

AGREEMENT FOR SALE OF REAL ESTATE

by and between

**CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its Public Utilities Commission,**

as Seller

and

**SANTA CLARA VALLEY WATER DISTRICT,
a Special District, created by the California Legislature,**

as Buyer

for the sale and purchase of

**an approximately 10,925 square foot portion of APN 104-28-066,
located in the City of Sunnyvale, County of Santa Clara, State of California.**

_____, 20__

Valley Water File No. 2010-225

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AGREEMENT FOR SALE OF REAL ESTATE

(a portion of Assessor's Parcel No. 104-28-066,
City of Sunnyvale, County of Santa Clara, State of California)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "**Agreement**") dated for reference purposes only as of _____, 20___, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**" or "**Seller**"), and SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature ("**Buyer**"). City and Buyer are sometimes collectively referred to in this Agreement as the "**Parties**" or singularly as "**Party**."

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. City owns an unimproved parcel of real property adjacent to Manzano Way at Oak Creek Way, east of Calabazas Creek in the City of Sunnyvale, Santa Clara County, State of California, and designated as a portion of Santa Clara County Assessor's Parcel Number 104-28-066 ("**Manzano Way Property**").

B. The SFPUC determined that most of the Manzano Way Property is not required for its utility needs and is conveying a portion of the Manzano Way Property, more particularly described in the attached **Exhibit A**, and shown generally on the map attached as **Exhibit B** ("**Property**"), to Buyer.

C. The Property is subject to three revocable permits with Buyer and Buyer's predecessor-in-interest, the Santa Clara County Flood Control and Conservation District, and one revocable permit with the City of Sunnyvale (the "**Permits**"). The Parties acknowledge that, aside from the permit to the City of Sunnyvale, the Property is under the possession and control of Buyer, as provided in the Permits. City will revoke the Permit to the City of Sunnyvale at Closing (as defined in Sec. 2 below).

D. Due to the configuration of the Property and Buyer's improvements on the Property under the Permits, Buyer is the only practical purchaser of the Property. Buyer intends to continue use of the Property for district purposes. The SFPUC has recommended the sale of the Property to Buyer pursuant to Resolution No. _____.

E. Buyer desires to purchase the Property and City is willing to sell the Property, subject to approval by City's Board of Supervisors and Mayor, on the terms and conditions set forth in this Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

1. SALE AND PURCHASE

1.1 Property Included in Sale

Subject to the terms, covenants and conditions set forth in this Agreement, City agrees to sell to Buyer, and Buyer agrees to purchase from City, City's interest in the Property.

2. PURCHASE PRICE

The purchase price for the Property is Thirty-Three Thousand Dollars (\$33,000) (the "**Purchase Price**"). Within fourteen (14) days after signing this Agreement, Buyer shall deposit

the Purchase Price into escrow with Chicago Title Company, One Embarcadero Center, Suite 250, San Francisco, California 94111, Attention: Mary Pat Noeker (the “**Title Company**”). Title Company shall deliver the Purchase Price to City at the consummation of the purchase and sale contemplated by this Agreement (the “**Closing**”).

All sums payable under this Agreement shall be paid by good check or in immediately available funds of lawful money of the United States of America.

3. TITLE

3.1 Conditions of Title

At the Closing City shall quitclaim interest in and to the Property to Buyer by quitclaim deed in the form attached as **Exhibit C** (the “**Deed**”). Title to the Property shall be subject to (a) liens of local real estate taxes and assessments, (b) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Buyer pursuant to **Section 5.1** [Buyer’s Conditions Precedent] below, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, and (c) all items of which Buyer has actual or constructive notice or knowledge. All of the foregoing exceptions to title shall be referred to collectively as the “**Conditions of Title**.” Without limiting the foregoing, Buyer acknowledges receipt of a preliminary report issued by the Title Company under Order No. 15606674-156-TJK-MC1, dated April 13, 2021 (the “**Title Report**”), covering the Property and approves all of the exceptions contained in the Title Report.

