

AGREEMENT FOR SALE OF REAL ESTATE

by and between

CITY AND COUNTY OF SAN FRANCISCO,

and

JWG MCHENRY, LLC,

For the sale and purchase of an

Easement in a Portion of SFPUC Parcel 656,
Modesto, California

_____, 20__

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AGREEMENT FOR SALE OF REAL ESTATE
(Portion of SFPUC Parcel 656, Modesto)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "**Agreement**") dated for reference purposes only as of _____, 2015, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Seller**"), acting through its Public Utilities Commission ("**SFPUC**") and JWG McHENRY, LLC, a California limited liability company ("**McHenry**").

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

A. City owns the Property located in the City of Modesto, Stanislaus County, California, described in attached **Exhibit A** and shown on attached **Exhibit B** (the "**Property**" or "**Easement Area**"). The Property is a portion of the parcel known in SFPUC records as SFPUC Parcel 656 and consists of land improved with SFPUC's overhead high voltage power lines and underground water transmission pipelines.

B. McHenry owns real property on either side of Parcel 656 ("**McHenry's Property**"), which McHenry is developing for automobile dealership and other purposes.

C. The Property and McHenry's Property abut McHenry Avenue. In connection with McHenry's development, the City of Modesto ("**Modesto**") is requiring that McHenry make certain improvements to McHenry Avenue, including widening the road to include street, curb and gutter improvements on the surface of the Property.

D. City is willing to permit such use of the Property, provided that, among other conditions, Modesto accepts ownership of the improvements and accepts an easement in the Property for such use (the "**Easement**") in the form of the Easement Deed and Agreement attached as **Exhibit C** (the "**Easement Agreement**") and City receives compensation for the value of the Easement.

E. By Resolution No. 2015-166, adopted on May 26, 2015, the City Council of Modesto approved the Easement Agreement. Modesto has executed the Easement Agreement and delivered the notarized, executed original to SFPUC.

F. Prior to McHenry's and City's execution of this Agreement, City, Caltrans and Modesto each approved the plans for the proposed improvements, including a subsurface structural bridge.

G. Concurrently with McHenry's execution of this Agreement, City and McHenry executed a license agreement (the "**McHenry Avenue Improvement License**") to allow McHenry to construct the improvements while SFPUC staff is seeking approval of the Easement Agreement from City's Public Utilities Commission, Board of Supervisors and Mayor. If not sooner revoked, such license agreement will terminate automatically upon the recording of the Easement Agreement.

H. Offering the Easement for sale by competitive bidding is impractical for a number of reasons. Given the dimensions and location of the Property along McHenry Avenue and the

presence of SFPUC's overhead high voltage lines and subsurface water transmission pipelines, the highest and best use of the surface of the Easement Area is for street and sidewalk improvements, and Modesto, Caltrans and McHenry are the only potential purchasers of an easement for that purpose. SFPUC staff negotiated with Caltrans, and that agency declined to acquire the Property or an easement in the Property for the road widening. Further, McHenry is willing to pay full appraised value as consideration for Modesto's acquisition of the Easement, and Modesto has the power to acquire property by eminent domain.

I. Modesto is willing to acquire the Easement, McHenry is willing to pay for Modesto's acquisition of the Easement, and City is willing to sell the Easement, subject to approval by City's Public Utilities Commission, Board of Supervisors and Mayor, on the terms and conditions set forth in this Agreement.

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

1. SALE AND PURCHASE

1.1 Property Included in Sale

Subject to the terms, covenants and conditions set forth herein, City agrees to convey the Easement to Modesto, and Buyer agrees to compensate City for the conveyance of the Easement.

2. PURCHASE PRICE

The purchase price for the Easement is Thirty-five Thousand Dollars (\$35,000) (the "**Purchase Price**"). McHenry shall pay the Purchase Price as follows:

(a) Within five (5) business days after the date this Agreement is executed by the parties hereto, McHenry shall deposit the sum of Five Thousand Dollars (\$5,000) as an earnest money deposit (the "**Deposit**"). If the parties elect to consummate this sale through an escrow, McHenry shall deliver the Deposit in escrow with Chicago Title Insurance Company, 455 Market Street, Suite 2100, San Francisco, CA 94105 (the "**Title Company**"); otherwise, McHenry shall deliver the Deposit to the City in care of SFPUC's Real Estate Director at SFPUC's address for notices in **Section 10.1**. The Deposit shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Deposit. At the Closing (as defined below) the Deposit shall be paid to City and credited against the Purchase Price.

(b) McHenry shall pay the balance of the Purchase Price, which is Thirty Thousand Dollars (\$30,000), to City at the consummation of the purchase and sale contemplated hereunder (the "**Closing**").

All sums payable hereunder including, without limitation, the Deposit, shall be paid in immediately available funds of lawful money of the United States of America.

3. TITLE

3.1 Conditions of Title

At the Closing, City shall convey the Easement to Modesto by executing, delivering and recording the Easement Agreement. Title to the Easement shall be subject to (a) liens of local

real estate taxes and assessments, (b) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by McHenry or Modesto (together, "Buyer") pursuant to Section 5.1 hereof, and any other exceptions to title that would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, and (c) all items of which Buyer has actual or constructive notice or knowledge. All of the foregoing exceptions to title shall be referred to collectively as the "Conditions of Title."

McHenry acknowledges that City and Modesto Irrigation District ("MID") entered into Revocable License #P4280, dated December 17, 2014, which authorized MID to install and operate a six-inch diameter subsurface conduit beneath City's water transmission pipelines in Parcel 656 and a 12,000 volt electrical distribution circuit within the conduit

3.2 Buyer's Responsibility for Title Insurance

McHenry understands and agrees that the right, title and interest in the Easement shall not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance in connection with this transaction. McHenry recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Easement Area. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters that an accurate survey or inspection might reveal. It is McHenry's and Modesto's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

4. "AS-IS" PURCHASE; RELEASE OF CITY

4.1 Buyer's Independent Investigation

McHenry represents and warrants to City that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Material in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "**Hazardous Material**" shall mean any

material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

(e) Any license agreement between City and McHenry relating to McHenry's performing street widening improvements and/or other improvements in connection with development of JWG McHenry's real property abutting McHenry Avenue and City's property.

(e) The suitability of the Easement Area for Modesto's intended uses. McHenry represents and warrants that Modesto's intended use of the Easement Area is for public street, curb and sidewalk use.

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

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

4.2 Property Disclosures

California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Material. Accordingly, McHenry is hereby advised that occupation of the Easement Area may lead to exposure to electromagnetic fields and Hazardous Material such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, and construction materials containing chemicals. By execution of this Agreement, McHenry acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

McHenry acknowledges that City has disclosed the matters relating to the Easement Area referred to in Schedule 1 attached hereto. Nothing contained in such schedule shall limit any of the provisions of this Article or relieve McHenry and Modesto of their responsibility to conduct a diligent inquiry hereunder, nor shall any such matters limit any of the provisions of Section 4.3 ["As-Is" Purchase] or Section 4.4 [Release of City].

4.3 "As-Is" Purchase

MCHENRY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND MCHENRY IS PURCHASING THE EASEMENT ON AN "AS-IS WITH ALL FAULTS" BASIS. MCHENRY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR MODESTO'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS MCHENRY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

4.4 Release of City

As part of its agreement to purchase the Easement in its "As-Is With All Faults" condition, McHenry, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) McHenry's and Modesto's and their respective Agents' and invitees' past, present and future use of the Easement Area, (ii) the design, construction, maintenance and repair of any improvements constructed on the Easement Area by or for McHenry or Modesto prior to the Closing, (iii) the physical, geological or environmental condition of the Easement Area, including, without limitation, any Hazardous Material in, on, under, above or about the Easement Area, and (iv) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, McHenry expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, MCHENRY SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT MCHENRY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

McHENRY'S INITIALS: _____

5. CONDITIONS PRECEDENT

5.1 McHenry's Conditions Precedent

McHenry's obligation to pay for the Easement is conditioned upon the following ("McHenry's Conditions Precedent"):

(a) City staff shall have timely obtained the necessary approvals from City's Public Utilities Commission, Board of Supervisors and Mayor on or before November 9, 2015, as such date may be extended by City.

