

At least 72 hours prior to the temporary closure to traffic of any street, sidewalk, or other public access, BART shall post notice of such closure in areas that provide adequate notice to the public. Temporary road closure notices shall include flyers to residents and businesses within a 500-foot radius of such closures. BART shall also provide notice of closures to emergency services operating in the area of the closure. Such notice of any road closure may include, as appropriate, use of changeable message signs.

D. Coordination with Agencies

BART shall coordinate with public agencies as necessary for approval to post temporary closure information signs.

E. Oakland International Airport

Due to the proximity to OIA BART shall have cooperative meetings with the City and the Port of Oakland to ensure coordination of traffic detours.

F. Debris Removal

On City streets used to construct the Project, BART shall dispose of all construction-related debris in a timely manner. Such cleaning shall be performed in accordance with the provisions of the Contract Documents.

G. Ingress and Egress Plans

Where ingress and egress of contractor employee parking and construction storage areas impact City streets, BART shall develop plans regarding ingress and egress and submit them to the City for review and approval.

H. Barriers

BART shall submit its construction fencing and traffic barrier plans to the City for review and comment prior to construction of any phase or portion of the Project requiring such construction fencing and traffic barriers affecting Public Right of Way.

I. Lane Closure Charts

BART and the City have reviewed lane closures necessary to accommodate construction of the Project. Attached as Exhibit F are approved lane closure charts for the Project. BART shall comply with these lane closure charts unless alternate lane closures are approved by the City.

SECTION 7: CONTRACT DOCUMENTS INDEMNITY

BART will require all of the Project's construction contractors to defend, indemnify and hold the City, its officers, agents and employees harmless against any liability arising out of the acts or omissions of each such contractor and such contractor shall include the City as additional insureds in any insurance policies obtained by them at no cost to the City.

SECTION 8: DESIGNATED AGENT OF THE PARTIES

The City's contact person for all design and construction matters will be the Director of Public Works, or his or her designee. BART's contact person for all matters related to this Agreement will be the manager of the Project, or his or her designee.

SECTION 9: INDEMNIFICATION

Neither the City nor any officer, agent or employee of the City is responsible for any damages or liability occurring by reason of anything done or omitted to be done by BART, its directors, officers, agents and employees, under or in connection with any work, authority or jurisdiction delegated to BART under this Agreement. Pursuant to California Government Code Section 895.4, BART will fully indemnify, hold harmless and defend in any claim or litigation, the City, its officers, agents and employees from any damage or liability occurring by reason of anything done or omitted to be done by BART, its directors, officers, agents and employees under or in connection with any work, authority or jurisdiction delegated to BART under this Agreement. 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 the City, its officers, agents and employees against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

Neither BART nor any director, officer, agent or employee of BART is responsible for any damages or liability occurring by reason of anything done or omitted to be done by the City, its officers, agents and employees, under or in connection with any work, authority or jurisdiction delegated to the City under this Agreement. Pursuant to California Government Code Section 895.4, the City will fully indemnify, hold harmless and defend in any claim or litigation, BART, its directors, officers, agents and employees from any damage or liability occurring by reason of

anything done or omitted to be done by the City, its officers, agents and employees under or in connection with any work, authority or jurisdiction delegated to the City under this Agreement. The duty of the 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 the City to indemnify BART, its directors, officers, agents and employees against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

SECTION 10: INSURANCE

A. Contractor Controlled Insurance Program

BART shall require its Contractor to include the City of Oakland, its Councilmembers, officers, directors, employees and agents as additional insureds in the master insurance program obtained during construction of the Project, also known as the Contractor Controlled Insurance Program ("CCIP"). Coverage for the City will include general liability, builder's risk (course of construction) and employer's liability insurance. BART shall require the Contractor to provide the relevant certificates of insurance and endorsements on all such policies to the City. The CCIP will be maintained in full force and effect during construction of the Project.

B. Primary Insurance

The insurance afforded to the City shall be considered primary insurance to the full limit of the CCIP and any insurance against a loss covered by policies held by the City shall be considered excess insurance only. Any policy obtained under the CCIP shall contain a severability-of-interests clause.

C. Tender of Defense

The City shall be accorded the same protections with respect to liability and indemnity as is accorded BART under such insurance policies. The City reserves the right to tender to BART's contractor the defense of any claims asserted against the City in connection with or arising out of the Project.

SECTION 11: WARRANTIES

BART will require warranties from all of its contractors for all work performed and for all contractor-installed equipment and materials supplied in connection with the Project. BART acceptance of all work performed and for all contractor-installed equipment and materials supplied in connection with City Infrastructure shall be predicated upon City's reasonable acceptance of such work, equipment and materials. All BART warranties to the City shall be for a period of 12 months from acceptance by the City, except where the manufacturer's usual warranty is for a longer period. In that event, the longer period, less 30 days, will apply. If necessary, BART will pursue all of its available remedies under such warranty provisions for correction of any defects in material and/or workmanship discovered within the warranty period. Correction of such defects in the work performed for the City shall commence within 60 working days of written notification to BART by the City, at no cost to the City, as long as the notification is within the warranty period.

SECTION 12: RESOLUTION OF DISPUTES

A. Referral to Higher Authority

If any dispute under this Agreement cannot be resolved by the Parties, prior to submission to mediation as set forth below, upon the written request of either of the Parties, the matter shall be dealt with as follows:

1. First Level. Each Party will designate project staff or individuals to be the initial person or persons to discuss any apparent dispute or disagreement between the Parties and initiate this procedure. Each such designated first-level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the Project. For the City, unless the City shall designate otherwise in writing, the first-level person shall be the City's Public Works Agency Project Manager. For BART, the first-level person, unless BART shall designate otherwise in writing, shall be BART's Project Manager.
 - a. Urgent Matters. For any matter designated by the initiating Party as "urgent", the other Party shall make its first response within 24 hours, or within such other period as the first-level persons may agree.
 - b. Non-Urgent Matters. Unless the initiating Party designates a matter "urgent", the other Party shall respond within 5 working days, or within such other period as the first-level persons may agree.
 - c. Predetermined Timeline. Items that have a predetermined timeline already specified within this Agreement do not constitute urgent matters within the meaning of this Section 12.
2. Second Level. Each Party will designate individuals to whom matters not resolved at the first level shall be referred. Each such designated second-level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the Project. For the City, the second-level person shall be City's Director of Public Works. For BART the second-level person, unless BART shall designate otherwise in writing, shall be BART's Executive Manager for the Project.

- a. Urgent Matters. For any matter designated by the initiating Party as "urgent", the other Party shall make its first response within 24 hours, or within such other period as the second-level persons may agree.
- b. Non-Urgent Matters. Unless a matter is designated "urgent" by the initiating Party, the other Party shall respond within 3 working days, or within such other period as the second-level persons may agree.
- c. Predetermined Timeline. Items that have a predetermined timeline already specified within this Agreement do not constitute urgent matters within the meaning of this Section 12.

