

Escrow Company: Stewart Title Company  
Escrow No.: 18000-481611  
Title Order No.: 18000-481611

**REAL PROPERTY PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

THIS REAL PROPERTY PURCHASE AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between THE CITY OF CHULA VISTA, a charter City organized under the laws of the State of California (“City”), and CARLOS SANCHEZ and JACOBA SANCHEZ (“Owner”), (collectively, the “Parties”) for purchase by City of the hereinafter described real property.

WHEREAS, Carlos Sanchez and Jacoba Sanchez, as husband and wife as joint tenants, are the owners of the real property located in the City of Chula Vista, County of San Diego, State of California and currently identified as San Diego County Assessor’s Parcel No. 574-410-55 (“Property”)

WHEREAS, City desires to purchase fee title in and to Owner’s Property; and

WHEREAS, City is proposing to construct the Telegraph Canyon Channel (“Project”) to provide necessary flood control protection; and

WHEREAS, the Property is necessary for the construction the Project; and

WHEREAS, City has made an offer to purchase the Property under the threat of eminent domain from Owner; and

WHEREAS, Owner and City have negotiated an agreed upon purchase price for the Property of **\$190,000** subject to the approval of the Chula Vista City Council and the terms and conditions in this Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **AGREEMENT TO SELL AND PURCHASE**

City agrees to purchase from Owner and Owner agrees to sell to City, upon the terms and for the consideration set forth in this Agreement, fee title in and to the Property more particularly described in the legal description designated as Exhibit “A” which is attached hereto and is incorporated herein by this

reference. City's agreement to purchase the Property is expressly contingent upon the adoption of a resolution by the City Council authorizing the acquisition. The Parties hereto agree that the Property shall be conveyed in fee to the City clear of all encumbrances except the Permitted Encumbrances (as defined below).

## 2. PURCHASE PRICE

The total purchase price for the Property shall be the sum of ONE HUNDRED NINETY THOUSAND DOLLARS (**\$190,000.00**) to be paid to Owner on the terms set forth herein at the Close of Escrow ("Purchase Price").

## 3. ESCROW AND TITLE INSURANCE

City agrees to open an escrow ("Escrow") in accordance with this Agreement at Stewart Title of California ("Escrow Holder"), located at 7676 Hazard Center Drive, San Diego, California 92108, and deposit a fully executed copy of this Agreement no later than December 20, 2018. City agrees to pay all usual and reasonable fees, charges, and costs (including transfer taxes, if any) which arise in the Escrow, upon demand of Escrow Holder. Owner shall not be liable for any costs or fees in connection with this Escrow.

This Agreement constitutes the joint escrow instructions of the Parties, and Escrow Holder to whom these instructions are delivered is hereby empowered to act under this Agreement. The Parties hereto agree to do all acts reasonably necessary for Closing as soon as possible, but in all events no later than December 31, 2018. The terms "Closing" and/or "Close of Escrow" as used herein shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this Escrow is authorized if necessary or proper in the issuance of title insurance pursuant to this Agreement.

City will, upon receipt of a statement of estimated closing cost from Escrow Holder, deposit the Purchase Price together with additional funds as set forth in said statement. Said deposit shall be made in accordance with the wire transfer instructions of the Escrow Holder and shall be made in sufficient time to allow for the timely Close of Escrow. City shall also execute and deposit into escrow a Certificate of Acceptance accepting fee title to the Property in sufficient time to allow for the timely Close of Escrow.

Owner shall execute and deliver into Escrow an executed grant deed ("Grant Deed") conveying fee title to the Property to City in sufficient time to allow for the timely Close of Escrow as set forth herein. Owner and City agree to deposit with Escrow Holder any additional instruments as may be reasonable and necessary to complete this transaction in a timely manner as set forth herein.

All funds received in this Escrow shall be deposited with other Escrow funds in a general Escrow account(s) and may be transferred to any other such Escrow trust account in any State or National Bank

doing business in the State of California. All disbursements shall be made by wire transfer from such account, unless Owner requests another form of payment.

