

**MEMORANDUM OF AGREEMENT**  
**between the**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**acting through its**  
**PUBLIC UTILITIES COMMISSION,**  
**and the**  
**COUNTY OF SAN MATEO**

**(San Andreas Pipeline No. 2 Upgrade Project)**

This Memorandum of Agreement (“**MOA**”), dated for reference purposes only as of \_\_\_\_\_, 2017, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation (“**CCSF**”), and the COUNTY OF SAN MATEO, a political subdivision of the State of California (“**County**”).

**RECITALS**

**A.** CCSF, acting by and through its Public Utilities Commission (“**SFPUC**”) owns and operates a regional water system that serves San Francisco and twenty-seven (27) wholesale water customers located in San Mateo, Santa Clara, and Alameda counties in the Bay Area.

**B.** CCSF's water system includes San Andreas Pipeline No. 2 (the “**Existing Pipeline**”), which is located in CCSF's right of way that is situated in part along and within a forty-five (45)-foot wide easement (the “**Easement**”) that spans certain lands owned and operated by County as a park known as Junipero Serra Park located at 1801 Crystal Springs Road in the City of San Bruno, California (the “**County Property**”), as shown approximately on the attached **Exhibit A**. The CCSF Easement was granted pursuant to an instrument dated May 9, 1928 (the “**Easement Deed**”) for purposes that include the laying, construction, reconstruction, maintenance, repair, operation, use, replacement, and inspection of pipelines and related infrastructure for water conveyance, supply, and distribution. The Easement Deed also grants CCSF the rights of ingress to, and egress from, the Easement over the County Property to any extent necessary or convenient in connection with the exercise and enjoyment of CCSF's easement rights and prohibits the owners of the County Property from constructing or placing any buildings or other improvements on and along the surface of the Easement area.

**C.** CCSF has proposed the San Andreas Pipeline No. 2 Upgrade Project (the “**Project**”) with the goal of increasing the Pipeline's reliability and ability to meet future water demands, which include, among other improvements, the rehabilitation, removal, and/or replacement of certain sections of the existing Pipeline. One section of the Pipeline that will be repaired, replaced, or renovated in the course of the Project includes a section that is within the CCSF Easement as shown on the attached **Exhibit A**. Proposed Project work inside Junipero Serra County Park includes replacement of approximately 1,800 feet of 54” diameter water pipeline with new pipeline of the same size by open-cut excavation with an average depth of 10 feet and a maximum depth of 16 feet.

**D.** County and CCSF have been working cooperatively to identify and address their respective requirements and concerns relating to the construction of the portion of the Project located within the boundaries of the CCSF Easement across the County Property.

E. The pipeline rehabilitation, removal, and replacement work contemplated by the Project relates to similar work performed in connection with a previous pipeline rehabilitation, repair, and replacement project entitled the Peninsula Pipeline Seismic Upgrade Project (the “**PPSU Project**”). The PPSU Project is a Water System Improvement Program (“**WSIP**”) Project included in the WSIP programmatic EIR (“**PEIR**”) approved by SFPUC Resolution No. 08-0200, on October 30, 2008. On April 10, 2013, CCSF published a Draft Environmental Impact Report (“**DEIR**”) for the PPSU Project, which tiered off of the PEIR. After the close of a forty-five (45)-day public review period on May 28, 2013, CCSF prepared responses to comments on environmental issues received at the public hearings and in writing during the public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document (“**C&R**”), published on October 17, 2013. A Final Environmental Impact Report (“**FEIR**”) was prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, the Comments and Responses document, and several Errata Sheets, which made minor clerical corrections. PPSU Project files on the FEIR are available for public review at the Department offices at 1650 Mission Street, San Francisco, California. Copies of the DEIR and associated reference materials as well as the C&R are also available for review at public libraries in San Mateo County.

F. On October 17, 2013, the San Francisco Planning Commission, acting as lead agency on behalf of the CCSF, certified the FEIR by Motion 19004. On October 22, 2013, the SFPUC approved the PPSU Project by SFPUC Resolution No. 13-061, and, in so doing, adopted findings (“**CEQA Findings**”) under the California Environmental Quality Act (“**CEQA**”), Public Resources Code section 21000 et seq., including a statement of overriding considerations for the Project's significant and unavoidable impacts, rejected project alternatives, and adopted a mitigation monitoring and reporting program (“**MMRP**”).

G. On April 12, 2017, the San Francisco Planning Department issued Addendum No. 1 to the FEIR, finding that proposed modifications to the PPSU Project to address four additional segments of the SAPL2 that have been identified as deteriorated and in need of rehabilitation. The four segments are located in portions of the Existing Pipeline that run from the Harry Tracy Water Treatment Plant, near the intersection of I-280 and Crystal Springs Road, to Sneath Lane, near the southern boundary of the Golden Gate National Cemetery. The Addendum stated that the Project will not cause new significant impacts not identified in the FEIR, will not increase the severity of significant impacts identified in the FEIR, and will not require new mitigation measures to reduce significant impacts. Addendum No. 1 among other considerations, identifies and discusses recommended modifications to two previously adopted mitigation measures, Mitigation Measure LU-1a, which provides for public notification to interested parties a week before construction activities, and Mitigation Measure LU-1b, which provides a 14-day advance notice to residents, tenants and property owners whose homes are potentially subject to significant and unavoidable noise impacts. Addendum No. 1 concludes that the modifications, which would add the areas within the Project to areas in the FEIR requiring these notices, would not result in new or more severe impacts.

**H.** On April 25, 2017, by Resolution No. 17-0091, the SFPUC found that since the FEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR. The SFPUC adopted CEQA findings for the Project, including modifications to mitigation measures as set forth in Addendum No. 1, the MMRP, and the Statement of Overriding Considerations. The SFPUC approved the Project and authorized the SFPUC staff to proceed with actions necessary to implement the Project. The Addendum and any supporting documents have been made available to the public at the Planning Department offices at 1650 Mission Street, San Francisco, California and are also available for review at public libraries in San Mateo County.

**I.** On \_\_\_\_\_, 201\_\_, County adopted findings under CEQA as a responsible agency, incorporating by reference the CEQA findings of the CCSF, and adopted a mitigation monitoring and reporting program, as applicable to its approval action.

NOW, THEREFORE, in consideration of their mutual covenants in this MOA, the parties agree as follows.

## **1. TERM**

This MOA shall become effective on the date it has been fully executed and delivered by both parties (“**Effective Date**”), provided it has been authorized by CCSF and County in a manner required by law. The term of this MOA shall continue in effect thereafter until the earlier of (a) one (1) year after County’s acceptance pursuant to **Section 3.2(g)** of all CCSF’s MOA Work (defined in **Section 3.2(a)**), (b) the ninth (9<sup>th</sup>) anniversary of the Effective Date, or (c) the date this MOA is earlier terminated in accordance with its terms.

If either party breaches a material term of this MOA without the other party's fault and does not cure the breach within thirty (30) calendar days' notice by the non-breaching party, the non-breaching party may terminate this MOA without any penalty or liability of either party to the other; provided, however, if more than thirty (30) days are reasonably required for such cure, the non-breaching party shall not have the right to terminate this MOA on account of such breach if the other party promptly commences the cure within such thirty (30)-day period and diligently prosecutes such cure to completion.

## **2. MEASURES FOR IMPROVEMENT OF PROJECT COORDINATION AND PUBLIC OUTREACH AND COMMUNICATIONS**

### **2.1. Press Releases, Public Information, and Community Outreach**

The parties will use reasonable efforts to coordinate public outreach efforts regarding construction impacts to users of the County Property. Periodically, CCSF will provide language for County’s approval and use on County website, twitter, social media, and other avenues for public outreach to notify Park users of the project and its impacts on them. In turn, County staff will utilize the agreed upon project language in its own public outreach materials, signs, and social media platforms to effectively notify users of the County Property, or other County land affected by Project construction work, of any impacts.

Before and during the course of Project construction:

- CCSF will work with County to create appropriate informational signage regarding Project construction for posting on or about the County Property before and during construction;
- CCSF will provide a 24-hour “Answerline” telephone line for referring callers with questions about construction;

- County will coordinate with CCSF outreach staff and project team on any special upcoming events or other Park activities that might have an impact on the project, or vice versa; and
- CCSF and County will provide advance notice to each other concerning all press releases, media inquiries and other information for public consumption concerning the Project within the sphere of influence of the County. The parties designate the following individuals as contact persons (unless specified elsewhere in this MOA) for press releases and other information created for public dissemination:

CCSF: Betsy Lauppe Rhodes (415) 554-3240; (cell) (415) 513-2172.  
e-mail: [BLauppe@sfwater.org](mailto:BLauppe@sfwater.org)

County: Sarah Birkeland (650) 363-4020; email: [sbirkeland@smcgov.org](mailto:sbirkeland@smcgov.org)

### 3. CCSF CONSTRUCTION; APPROVAL PROCESS

#### 3.1. Permits and Approvals; CCSF Reimbursement Obligations

(a) **Permits and Approvals.** CCSF anticipates the start of construction during the first calendar quarter of 2018 at the location(s) within County's borders identified on the attached **Exhibit A**. Based on County's review of the scope of the proposed construction and related activities to be undertaken by CCSF and its contractor retained to perform the Project construction ("**Contractor**"), County acknowledges that neither CCSF nor its Contractor will be required to obtain any permits or licenses from County with respect to such construction.