3. Third-Level. Each Party will designate individuals to whom matters not resolved at the second-level shall be referred. These designated third-level persons shall constitute the final internal level within BART and the City for resolution of issues between the parties. Each such designated third-level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the Project. For the City, the third-level person shall be the City Administrator. For BART, the third-level person, unless BART shall designate otherwise in writing, shall be its General Manager. The initiating third-level person will request a response from his or her counterpart and that response will be made within a time period agreed between the third-level persons.

B. Mediation. If the designated third-level persons are unable to reach resolution, upon written request of either of the Parties the matter shall be referred to mediation as set forth in this Section B, below.

1. Notice of Mediation. In the event of any dispute hereunder which the Parties are unable to resolve, either BART or the City may submit such dispute to mediation by serving a written notice of mediation ("Notice of Mediation") on the other. The Notice of Mediation shall be signed on behalf of BART by its Project Manager, and on behalf of City by its Director of Public Works, or his designee. The mediation shall proceed in accordance with rules promulgated by the mediator ("Mediator") (chosen as described in Section 2., below), and shall be concluded within 30 days, unless extended by mutual agreement of the Parties. Lawyers may participate only if both parties agree. The entire process shall be confidential and treated as a compromise negotiation for purposes of Federal and State rules of evidence.
2. Selection of Mediator. Within 15 days of the Notice of Mediation referred to in subsection a., above, the Parties shall meet and select a disinterested third person to act as Mediator. If the Parties fail to agree, either Party may request the American Arbitration Association in San Francisco, to appoint the Mediator. The Mediator shall be replaced within 15 days of receipt of a written request of either Party, using the procedure outlined above; provided, however, that either Party may only replace the Mediator once.
3. Cost of Mediator. BART shall provide to the Mediator, at no cost to City, administrative services, such as conference facilities and secretarial services. All other fees and expenses of the Mediator shall be borne equally by BART and City.

SECTION 13: NOTICES

All notices required hereunder may be given by personal delivery, U.S. mail, courier service (e.g. Federal Express) or telecopier transmission. Notices shall be effective upon receipt at the following addresses:

To BART by U.S. Mail:

San Francisco Bay Area

Rapid Transit District
P.O. Box 12688
Oakland, CA 94604-2688

Attention: Thomas L. Dunscombe
Telefax: (510) 287-4860

*To BART by personal or
courier delivery*

San Francisco Bay Area
Rapid Transit District
300 Lakeside Dr., 21st Fl.
Oakland, CA 94612

Attention: Thomas L. Dunscombe
Telefax: (510) 287-4860

Copy to:

San Francisco Bay Area
Rapid Transit District
300 Lakeside Dr., 21st Fl.
Oakland, CA 94612

Attention: Mike Forte
Telefax: (510) 287-4860

To City

Public Works Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612-2033

Attn: Raul Godinez, II
Director, Public Works Agency
Telefax: (510) 238-2233

Copy to:

Public Works Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612-2033

Attn: Marcel Uzegbu
Telefax: (510) 238-2233

SECTION 14: PARTIES NOT PARTNERS

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

SECTION 15: FURTHER ASSURANCES

A. Additional Instruments

Each party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out the purposes of this Agreement or to assure and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each party's governing body.

B. Amendments

Should unforeseen circumstances occur, BART and the City shall negotiate in good faith to reach agreement on any amendments that may be necessary fully to effectuate the Parties' respective intentions in entering into this Agreement.

C. Records

The City agrees to establish and maintain records pertaining to the fiscal activities of the Project, which records shall show the actual time devoted and the costs incurred by the City with respect to any work performed under this Agreement. The accounting systems of the City shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers. Upon written request the City shall, at a mutually convenient time, permit BART to inspect, examine, re-examine, and copy the City's books, records, accounts, and any and all data relevant to this Agreement for the purpose of auditing and verifying statements, invoices or bills submitted by the City pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection. The City shall, at BART's request, provide a letter of representation concerning its usual and ordinary charges for work similar to the

work to be performed under this Agreement, as well as the accounting systems utilized by the City for work to be performed under this Agreement.

D. Examination of Records

BART reserves the right to examine and re-examine such books, records, payrolls, accounts and data during the 3-year period after final payment under this Agreement and until all pending matters are closed, and the City shall in no event dispose of said books, records, payrolls, accounts and data in any manner whatsoever for 3 years after the final payment under this Agreement or until all pending matters are closed, whichever is later.

E. State Auditor

Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of 3 years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

F. ACTIA Audit.

As provided in the Master Project Funding Agreement between the Alameda County Transportation Improvement Authority ("ACTIA") and BART dated February 28, 2002, BART agrees to render a report or answer inquiries regarding its receipt and usage of ACTIA's funding. City shall cooperate fully in responding to any such requests from ACTIA relating to the Project.

SECTION 16: NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS

No director, officer, employee or agent of the City or BART shall be personally liable to any party to this Agreement or any successor in interest in the event of any default or breach of this

Agreement or for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 17: HEADINGS AND TITLES

Any titles to the Sections of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any part of their provisions.

SECTION 18: APPLICABLE LAW

This Agreement shall be interpreted under and pursuant to the laws of the State of California, without reference to conflicts of law principles. The Parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of Alameda County.

SECTION 19: SEVERABILITY

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

SECTION 20: BINDING UPON SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the transferees, successors and assigns of each of the Parties to it, except that there shall be no transfer of any interest by any of the Parties to this Agreement except pursuant to the terms of the Agreement.

SECTION 21: REMEDIES NOT EXCLUSIVE

No right or remedy conferred upon or reserved to BART or the City under this Agreement is intended to be exclusive of any other right or remedy, except as expressly stated in this Agreement, and each and every right and remedy shall be cumulative and in addition to any

other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited to this Agreement.

SECTION 22: FORCE MAJEURE

In addition to specific provisions of this Agreement permitting delays in performance, performance by either party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, casualties, acts of God, acts of the public enemy, epidemic, government restrictions on priorities, freight embargoes, shortage of labor or materials, unusually inclement weather, lack of transportation, court order, or any other similar causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other party within 30 days from the commencement of the cause and such extension is not rejected in writing by the other party within 30 days of receipt of the notice. Time of performance under this Agreement may also be extended by mutual written agreement, signed by both Parties.

SECTION 23: INTEGRATION

This Agreement 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 with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by an authorized officer or representative of each of the Parties. This Agreement is made and entered into as of the date set forth above.

