

RECORDING REQUESTED  
AND WHEN RECORDED MAIL TO:

Housing Authority of the City and County of San Francisco  
1815 Egbert Ave.  
San Francisco, CA 94124  
Attn: Barbara T. Smith, Acting Executive Director

WITH A CONFORMED COPY TO:

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

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Lot: \_\_\_\_\_ Block: \_\_\_\_\_

The undersigned declares this instrument to be exempt from recording fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code § 11922).

### **EASEMENT AGREEMENT**

#### **(Sewer Facilities)**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (“**Housing Authority**”), grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and its successors and assigns (“**City**”), a perpetual public utility easement for sewer facilities, in, across, and through Housing Authority’s certain real property, which is located in San Francisco, California and described and depicted in attached Exhibit A (the “**Easement Area**”), which will be referred to as the “**Easement**.”

1. **Grant of Sewer Easement by Housing Authority**. The Easement is a perpetual, divisible, nonexclusive easement in gross including the right **(a)** to construct, install, maintain, repair, restore, remove, replace, alter, expand, and reconstruct, from time to time, at City’s option, within the Easement Area, sewer facilities, with all associated appurtenances, appliances, and fittings (collectively, “**Sewer Facilities**”); **(b)** to excavate to access Sewer Facilities from the surface of the ground, with not less than thirty feet (30’) of vertical clearance above the surface to permit the installation and removal of Sewer Facilities from the surface; **(c)** of ingress and egress for City and its representatives, agents, employees, officers, suppliers, consultants, contractors, and subcontractors (“**City’s Agents**”), vehicles and equipment to and from the Easement Area

over the lands of Housing Authority; and (d) to place temporary facilities and equipment above ground when needed in connection with any emergency or repair work, as needed to maintain continuous utility service (provided that City will maintain any temporary above-ground facilities or equipment only so long as needed to address the emergency or perform the repair work).

2. **Housing Authority's Reserved Rights.** Housing Authority, on behalf of itself, its agents, contractors, subcontractors, suppliers, consultants, employees, invitees or other authorized persons acting for or on behalf of Housing Authority, including but not limited to any lessee and its tenants (collectively, "**Housing Authority's Agents**"), reserves the right to use the Easement Area, in any way not inconsistent with the above grant of Easement, subject to the following:

(a) Housing Authority will not use the Easement Area or permit the same to be used for any purpose or in any manner that will interfere with the proper use, function, maintenance, repair, replacement of, or access to any Sewer Facilities.

(b) Housing Authority will not use the Easement Area for the erection of any improvement that will damage, interfere with, or endanger the proper use, function, maintenance, repair or replacement of any of Sewer Facilities without prior written authorization by the director of the affected City department.

(c) If Housing Authority elects to construct and maintain fences on or around the Easement Area, Housing Authority will provide for City's immediate right of access to the Easement Area without prior notice or authorization to Housing Authority. Fence design, location, and construction method for any fence that Housing Authority locates on or over Sewer Facilities will require City's prior written consent.

(d) Housing Authority may plant low shrubs in the Easement Area, provided that their roots or underground growth will not have the potential to damage Sewer Facilities. Housing Authority will not plant trees or plants with invasive roots in the Easement Area except in movable planters.

(e) Housing Authority will not allow the Easement Area to be designated as the sole accessible path of travel.

3. **City's Use of the Easement.**

a. City's rights under this Agreement may be exercised by City's Agents.

b. City will bear all responsibility to operate, maintain and repair the Sewer Facilities at its sole cost, except to the extent any damage or cost is caused or necessitated by Housing Authority or Housing Authority's Agents, in which case Housing Authority will bear the proportional cost and repair or pay for the damage, at City's discretion. City may elect to repair the damage at Housing Authority's cost, or may elect to witness the repair work. Any cost incurred by City that is caused or necessitated by Housing Authority or Housing Authority's Agents will be invoiced to Housing Authority within twelve (12) months of the date the cost is

incurred. Housing Authority will remit payment to City within sixty (60) days of receiving an invoice.

c. Prior to commencing any Major Work, as defined below, City will provide Housing Authority with at least sixty (60) days' prior written notice. Prior to commencing any Ordinary Maintenance and Repair, as defined below, that requires excavation in the Easement Area, City will provide Housing Authority with at least fifteen (15) days' prior written notice. Notwithstanding the foregoing, in the event of an emergency, City will not be obligated to provide Housing Authority with any notice. The term "**Major Work**" means work in the Easement Area that cannot be reasonably expected to be completed within three (3) consecutive days. The term "**Ordinary Maintenance and Repair**" means work in the Easement Area that can be reasonably expected to be completed within three (3) consecutive days.

