

EXHIBIT A - DRAFT LICENSE AGREEMENT

LICENSE

This LICENSE AGREEMENT (“License”), made and entered into this ___ day of ___, 20___, by and between the City of South San Francisco, California, a municipal corporation (“City” or “Licensor”) and the San Mateo County Express Lanes Joint Powers Authority (“Licensee”). Together the Licensor and Licensee are referred to herein as “the Parties.”

RECITALS

- A. The Licensor owns or controls a certain parcel, easement or public right-of-way (the “Property”) more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.
- B. The Licensee wishes to install facilities for long-term operation of the San Mateo County Express Lanes Project on the portions of the Licensor’s Property as shown in Exhibit A (the “Premises”).
- C. The Licensor agrees that Licensee may install the Facilities on the Premises so long as Licensee maintains the Facilities under terms established by this License.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. License. Subject to the terms and conditions of this License, the Licensor grants a license to Licensee to construct, install, operate, maintain, repair, replace, and remove equipment as necessary for the operation of the San Mateo County Express Lanes Project (the “Facilities”) on the Premises as more particularly shown on the drawing which is attached hereto as Exhibit A to this License.
- 2. Use. Licensee shall use the Premises solely for purposes of the operation of the San Mateo County Express Lanes Project. This License is limited to the usage expressly allowed and described in this agreement. Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation or to install fencing on any portion of the Premises. Licensee shall not during construction or otherwise, in City’s sole and reasonable judgment, impede access to or in any way obstruct, interfere with or hinder the use of any City property.
- 3. Term and Termination. The term of this License shall commence upon issuance of all City approvals and/or entitlements required for installation of the Facilities, including but not limited to an encroachment permit. The term of this License shall cease when this License is terminated pursuant to this Paragraph 3 of this License. Licensor may terminate this License in the event of Licensee’s default of any License provisions and failure to cure within 60 days of written notice provided pursuant to Paragraph 23 of this License, or at any time with 120 days of written notice provided pursuant to Paragraph 23 of this License.
- 4. Installation and Conformity with Approved Plans and Specifications. At its own expense, Licensee shall design, install and construct the Facilities of such material, and in a manner that will not at any time be a source of danger to, or interfere with the Licensor’s present or future use of the Premises, including but not limited to, use of the Premises as public right-of-way, or the use of the Premises by any utility presently franchised by the Licensor with installations in

place at the time this License is entered into. If prior to installation, Licensor determines that the Licensee's proposed installation will interfere with existing or proposed Licensor installations or any underground installations that predate this License, then Licensee shall at its sole expense redesign the Facilities to eliminate the interference as described by Licensor.

The Facilities shall be constructed, installed, and maintained in conformity with the Licensor-approved plans and specifications, which are incorporated and hereby approved by reference. The Parties agree that the presentation of plans and specifications of the Facilities shall be a discretionary approval of the plan or design by the Licensee and a determination by Licensee that such plans or design are reasonable, and that the approval of the plans and specifications shall be a discretionary approval of the plan or design by the Licensor and a determination by Licensor that the plans and designs are reasonable. Before performing any construction, Licensee's contractors shall obtain all permits and insurance required by Licensor for work within the right-of-way and will pay all fees and reimburse Licensor for all reasonable and necessary costs incurred in inspecting and supervising the work performed.

After installation of the Facilities, Licensee shall back-fill, compact, repair and repave all resulting trenches, curbs, gutters and pavement to the satisfaction of the Licensor, in accordance with Licensor's standard designs and specifications.

If, in the sole judgment of Licensor, Licensee at any time fails to perform its obligations under this section, Licensor, at its option, may perform whatever work it deems necessary for the public safety, health and welfare, and Licensee shall reimburse Licensor within thirty (30) days after Licensor invoices Licensee for the actual cost to Licensor of performing such work. However, Licensor is not required to perform such work, and any failure by Licensor to perform Licensee's obligations shall not release Licensee from liability for any loss or damage caused by Licensee's failure to perform its obligations.