(b) City shall have executed and acknowledged a counterpart of the Easement Agreement (and delivered it to escrow if the parties are closing through an escrow) and shall be prepared to record the Easement Agreement upon receipt of the Purchase Price on the Closing Date.

5.2 Failure of McHenry's Conditions Precedent

Each of McHenry's Conditions Precedent is intended solely for the benefit of McHenry. If any of McHenry's Conditions Precedent are not satisfied as provided above, McHenry may, at its option, terminate this Agreement or waive the condition; however, the condition set forth in **Section 5.3(b)** may not be waived except for extending the deadline for satisfaction. Upon any such termination, neither party shall have any further rights or obligations hereunder except as provided in **Section 8.2** [Brokers] or **9.4** [Authority of McHenry] or as otherwise expressly provided herein. However, such termination shall not affect the parties' respective rights and obligations under the McHenry Avenue Improvement License or any other license agreement between McHenry and City.

5.3 City's Conditions Precedent

The following are conditions precedent to City's obligation to convey the Easement to Modesto ("City's Conditions Precedent"):

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

(b) An ordinance or resolution approving and authorizing the transactions contemplated hereby and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Easement, shall have been adopted by the City's Board of Supervisors and Mayor, each in their respective sole and absolute discretion, on or before November 9, 2015.

(c) McHenry shall not be in default beyond any applicable cure period of its obligations under any License Agreement between McHenry and City.

5.4 Failure of City's Conditions Precedent

Each of City's Conditions Precedent is intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied as provided above, City may, at its option, terminate this Agreement or waive the condition; however, the condition set forth in

Section 5.3(b) may not be waived except for extending the deadline for satisfaction. Upon any such termination, neither party shall have any further rights or obligations hereunder except as provided in **Section 8.2** [Brokers] or **9.4** [Authority of McHenry] or as otherwise expressly provided herein. However, such termination shall not affect the parties' respective rights and obligations under the McHenry Avenue Improvement License or any other license agreement between McHenry and City.

6. ESCROW AND CLOSING

6.1 Escrow

The parties may elect to close through an escrow with the Title Company or without an escrow pursuant to **Section 6.5**. If the parties elect to close through an escrow, then within five (5) business days after the parties execute this Agreement, McHenry and City shall deposit an executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. City and McHenry agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Closing Date

The Closing hereunder shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement before 1:00 p.m. San Francisco Time on (i) the date which is within forty-five (45) days after the effective date of the Board of Supervisor's ordinance or resolution referred to in **Section 5.3(b)** above, or if such date is not a business day, then upon the next ensuing business day, or (ii) such other date and time as McHenry and City may mutually agree upon in writing (the "**Closing Date**").

6.3 Deposit of Documents

(a) If the parties elect to close through an escrow, at or before the Closing, City shall deposit into escrow the following:

(i) the duly executed and acknowledged counterpart of the Easement Agreement conveying the Easement to Modesto subject to the Conditions of Title.

(b) If the parties elect to close through an escrow, at or before the Closing, McHenry shall deposit into escrow the following:

(i) the balance of the Purchase Price and other funds necessary to close this transaction, including expenses under Section 8;

(ii) any additional funds as may then be owing to City by McHenry under that Cost Reimbursement Agreement date October 1, 2014, between City and McHenry; and

(iii) a counterpart of the Easement Agreement, duly executed and acknowledged by Modesto, including the duly executed Certificate of Acceptance.

(c) City and McHenry shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Easement in accordance with the terms hereof.

6.4 Prorations

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

6.5 Closing without Escrow.

If the parties elect to consummate the purchase and sale without an escrow, City shall effect the Closing on the Closing Date as follows:

(a) McHenry shall deliver to City the Purchase Price and McHenry's share of expenses and prorations, if applicable, and any additional funds required under this **Section 6** and **Section 8**.

(b) City shall cause the Easement Agreement to be executed, recorded and delivered, when City receives such funds and City's Conditions Precedent are satisfied.

(c) City shall provide McHenry with a recordation conformed copy of the recorded Easement Agreement.

7. RISK OF LOSS

7.1 Loss

City shall give McHenry notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Easement Area. In the event that all or any portion of the Easement Area is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then so long as Modesto or Caltrans still intends to use Easement Area for public street and sidewalk purposes, McHenry shall proceed with the purchase of the Easement, and upon the Closing, McHenry shall receive a credit against the Purchase Price, equal to the amount of any insurance proceeds or condemnation awards actually collected by City as a result of any such damage or destruction or condemnation and allocable to the Easement, less any sums expended by City toward the restoration or repair of the Easement Area. If the proceeds or awards have not been collected as of the Closing, then City shall assign such proceeds or awards to McHenry, except to the extent needed to reimburse City for sums expended to collect such proceeds or repair or restore the Easement Area, and McHenry shall not receive any credit against the Purchase Price with respect to such proceeds or awards. If following such damage, destruction or condemnation, neither Modesto nor Caltrans intends to

use the Easement Area for public street or sidewalk purposes, then the parties shall terminate this Agreement, the Title Company or City shall return the Deposit to McHenry and return to Modesto the signed counterpart of the Easement Agreement, and neither party shall have any further rights or obligations hereunder except as provided in Section 8.2 [Brokers], or otherwise expressly provided herein. However, such termination shall not affect the parties' respective rights and obligations under the McHenry Avenue Improvement License or any other license agreement between McHenry and City.

7.2 Self-Insurance

Notwithstanding anything to the contrary above, McHenry acknowledges that City self-insures and shall not be obligated to purchase any third-party commercial liability insurance or property insurance.

8. EXPENSES

8.1 Expenses

McHenry shall pay any transfer taxes applicable to the sale, personal property taxes, escrow fees and recording charges and any other costs and charges of the escrow for the sale.

8.2 Brokers

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

9. INTENTIONALLY OMITTED

10. GENERAL PROVISIONS

10.1 Notices

Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next business day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Re: SFPUC Parcel 656

with a copy to:

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

and:

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

MCHENRY:

John Gardner
JWG McHenry LLC
c/o Central Valley Automotive
4460 McHenry Ave.
Modesto, CA 95356

with a copy to:

Marianne F. Adriatico
Duane Morris LLP
865 South Figueroa Street, Suite 3100
Los Angeles, CA 90017-5450

or such other address as either party may from time to time specify in writing to the other party. Any correctly addressed notice given by a method that provides confirmation of delivery shall be deemed given on the earliest of confirmed delivery or confirmed first attempted delivery.

10.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators and assigns. McHenry's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall McHenry be released of any of its obligations hereunder.

10.3 Amendments

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

10.4 McHenry's Representations and Warranties

McHenry makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) JWG McHenry, LLC is a limited liability company duly organized and validly existing and in good standing under the laws of the State of California. McHenry has

duly authorized by all necessary action the execution, delivery and performance of this Agreement. McHenry has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of McHenry, enforceable against McHenry in accordance with the terms hereof.

(b) McHenry represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event McHenry has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) No document or instrument furnished or to be furnished by the McHenry 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.

Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of McHenry contained herein or in other agreements or documents executed by McHenry in connection herewith, shall survive the Closing Date.