3.2 Buyer’s Responsibility for Title Insurance

Buyer understands and agrees that the right, title and interest in the Property shall not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance in connection with this transaction. Buyer recognizes that any fences or other physical monument of the Property’s boundary lines may not correspond to the legal description of the Property. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Buyer’s sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

4. “AS-IS” PURCHASE; RELEASE OF CITY

4.1 Buyer’s Independent Investigation

Buyer represents and warrants to City that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Buyer’s choosing, including, without limitation, the following matters (collectively, the “**Property Conditions**”):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City’s interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property, including, but not limited to, the structural elements, foundation, roof, interior, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliance, and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter 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.

(e) The suitability of the Property for Buyer's intended uses.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting the Property.

4.2 Property Disclosures

California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

4.3 Testing and Indemnity

Before Buyer performs any on-site testing, Buyer shall give City written notice thereof, including the identity of the company or persons who will perform such testing, the precise time and location of the testing, and the proposed scope of the testing. City shall have the right to approve, disapprove, or condition and limit the proposed testing, in City's sole discretion, within ten (10) business days after receipt of such notice. If Buyer or its agents, employees or contractors take any sample from the Property in connection with any approved testing, Buyer shall provide to City a portion of such sample being tested to allow City, if it so chooses, to perform its own testing. City or its representative may be present to observe any testing or other inspection performed on the Property. Buyer shall promptly deliver to City copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its agents, employees or contractors, but shall not deliver copies of any such reports to any other person or entity without Buyer's prior written approval. Buyer shall keep all test results and information strictly confidential, and shall indemnify, reimburse, defend and hold City harmless from and against any loss, cost, expense, or damage resulting from Buyer's failure to keep any information obtained from an inspection or testing of the Property strictly confidential; provided, however, Buyer shall not be liable if and to the extent Buyer is required to disclose such information pursuant to a court order. Buyer shall comply with all laws, ordinances, rules, regulations, orders and the like issued or promulgated by any local, state, or federal governmental agency in connection with any entry onto or testing of the Property.

Buyer shall maintain, and shall require that its Agents maintain, commercial general liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its Agents, arising out of any entry or inspection of the Property

in connection with the transaction contemplated by this Agreement, and Buyer shall provide City with evidence of such insurance coverage upon request from City.

To the fullest extent permitted under law, Buyer shall indemnify, defend and hold harmless City, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) (collectively “**Claims**”) arising out of or relating to any entry on, under or about the Property by Buyer, its Agents, contractors and subcontractors in performing the inspections, testing, or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any persons (including, without limitation, Buyer’s Agents) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

4.4 “As-Is” Purchase

BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY’S INTEREST IN THE PROPERTY ON AN “AS-IS WITH ALL FAULTS” BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER’S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER’S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

4.5 Release of City

As part of its agreement to purchase the Property in its “As-Is With All Faults” condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors, and representatives, and their respective heirs, successors, legal representatives, and assigns, from any and all demands, claims, legal, or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs, or expenses whatsoever (including attorneys’ fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (a) Buyer’s and its Agents and customer’s past, present and future use of the Property, (b) the physical, geological, or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property, and (c) any federal, state, local, or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “**Superfund**” law), as amended by Superfund Amendments and Reauthorization Act of 1986 (“**SARA**”) (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, “**RCRA**”) (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the “**Clean Water Act**”) (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act (“**TSCA**”) (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the “**California Superfund**” law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response

Plans and Inventory Law (commonly known as the “**Business Plan Law**”) (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “**Proposition 65**”) (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER: _____

5. CONDITIONS PRECEDENT

5.1 Buyer’s Conditions Precedent

Buyer’s obligation to purchase the Property is conditioned upon Buyer’s review and approval of an updated Title Report, together with copies of the underlying documents.

- (a) Buyer’s review and approval of the Conditions of Title.
- (b) Buyer’s review and approval of the physical condition of the Property.
- (c) Buyer’s review and approval of all zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Property.

5.2 City’s Condition Precedent

The following are conditions precedent to City’s obligation to sell the Property to Buyer (“**City’s Conditions Precedent**”):

- (a) City’s recording, as City’s expense, of a record of survey or other map as may be required by local agencies.
- (b) Buyer shall have performed all of its obligations pursuant to or in connection with this Agreement and all of Buyer’s representations and warranties shall be true and correct.
- (c) A resolution approving and authorizing the transactions contemplated by this Agreement and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, shall have been adopted or enacted by City’s Board of Supervisors and Mayor, at their respective sole and absolute discretion.

