

OPTION AGREEMENT FOR THE PURCHASE  
AND SALE OF REAL ESTATE

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and the

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

For the option to purchase of

1101 Connecticut Street

11/25, 2014

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EXHIBIT B:	SFUSD Deed
EXHIBIT C:	Memorandum of Option

## OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE

This Option Agreement for the Purchase and Sale of Real Estate (this "**Agreement**"), dated for reference purposes only as of 11/25, 2014, is by and between the City and County of San Francisco, a municipal corporation (the "**City**"), and the San Francisco Unified School District ("**SFUSD**"). City and SFUSD may each be referred to herein as a "**Party**" and together referred to herein as the "**Parties**".

### RECITALS

A. SFUSD owns that certain real property commonly known as 1101 Connecticut Street in San Francisco, California, as more particularly described in the attached Exhibit A, which together with all of SFUSD's interest in any improvements, fixtures, rights, privileges, and easements incidental or appurtenant thereto, shall be referred to herein as the "**Property**".

B. City wishes to acquire an exclusive option to purchase the Property, on the terms and conditions set forth in this Agreement. In the event that the City exercises the option, City wishes to purchase the Property on the terms and conditions also set forth in this Agreement.

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

### ARTICLE 1: OPTION TERMS

1.1 Grant of Option. On the Effective Date, if any, SFUSD shall grant to the City the irrevocable and exclusive option to purchase the Property (the "Option") on the terms and conditions set forth herein. The term of the Option shall commence on the Effective Date, and shall expire on March 2016 (the "Option Term") or the earlier transfer of the Property to the City following the City's exercise of the Option. If the City exercises the Option, SFUSD shall transfer and the City shall accept the Property on the Closing Date, subject to the terms set forth in this Agreement. If the City fails to exercise the Option during the Option Term, then the City's option to purchase the Property shall terminate as of the end of the Option Term.

1.2 Option Consideration. Within five (5) days of the Effective Date, the City shall pay to SFUSD the sum of Four Hundred Fifty Thousand Dollars (\$450,000) as consideration for the Option (the "Option Consideration"). The Option Consideration represents full compensation to SFUSD for keeping the Property off the market during the Option Term and for agreeing to sell the Property to the City for the Purchase Price (defined below). The City and SFUSD agree that the Option Consideration shall not be returned to the City under any circumstance, except as otherwise set forth in Section 8.1 of this Agreement.

1.3 Disposition of Option Consideration. If the City exercises the Option, the full amount of the Option Consideration will be credited to the City against the Purchase Price. Subject to City's remedies in Section 8.1 following a default by SFUSD, if the City does not exercise the Option for any reason, SFUSD shall be entitled to retain the Option Consideration and shall not be obligated to reimburse or otherwise credit such sums to the City.

#### 1.4 Exercise of Option.

(a) Subject to Section 1.4(b) and 1.4(c) below, the City may exercise this Option by delivering to SFUSD before the expiration of the Option Term written notice of the exercise of the Option ("Exercise Notice") in the manner set forth in Section 9.1 hereof. In delivering the Exercise Notice, the City shall also deliver to SFUSD evidence of the transaction's authorization by the Board of Supervisors and the Mayor. In the event the City delivers the Exercise Notice, SFUSD shall sell the Property to City, and City shall purchase the Property, at the Purchase Price, subject to the terms and conditions set forth herein.

(b) The City's exercise of the Option shall be subject to the prior approval of the Board of Supervisors and the Mayor, each in its sole and absolute discretion, and the appropriation of all necessary funds to pay the Purchase Price. The Parties acknowledge and agree that no prior approval from the Board of Supervisors or Mayor is necessary for the grant of the Option or payment of the Option Consideration, but that, notwithstanding the forgoing, no officer or employee of the City has the authority to commit the City to exercise the Option and purchase the Property unless and until the City's Board of Supervisors and Mayor have each authorized the transaction. Therefore, any obligations or liabilities of the City hereunder that apply on or after delivery of the Exercise Notice are contingent upon the prior approval of the Board of Supervisors and Mayor, and this Agreement shall be null and void if such approvals are not obtained by the end of the Option Term.

(c) In addition, the Parties acknowledge and agree that as a condition precedent to City's right to exercise the Option, all applicable environmental review must be completed, including but not limited to review under the California Environmental Quality Act (CEQA). Notwithstanding anything to the contrary in this Agreement, no Party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Property, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed purchase of the Property.

1.5 Purchase Price if Option is Exercised. Under the Option, the City shall have the right to purchase the Property for a purchase price of One Million Eight Hundred Thousand Dollars (\$1,800,000) (the "Purchase Price"). The Parties agree that this Purchase Price represents the fair market value of the Property as of the Effective Date.