City may request that Escrow Holder cause to be issued and delivered to City, at City's cost, a preliminary title report for City's review. City shall have five (5) days to review and approve said preliminary report. After City approval, Escrow Holder shall cause to be issued, as of the Closing date and at City's cost, a CLTA standard coverage policy of title insurance ("Title Policy"), issued by Commonwealth Land Title, with liability in the amount of the Purchase Price, covering the Property and showing title vesting in City, free of all recorded and unrecorded, liens, encumbrances, leases and taxes except those previously approved by the City, and:

(a) All non-delinquent general and special real property taxes for the current fiscal year;

(b) The standard printed exceptions and exclusions contained in the CLTA form policy;

(c) Public and Quasi-public utility, public alley, public street easements and rights of way of record.

(collectively, the "Permitted Encumbrances")

Escrow Holder is authorized to and shall pay and charge City for any title insurance premium and the costs of any endorsements. Escrow Holder is authorized to and shall disburse funds and deliver the Grant Deed when City and Owner have fulfilled all conditions of the Agreement.

#### 4. RESPONSIBILITY OF ESCROW HOLDER

Responsibility of Escrow Holder under this Agreement is expressly limited to section 3 herein and to its liability under any policy of title insurance issued in regard to this transaction.

#### 5. CONVEYANCE OF INTEREST

Fee title shall transfer to City upon recordation of the Grant Deed.

#### 6. DEPOSIT OF FUNDS

City agrees to deposit the Purchase Price of **\$190,000.00** to Escrow for dispersal to Owner at closing.

#### 7. OWNER REPRESENTATIONS AND WARRANTIES.

7.1 Due Authority, Execution, and Organization. Owner is an individual and has the requisite power and authority to enter into and to perform the terms of this Agreement. Owner is not subject to any law, order, decree, restriction or agreement that prohibits or would be violated by this Agreement or the consummation of the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transaction

contemplated hereby have been duly authorized by all requisite actions of Owner. This Agreement and all documents executed by Owner that are to be delivered to City at Closing are, and at the time of Closing will be, duly authorized, executed and delivered by Owner, and at the time of Closing will be the legal, valid and binding obligations of Owner, enforceable against Owner in accordance with their respective terms, and do not and, at the time of Closing will not, violate any provision of any law, agreement, or judicial order to which Owner or the Property is subject. Owner has full right, power and authority to enter into and perform all of the obligations required of Owner under this Agreement, including, without limitation, transferring the Property to City without obtaining any further consents or approvals from, or the taking of any other actions with respect to any third parties.

- 7.2 Title to Property. Owner now has and will have at Closing good, marketable, and indefeasible title in fee simple to the Property. At Closing, the Property shall be free and clear of all liens, charges, encumbrances, mortgages, pledges, security interests, easements, agreements and other interests, adverse claims and title matters, except for the Permitted Encumbrances specifically authorized herein, and the Property has not been assigned or conveyed to any party. Owner has the right to convey the Property pursuant to the terms of this Agreement. No person or entity (other than City pursuant to this Agreement) has a right to acquire an interest in the Property.
- 7.3 No Litigation. There are no judgments presently outstanding and unsatisfied against Owner or the Property. Neither Owner nor the Property are involved in any litigation at law or in equity, or any other proceeding before any court, or by or before any governmental or administrative agency, and no such litigation or proceeding is threatened against Owner or the Property (other than as provided herein), nor relating to the transactions contemplated by this Agreement and no investigation looking toward such a proceeding has begun or is contemplated.
- 7.4 No Bankruptcy or Insolvency. Owner has not: (a) filed any voluntary or had involuntarily filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (b) had a receiver, conservator or liquidating agent or similar person appointed for all or a substantial portion of its assets, suffered the attachment or other judicial seizure of all, or substantially all of its assets; (c) given notice to any person or governmental body of insolvency; or (d) made an assignment for the benefit of its creditors or taken any other similar action for the protection or benefit of its creditors. Owner is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement.

