AGREEMENT

between the

CITY OF SOUTH SAN FRANCISCO

and the

SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT REGARDING COLMA CREEK CHANNEL MAINTENANCE

This Agreement, made and entered into this 14 day of December, 2020, by and between the City of South San Francisco ("City"), a municipal corporation of the State of California, and the San Mateo County Flood and Sea Level Rise Resiliency District ("District"), a special district in San Mateo County, State of California.

WHEREAS, a portion of the Colma Creek Flood Control Channel financed, constructed, and maintained by District lies within the incorporated limits of the City; and

WHEREAS, the City and District have identified a need for a collaborative effort and sharing of resources in vegetation management, abatement of graffiti, vandalism, illegal dumping, illegal encampments, minor maintenance efforts, and the collection and disposal of trash and debris deposited in and around the Colma Creek Flood Control Channel in the City; and

WHEREAS, trash in the creeks and waterways is detrimental to the community and to the environment; and

WHEREAS, the City and District have implemented programs that include the removal of trash along creeks and waterways to comply with National Pollutant Discharge Elimination System (NPDES Municipal Regional Stormwater Permit issued by the San Francisco Bay Regional Water Quality Control Board (Order R2-2009-0074, NPDES Permit No. CAS612008, October 14, 2009; and

WHEREAS, the City has the resources and current programs to assist in the management of vegetation, graffiti, vandalism, illegal dumping, illegal encampments, and minor maintenance in and around the Colma Creek Flood Control Channel in the City; and

WHEREAS, the City and District desire to enter into an Agreement to utilize City resources for vegetation management, abatement of graffiti, vandalism, illegal dumping, illegal encampments, minor maintenance, and trash prevention and removal activities within and adjacent to the Colma Creek Flood Control Channel; and

WHEREAS, the City and District are government agencies duly authorized and existing under the laws of the State of California, and situated within the boundaries of the County of San Mateo; and

WHEREAS, Government Code section 54981 allows the legislative body of any local government agency to contract with another agency for performance of municipal services or functions; and

WHEREAS, Government Code section 6502 provides that, if authorized by their legislative or other governing bodies, two or more public agencies may by agreement jointly exercise any power common to the parties.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the CITY and DISTRICT agree as follows:

I. TERMS AND CONDITIONS

A. <u>Term of Agreement</u>

The term of this Agreement shall be from the date first set forth above to June 30, 2023. This Agreement may be terminated pursuant to Section J.

B. Authorizations

The City Manager is authorized to approve extensions to the term of this Agreement, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of the City, provided such approvals are not vested in the authority of the City Council, and provided that any approval requiring payment of funds in excess of appropriated funds shall require City Council approval of the appropriation of those funds.

The Chief Executive Officer of the District is authorized to approve the extension of the term of this Agreement, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of District, provided that any approval requiring payment of funds in excess of appropriated funds requires approval of the appropriation of excess funds by the District Board of Directors.

C. <u>Insurance</u>

Each party shall maintain a program of self-insurance or excess insurance, or any combination thereof, and shall name the other party as an additional insured thereto to protect against any liability for bodily injury or property damage arising out of, or in connection with, the performance of the insuring party, its appointed or elected officials, officers, agents, and employees, under this Agreement. The liability coverage under such program of self-insurance or excess insurance shall not be less than Two Million Dollars (\$2,000,000) combined single limit for each occurrence. Each party shall supply a certificate of self-insurance to the other party on or before the time of execution of this Agreement. Each party shall notify the other party in writing prior to any termination of such self-insurance program.

D. Indemnification

Pursuant to Government Code section 895.4, each party agrees to fully indemnify, defend, and hold the other party (including its appointed and elected officials, officers, employees, and agents) harmless from any damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its appointed or elected officials, officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such party under this Agreement. No party, nor any appointed or elected official, officer, employee, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its appointed or elected officials, officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such other party under this Agreement.

E. Amendment

This Agreement may be amended at any time upon the written mutual approval of the parties.

F. Notices

Any and all notices required to be given hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the following address or such other address as is provided by either party in writing:

To City:

City of South San Francisco P.O. Box 711 South San Francisco, CA 94083 Attn: Director, Public Works

To District:

San Mateo County Flood and Sea Level Rise Resiliency District 1700 S. El Camino Real, Suite 502 San Mateo, CA

Attn: Len Materman, Chief Executive Officer

G. Severability

If any provision of this Agreement shall be held to be invalid, void, or unenforceable, the validity, legality, or enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

H. Entire Agreement

This Agreement, together with <u>Exhibit A</u> and <u>Exhibit B</u> attached hereto and incorporated herein contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, documents, and discussions pertaining thereto.

I. Debt Limitation

The City and District are both subject to laws or policies which limit their ability to incur debt in future years. Nothing in this Agreement shall constitute an obligation of future legislative bodies of the City or District to appropriate funds for purposes of this Agreement.

J. <u>Termination</u>

Either party may terminate this Agreement by providing the other party with written notice of termination, no less than thirty (30) days prior to the effective date of termination.

K. Conflict of Interest

The City and the District shall each avoid all conflicts of interest in the performance of this Agreement and shall immediately notify the other should a conflict of interest arise that would prohibit or impair the party's ability to perform under this Agreement.

L. Non-Discrimination

Neither the City nor District will discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identification, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

M. Limitations

Sites that may require the performance of the activities under the terms of this Agreement must satisfy all of the following: (i) within the limits of the City, (ii) in or immediately adjacent to the Colma Creek Flood Control Channel as depicted on Exhibit A, and (iii) subject to a City and/or District right-of-way, easement, or permit. Other sites not meeting the requirements of (i), (ii), and (iii) of this subsection are not covered under this Agreement.

N. <u>Disputes</u>

The City and District agree that, with regard to all disputes or disagreements arising under this Agreement which are not resolved informally at the staff level after a good faith attempt by both parties, the parties may, at their sole and mutual discretion, agree to engage in mediation. The costs of the mediation shall be divided equally between the parties, unless otherwise agreed.

O. Payment for Services

In consideration of the services provided by the City or the City's contractors within District right-of-way, easement or future easements as depicted on Exhibit A in accordance with all terms, conditions, and scope set forth herein, the District shall make payment to the City based on the rates and in the manner specified. The City shall submit an invoice to the District upon completion of District-authorized work. Said invoice shall include an accounting of all charges for personnel, material, equipment, and/or outside services which the City shall have used for the performance of the work and a description of the work performed including dates of the work performed. Payments shall be in accordance with the rates described in Exhibit B. Every July 1, the City may notify the District in writing of any rate adjustments as identified in Exhibit B. Rate adjustments are subject to District approval. District shall make payment within thirty (30) days of receipt of invoice. In no event shall District's total fiscal obligation under the term of this Agreement exceed One Hundred Thousand Dollars (\$100,000). Invoices shall be submitted on a monthly basis whenever work is performed under this Agreement.