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SECTION 24: INCORPORATION BY REFERENCE

All Exhibits and Attachments hereto are hereby incorporated into this Agreement by this reference.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

CITY OF OAKLAND

By: 
Kathleen K. Mayo
Deputy Executive Manager

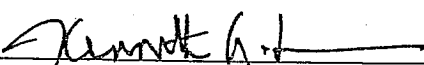
By: 
Raul Godinez, II
Director, Public Works Agency

APPROVED AS TO FORM:

Office of the General Counsel

APPROVED AS TO FORM:

Office of the City Attorney

By: 
BART Attorney


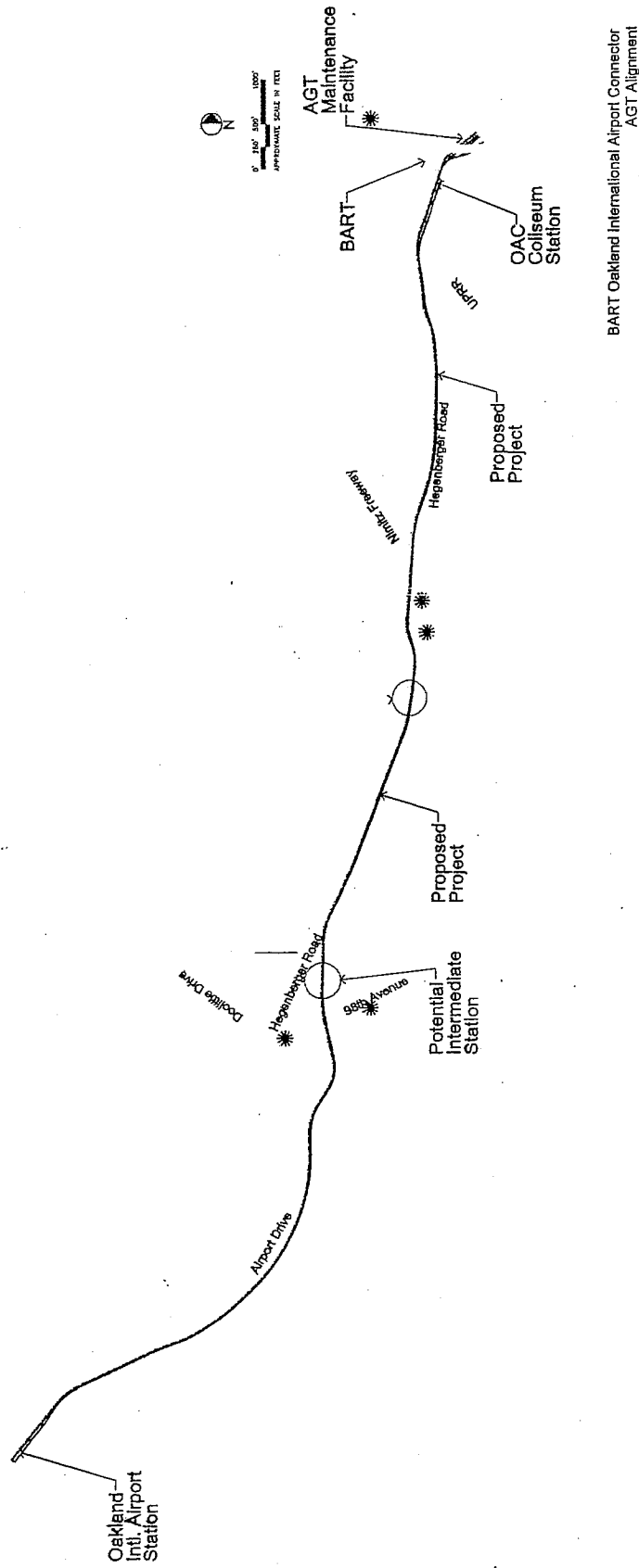
By: 
John A. Russo, City Attorney
fw

Exhibit A

Project Limit Map

EXHIBIT A OAKLAND AIRPORT CONNECTOR PROJECT ALIGNMENT



* Approximate Banner Sign Locations

Exhibit B

City of Oakland Reimbursement Budget

**CITY OF OAKLAND PUBLIC WORKS AGENCY / ENGINEERING AND DESIGN DIVISION
PRELIMINARY PROJECT ESTIMATE**

Project: Oakland Airport Connector Public Improvements EXHIBIT B	Estimate by: Marcel Uzegbu
Project No.:	Checked by:

CONSTRUCTION COSTS	ESTIMATED CONSTRUCTION COST	\$ 4,471,193
	Contingency (15.0%)	\$ 670,679
	CONSTRUCTION CONTRACT TOTAL	\$ 5,141,872

PlanReview (Engin. Design/Maintenance/Parks & Rec, Electrical, Traffic and coordination)	\$ 447,119
Construction Inspection per David Lau	\$ 100,000
Construction Services(survey, testing)	\$ 25,000
Fire Inspection and Review-cost	\$ 25,000
Real Estate Review Cost	\$ 50,000
Fire Services Equipment and Training****	
Contract Compliance	\$ 44,712
Subtotal	\$ 691,831
Contingency	33,169
Not to exceed Cost	725,000

**** See City.BART Agreement

Exhibit C

Pavement Survey Procedures

EXHIBIT C
PAVEMENT SURVEY PROCEDURES

1. Pavement Condition Survey

Prior to the commencement of construction activities a detailed inspection of existing roadway structures and conditions shall be conducted by the contractor and the City. Existing conditions shall be documented by the parties and a copy of the report thereon shall be provided to the District's representatives and to the City.

- A. Before beginning any construction activities that will result in the use of public streets and roadways, the contractor shall retain a qualified consultant, acceptable to the District, to perform a pavement condition survey of those streets and roadways planned to be used during construction including all haul routes within the boundaries of the City.
- B. The contractor shall obtain approvals from the City for work within the City streets required to conduct the pavement condition surveys.
- C. Pavement inspection and evaluation shall utilize the November 2003 MTC Pavement Management System (PMS) software and the Pavement Condition Index Distress Identification Manuals as described herein.

2. Pre-Construction Survey

A pre-construction survey shall be performed using the MTC guidelines for establishing the Pavement Condition Index (PCI) as set forth in the Pavement Condition Index Distress Identification Manuals for Asphalt and Surface Treatment Pavements and Jointed Portland Cement Concrete Pavement. The survey shall be performed for the entire surface area of the street, and will be conducted jointly by the City's representative, the District representative and the contractor. The amount of area included in each PCI segment will be agreed upon in the field, but ordinarily will not include more than 500 linear feet. The results of the survey will be preserved in writing and the PCIs computed using the MTC Pavement Management System Software. The survey shall be provided to the City for review and approval.

3. Post-Construction Survey

After the contractor has ceased to use a street or roadway for construction, including use as a haul route or for heavy equipment routes, on a date approved by the City, the contractor shall perform a post-construction pavement survey in the manner described for the pre-construction survey. The results of the survey will be preserved in writing and the PCIs computed. The post-construction survey shall be provided to the City for review

and approval. Any decrease in PCI will be used as the basis for computing the dollar value of the damage.