#### 3.2. Improvements

(a) **CCSF Obligations.** In consideration of County's assumption of obligations pursuant to this MOA, CCSF is assuming obligations to improve CCSF and/or County property, following construction of the Project improvements, to a standard that may exceed CCSF's legal obligations as determined by the parties' respective rights and interests in the land or prior legal agreements between the parties. Provided that this MOA remains in effect, CCSF shall undertake improvements as specified in the contract specifications and drawings prepared by or on behalf of County and identified in the attached **Exhibit B** (the "**Specifications**"). CCSF shall bear the cost of the improvements described in the Specifications ("**CCSF's MOA Work**"). In connection with the performance of CCSF's MOA Work, the construction contract (the "**Construction Contract**") between CCSF and its Contractor shall require Contractor to (i) name County and its directors, officers, agents and employees as co-indemnitees with respect to Contractor's obligation to indemnify and hold harmless CCSF and its directors, officers, agents and employees from all Claims (as defined in **Section 5.1** below) directly or indirectly arising out of, connected with, or resulting from the performance or nonperformance of the Project construction work and (ii) obtain and maintain insurance coverages in accordance with CCSF's standard specifications ("**Contractor's Insurance**"), modified to require Contractor's general liability insurance policy to name County and its directors, officers, agents and employees as additional insureds under the terms of the policy.

(b) **County's Approval of Specifications.** CCSF has consulted with County in CCSF's preparation of the Specifications and their incorporation into the Construction Contract. County acknowledges that it has reviewed and approves the Specifications and the Specifications as so prepared are consistent with its requirements, and County has no other requirements regarding CCSF's MOA Work. County has no knowledge of any inaccuracy in the depiction in the Specifications of the placement of existing utilities in on, or under County's streets or lands shown in the Specifications (inclusive of gas, electricity, water, sewer, storm water and other drainage, fiber optic, or other pipes, conduits, or utility structures or appurtenances). County represents and warrants that CCSF's Contractor shall not be required to obtain any approvals from County for implementation of CCSF's MOA Work. Notwithstanding the foregoing, if unforeseen local, state, or federal regulatory changes occur after the Effective Date that would require CCSF's Contractor to obtain approvals not listed in **Section 3.1**, CCSF shall cause its Contractor to obtain such approvals at its cost.

(c) **Changes to Specifications.** If County desires changes to the Specifications, County shall request such changes in writing. Such proposed changes shall be subject to CCSF's approval, at its sole discretion, provided such approval will not be unreasonably withheld or delayed if the proposed change to the Specifications is reasonably necessary to ensure public safety with respect to the improvements to be constructed pursuant to the Specifications. County shall bear the expense of all additional costs, if any, resulting from those changes to the Specifications requested by County and agreed to by CCSF, or changes required by application of federal, state, or local laws that were in effect on or before the Effective Date; provided, however, that CCSF shall notify County of any anticipated cost increases, and provide County with a reasonable opportunity to withdraw the request or otherwise amend the Specifications to avoid cost increases. CCSF shall bear the expense of all additional costs, if any, resulting from a change in the Specifications required by the application of federal, state or local laws that become effective after the Effective Date.

If CCSF determines that it is necessary to modify the Specifications because of any changed or newly discovered conditions or other circumstances ("**Changed Circumstances**"), it shall notify County of the possible modification, including full information about the nature and scope of the proposed modification, the reasons for it, and the expected impact on the construction schedule. CCSF and County will diligently and in good faith cooperate to review and agree on the response to such Changed Circumstances, and any related amendment to the Specifications, in time for CCSF to meet any response deadline in the Construction Contract related to Changed Circumstances; provided, however, if the parties are unable to agree within fifteen (15) business days after County receives CCSF's notice, CCSF may direct a change to the Specifications if it determines, at its sole discretion, that the change is necessary (i) to preserve the safety or functionality of CCSF's MOA Work, (ii) to obtain a necessary third party approval, (iii) to meet a response deadline under the Construction Contract, or (iv) to avoid cost increases or extensions of the Project construction schedule. Notwithstanding the foregoing, without County's prior, written consent, no change in the Specifications will result in any condition that is unsafe in a material manner or deleteriously impacts in a material manner the safety or functionality of CCSF's MOA Work or County's existing infrastructure.

(d) **County Inspections of CCSF's MOA Work**

(i) If County so desires, County may inspect the progress and condition of CCSF's MOA Work daily during the course of construction (each, an "**Elective Inspection**"). At the completion of one or more construction stages of CCSF's MOA Work, however, CCSF shall give County written notice ("**Inspection Notice**") that a County inspection is required (a "**Necessary Inspection**"), and CCSF shall allow five (5) business days following delivery of such notice for County to perform the Necessary Inspection. All County inspections must comply with the provisions of subsection (ii) below.

(ii) County shall bear the expense of all County inspections, except in instances where repairs to damages to County facilities caused by Contractor's negligence or willful misconduct require County inspection to ensure repairs are completed in accordance with County standards, in which case Contractor shall be responsible for reimbursing County for expenses incurred. County shall coordinate all inspections with CCSF. In conducting any inspections, County shall not take any actions that unreasonably interfere with the Contractor's performance, direct the Contractor's performance in the field, or authorize any additional work.

(iii) If County determines that any of CCSF's MOA Work that has not previously been accepted by County does not comply with the Specifications or the conditions of applicable County permits, County shall provide written notice to CCSF specifying the basis for such rejection. Such notice shall be delivered to CCSF within five (5) business days after an Elective Inspection or in the case of a Necessary Inspection, within five (5) business days after County's receipt of the Inspection Notice. County's failure to timely notify CCSF of its rejection of any matter shall be deemed County's acceptance of such matter.

(e) **Preconstruction Survey.** Prior to the commencement of Project construction on or about the County Property, Contractor will prepare, or cause to be prepared, a videotaped preconstruction survey and accompanying narrative (the "**Preconstruction Survey**") to document the condition of all County's surface improvements or vegetation on or about the County Property that may be affected by Project construction work.

(f) **Restoration of County Property.** Immediately following completion of the Project construction work on or about the County Property, CCSF shall cause its Contractor to remove all debris and any excess dirt and, except for trees that are removed or pruned, shall restore the County Property to substantially its condition immediately prior to such work as shown by the Preconstruction Survey.

(g) **Transfer of Ownership and Warranties.** Once CCSF and County accept a distinct phase of CCSF's MOA Work as completed by Contractor (a "**Completed Phase**"), CCSF shall deliver to County, and County shall execute, a certificate of completion and acceptance (a "**COA**") with respect to the Completed Phase in the form attached as **Exhibit C-1** (each COA shall be distinct from any other certificates of acceptance issued by CCSF to Contractor in connection with the Project). Each COA will evidence County's acceptance of the Completed Phase reflected in such COA and shall transfer ownership and responsibility for the operation and maintenance of that Completed Phase to County. Upon County's acceptance of each Completed Phase pursuant to a COA, CCSF shall indemnify and hold County harmless from any and all stop notice claims or other claims made by contractors, supplier or laborers for payment arising from or related to such Completed Phase. In addition, County and CCSF shall act in good faith to take all steps necessary to assign to County the following rights arising under the Construction Contract to the extent relating to each Completed Phase accepted by County (i) any express and implied warranties and guaranties from CCSF's Contractor or suppliers related to the Completed Phase (each a "**Warranty**" and collectively "**Warranties**"), (ii) CCSF's contractual rights related to the correction of nonconforming work to the extent applicable to the Completed Phase, and (iii) the right to pursue any Claim against the Contractor for latent defects related to such Completed Phase. Each such assignment with respect to a Completed Phase shall be effective upon or promptly after County's execution and delivery of a COA with respect to such Completed Phase and Contractor's executed consent to such assignment (Contractor's delivery of such consent promptly upon CCSF's and County's acceptance of a Completed Phase shall be an obligation required of Contractor pursuant to the Construction Contract), provided that CCSF's obligation to assign the rights described above with respect to such Completed Phase shall be conditioned on County's execution of the purchase and sale agreement required in **Section 4**. In connection with its assignment of the rights set forth above to County, the Construction Contract shall require Contractor to procure and provide directly to County, promptly upon or coincident with the execution and delivery of a COA with respect to a Completed Phase, a maintenance bond in favor of County that will guarantee all of Contractor's obligations with respect to the Warranties applicable to such Completed Phase. Each such bond shall be in a penal sum not less than 20% of the value of the work performed for each Completed Phase, shall cover defective workmanship and materials, and shall be issued by a surety admitted to do business in the State of California.

#### **4. REAL PROPERTY**

Within thirty (30) days of the Effective Date, the parties shall execute, deliver, and perform a purchase and sale agreement substantially in the form of the attached **Exhibit C-2** (the "**PSA**"), pursuant to which County shall grant CCSF the real property interests identified in the attached **Exhibit C-Table I** and further described in the easement deeds attached to and incorporated in the PSA.