d. In undertaking work within the Easement Area, City will use reasonable efforts to (i) complete all construction, maintenance or repair activities in an expeditious and diligent manner; and (ii) minimize disruption to Housing Authority's use of Housing Authority's land adjoining the Easement Area. City will not be liable in any manner, and Housing Authority waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry onto or use of the Easement Area, except to the extent resulting directly from the active negligence or willful misconduct of City or its contractors or agents, or City's breach of its covenants in this Easement Agreement.

e. Upon completion of any construction, maintenance or repair involving excavation within or around the Easement Area (including but not limited to any Major Work or Ordinary Maintenance and Repair), City will, at its cost, backfill the excavation and restore the surface in accordance with the terms of this Section. Where the disturbed surface area is paved, City will restore the area with three-inch (3") thick asphalt concrete over eight-inch thick (8") Portland cement concrete or its cost equivalent. Where the disturbed surface area is not paved, City will restore the area with native backfill. City will not be liable for damage to, or required to restore, any other improvements or vegetation within the Easement Area. City will not be responsible for the cost of removing, restoring or replacing any improvements previously installed by Housing Authority pursuant to City's authorization as described in **Section 2** (Housing Authority's Reserved Rights). In an emergency, City may remove any such improvements without notice, liability, or obligation to replace the same. In a non-emergency, City will provide a minimum of ten (10) business days' notice to Housing Authority to remove such improvements prior to City commencing work within the Easement Area.

f. City may remove any improvements that may damage or interfere with Sewer Facilities or impede access to the Sewer Facilities without any notice, liability, or obligation to replace the same. The foregoing sentence will not apply to any improvements constructed pursuant to improvement plans previously reviewed and approved by City or to paving of private roads that exist at the time the Easement is accepted.

4. **Indemnification.** Each Party (the "**Indemnitor**") will indemnify, defend (with counsel reasonably approved by the indemnified party), and hold harmless the other (the "**Indemnitee**") from and against any cost, expense, liability, damage or injury to property or persons to the extent caused by the Indemnitor's negligence or willful misconduct (or that of

their agents) in the exercise of the rights granted to, or reserved by, City under this Agreement or the rights of Housing Authority, as applicable. Notwithstanding anything in this Agreement to the contrary, this Section will survive the expiration and termination of this Easement.

5. **Insurance.** Housing Authority acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Easement. City assumes the risk of damage associated with the operation of the Sewer Facilities, except for damage caused by the Housing Authority or its Agents.

6. **Binding Effect.** The provisions of this Agreement will be binding upon the successors, grantees and assigns of the Parties, will run with the land, and will bind and benefit, as the case may be, all persons and entities acquiring or owning any interest in the burdened property.

7. **Notices.** All notices, demands or other communications required or permitted to be given under this Agreement will be in writing, signed by the Party giving the notice, demand or other communication, and will be delivered by one of the methods of delivery provided in this Section. All notices, demands, and communications will be deemed to have been properly given when either delivered personally, delivered to a reputable overnight delivery service providing a receipt, or at the address as may have been designed in writing. The effective date of any notice, demand or other communication given as aforesaid will be the date of actual receipt or, if receipt or confirmation is refused, will be the date delivery is first attempted. The addresses are as follows:

If to Housing Authority:                   Housing Authority of the City and County of  
San Francisco  
1815 Egbert Street, Suite 300  
San Francisco, California 94124  
Attn: Barbara T. Smith, Acting Executive  
Director

with a copy to:                               Goldfarb & Lipman LLP  
1300 Clay Street, 11<sup>th</sup> Floor  
City Center Plaza  
Oakland, California 94612  
Attn: Dianne Jackson McLean, Esq.

If to City:                                       San Francisco Public Utilities Commission  
General Manager  
525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102

with copies to:                               San Francisco Public Utilities Commission  
Real Estate Director  
525 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102

Office of the City Attorney  
Attn: Real Estate/Finance Team  
City Hall, Room 234  
1 Dr. Carlton R. Goodlett Place  
San Francisco, CA 94102

or to other address(es) or other or additional person(s) as any Party designates to the other for such purpose in the manner set forth above. Any notices, demands or other communications given by Housing Authority or City may be given on behalf of a Party by its respective counsel, in accordance with the terms of this Section.

8. **Recording.** This Agreement will be recorded in the Official Records of the City and County of San Francisco, California (the “Official Records”).

9. **Abandonment of Easement.** City may, at its sole option, abandon the Easement by recording a quitclaim deed. Except as otherwise provided in this Agreement, upon recording a quitclaim deed, the Easement and all rights, duties and liabilities under this Agreement will be terminated and of no further force or effect. No temporary nonuse of the Easement Area or other conduct, except for recordation of the quitclaim deed as provided in this paragraph will be deemed abandonment of the Easement.

10. **No Acceptance of Infrastructure Improvements.** Neither the provisions of this Agreement nor City’s acceptance of the Easement will be construed as acceptance of any infrastructure improvements by City.

