

**RESOLUTION NO. 070593**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF  
CALIFORNIA**

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**RESOLUTION:**

- 1) ACCEPTING A CALIFORNIA ENVIRONMENTAL QUALITY ACT  
MITIGATION MONITORING AND REPORTING PROGRAM FOR THE  
BAY DIVISION PIPELINE PROJECT NUMBER 5; AND**
- 2.) AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT  
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO, ACTING  
THROUGH ITS PUBLIC UTILITIES COMMISSION, AND THE  
COUNTY OF SAN MATEO FOR THE CONSTRUCTION OF THE  
BAY DIVISION PIPELINE PROJECT NUMBER 5**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo,  
State of California, that

**WHEREAS**, the City and County of San Francisco ("CCSF") has proposed  
to upgrade its existing waterline facilities located within the unincorporated areas  
of the County of San Mateo; and

**WHEREAS**, one component of the proposed upgrade of the existing  
waterline facilities is the Bay Division Pipeline Project No. 5 (the "Project"); and

**WHEREAS**, CCSF has prepared and certified a Final Environmental Impact  
Report for the Project that has been assigned California State Clearinghouse  
Number 2006062002 ("FEIR 2006062002") in compliance with the California  
Environmental Quality Act (CEQA) and the Guidelines for Implementation of the  
California Environmental Quality Act (the "Guidelines"); and

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**WHEREAS**, CCSF now wishes to enter into a Memorandum of Agreement (MOA) with the County of San Mateo, a copy of which is attached as **Exhibit A** to this Resolution, for work associated with the Project to delineate the roles and responsibilities for each agency on the Project; and

**WHEREAS**, the Director of Public Works has reviewed the MOA and recommends that the Board approve it; and

**WHEREAS**, this Board has reviewed the MOA as to form and substance and desires to enter into it; and

**WHEREAS**, the CCSF is the “lead agency” for the purposes of environmental review of the Project under CEQA and the Guidelines; and

**WHEREAS**, under CEQA and the Guidelines, the County is a “responsible agency” with respect to the Project; and

**WHEREAS**, as mentioned, the CCSF has analyzed the potential environmental impacts of the Project and the various actions to be taken in connection therewith in FEIR 2006062002; and

**WHEREAS**, the County has received, reviewed, and considered FEIR 2006062002 prepared and certified by the CCSF and has considered the effects of the Project as discussed in FEIR 2006062002 and has independently considered these matters; and

**WHEREAS**, the CCSF has also developed a Mitigation Monitoring and Report Program (MMRP) and a Statement of Overriding Considerations with respect to the environmental impacts identified in FEIR 2006062002; and

**WHEREAS**, the County has received, reviewed and independently considered the MMRP and Statement of Overriding Considerations; and

**WHEREAS**, this Board finds that FEIR 2006062002, the MMRP, and the Statement of Overriding Considerations remain adequate and appropriate environmental documents pursuant to CEQA and the Guidelines for purposes of analysis and consideration of the Project.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that:

The Board of Supervisors of the County of San Mateo adopts the following recitals as true and correct, and

1. The Board of Supervisors finds that it has independently reviewed and considered FEIR 2006062002, the MMRP, and the Statement of Overriding Considerations, and the administrative record related thereto and that they reflect the Board's independent judgment, acting on behalf of the County as a responsible agency for the proposed Project; and
2. On the basis of its review of FEIR 2006062002, the MMRP and the Statement of Overriding Considerations, and the administrative record related thereto, the Board of Supervisors finds that there is no substantial

evidence that execution of the Project will have a significant effect on the environment, except to the extent, as set forth in the Statement of Overriding Considerations, that specific economic, legal, social, technological, or other considerations make infeasible mitigation of environmental impacts to the threshold of insignificance.

3. The Board of Supervisors finds that there is no substantial evidence that would support requiring any subsequent environmental review of the Project.

The Board of Supervisors hereby approves the MOA between the CCSF, acting through its Public Utilities Commission, and the County and it hereby directs the President of the Board to sign the MOA on behalf of the Board and the Clerk of the Board shall attest the President's signature thereto.

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**Exhibit A**

**MEMORANDUM OF AGREEMENT**  
**between the**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**acting through its**  
**PUBLIC UTILITIES COMMISSION,**  
**and the**  
**COUNTY OF SAN MATEO**  
  
**(Bay Division Pipeline No. 5 Project)**

This Memorandum of Agreement ("MOA"), dated for reference purposes only \_\_\_, 2009, 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, including County, located in San Mateo, Santa Clara, and Alameda counties in the San Francisco Bay Area.

**B.** CCSF's water system includes Bay Division Pipelines 1 and 2, which are located in CCSF's right of way that is situated, in part, within the geographical limits of County as shown approximately on attached Exhibit A.

**C.** CCSF has developed a Water System Improvement Program ("WSIP") with the goals of increasing the system's ability to withstand major seismic events and prolonged droughts and to reliably meet future water demands. As part of WSIP, CCSF proposed the Bay Division Pipeline No. 5 Project (the "**Project**"), which includes, among other improvements, the installation of an additional pipeline within CCSF's right of way, for the purpose of improving the seismic reliability, water delivery, and drought-management goals outlined in WSIP, for the benefit of, among others, County and its residents and businesses.

**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 County's boundaries.

**E.** On December 23, 2008, CCSF published a Draft Environmental Impact Report ("**DEIR**") for the Project. After the close of a forty-five (45)-day public review period on February 5, 2009, 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 June 16, 2009. 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. 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 Francisco, Alameda, and San Mateo Counties.

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**F.** On July 9, 2009, the San Francisco Planning Commission, acting as lead agency on behalf of the CCSF, certified the FEIR. On July 14, 2009 the SFPUC approved the Project, and, in so doing, adopted 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.

