

**Meeting Date:** 5/5/2015

**Report Type:** Consent

**Report ID:** 2015-00241

**Title: Agreements: Option to Purchase Potential Future North Sacramento Water Facility Sites**

**Location:** Citywide

**Recommendation:** Pass a Motion authorizing the City Manager or the City Manager's designee to execute two Option to Purchase agreements with Sacramento County providing the City an exclusive 15-year option to purchase a) a four acre parcel for a future water supply intake, for an option payment of \$30,000, and b) two contiguous parcels that total 120 acres for a future water treatment facility, for an option payment of \$10,000.

**Contact:** Dan Sherry, Interim Engineering & Water Resources Manager, (916) 808-1419;  
Michelle Carrey, Interim Supervising Engineer, (916) 808-1438, Department of Utilities

**Presenter:** None

**Department:** Department Of Utilities

**Division:** CIP Engineering

**Dept ID:** 14001321

**Attachments:**

1-Description/Analysis

2-Background

3-Location Map

4-Option to Purchase Agreement (Site 1)

5-Option to Purchase Agreement (Site 2)

6-Exhibit B to Site 1 Option Agreement (Future Sales Purchase Agreement)

7-Exhibit B to Site 2 Option Agreement (Future Sales Purchase Agreement)

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**City Attorney Review**

Approved as to Form

Joe Robinson

4/7/2015 12:22:18 PM

**Approvals/Acknowledgements**

Department Director or Designee: Bill Busath - 4/3/2015 9:49:09 AM

## Description/Analysis

**Issue Detail:** The City is continuing to develop alternatives for a future surface water supply project that would provide for future potable water demands. One of the feasible locations is a portion of undeveloped land north of the International Airport that is owned by Sacramento County. The City previously entered into an agreement with Sacramento County providing the City the option to purchase property for this purpose, but that option agreement will expire in October 2015. To maintain rights to purchase property from Sacramento County for a potential future surface water supply project, City and County staff have negotiated new option agreements for the exclusive right to purchase 4 acres of land adjacent to the Sacramento River for an intake facility and 120 acres of land for a water treatment facility. The term of this new option is 15 years.

**Policy Considerations:** This project is consistent with the Council focus areas of Sustainability and Livability and Public Safety by maintaining opportunities for future water supplies.

**Economic Impacts:** Not Applicable

**Environmental Considerations:** The Community Development Department, Environmental Planning Services has reviewed the proposed option agreements and has determined that approval of agreements providing an option to purchase real property for a defined term, with no City obligation to exercise the option, is exempt from CEQA under CEQA's general rule that CEQA review is not required for activities that will not have any significant environmental effects (CEQA Guidelines section 15061(b)(3)). The proposed option agreements are an administrative activity seeking to maintain the City's opportunity to purchase property for a future water supply location, without any City obligation or commitment to approve the purchases. No physical changes in the environment will occur based upon this process. Any future action related to carrying out a project, including purchase of the property, will be subject to environmental review as required pursuant to CEQA.

**Sustainability Considerations:** N/A

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** While the City possesses sufficient capacity to meet existing potable water demands, there is not sufficient capacity to meet all anticipated future needs. The proposed agreements would provide the City the option to decide whether to purchase property for this purpose at a future point in time.

**Financial Considerations:** The total cost to secure the two 15-year purchase options is \$40,000. Sufficient funding exists within the operating budget for the Water Fund (Fund 6005) to purchase these options.

**Local Business Enterprise (LBE):** Not Applicable. No goods or services are being purchased as a result of this report.

## **BACKGROUND**

The City is engaged in a collaborative effort with other water agencies to study the feasibility of a regional water supply reliability project.

These water agencies are: California American Water Company, City of Folsom, the City of Roseville, the City of Sacramento, Placer County Water Agency, the Rio Linda/Elverta Community Water District, the Sacramento County Water Agency, the Sacramento Suburban Water District, the Citrus Heights Water District, and the El Dorado County Water Agency.

The agencies each desire to have water supplies, facilities, and contractual arrangements in place to provide high-quality, reliable long-term water supplies within their service areas. Several of the agencies entered into a Memorandum of Understanding in 1998 leading to the American River Basin Cooperating Agencies Regional Water Master Plan Phase 1 Final Report that identified potential projects and programs to address these goals. These potential projects included the concept for an additional point of diversion from the Sacramento River.

Several of the agencies subsequently collaborated in the Sacramento River Water Reliability Study (SRWRS) which envisioned a new water supply diversion from the Sacramento River, a new water treatment plant, and associated conveyance facilities. The SRWRS was not completed because of a significant downturn in the region's economy. The participating agencies now believe that a recovering local economy, coupled with recent multi-year drought conditions, warrant studying the possibility of reinitiating and re-envisioning a new Sacramento River water supply project.

The following three parcels which are owned by Sacramento County have been identified as potential locations for components of a potential new Sacramento River water supply project:

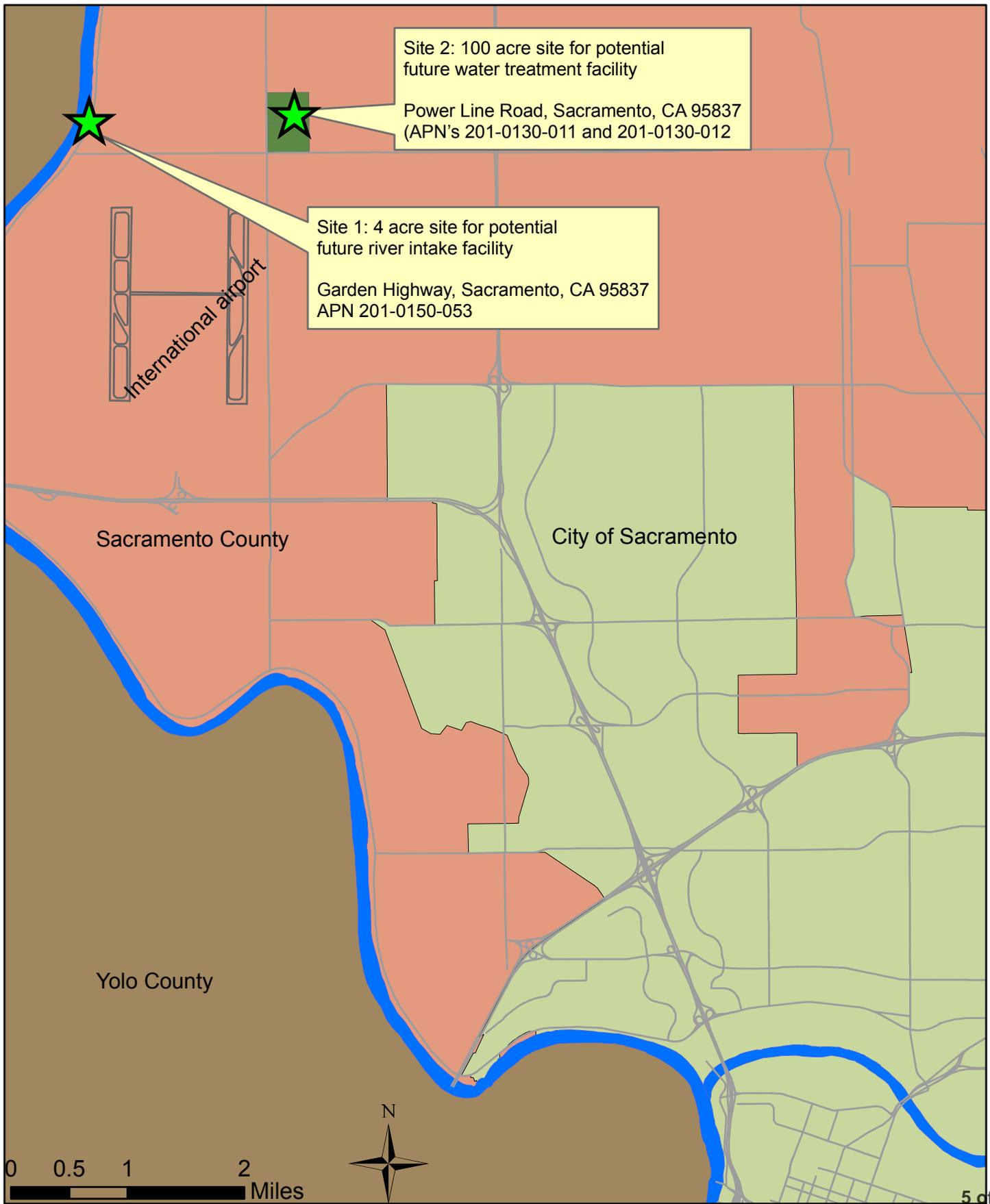
Parcel 1 is a 4.03-acre levee parcel adjacent to the Sacramento River, west of the Garden Highway and north of W. Elverta Road (APN 201-0150-053). This location could be a potential future Sacramento River intake structure.

Parcels 2 and 3 are two contiguous parcels that, when combined, could serve as a 120.41-acre location for a potential future potable water treatment plant. These parcels are designated as Assessor's Parcel Numbers (APN) 201-0130-011, a 64.01 acre parcel, and APN 201-0130-012, a 56.41 acre parcel. These parcels are located east of Power Line Road and north of W. Elverta Road.

City and County staff have negotiated the terms of a 15-year exclusive option for the City to purchase these sites, with no obligation for the City to do so. The option cost for the 4.03-acre site is \$30,000, and the option cost for the 120.41 acre site is \$10,000, for a total cost of \$40,000.

The \$40,000 option fee will be paid for out of the operating budget for the Water Fund (Fund 6005).

# LOCATION MAP FOR EXCLUSIVE PURCHASE RIGHTS BETWEEN CITY AND COUNTY OF SACRAMENTO FOR PROPERTY TO SUPPORT FUTURE WATER TREATMENT FACILITIES



WHEN RECORDED RETURN TO:  
REAL ESTATE DIVISION  
COUNTY OF SACRAMENTO  
3711 Branch Center Road  
Sacramento, CA 95827  
Mail Code 63-002  
No Fee Document - Per Government Code 27383  
No Document Transfer Tax - Per R & T Code 11922

APN: 201-0150-053 (Site 1)  
Project Name & Dept.: City's Option to Purchase at SMF  
(Airports)

THIS SPACE FOR RECORDER'S USE ONLY

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## **OPTION TO PURCHASE AGREEMENT**

Between the County of Sacramento and the City of Sacramento

RED File No: COP 16802 & 27587  
OWNER: County of Sacramento (Airports)  
APNs: 201-0150-053 (Site 1)  
Project: City's Option to Purchase at SMF

## OPTION TO PURCHASE AGREEMENT

This Option to Purchase Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California (“County”), and the **CITY OF SACRAMENTO**, a municipal corporation (“City”), with reference to the following facts:

### RECITALS

- A. County is the sole owner of that certain real property situated in the unincorporated area of Sacramento County, California, commonly known as Assessor’s Parcel Number (APN) 201-0150-053, a 4.03-acre levee parcel adjacent to the Sacramento River, west of the Garden Highway and north of W. Elverta Road, the location shown as Site 1 in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”). The Property consists of 4.03 total acres; and
- B. City desires to acquire the exclusive right to purchase the Property, without becoming obligated to purchase, at an agreed price and under specific terms and conditions.

### AGREEMENT

NOW THEREFORE, incorporating the aforementioned Recitals by reference and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

#### 1. GRANT OF OPTION

County grants to City the exclusive option and right to purchase the Property during the Option Term (defined below) for the Purchase Price (defined below), under the specific terms and conditions set forth in this Agreement. During the Option Term, County shall not sell, lease, or otherwise convey any interest in the Property to any third party, nor permit the creation of any encumbrances on the Property title, except as expressly authorized in this Agreement.

#### 2. OPTION TERM

The term of this option (the “Option Term”) shall commence and be effective on the date this Agreement is fully executed by all parties (the “Effective Date”) and shall expire and

end at 11:59 PM local time, on the last day of the calendar month which completes fifteen (15) full years from the Effective Date (the “Expiration Date”).

### **3. CONSIDERATION**

Not later than 45 days after this Agreement is fully executed by both parties, City shall pay County \$ 30,000.00 as consideration for County’s grant of this option and County’s staff time to prepare and process this Agreement. Should City not timely reimburse County as provided under this Section, this Agreement will terminate.

### **4. EXERCISE OF OPTION**

- a) To exercise the option to purchase the Property, the City shall date, sign and deliver the Sales and Purchase Agreement in the form attached as **Exhibit “B”** to the County.
- b) County shall date and sign the Sales and Purchase Agreement and return it to the City not later than 30 days after receiving it from the City.

### **5. PURCHASE PRICE**

The Purchase Price shall be determined in accordance with Section 3 of the attached Sales and Purchase Agreement.

### **6. CITY’S RIGHT TO ENTER AND INSPECT**

During the Option Term, and prior to the Close of Escrow if the City executes the Sales and Purchase Agreement, City may enter the Property for the purpose of performing reasonable tests, engineering studies, surveys, soil and environmental tests, and such other inspections and studies as City may deem necessary, at City’s expense, and in accordance with the following conditions:

- City shall provide County fourteen (14) calendar days written notice prior to entering the Property.
- City shall enter the Property only at defined access points identified in the written notice by City and approved by County, which approval shall not be unreasonably withheld. If applicable, City shall keep the gates locked during and after accessing or exiting the Property.
- If requested by County, City shall provide fencing, temporary gates, and signage sufficient to address public safety and to prevent any increased opportunity for trespass onto the Property while any of the above activities are occurring.
- City shall at all times conduct its use of the Property in such a manner that it shall not constitute a public or private nuisance.
- No trash or other evidence of field visits will be left on the Property.
- All field staff will carry identification.
- No firearms will be permitted.

- Smoking is prohibited.
- All machinery and vehicles will be equipped with spark arrestors.
- All vehicles will stay on roads; no off-road vehicles will be permitted unless addressed in the written notice approved by County.
- Vehicle speeds will be kept to ten (10) miles per hour on unpaved roads and if applicable, for any off-road activities, to minimize dust.
- No pets will be permitted.

