

**MEMORANDUM OF AGREEMENT BY AND BETWEEN
THE CITY OF DALY CITY
AND
THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION
REGARDING OPERATION OF THE
VISTA GRANDE DRAINAGE BASIN IMPROVEMENT PROJECT**

THIS Memorandum of Agreement (“MOA”) is entered into this ___ day of _____, 2025, by and between the City of Daly City (“Daly City”) and the San Francisco Public Utilities Commission (“SFPUC”) (individually, each a “Party,” and collectively referred to as the “Parties”) for the purpose of delineating responsibilities for the funding and operation of Daly City’s Vista Grande Drainage Basin Improvement Project (the “Vista Grande Project” or the “Project”).

WHEREAS, the SFPUC and Daly City are working collaboratively towards Daly City’s implementation of the Vista Grande Project to alleviate flooding in the Vista Grande Basin within Daly City and the SFPUC’s Lake Merced Tract and also facilitate augmentation and management of Lake Merced water levels using sustainable supplies of Daly City’s stormwater; and

WHEREAS, in 1930, the SFPUC purchased the Lake Merced Tract from the Spring Valley Water Company (“Spring Valley”), and historically used Lake Merced as a potable water supply; and

WHEREAS, in 1895, Spring Valley constructed a dam in the outlet of Lake Merced, preventing overflow of the lake into the Pacific Ocean and increasing total water storage capacity by 2.5 billion gallons; and

WHEREAS, Lake Merced is a surface water body that is interconnected to groundwater within the Westside Groundwater Basin (“Basin,” California Department of Water Resources Basin No. 2-35) in western San Francisco and northern San Mateo counties, and a fraction of the inflow to Lake Merced percolates to underground storage in the Basin through the bed of the lake; and

WHEREAS, the SFPUC today maintains Lake Merced for the beneficial uses of recreation and wildlife habitat, and continues to maintain the capability of using surface water from the lake as a non-potable emergency water supply through use of the Lake Merced Pump Station; and

WHEREAS, declines in Lake Merced water levels, generally attributable to Spring Valley’s diversion of stormwater away from Lake Merced following construction of the Vista Grande Canal and Tunnel in 1897, 20th century urban development in San Francisco and Daly City, drought conditions, and regional groundwater pumping, have generated concern regarding the long-term viability of Lake Merced; and

WHEREAS, the SFPUC and Daly City have a successful history of working cooperatively with citizens’ groups and environmental stakeholders regarding efforts to maintain Lake Merced water levels following the filing of a January 29, 2001 petition by California Trout at the California State Water Resources Control Board that sought to reverse declining lake levels following the 1987-94 drought; and

WHEREAS, Daly City and the SFPUC have made significant progress in developing plans and projects for stabilizing Lake Merced water levels, including entering into a March, 2002 Agreement for Purchase and Sale of Recycled Water (“2002 Recycled Water Agreement”) between Daly City, the North San Mateo County Sanitation District, the SFPUC, and the Olympic, Lake Merced, and San Francisco Golf Clubs; and

WHEREAS, groundwater monitoring performed following the 2005 delivery of recycled water for irrigation purposes to the Olympic, Lake Merced and San Francisco Golf Clubs under the 2002 Recycled Water Agreement has demonstrated beneficial effects on Lake Merced water levels resulting from the substitution of recycled water for groundwater used for irrigation purposes; and

WHEREAS, Daly City owns and operates the Vista Grande Canal within the SFPUC's Lake Merced tract, and leases the Vista Grande Tunnel from the SFPUC under a lease dated August 14, 2007 authorized under SFPUC Res. No. 07-0145 and Daly City Council Res. No. 07-132 (the "Tunnel Lease"), and Daly City is now a tenant "at will "due to expiration of the Lease term on or about August 14, 2017; and

WHEREAS, the existing Vista Grande Canal and Tunnel do not have adequate hydraulic capacity to convey peak storm flows to the Pacific Ocean; and

WHEREAS, storm-related flooding within the Vista Grande Watershed has resulted in property damage in adjacent low lying residential areas within the northern portion of Daly City; and

WHEREAS, storm-related flooding within the Vista Grande Watershed, particularly uncontrolled overflows into Lake Merced from the Vista Grande Canal across John Muir Drive, has resulted in property damage to John Muir Drive and associated areas; and

WHEREAS, Daly City studied the possible addition of stormwater from the Vista Grande Canal to Lake Merced in a controlled fashion, in an effort to mitigate flooding and reconnect Lake Merced to its historic watershed; addition of stormwater would also avoid the need for periodic additions of imported surface water to Lake Merced by the SFPUC as has occurred historically; and

WHEREAS, on December 11, 2017, Daly City certified the Vista Grande Project environmental impact report and impact statement ("EIR/EIS") under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), and approved the Vista Grande South Lake Merced Alternative described in the Project EIR/EIS via City Council Res. No. 17-200, dated December 11, 2017; and

WHEREAS, under the South Lake Merced Alternative, the Vista Grande Project is intended to route storm water from the Vista Grande Canal to South Lake Merced as well as to the Pacific Ocean, reduce uncontrolled overflows from the Vista Grande Canal into Lake Merced, achieve a sustained increase in Lake Merced Lake levels, improve storm water quality, and further the restoration of the drainage basin's natural hydrology; and

WHEREAS, the SFPUC approved its Water System Improvement Program ("WSIP") on October 30, 2008 in Resolution No. 08-0200, following certification of the WSIP programmatic environmental impact report under CEQA by the San Francisco Planning Commission on October 30, 2008 in its Motion No. 17743; and

WHEREAS, the Phased WSIP adopted by the SFPUC includes the development of 10 million gallons per day ("mgd") of additional water for retail customers in San Francisco through additional water conservation, recycled water, and groundwater development in San Francisco, based on a water supply goal and objective of diversifying water supply options for retail and wholesale water customers during drought and non-drought periods; and

WHEREAS, the Phased WSIP included the Regional Groundwater Storage and Recovery (“RGSR”) project to provide greater water supply reliability to the SFPUC’s retail and wholesale water customers by substituting additional SFPUC surface water supplies in wet and normal years for groundwater pumping by the California Water Service Company, San Bruno, and Daly City, resulting in potential in lieu storage of up to 61,000 acre-feet of water in the southern portion of the Westside Basin in northern San Mateo County; and

WHEREAS, the Phased WSIP also included the San Francisco Groundwater Project to diversify water supplies available to retail customers, and to provide additional potable emergency water supplies in San Francisco, through the production of up to 4 mgd of groundwater in the northern portion of the Westside Basin in San Francisco; and

WHEREAS, the SFPUC approved the implementation of the San Francisco Groundwater Project on January 14, 2014 in Resolution No. 14-0010, following certification of the project environmental impact report under CEQA by the San Francisco Planning Commission on December 19, 2013, in its Motion No. 19050; and

WHEREAS, to mitigate impacts resulting from the operation of the RGSR and San Francisco Groundwater Projects and their potential adverse impacts on Lake Merced, the WSIP programmatic environmental impact report required the SFPUC to (1) implement Mitigation Measure 5.6-1, Westside Basin Groundwater Monitoring to Determine the Safe Yield of the Westside basin; and (2) Mitigation Measure 5.6-2, implementation of a Lake Level Management Plan for Lake Merced; and

WHEREAS, in its approval of the San Francisco Groundwater Project in its Resolution No. 14-0010, the SFPUC agreed to implement Mitigation Measure M-HY-9, Lake Level Management for Lake Merced, in order to address potentially significant water quality impacts related to changes in Lake Merced water levels caused by project groundwater pumping in the following impact areas: aesthetics (impact AE-4); biological resources (impacts BI-6 and BI-7); hydrology (impact H-9); and cumulative impacts (impacts C-HY-4 & 5). In general, Mitigation Measure M-HY-9 requires the SFPUC to gradually increase project groundwater pumping “in a stepwise manner” while monitoring for excessive declines in Lake Merced water levels, and to redirect or restrict increasing pumping should undesirable effects occur at Lake Merced; and

WHEREAS, San Francisco Groundwater Project Mitigation Measure M-HY-9 anticipated that stormwater from the Vista Grande Project might be available as a “supplemental water source” to maintain Lake Merced water levels, which would further the cooperative efforts of Daly City and the SFPUC to protect Lake Merced while sustainably managing the Westside Groundwater Basin, consistent with the Sustainable Groundwater Management Act, California Water Code §§10720 *et seq*; and

WHEREAS, Daly City’s Vista Grande Project operates to mitigate impacts from SFPUC’s implementation of the RGSR and San Francisco Groundwater Projects, by increasing water surface elevations in Lake Merced;

WHEREAS, it is in the interests of both Daly City and the SFPUC for Daly City to proceed expeditiously with the implementation of the Vista Grande Project, and to do so in a manner that addresses both historic flooding and the parties’ shared goal of sustainably managing Lake Merced water levels and portions of the Westside Groundwater Basin within their respective jurisdictional control; and

WHEREAS, in November 2019, Brown and Caldwell, Inc. and McMillian Jacobs & Associates prepared “Project Plans for Construction of the Vista Grande Drainage Basin Improvements,”

which provides the 100 percent design for the Vista Grande Project (“Project 100 % Design”); and

WHEREAS, Daly City anticipates publishing a call for bids on the Vista Grande Project construction work, upon receipt of all required permits; and

WHEREAS, Daly City has prepared and will be implementing a Lake Management Plan, which will be incorporated into San Francisco Regional Water Quality Control Board permitting for the Vista Grande Project, that details Daly City’s water quality monitoring and operational responsibilities to augment water surface elevation in Lake Merced to the stated goal (weather permitting); and

WHEREAS, the SFPUC reviewed and concurs with the terms of the Lake Management Plan, which will assist with SFPUC’s mitigation obligations in its approval of the RGSR and San Francisco Groundwater Projects; and

WHEREAS, the SFPUC performs routine quarterly water quality monitoring and undertakes management activities in and around Lake Merced that are not related to the Project;

WHEREAS, both Daly City and the SFPUC wish to memorialize their respective obligations as follows: (1) Daly City to implement the Vista Grande Project; (2) Daly City and SFPUC to share water quality and hydrologic data related to Lake Merced; (3) memorialize the SFPUC’s financial contribution towards Project construction; and (4) affirm commitments to sustainably operate the portion of the Westside Basin within their respective jurisdictions while protecting the beneficial uses of Lake Merced.

NOW, THEREFORE, it is mutually understood and agreed as follows:

SECTION 1: AUTHORITY OF PARTIES

1.1 Daly City is a California municipal corporation that owns and operates the Vista Grande Project, which is intended to reconnect Lake Merced with its historic watershed, providing a source of water to increase the water surface elevation of Lake Merced and address localized flooding that periodically occurs across John Muir Drive.

1.2 Daly City Joint Powers Financing Authority (“Authority”) is a joint powers financing authority created under Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California created, in part, to assist with funding and financing of the Project.

1.3 The SFPUC is responsible for managing San Francisco’s municipal utilities pursuant to the Charter of the City and County of San Francisco (“City”). The SFPUC is also the owner and operator of Lake Merced and the Lake Merced tract, as well as the owner of the Vista Grande Tunnel that is currently leased to Daly City.

SECTION 2: DEFINITIONS

2.1 “**Authority**” refers to the Daly City Joint Powers Financing Authority.

2.2 “**Basin**” refers to the Westside Groundwater Basin in Western San Francisco and Northern San Mateo Counties, depicted as Basin No. 2-35 by the California Department of Water Resources.

2.3 “Contractor(s)” refers to the licensed construction contractor(s) retained and approved by Daly City to construct the Project as described in the Project 100% Design, and any subconsultants retained thereby and approved by Daly City, which will be wholly or partially funded by monies provided by the SFPUC.

2.4 “Daly City” refers to the City of Daly City.

2.5 “Effective Date” refers to the date that the San Francisco Board of Supervisors adopts a resolution approving this MOA following approval by the SFPUC.

2.6 “Lake Management Plan” refers to the Vista Grande Project Lake Merced Lake Management Plan prepared by Daly City and approved by the San Francisco Bay Regional Water Quality Control Board, a draft of which is attached hereto as **Exhibit A**.

2.7 “Lake Merced Tract” refers to the tract of land designated as SFPUC Parcel No. 55 of San Francisco County Lands, in that certain deed between the Spring Valley Water Company and the City and County of San Francisco, dated and recorded in the office of the County Recorder of the City and County of San Francisco on March 3, 1930 in Liber 2002 of Official Records at Page 1.

2.8 “Parties” means Daly City and the SFPUC.

2.9 “Prior Planning, Design, and Engineering Services Contracts” refers to Vista Grande Project related expenses previously incurred by Daly City, and partially funded by the SFPUC in the amount of \$205,500, for planning, design, and engineering expenses, as well as consultant fees for securing those permits necessary for Vista Grande Project implementation.

2.10 “Project” means the proposed construction work to implement the Vista Grande Drainage Improvement Project, including: modifications to the Vista Grande Canal; construction of a diversion structure to divert stormwater from the canal to Impound Lake in accordance with the approved Lake Management Plan; construction of two treatment wetlands over a portion of the reconstructed canal that will use water pumped from the lake during the dry season to maintain the wetlands; reconstruction of the Lake Merced Overflow Outlet to drain water out of Lake Merced where necessary and consistent with the Lake Management Plan; construction of a new Vista Grande Tunnel to the Pacific Ocean; and structural improvements at Daly City’s beach outlet structure.

2.11 “SFPUC” or “San Francisco” means the San Francisco Public Utilities Commission.

2.12 “Vista Grande Project” means the Vista Grande Drainage Basin Improvement Project described in the environmental impact report and impact statement under CEQA and “NEPA” by Daly City on December 11, 2017 and as described in the Project 100% Design.

2.13 “Vista Grande Project 100% Design” means the project design attached hereto as **Exhibit B**.

SECTION 3: PURPOSE OF THE MOA

3.1 Purpose.

The purpose of this MOA is to identify the Parties’ respective obligations for the implementation of the Vista Grande project. Specifically, under this MOA:

(1) The SFPUC shall provide the Authority with funding in an amount not to exceed \$35,000,000, which shall be applied solely to the actual construction costs of the Vista Grande Project.

(2) The Parties shall voluntarily share with each other any and all information generated, and requested by the other Party, regarding the water level and quality of Lake Merced, the quantity and frequency of stormwater diversions from the Vista Grande Canal to Lake Merced, and the quantity and frequency of stormwater withdrawn from Lake Merced and directed back to the Vista Grande Canal and Vista Grande Tunnel for discharge to the Pacific Ocean.

(3) The Parties reserve all rights to initiate or participate in a general adjudication of groundwater rights in the Basin, subject to mutual agreement on certain factual stipulations set forth in Section 5.4 of this MOA, should the Parties participate in a future adjudication.

SECTION 4: FUNDING FOR THE PROJECT

4.1 Funding.

A. Amount of Funding. The SFPUC will reimburse Daly City, via the Authority, for Project construction costs in a total amount not-to-exceed \$35,000,000 (“Contribution Amount”). The Contribution Amount excludes any previous sums provided by SFPUC to Daly City for any prior Project-related costs.

B. No SFPUC Liability for Increases in Estimated Construction Costs. Daly City shall be solely responsible for any and all Project capital costs in excess of the Contribution Amount, whether such excess costs are attributable to (1) errors or omissions in Project engineering, design, or construction by Daly City, its Contractor, or the consultants hired by Daly City; (2) unforeseen events beyond the control of Daly City and its Contractor; or (3) any other cause.

