



# AGENDA ITEM

## Public Utilities Commission

*City and County of San Francisco*



DEPARTMENT Real Estate Services Division AGENDA NO. 14  
 MEETING DATE June 13, 2017

**Real Estate Agreement:** Regular Calendar  
**Project Managers:** Michael Carlin, Deputy General Manager  
 Steven R. Ritchie, Assistant General Manager for Water  
 Rosanna Russell, Real Estate Director

**Adopt a Finding Declaring 7484 Sheridan Road in Sunol, California is Surplus**

|   |   |
|---|---|
| <b>Summary of Proposed Commission Action:</b> | <b>Adopt</b> a finding declaring that the improved property at 7484 Sheridan Road in Sunol, unincorporated Alameda County, California (Property), is surplus to the San Francisco Public Utilities Commission (SFPUC)’s current and future utility needs; <b>Authorize</b> the SFPUC General Manager <b>to negotiate and execute</b> an Agreement to sell the Property for \$3,550,000 to Timothy Su and Lan Fong Chen, husband and wife (together, Buyer); <b>Authorize</b> a request to the Board of Supervisors and the Mayor to approve the Property sale, subject to the terms of the Agreement.   |
| <b>Background:</b>                            | <p>The City and County of San Francisco (City), through the SFPUC, owns the Property, consisting of approximately 84 acres of improved land in Sunol. The land is improved with various structures, including a single-family residence, barn/office, shop/store, steel-framed barns, pole barns and corrals. The Property is designated as Alameda County Assessor’s Parcel Number 096-001-020-03.</p> <p>The SFPUC acquired the Property from Kenneth Paul Mackin and Janice Mackin (together, the Mackins) in 2014 in connection with its New Irvington Tunnel project. At that time, the Mackins decided against extending the term of a temporary construction easement issued to the SFPUC, and the SFPUC purchased the Property in order to avoid incurring Project construction delay damages.</p> <p>The SFPUC is selling underutilized property in order to raise needed funds for the Water Enterprise. The Property is one of several underutilized parcels that SFPUC executive management has deemed unessential to the SFPUC’s utility needs.</p> <p>The SFPUC entered into a real estate brokerage services contract dated March 4, 2016 with Colliers International CA, Inc. (Broker) to advertise and</p> |

**APPROVAL:** \_\_\_\_\_

COMMISSION SECRETARY Donna Hood

|                              |  |
|------------------------------|--|
|                              | <p>provide brokerage services for select underutilized properties. The Broker advertised the Property on commercial real estate platforms for many weeks, posted signage on the Property, and produced offering memoranda and other marketing materials.</p> <p>The SFPUC complied with reporting, notice and other requirements of the California Surplus Property Statute (California Government Code Sections 54220 through 54233) and the San Francisco Surplus Property Ordinance (San Francisco Administrative Code Chapter 23A) with respect to the sale of the Property, including offering the Property for sale to all applicable local public agencies as required by California Government Code Section 54222.</p> <p>On May 11, 2017, the SFPUC, through the Broker, advertised and issued an invitation to bid on the Property. Buyer submitted the highest and best responsible bid by the May 19, 2017 deadline and was awarded the opportunity to enter into the Agreement.</p> <p>Buyer has agreed to the terms and conditions of the Agreement.</p> <p>The SFPUC is selling the Property “As Is, Where Is” and will not participate in any proposal to change or alter the Property use.</p> <p>At close of escrow, the SFPUC will retain City’s retained interests stated in the Notice to Preserve Interest recorded on December 27, 2013 as Document No. 2013392658 in the Alameda County Records, and (ii) a well easement which City will reserve at closing.</p> <p>The SFPUC procured a fair market valuation of the Property dated March 16, 2017 by CBRE, a MAI appraiser. The sale price of \$3,550,000 is above the \$3,290,000 appraisal value.</p> |
|                              |  |
| <b>Environmental Review:</b> | The Bureau of Environmental Management has determined that the proposed action does not constitute a project under California Environmental Quality Act (CEQA) Guidelines Section 15378 because there would be no physical change in the environment.  |
|                              |  |
| <b>Result of Inaction:</b>   | A delay in adopting the attached resolution will delay the Property sale and the SFPUC’s receipt of \$3,550,000.   |
|                              |  |
| <b>Budget &amp; Costs:</b>   | Buyer will pay \$3,550,000 for the Property to the SFPUC. Buyer will pay any prorated property taxes, assessments, and other charges as of the date of sale. Buyer will pay escrow fees, recording costs, and other closing costs. The SFPUC will pay a 2.75% fee to the Broker for its services.  |
|                              |  |