II. DEFINITIONS

- A. Channel The Colma Creek Flood Control Channel financed, constructed, and maintained by District from the confluence with the Navigable Slough (also known historically as San Bruno Creek/Canal/Slough) to the general vicinity of the intersection of El Camino Real and Valley Street in the City of Daly City.
- **B.** Active Illegal Encampment An illegal encampment that appears to have been recently used as an encampment site as evidenced by (i) the presence of persons at or around the encampment, or (ii) the organized, systematic and methodical appearance of the encampment where it would be reasonable to assume that it is currently being used as an encampment.
- C. City Waste All wastes generated by or collected by the City in the performance of all municipal services, including Grit and Screenings, but excluding Sewage Sludge or other residue from waste-water treatment facilities, and including, but not limited, to debris from street and sewer repairs and construction, debris from public and private lot clean-up operations, tires from municipal vehicles, debris from street sweepings, grass clippings, leaves and tree trimmings from maintenance of City parks, streets, median strips, and property, rock and concrete not exceeding a non-diagonal dimension of four (4) feet, asphalt pavement as found in streets, tree stumps and branches no more than eight (8) feet long and no more than two (2) feet in diameter, bulky wastes such as large appliances and furniture found in clean-up operations of real property, parks or other public or private lands, and other similar wastes generated by or collected by the City. Except as provided in this Section II.C,

City Waste shall not include residential garbage and rubbish, or commercial garbage and rubbish that is generated by private individuals or private businesses and is regularly collected by the City's waste hauler from private property.

- **D.** Grit and Screenings Grit includes sand, gravel, cinder, or other heavy solid materials that are "heavier" (higher specific gravity) than the organic biodegradable solids in wastewater. Grit also includes eggshells, bone chips, seeds, coffee grounds, and large organic particles, such as food waste. Screenings are suspended solids or objects such as rags, paper, plastics, and metals to prevent damage and clogging of downstream equipment, piping, and appurtenances.
- **E. Hazardous Waste** A solid waste, or combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (i) cause, or significantly contribute to an increase in mortality, or an increase in serious irreversible, or incapacitating reversible illness; or (ii) pose a substantial, present, or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- F. Illegal Encampment A camp located in or immediately adjacent to the Colma Creek Flood Control Channel within the City that has not been permitted by the City, District, and/or other agencies with jurisdiction to regulate that camping activity.
- G. Inactive Illegal Encampment An illegal encampment that does not appear to have recently been used as an encampment as evidenced by: (i) the lack of persons at or around the encampment, and (ii) the unorganized, unmethodical, unsystematic, haphazard appearance of the encampment where it would be reasonable to assume that it was abandoned.
- **H. Right-of-Way** Recorded deed for property, either in form of fee title ownership or easement.
- **I. Sewage Sludge** Sewage sludge are nutrient-rich organic materials resulting from the treatment of domestic sewage in a wastewater treatment facility.
- J. Trash All illegal dumping and improperly discarded waste material, including, but not limited to, shopping carts, tires, furniture, pallets, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waterways within the City. For the purposes of this Agreement, Trash does not include sediment or vegetation; except for yard waste that is illegally disposed in or along the Colma Creek Flood Control Channel.
- **K.** Universal Waste Any of the following hazardous wastes that are subject to the universal waste requirements of 40 CFR part 273 or CCR Title 22, Division 4.5, Chapter 23, including: (1) Batteries as described in § 273.2; (2) Pesticides as described in § 273.3; (3) Mercury-containing equipment as described in § 273.4; and (4) Lamps as described in § 273.5. (source: 40 CFR §273.9)
- L. Advisory Committee The Colma Creek Flood Control District Citizens Advisory Committee

III. SCOPE

A. Agreement Administration

1. Quarterly Channel Inspections

The City and District shall each designate lead staff from their respective organizations to perform quarterly tandem inspections of the Channel from the confluence of Colma Creek and Navigable Slough to five hundred (500) feet upstream of the McClellan Avenue crossing (City boundary). Staff shall inspect areas within and adjacent to the Channel. The quarterly inspections shall:

Identify issues related to maintenance needs, including litter problem areas, illegal dumping sites, abandoned shopping carts, graffiti, vandalism, Active and Inactive Illegal Encampments, areas in need of vegetation maintenance, including those areas within the Channel and along access roads, and fence repair needs along the Channel.

2. Reporting

- a. The City shall prepare an Annual Report.
 - i. The Annual Report for each fiscal year (July 1 June 30) shall be prepared and submitted to District by the City by July 31 of each year this Agreement is in effect.
 - ii. The Report must include at a minimum the following:
 - Status, accomplishments, and requests to be completed under this Agreement;
 - Number of sites, site locations, and amount of material collected during all cleanup programs or projects under this Agreement;
 - Number of sites and site locations of Illegal Encampments removed under this Agreement;
 - Actual expenditures under this Agreement.
 - iii. The information provided pursuant to ii. above, and other appropriate metrics, shall be used to determine the success of the maintenance program, and generate information that supports Municipal Regional Stormwater Permit reporting.
- b. The Annual Report shall be submitted by District to the Advisory Committee each calendar year for the Advisory Committee's September meeting.

3. Environmental Permitting

For maintenance activities by the City in and around the areas of Colma Creek that are included in the District's long-term maintenance permit from environmental regulatory agencies, City shall be responsible for compliance with the provisions of such permit(s) in the performance of these activities. For other activities by the City in and around Colma Creek, the City shall obtain all necessary permits.

B. <u>Illegal Encampment Clean-up Program</u>

The Illegal Encampment clean-up program focuses on the cleanup of Active and Inactive Illegal Encampment sites and is led by the City on an as-needed basis.

1. City Actions

The City shall:

- a. Coordinate site identification, which includes the identification of the sites and verification (in collaboration with District staff) that the sites are within the City limits, that either District or the City has right-of-way on the sites, and that the sites are in or adjacent to the Colma Creek Flood Control Channel;
- b. Coordinate site logistics, which includes coordinating the timing of the clean-ups; and coordinating with the District on services and supplies needed as described in 2. below under District Actions for this program;
- c. Provide clean-up personnel and supervision, which includes providing sufficient personnel and supervision to conduct the cleanup. Alternately, the City may contract with another entity to provide personnel for clean-up of Active Illegal Encampments. The City shall ensure that notices of the clean-up are posted by the City at least seventy-two (72) hours prior to the clean-up date of the sites.
- d. Coordinate appropriate social services, which includes coordinating appropriate and available resources to attend clean-ups and direct any encampment occupants to social services as needed;
- e. Provide disposal of non-hazardous wastes, which includes the acceptance at an appropriate disposal facility of materials meeting all of the following conditions:
 - i. Materials meet the definition of "Trash":
 - ii. Materials include only Trash from this clean-up program; no other materials may be commingled with the material collected pursuant to this Agreement;
 - iii. Any vehicle or container used for this purpose must be empty at the start of the clean-up and must be dumped at the end of the clean-up without being used for any other purpose; all containers must be secured to prevent unauthorized deposition of waste in the containers;
 - iv. Materials include no Hazardous Wastes (such as containers of fuel, paint, or chemicals), Universal Wastes (such as batteries, lamps, televisions, or other electronic waste), sediment or vegetation, or other materials banned from landfill disposal (such as tires, appliances, motor vehicles, and other large metallic discards);
 - v. Delivery is accompanied by properly completed forms; and
 - vi. All regulations at the disposal facility shall be observed by disposal vehicle drivers.
- f. Lawfully manage personal possessions, which include the receipt, storage, and management by the City of personal possessions collected during clean-ups.

2. District Actions

The District shall:

- a. Ensure permit coverage, which includes obtaining appropriate permits for performing maintenance work in and around the Colma Creek Flood Control Channel;
- b. Provide notifications when appropriate and coordinate with permitting agencies when requested by the City.

3. Standard Operating Procedures

a. The parties agree that all clean-up of Illegal Encampments under the encampment clean-up program will be performed in accordance with the City's standard procedures.

b. The City procedures may be amended from time to time by the City. City shall notify District of any amendments to City procedures impacting clean-up of Illegal Encampments.

C. Trash Clean-Up Program

The Trash Clean-Up Program helps address the clean-up of Trash accumulations that fall outside the scope of the encampment cleanup program. It is coordinated by City and District staff through the Quarterly Channel Inspections described in Section III.A.1 of this Agreement. Sites must be located within the Colma Creek Flood Control Channel right-of-way, easement, and the boundaries of the City.

1. Site Identification:

- a. City and District staff will identify the Trash Clean-Up Program sites, using the following criteria for prioritization:
 - i. Site is a historically-reoccurring litter problem area
 - ii. Site has received complaints from the public
 - iii. Site provides opportunity for proactive intervention
 - iv. Site has a significant accumulation of debris

2. Implementation

City and District staff will coordinate logistics and responsibilities on an annual basis.

- a. Program List The City shall develop, maintain, and distribute to appropriate City and District personnel a list of trash prevention and removal programs and their associated staff contacts. This list is intended to improve coordination and make communications with residents more seamless.
- b. Coordinating Operations The City and District shall, as part of their annual work planning, consider opportunities to manage and schedule routine clean-up activities performed by both parties with the intent of providing equitable exchange of services.

D. Abatement of Graffiti and Vandalism

The City and District will work collaboratively on graffiti and vandalism abatement programs. Recognizing that timely abatement of graffiti and vandalism discourages proliferation of associated illegal activities, District authorizes the City to abate upon notice by any party.

Graffiti and Vandalism Abatement:

- a. Graffiti and Vandalism abatement may be conducted by the City.
- b. The City shall provide photographs of graffiti that was removed (before and after) as a condition of reimbursement for services provided under this Agreement.
- c. Proper best management practices (BMPs) shall be followed to ensure compliance with water quality laws and regulations, including, but not limited to, BMPs for methods of proper capture and disposal of wastes generated during graffiti removal activities.

E. Vegetation Management

The City and District will work collaboratively on vegetation management within the Colma Creek Flood Control Channel right-of-way and access road areas.

Vegetation Management:

- a. Vegetation removal within the Channel and access road areas may be conducted by the City upon request by the District.
- b. Vegetation removal within the Channel shall not occur unless the necessary permit coverage has been obtained by District.
- c. Proper best management practices (BMPs) shall be followed to ensure compliance with water quality laws and regulations, including, but not limited to, BMPs for methods of proper capture and disposal of debris generated during vegetation removal activities.
- d. Use of herbicides shall be compliant with the NPDES requirements pursuant to the San Francisco Bay Municipal Regional Stormwater Permit and requirements of the City's Integrated Pest Management Plan, if applicable.

F. Minor Maintenance

The City and District will work collaboratively on identifying and performing minor repairs to the following, but not limited to, facilities within the Colma Creek Flood Control Channel right-of-way and access road areas:

- Fences, posts, cables, and gates.
- Flap gates, valves, and other flow restriction devices.
- Concrete or asphalt pavement/sidewalk.

When requested by District, the City shall submit a proposal that includes a scope of work and anticipated costs. District shall authorize the proposed work by the City prior to commencement of repairs. Reimbursement for actual costs shall be in accordance with the terms under Section I-O, "Payment for Services".

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement.

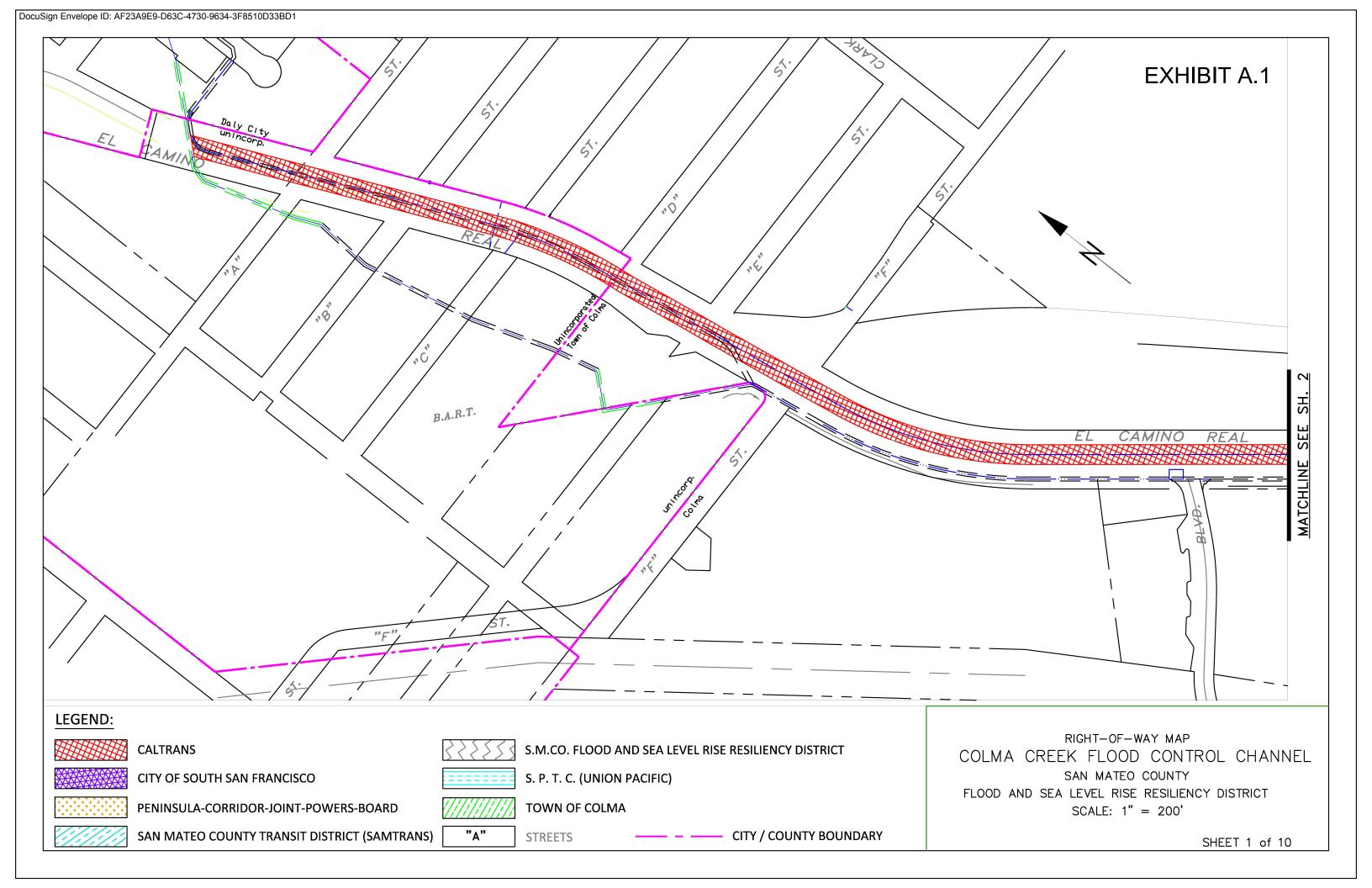
"City"	"District"	
CITY OF SOUTH SAN FRANCISCO,	SAN MATEO COUNTY FLOOD AND	
a California municipal corporation	SEA LEVEL RISE RESILIENCY DISTRICT	
By: Mike Futrell By: Mike Futrell Mike Futrell, City Manager Date: February 26, 2021 7:31:52 AM PST Authorized by 183-2020 Resolution Nationed by: By: Kosa Gowa lusta City Clerk December 9 , 2020	By: Lun Matuman Len Materman, Chief Executive Officer Date: February 24, 2021 10:32:07 PM PST	
APPROVED AS TO FORM:	APPROVED AS TO FORM:	
DocuSigned by:	DocuSigned by:	
Claire Lai	Brian kulich	
City Attorney	(
City Attorney	Brian E. Kulich, District Legal Counsel	
Date: February 25, 2021 10:48:48 PM PST	Date: January 12, 2021 9:35:33 PM PST	

