

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

by and between

SUNOL GLEN UNIFIED SCHOOL DISTRICT,  
a California Unified School District,  
as Seller,

and

CITY AND COUNTY OF SAN FRANCISCO,  
a California municipal corporation, by and through its Public Utilities Commission,  
as Buyer,

for the purchase and sale of

one permanent water pipeline easement and one temporary construction easement  
over, upon and across a portion of  
Assessor's Parcel 096-0155-004-01

located in the unincorporated town of Sunol,  
County of Alameda, State of California.

\_\_\_\_\_, 2024

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LIST OF EXHIBITS

- EXHIBIT A**      Description of Seller’s Property
- EXHIBIT B**      Easement Deed for Permanent Water Utility Easement with attached legal description and depiction of Easement Area to be conveyed thereby.
- EXHIBIT C**      Easement Deed for Temporary Construction Easement with attached legal description and depiction of Easement Area to be conveyed thereby.
- EXHIBIT D**      Certificate of Transferor Other Than An Individual (FIRPTA Affidavit)

## AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of \_\_\_\_\_, 202\_\_, is by and between the SUNOL GLEN UNIFIED SCHOOL DISTRICT, a California Unified School District (“**Seller**”), and the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation (“**City**”), by and through its Public Utilities Commission (“**SFPUC**”). Seller and City sometimes are referred to collectively in this Agreement as the “**Parties**” or singularly as a “**Party**.”

### RECITALS

**A.** Seller owns the real property located at 11601 Main Street, Sunol, California 94568 and commonly known as Assessor’s Parcel 096-0155-004-01 and more particularly described in the attached **Exhibit A** “**Seller’s Property**.”

**B.** In connection with the SFPUC Town of Sunol Pipe Replacement Project, City wishes to purchase, and Seller has agreed to sell, those certain easement interests described below in Section 1.1 [Purchase and Sale of Easements] (each, an “**Easement**” and collectively, the “**Easements**”) to City in, on, over, under, upon, along, and/or across certain portions of Seller’s Property (“**Easement Area**”) in accordance with, and pursuant to, the terms and conditions of this Agreement.

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

### 1. PURCHASE AND SALE

#### 1.1. Purchase and Sale of Easements

Seller will sell and convey the Easements to City by duly executed and acknowledged easement deeds in the forms attached as **Exhibits B and C** (each, a “**Deed**” and collectively, the “**Deeds**”), subject to the terms, covenants, and conditions hereinafter set forth.

(1) a permanent nonexclusive subsurface easement and nonexclusive surface easement for water pipeline purposes (the “**Pipeline Easement**”) under, across, in, and upon a portion of Seller’s Property; and

(2) a temporary construction easement (the “**TCE**”) on, over, across, in and upon two portions of Seller’s Property.

#### 1.2. Easement Areas; Nature of Easements

The Easement Areas are described and depicted in the exhibits to the Deeds. The nature, scope, and conditions of the Easements are set forth in the Deeds with respect to each Easement.

## 2. PURCHASE PRICE

### 2.1. Purchase Price

(1) The purchase price for the Pipeline Easement is TWENTY FOUR THOUSAND FORTY EIGHT AND NO 1/100 DOLLARS (\$24,048.00).

(2) The purchase price for the TCE is TEN THOUSAND FIVE HUNDRED SIXTY FIVE AND NO 1/100 DOLLARS (\$10,565.00).

Accordingly, the total rounded purchase price for the Easements is THIRTY FIVE THOUSAND AND NO 1/100 DOLLARS (\$35,000.00) (the “**Purchase Price**”).

### 2.2. Payment

On the Closing Date (defined in Section 5.3 [Closing Date] below), City will pay the Purchase Price, adjusted pursuant to the provisions of Section 6 [Expenses; Closing Costs] below, and reduced by any credits due City under this Agreement.

### 2.3. Funds

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

## 3. CONVEYANCE OF EASEMENTS

### 3.1. Easement Deeds

At the Closing (defined in Section 5.1 [“Closing” Defined] below), Seller will convey to City marketable and insurable title to the Easements by delivery of the Deeds, duly executed and acknowledged in the forms attached as Exhibits B and C, free and clear of all exceptions, liens, and encumbrances except solely for the Accepted Conditions of Title (defined in Section 3.2 [State of Title] below). The Deeds will be executed and delivered to the Title Company in a recordable form and the Title Company will record the Deeds in the Official Records of Alameda County.

### 3.2. State of Title

“Accepted Conditions of Title” will mean (a) the lien of real property taxes, not yet due or payable; and (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. As a condition precedent to City’s obligation to purchase, quitclaim deeds, a spousal waiver, lender’s consents or subordinations, tenants’ consents, or similar releases sufficient to clear or subordinate any possessory rights over the Easement Areas may be required, at City’s election, each in a form approved by City. Seller will secure any such waiver quitclaim deeds, consents, subordinations, or releases.