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|----------------------------------|---|---|
| <b>Description of Agreement:</b> | <b>Parties to Agreement:</b>  | The City and County of San Francisco, acting through the SFPUC, and Timothy Su and Lan Fong Chen  |
|                                  | <b>Purchase Price:</b>  | \$3,550,000   |
|                                  | <b>Purpose:</b>   | Sale of approximately 84 acres of improved real property.   |
|                                  | <b>Location:</b>  | 7484 Sheridan Road in unincorporated Sunol, California.   |
|                                  | <b>Insurance and Indemnity</b>  | Buyer shall insure and indemnify the SFPUC against risks associated with its purchase of the Property.  |
|                                  | <b>Effective Date:</b>  | The first date on which each of the following has been completed: <b>(a)</b> City's Board of Supervisors and Mayor have adopted or enacted a resolution or an ordinance approving and authorizing this Agreement and the transactions contemplated by this Agreement; and <b>(b)</b> this Agreement has been mutually executed and delivered by both Parties. |
|                                  | <b>Closing Date:</b>  | The date that is (a) thirty (30) days after the Effective Date, or (b) such earlier date and time as Buyer and the SFPUC may mutually agree upon in writing.  |
|                                  |   |   |
| <b>Recommendation:</b>           | SFPUC staff recommends that the Commission adopt the attached resolution.   |   |
|                                  |   |   |
| <b>Attachments:</b>              | <ol style="list-style-type: none"> <li>1. Purchase and Sale Agreement</li> <li>2. Not a Project Memorandum</li> </ol> |   |

# **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. \_\_\_\_\_

WHEREAS, The City and County of San Francisco (City) owns certain real property presently under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) at 7484 Sheridan Road in Sunol, California (Property); and

WHEREAS, The SFPUC executive management deemed the Property to be non-essential to the SFPUC's current and future utility needs of each enterprise; and

WHEREAS, The SFPUC entered into an agreement dated March 4, 2016 with Colliers International CA, Inc. (Broker) for real estate brokerage services; and

WHEREAS, The SFPUC complied with reporting, notice and other requirements of the California Surplus Property Statute (California Government Code Sections 54220 through 54233) and the San Francisco Surplus Property Ordinance (San Francisco Administrative Code Chapter 23A) with respect to the sale of the Property; and

WHEREAS, The Broker advertised the Property on commercial real estate platforms for many weeks, posted signage on the Property, and produced offering memoranda and other marketing materials; and

WHEREAS, The SFPUC, through the Broker, solicited bids from prospective Property buyers between May 11, 2017 and May 19, 2017 and

WHEREAS, Timothy Su and Lan Fong Chen (together, Buyer) submitted the highest and best responsible offer to purchase the Property for \$3,550,000; and

WHEREAS, SFPUC staff and Buyer staff have agreed to the terms and conditions of a Purchase and Sale Agreement (Agreement); and

WHEREAS, The Bureau of Environmental Management has determined that the proposed action does not constitute a project under California Environmental Quality Act (CEQA) Guidelines Section 15378 because there would be no physical change in the environment. now, therefore, be it

RESOLVED, That this Commission hereby finds that the Property is surplus to the SFPUC's utility needs; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager of the SFPUC and/or City's Director of Property to seek approval of the Agreement by City's Board of Supervisors and the Mayor, and upon such approval, to execute the Agreement in substantially the same form presented to this Commission; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with this Agreement; and be it

FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of this Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC's General Manager to negotiate and execute the Agreement, subject to the approval of the Board of Supervisors and Mayor; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Property to enter into any amendments or modifications to this Agreement, including without limitation, the exhibits, that the General Manager or Director of Property determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Agreement or this resolution; and are in compliance with all applicable laws, including the City Charter; and be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the SFPUC General Manager to execute and deliver a quitclaim deed conveying the Property to Buyer; and be it

FURTHER RESOLVED, That upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the General Manager of the SFPUC to take any and all other steps they, in consultation with the City Attorney, deem necessary and advisable to effectuate the purpose and intent of this Resolution.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 13, 2017.*

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*Secretary, Public Utilities Commission*

AGREEMENT FOR SALE OF REAL ESTATE

by and between

CITY AND COUNTY OF SAN FRANCISCO,  
as Seller

and

TIMOTHY SU AND LAN FONG CHEN

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as Buyer

For the sale and purchase of

84 acres of improved real property known as  
7484 Sheridan Road, Sunol, California

\_\_\_\_\_, 2017\_\_

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## LIST OF EXHIBITS

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| EXHIBIT B | PERSONAL PROPERTY<br>DESCRIPTION_____    |
| EXHIBIT C | QUITCLAIM DEED                           |
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**AGREEMENT FOR SALE OF REAL ESTATE**  
7484 Sheridan Road, Sunol, California)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "Agreement") dated for reference purposes only as of \_\_\_\_\_, 2017, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Seller"), and Timothy Su, an individual, and Lan Fong Chen, an individual(together, "Buyer").

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

**A.** City owns the Property located in the Town of Sunol in Alameda County, described in Section 1 below. The Property consists of approximately 84 acres, or 3,658,398 square feet, and is located on the east side of Sheridan Road, just west of Calaveras Road. The Property is currently improved with various structures including a single-family residence, barn/office, shop/store, steel-framed barns, pole barns and corrals.

**B.** The SFPUC has recommended sale of the Property pursuant to Resolution No. \_\_\_\_\_.

**C.** Buyer has submitted the highest and best responsible offer to purchase the Property.

**D.** 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 hereinbelow.

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 herein, City agrees to sell to Buyer, and Buyer agrees to purchase from City, the following:

(a) City's interest in the real property located at the real property consisting of approximately eighty-four (84) acres of land, located in Sunol, in unincorporated Alameda County, California, commonly known as 7484 Sheridan Road, Sunol, Alameda County Assessor's Parcel No. 096-001-020-03\_, State of California, and more particularly described in Exhibit A attached hereto (the "[Real] Property"), as shown generally on the map attached hereto as Exhibit A-1,

(b) all improvements and fixtures located on the Real Property, including, without limitation, that certain one-story residence containing approximately 1,930 square feet of living space, a barn/office, a shop/store, two steel-frame metal barns, two pole barns, a pump shed, a wine cellar, ancillary agricultural improvements, all fixtures and built-in apparatus such as doors, fences (including without limitation cattle operation fencing and equipment affixed to the Real Property), gates, and plumbing, electrical, heating and air conditioning systems and fixtures used to provide any utility, refrigeration, lighting, ventilation, garbage disposal, water, communications or other services, and all on-site parking (collectively, the "Improvements");

(c) together with the personal property owned by City, if any, located at the Real Property and used exclusively in the operation or maintenance of the Real Property, as the same may be further described in any list which City currently has in its possession and furnishes to Buyer within the Contingency Period, as defined in Section 5.2 below (the "Personal Property"). The Real Property and the Personal Property are collectively referred to herein as the "Property."