### **ARTICLE 2: PRE-CLOSING RIGHTS AND OBLIGATIONS**

#### 2.1 Due Diligence Investigation of SFUSD Property.

(a) Entry. At all times prior to the Closing Date, SFUSD shall afford City and its Agents access to the Property so City, at its sole election, may independently conduct its due diligence review of all aspects of the Property and verify SFUSD's representations, warranties

and covenants in this Agreement. Subject to the provisions of the Section 2.1(b), such activities may include tests of the environmental condition of the Property, including, without limitation, the drilling of test wells and the taking of soil borings. City shall give SFUSD notice of any planned entry of the Property by facsimile or phone to SFUSD at least three (3) business days before such entry and shall conduct such entry and any inspections in a manner that reasonably minimizes interference with the current uses of the Property.

(b) On-Site Testing. Notwithstanding anything to the contrary in this Section 2.1, City shall not perform any invasive on-site testing of the Property without first obtaining SFUSD's prior written consent. To obtain such consent, City shall notify SFUSD of the identity of the party that will perform the testing, the proposed scope of the testing, and any other information reasonably requested by SFUSD. SFUSD shall have the right to reasonably approve or disapprove the proposed testing within ten (10) business days after receipt of such notice. In addition, SFUSD may condition any such approval on the procurement of insurance (unless covered by City's self-insurance) and the release of any claims against SFUSD by the party performing such testing. If City or its Agents takes any sample from the Property, upon written request, City shall provide to SFUSD a portion of such sample being tested to allow SFUSD, if it so chooses, to perform its own testing. SFUSD or its representative may be present to observe any testing or other inspection performed on the SFUSD Property. If Closing does not occur for any reason, City shall promptly deliver, or cause to be delivered, to SFUSD one copy of any reports relating to any testing or other inspection of the Property performed by City or its Agents. City shall have the right to retain any other copies of such reports, provided that neither City nor its Agents shall disclose such information to other parties unless and except to the extent required by Applicable Law.

(c) Insurance. SFUSD acknowledges that City is self-insured, and shall not require City to maintain insurance in connection with City's inspection of the Property.

(d) Indemnification. City hereby agrees to indemnify, protect, defend and hold harmless SFUSD, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, all of the Agents of SFUSD, and their respective heirs, legal representatives, successors and assigns (collectively, the "**SFUSD Indemnified Parties**"), from and against any Losses arising out of or relating to the conduct of City or its Agents, as applicable, or its or their activities during any entry on, under or about the Property in performing any inspections, testings or inquiries thereof, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any party (including, without limitation, City's Agents) and damage to any property, from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of SFUSD. The foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property. If City's investigation of the Property causes any material alteration and this Agreement is terminated for any reason other than SFUSD's default hereunder, City shall restore the Property to substantially the condition it was in prior to such investigation, subject to all Applicable Laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

2.2 Property Documents. From the Effective Date (as defined in Section 9.23) until the Closing or earlier termination of this Agreement, neither Party shall enter into any binding lease or contract with respect to the Property, or any amendment or assignment thereto, without first obtaining the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

2.3 No New Improvements; No New Liens; Maintenance. From the Effective Date until the Closing or earlier termination of this Agreement, SFUSD agrees that it shall not: (i) construct any improvements on the Property, except to the extent that such improvements are pursuant to City's prior written approval; ii) encumber, lien, transfer, grant, lease or license all or any part of the Property, or enter into any contract affecting the Property that will survive the Closing, if any, except with the written consent of the Director of MOHCD, (iii) cause or authorize any Hazardous Material to be stored or brought onto the Property, or (iv) cause or authorize any use of the Property different from its current uses that would have a material adverse effect on the Property condition as of the Effective Date. In addition, from the Effective Date until the Closing or earlier termination of this Agreement, SFUSD agrees to maintain the Property in good order, condition and repair, reasonable wear and tear excepted, and to make all repairs, maintenance and replacements of any improvements and otherwise operate the Property in the same manner as before the making of this Agreement..

### ARTICLE 3: TITLE

#### 3.1 Permitted Title Exceptions to the Property.

(a) SFUSD Property Permitted Title Exceptions. If City delivers the Exercise Notice, at the Closing, SFUSD shall convey its right, title and interest in and to the Property to City by using the form of quitclaim deed attached hereto as Exhibit B (the "**SFUSD Deed**").

Title to the Property shall be subject to (i) pro rated liens of local real estate taxes and assessments that are not yet payable, (ii) the exceptions shown as 1,2,3,4,5,6 in the preliminary report issued by the Title Company for Title No. NCS-668929-SF, dated August 11, 2014, and (iii) any other exceptions approved in writing by City in its sole discretion. All of the foregoing permitted exceptions to title shall be referred to collectively as the "**SFUSD Property Permitted Title Exceptions**" and shall be reflected in an owner's title insurance policy (the "**SFUSD Property Title Policy**") issued by the Title Company to City as of the Closing Date, with such coinsurance or reinsurance and direct access agreements and endorsements as City may reasonably request, in an amount specified by City to the Title Company, insuring City's fee interest in the Property, subject only to the SFUSD Property Permitted Title Exceptions, all at the sole cost and expense of City.

