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HIGHWAY AND TRANSPORTATION
10 DISTRICT

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF CONTRA COSTA**

14 CITY OF SAUSALITO,
15
16 Petitioner and Plaintiff
17 v.
18 GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT,
19
20 Respondent and Defendant
21
22 GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT,
23
24 Real Party in Interest

Case No. CIV MSN17-0098
**DEFENDANT GOLDEN GATE BRIDGE,
HIGHWAY AND TRANSPORTATION
DISTRICT'S ANSWER TO VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**

Action Filed: September 13, 2016

25 Pursuant to Code of Civil Procedure section 446, Defendant Golden Gate Bridge, Highway
26 And Transportation District ("District" or "Defendant") answers the Verified Petition for Writ of
27 Mandate and Complaint for Declaratory Relief ("Complaint") filed by Plaintiff City of Sausalito
28 ("City" or "Plaintiff") as follows. Unless admitted specifically herein, the District generally and

1 specifically denies each and every allegation, assertion, and contention in the Complaint.

2 **INTRODUCTION**

3 1. Answering Paragraph 1, Defendant admits that, in 2008, the District began the
4 process of replacing the existing ferry landing in Sausalito, which is in a state of disrepair, with a
5 replacement landing that would fully accommodate passengers with disabilities and achieve
6 adequate services standards for all ferry passengers (the "Project"). Defendant admits that the
7 District completed review of the proposed Project under the California Environmental Quality Act
8 ("CEQA") in December 2012, when the District approved a Mitigated Negative Declaration
9 ("MND") for the Project. Defendant admits that the District has submitted at least three different
10 designs for the Project to the City. Defendant admits that the District sent a letter to the City on
11 September 2, 2016 that states, "[T]he District hereby withdraws its request for the City to consent,
12 under the terms of the 1995 Lease, to the plans for the replacement landing, and further withdraws
13 any request to utilize City property and asks the City to take no further action on the Project. As
14 the District is seeking no discretionary action by the City, the City is no longer a responsible
15 agency under the terms of CEQA and should halt any environmental review process." The
16 remaining allegations contain Plaintiff's characterization of this action or conclusions of law, to
17 which no response is required. Defendant further alleges that the Complaint speaks for itself and
18 is the best evidence of what Plaintiff's action challenges. Except as expressly admitted, Defendant
19 generally and specifically denies each and every allegation contained in Paragraph 1.

20 **PARTIES**

21 2. Answering Paragraph 2, Defendant admits that the City is the lessor and the
22 District is the lessee in an agreement titled "Lease of Public Tides and Submerged Lands,"
23 executed December 1, 1995. Except as expressly admitted, Defendant lacks sufficient knowledge
24 or information and belief to admit or deny the allegations contained in Paragraph 2, and Defendant
25 denies the allegations on that basis

26 3. Answering Paragraph 3, Defendant admits that the California legislature passed the
27 Golden Gate Bridge and Highway District Act of California in 1923; the District is governed by a
28 Board of Directors who represent the Counties of San Francisco, Marin, Sonoma, Napa,

1 Mendocino, and Del Norte; and the District is the lead agency for the Project under CEQA. The
2 remaining allegations in Paragraph 3 consist of Plaintiff's characterization of this action or
3 conclusions of law to which no response is required. To the extent a response is required, except
4 as expressly admitted, Defendant generally and specifically denies each and every allegation
5 contained in Paragraph 3.

6 **JURISDICTION AND VENUE**

7 4. Answering Paragraph 4, Defendant contends that the allegations contained in
8 Paragraph 4 constitute Plaintiff's characterization of this action or conclusions of law to which no
9 response is required.

10 5. Answering Paragraph 5, Defendant denies that the District resides in Marin County.
11 Defendant admits the Project was proposed to be constructed in Marin County. Except as
12 expressly denied or admitted herein, Defendant contends that the allegations contained in
13 Paragraph 5 consist of Plaintiff's characterization of this action or conclusions of law to which no
14 response is required.

15 6. Answering Paragraph 6, Defendant contends that the allegations contained in
16 Paragraph 5 consist of Plaintiff's characterization of this action or conclusions of law to which no
17 response is required.