## 5. INDEMNIFICATION

### 5.1. County Indemnification when CCSF Constructs, Installs, or Places County Improvements on behalf of County

With respect to any of CCSF's MOA Work constructed, installed, or placed by CCSF in accordance with the Specifications, to the fullest extent permitted by law, County shall defend, indemnify, and save harmless CCSF, its Board, commissions, members, officers, employees, agents, or authorized representatives (collectively, "**Indemnitees**"), from and against any and all demands, claims, losses, costs, judgments, awards, penalties, fines, damages, injuries (including, without limitation, injury to or death of an employee of County or its contractors, subcontractors, or consultants), expenses, and liability of every kind (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation) (each, a "**Claim**"), (a) that arise out of, or relate to, directly or indirectly, in whole or in part, any fault, defect, or negligence in the Specifications, except to the extent any Claim results from CCSF's or CCSF's contractor's negligent acts or omissions or willful misconduct, in the construction, placement, or installation of CCSF's MOA Work constructed pursuant to the Specifications, or (b) that arise out of, or relate to, directly or indirectly, in whole or in part, suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by any Indemnatee of any designs, plans, articles, or services included in the Specifications. County's obligations under this Section shall survive the expiration or earlier termination of this MOA.

### 5.2. Indemnification Procedures

On request, County shall defend any action, claim, or suit asserting a Claim covered by its indemnification obligations pursuant to this MOA. In any action or proceeding brought against any CCSF Indemnatee by reason of any Claim indemnified by County hereunder, County shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that CCSF shall have the right, but not the obligation, to participate in the defense of any such Claim. County shall pay all costs that may be incurred by any CCSF Indemnatee, including reasonable attorneys' fees, court costs, and all other litigation expenses related to or arising from any Claim. For purposes of this MOA, reasonable attorneys' fees of CCSF when CCSF uses its own attorneys shall include the weighted costs attributable to all salaries, employee benefits, and perquisites received by or payable to such attorneys in connection with their employment by CCSF.

### 5.3. Assumption of Risk; Waiver of Claims

County shall assume all risk of

- (a) damage to any and all real or personal property owned or under the control or custody of County and
- (b) any bodily injury or death to and of County's officers, agents, employees, contractors or subcontractors, or their employees

resulting from or incident to the performance of CCSF's MOA Work. This assumption of risk and waiver shall not be valid in the instance where a loss is caused by the sole negligence or intentional tort of an Indemnatee.

Notwithstanding the foregoing waivers and release, (i) with respect to any Claim arising from Contractor's acts or omissions, County, as an additional insured, shall be entitled to the benefits of any insurance coverage arising under Contractor's insurance as provided in **Section 3.2(a)**, and (ii) with respect to any Claim arising from or related to any of CCSF's MOA Work, County shall be entitled to the benefit of any express or implied warranties from CCSF's contractors relating to CCSF's MOA Work, as set forth in **Section 3.2(g)** [Transfer of Ownership and Warranties].



In connection with the foregoing release, County acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

County acknowledges that the release stated in the first paragraph of this **Section 5.3** includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims resulting from or incident to the performance of CCSF's MOA Work. County realizes and acknowledges that it has entered into this MOA in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The release contained herein shall survive any termination of this MOA.

## **6. MISCELLANEOUS**

### **6.1. Notices.**

Except as specifically otherwise provided in **Section 2**, any notice, consent, or approval required or permitted to be given under this MOA shall be in writing and shall be given by **(a)** hand delivery, against receipt, **(b)** reliable next-business-day courier service that provides confirmation of delivery, or **(c)** United States registered or certified mail, postage prepaid, return receipt required, to the address(es) set forth below or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. The parties' initial addresses are:

#### **CCSF:**

To: Harlan L. Kelly, Jr., General Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102

and: Janet Ng, Project Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

and Alan Johanson, Construction Management Bureau Manager,  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 6th Floor  
San Francisco, CA 94102

**COUNTY:**

To: San Mateo County Parks  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
Attn: Sarah Birkeland

and: San Mateo County  
400 County Center  
Redwood City, CA 94063  
Attn: Nirit Eriksson

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any fax numbers or e-mail addresses are provided for convenience of communication only; neither party may give official or binding notice by fax or e-mail. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed or e-mailed copy of a notice.

**6.2. Risk of Non-Appropriation of Funds.**

This MOA is subject to the budget and fiscal provisions of CCSF's Charter. CCSF shall have no obligation to make appropriations for this MOA in lieu of appropriations for new or other agreements. County acknowledges that CCSF budget decisions are subject to the discretion of its Mayor and Board of Supervisors. County assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this MOA. CCSF acknowledges that, in the event a non-appropriation or non-certification of funds prevents CCSF from performing its obligations pursuant to this MOA, (a) County shall be relieved of any of its then-executory obligations pursuant to this MOA, (b) County may terminate this MOA as stated in and pursuant to Section 1 above, and (c) County may seek any remedy available against CCSF pursuant to applicable law with respect to obligations then or previously performed, or consideration then or previously delivered, by County pursuant to this MOA for which County was not previously compensated or for which County did not receive fair consideration as contemplated in this MOA.

**6.3. Severability.**

If any provision of this MOA or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOA, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this MOA shall be valid and be enforceable to the fullest extent permitted by law, provided that the remainder of this MOA can be interpreted to give effect to the intention of the parties.

**6.4. Good Faith.**

Each party shall use all reasonable efforts and work wholeheartedly and in good faith for the expedited completion of the objectives of this MOA and the satisfactory performance of its terms.

**6.5. Sole Benefit.**

This MOA is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than the other party to this MOA.

**6.6. Governing Law.**

This MOA is made under and shall be governed by the laws of the State of California.

**6.7. Amendment; Waiver.**

Neither this MOA nor any term or provision hereof may be changed or amended, except by a written instrument signed by both parties. Any waiver by CCSF or County of any term, covenant, or condition contained in this MOA must be in writing, and a waiver of one breach shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition.

**6.8. Counterparts.**

This MOA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**6.9. Recitals and Exhibits.**

The Recitals set forth above are true and correct and are incorporated into this MOA. The attached exhibits referred to herein are incorporated into and made a part of this MOA.

**6.10. Integration.**

This MOA represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this MOA.

**6.11. Tropical Hardwood and Virgin Redwood Ban.**

Pursuant to §804(b) of the San Francisco Environment Code, CCSF urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither County nor any of its contractors shall include in the Specifications or in any other work performed by or on behalf of County pursuant to or in connection with this MOA any items that are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

**6.12. Nondiscrimination.**

In the performance of this MOA, County shall not discriminate against any employee, subcontractor, applicant for employment with County, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement by their duly authorized representatives.

**CITY AND COUNTY OF SAN FRANCISCO,**  
a California municipal corporation


By:   
Harlan L. Kelly, Jr.  
General Manager,  
Public Utilities Commission

Dated: \_\_\_\_\_

Authorized by San Francisco Public Utilities  
Commission, Resolution No.17-0091

Adopted April 25, 2017

APPROVED AS TO FORM  
Dennis Herrera, City Attorney

By:   
Richard Handel  
Deputy City Attorney

**COUNTY OF SAN MATEO,**  
a political subdivision of the State of  
California

By: \_\_\_\_\_  
President Board of Supervisors

Dated: \_\_\_\_\_

Authorized by the Board of Supervisors  
Resolution No. \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Adopted \_\_\_\_\_, 20\_\_

APPROVED AS TO FORM  
Office of the County Counsel for the  
County of San Mateo

By: \_\_\_\_\_  
John D. Nibbelin  
Deputy County Counsel

**EXHIBITS:**

- A – Depiction of County Property and CCSF Easement
- B – Specifications for Improvements to County Property
- C – Forms of Certificate of Acceptance and Access License
- Table C-I Real Estate Interests in County-Owned Parcels to be Transferred to  
CCSF Pursuant To Purchase And Sale Agreement
- C-1 Form of Certificate of Acceptance
- C-2 Form of Purchase and Sale Agreement

## **EXHIBIT A**

### **Depiction of County Property and CCSF Easement**

## **EXHIBIT B**

### **Specifications for Improvements to County Property**

**SPECIFICATIONS FOR IMPROVEMENTS TO COUNTY PROPERTY –  
MOA WORK AS PROVIDED IN THE PROJECT DRAWINGS AS DETAILED BELOW**

