

RIGHT OF ENTRY FOR CONSTRUCTION WORK (Park Improvements)

This Right of Entry for Construction Work (Park Improvements) (the “**Permit**”) is entered into for reference purposes as of _____, 2015, by and between the CITY OF ALAMEDA, a charter city and municipal corporation (the “**City**”), and SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY, a California public entity created pursuant to Government Code Section 66540 *et seq.* (“**Permittee**”).

RECITALS

This Permit is entered into upon the basis of the following facts, understandings and intentions of the City and Permittee.

A. The East Bay Regional Park District (“**EBRPD**”) leases that certain shoreline area of the City of Alameda (the “**Park**”) pursuant to that certain City of Alameda Lease Agreement with the City dated for reference purposes as December 1, 2006 (the “**Park Lease**”). The Park is depicted on Exhibit A attached hereto and incorporated herein by this reference.

B. Permittee has agreed to realign the San Francisco Bay Trail within a portion of the Park and construct other related public access amenities in the area depicted on Exhibit B attached hereto and incorporated herein by this reference (collectively, the “**Park Improvements**”). The Park Improvements are to be constructed on that portion of the Park depicted on Exhibit B as the “**Park Site**” and on that portion of adjacent property owned by the City but not subject to the Park Lease depicted on Exhibit B as the “**Offsite Area**”. The Park Site and the Offsite Area are jointly referred to herein as the “**Work Site**”.

C. To accomplish the Work (as defined in Section 2(a) below), it is necessary for Permittee to enter the Work Site.

D. It is in the best interests of the City and EBRPD (as to its interest in the Park Site only) to permit Permittee to enter the Work Site to perform the Work to be done as described in this Permit.

NOW, THEREFORE, the City hereby grants to Permittee a right to enter the Work Site based upon the conditions set forth in this document, all as more fully described below.

1. License. The City hereby grants to Permittee for use by Permittee and its employees, officers, agents, consultants, and contractors (collectively, “**Agents**”) a personal, nonexclusive and nonpossessory right and license to enter upon and use the Work Site, for the purposes and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a deed or grant by the City of any ownership, leasehold, easement or other similar real property interest or estate whatsoever in the Work Site, or any portion thereof. This Permit is nonexclusive and shall be subject and subordinate to the rights of the City and EBRPD to use the Park at their reasonable discretion for any use that does not materially interfere with

Permittee's performance of the Work. The City and Permittee shall cooperate in the use of the Work Site during the term of this Permit.

2. Purposes.

a. Permittee may, but shall not be obligated to, enter and use the Work Site to construct the Park Improvements in the Work Site (collectively, the "**Work**") in accordance with permits issued by the City in its regulatory capacity for such Work and by the San Francisco Bay Conservation and Development Commission ("**BCDC**").

b. The Work Site shall not be used by Permittee for any other purpose, without the express prior written consent of the City.

3. Term. The license conferred to Permittee pursuant to this Permit shall commence on the date Permittee provides written notice to the City that it intends to commence mobilization for the Work (the "**Effective Date**") and shall terminate on the date on which (a) the Work has been approved by BCDC and (b) the Park Improvements have been accepted as complete by the City, subject to delays due to Force Majeure Events (as defined in Section 10(c) below) which shall automatically extend the time for performance under this Permit. After commencement of the Work, Permittee shall complete the Work in an expeditious manner.

4. Performance, Approvals; Due Care.

a. Permittee shall obtain all approvals and permits, including without limitation approvals and permits from the City and all other governmental entities having jurisdiction over the Work Site, including, if applicable, BCDC, and, if applicable, pay all fees (including, without limitation, inspection fees) required by all City departments, including the Department of Public Works, and any other governmental agencies having or claiming jurisdiction over the Work Site that are required to commence and complete the Work. Prior to commencement of the Work, Permittee shall provide proof of all such required permits and approvals, and business licenses to the City, to the extent the City was not the entity issuing the applicable permits and approvals. Permittee shall perform, or cause to be performed, all Work in compliance with such permits and approvals.