(d) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (defined in Section 6.4 [Title Company as Real Estate Reporting Person] below).

5.3 Failure of City's Conditions Precedent

Each of City's Conditions Precedent are intended solely for the benefit of City. If any City's Conditions Precedent are not satisfied as provided above, City may, at its option, terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations under this Agreement except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 10.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

6. ESCROW AND CLOSING

6.1 Escrow

Within fourteen (14) days after the Parties execute this Agreement, Buyer and City shall deposit an executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated by this Agreement. City and Buyer agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Closing Date

The Closing shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Title Company on or before the date that is no more than thirty (30) days after approval by the SFPUC's Commission and City's Board of Supervisors and Mayor, or such other date and time as Buyer and City may mutually agree upon in writing (the "**Closing Date**"). Such date and time may not be extended without the prior written approval of both City and Buyer.

6.3 Deposit of Documents and Funds

(a) At or before the Closing, City shall deposit into escrow the following items:

(i) the duly executed and acknowledged Deed conveying the Property to Buyer subject to the Conditions of Title;

(ii) a copy of the letter confirming termination of the existing permit to the City of Sunnyvale for a portion of the Property effective on the Closing Date; and

(iii) such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

(b) At or before the Closing, Buyer shall deposit into escrow the following items:

(i) the funds necessary to close this transaction; and

(ii) such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

6.4 Taxes

Any real property taxes and assessments will be prorated as of 12:01 a.m. on the date the Deed is recorded, on the basis of a three hundred sixty-five (365)-day year. City and Buyer hereby agree that if any of the real property taxes and assessments prorations cannot be calculated accurately on the Closing Date, then they will be calculated as soon as reasonably practicable after the Closing Date and either party owing the other party a sum of money based on the subsequent proration(s) will promptly pay that sum to the other party. Regardless of when or whether or not the County of Santa Clara assigns new Assessor Parcel Number(s) (“APNs”) to the Property, Buyer’s obligation to pay real property taxes and assessments on the Property arises as of 12:01 a.m. on the date the Deed is recorded, and Buyer is obligated to pay all taxes from and after that date. Buyer will be responsible for obtaining new APNs from the County of Santa Clara and ensuring Buyer receives tax bills. If City receives a real property tax bill for the Property from the County of Santa Clara, City will not be obligated to forward the same to Buyer.

6.5 Title Company as Real Estate Reporting Person

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the “**Reporting Requirements**”) require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to City, in connection with the Closing. Buyer and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is by this Agreement designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Buyer and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

7. RISK OF LOSS

7.1 Loss

As stated above, Buyer is in possession and control of the Property under the Permits. Buyer will give City notice of the occurrence of damage or destruction of any portion of the Property, or the commencement of condemnation proceedings affecting. If, as record owner of the Property City receives notice of the commencement of condemnation proceeding affecting the Property, City will notify Buyer. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of City’s notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms of this Agreement. If Buyer elects to terminate this Agreement or fails to give City notice within such 10-day period that Buyer will proceed with the purchase, then this Agreement shall terminate at the end of such 10-day period, and neither party shall have any further rights or obligations under this Agreement except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or otherwise expressly provided in this Agreement. If Buyer elects to proceed with the purchase of the Property, then upon the Closing, Buyer shall receive a credit against the Purchase Price payable under this Agreement equal to the amount of any insurance proceeds or condemnation awards actually collected by City as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by City toward the restoration or repair of

the Property. If the proceeds or awards have not been collected as of the Closing, then City shall assign such proceeds or awards to Buyer, except to the extent needed to reimburse City for sums expended to collect such proceeds or repair or restore the Property, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards.

7.2 Self-Insurance

Notwithstanding anything to the contrary above, Buyer acknowledges that City self-insures and shall not be obligated to purchase any third-party commercial liability insurance or property insurance.