Installation and maintenance of the Facilities shall be accomplished in a manner which will not unreasonably impede Licensor's access to the Premises or impede its use for operation and maintenance of infrastructure, as determined by Licensor. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the Licensor's requirements.

If the Facilities or any part thereof creates an emergency condition, and Licensor determines that the situation makes it unreasonable to notify Licensee or await action by Licensee, Licensor may take whatever actions it deems necessary to remedy the emergency situation at the sole expense of Licensee and Licensee will reimburse the Licensor within thirty (30) days after the Licensor invoices Licensee for its actual cost of performing such work.

5. Removal. If operation of the San Mateo County Express Lanes permanently ends or ceases for a period of time greater than 12 months, or should the Facilities be rendered unusable, infeasible or no longer necessary, Licensee agrees, at its sole cost and expense to remove the Facilities within one year of the Facilities use ceasing.
6. Licensee shall repair any damage to the Premises where such damage is caused by Licensee, any of its agents, representatives, employees, contractors, or subcontractors, as a result of the installation, construction, operation, maintenance, and repair of the Facilities, at its sole cost, as soon as possible, but in no event more than ten (10) days from the date Licensee first receives

notice of such damage, except those repairs which require more than ten (10) working days to repair as long as Licensee has commenced the repairs within such period and thereafter diligently pursues the repair to completion. All repairs shall be performed to the reasonable satisfaction of the City. If Licensee fails to repair or refinish any such damage, City may, in its sole discretion, repair, or refinish such damage and Licensee shall reimburse City for all costs and expenses incurred in such repair or refinishing.

7. As-Built. Upon completion of the construction and installation of the Facilities, the Licensee shall promptly provide Licensor with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.
8. Location Markers and Marking. As deemed necessary by Licensor, Licensee shall furnish, install, and place signs to give notice and location of the Facilities. Licensee shall install permanent markers situated so as not to impede use of the Premises by the Licensor, members of the public or currently franchised utilities on each side of the public right-of-way where the Facilities cross the right-of-way. The permanent markers placed inside the Facilities shall indicate the location of the Facilities, the name and address of Licensee, and a telephone contact number for information regarding the Facilities. Licensee shall conduct periodic inspections of the markers to ensure that such markers are legible and in place as required herein. Licensee shall provide access to the Facilities whenever requested to do so by Licensor, any franchised utility, and any licensed contractor excavating near the Facilities.
9. Indemnity. Licensee agrees to indemnify, defend (with counsel approved by City) and hold harmless the Licensor and its elected and appointed officials, agents and employees from any claims, actions, losses, liabilities, damages, costs, expenses, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its employees if any, agents, representatives, contractors or subcontractors or arising from Licensee's rights and obligations under this License, including the failure of the Licensee, its employees if any, agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein, except to the extent any claims, actions, losses, liabilities, damages, costs, expenses, suits or other proceedings are caused by the active negligence or willful misconduct of the City or design specifications imposed by City staff as conditions.
10. Insurance. During the Term of this License, Licensee shall obtain and maintain the insurance set forth in Exhibit B to this Agreement.
11. Damages. Licensee shall repair or pay for all actual damages to the Premises, caused by Licensee's activities.
12. Interference. Whenever, after Licensee installs the Facilities, Licensor determines that the Facilities are not located as indicated on as-built plans provided to Licensor by the Licensee, and the Facilities interfere with Licensor's use of the Premises, Licensee shall immediately relocate the Facilities to another location approved in advance by Licensor, at Licensee's sole expense, restoring the surface to its prior condition.

If the Facilities are at the location indicated on the as-built plans provided to Licensor by Licensee and the Facilities interfere with Licensor's use of the Premises, Licensor will provide written notice to Licensee that relocation of the Facilities is required and the Licensee shall

relocate the Facilities within ninety (90) days of notice to the new location as approved in advance by Licensor, at Licensee's sole expense, restoring the surface to its prior condition.