4.2 Additional Project Capital Costs Payable by Daly City to SFPUC and San Francisco Department of Public Works; Maintenance of Mitigation Plantings on Lake Merced Tract at SFPUC Expense.

A. Project-Related Real Estate Acquisitions. Daly City shall be solely responsible for paying all costs and fees associated with acquiring Project-related (1) Parcels within the Lake Merced Tract; (2) licenses for temporary use of SFPUC property as construction staging areas; and (3) major encroachment permits from the San Francisco Department of Public Works for Project facilities within public streets. The Parties agree that any Project-related real property conveyances from SFPUC or the City to Daly City will further a proper public purpose.

B. Temporary Support or Relocation of SFPUC Utility Infrastructure Required by Project Construction. Daly City shall be responsible for the costs of temporary support and any necessary relocations of SFPUC water, wastewater and energy facilities affected by Project construction, as well as the metered costs for the temporary diversion of stormwater from the Vista Grande system into the SFPUC’s “Westside Transport” sewer transmission main, and associated treatment costs at the SFPUC’s Oceanside Wastewater Treatment Plant at then-current SFPUC rates for wastewater treatment and disposal.

C. Transfer of Title to Vista Grande Tunnel under Tunnel Lease. The Parties acknowledge that, pursuant to Section 21.2 of the Tunnel Lease, the City agreed to

transfer title to the Vista Grande Tunnel to Daly City at no cost in the event that Daly City implemented a project or projects to eliminate overflows from the Vista Grande Canal by the end of the Lease term. The Tunnel Lease expired in 2017. Daly City will pay an amount equal to the appraised value, as determined by an independent third-party appraisal and approved by the City's Director of Real Estate, for the Vista Grande Tunnel and associated easement.

D. Allocation of Project Mitigation Costs Imposed by California Coastal

Commission (CCC). Daly City shall be solely responsible for payment of all Project capital costs required to comply with any CCC mitigation measures imposed in the Project Coastal Development Permit. With regard to CCC-imposed mitigation measures consisting of removal of non-native vegetation and the planting of willows and other native plant species within the Lake Merced Tract, Daly City's Contractor(s) will design, install, and establish the initial plantings under license from the SFPUC, as well as perform required monitoring and regulatory reporting to the CCC. The SFPUC will be solely responsible for payment of all costs to maintain mitigation-related plantings within the Lake Merced Tract under the terms of the license issued to Daly City. Work performed is further described in Exhibit "C", Mitigation Plantings Maintenance Plan.

E. Cost Estimates for Foregoing Items.

The Parties acknowledge that certain project-related costs incurred by Daly City, including but not limited to easement acquisition, licensing fees, encroachment permits, utility relocations, and CCC mitigation measures, remain subject to refinement and future determination.

To avoid delay in execution of this MOA, the following estimated cost figures are provided by Daly City as good faith estimates for planning and coordination purposes and shall not be construed as a condition precedent to the effectiveness of this MOA or an obligation on the part of Daly City to finalize such costs prior to execution of MOA. These estimates may be updated by Daly City through written notice as actual costs are established. When estimates are not available, value shall be marked as "TBD" and updated by the parties in good faith.

1. Estimated Daly City Costs:

- a. Payment for parcels within the Lake Merced Tract required for Project construction, including the Vista Grande Tunnel and associated easement: \$_____ (TBD)
- b. Payment for license fees for temporary use of SFPUC property for construction staging: \$_____ (TBD)
- c. Major encroachment permit fees payable to San Francisco Department of Public Works: \$_____ (TBD)
- d. Payment for temporary relocation, support, and reinstallation of SFPUC utility facilities: \$200,000

- e. Unit cost of stormwater treatment at SFPUC Oceanside Wastewater Treatment Plant (first flush and base flows) during construction of the new Vista Grande Tunnel: \$10.09/ccf
- f. Capital cost for construction of onsite mitigation within the Lake Merced Tract required by the CCC as well as ongoing monitoring and reporting: \$____(TBD)

2. Estimated SFPUC Costs:

- g. Maintenance of mitigation plantings within the Lake Merced Tract required by the CCC over a typical 10 year reporting period.
Yearly plant maintenance expenses: up to \$10,000 per year.
Approximate cost of maintenance over 10 year mitigation period: \$3,000,000. (Note: Contractor has a 5-yr performance period, which they are responsible for the maintenance over the 10 year period.

4.3 Administration of Project Construction Contract.

Daly City shall serve as the project manager of the contract(s) for the construction of the Project by Contractor(s) and shall be responsible for managing all such contract(s). Daly City's contract with the Contractor(s) that are funded in whole or in part using SFPUC funds, shall contain language that deems the Contractor(s) to be an independent contractor of Daly City and not an agent or employee of the SFPUC.

4.4 Review of Project Change Orders and Involvement of SFPUC in Daly City's Acceptance of Work upon Project Completion.

Following Daly City's award of the Project construction contract to Contractor, Daly City shall provide the SFPUC ten (10) business days to review any proposed modifications or change orders affecting the Project construction contracts, along with any related plans and specifications. The SFPUC shall have the right to participate in and agree on periodic progress inspections and final walkthrough/ punch list of outstanding work and the acceptance of work by Contractor upon completion of the Project.

