

AGREEMENT FOR EXCHANGE OF REAL PROPERTY (Escrow)

This Agreement For Exchange Of Real Property, (hereinafter referred to as "Agreement"), is made and entered into by and between the County of San Mateo, a political subdivision of the State of California, (hereinafter referred to as "County"), and PS Northern California One, Inc., a Delaware corporation (hereinafter referred to as "Owner" or "PS Northern," and, together with "County," the "Parties"). The rights and protections provided within this Agreement shall extend to the other public agencies partnering with the County on the Project, as defined herein, including, the San Francisquito Creek Joint Powers Authority, a California joint powers authority, ("Authority"); Santa Clara Valley Water District, a special district of the State of California, ("District"); and City of East Palo Alto, a California municipal corporation, ("City of East Palo Alto"). Any reference to "County" herein shall be inclusive of these additional agencies.

RECITALS

I. WHEREAS, PS Northern is the fee owner of certain real property bearing Assessor's Parcel Numbers 063-571-060, 063-571-070, and 063-540-270, also known as 1985 East Bayshore Road located in East Palo Alto (hereafter the "PS Northern Property"); and

II. WHEREAS, County is owner of an existing easement for construction, reconstruction, operation and maintenance of the San Francisquito Creek Channel, together with the right of ingress and egress for maintenance, which easement crosses over Assessor's Parcel Number 063-540-270, (the "Existing Easement"); and

III. WHEREAS, 2629 square feet of the Existing Easement is unnecessary for San Francisquito Creek channel management ("Surplus Easement Area") and PS Northern owns 908 square feet of property that lies outside of County's Existing Easement that is required for the San Francisquito Creek Flood Reduction, Ecosystem Restoration and Recreation Project, (hereinafter referred to as the "Project") and channel management ("New Easement Area"), as described and shown in Exhibit "A"; and

IV. WHEREAS, pursuant to this Agreement, the entirety of the County's Existing Easement will be quitclaimed to PS Northern and in exchange, PS Northern will convey a new easement that represents the County's Existing Easement plus the New Easement Area less the Surplus Easement Area ("Proposed Easement"), as outlined in the attached San Francisquito Creek Area Map; and

V. WHEREAS, in order for County to conform the PS Northern Property to reflect the exchanged property interests and to complete work needed to comply with the terms of this Agreement, County requires a Temporary Construction Easement ("TCE") and Owner desires to convey to County a TCE for these purposes.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEMISE OF PROPERTY

PS Northern hereby grants to County a perpetual easement for the construction, reconstruction, operation and maintenance of San Francisquito Creek Channel, together with the right of ingress and egress and public trail purposes and for all connected and associated purposes, over, under, and across the APN: 063-540-270, which easement is described in the attached Exhibit "A" ("Proposed Easement") and is subject to the conditions set forth in this Agreement and any other existing easements of record. PS Northern further grants County a TCE

as described and shown in Exhibit “C”. In consideration for such grant of the Proposed Easement and TCE, County shall quitclaim all right, title and interest in the Existing Easement recorded at Book 3462 at Page 590 in the Official Records of the County of San Mateo as shown in Exhibit “B”. County shall record said quitclaim concurrently with the recording of the Proposed Easement. The Proposed Easement and TCE are hereinafter referred to as the “Property”.

_____	Exhibit “A” Proposed Easement to be granted to County
_____	Exhibit “B” Existing Easement to be quitclaimed to Owner
_____	Exhibit “C” Temporary Construction Easement (“TCE”)
_____	Exhibit “D” Escrow Instructions

2. PROPERTIES OF EQUAL VALUE AND ESCROW

The Parties agree that the property interests being exchanged are of equal value, inclusive of all improvements and damages. Owner hereby agrees to deliver title to County through escrow free and clear of all liens, encumbrances, assessments, easements, leases (recorded), and taxes unless otherwise indicated on the Escrow Instructions.

This transaction shall be held in escrow at Old Republic Title Company, (hereinafter referred to as “Escrow Agent”) under their Escrow Number 626024844, (hereinafter referred to as “Escrow”) located at 361 Lytton Avenue, Suite 100, Palo Alto, Ca 94301, as described in the aforementioned Escrow Instructions attached hereto and identified as Exhibit “D”.

3. DELIVERY OF DOCUMENT/ESCROW

The Exhibits shall be executed and delivered by Owner to County and County to Owner for the purpose of placing them into Escrow. County and Owner shall not be deemed to have accepted delivery of the Property conveyed by the Exhibit(s) until such time as the applicable Exhibits are recorded in the Official Records of County of San Mateo, California. Said TCE will not be recorded. County shall pay all costs to close Escrow, including escrow fees, document preparation fees, delivery charges, and recording fees as may be incurred in this transaction.

4. POSSESSION

Owner agrees that, , County and its authorized agents and contractors, including but not limited to the Authority; the designated Construction Manager pursuant to an Authority Construction Management Agreement; and the District’s agents, employees, invitees, contractors and subcontractors acting on behalf of the Authority, may enter upon the PS Northern Property described herein for purposes of performing activities related to and incidental to the construction of Project, inclusive of the right to remove and dispose of any improvements. Such possession and use of the Property by County may commence on January 1, 2017 or close of Escrow, whichever occurs first.