## **7. CITY’S INDEMNIFICATION FOR RIGHT OF ENTRY ACTIVITIES**

To the fullest extent allowed by law, City shall defend, indemnify, and hold harmless County, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents (each an “Indemnified Party”) from and against any and all claims, demands, actions, losses, liabilities or damages, and all expenses and costs incidental thereto (collectively “Claims”) including cost of defense settlement, arbitration, and reasonable attorneys’ fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property, including but not limited the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions on the Property of the City, its officers, agents, employees, or contractors, or the acts or omissions of anyone else directly or indirectly acting on behalf of the City, or for which the City is legally liable under law excepting only such injury, death, or damage to the extent caused by the negligence or willful misconduct of an Indemnified Party.

If this transaction does not close for any reason other than the breach of this Agreement by County, City shall restore the Property to the condition it was in prior to the execution of this Agreement and before City conducted any test or studies of any kind. If this transaction does not close due to the breach of this Agreement by County, City shall be under no obligation to restore the Property.

## **8. INSURANCE**

Each party, at its sole cost and expense, shall carry insurance, or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent program of self-insurance, for property, professional liability, general liability, workers compensation and business automobile liability adequate to cover its potential liabilities hereunder

## **9. PUBLIC UTILITY CONVEYANCES; LEASES**

County reserves the right to convey easements, licenses and right-of-way to public utility and quasi-public utility providers within the subject Property upon the City’s written consent, which consent shall not be unreasonably withheld. Withholding of consent by City because the utility provider’s use of the easement, license, or right-of-way may materially impair the City’s intended use of the Property shall be a reasonable basis for City to withhold or condition its consent.

County reserves the right to lease the property subject to a provision requiring termination of the lease by a date certain or upon the City's exercise of its option rights herein, whichever event occurs first in time.

## 10. NOTICES

- a) Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party pursuant to this Agreement shall be in writing and either served personally or sent by prepaid, first class, certified mail. Such matters shall be addressed to the other party at the following address:

To COUNTY at:	To CITY at:
County of Sacramento	Department of Utilities
Department of Airports	City of Sacramento
6900 Airport Boulevard	1391 35 <sup>th</sup> Ave
Sacramento, CA 95837	Sacramento, CA 95822
Attn: Director	Attn: Director
Telephone: (916) 874-0600	Telephone: (916) 808-1920
Email: <a href="mailto:WheatJ@SacCounty.net">WheatJ@SacCounty.net</a>	Email: <a href="mailto:wbusath@cityofsacramento.org">wbusath@cityofsacramento.org</a>

or to such other address either party may designate to the other by notice.

- b) Any communication mailed pursuant to this paragraph shall be deemed communicated within 72 hours from the time of mailing.

## 11. ENTIRE AGREEMENT

This instrument and the attached Exhibits "A", "B", and "C" (described below) constitute the entire agreement between the parties relating to the option set forth herein. Any prior agreement, promises, negotiations, or representations not expressly set forth in this Agreement and the Exhibits are of no force and effect. Any subsequent amendment to or extension of this Agreement shall be in writing and shall be signed by County and City or their designated representatives.

## 12. INVALIDITY OF PROVISIONS

If any provisions of this Agreement or any instrument to be delivered by City at closing pursuant to this Agreement is declared invalid or is unenforceable for any reason, that provision shall be deleted from the document and shall not invalidate any other provision contained in the document.

### **13. BROKERS**

Neither party to this Agreement has engaged the services of any broker, finder, or real estate agent. Each party will defend, indemnify, and hold the other party harmless from any claim, loss, or liability made or imposed by any other party through whom a commission or fee is claimed in connection with this transaction and arising out of that party's own conduct.

### **14. BINDING EFFECT**

This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their public agency successors and assigns, except as otherwise provided in this Agreement. This Agreement may not be assigned by either party without the written consent of the non-assigning party, and any purported assignment without such consent will be void. This Agreement shall be recorded in the Sacramento County Recorder's Office.

### **15. ASSURANCES REQUIRED BY THE FAA**

For activities located within the vicinity of Sacramento International Airport (SMF), the City shall, at all times during the Term of this Agreement, comply with the provisions of the "Assurances Required by the Federal Aviation Administration (FAA)" (the "Assurances") and any subsequent amendments. A copy of these Assurances is attached as **Exhibit "C"** and incorporated herein by this reference. The City shall include compliance with these Assurances in all other agreements it enters into with third parties, pertaining to, referencing or otherwise related to activities on the Property.

### **16. IF AMENDMENT REQUIRED BY TSA OR FAA**

This Agreement may be amended without further consideration to satisfy requirements of the TSA or FAA or any federal agency succeeding to their respective jurisdictions.

### **17. MISCELLANEOUS.**

a) Waiver. No waiver of any breach of any covenant or provision hereof shall be deemed a waiver of any preceding or succeeding breach hereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of delay.

b) Authority of Signators. Each party to this Agreement warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this Agreement and all related documents.

- c) **Attorneys' Fees.** If litigation is commenced between the parties concerning the interpretation or enforcement of this Agreement, each party in that litigation shall be responsible for its own attorney's fees and costs.
- d) **Governing Law.** This Agreement shall be governed by the laws of the State of California.
- e) **Time is of Essence.** County and City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof.
- f) **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create a relationship of principal and agent, a partnership, joint venture, or any other association between County and City.
- g) **Construction of Agreement.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.
- h) **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which, together, shall constitute one and the same instrument.

*Remainder of Page Intentionally Left Blank*

**IN WITNESS WHEREOF, the parties have executed the Agreement the day and year first above written as follows:**

**COUNTY:**

County of Sacramento, a political subdivision of the State of California

**CITY:**

City of Sacramento, a municipal corporation

By: \_\_\_\_\_  
MICHAEL M. MORSE, Director  
Department of General Services

By: \_\_\_\_\_  
JOHN F. SHIREY, City Manager

Under delegated authority by:  
Resolution No.: \_\_\_\_\_  
Dated: \_\_\_\_\_

Under delegated authority by:  
Sacramento City Code § 3.04.010

***ATTACH NOTARY CERTIFICATIONS for above Signators***

**APPROVED AS TO TERMS**

**ATTEST**

\_\_\_\_\_  
John Wheat, Director  
County Airport Systems

\_\_\_\_\_  
City Clerk

**REVIEWED AND APPROVED  
AS TO FORM BY COUNTY COUNSEL**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Stephanie G. Percival  
Deputy County Counsel

\_\_\_\_\_  
City Attorney

**Exhibit "A"**

**Site 1 Location Map**

**Garden Highway, Sacramento, CA 95837  
APN 201-0150-053**



## Exhibit "A-1"

### Legal Description

All that portion of Lot 176 of Plat of Natomas Elkhorn Subdivision; according to the official plat thereof, filed in the office of the Recorder of Sacramento County, California, on February 26, 1918, in Book 15 of Maps, Map No. 42, lying Westerly of the Westerly line of a 30 foot canal and private road right of way in said Lot 176.

EXCEPTING THEREFROM the following: Beginning at a point on the North line of said Lot 176, located West 1518.67 feet from the Northeast corner of said Lot 176; thence from said point of beginning, Southerly along the Westerly line of the 30 foot canal and private road right of way as shown on said map along a curve to the right on an arc of 3487.87 feet radius, said arc being subtended by a chord bearing South 12° 42' 45" West 100.00 feet; thence continuing on said curve 3487.87 feet radius, said arc being subtended by a chord bearing South 14° 21' 15" West 100.00 feet; thence West 223.00 feet to the East bank of the Sacramento River and the West line of said Lot 176; thence North 19° 49' 30" East 206.70 feet along the East bank of said Sacramento River and the West line of said Lot 176 to the Northwest corner of said Lot 176; thence East 199.70 feet along the North line of said Lot 176 to the point of beginning.

**Exhibit “B”**

**Sales and Purchase Agreement**

**(Attached as a separate document)**

## **Exhibit “C”**

### **Assurances Required by the Federal Aviation Administration (FAA)**

#### **SECTION A**

#### **Purpose, Classes Of Activities, Applicability Of Assurances And Definition Of Terms**

##### **1. PURPOSE:**

The County of Sacramento, California, an airport owner subject to both Federal Grant Agreement obligations at Sacramento International Airport (SMF), Sacramento Executive Airport (SAC), and Mather Airport (MHR), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said County and any and all entities who use or perform work or conduct activities on County owned or operated airport premises for aeronautical or non-aeronautical purposes. The purpose of this Exhibit is to appropriately incorporate within the Agreement to which it is attached and made a part of by reference therein, the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below.

##### **2. CLASSES OF ACTIVITIES:**

The applicability of each of the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below, to that certain Agreement to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the City, Lessee, PERMITTEE, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized there under. The following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. Direct and Supportive Aeronautical: The following activities, commonly conducted on airports, are AERONAUTICAL ACTIVITIES:

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing

- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts
- (12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an “aeronautical activity.”

b. Complementary Aeronautical: The following activities, when conducted on airports, are COMPLEMENTARY AERONAUTICAL ACTIVITIES:

- (1) Ground Transportation (taxis, car rentals, limousines)
- (2) Restaurants
- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. Non-Aeronautical: The following activities, when conducted on airports, being neither “Direct and Supportive Aeronautical” nor “Complementary Aeronautical,” as defined above, are NON-AERONAUTICAL ACTIVITIES.

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the above-said “Direct and Supportive Aeronautical” and/or “Complementary Aeronautical,” classifications.

**3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION “B,” “ASSURANCES,” BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:**

The applicability of the numbered provisions within Section “B,” “Assurances,” below, to the respective classes of activities specified within sub-paragraphs 2a, b, and c, of this Section “A,” above, is as follows:

ACTIVITY CLASS	NUMBERED PROVISIONS	APPLICABLE TO CLASS
SMF, SAC and MHR AGREEMENTS		

Direct and Supportive Aeronautical	1 through 17
Complementary Aeronautical	1 through 16
Non-Aeronautical	1 through 16

**4. DEFINITION OF TERMS USED WITHIN SECTION “B,”  
“ASSURANCES,” BELOW:**

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section “A,” this Exhibit is designed to be attached to and made a part of all County of Sacramento Airport “Agreements,” including, without limitation, leases, licenses, permits, contracts, etc. Therefore, in the event the “Agreement” to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than “Lessor” and “Lessee,” then, where the terms “Lessor,” “Lessee,” and “Lease” appear, as shown, within the seventeen (17) numbered “ASSURANCES” listed within Section “B,” below, said terms shall be deemed to mean “COUNTY OF SACRAMENTO, CALIFORNIA,” “THE OTHER PARTY TO THE PARTICULAR AGREEMENT” (e.g., City, Licensee, PERMITTEE, Concessionaire, Operator, etc.), and the “AGREEMENT” itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively. Where the terms “LANDLEASED” and “LEASEDPREMISES” (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the “Agreement” as being that/those to which leasehold tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, PERMITTEE, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term “AIRPORT” appears, as shown, it shall be deemed to mean the particular airport(s) (i.e., either the Sacramento International Airport, the Sacramento Executive Airport, or Mather Field) as identified within the “Permit” between the parties as being the Airport(s) to which the “Permit” pertains.

**SECTION B**

**Assurances**

1. The “LESSEE,” for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the “Permit” to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this “LEASE” or “Agreement” for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the “LESSEE” shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The “LESSEE,” for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the “LESSEE” shall use the “premises” in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, “LESSOR” shall have the right to terminate the “LEASE” and to reenter and repossess said land and the facilities thereon, and hold the same as if said “LEASE” had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. “LESSEE” shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the “LESSEE” may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the COUNTY OF SACRAMENTO, CALIFORNIA (“LESSOR”) shall have the right to terminate this “LEASE” and the estate hereby created without liability therefore or at the election of the “LESSOR” or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3, and 4 above.

6. “LESSEE” agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which “LESSEE” grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the “premises” herein “LEASED.”

7. The “LESSEE” assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The “LESSEE” assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The “LESSEE”

assures that it will require that its covered suborganizations provide assurances to the “LESSEE” that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The “LESSOR” reserves the right to further develop or improve the landing area of the “Airport” as it sees fit, regardless of the desires or view of the “LESSEE” and without interference or hindrance.

9. The “LESSOR” reserves the right, but shall not be obligated to the “LESSEE,” to maintain and keep in repair the landing area of the “Airport” and all publicly-owned facilities of the “Airport,” together with the right to direct and control all activities of the “LESSEE” in this regard.

10. This “LEASE” shall be subordinate to the provisions and requirements of any existing or future agreement between the “LESSOR” and the United States, relative to the development, operation or maintenance of the “Airport.”

11. There is hereby reserved to the “LESSOR,” its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the “premises” herein “LEASED.” This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the “Airport.”

12. “LESSEE” agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the “LEASED PREMISES,” or in the event of any planned modification or alteration of any present or future building or structure situated on the “LEASED PREMISES.”

13. The “LESSEE,” by accepting this “LEASE,” expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the “land leased” hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, “LESSOR” (the owner) reserves the right to enter upon the “land leased” hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the “LESSEE.”

14. The “LESSEE,” by accepting this “LEASE,” agrees for itself, its successors and assigns, that it will not make use of the “LEASED PREMISES” in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the “AIRPORT” (either Sacramento International Airport or Sacramento Executive Airport, or Mather Field, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the “LESSOR” (owner) reserves the right to enter upon

the “premises hereby leased” and cause the abatement of such interference at the expense of the “LESSEE.”

15. This “LEASE,” and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said “AIRPORT” or the exclusive or nonexclusive use of the “AIRPORT” by the United States during the time of war or national emergency.

16. It is the policy of the Department of Transportation (DOT) that disadvantaged and minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, these leases are subject to 49 CFR Part 23, as applicable. “LESSEE” hereby covenants and agrees that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex. “LESSEE” agrees that it will include the above clauses in all sub-leases and cause sublessees to similarly include the clauses in further sub-leases.

17. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

Remainder of page intentionally left blank

WHEN RECORDED RETURN TO:  
REAL ESTATE DIVISION  
COUNTY OF SACRAMENTO  
3711 Branch Center Road  
Sacramento, CA 95827  
Mail Code 63-002  
No Fee Document - Per Government Code 27383  
No Document Transfer Tax - Per R & T Code 11922

APNs: 201-0130-011 and 201-0130-012 (Site 2)  
Project Name & Dept.: City's Option to Purchase at SMF  
(Airports)

THIS SPACE FOR RECORDER'S USE ONLY

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## **OPTION TO PURCHASE AGREEMENT**

Between the County of Sacramento and the City of Sacramento

RED File No: COP 16802 & 27587  
OWNER: County of Sacramento (Airports)  
APNs: 201-0130-011 and 201-0130-012 (Site 2)  
Project: City's Option to Purchase at SMF

## OPTION TO PURCHASE AGREEMENT

This Option to Purchase Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California (“County”), and the **CITY OF SACRAMENTO**, a municipal corporation (“City”), with reference to the following facts:

### RECITALS

- A. County is the sole owner of that certain real property situated in the unincorporated area of Sacramento County, California, commonly known as Assessor’s Parcel Numbers (APN) 201-0130-011, a 64.01 acre parcel, and APN 201-0130-012, a 56.41 acre parcel, which combined are two contiguous parcels of approximately 120.41-acres located east of Power Line Road and north of W. Elverta Road, shown as Site 2 in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”). The Property is more particularly described in **Exhibit “A-1”**; and
- B. City desires to acquire the exclusive right to purchase the Property, without becoming obligated to purchase, at an agreed price and under specific terms and conditions.

### AGREEMENT

NOW THEREFORE, incorporating the aforementioned Recitals by reference and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

#### 1. GRANT OF OPTION

County grants to City the exclusive option and right to purchase the Property during the Option Term (defined below) for the Purchase Price (defined below), under the specific terms and conditions set forth in this Agreement. During the Option Term, County shall not sell, lease, or otherwise convey any interest in the Property to any third party, nor permit the creation of any encumbrances on the Property title, except as expressly authorized in this Agreement.

#### 2. OPTION TERM

The term of this option (the “Option Term”) shall commence and be effective on the date this Agreement is fully executed by all parties (the “Effective Date”) and shall expire and

end at 11:59 PM local time, on the last day of the calendar month which completes fifteen (15) full years from the Effective Date (the “Expiration Date”).

### **3. CONSIDERATION**

Not later than 45 days after this Agreement is fully executed by both parties, City shall pay County \$ 10,000.00 as consideration for County’s grant of this option and County’s staff time to prepare and process this Agreement. Should City not timely reimburse County as provided under this Section, this Agreement will terminate.

### **4. EXERCISE OF OPTION**

- a) To exercise the option to purchase the Property, the City shall date, sign and deliver the Sales and Purchase Agreement in the form attached as **Exhibit “B”** to the County.
- b) County shall date and sign the Sales and Purchase Agreement and return it to the City not later than 30 days after receiving it from the City.

### **5. PURCHASE PRICE**

The Purchase Price shall be determined in accordance with Section 3 of the attached Sales and Purchase Agreement.

### **6. CITY’S RIGHT TO ENTER AND INSPECT**

During the Option Term, and prior to the Close of Escrow if the City executes the Sales and Purchase Agreement, City may enter the Property for the purpose of performing reasonable tests, engineering studies, surveys, soil and environmental tests, and such other inspections and studies as City may deem necessary, at City’s expense, and in accordance with the following conditions:

- City shall provide County fourteen (14) calendar days written notice prior to entering the Property.
- City shall enter the Property only at defined access points identified in the written notice by City and approved by County, which approval shall not be unreasonably withheld. If applicable, City shall keep the gates locked during and after accessing or exiting the Property.
- If requested by County, City shall provide fencing, temporary gates, and signage sufficient to address public safety and to prevent any increased opportunity for trespass onto the Property while any of the above activities are occurring.
- City shall at all times conduct its use of the Property in such a manner that it shall not constitute a public or private nuisance.
- No trash or other evidence of field visits will be left on the Property.
- All field staff will carry identification.
- No firearms will be permitted.
- Smoking is prohibited.

- All machinery and vehicles will be equipped with spark arrestors.
- All vehicles will stay on roads; no off-road vehicles will be permitted unless addressed in the written notice approved by County.
- Vehicle speeds will be kept to ten (10) miles per hour on unpaved roads and if applicable, for any off-road activities, to minimize dust.
- No pets will be permitted.

**7. CITY’S INDEMNIFICATION FOR RIGHT OF ENTRY ACTIVITIES**

To the fullest extent allowed by law, City shall defend, indemnify, and hold harmless County, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents (each an “Indemnified Party”) from and against any and all claims, demands, actions, losses, liabilities or damages, and all expenses and costs incidental thereto (collectively “Claims”) including cost of defense settlement, arbitration, and reasonable attorneys’ fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property, including but not limited the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions on the Property of the City, its officers, agents, employees, or contractors, or the acts or omissions of anyone else directly or indirectly acting on behalf of the City, or for which the City is legally liable under law excepting only such injury, death, or damage to the extent caused by the negligence or willful misconduct of an Indemnified Party.

If this transaction does not close for any reason other than the breach of this Agreement by County, City shall restore the Property to the condition it was in prior to the execution of this Agreement and before City conducted any test or studies of any kind. If this transaction does not close due to the breach of this Agreement by County, City shall be under no obligation to restore the Property.

**8. INSURANCE**

Each party, at its sole cost and expense, shall carry insurance, or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent program of self-insurance, for property, professional liability, general liability, workers compensation and business automobile liability adequate to cover its potential liabilities hereunder

**9. PUBLIC UTILITY CONVEYANCES; LEASES**

County reserves the right to convey easements, licenses and right-of-way to public utility and quasi-public utility providers within the subject Property upon the City’s written consent, which consent shall not be unreasonably withheld. Withholding of consent by City because the utility provider’s use of the easement, license, or right-of-way may materially impair the City’s intended use of the Property shall be a reasonable basis for City to withhold or condition its consent.

County reserves the right to lease the property subject to a provision requiring termination of the lease by a date certain or upon the City’s exercise of its option rights herein, whichever event occurs first in time.

**10. NOTICES**

- a) Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party pursuant to this Agreement shall be in writing and either served personally or sent by prepaid, first class, certified mail. Such matters shall be addressed to the other party at the following address:

<b>To COUNTY at:</b>	<b>To CITY at:</b>
County of Sacramento	Department of Utilities
Department of Airports	City of Sacramento
6900 Airport Boulevard	1391 35 <sup>th</sup> Ave
Sacramento, CA 95837	Sacramento, CA 95822
Attn: Director	Attn: Director
Telephone: (916) 874-0600	Telephone: (916) 808-1920
Email: <a href="mailto:WheatJ@SacCounty.net">WheatJ@SacCounty.net</a>	Email: <a href="mailto:wbusath@cityofsacramento.org">wbusath@cityofsacramento.org</a>

or to such other address either party may designate to the other by notice.

- b) Any communication mailed pursuant to this paragraph shall be deemed communicated within 72 hours from the time of mailing.

**11. ENTIRE AGREEMENT**

This instrument and the attached Exhibits “A”, “B”, and “C” (described below) constitute the entire agreement between the parties relating to the option set forth herein. Any prior agreement, promises, negotiations, or representations not expressly set forth in this Agreement and the Exhibits are of no force and effect. Any subsequent amendment to or extension of this Agreement shall be in writing and shall be signed by County and City or their designated representatives.

**12. INVALIDITY OF PROVISIONS**

If any provisions of this Agreement or any instrument to be delivered by City at closing pursuant to this Agreement is declared invalid or is unenforceable for any reason, that provision shall be deleted from the document and shall not invalidate any other provision contained in the document.

**13. BROKERS**

Neither party to this Agreement has engaged the services of any broker, finder, or real estate agent. Each party will defend, indemnify, and hold the other party harmless from any claim, loss, or liability made or imposed by any other party through whom a

commission or fee is claimed in connection with this transaction and arising out of that party's own conduct.

#### **14. BINDING EFFECT**

This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their public agency successors and assigns, except as otherwise provided in this Agreement. This Agreement may not be assigned by either party without the written consent of the non-assigning party, and any purported assignment without such consent will be void. This Agreement shall be recorded in the Sacramento County Recorder's Office.

#### **15. ASSURANCES REQUIRED BY THE FAA**

For activities located within the vicinity of Sacramento International Airport (SMF), the City shall, at all times during the Term of this Agreement, comply with the provisions of the "Assurances Required by the Federal Aviation Administration (FAA)" (the "Assurances") and any subsequent amendments. A copy of these Assurances is attached as **Exhibit "C"** and incorporated herein by this reference. The City shall include compliance with these Assurances in all other agreements it enters into with third parties, pertaining to, referencing or otherwise related to activities on the Property.

#### **16. IF AMENDMENT REQUIRED BY TSA OR FAA**

This Agreement may be amended without further consideration to satisfy requirements of the TSA or FAA or any federal agency succeeding to their respective jurisdictions.

#### **17. MISCELLANEOUS.**

- a) Waiver. No waiver of any breach of any covenant or provision hereof shall be deemed a waiver of any preceding or succeeding breach hereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of delay.
- b) Authority of Signators. Each party to this Agreement warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this Agreement and all related documents.
- c) Attorneys' Fees. If litigation is commenced between the parties concerning the interpretation or enforcement of this Agreement, each party in that litigation shall be responsible for its own attorney's fees and costs.

- d) **Governing Law.** This Agreement shall be governed by the laws of the State of California.
- e) **Time is of Essence.** County and City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof.
- f) **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create a relationship of principal and agent, a partnership, joint venture, or any other association between County and City.
- g) **Construction of Agreement.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.
- h) **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which, together, shall constitute one and the same instrument.

*Remainder of Page Intentionally Left Blank*

**IN WITNESS WHEREOF, the parties have executed the Agreement the day and year first above written as follows:**

**COUNTY:**

County of Sacramento, a political subdivision of the State of California

**CITY:**

City of Sacramento, a municipal corporation

By: \_\_\_\_\_  
MICHAEL M. MORSE, Director  
Department of General Services

By: \_\_\_\_\_  
JOHN F. SHIREY, City Manager

Under delegated authority by:  
Resolution No.: \_\_\_\_\_  
Dated: \_\_\_\_\_

Under delegated authority by:  
Sacramento City Code § 3.04.010

***ATTACH NOTARY CERTIFICATIONS for above Signators***

**APPROVED AS TO TERMS**

**ATTEST**

\_\_\_\_\_  
John Wheat, Director  
County Airport Systems

\_\_\_\_\_  
City Clerk

**REVIEWED AND APPROVED  
AS TO FORM BY COUNTY COUNSEL**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Stephanie G. Percival  
Deputy County Counsel

\_\_\_\_\_  
City Attorney

**Exhibit "A"**

**Site 2 Location Map**

**Power Line Road, Sacramento, CA 95837  
(APN's 201-0130-011 and 201-0130-012)**



## **Exhibit "A-1"**

### **Legal Description**

"Lots of 244 and 245 as shown on the map of Natomas Central Sub-division, filed September 18, 1920, in Book 16 of Maps, Map No. 3, et seq., in the office of the County Recorder of Sacramento County, California."

**Exhibit “A-2”**

**PG&E Natural Gas Line**

**Exhibit “B”**

**Sales and Purchase Agreement**

**(Attached as a separate document)**

## **Exhibit “C”**

### **Assurances Required by the Federal Aviation Administration (FAA)**

#### **SECTION A**

##### **Purpose, Classes Of Activities, Applicability Of Assurances And Definition Of Terms**

###### **1. PURPOSE:**

The County of Sacramento, California, an airport owner subject to both Federal Grant Agreement obligations at Sacramento International Airport (SMF), Sacramento Executive Airport (SAC), and Mather Airport (MHR), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said County and any and all entities who use or perform work or conduct activities on County owned or operated airport premises for aeronautical or non-aeronautical purposes. The purpose of this Exhibit is to appropriately incorporate within the Agreement to which it is attached and made a part of by reference therein, the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below.

###### **2. CLASSES OF ACTIVITIES:**

The applicability of each of the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below, to that certain Agreement to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the City, Lessee, PERMITTEE, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized there under. The following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. Direct and Supportive Aeronautical: The following activities, commonly conducted on airports, are AERONAUTICAL ACTIVITIES:

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing

- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts
- (12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an “aeronautical activity.”

b. Complementary Aeronautical: The following activities, when conducted on airports, are COMPLEMENTARY AERONAUTICAL ACTIVITIES:

- (1) Ground Transportation (taxis, car rentals, limousines)
- (2) Restaurants
- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. Non-Aeronautical: The following activities, when conducted on airports, being neither “Direct and Supportive Aeronautical” nor “Complementary Aeronautical,” as defined above, are NON-AERONAUTICAL ACTIVITIES.

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the above-said “Direct and Supportive Aeronautical” and/or “Complementary Aeronautical,” classifications.

**3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION “B,” “ASSURANCES,” BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:**

The applicability of the numbered provisions within Section “B,” “Assurances,” below, to the respective classes of activities specified within sub-paragraphs 2a, b, and c, of this Section “A,” above, is as follows:

ACTIVITY CLASS	NUMBERED PROVISIONS	APPLICABLE TO CLASS
SMF, SAC and MHR AGREEMENTS		

Direct and Supportive Aeronautical	1 through 17
Complementary Aeronautical	1 through 16
Non-Aeronautical	1 through 16

**4. DEFINITION OF TERMS USED WITHIN SECTION “B,”  
“ASSURANCES,” BELOW:**

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section “A,” this Exhibit is designed to be attached to and made a part of all County of Sacramento Airport “Agreements,” including, without limitation, leases, licenses, permits, contracts, etc. Therefore, in the event the “Agreement” to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than “Lessor” and “Lessee,” then, where the terms “Lessor,” “Lessee,” and “Lease” appear, as shown, within the seventeen (17) numbered “ASSURANCES” listed within Section “B,” below, said terms shall be deemed to mean “COUNTY OF SACRAMENTO, CALIFORNIA,” “THE OTHER PARTY TO THE PARTICULAR AGREEMENT” (e.g., City, Licensee, PERMITTEE, Concessionaire, Operator, etc.), and the “AGREEMENT” itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively. Where the terms “LANDLEASED” and “LEASEDPREMISES” (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the “Agreement” as being that/those to which leasehold tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, PERMITTEE, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term “AIRPORT” appears, as shown, it shall be deemed to mean the particular airport(s) (i.e., either the Sacramento International Airport, the Sacramento Executive Airport, or Mather Field) as identified within the “Permit” between the parties as being the Airport(s) to which the “Permit” pertains.