10.5 Governing Law

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

10.6 Merger of Prior Agreements

This Agreement, together with the exhibits hereto and license agreements referenced herein, contain any and all representations, warranties and covenants made by McHenry and City and constitutes the entire understanding between the parties hereto with respect to the purchase and sale of the Easement. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

10.7 Parties and Their Agents

The term "McHenry" as used herein shall include the plural as well as the singular. If McHenry consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on McHenry shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party.

10.8 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision

contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

10.9 Attorneys' Fees

If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

10.10 Time of Essence

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

10.11 No Merger

The obligations contained herein shall not merge with the transfer of title to the Easement but shall remain in effect until fulfilled.

10.12 Non-Liability of City Officials, Employees and Agents

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

10.13 Conflicts of Interest

Through its execution of this Agreement, McHenry acknowledges that it is familiar with the provisions of Section 15.103 or City's 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 California Government Code, and certifies that it does not know of any facts which constitute a

violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, McHenry shall immediately notify the City.

10.14 Notification of Limitations on Contributions

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

10.15 Sunshine Ordinance

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

10.16 Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

10.17 MacBride Principles - Northern Ireland

The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges companies to do business with corporations that abide by the MacBride Principles. McHenry acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

10.18 No Recording

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

10.19 Effective Date

As used herein, the term “**Effective Date**” shall mean the date on which the City’s Board of Supervisors and Mayor enact a resolution or an ordinance approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

10.20 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

10.21 Counterparts

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

10.22 Cooperative Drafting.

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, MCHENRY ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OR ORDINANCE OF CITY’S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION OR ORDINANCE, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY’S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED

TO IMPLY THAT SUCH RESOLUTION OR ORDINANCE WILL BE ENACTED NOR
WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

CITY:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

Date: _____

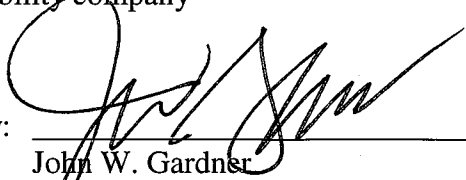
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carolyn Johnson Stein
Deputy City Attorney

MCHENRY:

JWG MCHENRY, LLC, a California limited
liability company

By: _____

John W. Gardner
President

Date: 10-13-2015

EXHIBIT "A"
LEGAL DESCRIPTION

All that certain real property situate in the City of Modesto, County of Stanislaus, State of California, lying within the Southwest quarter of Section 4, Township 3 South, Range 9 East, Mount Diablo Meridian, described as follows:

ALL that portion of that certain 110.00 foot wide tract of land (herein after referred to as Hetch Hetchy Aqueduct right of way) conveyed to the City and County of San Francisco by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on February 13, 1924 in Book 53 of Official Records at Page 491, being more particularly described as follows:

COMMENCING at the intersection point of the West line of said Section 4 and the surveyed center line of the Hetch Hetchy Aqueduct right of way, said point bears North 01°13'55" West, a distance of 875.40 feet as same is shown on that amended map filed for record in the Office of the Recorder of the County of Stanislaus on January 27, 2006 in Book 54 of Parcel Maps at Page 28; thence North 70°11'10" East along the center line of said surveyed center line of the Hetch Hetchy Aqueduct right of way, a distance of 58.02 feet to a point on the East line of that parcel of land conveyed to the State of California (State Highway 108) by Deed recorded July 13, 2001 as Document Number 63580 and being the TRUE POINT OF BEGINNING of this description; thence North 01°13'55" West along last said line, a distance of 58.02 feet to angle point in last said line and a point on the North line of said Hetch Hetchy Aqueduct right of way; thence North 70°11'10" East along last said line, a distance of 32.97 feet to a point of intersection with the East right of way line of that certain 12.00 foot wide strip dedicated to the City of Modesto on last said Parcel Map; thence South 01°13'55" East, a distance of 116.05 feet to a point on the Southerly line of said Hetch Hetchy Aqueduct right of way; thence South 70°11'10" West along last said line, a distance of 32.97 feet to a point on the East line of said State Highway 108; thence North 01°13'55" West along last said line, a distance of 58.03 feet to the point of beginning of this description.

CONTAINING 3,627 square feet more or less

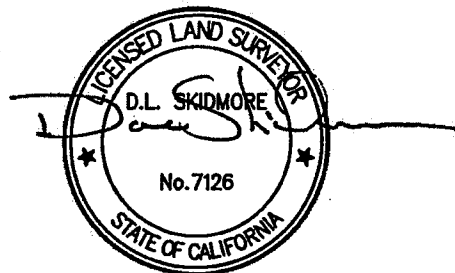
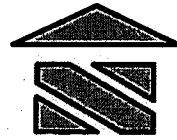


EXHIBIT B

Plat of Property

CLARATINA AVENUE



PARCEL "1"

EXIST. RIGHT OF WAY LINE

SURVEYED CENTER LINE OF
110' WIDE RIGHT OF WAY
CITY AND COUNTY OF
SAN FRANCISCO

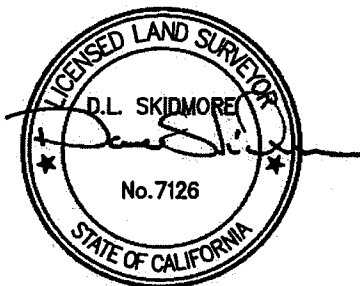
**110' HETCH HETCHY
RIGHT-OF-WAY**
BOOK 53, OFFICIAL RECORDS, PG. 491

3,627 SQ. FT.

EXIST. RIGHT OF WAY LINE

PARCEL "1"

54 - PM - 28



(MCHENRY AVENUE)
STATE HIGHWAY 108

SECTION LINE

N01°13'55"W 875.40'

P.O.B.

S70°11'10"W
58.02'

P.O.C.

N01°13'55"W

58.02'

S01°13'55"E

58.03'

S70°11'10"W
32.97'

N01°13'55"W 116.05'

N70°11'10"E
32.97'

86.25'

55.00'

86.25'

SW. COR. SEC. 4
T.3 S., R. 9 E., M.D.M.

DRAWN:	DLS
DATE:	5/11/15
SCALE:	1" = 30'
JOB #:	910-13
DWG:	ExB(HH)(r1)

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

A PORTION OF THE SOUTHWEST QUARTER
OF SECTION 4, T. 3 S., R. 9 E., M.D.M.
CITY OF MODESTO, CALIFORNIA



**ASSOCIATED
ENGINEERING
GROUP**

4206 TECHNOLOGY DRIVE, SUITE 4, MODESTO, CA 95356
PHONE: (209) 545-3390 FAX: (209) 545-3875 www.assoceng.com

SCHEDULE 1

PROPERTY DISCLOSURES

Pursuant to Section 4.2 of the Agreement for Sale of Real Estate, to which this Schedule is attached, City discloses the following information concerning the Property:

- There are three (3) large diameter pipelines buried in the soil; the top of pipe is approximately four (4) feet deep. The pipes transport water for the needs of 2.5 million people in the San Francisco Bay Area.
- These three Hetch Hetchy San Joaquin Pipeline (SJPL) pipes have had their coatings partially reconditioned in the area of the Property. Reconditioned pipe is coated with Environline 376.
- SJPL1, installed in approximately 1923, is a 56-inch diameter steel pipe with riveted steel joints coated with bitumen (asphalt) paper wrapped.
- SJPL2, installed in approximately 1956, is a 62-inch diameter steel pipe coated with cement mortar
- SJPL3, installed in approximately 1965, is a 78-inch diameter steel pipe coated with coal tar paper covering with asbestos filler as a binding agent.
- Additional pipelines may be installed, including a future SJPL #4, 78 inches in diameter. The exact dates depend on Hetch Hetchy needs and funding.
- The combined capacity of the three existing SJPL pipes is 420 million gallons of water per day.
- The pressure in the pipes is up to 200 psi.
- The pH of the water in the pipes varies from 6.7 to 10.6 pH.
- Cathodic protection insulated copper wire test leads are attached to the pipes.
- DC electric current on the order of 30 Volts DC may one day be induced on the pipes.
- The soil in that area is 100% disturbed down to 15 feet beneath the surface due to construction activity.
- The soil was filled and compacted to approximately 90%.
- The fill under the pipes is controlled low strength cement material on the order of 300 psi.
- There are Hetch Hetchy high voltage electrical transmission lines overhead; the existing north lines are 230kV and the existing south lines are 130kV.