4. Video Survey

During the pre-construction survey the contractor shall make a color videotape survey of the streets and roadways to be used for construction, including haul routes and heavy equipment routes. The videotape shall be adequate in detail and resolution to show clearly the condition of the pavement and all associated structures (e.g. curbs, gutters, drainage facilities, and manholes). The videotape shall include a narrative, date, and time.

- A. City staff shall be present during the videotaping, and a copy of the completed videotape record shall be provided to the City and to the District representative for acceptance and approval.
- B. During the course of construction, the contractor shall record on videotape the condition of the streets as events or circumstance may dictate, to show significant and observable changes in condition and the events causing such changes.

5. Assessment Rate

Three levels of rehabilitation will be used:

- A. Thin overlay (1.5") for streets with a PCI above 50.
- B. Thick overlay (2.5") for streets with a PCI from 25 to 50.
- C. Reconstruction of pavement only for streets with a PCI below 25.

The unit costs for these treatments are listed below for both Asphalt Cement (AC) and Portland Cement Concrete (PCC). These costs are presented on a year 2003 dollars per square yard (\$/sy) basis. Assuming that the cost for any treatment will bring the pavement back to a PCI of 100, the assessment rate or dollars per square yard per PCI point (\$/sy/pt) cost is computed by dividing the listed cost by the maximum number of PCI points that a particular treatment can produce. The table below represents these costs.

Street Type Treatment Category / Units	Arterial		Collector		Residential	
	\$/sy	\$/sy/pt	\$/sy	\$/sy/pt	\$/sy	\$/sy/pt
AC Thin Overlay 100>PCI≥50	9.76	0.1952	9.76	0.1972	9.76	0.1952
AC Thick Overlay 50>PCI≥25	17.92	0.2389	17.92	0.2389	17.92	0.2389
AC Reconstruct Surface 25>PCI>0	29.49	0.2949	29.49	0.2949	18.24	0.1824
PCC Thin Overlay 100>PCI≥50	11.76	0.2352	11.76	0.2352	11.76	0.2352
PCC Thick Overlay 50>PCI≥25	19.88	0.2651	19.88	0.2651	19.88	0.2651
PCC Reconstruct Surface 25>PCI>0	90.00	0.9000				

6. PCI Discount Values

Where haul routes are used for more than one year, the change in PCI will be reduced by an amount which represents normal wear and tear expected on the pavement. Each treatment category is assigned a PCI discount based on the number of years that a pavement would take to reach the lowest PCI in the category.

- A. AC Streets. For the thin overlay category, a 50 PCI point drop would be reached in 20 years, or 2.5 points per year. For the thick overlay, the discount (based on 75 points over 25 years) is 3.0 points per year, and for reconstruction, the discount (based on 100 points over 30 years) is 3.3 points per year.
- B. PCC Streets. For the thin overlay category, the 50 PCI point drop would be reached in 60 years, or 0.8 points per year. For the thick overlay, the discount (based on 75 points over 75 years) is 1.0 point per year, and for reconstruction, the discount (based on 100 points over 85 years) is 1.2 points per year.

7. Adjustment for Seal Coat, Patching and Crack Sealing

When the contractor has applied maintenance to a pavement with an asphalt concrete or rubberized asphalt surface which does not add a new surface to the pavement, a PCI condition improvement factor shall be applied to the post-construction survey PCI value. The PCI improvement factors shall be calculated in accordance with Table D-3 of The Technical Appendices Describing the Development and Operation of the Bay Area Pavement Management System, as revised November 1987.

8. Assessment Calculation

- A. The PCI value determined by the pre-construction survey will be used to establish the treatment category for use in calculation of the value of assessment.
- B. The assessment rate of each treatment category shall be adjusted annually using the construction cost index of the Engineering News Record.
- C. The appropriate PCI discount value shall be applied.
- D. The post-construction PCI value shall be adjusted for application of seal coats, patching and crack sealing.
- E. The post-construction PCI value shall be subtracted from the pre-construction PCI value to determine the PCI change.
- F. The Assessment shall be calculated in accordance with the following formula:

$$\text{Assessment} = \text{PCI Change} \times \text{Affected Area} \times \text{Assessment Rate}$$

9. Payment

The contractor will pay the computed dollar value of the damage to the City, and the City will then use the funds toward the maintenance/rehabilitation of the street on its own schedule, in order to avoid the following three problems:

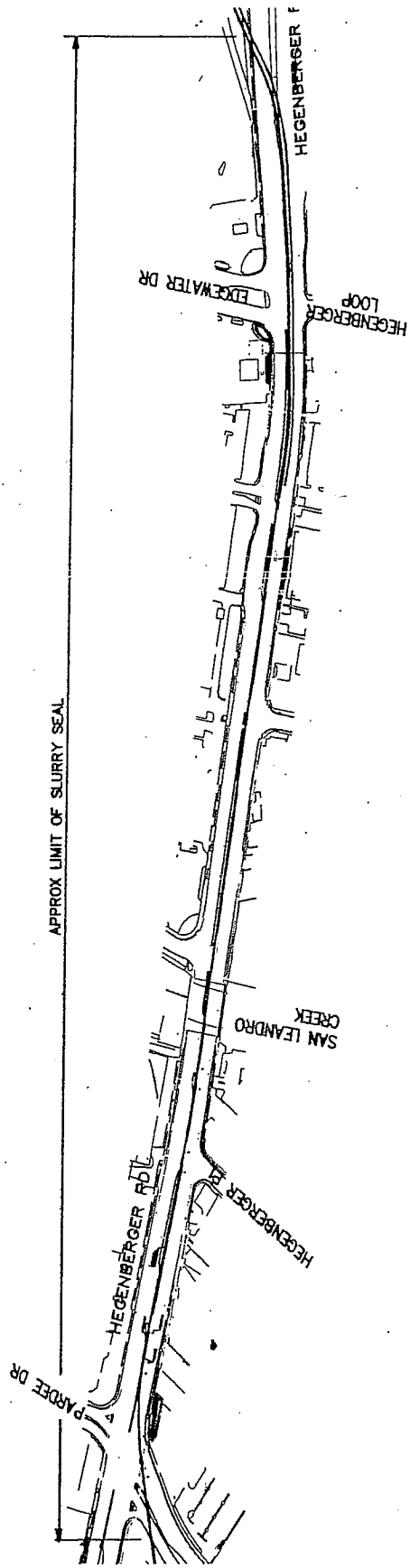
- A. The procedure is established in advance, and therefore arguments concerning the method of assessment or repair are avoided.
- B. The contractor can avoid making repairs that bring a street to a PCI of 100, when the index may have been much less prior to beginning work.
- C. The contractor can be assessed for small amounts of damage (those damages beyond normal wear and tear) that are not corrected because they do not warrant repair at the completion of construction.