**G.** On [ADD DATE] 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(d) 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 as provided herein.

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**

The parties will use reasonable efforts to provide advance notice to each other concerning all press releases and other information created for public dissemination concerning the Project within the geographical limits of County and to otherwise comply with the provisions of CCSF's Communications and Public Outreach Plan as stated in the attached Exhibit E. 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: Christina Kerby, 415-554-3203, [ckerby@sfwater.org](mailto:ckerby@sfwater.org), cell: 415-412-5744

County: Joseph A. Lo Coco 650-363-4102, [jlococo@co.sanmateo.ca.us](mailto:jlococo@co.sanmateo.ca.us) ;  
cell 650-222-1450.

## **3. CCSF CONSTRUCTION; APPROVAL PROCESS**

### **3.1. Required Permits and Approvals**

(a) CCSF anticipates the start of construction during the first calendar quarter of 2010 at the locations within County's borders identified on the attached Exhibit B. CCSF or its contractor ("**Contractor**"), will submit applications as required for the licenses, approvals, or permits (collectively, the "**Permit Application(s)**"), including a County of San Mateo Public Works Permit (or Permits) to be issued in the form attached as Exhibit D-1 to govern CCSF's

MOA Work (defined in Section 3.2(a) below) with respect to such locations and traffic-control permits, hauling permits, groundwater discharge permits, sewer inspection permits and tree-removal permits (collectively, the "**Permit Applications**"), as further detailed below:

<b>PERMIT/APPROVAL</b>	<b>ENTITY RESPONSIBLE</b>	<b>COUNTY DEPARTMENT RESPONSIBLE</b>	<b>CONTACT INFORMATION</b>
<b>Traffic control</b>	<b>Contractor</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Hauling</b>	<b>Contractor</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Public Works Permit</b>	<b>CCSF</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Temporary Groundwater Discharge to Storm Sewer</b>	<b>Contractor</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Sanitary Sewer Inspection Permit (if required because of damage to County's sanitary sewer resulting from Project construction work)</b>	<b>Contractor</b>	<b>Public Works/Utilities-Flood Control-Watershed Protection</b>	<b>Mark Chow 650-599-1489</b>

(b) County shall expeditiously process the Permit Applications, and will inform CCSF within ten (10) business days of County's receipt of each Permit Application if additional information is required to complete County's review and approval of such application. Within ten (10) business days after receipt of each complete Permit Application, County will review it and provide CCSF with written approval, or comments explaining the reasons for withholding approval.

(c) Any fees charged CCSF or its Contractor by County for or in connection with any County permit or approval issued with respect to the Project shall not be discriminatory and shall be reasonable and in accordance with fees that the County ordinarily collects from the public with respect to similar permits or approvals.

(d) The parties agree that the following fees will be payable by CCSF in connection with Project-related work within County's borders:

PERMIT TYPE	TYPE OF FEE	ENTITY RESPONSIBLE	AMOUNT
Public Works	Application	CCSF	\$1,500 (one-time payment)
Sanitary Sewer Inspection Permit	Application	Contractor	\$1,500 (one-time payment)

(e) Within ten (10) business days of the issuance of a Public Works Permit, CCSF or its Contractor shall deposit with County the amount of Five Thousand Dollars (\$5,000) as a security deposit for any inspection fees necessitated and required pursuant to Section 3.2(e)(ii) below. Similarly, within ten (10) calendar days of the issuance of a Sanitary Sewer Inspection Permit (if necessary), CCSF shall deposit with County the amount of Five Thousand Dollars (\$5,000) as a security deposit for any inspection fees necessitated and required in connection with such Permit pursuant to Section 3.2(e)(ii) below. Any amounts of any deposit made pursuant to this Section 3.1(e) remaining upon completion of construction that were not expended as stated in Section 3.2(e)(ii) shall be promptly refunded by County to CCSF.

### 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 that the Specifications as so prepared are consistent with its requirements and that County has no other requirements regarding CCSF's MOA Work. 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 except those specified in Section 3.1. Notwithstanding the foregoing in the event 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 agrees that it 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. 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.

(d) 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, the expected impact on the construction schedule and cost of the Project and CCSF's MOA Work, and how CCSF proposes that any extra costs be shared, if at all. 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.

#### (e) 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). When issuing Inspection Notices, CCSF shall also contact (by telephone or in writing) the following County representatives with respect to Necessary Inspections related to the respective area of responsibility for each such representative:

#### County Review and Inspection Review Items

Item	Description	Contact
1	Traffic Control Plan	Road Operations Section, Diana Shu 650-599-1414 or assigned
2	Pavement Overlay	Road Operations Section, Diana Shu 650-599-1414 or assigned
3	Discharges of groundwater onto streets or storm drains.	Road Operations Section, Diana Shu 650-599-1414 or assigned
4	Park Facilities	Parks and Recreation Department Dave Moore or assigned
5	Sanitary Sewer Repair Work	Utilities-Flood Control-Watershed Protection Section Mark Chow 650-599-1489 or assigned

(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.

(f) **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 bill of sale (a "**Bill of Sale**") in the form attached in Exhibit D-5 to transfer title of that portion of CCSF's MOA Work. Each Bill of Sale will evidence County's acceptance of the Completed Phase reflected in such Bill of Sale 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 Bill of Sale, CCSF shall indemnify and hold County harmless from any and all stop notices 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 (defined in Section 5.1) 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 Bill of Sale with respect to such Completed Phase, provided that CCSF's obligation to assign the rights described above with respect to such Completed Phase shall be conditioned on Contractor's consent to such assignment and County's issuance and execution of the permits and easement 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 Bill of Sale 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.