### 3.3. Title Insurance

Delivery of title in accordance with the preceding Section will be evidenced by the commitment of the Title Company (defined in Section 5.2 [Escrow; Closing Without an Escrow ] below) to issue to City an CLTA owner's policy of title insurance ("**Title Policy**") in the amount of the Purchase Price, insuring title to the Easements vested in City, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, rights of tenants or other occupants, and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title. The Title Policy will provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair, or alteration of the Easements, shall delete any required arbitration provision, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Easements and will contain such special endorsements as City may reasonably request.

## 4. CONDITIONS TO CLOSING

### 4.1. City's Conditions to Closing

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

(a) City will have reviewed and approved title to the Property, and accepts all conditions of title.

(b) City's review and approval that the physical condition of all portions of the Easement Areas are substantially the same on the Closing Date (defined in Section 5.3 [Closing Date] below) as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9 [Risk of Loss] below), and as of the Closing Date there will be no litigation or administrative agency or other governmental proceeding, pending, or threatened, that after the Closing could materially adversely affect the value of the Easements or City's ability to use all portions of the Easement Areas for their respective intended use, and no proceedings will be pending or threatened that could or would cause the change, re-designation, or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any portion(s) of the Easement Areas.

(c) Seller will have delivered signed originals of any documents required under Section 3.2 [State of Title] above, and, unless the Parties elect to consummate the transaction without an escrow, Title Company will be committed at the Closing to issue to City the Title Policy (defined in Section 3.3 [Title Insurance] above).

(d) City's review and approval of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(e) The transactions contemplated by this Agreement will have been approved by all applicable City departments and agencies, including the San Francisco Public Utilities Commission, at their respective sole discretion, within ninety (90) days after Seller executes and delivers this Agreement to City.

(f) If required by City's Charter, City's Mayor and the Board of Supervisors, each at their sole discretion, will have enacted a resolution approving, adopting, and authorizing

this Agreement and the transactions contemplated by this Agreement, within one hundred twenty (120) days after Seller executes and delivers this Agreement to City.

(g) Seller will have delivered the items described in Section 5.4 [Seller's Delivery of Documents] below on or before the Closing (defined in Section 5.1 ["Closing" Defined] below).

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

If the sale of the Easements is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, at City's sole election City may either (i) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal, and inspection fees incurred by City and any other expenses incurred by City in connection with the performance of its due diligence review of Seller's Property, and neither Party will have any further rights or obligations under this Agreement, or (ii) elect to proceed with Closing of the Easements with respect to which all Conditions Precedent have been waived by City or satisfied.

#### **4.2. Cooperation with City**

Seller will cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including execution of any documents, applications, or permits, but Seller's representations and warranties to City will not be affected or released by City's waiver or fulfillment of any Condition. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

### **5. ESCROW AND CLOSING; POSSESSION**

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

The consummation of the purchase and sale transaction contemplated by this Agreement ("Closing") will occur as provided in this Section 5.



## 5.2. Escrow; Closing Without an Escrow

(a) Unless the Parties agree to consummate the purchase and sale without an escrow as provided in subparagraph (b) below: (i) on or before the Effective Date (defined in Section 12.17 [General Provisions] below), the Parties will open escrow by depositing an executed counterpart of this Agreement with Chicago Title Company at its offices at One Embarcadero Center, Suite 250, San Francisco, California 94111 (“**Title Company**”); (ii) this Agreement will serve as instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby; (iii) Seller hereby authorizes City to prepare and submit supplemental escrow instructions on behalf of both Parties, as needed, to enable the Title Company to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control and (iv) the Closing will be held and delivery of all items to be made at the Closing under this Agreement will be made at the Title Company’s offices.

(b) Notwithstanding the foregoing, the Parties may elect by mutual agreement to consummate the purchase and sale without an escrow, in which event the Closing will occur as described in Section 5.7(b) [Closing Without Escrow] below.

## 5.3. Closing Date

The Closing will occur one hundred and twenty days (120) days after the Effective Date or on such earlier date as City and Seller may mutually agree (“**Closing Date**”), subject to the provisions of Section 4 [Conditions to Closing] above. The Closing Date may not be extended without the prior written approval of both Parties, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date and the Parties have deposited documents or funds in escrow, Title Company will, unless it is notified by both Parties to the contrary within five (5) business days after the Closing Date, return such items to the depositor thereof. Any such return shall not, however, limit the provisions hereof or otherwise relieve either Party of any liability it may have for its wrongful failure to close.

## 5.4. Seller’s Delivery of Documents

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

(i) a duly executed and acknowledged Deed for each Easement to be acquired;

(ii) such resolutions, authorizations, or other documents as Seller deems necessary or City may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated by this Agreement, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

(iii) any documents needed in order to eliminate title exceptions other than Accepted Conditions of Title;

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

(v) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached as **Exhibit D**, and on which City is entitled to rely, that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Tax Code; and

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

(b) Seller will deliver such items to City through escrow, unless the Parties elect to close the transaction without an escrow in which event Seller will deliver the items directly to City for a Closing in accordance with Section 5.7(b) [Closing Without Escrow] below.