10. Minimum Serviceability

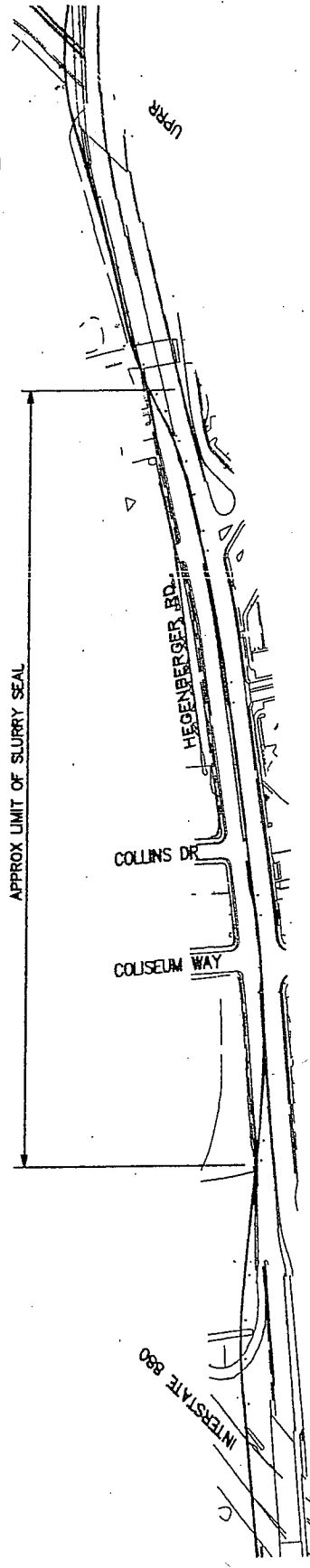
In addition to the assessment method set forth above, the contractor must maintain minimum serviceability of the routes described herein. All potholes and other damage caused by the contractor that affect the serviceability of the streets must be repaired on an ongoing basis, as determined by the District representative and the City during construction.

Exhibit D

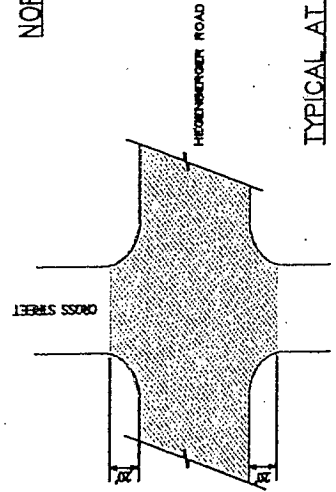
Hegenberger Road Restoration



HEGENERBERG ROAD
SOUTH OF INTERSTATE 880



HEGENERBERG ROAD
NORTH OF INTERSTATE 880



TYPICAL AT CROSS STREET

Exhibit E

City of Oakland Fire Marshal Letter



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
800 Madison Street, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

Peter W. Snyder
PRESIDENT

James Fang
VICE-PRESIDENT

Thomas E. Margro
GENERAL MANAGER

DIRECTORS

Dan Richard
1ST DISTRICT

Joel Keller
2ND DISTRICT

Roy Nakadegawa
3RD DISTRICT

Carol Ward-Allen
4TH DISTRICT

Peter W. Snyder
5TH DISTRICT

Thomas M. Blalock
6TH DISTRICT

Lynette Sweet
7TH DISTRICT

James Fang
8TH DISTRICT

Tom Radulovich
9TH DISTRICT

December 10, 2003

Com#1512

Ref. 1.8

Ernest Robinson
Fire Marshal
Oakland Fire Department
City of Oakland
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

Subject: Oakland Airport Connector – Oakland Fire Department Emergency Services List for the Oakland Airport Connector

Dear Ernest:

Through much of the past year, BART and the Oakland Fire Departments (OFD) have attempted to come to agreement on several specific Fire Life Safety requirements for the Oakland Airport Connector (OAC) Project. This letter summarizes and memorializes our mutual understanding of those specific issues that were resolved during our discussions.

BART acknowledges the Project is still in a preliminary engineering phase. In the future, when more detailed design is completed by the Districts Contractor, many of these issues will be addressed more thoroughly with the OFD. One issue that was left for future discussions is a list of equipment and training requested by the OFD. Given that the OAC Project schedule may be delayed, the OFD's equipment needs may change over time. Therefore, when more specific information is known about the automated guideway transit system technology being procured, OFD and BART will meet and finalize the list.

Please find below, the list of the Fire Life Safety elements identified and agreed upon:

1. SUBWAY VENTILATION

- a. A subway ventilation study is required by NFPA-130. Because the result will vary depending upon the AGT technology and the configuration of the subway, the Contractor will be required to perform this study to determine if mechanical ventilation is needed for the subway section. The study results are subject to review by the OFD.

2. COMMUNICATIONS/RADIOS.

- a. The OAC will provide unbroken coverage for OFD 800 MHz handheld radios along the entire Project alignment. In particular, any subway sections will be tested by the Design Build Contractor to determine if signal augmentation is necessary to provide complete coverage.
- b. Two phone lines designated, as "Emergency Use" which allow for OFD to dial directly into OAC Central Control Facility will be provided.
- c. BART will provide the OAC Central Control Facility with two 800 MHz MDX radios.

3. EMERGENCY LIGHTING.

- a. Emergency lighting will comply with the NFPA 130.

4. PUBLIC ADDRESS SYSTEM

- a. PA system complying with NFPA 130 will be provided on all trains. OAC Central Control Facility will have the capability to take any calls from OFD and patch into the AGT Vehicle PA system.
- b. PA system complying with NFPA 130 will be provided in all stations.

5. TRAIN INTERIORS

- a. Video cameras will be installed in all AGT Vehicles. A taped video will be generated and available for review by OFD upon their request.

6. GUIDEWAY SIGNAGE

- a. Signage (MP signs), visible from the street level, will be provided along the guideway to allow emergency workers a reference point to accurately describe the location of incidents to emergency response and rescue teams.
- b. The final design of guideway the MP signage is subject to review and approval by the OFD.

7. OAC AIRPORT STATION - FIRE PROTECTION SYSTEMS.

- a. Fire life safety elements for the OAC Airport Station including; emergency egress & access, and fire suppression, are subject to review and approval of the OFD.

8. OAC COLISEUM STATION AND MAINTENANCE BUILDING - FIRE PROTECTION SYSTEMS.

- a. Fire life safety elements for the OAC Coliseum Station and Maintenance Building including; emergency egress & access, and fire suppression, are subject to review by of the OFD.

- b. Coliseum Station Emergency Egress: Preliminary station exiting analysis was performed by BART based on the OAC Coliseum Station configuration shown in the RFP. Results showed station compliance with NFPA 130 requirements.
- c. Final station design and exiting calculations will be performed by the Contractor and will be subject to review and approval by the OFD.

9. EMERGENCY WALKWAY.

- a. An emergency walkway complying with NFPA 130 must be provided on the AGT guideway. Either the AGT running surface or a dedicated walkway would be acceptable to the OFD.
- b. The final design of the emergency walkway is subject to review by the OFD.