8. EXPENSES

8.1 Expenses

Buyer shall pay all escrow fees and recording charges and any other costs and charges of the escrow for the sale and Buyer's policy of title insurance, if any. City shall pay any documentary transfer taxes on the recordation of the Deed, if applicable to the sale, and other seller's closing costs customary in Santa Clara County.

8.2 Brokers

Except as identified below, neither Party has had any contact or dealings regarding the sale of the Property, or any communication in connection with the sale of the Property, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Agreement. Accordingly, any such commission or finder's fee, if due, shall be paid pursuant to a separate written agreement between such broker or other person and the Party through which such broker or other person contracted. If any other 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 a claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other Party from any and all Claims incurred by the indemnified Party in defending against the same. The provisions of this Section shall survive any termination of this Agreement.

City acknowledges that: **(a)** prior to the Effective Date, it entered into a written agreement with Colliers International CA, Inc. (the "**Listing Agreement**") that provides for the provision of real estate brokerage services in connection with the marketing and sale of the Property; **(b)** Colliers International CA, Inc. only represents City in connection with the purchase and sale transaction contemplated by this Agreement; and **(c)** City shall be solely responsible for any compensation, commission, or finder's fee payable to Colliers International CA, Inc. pursuant to the Listing Agreement in connection with the purchase transaction contemplated by this Agreement.

9. GENERAL PROVISIONS

9.1 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:

San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: Sale of VW Manzano Way
Property

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Real Estate Transactions Team
Re: Sale of VW Manzano Way
Property

BUYER:

Valley Water
Real Estate Services Unit
5750 Almaden Expressway
San Jose, California 95116
Attn: Real Estate Services Unit Manager
Re: Purchase Manzano Way
Property 2010-225

with a copy to:

Valley Water
Clerk of the Board Office
5750 Almaden Expressway
San Jose, California 95116
Attn: Clerk of the Board
Re: Purchase Manzano Way
Property 2010-225

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 e-mail addresses, telephone numbers, or facsimile numbers provided by one party to the other shall be for convenience of communication only; neither party may give official or binding notice orally or 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 oral notice or an e-mail or facsimile copy of the notice.

9.2 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, legal representatives, administrators and assigns. Buyer's rights and obligations under this Agreement shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall Buyer be released of any of its obligations under this Agreement.

9.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the Buyer and City.

9.4 Authority of Buyer

Buyer represents and warrants to City that Buyer is a California special district duly organized, validly existing, and in good standing under the laws of the State of California. Buyer further represents and warrants to City that this Agreement and all documents executed by Buyer which are to be delivered to City at Closing: **(a)** are or at the time of Closing will be duly authorized, executed, and delivered by Buyer; **(b)** are or at the time of Closing will be legal, valid, and binding obligations of Buyer; and **(c)** do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained in this Agreement or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date.

9.5 Buyer's Representations and Warranties

Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is a special district created by the California Legislature, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Buyer has duly authorized by all necessary action the execution, delivery, and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(b) Buyer represents and warrants to City that it has not been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it shall immediately notify City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline, or prohibition may result in the termination or suspension of this Agreement.

(c) No document or instrument furnished or to be furnished by the Buyer to City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

9.6 Governing Law

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

9.7 Merger of Prior Agreements

This Agreement, together with the exhibits attached to this Agreement, contain any and all representations, warranties, and covenants made by Buyer and City and constitutes the entire understanding between the Parties to this Agreement with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement together with the exhibits attached to this Agreement.

9.8 Parties and Their Agents

The term "**Buyer**" as used in this Agreement shall include the plural as well as the singular. If Buyer consists of more than one individual or entity, then the obligations under this Agreement imposed on Buyer 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.

9.9 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. Use of the word "including" or similar words shall not be construed to limit any general term, statement, or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used. 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 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.

9.10 Attorneys' Fees

If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco 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 City Attorney's Office.

9.11 Time of Essence

Time is of the essence with respect to the performance of the parties' respective obligations contained in this Agreement.

9.12 No Merger

The obligations contained in this Agreement shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

9.13 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, or agent of City shall be personally liable to Buyer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of City under this Agreement.