## **2. PURCHASE PRICE**

The purchase price for the Property is Three Million Five Hundred and Fifty Thousand Dollars (\$3,550,000) (the "Purchase Price"). Buyer shall pay the Purchase Price as follows:

(a) Within five (5) business days after Buyer executes this Agreement, Buyer shall deposit in escrow with Chicago Title Company, 455 Market Street, Suite 2100, San Francisco, California, Attention: Mary Pat Noeker (the "Title Company"), the sum of Thirty Five Thousand Dollars (\$35,000) as an initial earnest money deposit (the "Initial Deposit"). The Initial Deposit shall be non-refundable and shall be applied by City to meet City's ordinary application fees relating to Buyer's due diligence activities on the Property in the event the Closing does not occur. Within 45 days after Buyer's execution of this Agreement, Buyer shall increase the Deposit to Three Hundred and Fifty Thousand Dollars (\$350,000) by depositing into escrow with the Title Company an additional Three Hundred and Fifteen Thousand Dollars (\$315,000) (together with the Initial Deposit, the "Deposit"). The Deposit shall be non-refundable. The Deposit shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Deposit. At the Closing (as defined below) the Deposit shall be paid to City and credited against the Purchase Price.

(b) Buyer shall pay the balance of the Purchase Price, which is Three Million Two Hundred Thousand Dollars (\$3,200,000), to City at the consummation of the purchase and sale contemplated hereunder (the "Closing").

All sums payable hereunder including, without limitation, the Deposit, shall be paid 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 of Exhibit C attached hereto (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 hereof, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, (c) all items of which Buyer has actual or constructive notice or knowledge, (d) the Project Declaration (as defined in Section 3.2 below), and (f) the deed restrictions described in Section 3.3 below and (g) the easements which shall be reserved as further provided in Section 3.4 below. 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. \_\_\_\_\_, dated \_\_\_\_\_, covering the Property and approves all of the exceptions contained therein.

### **3.2 Local Hire and Prevailing Wage Requirements**

(a) Any undefined, initially-capitalized term used in this Section 3.2(a) shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If

Buyer uses the Property for the construction, rehabilitation or expansion of three (3) or more residential units (a "Housing Project"), the requirements of San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements") will apply to the Housing Project. Buyer shall contact City's Office of Economic Workforce and Development ("OEWD") before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Local Hiring Requirements.

For a Housing Project, Buyer shall include, and shall require its Contractors and Subcontractors to include, a requirement to comply with the Local Hiring Requirements in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.62. Each such Construction Contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Buyer shall cooperate, and require its Contractors and Subcontractors to cooperate, with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Local Hiring Requirements when required. Buyer's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. In addition, City shall have the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party (i.e., Buyer, a Contractor, or a Subcontractor, as applicable).

**(b)** Any undefined, initially-capitalized term used in this Section 3.2(b) shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Buyer uses the Property for the construction of a Housing Project that will exceed the Threshold Amount, Buyer shall, and shall require its Contractors and Subcontractors to, comply with the applicable requirements in San Francisco Administrative Code Section 23.61, including, but not limited to, (1) paying workers performing such work not less than the Prevailing Rate of Wages, (2) providing the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, (3) complying with certain record keeping, posting, and audit requirements, such as maintaining weekly certified payroll records and submitting them to the City's Office of Labor Standard Enforcement ("OLSE") on request, and (4) employing Apprentices (collectively, "Prevailing Wage Requirements"). Buyer agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Buyer shall contact, and shall require its Contractors and Subcontractors to contact, OLSE before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Prevailing Wage Requirements, including the electronic submission of certified payroll records if mutually acceptable to OLSE and the applicable party (i.e., Buyer, Contractor, or Subcontractor, as applicable).

Buyer shall include, and shall require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Buyer's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Rate of Prevailing Wages, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call OLSE at 415-554-6235.

(c) At Closing, Buyer and City shall record against the Property in the Official Records of San Francisco a declaration in the form attached as Exhibit D (the "**Project Declaration**"). On Buyer's receipt of a final certificate of occupancy for a Housing Project (a "**Completion Certificate**"), Buyer shall deliver a copy of the Completion Certificate to OEWD and OLSE, together with any documents or material not previously delivered to confirm Buyer's satisfaction of the Local Hiring Requirements and the Prevailing Wage Requirements. The Project Declaration shall automatically terminate on the fourth (4<sup>th</sup>) anniversary of the date of the Completion Certificate. If Buyer decides to build something other than a Housing Project on the Property, receives a final certificate of occupancy for such alternative project, and delivers a copy of such certificate to City's Director of Property, City's Director of Property shall execute and deliver to Buyer a release of the Project Declaration in the form attached as Exhibit B to the Project Declaration (the "**Release of Declaration**"). The Project Declaration shall continue and remain in full force and effect at all times with respect to the Former Street Property until the earlier to occur of the fourth (4<sup>th</sup>) anniversary of the date of the Completion Certificate and the date that OEWD delivers the Release of Declaration to Declarant.