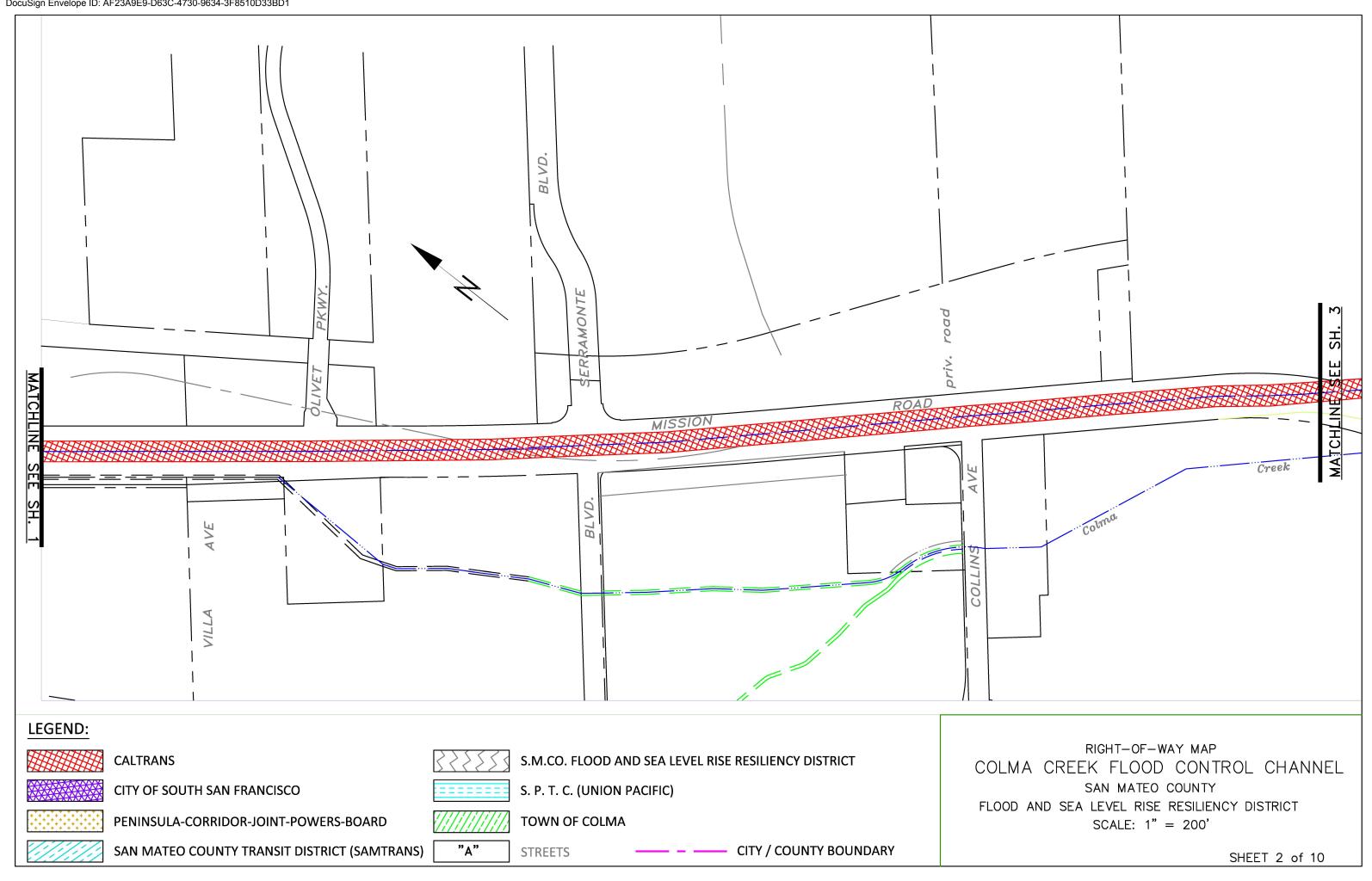
EXHIBITS:

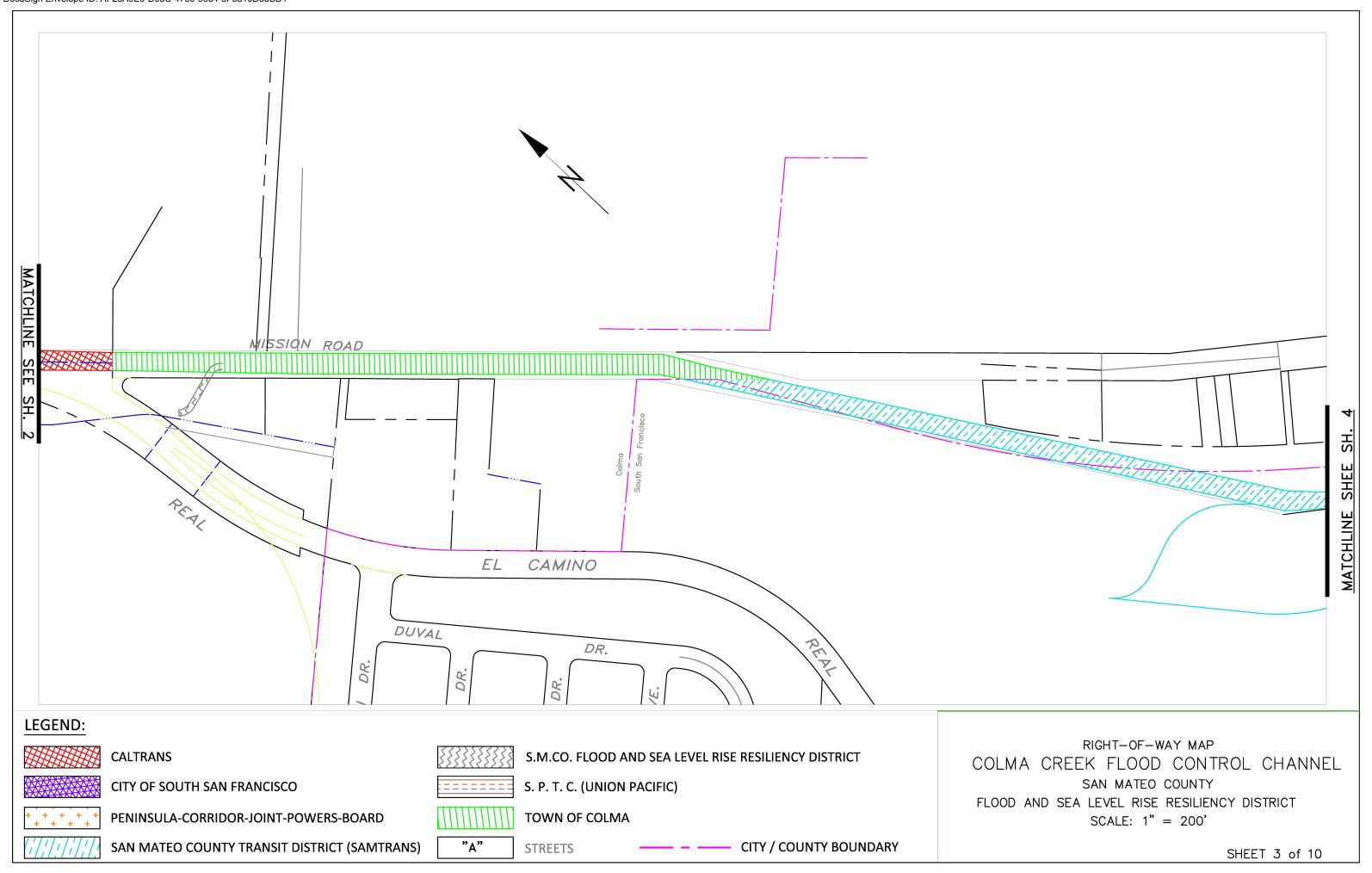
- A Colma Creek Flood Control Channel Right-of-Way Map
 B City of South San Francisco Labor, Material, and Equipment Rates