<b>Feature</b>	<b>WD-2829 Drawing Number/ Specifications Section</b>	<b>Prepared By</b>	<b>Date</b>	<b>Approximate Stationing</b>	<b>MOA Work and Agreements with San Mateo County Public Parks</b>	<b>Fee Owner/ROW</b>
Demolition Plan	CD-1002, CD-1003	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Surface improvements demolition plans	CCSF Easement
Demolition Plan	CD-4002, CD-4003	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Pipeline demolition plans	CCSF Easement
Tree Removal and Staging Plan	CD-4008, CD-4009	SFPUC	Sept 2017	8+50 to 23+50	Tree removal plan and staging areas	CCSF Easement
Surface Improvements	C-1002, C-1003	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Surface restoration following pipeline work	CCSF Easement
Pipeline Plan and profile	C-4002, C-4003	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Pipeline plan and profile and ground surface	CCSF Easement
Standard Civil Details	C-5001	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Restoration details for curb and gutter, drainage outlets, concrete walkways, and asphalt concrete pavement details	CCSF Easement
Enlarged Plan at Harry Tracy Water Treatment Plant	C-5004	Kennedy/Jenks	Sept 2017	8+50	Enlarge civil plan at border between Harry Tracy Water Treatment Plant and Junipero Serra County Park	CCSF Easement
Loading Diagrams	C-5006	Arup/Terra JV	June 2017	8+50 to 23+50	Loading diagrams for temporary shoring	CCSF Easement
Typical Trench Details	C-5011	SFPUC	Sept 2017	8+50 to 23+50	Typical pipeline trench restoration details	CCSF Easement
Appurtenance and Manhole Schedule	C-5016	SFPUC	Sep 2017	8+50 to 23+50	Air/vacuum release valve and blowoff schedule	CCSF Easement
Manhole vault details	C-5017, C-5018, C-5019, C-5020, C-5021, C-5022, C-5023	SFPUC	Sept 2017	8+50 to 23+50	Manhole vault details for air release/vacuum valves and blowoffs	CCSF Easement
Traffic Control Plan	TC-1001, TC-1002	AECOM	Sept 2017	8+50 to 23+50	Traffic Control plan at Crystal Springs Rd	City of San Bruno
TCE Plats & Figures	C-8001, C-8002	SFPUC	Sept 2017	8+50 to 23+50	TCE plats	CCSF Easement
Cathodic Protection Rectifier and Deep Bed Anode	CP-0001, CP-4001, CP-4002, CP-5002, CP-5003, CP-5004, and CP-5005	SFPUC	Oct 2017	8+50 to 23+50	Cathodic protection system details	CCSF Easement
Cathodic Protection	C-5025	SFPUC	Sept 2017	8+50 to 23+50	Rectifier concrete pad details	CCSF Easement
Cathodic Protection Specifications	Specifications 26 42 60	SFPUC	Oct 2017	8+50 to 23+50	Cathodic protection specifications	CCSF Easement

Feature	WD-2829 Drawing Number/ Specifications Section	Prepared By	Date	Approximate Stationing	MOA Work and Agreements with San Mateo County Public Parks	Fee Owner/ROW
Earthwork	Division 31 Specifications	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Clearing and grubbing, earth moving, erosion control, shoring and bracing and surface restoration and improvements specifications	CCSF Easement
Exterior Improvements	Division 32 Specifications	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Paving, curb, sidewalk, gutter, fences, and gates specifications	CCSF Easement
Utilities	Division 33 Specifications	Kennedy/Jenks	Sept 2017	8+50 to 23+50	Pipeline, appurtenances and utility vault specifications	CCSF Easement
Planting Preparation	Specifications 32 91 00	AECOM	Oct 2017	8+50 to 23+50	Site preparation specifications	CCSF Easement
Turf and Grasses	Specifications 32 92 00	AECOM	Oct 2017	8+50 to 23+50	Plant installation specifications	CCSF Easement
Plants	Specifications 32 93 00	AECOM	Oct 2017	8+50 to 23+50	Seeding and mulching specifications	CCSF Easement
Plant Establishment	Specifications 32 93 53	AECOM	Oct 2017	8+50 to 23+50	Plant establishment specifications	CCSF Easement
Guidelines to Minimize Phytophthora Contamination in Restoration Projects		AECOM	October 2016	8+50 to 23+50	Guidelines to minimize Phytophthora	CCSF Easement
Amendment to the Right of Way Integrated Vegetation Management Policy		SFPUC	January 2015	8+50 to 23+50	SFPUC Right of Way Integrated Vegetation Management Policy	CCSF Easement
Environmental Procedures	Specifications 01 35 43	SFPUC	May 2014	8+50 to 23+50	Environmental procedures	CCSF Easement
Segment 1 Revegetation Plan	C-1021	AECOM	Oct 2017	8+50 to 23+50	Revegetation Plan in Segment 1	CCSF Easement
Planting Schedule	C-1023	AECOM	Oct 2017	8+50 to 23+50	Planting schedule	CCSF Easement
Segment 1 Revegetation	-	AECOM	July 2017	8+50 to 23+50	Segment 1 revegetation plan	CCSF Easement
4-Year Maintenance Plan		AECOM	Oct 2017	8+50 to 23+50	4-year plant maintenance plan	CCSF Easement



## **EXHIBIT C**

- **TABLE OF REAL ESTATE INTERESTS IN COUNTY-OWNED PARCELS TO BE TRANSFERRED TO CCSF PURSUANT TO PURCHASE AND SALE AGREEMENT;**
- **FORM OF CERTIFICATE OF ACCEPTANCE; AND**
- **FORM OF PURCHASE AND SALE AGREEMENT**

**TABLE C-I**

**REAL ESTATE INTERESTS IN COUNTY-OWNED PARCELS TO BE TRANSFERRED  
TO CCSF PURSUANT TO PURCHASE AND SALE AGREEMENT**

<b>Interest to Be Conveyed to CCSF</b>	<b>APN</b>	<b>Purpose of Grant</b>
Temporary Construction Easement 1	019-230-020 (Parcels 1 & 2)	Construction Staging and general construction operations
Temporary Construction Easement 2	019-230-020 (Parcel 3)	Construction Staging and general construction operations

## EXHIBIT C-1

### FORM OF CERTIFICATE OF COMPLETION AND ACCEPTANCE

#### CERTIFICATE OF COMPLETION AND ACCEPTANCE

This Certificate of Completion and Acceptance is made by the COUNTY OF SAN MATEO, a political subdivision of the State of California (“**County**”), and the City and County of San Francisco (“**CCSF**”), a California municipal corporation, with respect to certain improvements constructed by CCSF within the County.

#### RECITALS

A. County and CCSF entered into that certain Memorandum of Agreement (“**MOA**”), dated for reference purposes only \_\_\_\_\_, 2017, with respect to the construction of CCSF’s San Andreas Pipeline No. 2 Upgrade Project through and on County's property.

B. Section 3.2(g) of the MOA requires CCSF to deliver and County to execute a Certificate of Completion and Acceptance upon completion of construction of distinct phases of the CCSF MOA Work (as that term is defined in the MOA).

C. County has inspected the CCSF MOA Work described as \_\_\_\_\_ [insert brief description – intersection(s) name(s), etc.] and more particularly described on Exhibit A to this Certificate (the “**Improvements**”) and determined that the Improvements have been satisfactorily completed.

NOW THEREFORE, County and CCSF each certify as follows:

1. CCSF certifies that, as of the date of this Certificate of Completion and Acceptance, it has assigned or is in the process of assigning to County all warranties and guaranties related to the Improvements as required by Section 3.2(g) of the MOA.

2. County hereby accepts ownership and control of the Improvements, including responsibility for the operation and maintenance of the Improvements.

3. This Certificate is not a Notice of Completion as defined in California Civil Code Section 3093.

4. Nothing contained in this Certificate of Completion and Acceptance shall modify or alter in any way the provisions of the MOA.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY AND COUNTY OF SAN FRANCISCO,  
a California municipal corporation**

By: \_\_\_\_\_

**COUNTY OF SAN MATEO, a political  
subdivision of the State of California**

By: \_\_\_\_\_

**[Create and attach an Exhibit A that describes all improvements and personal property  
incorporated into CCSF’s MOA Work being delivered pursuant to the COA]**

**EXHIBIT C-2**  
**FORM OF PURCHASE AND SALE AGREEMENT**

[See following pages]

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

by and between

COUNTY OF SAN MATEO  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

Three temporary construction easements over, on, and  
across real property in the City of San Bruno, County of San Mateo, State of California

\_\_\_\_\_, 2018

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## LIST OF EXHIBITS

- EXHIBIT A      Easement Deed for TCE 1 (Parcels 1 & 2) with attached legal description and depiction of Easement Area to be conveyed thereby.
- EXHIBIT B      Easement Deed for TCE 2 (Parcel 3) with attached legal description and depiction of Easement Area to be conveyed thereby.



**AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**  
(Temporary Easements Over, On, and Across  
Portions of APN 019-230-020)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of \_\_\_\_\_, 2018, is by and between COUNTY OF SAN MATEO, a political subdivision of the State of California (“**Seller**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Buyer**” or “**City**”).

**RECITALS**

**A.** In connection with the San Andreas Pipeline No. 2 Upgrade Project (the “**Project**”) of Buyer’s Public Utilities Commission, City seeks to acquire certain easement interests on, over, and across that certain real property owned by Seller in the City of San Bruno, San Mateo County (“**County**”), California, located at 1801 Crystal Springs Road, San Bruno, California and commonly known as Junipero Serra County Park (“**Seller’s Property**”).

**B.** Subject to the terms and conditions of this Agreement, City desires to purchase, and Seller is willing to sell to City, the easement interests described in this Agreement.

IN CONSIDERATION of the respective agreements set forth below, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Purchase and Sale of Easements**

In connection with the Project, Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants, and conditions set forth below, the following interests in real property (each, an “**Easement**” and collectively, the “**Easements**”):

(a) a temporary construction easement (the “**TCE 1**”) over, across, in, and upon portions of Seller’s Property described on Exhibit 1 to the Easement Deed attached as **Exhibit A** to this Agreement and designated as Parcel 1 and Parcel 2 on Exhibit 2 to such attached Easement Deed; and

(b) a temporary construction easement (the “**TCE 2**”) over, across, in, and upon portions of Seller’s Property described on Exhibit 1 to the Easement Deed attached as **Exhibit B** to this Agreement and designated as Parcel 3 on Exhibit 2 to such attached Easement Deed.