- 7.5 FIRPTA Compliance. Owner is not a foreign person, foreign corporation, foreign partnership or foreign estate as those terms are defined in the Internal Revenue Code and Income Tax Regulation, as amended, or any regulations promulgated thereunder.
- 7.6 Liens. Owner does not owe any monies to any contractor, subcontractor, or material supplier for labor or materials performed, rendered, or supplied in connection with the Property for which such person could claim a lien against the Property. Owner is not in default under, has not received a notice of default under, and has not breached any of the terms of any of the Permitted Encumbrances and no fact or circumstance has occurred which by itself or with the passage of time or the giving or notice, or both, would constitute a default by Owner or any other party pursuant to the terms of any of the Permitted Encumbrances.
- 7.7 Insurance. Owner has insurance with respect to the Property and every part thereof. Owner shall keep the insurance in full force and effect until Closing. Owner's casualty insurance is adequate to prevent the invoking of any co-insurance provisions in the event of any loss or damage to the Property. All premiums for such insurance have been or shall be paid in full when due. Owner has not performed, permitted, or suffered any act or omission which would cause the insurance coverage provided in said policies to be reduced or cancelled. Owner has not received (and has no knowledge of) any notice or request from any insurance company requiring the performance of any work or alteration in respect of the Property or any part thereof or cancelling or threatening to cancel any of said policies. Owner has made no claims under its casualty insurance policy maintained with respect to the Property and Owner has no knowledge of any casualty which has occurred with respect to any portion of the Property for which it could have made such a claim. No insurance carrier to which application has been made has refused to insure the Property.
- 7.8 Compliance With Laws. The Property complies with all applicable statutes, laws, ordinances, rules, regulations, requirements and codes, including, without limitation, those regarding building, fire, health, safety, zoning, environmental, subdivision, water quality, sanitation controls and the Americans with Disabilities Act ("Laws") of all federal, state, county, city, municipal and/or other governmental departments and authorities having jurisdiction over, against or affecting the Property on the Closing Date (separately and collectively, "Authorities").
- 7.9 Property, Assessments, Real Estate Taxes. Attached hereto as Schedule "B" are true, correct, and complete copies of all real estate tax bills for the Property for the current and immediately preceding three (3) tax years. Said bills cover the whole of the Property and do not cover or apply to any other property. No application or proceeding is pending with respect to a reduction of the taxes on the Property. There are no tax abatements or exemptions affecting the Property. No assessments or special assessments for public

improvements or otherwise have been levied or are now affecting the Property. Owner does not know of: (i) any pending or threatened special assessments affecting the Property; or (ii) any contemplated improvement affecting the Property that may result in special assessments affecting the Property.

- 7.10 Environmental. No "Hazardous Substances" (as hereinafter defined) have been disposed of, or identified on, under or at the Property in violation of applicable "Environmental Laws" (as hereinafter defined). Owner has not received written notice from any Authorities or entity asserting jurisdiction over any of the parties hereto or over the Property that the Property is or may be in violation of any applicable federal, state, or local law, ordinance or regulation regarding Hazardous Substances. No Hazardous Substances were used in the construction of the improvements at the Property, no Release (as hereinafter defined) of Hazardous Substances has occurred at, from, in, adjacent to, or on the Property, nor are there any Hazardous Substances in, on, about or migrating to the Property, and the Property is not affected in any way by any Hazardous Substances. Except as disclosed by the Environmental Report, there are no incinerators, septic tanks, underground storage tanks, PCB-containing equipment, asbestos-containing material, formaldehyde insulators or cesspools on the Property, all waste is discharged from the Property into a public sanitary sewer system in accordance with applicable legal requirements, and no Hazardous Substances are discharged from the Property, directly or indirectly, into any body of water by Owner or any other party. As used herein, the term "Hazardous Substances" shall mean: (a) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them; (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (c) natural gas, synthetic gas and any mixtures thereof; (d) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable; (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids; (f) radon; (g) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. As used herein, the term "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Material

Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances.