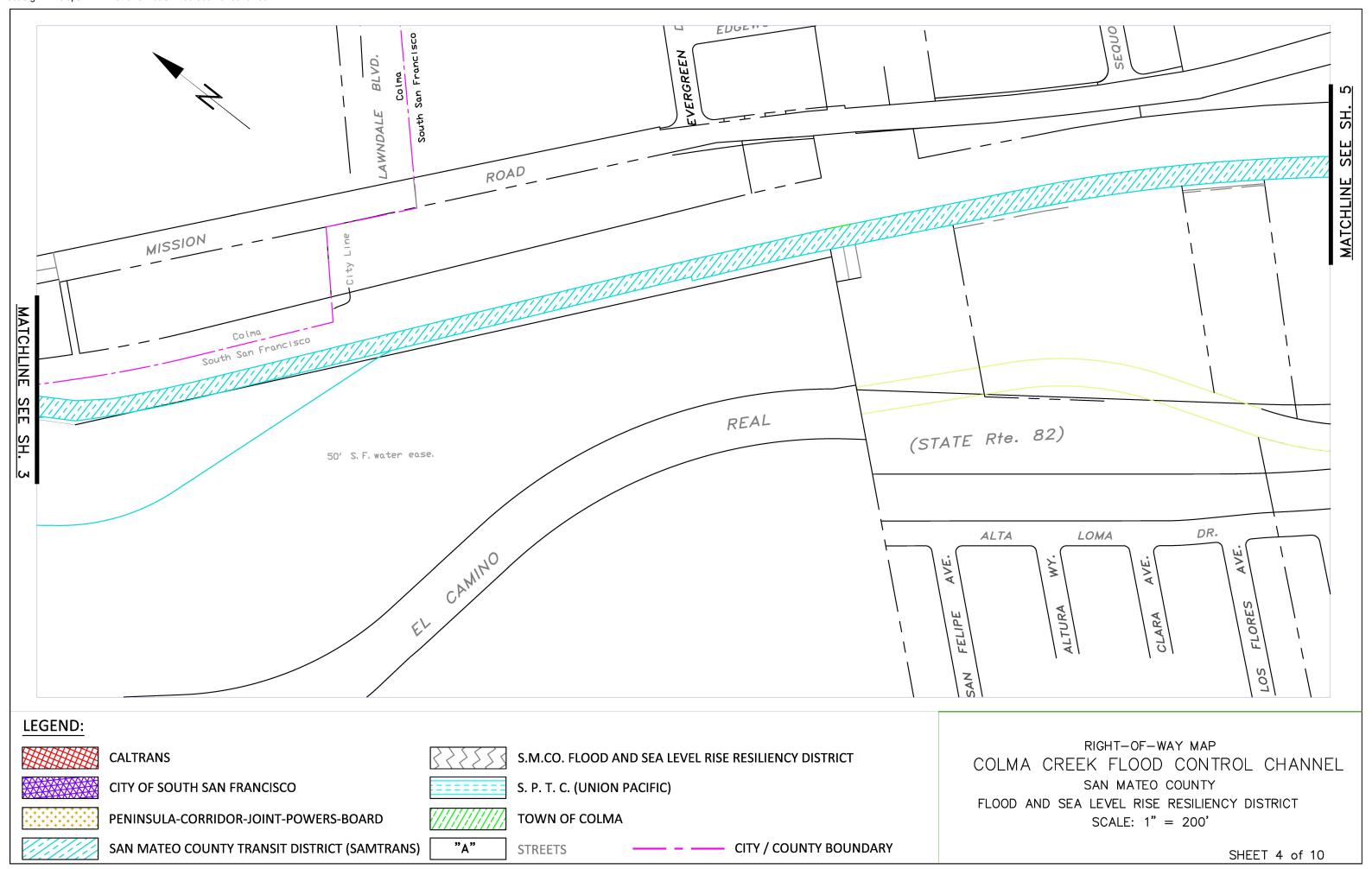
EXHIBIT "A"

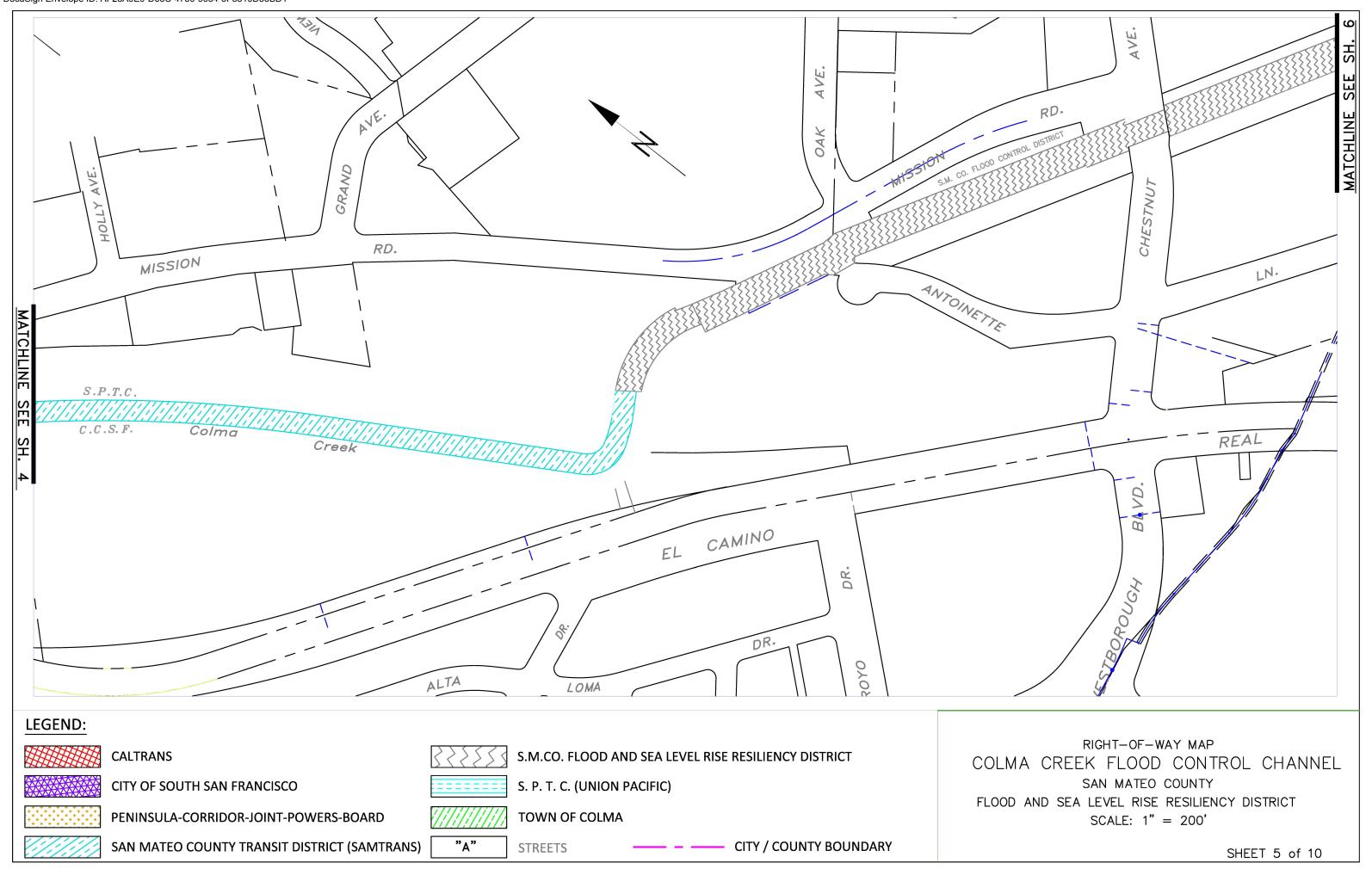
COLMA CREEK FLOOD CONTROL CHANNEL $\label{eq:right-of-waymap}$ RIGHT-OF-WAY MAP