Owner agrees that County may extend, or transfer completely or in part, Proposed Easement and all rights thereto to the City of East Palo Alto at a future date to be determined by County.

5. CONSTRUCTION CONTRACT WORK

Owner grants County the express right during construction of the Project to remove all improvements lying within Proposed Easement and TCE, including but not limited to: 1) Security fencing, 2) trash enclosure, and 3) signs and poles. County shall install temporary fencing and a temporary gate if necessary to separate the construction area from Owner’s business operations. All improvements removed from within Proposed Easement and TCE shall be surrendered to Owner for salvage or disposal at Owner’s cost

and discretion.

The TCE described in attached Exhibit C shall be for a period of 1 year within the time period of January 1, 2017 to December 31, 2018. County shall install temporary fencing as is necessary and use reasonable efforts to complete such construction work in as short a period as possible to minimize disruption to the tenants/ occupants on the site. At no cost to County, Owner agrees to provide County a Right of Entry on terms acceptable to Owner and County, if during construction it is determined that such rights will expedite or improve construction.

It is agreed that all work performed under this Agreement by County and situated within the Property shall be done in a good and workmanlike manner. All structures, improvements or other facilities when removed, relocated or reconstructed by County, shall be left in as good condition as found.

It is further understood that after completion of all work performed under the TCE, said Property outside of the Proposed Easement shall hereinafter be considered Owner's sole Property and Owner will be responsible for all maintenance and repair thereto.

6. TERMS OF EXCHANGE

Owner agrees that there will be no monetary compensation from County for the exchange of permanent easements or the rights granted to County within the TCE. County will furnish the following improvements to Owner's property to improve the aesthetics, safety, and operations of the Property.

- a. County or its Assignee will install a new fire hydrant within City of East Palo Alto Right-of-Way along East Bayshore Road. County or its Assignee shall remove an existing fire hydrant on Property and cap the water line servicing the existing fire hydrant. Site restoration will consist of fill and asphalt paving of area. The new fire hydrant will be installed prior to removing the existing fire hydrant.
- b. County or its Assignee will modify an existing storm drain on the property to improve its function. This will consist of new piping and appurtenances for the new storm drain, regrading, repairs and repaving the area needed to better manage stormwater from the Property.
- c. Upon completion of the Project, County or its Assignee will install a new wrought-iron security fence, 8-feet in height, with Shepard's Hook features along the top, within the TCE at a distance of 1 foot from, and along the entirety of, the northerly boundary of the Proposed Easement.

All improvements described above will take place within the TCE. The storm drain and security fence, and related appurtenances will become property of the Owner. The new fire hydrant will become the property of the City of East Palo Alto. County will notify Owner at least 15 days prior to initiation of work on the storm drain or its intent to occupy TCE secured for the purpose of working on the storm drain. Once work on the storm drain has commenced, it will continue during normal workdays and hours until its completion.

7. RECONSTRUCTION OF OWNER'S REMAINDER PROPERTY

County and its authorized agents and contractor are hereby granted permission to enter onto Owner's remainder property to reconstruct Owner's driveways, and walkways, (hereinafter referred to as "Remainder"), as necessary to conform same to the street frontage improvements, including re-grading.

8. LEASE WARRANTY

Owner warrants there are no oral or written leases on any portion of the Property within the Proposed Easement or TCE.

9. OWNER'S INDEMNIFICATION

Owner covenants and agrees to indemnify and hold County harmless from any and all claims with respect to the title to the Property and any improvements therein made or asserted by any person lawfully claiming or purporting to claim the same or any part thereof by, through, or under Owner, but not otherwise.

10. COUNTY'S INDEMNIFICATION

County shall indemnify, defend, and hold harmless Owner, its directors, officers, affiliates, agents, and employees from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees caused by County's activities allowed by this Agreement except and in proportion to the extent caused by an act or omission of Owner or Owner's agents, representatives, employees, consultants and/or contractors. The foregoing indemnity shall also be inapplicable to any adverse condition or defect on or affecting the Property not caused by County or its employees, agents, contractors, or subcontractors but discovered or impacted during their activities; provided, however, that County's indemnification obligations shall apply to the extent such adverse condition or defect is exacerbated by County's actions.

County agrees to release Owner from all liability arising from County exercising its rights under this Agreement. Furthermore, County agrees to assume responsibility for any damages to Owner's Retained Property caused by reason of County's use of the Property under this Agreement, and will, at County's option, either repair or pay for such damage.

11. SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

13. AUTHORITY AND EXECUTION

This Agreement, which is valid, only when executed by County, constitutes the complete understanding and agreement of the parties hereto and no oral representation shall in any manner vary the terms hereof or be binding.

14. ENTIRE AGREEMENT

The performance of this Agreement constitutes the entire consideration for the conveyances from Owner and shall relieve County of all further obligation or claim on this account, or on account of the location, grade or construction of the proposed public improvement and related facilities and/or structures.

This Agreement shall bind the respective heirs, personal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Amendment as follows:

COUNTY	Owner
Date: _____	Date: _____
By: _____ Warren Slocum President, Board of Supervisors County of San Mateo	By: _____ PS Northern California One, Inc., a Delaware corporation
	Address:
	Telephone:

