

PROPERTY OWNER: City of Chula Vista  
ASSESSOR'S PARCEL NO. 568-153-01 and 568-153-02  
ADDRESS: 365 F Street, Chula Vista, California 91910

## **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between CITY OF CHULA VISTA ("Seller") and SWEETWATER AUTHORITY, a joint powers agency ("Buyer"), collectively, "Parties," and is made with reference to the following facts:

NOW THEREFORE, in consideration of the purposes stated above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Agreement to Sell and Purchase. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions in this Agreement, an easement situated in the City of Chula Vista, County of San Diego, State of California, as described in Exhibit "A" and more particularly shown on a Plat designated as Exhibit "B" both attached hereto and incorporated herein ("Easement").
2. Purchase Price. The total purchase price, payable in cash through escrow, will be the sum of One Hundred Three Thousand Dollars (\$103,000) ("Purchase Price").
3. Threat of Condemnation. The Parties acknowledge that the sale of the Easement to Buyer is under threat of condemnation and if Seller did not sell, Buyer would have considered condemning the Easement for public purposes. The Parties also acknowledge that the purchase price includes all compensation and claims Seller would otherwise be entitled to, including relocation assistance, if applicable, under Government Code section 7200, *et seq.*
4. Conveyance of Title. Seller agrees to convey the Easement shown in Exhibit "A," in a condition as set forth in Section 6 of this Agreement.
5. Escrow. Buyer will cause an escrow to be opened for the purchase and sale of the Easement with an escrow company chosen by Buyer. The escrow holder will notify the Parties regarding the escrow number and the name of the escrow officer assigned to this escrow. The Parties agree to execute escrow holder's standard escrow instructions or letter of acceptance as escrow holder may reasonably require, provided such instructions do not conflict with the terms and provisions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of escrow holder's standard escrow instructions, the terms and

conditions of this Agreement shall prevail, notwithstanding any contrary language contained in escrow holder's standard instructions.

5.1 Opening of Escrow. Prior to May 1, 2015, Seller and Buyer shall deposit with escrow holder a fully-executed copy or executed counterparts of this Agreement. Escrow holder shall notify the Parties of the date of such receipt of the fully-executed Agreement or counterparts, and such date shall be referred to herein as the "Opening Date."

5.2 Close of Escrow/Closing Date. "Close of Escrow" shall mean the date on which the Easement is recorded with the San Diego County Recorder.

5.3 Documents and Funds. Not later than seven (7) business days prior to the Closing Date, the Parties will deliver or will assure that the following documents and funds have been delivered to escrow holder:

(a) From Buyer. Buyer will provide: (i) the Purchase Price, and (ii) all other sums and documents required by escrow holder in order to allow escrow to close.

(b) From Seller. Seller will provide (i) a fully executed and acknowledged Easement, (Exhibit "A") conveying the Easement to Buyer; (ii) a FIRPTA Affidavit, if so requested; and (iii) all other documents required by escrow holder in order to close escrow.

5.4 Title Policy. As a condition to closing of this escrow, the title company shall have issued its commitment to deliver a title policy in a form and content acceptable to Buyer.

5.5 Report to IRS. After Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service ("IRS"), and if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, escrow holder shall report the proceeds of the purchase of the Easement to the IRS on Form 1099, W-9 or such other form(s) as may be specified by the IRS pursuant to said Section 6045(e). Concurrently with such filing, escrow holder shall deliver a copy thereof to both Buyer and Seller.

5.6 Facsimile and Electronic Documents. In the event Buyer or Seller utilizes "facsimile" or electronic transmittal signed documents, the Parties agree to accept and instruct escrow holder to rely upon such documents as if they bore original signatures. Buyer and Seller acknowledge and agree to provide to escrow holder, within three (3) days after transmission, such documents bearing the original signatures. Buyer and Seller further acknowledge and agree that facsimile and electronic documents bearing non-original signatures will not be accepted for recording, and that the Parties will provide originally executed documents to escrow holder for such purposes.

5.7 Costs of Escrow. Buyer will pay all costs associated with this escrow, including the cost of Buyer's title policy and escrow fees. Because of Buyer's status as a public agency, no documentary transfer tax will be payable with respect to this conveyance, pursuant to Revenue and Taxation Code section 11922. Similarly, no recording fees will be payable with respect to the recording of the Easement, pursuant to Government Code section 27383.

5.8 Prorations. All real property taxes and assessments will be prorated between the Parties as of the Closing Date. Buyer will be responsible for any supplemental or other real property taxes and assessments attributable to the period from and after the Closing Date. Seller shall be responsible for requesting any taxes to be refunded to Seller.

5.9 Broker's Commission. Seller and Buyer each represent and warrant to the other that no broker, agent or finder has been engaged by them in connection with the transaction described in this Agreement. Each of the Parties shall indemnify and defend the other Party and hold it harmless from any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, which the other Party may incur or sustain by reason of or in connection with any misrepresentation or breach of warranty by the indemnifying Party with respect to the foregoing.

6. Title/Title Insurance. Upon execution of this Agreement, the parties will order a preliminary report from a title company chosen by Buyer, indicating the status of title to the Property. When escrow holder holds for Buyer the Grant Deed in favor of Buyer executed and acknowledged by Seller covering the Property, Escrow Holder shall cause to be issued and delivered to Buyer, at Buyer's expense, a C.L.T.A. standard owners protection coverage policy (or if Buyer so elects, an A.L.T.A. coverage policy) ("Title Policy"). Title shall be free of restrictions or encumbrances, except for the following (hereinafter collectively the "Permitted Encumbrances"):

6.1 All non-delinquent general and special real property taxes and assessments;

6.2 Easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way of record not excepted to by Buyer within the Inspection Period;

6.3 The standard printed exception and exclusions contained in the C.L.T.A. (or, if Buyer so elects, A.L.T.A.) Form policy; and

6.4 Any exception created or consented to by Buyer, including without limitation, any arising by reason of Buyer's entry on the Property.

7. Escrow Fees, Charges and Costs. Buyer agrees to pay all fees, charges and costs which arise in this escrow, except those necessary to place title in condition necessary to satisfy paragraph 4 of this Agreement.
8. Leases. Seller warrants that there are no rental/lease agreements on the property described in Exhibit "A" and shown on Exhibit "B" to this Agreement.
9. Maintenance. During escrow, Seller agrees to continue to maintain the property in a condition equal to or better than the condition existing at the time of this Agreement.
10. Notices. Any notice, which either Party may desire to give to the other Party, must be in writing and may be given by personal delivery or by mailing to the Party to whom the notice is directed at the address of such Party set forth below, or such address as the Parties may hereinafter designate, by giving notice in the manner provided for herein. Any notice given by mail will be deemed given four (4) days after such notice is deposited in the United States Mail, addressed as provided, with postage fully prepaid.

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, California 91910  
Telephone: (619) 691-5031

Sweetwater Authority  
ATTN: James L. Smyth  
General Manager  
Post Office Box 2328  
Chula Vista, California 91912-2328

11. Closing Statement. Seller instructs Escrow Agent to release a copy of Seller's closing statement to Buyer.
12. Property Investigation. Buyer may, at Buyer's option and expense, undertake a property investigation prior to close of escrow to determine the nature and extent of any Hazardous Substance present at or near the property. Buyer and its designated agents, consultants or employees will have a right of access to the property during mutually agreed upon hours to perform a property investigation. The property investigation may include, but is not limited to, soil, ground water and other engineering or geological tests or physical inspections as necessary to determine the nature and extent of any Hazardous Substance at or near the Easement. Buyer's obligation to purchase the Easement is subject to Buyer's approval of the condition of the property. In the event that Buyer determines, in Buyer's absolute discretion, that the Condition of the property is not satisfactory, Buyer may terminate the Agreement by giving written notice to Seller and Escrow Agent.

13. Binding Effect. This Agreement may not be assigned by either Party without the express written consent of the other Party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective heirs, successors and assigns.

14. Construction of Agreement. This Agreement will be liberally construed to effectuate the intention of the Parties with respect to the transaction described. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity will be construed or resolved against either Party (including the Party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting of the Agreement.

15. Amendment/Modification. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless in writing and signed by both Parties.

16. Governing Law/Venue. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California. Any litigation or arbitration regarding the Easement or this Agreement shall be brought in San Diego County Superior Court or conducted in San Diego County.

17. Attorneys' Fees. In the event of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to reasonable attorneys' fees and costs.

18. Authority. Each Party will adopt and provide to the other and to escrow holder and the title company such corporate resolutions or other evidence as may be reasonably required, confirming that the transaction described herein has been duly and properly authorized in accordance with the governing documents of such entities.

19. Counterparts. This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.

This Agreement contains the entire agreement between the Parties, and neither Party relies upon any warranty or representation made by either Party if not contained in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**SELLER:** City of Chula Vista

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

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

Its: \_\_\_\_\_  
(Please Print Name and Title and supply support documentation)

**BUYER:** SWEETWATER AUTHORITY, a joint powers agency

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

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

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