b. Permittee shall use, and shall cause its Agents to use, due care at all times in performing the Work to avoid any damage or harm to the City's property and adjoining property and any facilities, in, under, or on the Work Site, unless such property or facilities are to be demolished, removed or replaced in connection with the Work.

c. All Work shall be performed in a workmanlike manner and in accordance with all applicable requirements of State and local law, including without limitation the Alameda Municipal Code, or any subsequent revisions thereof, and according to the plans filed in the office of the City's Public Works Director. Permittee shall protect all existing facilities not required to be demolished in accordance with the Work. Permittee shall repair any damage to the Work Site caused by its Work or use of the Work Site, including but not limited to landscaping, curb, gutter, sidewalk and roadways; provided, however, Permittee shall not be

required to repair any property or facilities that are required by the City to be, or otherwise are to be, demolished or removed in connection with the Work. Permittee is responsible for daily clean up of all rubbish, excess material, temporary structures and equipment used to accomplish the Work. Permittee shall comply, and cause compliance, with all requirements of the State Water Resources Control Board Construction Activity Storm Water National Pollutant Discharge Elimination System General Permit with respect to removal of all dirt, mud, gravel and refuse from any public street pavement adjoining the Work Site daily and prior to rain.

d. Permittee shall at all times during the term of this Permit, use commercially reasonable efforts to maintain, or cause to be maintained, the Work Site in a safe and secure condition.

e. Permittee shall require all of its Agents to comply with the terms of this Permit. Upon the City's request, evidence of such requirement shall be provided to the City.

f. Prior to commencement of any intrusive Work, as applicable, Permittee shall contact Underground Service Alert and comply with its protocols to locate all utilities. Permittee shall take all necessary precautions to avoid contact with, or damage to, any existing utilities. Permittee shall promptly repair any damage to any utilities caused by its Work or use of the Work Site (other than utilities that are to be removed, terminated, or relocated in connection with the Work (unless required to be operable during the Work) and shall bear all costs and expenses related to any such damage and repairs (excluding consequential damages).

g. Permittee shall provide competent personal supervision of the Work or have a competent contractor, foreman or superintendent on the Work at all times during progress with authority to act for Permittee. Permittee shall provide to the City emergency telephone numbers of personnel authorized to act on behalf of Permittee during non-business hours.

h. Permittee shall be responsible for the cost of all utilities used by Permittee and/or its Agents in connection with the Work.

i. On completion of the Work, Permittee shall provide to the City a digital AutoCAD-formatted complete set of "as-built" drawings showing clearly all changes, revisions and substitutions during the Work, including, without limitation, field changes and the final location of all utility lines.

5. Fire Protection Plans. If required by applicable law, prior to commencement of the Work, Permittee shall submit a fire protection plan for the Work for approval by the City's office of the Fire Marshall ("**Fire Marshall**") and shall comply with the fire protection plan as approved by the Fire Marshall.

6. Insurance.

a. Permittee shall maintain throughout the term of this Permit, at no cost to the City, insurance as follows:

i. Commercial, broad form general liability insurance, in an amount not less than Two Million Dollars (\$2,000,000), combined single limit. At least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage.

ii. Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

iii. Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit.

iv. Pollution liability insurance, in an amount not less than Five Million Dollars (\$5,000,000), per pollution incident and in the aggregate.

v. Permittee shall cause the contractors and subcontractors to provide the following insurance coverages:

A. Commercial, broad form general liability insurance, including contractual liability, products and completed operations, in an amount not less than One Million Dollars (\$1,000,000), combined single limit. If such insurance is provided under a blanket policy, a separate general liability and completed operations aggregate limit shall apply to the Work Site; at least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage. Permittee shall use its reasonable efforts to cause the completed operations coverage to be maintained for at least five (5) years following completion of construction.