**SECTION B**

**Assurances**

1. The “LESSEE,” for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the “Permit” to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this “LEASE” or “Agreement” for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the “LESSEE” shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The “LESSEE,” for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the “LESSEE” shall use the “premises” in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, “LESSOR” shall have the right to terminate the “LEASE” and to reenter and repossess said land and the facilities thereon, and hold the same as if said “LEASE” had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. “LESSEE” shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the “LESSEE” may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the COUNTY OF SACRAMENTO, CALIFORNIA (“LESSOR”) shall have the right to terminate this “LEASE” and the estate hereby created without liability therefore or at the election of the “LESSOR” or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3, and 4 above.

6. “LESSEE” agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which “LESSEE” grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the “premises” herein “LEASED.”

7. The “LESSEE” assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The “LESSEE” assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The “LESSEE”

assures that it will require that its covered suborganizations provide assurances to the “LESSEE” that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The “LESSOR” reserves the right to further develop or improve the landing area of the “Airport” as it sees fit, regardless of the desires or view of the “LESSEE” and without interference or hindrance.

9. The “LESSOR” reserves the right, but shall not be obligated to the “LESSEE,” to maintain and keep in repair the landing area of the “Airport” and all publicly-owned facilities of the “Airport,” together with the right to direct and control all activities of the “LESSEE” in this regard.

10. This “LEASE” shall be subordinate to the provisions and requirements of any existing or future agreement between the “LESSOR” and the United States, relative to the development, operation or maintenance of the “Airport.”

11. There is hereby reserved to the “LESSOR,” its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the “premises” herein “LEASED.” This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the “Airport.”

12. “LESSEE” agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the “LEASED PREMISES,” or in the event of any planned modification or alteration of any present or future building or structure situated on the “LEASED PREMISES.”

13. The “LESSEE,” by accepting this “LEASE,” expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the “land leased” hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, “LESSOR” (the owner) reserves the right to enter upon the “land leased” hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the “LESSEE.”

14. The “LESSEE,” by accepting this “LEASE,” agrees for itself, its successors and assigns, that it will not make use of the “LEASED PREMISES” in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the “AIRPORT” (either Sacramento International Airport or Sacramento Executive Airport, or Mather Field, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the “LESSOR” (owner) reserves the right to enter upon

the “premises hereby leased” and cause the abatement of such interference at the expense of the “LESSEE.”

15. This “LEASE,” and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said “AIRPORT” or the exclusive or nonexclusive use of the “AIRPORT” by the United States during the time of war or national emergency.

16. It is the policy of the Department of Transportation (DOT) that disadvantaged and minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, these leases are subject to 49 CFR Part 23, as applicable. “LESSEE” hereby covenants and agrees that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex. “LESSEE” agrees that it will include the above clauses in all sub-leases and cause sublessees to similarly include the clauses in further sub-leases.

17. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

Remainder of page intentionally left blank

WHEN RECORDED RETURN TO:  
REAL ESTATE DIVISION  
COUNTY OF SACRAMENTO  
3711 Branch Center Road  
Sacramento, CA 95827  
Mail Code 63-002  
No Fee Document - Per Government Code 27383  
No Document Transfer Tax - Per R & T Code 11922

APN: 201-0150-053 (Site 1)  
Project Name & Dept.: City's Option to Purchase at SMF  
(Airports)

THIS SPACE FOR RECORDER'S USE ONLY

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## **SALES AND PURCHASE AGREEMENT**

Between the County of Sacramento and the City of Sacramento

RED File No: COP 16802 & 27587  
OWNER: County of Sacramento (Airports)  
APN: 201-0150-053 (Site 1)  
Project: City's Option to Purchase at SMF

## SALES AND PURCHASE AGREEMENT

This Sales and Purchase Agreement (“**Agreement**”), dated for convenience as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, ( “**Agreement Date**”), is made by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California ( “**COUNTY**”), and the **CITY OF SACRAMENTO**, a municipal corporation ( “**CITY**”), in consideration of the mutual covenants and agreements herein contained, and is subject to the conditions set forth below, and is made with reference to the following facts:

### RECITALS

A. COUNTY and CITY entered into an Option to Purchase Agreement dated \_\_\_\_\_, 20\_\_\_ (the “**Option Agreement**”), in which the COUNTY, as Optionor, granted to CITY, as Optionee, the exclusive right to purchase the Property (described in Recital B below) for the Purchase Price (defined in Paragraph 3 below) and under the specific terms and conditions set forth in the Option Agreement and reiterated in this Agreement.

B. COUNTY is the owner of that certain real property situated in Sacramento County, California, known as Assessor’s Parcel Number (APN) 201-0150-053, a 4.03-acre levee parcel adjacent to the Sacramento River, west of the Garden Highway and north of W. Elverta Road, the location shown as Site 1 in **Exhibit “A”** attached hereto and incorporated herein by reference (the “**Property**”), together with all rights, hereditaments, easements, appurtenances thereto belonging or otherwise appertaining. The Property is more particularly described in **Exhibit “B”** attached hereto and incorporated herein; and

C. CITY desires to purchase from COUNTY for construction of a Water Intake Project, a public works project for which CITY has the authority to exercise its power of eminent domain, and COUNTY desires to sell to CITY, the Property, pursuant to the provisions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

#### 1. INCORPORATION OF RECITALS.

The foregoing recitals are true and correct and are hereby incorporated by reference.

#### 2. PURCHASE AND SALE.

COUNTY hereby agrees to sell and convey, and CITY hereby agrees to purchase through escrow, for the purchase price and upon the terms and conditions herein stated, the Property described above.

### 3. PURCHASE PRICE.

The purchase price for the Property shall be either the minimum price of \$100,798.00 (4.03 acres X \$25,012 per acre) or the Property's fair market value as determined within 180 days of the CITY's execution of this Agreement, *whichever price is higher* (hereinafter referred to as the "Purchase Price"). The fair market value Purchase Price shall be determined by an MAI appraiser selected according to the following conditions:

- a) Within 30 days of the date CITY delivers this Agreement signed by the City and County returns the fully-executed Agreement to City, as specified in the Option Agreement, each party shall provide to the other party a list of at least three (3) independent MAI appraisers and their qualifications.
- b) CITY and COUNTY shall have 30 days to mutually agree on selection of one of the listed appraisers to determine the fair market value of the Property; the parties shall work jointly in good faith to mutually agree on selection of the appraiser.
- c) The appraiser's estimate of fair market value (the "Purchase Price") shall be stated in a written Appraisal Report prepared under the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) with copies delivered simultaneously to both parties.
- d) Both parties will be provided a reasonable period of time to review the draft appraisal report and provide comments to the appraiser for his or her consideration prior to preparation of the final report.
- e) If both parties agree, the first appraisal's determination of the Purchase Price may be rejected and a second appraisal may be performed to determine the Purchase Price, in accordance with this paragraph 3, by another appraiser selected in the same manner as stated above.
- f) The fee for preparing the Appraisal Report shall be shared equally by the parties.
- g) The COUNTY shall contract for the appraiser's services, but both parties shall be identified as co-clients for purposes of the appraisal.

The Purchase Price will be payable in immediately available funds as hereinafter instructed at Close of Escrow (as hereinafter defined). On or before Close of Escrow, CITY shall deposit with Escrow Holder, the Purchase Price plus Escrow Holder's estimate of CITY's share of closing costs as described below.

### 4. ESCROW INSTRUCTIONS.

A fully executed copy of this Agreement shall be deposited with Fidelity National Title Company located at 1375 Exposition Blvd, Suite 240, Sacramento, CA 95815 (the "**Escrow Holder**") and such delivery shall constitute the opening of an escrow under Escrow Holder's file number \_\_\_\_\_ for sale of the Property pursuant to this Agreement. Escrow Holder shall be concerned only with the provisions of this Paragraph 4. The escrow shall be on the following terms and conditions:

- a. Payment of the Purchase Price. Prior to closing, CITY shall cause the Purchase Price to be deposited in escrow.
- b. Title. COUNTY shall execute and deliver to Escrow Holder a Grant Deed, in substantially the same form as set forth in **Exhibit “C”**, attached hereto and incorporated herein, conveying title to the Property to CITY. When all of the conditions to closing herein contained have been either satisfied or waived by the parties and so confirmed in writing, and escrow is ready to close, Escrow Holder shall cause the Grant Deed to be recorded and evidence of CITY’s acceptance thereof executed by a duly authorized representative of the CITY. Escrow Holder shall also deliver to CITY a CLTA Owner's Policy of Title Insurance, in an amount equal to the Purchase Price, showing title to the Property vested in CITY, subject to those exceptions previously approved by CITY.
- c. Pro-rations. Escrow Holder is hereby instructed to segregate and pro-rate real estate taxes, assessments and similar charges as of the Close of Escrow, as hereinafter defined. Segregation and pro-rations of real estate taxes, assessments and similar charges shall be done based upon the most currently available information at the Close of Escrow. COUNTY shall be responsible for applying for any refund due for assessments or property taxes prepaid beyond the Close of Escrow.
- d. Costs of Escrow and Fees. Except as otherwise specifically provided herein, the cost of any escrow fees, the charge for preparation of escrow documents, the CLTA Policy of Title Insurance as described above, and all other costs of escrow and closing are to be paid by CITY. Any increased costs for an ALTA Policy of Title Insurance together with the cost of any associated survey shall be paid by CITY. COUNTY and CITY are exempt from the payment of transfer tax and recording fees.
- e. Close of Escrow. Upon the satisfaction or waiver of all conditions hereto, COUNTY and CITY instruct Escrow Holder to close escrow by recording the Grant Deed in the Official Records of Sacramento County and disbursing the Purchase Price to COUNTY, less any amounts payable by COUNTY hereunder (hereinafter referred to as “**Close of Escrow**”). Both COUNTY and CITY agree that time is of the essence in this matter and agree to take whatever steps are reasonably necessary to ensure that all conditions of this escrow are satisfied in a timely manner. Title to the Property shall pass immediately upon recording of the Grant Deed.
- f. Failure to Close Escrow. Notwithstanding the foregoing, if escrow does not close as herein provided, or any extension thereof in writing, this escrow shall terminate, and Escrow Holder shall return all documents, things, and refundable monies deposited in escrow, to the respective parties, less Escrow Holder’s fees and costs.
- g. Conditions Precedent. The Close of Escrow is expressly conditioned upon the occurrence of the following events:
  - (1) To CITY’s Obligation. The following shall be conditions precedent to CITY’s obligation to acquire the Property:

- i. Escrow Holder is ready to issue, as of the Close of Escrow, the title policy required by Paragraph 4.b. hereof, and all exceptions listed in the Title Report have been either satisfied or waived by the parties in writing.
- ii. COUNTY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the Close of Escrow.
- iii. Approval of this Agreement by the City Council and execution of the Agreement by a duly authorized representative of CITY.
- iv. Approval of the Purchase Price by the City Council.

(2) To COUNTY's Obligation. The following shall be conditions precedent to the COUNTY's obligation to convey the Property at Close of Escrow.

- i. CITY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the Close of Escrow.
  - ii. Approval of this Agreement by COUNTY'S Board of Supervisors and execution of the Agreement by a duly authorized representative of COUNTY.
- h. Standard Escrow Instructions. For those escrow matters not specifically addressed herein, Escrow Holder's standard escrow instructions entitled "**General Provisions**", a copy of which is attached hereto as **Exhibit "D"**, shall be applicable. Where there is a conflict between the provisions of this Agreement and the provisions of Escrow Holder's standard escrow instructions, the provisions of this Agreement shall control.

## 5. RISK OF LOSS.

Risk of loss shall transfer from COUNTY to CITY upon Close of Escrow.

## 6. PRESERVATION OF PROPERTY.

COUNTY agrees that the Property herein described shall remain as it now is until Close of Escrow, and that COUNTY will prevent and refrain from any use of the Property for any purpose or in any manner which would adversely affect the value of the Property or the City's intended use of the Property. Except as otherwise provided here and in the Option Agreement, COUNTY shall not transfer, lease, or encumber any interest in the Property prior to the Close of Escrow. In the event of such actions, or any other loss or damage that adversely affects City's intended use of the Property or the value of the Property, CITY may, without liability, refuse to accept the conveyance of title, or alternatively may elect to accept conveyance of title to the Property or a portion thereof, in which case there will be an equitable adjustment of the Purchase Price to the extent the City's intended use of the Property is impaired or the value of the Property is reduced based on the change in circumstance.

**7. AS-IS SALE.**

CITY acknowledges that, except as expressly contained in this Agreement, neither COUNTY nor anyone acting for or on behalf of the COUNTY has made any representation, warranty, or promise to CITY concerning the physical aspects or condition of the Property; the feasibility or desirability of the Property for any particular use; the conditions of soils, sub-soils, groundwater and surface waters; or the presence or absence of any other physical aspect of the Property; and that in entering into the Agreement, CITY has not relied on any representation, statement, or warranty of COUNTY or anyone acting for or on behalf of COUNTY, other than as may be expressly contained in this Agreement, and that all matters concerning the Property shall be independently verified by CITY and that CITY shall purchase the Property on CITY's own examination thereof; and that if CITY elects to acquire the Property, is purchasing the Property in its "as is" condition and its "as is" state of repair as of the Close of Escrow.