**3.3. Cooperation in Implementation.** CCSF and County agree to cooperate to achieve the implementation of the Project, including but not limited to undertaking those specific obligations described in attached Exhibit C.

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

##### **4.1. Agreements for CCSF's Use of County Land**

Within thirty (30) of the Effective Date, County shall grant CCSF encroachment permits, and/or such other appropriate instruments (each, a "**Use Instrument**") as are necessary to permit CCSF's Contractor to perform and install improvements at the locations identified in Exhibit D, Table 1, provided County has all the required information to process them. Each Use Instrument shall be in substantially the form attached as Exhibit D-2 or otherwise in a form

mutually acceptable to the parties. In addition, within thirty (30) days of the Effective Date, County shall grant CCSF a permanent easement without warranty in substantially the form attached as Exhibit D-3, to permit CCSF to construct and maintain its facilities under a portion of Bay Road that is generally described in Exhibit 1 to such Exhibit D-3, and more specifically detailed in the diagram attached to Exhibit D-3 as Exhibit 2 thereto (Figure 1).

## **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 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 Indemnitee 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. County Indemnification when County Constructs, Installs, or Places Improvements**

With respect to any improvements constructed, installed, or placed by County or, other than CCSF's MOA Work, on behalf of County, on or proximate to CCSF's property or right-of-way ("**County's Work**"), County shall assume the defense of, indemnify, and hold harmless Indemnitees from all Claims directly or indirectly arising out of, connected with or resulting from the performance of County's Work. County acknowledges that any Claims that arise out of, result from, or are in any way connected with (a) 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 Indemnitee of articles or services to be supplied in the performance of County's Work by or on behalf of County or (b) the release or spill of any legally designated hazardous material or waste or contaminated material as a result of County's Work are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity. County's obligations under this Section shall survive the expiration or earlier termination of this MOA.

### **5.3. 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 Indemnitee 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 Indemnitee, 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.

#### **5.4. 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 County's Work or 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 Indemnitee.

Notwithstanding the foregoing waivers and releases, (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 subsection 3.2(e) [Transfer of Ownership and Warranties].

In connection with the foregoing releases, 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 releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. 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 releases 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 (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) 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: General Manager  
San Francisco Public Utilities Commission  
1155 Market Street, 11th Floor  
San Francisco, CA 94103  
Fax: (415) 554-3161

and Joseph Ortiz, Project Manager  
San Francisco Public Utilities Commission  
1145 Market Street 6th Floor  
San Francisco, CA 94103  
Fax: (415) 934-3943

and: Ed Weyrauch  
SFPUC Project Construction Manager  
1145 Market Street, 7th Floor  
San Francisco, CA 94103

**COUNTY:**

To: Director of Public Works  
James Porter  
555 County Center  
Redwood City, CA 94063  
Fax 650-361-8220

and: Deputy Director  
Joseph A Lo Coco  
752 Chestnut Street  
Redwood City, Ca 94063  
Fax 650-366-7238

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 are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed 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.

**6.3. Certification of Controller.**

The terms of this MOA shall be governed by and subject to the budgetary and fiscal provisions of CCSF's Charter. Notwithstanding anything to the contrary contained in this MOA, there shall be no obligation for the payment or expenditure of money by CCSF under this MOA unless the CCSF's Controller first certifies, pursuant to Section 3.105 of CCSF'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. Without limiting the

foregoing, if in any fiscal year of CCSF after the fiscal year in which the term of this MOA commences, sufficient funds for the funding of construction costs and any other payments required under this MOA are not appropriated, then CCSF may terminate this MOA, without penalty, liability or expense of any kind to CCSF, as of the last date on which sufficient funds are appropriated. CCSF shall use its reasonable efforts to give County reasonable advance notice of such termination.

**6.4. 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.

**6.5. 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.

**6.6. 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.

**6.7. Governing Law.**

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

**6.8. 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.

**6.9. 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.

**6.10. 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.

**6.11. 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.

**6.12. 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.

**6.13. 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]*

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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

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

By: \_\_\_\_\_  
— Ed Harrington  
General Manager  
Public Utilities Commission

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

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

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

Authorized by San Francisco Public Utilities  
Commission, Resolution No. \_\_\_\_\_

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

By: \_\_\_\_\_  
Commission Secretary

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

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

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

APPROVED AS TO FORM  
Dennis Herrera, City Attorney

APPROVED AS TO FORM  
\_\_\_\_\_

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

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

**EXHIBITS:**

- A – Depiction of Project Location
- B – Improvements to County Property
  - B-1 – B-7 MOA Work as Provided in the Project Drawings
- C – Cooperation in Implementation
- D – Form(s) of Public Works Permit, Real Estate License Encroachment Permit for County-owned Parcels, Easement Deed, Table of County-owned Parcels, and Bill of Sale
  - D-1 Form of Public Works Permit
  - D-2 Form of Real Estate License Encroachment Permit for County Owned Parcels
  - D-3 Form of Easement Deed
  - D-4 Table Of County-owned Parcels
  - D-5 Form of Bill of Sale

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E - Communications

E-1 – E-2 Communications and Public Outreach Plan

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**EXHIBIT A**  
**Depiction of Project Location**