13. Interference with Utility. Whenever, after Licensee installs the Facilities, Licensor determines that the Facilities are not located as indicated on as-built plans provided to Licensor by Licensee, the Facilities interfere with the reasonable use of the Premises by a utility holding a franchise issued prior to execution of this License, Licensee shall immediately relocate, at its sole cost and expense, the facility to a location approved in advance by Licensor. If the Facility is at the location indicated on the as-built plans provided to the Licensor by the Licensee and it is alleged by a utility franchised by the Licensor prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the Licensor's Property, the Licensee shall make a good faith effort to negotiate, at its sole cost and expense, with the previously-franchised utility to resolve any conflict. The Licensee and the previously franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface on a "first in time, first in right" basis. None of the related costs shall be paid by the Licensor.
14. Installation by Third Party. Unless required by a pre-existing agreement, state or federal law, applicable government regulation, or order from a court of competent jurisdiction, Licensor shall not voluntarily permit, authorize or approve any installation or construction by a third party that would deprive Licensee of, or unreasonably interfere with Licensee's use and enjoyment of, the Premises during the term of the License. If any road, street, sidewalk, passageway, fire alarm, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facilities by any entity other than Licensor, and the construction requires the Licensee to relocate the Facilities, then that entity and the Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by Licensor.
15. Waiver. The waiver by either party of any breach or violation of any term, covenant, or condition of this License shall not be deemed a waiver of such term, covenant, condition, ordinance, or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law.
16. Entire Agreement. This License contains the entire agreement of the parties regarding the Facilities and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
17. Changes. Changes to this License are not binding unless made in a written amendment to this License duly authorized by each of the Parties.
18. Binding Effect and Authority. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties. Each individual executing this License on behalf of a party entity represents and warrants that he or she is duly authorized to execute this License on behalf of that party.
19. Compliance with Laws. The Licensee and its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person.

20. Venue and Governing Law. This License is governed by and construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of San Mateo.
21. Construction and Severability. If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.
22. Assignment. The Licensee may only assign its obligations under this Agreement with the prior written consent of City, which will not be unreasonably withheld. In connection with any such assignment, Association and its assignee will execute and deliver to City a written assignment and assumption agreement in a form acceptable to the City Manager and City Attorney
23. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

San Mateo County Express Lanes Joint Powers Authority
555 County Center, 5th Floor
Redwood City, CA 94063

For purposes of giving formal, written notice to Licensor, Licensor's address is:

City of South San Francisco
Attn: Public Works Department
550 N Canal Street
South San Francisco CA 94080

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this Section.

EXHIBITS

- Exhibit A – Description of Property, Premises, and Facilities
Exhibit B – Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF SOUTH SAN FRANCISCO

SAN MATEO COUNTY EXPRESS
LANES JOINT POWERS AUTHORITY

By: _____
CHARLES M. FUTRELL
CITY MANAGER

By: _____
DIANE PAPAN
CHAIR

Attest:

By: _____
City Clerk

Approved as to form:

Approved as to form:

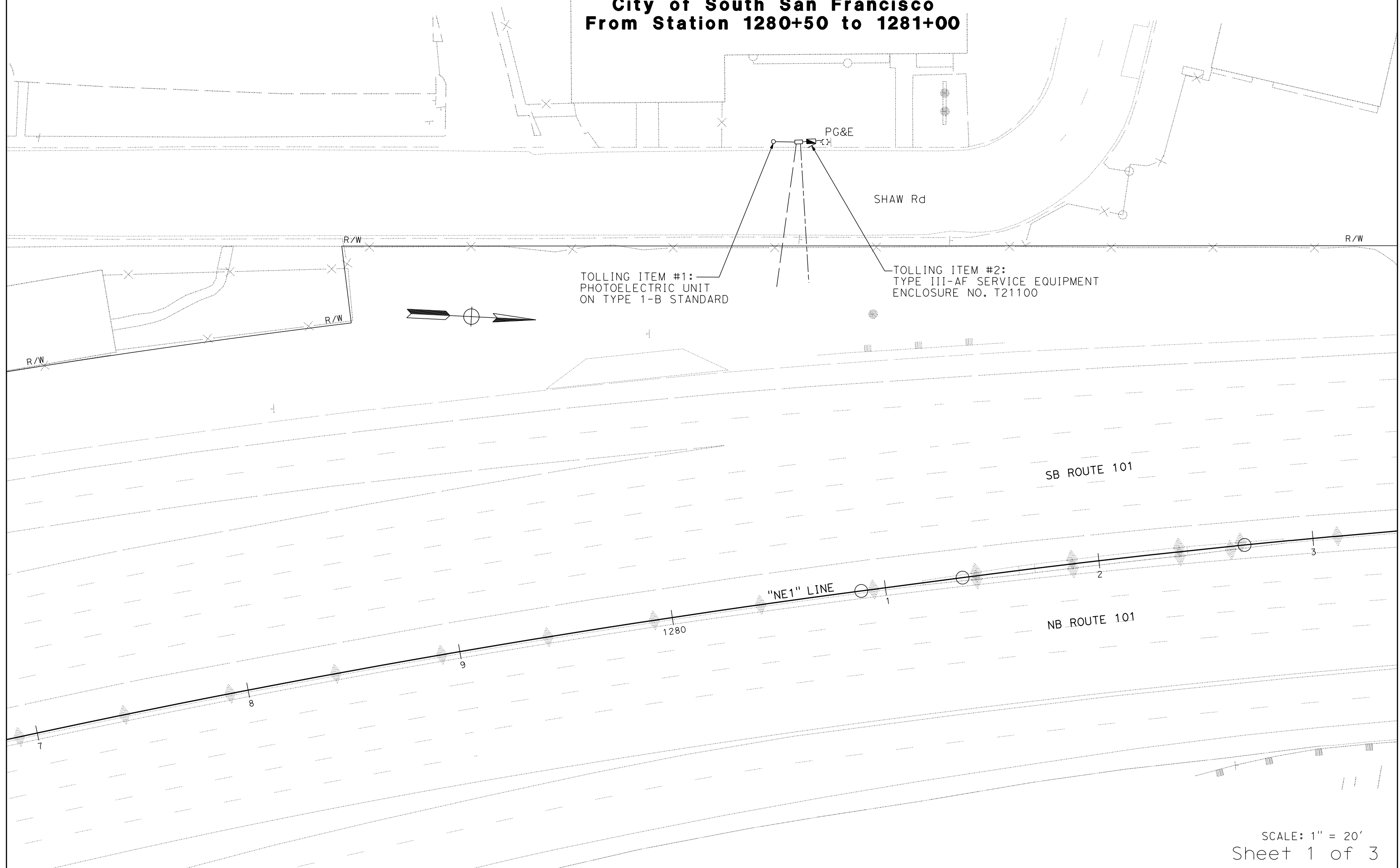
By: _____
City Attorney

By: _____
Timothy Fox
Legal Counsel

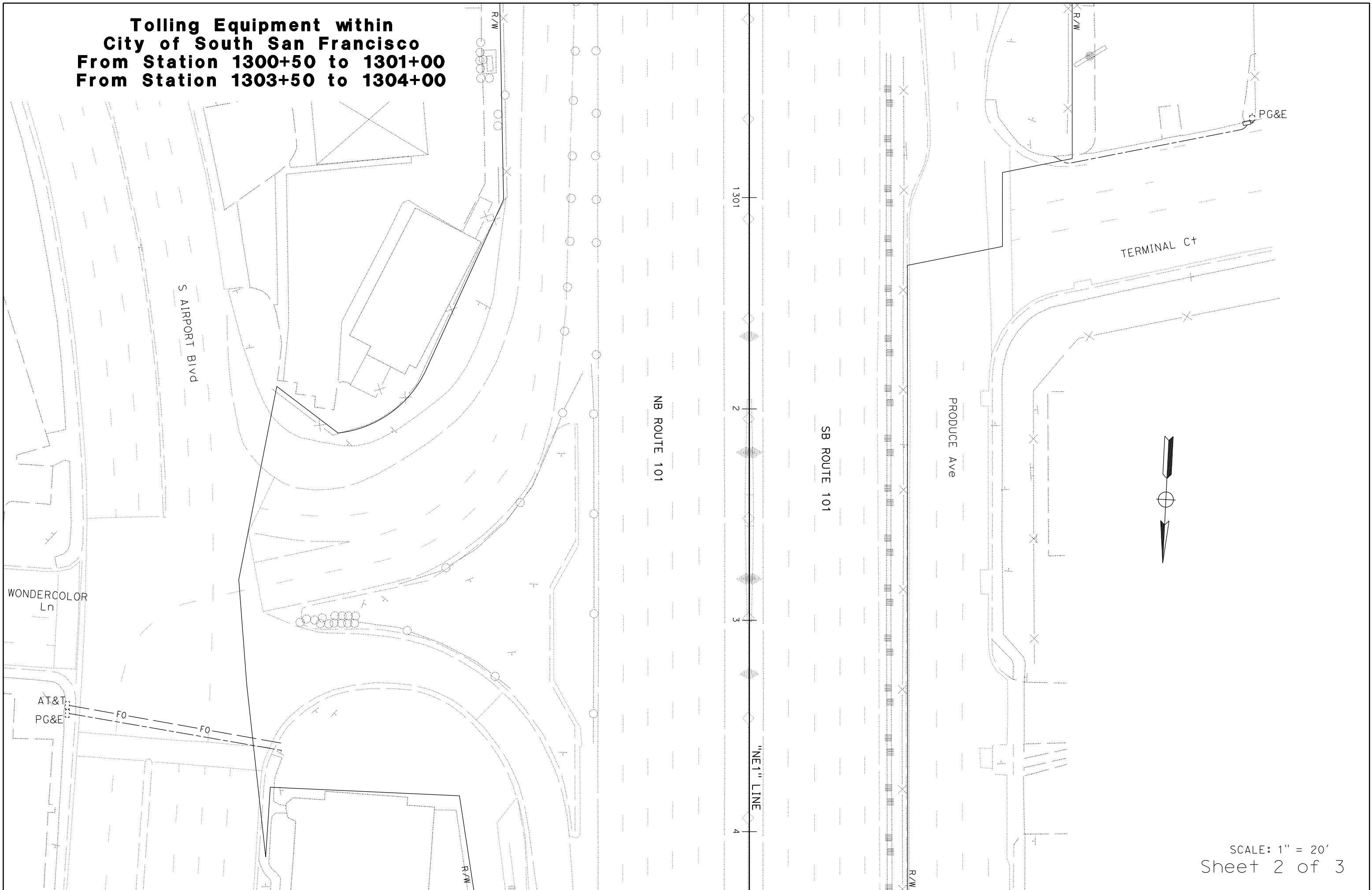
EXHIBIT A

Description of Property, Premises, and Facilities

**Tolling Equipment within
City of South San Francisco
From Station 1280+50 to 1281+00**



**Tolling Equipment within
City of South San Francisco
From Station 1300+50 to 1301+00
From Station 1303+50 to 1304+00**



Tolling Equipment within City of South San Francisco

TOLLING ITEM #1:
PHOTOELECTRIC UNIT
ON TYPE 1-B STANDARD

TOLLING ITEM #2:
TYPE III-AF SERVICE EQUIPMENT
ENCLOSURE NO. T21100



EXHIBIT B

Insurance Requirements

Licensee, at its own cost and expense, will maintain the following insurance coverages once toll equipment is installed and owned by the Licensee, where Licensor shall be included as an additional insured on such policies:

Property Insurance.

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the toll equipment property.

Liability Insurance.

General Liability insurance at a \$1M limit per occurrence and a general aggregate limit of \$2M for bodily injury and property damage arising from the ownership of the installed toll equipment. A separate Contractor will maintain the toll equipment and will assume direct liability for such maintenance, but Licensee will have vicarious liability protection for the ownership of the toll equipment. Licensee will require that such maintenance contractor will have at least \$1M in liability insurance limits.