The provisions of this paragraph 7 shall not apply to any unknown hazardous materials, as defined below, existing on the Property as of the Close of Escrow for that site. "Hazardous materials" shall be defined for the purposes of this Agreement as any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the State of California, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. Liability for unknown hazardous materials existing on the Property as of the Close of Escrow shall be governed by applicable law.

**8. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF COUNTY.**

- a. COUNTY warrants that it is the owner in fee simple of the Property and that it has the exclusive right to sign this Agreement and convey the Property subject to FAA authorization.
- b. To the best of COUNTY Department of Airports' knowledge and belief, without any duty or obligation to investigate, COUNTY represents, warrants and covenants to CITY that the following are true as of the date COUNTY executes this Agreement and shall continue to be true as of the Close of Escrow:
  - (1) COUNTY has not received notice of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation or administrative or judicial order with respect to the Property.
  - (2) There is no action, suit or proceeding, which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of

the Property, in any court or before or by any federal, state, commission, board, bureau, agency or other governmental instrumentality.

- (3) Except for such matters of record as may be disclosed in the Title Report issued by Escrow Holder, or any amendment thereto issued prior to Close of Escrow, (i) there are no leases, licenses, prescriptive easements or other third party rights to use or occupy any portion of the Property; (ii) there are no adverse parties in possession of any portion of the Property; and (iii) there are no rights to purchase the Property or any portion thereof prior to those set forth herein which are held or claimed by any third party; or if there are any of the foregoing interests, rights or claims, COUNTY has disclosed any and all of them, and shall provide to CITY copies of any written agreements and other documents evidencing such matters.
- (4) As of the Close of Escrow, there shall be no unpaid bills or claims by COUNTY in connection with any work on the Property.
- (5) During the period of COUNTY's ownership of the Property, there has been no litigation or governmental administrative action or proceeding maintained or threatened against COUNTY, nor any settlements reached by COUNTY with any party or parties, alleging the presence, disposal, release or threatened release of any hazardous waste or hazardous substance on, from or under the Property. The Property are not subject to any "Superfund" or similar lien, or any claim by any government regulatory agency or third party related to the release or threatened release of any toxic or hazardous substance, material or waste.
- (6) Notwithstanding anything in the Agreement to the contrary, in the event either party becomes aware, between the date the CITY executes this Agreement and delivers it to COUNTY, and the Close of Escrow, of any substantive matter which would make any of COUNTY's representations or warranties untrue, the party discovering such matter shall promptly provide written notice thereof to the other party. The CITY shall have the right, within 30 days after giving or receiving such written notice, to provide written notice to the COUNTY that the CITY elects to proceed to close this transaction notwithstanding such matter. If the CITY does not provide such written notice of its election to proceed, the parties shall have the right, within 15 days following the expiration of such 30 day period, (i) to proceed to close this transaction with a mutually-acceptable indemnity from COUNTY as to any liability arising out of the matter discovered, or (ii) to treat such matter as a failure of a condition and terminate this Agreement.
- (7) There are no leases affecting the Property requiring termination prior to the satisfaction of any condition to this Agreement.

## **9. POSSESSION.**

COUNTY will deliver possession of the Property to CITY at the Close of Escrow.

## **10. RIGHT OF ENTRY/INDEMNIFICATION/INSURANCE**

Until such time as escrow is closed and the deed is recorded, Optionee's Right to Enter,

Indemnification for Right of Entry Purposes, and Insurance Requirements as stated in the Option Agreement; RED File No: COP 16802 & 27587, paragraphs 6, 7, and 8, shall remain in effect.

**11. ASSURANCES REQUIRED BY THE FAA.**

CITY shall be subject to the Assurances Required by the Federal Aviation Administration (FAA), a copy of which is attached hereto as **Exhibit “E”**. This provision shall survive the recordation of the Grant Deed and shall not merge with title.

**12. BINDING.**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**13. NOTICE.**

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by electronic facsimile and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, on the date of posting by the United States Post Office, or (iii) if given by electronic facsimile, when received by the other party.

TO COUNTY: County of Sacramento  
Department of Airports  
Mr. John Wheat, Director  
6900 Airport Blvd  
Sacramento, CA 95837  
Telephone: (916) 874-0600  
Email: [WheatJ@SacCounty.net](mailto:WheatJ@SacCounty.net)

TO CITY: Director  
Department of Utilities  
City of Sacramento  
1395 35<sup>th</sup> Ave Sacramento, CA 95822  
Telephone: (916) 808-1400  
Email: [wbusath@cityofsacramento.org](mailto:wbusath@cityofsacramento.org)

TO ESCROW HOLDER: Fidelity National Title Company  
1375 Exposition Blvd, Suite 240  
Sacramento, CA 95815  
Telephone: (916) 646-6018

Notice of change of address shall be given by written notice in the manner described in this Paragraph.

#### 14. MISCELLANEOUS.

- a. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, or is found to be prohibited by law, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable or prohibited, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- b. **Waiver.** No waiver of any breach of any covenant or provision hereof shall be deemed a waiver of any preceding or succeeding breach hereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of delay.
- c. **Entire Agreement.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understanding with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and lawful assignees.
- d. **Authority of Signators.** Each party to this Agreement warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this Agreement and all related documents.
- e. **Survival of Provisions.** Notwithstanding any provisions of this Agreement to the contrary, the provisions of this Agreement shall survive the Close of Escrow and shall not merge into the Grant Deed and the recordation thereof, and the covenants, representations, warranties, hold harmless and indemnification obligations made by each party herein shall survive the termination of this Agreement.
- f. **Attorneys' Fees.** If litigation is commenced between the parties concerning the interpretation or enforcement of this Agreement, each party in that litigation shall be responsible for its own attorney's fees and costs.
- g. **Commission.** There is no real estate, finders, or other commission due or payable by reason of this transaction. Each party shall indemnify the other for any actions which may cause the other party to be liable for a real estate brokerage or sales commission arising here from.
- h. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

- i. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns or the parties hereto. This Agreement may not be assigned by either party without the written consent of the non-assigning party, and any purported assignment without such consent will be void.
- j. **Time of Essence.** COUNTY and CITY hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.
- k. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create a relationship of principal and agent, a partnership, joint venture, or any other association between COUNTY and CITY.
- l. **Construction of Agreement.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.
- m. **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which, together, shall constitute one and the same instrument.
- n. **Additional Documents.** The CITY and COUNTY agree to execute such other documents and instruments as may be reasonably requested by the other party or Escrow Holder in connection with the property conveyance that is the subject of this Agreement, consistent with the provisions of this Agreement. For the purposes of this Agreement, the County's Director of Airports has authority to execute said documents and instruments.

*Remainder of Page Intentionally Left Blank*

**IN WITNESS WHEREOF, the parties have executed the Agreement the day and year first above written as follows:**

**COUNTY:**

County of Sacramento, a political subdivision of the State of California

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Under delegated authority by:

Resolution No.: \_\_\_\_\_

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

**CITY:**

City of Sacramento, a municipal corporation

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Under delegated authority by:

Motion/Resolution No.: \_\_\_\_\_

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

**APPROVED AS TO TERMS**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Department of Airports

**ATTEST**

\_\_\_\_\_

City Clerk

**REVIEWED AND APPROVED BY COUNTY COUNSEL**

\_\_\_\_\_  
Name: \_\_\_\_\_

Deputy County Counsel

**APPROVED AS TO FORM**

\_\_\_\_\_  
Name: \_\_\_\_\_

City Attorney

**EXHIBIT "A" to Agreement**

**Site 1 Location Map**

**Garden Highway, Sacramento, CA 95837  
APN 201-0150-053**



## EXHIBIT "B" to Agreement

### Legal Description

All that portion of Lot 176 of Plat of Natomas Elkhorn Subdivision; according to the official plat thereof, filed in the office of the Recorder of Sacramento County, California, on February 26, 1918, in Book 15 of Maps, Map No. 42, lying Westerly of the Westerly line of a 30 foot canal and private road right of way in said Lot 176.

EXCEPTING THEREFROM the following: Beginning at a point on the North line of said Lot 176, located West 1518.67 feet from the Northeast corner of said Lot 176; thence from said point of beginning, Southerly along the Westerly line of the 30 foot canal and private road right of way as shown on said map along a curve to the right on an arc of 3487.87 feet radius, said arc being subtended by a chord bearing South 12° 42' 45" West 100.00 feet; thence continuing on said curve 3487.87 feet radius, said arc being subtended by a chord bearing South 14° 21' 15" West 100.00 feet; thence West 223.00 feet to the East bank of the Sacramento River and the West line of said Lot 176; thence North 19° 49' 30" East 206.70 feet along the East bank of said Sacramento River and the West line of said Lot 176 to the Northwest corner of said Lot 176; thence East 199.70 feet along the North line of said Lot 176 to the point of beginning.

(As described in the vesting Grant Deed to the County of Sacramento, recorded in Book 19790619, Page 643.)

(APN 201-0150-053)

**EXHIBIT "C" to Agreement  
Grant Deed**

**WHEN RECORDED RETURN TO:**  
City of Sacramento  
DGS Facilities & Real Property  
5730 24th Street, Building 4  
Sacramento, CA 95822

No Fee Document - Per Government Code 27383  
No Document Transfer Tax - Per R & T Code 11922

**SEND TAX/ASSESSMENT BILLS TO:**  
City of Sacramento  
DGS Facilities & Real Property  
5730 24th Street, Building 4  
Sacramento, CA 95822

APN: 201-0150-053

Project Name & Dept: City's Option to Purchase at SMF (Airports) **THIS SPACE FOR RECORDER'S  
USE ONLY**

**GRANT DEED**

The **COUNTY OF SACRAMENTO**, a political subdivision of the State of California, do(es) hereby grant to the **CITY OF SACRAMENTO**, a municipal corporation, all that real property in the unincorporated area of the County of Sacramento, State of California, bounded and described as follows, to-wit:

See Exhibit "A" attached hereto and made part hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

**County of Sacramento, a political subdivision of the State of California**

\_\_\_\_\_  
**Michael M. Morse, Director**  
**Department of General Services**  
Under delegated authority by:  
Resolution No.: \_\_\_\_\_  
Dated: \_\_\_\_\_

**SALE LOG NO.** \_\_\_\_\_

M:\RealEstate\Templates\RES Asset Management\Fee Deeds Conveying Property\Grant Deed to Outside Grantee.dot 09112008 SGP

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

<p>STATE OF _____ )          COUNTY OF _____ )</p> <p>On _____ before me, _____, notary public,  <small>date name of notary officer</small></p> <p>personally appeared _____,  <small>name(s) of signer(s)</small></p> <p>_____ )          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.</p> <p>I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.</p> <p>WITNESS my hand and official seal.</p> <p>_____          Signature of Notary</p>	<p style="text-align: center;">-----OPTIONAL SECTION-----</p> <p><b>CAPACITY CLAIMED BY SIGNER</b></p> <p>Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.</p> <p><input type="checkbox"/> INDIVIDUAL  <input type="checkbox"/> CORPORATE OFFICER(S)</p> <p style="text-align: center;">Title(s)</p> <p><input type="checkbox"/> PARTNER(S)      <input type="checkbox"/> LIMITED  <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT  <input type="checkbox"/> TRUSTEE(S)  <input type="checkbox"/> GUARDIAN/CONSERVATOR  <input type="checkbox"/> OTHER: _____</p> <p>_____          _____</p> <p><b>SIGNER IS REPRESENTING:</b>          Name of Person(s) or entity(ies)</p> <p>_____          _____</p>
<p><b>OPTIONAL SECTION:</b></p> <p>DATA REQUESTED HERE IS NOT REQUIRED BY LAW.</p> <p>TITLE OR TYPE OF DOCUMENT: _____</p> <p>NUMBER OF PAGES _____ DATE _____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE _____</p>	

**City of Sacramento's Acceptance  
 Inserted Here**

SALE LOG NO. \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description**

4.03-acre levee parcel adjacent to the Sacramento River

All that portion of Lot 176 of Plat of Natomas Elkhorn Subdivision; according to the official plat thereof, filed in the office of the Recorder of Sacramento County, California, on February 26, 1918, in Book 15 of Maps, Map No. 42, lying Westerly of the Westerly line of a 30 foot canal and private road right of way in said Lot 176.

EXCEPTING THEREFROM the following: Beginning at a point on the North line of said Lot 176, located West 1518.67 feet from the Northeast corner of said Lot 176; thence from said point of beginning, Southerly along the Westerly line of the 30 foot canal and private road right of way as shown on said map along a curve to the right on an arc of 3487.87 feet radius, said arc being subtended by a chord bearing South 12° 42' 45" West 100.00 feet; thence continuing on said curve 3487.87 feet radius, said arc being subtended by a chord bearing South 14° 21' 15" West 100.00 feet; thence West 223.00 feet to the East bank of the Sacramento River and the West line of said Lot 176; thence North 19° 49' 30" East 206.70 feet along the East bank of said Sacramento River and the West line of said Lot 176 to the Northwest corner of said Lot 176; thence East 199.70 feet along the North line of said Lot 176 to the point of beginning.

As described in the vesting Grant Deed to the County of Sacramento, recorded in Book 19790619, Page 643.

(APN 201-0150-053)

## EXHIBIT "D" to Agreement



# Fidelity National Title Company

8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95826  
916 364-4070 • FAX 916 364-4093

## General Provisions

### 1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account or accounts of Fidelity National Title Company - C & I, with any state or national bank, or savings and loan association (the "depository Institution") and may be transferred to any other such general escrow account or accounts. The parties to this escrow acknowledge that the maintenance of such escrow accounts with some depository institutions may result in Escrow Holder's being provided with an array of bank services, accommodations or other benefits by the depository institution. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations and other benefits shall accrue to Escrow Holder and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Fidelity National Title Company - C & I. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

To the extent provided by law, if for any reason funds are retained or remain in escrow following the close of escrow, you are to deduct therefrom a reasonable monthly charge as custodian thereof of not less than \$10.00 per month.