**EXHIBIT B**  
**CCSF's MOA Work**

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**MOA WORK AS PROVIDED IN THE PROJECT DRAWINGS AS DETAILED BELOW**

<b>Feature</b>	<b>WD-2542 Drawing Number</b>	<b>Prepared by</b>	<b>Date</b>	<b>Approximate Stationing</b>	<b>MOA Work and Agreements with San Mateo County</b>	<b>Fee owner /ROW</b>
Typical Details	P0-2A	SFPUC Engineering Management Bureau	August 2009	STA 180+60 to 261+90, STA 368+00 to 453+60	Typical trench details for streets within unincorporated areas of County shall be per County's Department of Public Work standards. Construction in County's streets identified below shall comply with the traffic control plan reviewed and approved by County	N/A
Flood County Park	P1-25 to P1-29 L2-1 to L2-7 L6-1 to L6-4	SFPUC Engineering Management Bureau	August 2009	STA 124+10 to STA 142+00	SFPUC Contractor shall restore any affected areas of grounds, including landscaping, sports facilities ,and paving, per County's Department of Public Work standards. The guardhouse (on sliders) shall be removed prior to the start of construction. All construction within Flood Park, including restoration, shall occur between November 1, 2010 to March 31, 2011 only. County will allow SFPUC contractor to use the paved areas of Flood Park within the SFPUC ROW as a staging area between November 1, 2010 to March 31, 2011.	SFPUC owns a 80' strip SMC Parks owns park and remaining areas
18th Avenue	P1-37	SFPUC Engineering Management Bureau	August 2009	STA 180+60	Any affected areas of paving and sidewalks shall be restored to per County's Department of Public Work standards.	SFPUC
14th Avenue	P1-39	SFPUC Engineering Management Bureau	August 2009	STA 190+85	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SFPUC
12th Avenue	P1-40	SFPUC Engineering Management Bureau	August 2009	STA 197+20	SFPUC Contractor shall allow access to residence at 790 12th Ave during non-work hours, and emergency access during work hours. Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	
11th Avenue	P1-41	SFPUC Engineering Management Bureau	August 2009	STA 200+65	SFPUC Contractor shall allow access to residence at 742 11th Ave during non-work hours, and emergency access during work hours. Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW (ptn) SFPUC (ptn)

Pocket Park, Fair Oaks and 10th Avenue	P1-41, P1-42 L4-1, L4-2 L6-1 to L6-4	SFPUC Engineering Management Bureau	August 2009	STA 202+50 to STA 205+00	SFPUC Contractor shall restore grounds, including landscaping and paving, to their as-found conditions. Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	Road- SMC ROW Park area -SFPUC Park -Newdell Ronald M & Agnes
Fair Oaks Avenue	P1-41, P1-42	SFPUC Engineering Management Bureau	August 2009	STA 205+20	Any affected areas of paving and sidewalks shall be restored to per County's Department of Public Work standards.	SMC ROW
9th Avenue	P1-42	SFPUC Engineering Management Bureau	August 2009	STA 207+75	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW
8th Avenue	P1-43	SFPUC Engineering Management Bureau	August 2009	STA 211+30	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW
7th Avenue	P1-44	SFPUC Engineering Management Bureau	August 2009	STA 215+00	Any affected areas of paving and sidewalks shall be restored to per County's Department of Public Work standards.	SMC ROW
6th Avenue	P1-44	SFPUC Engineering Management Bureau	August 2009	STA 218+80	Any affected areas of paving and sidewalks shall be restored to per County's Department of Public Work standards.	SMC ROW
5th Avenue	P1-45	SFPUC Engineering Management Bureau	August 2009	STA 222+70	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW
4th Avenue	P1-46	SFPUC Engineering Management Bureau	August 2009	STA 226+70	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW
Park Road	P1-46	SFPUC Engineering Management Bureau	August 2009	STA 227+90	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW
3rd Avenue	P1-47	SFPUC Engineering Management Bureau	August 2009	STA 230+50	Any affected areas of paving and sidewalks shall be restored per County's Department of Public Work standards.	SMC ROW

**MOA WORK AS PROVIDED IN THE PROJECT SPECIFICATIONS AS DETAILED BELOW**

<b>Specification Name</b>	<b>WD-2541 Spec Number</b>	<b>Prepared by</b>	<b>Date</b>	<b>MOA Work covered</b>
Supplementary Conditions	00800	SFPUC Engineering Management Bureau	August 2009	Assignment of warranties to County.
Summary of Work	01010	SFPUC Engineering Management Bureau	August 2009	Description of contract scope, including: 1. Restoration of street and roadway improvements in the public right of way and specific locations within the SFPUC right of way. 2. Restoration of parks and landscaping. 3. Traffic control.
Environmental	01062	SFPUC Engineering Management Bureau	August 2009	Specification for environmental monitoring
Temporary Facilities and Controls	01500	SFPUC Engineering Management Bureau	August 2009	Specification for barriers, fencing, temporary signage
Protection of Property	01540	SFPUC Engineering Management Bureau	August 2009	Specification for Protection of private and public property within County limits.
Traffic Control	01570	SFPUC Engineering Management Bureau	August 2009	Specification for Traffic Control for project per County requirements.
Surface Restoration and Improvements	02500	SFPUC Engineering Management Bureau	August 2009	Specification for repair for the following items affected by work: pavement, parking lots, roadway improvements, mailboxes, playfields, school grounds, parks, and landscaping.

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## EXHIBIT C

### Cooperation in Implementation

County agrees to cooperate with CCSF in the following areas:

1. If County property is located within 500 feet of any Project location described in Exhibit A, provide reasonable access onto County property upon reasonable notice for CCSF and/or its contractors to perform surveys relating to bird nests and burrowing owls.
2. Provide access to CCSF onto County property to allow installation of necessary noise barriers and vibration monitoring of structures adjacent to the construction zone.
3. Work with CCSF's contractor to establish haul routes. County shall review in a timely manner Contractor's proposed hauling plan, provide comments, and provide its written approval of that plan.
4. Approve solid waste recycling plan that will be limited to a 50% diversion rate. Contractor actions to divert inert solids from disposal in a landfill (as defined in the Integrated Waste Management Act, AB 939) will be limited to 50%.
5. Before commencement of Project construction, CCSF will notify all parties for a Pre-Construction Conference. Attendance at these meetings are recommended but not mandatory.

