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AGREEMENT FOR SALE OF REAL ESTATE

(Road and Slope Easements, Calaveras Road, unincorporated Alameda County)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of [REDACTED], 2018, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation (“**City**” or “**Seller**”), acting by and through its PUBLIC UTILITIES COMMISSION (the “**SFPUC**”), and COUNTY OF ALAMEDA, a political subdivision of the State of California (“**Alameda County**” or “**Buyer**”).

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

A. City owns in fee the property described in the attached **Exhibit A** and shown on the attached **Exhibit B** pursuant to that certain deed dated and recorded on March 3, 1930, in Liber 2350 at Page 1 of the Alameda County Official Records (the “**Property**”). The Property is adjacent to Calaveras Road in the County of Alameda, California.

B. Alameda County maintains a portion of Calaveras Road on a 50-foot-wide easement on the Property pursuant to that certain Indenture between City’s predecessor-in-interest, the Spring Valley Water Company, and Alameda County dated November 16, 1921, and recorded on January 30, 1922, in Book 148, at page 80 of the Alameda County Official Records (the “**Road Easement**”).

C. In 2011, the SFPUC began building a replacement dam and spillway for the existing Calaveras Dam (the “**Project**”) located on the Property. Calaveras Road is the main access road for the Project construction contractor to transport large equipment and materials to and from the Project site.

D. On January 10, 2017, a landslide occurred on the downslope edge of an approximately 100-foot section of Calaveras Road that Alameda County maintains pursuant to the Road Easement, resulting in damage to Calaveras Road and making the road impassible. In consultation with Alameda County, the SFPUC made temporary road and slope improvements in and around the landslide area on Calaveras Road (the “**New Road Alignment**”) to avoid prolonged construction delays that would have delayed completion of the Project.

E. Alameda County has agreed to accept the New Road Alignment and desires to acquire easements over a portion of the Property for the new roadway and the adjacent slope area where a portion of the New Road Alignment exceeds the boundary of the Road Easement. The proposed new easements (“**New Easements**”) consist of one (1) approximately 5,484-square-foot road easement and one (1) approximately 22,548-square-foot slope easement.

F. The Commissioners of the SFPUC have recommended sale of the New Easements, as defined in Section 1.1 below, pursuant to the SFPUC Resolution No. 18-0129.

G. Alameda County desires to purchase the New Easements and City is willing to sell the New Easements on the terms and conditions set forth below.

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

1. SALE AND PURCHASE

1.1 Purchase and Sale of Easements

Subject to the terms, covenants, and conditions set forth in this Agreement, City agrees to convey the New Easements and New Road Alignment to Buyer, and Buyer agrees to compensate City for the conveyance of the New Easements:

(a) A permanent nonexclusive easement to construct, use, maintain, repair, and replace a roadway and necessary appurtenances over and across an approximately 5,484-square-foot portion of the Property. Buyer will accept the existing road improvements constructed by City's contractor.

(b) A permanent nonexclusive easement to construct, use, maintain, monitor, repair, and replace a slope and necessary appurtenances for use in connection with the slope in, under, along, and across an approximately 22,548-square-foot portion of the Property. Buyer will accept the existing slope improvements and monitoring equipment constructed and installed by City's contractor.

The areas where Buyer will acquire real property interests pursuant to this Agreement are referred to in this Agreement as the "**Easement Areas.**"

1.2 Easement Areas; Nature of Easements

The Easement Areas consist of those portions of the Property described and depicted in the exhibit to the easement agreement attached as **Exhibit C** (the "**Easement Agreement**"), including the road and slope improvements. The nature, scope, and conditions of the New Easements are set forth in the Easement Agreement.

2. PURCHASE PRICE

The purchase price for the New Easements is Two Thousand Four Hundred Fifty-Seven Dollars (\$2,457) (the "**Purchase Price**"). Buyer shall pay the Purchase Price on the Closing Date (defined in Section 6.2 below). All payments made pursuant to this Agreement shall be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds. Payments shall be made to the Title Company as the escrow agent.

3. TITLE

3.1 Conditions of Title

At the Closing, City shall convey the New Easements to Buyer by Easement Agreement. Title to the New Easements 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 below, and any other exceptions to title that 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.**"

3.2 Responsibility for Title Insurance

Buyer understands and agrees that Buyer's 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 Easement Areas' boundary lines may not correspond to the legal description of the Easement Areas. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters that 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 Easement Areas, including the New Road Alignment, 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 Easement Areas and the existence of physically open and legally sufficient access to the Easement Areas.