### **5.5. City’s Delivery of Documents and Funds**

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

(i) a certificate of acceptance, executed by City’s Director of Property or Acting Director of Property, to be attached to each Deed before recording;

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

(iii) funds sufficient to pay City’s share of expenses under Section 6 [Expenses; Closing Costs] below; and

(iv) the Purchase Price, as provided in Section 2 [Purchase Price] above.

(b) City will deliver such documents and funds through escrow; however, if the Parties elect to consummate the transaction without an escrow, City will deliver the funds and documents as provided in Section 5.7(b) [Closing Without Escrow] below.

### **5.6. Other Documents; Cooperation**

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

## 5.7. Closing

**(a) Closing through Escrow.** Subject to Section 5.7(b) [Closing Without Escrow] below, at Closing, provided all the conditions to the Parties' obligations have been satisfied or waived as provided and permitted by this Agreement, Title Company will perform the following acts in the following order:

**(i)** Perform such acts as are necessary in order to deliver title to City subject only to the Accepted Conditions of Title, including recording any deed of reconveyance, subordination agreement, or other documentation as specified in supplemental escrow instructions submitted by City before Closing;

**(ii)** Record the Deeds, duly executed and acknowledged by Seller, in the Official Records of Alameda County;

**(iii)** Deliver to Seller, or as Seller may instruct, the Purchase Price, less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations under Section 6 [Expenses; Closing Costs] below;

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

**(v)** Deliver to the appropriate person or entity any other documents, instruments, and sums required by this Agreement.

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

**(i)** City will: **(A)** deliver to Seller, or as Seller may instruct, the Purchase Price (less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations, if applicable, under Section 6 [Expenses; Closing Costs] below, and **(B)** cause the certificates of acceptance for the Deeds to be executed, when:

**(1)** City has received Seller's documents in accordance with Section 5.4 [Seller's Delivery of Documents] above, and

**(2)** City has received all the Deeds conveying the Easements to City duly acknowledged and in a recordable form, subject only to the Accepted Conditions of Title, obtain the Title Policy (if City elects to do so), and deliver to the appropriate person or entity any other documents, instruments, and sums required by this Agreement.

## 5.8. Possession and Use

Subject to the provisions of the Deed, the right of possession and use of the Easement Areas by City and/or its designees will commence on the Closing Date.

## **6. EXPENSES; CLOSING COSTS**

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

City will pay all escrow and recording fees, the premium for the Title Policy and the cost of the endorsements thereto, and Seller's administrative fee in the amount of \$5,000.

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

Seller will pay all costs incurred in connection with the prepayment or satisfaction of any loan, bond, or other indebtedness secured in whole or part by any portion of the Easement Areas including any prepayment or delinquency fees, penalties, or charges. Seller also will pay at the Closing any delinquent taxes that may have become a lien against Seller's Property.

### **6.3. Other Expenses**

Any other costs and charges of the escrow not otherwise provided for in this Section or elsewhere in this Agreement will be allocated in accordance with the closing customs for Alameda County, as determined by Title Company.

### **6.4. Post-Closing Reconciliation**

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall pay such sum to the other party.

### **6.5. Survival**

The provisions of this Section will survive the Closing.

## **7. REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to and covenants with City as follows:

**(a) Ownership of Property.** Although Seller is obligated to sell Seller's Property to City, Seller is now the sole fee owner of Seller's Property, and will own it at the time of the Closing, free and clear of all liens, leases, occupancy agreements, claims, encumbrances, easements, and rights of way of any nature (whether disclosed in the public record or not), except only the Accepted Conditions of Title and City's rights to acquire the Seller's Property as set forth in this Agreement.

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

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

**(d) No Property Defects or Legal Violations.** To the best of Seller's knowledge, there are now, and at the time of the Closing will be, no material physical defects of any portion of the Easement Areas, and no violations of any laws, rules, or regulations applicable to any portion of the Easement Areas.

**(e) No Omission of Facts.** No document or instrument furnished or to be furnished by the Seller 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.

**(f) No Impediments to Use.** Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using the Easements after Closing in the normal manner as described in, and intended by the Parties to, the Deeds. Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation, or value of the Property.

**(g) Validity of Seller Representations.** Seller is a non-profit benefit corporation duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

**(h) Seller Not a "Foreign Person".** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

**(i) No Lawsuits.** There are no lawsuits or proceedings pending or, to the best of Seller's knowledge, threatened against or affecting Seller, Seller's Property, or its use that would affect Seller's ability to consummate the sale contemplated by this Agreement or City's use and enjoyment of the Easements after the Closing.

**(j) No Known Hazardous Materials.** To the best of Seller's knowledge, there has been no release and there is no threatened release of any Hazardous Material in, on, under, or about Seller's Property. As used herein, "**Hazardous Material**" will mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "**Release**" or "**threatened release**" when used with respect to Hazardous Material will include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under, or about the Easement Areas. Release will include "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

## **8. INDEMNITY**

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents (defined in Section 12.8 [Parties and Their Agents; Approvals] below) and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section shall survive beyond the Closing, or beyond any termination of this Agreement.