Each portion of Seller’s Property to be acquired by City pursuant to this Agreement is referred to in this Agreement individually as an “**Easement Area**” and collectively as the “**Easement Areas**” and the Easement Deeds described above are sometimes referred to in this Agreement individually as a “**Deed**,” and collectively as the “**Deeds**.”

**1.2 Nature of Easements**

The nature, scope, and conditions of each Easement are set forth in the respective Deed with respect to such Easement.

## **2. PURCHASE PRICE**

### **2.1 Purchase Price**

The purchase price to be paid by City for each of the Easements shall be as follows:

(a) For the TCE 1 – Parcel 1, the sum of FOUR HUNDRED FORTY DOLLARS (\$440.00);

(b) For the TCE 1 – Parcel 2, the sum of ONE HUNDRED EIGHTY DOLLARS (\$180.00); and

(c) For the TCE 2 – Parcel 3, the sum of SIX HUNDRED EIGHTY DOLLARS (\$680.00).

The total Purchase price for the Easements is ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300.00) (the “**Purchase Price**”).

### **2.2 Payment**

On the Closing Date, City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 6 [Expenses], and reduced by any credits due City under this Agreement.

### **2.3 Funds**

All payments made pursuant to this Agreement shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds. Unless the parties elect to close the transaction without an escrow, payments shall be made to Escrow Holder (defined in Section 5.2 [Escrow; Closing Without an Escrow]), as the escrow agent.

## **3. CONVEYANCE OF EASEMENT**

### **3.1 Easement Deeds**

At the Closing defined in Section 5.1 [“Closing” Defined]), Seller shall convey to City or its designee marketable title to the Easements, by delivery of the Deeds, each duly executed and acknowledged in the forms attached as Exhibit A and Exhibit B. Each Deed shall be executed and delivered to City in a recordable form. Although City may record each of the Deeds in County’s Recorder’s Office, because of the temporary nature of the temporary construction easements to be granted, City may elect not to record the Deeds.

## **4. CONDITIONS TO CLOSING**

### **4.1 City's Conditions to Closing**

The following are conditions precedent to City's obligation to purchase the Easements (collectively, “**Conditions Precedent**”):

(a) The physical condition of all portions of the Easement Areas shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Article 8 [Risk of Loss]), and as of the Closing Date there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, that after the Closing could materially adversely affect the value of the Easements or City’s ability to use all portions of the Easement

Areas for their respective intended use, and no proceedings shall be pending or threatened that could or would cause the change, re-designation, or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any portions of the Easement Areas.

(b) The transactions contemplated by this Agreement shall have been approved by all applicable City departments and agencies, including, without limitation, the San Francisco Public Utilities Commission, at their respective sole discretion, within sixty (60) days after Seller executes and delivers this Agreement to City.

(c) If required by City's Charter, the City's Mayor and the Board of Supervisors, at the sole discretion of each, shall have enacted a resolution or ordinance approving, adopting, and authorizing this Agreement and the transactions contemplated by this Agreement, within ninety (90) days after Seller executes and delivers this Agreement to City.

(d) Seller shall have delivered the items described in Section 5.4 below [Seller's Delivery of Documents] on or before the Closing.

The Conditions Precedent contained in the foregoing subsections (a) through (e) are solely for City's benefit. If any Condition Precedent is not satisfied, at its sole discretion, City may either to waive in writing the Condition Precedent in question and proceed with the purchase (provided that the Conditions Precedent described in items (c) and (d) above may not be waived except insofar as City elects to extend the deadline for satisfying such item) or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of Seller. In addition, the Closing Date may be extended, at City's option, for a reasonable period specified by City, to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if any such Conditions Precedent remain unsatisfied.

If the sale of both the Easements is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent with respect to one or more of the Easements cannot be fulfilled because Seller frustrated such fulfillment by some intentional affirmative act or negligent omission, at its sole election, City may (i) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal, and inspection fees incurred by City, and neither party shall have any further rights or obligations hereunder, (ii) elect to proceed with Closing with respect to any Easement with respect to which all Conditions Precedent have been waived by City or satisfied and elect to either terminate this Agreement with respect to the remaining Easements not so purchased (pursuant to clause (i) of this paragraph) or continue this Agreement with respect to such remaining Easements (pursuant to clause (iii) of this paragraph), or (iii) continue this Agreement pending City's action for specific performance and/or damages (in no event to exceed the amount of the Purchase Price) under and pursuant to this Agreement, including, without limitation, City's costs and expenses incurred in connection with the transactions contemplated by this Agreement. If City elects to proceed to Closing with respect to one, but not both, of the Easements pursuant to clause (ii) above, the Purchase Price with respect to the Easements being purchased will be reduced by the sum of the purchase prices stated in Section 2.1 attributable to the Easement not being purchased and any subsequent Closing with respect to any such Easement not initially purchased shall be for the purchase price stated for such Easement in Section 2.1.

#### **4.2 Seller's Condition to Closing**

The following are conditions precedent to Seller's obligation to sell the Easements (collectively, "**Seller's Conditions Precedent**");

(a) Seller shall have received the Purchase Price as set forth in Section 2.1.

(b) City shall have performed all of its material duties and obligations under the License that are required to be performed pursuant to the License on or prior to Closing and City shall not be in material breach or default of said License Agreement.

(c) City shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by City as of Closing.

#### **4.3 Cooperation**

Seller and City shall each cooperate with each other and do all acts as may be reasonably requested with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications, or permits, but Seller's representations and warranties of the parties shall not be affected or released by either City or Seller's waiver or fulfillment of any Condition.

### **5. CLOSING AND POSSESSION**

#### **5.1 "Closing" Defined**

The consummation of the purchase and sale contemplated hereby (the "**Closing**") shall occur as provided in this Article 5.

#### **5.2 Escrow; Closing Without an Escrow**

(a) Unless the parties agree to consummate the purchase and sale without an escrow as provided in subparagraph (b) below: (i) On or before the Effective Date (as defined in Section 11.17 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Chicago Title Company at its offices at 455 Market Street, Suite 2100, San Francisco, California 94105 ("**Escrow Holder**"); (ii) this Agreement shall serve as instructions to Escrow Holder as the escrow holder for consummation of the purchase and sale contemplated hereby; (iii) Seller hereby authorizes City to prepare and submit supplemental escrow instructions in accordance with this Agreement on behalf of both parties, as needed; and (iv) the Closing shall be held and delivery of all items to be made at the Closing under this Agreement shall be made at Escrow Holder's offices.

(b) Notwithstanding the foregoing, the parties may elect by mutual agreement to consummate the purchase and sale without an escrow, in which event the Closing shall occur as described in Section 5.7(b).

#### **5.3 Closing Date**

The Closing shall occur ninety (90) days after the Effective Date (as defined in Section 11.17) or on such earlier date as City and Seller may mutually agree (the "**Closing Date**"), subject to the provisions of Article 4 [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date and the parties have deposited documents or funds in escrow, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) business days after the Closing Date, return such items to the depositor of such documents or funds.

#### **5.4 Seller's Delivery of Documents**

**(a)** At or before the Closing, Seller shall deliver or cause to be delivered to City the following:

- (i)** each of the duly executed and acknowledged Deeds;
- (ii)** such resolutions, authorizations, or other documents as Escrow Holder (or City if the parties close without an escrow) may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (iii)** a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City, countersigned by Seller, if the parties elect to consummate the transaction without an escrow).

Seller shall also deliver a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident (if Seller is an individual) or that Seller has a permanent place of business in California or is qualified to do business in California, if Seller is a corporation, or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the California Revenue and Taxation Code. Seller acknowledges and agrees that if Seller fails at Closing to deliver to City such certificate, City may be required to withhold and remit to the appropriate tax authority a portion of the Purchase Price pursuant to Section 18662 of the California Revenue and Taxation Code. Any amount properly so withheld and remitted shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated in this Agreement shall not be excused or otherwise affected thereby.

**(b)** Seller shall deliver such items to Seller through escrow, unless the parties elect to close the transaction without an escrow in which event Seller shall deliver the items directly to City for a Closing in accordance with Section 5.7(b).

## **5.5 City's Delivery of Documents and Funds**

(a) At or before the Closing, City shall deliver to Seller the following:

(i) a certificate of acceptance, executed by City's Director of Property, or, with respect to any Easement to be conveyed to City's designee, an authorized agent on behalf of such designee, to be attached to each of the Deeds before recording;

(ii) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City to Seller if the parties elect to consummate the transaction without an escrow);

(iii) funds sufficient to pay City's share of expenses under Article 6;  
and

(iv) the Purchase Price, as provided in Article 2 above (as it may adjusted pursuant to the provisions of Section 4.1(c)).

(b) City shall deliver such documents and funds through escrow; however, if the parties elect to consummate the transaction without an escrow, City shall deliver the funds and documents as provided in Section 5.7(b).

## **5.6 Other Documents; Cooperation**

Seller and City shall perform such further acts and execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

## **5.7 Closing**

(a) **Closing through Escrow.** Subject to Section 5.7(b), at Closing, provided all the conditions to the parties' obligations have been satisfied or waived as provided and permitted by this Agreement, Escrow Holder shall perform the following acts in the following order:

(i) Perform such acts as are necessary in order to deliver title to City, including recording any deed of reconveyance or other documentation as specified in supplemental escrow instructions submitted by City before Closing.