18 7. Answering Paragraph 7, Defendant contends that the allegations contained in
19 Paragraph 5 consist of Plaintiff's characterization of this action or conclusions of law to which no
20 response is required.

21 8. Answering Paragraph 8, Defendant contends that the allegations contained in
22 Paragraph 5 consist of Plaintiff's characterization of this action or conclusions of law to which no
23 response is required.

24 9. Answering Paragraph 9, Defendant lacks sufficient knowledge or information and
25 belief to admit or deny the allegations contained in Paragraph 9, and Defendant denies the
26 allegations on that basis.

27 10. Answering Paragraph 10, Defendant contends that the allegations in Paragraph 10
28 contain Plaintiff's characterization of this action or conclusions of law, to which no response is

1 required.

2 **STATEMENT OF FACTS**

3 11. Answering Paragraph 11, Defendant admits it operates the Golden Gate Ferry,
4 which provides passenger ferry routes from San Francisco, at one end, to Sausalito, Larkspur, and
5 Tiburon, on the other end.

6 12. Answering Paragraph 12, Defendant admits the allegations in Paragraph 12.

7 13. Answering Paragraph 13, Defendant admits that the City is the lessor and the
8 District is the lessee in an agreement titled "Lease of Public Tides and Submerged Lands,"
9 executed December 1, 1995 ("Lease"). Defendant further alleges that the Lease speaks for itself
10 and is the best evidence of Plaintiff's allegations about the Lease. Except as expressly admitted,
11 Defendant contends that the allegations in Paragraph 13 contain Plaintiff's characterization of this
12 action or conclusions of law, to which no response is required.

13 14. Answering Paragraph 14, Defendant admits the allegations in Paragraph 14.

14 15. Answering Paragraph 15, Defendant admits the allegations in Paragraph 15.

15 16. Answering Paragraph 16, Defendant admits that the District approved an MND for
16 the Project in December 2012 pursuant to CEQA. Defendant further alleges that the MND speaks
17 for itself and is the best evidence of Plaintiff's allegations about the MND. Except as expressly
18 admitted, Defendant contends that the allegations in Paragraph 16 contain Plaintiff's
19 characterization of this action or conclusions of law, to which no response is required.

20 17. Answering Paragraph 17, Defendant admits the allegations in Paragraph 17.

21 18. Answering Paragraph 18, Defendant admits that the District submitted a permit
22 application of the Project to the San Francisco Bay Conservation and Development Commission
23 ("BCDC") on January 23, 2014. Defendant admits that BCDC requested additional information
24 from the District throughout 2014.

25 19. Answering Paragraph 19, Defendant lacks sufficient knowledge or information and
26 belief to admit or deny the allegations contained in Paragraph 19, and Defendant denies the
27 allegations on that basis.

28 20. Answering Paragraph 20, Defendant admits that on or about February 4, 2015, the

1 District, without conceding the City had land use authority over the Project, agreed to participate
2 in a voluntary process for review of the Project, which included joint public hearings before the
3 City's Planning Commission and Historic Landmarks Board. Except as expressly admitted,
4 Defendant lacks sufficient knowledge or information and belief to admit or deny the allegations
5 contained in Paragraph 20, and Defendant denies the allegations on that basis.

6 21. Answering Paragraph 21, Defendant admits it submitted plans for the Project to the
7 City on March 24, 2015. Defendant further alleges that the plans the District submitted on March
8 24, 2015 speak for themselves and are the best evidence of Plaintiff's allegations about these plans.

9 22. Answering Paragraph 22, Defendant lacks sufficient knowledge or information and
10 belief to admit or deny the allegations contained in Paragraph 22, and Defendant denies the
11 allegations on that basis.

12 23. Answering Paragraph 23, Defendant admits the City Council considered the
13 District's Project during a public hearing on May 5, 2015 and that the District's General Manager
14 stated at the public hearing that (1) the District's passenger growth projections "don't affect the
15 fundamental size of the float or gangway"; (2) the proposed dimensions of the float and gangway
16 are "dictated by the geometry of the Americans with Disabilities Act"; (3) "[i]f there was no
17 growth, of if there's a doubling, it wouldn't affect the fundamental size of the float and the
18 gangway"; and (4) "[t]oday's operational needs, as well as accessibility standards, indicate these
19 dimensions are appropriate." Except as expressly admitted, Defendant lacks sufficient knowledge
20 or information and belief to admit or deny the allegations contained in Paragraph 23, and
21 Defendant denies the allegations on that basis.