## **9. RISK OF LOSS**

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

## **10. MAINTENANCE**

Between the date of Seller's execution of this Agreement and the Closing, Seller will maintain Seller's Property in its current condition and will make, at Seller's expense, all repairs necessary to maintain Seller's Property in such condition. Seller will make no changes to the Easement Areas without City's prior, written consent, which will not be unreasonably withheld or delayed.

## **11. DISMISSAL OF EMINENT DOMAIN ACTION**

Seller hereby agrees and consents to the dismissal of any pending action in eminent domain by City as to Seller's Property or any portion thereof and Seller also waives all claims to court costs and any money that may now be on deposit in the Superior Court in such action.

## 12. GENERAL PROVISIONS

### 12.1. Notices

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

City:

To: General Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13<sup>th</sup> Floor  
San Francisco, California 94102

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

with copy to: Anna Parlato Gunderson  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

Seller:

To: Molleen Barnes, Superintendent  
Sunol Glen Unified School District  
11601 Main Street  
Sunol, CA 94586

A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon the confirmed date of delivery, or rejected delivery. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one Party to the other will 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 will 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.

### 12.2. Brokers and Finders

Neither Party has had any contact or dealings regarding the Easements, or any communication in connection with the subject matter of this Agreement, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated by this Agreement. In the event that any broker or finder

perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes his or her claim will be responsible for such commission or fee and will indemnify and hold harmless the other Party from all claims, costs, and expenses (including reasonable attorneys' fees and disbursements) incurred by the indemnified Party in defending against the same. The provisions of this Section will survive the Closing.

### **12.3. Successors and Assigns**

This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, administrators, and assigns.

### **12.4. Amendments; Waivers**

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

### **12.5. Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective Parties contained in, or made in writing pursuant to, this Agreement are intended to be, and will remain, true and correct as of the Closing, will be deemed to be material, and, together with all conditions, covenants, and indemnities made by the respective Parties contained in this Agreement or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), will survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated by this Agreement will constitute representations and warranties under this Agreement.

### **12.6. Governing Law**

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

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum.



### **12.7. Merger of Prior Agreements; No Inducement**

The Parties intend that this Agreement (including all of the attached exhibits and schedules and any documents specifically described in this Agreement, which are hereby incorporated into this Agreement by reference) will be the final, complete, and exclusive expression of their agreement with respect to the subject matter of this Agreement and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The Parties further intend that this Agreement will constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including term sheets and prior drafts or changes to such drafts) may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement. The Parties' making, execution, and delivery of this Agreement has been induced by no representations, statements, warranties, or agreements other than those expressed in this Agreement.

### **12.8. Parties and Their Agents; Approvals**

The term "Seller" as used in this Agreement will include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller will be joint and several. As used herein, the term "Agents" when used with respect to either Party will include the agents, employees, officers, contractors, and representatives of such Party. Subject to applicable law, all approvals, consents, or other determinations permitted or required by City under this Agreement will be made by or through the General Manager of City's Public Utilities Commission or City's Director of Property or Acting Director of Property, unless otherwise provided in this Agreement.

### **12.9. Interpretation of Agreement**

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and will not affect the meaning or interpretation of any provision contained in this Agreement. Whenever the context so requires, the use of the singular will be deemed to include the plural and vice versa, and each gender reference will 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 his Agreement. In addition, each Party has been represented or had the opportunity to be represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. Use of the word "including" or similar words will not be construed to limit any general term, statement, or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used. The provisions of this Agreement will be interpreted in a reasonable manner to affect the purposes of the Parties and this Agreement.

### **12.10. Seller Tax Obligations**

Seller acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code ("Delinquent Payment"). If, under that authority, any payment City is required to make to Seller under this Agreement is

withheld because Seller owes the City a Delinquent Payment, then City will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Seller, without interest, late fees, penalties, or other charges, upon Seller coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

#### **12.11. Severability**

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

#### **12.12. Sunshine Ordinance**

Seller understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City under this Agreement are public records subject to public disclosure. Seller hereby acknowledges that City may disclose any records, information, and materials submitted to City in connection with this Agreement.

#### **12.13. Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, 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 that would constitute a violation of those provisions, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller will immediately notify City.

#### **12.14. Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller 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 any department of 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 twelve (12) months after the date the contract is approved. Seller 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 \$100,000 or more. Seller further acknowledges that the (i) prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in

the contract; and any committee that is sponsored or controlled by Seller; and **(ii)** within thirty (30) days of the submission of a proposal for the contract, the City department with whom Seller is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Seller certifies that Seller has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

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

#### **12.16. Counterparts**

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

#### **12.17. Effective Date**

As used in this Agreement, the term “**Effective Date**” will mean the date on which the execution and delivery of this Agreement by both Parties is concluded and the transactions contemplated by the Agreement will have been authorized **(a)** in a manner required by law governing Seller, **(b)** by a duly adopted resolution of the San Francisco Public Utilities Commission, and **(c)** if required by City’s Charter, by a duly adopted resolution of City’s Board of Supervisors and Mayor.

