

## **FACILITIES RELOCATION AGREEMENT**

This Facilities Relocation Agreement (“Agreement”) is entered into this 21 day of February 2007 (“Effective Date”), by and between the Sacramento Municipal Utility District (the “District”) and the City of Sacramento (the “City”) (hereinafter District and City are referred to individually as “Party” or collectively as “Parties”).

### **RECITALS**

This Agreement is entered into with reference to the following facts:

- A. The City is proposing the construction of the Cosumnes River Boulevard-Interstate 5 Interchange Project (“Project”).
- B. The District owns rights of way and easements related to its high-pressure natural gas pipeline facilities (“Facilities”). The District’s operation of the Facilities supplies natural gas to three co-generation plants and the Cosumnes Power Plant accounting for 824 megawatts (“MW”) of electric power generation.
- C. Construction of the Project will require the relocation of a portion of the Facilities.
- D. The Facilities are licensed to the District by the California Energy Commission (the “CEC”).
- E. Subsequent relocation of the Facilities will require the modification of the District’s CEC license for the Facilities and the acquisition of permits, rights of way, and easements.

### **AGREEMENT**

Therefore, in consideration of the mutual covenants contained herein, and of other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the terms and conditions as follows:

1. Purpose of the Agreement.

The purpose of this Agreement, and the intent of the Parties, is to provide a method to allow the Project to move forward, to avoid the possibility of damage to the District’s Facilities, and set forth the Parties’ obligation in funding the relocation of the Facilities.

2. District Responsibilities.

The District shall relocate certain Facilities currently located easterly of Freeport Boulevard, and northerly of Stonecrest Avenue, continuing underneath Interstate

5, then, once on the east side of Interstate 5, heading in a southerly direction, that are impacted by the Project as more thoroughly described in the attached map (Attachment A) (“Relocation Work”).

District shall obtain all required licenses and permits necessary to relocate the Facilities.

The District agrees to contract for the environmental professionals required in the preparation of the CEC license amendment. Any costs incurred by the District for this work shall be offset against the District’s contribution to Relocation Costs.

3. City’s Responsibilities.

The City agrees that the District is entitled to contribution for any and all Relocation Costs, as described in paragraphs 4 and 5, that the District may incur for the relocation of the Facilities related to the Project including, but not limited to, contractual costs and/or penalties, purchase of replacement electrical energy, and the cost of any natural gas purged from the Facilities to allow the for the shutdown event. The City is aware that relocation of the Facilities may necessitate the shutdown of the Facilities. A shutdown of the Facilities may result in the District having to purchase electrical energy to replace lost generation and other contractual costs associated with its inability to provide a fuel source for its plants.

The City shall provide the District with suitable replacement easements, rights-of-way, permits, property rights, as appropriate, within which to relocate said Facilities, with the exception of any encroachment permits necessary from the State of California Department of Transportation, in a form acceptable to the District as shown on Attachment B hereto. Any costs incurred by the City for this work shall be offset against the City’s contribution to Relocation Costs.

4. Relocation Costs.

Relocation Costs include the costs actually incurred or to be incurred by the District for and due to the relocation of the Facilities related to the Project including, but not limited to, District staff time and material costs, acquisition of required licenses, permits, rights of way, easement, survey, design and construction, abandonment of old facilities, steam provision contractual costs and/or penalties, purchase of replacement electrical energy, and the cost of any natural gas purged from the Facilities to allow for the shutdown event. Relocation Costs do not include work performed by the District where the sole purpose is betterments to the Facilities.

The District’s preliminary estimate is that Relocation Costs for the Project will be between \$2.5 and \$3.5 million, as illustrated for the following tasks:

|                                  |             |
|----------------------------------|-------------|
| CEC License Amendment            | \$ 250,000  |
| Survey (cadastral)               | \$ 7,000    |
| Pipeline Design                  | \$ 220,000  |
| Pipeline Construction            | \$1,575,000 |
| Testing and Pipeline Abandonment | \$ 60,000   |
| Replacement Energy and Fuel      | \$ 450,000  |
| Administration costs             | \$ 570,000  |

(e.g.; project management, environmental, administrative support)

\*\*This estimate is for discussion purposes only. It is not a detailed listing of all the tasks to be performed and does not represent actual Relocation Costs. Reimbursement obligations are based on the actual costs incurred.

The District will provide the City with an invoice including a cost breakdown for the Relocation Costs; payment by the City shall be in accordance with Paragraph 7.