Intentionally Omitted.

### **3.3 Reservation of Easements**

### **3.4 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.

**(5) The Leases and the Contracts, as defined in Section 5.1, and all matters in connection therewith, including, without limitation, the ability of the tenants to pay the rent under the Leases.]**

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

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

#### **4.2 Property Disclosures**

#### **4.3 Entry and Indemnity**

In connection with any entry by Buyer or its Agents onto the Property, 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 Property and otherwise in a manner and on terms and conditions acceptable to City. All entries by Buyer or its Agents onto the Property to perform any testing or other investigations which could affect the physical condition of the Property (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 in the form of Exhibit Hattached hereto. 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 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 in connection with any entry onto or testing of the Property.

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 Property 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 Property 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 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, 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 (i) Buyer's and its Agents and customer's past, present and future use of the Property, (ii) the physical, geological or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property, and (iii) 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.), 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**

(a) None.

### **5.2 Contingency Period**

None.

### **5.3 City's Condition Precedent**

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

(a) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct.

(b) A resolution approving and authorizing the transactions contemplated hereby and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, shall have been adopted by the City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted on or before \_\_\_\_\_, 20\_\_\_\_.

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

### **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 hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 10.4 [Authority of Buyer] or as otherwise expressly provided herein.

## **6. ESCROW AND CLOSING**

### **6.1 Escrow**

Within three(3) days after the parties hereto 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 hereby. 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 hereunder 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 the date which is Thirty (30) days after the expiration of the Contingency Period and enactment of the Board of Supervisor's ordinance 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.

### **6.3 Deposit of Documents**

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

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

(ii) a duly executed counterpart of the Project Declaration;

(iii) a duly executed counterpart of the Bill of Sale covering the Personal Property, in the form attached hereto as Exhibit E;

(iv) four (4) duly executed counterparts of an Assignment and Assumption of Leases in the form attached hereto as Exhibit F (the "Assignment of Leases"); and

(v) four (4) duly executed counterparts of as Assignment and Assumption of Contracts in the form attached hereto as Exhibit G (the "Assignment of Contracts").

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

(i) the funds necessary to close this transaction;

(ii) a duly executed counterpart of the Project Declaration;

(iii) a duly executed counterpart of the Bill of Sale;

and (iv) four (4) duly executed counterparts of the Assignment of Leases;

(v) four (4) duly executed counterparts of the Assignment and Assumption of Contracts.

(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.

(d) City shall deliver to Buyer originals (or to the extent originals are not available, copies) of the Leases, and copies of the tenant correspondence files) for the three (3) most recent years of City's ownership of the Property only), and originals (or to the extent originals are not available, copies) of any other items which City is required to furnish Buyer copies of or make available at the Property pursuant to Section 2 above, within five (5) business days after the Closing Date. City shall deliver to Buyer a set of keys to the Property on the Closing Date.

#### 6.4 Prorations

**[Rents, including, without limitation, percentage rents, if any, and any additional charges and expenses payable under the Leases, all as and when actually collected (whether such collection occurs before, on or after the Closing Date); any real property taxes and assessments; water, sewer and utility charges; amounts payable under any service contracts; annual permits and/or inspection fees (calculated on the basis of the period covered); and]** any other expenses normal to the operation and maintenance of the Property, shall all 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. Any delinquent rents collected after the Closing shall be paid immediately to City. **[Buyer shall use all reasonable efforts to collect such delinquent rents; provided, however, City reserves its right to sue a tenant under its Lease for damages suffered by City as a result of such tenant's failure to pay any rents to City which were payable prior to the Closing Date so long as such a suit does not seek a termination of such tenant's Lease].** The amount of any security deposits received by City and not applied against tenants' obligations under the Leases shall be credited against the Purchase Price. The Purchase Price shall be increased by the amount of any utility deposits paid by City with respect to the Property. City and Buyer hereby 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 Property. 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 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, the Title Company shall return the Deposit to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or otherwise expressly provided herein. 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 hereunder 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 any transfer taxes applicable to the sale, personal property taxes, escrow fees and recording charges and any other costs and charges of the escrow for the sale.