(b) Title Defect. If at the time scheduled for Closing, any of the Property is (i) occupied by other parties, (ii) subject to the rights of possession other than those of SFUSD or City, as the case may be, or (iii) encumbered by a lien, encumbrance, covenant, assessment, easement, lease, tax or other matter (except for a SFUSD Property Permitted Title Exception, or anything caused by the action or inaction of the acquiring Party) that would materially affect the

proposed development or use of such Property, as determined by the acquiring Party in its sole discretion (“**Title Defect**”), SFUSD will have up to sixty (60) days after the date scheduled for Closing to cause the removal of the Title Defect. The Closing will be extended to the earlier of five (5) business days after the Title Defect is removed or the expiration of such sixty (60) day period (the “**Extended Closing**”).

(c) Remedies With Respect to Uncured Title Defect. If a Title Defect still exists at the date specified for the Extended Closing, unless the Parties mutually agree to extend such date, the acquiring Party of such affected Property may by written notice to the other Party either (i) terminate this Agreement or (ii) accept conveyance of such affected Property. If the acquiring Party accepts conveyance of such affected Property, the Title Defect will be deemed waived but solely with respect to any action by the acquiring Party against the other Party. If the acquiring Party does not accept conveyance of the affected Property and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Closing, or any extension provided above, either Party may terminate this Agreement upon three (3) days’ written notice to the other Party. If this Agreement is terminated under this Section, neither Party shall have any further remedies under this Agreement against the other Party with respect to such termination nor any other rights or remedies, except for those that expressly survive the termination of this Agreement.

3.2 Responsibility for Title Insurance. Each Party understands and agrees, on behalf of itself and its transferees, that the right, title and interest in the Property shall not exceed that vested in SFUSD immediately prior to the Closing Date, and SFUSD is not under any obligation to furnish any policy of title insurance in connection with this transaction. Each Party recognizes that any physical monument of any of the Property’s boundary lines may not correspond to the legal description of such Property. SFUSD shall not be responsible for any discrepancies in the area or location of the property lines or any other matters that an accurate survey or inspection might reveal. It is the sole responsibility of the City to obtain a survey and a policy of title insurance, if desired, and to investigate any and all title, survey and inspection matters affecting the Property.

#### **ARTICLE 4: REPRESENTATIONS AND WARRANTIES**

4.1 Representations and Warranties of SFUSD. City agrees that it shall accept the Property in its “as-is” condition, as further set forth in Section 4.3, subject only to the following matters, to which SFUSD represents and warrants to and covenants with City as of the Effective Date and as of the Closing Date:

(a) To the best of SFUSD’s knowledge, there are no (i) leases, easements, rights of way, permits, licenses, purchase agreements, option agreements or any other agreements that provide any third parties with the right to acquire, use, possess, access, or traverse any portion of the Property other than this Agreement, (ii) disputes or claims with regard to the Property’s boundaries, or the location of any fence or other monument on any of such boundaries, and (iii) easements or rights of way that have been acquired by prescription or are otherwise not of record with respect to the Property.

(b) To the best of SFUSD’s knowledge, no document or instrument furnished



or to be furnished by SFUSD to 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.

(c) SFUSD does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, that could detrimentally affect the use, operation or value of the Property.

(d) To the best of SFUSD's knowledge, there is no litigation pending or, threatened, against SFUSD or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect its use, operation or value, or SFUSD's ability to perform its obligations under this Agreement.

(e) SFUSD is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, except for this Agreement, SFUSD has not granted any option or right of first refusal or first opportunity to any non-City party to acquire any interest in any of the Property.

(f) This Agreement and all documents executed by SFUSD that are to be delivered to City at the Closing are, or at the Closing will be, all of the relevant documents and information pertaining to the condition and operation of the Property that are under the possession of SFUSD, are duly authorized, executed and delivered by SFUSD, are legal, valid and binding obligations of SFUSD, enforceable against SFUSD in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which SFUSD is a party or to which SFUSD or the Property are subject.

(g) To the best of SFUSD's knowledge, neither the Property nor any real estate in the vicinity of the Property is in violation of any Environmental Laws (as defined in Section 4.4); the Property is not now, nor, to the best of SFUSD's knowledge, has ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material (as defined in Section 4.4); to the best of SFUSD's knowledge, there has been no release (as defined in Section 4.4) and there is no threatened release of any Hazardous Material in, on, under or about the Property; to the best of SFUSD's knowledge, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property; to the best of SFUSD's knowledge, the Property does not consist of any landfill or of any building materials that contain Hazardous Material; to the best of SFUSD's knowledge, the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material; and to the best of SFUSD's knowledge, there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property.