22 24. Answering Paragraph 24, Defendant admits the City denied consent to the Project
23 at its May 5, 2015 public hearing. Except as expressly admitted, Defendant lacks sufficient
24 knowledge or information and belief to admit or deny the allegations contained in Paragraph 24,
25 and Defendant denies the allegations on that basis.

26 25. Answering Paragraph 25, Defendant admits that after a process that included a
27 series of workshops in which the input of City leaders and members of the community was
28 considered, it submitted revised plans for the Project to the City on March 2, 2016, which

1 proposed a Project smaller than the Project for which the City denied consent on May 5, 2015.
2 Defendant further alleges that the plans the District submitted on March 2, 2016 speak for
3 themselves and are the best evidence of Plaintiff's allegations about these plans.

4 26. Answering Paragraph 26, Defendant admits it agreed that the 45-day "deemed
5 approved" provision in Section 5.4(b) of the Lease would not apply to the March 2, 2016 submittal
6 or to the review process. Defendant further alleges that the communications between the District
7 and the City on March 4, 2016 speaks for themselves and are the best evidence of Plaintiff's
8 allegations about what was agreed upon between the parties.

9 27. Answering Paragraph 27, Defendant lacks sufficient knowledge or information and
10 belief to admit or deny the allegations contained in Paragraph 27, and Defendant denies the
11 allegations on that basis.

12 28. Answering Paragraph 28, Defendant admits that the District responded to
13 Environmental Vision's June 1, 2016 report on June 29, 2016. Defendant denies that the District's
14 renderings were inaccurate. Except as expressly admitted or denied herein, Defendant lacks
15 sufficient knowledge or information and belief to admit or deny the allegations contained in
16 Paragraph 28, and Defendant denies the allegations on that basis.

17 29. Answering Paragraph 29, Defendant admits that it sent a letter in response to
18 COWI's request for information on June 30, 2016. Defendant further alleges that the its June 30,
19 2016 response to COWI speaks for itself and is the best evidence of Plaintiff's allegations about
20 the District's June 30, 2016 response to COWI. Except as expressly admitted, Defendant lacks
21 sufficient knowledge or information and belief to admit or deny the allegations contained in
22 Paragraph 29, and Defendant denies the allegations on that basis.

23 30. Answering Paragraph 30, Defendant admits it sent a letter to the City on August 11,
24 2016. Defendant further alleges that the letter the District submitted on August 11, 2016 speaks
25 for itself and is the best evidence of Plaintiff's allegations about this letter. Except as expressly
26 admitted, Defendant contends that the allegations in Paragraph 30 contain Plaintiff's
27 characterization of this action or conclusions of law, to which no response is required.

28 31. Answering Paragraph 31, Defendant lacks sufficient knowledge or information and

1 belief to admit or deny the allegations contained in Paragraph 31, and Defendant denies the
2 allegations on that basis.

3 32. Answering Paragraph 32, Defendant admits it submitted supplemental plans to the
4 City on August 18, 2016. Defendant further alleges that the plans the District submitted on
5 August 18, 2016 speak for themselves and are the best evidence of Plaintiff's allegations about
6 these plans.

7 33. Answering Paragraph 33, Defendant admits it received a letter from the City dated
8 August 22, 2016. Defendant further alleges that the plans the District submitted on August 18,
9 2016 speak for themselves and are the best evidence of Plaintiff's allegations about these plans.
10 Except as expressly admitted, Defendant lacks sufficient knowledge or information and belief to
11 admit or deny the allegations contained in Paragraph 33, and Defendant denies the allegations on
12 that basis.