11. **Intentionally Deleted.**

12. **Miscellaneous.**

(a) **Additional Actions and Documents.** The Parties will take additional actions and execute additional documents as may be necessary or proper to carry out the transactions contemplated by this Agreement and effect the purposes of this Agreement.

(b) **Amendments.** Except as otherwise provided in this Agreement, this Agreement may be amended at any time only by the recordation of a written instrument in the Official Records signed by the Parties or their respective successors or assignees.

(c) **Relationship of Parties.** Nothing in this Agreement will be deemed or construed to create or establish any relationship of partnership, joint venture, agency, or any similar relationship between the Parties.

(d) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

(e) **Entire Agreement.** The terms of this Agreement are intended by the Parties as the final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

(f) **Captions and Gender.** The captions contained in this Agreement are for convenience only, are not a part of this Agreement, and are not intended in any way to limit or enlarge the terms and provisions of this Agreement. Whenever the context so requires, the use of any gender includes all genders, and the singular includes the plural.

(g) **Enforceability.** If any provision of this Agreement is or becomes invalid, illegal, or unenforceable, it will not affect or impair the validity, legality, or enforceability of any other provision of this Agreement, and each provision of this Agreement, unless specifically conditioned upon the invalid or unenforceable provision, will be valid and enforceable to the fullest extent permitted by law.

(h) **Incorporation of Exhibits.** Each writing or plat referred to in this Agreement as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

(i) **No Third Party Beneficiaries.** Neither the declaration and grant of any easement, nor the use and enjoyment pursuant to the provisions of this Agreement, will be deemed in any way to create or confer in or on any other person, any member of the public, or any public authority any right to use or enjoy the same, or any estate therein, other than the Parties and their respective Agents.

(j) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, and all of which will constitute one and the same agreement.

(k) **Further Assurances.** Housing Authority and City will each execute, acknowledge and deliver in recordable form (if applicable) and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof, provided that no such instrument or agreement increases the obligations or diminishes the rights (other than in a de minimis respect) of either Party under this Agreement.

(l) **Attorneys' Fees.** If any action is brought by Housing Authority or City against the other to enforce this Agreement, obligations under this Agreement or any indemnity rights contained in this Agreement, or to seek a clarification of the terms contained in this Agreement, or for the breach of any of the terms, covenants or conditions contained in this Agreement, including any action or proceeding in a bankruptcy case, the prevailing party will be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs, which will include fees and costs of any appeal, all as fixed by the court.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE  
CITY AND COUNTY OF SAN FRANCISCO,  
a public body, corporate and politic

By: Barbara T. Smith  
Name: Barbara T. Smith  
Title: Acting Executive Director

APPROVED AS TO FORM AND  
LEGALITY:

Dianne Jackson McLean  
Dianne Jackson McLean, Esq.  
Goldfarb & Lipman LLP  
Special Counsel to Authority

RECOMMENDED:

San Francisco Public Utilities Commission

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE  
CITY AND COUNTY OF SAN FRANCISCO,  
a public body, corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
Dianne Jackson McLean, Esq.  
Goldfarb & Lipman LLP  
Special Counsel to Authority

RECOMMENDED:

San Francisco Public Utilities Commission

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By:   
\_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney



CERTIFICATE OF ACKNOWLEDGEMENT

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

County of San Francisco

On Sept. 12,, 2019 before me, Cindy E. Gamez,  
Notary Public, personally appeared Barbara Taylor Smith,  
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.

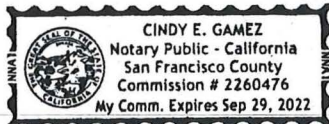
I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

(Notary Seal)



CERTIFICATE OF ACKNOWLEDGEMENT

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

County of \_\_\_\_\_

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_,  
Notary Public, 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 of Notary Public

(Notary Seal)