(h) As of the Closing Date, there will be no outstanding written or oral contracts made by SFUSD for any of improvements located on the Property that have not been fully paid for and SFUSD shall cause to be discharged any mechanics' or material men's liens arising from any labor or materials furnished to the Property prior to the Closing Date. There are no obligations in connection with the Property that will be binding upon City after Closing except for the SFUSD Property Permitted Title Exceptions.

The forgoing representations and warranties, and any other representations or writings made in writing by SFUSD to City and delivered pursuant to this Section, shall survive the Closing or any other termination of this Agreement.

#### 4.2 Indemnities.

(a) SFUSD, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all Losses resulting from any misrepresentation or breach of warranty or breach of covenant made by SFUSD in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification obligations of this Section shall survive the Closing or any termination of this Agreement.

(b) City, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless SFUSD, its Agents and their respective successors and assigns, from and against any and all Losses resulting from any misrepresentation or breach of warranty or breach of covenant made by City in this Agreement or in any document, certificate, or exhibit given or delivered to SFUSD pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section shall survive the Closing or any termination of this Agreement.

#### 4.3 As-Is Conditions; Release.

(a) CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, IF CITY DELIVERS THE EXERCISE NOTICE, SFUSD WILL BE CONVEYING AND CITY WILL BE ACQUIRING SFUSD'S INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. EXCEPT FOR SFUSD'S REPRESENTATIONS IN SECTION 4.1, CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SFUSD OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. SFUSD DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OTHER CONDITIONS OF THE

PROPERTY OR THE SUITABILITY OF THE SFUSD PROPERTY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE SFUSD PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

(b) As part of its agreement to accept the Property in its "as is and with all faults" condition, the City, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, SFUSD or its Agents, officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) SFUSD's and its Agents and customers past, present and future use of the Property, and (ii) the physical, geological or environmental conditions of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property and any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, all Environmental Laws.

In connection with the foregoing release, City 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 EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

By placing its initials below, City specifically acknowledges and confirms the validity of the releases made above and the fact that the City was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases.

INITIALS: City: 

Notwithstanding anything to the contrary in the foregoing, City in its capacity as a transferee (the "Transferee Party") is not waiving, releasing, or discharging SFUSD (the "Transferor Party") from any claims for Losses relating to a material adverse condition of the Property being transferred to the Transferee Party of which the Transferor Party had actual knowledge and the Transferee Party had no actual knowledge before the Closing Date, but the Transferor Party failed to disclose to the Transferee Party prior to the Closing Date.

#### 4.4 Definitions.

(a) The term "**Environmental Laws**" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

(b) The term “**Hazardous Material**” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any “hazardous waste” as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials (whether or not such materials are part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property, or are naturally occurring substances on, in or about the Property); and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. “Hazardous Material” shall not include any material used or stored at the Property in limited quantities and required in connection with the routine operation and maintenance of the Property, if such use and storage complies with all applicable Hazardous Material Laws.

(c) The term “**Hazardous Material Claims**” shall mean any and all enforcement, investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Materials Laws, together with any and all Losses made or threatened by any third party against City or SFUSD, their Agents, or the Property, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. “Hazardous Material Claims” include, without limitation, investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Property, the loss or restriction of the use or any amenity of the Property, or any portion of either of the foregoing, and Attorneys’ Fees and Costs, and consultants’ fees and experts’ fees and costs.

(d) The term “**Hazardous Material Laws**” shall mean any present or future federal, state or local laws, rules, regulations or policies relating to Hazardous Material (including, without limitation, its handling, transportation or release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Property and any other property, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. “Hazardous Materials Laws” includes, without limitation, CERCLA, as amended by SARA, the RCRA, the Clean Water Act, TSCA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the California Superfund law, the Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), the Business Plan Law, Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Proposition 65, City’s Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), and Article 20 of the San Francisco Public Works Code (“Analyzing Soils for Hazardous Waste”).

(e) The term “**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 any portion of the Property or into the environment.

(f) The term “**remediate**” or “**remediation**” when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Property or which have been, are being, or threaten to be released into the environment. “Remediation” includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

## **ARTICLE 5: CONDITIONS PRECEDENT TO CLOSING**

5.1 City’s Conditions Precedent. In the event that the City delivers the Exercise Notice, the following are conditions precedent to City’s obligations under this Agreement to acquire the SFUSD Property (each, a “**City Condition Precedent**”, and collectively, the “**City’s Conditions Precedent**”):

(a) SFUSD shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, no event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of SFUSD under this Agreement, and each of SFUSD’s representations and warranties under this Agreement shall be true and correct as of the Closing Date.

(b) SFUSD shall have deposited into Escrow (as defined in Section 6.2) any sums required to be paid by SFUSD under this Agreement and all items to be deposited in Escrow pursuant to Section 6.3(b).