9.14 Sunshine Ordinance

Buyer understands and agrees that under 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 City under this Agreement are public records subject to public disclosure. Buyer by this Agreement acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

9.15 No Recording

Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer.

9.16 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 Buyer, **(b)** by a duly adopted resolution of the SFPUC, and **(c)** if required by City’s Charter, a duly adopted resolution of City’s Board of Supervisors and Mayor.

9.17 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, 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 Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

9.18 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.

9.19 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of the Parties, and the Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL AN ORDINANCE OF CITY’S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS AGREEMENT ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH AN ORDINANCE, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY’S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

BUYER:

SANTA CLARA VALLEY WATER
DISTRICT, a Special District, created by the
California Legislature

By:

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

By:

Rick L. Callender, Esq.
Chief Executive Officer

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

APPROVED AS TO FORM:

By:

Shari Geller Diamant
Deputy City Attorney

By:

Joseph D. Aranda
Assistant District Counsel

EXHIBIT A

Legal Description of Real Property

All that certain real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being a portion of the lands described in the Deed in favor of the City and County of San Francisco, Recorded June 15, 1950, in Book 1998 at Page 64 (Document Number 644174), Official Records of Santa Clara County, being a portion of the NE ¼ of Section 20, Township 6 South, Range 1 West, Mt. Diablo Base & Meridian (hereinafter referred to as "Sec. 20, T. 6S., R. 1W, MDB & M"), said real property also being a portion of Parcel 2 of the Certificate of Compliance Recorded February 1, 2019, Document No. 24108184, Official Records of Santa Clara County, more particularly described as follows:

Commencing at the most Northwesterly corner of Lot 1429 as depicted on the Map Entitled "Tract No. 2010, Lakewood Village No. 5", Recorded December 18, 1957 in Book 89, Pages 16, 17 & 18 of Maps, Santa Clara, County Records, said point also being on the Southerly line of said Parcel 2 Document No. 24108184, thence along said Southerly line, North 89° 34' 00" East, a distance of 95.48 feet to the point of beginning, said point being the most Northeasterly corner of Lot 1429 as depicted on said Tract Map.

Thence leaving said Southerly line, entering into said Parcel 2 Document No. 24108184, North 00° 00' 35" East, a distance of 183.82 feet to a point on the Northwesterly line of said Parcel 2 Document No. 24108184;

Thence along said Northwesterly line, said line being common with the Southerly line of the 80' City and County of San Francisco Lands as depicted in the above-mentioned Tract Map, North 77° 26' 30" East, a distance of 58.91 feet to a point on said Northwesterly line, said point also being on the Section 20/21 line (Township 6 South, Range 1 West, Mount Diablo Base & Meridian) as depicted on the above mentioned Tract Map;

Thence along said section line, South 00° 00' 35" West, a distance of 196.19 feet to a point on the Southerly line of said Parcel 2 (Doc. No. 24108184);

Thence along said Southerly line, South 89° 34' 00" West, a distance of 57.50 feet to the point of beginning;

Said Land also being known as Parcel 3, pursuant to that certain Certificate of Compliance on filed with the City of Sunnyvale, and recorded May 28, 2019 as Document No. 24190421, Official Records of said County.