- 7.11 Leases. There are no leases affecting the Property.
- 7.12 Agreements. There are no service, maintenance, supply, management, leasing, brokerage, listing and or other contracts agreements affecting the Property.
- 7.13 Accuracy of Representations and Warranties. There is no fact or condition which materially and adversely affects the business, operations, affairs, properties or condition of Owner or the Property, which has not been set forth in this Agreement or in the other documents, certificates or written statements furnished to City in connection with the transactions contemplated hereby. No representation or warranty made by Owner in this Agreement, in any Exhibit or Schedule annexed hereto, or in any letter or certificate furnished to City pursuant to the terms hereof, each of which is incorporated herein by reference and made a part hereof, contains any untrue statement of a fact or omits to state a fact necessary to make the statements contained herein or therein not misleading.
- 7.14 Owner shall indemnify, defend, and hold City and its elected and appointed officials, employees, agents, and volunteers harmless from and against any and all claims, proceedings, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) imposed upon or incurred by City by reason of any of the matters referred to in Section 7 (Owner's Representations and Warranties).
- 7.15 Survival. The representations and warranties set forth in this section shall be continuing and must be true and correct in all material respects on and as of the date of the Closing with the same force and effect as if made at that time. The representations and warranties set forth in this section shall survive the closing and will not be affected by any investigation, verification or approval by any party or anyone on behalf of any party to this Agreement.

## 8. SELLER COVENANTS.

- 8.1 From the Effective Date through Closing, Owner shall:

- 8.1.1 Maintain in full force and effect the insurance policies currently in effect with respect to the Property;
  - 8.1.2 Operate and manage the Property in a manner consistent in all material respects with past practice but in any event shall perform its obligations under the Leases, Property Contracts and other agreements of Owner relating to the Property in all material respects;
  - 8.1.3 Promptly deliver to City copies of all written notices of violations and promptly notify City of all judgments, claims, and litigation affecting Owner or any part of the Property;
  - 8.1.4 Promptly notify City of the institution of any litigation, arbitration, administrative hearing before any court or governmental agency concerning or affecting the Owner, and/or the Property and of any such proceedings which are to Owner's knowledge threatened after the date hereof;
  - 8.1.5 Promptly after the delivery or receipt thereof, deliver to City copies of all notices concerning Owner or the Property, which relate to the contracts concerning the Property, the leases concerning the Property, releases of Hazardous Materials affecting the Property, and copies of all other correspondence sent, filed, served on or received by Owner from any federal, state or local agency affecting the Property from and after the Effective Date; and
  - 8.1.6 Pay all utility and other service charges accrued through the date of Closing.
- 8.2 From the Effective Date through Closing, Owner shall not, without the prior written consent of City:
- 8.2.1 Enter into any new Lease, terminate any Lease, or amend or modify any Lease;
  - 8.2.2 Amend, modify, terminate, or renew any of the Property Contracts;
  - 8.2.2 Enter into any new agreements concerning the Property;
  - 8.2.4 Subject the Property to any additional liens, encumbrances, covenants, or easements;
  - 8.2.5 Sell, transfer, encumber or change the status of title of all or any portion of the Property; and
  - 8.2.6 Take any action in respect of any litigation or proceeding with respect to the Property which shall have a material adverse effect on the Property.
- 8.3 From and after the Effective Date, Owner shall not make any capital improvements or alterations or changes to the Property except those necessary to prevent loss of life, personal injury, or property damage in emergency situations.
- 8.4 On or before the Close of Escrow, Owner shall, at its sole cost and expense, terminate: (i) all contracts, except for any contracts which City elects (in its sole discretion) to assume, by written notice to Owner on or before fifteen (15) days prior to the Closing Date.



- 8.5 At the Close of Escrow, the Property shall be free and clear of all liens, charges, encumbrances, mortgages, pledges, security interests, easements, agreements and other interests, adverse claims and title matters, except as otherwise provided in this Agreement.
- 8.6 All contractors, suppliers, and others who have performed services or labor, or have supplied materials, for the Property have been or by Close of Escrow will be paid in full and all liens arising therefrom have been or by Close of Escrow will be satisfied and released or affirmatively insured over by the title company.
- 8.7 Owner shall indemnify, defend and hold City and its elected and appointed officials, employees, agents, and volunteers harmless from and against any and all claims, proceedings, losses, liabilities, costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees) imposed upon or incurred by City by reason of any of the matters referred to in Section 8 (Owner's Covenants).