### 2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

### **3. SUPPLEMENTAL TAXES**

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

### **4. UTILITIES/POSSESSION**

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

### **5. PREPARATION AND RECORDATION OF INSTRUMENTS**

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

### **6. AUTHORIZATION TO FURNISH COPIES**

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

### **7. RIGHT OF CANCELLATION**

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver one copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH MAILING, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

### **8. PERSONAL PROPERTY**

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

### **9. RIGHT OF RESIGNATION**

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein.

If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

### **10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES**

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow.

Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

#### **11. ACTION IN INTERPLEADER**

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

#### **12. TERMINATION OF AGENCY OBLIGATION**

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Fidelity National Title Company - C & I, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

#### **13. CONFLICTING INSTRUCTIONS**

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

#### **14. REIMBURSEMENT ATTORNEY FEES/ESCROW HOLDER**

In the event that a suit is brought by any party or parties to these escrow instructions to which the Escrow Holder is named as a party which results in a judgment in favor of the Escrow Holder and against a principal or principals herein, the principals or principals' agent agree to pay said Escrow Holder all costs, expenses and reasonable attorney's fees which it may expend or incur in said suit, the amount thereof to be fixed and judgment therefore to be rendered by the court in said suit.

#### **15. DELIVERY/RECEIPT**

Delivery to principals as used in these instructions unless otherwise stated herein is to be by regular mail, and receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned are to be mailed to the address shown herein.

#### **16. STATE/FEDERAL CODE NOTIFICATIONS**

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the CITY in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said CITY and Escrow Holder shall debit the account of Buyer for same at close of escrow.

Buyer and Seller herein represent and warrant that they will seek and obtain independent legal advice and counsel relative to their obligations under the "Foreign Investors In Real Property Act", and any other applicable federal and/or state laws regarding same, and will take all steps necessary in order to comply with such requirements and hereby hold you harmless relative to their compliance therewith.

#### **17. ENCUMBRANCES**

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

#### **18. ENVIRONMENTAL ISSUES**

Fidelity National Title Company - C & I has made no investigation concerning said property as to

environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. Fidelity National Title Company - C & I is released of any responsibility and/or liability in connection therewith.

**19. USURY**

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

**20. DISCLOSURE**

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

**21. CLARIFICATION OF DUTIES**

Fidelity National Title Company - C & I serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

**FIDELITY NATIONAL TITLE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 2597-3 ISSUED BY THE CALIFORNIA DEPARTMENT OF INSURANCE**

# EXHIBIT “E” to Agreement

## ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION

### SECTION A

#### Purpose, Classes Of Activities, Applicability Of Assurances And Definition Of Terms

1. PURPOSE:

The County of Sacramento, California, an airport owner subject to both Federal Grant Agreement obligations at Sacramento International Airport (SMF), Sacramento Executive Airport (SAC), and Mather Airport (MHR), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said County and any and all entities who use or perform work or conduct activities on County owned or operated airport premises for aeronautical or non-aeronautical purposes. The purpose of this Exhibit is to appropriately incorporate within the Agreement to which it is attached and made a part of by reference therein, the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below.

2. CLASSES OF ACTIVITIES:

The applicability of each of the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below, to that certain Agreement to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the Optionee, Lessee, PERMITTEE, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized there under. The following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. Direct and Supportive Aeronautical: The following activities, commonly conducted on airports, are AERONAUTICAL ACTIVITIES:

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing
- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts
- (12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an “aeronautical activity.”

b. Complementary Aeronautical: The following activities, when conducted on airports, are COMPLEMENTARY AERONAUTICAL ACTIVITIES:

- (1) Ground Transportation (taxis, car rentals, limousines)

- (2) Restaurants
- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. Non-Aeronautical: The following activities, when conducted on airports, being neither “Direct and Supportive Aeronautical” nor “Complementary Aeronautical,” as defined above, are NON-AERONAUTICAL ACTIVITIES.

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the above-said “Direct and Supportive Aeronautical” and/or “Complementary Aeronautical,” classifications.

3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION “B,” “ASSURANCES,” BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:

The applicability of the numbered provisions within Section “B,” “Assurances,” below, to the respective classes of activities specified within sub-paragraphs 2a, b, and c, of this Section “A,” above, is as follows:

NUMBERED PROVISIONS	ACTIVITY CLASS	APPLICABLE TO CLASS
SMF, SAC and MHR AGREEMENTS		
	Direct and Supportive Aeronautical	1 through 17
	Complementary Aeronautical	1 through 16
	Non-Aeronautical	1 through 16

4. DEFINITION OF TERMS USED WITHIN SECTION “B,” “ASSURANCES,” BELOW:

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section “A,” this Exhibit is designed to be attached to and made a part of all County of Sacramento Airport “Agreements,” including, without limitation, leases, licenses, permits, contracts, etc. Therefore, in the event the “Agreement” to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than “Lessor” and “Lessee,” then, where the terms “Lessor,” “Lessee,” and “Lease” appear, as shown, within the seventeen (17) numbered “ASSURANCES” listed within Section “B,” below, said terms shall be deemed to mean “COUNTY OF SACRAMENTO, CALIFORNIA,” “THE OTHER PARTY TO THE PARTICULAR AGREEMENT” (e.g., Optionee, Licensee, PERMITTEE, Concessionaire, Operator, etc.), and the “AGREEMENT” itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively. Where the terms “LANDLEASED” and “LEASEDPREMISES” (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the “Agreement” as being that/those to which leasehold tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, PERMITTEE, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term “AIRPORT” appears, as shown, it shall be deemed to mean the particular airport(s) (i.e., either the Sacramento International Airport, the Sacramento Executive Airport, or Mather Field) as identified within the “Permit” between the parties as being the Airport(s) to which the “Permit” pertains.

**SECTION B**

**Assurances**

1. The “LESSEE,” for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the “Permit” to

which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this "LEASE" or "Agreement" for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the "LESSEE" shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The "LESSEE," for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the "LESSEE" shall use the "premises" in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, "LESSOR" shall have the right to terminate the "LEASE" and to reenter and repossess said land and the facilities thereon, and hold the same as if said "LEASE" had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. "LESSEE" shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the "LESSEE" may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the COUNTY OF SACRAMENTO, CALIFORNIA ("LESSOR") shall have the right to terminate this "LEASE" and the estate hereby created without liability therefore or at the election of the "LESSOR" or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3, and 4 above.

6. "LESSEE" agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which "LESSEE" grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the "premises" herein "LEASED."

7. The "LESSEE" assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The "LESSEE" assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The "LESSEE" assures that it will require that its covered suborganizations provide assurances to the "LESSEE" that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The "LESSOR" reserves the right to further develop or improve the landing area of the "Airport" as it sees fit, regardless of the desires or view of the "LESSEE" and without interference or hindrance.

9. The "LESSOR" reserves the right, but shall not be obligated to the "LESSEE," to maintain and keep in repair the landing area of the "Airport" and all publicly-owned facilities of the "Airport," together with the right to direct and control all activities of the "LESSEE" in this regard.

10. This "LEASE" shall be subordinate to the provisions and requirements of any existing or future agreement

between the “LESSOR” and the United States, relative to the development, operation or maintenance of the “Airport.”

11. There is hereby reserved to the “LESSOR,” its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the “premises” herein “LEASED.” This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the “Airport.”

12. “LESSEE” agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the “LEASED PREMISES,” or in the event of any planned modification or alteration of any present or future building or structure situated on the “LEASED PREMISES.”

13. The “LESSEE,” by accepting this “LEASE,” expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the “land leased” hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, “LESSOR” (the owner) reserves the right to enter upon the “land leased” hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the “LESSEE.”

14. The “LESSEE,” by accepting this “LEASE,” agrees for itself, its successors and assigns, that it will not make use of the “LEASED PREMISES” in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the “AIRPORT” (either Sacramento International Airport or Sacramento Executive Airport, or Mather Field, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the “LESSOR” (owner) reserves the right to enter upon the “premises hereby leased” and cause the abatement of such interference at the expense of the “LESSEE.”

15. This “LEASE,” and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said “AIRPORT” or the exclusive or nonexclusive use of the “AIRPORT” by the United States during the time of war or national emergency.

16. It is the policy of the Department of Transportation (DOT) that disadvantaged and minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, these leases are subject to 49 CFR Part 23, as applicable. “LESSEE” hereby covenants and agrees that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex. “LESSEE” agrees that it will include the above clauses in all sub-leases and cause sublessees to similarly include the clauses in further sub-leases.

17. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

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WHEN RECORDED RETURN TO:  
REAL ESTATE DIVISION  
COUNTY OF SACRAMENTO  
3711 Branch Center Road  
Sacramento, CA 95827  
Mail Code 63-002  
No Fee Document - Per Government Code 27383  
No Document Transfer Tax - Per R & T Code 11922

APNs: 201-0130-011 and 201-0130-012 (Site 2)  
Project Name & Dept.: City's Option to Purchase at SMF  
(Airports)

THIS SPACE FOR RECORDER'S USE ONLY

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## **SALES AND PURCHASE AGREEMENT**

Between the County of Sacramento and the City of Sacramento

RED File No: COP 16802 & 27587  
OWNER: County of Sacramento (Airports)  
APNs: 201-0130-011 and 201-0130-012 (Site 2)  
Project: City's Option to Purchase at SMF

## SALES AND PURCHASE AGREEMENT

This Sales and Purchase Agreement (“**Agreement**”), dated for convenience as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, (“**Agreement Date**”), is made by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California (“**COUNTY**”), and the **CITY OF SACRAMENTO**, a municipal corporation (“**CITY**”), in consideration of the mutual covenants and agreements herein contained, and is subject to the conditions set forth below, and is made with reference to the following facts:

### RECITALS

A. COUNTY and CITY entered into an Option to Purchase Agreement dated \_\_\_\_\_, 20\_\_\_ (the “**Option Agreement**”), in which the COUNTY, as Optionor, granted to CITY, as Optionee, the exclusive right to purchase the Property (described in Recital B below) for the Purchase Price (defined in Paragraph 3 below) and under the specific terms and conditions set forth in the Option Agreement and reiterated in this Agreement.

B. COUNTY is the owner of that certain real property situated in Sacramento County, California, known as Assessor’s Parcel Number (APN) 201-0130-011, a 64.01 acre parcel, and APN 201-0130-012, a 56.41 acre parcel, which combined are two contiguous parcels of approximately 120.41-acres located east of Power Line Road and north of W. Elverta Road, the location shown as Site 2 in **Exhibit “A”** attached hereto and incorporated herein by reference (the “**Property**”), together with all rights, hereditaments, easements, appurtenances thereto belonging or otherwise appertaining. The Property is more particularly described in **Exhibit “B”** attached hereto and incorporated herein; and

C. CITY desires to purchase from COUNTY for construction of a Water Intake Project, a public works project for which CITY has the authority to exercise its power of eminent domain, and COUNTY desires to sell to CITY, the Property, pursuant to the provisions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

#### 1. INCORPORATION OF RECITALS.

The foregoing recitals are true and correct and are hereby incorporated by reference.

#### 2. PURCHASE AND SALE.

COUNTY hereby agrees to sell and convey, and CITY hereby agrees to purchase through escrow, for the purchase price and upon the terms and conditions herein stated, the Property described above.

### 3. PURCHASE PRICE.

The purchase price for the Property shall be either the minimum price of \$3,011,945 (120.42 acres x \$25,012) or the Property's fair market value as determined within 180 days of the CITY's execution of this Agreement, *whichever price is higher* (hereinafter referred to as the "Purchase Price"). The fair market value Purchase Price shall be determined by an MAI appraiser selected according to the following conditions:

- a) Within 30 days of the date CITY delivers this Agreement signed by the City and County returns the fully-executed Agreement to City, as specified in the Option Agreement, each party shall provide to the other party a list of at least three (3) independent MAI appraisers and their qualifications.
- b) CITY and COUNTY shall have 30 days to mutually agree on selection of one of the listed appraisers to determine the fair market value of the Property; the parties shall work jointly in good faith to mutually agree on selection of the appraiser.
- c) The appraiser's estimate of fair market value (the "Purchase Price") shall be stated in a written Appraisal Report prepared under the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) with copies delivered simultaneously to both parties.
- d) Both parties will be provided a reasonable period of time to review the draft appraisal report and provide comments to the appraiser for his or her consideration prior to preparation of the final report.
- e) If both parties agree, the first appraisal's determination of the Purchase Price may be rejected and a second appraisal may be performed to determine the Purchase Price, in accordance with this paragraph 3, by another appraiser selected in the same manner as stated above.
- f) The fee for preparing the Appraisal Report shall be shared equally by the parties.
- g) The COUNTY shall contract for the appraiser's services, but both parties shall be identified as co-clients for purposes of the appraisal.

The Purchase Price will be payable in immediately available funds as hereinafter instructed at Close of Escrow (as hereinafter defined). On or before Close of Escrow, CITY shall deposit with Escrow Holder, the Purchase Price plus Escrow Holder's estimate of CITY's share of closing costs as described below.