EXHIBIT C

FORM OF EASEMENT AGREEMENT

[See attached]

Recording Requested By
and
When Recorded Mail To:

(Space Above For Recorder's Use)

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
EASEMENT DEED AND AGREEMENT**

THIS EASEMENT AGREEMENT (this "Agreement") dated for reference purposes only as of _____, 2015, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("San Francisco"), acting by and through its Public Utilities Commission ("SFPUC"), and **City of Modesto**, a municipal corporation ("Holder").

RECITALS

A. San Francisco owns in fee that certain real property situated in the City of Modesto, County of Stanislaus, State of California, more particularly described in attached **Exhibit A** (the "Easement Area"). The Easement Area is shown generally on attached **Exhibit B**. The Easement Area is a portion of the real property described in attached **Exhibit C** ("San Francisco's Property").

B. San Francisco, acting through SFPUC, is the owner and operator of regional water and power systems. As part of those systems, San Francisco maintains and operates within San Francisco's Property and adjacent real property various facilities, fixtures and structures for the transmission of utilities, including subsurface water transmission pipelines, vaults, conduits, tunnels, surface towers and overhead power transmission lines and appurtenances (as they currently exist and may be modified, replaced, expanded, added to, constructed and installed from time to time, the "SFPUC Facilities").

C. In connection with the development of adjacent property, Holder has required that **JWG McHenry, LLC**, a California limited liability company, make certain improvements to **McHenry Avenue**, including widening the road to include street, curb and gutter improvements on the surface of the Easement Area. San Francisco is willing to allow the construction of such improvements within the Easement Area and to convey an easement for such roadway use subject to the condition that a protective bridge or cap (the "Cap") be constructed and maintained over San Francisco's subsurface water transmission pipelines and subject to the other terms and conditions of this Agreement.

Now, therefore, San Francisco and Holder agree as follows:

1. **Easement.**

(a) **Conveyance of Easement.** San Francisco quitclaims and conveys to Holder and its successors and assigns, without warranty, a perpetual, nonexclusive easement upon, over and across the Easement Area for the limited purpose and subject to the terms, conditions and restrictions set forth below (the "Easement").

(b) **No Representations.** THE PRIVILEGE GIVEN TO HOLDER UNDER THIS AGREEMENT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF SAN FRANCISCO IN THE EASEMENT AREA ARE CONCERNED, AND HOLDER SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE EASEMENT AREA. HOLDER ACKNOWLEDGES AND AGREES THAT NEITHER SAN FRANCISCO NOR ANY OF ITS AGENTS HAVE MADE, AND SAN FRANCISCO HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING SAN FRANCISCO'S TITLE TO THE EASEMENT AREA OR THE PRESENT OR FUTURE SUITABILITY OF THE EASEMENT AREA FOR HOLDER'S INTENDED WORK OR IMPROVEMENTS.

2. **Commencement Date.** The Easement shall commence on the date on which this Agreement is fully executed and recorded in the Office of the County Recorder of Stanislaus County, California (the "Commencement Date"), provided that San Francisco's Public Utilities Commission, Board of Supervisors, and Mayor shall each in its sole discretion have duly adopted a resolution approving this Agreement and authorizing the transactions contemplated hereby. The effectiveness of this Agreement is contingent upon adoption of such resolutions.

3. **Use of Easement Area.**

(a) **Holder's Permitted Acts.** Holder may enter and use the Easement Area for the sole purposes of constructing, reconstructing, upgrading, replacing, removing, inspecting, maintaining, repairing and operating the Cap over the top of San Francisco's subsurface water transmission pipelines, and curb, gutter and roadway improvements on the surface of the Easement Area to comprise a portion of McHenry Avenue, a public street, all in strict accordance with Section 4(a) (Approval of Plans and Specifications) hereof (the "Permitted Acts"), and for no other purpose. Holder's use of the Easement Area for roadway purposes is conditioned upon construction of the Cap in accordance with the Initial Approved Plans, as defined in Section 4(a), and Holder's maintenance of such Cap in good condition and repair. The Cap and the curb, gutter and roadway improvements, as originally constructed within the Easement Area and as Holder may modify or replace them from time to time in accordance with this Agreement, are referred to herein collectively as the "Road Improvements." San Francisco and Holder acknowledge that San Francisco has allowed the initial construction of the Road Improvements to be performed by JWG McHenry, LLC, prior to the effective date of the Easement, pursuant to a separate License Agreement between JWG McHenry, LLC, and San Francisco. The Permitted Acts shall not include installation, maintenance or operation of third party utility facilities such as, without limitation, electrical, communications, water or sewer facilities within the Easement Area. Utility and communications providers (whether private or

public, including municipalities and public agencies) must obtain San Francisco's prior approval for any such installation, and such approval may be granted or withheld at San Francisco's sole discretion. The Permitted Acts may be performed by Holder's agents, employees, contractors, architects, vendors, material suppliers and invitees.

(b) **Subject to San Francisco Uses.** Holder is aware that the Easement Area constitutes a portion of San Francisco's regional water and power transmission systems. Notwithstanding anything to the contrary in this Agreement, any and all of Holder's activities hereunder shall be subject and subordinate at all times to San Francisco's existing and future use of the Easement Area for utility and other municipal purposes, which may include construction of additional subsurface pipelines within the Easement Area. San Francisco shall in no way be liable for any damage or destruction to the Road Improvements or the personal property of Holder or its Agents resulting from any construction, accident, break, repair, assessment, or maintenance of any pipeline or other SFPUC Facilities located on or about the Easement Area. Holder acknowledges that San Francisco may use the open trench method for access to San Francisco's existing or future facilities or pipelines located on or about the Easement Area in the event of maintenance, repair, replacement, construction or installation of any existing, future or additional pipelines, conduits transmission lines, tunnels or other SFPUC Facilities. Upon prior notice from San Francisco, Holder shall use good faith, reasonable efforts to cooperate and accommodate any assessment, maintenance, repair or construction work schedule provided by San Francisco related to the Easement Area, and San Francisco agrees to use good faith, reasonable efforts to coordinate nonemergency maintenance, repair and construction work with Holder so as to minimize disruption to Holder's use of the Easement Area to the extent reasonably practicable. If San Francisco determines that it is necessary to remove or damage the Cap in whole or in part in order to repair, replace or construct San Francisco's pipes, upon completion of such work, Holder shall restore or replace the Cap at its sole cost so that it protects the pipelines and supports roadway uses, to the reasonable satisfaction of San Francisco and Caltrans.

4. **Holder's Construction and Ownership of Improvements.** Holder accepts ownership of the Road Improvements that were constructed by JWG McHenry, LLC, within the Easement Area in accordance with the plans and specifications described on attached **Exhibit D** (the "**Initial Approved Plans**"). Subject to the terms and conditions of this Agreement, Holder may, at its sole cost and expense, construct or cause the construction of modifications, additions or replacements of such Road Improvements and shall, at its sole cost and expense, maintain the Road Improvements in good, safe condition and repair.