**EXHIBIT A**

DEPICTION OF EASEMENT AREA

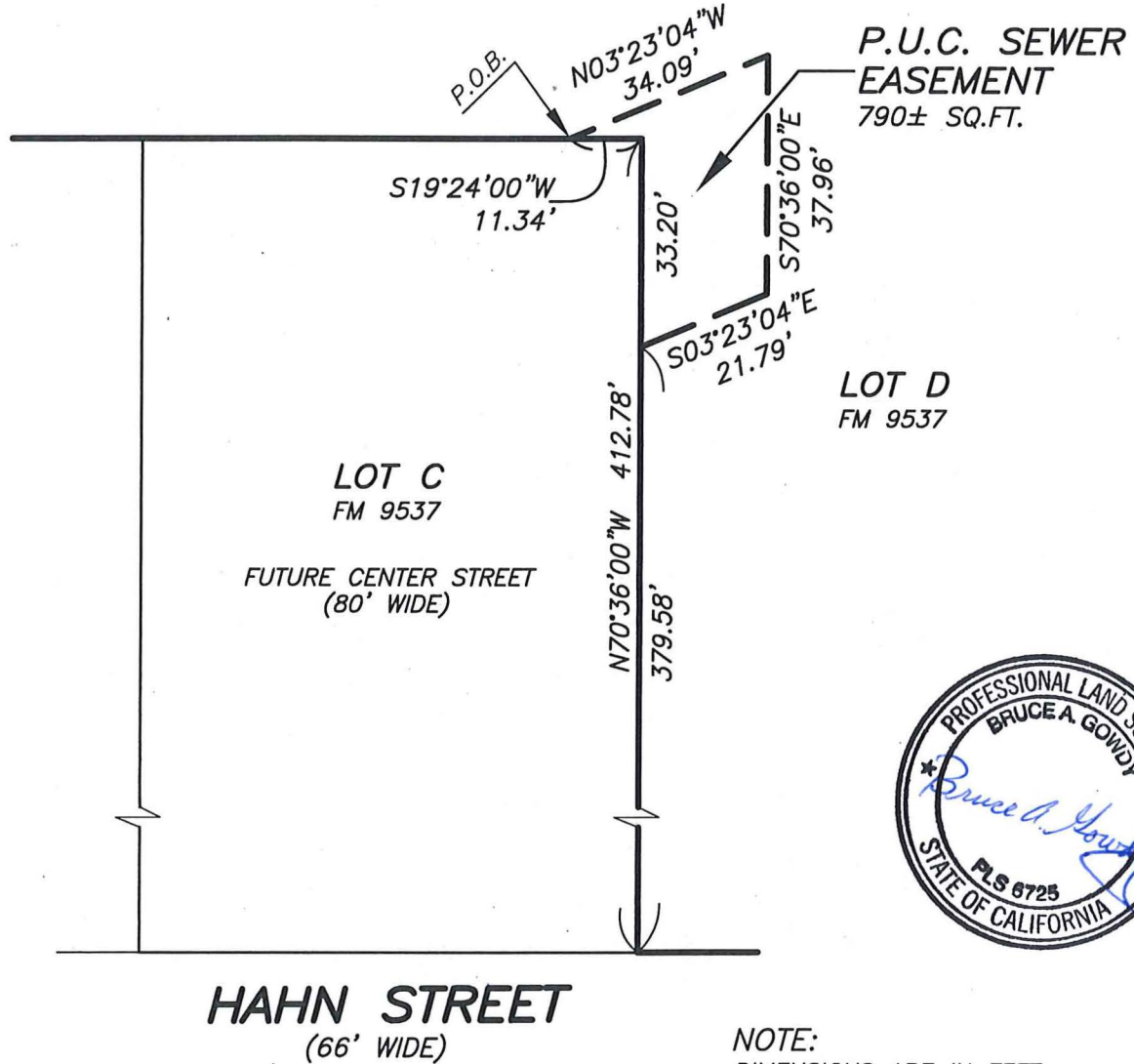
Exhibit A



PROJECT  
NORTH

LEGEND

P.O.B. POINT OF BEGINNING  
FM FINAL MAP



NOTE:  
DIMENSIONS ARE IN FEET  
AND DECIMALS THEREOF.

**EASEMENT PLAT**

SAN FRANCISCO,  
CALIFORNIA

BY JP CHKD. BR DATE 8-01-19 SCALE 1"=30' SHEET 1 OF 1 JOB NO. S-8996

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-8996\_FM9537 ESMT PLATS.DWG

LEGAL DESCRIPTION

"P.U.C. SEWER EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF LOT D, AS SAID LOT IS SHOWN ON FINAL MAP 9537, TO BE RECORDED, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF LOT C, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9537, DISTANT THEREON S19°24'00"W 11.34 FEET FROM THE NORTHERLY LINE OF SAID LOT C; THENCE N03°23'04"W 34.09 FEET; THENCE S70°36'00"E 37.96 FEET; THENCE S03°23'04"E 21.79 FEET TO SAID NORTHERLY LINE OF LOT C; THENCE ALONG SAID NORTHERLY LINE N70°36'00"W 33.20 FEET TO SAID WESTERLY LINE OF LOT C; THENCE ALONG SAID WESTERLY LINE S19°24'00"W 11.34 FEET TO THE POINT OF BEGINNING.

BEING 790 SQUARE FEET, MORE OR LESS.



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed to the City and County of San Francisco by this Easement Agreement, dated \_\_\_\_\_, 2019, is hereby accepted pursuant to Board of Supervisors' Ordinance No. \_\_\_\_\_, approved \_\_\_\_\_, and the City consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 2019

CITY AND COUNTY OF SAN  
FRANCISCO,  
a municipal corporation

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