5. Funding Responsibilities.

The Parties understand and agree to jointly fund the relocation of the Facilities, where each party bears a proportionate share of the costs based upon their applicable real property rights. The parties understand and agree that the bulk of the Facilities are sited on private non-exclusive easements owned by the District; a section of the Facilities is subject to a State of California Department of Transportation (“CalTrans”) encroachment permit (Permit No. 0395-NUT0057); and two sections of the Facilities are subject to City encroachment permits (Beach Lake Road and Stonecrest Avenue; Permit No. 1995164 issued May 22, 1995).

Relocation Costs Allocation Formula:

District Allocation of Relocation Costs = 100%(F/T)

City Allocation of Relocation Costs = 100% – [100%(F/T)]

Where F is equal to the sum of the lengths in feet of the CalTrans (approximately 285 feet) and City (approximately 334 feet) encroachment permits; and T is equal to the total sum of the length in feet of the Facilities’ alignment from tie-in point to tie-in point. The parties agree to adjust the tie-in points within six months of execution of this Agreement, when the final alignment of the Facilities has been determined.

For example (Scenario 1):

District Allocation of Relocation Costs = 100%[(285 + 100 + 234)/3646]

District Allocation of Relocation Costs = 16.98%

City Allocation of Relocation Costs = 100% - 100%[(619/3646)]

City Allocation of Relocation Costs = 83.02%

The City may choose to enter into a separate agreement with a third party (such a party is not a third party beneficiary to this Agreement), which extends the proposed alignment in Scenario 1 in a southerly direction, as indicated by the light blue line in Attachment A. This scenario (Scenario 2) extends the overall length of the Facilities' relocation, from tie-in-point to tie-in point, henceforth adjusting the percentages to be incurred by the City and SMUD.

For example (Scenario 2):

District Allocation of Relocation Costs =  $100\%[(285 + 100 + 234)/5012]$

District Allocation of Relocation Costs = 12.35%

City Allocation of Relocation Costs =  $100\% - 100\%[(619/5012)]$

City Allocation of Relocation Costs = 87.65%

6. Allocation of Approximate Relocation Costs.

Funding Scenario 1: Allocable of Approximate Relocation Costs are as follows:

| <u>Entity</u> | <u>Share</u> | <u>Contribution</u> |
|---------------|--------------|---------------------|
| District      | 16.98%       | \$594,300           |
| City          | 83.02%       | \$2,905,700         |
|               | 100%         | \$3,500,000         |

Funding Scenario 2: Allocable of Approximate Relocation Costs are as follows:

| <u>Entity</u> | <u>Share</u> | <u>Contribution</u> |
|---------------|--------------|---------------------|
| District      | 12.35%       | \$432,250           |
| City          | 87.65%       | \$3,067,750         |
|               | 100%         | \$3,500,000         |

7. Invoice / Payment.

- a. Good Faith Deposit. The City agrees to make a deposit of \$350,000 to the District within thirty (30) days from the Effective Date of this Agreement. This deposit will be held by the District to offset initial Relocation Costs as incurred.
- b. Form of Invoice. The District will invoice the City on a monthly basis for its contribution of actual Relocation Costs. The City will remit payment for any uncontested costs within sixty (60) days after the date invoiced. The City's check should be made payable to the "Sacramento Municipal Utility District," reference the applicable order number, and be delivered to the address listed in Paragraph 9. The City reserves the right to require and the District shall

provide reasonable documentation for all charges submitted for reimbursement.

8. Milestone. Milestone means each task to be performed by the District for the Relocation Work, to be completed as set forth in the Payment Milestones in Attachment C. The Parties agree that the Payment Milestones set forth in Attachment C represent a preliminary estimate of Relocation Costs and that the actual Relocation Costs may exceed the estimate, and may be adjusted by the District in its sole discretion to reflect actual Relocation Costs. Prior to commencing a Milestone, the District shall notify the City. If the City has altered its Project schedule in such a manner that the Milestone should likewise be altered, the City shall notify the District within five (5) business days to suspend the next Milestone until notified by the City. The City understands that actual Relocation Costs may increase due to such a notice, and that the City will be solely responsible for the delta between the estimated Relocation Costs and the actual Relocation Costs.

9. Notices.

All notices, letters, and other communications under this Agreement from one Party to the other will be mailed, first class, or hand delivered, or via facsimile or e-mail followed by delivery of the original documents to the address shown. Either Party may change their address at any time by providing written notification to the other Party.