Department	Area Covered	Contact Phone
Department of Public Works	Unincorporated County	(650) 363-4103
Parks and Recreation Department	Flood Park and other neighborhood parks	(650) 363-4020
Sheriff's Department	Unincorporated County	(650) 363-4531
California Highway Patrol, CHP	Unincorporated County	
Broadmoor Police Department	Broadmoor	(650) 755-3838
Redwood City Fire	Redwood City	(650) 369-6261
California Department of Forestry, CDF	Unincorporated County	(831) 335-5353

6. Work cooperatively with CCSF's Contractor to establish permit conditions, discharge locations and discharge rates for groundwater and construction discharges. County shall review Contractor's proposed discharge plan within a timely fashion, provide comments, and approve as necessary. CCSF or its Contractor will apply for an appropriate County permit with plans, estimated amounts of release, and specifications to County reviewer for review and approval prior to start of the Project. At no time, will County permit discharges during periods of heavy rainfall. CCSF's Contractor shall not discharge any groundwater and/or surface runoff into County owned sanitary sewer facilities.

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**EXHIBIT D**

**FORM(S) OF**

**PUBLIC WORKS PERMIT,**

**REAL ESTATE LICENSE ENCROACHMENT PERMIT FOR COUNTY-OWNED**

**PARCELS,**

**EASEMENT DEED,**

**TABLE OF COUNTY-OWNED PARCELS,**

**AND BILL OF SALE**



## EXHIBIT D-1

(SAMPLE)

Department of Public Works  
Road Operations – Permits  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063  
(650) 363-1822 or 363-1852

### PUBLIC WORKS PERMIT

Permit Number:  
Issued:  
Inspection Request:

**MUST CALL FOR INSPECTION 48 HOURS  
BEFORE COMMENCING WORK**

APPLICANT NAME: SFPUC (ATTN: JOSEPH ORTIZ)

SITE ADDRESS:

#### APPLICANT INFORMATION

SFPUC (ATTN: JOSEPH ORTIZ)  
1155 MARKET STREET, 6<sup>TH</sup> FL.  
SAN FRANCISCO, CA 94103

PHONE#1: 415-551-4541

PHONE#2:

AREA:

#### CONTRACTOR INFORMATION

PHONE #1:

PHONE #2:

PROJECT NAME: SFPUC BDPL NO.53

PARCEL NUMBER:

PROJECT DESCRIPTION: Install Water Line as shown on approved plans and specs. Provide Traffic Control notification in advance of project. Coordinate with local inspector.

#### **TYPE OF PERMIT**

ENCROACHMENT:  
CONSTRUCTION (NMRW):  
STREET CLOSURE:  
TRANSPORTATION:  
LANDSCAPING:  
OTHER:

UNDERGROUND SERVICE ALERT (USA) NO.:

DATE OF USA INQUIRY:

SEWER DISTRICT:

COUNTY SIP REQ'D:

SURETY DEPOSIT AMOUNT: \$

INSPECTION DEPOSIT AMOUNT: \$

PERMIT EXPIRATION DATE:

FEE AMOUNT PAID:

The work authorized by this Permit shall be subject to all the terms, conditions, and restrictions set forth herein and the Memorandum of Agreement dated as of \_\_\_\_\_, 2009 ("MOA") by and between Applicant and the County of San Mateo. The project, as specifically described, is to be strictly construed and no other activity shall be permitted.

**Notify County Road Inspector 48 hrs prior to starting work.**

The parties' respective insurance and indemnity obligations in connection with the construction work authorized by this Permit shall be as stated in the MOA...

#### INSURANCE

Permittee's contractor required to maintain property damage and liability insurance in amounts equivalent to or exceeding the legal minimums as a condition of this Permit.

#### APPROVAL BY DEPARTMENT OF PUBLIC WORKS

This permit was issued by me on:

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

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

**\*\*FOR OFFICE USE ONLY\*\***

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

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

## EXHIBIT D-2

### FORM OF REAL-ESTATE LICENSE ENCROACHMENT PERMIT

#### ENCROACHMENT PERMIT

**THIS ENCROACHMENT PERMIT** (this "**Permit**"), dated as of \_\_\_\_\_, 2009 for reference purposes, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**Permittee**"), acting by and through its Public Utilities Commission ("**SFPUC**"), and the **COUNTY OF SAN MATEO**, a political subdivision of the State of California ("**County**").

#### RECITALS

A. Permittee, acting by and through the SFPUC owns and operates a regional water system that serves San Francisco and twenty-seven (27) wholesale water customers, including County, located in San Mateo, Santa Clara, and Alameda counties in the Bay Area.

B. SFPUC has developed a Water System Improvement Program ("**WSIP**") with the goals of increasing the system's ability to withstand major seismic events and prolonged droughts and to reliably meet future water demands. As part of WSIP, Permittee proposed the Bay Division Pipeline No. 5 Project (the "**Project**"), which includes, among other improvements, the installation of an additional pipeline within Permittee's right of way, for the purpose of improving the seismic reliability, water delivery, and drought-management goals outlined in WSIP, for the benefit of County and its residents and businesses.

C. Construction of the Project is anticipated to involve installation of Permittee's pipelines and related appurtenances in parcels owned by County in which Permittee seeks rights to construct and maintain its pipeline and related appurtenances in connection with the Project.

D. Permittee desires County's license to install, operate, and maintain its pipeline and related appurtenances in parcels where Permittee has no current real estate rights to do.