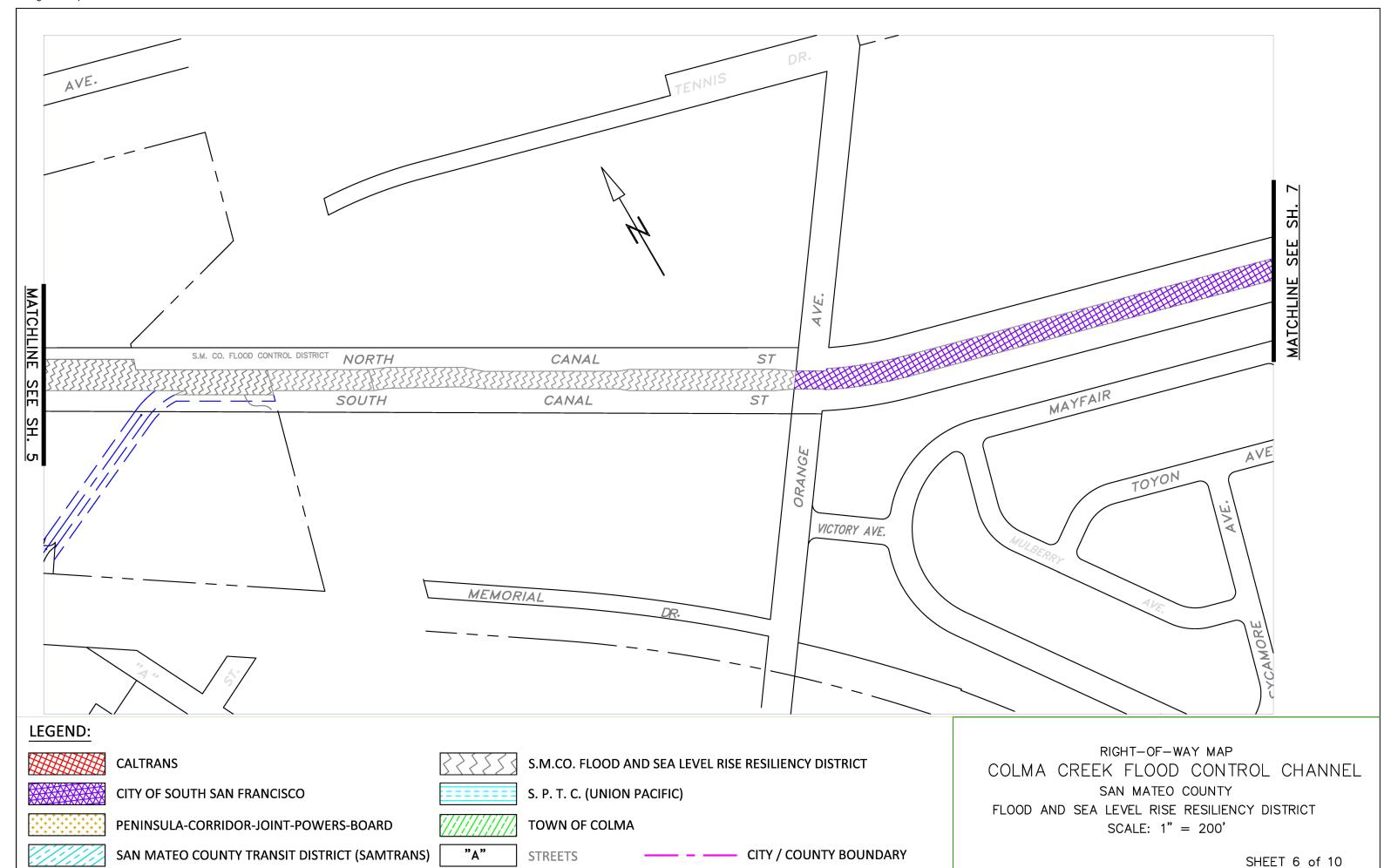


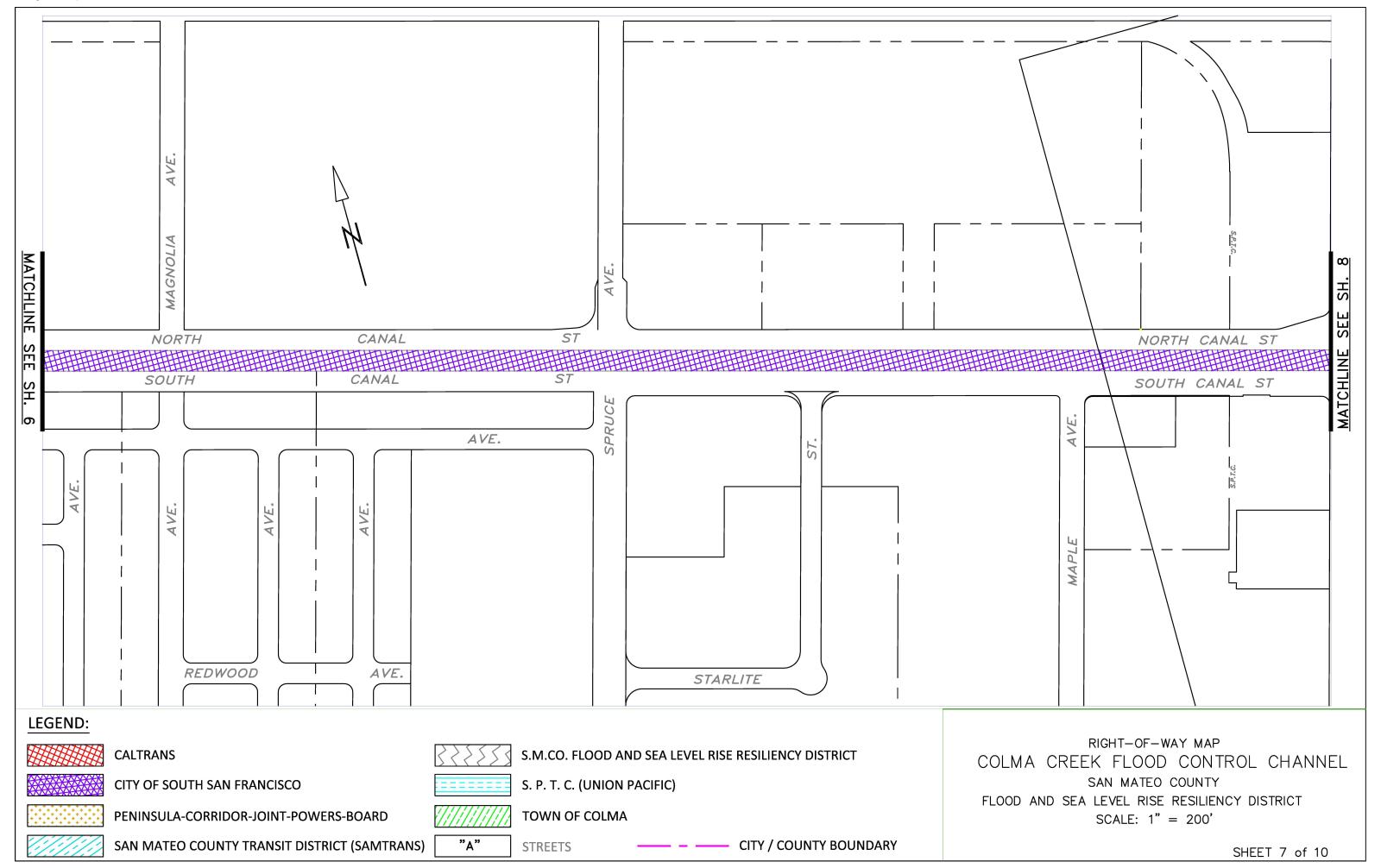


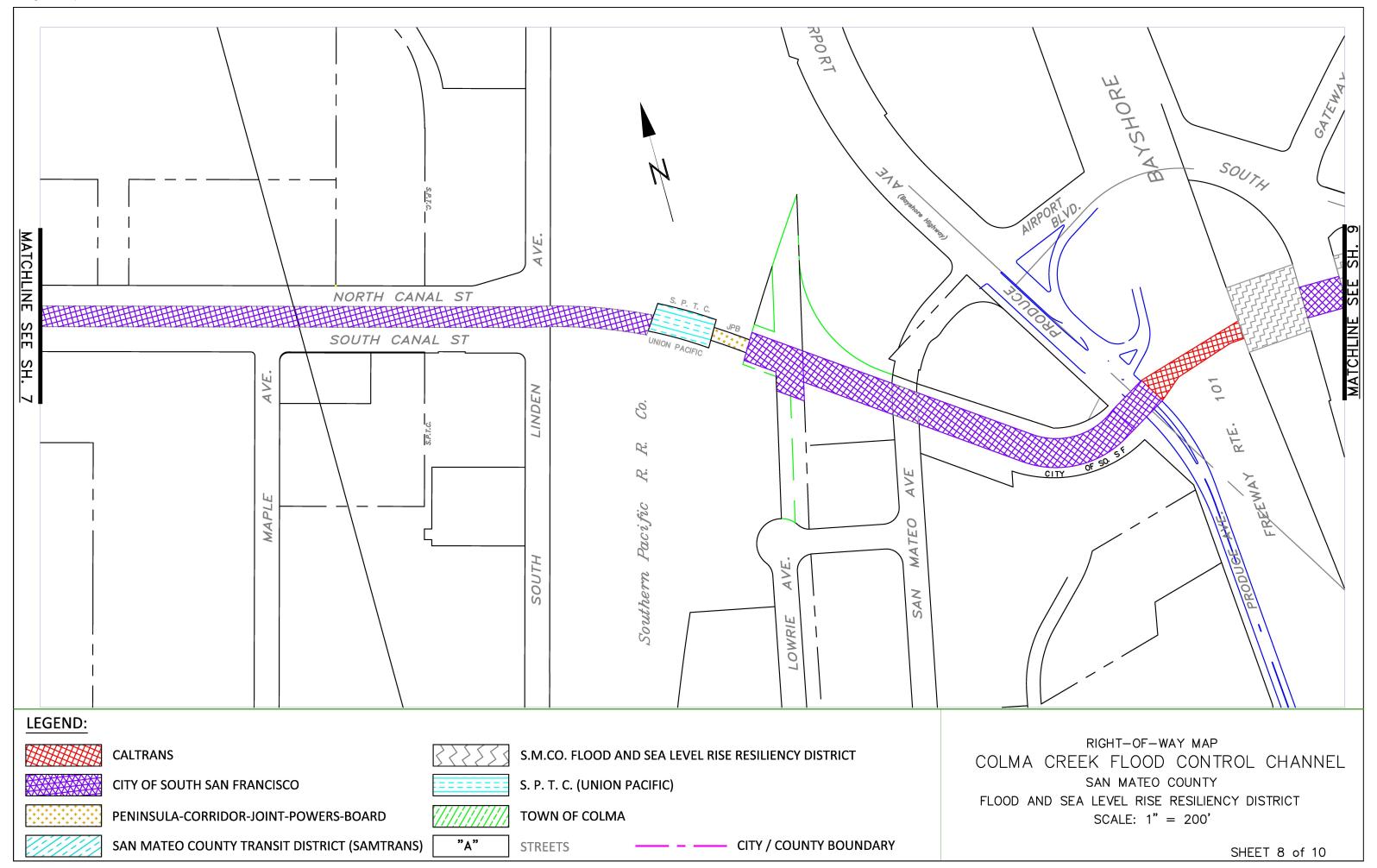


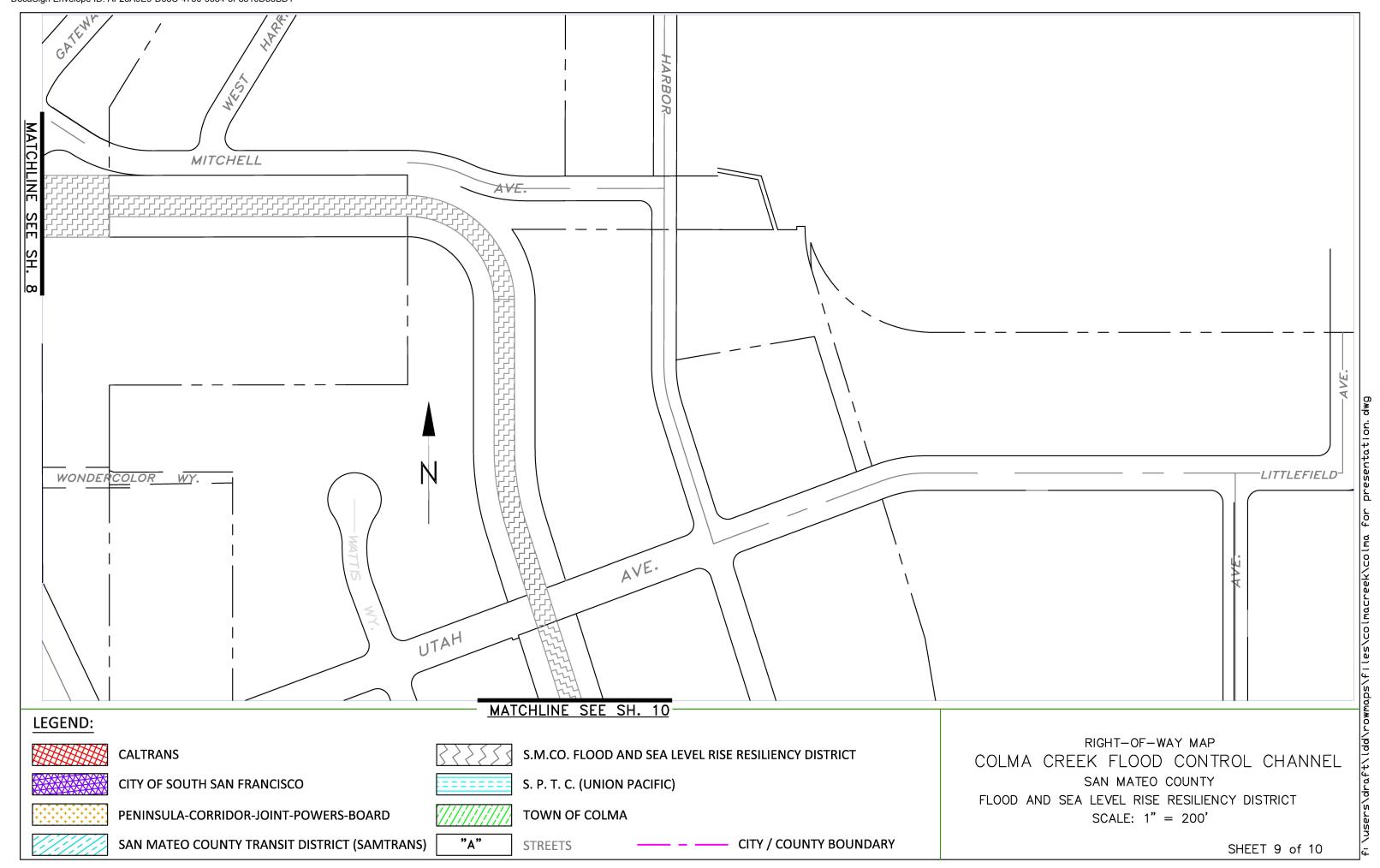


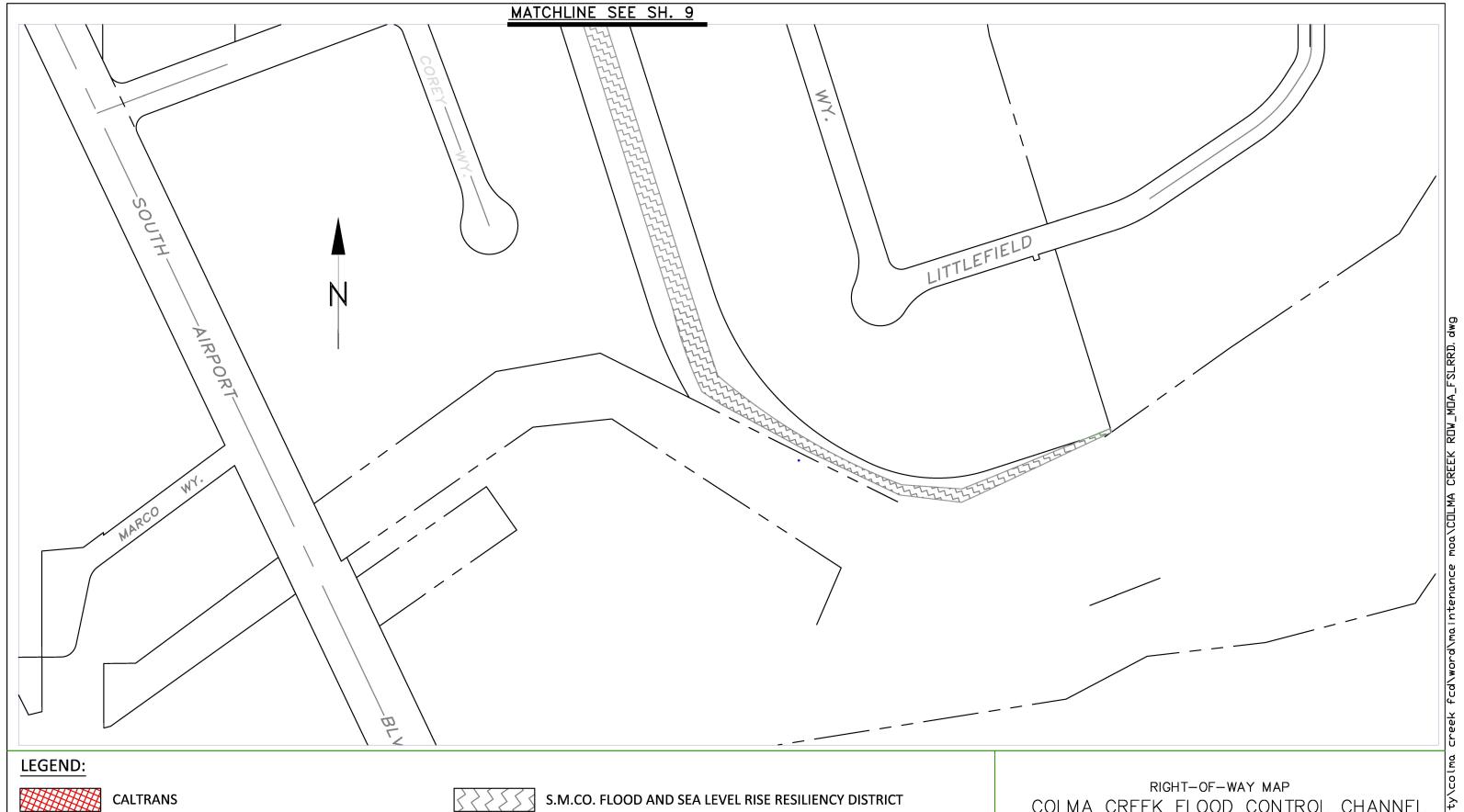












CITY OF SOUTH SAN FRANCISCO

PENINSULA-CORRIDOR-JOINT-POWERS-BOARD

SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)



S. P. T. C. (UNION PACIFIC)



TOWN OF COLMA



STREETS

CITY / COUNTY BOUNDARY

COLMA CREEK FLOOD CONTROL CHANNEL SAN MATEO COUNTY

FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT

SCALE: 1" = 200'

SHEET 10 of 10

EXHIBIT "B"

CITY OF SOUTH SAN FRANCISCO LABOR, MATERIALS, AND EQUIPMENT RATES