B. Liability insurance for owned, hired and non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit.

C. Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

D. Solely with respect to the contractor or subcontractor which will be handling Hazardous Materials while performing Work on the Work Site, contractor's pollution liability insurance, in an amount not less than Two Million Dollars (\$2,000,000), per pollution incident and in the aggregate. The phrase "handling Hazardous Materials" as used herein shall include without limitation containing, labeling and removal.

vi. Permittee shall cause its geotechnical and civil engineering consultants to maintain professional liability insurance. Permittee shall use its reasonable efforts to cause such professional liability insurance to have an inception date or a retroactive date coinciding with or prior to the date such consultant's services are first performed and to cause coverage to continue uninterrupted until at least five (5) years after the date such work or services are accepted.

b. General Requirements.

i. All insurance provided for under this Permit shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VII in the most current edition of Best's Insurance Reports, or otherwise acceptable to the City's Risk Manager.

ii. The professional and pollution legal liability policies required pursuant to this Section 6 shall be written on a "claims made" form with a "thirty day extended reporting provision" that survives this Permit. All other liability policies required hereunder shall be written on an occurrence basis. The required coverage may be provided by a blanket, multi-location policy, if such policy provides a separate aggregate limit per occurrence for the benefit of the Work Site and off-site areas subject to this Permit.

iii. Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

iv. Commercial general and automobile liability insurance policies shall be endorsed or otherwise provide the following:

A. Name the City and its commissions, boards, departments including the electric utility Alameda Municipal Power, officers, agents and employees, as additional named insureds, as their respective interests may appear hereunder.

B. All policies shall be endorsed to endeavor to provide at least fifteen (15) days' written notice to City's Risk Manager prior to any cancellation, nonrenewal or modification of insurance coverage. Permittee covenants and agrees to give the City reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

v. All insurance provided for under this Permit are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

vi. Permittee agrees that in the event of loss due to any of the perils for which it has agreed to provide commercial general and automotive liability insurance and workers' compensation, Permittee shall look solely to its insurance for recovery. Permittee hereby grants to the City, on behalf of any insurer providing comprehensive general and

automotive liability insurance and workers' compensation to either Permittee or the City with respect to the Work, a waiver of any right to subrogation which any such insurer of said Permittee may acquire against the City by virtue of the payment of any loss under such insurance.

c. Permittee shall deliver to the City certificates of insurance and additional insured endorsements in form reasonably satisfactory to the City's Risk Manager, evidencing the coverages required hereunder, on or before the Effective Date of this Permit ("**Evidence of Insurance**"), and Permittee shall provide the City with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Permittee shall deliver to the City complete copies of the relevant policies upon request therefor from the City. If Permittee shall fail to procure such insurance, or fails to deliver Evidence of Insurance as required herein, and such failure continues for more than ten (10) days following written notice from the City to Permittee, the City may, at its option, procure the same for the account of Permittee, and the reasonable cost thereof shall be paid to the City within thirty (30) days after delivery to Permittee of bills therefor. The City shall notify Permittee within thirty (30) days of its receipt of Evidence of Insurance whether Evidence of Insurance is not acceptable to the City.

d. Notwithstanding anything to the contrary in this Permit, Permittee's compliance with this Section 6 shall in no way relieve or decrease liability of Permittee under Section 13 below, or any other provision of this Permit, and no insurance carried by the City shall be called upon to satisfy the Permittee's indemnification obligations under Section 13 or any other obligations of Permittee or its Agents under this Permit.

7. Compliance with Laws and Agreements.

a. All activities and operations of Permittee and/or its Agents under this Permit shall be in compliance with all applicable federal, state and local laws and regulations, including without limitation, the City's Marsh Crust ordinance and all applicable federal and state labor laws and standards, including prevailing wage requirements (to the extent applicable). All contracts Permittee enters into for performance of the Work shall make appropriate provision for compliance with this Section 7.

b. Permittee herein covenants for itself and for all persons claiming in or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, sex, marital status, sexual orientation, disability, national origin or ancestry in the use, occupancy or enjoyment of the Park. Permittee shall require its Agents to ensure that all consultant contracts and construction contracts for the Work, contain this provision against discrimination or provide that its consultants and contractors shall comply with all applicable laws which would include laws prohibiting discrimination on these bases.