4.5 Testing Period Following Completion of Project.

A. Following completion of construction but prior to Project close out, the Parties agree to perform a test run of the entire system, including the pumping of water from the Canal to the constructed treatment wetlands to Lake Merced, and the withdrawal of water from Lake Merced via the Overflow Outlet, assuming there exists adequate flow in the Vista Grande Canal to perform such tests and the water surface elevation in Lake Merced is at least 7.0 feet City and County of San Francisco Datum.

B. If the Vista Grande Canal does not contain adequate flow for a pumping test of water from the Vista Grande Canal to the constructed treatment wetlands, such test shall not be required.

4.6 Fiscal Limitations. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation; Prohibition on Use of Funds for Political Activities.

A. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non- Appropriation. The SFPUC's payments under this MOA are subject to and contingent upon the budget and fiscal provisions of the Charter of the City . Charges will accrue only after prior written authorization certified by the City's Controller, and the amount of the SFPUC's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The SFPUC's financial obligations under this MOA will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the SFPUC's financial obligations under this MOA will terminate, without penalty, liability or expense of any kind to City at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this MOA in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors.

B. Guaranteed Maximum Costs. The SFPUC's payment obligation to Daly City cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Daly City under this MOA in excess of the certified maximum amount without the Controller having first certified the additional promised amount and, if necessary, the Parties having modified this MOA as provided in Section 6.9 of this MOA.

C. Prohibition on Use of Public Funds for Political Activity. In performing work under this MOA, the recipient of City funds shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement as amended from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The recipient of City funds is subject to the enforcement and penalty provisions in Chapter 12G.

4.7 Payment.

Daly City shall submit Contractor's monthly invoices, to the SFPUC for approval within thirty (30) days of receipt by Daly City. The Project construction invoices shall set forth in detail the work performed and the expenses incurred and shall identify which Contractor or subcontractor performed the construction work. The SFPUC shall review, approve and pay invoices within thirty (30) calendar days of receipt from Daly City. As explained above in Section 4.1, the SFPUC's total contribution of funding under this Agreement shall not exceed the Contribution Amount.

4.8 Books and Records.

Daly City agrees to maintain all documents and records regarding use of funds received from the SFPUC for payments to Contractor for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this MOA. Daly City agrees to provide the SFPUC with reasonable access to its books and records for purposes of auditing the use of funds contributed by the SFPUC for Project purposes.

4.9 Insurance.

A. General Liability and Other Insurance; Coverage Amounts: Daly City's contract(s) with its Contractor(s) for work performed that is reimbursed in whole or in part by SFPUC funds shall require all Contractors to maintain in force during the course of the contract insurance in the following amounts and coverages, with insurers satisfactory to San Francisco:

1. Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations;

2. Worker's Compensation in statutory amount including Employer's Liability coverage with limits not less than \$1,000,000 for each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors;

3. Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.

4. Professional Liability Insurance with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors, or omissions in connection with professional services (e.g., performing field engineering, surveying, preparing designs, calculations drawings and specifications) to be provided under this Contract. Contractor's professional liability policy shall not have an exclusion for environmental compliance management or construction management professionals; and

5. Pollution Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form) from bodily injury, property damage, abatement of hazardous or contaminated materials, including coverage for Non- Owned Disposal Site, and on-site or off-site third-party claims. Contractor and its subcontractor(s) performing abatement or disposal of such materials must have insurance coverage and shall do so in accordance with the requirements of the Contract Documents. If any policy includes an aggregate limit or provides that claims investigation or legal defense costs are included in such aggregate limit, the aggregate limit shall be double the occurrence limits specified above.

6. Provide evidence of Builders Risk coverage for the work performed and its full replacement value.

Each policy shall: (i) name as additional insured "the City and County of San Francisco, its officers, agents and employees;" (ii) provide that it is primary to any other insurance available to any additional insured, with respect to any claims arising out of this MOA; (iii) provide that it applies separately to each insured against whom claim is made or suit is brought; (iv) provide for at least thirty (30) calendar days' advance written notice to the SFPUC of cancellation or modification; and (v) provide for a waiver of subrogation in favor of the City.

B. Performance and Payment Bond. Daly City's contract with Contractor shall contain language requiring Contractor to provide surety bonds, each in a sum not less than one hundred percent (100%) of the contract price, to guarantee the faithful performance of the contract ("Performance Bond") and payment to individuals or entities who provide work on the Project under the contract with Contractor or any subcontract for the Project issued by Contractor. The Performance Bond shall cover all warranty and maintenance work required by the contract and any and all work required to correct patent or latent defects.

4.10 Termination Clause.

The Contract shall contain provisions for termination for cause and for convenience by Daly City, including the manner by which termination will be affected and the basis for settlement.

4.11 Indemnity.

The Contracts for work performed that is reimbursed in whole or in part by SFPUC funds shall contain language requiring the Contractor(s) or consultants to indemnify, defend, and hold harmless the City and its officers, agents and employees for any and all claims for bodily injury or property damage arising out of the negligence or willful misconduct of the Contractor during the construction of the Project. Daly City shall include language that incorporates the indemnification requirement referenced above in the Contracts.

4.12 Ownership, Operation and Maintenance of Completed Project.

Following the completion and acceptance of the Project by Daly City, Daly City shall own, operate and maintain the Vista Grande Project. SFPUC will continue to own the Lake Merced drain which will be rehabilitated as part of the Project. Following completion of rehabilitation, the Lake Merced drain will be operated and maintained by Daly City under a long-term license agreement from the SFPUC, with drain operation in accordance with the terms of the agreed upon Lake Management Plan as it may be modified by mutual agreement in the future under Section 5.2.

4.13 Prevailing Wages for Construction Work.

Daly City agrees that any person performing labor in the construction of the Project using funds provided by the SFPUC under this MOA shall be paid not less than the highest prevailing rate of wages and that Daly City shall include in any contract for construction of the Project a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Daly City further agrees that it will comply with the provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22(E) of the San Francisco Administrative Code.

SECTION 5: PROJECT COORDINATION AND OPERATION

5.1 Information Sharing for Project Implementation.

A. Daly City Information Sharing Obligations. Upon request, Daly City shall voluntarily and timely provide to the SFPUC any and all information submitted by Daly City to the San Francisco Bay Regional Water Quality Control Board regarding the Vista Grande Project and any water quality or quantity data generated, but not yet submitted, to the San Francisco Bay Regional Water Quality Control Board. The SFPUC shall have the right to participate in meetings with San Francisco Bay Regional Water Quality Control Board staff regarding Project implementation and operation.

B. SFPUC Information Sharing Obligations. Upon request, SFPUC shall provide to Daly City any and all information regarding Lake Merced water surface elevations and water quality that is developed by, contracted for, or otherwise in the possession of SFPUC. Information pertinent to Lake Merced water surface elevations and water quality shall be interpreted to include available information regarding all four lakes (North Lake, East Lake, South Lake, and Impound Lake) that comprise the entirety of Lake Merced. Such information includes but is not limited to the results of any performed water quality sampling, information regarding groundwater pumping rates in the Westside Groundwater Basin, any emergency notices issued regarding the quality of Lake Merced water, and any information regarding changes to the connections among the four lakes that comprise Lake Merced.

5.2 Daly City Operation of the Vista Grande Project; Indemnification.

Daly City shall at all times operate the Project consistent with the current contents of the Vista Grande Project Lake Management Plan, as approved by the San Francisco Bay Regional Water Quality Control Board. The Lake Management Plan is expected to be adjusted after the effective date of this MOA as a result of adaptive management and the information provided to the San Francisco Bay Regional Water Quality Control Board in annual and five-year reports prescribed by the Lake Management Plan. As the supplier of stormwater to Lake Merced through operation of the Project, Daly City shall have sole responsibility for compliance with all state and federal regulations and permitting requirements that are related to the addition of stormwater to Lake Merced. In the event that Daly City fails to comply with any of its applicable state and federal permits, or SFPUC notifies Daly City of potential negative impacts to lake water quality exclusively due to the diversion of Daly City's stormwater, the SFPUC reserves the right to request that Daly City cease diversion of any stormwater to the lake until such a time as the permit compliance is restored or the impact to the lake is abated.

Daly City agrees to indemnify and defend the City and its officers, agents and employees from any and all liabilities, losses, damages or expenses, including, without limitation, reasonable attorneys' fees ("Claims"), to the extent they arise from or relate in any way to Daly City's acts or omissions concerning the operation of the Vista Grande Project; except that Daly City's foregoing indemnity obligation shall not apply to (i) any and all Claims associated with water quality conditions of Lake Merced, except to the extent a water quality condition arises out of or is in any way related to Daly City's diversion of stormwater into Lake Merced, or (ii) any and all Claims to the extent they arise from the negligence or willful misconduct of the City, its officers, agents or employees.

5.3 Lake Merced Water Quality.

As of the effective date of this MOA, Lake Merced is listed as an impaired water body under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), for dissolved oxygen (DO) and pH. The Parties agree to coordinate any efforts to change Lake Merced's characterization on the State of California's list of impaired water bodies.

5.4 Water Rights.

A. Each Party agrees that it will not operate its existing and future groundwater wells within the Basin in a manner that causes Undesirable Results to Lake Merced under California Water Code §10721(x)(6) and 23 CCR § 354.28(c)(6).

B. Each Party reserves all rights to initiate or participate in a general adjudication of groundwater rights in and to the Basin, including but not limited to a comprehensive adjudication commenced pursuant to California Code of Civil Procedure section 830 *et seq.* In the event of a Basin adjudication, each Party reserves all rights, positions and defenses except that the following factual stipulations shall be binding on each Party in the Basin adjudication for all purposes:

1. Daly City and the SFPUC each augments the Basin groundwater supply as a result of leakage from water and sewer piping within their respective service areas overlying the Basin. The quantity and other parameters of such augmentation will be determined in the Basin adjudication proceeding.
2. Daly City augments the Basin groundwater supply as a result of the continued delivery of recycled water by Daly City under the 2002 Recycled Water

Agreement between Daly City, the North San Mateo County Sanitation District, the SFPUC, and the Olympic, Lake Merced, and San Francisco Golf Clubs. The quantity and other parameters of such augmentation will be determined in the Basin adjudication proceeding.

