

Project: Pure Water Monterey – Reclamation Ditch Diversion Facility
Agency: Monterey Regional Water Pollution Control Agency (MRWPCA)
Parcel: APN 261-011-021

AGREEMENT FOR GRANT AND PURCHASE OF EASEMENTS
AND ESCROW INSTRUCTIONS

Chicago Title Company
250 Bonifacio Place
Monterey, CA 93940

("Escrow Holder")

This Agreement for Grant and Purchase of Easement and Escrow Instructions ("Agreement") is entered into this ____ day of _____, 2017, ("Reference Date") by and between Monterey Regional Water Pollution Control Agency, a California Joint Powers Authority ("PCA") and the Monterey County Water Resources Agency, a California flood control and water agency ("Agency"). PCA and the Agency are sometimes referred to herein individually as a "party" and collectively as "parties."

Recitals

A. PCA desires to acquire an easement over a portion of Agency's real property ('Parcel,' APN 261-011-021), in connection with the Reclamation Ditch Diversion Facility, a part of PCA's water reclamation development, for construction of an intake structure, pump station and related facilities ("Project") for conveyance of water from the Reclamation Ditch to the PCA's Salinas Pump Station. PCA has determined that the most suitable location for the Project includes a portion of the Parcel. Agency is prepared to grant an easement deed and a temporary construction easement (collectively "Easements") to PCA to enable such use.

B. PCA and Agency desire to enter into this Agreement to allow use of the Parcel, by approving an easement deed and temporary construction easement providing that PCA shall have the right to construct and install the Reclamation Ditch Diversion pump station and related facilities within the Easement.

Now, therefore, in consideration of the foregoing and the mutual covenants, agreements, representations and warranties contained in this Agreement, the parties hereto agree as follows:

1. AGREEMENT TO PURCHASE AND SELL

1.01 The recitals set forth in the foregoing are hereby incorporated into this Agreement.

1.02. Agency hereby agrees to grant PCA and PCA hereby agrees to purchase from Agency, Easements, located in Monterey County, California, as set forth in the Easement Deed and Temporary Construction Easement Deed substantially in the form and content as set forth in Exhibit "1" and Exhibit "2" respectively, attached hereto, providing for (1) an easement to construct, operate and maintain the Reclamation Ditch Diversion Pump Station and related facilities within the Parcel, described and set out in the Easement Deed; and (2) temporary use of Agency's property in connection with construction of the Project as set out in the Temporary Construction Easement Deed.

2. DELIVERY OF DOCUMENT

2.01 The Easements will be executed and delivered by Agency at Closing, as defined in Section 8 hereof, to Chicago Title Company, Monterey, California, Escrow Holder for the parties for the purpose of granting the Easements to the Agency.

3. PURCHASE PRICE

3.01 The full purchase price for items (1) and (2), described above in subsection 1.02, to be paid by the PCA is \$5,851 the "Purchase Price." The Purchase Price will be paid by the PCA to Agency, at the Agency's option, by

cashier's or certified check or by wire transfer of immediately available funds at the time of Closing.

4. TITLE

4.01 At Closing, Agency will deliver title to the Easements to PCA, and said title shall be subject only to those restrictions and reservations set forth in the Easements, this Agreement, and the exceptions shown in the preliminary title report for the property containing Easements dated as of December 27, 2016, as provided by Chicago Title Company ("Title Company"), or disclosed in any visual inspection of said property by the Title Company.

4.02 At Closing, PCA shall pay the following Closing costs: all escrow fees; the cost of obtaining a title insurance policy, and extended coverage and any additional title coverage or endorsements which Agency may desire; the cost of any documentary transfer tax; the cost of any document preparation; the amount required to reimburse the Agency for Agency's cost to obtain or review the appraisal; the amount required to reimburse the Agency for Agency's cost to obtain or review a preliminary title report; and the cost of a title policy.

4.03 No recording fees will be payable with respect to the recording of the Easements, pursuant to Government Code Section 27383.

4.04 The parties acknowledge that because the PCA is a public entity, the easement interest granted will not be subject to real property taxation.

5. REPRESENTATIONS AND WARRANTIES

5.01 Agency is granting the Easement "AS IS," with all faults, but represents and warrants to PCA as follows:

(a) Agency has full power and authority to grant the Easement as provided in this Agreement, and this Agreement is binding the enforceable against Agency.