NOW, THEREFORE, in consideration of their mutual covenants in this Permit, the parties agree as follows:

1. **License.** County confers to Permittee a nontransferable, nonexclusive, and nonpossessory privilege to enter upon and use those parcels of real property owned by County situated in the County of San Mateo, State of California, each more particularly described in the attached Exhibit 1 and generally depicted on the attached Exhibit 1-A (such parcels shall be collectively referred to as the "**County Parcels**"), for the purpose of installing, constructing, operating, inspecting, maintaining, repairing, and replacing water pipelines and related appurtenances owned and operated by Permittee as part of its water enterprise (the "**Permitted Improvements**"), subject to the terms, conditions, and restrictions stated in this Permit and its incorporated exhibits. This Permit gives Permittee a license only and, notwithstanding anything to the contrary in this Permit, does not constitute a grant by County of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the County Parcels. Permittee's execution of this Permit shall not be deemed a waiver by Permittee of any preexisting real property or other rights Permittee may have to use or occupy the land that is the subject of this Permit.

**2. Term.** The term of this Permit shall commence on the date (the "**Commencement Date**") when the mutual full execution and delivery of this Permit is completed and shall continue for nine (9) years and will expire thereafter unless, at least one-hundred eighty (180) days prior to the then-current term expiration date, Permittee gives County written notice of renewal, whereupon the term of this Permit will renew for an additional one (1)-year period. Notwithstanding the foregoing, this Permit may be terminated by either party at any time during the term upon one (1) year's prior, written notice to the other party.

**3. Permittee's Obligation to Remove Permitted Improvements.** If the proposed construction, reconstruction, or maintenance on any County Parcel is materially and adversely impacted by the presence of any of the Permitted Improvements in any such County Parcel, Permittee shall remove or move such Permitted Improvements in a manner to permit such construction, reconstruction, or maintenance within one (1) year of County's notice to Permittee requesting such removal or movement.

**4. Indemnity.**

(a) Permittee, for itself, its successors, agents, contractors, and employees, hereby agrees to hold harmless, defend, and indemnify County, its officers, board members, employees, and agents, from and against any liability for damages and any liability or claims resulting from property damage or bodily injury (including accidental death), to the extent proximately caused by Permittee's construction, operation, maintenance, repair, or replacement of the Permitted Improvements or Permittee's contractors.

(b) Should Permittee's use or occupancy of the Permit Area cause any discharge, leakage, spillage, emission, or pollution of any type, Permittee at its expense, shall clean all affected property to the reasonable satisfaction of County and any governmental body having jurisdiction.

(c) The provisions of this Section 4 shall survive the expiration or termination of this Permit.

**5. Notices:** Any notice issued in connection with this Permit will be in writing and will be deemed given if personally delivered, mailed by registered or certified mail (return-receipt requested), or delivered by express delivery service at the following street address, unless and until a different street address has been designated by written notice to the other parties addressed as follows:

**Permittee:**

San Francisco Public Utilities Commission  
Real Estate Services  
1145 Market Street, 5th Floor  
San Francisco, California 94103  
Attn: Director

**County:** Director of Public Works  
James Porter  
555 County Center  
Redwood City, CA 94063

Deputy Director  
Joseph A Lo Coco  
752 Chestnut Street  
Redwood City, CA 94063

Any notice by a means that affords the sender evidence of delivery, attempted delivery, or rejected delivery will be deemed to have been given and received at the date and time of receipt, attempted delivery, or rejected delivery.

**6. San Francisco's Sunshine Ordinance:** County understands and agrees that Permittee's Sunshine Ordinance (San Francisco Administrative Code Chapter 67 and the State Public Records Law Gov't Code Section 6250 et seq.) apply to this Permit and any and all records, information, and materials submitted to Permittee in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with Permittee's Sunshine Ordinance and the State Public Records Act. County hereby authorizes Permittee to disclose any records, information, and materials submitted to Permittee in connection with this Permit.

**7. San Francisco's Campaign and Governmental Conduct Code:** Through its execution of this Permit, County acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, the provisions of Article III, Chapter 2 of Permittee's Campaign and Governmental Conduct Code, and the provisions of Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which would constitute a violation of said provision.

**8. Certification of Controller:** The terms of this Permit shall be governed by and subject to the budgetary and fiscal provisions of Permittee's Charter. Notwithstanding anything to the contrary contained in this Permit, there shall be no obligation for the payment or expenditure of money by Permittee under this Permit unless the Permittee's Controller first certifies, pursuant to Section 3.105 of Permittee'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. Without limiting the foregoing, if in any fiscal year of Permittee after the fiscal year in which the term of this Permit commences, sufficient funds for the funding of construction costs and any other payments required under this Permit are not appropriated, then Permittee may terminate this Permit, without penalty, liability or expense of any kind to Permittee, as of the last date on which sufficient funds are appropriated. Permittee shall use its reasonable efforts to give County reasonable advance notice of such termination.

**9. Amendments, Etc.:** (a) This Permit may be amended or modified only by a writing signed by County and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. (c) This instrument (including the attached exhibits) contains the entire agreement between the parties regarding the subject matter of this Permit and all prior written or oral negotiations, discussions, understandings, and agreements regarding such subject matter are merged herein. (d) This Permit shall be governed by California law. (e) If either party commences an action

against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorney's fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorney's fees of County or Permittee shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding County's or Permittee's use of its own attorneys. (f) This Permit may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument. (g) The exhibits referenced in and attached to this Permit are incorporated into and made a part of this Permit.

**[signatures on the following page]**

IN WITNESS WHEREOF, the parties have executed this Permit by their duly authorized representatives.