APN: 104-28-066

EXHIBIT B

Depiction of Real Property

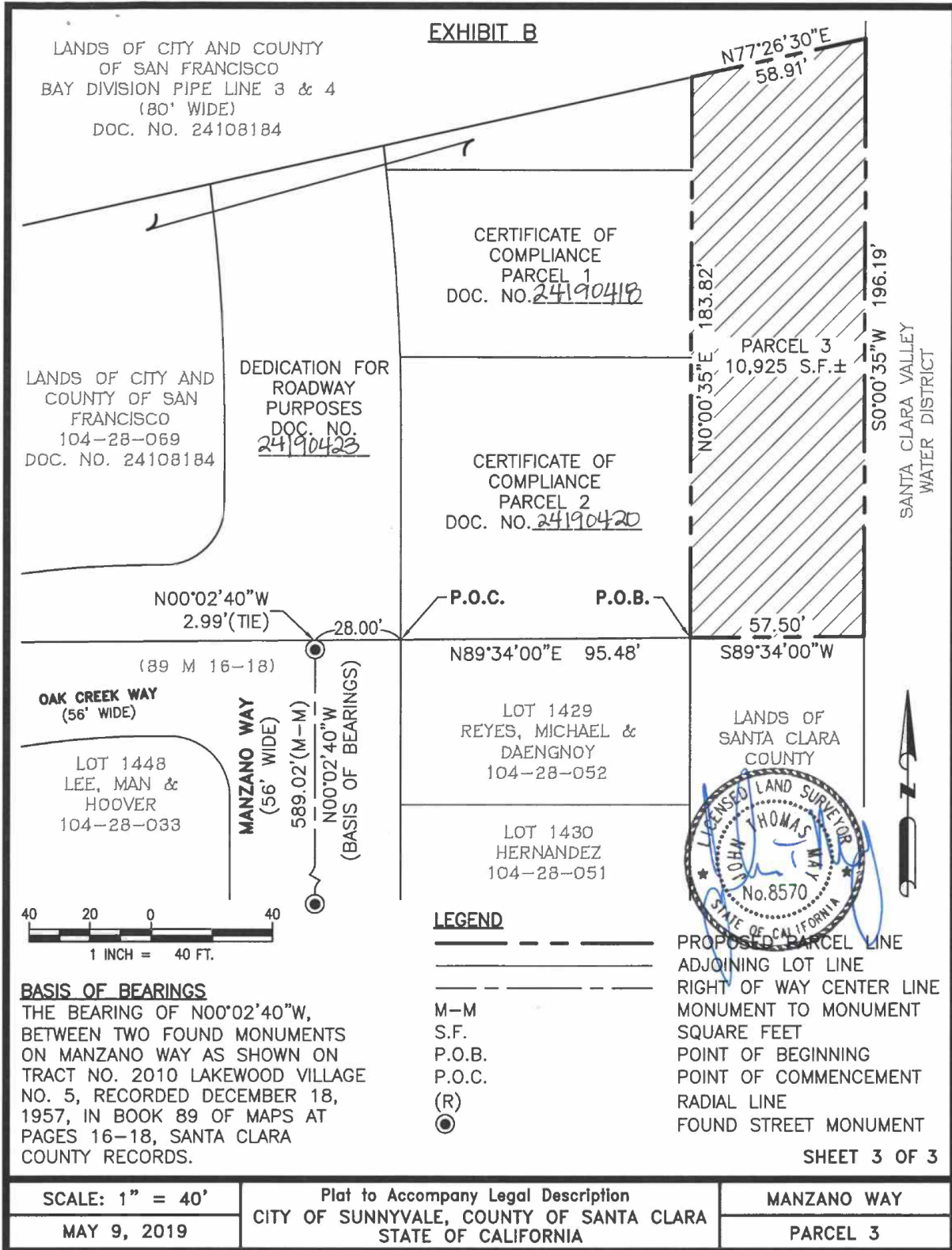


EXHIBIT C

Quitclaim Deed

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

WITH A CONFORMED COPY TO:

San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director

MAIL TAX STATEMENTS TO:

Valley Water
Real Estate Services Unit
5750 Almaden Expressway
San Jose, California 95116
Attn: RESU Manager 2010-225

Exempt from Recording Fees under CA Gov't Code Section 27383.
Conveyance is exempt from Documentary Transfer Tax under
Santa Clara County Code Section A30-36.

APN: 104-28-066
2010-225

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

**QUITCLAIM DEED
(portion of Assessor's Parcel No. 104-28-066)**

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, 20__, and approved by the Mayor on _____, 20__, hereby **RELEASES, REMISES AND QUITCLAIMS** to SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature, any and all right, title and interest City may have in and to the real property located in the City of Sunnyvale, County of Santa Clara, State of California, described on the attached **Exhibit A** and made a part of this quitclaim deed.

[SIGNATURES ON FOLLOWING PAGES]

Executed as of this _____ day of _____, 20__.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
ANDRICO Q. PENICK
Director of Property

DESCRIPTION CHECKED/APPROVED:

By: _____
R. Edward Peterson
Chief Surveyor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

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)