(b) To Agency's actual knowledge Agency has not caused any Hazardous Materials to be placed or disposed of on or at the Easement property

or any part thereof in any manner or quantity which would constitute a violation of Environmental Law as defined in subsection 5.01 (b)(ii), nor has Agency received any written notice or any information of any nature which imparted notice that such property is in violation of Environmental Law. As noted herein:

(i) The term “Hazardous Materials” means “hazardous waste,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; petroleum; asbestos; polychlorinated biphenyl; radioactive material; designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1251 *et seq.* (33 U.S.C. Sec 1317); defined as a “hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.* (42 U.S.C. Sec. 6903; or defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 *et seq.* (42 U.S.C. Sec. 9601); and

(ii) the term “Environmental Laws” shall mean all statutes specifically described in the definition of “Hazardous Materials” and associated federal, state or local laws, regulations or orders relating to or imposing liability or standards of conduct concerning any Hazardous Material.

5.02 Except as expressly set forth in this Agreement, PCA is relying upon no warranties, express or implied, oral or written, from Agency regarding the Easement property and, upon Close of Escrow, PCA will have accepted said property as-is, with all faults. PCA represents and warrants to Agency as follows:

(a) Neither the execution and delivery of this Agreement by PCA nor the consummation of the transaction contemplated hereby will result in any breach or violation or of default under any judgment, decree, order, mortgage, lease, agreement, indenture or other instrument to which PCA is a party.

(b) PCA has full power and authority to execute this Agreement and purchase the easement as provided for in this Agreement, and this Agreement is binding and enforceable against PCA.

5.03 PCA acknowledges and agrees that, except as otherwise specifically provided herein, Agency has not made, does not make and specifically negates

and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to any of the following:

(i) Value

(ii) Income to be derived from the Easement property.

(iii) The nature, quality or condition of said property, including without limitation, the water, soil and geology.

(iv) Compliance with or by said property or its operations with any laws, rules, ordinances or regulations of any applicable governmental authority or body.

(v) Compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including but not limited to, California Health and Safety Code, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, The U.S. Environmental Protection Agency regulations at 40 C.F.R., part 261, the Comprehensive Environmental Response Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, and regulations promulgated under any of the forgoing.

(vi) The presence or absence of hazardous materials at, on, under, or adjacent to said property.

(vii) The content, completeness or accuracy of any due diligence materials delivered by Agency to PCA or preliminary report regarding title.

(viii) Deficiency of any under shoring or support.

(ix) The fact that all or a portion of said property may be located on or near an earthquake fault line or a flood zone.

(x) With respect to any other matter.

5.04 PCA further acknowledges and agrees that it has or will have been given the opportunity to inspect the Easement property and review information and documentation affecting said property, and that, except for Agency's express representations and warranties contained herein, PCA is relying solely on its own investigation of said property and review of such information and documentation, and not on any information provided or to be provided by Agency. PCA further acknowledges and agrees that any information made available by PCA or provided or to be provided by or on behalf of Agency with respect to said property was obtained from a variety of sources and that Agency has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. PCA agrees to fully and irrevocably release all such sources of information and the preparers of information and documentation affecting said property which were retained by Agency from any and all claims that they may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Except for Agency's express representations and warranties contained in subsection 5.01 above, Agency is not liable or bound in any manner by any oral or written statements, representations or information pertaining to said property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. PCA further acknowledges and agrees that to the maximum extent permitted by law, except for Agency's express representations and warranties contained in subsection 5.01 above, the grant and purchase of the Easement property as provided for herein is made on an "AS IS" condition and basis with all faults, and that Agency has no obligations to make repairs, replacements or improvements except as may otherwise be expressly stated herein. PCA represents, warrants and covenants to Agency that, except for Agency's express representations and warranties specified in this Agreement, PCA is relying solely upon PCA's own investigation of said property.

5.05 With respect to the waivers and releases set forth in subsection 5.04 above, PCA expressly waives any of its rights granted under California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the

time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

6. UTILITIES

6.01 The Agency shall make available to PCA maps in its possession showing the location of sewer, water, electrical, gas and telephone and any other utility lines located adjacent or near to the Easement property. Notwithstanding the foregoing, PCA shall be solely responsible for identifying and protecting all underground utilities and arranging for the delivery and paying for all utilities required on said property. PCA shall be responsible to provide and pay for utility connection equipment, meters and any fees required. The Agency cannot and does not guarantee that there will be no interruption of service to utility services delivered over Agency's lands and PCA hereby waives any rights or claims it may have resulting from temporary interruptions of service. To the extent it has knowledge, the Agency will provide notice of any work scheduled which may interrupt the utility service to said property. Prior to any scheduled interruption of the utility services delivered to Agency's land by the PCA as a result of PCA's activities, PCA shall provide Agency an advance written notice a minimum of five (5) business days prior to the scheduled interruption.