Sacramento Municipal Utility District  
6201 S Street, P.O. Box 15830  
Sacramento, CA 95817-1899  
ATTN: Kevin Hudson, MS B355

Facsimile: (916) 732-6563  
E-mail: khudson@smud.org

City of Sacramento  
Engineering Services Division  
915 I Street, Room 2000  
Sacramento, CA 95814  
ATTN: Nader Kamal

Facsimile: (916) 808-8281  
E-mail: nkamal@cityofsacramento.org

No change of address shall be binding upon the other Party hereto until such Party receives, at the address shown herein, written notice thereof. All notices shall be in English and shall be effective upon receipt.

10. Jurisdiction.

Any lawsuit, action, or other proceeding arising from this Agreement shall be brought in a California state court located in the County of Sacramento, California.

11. Execution and Counterparts.

This Agreement may be executed and delivered in facsimile counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same Agreement. Any Party executing and delivering this Agreement by facsimile shall deliver an original signature page to the other Party hereto as soon as practicable. However, the failure by such Party to deliver such original signature shall have no effect on the validity, binding effect or enforceability of this Agreement as to such Party.

12. Definitions.

Terms which are defined in any part of this Agreement shall have the defined meaning whenever used with initial capital letters throughout this Agreement.

13. Construction.

In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement.

If any term, provision, condition or covenant of this Agreement or its application to any party or circumstance shall be held, to any extent, invalid or unenforceable, then the remainder of this Agreement, or the application of such term, provision, condition or covenant to any party or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

14. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Party without the prior consent of the other Party.

15. Severability.

If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

16. Waiver.

No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement by the other party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by either party hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by the City or the District to or of any act by the other party requiring the consent or approval of the first party shall not be deemed to waive or render unnecessary such party's consent or approval to or of any subsequent similar acts by the other party. Failure to exercise any right or remedy shall not preclude the exercise of that right or remedy at any other time or of any other right or remedy at any time.

17. Headings.

The subject headings of the sections of this Agreement are included for the purposes of convenience, and shall not affect the construction and interpretation of any of its provisions.

18. Warranty of Authority.

Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the entity on whose behalf it is indicated the person is signing.

19. Integration.

This Agreement constitutes the entire understanding among the Parties pertaining to the subject matter hereof and supersedes all prior understandings and representations of the Parties with respect to the subject matter hereof. Any representation, promise, or condition not incorporated into this Agreement shall not be binding on any Party

20. Amendment.

This Agreement may not be modified, amended or supplemented, or otherwise changed except by the written agreement of each of the Parties.

IN WITNESS WHEREOF, the Parties hereto enter into this Agreement as of the Effective Date.