### **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 transactions 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, any and 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.

(a) City acknowledges that: (i) prior to the Effective Date, it entered into a written agreement with Colliers International CA, Inc. that provides for real estate brokerage

services in connection with the marketing and sale of the Property and (ii) City shall be solely responsible for any compensation, commission, or finder's fee payable to Colliers International CA, Inc. in connection with the purchase transaction contemplated by this Agreement.

(b) Buyer acknowledges that: (i) prior to the Effective Date, it entered into a written agreement with Jennifer Van Wegen of RAM Real Estate and Properties. that provides for real estate brokerage services in connection with Buyer's proposed acquisition of the Property and (ii) Buyer shall be solely responsible for any compensation, commission, or finder's fee payable to Jennifer Van Wegen of RAM Real Estate and Properties in connection with the purchase transaction contemplated by this Agreement.

**9. LIQUIDATED DAMAGES**

**IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO THE FAILURE OF ANY CONDITION PRECEDENT OR CITY'S DEFAULT HEREUNDER AND BUYER IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL RETURN THE DEPOSIT TOGETHER WITH ACCRUED INTEREST THEREON TO BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER AND CITY IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL DELIVER THE DEPOSIT 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 THE DEPOSIT 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 notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

BUYER:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Re: **Mackin Ranch, 7484 Sheridan**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Road, Sunol**

with a copy to:

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Re: **Mackin Ranch, 7484 Sheridan Road,  
Sunol**

or such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

**10.2 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators and assigns. Buyer's rights and obligations hereunder 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 hereunder.

**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 consists of two individuals. 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 herein 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 consists of two individuals. 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 the 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 the 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 any and 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 herein 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 herein, 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 herein. 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 herein. 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 any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder,

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 herein.

#### **10.12 No Merger**

The obligations contained herein shall not merge with the transfer of title to the Property 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 the 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 the City for the selling or leasing of any land or building to or from the 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) the 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 the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Buyer hereby acknowledges that the City may disclose any records, information and materials submitted to the 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 herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact an ordinance approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

#### **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 June 6, 2017.

#### **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 TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER 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 TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE **[OR 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:

SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

By: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager  
Date: \_\_\_\_\_

BUYER:

\_\_\_\_\_  
\_\_\_\_\_

TIMOTHY SU, an individual

\_\_\_\_\_

LAN FONG CHEN, and individual

APPROVED BY

PUBLIC UTILITIES COMMISSION

Pursuant to Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
\_\_\_\_\_

Secretary

APPROVED BY BOARD OF  
SUPERVISORS

By Resolution No. \_\_\_\_\_

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
[NAME OF DEPUTY]  
Deputy City Attorney

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

**EXHIBIT B**

**EXHIBIT C**

**QUITCLAIM DEED**

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

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

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Address: \_\_\_\_\_

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

Block \_\_\_\_\_, Lot \_\_\_\_\_

Documentary Transfer Tax of \$\_\_\_\_\_ based upon full market value of the property without deduction for any lien or encumbrance

**QUITCLAIM DEED [WITH RESTRICTIONS  
AND EASEMENT RESERVATIONS]  
[(Assessor's Parcel No. \_\_\_\_\_)]**

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), 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 \_\_\_\_\_, any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof.

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

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
[NAME OF DEPUTY]  
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: \_\_\_\_\_  
[NAME]  
City Engineer

**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 San Francisco     )

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)

**EXHIBIT D**  
**PROJECT DECLARATION**



**EXHIBIT E**

**BILL OF SALE**

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), does hereby sell, transfer and convey to \_\_\_\_\_, a \_\_\_\_\_ ("Buyer"), the personal property described in the attached Schedule 1 and used in connection with the operation of that certain real property located at \_\_\_\_\_, San Francisco, California.