(c) The Title Company shall have issued to City (or shall be irrevocably committed to issue on payment by City of all required premiums) the SFUSD Property Title Policy at City’s sole cost and expense.

(d) There shall be no pending or threatened (i) condemnation, environmental or other pending governmental proceedings in respect of Property that would materially and adversely affect City’s intended use thereof or (ii) litigation, administrative agency or other governmental proceeding, either pending or threatened in writing prior to the Closing Date, that would materially and adversely affect any of the Property at or after Closing.

(e) There shall be no material adverse change in the condition of the Property from the Effective Date to the Closing Date.

(f) SFUSD shall have removed any of its equipment and personal property from the Property, as requested by City.

(g) SFUSD’s Board of Trustees and any other necessary parties necessary to authorize SFUSD to enter into this Agreement, in their sole discretion, shall have duly approved of this Agreement in compliance with all Applicable Laws, and all applicable appeal periods for the filing of any administrative or judicial challenge of such approval shall have expired (the “**SFUSD Approval Condition**”).

(h) City's Board of Supervisors shall have passed, and the Mayor shall have approved of, in their sole discretion, a resolution approving of the City's exercise of the Option and purchase of the Property (the "**Transfer Resolution**") in accordance with and subject to City's Charter (the "**City Approval Condition**").

5.2 Failure of City's Conditions Precedent. Each City Condition Precedent is intended solely for the benefit of City. If any City Condition Precedent is not satisfied by the Closing Date or by the date otherwise provided above, City may, at its sole election and by written notice to SFUSD, extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to SFUSD in its sole discretion, SFUSD may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement.

5.3 SFUSD's Conditions Precedent. In the event that the City delivers the Exercise Notice, the following are conditions precedent to SFUSD's obligations under this Agreement to convey the Property to City (each, a "**SFUSD Condition Precedent**", and collectively, the "**SFUSD's Conditions Precedent**"):

(a) City shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, no event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of City under this Agreement and each of City's representations and warranties under this Agreement shall be true and correct as of the Closing Date.

(b) City shall have deposited into Escrow the Purchase Price (less the Option Consideration) and any other sums required to be paid by City under this Agreement and all items City is required to deposit in Escrow pursuant to Section 6.3(a).

(c) The City Approval Condition and the SFUSD Approval Condition shall have been satisfied.

5.4 Failure of SFUSD's Conditions Precedent. Each SFUSD Condition Precedent is intended solely for the benefit of SFUSD. If any SFUSD Condition Precedent is not satisfied by the Closing Date or by the date otherwise provided above, SFUSD may, at its sole election and by written notice to City, extend the date for satisfaction of the condition, waive the condition in whole or in part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to City in its sole discretion, City may reject such conditional waiver, in which event the original SFUSD Condition Precedent shall remain effective, and if not satisfied, shall entitle SFUSD to terminate this Agreement. If SFUSD elects to so terminate this Agreement, then upon such termination, neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

5.5 Notification Obligation. From and after the Effective Date through to the Closing Date, SFUSD shall promptly deliver written notice to City if SFUSD becomes aware of or receives notice of any actual or threatened litigation with respect to the Property, any violation of Applicable Law affecting or related to the Property, or any other material adverse change in the condition of the Property. Such notification shall include all material facts known by SFUSD relative to such matter.

5.6 Cooperation of Parties. SFUSD shall cooperate with City and do all acts as may be reasonably requested by City to fulfill any City Condition Precedent, including, without limitation, execution of any documents, applications or permits. SFUSD's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City Condition Precedent. SFUSD hereby irrevocably agrees that City and its Agents may make all inquiries with and applications to any party, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

City shall cooperate with SFUSD and do all acts as may be reasonably requested by SFUSD to fulfill any SFUSD Condition Precedent, including, without limitation, execution of any documents, applications or permits. City's representations and warranties to SFUSD shall not be affected or released by SFUSD's waiver or fulfillment of any SFUSD Condition Precedent. City hereby irrevocably agrees that SFUSD and its Agents may make all inquiries with and applications to any party, including, without limitation, any regulatory authority with jurisdiction as SFUSD may reasonably require to complete its due diligence investigations.

## ARTICLE 6: ESCROW AND CLOSING

6.1 Escrow. If the Board of Supervisors passes, and the Mayor approves of, the Transfer Resolution, and the City delivers the Exercise Notice, within five (5) business days following such delivery, the parties shall open an escrow for the purchase of the Property ("**Escrow**") with First American Title Insurance Company, at its office at 101 Mission Street, Suite 1600, in San Francisco, California, 94105 (the "**Title Company**"), and deposit a fully executed copy of this Agreement with Title Company. This Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase. SFUSD and City agree to execute such additional or supplementary instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement and effect Closing; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

6.2 Closing Date. "**Closing**" shall mean the consummation of the purchase of the Property pursuant to the terms and conditions of this Agreement. The Closing shall be held at the offices of the Title Company on the 30<sup>th</sup> day following the delivery of the Exercise Notice (the "**Closing Date**"). The Closing Date may not be extended without the prior written approval of the Parties, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both Parties to the contrary within five (5) days after the Closing Date, return each item deposited in Escrow to the Party that deposited such item. Any such return shall not, however, limit the provisions hereof or

otherwise relieve either Party of any liability it may have for its wrongful failure to perform its obligations under this Agreement.