13 34. Answering Paragraph 34, Defendant admits it sent a letter to the City on September
14 2, 2016. Defendant further alleges that the letter the District submitted on September 2, 2016
15 speaks for itself and is the best evidence of Plaintiff's allegations about this letter. Except as
16 expressly admitted, Defendant contends that the allegations in Paragraph 34 contain Plaintiff's
17 characterization of this action or conclusions of law, to which no response is required.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of CEQA)**

20 35. Answering Paragraph 35, Defendant incorporates its responses set forth in the
21 foregoing paragraphs.

22 36. Answering Paragraph 36, Defendant admits that the District is the lead agency of
23 the Project pursuant to CEQA. Defendant further contends that the allegations in Paragraph 36
24 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
25 required. To the extent Paragraph 36 contains any factual allegations, such allegations are denied
26 on information and belief.

27 37. Answering Paragraph 37, Defendant contends that the allegations in Paragraph 37
28 contain Plaintiff's characterization of this action or conclusions of law, to which no response is

1 required. Defendant further alleges that Lease and the MND speak for themselves and are the best
2 evidence of Plaintiff's allegations about these documents. To the extent Paragraph 37 contains any
3 factual allegations, such allegations are denied on information and belief.

4 38. Answering Paragraph 38, Defendant contends that the allegations in Paragraph 38
5 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
6 required. To the extent Paragraph 38 contains any factual allegations, such allegations are denied
7 on information and belief.

8 39. Answering Paragraph 39, Defendant contends that the letter the City sent to the
9 District on August 22, 2016 and the letter the District sent to the City on September 2, 2016 speak
10 for themselves and are the best evidence of Plaintiff's allegations about these letters. Defendant
11 further contends that the allegations in Paragraph 36 contain Plaintiff's characterization of this
12 action or conclusions of law, to which no response is required. To the extent Paragraph 39
13 contains any factual allegations, such allegations are denied on information and belief.

14 40. Answering Paragraph 40, Defendant denies its alleged actions were unlawful.
15 Except as expressly denied, Defendant contends that the allegations contained in Paragraph 40
16 consist of Plaintiff's characterization of this action or conclusions of law to which no response is
17 required. To the extent Paragraph 40 contains any factual allegations, such allegations are denied
18 on information and belief.

19 41. Answering Paragraph 41, Defendant denies the allegations in Paragraph 41.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of the Public Trust Doctrine)**

22 42. Answering Paragraph 42, Defendant incorporates its responses set forth in the
23 foregoing paragraphs.

24 43. Answering Paragraph 43, Defendant lacks sufficient knowledge or information and
25 belief to admit or deny the allegations contained in Paragraph 43, and Defendant denies the
26 allegations on that basis.

27 44. Answering Paragraph 44, Defendant contends that the allegations in Paragraph 44
28 contain Plaintiff's characterization of this action or conclusions of law, to which no response is

1 required. To the extent Paragraph 44 contains any factual allegations, such allegations are denied
2 on information and belief.

3 45. Answering Paragraph 45, Defendant lacks sufficient knowledge or information and
4 belief to admit or deny the allegations contained in Paragraph 45, and Defendant denies the
5 allegations on that basis.

6 46. Answering Paragraph 46, Defendant lacks sufficient knowledge or information and
7 belief to admit or deny the allegations contained in Paragraph 46, and Defendant denies the
8 allegations on that basis.

9 47. Answering Paragraph 47, Defendant denies all of the allegations in Paragraph 47.

10 **THIRD CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 48. Answering Paragraph 48, Defendant incorporates its responses set forth in the
13 foregoing paragraphs.

14 49. Answering Paragraph 49, Defendant alleges that the Lease speaks for itself and is
15 the best evidence of Plaintiff's allegations about the Lease.

16 50. Answering Paragraph 50, Defendant contends that the allegations in Paragraph 50
17 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
18 required. To the extent Paragraph 50 contains any factual allegations, such allegations are denied
19 on information and belief.

20 51. Answering Paragraph 51, Defendant denies that the proposed Project triggers the
21 City's alleged right of consent under the Lease. Defendant further alleges that the Lease speaks for
22 itself and is the best evidence of Plaintiff's allegations about the Lease. Defendant further
23 contends that the allegations in Paragraph 51 contain Plaintiff's characterization of this action or
24 conclusions of law, to which no response is required. Except as expressly admitted, Defendant
25 lacks sufficient knowledge or information and belief to admit or deny the allegations contained in
26 Paragraph 51, and Defendant denies the allegations on that basis.