(a) **Approval of Holder's Plans and Specifications.** Holder shall construct and install any improvements in the Easement Area, including modifications, additions, or replacements to the Road Improvements, in strict accordance with plans and specifications (including drawings) approved in advance and in writing by SFPUC ("**Approved Plans**"). Plans and drawings for any repairs or replacements of the Cap and any other improvements that will impact Caltrans' property or traffic operations on McHenry Avenue (so long as it remains a state route) must also be approved in writing in advance by Caltrans. Any Approved Plans may be revised or amended only with prior written approval of SFPUC, in its sole discretion, after SFPUC's Bureau of Environmental Management has determined that no further environmental review is required by CEQA as a result of any such revision or amendment. SFPUC's consent to

or approval of any improvements, equipment or fixtures shall not relieve Holder or its engineers, architects or contractors from any liability for negligence, errors or omissions associated with the design and construction thereof. In no event shall SFPUC's approval of the Initial Approved Plans, any future Approved Plans, or any other plans and specifications be deemed to constitute a representation or warranty by San Francisco concerning the suitability of the improvements, equipment or fixtures for Holder's purposes or that the work called for in the plans and specifications complies with applicable laws or industry standards nor shall such approval release Holder from Holder's obligation to supply plans and specifications that conform to applicable building codes, other laws and industry standards.

(b) **Permits and Approvals.** Before beginning any work in the Easement Area, Holder shall obtain any and all permits, licenses and approvals (collectively, "Approvals") of all regulatory agencies and other third parties that are required to commence, complete and maintain the permitted work. Promptly upon receipt of such Approvals, Holder shall deliver copies of them to SFPUC. Holder recognizes and agrees that no approval by SFPUC for purposes of Holder's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit Holder's obligation to obtain all such regulatory Approvals, at Holder's sole cost.

(c) **Exercise of Due Care.** Due care shall be used at all times to avoid any damage or harm to SFPUC Facilities, or other property and to any native vegetation and natural attributes of the Easement Area and to minimize slope erosion. Holder shall not disturb the surface of the Easement Area or perform any excavation work without the prior written approval of San Francisco, which San Francisco may withhold in its sole discretion. San Francisco shall have the right to condition and/or oversee any permitted excavation work. Holder shall not use any pick, plow or other sharp tool to remove the two feet (2') of soil around the transmission mains, provided that Holder may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this Agreement. Holder shall immediately inform San Francisco of any actual or potential damage to the coating of the pipeline, and any such damage shall be promptly repaired by Holder, at its own expense, to the satisfaction of San Francisco prior to backfilling; provided, San Francisco may elect, in its sole discretion, to make any necessary repairs itself, at Holder's sole cost, by notifying Holder of such fact. Upon completion of the repairs, San Francisco shall send to Holder a bill therefore which Holder shall pay within thirty (30) days following receipt. Under no circumstances shall Holder damage, harm or take any rare, threatened or endangered species on or about the Easement Area.

(d) **Cooperation with Public Utilities Commission.** Holder and its agents, contractors, subcontractors and consultants shall work closely with San Francisco personnel to minimize any potential disruption (even if temporary) of San Francisco's Facilities, in, under, on or about the Easement Area and San Francisco's use thereof.

(e) **Heavy Equipment.** Holder shall not use any heavy construction equipment over or about San Francisco's pipelines, except as otherwise expressly allowed in Section 5(i) (Protection of the SFPUC Facilities).

(f) **Work Schedule; San Francisco Construction Inspector.** At least ten (10) business days prior to the commencement of any work on the Easement Area, Holder shall notify

the Construction Inspector, at 209-989-2832 or 209-989-2547, of the date such work shall commence and the intended construction schedule, which shall be subject to San Francisco's prior written approval. Notwithstanding the approval of such schedule, the Construction Inspector shall have the right to require Holder to reasonably adjust such schedule from time to time. No work shall take place within the Easement without the Construction Inspector present. Holder shall bear the cost of the Construction Inspector at San Francisco's standard charge, as it may be revised from time to time. All work must be performed during regular working hours (Monday through Friday) between 8:00 a.m. and 4:30 p.m., exclusive of San Francisco holidays. Any work performed during any other time or day must be preapproved by the SFPUC at least five (5) business days prior to commencing such work. In connection with such approval, San Francisco shall have the right to charge Holder additional inspection fees payable prior to SFPUC's approval of the request. Holder shall complete all work in accordance with the approved schedule, subject only to unavoidable delays. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, strikes, lockouts, other labor disputes, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of Holder (excluding financial inability).

(g) **Restoration of Easement Area.** Immediately following completion of any work permitted under this Agreement, Holder shall remove all debris and any excess dirt, repair any damage caused to San Francisco's facilities and adjacent property, and place the Easement Area in the condition reflected in the Approved Plans. Any area that is not slated for modification in the Approved Plans but is altered by the work shall be returned to pre-work condition, to San Francisco's reasonable satisfaction.

(h) **Pipeline Depth/Installation of Above-Ground Markers.** Before commencing any excavation work in the Easement Area, Holder shall have a licensed surveyor prepare a survey of all SFPUC structures and other SFPUC Facilities on, under and above the surface of the Easement Area and shall submit the survey to San Francisco for review and reasonable approval. Before commencing any excavation work in the Easement Area, Holder shall confirm by field measure the depth of any San Francisco's structures or facilities (which includes but is not limited to pipelines, conduits and cables) located in the Easement Area and shall forward such information to San Francisco. Holder shall install above-ground markers identifying the location of any underground facilities installed pursuant to this Agreement. The location, type and installation of markers and identifying information on the markers shall be subject to the prior written approval of SFPUC.

(i) **As-Built Drawings/Reports.** Promptly upon completion of the installation of permitted improvements, Holder shall furnish SFPUC with two (2) complete copies (including electronic CAD format ".dwg" files) of final as-built drawings for the Road Improvements, which drawings shall include sufficient detail so as to allow San Francisco to precisely locate the Road Improvements. In the event that Holder or its agents or consultants prepares any environmental, seismic, geophysical or other written report relating to the Easement Area and/or any work performed thereon, Holder shall furnish to San Francisco a complete copy of such report, including any schedules, exhibits and maps, promptly upon completion of the same.

(j) **Responsibility for Maintenance of Road Improvements.** Holder shall be solely responsible for repairing and maintaining all Road Improvements placed within the Easement Area and the surface of the Easement Area in good and safe condition. The term "Road Improvements" includes all improvements, alterations, fixtures and facilities constructed or installed by or for Holder or JWG McHenry LLC in accordance with the Initial Approved Plans or any future Approved Plans. Holder shall notify San Francisco in writing not less than five (5) business days before performing any routine repair or maintenance work in the Easement Area, except in the case of an emergency wherein Holder shall notify San Francisco telephonically and in writing as soon as reasonably possible.

(k) **Potholing.** Any potholing authorized by this Agreement shall be subject to the direction of San Francisco's inspector. Potholing using the soft dig method is preferred. The use of other mechanical methods such as digging with a backhoe must be approved by SFPUC at least five (5) business days prior to commencing such work. Notwithstanding the foregoing, the last two (2) feet above the top of any San Francisco pipe must be dug manually, without the use of any machines.

5. **Restrictions on Use.** Holder agrees that, by way of example only and without limitation, the following uses of the Easement Area by Holder, or any other person claiming by or through Holder, are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:

(a) **Improvements.** Except as otherwise expressly provided herein, Holder shall not construct or place any temporary or permanent structures or improvements in, on, under or about the Easement Area, nor shall Holder make any alterations or additions to any of existing structures or improvements on the Easement Area, unless Holder first obtains SFPUC's prior written consent, which SFPUC may give or withhold in its sole and absolute discretion. For purposes hereof, "improvements" shall include but not be limited to asphalt, blacktop, concrete and cementitious concrete driveways, sidewalks and parking areas, shacks, storage facilities, poles, towers, wires, signs, fences, and changes to grade elevation.