10. GUIDEWAY FIRE PROTECTION SYSTEM AND GUIDEWAY

ACCESS. The following will be required:

- a. A wet standpipe system through the entire tunnel at the 98th Avenue/Doolittle Drive and entire area where U-wall (depressed guideway)
- b. An access gate and a hard surface access road at the 98th Avenue approach (see attached drawing). Provide an emergency exit stairway at the southwest portal (see attached map).
- c. A wet standpipe on the guideway from Edgewater Drive to the northeast of I-880, which ends at the GMC Truck Center per attached drawing. A Fire Department Connection (FDC) will be provided at Edgewater behind Superstar Gas Station and near GMC Trucking.
- d. A hard surface access road, minimum of 20 feet wide, from Edgewater Drive behind the existing Super Stop gas station to the new access stairway at the proposed location of the Edgewater station.
- e. Four (4) new fire hydrants along Airport Dr. to provide water supply for fire protection of the AGT system. (Due to limited Right of Way, wall mounted fire hydrants may be necessary along the at grade segment).
- f. The Fire Hydrant map and Access map are attached.

11. CODES GOVERNING THE OAC AGT SYSTEM


The Oakland Airport Connector AGT system, BART will meet the applicable codes in effect as of the time of release of the RFP.

Ernest Robinson
December 10, 2003
Page Four

This cooperative effort will benefit both the Project and the OFD by allowing the Districts Contractor to clearly understand, plan and incorporate these specific requirements into the final design and will eliminate much of the uncertainty, frustration, and costly changes which often accompany issues such as these if left unresolved until later. The District appreciates OFD's input to these fire life safety issues and looks forward working closely with the OFD in the future.

If you have additional comments or do not agree with any specific issue, please respond in writing prior to December 30, 2003 so we can incorporate any changes necessary into the Contract Documents with assurance the District and the OFD are in agreement. If you need any additional information, please contact me or Jon Cimperman at (510) 874-7301.

Sincerely,



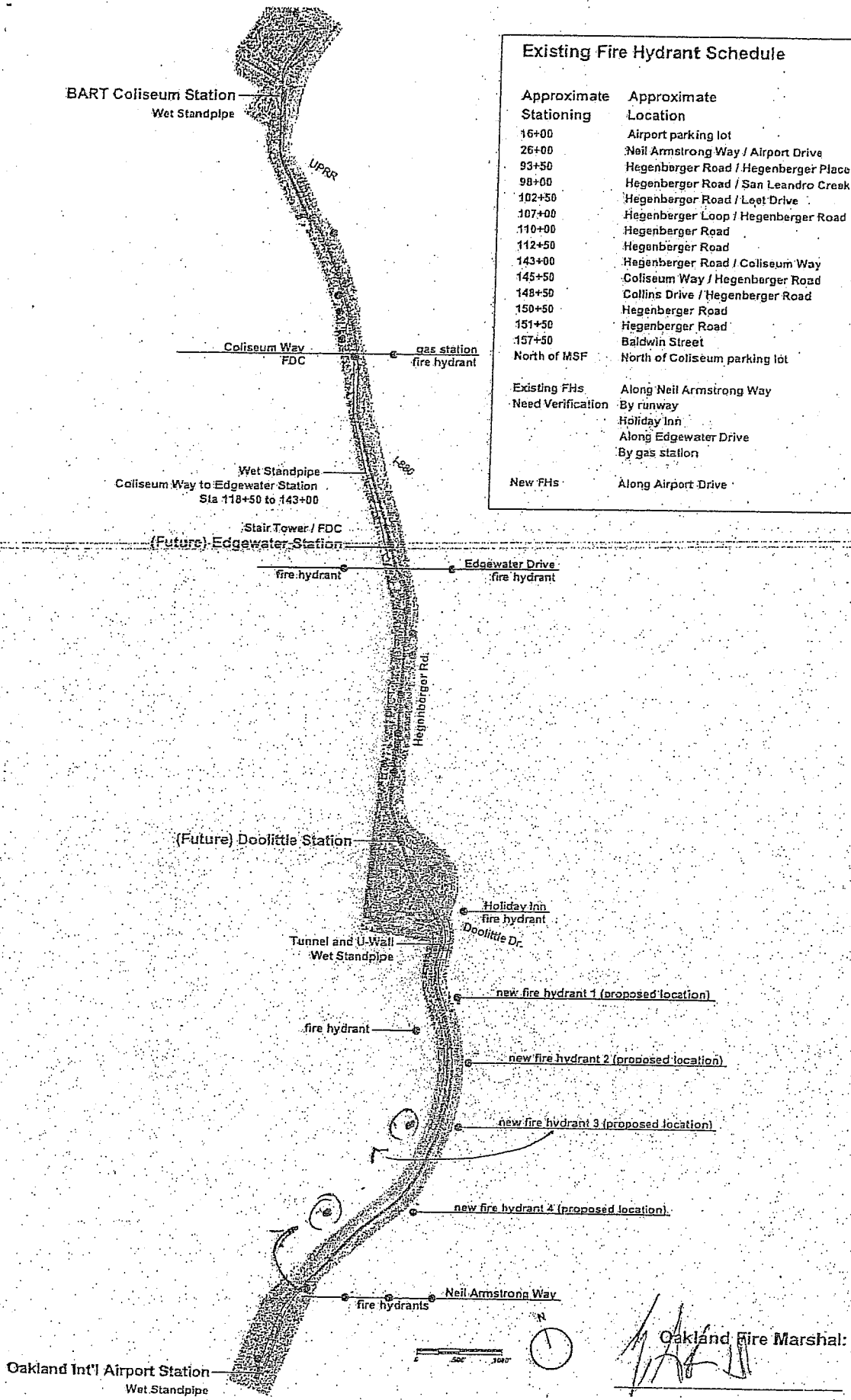
Tom Dunscombe
Project Manager
Transit System Development
BART, 1KB-6
1000 Broadway, Suite #620
Oakland, CA 94607
510.287.4822
510.287.4888 (fax)

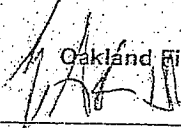
Attachments: Fire Hydrant Map
Access Map

cc: File
D Tannenwald - City of Oakland
K Mayo - BART
T Parker - BART
L Hardy - BART
M Chan - BART
H Moore - Lea & Elliott
R Bohn - Lea & Elliott
E Cartwright - Lea & Elliott