3. The augmentation of the Basin groundwater supply as a result of the addition of stormwater to Lake Merced through implementation of the Vista Grande Project shall be credited to the SFPUC as part of the consideration for the SFPUC's contribution towards construction costs of the Vista Grande Project in Section 4.1 of this MOA. The quantity and other parameters of such augmentation will be determined in the Basin adjudication proceeding. This stipulation shall not be interpreted to allocate any responsibility whatsoever to the SFPUC for the quality of any stormwater from the Vista Grande system prior to its addition to Lake Merced, which remains Daly City's sole responsibility under §5.2.

4. SFPUC, as the owner of the Lake Merced Tract purchased from the Spring Valley in 1930, owns riparian water rights to Lake Merced that currently support the beneficial uses of fish and wildlife habitat, recreation, and emergency non-potable water supply. The nature and extent of such riparian rights, and the quantity of water available under such rights, will be determined in the Basin adjudication proceeding.

5. SFPUC augments the Basin groundwater supply to the extent that water percolates to storage in the Basin through the bed and banks of Lake Merced as a result of the 1895 construction of a dam in the outlet of Lake Merced that added 2.5 billion gallons of additional storage capacity. The quantity and other parameters of such augmentation will be determined in the Basin adjudication proceeding.

C. Nothing in this MOA shall be construed as modifying, amending or otherwise affecting the "Agreement for Groundwater Storage and Recovery from the Southern Portion of the Westside Basin by and among the San Francisco Public Utilities Commission, the City of Daly City, the City of San Bruno, and California Water Service Company" ("RGSR Project Operating Agreement").

5.5 Project Construction Timeline.

Once permits for the Project are secured, Daly City shall provide the SFPUC with a schedule or timeline for anticipated start and completion of Project construction. Daly City shall provide to the SFPUC periodic updates to the schedule or timeline.

SECTION 6: GENERAL PROVISIONS

6.1 Term.

The term for completion of Vista Grande Project construction under this MOA shall be sixty (60) months. The obligations of each Party set forth in sections 5.1 to 5.4, inclusive, shall survive the term of this MOA and continue in force as long as the Project is operational. The Parties' respective obligations in section 4.2.D to install and maintain mitigation plantings within the Lake Merced Tract shall survive the term of this MOA and continue in force until the mitigation obligation has been deemed complete under the Project's Coastal Development Permit.

6.2 Invalidity of Any Term Not to Invalidate Entire MOA.

In the event that any of the terms, covenants, or conditions of this MOA or the application of any such term, covenant, or condition shall be held invalid as to any party by any court of competent jurisdiction, all other terms, covenants, or conditions of this MOA and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOA.

6.3 Construction of Terms.

This MOA is for the sole benefit of the Parties and shall not be construed as granting rights to or imposing any obligations on any person or entity other than the Parties.

6.4 Incidental, Consequential, and Indirect Damages.

To the extent permitted by law, neither of the Parties shall be liable to the other Party for consequential, indirect, special damages or lost profits.

6.5 Good Faith

The Parties shall use their best efforts and work wholeheartedly and in good faith for the expedited completion of the objectives of this MOA and the satisfactory performance of its terms.

6.6 Conflict of Interest.

Through its execution of this MOA, Daly City acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts that constitute a violation of said provisions. Daly City agrees that if it becomes aware of any such fact during the term of this MOA, Daly City shall immediately notify the SFPUC.

6.7 Liability of San Francisco.

The SFPUC's obligations under this MOA shall be limited to the payment of the not-to-exceed amount of compensation provided for in Section 4.1 and the actions described in Section 5. Notwithstanding any other provision of this MOA, in no event shall SFPUC be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this MOA or the services performed by Contractor in connection with this MOA.

6.8 Termination for Convenience.

After SFPUC's payment of the not-to-exceed amount of compensation provided for in Section 4.1, the SFPUC may terminate this MOA for San Francisco's convenience and without cause at any time by giving Daly City thirty (30) calendar days written notice of such termination; Daly City may terminate this MOA for Daly City's convenience and without cause at any time by giving the SFPUC thirty (30) calendar days written notice of such termination. In the event of termination, Daly City shall not be obligated to further perform any activities described in this MOA. In the event of termination, SFPUC and Daly City will continue to voluntarily provide the other with the information described in Section 5.1. In no event will the SFPUC be liable for Contract costs incurred after receipt of a notice of termination.

6.9 Amendment.

The Parties may agree to modify the terms of this MOA by written agreement authorized by the governing boards of both Parties.

6.10 Waiver.

The Parties agree that waiver by either Party of any breach or violation of any term or condition of this MOA will not be deemed to be a waiver of any other term or condition contained herein, or a waiver of any subsequent breach or violation of the same, or any other term or condition. The acceptance of the performance of any work or services by either Party will not be deemed to be a waiver of any term or condition of this MOA.

6.11 Assignment.

This MOA may not be assigned by any of the Parties without the express written consent of the other Party.

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6.12 Dispute Resolution.