27 52. Answering Paragraph 52, Defendant contends that the allegations in Paragraph 52
28 contain Plaintiff's characterization of this action or conclusions of law, to which no response is

1 required.

2 **FOURTH CAUSE OF ACTION**

3 **(Declaratory Relief)**

4 53. Answering Paragraph 53, Defendant incorporates its responses set forth in the
5 foregoing paragraphs.

6 54. Answering Paragraph 54, Defendant contends that the allegations in Paragraph 54
7 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
8 required.

9 55. Answering Paragraph 55, Defendant contends that the allegations in Paragraph 55
10 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
11 required.

12 56. Answering Paragraph 56, Defendant contends that the allegations in Paragraph 56
13 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
14 required.

15 **FIFTH CAUSE OF ACTION**

16 **(Declaratory Relief)**

17 57. Answering Paragraph 57, Defendant incorporates its responses set forth in the
18 foregoing paragraphs.

19 58. Answering Paragraph 58, Defendant contends that the allegations in Paragraph 58
20 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
21 required.

22 59. Answering Paragraph 59, Defendant contends that the allegations in Paragraph 59
23 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
24 required.

25 60. Answering Paragraph 60, Defendant contends that the allegations in Paragraph 60
26 contain Plaintiff's characterization of this action or conclusions of law, to which no response is
27 required.

28

1 **AFFIRMATIVE DEFENSES**

2 Defendant pleads the following separate defenses. Defendant reserves the right to assert
3 additional affirmative defenses that discovery indicates are proper.

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim)**

6 1. As a separate and first affirmative defense to the Complaint, and to the purported
7 causes of action set forth therein, Defendant alleges that the Complaint fails to state facts sufficient
8 to constitute a cause of action.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Adequate Remedy at Law)**

11 2. As a separate and second affirmative defense to the Complaint and each purported
12 cause of action contained therein, Defendant alleges that Plaintiff has an adequate remedy at law.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(All Obligations Performed)**

15 3. As a separate and third affirmative defense to the Complaint and each purported
16 cause of action contained therein, Defendant alleges that Defendant has fully and/or substantially
17 performed any and all obligations it may have had to Plaintiff.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Arbitration Clause)**

20 4. As a separate and fourth affirmative defense to the Complaint and each purported
21 cause of action contained therein, Defendant alleges that to the extent Plaintiff is relying upon any
22 contracts, whether or not attached as exhibits to its Complaint for its claims, such claims appear to
23 be subject to an arbitration clause.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(Attorneys' Fees Barred)**

26 5. As a separate and fifth affirmative defense to the Complaint and each purported
27 cause of action contained therein, Defendant alleges that Plaintiff's claim for attorneys' fees is
28 barred by the provisions of California Code of Civil Procedure § 1021.

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SIXTH AFFIRMATIVE DEFENSE

(Authorization)

6. As a separate and sixth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that by virtue of the acts of the Plaintiff, and/or the persons and/or entities acting on its behalf, Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint by the doctrine of authorization.

SEVENTH AFFIRMATIVE DEFENSE

(Breach of Contract)

7. As a separate and seventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that that any obligations owed by it under any alleged contract were excused by Plaintiff's breach of the alleged contract.

EIGHTH AFFIRMATIVE DEFENSE

(Business Judgment)

8. As a separate and eighth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the actions taken by Defendant were the exercise of reasonable business judgment.

NINTH AFFIRMATIVE DEFENSE

(Compliance with the Law)

9. As a separate and ninth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the actions taken by Defendant were in full compliance with the law.

TENTH AFFIRMATIVE DEFENSE

(Consent)

10. As a separate and tenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint because Plaintiff, and/or the persons and/or entities acting on its behalf, consented to and acquiesced in the subject conduct.

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ELEVENTH AFFIRMATIVE DEFENSE

(Defendant Acted in Accordance with Constitution)

11. As a separate and eleventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Defendant acted at all times within the scope of discretion, in good faith, with due care, and pursuant to applicable rules, regulations, and practices reasonably and in good faith believed to be in accordance with the Constitution and laws of the United States and/or the State of California and Defendant is therefore not liable.