(b) The zoning and other legal status of the Easement Areas, including, without limitation, the compliance of the Easement Areas or their 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 Easement Areas, including, but not limited to, the structural elements, geotechnical elements, foundation, landscaping, the sewage and utility systems, facilities and appliances, and all other physical and functional aspects of the Easement Areas.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Easement Areas (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Easement Areas or any other real property in the vicinity of the Easement Areas. 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 Easement Areas for Buyer's intended uses.

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

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

4.2 Property Disclosures

(a) 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 Easement Areas may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, 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.

(b) According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>. All or a portion of the Property lies within an earthquake fault zone.

(c) The Property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of California Public Resources Code Section 4291.

(d) The Easement Areas lie within a mapped deep-seated landslide of unknown extent and total depth.

(e) Nothing contained in this Article shall relieve Buyer of its obligations to conduct a diligent inquiry under this Agreement, nor shall any such matters limit any of the provisions of Section 4.4 ["As-Is" Purchase] or Section 4.5 [Release of City].

4.3 Entry and Indemnity

In connection with any entry by Buyer or its Agents (defined in Section 10.8 below) onto the Easement Areas, Buyer shall give City reasonable advance written notice of such entry and shall conduct such entry and any inspections in connection therewith so as to minimize, to the extent possible, interference with uses being made of the Easement Areas and otherwise in a manner and on terms and conditions acceptable to City. All entries by Buyer or its Agents onto the Easement Areas to perform any testing or other investigations that could affect the physical condition of the Easement Areas (including, without limitation, soil borings) or the uses thereof will be made only pursuant to the terms and conditions of a permit to enter in form and substance satisfactory to City. Without limiting the foregoing, prior to any entry to perform 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 Easement Areas 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 Easement Areas. 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 Easement Areas 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 in connection with any entry onto or testing of the Easement Areas.

Buyer shall maintain, and shall require that its Agents maintain, public 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 Easement Areas in connection with the transaction contemplated hereby, 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) arising out of or relating to any entry on, under or about the Easement Areas by Buyer, its Agents, contractors and subcontractors in performing the inspections, testings 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 FROM CITY EASEMENT INTERESTS IN THE PROPERTY AND THE NEW ROAD ALIGNMENT 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 EASEMENT AREAS AND NEW ROAD ALIGNMENT, THEIR 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 EASEMENT AREAS OR NEW ROAD ALIGNMENT, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE EASEMENT AREAS OR THEIR 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 EASEMENT AREAS AND THE USES TO WHICH THEY MAY BE PUT.

4.5 Release of City

As part of its agreement to purchase the New Easements on the Property, including the New Road Alignment, in their "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 all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, 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) the New Road Alignment, (b) Buyer's and its Agents and customer's past, present and future use of the Easement Areas, (c) the physical, geological or environmental condition of the Easement Areas, including, without limitation, any Hazardous Material in, on, under, above or about the Easement Areas, and (d) 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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 New Easements is conditioned upon the following:

(a) Buyer’s review and approval of any occupancy agreements, if any, affecting the Easement Areas.

(b) Buyer’s review and approval of the physical condition of the Easement Areas.

(c) Buyer’s review and approval of all zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Easement Areas.

5.2 Contingency Period

Buyer shall have until 5:00 p.m. San Francisco Time on the date that is ten (10) business days after the Effective Date (defined in Section 10.19 below) to review and approve or waive Buyer’s Conditions (such period being referred to in this Agreement as the “**Contingency Period**”). If Buyer elects to proceed with the purchase of the New Easements, then Buyer shall, before the expiration of the Contingency Period, notify City in writing that Buyer has approved all such matters. If before the end of the Contingency Period Buyer fails to give City such written notice and fails to object to any of Buyer’s Conditions, then Buyer shall be deemed to have waived Buyer’s Conditions. Notwithstanding the foregoing, if Buyer objects to any of the matters contained within Section 5.1 within the Contingency Period, then City may, but shall have no obligation to remove or remedy any objectionable matter. If City agrees to remove or remedy the objectionable matter, it shall notify Buyer within ten (10) days following Buyer’s notice of objection, and the Closing Date shall be delayed for so long as City diligently pursues

such removal or remedy. If and when City elects not to remove or remedy the objectionable matter, which City may do at any time including following an initial election to pursue remedial or corrective actions, this Agreement shall automatically terminate, the Purchase Price shall be returned to Buyer, 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 10.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

5.3 City's Condition Precedent

The following are conditions precedent to City's obligation to sell the New Easements to Buyer ("**City's Conditions Precedent**"):

(a) 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.