The Parties shall make good faith efforts to resolve disputes or disagreements arising from this MOA through a meet and confer process. If a dispute or disagreement arises, the Parties shall meet and confer within ten (10) calendar days of receiving written notification from the other Party describing the dispute and shall thereafter schedule and participate in further meetings, if appropriate, in an effort to resolve the dispute or disagreement.

6.13 Ownership of Materials.

All Project plans, specifications, reports, documents, or other materials developed by Daly City or any other person engaged directly or indirectly by Daly City will be and will remain the property of Daly City, without restriction or limitation upon their use. Notwithstanding the above, Daly City will make available to SFPUC copies of all non-privileged and non-confidential plans, specifications, reports, documents, or other materials developed by Daly City pursuant to this MOA for inspection or audit at any time, during regular business hours, upon written request by the SFPUC.

6.14 Entire Agreement.

This MOA sets forth the entire agreement of the Parties and supersedes all other oral or written agreements or understandings related to the design and construction of the Project. This MOA may only be modified by writing executed by both Parties.

6.15 San Francisco Sunshine Ordinance.

Daly City understands and agrees that the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the California Public Records Act (Govt. Code Section 6250 et seq.) apply to this MOA and any and all records, information, and materials may be subject to public disclosure in accordance with the terms of the ordinance and state law.

6.16 Nondiscrimination.

In the performance of this MOA, Daly City shall not discriminate against any employee, subcontractor, applicant for employment with Daly City, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status ("AIDS/HIV status"), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

6.17 Governing Law.

The Parties agree that the law governing this MOA will be that of the State of California. The Parties will comply with all applicable laws and regulations. As the Party fully responsible for the design, construction, operation, and maintenance of the Project, Daly City will comply with all applicable laws and regulations concerning the design, construction, operation, and maintenance of the Project.

6.18 Notices. All notices and other communications required or permitted to be given under this MOA will be in writing and will be e-mailed, personally served or mailed, postage prepaid and return receipt requested, and addressed to the Parties as follows:

SFPUC: Steve Ritchie
Assistant General Manager, Water
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
SRitchie@sfwater.org

With a copy to: Sheryl Bregman
Utilities General Counsel
1390 Market Street, Suite 418
San Francisco, CA 94102

Sheryl.Bregman@sfcityatty.org

Daly City: Tom Piccolotti, City Manager
Department of Water and Wastewater Resources
153 Lake Merced Blvd.
Daly City, CA 94105
tpiccolotti@dalycity.org

With a copy to: Joshua Cosgrove, Director
Department of Water and Wastewater Resources
153 Lake Merced Blvd.
Daly City, CA 94105
jcosgrove@dalycity.org

Rose Zimmerman
City Attorney
333 90th Street
Daly City, CA 94105
rzimmerman@dalycity.org

Notice will be deemed effective on the date e-mailed, personally delivered, or if mailed, three (3) days after placement in the mail.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement by their duly authorized representatives as of the day and year indicated on the first page of this MOA.

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION

CITY OF DALY CITY

By: _____
Dennis Herrera
General Manager

By: _____
Thomas J. Piccolotti
City Manager

Dated: _____

Dated: _____

Authorized by San Francisco Public
Commission Resolution No. _____

Authorized by City Council
Resolution No. _____

By: _____
Commission Secretary

By: _____
City Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Joshua Milstein
Deputy City Attorney

By: _____
Rose Zimmerman
City Attorney

EXHIBIT A
VISTA GRANDE PROJECT LAKE MERCED LAKE MANAGEMENT PLAN

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EXHIBIT B
100% PROJECT DESIGN DRAWINGS

DRAFT

EXHIBIT C

MITIGATION PLANTINGS, MAINTENANCE PLAN

Daly City and its Contractors will be responsible for:

- Obtaining necessary permits from CCSF, Caltrans, and updated regulatory permits prior to commencement of construction
- Construction mitigation implementation (e.g., pre-construction surveys, worker awareness training, mitigation monitoring) and Mitigation Monitoring and Reporting as required by regulatory permits up to ten year maintenance period.
- Construction of the Restoration Sites per the final restoration site design approved by Daly City and CCSF, and as permitted by CCSF, Caltrans, and regulatory agencies.
- Obtaining a metered water connection from CCSF and bringing water to the site for needed irrigation
- Maintaining recreational access on trails, except during short active construction periods

During the five-year Plant Establishment Maintenance period Daly City will be responsible for:

- Weeding all non-native invasive plants to a level that meets the project's performance criteria in terms of area and species cover
- Maintaining all components of the irrigation system if installed (lines, hoses, emitters, sprayers, tanks, meters, connections, etc.)
- Maintaining and replacing all plants as needed to meet ground cover and other performance criteria
- Eliminating trash
- Monitoring and remediating erosion issues
- Fencing maintenance and repair to keep the plants protected and the sites secure
- Removal of the irrigation system at the end of 3 years

CCSF/SFPUC and its Contractors will be responsible for:

Following completion of the five-year Plant Establishment Maintenance period, SFPUC/CCSF will:

- Perform maintenance of the restoration sites for years six through ten (CCC will define how many additional years, up to ten years total, will be required after the initial five year maintenance period) which would primarily include weeding of non-native invasive plants, reseeding and replacing plants to a level that meet's the project's performance criteria in terms of area and species cover.