(ii) Deliver the Deeds to City or City's designee;

(iii) Deliver to Seller, or as Seller may instruct, the Purchase Price, less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations under Article 6;

(iv) Issue the Title Policy to City, if requested to do so by City; and

(v) Deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(b) **Closing without Escrow.** If the parties elect to consummate the purchase and sale without an escrow, City shall effect the Closing on the Closing Date as follows:

(i) City shall: (A) deliver to Seller, or as Seller may instruct, the Purchase Price (less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations, if applicable, under Article 6), and (B) cause each respective certificate of acceptance for the Deeds to be executed, when:

(1) City has received Seller's documents in accordance with Section 5.4, and

(2) City and/or its designee has received each of the Deeds conveying the Easements to City or its designee duly acknowledged and in a recordable form, and deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

## **5.8 Possession and Use**

With respect to each Easement, the right of possession and use of the Easement Area corresponding to such Easement by City and/or its designees, including the right to remove and dispose of improvements and install and connect utilities, shall commence on the date City's contractor first enters such Easement Area to commence staging for the Project (the "**Possession Date**"), which may occur before the Closing Date. The Purchase Price includes but is not limited to full payment for such possession and use, including interest and damages if any from such date, notwithstanding any other provision of this Agreement. City shall provide Seller with at least thirty (30) days' advance written notice of the Possession Date.

## **6. EXPENSES**

### **6.1 City's Expenses**

City shall pay all escrow fees, transfer taxes (if any), and all other costs associated with the purchase transaction contemplated by this Agreement except as otherwise specifically provided in Section 6.2 and Section 6.3.

### **6.2 Seller's Expenses**

Seller shall pay at the Closing any delinquent taxes that may have become a lien against Seller's Property.

### **6.3 Other Expenses**

Any other costs and charges of the Escrow not otherwise provided for in this Article or elsewhere in this Agreement shall be allocated in accordance with the closing customs for the County, as determined by Escrow Holder.

## **7. AS IS TRANSACTION; REPRESENTATIONS AND WARRANTIES; INDEMNITY**

### **7.1 As Is Sale**

City acknowledges that the Easement Areas are being sold in their "AS IS, WHERE IS AND WITH ALL FAULTS" condition. Except for Seller's representations and warranties set forth in Section 7.2 of this Agreement, (collectively, the "**Excepted Matters**"), no representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether expressed or implied, oral or written, past, present, or future, have been made or are made, and no responsibility has been, or is, assumed by Seller or any of its Agents (as such term

is defined in Section 11.8 (Parties and Their Agents; Approvals) of, as to, concerning, or with respect to any aspect whatsoever of the Easement Areas and, except for the Excepted Matters, City agrees that Seller shall have no liability or obligation with respect to any matter relating to the Easement Areas, including, without limitation, with respect to the physical condition and environmental condition on, at, in, under, beneath, emanating from, or affecting the Easement Areas, any patent or latent defects, the amount of square footage of the Easement Areas, the condition of title to Seller's Property that might affect the Easement Areas, or access of or to Easement Areas or the Seller's Property.

Except for the Excepted Matters, City shall rely solely on its own investigation of the Easement Areas and any reports commissioned by or on behalf of City and not on any information or opinions provided by or on behalf of Seller. Except for the Excepted Matters, City shall take the Easement Areas subject to and including all applicable legal requirements, permits, environmental land use restrictions, whether recorded or proposed, and easements as may exist as of Closing and shall cooperate with Seller to make all regulatory filings that may be necessary with respect to any relocation of the Easement Areas as described in Exhibit B.

## **7.2 Seller Representations and Warranties**

(a) **Ownership of Property.** Seller is the sole fee owner of Seller's Property, and will own it at the time of the Closing, free and clear of all liens, leases, occupancy agreements, claims, encumbrances, easements, and rights of way of any nature..

(b) **Signing Authority.** Seller and the signatories on Seller's behalf represent and warrant that the signatories on Seller's behalf to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of Seller.

(c) **Leases.** There are now, and, at Closing, there will be no written leases or occupancy agreements affecting any portion of any of the Easement Areas or that would affect City's access to or use of any portion of the Easement Areas as contemplated by the Deeds.

(d) **Easements.** To Seller's actual knowledge (without duty of inquiry), Seller is unaware of any easements that affect any portion of any of the Easement Areas or that would affect City's access to or use of any portion of the Easement Areas as contemplated by the Deeds.

(e) **No Impediments to Use.** To Seller's actual knowledge (without duty of inquiry), Seller is unaware of any material facts or circumstances that would prevent City from using the Easements after Closing in the normal manner contemplated by the Deeds.

(f) **No Lawsuits.** To Seller's actual knowledge (without duty of inquiry) there are no lawsuits or proceedings pending against or affecting Seller, Seller's Property, or its use that would affect Seller's ability to consummate the sale contemplated by this Agreement.

(g) **No Known Hazardous Materials.** To Seller's actual knowledge (without duty of inquiry), there has been no release during the period Seller has owned Seller's Property, and there is no threatened release of, any Hazardous Material in, on, under, or about Seller's Property. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "**Release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping,



pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under, or about the Easement Area.

### **7.3 Indemnity**

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents, and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses, and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section shall survive beyond the Closing, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

## **8. RISK OF LOSS**

If any portion of an Easement Area is damaged or destroyed before the Closing Date, then the rights and obligations of Seller and City under this Agreement shall be as follows: City shall have the right, at its election, to terminate this Agreement in its entirety or terminate it only as to that portion of such Easement Area damaged or destroyed. City shall have thirty (30) days after Seller notifies City that an event described in this Article 8 has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Article 8, then City and Seller shall each be released from all obligations under this Agreement pertaining to that portion of the Easement Area affected by such termination. If City elects not to terminate this Agreement in its entirety, Seller shall give City a credit against the Purchase Price at the Closing in an amount proportionate to the percentage reduction, if any, of the square footage of the Easement Area, and this Agreement shall remain in full force and effect.

## **9. MAINTENANCE; CONSENT TO NEW CONTRACTS**

### **9.1 Maintenance of the Easement Areas**

Subject to City's uses of the Easement Areas pursuant to the License, between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain Seller's Property in its current condition. Seller shall make no material changes to the Easement Areas without City's prior, written consent, which shall not be unreasonably withheld or delayed.

### **9.2 Contracts Affecting the Easement Areas**

Except as otherwise provided in this Agreement or by express written consent by City, not to be unreasonably withheld or delayed, after the date of execution of this Agreement, Seller shall not, alienate, lien, encumber, or otherwise transfer any portion of Seller's Property or allow the same to occur, or enter into any lease or contract with respect to any portion of Seller's Property that would survive the Possession Date and impair City's access to or use of any portion of any of the Easement Areas as contemplated by the Deeds.

## **10. CITY REPRESENTATION RE: EMINENT DOMAIN**

City has not instituted or maintained, and on the Closing Date, there shall not be then pending, any action in eminent domain by City as to any portion of Seller's Property.

## **11. GENERAL PROVISIONS**

### **11.1 Notices**

Any notice, consent, or approval required or permitted to be given under this Agreement shall be in writing and shall be given by **(a)** hand delivery, against receipt, **(b)** reliable next-business-day courier service that provides confirmation of delivery, or **(c)** United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior, written notice in the manner provided above):

#### **City:**

To: San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, California 94102  
Attention: Brian Morelli

with copy to: Richard Handel  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682

#### **Seller:**

To: County of San Mateo Parks  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
Attn: Scott Lombardi, Superintendent

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any email addresses or facsimile numbers provided above or otherwise by the parties are for convenience of communication; however, neither party may give official or binding notice by e-mail or facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an e-mailed or facsimile copy of the notice.

### **11.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Easements, or any of them, or any communication in connection with the subject matter of this Agreement, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated in this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and

disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective successors, heirs, administrators and assigns, subject to Section 9.2 [Contracts Affecting the Easement Areas].

### **11.4 Amendments; Waivers**

Except as otherwise provided in this Agreement, (a) this Agreement may be amended or modified only by a written instrument executed by City and Seller, (b) no waiver of any provision of this Agreement will be binding unless executed in writing by the party making the waiver, (c) no waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision, whether or not similar, and (d) no waiver will constitute a continuing waiver unless the written waiver so specifies.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants, and indemnities made by the respective parties contained in this Agreement or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement.

### **11.6 Governing Law**

This Agreement shall be governed by California law and City's Charter. There shall be no obligation for the payment of money by City under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

### **11.7 Merger of Prior Agreements; No Inducement**

The parties intend that this Agreement (including all of the attached exhibits and schedules and any documents specifically described in this Agreement, which are hereby incorporated into this Agreement by reference) shall be the final, complete, and exclusive expression of their agreement with respect to the subject matter of this Agreement and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, term sheets and prior drafts or changes to such drafts) may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement. The making, execution, and delivery of this Agreement by the parties has been induced by no representations, statements, warranties, or agreements other than those expressed in this Agreement.