(b) A resolution approving and authorizing the transaction contemplated by this Agreement shall have been adopted by City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted on or before October 15, 2018.

(c) Title Company (defined in Section 6.1 below) shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (defined in Section 6.5 below).

5.4 Failure of City's Conditions Precedent

Each of City's Conditions Precedent are intended solely for the benefit of City. If any of 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

On the date within five (5) days after the parties execute this Agreement, Buyer and City shall deposit an executed counterpart of this Agreement with Chicago Title Company located at 455 Market Street, Suite 2100, San Francisco, California 94105 (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 in 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

6.3 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 October 30, 2018, and before 1:00 p.m. San Francisco Time (i) the date that is thirty (30) days after the expiration of the Contingency Period and enactment of the Board of Supervisor's resolution referred to in Section 5.3(b) above, or if such date is not a business day, then upon the next ensuing business day, before 1:00 p.m. San Francisco time or

(ii) such earlier 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. Deposit of Documents

(a) At or before the Closing, City shall deposit into escrow the duly executed and acknowledged Easement Agreement conveying the New Easements to Buyer subject to the Conditions of Title.

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

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

(ii) a duly executed counterpart of the Easement Agreement conveying the New Easements to Buyer.

(c) City and Buyer shall each deposit 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 hereof.

6.4 Prorations

Any real property taxes, assessments, and any other expenses normal to the operation and maintenance of the Easement Areas, shall all be prorated as of 12:01 a.m. on the date the Easement Agreement is recorded, based on a three hundred sixty-five (365)-day year. City and Buyer agree that if any of the above described prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party.

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 hereby 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

City shall give Buyer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Easement Areas. If all or any portion of the Easement Areas 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 hereof. If Buyer elects to terminate this Agreement

or fails to give City notice within such ten (10)-day period that Buyer will proceed with the purchase, then this Agreement shall terminate at the end of such ten (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 New Easements, 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 to the extent such amounts represent Buyer's interest in the Property under the New Easements, 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 Easement Areas, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards.

(a) Minor Loss

If there occurs any partial damage to the Easement Areas or destruction of any of the improvements thereon to be acquired by Buyer, or any condemnation proceeding with respect to a portion of the Easement Areas or improvements to be acquired by Buyer, between the date this Agreement is fully executed and the Closing Date, Buyer shall nonetheless be bound to purchase the New Easements for the full Purchase Price pursuant to the terms hereof, without regard to the occurrence or effect of any such damage, destruction or condemnation proceeding, provided that the following conditions are satisfied: (a) the cost to repair any damage or destruction, or the diminution on the fair market value of the remaining Easement Areas, as the case may be, does not exceed the Purchase Price and (b) upon the Closing, Buyer shall receive a credit against the Purchase Price equal to the amount of any insurance proceeds or condemnation awards that City collects as a result of any such event to the extent such amounts represent Buyer's interest in the Property under the New Easements, plus the amount of any insurance deductible, but less any sums City expends toward the restoration or repair of the Easement Areas. If City has not collected the proceeds or awards as of the Closing Date, then City shall assign such amounts to Buyer, except to the extent necessary to reimburse City for sums City has expended to repair or restore the Property.

(b) Major Loss

If the amount of the damage or destruction or condemnation as described above exceeds One Hundred Thousand Dollars (\$100,000), then Buyer may, at its option to be within ten (10) business days of City's notice of the occurrence of such event, either terminate this Agreement or consummate the purchase for the full Purchase Price pursuant to the terms hereof. If Buyer elects to terminate this Agreement or fails to give City notice within such ten (10)-day period that Buyer will proceed with the purchase, then neither party shall have any further rights or obligation under this Agreement except as provided in Sections 4.3, 8.2, or 10.4 or otherwise expressly provided in this Agreement. If Buyer elects to proceed with the purchase of the New Easements, then upon the Closing, there shall be a credit against the Purchase Price due under this Agreement equal to the amount of any insurance proceeds or condemnation awards collected by City as a result of any such damage or destruction or condemnation to the extent such amounts represent Buyer's interest in the Property under the New Easements, plus the amount of any insurance deductible, but less any sums expended by City toward the restoration or repair of the Easement Areas. If City has not collected the proceeds or awards as of the Closing Date, then City shall assign such sums to Buyer, except to the extent necessary to reimburse City for any sums City expended to repair or restore the Easement Areas.