**Sacramento Municipal Utility District**

*SSP  
(signed)*

By: James R. Shori

Name: Jan Shori

Title: General Manager

Date: 1/22/07

**City of Sacramento**

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

Jerry Way, Interim Director  
Department of Transportation

For Ray Kerridge, City Manager

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

**Attest:**

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

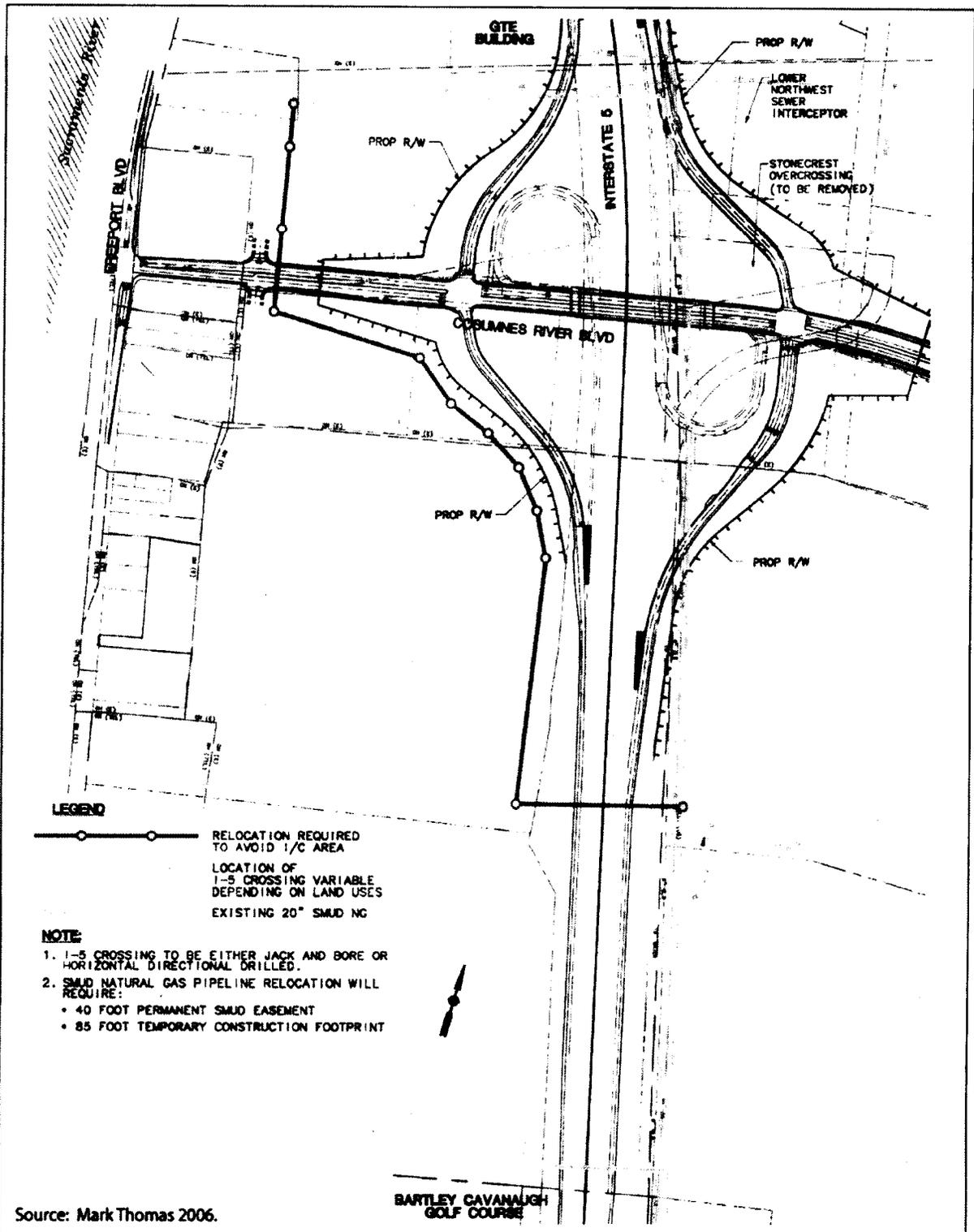
City Clerk

**Approved as to Form:**

By: Jerry Hicke

Jerry Hicke  
Deputy City Attorney

**ATTACHMENT A**



**Figure S-4**  
**SMUD 20-Inch Natural Gas Pipeline Possible Relocation at Interchange**

**ATTACHMENT B**

**EASEMENTS**

No fee for recordation  
Govt. Code Sec 6103  
RECORD AT REQUEST OF AND RETURN TO:  
Sacramento Municipal Utility District  
Attention: Real Estate Services - B 304  
P. O. Box 15830  
Sacramento, CA 95852-1830

NO COUNTY TRANSFER TAX DUE  
PER GOV'T CODE SEC. 11922

SMUD BY: \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

A.P.N. Ptn.

R/W No.:

## GRANT OF RIGHT OF WAY AND EASEMENT

\_\_\_\_\_, "Grantor", does hereby grant, sell and convey to **SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district**, "Grantee", its successors and assigns, an exclusive right-of-way and easement ("Easement") to:

locate, survey, construct, operate, maintain, repair, replace, remove, inspect and protect a pipeline or pipelines, cathodic equipment, valves, metering equipment, electrical and communication systems consisting of, but not limited to wires, cables, splicing, switching, terminal, and pull boxes, underground conduits, riser poles, roads, and all necessary above and below ground fixtures and appurtenances; being hereinafter collectively referred to as the "Facilities", over, under and upon that certain real property situate in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, described herein.

### INSERT LEGAL DESCRIPTION OF THE PREMISES

The route of said Easement shall be as described in Exhibit "A" attached hereto and hereby made a part hereof.

This Easement conveys to Grantee the right of ingress and egress to and from, and access on and within said Easement, with the right to use existing and future roads for the purpose of exercising and performing all the rights and privileges granted herein, including but not limited to surveying, constructing, inspecting, repairing, protecting, operating and maintaining the facilities and the addition, removal or replacement of same at will, either in whole or in part, with either like or different size pipe ("work"). During temporary periods Grantee may use such portions of the property along and adjacent to said Easement as may be reasonably necessary in connection with the construction, maintenance, repair, removal or replacement of the Facilities.