#### **12.18. Cooperative Drafting**

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

#### **12.19. Release of Claims**

Seller, for itself, its agents, heirs, assigns, successors in interest, and any related or affiliated entities, hereby, following execution of this Agreement by the Parties, fully releases and discharges City, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, expenses, liabilities, and demands, including any claim arising out of or pertaining to, directly or indirectly, the acquisition or use of the property interest described in this Agreement and/or the construction of any improvements thereon, including inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of

any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic, and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

Seller acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release, Seller expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

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

If this Agreement is terminated prior to Closing, this Section 11.18 will have no force or effect.

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

*[Signatures on next page]*

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

SELLER:

SUNOL GLEN UNIFIED SCHOOL DISTRICT,  
a California Unified School District

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
DENNIS J. HERRERA  
General Manager  
San Francisco Public Utilities Commission

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

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Anna Parlato Gunderson  
Deputy City Attorney

TITLE COMPANY'S ACKNOWLEDGMENT

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

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement. Title Company's failure to execute below will not invalidate the Agreement between the Parties.

TITLE COMPANY:

CHICAGO TITLE COMPANY

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

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

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

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

## **EXHIBIT A**

### **Description of Seller's Property**

All that real property situate in the Town of Sunol, County of Alameda, State of California, being Assessor's Parcel Number 96-155-4-1, being three adjoining parcels describe in the following three documents file in Official Records of the Office of the Recorder, County of Alameda, State of California:

1. The Exchange Deed from the City and County of San Francisco to the Sunol Glen School District of Alameda County, Recorded January 30, 1964 in Book 1110 of Official Records, at Page 14;
2. The Final Order of Condemnation, Recorded December 01, 1955 in Book 7863 of Official Records, at Page 465;
3. That certain document Recorded July 27, 1965 in Book 1560 of Official Records, at Page 609.

**EXHIBIT B**

**Form of Pipeline Easement Deed**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

With a copy to:

San Francisco Public Utilities Commission  
Real Estate Services Division  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director

And to:

Sunol Glen School  
11601 Main Street  
Sunol, California 94568  
Attn: Superintendent

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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

**EASEMENT DEED**  
(Water Utility Easement)

(Portion of Assessor's Parcel 096-0155-004-01)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SUNOL GLEN UNIFIED SCHOOL DISTRICT, a California Unified School District ("**Grantor**"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**Grantee**"), an easement for water pipes or pipelines and related appurtenances thereto (the "**Easement**") in, under, upon, along, and/or across a portion of Grantor's real property located in the Town of Sunol, County of Alameda, State of California, more particularly described on the attached **Exhibit A** and depicted on the attached **Exhibit B** (the "**Easement Area**"). The Easement Area is appurtenant to Grantee's adjoining real property.

Grantor will retain such rights and privileges to use the Easement Area as are not inconsistent with this Easement, subject to the conditions, covenants, and restrictions in this Deed. Grantor will not do or allow anything in, on, under, or about the Easement Area that could damage or interfere with Grantee's Facilities (as defined in Section 1 [Nature of Easement]).



**1. Nature of Easement.** The Easement is a perpetual, nonexclusive easement in gross for purposes of accessing, constructing, reconstructing, removing, replacing, enlarging, decreasing, maintaining, repairing, operating, inspecting, and using one or more water pipes or pipelines, with all necessary braces, footings, connections, valves, fastenings, foundation sites, and other appliances and fixtures (collectively, “**Grantee’s Facilities**”) in, on, under, upon, along, and across the Easement Area. The Easement includes the right of ingress and egress, and emergency access to the Easement Area over and across adjacent lands of Grantor, over any available roadways, or such routes as may be agreed upon by Grantor and Grantee, to the extent Grantor has rights to grant such rights, and to the extent necessary for the convenience of Grantee in the enjoyment of its rights under this easement deed (“**Deed**”). Grantee is also granted the right to clear obstructions and vegetation from the Easement Area as may be required for the proper use of the other rights granted under this Deed. Grantee’s rights under this Deed may be exercised by Grantee’s agents, contractors, subcontractors, suppliers, consultants, employees, licensees, invitees, or representatives, or by other authorized persons acting for or on behalf of Grantee (collectively, “**Agents**”).

**2. Subject to Superior and Prior and Existing Rights.**

(a) The rights granted by this Deed are subject to any prior and existing recorded property rights of third parties, if any. Grantee will be solely liable for the interference with any prior and existing third-party rights. Grantor reserves the right to grant, at its sole and absolute discretion, nonexclusive rights to other third parties within the Easement Area, provided that any such grants will not require Grantee to relocate or remove Grantee’s Facilities or unreasonably restrict or interfere with Grantee’s rights to access, construct, reconstruct, remove, replace, maintain, repair, operate, inspect, and use Grantee’s Facilities.