9. OWNER DEFAULT.

IF OWNER DEFAULTS UNDER THE TERMS OF THE AGREEMENT, AND IF OWNER FAILS TO CURE SUCH DEFAULT ON OR BEFORE THE DATE WHICH IS TEN (10) BUSINESS DAYS AFTER NOTICE THEREOF FROM CITY (OR, IF EARLIER, ON THE CLOSE OF ESCROW), CITY MAY EITHER (I) TERMINATE THIS AGREEMENT BY DELIVERY OF NOTICE OF TERMINATION TO OWNER AND ESCROW HOLDER, IN WHICH EVENT THE ITEMS DEPOSITED INTO ESCROW SHALL BE RETURNED TO THE DELIVERING PARTY, AND THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF CITY AND OWNER HEREUNDER SHALL TERMINATE, EXCEPT FOR THOSE SPECIFICALLY SURVIVE TERMINATION OF THIS AGREEMENT, OR (II) SPECIFICALLY ENFORCE OWNER'S OBLIGATIONS.

Owner's Initials: \_\_\_\_\_

City's Initials: \_\_\_\_\_

10. DONATION TO CITY OF OWNER'S REMAINDER PARCEL

Owner agrees to donate, and City agrees to accept the donation of, Owner's approximately 7,598 square foot remainder parcel located at the Project location at the northeast corner of First Avenue and Milan Court in Chula Vista, California, which is currently identified as San Diego County Assessor's Parcel No. 574-410-54 ("Remainder Parcel"). Owner acknowledges and agrees that City makes no representation regarding the donation, the characterization of the donation for tax purposes or otherwise, or the availability or appropriateness any applicable tax or other credits for such donation. Owner acknowledges and agrees that City has no obligations relative to the Remainder Parcel other than acceptance of title thereto. Owner acknowledges and agrees that the City shall not be liable, in any manner whatsoever, and Owner hereby releases City from any liability concerning the donation of the Remainder Parcel or the characterization or treatment of such donation by any Federal, State, and Local taxing agencies. For purposes of this Agreement and all of Owner's obligations, representations, warranties, and

covenants hereunder, the Remainder Parcel shall be considered as and included in the definition of the Property.

#### 11. REAL ESTATE COMMISSIONS

No brokers or finders have been employed by City or Owner in this transaction. No commissions have been or will be earned in this transaction.

#### 12. MISCELLANEOUS

a. Legal Fees. In the event of the bringing of any action or suit by either party against the other party by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to have and recover of and from the other party all costs and expenses of suit, including reasonable attorneys' fees (or, in the event of any action to enforce this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses of the action, including reasonable attorney's fees), as determined by a court of competent jurisdiction.

b. Time is of the Essence. Time is of the essence of each and every term, condition, obligation, and provision of this Agreement.

a. No Third Party Rights. Nothing in this Escrow Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies under this Escrow Agreement.

b. Further Assurances. Each of the parties, shall, at its own expense, execute, acknowledge and deliver any further documents and instruments reasonably requested by the other party and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other party for the purpose of carrying out the terms of this Agreement.

c. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Facsimile signatures are acceptable provided they are followed by hard copy originals within five days.

d. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of the Parties, and their respective successors and assigns.

e. Entire Agreement. This Agreement contains the entire understanding and agreement of the parties hereto relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Escrow Agreement shall be of no force or effect.

f. Amendments and Waivers. This Agreement may not be amended or altered except by an instrument in writing executed by the parties. No waiver of any breach of a provision of this Agreement shall be deemed a waiver of any other provision. No waiver shall be valid unless in writing and executed by the waiving party.

g. Severability. If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

h. Governing Law. This Agreement is executed and delivered in the State of California and shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

[Remainder of page intentionally left blank. Signature page to follow]

IN WITNESS WHEREOF, the duly authorized representative of each party has executed this Agreement effective upon the date first written above.

**CITY OF CHULA VISTA**

**OWNER**

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

\_\_\_\_\_  
**Carlos Sanchez**

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

\_\_\_\_\_  
**Jacoba Sanchez**

Approved as to Form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

**EXHIBITS**

- A – Legal Description
- B – Plat Map
- C – Form of Grant Deed