TWELFTH AFFIRMATIVE DEFENSE

(Estoppel)

12. As a separate and twelfth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine of estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure of Condition Precedent)

13. As a separate and thirteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's causes of action are barred by Plaintiff's failure to perform all conditions precedent to Plaintiff's purported right to recover.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure of Condition Subsequent)

14. As a separate and fourteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's causes of action are barred by Plaintiff's failure to perform all conditions subsequent to Plaintiff's purported right to recover.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Failure of Condition)

15. As a separate and fifteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that by virtue of the acts of the Plaintiff, and/or the persons and/or entities acting on its behalf, Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint because of a failure of the Plaintiff, and/or the persons and/or entities acting on its behalf, to perform all or any conditions, whether precedent, concurrent and/or subsequent, covenants, and/or promises on their part to be performed as between the parties herein.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure of Consideration)

16. As a separate and sixteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that any performance due by the Defendant under any contract alleged in the Complaint was excused by failure of consideration.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

17. As a separate and seventeenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's claims are barred because Plaintiff failed to exhaust its administrative remedies and/or CEQA exhaustion doctrine.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Serve Notice)

18. As a separate and eighteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that each cause of action is barred because Plaintiff failed to serve a timely notice.

NINETEENTH AFFIRMATIVE DEFENSE

(Fraud)

19. As a nineteenth separate and affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that negligent and/or intentional

1 misrepresentations were made by Plaintiff's employees to Defendant such that Defendant was
2 induced to enter into the contract with Plaintiff and/or induced to continue performance under the
3 contract with Plaintiff, which Defendant would not have done absent such misrepresentations.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 **(Justification/Excuse)**

6 20. As a separate and twentieth affirmative defense to the Complaint and each
7 purported cause of action contained therein, Defendant alleges that by virtue of the acts of the
8 Plaintiff, and/or the persons and/or entities acting on its behalf, Plaintiff is barred from prosecuting
9 the purported causes of action set forth in the Complaint because the acts and/or omissions alleged
10 in the Complaint were justified and/or excused.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 **(Laches)**

13 21. As a separate and twenty-first affirmative defense to the Complaint and each
14 purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or
15 in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine
16 of laches.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Lack of Deception)**

19 22. As a separate and twenty-second affirmative defense to the Complaint and each
20 purported cause of action contained therein, Defendant alleges that the actions taken by it were not
21 deceptive.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 **(Lack of Standing)**

24 23. As a separate and twenty-third affirmative defense to the Complaint and each
25 purported cause of action contained therein, Defendant alleges that Plaintiff lacks standing to
26 prosecute the purported claims set forth in the Complaint.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Mistake)

24. As a twenty-fourth separate and affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred from recovering on the claims in its Complaint on the grounds of mistake.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Modification of Written Contract by Written Agreement or by Oral Agreement)

25. As a separate and twenty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that there was a modification of the written contract by written agreement or by oral agreement between Plaintiff and Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Mootness)

26. As a separate and twenty-sixth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the actions complained of are not likely to recur.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Contractual Relationship)

27. As a separate and twenty-seventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that no contractual relationship exists between Plaintiff and Defendant and, therefore, Plaintiff's claims for declaratory relief fails to state a claim upon which relief can be granted against said Defendant, insofar as Plaintiff purports to assert those claims against said Defendant.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Injury or Damage)

28. As a separate and twenty-eighth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff has not been injured or damaged as a proximate result of any act or omission for which Defendant is responsible

1 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

2 **(Novation)**

3 29. As a separate and twenty-ninth affirmative defense to the Complaint and each
4 purported cause of action contained therein, Defendant alleges that a novation was reached
5 between Plaintiff and Defendant.

6 **THIRTIETH AFFIRMATIVE DEFENSE**

7 **(Official and Quasi-Judicial Immunity)**

8 30. As a separate and thirtieth affirmative defense to the Complaint and each purported
9 cause of action contained therein, Defendant alleges that Defendant is entitled to official and
10 quasi-judicial immunity and, therefore, not liable.