6.3 Deposit of Documents and Funds for Closing.

- (a) At or before the Closing, City shall deposit the following items into Escrow:
  - (i) the Purchase Price (less the Option Consideration) and any other funds City is required to deposit into Escrow in accordance with this Agreement.
- (b) At or before the Closing, SFUSD shall deposit the following items into Escrow:
  - (i) the SFUSD Deed, duly executed and acknowledged by SFUSD and conveying the Property to City subject to the SFUSD Property Permitted Title Exceptions; and
  - (ii) any funds SFUSD is required to deposit into Escrow in accordance with this Agreement.
- (c) City and SFUSD 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 in accordance with the terms hereof.
- (d) As of Closing, the Title Company shall record the SFUSD Deed in the Official Records.
- (e) As of Closing, the Title Company shall issue to City, at City's expense, the SFUSD Property Title Policy.
- (f) As of Closing, the Title Company shall deliver to City the SFUSD Deed.
- (g) As of Closing, the Title Company shall deliver the Purchase Price (less the Option Consideration) to SFUSD.
- (h) Unless the parties otherwise expressly agree at or prior to the time of the purchase, as of Closing, all pre-conveyance conditions of the Parties with respect to the Property shall be deemed satisfied or waived by the Party or Parties benefited by such condition.

6.4 Expenses. The Parties shall each pay fifty percent (50%) of any transfer taxes assessed on the conveyance of the Property to City pursuant to this Agreement, any fees related to recording the SFUSD Deed, , and all Escrow fees for the Closing. Any real property taxes or assessments for the Property shall be prorated as of the Closing Date, and SFUSD shall convey the Property to City free and clear of any real property taxes or assessments, other than those that are not yet due and payable. Any personal property taxes that may be due from the transfer of the Property to City pursuant to this Agreement shall be paid by City.

6.5 Prorations. SFUSD shall pay for all utilities used at the Property prior to the Closing Date. City shall pay for all utilities used at the Property on and after the Closing Date. Any



utility deposits paid by either Party for the Property prior to the Closing Date shall remain the property of such depositing Party, and the other Party shall reasonably cooperate to cause the return of such deposits to the depositing Party to the extent the depositing Party is entitled thereto. If any of the foregoing prorations cannot be accurately calculated on the Closing Date, they shall be calculated as soon as reasonably feasible after the Closing Date. Either Party owing the other Party a sum of money based on such subsequent prorations shall promptly pay such sum to the other Party.

6.6 Possession. SFUSD shall deliver possession of the Property to City on the Closing Date.

## **ARTICLE 7: RISK OF LOSS**

7.1 Loss. If all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty before the Closing, then either Party may, at its option, either terminate this Agreement or consummate the purchase pursuant to this Section 7.1. If either Party elects to terminate this Agreement under this Section 7.1, then neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Without limiting the foregoing, in the event City terminates this Agreement following an event of damage or destruction that renders the Property unusable for City's intended purpose and such damage or destruction resulted from SFUSD's negligent failure to maintain the Property in the manner required in Section 2.3 above, then SFUSD shall be responsible for returning that portion of the Option Consideration, prorated per diem over the Option Term, applicable for the period following the termination. Except as expressly set forth above, City shall not be entitled to any refund or credit of the Option Consideration resulting from a condemnation or damage or destruction to the Property during the Option Term.

7.2 Self-Insurance. Notwithstanding anything to the contrary contained in this Agreement, each Party acknowledges and agrees that the other Party self-insures and shall not be obligated to purchase any third party comprehensive liability insurance or property insurance.

## **ARTICLE 8: DEFAULT AND REMEDIES**

8.1 Default; Right to Specific Performance.

(a) If either Party fails to perform its obligations under this Agreement (except as excused by the other Party's default), including, without limitation, a failure to convey the Property, at the time and in the manner provided for hereunder, the Party claiming default may, at its sole election, make written demand for performance. If the Party receiving such demand for performance fails to comply with such written demand within thirty (30) days after such notice is delivered, the Party claiming default will have the option to (i) waive such default, (ii) demand specific performance or (iii) terminate this Agreement, in each case by written notice to the defaulting Party. If a Party becomes aware of a default by the other Party under this Agreement that relates to the Property before the Closing Date and the Party elects to proceed with the Closing, then the Party that elects to proceed shall be deemed to have waived the default.

