

FILE NO. 070297

ORDINANCE NO.

75-07

1 [Settlement of Lawsuit]
 2

3 **Ordinance authorizing revised settlement of litigation brought by the San Francisco**
 4 **Bay Area Transit District against City and County of San Francisco in the eminent**
 5 **domain action entitled San Francisco Bay Area Transit District v. City and County of**
 6 **San Francisco, et al. (Alameda County Superior Court No. HG03-099024, filed July 7,**
 7 **2003), for the principal amount of \$2,367,570.**

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

9 Section 1. The City Attorney is hereby authorized to settle with San Francisco Bay
 10 Area Transit District ("BART") for the taking of the City's property in the eminent domain action
 11 entitled San Francisco Bay Area Transit District v. City and County of San Francisco, et al.,
 12 Alameda County Superior Court No. HG03-099024, by accepting payment to the City of
 13 \$2,367,570.00, plus interest as agreed through March 11, 2005, such other material terms as
 14 are set forth in a stipulation substantially in the form of the Stipulation for Entry of Judgment in
 15 Condemnation and attachments thereto, contained in Board of Supervisors File No.
 16 070297, and on such other terms as shall be negotiated and approved by the City
 17 Attorney's Office.

18 Section 2. The plaintiff filed its eminent domain action entitled San Francisco Bay Area
 19 Transit District v. City and County of San Francisco, et al. in Alameda County Superior Court
 20 on July 7, 2003.

21 Section 3: The action was brought by BART seeking fee ownership of certain property
 22 located in the County of Alameda, owned by the City and County of San Francisco ("CCSF")
 23 under the jurisdiction of the San Francisco Public Utilities Commission ("SFPUC") and
 24 occupied, in part, by SFPUC above-ground water transmission lines (the "Property").
 25

1 Section 4: SFPUC and BART initially reached a settlement during the course of a
2 judicially supervised settlement conference by which BART agreed to make payment in the
3 amount of \$2,750,000, plus interest according to law, to CCSF for acquisition of the Property
4 for use in connection with a BART Project, subject to a reserved permanent easement in favor
5 of CCSF. The initial settlement was then submitted to the SFPUC and the Board of
6 Supervisors ("Board") for approval. The Board authorized the City Attorney's Office to
7 negotiate the settlement on the financial terms set forth above by its Ordinance No. 220-05.

8 Section 5: Following the Board's adoption of a settlement ordinance, the parties
9 discovered that a material disagreement existed as to the scope of the property rights to be
10 acquired by BART and reserved by CCSF under the settlement. BART subsequently filed a
11 motion with the Alameda County Superior Court to enforce the settlement on terms that
12 SFPUC and the City Attorney's Office believed would not protect the integrity of present or
13 potential future SFPUC water delivery facilities on the Property, and the Superior Court
14 granted that motion. The parties then subsequently agreed to negotiate a revised settlement.

15 Section 6: By the terms of the revised settlement, BART will take fee ownership of
16 ~~portions of the Property;~~ for a payment in the principal amount of \$2,367,570.00, plus
17 negotiated interest, and CCSF will receive an easement that provides it with sufficient
18 property rights to maintain its existing facilities, and relocate its existing facilities underground,
19 as well as locate potential future facilities, at an alternate location on the Property. The terms
20 of the easement in favor of CCSF will be in substantially the form reflected in Exhibit A,
21 contained in the Board of Supervisors File No. 070297. Before BART takes fee
22 ownership of the Property and the easement is recorded, CCSF will require that the City of
23 Fremont, Union Pacific Railroad Company, Alameda County Water District, and the Alameda
24 County Flood Control District, each of which currently operates or will operate facilities over
25 the Property, will consent to the easement pursuant to certain consent and estoppel

1 certificates or certificates of consent, as applicable, substantially in the forms attached to the
2 stipulation; such consents and estoppel certificates shall be recorded contemporaneously with
3 the easement in favor of CCSF and such certificates of consent shall be executed on or prior
4 to such recordation date; and

5 Section 7: By the terms of the revised settlement, the parties shall bear their own costs
6 and attorneys fees associated with the litigation.

7 Section 8: The SFPUC has approved this revised settlement by Resolution No. 07-
8 0031 on February 14, 2007. A copy of that resolution is contained in Board of Supervisors
9 File No. 070297 and is incorporated herein by this reference.

10
11
12 APPROVED AS TO FORM:

APPROVED: Public Utilities Commission

13 DENNIS J. HERRERA, City Attorney

14
15 By:


KRISTEN A. JENSEN
Deputy City Attorney


Susan Leal
General Manager



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 070297

Date Passed:

Ordinance authorizing revised settlement of litigation brought by the San Francisco Bay Area Transit District against City and County of San Francisco in the eminent domain action entitled San Francisco Bay Area Transit District v. City and County of San Francisco, et al. (Alameda County Superior Court No. HG03-099024, filed July 7, 2003), for the principal amount of \$2,367,570.

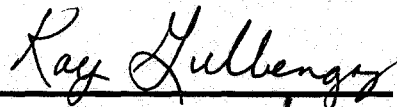
March 27, 2007 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

April 10, 2007 Board of Supervisors — FINALLY PASSED

File No. 070297

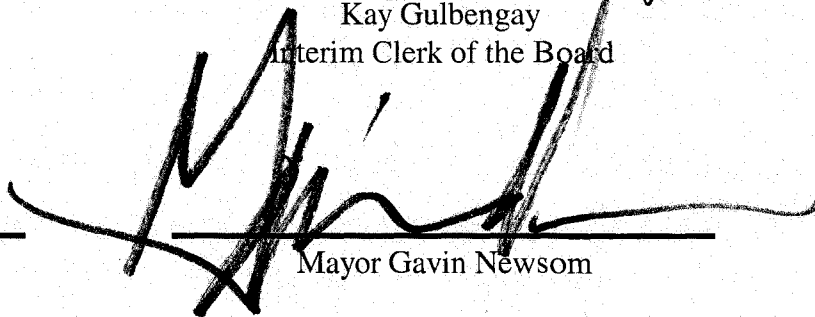
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on April 10, 2007 by
the Board of Supervisors of the City and
County of San Francisco.



Kay Gulbengay
Interim Clerk of the Board

APR 19 2007

Date Approved



Mayor Gavin Newsom