### 4. ESCROW INSTRUCTIONS.

A fully executed copy of this Agreement shall be deposited with Fidelity National Title Company located at 1375 Exposition Blvd, Suite 240, Sacramento, CA 95815 (the "**Escrow Holder**") and such delivery shall constitute the opening of an escrow under Escrow Holder's file number \_\_\_\_\_ for sale of the Property pursuant to this Agreement. Escrow Holder shall be concerned only with the provisions of this Paragraph 4. The escrow shall be on the following terms

and conditions:

- a. Payment of the Purchase Price. Prior to closing, CITY shall cause the Purchase Price to be deposited in escrow.
- b. Title. COUNTY shall execute and deliver to Escrow Holder a Grant Deed, in substantially the same form as set forth in **Exhibit “C”**, attached hereto and incorporated herein, conveying title to the Property to CITY. When all of the conditions to closing herein contained have been either satisfied or waived by the parties and so confirmed in writing, and escrow is ready to close, Escrow Holder shall cause the Grant Deed to be recorded and evidence of CITY’s acceptance thereof executed by a duly authorized representative of the CITY. Escrow Holder shall also deliver to CITY a CLTA Owner's Policy of Title Insurance, in an amount equal to the Purchase Price, showing title to the Property vested in CITY, subject to those exceptions previously approved by CITY.
- c. Pro-rations. Escrow Holder is hereby instructed to segregate and pro-rate real estate taxes, assessments and similar charges as of the Close of Escrow, as hereinafter defined. Segregation and pro-rations of real estate taxes, assessments and similar charges shall be done based upon the most currently available information at the Close of Escrow. COUNTY shall be responsible for applying for any refund due for assessments or property taxes prepaid beyond the Close of Escrow.
- d. Costs of Escrow and Fees. Except as otherwise specifically provided herein, the cost of any escrow fees, the charge for preparation of escrow documents, the CLTA Policy of Title Insurance as described above, and all other costs of escrow and closing are to be paid by CITY. Any increased costs for an ALTA Policy of Title Insurance together with the cost of any associated survey shall be paid by CITY. COUNTY and CITY are exempt from the payment of transfer tax and recording fees.
- e. Close of Escrow. Upon the satisfaction or waiver of all conditions hereto, COUNTY and CITY instruct Escrow Holder to close escrow by recording the Grant Deed in the Official Records of Sacramento County and disbursing the Purchase Price to COUNTY, less any amounts payable by COUNTY hereunder (hereinafter referred to as “**Close of Escrow**”). Both COUNTY and CITY agree that time is of the essence in this matter and agree to take whatever steps are reasonably necessary to ensure that all conditions of this escrow are satisfied in a timely manner. Title to the Property shall pass immediately upon recording of the Grant Deed.
- f. Failure to Close Escrow. Notwithstanding the foregoing, if escrow does not close as herein provided, or any extension thereof in writing, this escrow shall terminate, and Escrow Holder shall return all documents, things, and refundable monies deposited in escrow, to the respective parties, less Escrow Holder’s fees and costs.
- g. Conditions Precedent. The Close of Escrow is expressly conditioned upon the occurrence of the following events:
  - (1) To CITY’s Obligation. The following shall be conditions precedent to CITY’s obligation to acquire the Property:

- i. Escrow Holder is ready to issue, as of the Close of Escrow, the title policy required by Paragraph 4.b. hereof, and all exceptions listed in the Title Report have been either satisfied or waived by the parties in writing.
- ii. COUNTY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the Close of Escrow.
- iii. Approval of this Agreement by the City Council and execution of the Agreement by a duly authorized representative of CITY.
- iv. Approval of the Purchase Price by the City Council.

(2) To COUNTY's Obligation. The following shall be conditions precedent to the COUNTY's obligation to convey the Property at Close of Escrow.

- i. CITY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the Close of Escrow.
  - ii. Approval of this Agreement by COUNTY'S Board of Supervisors and execution of the Agreement by a duly authorized representative of COUNTY.
- h. Standard Escrow Instructions. For those escrow matters not specifically addressed herein, Escrow Holder's standard escrow instructions entitled "**General Provisions**", a copy of which is attached hereto as **Exhibit "D"**, shall be applicable. Where there is a conflict between the provisions of this Agreement and the provisions of Escrow Holder's standard escrow instructions, the provisions of this Agreement shall control.

## 5. RISK OF LOSS.

Risk of loss shall transfer from COUNTY to CITY upon Close of Escrow.

## 6. PRESERVATION OF PROPERTY.

COUNTY agrees that the Property herein described shall remain as it now is until Close of Escrow, and that COUNTY will prevent and refrain from any use of the Property for any purpose or in any manner which would adversely affect the value of the Property or the City's intended use of the Property. Except as otherwise provided here and in the Option Agreement, COUNTY shall not transfer, lease, or encumber any interest in the Property prior to the Close of Escrow. In the event of such actions, or any other loss or damage that adversely affects City's intended use of the Property or the value of the Property, CITY may, without liability, refuse to accept the conveyance of title, or alternatively may elect to accept conveyance of title to the Property or a portion thereof, in which case there will be an equitable adjustment of the Purchase Price to the extent the City's intended use of the Property is impaired or the value of the Property is reduced based on the change in circumstance.

**7. AS-IS SALE.**

CITY acknowledges that, except as expressly contained in this Agreement, neither COUNTY nor anyone acting for or on behalf of the COUNTY has made any representation, warranty, or promise to CITY concerning the physical aspects or condition of the Property; the feasibility or desirability of the Property for any particular use; the conditions of soils, sub-soils, groundwater and surface waters; or the presence or absence of any other physical aspect of the Property; and that in entering into the Agreement, CITY has not relied on any representation, statement, or warranty of COUNTY or anyone acting for or on behalf of COUNTY, other than as may be expressly contained in this Agreement, and that all matters concerning the Property shall be independently verified by CITY and that CITY shall purchase the Property on CITY's own examination thereof; and that if CITY elects to acquire the Property, is purchasing the Property in its "as is" condition and its "as is" state of repair as of the Close of Escrow.

The provisions of this paragraph 7 shall not apply to any unknown hazardous materials, as defined below, existing on the Property as of the Close of Escrow for that site. "Hazardous materials" shall be defined for the purposes of this Agreement as any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the State of California, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. Liability for unknown hazardous materials existing on the Property as of the Close of Escrow shall be governed by applicable law.

**8. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF COUNTY.**

- a. COUNTY warrants that it is the owner in fee simple of the Property and that it has the exclusive right to sign this Agreement and convey the Property subject to FAA authorization.
- b. To the best of COUNTY Department of Airports' knowledge and belief, without any duty or obligation to investigate, COUNTY represents, warrants and covenants to CITY that the following are true as of the date COUNTY executes this Agreement and shall continue to be true as of the Close of Escrow:
  - (1) COUNTY has not received notice of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation or administrative or judicial order with respect to the Property.
  - (2) There is no action, suit or proceeding, which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of

the Property, in any court or before or by any federal, state, commission, board, bureau, agency or other governmental instrumentality.

- (3) Except for such matters of record as may be disclosed in the Title Report issued by Escrow Holder, or any amendment thereto issued prior to Close of Escrow, (i) there are no leases, licenses, prescriptive easements or other third party rights to use or occupy any portion of the Property; (ii) there are no adverse parties in possession of any portion of the Property; and (iii) there are no rights to purchase the Property or any portion thereof prior to those set forth herein which are held or claimed by any third party; or if there are any of the foregoing interests, rights or claims, COUNTY has disclosed any and all of them, and shall provide to CITY copies of any written agreements and other documents evidencing such matters.
- (4) As of the Close of Escrow, there shall be no unpaid bills or claims by COUNTY in connection with any work on the Property.
- (5) During the period of COUNTY's ownership of the Property, there has been no litigation or governmental administrative action or proceeding maintained or threatened against COUNTY, nor any settlements reached by COUNTY with any party or parties, alleging the presence, disposal, release or threatened release of any hazardous waste or hazardous substance on, from or under the Property. The Property are not subject to any "Superfund" or similar lien, or any claim by any government regulatory agency or third party related to the release or threatened release of any toxic or hazardous substance, material or waste.
- (6) Notwithstanding anything in the Agreement to the contrary, in the event either party becomes aware, between the date the CITY executes this Agreement and delivers it to COUNTY, and the Close of Escrow, of any substantive matter which would make any of COUNTY's representations or warranties untrue, the party discovering such matter shall promptly provide written notice thereof to the other party. The CITY shall have the right, within 30 days after giving or receiving such written notice, to provide written notice to the COUNTY that the CITY elects to proceed to close this transaction notwithstanding such matter. If the CITY does not provide such written notice of its election to proceed, the parties shall have the right, within 15 days following the expiration of such 30 day period, (i) to proceed to close this transaction with a mutually-acceptable indemnity from COUNTY as to any liability arising out of the matter discovered, or (ii) to treat such matter as a failure of a condition and terminate this Agreement.
- (7) There are no leases affecting the Property requiring termination prior to the satisfaction of any condition to this Agreement.

## **9. POSSESSION.**

COUNTY will deliver possession of the Property to CITY at the Close of Escrow.

## **10. RIGHT OF ENTRY/INDEMNIFICATION/INSURANCE**

Until such time as escrow is closed and the deed is recorded, Optionee's Right to Enter,

Indemnification for Right of Entry Purposes, and Insurance Requirements as stated in the Option Agreement; RED File No: COP 16802 & 27587, paragraphs 6, 7, and 8, shall remain in effect.

**11. ASSURANCES REQUIRED BY THE FAA.**

CITY shall be subject to the Assurances Required by the Federal Aviation Administration (FAA), a copy of which is attached hereto as **Exhibit “E”**. This provision shall survive the recordation of the Grant Deed and shall not merge with title.

**12. BINDING.**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**13. NOTICE.**

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by electronic facsimile and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, on the date of posting by the United States Post Office, or (iii) if given by electronic facsimile, when received by the other party.

TO COUNTY: County of Sacramento  
Department of Airports  
Mr. John Wheat, Director  
6900 Airport Blvd  
Sacramento, CA 95837  
Telephone: (916) 874-0600  
Email: [WheatJ@SacCounty.net](mailto:WheatJ@SacCounty.net)

TO CITY: Director  
Department of Utilities  
City of Sacramento  
1395 35<sup>th</sup> Ave Sacramento, CA 95822  
Telephone: (916) 808-1420  
Email: [wbusath@cityofsacramento.org](mailto:wbusath@cityofsacramento.org)

TO ESCROW HOLDER: Fidelity National Title Company  
1375 Exposition Blvd, Suite 240  
Sacramento, CA 95815  
Telephone: (916) 646-6018

Notice of change of address shall be given by written notice in the manner described in this Paragraph.

#### 14. MISCELLANEOUS.

- a. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, or is found to be prohibited by law, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable or prohibited, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- b. **Waiver.** No waiver of any breach of any covenant or provision hereof shall be deemed a waiver of any preceding or succeeding breach hereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of delay.
- c. **Entire Agreement.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understanding with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and lawful assignees.
- d. **Authority of Signators.** Each party to this Agreement warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this Agreement and all related documents.
- e. **Survival of Provisions.** Notwithstanding any provisions of this Agreement to the contrary, the provisions of this Agreement shall survive the Close of Escrow and shall not merge into the Grant Deed and the recordation thereof, and the covenants, representations, warranties, hold harmless and indemnification obligations made by each party herein shall survive the termination of this Agreement.
- f. **Attorneys' Fees.** If litigation is commenced between the parties concerning the interpretation or enforcement of this Agreement, each party in that litigation shall be responsible for its own attorney's fees and costs.
- g. **Commission.** There is no real estate, finders, or other commission due or payable by reason of this transaction. Each party shall indemnify the other for any actions which may cause the other party to be liable for a real estate brokerage or sales commission arising here from.
- h. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

- i. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns or the parties hereto. This Agreement may not be assigned by either party without the written consent of the non-assigning party, and any purported assignment without such consent will be void.
- j. **Time of Essence.** COUNTY and CITY hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.
- k. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create a relationship of principal and agent, a partnership, joint venture, or any other association between COUNTY and CITY.
- l. **Construction of Agreement.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.
- m. **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which, together, shall constitute one and the same instrument.
- n. **Additional Documents.** The CITY and COUNTY agree to execute such other documents and instruments as may be reasonably requested by the other party or Escrow Holder in connection with the property conveyance that is the subject of this Agreement, consistent with the provisions of this Agreement. For the purposes of this Agreement, the County's Director of Airports has authority to execute said documents and instruments.

*Remainder of Page Intentionally Left Blank*

**IN WITNESS WHEREOF, the parties have executed the Agreement the day and year first above written as follows:**

**COUNTY:**

County of Sacramento, a political subdivision of the State of California

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Under delegated authority by:

Resolution No.: \_\_\_\_\_

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

**CITY:**

City of Sacramento, a municipal corporation

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Under delegated authority by:

Motion/Resolution No.: \_\_\_\_\_

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

**APPROVED AS TO TERMS**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Department of Airports

**ATTEST**

\_\_\_\_\_

City Clerk

**REVIEWED AND APPROVED BY  
COUNTY COUNSEL**

\_\_\_\_\_  
Name: \_\_\_\_\_

Deputy County Counsel

**APPROVED AS TO FORM**

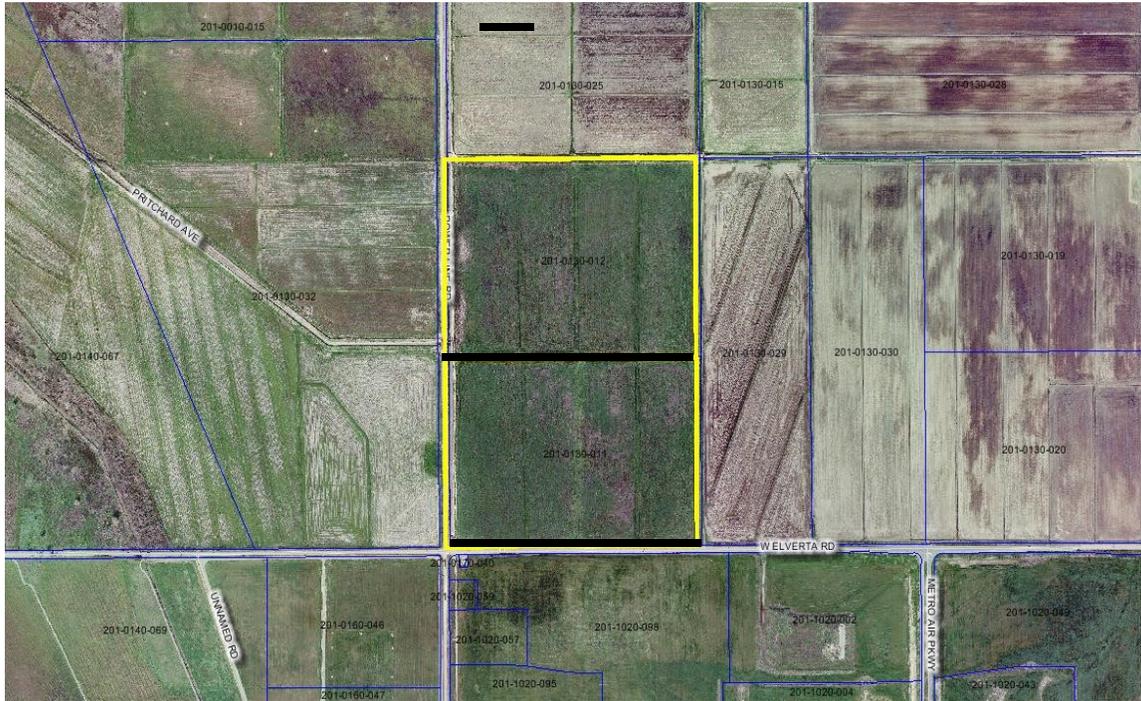
\_\_\_\_\_  
Name: \_\_\_\_\_

City Attorney

# EXHIBIT "A" to Agreement

## Site 2 Location Map

Power Line Road, Sacramento, CA 95837  
(APN's 201-0130-011 and 201-0130-012)



## **EXHIBIT "B" to Agreement**

### **Legal Description**

"Lots of 244 and 245 as shown on the map of Natomas Central Sub-division, filed September 18, 1920, in Book 16 of Maps, Map No. 3, et seq., in the office of the County Recorder of Sacramento County, California."