(b) If Grantor or any of its agents propose or permit excavation or the installation or placement of any improvements by or on behalf of Grantor in, under, across, or above the surface of the Easement Area, prior to any such excavation, installation or placement: (i) Grantor will provide, or cause to be provided, to Grantee such plans and other pertinent documents related to such proposed excavation or improvements as are reasonably requested by Grantee, at the address for Grantee set forth in Section 9 [Notices] below, to provide Grantee an opportunity to review and comment on the proposed excavation or improvements; (ii) Grantor will obtain Grantee’s written approval of the plans and specifications for any such proposed excavation, installation or placement, which approval may be reasonably conditioned but will not be unreasonably withheld or delayed; (iii) Grantor will contact Underground Service Alert, ensure that the utilities are physically marked in the field, and provide that information to the Grantee prior to commencing any work in the Easement Area; and (iv) such excavation, installation or placement will be performed in a manner that does not endanger or damage any then-existing Grantee’s Facilities within the Easement Area.

**3. Maintenance of Improvements.** Grantee shall be solely responsible for repairing and maintaining all of Grantee’s facilities placed in, on, or under the Easement Area in good, safe, and secure condition, and Grantor shall have no duty whatsoever for any repair or maintenance of Grantee’s facilities. Grantor shall maintain the surface of the Easement Area, provided that any damage, subsidence, or other injury to the Easement Area to the extent resulting from the presence of Grantee’s facilities or Agents shall be remedied or repaired by Grantee.

**4. Indemnification.** Grantee will indemnify, defend, and hold Grantor harmless from and against any direct injury, loss, damage, or liability, costs, or expenses (including reasonable attorneys’

fees and court costs) resulting from Grantee's use of the Easement Area, except to the extent attributable to the negligent or intentional act or omission of Grantor or its Agents.

**5. Notification.** Grantor and Grantee, and their respective agents and contractors, will not perform, nor permit any person or entity to perform, any excavation work on or about the Easement Area without giving at least thirty (30) days' written notice to the other party in the manner required by Section 9 [Notices] of this Deed (except in emergencies, where each will give prompt written notice).

**6. No Dumping or Hazardous Materials.** Grantor will not cause or permit the dumping or other disposal on or about the Easement Area of refuse, hazardous materials, or other materials that are unsightly or could pose a danger to human health or safety or to the environment.

**7. No Structures.** Grantor will not do or allow anything in, on, under, or about the Easement Area that could cause damage or interference to Grantee's Facilities. Without limiting the foregoing, Grantor agrees that, without Grantee's prior, written consent: **(a)** except as permitted by Section 2 [Subject to Superior and Prior and Existing Rights] above, no structures of any kind or character will be constructed or placed on the Easement Area; **(b)** except as permitted by Section 2 above, no excavation will occur on the Easement Area; and **(c)** no trees or other vegetation that fails to comply with the San Francisco Public Utilities Commission's Vegetation Management Policy (as it may be amended from time to time) will be planted or maintained on the Easement Area.

**8. Run with the Land.** The provisions, covenants, conditions, and restrictions provided in this Deed will be covenants running with the land pursuant to California Civil Code Sections 1468 and 1471 and will burden and benefit every person having an interest in the Easement Area. Any reference to Grantor in this Deed will include Grantor's agents and all successor owners of all or any part of the Easement Area.

**9. Notices.** Notices and other deliveries pursuant to this Deed may be delivered by private messenger service, mail, overnight courier, or delivery service. Any notice or document required or permitted to be delivered by either party will be in writing and will be deemed to be given on the date received by, or on the date receipt was refused by the party; provided, however, that all notices and documents: **(a)** mailed to a party in the United States Mail, postage prepaid, certified mail, return receipt requested, will be deemed to have been received five (5) postal days after mailing; or **(b)** delivered by a nationally recognized overnight courier or delivery service will be deemed received the next business day after deposit with a nationally recognized overnight courier or delivery service for overnight delivery. For all purposes the address of the parties will be the following, unless otherwise changed by the party by notice to the other as provided in this Section:

**To GRANTOR:** Sunol Glen School  
11601 Main Street  
Sunol, California 94568  
Attn: Superintendent

**To GRANTEE:** General Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13th Floor  
San Francisco, California 94102

With a copy to: Real Estate Director  
Real Estate Services Division  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, California 94102  
Email: [RES@sfwater.org](mailto:RES@sfwater.org)

And to: Attn: Real Estate /Finance  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

A properly addressed notice transmitted by one of the foregoing methods will 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 will 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 will 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. Abandonment of Easement.** Grantee may, at its sole option, abandon all or part of the Easement by recording a quitclaim deed. Except as otherwise provided in this Deed, on recording such quitclaim deed, the affected Easement Area and all rights, duties, and liabilities under this Deed with respect to such Easement Area shall be terminated and of no further force or effect. No temporary non-use of the Easement Area or other conduct, except for recordation of the quitclaim deed as provided in this paragraph, shall be deemed abandonment of the Easement.

**11. Restoration.** Upon Abandonment of the Easement as set forth above, at its sole cost and expense, Grantee shall restore, as nearly as reasonably possible, the Easement Area to its condition immediately prior to the commencement of the Work.

**12. Miscellaneous.**

**(a) Entire Agreement.** This Deed is the final expression of and contains the entire agreement between the parties with respect to the matters addressed in this Deed and supersedes all prior understandings with respect to such matters. This Deed may not be modified, changed, supplemented, or terminated, nor may any obligations under this Deed be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted in this Deed. The parties do not intend to confer any benefit under this Deed on any person, firm, or corporation other than the parties to this Deed.