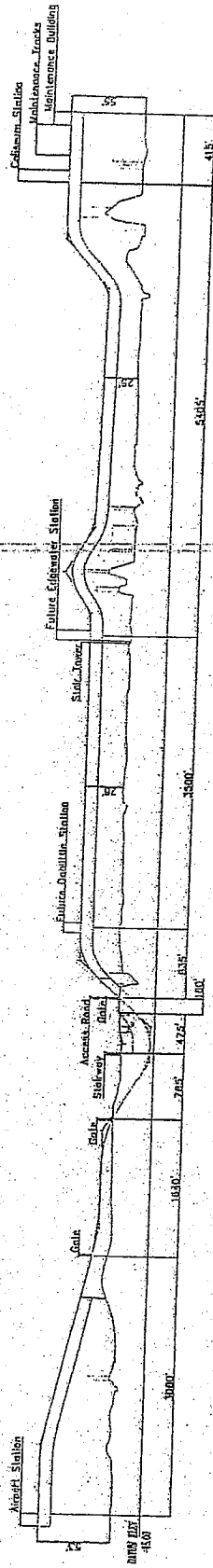
Existing Fire Hydrant Schedule

Approximate Stationing	Approximate Location
16+00	Airport parking lot
26+00	Neil Armstrong Way / Airport Drive
93+50	Hegenberger Road / Hegenberger Place
98+00	Hegenberger Road / San Leandro Creek
102+50	Hegenberger Road / Leet Drive
107+00	Hegenberger Loop / Hegenberger Road
110+00	Hegenberger Road
112+50	Hegenberger Road
143+00	Hegenberger Road / Coliseum Way
145+50	Coliseum Way / Hegenberger Road
148+50	Collins Drive / Hegenberger Road
150+50	Hegenberger Road
151+50	Hegenberger Road
157+50	Baldwin Street
North of MSF	North of Coliseum parking lot
Existing FHs	Along Neil Armstrong Way
Need Verification	By runway
	Holiday Inn
	Along Edgewater Drive
	By gas station
New FHs	Along Airport Drive



Oakland Fire Marshal:


Oakland Airport Connector Access Map



Note: Dimensions are Approximate

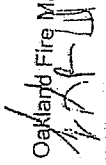
Oakland Fire Marshal:


Exhibit F

Lane Closure Charts

**Chart No. 5
Multilane Lane Requirements**

Location: Northbound Hegenberger Road from I-880 to Doolittle Drive

FROM HOUR TO HOUR	a.m.											p.m.													
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Mondays through Thursdays	2	1	1	1	1	1																			2
Fridays	2	1	1	1	1	1																			
Saturdays	2	1	1	1	1	1	2	2	2															2	2
Sundays	2	1	1	1	1	1	2	2	2	2	2													2	2
Day before designated legal holiday	2	1	1	1	1	1																			
Designated legal holidays	2	1	1	1	1	1	2	2	2	2	2													2	2

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.

**Chart No. 6
Multilane Lane Requirements**

Location: Southbound Hegenberger Road from I-880 to Doolittle Drive

FROM HOUR TO HOUR	a.m.											p.m.													
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Mondays through Thursdays	1	1	1	1	1	2																			2
Fridays	1	1	1	1	1	2																			2
Saturdays	2	1	1	1	1	1	2	2													2	2	2	2	2
Sundays	1	1	1	1	1	1	2	2	2												2	2	2	1	
Day before designated legal holiday	1	1	1	1	1	2																			2
Designated legal holidays	1	1	1	1	1	1	2	2	2												2	2	2	1	

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.

**Chart No. 7
Multilane Lane Requirements**

Location: Northbound Hegenberger Road from Coliseum Wy to San Leandro St.

FROM HOUR TO HOUR	a.m.											p.m.													
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Mondays through Thursdays	2	1	1	1	1	1																			2
Fridays	2	1	1	1	1	1																			
Saturdays	2	1	1	1	1	1	2	2	2														2	2	
Sundays	2	1	1	1	1	1	2	2	2	2	2												2	2	
Day before designated legal holiday	2	1	1	1	1	1																			
Designated legal holidays	2	1	1	1	1	1	2	2	2	2	2												2	2	

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.

**Chart No. 8
Multilane Lane Requirements**

Location: Southbound Hegenberger Road from Coliseum Wy to San Leandro St.

FROM HOUR TO HOUR	a.m.											p.m.													
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
Mondays through Thursdays	1	1	1	1	1	2																			2
Fridays	1	1	1	1	1	2																			2
Saturdays	2	1	1	1	1	1	2	2												2	2	2	2	2	
Sundays	1	1	1	1	1	1	2	2	2												2	2	2	2	
Day before designated legal holiday	1	1	1	1	1	2																		2	
Designated legal holidays	1	1	1	1	1	1	2	2	2												2	2	2	2	

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.

**Chart No. 5A
Multilane Lane Requirements**

Location: Northbound Hegenberger Road from I-880 to Doolittle Drive

FROM HOUR TO HOUR	a.m.												p.m.											
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Mondays through Thursdays	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Fridays	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Saturdays	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Sundays	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Day before designated legal holiday	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Designated legal holidays	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.
This chart will apply during construction of substructure and columns

**Chart No. 6A
Multilane Lane Requirements**

Location: Southbound Hegenberger Road from I-880 to Doolittle Drive

FROM HOUR TO HOUR	a.m.												p.m.											
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Mondays through Thursdays	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Fridays	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Saturdays	2	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Sundays	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	1
Day before designated legal holiday	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Designated legal holidays	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	1

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.
This chart will apply during construction of substructure and columns

**Chart No. 7A
Multilane Lane Requirements**

Location: Northbound Hegenberger Road from Coliseum Wy to San Leandro St.

FROM HOUR TO HOUR	a.m.												p.m.											
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Mondays through Thursdays	2	1	1	1	1	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2
Fridays	2	1	1	1	1	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Saturdays	2	1	1	1	1	1	2	2	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Sundays	2	1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	2	2
Day before designated legal holiday	2	1	1	1	1	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Designated legal holidays	2	1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	2	2

Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.
This chart will apply during construction of substructure and columns

**Chart No. 8A
Multilane Lane Requirements**

Location: Southbound Hegenberger Road from Coliseum Wy to San Leandro St.

FROM HOUR TO HOUR	a.m.												p.m.											
	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Mondays through Thursdays	1	1	1	1	1	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2
Fridays	1	1	1	1	1	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2
Saturdays	2	1	1	1	1	1	2	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2
Sundays	1	1	1	1	1	1	2	2	2	3	3	3	3	3	3	3	3	3	3	3	2	2	2	2
Day before designated legal holiday	1	1	1	1	1	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2
Designated legal holidays	1	1	1	1	1	1	2	2	2	3	3	3	3	3	3	3	3	3	3	3	2	2	2	2

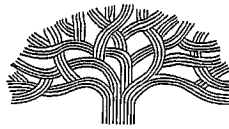
Legend:

2 Two adjacent lanes open in direction of travel

1 One lane open in direction of travel

No lane closure allowed

REMARKS: No lane closures allowed during Oakland Coliseum events.
This chart will apply during construction of substructure and columns



**PUBLIC WORKS AGENCY
ENGINEERING DESIGN & RIGHT OF AWAY
MANAGEMENT SERVICES**

PROJECT ROUTING SLIP

PROJECT NO: _____
TITLE: **COOPERATIVE AGREEMENT BART AIRPORT CONNECTOR**
SITE ADDRESS: _____

From: **Marcel Uzegbu**
Date Issued: **April 16, 2007**

Routing Names	Department/Agency	Reviewed Date	Signature Date	Signatures
Marcel Uzegbu, Supervising Civil Engineer	PWA, Engineering and Right of Way Management	4/16/07	4/16/07	
Mike Neary, P.E. Assistant Director, Public Works Agency	PWA, Design & Construction Services	4-16-07	4-16-07	
Raul Godinez II, P.E. Director, Public Works Director Agency	PWA, Administration			
Patrick Tang, Deputy City Attorney	Office of the City Attorney	5-1-07	5-4-07	
John A. Russo, City Attorney	Office of the City Attorney			

Note: City Agreement executed by BART for Final signatures.