(As described in the vesting Grant Deed to the County of Sacramento, recorded in Book 20050103 Book 1220.)

(APN's 201-0130-011 and 201-0130-012)

# EXHIBIT "C" to Agreement

## Grant Deed

**WHEN RECORDED RETURN TO:**

City of Sacramento  
DGS Facilities & Real Property  
5730 24th Street, Building 4  
Sacramento, CA 95822

No Fee Document - Per Government Code 27383  
No Document Transfer Tax - Per R & T Code 11922

**SEND TAX/ASSESSMENT BILLS TO:**

City of Sacramento  
DGS Facilities & Real Property  
5730 24th Street, Building 4  
Sacramento, CA 95822

APN: 201-0130-011 and 201-0130-012

Project Name & Dept: City's Option to Purchase at SMF (Airports)

**THIS SPACE FOR RECORDER'S  
USE ONLY**

## GRANT DEED

The COUNTY OF SACRAMENTO, a political subdivision of the State of California, do(es) hereby grant to the CITY OF SACRAMENTO, a municipal corporation, all that real property in the unincorporated area of the County of Sacramento, State of California, bounded and described as follows, to-wit:

See Exhibit "A" attached hereto and made part hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

County of Sacramento, a political subdivision of the State of California

\_\_\_\_\_  
**Michael M. Morse, Director**  
Department of General Services  
Under delegated authority by:  
Resolution No.: \_\_\_\_\_  
Dated: \_\_\_\_\_

**SALE LOG NO.** \_\_\_\_\_

M:\RealEstateTemplates\RES Asset Management\Fee Deeds Conveying Property\Grant Deed to Outside Grantee.dot 09112008 SGP

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

<p>STATE OF _____ )  COUNTY OF _____ )</p> <p>On _____ before me, _____, notary public,  <small>date name of notary officer</small></p> <p>personally appeared _____,  <small>name(s) of signer(s)</small></p> <p>_____</p> <p>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.</p> <p>I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.</p> <p>WITNESS my hand and official seal.</p> <p>_____  Signature of Notary</p>	<p style="text-align: center;">-----OPTIONAL SECTION-----</p> <p><b>CAPACITY CLAIMED BY SIGNER</b></p> <p>Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.</p> <p><input type="checkbox"/> INDIVIDUAL  <input type="checkbox"/> CORPORATE OFFICER(S)</p> <p>_____  Title(s)</p> <p><input type="checkbox"/> PARTNER(S)      <input type="checkbox"/> LIMITED  <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT  <input type="checkbox"/> TRUSTEE(S)  <input type="checkbox"/> GUARDIAN/CONSERVATOR  <input type="checkbox"/> OTHER: _____</p> <p>_____  _____  _____</p> <p><b>SIGNER IS REPRESENTING:</b>  <b>Name of Person(s) or entity(ies)</b></p> <p>_____  _____  _____</p>
<p><b>OPTIONAL SECTION:</b></p> <p>DATA REQUESTED HERE IS NOT REQUIRED BY LAW.</p> <p>TITLE OR TYPE OF DOCUMENT: _____</p> <p>NUMBER OF PAGES _____ DATE _____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE _____</p>	

**City of Sacramento's Acceptance  
Inserted Here**

**EXHIBIT "A"**

**Legal Description**

"Lots of 244 and 245 as shown on the map of Natomas Central Sub-division, filed September 18, 1920, in Book 16 of Maps, Map No. 3, et seq., in the office of the County Recorder of Sacramento County, California."

As described in the vesting Grant Deed to the County of Sacramento recorded in Book 20050103, Page 1220.

(Two contiguous parcels of approximately 120.41-acres (APN's 201-0130-011 and 201-0130-012))

## EXHIBIT "D" to Agreement



# Fidelity National Title Company

8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95826  
916 364-4070 • FAX 916 364-4093

## General Provisions

### 1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account or accounts of Fidelity National Title Company - C & I, with any state or national bank, or savings and loan association (the "depository Institution") and may be transferred to any other such general escrow account or accounts. The parties to this escrow acknowledge that the maintenance of such escrow accounts with some depository institutions may result in Escrow Holder's being provided with an array of bank services, accommodations or other benefits by the depository institution. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations and other benefits shall accrue to Escrow Holder and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Fidelity National Title Company - C & I. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

To the extent provided by law, if for any reason funds are retained or remain in escrow following the close of escrow, you are to deduct therefrom a reasonable monthly charge as custodian thereof of not less than \$10.00 per month.

### 2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax

statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

### **3. SUPPLEMENTAL TAXES**

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

### **4. UTILITIES/POSSESSION**

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

### **5. PREPARATION AND RECORDATION OF INSTRUMENTS**

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

### **6. AUTHORIZATION TO FURNISH COPIES**

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

### **7. RIGHT OF CANCELLATION**

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver one copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH MAILING, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

### **8. PERSONAL PROPERTY**

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

### **9. RIGHT OF RESIGNATION**

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein.

If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

### **10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES**

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow.

Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

## **11. ACTION IN INTERPLEADER**

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

## **12. TERMINATION OF AGENCY OBLIGATION**

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Fidelity National Title Company - C & I, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

## **13. CONFLICTING INSTRUCTIONS**

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

## **14. REIMBURSEMENT ATTORNEY FEES/ESCROW HOLDER**

In the event that a suit is brought by any party or parties to these escrow instructions to which the Escrow Holder is named as a party which results in a judgment in favor of the Escrow Holder and against a principal or principals herein, the principals or principals' agent agree to pay said Escrow Holder all costs, expenses and reasonable attorney's fees which it may expend or incur in said suit, the amount thereof to be fixed and judgment therefore to be rendered by the court in said suit.

## **15. DELIVERY/RECEIPT**

Delivery to principals as used in these instructions unless otherwise stated herein is to be by regular mail, and receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned are to be mailed to the address shown herein.

## **16. STATE/FEDERAL CODE NOTIFICATIONS**

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the CITY in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said CITY and Escrow Holder shall debit the account of Buyer for same at close of escrow.

Buyer and Seller herein represent and warrant that they will seek and obtain independent legal advice and counsel relative to their obligations under the "Foreign Investors In Real Property Act", and any other applicable federal and/or state laws regarding same, and will take all steps necessary in order to comply with such requirements and hereby hold you harmless relative to their compliance therewith.

## **17. ENCUMBRANCES**

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

## **18. ENVIRONMENTAL ISSUES**

Fidelity National Title Company - C & I has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow.

Fidelity National Title Company - C & I is released of any responsibility and/or liability in connection therewith.

**19. USURY**

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

**20. DISCLOSURE**

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

**21. CLARIFICATION OF DUTIES**

Fidelity National Title Company - C & I serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

**FIDELITY NATIONAL TITLE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 2597-3 ISSUED BY THE CALIFORNIA DEPARTMENT OF INSURANCE**

# EXHIBIT “E” to Agreement

## ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION

### SECTION A

#### Purpose, Classes Of Activities, Applicability Of Assurances And Definition Of Terms

1. PURPOSE:

The County of Sacramento, California, an airport owner subject to both Federal Grant Agreement obligations at Sacramento International Airport (SMF), Sacramento Executive Airport (SAC), and Mather Airport (MHR), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said County and any and all entities who use or perform work or conduct activities on County owned or operated airport premises for aeronautical or non-aeronautical purposes. The purpose of this Exhibit is to appropriately incorporate within the Agreement to which it is attached and made a part of by reference therein, the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below.

2. CLASSES OF ACTIVITIES:

The applicability of each of the seventeen (17) numbered provisions contained within Section “B,” “ASSURANCES,” below, to that certain Agreement to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the Optionee, Lessee, PERMITTEE, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized there under. The following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. Direct and Supportive Aeronautical: The following activities, commonly conducted on airports, are AERONAUTICAL ACTIVITIES:

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing
- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts
- (12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an “aeronautical activity.”

b. Complementary Aeronautical: The following activities, when conducted on airports, are COMPLEMENTARY AERONAUTICAL ACTIVITIES:

- (1) Ground Transportation (taxis, car rentals, limousines)
- (2) Restaurants

- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. Non-Aeronautical: The following activities, when conducted on airports, being neither “Direct and Supportive Aeronautical” nor “Complementary Aeronautical,” as defined above, are NON-AERONAUTICAL ACTIVITIES.

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the above-said “Direct and Supportive Aeronautical” and/or “Complementary Aeronautical,” classifications.

3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION “B,” “ASSURANCES,” BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:

The applicability of the numbered provisions within Section “B,” “Assurances,” below, to the respective classes of activities specified within sub-paragraphs 2a, b, and c, of this Section “A,” above, is as follows:

NUMBERED PROVISIONS	ACTIVITY CLASS	APPLICABLE TO CLASS
SMF, SAC and MHR AGREEMENTS		
	Direct and Supportive Aeronautical	1 through 17
	Complementary Aeronautical	1 through 16
	Non-Aeronautical	1 through 16

4. DEFINITION OF TERMS USED WITHIN SECTION “B,” “ASSURANCES,” BELOW:

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section “A,” this Exhibit is designed to be attached to and made a part of all County of Sacramento Airport “Agreements,” including, without limitation, leases, licenses, permits, contracts, etc. Therefore, in the event the “Agreement” to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than “Lessor” and “Lessee,” then, where the terms “Lessor,” “Lessee,” and “Lease” appear, as shown, within the seventeen (17) numbered “ASSURANCES” listed within Section “B,” below, said terms shall be deemed to mean “COUNTY OF SACRAMENTO, CALIFORNIA,” “THE OTHER PARTY TO THE PARTICULAR AGREEMENT” (e.g., Optionee, Licensee, PERMITTEE, Concessionaire, Operator, etc.), and the “AGREEMENT” itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively. Where the terms “LANDLEASED” and “LEASEDPREMISES” (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the “Agreement” as being that/those to which leasehold tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, PERMITTEE, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term “AIRPORT” appears, as shown, it shall be deemed to mean the particular airport(s) (i.e., either the Sacramento International Airport, the Sacramento Executive Airport, or Mather Field) as identified within the “Permit” between the parties as being the Airport(s) to which the “Permit” pertains.

**SECTION B**

**Assurances**

1. The “LESSEE,” for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the “Permit” to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated

on the said property described in this "LEASE" or "Agreement" for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the "LESSEE" shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The "LESSEE," for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the "LESSEE" shall use the "premises" in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, "LESSOR" shall have the right to terminate the "LEASE" and to reenter and repossess said land and the facilities thereon, and hold the same as if said "LEASE" had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. "LESSEE" shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the "LESSEE" may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the COUNTY OF SACRAMENTO, CALIFORNIA ("LESSOR") shall have the right to terminate this "LEASE" and the estate hereby created without liability therefore or at the election of the "LESSOR" or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3, and 4 above.

6. "LESSEE" agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which "LESSEE" grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the "premises" herein "LEASED."

7. The "LESSEE" assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The "LESSEE" assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The "LESSEE" assures that it will require that its covered suborganizations provide assurances to the "LESSEE" that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The "LESSOR" reserves the right to further develop or improve the landing area of the "Airport" as it sees fit, regardless of the desires or view of the "LESSEE" and without interference or hindrance.

9. The "LESSOR" reserves the right, but shall not be obligated to the "LESSEE," to maintain and keep in repair the landing area of the "Airport" and all publicly-owned facilities of the "Airport," together with the right to direct and control all activities of the "LESSEE" in this regard.

10. This "LEASE" shall be subordinate to the provisions and requirements of any existing or future agreement between the "LESSOR" and the United States, relative to the development, operation or maintenance of the

“Airport.”

11. There is hereby reserved to the “LESSOR,” its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the “premises” herein “LEASED.” This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the “Airport.”

12. “LESSEE” agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the “LEASED PREMISES,” or in the event of any planned modification or alteration of any present or future building or structure situated on the “LEASED PREMISES.”

13. The “LESSEE,” by accepting this “LEASE,” expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the “land leased” hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, “LESSOR” (the owner) reserves the right to enter upon the “land leased” hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the “LESSEE.”

14. The “LESSEE,” by accepting this “LEASE,” agrees for itself, its successors and assigns, that it will not make use of the “LEASED PREMISES” in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the “AIRPORT” (either Sacramento International Airport or Sacramento Executive Airport, or Mather Field, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the “LESSOR” (owner) reserves the right to enter upon the “premises hereby leased” and cause the abatement of such interference at the expense of the “LESSEE.”

15. This “LEASE,” and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said “AIRPORT” or the exclusive or nonexclusive use of the “AIRPORT” by the United States during the time of war or national emergency.

16. It is the policy of the Department of Transportation (DOT) that disadvantaged and minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, these leases are subject to 49 CFR Part 23, as applicable. “LESSEE” hereby covenants and agrees that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex. “LESSEE” agrees that it will include the above clauses in all sub-leases and cause sublessees to similarly include the clauses in further sub-leases.

17. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

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