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

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

By: \_\_\_\_\_  
— Ed Harrington  
General Manager  
Public Utilities Commission

By: \_\_\_\_\_  
[Name]  
[Title]

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

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

Authorized by San Francisco Public Utilities  
Commission, Resolution No. \_\_\_\_\_

Authorized by \_\_\_\_\_,  
Resolution No. \_\_\_\_\_

By: \_\_\_\_\_  
Commission Secretary

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

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

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

APPROVED AS TO FORM  
Dennis Herrera, City Attorney

APPROVED AS TO FORM

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

By: \_\_\_\_\_  
[NAME]  
[TITLE]

**EXHIBITS:**

1 County Parcels Description

**EXHIBIT 1 TO ENCROACHMENT PERMIT**  
**COUNTY PARCELS DESCRIPTION**

**EXHIBIT D-3**

**FORM OF EASEMENT 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 declares this instrument to be exempt  
from Recording Fees (Govt. Code § 27383) and  
Documentary Transfer Tax (Rev. & Tax. Code §11922).

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

**EASEMENT DEED**  
(Subsurface Utility Facilities)

(Portion of Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the COUNTY OF SAN MATEO, a political subdivision of the State of California ("**County**") hereby grants, transfers and conveys to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**San Francisco**") a perpetual easement in gross (the "**Easement**") for the installation, construction, reconstruction, operation, inspection, maintenance, upgrade, repair and replacement of one or more pipelines and related appurtenances and appliances (collectively, the "**Facilities**") within and beneath the surface of that County owned real property in the City of Menlo Park known as Flood Park, San Mateo County, California, described in attached Exhibit 1 and depicted approximately on attached Exhibit 2 (the "**Easement Area**"), which exhibits are incorporated into this Deed.

County conveys the Easement, and San Francisco accepts the same, subject to the following conditions and covenants:

**1. No Warranty of Title.** No representation or warranty, express or implied, is made by County or its employees or agents regarding title to or ownership of the Easement Area, and San Francisco acknowledges that it is not relying on any statements, representations, or warranties made by anyone acting on County's behalf concerning title to the Easement Area.

**2. Surface Monuments.** The Easement includes the right to install and maintain surface monuments to identify the location of the Facilities and/or the Easement Area boundaries.

**3. Restrictions on Surface Use.** County reserves the right to use the surface of the Easement Area for public road purposes, subject to the following covenants and conditions

(a) The depth of cover over the tops of San Francisco's pipelines, as installed, will be approximately four (4) feet. County shall not cause or allow County's agents, employees, consultants or contractors to excavate below a minimum depth of cover of three (3) feet.

(b) County shall not use vibrating compacting equipment within ten (10) feet of the pipeline centerline unless it first obtains San Francisco's written approval.

(c) County shall not cause or allow any trees to be planted or cultivated or any structures of any kind to be constructed, placed or maintained on, over, along, and/or across the Easement Area.



(d) County shall provide San Francisco with at least thirty (30) days' advance written notice of any work to be performed on or under County owned property at Flood Park that contains the Easement Area (i.e., between the western boundary of Marsh Road and the terminus of the Easement Area east of Greenwood Drive), by County or its agents, employees, contractors, permittees, franchisees, invitees, or others acting for, on behalf of, or with permission of County.

**4. Run with the Land.** The covenants and conditions in this Easement Deed shall run with the land, burden the Easement Area and bind and inure to the benefit of County and San Francisco and their respective successors and assigns.

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

*[Signatures on next page]*

070593

Executed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**COUNTY:**

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

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

Name: \_\_\_\_\_

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

**SAN FRANCISCO:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

Amy L. Brown  
Director of Property

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney  
City and County of San Francisco

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

Richard Handel  
Deputy City Attorney

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

SS

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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)

**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: \_\_\_\_\_  
AMY L. BROWN  
Director of Property

**EXHIBIT 1 TO EASEMENT DEED**

**Description of Easement Area**

*[See following page]*

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**EXHIBIT 2 TO EASEMENT DEED**  
Depiction of Easement Area (Approximate)  
*[See following page]*

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**EXHIBIT D-4****TABLE 1 – County-Owned Parcels**

<b>Feature</b>	<b>SFPUC RES Map Number</b>	<b>Right Of Way</b>	<b>WD-2541 Drawing Number</b>
12th Ave	WB-26	County	P1-40
11th Ave	WB-26	County	P1-41
Fair Oaks Ave	WB-25	County	P1-41, P1-42
9th Ave	WB-25	County	P1-42
8th Ave	WB-25	County	P1-43
7th Ave	WB-24	County	P1-44
6th Ave	WB-24	County	P1-44
5th Ave	WB-24	County	P1-45
4th Ave	WB-23	County	P1-46
Park Rd	WB-23	County	P1-46
3rd Ave	WB-23	County	P1-47
2nd Ave	WB-23	County	P1-47
Middlefield Rd / 1st Ave	WB-22	County	P1-48
Berkshire Ave	WB-22	County	P1-48
Huntington Ave	WB-22	County	P1-49
Curtis Ave	WB-22	County	P1-50
Dumbarton Ave	WB-22	County	P1-50
Calvin Ave	WB-22	County	P1-50
Pacific Ave	WB-21	County	P1-51
Westmoreland Ave	WB-21	County	P1-51
Devonshire Ave	WB-21	County	P1-52
Buckingham Ave / Marlborough Ave	WB-21	County	P1-52, P1-53
Nottingham Ave	WB-20	County	P1-53, P1-54
Edgewood Rd	WB-8	County	P1-82

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**EXHIBIT D-5**

**FORM OF BILL OF SALE**

**BILL OF SALE**

For good and valuable consideration the receipt of which is hereby acknowledged, CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**Seller**"), does hereby sell, transfer, and convey to the COUNTY OF SAN MATEO, a political subdivision of the State of California ("**Buyer**"), the personal property ("**Personal Property**") owned by Seller and described and located as listed in the attached Schedule 1.