6.02 It shall be the responsibility of the PCA to contact, consult and comply with any regulation applicable to PCA's activities on the Easement property which are now or may be promulgated by a local public agency or private utility provider or regulator having jurisdiction over activities or utility services, including, but not limited to the Monterey County, Regional Water Quality Control Board, State Water Resources Control Board, Monterey Bay Unified Air Pollution Control District, Pacific Gas & Electric Company, and the Marina Coast Water District.

7. OTHER USE OF PROPERTY BY PCA

7.01 PCA shall not use or knowingly allow others to use the Easement property in a manner inconsistent with the description of use and activity in this Agreement and the Easement Deed. Any other use or activity is prohibited. This Agreement authorizes Agency to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Agreement shall require the PCA to take any action to restore the condition of said property

after any Act of God or other event over which it has no control. PCA understands that nothing in this Agreement relieves it of any obligation or restriction on the use of said property imposed by law.

7.02 Where PCA is required to obtain Agency's permission or approval for the use of the Easements consistent with the Easement Deed and Temporary Construction Easement Deed, said permission or approval (i) shall not be unreasonably delayed or withheld by Agency, (ii) shall be sought and given in writing, and (iii) shall in all cases be obtained by PCA prior to PCA's taking any such action.

7.03 Agency may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Agreement. If the Agency finds what it believes is a violation, it shall give the PCA written notice of the violation and 30 days to correct it. Thereafter, the Agency may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and purposes of this Agreement. If a court with jurisdiction determines that a violation may exist or has occurred, the Agency may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy. A court may also issue an injunction requiring the PCA to restore the Easement property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the PCA shall reimburse the Agency for all its expenses incurred in stopping and correcting the violation. The prevailing party shall be entitled to attorney's fees as provided in Section 10. The failure to Agency to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Agency's remedies under this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8. CLOSING

8.01 Closing Date. The consummation of the grant and purchase of Easements will be held at the offices of the Title Company, on or before 30 days after the date of this Agreement, or later if agreed to in writing by the parties. The performance by parties of their respective obligations under this Agreement directly or through the completion of escrow deposits required of them to be made, delivery of the Purchase Price to Agency by Escrow Holder after recording

of the Easements upon title insurers commitment to issue title policy to PCA and delivery of possession of the Easement property to PCA shall constitute the closing of the grant and purchase ("Closing Day").

8.02 Agency's Deposits into Escrow. Prior to Closing, Agency must deposit all the following documents and items into escrow:

(i) Duly executed Easement Deed Temporary Construction Easement Deed in the form attached as Exhibit 1.

(ii) An affidavit substantially in the form attached as Exhibit 3 (Non-Foreign Certificate) stating that Agency is not a "foreign person under IRC Section 1445(f)(3).

(iii) Such other documents as may reasonably be required to complete the Closing, including a document certifying to escrow holder that all acts or legal conditions precedent necessary to be taken or performed by Agency to authorize execution of the documents have been taken or performed.

8.03 PCA's Deposits into Escrow. Prior to Closing, PCA must deposit all the following into escrow:

(i) A bank cashier's or certified check, or wire transfer, to Agency in an amount equal to the Purchase Price.

(ii) PCA's obligation for closing costs as described in subsection 4.02.

(iii) Duly executed Easement Deed and Temporary Construction Easement Deed which shall also be signed by Agency as provided in subsection 8.02(i) above.

(iv) Such other documents as may reasonably be required to complete the Closing, including a document certifying to the escrow holder that all acts or legal conditions precedent necessary to be taken or performed by the PCA to authorize execution of the documents have been taken or performed.

8.04 Pro-ration of Taxes. All real and personal property *ad valorem* taxes and special assessments, if any, will be prorated to the Closing Date, based on the latest available tax rate and assessed valuation.

8.05 Closing Costs. PCA shall pay costs incurred in this transaction as provided in subsection 4.02 hereof.

8.06 Closing. Pursuant to Section 4 hereof, Title Company shall close the escrow by doing all of the following:

(i) Recording the Easement Deed and Temporary Construction Easement Deed in the Official Records of the Monterey County Recorder.

(ii) Delivering to Agency the amount due Agency as shown on the closing statement for the escrow consistent with this Agreement and satisfactory to Agency and PCA ("Closing Statement") and a signed original of Agency's Closing Statement.

(iii) Delivering to PCA a signed original of PCA's Closing Statement and any refund due to PCA.

8.07 Possession. Agency shall provide and deliver access and possession of the Easement property to PCA on the Closing Date.