8. Signs. Permittee shall not place, erect, or maintain any sign, advertisement, banner or similar object on the Work Site, except for temporary safety and warning signs or construction signs associated with the Work and as approved by the City. Informational signage

shall be subject to the approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.

9. Condition/Restoration of Condition of Property.

a. The Work Site is accepted “as is” and entry upon the Work Site by Permittee is an acknowledgment by Permittee that all dangerous places and defects in the Work Site, except latent defects and dangerous places, are known to it and are to be made secure and kept in such secure condition by Permittee, which shall include, without limitation, installing and maintaining security fencing and signage, conducting regular inspections of the Work Site and if applicable, buildings situated thereon, and promptly contacting the City’s police and/or fire department as necessary at (510) 522-2423, or if normal telephone lines are inoperable at (510) 337-8340. Permittee shall vacate the Work Site, remove any and all of its personal property located thereon, and restore any portion of the Work Site affected by Permittee’s Work to a neat, safe and secure condition. The City shall have the right upon not less than fifteen (15) days’ notice to Permittee to dispose of any property left by Permittee on the Work Site and/or the Park after termination of this Permit or after the Permittee has vacated the Work Site.

b. If any soils investigation permitted hereby involves the drilling of holes or other excavation having a dimension that could create a safety hazard for persons, said holes and excavation shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling and shall be approved by Permittee’s geotechnical engineer. All soils test data and reports prepared based thereon, obtained from these activities shall be provided to the City upon request.

c. Prior to completion of the Work pursuant to this Permit, Permittee, at its sole cost and expense, shall appropriately contain and label Hazardous Materials (as defined below) extracted from or introduced in, on, under or about the Work Site by Permittee or its Agents in compliance with all laws, including California Environmental Protection Agency regulations and guidelines for Hazardous Materials handling and management (including the management of PCB-containing materials and mercury-containing materials), and cause to be removed, any and all Hazardous Materials extracted from or introduced in, on, under or about the Work Site by Permittee or its Agents. All costs of storage, shipping and disposal of extracted soils and groundwater introduced in, on, under or about the Work Site by Permittee or its Agents shall be the responsibility of Permittee including, without limitation, the costs of preparation of shipping papers. Permittee shall promptly inform the City that such actions have been performed. For purposes herein, the term “**Hazardous Materials**” shall mean any substance, material or waste which is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (ii) petroleum; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive materials; (vi) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (viii) defined as a “hazardous substance” pursuant to

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (ix) determined by California or federal governmental authority to be capable of posing an unacceptable risk to human health or the environment due to environmental exposures. If the following is applicable to Permittee, then notwithstanding the foregoing provisions of this Section to the contrary, in no event shall Permittee or its Agents be liable for the mere discovery by Permittee of any preexisting condition of Hazardous Materials in, on, under or about the Work Site that Permittee did not extract from or introduce in, on, under or about the Work Site, provided Permittee promptly notifies the City of such discovery and properly documents and handles any Hazardous Materials actually extracted by Permittee or its Agents in accordance with this Section 9(c).

d. The City makes no representations or warranties, express or implied, with respect to the environmental condition of the Work Site or the surrounding property (including, without limitation, all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any applicable laws pertaining to Hazardous Materials, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or release or threatened release of Hazardous Materials in or from the Work Site.

e. Permittee recognizes that, in entering upon the Work Site and performing work under this Permit, its Agents may be working with, or be exposed to, substances or conditions which are toxic or otherwise hazardous. Permittee shall provide prior written notice to its Agents of the potential presence and exposure to such toxic or hazardous substances or conditions. Permittee agrees that it is assuming full responsibility for such risks.

f. All excavation, backfilling or other earthwork shall be performed in accordance with the recommendations of Permittee's geotechnical engineer.