Signature

Reply: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2006 MAR 29 PM 6:49

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL
RESOLUTION No. 79874 C. M. S

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART) RELATING TO THE OAKLAND AIRPORT CONNECTOR PROJECT AND TO NEGOTIATE REIMBURSEMENTS AND PERMITS

WHEREAS, the San Francisco Bay Area Rapid Transit District ("BART") plans to construct the Oakland Airport Connector Project (the "Project"), a 3.2-mile long Automated Guide Way Transit ("AGT") System as described in the Project Limit Map attached hereto as Exhibit A; and

WHEREAS, the Oakland International Airport Connector Project will impact City infrastructure improvements including landscaping; and

WHEREAS, BART will be required to replace at their sole expense any City infrastructure improvements impacted by their operation and warranty the landscaping for three years; and

WHEREAS, BART and the City acknowledge that it will be necessary to develop procedures to ensure careful and continued cooperation between the parties, including the following: (1) procedures for finalizing any necessary design and construction options relating to City infrastructure; (2) procedures for protecting in place and/or relocating certain City-owned facilities; (3) procedures to avoid all unnecessary delays to either the contracting or construction process; (4) procedures for inspecting the construction, relocation, and replacement, as necessary, of City infrastructure; (5) procedures for conveyance of property interest rights by City to BART; and (6) procedures for securing necessary permits and reimbursement to the City; and

WHEREAS, the estimated costs for City plan review, construction monitoring, and administration for the project is approximately \$725,000.00; and

WHEREAS, this agreement is contingent on the Redevelopment Agency approving a contribution from the Coliseum Tax Allocation Bond Fund (9453); Capital Improvement Project-Economic Development Organization (94800), Miscellaneous Contract Services Account (54919), Coliseum Redevelopment Tax Allocation Bond Series 2003 Project (P233410) to the City in an amount not to exceed \$725,000.00 to fund the plan review, construction monitoring, and administration costs of the City for the project; and

WHEREAS, the Redevelopment Agency has an interest in the development of the area and desires to contribute towards the cost for plan review and construction monitoring; and

WHEREAS, in a companion City and Redevelopment Agency report with two resolutions, the Redevelopment Agency authorizes a contribution of \$725,000.00 which the City accepts and appropriates, to provide to BART as credit to cover plan review and related city costs; and

WHEREAS, BART certified an Environmental Impact Statement and Environmental Impact Report for the project on March 28, 2002, and thus the requirements of the California Environmental Quality Act ("CEQA"), the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; and

WHEREAS, BART and the City acknowledge that the work performed under this agreement shall be in conformance with all applicable Federal and/or State grant conditions and all applicable laws, and

WHEREAS, the City and BART recognize and agree that this agreement may not reasonably anticipate all aspects of the project and changes thereto which may occur due to unforeseen circumstances. Accordingly, the City and BART acknowledge their respective obligations to act reasonably and in good faith and to modify the terms hereof when necessary to accomplish their mutual goals; and

WHEREAS, BART and the City agree that the agreement applies solely to work performed under the Oakland Airport Connector Project; and

WHEREAS, the City and the Redevelopment Agency entered into a Cooperation Agreement in July 1, 2004, which generally governs the provision of assistance and the payment of funds between the two agencies; now, therefore, be it

RESOLVED: That the Council of the City of Oakland authorizes and empowers the City Administrator or her designee to enter into a Cooperative Agreement with BART for the construction of the Airport Connector Project, and negotiate reimbursements and credits to BART in an amount not to exceed \$725,000.00 for permits related to the project; and be it

FURTHER RESOLVED: That this agreement applies solely to work performed under the Oakland Airport Connector Project.

MAY 2 2006

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

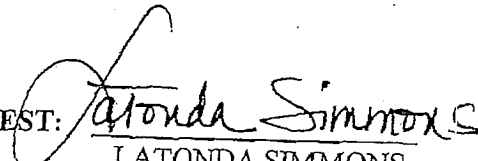
AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, ~~WASSER~~, QUAN, REID AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

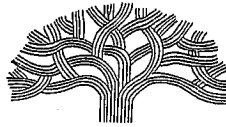
ABSENT- Nadel - 1

ABSTENTION- 0

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland, California



**PUBLIC WORKS AGENCY
ENGINEERING DESIGN & RIGHT OF AWAY
MANAGEMENT SERVICES**

PROJECT ROUTING SLIP

PROJECT NO:	COOPERATIVE AGREEMENT BART AIRPORT CONNECTOR
TITLE:	
SITE ADDRESS:	
From:	Marcel Uzegbu
Date Issued:	April 16, 2007

Routing Names	Department/Agency	Reviewed Date	Signature Date	Signatures
Marcel Uzegbu, Supervising Civil Engineer	PWA, Engineering and Right of Way Management	4/16/07	4/16/07	
Mike Neary, P.E. Assistant Director, Public Works Agency	PWA, Design & Construction Services	4-16-07	4-16-07	
Raul Godinez II, P.E. Director, Public Works Director Agency	PWA, Administration			
Patrick Tang, Deputy City Attorney	Office of the City Attorney	5-1-07	5-4-07	
John A. Russo, City Attorney	Office of the City Attorney			

Note: City Agreement executed by BART for Final signatures.

Signature

Reply: _____

URGENT!

CONTRACT REVIEW

For Signature

TO:

***PATRICK TANG
OFFICE OF THE CITY ATTORNEY***

FROM:

***PWA, DESIGN & CONSTRUCTION
ADMINISTRATION***

RECEIVED
OAKLAND CITY ATTORNEY

07 APR 19 AM 9:06

in.

PERSONAL MAIL

C

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2006 MAR 29 PM 6:49

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL
RESOLUTION No. 79874 C. M. S.

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FURTHER RESOLVED: That this agreement applies solely to work performed under the Oakland Airport Connector Project.

MAY 2 2006

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006


PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, ~~WILLIAMS~~, QUAN, REID AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- Nadel - 1

ABSTENTION- 0

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland, California