(b) In the event that SFUSD fails to perform its obligations under this Agreement during the Option Term, and fails to cure such default in accordance with the preceding paragraph, the City may terminate this Agreement and demand the immediate refund of the full amount of the Option Consideration.

8.2 Termination. If any Party terminates this Agreement pursuant to this Article 8, such Party shall have the right to seek all legal remedies available to such Party.

## ARTICLE 9: GENERAL PROVISIONS

9.1 Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to be delivered upon (i) personal delivery, or the day the addressee refuses to accept such delivery, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to SFUSD:

With a copy to:

If to City:                    Director of Property  
City and County of San Francisco  
25 Van Ness Ave., Suite 400  
San Francisco, CA 94102  
Facsimile: (415) 554-9216  
Telephone: (415) 554-9875

With a copy to:            Office of the City Attorney  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Evan Gross  
Facsimile: (415) 554-4468  
Telephone: (415) 554-4711

For the convenience of the Parties, copies of notice may also be given by facsimile, but a Party may not give official or binding notice by facsimile and the effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

Every notice given to a Party pursuant to this Agreement must state (or must be accompanied by a cover letter that states) substantially the following: (A) the Section of this Agreement under which the notice is given and the action or response required, if any; (B) if applicable, the period of time within which the recipient of the notice must respond thereto; (C) if approval is being requested, shall be clearly marked "Request for Approval"; and (D) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. If delivery of any notice given pursuant to this Agreement is rejected, such notice shall be deemed to have been made on the attempted delivery date.

9.2 Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City and SFUSD. The Director of Property of City (or any successor City officer as designated by law) shall have the authority to consent to any non-material amendments or other modifications to this Agreement. The Chief Financial Officer and/or, Chief Facilities Officer of SFUSD shall have the authority to consent to any non-material amendments or other modifications to this Agreement. For purposes hereof, “non-material change” shall mean any change that does not materially reduce the consideration to a Party under this Agreement or otherwise materially increase the liabilities or obligations of a Party under this Agreement. Material amendments to this Agreement shall require the approval of the SFUSD’s Board of Trustees and, if City delivers the Exercise Notice, City’s Board of Supervisors, by resolution.

9.3 Severability. If any provision of this Agreement, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other party or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

9.4 Non-Waiver. Except as expressly set forth herein to the contrary, a Party’s delay or failure to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

9.5 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Neither Party’s rights or obligations hereunder shall be assignable without the prior written consent of the other Party; provided, however, even if the other Party approves any such proposed assignment, in no event shall the assigning Party be released of any of its obligations hereunder.

9.6 Consents and Approvals. Any approvals or consents of City required under this Agreement may be given by the Director of Property, unless otherwise provided in the City Charter or applicable City ordinances. Any approvals or consents of SFUSD required under this Agreement may be given by the Chief Financial Officer and/or the Chief Facilities Officer.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.8 Applicable Laws. “**Applicable Laws**” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders and requirements, whether or not in the contemplation of the parties hereto, that may affect or be

applicable to the Property or any part of the Property (including, without limitation, any subsurface area) or the use of the Property. "Applicable Laws" shall include, without limitation, any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the subject property. The term "Applicable Law" shall be construed to mean the same as the above in the singular as well as the plural.

9.9 No Brokers or Finders. Each Party warrants to the other Party 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 party brings a claim for a commission or finder's fee based on any contact, dealings, or communication with SFUSD or City, then the Party through whom such party makes a claim shall defend the other Party from such claim, and shall indemnify, protect, defend and hold harmless the indemnified Party from any Losses that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

9.10 Counterparts. 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.

9.11 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. If there is any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

9.12 Entire Agreement. This Agreement (including the exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter herein. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter, are superseded in total by this Agreement (and such other agreements to the extent referenced herein). No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other party and no court or other body shall consider those drafts in interpreting this Agreement.

9.13 Survival. Any and all other representations, warranties and indemnities of the Parties contained herein (including the Exhibits), shall survive the Closing or termination of this Agreement.

9.14 Parties and Their Agents. 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.

9.15 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 reasonable Attorneys’ Fees and Costs incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including without limitation, court costs. Any such Attorneys’ Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys’ Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of 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 such 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.

9.16 Time of Essence. Time is of the essence with respect to the performance of the Parties’ respective obligations contained herein.

9.17 Non-Liability. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, director, or Agent of City shall be personally liable to SFUSD or its successors and assigns, if there is any default or breach by City or for any amount which may become due hereunder to SFUSD or its successors and assigns, or for any obligation of City under this Agreement. Notwithstanding anything to the contrary in this Agreement, no elected or appointed board, commission, director, or Agent of SFUSD (or of its successors or assigns) shall

be personally liable to City, or its successors and assigns, if there is any default or breach by SFUSD or for any amount which may become due to City, or its successors and assigns, or for any obligations of SFUSD under the terms of this Agreement.