10. Defaults by Permittee; Force Majeure Events.

a. Default by Permittee shall include, but not be limited to, Permittee's failure to timely commence or complete construction of the Work in accordance with this Permit, subject to delays due to Force Majeure Events; Permittee's failure to cure any default or any defect in the Work within thirty (30) days from the date of written notice thereof from the City; Permittee's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Permittee fails to discharge within sixty (60) days; or Permittee's failure to perform any other obligation under this Permit within the applicable notice and cure periods.

b. Permittee shall notify the Public Works Director of Permittee's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action, or any correspondence in lieu thereof.

c. In addition to specific provisions of this Permit, performance by either party shall not be deemed to be in default where delays or defaults are for reasons beyond the reasonable control of such party due to war; insurrection or acts of civil disobedience; strikes;

lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; the pendency of any mediation, arbitration, litigation or other administrative or judicial proceeding affecting the Work or a party's ability to perform its obligations under this Permit; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City) or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform which substantially interferes with such party's performance under this Permit (collectively, "**Force Majeure Events**").

11. Right to Cure Defaults; Remedies.

a. Except as provided in Section 11(b) below, if Permittee fails to cure any default under this Permit within thirty (30) days after its receipt of written notice thereof from the City, the City may, but shall not be obligated to, remedy such failure for Permittee's account and at Permittee's cost by providing Permittee fifteen (15) days' prior written notice of the City's intention to cure such default; provided, however, if more than thirty (30) days is reasonably required to complete the cure, Permittee shall not be in default so long as Permittee has commenced the cure within such thirty (30) day period and is diligently prosecuting such cure to completion. No such prior notice by the City shall be required in the event of an emergency as reasonably determined by the City. Such action by the City shall not be construed as a waiver of any rights or remedies of the City under this Permit, and nothing herein shall imply any duty of the City to do any act that Permittee is obligated to perform. Permittee shall pay to the City within fifteen (15) days following the City's written demand, all reasonable, out-of-pocket costs and expenses incurred by the City, including, without limitation reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section 11 shall survive the termination of this Permit. In the event of Permittee's default (beyond any applicable notice and cure periods and subsequent to the City's written notice to Permittee of such default):

i. Any remedies specified herein are in addition to, and not in lieu of, other remedies available to the City. Permittee agrees that the City has full discretion in choosing the remedy or remedies to pursue and that the failure of the City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

ii. Permittee shall reimburse the City for its reasonable costs and expenses (including reasonable attorneys' fees and costs) including interest thereon at the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to the City in connection with this Permit.

b. The City reserves to itself all remedies available to it at law or in equity, including without limitation, the right, without limiting any of its other rights and remedies, to issue a stop work order, remove Permittee from the Work Site and revoke and terminate this

Permit if Permittee fails to comply with any terms of this Permit. If the issue triggering the stop work order (the “failure”) can be cured and is not a safety or health hazard and is not considered an emergency, Permittee may have up to fifteen (15) days to cure after receiving written notice from the City, provided, however, if more than fifteen (15) days is reasonably required to complete the cure, the City shall not issue a stop work order and remove Permittee from the Work Site so long as Permittee has commenced the cure within such fifteen (15) day period and Permittee is diligently prosecuting such cure to completion not to exceed thirty (30) days.

12. Costs. Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Work Site, including, without limitation, any fines or penalties related to, or arising from, performance of the Work and any other costs incurred by the City caused by Permittee’s failure to comply with this Permit.

13. Indemnification.

a. Permittee shall indemnify, defend and hold harmless the City and its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, and agents from and against any and all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys’ fees and costs and consultant fees and costs and court costs), including the reasonable costs to the City of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires the City to take any action, arising from or as a result of the following (collectively, “**Indemnified Claims**”): (i) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Work Site, or any part thereof, whether to the person or property of Permittee or its Agents, their invitees, guests or business visitors (collectively, “**Invitees**”), or third persons, resulting from any use or activity by Permittee or its Agents under this Permit, (ii) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, or (iii) the use of the Work Site or any activities conducted thereon under this Permit by Permittee, its Agents or Invitees. The foregoing indemnity shall exclude any Indemnified Claims to the extent they result from (y) the negligence or willful or other actionable misconduct of the City or its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, and agents, or (z) the mere discovery by Permittee or its Agents of any preexisting condition of Hazardous Materials in, on, under or about the Work Site, provided Permittee promptly notifies the City of such discovery and properly documents and handles such Hazardous Materials actually extracted by Permittee or its Agents in accordance with Section 9(c) above. Permittee agrees to defend the indemnified parties against any claims that is actually within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.