Seller does hereby represent to Buyer that Seller is the lawful owner of the Personal Property, that such Personal Property is free and clear of all encumbrances, and that Seller has the right to sell the same as aforesaid and will warrant and defend title thereto unto Buyer.

Except as provided above and in the Memorandum of Agreement dated \_\_\_\_\_ ("**MOA**") between Buyer and Seller, Seller has not made and does not make any express or implied warranty or representation of any kind whatsoever with respect to the Personal Property, including but not limited to: title; merchantability of the Personal Property or its fitness for any particular purpose; the design or condition of the Personal Property; the quality or capacity of the Personal Property; workmanship or compliance of the Personal Property with the requirements of any law, rule, specification or contract pertaining thereto; patent infringement or latent defects. Subject to any warranties or other remedies provided or assigned to Buyer pursuant to the MOA, Buyer accepts the Personal Property on an "AS IS, WHERE IS" basis.

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

CITY AND COUNTY OF SAN FRANCISCO,  
a California municipal corporation

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

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the personal property conveyed by the foregoing Bill of Sale to the County of San Mateo a political subdivision of the State of California, is hereby accepted pursuant to [Board of Supervisors'] Resolution No. \_\_\_\_\_, approved \_\_\_\_\_, 20\_\_.

Dated: \_\_\_\_\_, 20\_\_

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

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## **EXHIBIT E**

### **Bay Division Pipeline Reliability Upgrade Project Communications and Public Outreach Plan for County of San Mateo**

#### **PROJECT COORDINATION AND PUBLIC OUTREACH AND COMMUNICATIONS**

##### **1.1. Community Outreach - Prior to Commencement of Construction**

CCSF and its communications consultants will conduct targeted community outreach and information dissemination during the period prior to the commencement of Project construction. Outreach during this period shall include efforts such as:

- (a) Direct mail of a Project Information/Fact Sheet (bilingual where appropriate) to adjacent neighbors and stakeholders as deemed necessary by CCSF or requested by County.
- (b) Informational meetings as needed with neighborhood associations, representatives and parents of impacted schools, merchants associations, and other neighborhood groups.
- (c) Creation of a Project web page, searchable or organized for easy navigation to a particular segment of the construction, with street level updates on construction activities.

##### **1.2. Community Outreach – Immediate Pre-construction Period (After Notice to Proceed to Contractor)**

CCSF and its communications consultants will conduct targeted community outreach and information dissemination during the period immediately prior to construction (i.e., after issuance of "Notice to Proceed" to CCSF's contractor (approximately 4 – 6 weeks prior to start of construction). Outreach during this period shall include efforts such as:

- (a) Direct mail and "door hangers" of a Project Information/Fact Sheet (bilingual where appropriate) to adjacent neighbors and stakeholders, to include a construction schedule, safety information, and Project contact information/website.
- (b) Distribution of news releases and production of informational newspaper advertisements.
- (c) Meetings with school staff, PTAs, and other neighborhood groups as needed or requested.
- (d) Bilingual information in "take-home packets" distributed to affected schools.
- (e) Direct contact with adjacent residents to answer questions, offer walk-throughs, ensure removal of personal property from construction area, etc.
- (f) Frequent updating of Project web page.

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### **1.3. Community Outreach – During Construction**

CCSF and its consultants will conduct targeted community outreach/information dissemination, and respond to resident concerns and issues for the duration of the construction period. Outreach during this period shall include efforts such as:

- (a) Staffing of a Project public information office (one office on the Peninsula, one in the East Bay) with regular office hours.
- (b) A construction hot-line phone number, to be staffed 24 hours a day, 7 days a week.
- (c) Direct mail and “door hangers” of a Project Information/ Construction Update (bilingual where appropriate) to adjacent neighbors and stakeholders, to include updated construction schedule, advance notice of construction activities, safety information, and Project contact information/website.
- (d) On-site signage (bilingual elements where appropriate) providing Project contact information, website, and other information.
- (e) Advance notice to immediate neighborhood and wider community of street closures, lane closures, and detours.
- (f) Distribution of promotional items to residents (e.g., refrigerator magnets) to include Project contact information, website, and other information.
- (g) Newspaper advertisements, radio, or other publicity, as needed.
- (h) Frequent updating of Project web page.

### **1.4 Community Outreach – Mutual Advance Notice and Cooperation**

The parties will endeavor to provide advance notice to each other concerning all press releases and other information created for public consumption concerning the Project within County's sphere of influence. The parties designate the following individuals as contact persons (unless specified elsewhere in this MOA) for press releases and other information created for public consumption:

CCSF: Christina Kerby, (415) 554-3203, [ckerby@sfwater.org](mailto:ckerby@sfwater.org), cell: (415) 412-5744

County: Joseph A. Lo Coco 650-363-4102, [jlococo@co.sanmateo.ca.us](mailto:jlococo@co.sanmateo.ca.us); cell 650-222-1450

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Regularly passed and adopted this 26<sup>th</sup> day of January, 2010.

AYES and in favor of said resolution:

Supervisors:

MARK CHURCH

CAROLE GROOM

RICHARD S. GORDON

ROSE JACOBS GIBSON

ADRIENNE J. TISSIER

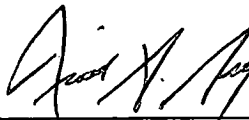
NOES and against said resolution:

Supervisors:

NONE

Absent Supervisors:

NONE



\_\_\_\_\_  
President, Board of Supervisors  
County of San Mateo  
State of California

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



\_\_\_\_\_  
Marie L. Peterson, Deputy  
Clerk of the Board of Supervisors