

**TA**

**CORRESPONDENCE**

**as of 9-2-2021**

**From:** [Eduardo Gonzalez](#)  
**To:** [Mau, Carter](#)  
**Cc:** [Tom Williams](#); [City-Council](#); [Board \(@smcta.com\)](#)  
**Subject:** City of Millbrae"s Response to SamTrans" August 20, 2021 Letter  
**Date:** Wednesday, September 1, 2021 6:20:51 PM  
**Attachments:** [image001.wmz](#)  
[image002.png](#)  
[20210901 CM Letter to Carter Mau - City of Millbrae"s Response to SamTrans" August 20, 2021 Letter.pdf](#)

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Hello Mr. Mau,

On behalf of Millbrae City Manager Thomas C. Williams, please see the attached letter. Thank you, have a great day.

**Please do not reply to this e-mail in order to adhere to the Brown Act. If you have any questions please send them directly to the City Manager Tom Williams at [twilliams@ci.millbrae.ca.us](mailto:twilliams@ci.millbrae.ca.us).**

**Eduardo Gonzalez**

Management Assistant

621 Magnolia Ave. | Millbrae CA 94030

Tel. (650) 259-2373 | [egonzalez@ci.millbrae.ca.us](mailto:egonzalez@ci.millbrae.ca.us)

**From:** [Ann Schneider](#)  
**To:** [Eduardo Gonzalez](#); [Mau, Carter](#)  
**Cc:** [Tom Williams](#); [City-Council](#); [Board \(@smcta.com\)](#)  
**Subject:** RE: City of Millbrae"s Response to SamTrans" August 20, 2021 Letter  
**Date:** Wednesday, September 1, 2021 7:22:08 PM  
**Attachments:** [image001.wmz](#)  
[image003.png](#)

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Thank you.

Ann

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**From:** Eduardo Gonzalez <[EGonzalez@ci.millbrae.ca.us](mailto:EGonzalez@ci.millbrae.ca.us)>  
**Sent:** Wednesday, September 1, 2021 6:21 PM  
**To:** [MauC@samtrans.com](mailto:MauC@samtrans.com)  
**Cc:** Tom Williams <[TWilliams@ci.millbrae.ca.us](mailto:TWilliams@ci.millbrae.ca.us)>; City-Council <[City-Council@ci.millbrae.ca.us](mailto:City-Council@ci.millbrae.ca.us)>; [board@smcta.com](mailto:board@smcta.com)  
**Subject:** City of Millbrae's Response to SamTrans' August 20, 2021 Letter

Hello Mr. Mau,

On behalf of Millbrae City Manager Thomas C. Williams, please see the attached letter. Thank you, have a great day.

**Please do not reply to this e-mail in order to adhere to the Brown Act. If you have any questions please send them directly to the City Manager Tom Williams at [twilliams@ci.millbrae.ca.us](mailto:twilliams@ci.millbrae.ca.us).**

**Eduardo Gonzalez**

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# City of Millbrae

621 Magnolia Avenue, Millbrae, CA 94030

ANN SCHNEIDER  
Mayor

ANNE OLIVA  
Vice Mayor

GINA PAPAN  
Councilmember

ANDERS FUNG  
Councilmember

REUBEN D. HOLOBER  
Councilmember

September 1, 2021

**VIA REGULAR MAIL AND EMAIL (mauc@samtrans.com)**

Carter Mau, Acting Executive Director  
San Mateo County Transportation Authority  
1250 San Carlos Avenue  
P.O. Box 3006  
San Carlos, California 94070-1306

Re: City of Millbrae’s Response to SamTrans’ August 20, 2021 Letter  
Parcels: D-Railroad-X; D-Linden-X1; D-3125-X and portion of APN: 093-352-030

Dear Carter:

This letter responds to your August 20, 2021 correspondence sent on behalf of the San Mateo County Transportation Authority (“**SamTrans**”), regarding parcels D-Railroad-X, D-Linden-X1, D-3125-X and portion of APN: 093-352-030 (collectively, the “**Parcels**”).