11 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

12 **(Ongoing Investigation)**

13 31. As a separate and thirty-first affirmative defense to the Complaint and each
14 purported cause of action contained therein, Defendant alleges that it has not yet completed a
15 thorough investigation or study or completed the discovery of all the facts and circumstances of
16 the subject matter of the Complaint and, accordingly, reserve the right to amend, modify, revise or
17 supplement its answer and to plead such other defenses and take such other further actions as it
18 may deem proper and necessary in its defense upon completion of said investigation and/or study.

19 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

20 **(Parol Evidence Rule)**

21 32. As a separate and thirty-second affirmative defense to the Complaint and each
22 purported cause of action contained therein, Defendant alleges that Plaintiff's claims are barred by
23 the parol evidence rule.

24 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

25 **(Performance Excused)**

26 33. As a separate and thirty-third affirmative defense to the Complaint and each
27 purported cause of action contained therein, Defendant alleges that Defendant was excused from
28 any performance due from it to Plaintiff under any of the alleged contracts.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Prior Material Breach)

34. As a separate and thirty-fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the purported causes of action asserted in the Complaint are barred by reason of the prior material breach of the agreement or agreements by Plaintiff upon which he bases the Complaint.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Privilege)

35. As a separate and thirty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that in each act or statement done or made by Defendant, its officers, employees and/or agents, with reference to Plaintiff were and continue to be made in good faith and are proper assertions of Defendant's legal rights and obligations and, therefore, were and are privileged.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Privilege – Civil Code Section 47)

36. As a separate and thirty-sixth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Defendant's conduct was privileged under Civil Code section 47 and under all other applicable privileges.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Ratification)

37. As a separate and thirty-seventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that by virtue of the acts of the Plaintiff, and/or the persons and/or entities acting on its behalf, Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint by the doctrine of ratification.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Rule or Regulation Promulgated in Conformance with Law)

38. As a separate and thirty-eighth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that insofar as Defendant has

1 promulgated any rule or regulation or directive, such was done within the scope of discretion, in
2 good faith, and with due care, and with the intent that such rule or regulation or directive conform
3 in all respects to the Constitution and laws of the United States and/or the State of California.

4 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

5 **(Statute of Frauds)**

6 39. As a separate and thirty-ninth affirmative defense to the Complaint and each
7 purported cause of action contained therein, Defendant alleges that Plaintiff's claims are barred by
8 the statute of frauds.

9 **FORTIETH AFFIRMATIVE DEFENSE**

10 **(Statute of Limitations)**

11 40. As a separate and fortieth affirmative defense to the Complaint and each purported
12 cause of action contained therein, Defendant alleges that the purported causes of action asserted in
13 the Complaint are barred by such statutes of limitation as may be applicable, including, but not
14 limited to, Public Resources Code Section 21167(a)-(f) and Code of Civil Procedure Sections 335,
15 335.1, 336, 337, 338, 339, 340, 340.5, 340.9, 343, 344 and 474.

16 **FORTY-FIRST AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 41. As a separate and forty-first affirmative defense to the Complaint and each
19 purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or
20 in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine
21 of unclean hands.

22 **FORTY-SECOND AFFIRMATIVE DEFENSE**

23 **(Waiver)**

24 42. As a separate and forty-second affirmative defense to the Complaint and each
25 purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or
26 in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine
27 of waiver.

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FORTY-THIRD AFFIRMATIVE DEFENSE

(Challenge to Non-Discretionary Approvals)

43. As a separate and forty-third affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges the Complaint challenges non-discretionary approvals (e.g., State CEQA Guidelines section 15378(c)) and other matters not subject to challenge under CEQA including, but not limited to, economic matters.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(Public Resources Code Section 21177)

44. As a separate and forty-fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges the Complaint is barred by Public Resources Code section 21177.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Lack of Ripeness)

45. As a separate and forty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges the Complaint is not ripe or fails to present a justiciable controversy.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(Public Resources Code Section 21167.6.5)

46. As a separate and forty-sixth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges there is a defect (nonjoinder) and/or misjoinder of parties as Plaintiff has failed, among other things, to name necessary and/or indispensable parties, including, but not limited to, recipients of an approval as defined by Public Resources Code section 21167.6.5.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Public Resources Code Section 21168.9)

47. As a separate and forty-seventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges the Complaint is barred by Public Resources Code section 21168.9.