9.18 Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

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

9.20 MacBride Principles - Northern Ireland. 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.* City also urges companies to do business with corporations that abide by the MacBride Principles. SFUSD acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

9.21 Relationship of the Parties. The relationship between the Parties hereto is solely that of transferor and transferee of real property.

9.22 Prohibition Against Making Contributions to City. SFUSD acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

9.23 Effective Date. This Agreement shall become effective upon the first day ("**Effective Date**") on which the Parties have duly executed and delivered this Agreement. The Parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to the "Effective Date" will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

9.24 Memorandum of Option Agreement. Upon execution of this Agreement, the Parties shall execute and acknowledge a memorandum hereof, on the form attached hereto as Exhibit C, which will be recorded in the Official Records of the County of San Francisco, California. If this Agreement is terminated prior to the Closing, City agrees to execute, acknowledge, and deliver a quitclaim deed to SFUSD within ten (10) days after termination and to execute, and deliver any

other documents required by any title company to remove the cloud of this Option from the Property.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

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: November 25, 2014

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Evan A. Gross, Deputy City Attorney

**SFUSD:**

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,  
a political subdivision of the State of California

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

Its: \_\_\_\_\_  
David L. Goldin, AIA  
Chief Facilities Officer  
San Francisco USD



**CONSENT OF TITLE COMPANY:**

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

**TITLE COMPANY:**            FIRST AMERICAN TITLE  
   INSURANCE COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at the point of intersection of the Southerly line of Twenty-Fifth Street and the Westerly line of Missouri Street; running thence Southerly along said westerly line of Missouri Street 150 feet; thence at a right angle Westerly 200 feet to the Easterly line of Connecticut Street; thence at a right angle Northerly along said Easterly line of Connecticut Street 100 feet; thence at a right angle Easterly 100 feet; thence at a right angle Northerly 50 feet to said Southerly line of Twenty-Fifth Street; thence at a right angle Easterly along said Southerly line 100 feet to the point of beginning.

Being a portion of Potrero Nueva Block 253.

Assessor's Lot 007; Block 4287

**EXHIBIT B**

**SFUSD DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Documentary Transfer Tax of \$0 based on  
full value of the property conveyed

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

**QUITCLAIM DEED**

(Assessor's Parcel No. 4287-007)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
SAN FRANCISCO UNIFIED SCHOOL DISTRICT (the "Grantor"), hereby releases, remises  
and quitclaims to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,  
the real property located in the City and County of San Francisco, State of California, described  
on Exhibit A attached hereto and made a part hereof.

Executed as of \_\_\_\_\_.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of California            )  
  ) ss  
County of San Francisco        )

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

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

WITNESS my hand and official seal.

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

State of California            )  
  ) ss  
County of San Francisco        )

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

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

WITNESS my hand and official seal.

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

---

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_ from the first part to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

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

By: \_\_\_\_\_  
John Updike  
Director of Property

**EXHIBIT C**

**MEMORANDUM OF OPTION**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Department of Real Estate  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

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

**MEMORANDUM OF OPTION AGREEMENT**

THIS MEMORANDUM OF OPTION AGREEMENT dated as of \_\_\_\_\_, 2014, is by and between City and County of San Francisco, a municipal corporation (the "City"), and the San Francisco Unified School District ("SFUSD").

1. SFUSD is the owner of certain real property located in the City and County of San Francisco, California, commonly known as 1101 Connecticut Street, San Francisco California, more particularly described in Exhibit A attached to and incorporated by this reference in this Memorandum of Option Agreement (the "Property").

2. SFUSD and City have entered into that certain unrecorded Option Agreement for the Purchase and Sale of Real Property dated for reference purposes only as of \_\_\_\_\_, 2014 and incorporated by this reference into this Memorandum (the "Agreement"), pursuant to which SFUSD granted to City the exclusive and irrevocable option to purchase the Property upon all the terms and conditions set forth in the Agreement. The term of the option granted pursuant to the Agreement shall expire no later than March 2016, as defined therein.

3. The purpose of this Memorandum of Agreement is to give notice of the Agreement and the respective rights and obligations of the parties thereunder, and all of the terms and conditions of the Agreement are incorporated herein by reference as if they were fully set forth herein.

4. This Memorandum of Agreement shall not be deemed to modify, alter or amend in any way the provisions of the Agreement. In the event any conflict exists between the terms of the Agreement and this instrument, the terms of the Agreement shall govern and determine for all purposes the relationship between SFUSD and City and their respective rights and duties.

5. This Memorandum of Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

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

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: \_\_\_\_\_  
Evan A. Gross, Deputy City Attorney

**SFUSD:**

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,  
a political subdivision of the State of California

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

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

State of California                    )  
  ) ss  
County of San Francisco            )

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

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

WITNESS my hand and official seal.

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

State of California                    )  
  ) ss  
County of San Francisco            )

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