We have reviewed the October 14, 1993 Agreement by and between SamTrans and the City of Millbrae (“**Agreement**”), including Section I, Clause 13. Resale of Excess Property. The City does not agree with SamTrans’ interpretation of the Agreement and the application of the Agreement to the Parcels for the reasons stated below.

1. The Agreement has terminated and is no longer enforceable. Section III, Clause 3 of the Agreement provides:

**Termination. This Agreement shall terminate upon acceptance and completion of the Project or the tender by Authority of its final payment hereunder, whichever is later.** Prior to award of the construction contract for the Project, Authority may terminate, in writing, this Agreement, if the City breaches any provision of this Agreement. In no event, shall the

City Council/City Manager/City Clerk  
(650) 259-2334

Building Division/Permits  
(650) 259-2330

Community Development  
(650) 259-2341

Finance  
(650) 259-2350

Fire  
(650) 558-7600

Police  
(650) 259-2300

Public Works/Engineering  
(650) 259-2339

Recreation  
(650) 259-2360

Authority's financial obligation extend past the expenditure of maximum funding amounts or December 31, 1999, whichever occurs first.

(See page 7 of Agreement, emphasis added.)<sup>1 2</sup>

As you know, the Project involving the grade separation at Millbrae Avenue was accepted and completed over 20 years ago. Final payment under this Agreement by SamTrans took place in and around the same time. Because those two events have already taken place, and irrespective of whichever occurred later, the Agreement has terminated and its provisions no longer have any force or effect.

2. Neither the Agreement, itself, nor Section I, Clause 13 contains any survivability provisions. There is no survivability language anywhere in the Agreement that maintains the enforceability of any obligations or rights beyond the termination. As such, Section I, Clause 13 does not survive the termination of the Agreement.

3. There is no factual basis to apply the Agreement to the Parcels. Even if the Agreement had not already terminated or Section I, Clause 13 survived termination—neither of which is true—there is no factual basis to apply the Agreement to parcels D-Railroad-X, D-Linden-X1, D-3125-X and a portion of APN: 093-352-030. Your August 20, 2021 letter openly admits that the Agreement does not identify specific properties. And although SamTrans believes the Parcels to be subject to Section I, Clause 13, SamTrans does not offer any facts showing that the Parcels were acquired using funds transmitted from SamTrans pursuant to the Agreement. Moreover, based on the City's preliminary investigation, it has no information supporting SamTrans' assertion.

4. The Parcels will continue to be used for the City's benefit while also accomplishing the goal of maintaining access to the Millbrae Station. The City does not intend to sell the Parcels at this time. Rather, the City intends to lease the Parcels to a developer so that they may be put to their highest and best use. Any future development on the Parcels will co-exist with the station access facilities that will be relocated or constructed in connection with the realignment of California Drive. As such, the Parcels will serve dual purposes by benefitting the City through intelligent development and maintaining access to the Millbrae station for pedestrians, bicyclists, motorists, and other vehicular traffic including buses and shuttles.

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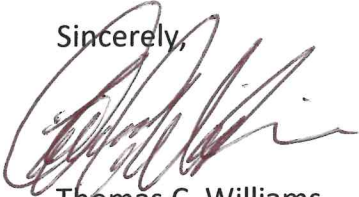
<sup>1</sup> "Authority" is defined as the San Mateo County Transportation Authority. (See page 1 of Agreement.)

<sup>2</sup> "Project" is defined as the "railroad grade separation at Millbrae Avenue." (See page 1 of Agreement; see also Exhibit A to Agreement.)

**Conclusion**

In view of the foregoing, the City does not agree with SamTrans' interpretation of the Agreement and the application of that Agreement to the Parcels. The City respectfully declines SamTrans' invitation for a meeting of our respective staff members on these issues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Tom Williams', written over the word 'Sincerely,'.

Thomas C. Williams  
City Manager  
City of Millbrae

cc. City of Millbrae and City Council, (Via email: [City-council@millbrae.ca.us](mailto:City-council@millbrae.ca.us))  
San Mateo County Transportation Authority, (Via e-mail: [board@smcta.com](mailto:board@smcta.com))