### **11.8 Parties and Their Agents; Approvals**

The term “**Seller**” as used in this Agreement shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used in this Agreement, the term “**Agents**” when used with respect to either party shall include the agents, employees, officers, contractors, and representatives of

such party. Subject to applicable law, all approvals, consents, or other determinations permitted or required by City under this Agreement shall be made by or through the General Manager of City's Public Utilities Commission or the City's Director of Property, unless otherwise provided in this Agreement.

### **11.9 Remedies**

In the event of a material default or breach of this Agreement by City (which default or breach is not cured within ten (10) days after City's receipt of Seller's written notification specifying such default or breach), then Seller may terminate this Agreement and be released of its obligations under this Agreement and the License, except that Buyer shall be responsible for all restoration and indemnity obligations under this Agreement and the License. This provision shall survive the early termination of this Agreement.

### **11.10 Interpretation of Agreement**

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained in this Agreement. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented or had the opportunity to be represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

### **11.11 Attorneys' Fees**

The prevailing party in any action or proceeding to enforce or interpret, or otherwise arising out of or relating to, this Agreement or any provision of this Agreement (including but not limited to any arbitration, trial, administrative hearing, bankruptcy, or appeal) will be entitled to recover from the other party all of its costs and expenses, including but not limited to reasonable attorneys' fees and experts' fees. For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

### **11.12 Severability**

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforceable to the extent permitted by law.

### **11.13 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et

seq.), this Agreement and any and all records, information, and materials submitted to the City under this Agreement are public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information, and materials submitted to the City in connection with this Agreement.

#### **11.14 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller acknowledges that Section 1.126 of the San Francisco Campaign and Governmental Conduct Code prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

#### **11.15 Non-Liability of City Officials, Employees, and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, agent, or consultant of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

#### **11.16 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **11.17 Effective Date**

As used in this Agreement, the term “**Effective Date**” shall mean the date on which both parties shall have executed this Agreement provided the Agreement and the transactions contemplated by the Agreement shall have been authorized (a) in a manner required by law governing Seller, and (b) by a duly adopted resolution of the City's Public Utilities Commission, and (c) if required by City's Charter, by a duly adopted resolution of the City's Board of Supervisors and Mayor.

#### **11.18 Release of Claims**

Seller, for itself, its agents, heirs, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges City, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, expenses, liabilities, and demands, including, without limitation, any claim arising out of or pertaining, directly or indirectly, to the acquisition or use of the property interest described in this Agreement and/or the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic, and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages. Notwithstanding the above, this release does not apply to any claims for damages or injury to person or property arising from the construction by or on behalf of City of improvements in the Easement Areas or any of City's or its Agents' activities pursuant to the Easement, nor does this release in any manner excuse, waive, or release City from its obligations set forth in this Agreement, the Deeds, or the License (collectively, the “**Exceptions**”).

Seller acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled except for the Exceptions, or any of them. In giving this release, Seller expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EXCEPT WITH RESPECT TO THE LICENSE, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S PUBLIC UTILITIES COMMISSION (AND, IF REQUIRED BY CITY'S CHARTER, APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS) SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION.

*[Signatures on next page]*

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,**  
a California municipal corporation

SELLER:

**COUNTY OF SAN MATEO,** a political  
subdivision of the State of California

By: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager,  
Public Utilities Commission

By: \_\_\_\_\_

Printed name & Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2018

Dated: \_\_\_\_\_

Authorized by San Francisco Public  
Utilities Commission, Resolution No.17-  
0091

Adopted April 25, 2017

APPROVED AS TO FORM:

Office of the County Counsel for the County of  
San Mateo

By: \_\_\_\_\_  
John D. Nibbelin  
Deputy County Counsel

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Richard Handel,  
Deputy City Attorney

## ESCROW HOLDER'S ACKNOWLEDGMENT

*[Applicable only when the parties will close the transaction through an escrow]*

Escrow Holder agrees to act as escrow holder in accordance with the terms of this Agreement. Escrow Holder's failure to execute below shall not invalidate the Agreement between City and Seller.

ESCROW HOLDER:

CHICAGO TITLE COMPANY

By: \_\_\_\_\_  
[signature]

Name: \_\_\_\_\_  
[print name]

Its: \_\_\_\_\_

Date: \_\_\_\_\_

*[When Seller and City have delivered a copy of this Agreement for Purchase and Sale of Real Estate, executed by Seller and City, to escrow, Escrow Holder should sign this page and transmit a copy to Seller and City. Seller and City agree that a photocopy, scanned copy or faxed copy is adequate for this purpose.]*



## EXHIBIT A

### TO AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

#### TCE 1 DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code §11922).

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(Space above this line reserved for Recorder's use only)

#### EASEMENT DEED

(Temporary Construction Easement)  
(Portion of Assessor's Parcel No. 019-230-020)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged COUNTY OF SAN MATEO, a political subdivision of the State of California ("**Grantor**"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Grantee**") a temporary, exclusive easement for construction and access purposes and placement of an office trailer as further described below (the "**Easement**") over, across, under, and upon Grantor's real property located at 1801 Crystal Springs Road, San Bruno, California and commonly known as Junipero Serra County Park ("**Grantor's Property**"). The portion of Grantor's Property that shall be subject to the Easement is more particularly described in the attached **Exhibit 1** and depicted as "Parcel 1" and "Parcel 2" in the attached **Exhibit 2** (the "**Easement Area**").

**1. Nature of Easement.** The Easement Area shall consist of an exclusive surface easement that shall be used for general construction-related activities and the placement of a construction trailer. Grantee's rights to use any portion of the Easement Area shall include (a) the right to use equipment, vehicles, machinery, and tools, temporarily place a trailer, construction materials, and supplies, and store excavated soils that will be used to backfill the trenches in connection with the construction of Grantee's San Andreas Pipeline No. 2 Upgrade Project (the "**Project**"); (b) the right to improve, repair, and maintain the Easement Area, including grading, installation of paving and/or crushed rock and management of vegetation impinging on the Easement Area; and (c) such other rights as are reasonably necessary for the full enjoyment and accomplishment of the purposes of the Easement. Grantee's rights under this Easement Deed may be exercised by Grantee or its Agents (defined in Section 8 below). Notwithstanding the foregoing, Grantee's use of, and access to, the Easement Area shall be subject to the time limitations and restrictions set forth in the attached **Exhibit 3**.

**2. Term of Easement.** The term of the Easement shall commence on the date (the "**Commencement Date**") that is the later of (a) the date on which Grantee's contractor first

C-2-A-1

enters the Easement Area to commence construction of the Project after Grantee's issuance of a Notice to Proceed to Grantee's general contractor retained to perform the Work or **(b)** the date of the closing of the purchase transaction with respect to this Easement Deed as contemplated by, and pursuant to, the Agreement for Purchase and Sale of Real Estate dated as of \_\_\_\_\_, 2017 between Grantor and Grantee. At the request of either party, Grantor and Grantee shall confirm in writing the Commencement Date. The Easement shall expire on the earlier of the following: the date the Work is completed and Grantee obtains final inspections and sign offs, as applicable;—the last day of the sixth (6th) full calendar month after the Commencement Date; provided, however, Grantee may extend the term of this Easement Deed on a month-to-month basis not to exceed an additional three (3) months beyond the original expiration of the term of this Easement Deed. Thirty (30) days' written notice will be given to Grantor if Grantee elects to exercise its option for any such extension. Upon expiration of any such extended term, Grantee shall pay Grantor as compensation for Grantee's use of the Easement Areas during the extended term at the rate of One Hundred Three Dollars (\$103) for each monthly period of such extended term. Compensation due for any fractional month shall be prorated based on a thirty (30)-day month. Upon expiration of the term of this Easement, promptly after Grantor's written request, City will execute and deliver a quit claim deed or similar instrument that reflects the termination of City's rights to use the Easement Area under and pursuant to this Easement Deed.

**3. Restoration.** Upon the earlier of expiration of the term of the Easement or Grantee's completion of the Work, Grantee shall restore, as nearly as reasonably possible, the surface of the Easement Area to its condition immediately prior to the commencement of the work related to the Work.

**4. Repair of Damage.** If any portion of the Property is damaged by Grantee or its Agents in the exercise of the entry rights under this Easement Deed, Grantee shall repair such damage or replace the damaged item at its sole cost, or at Grantee's election and, with Grantor's consent, shall compensate Grantor for the damage. Further, upon the earlier of the date the Work is completed or the date of the expiration of the term of this Easement Deed, Grantee shall restore the surface of the Easement Areas and any adjoining portion of the Property to the extent damaged by Grantee's exercise of its rights to access the Easement Areas pursuant to this Easement Deed to substantially the same condition as that which existed immediately prior to the commencement of the Work and remove all of Grantee's facilities, or abandon them in place in accordance with Grantor's reasonable specifications. Grantee's obligation to restore the Easement Areas and any such damaged portion of Grantor's Property will include the removal of any material introduced to, or released upon, any portion of the Easement Areas or Grantor's Property by Grantee or its Agents that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment (collectively, "**Hazardous Materials**"). Grantee's obligations under this Section 4 shall survive the termination of this Easement Deed.

**5. Indemnity.** Grantee shall indemnify, defend, and hold Grantor harmless from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind including, without limitation, the release of Hazardous Materials (collectively, "**Losses**"), to the extent arising directly out of any activity by Grantee or its Agents pursuant to this Easement Deed or any breach of Grantee's obligations under this Easement Deed, except to the extent of Losses caused by the active negligence or willful misconduct of Grantor or its respective Agents, and except for Losses resulting from the discovery of pre-existing conditions discovered (and not caused or released) by any activities undertaken by Grantee or its Agents pursuant to this Easement Deed. Grantee's obligations under this Section 5 shall survive the termination of this Easement Deed.