(b) **Trees and Other Plantings.** In no event shall Holder plant or maintain any trees within the Easement Area. Holder shall not plant or maintain any other vegetation in or on the Easement Area, except as otherwise expressly provided herein and except in accordance with detailed plans consistent with the SFPUC's Vegetation Management Policy, as it may be amended from time to time, and as approved by the SFPUC in writing in advance.

(c) **Dumping.** Holder shall not cause or permit the dumping or other disposal in, on, under or about the Easement Area of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material.** Holder shall not cause, nor shall Holder allow any of its agents, contractors or subcontractors to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released or disposed of in, on, under or about the Easement Area, or transported to, from or over the Easement Area. Holder shall immediately notify San Francisco when Holder learns of, or has reason to believe that, a release of Hazardous

Material has occurred in, on, under or about the Easement Area. Holder shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts and the like (collectively, "Laws") requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. In the event that Holder or its agents, contractors or subcontractors cause a release of Hazardous Material, Holder shall, without cost to San Francisco and in accordance with all Laws and using the highest and best technology available, promptly return the Easement Area to the condition immediately prior to the release. In connection therewith, Holder shall afford San Francisco a full opportunity to negotiate and participate in any discussion with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material, and any other abatement or clean-up plan, strategy and procedure. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes the following: any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area; and any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, provided, the foregoing shall not prohibit Holder from traversing to, from and across the Easement Area in standard motor vehicles that do not exceed the weight limitations set forth below. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area.

(f) **Waste or Nuisance.** Holder shall not conduct any activities in, on, under or about the Easement Area that constitute waste, nuisance or unreasonable annoyance (including emission of objectionable odors, noises or lights) to San Francisco, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(g) **Damage.** Holder shall not do anything in, on, under or about the Easement Area that could cause damage to or interference with any pipelines or other property located in, on, under or about the Easement Area.

(h) **Ponding; Water Courses.** Holder shall not cause any ponding on the Easement Area or any flooding on adjacent land. Holder shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under or about the Easement Area, nor shall Holder engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Protection of the SFPUC Facilities.** To prevent damage to San Francisco's underground pipelines, Holder's use of the Easement Area shall be subject to the following restrictions:

(1) Prior to construction of the Cap, or during any period when the Cap has been damaged or removed (each a "Non-Cap Period"), the depth of soil cover over the tops of San Francisco's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in subsection (2). During any Non-Cap Period, if any equipment with axle loading exceeds the loads stated in subsection (2) below or if the depth of soil cover is less than stated above, Holder shall submit to SFPUC for review and approval, in SFPUC's sole discretion, engineering calculations prepared by a licensed Professional Engineer licensed in California showing that San Francisco's pipelines will not be adversely affected by Holder's proposed activities. In the event that San Francisco's pipelines may be adversely affected, Holder shall submit remedial measures for San Francisco's approval to ensure that no adverse effect will occur.

(2) During any Non-Cap Period, the effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying 8-tons (16,000 lbs.). Holder shall be responsible to provide SFPUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(3) Holder shall not use vibrating compaction equipment within the Easement Area without SFPUC's prior written approval, which approval may be withheld in SFPUC's sole discretion.

(4) During any Non-Cap Period, if the depth of the soil cover over the pipelines (determined by potholing or other proof procedure) is less than the minimum stated in subsection (1) above, unless an alternate method is approved by SFPUC in writing, all excavation and grading over the pipelines shall be performed manually.

(5) For any machinery equipment excavation and grading over and within twenty feet (20') of each side of the centerline of any of the pipelines (measured on the surface), Holder shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two feet (2') of soil around any pipeline shall be removed manually or by other methods approved by SFPUC with due care as provided in Section 4(c) (Exercise of Due Care).

(6) Holder shall maintain the Cap in good condition and repair at all times. If Holder becomes aware that any portion of the Cap is or may have been damaged, Holder shall immediately notify San Francisco via San Francisco's emergency contact pursuant to **Section 18 (Notices)** (or if San Francisco first becomes aware of such damage, San Francisco shall notify Holder via Holder's emergency contact pursuant to **Section 18**). In that event the parties shall also promptly notify Caltrans (if McHenry Avenue remains a State route at that time), and shall suspend all vehicular use of the surface of the Easement Area, unless and until San Francisco, Modesto and Caltrans determine, each in its sole discretion, that the Cap will support vehicular

traffic and protect the subsurface pipes. Any repair or replacement of the Cap must be in accordance with Approved Plans approved by San Francisco and (so long as McHenry Avenue remains a State route) by Caltrans. When submitting proposed plans for review, Holder shall also submit to SFPUC for review and approval, in SFPUC's sole discretion, engineering calculations prepared by a professional engineer licensed in California showing that the repaired or restored Cap will continue to support roadway use and protect San Francisco's subsurface pipelines.

6. Insurance.

(a) Holder shall at its expense procure and keep in effect, and cause each contractor, if any, performing work in the Easement Area, at its expense, to procure and keep in effect at all times during any construction activities on the Easement Area insurance as follows: (i) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse and underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations; (ii) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired automobiles, as applicable, if Holder uses or causes to be used any vehicles in connection with its use of the Easement Area, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident. Each workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Permittee and its Agents related to this Agreement or the Easement Area. Regarding workers' compensation, Holder waives subrogation which any insurer of Holder may acquire from Holder by virtue of the payment of any loss. Holder shall include in any contract with a contractor for work to be performed on the Easement Area a provision by which the contractor waives subrogation which any insurer of the contractor may acquire from the contractor by virtue of the payment of any workers' compensation loss.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injuries or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Holder's activities (and Holder's agents, contractors, subcontractors and consultants) under this Agreement (excluding nonnegligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All insurance policies required to be maintained by Holder hereunder shall be endorsed to provide thirty (30) days prior written notice to San Francisco of cancellation for any

reason, intended non-renewal, or reduction in coverage to Holder. Notice to San Francisco shall be mailed to the address(es) for San Francisco set forth in **Section 18** (Notices) below. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating no less than "A-, VIII" and shall be satisfactory to San Francisco.

(d) Prior to the Commencement Date of this Agreement, Holder shall deliver to San Francisco certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to San Francisco, evidencing the coverages required hereunder, together with complete copies of the policies at San Francisco's request. In the event Holder shall fail to procure such insurance, or to deliver such policies or certificates, San Francisco may procure, at its option, the same for the account of Holder, and the cost thereof shall be paid to San Francisco within five (5) days after delivery to Holder of bills therefor.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(f) Should any of the required insurance be provided under a claims made form, Holder shall maintain such coverage continuously for the period of any construction activities on the Easement Area until the completion of the Road Improvements and, without lapse, for a period of three (3) years beyond the completion of the Road Improvements, to the effect that should any occurrences during such period, such claims shall be covered by such claims-made policies.

(g) If Holder is a public agency, Holder shall have the right to self-insure with respect to any of the insurance required under this consent, to the extent permitted by applicable law. If Holder elects to self-insure, Holder shall submit to San Francisco a certificate of self insurance signed by a duly authorized representative of Holder, such certificate evidencing that Holder's self-insurance program is adequately funded, in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this consent, and shall give San Francisco prompt written notice of any significant change in or the depletion of its self-insurance fund. Notwithstanding the foregoing, Holder is also responsible for causing any contractor performing work within the Easement Area to maintain insurance coverages and coverage limits as required under this **Section 6**.

7. Compliance with Laws. Holder shall, at its expense, conduct and cause to be conducted all activities on the Easement Area allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including the Americans with Disabilities Act) and all covenants, restrictions and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties.

8. Covenant to Maintain Easement Area. In connection with its use hereunder, Holder shall at all times, at its sole cost, maintain the Easement Area in a good, clean, safe, secure,

sanitary and sightly condition, so far as the Easement Area may be affected by Holder's activities hereunder and operation of a roadway.