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FORTY-EIGHTH AFFIRMATIVE DEFENSE

(Form of Relief)

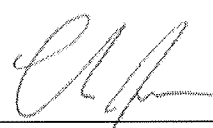
48. As a separate and forty-eighth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges Plaintiff has not met the legal requirements for issuance of declaratory relief, a writ of administrative mandate, injunction, or any other relief.

WHEREFORE, Defendant prays for relief as follows:

- 1. That the Complaint be dismissed, with prejudice and in its entirety;
- 2. That Plaintiff take nothing by reason of this Complaint and that judgment be entered against Plaintiff and in favor of Defendant;
- 3. That Defendant be awarded its attorneys' fees and costs incurred in defending this action;
- 4. That Defendant be granted such other and further relief as the Court may deem just and proper.

DATED: May 18, 2017

HANSON BRIDGETT LLP

By: 

KIMON MANOLIUS
MICHAEL N. CONNERAN
CHRISTOPHER DAVID JENSEN
CANDICE P. SHIH
Attorneys for GOLDEN GATE BRIDGE,
HIGHWAY AND TRANSPORTATION
DISTRICT

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VERIFICATION

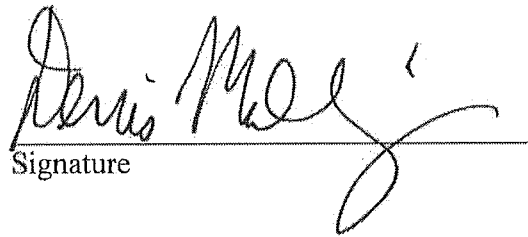
I have read the foregoing DEFENDANT GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT'S ANSWER TO VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and know its contents.

I am the General Manager of the Golden Gate Bridge, Highway and Transportation District, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. The matters stated in the foregoing document are true of my own knowledge, except as to the matters which are stated on information or belief, and as to those matters I believe them to be true.

Executed on May 18, 2017, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Denis J. Mulligan
Print Name of Signatory


Signature

1 PROOF OF SERVICE

2 City of Sausalito v. Golden Gate Bridge, Highway and Transportation District
3 Marin County Superior Court, Case No. CIV 1603319

4 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

5 At the time of service, I was over 18 years of age and not a party to this action. I am
6 employed in the County of San Francisco, State of California. My business address is 425 Market
7 Street, 26th Floor, San Francisco, CA 94105.

8 On May 18, 2017, I served true copies of the following document(s) described as
9 **DEFENDANT GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION**
10 **DISTRICT'S ANSWER TO VERIFIED PETITION FOR WRIT OF MANDATE AND**
11 **COMPLAINT FOR DECLARATORY RELIEF** on the interested parties in this action as
12 follows:

13 Arthur J. Friedman
14 Alexander L. Merritt
15 Sheppard, Mullin, Richter & Hampton LLP
16 Four Embarcadero Center, 17th Floor
17 San Francisco, CA 94111-4109
18 Tel: 415.434.9100
19 Fax: 415/434/3947
20 Email: afriedman@sheppardmullin.com
21 amerritt@sheppardmullin.com

Mary Anne Wagner
City Attorney
City of Sausalito
City Hall
420 Litho Street
Sausalito, CA 94965
Tel: 415.289.4103
Email: mwagner@ci.sausalito.ca.us

22 Attorneys for Petitioner and Plaintiff CITY
23 OF SAUSALITO

Attorneys for Petitioner and Plaintiff
CITY OF SAUSALITO

24 **BY ELECTRONIC SERVICE:** I electronically served the document(s) described above
25 via File & ServeXpress, on the recipients designated on the Transaction Receipt located on the
26 File & ServeXpress website (<https://secure.fileandservexpress.com>) pursuant to the Court Order
27 establishing the case website and authorizing service of documents.

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on May 18, 2017, at San Francisco, California.


Lillian A. Byrd