**6. Notices.** Any notice, consent, or approval required or permitted to be given under this Easement Deed shall be in writing and shall be given by **(a)** hand delivery, against receipt, **(b)** reliable next-business-day courier service that provides confirmation of delivery, or **(c)** United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above):

**Grantee:**

To: San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94103  
Attention: Brian Morelli,  
WSIP Right of Way Manager

With a copy to: Richard Handel, Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682

**Grantor:**

To: County of San Mateo Parks  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
Attn: Scott Lombardi, Superintendent

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any e-mail addresses or facsimile numbers provided by one party to the other are for convenience of communication only; neither party may give official or binding notice by e-mail or facsimile.

**7. Run with the Land.** The provisions of this Easement Deed shall run with the land, burden the Easement Area, and bind and inure to the benefit of the respective successors and assigns of Grantee and Grantor. In the event Grantor sells, conveys, or assigns any property interest encumbered by the Agreement, Grantor shall notify the successor or assignee of the rights and obligations of both parties as stated in this Easement Deed.

**8. Agents.** As used in this Easement Deed, the term “**Agents**” when used with respect to either party shall include the agents, employees, officers, contractors, subcontractors, suppliers, consultants, licensees, and representatives of such party.

**9. Exhibits.** The Exhibits referenced in this Easement Deed are attached to and made a part of this Easement Deed.

**10. Counterparts.** This Easement Deed may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

*[Remainder of page intentionally left blank.]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR:**

COUNTY OF SAN MATEO, a political  
subdivision of the State of California

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2017

**ACCEPTED:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
John Updike  
Director of Property

PUC Resolution: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Richard Handel, Deputy City Attorney

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_, from the Grantor to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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State of California                    )  
  ) ss  
County of \_\_\_\_\_ )

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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**EXHIBIT 1 TO**

**TCE 1 DEED**

[Attach Legal Description of Grantor's Real Property]



**EXHIBIT 2 TO**

**TCE 1 DEED**

[Attach Depiction of Easement Area]

**EXHIBIT 3 TO**

**TCE 1 DEED**

[Attach Diagram Showing Easement Area and Restrictions on Hours and Days of Use]

## EXHIBIT B

### TO AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

#### TCE 2 DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code §11922).

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(Space above this line reserved for Recorder's use only)

#### EASEMENT DEED

(Temporary Construction Easement)  
(Portion of Assessor's Parcel No. 019-230-020)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged COUNTY OF SAN MATEO, a political subdivision of the State of California ("**Grantor**"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Grantee**") a temporary, exclusive easement for construction and access purposes as further described below (the "**Easement**") over, across, under, and upon Grantor's real property located at 1801 Crystal Springs Road, San Bruno, California and commonly known as Junipero Serra County Park ("**Grantor's Property**"). The portions of Grantor's Property that shall be subject to the Easement are more particularly described in the attached **Exhibit 1** and depicted as "Parcel 3" in the attached **Exhibit 2** (the "**Easement Area**").

**1. Nature of Easement.** The Easement Area shall consist of an exclusive surface easement that shall be used for general construction-related activities. Grantee's rights to use any portion of the Easement Area shall include (a) the right to use equipment, vehicles, machinery, and tools, temporarily place a trailer, construction materials, and supplies, and store excavated soils that will be used to backfill the trenches in connection with the construction of Grantee's San Andreas Pipeline No. 2 Upgrade Project (the "**Project**"); (b) the right to improve, repair, and maintain the Easement Area, including grading, installation of paving and/or crushed rock and management of vegetation impinging on the Easement Area; and (c) such other rights as are reasonably necessary for the full enjoyment and accomplishment of the purposes of the Easement. Grantee's rights under this Easement Deed may be exercised by Grantee or its Agents (defined in Section 8 below). Notwithstanding the foregoing, Grantee's use of, and access to, the Easement Area shall be subject to the time limitations and restrictions set forth in the attached **Exhibit 3**.

**2. Term of Easement.** The term of the Easement shall commence on the date (the "**Commencement Date**") that is the later of (a) the date on which Grantee's contractor first enters the Easement Area to commence construction of the Project after Grantee's issuance of a Notice to Proceed to Grantee's general contractor retained to perform the Work or (b) the date of

C-2-B-1

the closing of the purchase transaction with respect to this Easement Deed as contemplated by, and pursuant to, the Agreement for Purchase and Sale of Real Estate dated as of \_\_\_\_\_, 2017 between Grantor and Grantee. At the request of either party, Grantor and Grantee shall confirm in writing the Commencement Date. The Easement shall expire on the earlier of the following: the date the Work is completed and Grantee obtains final inspections and sign offs, as applicable;—the last day of the sixth (6th) full calendar month after the Commencement Date; provided, however, Grantee may extend the term of this Easement Deed on a month-to-month basis not to exceed an additional three (3) months beyond the original expiration of the term of this Easement Deed. Thirty (30) days' written notice will be given to Grantor if Grantee elects to exercise its option for any such extension. Upon expiration of any such extended term, Grantee shall pay Grantor as compensation for Grantee's use of the Easement Areas during the extended term at the rate of One Hundred Thirteen Dollars (\$113) for each monthly period of such extended term. Compensation due for any fractional month shall be prorated based on a thirty (30)-day month. Upon expiration of the term of this Easement, promptly after Grantor's written request, City will execute and deliver a quit claim deed or similar instrument that reflects the termination of City's rights to use the Easement Area under and pursuant to this Easement Deed.

**3. Restoration.** Upon the earlier of expiration of the term of the Easement or Grantee's completion of the Work, Grantee shall restore, as nearly as reasonably possible, the surface of the Easement Area to its condition immediately prior to the commencement of the work related to the Work.

**4. Repair of Damage.** If any portion of the Property is damaged by Grantee or its Agents in the exercise of the entry rights under this Easement Deed, Grantee shall repair such damage or replace the damaged item at its sole cost, or at Grantee's election and, with Grantor's consent, shall compensate Grantor for the damage. Further, upon the earlier of the date the Work is completed or the date of the expiration of the term of this Easement Deed, Grantee shall restore the surface of the Easement Areas and any adjoining portion of the Property to the extent damaged by Grantee's exercise of its rights to access the Easement Areas pursuant to this Easement Deed to substantially the same condition as that which existed immediately prior to the commencement of the Work and remove all of Grantee's facilities, or abandon them in place in accordance with Grantor's reasonable specifications. Grantee's obligation to restore the Easement Areas and any such damaged portion of Grantor's Property will include the removal of any material introduced to, or released upon, any portion of the Easement Areas or Grantor's Property by Grantee or its Agents that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment (collectively, "**Hazardous Materials**"). Grantee's obligations under this Section 4 shall survive the termination of this Easement Deed.

**5. Indemnity.** Grantee shall indemnify, defend, and hold Grantor harmless from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind including, without limitation, the release of Hazardous Materials (collectively, "**Losses**"), to the extent arising directly out of any activity by Grantee or its Agents pursuant to this Easement Deed or any breach of Grantee's obligations under this Easement Deed, except to the extent of Losses caused by the active negligence or willful misconduct of Grantor or its respective Agents, and except for Losses resulting from the discovery of pre-existing conditions discovered (and not caused or released) by any activities undertaken by Grantee or its Agents pursuant to this Easement Deed. Grantee's obligations under this Section 5 shall survive the termination of this Easement Deed.

**6. Notices.** Any notice, consent, or approval required or permitted to be given under this Easement Deed shall be in writing and shall be given by **(a)** hand delivery, against receipt, **(b)** reliable next-business-day courier service that provides confirmation of delivery, or **(c)** United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above):

**Grantee:**

To: San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94103  
Attention: Brian Morelli,  
WSIP Right of Way Manager

With a copy to: Richard Handel, Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682

**Grantor:**

To: County of San Mateo Parks  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
Attn: Scott Lombardi, Superintendent

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any e-mail addresses or facsimile numbers provided by one party to the other are for convenience of communication only; neither party may give official or binding notice by e-mail or facsimile.

**7. Run with the Land.** The provisions of this Easement Deed shall run with the land, burden the Easement Area, and bind and inure to the benefit of the respective successors and assigns of Grantee and Grantor. In the event Grantor sells, conveys, or assigns any property interest encumbered by the Agreement, Grantor shall notify the successor or assignee of the rights and obligations of both parties as stated in this Easement Deed.

**8. Agents.** As used in this Easement Deed, the term “**Agents**” when used with respect to either party shall include the agents, employees, officers, contractors, subcontractors, suppliers, consultants, licensees, and representatives of such party.

**9. Exhibits.** The Exhibits referenced in this Easement Deed are attached to and made a part of this Easement Deed.

**10. Counterparts.** This Easement Deed may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

*[Remainder of page intentionally left blank.]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR:**

COUNTY OF SAN MATEO, a political  
subdivision of the State of California

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2017

**ACCEPTED:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
John Updike  
Director of Property

PUC Resolution: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Richard Handel, Deputy City Attorney

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_, from the Grantor to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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