**(b) Partial Invalidity.** If any term or provision of this Deed, or the application thereof, to any person or circumstance will be invalid or unenforceable, to any extent, the remainder of this Deed, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each such term and provision of this Deed will be valid and enforced to the fullest extent permitted by law.

**(c) Waivers.** No waiver of any breach of any covenant or provision of this Deed will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or

provision of this Deed. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

**(d)** Governing Law; Consent to Jurisdiction. The parties to this Deed acknowledge that this Deed has been negotiated and entered into in the State of California and expressly agree that this Deed will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Any legal action or proceeding brought by either party and arising from or in connection with this Deed or any breach of this Deed will be brought in the California Superior Court for the County of Alameda.

*[SIGNATURES ON FOLLOWING PAGE]*

DRAFT

Executed as of this \_\_\_\_ day of \_\_\_\_\_, 202\_.

GRANTOR:

SUNOL GLEN UNIFIED SCHOOL DISTRICT,  
a California Unified School District

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

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

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

ACCEPTED AND AGREED

GRANTEE:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

DENNIS J. HERRERA  
General Manager  
San Francisco Public Utilities Commission

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

Authorized by SFPUC Resolution No. \_\_\_\_\_  
and Board of Supervisors Resolution No. \_\_\_\_\_

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

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

Anna Parlato Gunderson  
Deputy City Attorney

**ACKNOWLEDGMENT**

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

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

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

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

**CERTIFICATE OF ACCEPTANCE**

As required under Government Code Section 27281, this is to certify that the interest in real property conveyed by the Easement Deed dated \_\_\_\_\_, from Sunol Glen Unified School District, a California Unified School District, to the City and County of San Francisco, a municipal corporation (“Grantee”), is hereby accepted by order of its Board of Supervisors’ Resolution No. 18110 (Series of 1939), adopted on August 5, 1957, and approved by the Mayor on August 10, 1957, and its Board of Supervisors' Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, and Grantee consents to recordation thereof by its duly authorized officer.

Dated \_\_\_\_\_, 202\_\_.

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

DRAFT

**Exhibit A to Pipeline Easement Deed**

**Legal Description of Easement Area**

*[see attached]*

DRAFT



**Exhibit B to Pipeline Easement Deed**

**Depiction of Easement Area**

*[see attached]*

DRAFT

**EXHIBIT C**

**Form of TCE Deed**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

With a conformed copy to:

San Francisco Public Utilities Commission  
Real Estate Services Division  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director

And to:

Sunol Glen School  
11601 Main Street  
Sunol, California 94568  
Attn: Superintendent

The undersigned hereby declares this instrument to be exempt  
from Recording Fees (CA Govt. Code § 27383) and  
Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and  
S.F. Bus. & Tax Reg. Code § 1105)

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

**EASEMENT DEED**

(Temporary Construction Easement)

(Portion of Assessor's Parcel 096-0155-004-01)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the SUNOL GLEN UNIFIED SCHOOL DISTRICT, a California Unified School District (“**Grantor**”), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation (“**Grantee**”), a temporary surface easement for construction and access purposes (the “**Easement**”) in, on, over, under, upon, along, and/or across certain portions of Grantor's real property located in the Town of Sunol, County of Alameda, State of California, more particularly described on the attached **Exhibit A** and depicted on the attached **Exhibit B** (the “**Easement Area**”).

**13. Nature of Easement.** The Easement is an exclusive surface easement that shall be used for construction staging and general construction-related activities. Grantee's rights to use any portion of the Easement Area shall include **(a)** the right to store, use, and stage equipment,

vehicles, machinery, tools, materials, supplies, and excavated soils in connection with the construction of Grantee's Regional Groundwater Storage and Recovery Project (the "**Project**"); (b) the right to improve, repair, and maintain the Easement Area, including grading, installation of paving and/or crushed rock, fencing, management of vegetation impinging on the Easement Area; and (c) such other rights as are reasonably necessary for the full enjoyment and accomplishment of the purposes of the Easement. The Easement includes the right of ingress and egress to the Easement Area across adjacent lands of Grantor to the extent Grantor has rights to grant such rights, and to the extent necessary for the convenience of Grantee in the enjoyment of its rights under this Deed. Grantee's rights under this Deed may be exercised by Grantee's agents, utility operators, contractors, subcontractors, suppliers, consultants, employees, licensees, invitees, or representatives, or by other authorized persons acting for or on behalf of Grantee (collectively, "**Agents**").

**14. Term of Easement.** The term of the Easement shall commence on the date (the "**Commencement Date**") on which Grantee's contractor first enters the Easement Area to commence staging in connection with the Work after Grantee's issuance of a Notice to Proceed to the contractor. Grantee shall provide, or cause its contractor to provide, at least thirty (30) days' advance written notice to Grantor of the Commencement Date. At the request of either party, Grantor and Grantee shall confirm in writing the Commencement Date. The Easement shall expire on the last day of the eighteenth (18th) full calendar month after the Commencement Date; however, Grantee shall have the option to extend the term on a month-to-month basis not to exceed an additional six (6) months beyond the original expiration term of the easement. Thirty (30) days' written notice will be given to Grantor if Grantee elects to exercise its option for any such extension. Upon expiration of the extended term, Grantee shall pay Grantor an additional sum for any such extensions at the same rate paid for the initial term (prorated on a monthly basis).