Position	Hourly Charge
Public Works Director/City Eng.	175.20
Deputy Public Works Director	130.00
PW Program Manager	105.00
PW Maintenance Supervisor	90.00
PW Electrical Services Supervisor	100.00
Management Analyst I	85.00
Management Analyst II	90.00
Administrative Assistant I	55.00
Administrative Assistant II	60.00
PW Maint. Worker	60.00
Senior PW Maint. Worker	65.00
Lead PW Maint. Worker	70.00
Electrical Technician	80.00
Senior Electrical Technician	90.00
Lead Electrical Technician	100.00
Sweeper Operator	70.00
Equipment Operator	70.00
Equipment Mechanic	74.00
Parks Maint. Worker	60.00
Police Officer	110.00
Police Sgt.	130.00
Safety Inspector	110.00
Equipment (Caltrans Rate Description)	Hourly Charge
Truck (6,000-12,000 GVW)	31.00
Truck (12,000-20,000 GVW)	40.16
Backhoe (JCB 314 Loader w/ Backhoe)	55.74
Bucket Truck (12,000-20,000 GVW w/ boom type lift 25-50ft)	71.69

Crane (truck 48,000-60,000 GVW w/ boom type lift 25-50ft)	102.56
Sweeper (Vacuum sweeper w/ 6 yd. hopper)	
	166.60
Jetter*	
	105.00
Vac-Con*	
	175.00
* Not in the Caltrans List of Equipment	

^{**}Equipment rates not specifically called out in this agreement will be charged according to the State of California/California State Transportation Agency Labor Surcharge and Equipment Rental Rates.