Grantee shall have the right to trim, cut or remove, without payment of damages, all trees, brush, foliage or other obstructions that may, in the Grantee's opinion, endanger, hinder or conflict with Grantee's exercise of the rights granted herein.

Grantee agrees that within a reasonable time following the completion of its work and subject to weather and/or soil conditions, Grantee shall, as near as practicable, restore said Easement to its original contour and condition. Grantee agrees to compensate Grantor for damages, which directly result from its work, including loss of timber, growing crops, pasture and livestock. Any other recognizable damages to other real or personal property that resulted from its work shall be repaired by Grantee.

Grantee may assign the rights granted in this Easement, either in whole or in part, subject to the terms of this grant, with such rights and Easement deemed to be covenants running with the land and to be binding upon Grantor, its heirs, legal representatives and successors in interest

Grantee may at any time permanently abandon the Easement and, at its discretion, may remove or abandon in place the Facilities constructed in it. Upon such abandonment action, Grantee may, at its discretion, execute and record a quitclaim deed of the Easement whereupon the Easement with all rights and privileges mutually granted shall be fully canceled and terminated.

Grantor reserves the right to use and enjoy said property except for the purposes granted in this Easement. Grantor shall have the right to cultivate, work, plow, harvest and use the land granted within the Easement so long as it shall not hinder, conflict or interfere with Grantee's surface or subsurface rights or hinder its ability to operate, maintain, inspect, repair and protect its Facilities.

Grantor agrees and covenants that no road or change in surface grade existing at the time of pipeline construction shall be constructed, created or maintained within the Easement without the prior express written approval of Grantee.

Grantor agrees and covenants that it will not impound water, create water detention basins or wetlands, plant vineyards, orchards or deep rooted crops, deep rip the soil, construct wells, buildings or structures of any type whatsoever within the Easement. This shall be a covenant running with the land and shall be binding on Grantor, its heirs, successors in interest, and assigns.

Grantee shall indemnify and hold Grantor harmless from and against any and all loss, damage, or injury which may result from the construction, operation and maintenance of the Facilities; provided, however, that said loss, damage, or injury does not arise out of or result from the actions of the Grantor, its agents, employees, or invitees.

Grantor shall not grant any other right of way or easement on, over or under the Easement to any third party, firm or corporation without the prior express written consent of Grantee.

Grantor shall not be allowed to cross fence the Easement without the prior express written consent of Grantee, except that Grantor may erect agricultural cross fences if it allows Grantee to install and maintain a gate so that Grantee can maintain continuous access along the Easement for inspection and maintenance of the Facilities.

Grantor agrees to indemnify Grantee against any environmental liability that predates the date of this Easement or is caused by Grantor's actions or inactions.

It is mutually understood and agreed that this Easement and the attached Exhibits, as written, cover and include all of the agreements and stipulations between the parties and that no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this Easement.

The terms, conditions, and provisions of this Easement shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors in interest, and assigns of the parties hereto.

Grantor:

\_\_\_\_\_

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

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

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

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF )

On \_\_\_\_\_, 200\_\_ before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, personally known to me, or 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.

Witness my hand and official seal.

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Notary Public, State of California

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF )

On \_\_\_\_\_, 200\_\_ before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, personally known to me, or 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.

Witness my hand and official seal.

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Notary Public, State of California

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )

Certificate of Acceptance  
Attached to R/W

This is to certify that the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district, hereby accepts for public purposes the interest in real property conveyed by the foregoing deed or grant and consents to the recordation thereof. The undersigned officer is authorized to execute this acceptance and consent pursuant to authority conferred by Resolution No. 89-6-11, adopted by said District's Board of Directors on June 20, 1989.

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

\_\_\_\_\_

Supervisor, Real Estate Services

**ATTACHMENT C**  
**PAYMENT MILESTONES**

**EXHIBIT C**  
**PAYMENT MILESTONES**

| <b>No.</b> | <b>Milestone Description</b>             | <b>Cost</b>  |
|------------|--|--------------|
| -          | Good Faith Deposit                       | (350,000.00) |
| 1.         | CEC License Amendment                    | 350,000.00   |
| 2.         | Land Acquisition, Permits and Mitigation | 577,000.00   |
| 3.         | Pipeline Design                          | 220,000.00   |
| 4.         | Material Purchase Order Issued           | 250,000.00   |
| 5.         | Pipeline Construction                    | 1,225,000.00 |
| 6.         | Testing and Pipeline Abandonment         | 60,000.00    |
| 7.         | Replacement Energy and Fuel              | 450,000.00   |