9. Intentionally Omitted

10. Removal or Alteration of Improvements. Without limiting San Francisco's rights hereunder, Holder shall promptly, at San Francisco's request, alter or remove at its sole expense any and all improvements, facilities, plantings or other property installed or placed in, on, under or about the Easement Area by or for Holder, as may be necessary to avoid any actual or potential interference with any of the SFPUC Facilities now or later constructed, or with the construction, repair or maintenance thereof; provided however, San Francisco agrees to provide to Holder at least sixty (60) days prior written notice of alteration or removal, except in the event of an emergency (as determined by San Francisco in its sole discretion), in which case no notice shall be required. In the request, San Francisco shall have the right to specify reasonable time limits for completion of the work. If after such written notice Holder fails to complete the requested work within the prescribed time limits, San Francisco shall have the right to perform the requested work and charge Holder all costs and expenses incurred by San Francisco in performing the work. Such amount shall be due and payable upon San Francisco's demand. In the event of an emergency San Francisco may, at its sole option and without notice, alter, remove or protect at Holder's sole expense, any and all improvements, facilities, plantings or other property owned by or installed or placed in, on, under or about the Easement Area by or for Holder. San Francisco shall have no responsibility for repairing or replacing any improvements, facilities, plantings or other property removed or damaged in the exercise of San Francisco's rights hereunder. If the surface is disturbed by San Francisco's exercise of its rights, San Francisco shall restore the surface to Base Conditions or the cost equivalent, or to such other condition as agreed to by Holder and Grantee, provided that Holder shall pay the cost of restoration to the extent it exceeds the cost of restoring to Base Conditions. "Base Conditions" is defined as three-inch (3") thick asphalt concrete over eight-inch (8") thick Portland cement concrete.

11. Traffic Control and Public Notice for Construction Activities. Each party shall be responsible, at its sole cost, for traffic control measures (such as temporary signs, cones and detour plans) for its own construction and maintenance activities within or affecting the Easement Area, and for advance media and neighborhood notification regarding such construction and maintenance activities.

12. Repair of Damage. If any portion of the Easement Area, the Cap, or any property of San Francisco located on or about the Easement Area, or any persons lawfully traversing on or about the Easement Area are injured, damaged or threatened by the condition of the Road Improvements or any of the activities conducted by Holder or Holder's Agents or Invitees, Holder shall immediately notify San Francisco of such damage or threat via San Francisco's emergency contact pursuant to **Section 18 (Notices)** (or if San Francisco first becomes aware of such damage or threat, San Francisco shall notify Holder via Holder's emergency contact pursuant to **Section 18**). San Francisco may, but shall not be obligated, to remedy any such damage or threat at Holder's sole cost, or San Francisco may elect to witness Holder's repair work. In the event San Francisco elects not to remedy such damage or threat, Holder shall repair any and all such damage and restore the Easement Area or property to its previous condition

subject to San Francisco's inspection, review and approval. San Francisco has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Easement Area. Holder has the sole responsibility to locate such utilities and other existing facilities and protect them from damage. Holder shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder; provided, Holder shall obtain San Francisco's prior written approval to the provision of such services or utilities in, on, under, or through the Easement Area.

13. No Costs to San Francisco. Holder shall bear all costs and expenses of any kind in connection with its use of the Easement Area, and shall keep the Easement Area free of any liens or claims of lien arising out of or in any way connected with its use of the Easement Area.

14. Indemnity. Holder shall indemnify, defend, reimburse and hold harmless San Francisco, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (together, "**Claims**"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring within the Easement Area, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of Holder, its officers, directors, members, employees, agents, consultants, contractors or subcontractors (collectively, "**Agents**"), its invitees, guests or business visitors (collectively, "**Invitees**"), or third persons, relating to any use or activity under this Agreement, (b) any failure by Holder to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, (c) the use of the Easement Area or any activities conducted thereon by Holder, its Agents or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Holder, its Agents or Invitees, on, in, under or about the Easement Area, any improvements or into the environment, or (e) any failure by Holder to faithfully observe or perform any terms, covenants or conditions of the Recorded Documents to the extent that such terms, covenants or conditions relate to or are triggered by the work to be performed or the facilities to be installed pursuant to this Agreement; except solely to the extent of Claims resulting directly from the active negligence or willful misconduct of San Francisco or San Francisco's authorized representatives. In addition to Holder's obligation to indemnify San Francisco, Holder specifically acknowledges and agrees that it has an immediate and independent obligation to defend San Francisco from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Holder by San Francisco and continues at all times thereafter. The foregoing indemnity shall include reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including damages for decrease in the value of the Easement Area and claims for damages or decreases in the value of adjoining property. With respect to any settlement of Claims negotiated by Holder on behalf of, or for the benefit of, San Francisco, San Francisco's approval thereof shall not be unreasonably withheld or delayed (subject to San Francisco's required review and approval processes), provided the proposed settlement would not diminish San Francisco's property rights or increase existing or future liabilities and provided further that to the extent that San Francisco law requires approval by the Board of Supervisors such approval shall be at the Board's sole discretion. Holder's obligations under this Section shall survive the expiration or other termination of this Agreement.

15. **Waiver of Claims.** Neither San Francisco nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to real or personal property or for any bodily injury to or death of persons, resulting or arising from the condition of the Easement Area or its use by Holder or its agents, employees, contractors, consultants, vendors or employees, and Holder on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, San Francisco and its officers, agents and employees, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all claims for such damage, injury or death.

16. **As-Is Condition of Easement Area.** Holder accepts the Easement Area in its "AS IS" condition, without representation or warranty of any kind by San Francisco, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Easement Area. Without limiting the foregoing, this Agreement is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

17. **No Joint Ventures or Partnership.** This Agreement does not create a partnership or joint venture between San Francisco and Holder as to any activity conducted by Holder on, in or relating to the Easement Area.

18. **Notices and Emergency Contacts.**

(a) **Notices.** Except as expressly stated below, all notices, demands, claims, consents or approvals given hereunder ("notice") shall be in writing and shall be personally delivered, or sent by a reputable commercial courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, addressed as provided below. Any notice that is addressed in accordance with this Section and transmitted by a method that provides confirmation of delivery or attempted delivery shall be deemed received on the date of the earliest of actual delivery, first attempted delivery, or refusal of delivery.

Any notice to San Francisco shall be addressed to San Francisco at the then current published mailing address for SFPUC's executive offices, which can be determined by visiting SFPUC's website (currently www.sfwater.org) or by calling SFPUC's main telephone number (currently (415) 554-3155), with a copy to the City Attorney (Attn: Real Estate Team) at the City Attorney's then current mailing address, which can be determined by visiting San Francisco's website (currently www.sfgov.org), and with a copy to such other address(es) as San Francisco may direct in a written notice to Holder from time to time. San Francisco's addresses for notices as of the date of this Agreement are set forth below.

Any notice to Holder shall be addressed to Holder at the address(es) set forth below or such other address(es) as Holder may direct in a written notice to San Francisco from time to time.

San Francisco or SFPUC: Real Estate Services
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: McHenry Avenue (Parcel #656)

with a copy to: San Francisco City Attorney's Office
One Dr. Carlton B. Goodlett Place, Rm 234
San Francisco, CA 94102-4682
Attn: Real Property/Finance Team
Re SFPUC Parcel #656

Holder: City of Modesto
1010 10th Street
Modesto, CA 95354
Attn: City Engineer

Correctly addressed notices sent by a method that provides confirmation of delivery and attempted delivery shall be deemed given upon the earlier of confirmed first attempted delivery or confirmed delivery.