b. Permittee, jointly and severally for itself, its successors, and Agents, agrees to indemnify, defend (with counsel acceptable to the City) and hold harmless the City and its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, agents and any successors to the City’s interest in the Work Site from and against any and all damages, liability, claims, suits, fines, penalties, charges,

administrative and judicial proceedings and orders, judgments, remedial actions of any kind and all costs and cleanup actions of any kind, reasonable attorney's fees, and all costs and expenses incurred in connection therewith, (including, without limitation, costs of defense, any and all fines, penalties, costs, damages, or consultant's fees related to encountering, threatened release, releasing, exposing, disposing or otherwise impacting Hazardous Materials or "pesticides" as those terms might be defined in any federal, state or local legislation currently existing or enacted in the future) (collectively, "**Claims**") to the extent caused directly by the Work conducted or performed within and under this Permit by Permittee or its Agents. Provided, however, that such indemnification, defense and hold harmless obligation shall not apply to any Claims due to (i) the negligence or willful or other actionable misconduct of the City or its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, or agents, or (ii) the mere discovery by Permittee or its Agents of any preexisting condition of Hazardous Materials in, on, under or about the Work Site, provided Permittee promptly notifies the City of such discovery and properly documents and handles such Hazardous Materials actually extracted by Permittee or its Agents in accordance with Section 9(c) above.

c. Permittee shall not permit any mechanics' or material supplier's liens to be levied against the Work Site for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to its Agents. Permittee shall, within ten (10) days following the imposition of any such lien, either cause the same to be released of record or provide City with insurance against the same issued by a major title insurance company or such other protection against the same as City shall accept, City shall have the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith shall be payable to City by Permittee on demand. In addition, Permittee shall indemnify, defend and hold the City free and harmless from any and all cost or expense connected with or arising from any Work undertaken on the Work Site by Permittee.

d. For the purposes of this Section 13, Permittee's operations and activities include, but are not limited to, those of its Agents.

e. Permittee's obligations under this Section 13 shall survive the expiration or other termination of this Permit.

14. Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received upon personal delivery or upon delivery by facsimile by 5:00 p.m. Pacific Time and is followed by delivery of a "hard" copy to the addresses listed below or, if sent by mail, three (3) business days following its deposit in the United States mail, postage prepaid, certified mail, return receipt requested, or, if sent by FedEx or other reliable overnight courier, on the next business day following dispatch, and in any such events addressed to the City or Permittee, as the case may be, at the addresses set forth below (or such other address as a party may specify by notice given pursuant to this Section):

City: City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: City Manager
Telephone: (510) 747-4700
Facsimile: (510) 747-4704

with copy to: City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: City Attorney
Telephone: (510) 747-4750
Facsimile: (510) 747-4767

with copy to: City of Alameda
950 West Mall Square, Room 110
Alameda, CA 94501
Attention: City Engineer
Telephone: (510) 747-7937
Facsimile: (510) 769-6030

Permittee: San Francisco Bay Area Water Emergency Transportation Authority
Pier 9 Suite 111, The Embarcadero
San Francisco, CA 94111
Attention: Executive Director
Telephone: (415) 364-3192
Facsimile: (415) 291-3388

15. No Assignment by Permittee. This Permit is personal to Permittee and shall not be transferred by Permittee without the City's prior written consent, which may be granted or denied in the City's sole discretion. Any attempt by Permittee to transfer this Permit in violation of the immediately preceding sentence shall be null and void and cause the immediate termination and revocation of this Permit. Notwithstanding the foregoing, the City acknowledges that some or all of the Work may be performed by Permittee's Agents, and such performance shall not be construed as an assignment or transfer by Permittee of this Permit.

16. Strictly Construed. This Permit is to be strictly construed and no use other than that specifically stated herein is authorized hereby.

17. Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Permit, no elective or appointive board, commission, member, officer, employee or agent of the City shall be personally liable to Permittee, its successors and assigns, in the event of any default or breach by the City or for any obligation of City under this Permit or a judgment obtained against the City, nor shall any officer, director, shareholder, partner, member, trustee, employee, or beneficiary of Permittee be personally liable to the City, or its

successors or assigns, in the event of any default or breach by Permittee or for any obligation of Permittee under this Permit or a judgment obtained against Permittee.

18. No Joint Venturers or Partnership; No Authorization. This Permit does not create a partnership or joint venture between the City and Permittee as to any activity conducted by Permittee on, in or relating to the Work Site. Except as provided in this Permit, the giving of this Permit by the City does not constitute authorization or approval by the City of any activity conducted by Permittee on, in, or relating to the Work Site.

19. Taxes. Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, in the event that this Permit creates a possessory interest subject to property taxation, that may be lawfully assessed on Permittee's interest under this Permit or use of the Work Site pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Work Site that may be imposed upon Permittee by applicable law. Permittee shall pay all such charges when they become due and payable and before delinquency. Nothing in this Section 19 shall be construed as indicating an intent to create a possessory interest subject to taxation, and the City agrees that it will cooperate with Permittee in efforts to lawfully minimize or avoid any such assessments.

20. Contractor Licensing. The City acknowledges and agrees that Permittee shall be deemed to be the owner of the Work Site solely for purposes of California contractor licensing laws and Permittee shall be responsible for the payment of all costs relating to the performance of the Work described in the Permit.

21. General Provisions.

a. This Permit may not be amended or modified except by a written instrument signed by an officer or other authorized representative of all parties hereto.

b. No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in such written waiver.

c. All approvals and determinations of the City required or permitted hereunder shall be made in the reasonable discretion of the City.

d. The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit.

e. Time is of the essence.

f. This Permit shall be construed and governed in accordance with the laws of the State of California.

g. If either party institutes any action or proceeding in court or before an arbitrator to enforce any provision hereof or for damages by reason of an alleged breach of any

provision of this Permit, the prevailing party shall be entitled to receive from the other party court or arbitration costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or arbitrator may judge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding.

h. Permittee may not record this Permit or any memorandum hereof.

i. Subject to the limitations on assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

j. Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

k. For purposes herein, the designated representative for the City shall be the City Manager or his or her designee.



l. This Permit may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Permit as of the date first written above.

CITY:

City of Alameda,
a charter city and municipal corporation

By: _____
John A. Russo
City Manager

Approved as to Form:
By: 
 Janet Kern
City Attorney

Recommended for Approval:

By: _____
Name: _____
Title: _____

[Remainder of page intentionally blank; signature follows.]

PERMITTED:

San Francisco Bay Area Water Emergency Transportation Authority,
a California public entity created pursuant to Government Code Section 66540 *et seq.*

By: Nina Pannells
Name: NINA PANNELLS
Title: EXECUTIVE DIRECTOR

Approved as to Form:

By: Stanley S. Taylor III
Stanley S. Taylor III, General Counsel

Exhibit A - Depiction of the Park

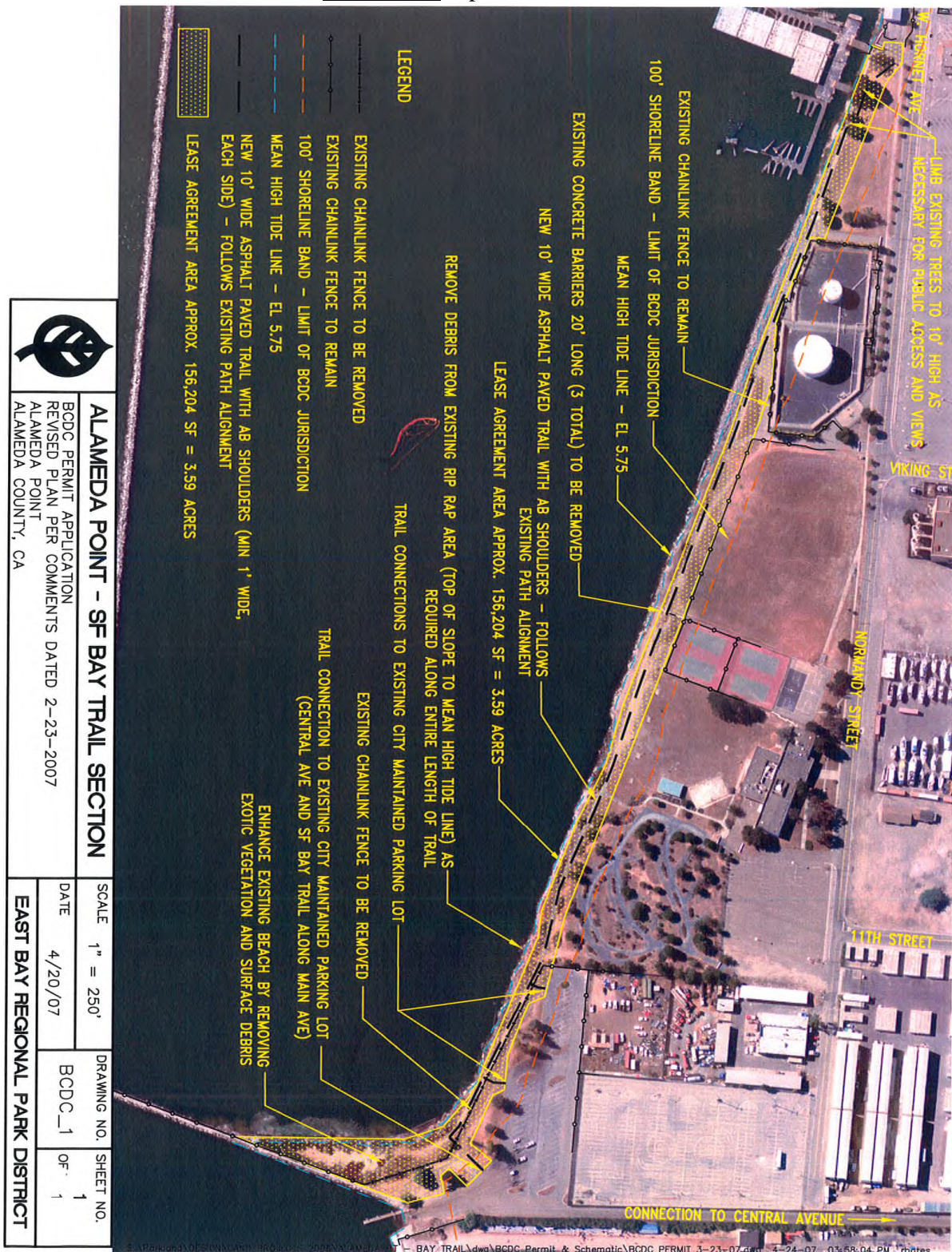


Exhibit B



EXHIBIT B: PARK AND PUBLIC ACCESS IMPROVEMENT AREA

CONSENT OF EAST BAY REGIONAL PARK DISTRICT

The East Bay Regional Park District, a California special district (“**EBRPD**”) is the Tenant under that certain City of Alameda Lease Agreement dated for reference purposes as December 1, 2006 by and between EBRPD and the City of Alameda, a municipal corporation (“**City**”), for certain premises more particularly described therein (the “**Park**”).

EBRPD:

The undersigned hereby acknowledges and consents to the foregoing Right of Entry for Construction Work (Park Improvements) (the “**Right of Entry**”) to which this Consent of East Bay Regional Park District is attached and agrees to maintain the Park Improvements (as defined in the Right of Entry) to be constructed in the Park pursuant to the Right of Entry following completion of construction of the Park Improvements. EBRPD’s consent extends only to the Park Site (as defined in the Right of Entry).

East Bay Regional Park District,
a California special district

By: _____
Name: _____
Title: _____