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 any transfer taxes applicable to the sale, property taxes, assessments, escrow fees and recording charges, and any other costs and charges of the escrow for the sale. Further, Buyer shall pay to City a processing fee of Two Thousand Five Hundred Dollars (\$2,500) and reimburse City for out-of-pocket costs incurred for surveying work and obtaining approvals from City's Board of Supervisors and Mayor in an amount not to exceed Forty-Seven Five Hundred and Forty-Three Dollars (\$47,543). The processing fee together with City's out-of-pocket costs are referred to in this Agreement as "**City's Costs.**"

8.2 Brokers

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transaction contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party against, all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

9. LIQUIDATED DAMAGES

IF THE SALE OF THE NEW EASEMENTS IS NOT CONSUMMATED DUE TO THE FAILURE OF ANY CONDITION PRECEDENT OR CITY'S DEFAULT UNDER THIS AGREEMENT AND BUYER IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL RETURN THE PURCHASE PRICE TOGETHER WITH ACCRUED INTEREST THEREON TO BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER UNDER THIS AGREEMENT AND CITY IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL DELIVER CITY'S COSTS TOGETHER WITH ACCRUED INTEREST THEREON TO CITY, AND CITY SHALL BE ENTITLED TO RETAIN SUCH SUM AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF CITY'S COSTS TOGETHER WITH ACCRUED INTEREST THEREON IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME

THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: _____ BUYER: _____

10. GENERAL PROVISIONS

10.1 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 provider above):

CITY:

BUYER:

San Francisco Public Utilities Commission
Attn: Real Estate Director
Re: Alameda County Easements;
Calaveras Road
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

County of Alameda

with a copy to:

with a copy to:

Shari Geller Diamant
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
Re: Alameda County Easements;
Calaveras Road
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

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 telefacsimile copy of the notice.

10.2 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.

10.3 Amendments

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

10.4 Authority of Buyer

Buyer represents and warrants to City that Buyer is a political subdivision of the State of California 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 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.

10.5 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 political subdivision of the State of California 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.

10.6 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.

10.7 Merger of Prior Agreements

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

10.8 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 (1) 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.

10.9 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. 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.

10.10 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 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.

10.11 Time of Essence

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

10.12 No Merger

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

10.13 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.

10.14 Conflicts of Interest

Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify City.

10.15 Notification of Limitations on Contributions

Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Buyer further acknowledges that the prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer. Additionally, Buyer acknowledges that Buyer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Buyer further agrees to provide to City the names of each person, entity or committee described above.

10.16 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 all records, information, and materials submitted to City under this Agreement public records subject to public disclosure. Buyer hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

10.17 Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges companies 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.

10.18 No Recording

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

10.19 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 City’s Public Utilities Commission, and (c) a duly adopted resolution of City’s Board of Supervisors and Mayor.

10.20 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.

10.21 Acceptance by Buyer

This Agreement shall be null and void unless it is accepted by Buyer and two (2) fully executed copies hereof are returned to City on or before 5:00 p.m. San Francisco time on , 20 .

10.22 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.

10.23 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of both parties, and both 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 A RESOLUTION OF CITY’S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS AGREEMENT ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, 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 TRANSACTION CONTEMPLATED BY THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION 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:

COUNTY OF ALAMEDA,
a political subdivision of the State of California

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

By: _____
[NAME]

Its: _____

By: _____
[NAME]

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

Its: _____

By: _____
Shari Geller Diamant
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property located in the County of Alameda, State of California, described as follows:

[NOTE: DESCRIPTION TO COME FROM SURVEYOR'S LEGAL DESCRIPTION]

EXHIBIT B

DEPICTION OF PROPERTY

[see attached]

DRAFT
8/10/18 SG

EXHIBIT C
EASEMENT AGREEMENT