To facilitate communication, the preference is for Parties to provide notice through multiple methods, which may include email, text or fax as a duplicative method; however, neither fax, text, nor email shall be a sufficient method of providing notice.

(b) **Emergency Contacts.** Each party shall designate an emergency contact, to be contacted in the event of an emergency involving actual or imminent damage to property or injury to persons on or about the Easement Areas. As of the date of this Agreement such contacts are:

San Francisco or SFPUC: Power House Emergency Line (209) 989-2199

Holder: City of Modesto (209) 577-5200

19. **Severability.** If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

20. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have this Agreement reviewed and

revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

21. **Covenants Run with the Land.** The covenants of this Agreement are equitable servitudes and covenants running with the land, and shall bind and benefit San Francisco and Holder and their respective successors in interest.

22. **General Provisions.** (a) This Agreement may be amended or modified only by a writing signed by San Francisco and Holder. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement. (c) Except as expressly provided to the contrary, all approvals, consents, elections and determinations to be made by San Francisco hereunder may be made in the sole and absolute discretion of San Francisco acting through SFPUC's General Manager or his or her designee. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (f) Time is of the essence in all matters relating to this Agreement. (g) This Agreement shall be governed by California law and San Francisco's Charter. (h) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys' fees of San Francisco shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the San Francisco's use of its own attorneys. (i) If Holder consists of more than one person then the obligations of each person shall be joint and several. (j) Subject to the prohibition against assignments or other transfers by Holder hereunder, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) The Recitals set forth on the first page and the exhibits referenced in and attached to this Agreement are incorporated into this Agreement. (l) Each of the persons executing this Agreement on behalf of Holder are authorized to do so. (m) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. (n) Use of the word "including" or similar words shall 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.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

CITY:


CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

Date: _____

HOLDER:


CITY OF MODESTO, a municipal
corporation

By: 
Name: James W. Holgerson
Its: City Manager
Date 6/4/15

Resolution 2015-166, May 26, 2015

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 
Carolyn Johnson Stein
Deputy City Attorney

**Authorized by
San Francisco Public Utilities Commission**

Resolution No. _____
Adopted: _____

Attested: _____
Secretary
San Francisco Public Utilities
Commission

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 STANISLAUS)

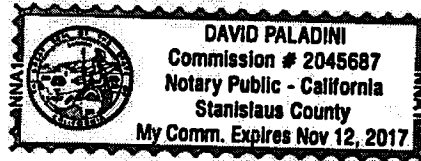
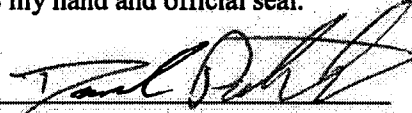
On 6/4/15, before me, DAVID PALADINI, NOTARY PUBLIC
(here insert name and title of the officer)

personally appeared JAMES N. HOLLERSON
_____, 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)

[Attach copy of Board of Supervisors resolution]

EXHIBIT A

Description of Easement Area

[See attached]

EXHIBIT "A"
LEGAL DESCRIPTION

All that certain real property situate in the City of Modesto, County of Stanislaus, State of California, lying within the Southwest quarter of Section 4, Township 3 South, Range 9 East, Mount Diablo Meridian, described as follows:

ALL that portion of that certain 110.00 foot wide tract of land (herein after referred to as Hetch Hetchy Aqueduct right of way) conveyed to the City and County of San Francisco by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on February 13, 1924 in Book 53 of Official Records at Page 491, being more particularly described as follows:

COMMENCING at the Intersection point of the West line of said Section 4 and the surveyed center line of the Hetch Hetchy Aqueduct right of way, said point bears North 01°13'55" West, a distance of 875.40 feet as same is shown on that amended map filed for record in the Office of the Recorder of the County of Stanislaus on January 27, 2006 in Book 54 of Parcel Maps at Page 28; thence North 70°11'10" East along the center line of said surveyed center line of the Hetch Hetchy Aqueduct right of way, a distance of 58.02 feet to a point on the East line of that parcel of land conveyed to the State of California (State Highway 108) by Deed recorded July 13, 2001 as Document Number 63580 and being the TRUE POINT OF BEGINNING of this description; thence North 01°13'55" West along last said line, a distance of 58.02 feet to angle point in last said line and a point on the North line of said Hetch Hetchy Aqueduct right of way; thence North 70°11'10" East along last said line, a distance of 32.97 feet to a point of intersection with the East right of way line of that certain 12.00 foot wide strip dedicated to the City of Modesto on last said Parcel Map; thence South 01°13'55" East, a distance of 116.05 feet to a point on the Southerly line of said Hetch Hetchy Aqueduct right of way; thence South 70°11'10" West along last said line, a distance of 32.97 feet to a point on the East line of said State Highway 108; thence North 01°13'55" West along last said line, a distance of 58.03 feet to the point of beginning of this description.

CONTAINING 3,627 square feet more or less

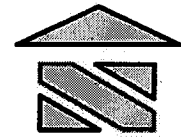


EXHIBIT B

Plat of Easement Area

[see attached]

CLARATINA AVENUE



PARCEL "1"

EXIST. RIGHT OF WAY LINE

SECTION LINE

86.25'

55.00'

S70°11'10"W

32.97'

SURVEYED CENTER LINE OF
110' WIDE RIGHT OF WAY
CITY AND COUNTY OF
SAN FRANCISCO

110' HETCH HETCHY
RIGHT-OF-WAY

BOOK 53, OFFICIAL RECORDS, PG. 491

N01°13'55"W

58.02'

N01°13'55"W 116.05'

P.O.B.

S70°11'10"W
58.02'

P.O.C.

S01°13'55"E

58.03'

3,627 SQ. FT.

N70°11'10"E

EXIST. RIGHT OF WAY LINE

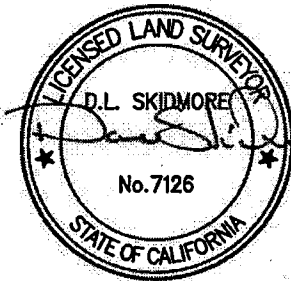
PARCEL "1"

54 - PM - 28

N01°13'55"W 875.40'

86.25'

SW. COR. SEC. 4
T.3 S., R. 9 E., M.D.M.



DRAWN:	DLS
DATE:	5/11/15
SCALE:	1" = 30'
JOB #:	910-13
DWG:	ExB(HH)(r1)

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

A PORTION OF THE SOUTHWEST QUARTER
OF SECTION 4, T. 3 S., R. 9 E., M.D.M.
CITY OF MODESTO, CALIFORNIA



**ASSOCIATED
ENGINEERING
GROUP**

4206 TECHNOLOGY DRIVE, SUITE 4, MODESTO, CA 95356
PHONE: (209) 545-3390 FAX: (209) 545-3875 www.assoceng.com

EXHIBIT C

Description of San Francisco's Property

Real property in the City of Modesto, County of Stanislaus, State of California, described as:

That real property conveyed by H. Leslie Say and his wife, Mona Say, to the City and County of San Francisco, a municipal corporation, by indenture dated September 19, 1923, and recorded February 13, 1924 in Book 53 of Official Records of Stanislaus County, at page 491, which real property is known in the records of the San Francisco Public Utilities Commission as Parcel 656,


EXCEPTING THEREFROM:

The portion of such real property that was conveyed by the City and County of San Francisco to the State of California by Grant Deed dated August 19, 1988, recorded March 16, 1989 as Instrument 018241 in Stanislaus County Records.

ACCEPTANCE

This is to certify that the interest in real property conveyed by this deed is hereby accepted by order of the Modesto City Council Resolution No. 96-331, adopted June 11, 1996, and the grantee consents to recordation thereof.

Date: May 26, 2015

By: 
VICKEY DION, Acting City Engineer

City of Modesto