9. REPRESENTATIONS AND WARRANTIES

9.01 Representations and Warranties of Agency. Agency represents and warrants to PCA as of the date of this Agreement and the Closing Date, as follows:

(i) Organization, Qualification and Corporate Power. Agency is a California flood control and water resources agency. Agency has the full power and authority to enter into and perform this Agreement and the execution, delivery and performance of this Agreement by Agency has or will be duly and validly authorized by all necessary action on the part of Agency. This Agreement is a legal, valid and binding obligation of Agency enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, reorganization, insolvency or similar laws and subject to general principles of equity.

9.02 Representations and Warranties of PCA. PCA represents and warrants to Agency as of the date of this Agreement and the Closing date, as follows:

(i) Authority. This Agreement and all documents executed by PCA which are to be delivered to Agency at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by the PCA, and are, or at the Closing will be, legal, valid, and binding obligations of the PCA, and do not, and at the time of Closing will not, violate any provisions of any agreement to which the PCA is a party or to which it is subject of any law, judgment or order applicable to PCA.

10. ATTORNEY'S FEES

10.01 In the event of any dispute between the parties in any way related to this Agreement, the prevailing party shall be entitled to, in addition to all expenses, costs or damages, reasonable attorney's fees whether or not the dispute is litigated or prosecuted to final judgment. The prevailing party will be that party who is awarded judgment, including specific performance or injunctive relief, as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by the party.

11. GOVERNING LAW

11.01 This Agreement is entered into and shall be governed and construed in accordance with the laws of the State of California (without giving effect to its choice of law principles).

12. WAIVER OF DEFAULT

12.01 Any waiver by either party of a default of this Agreement arising out of the breach of any of the covenants, conditions, or restrictions of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this Agreement.

13. COUNTERPARTS

13.01 This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when each party has delivered signatures to the other party. Signatures may be delivered by facsimile transmission. All counterparts shall be deemed an original of this Agreement.

14. NOTICE

14.01 All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by one party to the other party pursuant to this Agreement shall be in writing and shall be delivered in person, mailed by registered or certified mail, return receipt requested, or delivered by a commercial courier guaranteeing overnight delivery, addressed as follows:

If to Agency: Monterey County Water Resources Agency
 Attn: General Manager
 893 Blanco Circle
 Salinas, CA 93901

If to PCA: Monterey Regional Water Pollution Control Agency
 Attn: General Manager
 5 Harris Court, Bldg. D
 Monterey, CA 93940

15. SUCCESSORS AND ASSIGNS

15.01 This Agreement and the rights, interests, and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

16. AMENDMENT OR MODIFICATION

16.01 This Agreement may be amended, altered or modified only by a writing specifying such amendment, alteration or modification, executed by authorized representatives of the parties hereto.

17. COVENANT AND CONDITION

17.01 Each term and condition of this Agreement performable by a party shall be construed to be both a covenant and condition.

18. TIME

18.01. Time is and shall be of the essence of each term and provision of this Agreement.

19. FURTHER ACTIONS

19.01 Each of the parties agrees to execute and deliver to the other all such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

20. INTERPRETATION

20.01 This Agreement has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including California Civil Code, Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties hereto.

21. CAPTIONS

21.01 Titles or captions of sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.

22. SEVERABILITY

22.01 If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability

of the remainder of this Agreement, unless this Agreement without the severed provisions would frustrate a material purpose of either party in entering into it.

23. BUSINESS DAYS

23.01 Except as may otherwise be provided in this Agreement, if any date specified herein for commencement or expiration of time periods occurs on a day other than a Business Day (defined as any day other than a Saturday, Sunday or holiday observed by national banks), then such date shall be postponed to the following Business Day.

24. ASSIGNMENT

24.01 PCA may not assign any of its rights under this Agreement.

25. ENTIRE AGREEMENT

25.01 This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except as may be set forth in writing executed by both parties contemporaneously with or subsequent to this Agreement. The performance of this Agreement constitutes the entire consideration for the easement interest described herein and shall constitute entire payment for all claims including interest and damages including severance.

In witness whereof, the parties have executed this Agreement as of the date and year first above written.

PCA:

AGENCY:

Monterey Regional Water Pollution
Control Agency

Monterey County Water
Resources Agency

By: _____

Paul Sciuto
General Manager

By: _____

David Chardavoyne
General Manager

Approved as to Form:

Robert Wellington
MRWPCA Legal Counsel

Approved as to Form:

CHARLES J. McKEE, County Counsel
Monterey County Water Resources
Agency

Jesse J. Avila
Deputy County Counsel