WITHOUT LIMITING ANY OF THE PROVISIONS OF THE AGREEMENT OF PURCHASE AND SALE BETWEEN CITY AND BUYER, BUYER ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING SUCH PERSONAL PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY, ITS AGENTS, EMPLOYEES OR OFFICERS, AS TO ANY MATTERS CONCERNING SUCH PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
[NAME OF DEPUTY]  
Deputy City Attorney

**EXHIBIT F**

**ASSIGNMENT AND ASSUMPTION OF LEASE(S)**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE(S) (this "Assignment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignor") and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the date (the "Conveyance Date") City conveys title to that certain real property commonly known as \_\_\_\_\_ (the "Property"), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under certain lease(s) executed with respect to the Property as more fully described in Schedule 1 attached hereto (collectively, the "Lease(s)").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

As of the Conveyance Date, Assignor hereby agrees to indemnify, defend and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating prior to the Conveyance Date and arising out of the landlord's obligations under the Lease(s).

As of the Conveyance Date, Assignee hereby assumes all of the landlord's obligations under the Leases and agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), originating on or subsequent to the Conveyance Date and arising out of the landlord's obligations under the Lease(s).

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 hereunder, 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 and 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.

This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

This Assignment shall be governed by and construed in accordance with the laws of the State of California and City's Charter.

This Assignment 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.

Assignor and Assignee have executed this Assignment as of the day and year first written above.

ASSIGNEE:

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

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

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

ASSIGNOR:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
[NAME OF DEPUTY]  
Deputy City Attorney

**EXHIBIT G**

**ASSIGNMENT AND ASSUMPTION OF CONTRACT(S)**



**MEMORANDUM**

**DATE:** May 24, 2016

**TO:** Rosanna Russell, Director, SFPUC Real Estate Services

**FROM:** Irina Torrey, Bureau Manager  
 SFPUC Bureau of Environmental Management

**SUBJECT:** Proposed Sale of Underutilized Property at 7484 Sheridan Road (Mackin Ranch), Sunol, Alameda County, CA, Assessor's Parcel Number: 096-0001-020-0

**cc:** Janice Levy, Project Manager, SFPUC Real Estate Services  
 Lindsay Revelli, Environmental Project Manager, SFPUC Bureau of Environmental Management

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The San Francisco Public Utilities Commission ("SFPUC") proposes to sell underutilized property at 7484 Sheridan Road (Mackin Ranch), Sunol, Alameda County, CA, Assessor's Parcel Number: 096-0001-020-0 ("Property"), which is no longer needed to carry out the core mission of the SFPUC. This surplus Property consists of approximately 84 acres of real property, just west of Calaveras Road in Sunol. The SFPUC advertised and proposes to sell the Property to the highest bidder in accordance with Chapter 23 of the San Francisco Administrative Code. Approval of the sale would be conducted at a public hearing of the SFPUC Commissioners and is subject to a General Plan Referral.

The SFPUC's Bureau of Environmental Management has determined that SFPUC's action in disposing of this Property has no potential to result in a physical change in the environment or a reasonably foreseeable indirect physical change in the environment because the Property would be sold "as-is". Any future proposal by the entity that purchases the Property to develop or redevelop the site would be subject to CEQA review by the Alameda County Community Development Agency's Planning Department, and any environmental effects of this development would be addressed through that process. Therefore, the Bureau of Environmental Management under its delegation authority with the San Francisco Planning Department has concluded the proposed sale does not meet the definition of a "project" under CEQA Guidelines Section 15378.

- Edwin M. Lee**  
Mayor
- Anson Moran**  
President
- Ike Kwon**  
Vice President
- Ann Moller Caen**  
Commissioner
- Francesca Vietor**  
Commissioner
- Vince Courtney**  
Commissioner
- Harlan L. Kelly, Jr.**  
General Manager