**15. Restoration.** Upon the earlier of expiration of the term of the Easement or Grantee's completion of Project construction, at its sole cost and expense, Grantee shall restore, as nearly as reasonably possible, the surface of the Easement Area to its condition immediately prior to the commencement of the Work.

**16. Indemnification.** Grantee will indemnify, defend, and hold Grantor harmless from and against any direct injury, loss, damage, or liability, costs, or expenses (including reasonable attorneys' fees and court costs) resulting from Grantee's use of the Easement Area, except to the extent attributable to the negligent or intentional act or omission of Grantor or its Agents.

**17. No Dumping or Hazardous Materials.** Grantor will not cause or permit the dumping or other disposal on or about the Easement Area of refuse, hazardous materials, or other materials that are unsightly or could pose a danger to human health or safety or to the environment.

**18. Run with the Land.** The provisions, covenants, conditions, and restrictions provided in this Deed will be covenants running with the land pursuant to California Civil Code Sections 1468 and 1471 and will burden and benefit every person having an interest in the Easement Area. Any reference to Grantor in this Deed will include Grantor's agents and all successor owners of all or any part of the Easement Area.

**19. Notices.** Notices and other deliveries pursuant to this Deed may be delivered by private messenger service, mail, overnight courier, or delivery service. Any notice or document required or permitted to be delivered by either party will be in writing and will be deemed to be

given on the date received by, or on the date receipt was refused by the party; provided, however, that all notices and documents: **(a)** mailed to a party in the United States Mail, postage prepaid, certified mail, return receipt requested, will be deemed to have been received five (5) postal days after mailing; or **(b)** delivered by a nationally recognized overnight courier or delivery service will be deemed received the next business day after deposit with a nationally recognized overnight courier or delivery service for overnight delivery. For all purposes the address of the parties will be the following, unless otherwise changed by the party by notice to the other as provided in this subparagraph:

**To GRANTOR:** Sunol Glen School  
11601 Main Street  
Sunol, California 94568  
Attn: Superintendent

**To GRANTEE:** General Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13th Floor  
San Francisco, California 94102

With a copy to: Real Estate Director  
Real Estate Services Division  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, California 94102  
Email: [RES@sfgwater.org](mailto:RES@sfgwater.org)

And to: Attn: Real Estate /Finance  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

A properly addressed notice transmitted by one of the foregoing methods will 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 will be for convenience of communication only; neither party may give official or binding notice orally or by email or facsimile. The effective time of a notice will not be affected by the receipt, prior to receipt of the original, of an oral notice or an email or telefacsimile copy of the notice.

## **20. Miscellaneous.**

**(e) Entire Agreement.** This Deed is the final expression of and contains the entire agreement between the parties with respect to the matters addressed in this Deed and supersedes all prior understandings with respect to such matters. This Deed may not be modified, changed, supplemented, or terminated, nor may any obligations under this Deed be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted in this Deed. The parties do not intend to confer any benefit under this Deed on any person, firm, or corporation other than the parties to this Deed.

(f) Partial Invalidity. If any term or provision of this Deed, or the application thereof, to any person or circumstance will be invalid or unenforceable, to any extent, the remainder of this Deed, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each such term and provision of this Deed will be valid and enforced to the fullest extent permitted by law.

(g) Waivers. No waiver of any breach of any covenant or provision of this Deed will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision of this Deed. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

(h) Governing Law; Consent to Jurisdiction. The parties to this Deed acknowledge that this Deed has been negotiated and entered into in the State of California and expressly agree that this Deed will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Any legal action or proceeding brought by either party and arising from or in connection with this Deed or any breach of this Deed will be brought in the California Superior Court for the County of Alameda.

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

GRANTOR:

SUNOL GLEN UNIFIED SCHOOL DISTRICT,  
a California Unified School District

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

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

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

ACCEPTED AND AGREED

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

GRANTEE:

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

DENNIS J. HERRERA  
General Manager  
San Francisco Public Utilities Commission

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

Authorized by SFPUC Resolution No. \_\_\_\_\_  
and Board of Supervisors Resolution No. \_\_\_\_\_

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Anna Parlato Gunderson  
Deputy City Attorney

**ACKNOWLEDGMENT**

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

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

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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 A to TCE Deed**

**Legal Description of Easement Area**

*[see attached]*

DRAFT



**Exhibit B to TCE Deed**

**Depiction of Easement Area**

*[see attached]*

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**EXHIBIT D**

**Certificate of Transferor  
Other Than An Individual  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the County of Alameda, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's office address is \_\_\_\_\_  
\_\_\_\_\_.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 202\_\_.

On behalf of:

\_\_\_\_\_,  
[NAME]  
a \_\_\_\_\_,

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

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