

**MEMORANDUM OF AGREEMENT**  
**between the**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**acting through its**  
**PUBLIC UTILITIES COMMISSION,**  
**and the**  
**COUNTY OF SAN MATEO**

**(Crystal Springs Pipeline No. 2 Replacement Project)**

[NOTE: The proposed terms contained in this document represent preliminary discussions between the staff of the San Francisco Public Utilities Commission ("SFPUC") and representatives of County of San Mateo concerning the SFPUC'S proposed Crystal Springs Pipeline No. 2 Replacement Project (the "**Project**"), to further mutual cooperation, anticipate issues and concerns, and identify potential solutions. This document represents a general statement of the intent of the parties with respect to the subjects described herein. This draft is not intended to be, and will not become, contractually binding on the parties and no legal obligation will exist unless and until the parties have executed and delivered, following appropriate governmental approvals, a final agreement. SFPUC will review and consider the Final Environment Impact Report for the proposed Project before deciding whether to approve the Project, and any Memorandum of Agreement related to the Project. Both parties understand that there cannot be final action on the Project until there has been complete compliance with the California Environmental Quality Act ("CEQA") and San Francisco's Environmental Quality Regulations (San Francisco Administrative Code Section 31). Through these discussions, SFPUC intends to identify the actions and activities that would be necessary to develop the Project, which will thereby facilitate meaningful environmental review. SFPUC retains absolute discretion to: (1) modify the Project to mitigate significant adverse environmental impacts, (2) select feasible alternatives that avoid significant adverse impacts of the Project, (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts of the Project, as identified upon environmental evaluation in compliance with CEQA and San Francisco's Environmental Quality Regulations, (4) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project, or (5) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse impacts. SFPUC understands that the County of San Mateo, as a governmental agency, is also subject to CEQA, and accordingly, that County of San Mateo reserves the sole discretion to decide whether to enter into a Memorandum of Agreement with SFPUC concerning the Project pending its review and consideration of the Final Environmental Impact Report.

**MEMORANDUM OF AGREEMENT**  
**between the**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**acting through its**  
**PUBLIC UTILITIES COMMISSION,**  
**and the**  
**COUNTY OF SAN MATEO**

**(Crystal Springs Pipeline No. 2 Replacement Project)**

This Memorandum of Agreement (“MOA”), dated for reference purposes only April \_\_\_\_\_, 2010, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation (“CCSF”) and the COUNTY OF SAN MATEO, a political subdivision of the State of California (“County”).

**RECITALS**

**A.** CCSF, acting by and through its Public Utilities Commission (“SFPUC”) owns and operates a regional water system that serves San Francisco and twenty-seven (27) wholesale water customers, including County, located in San Mateo, Santa Clara, and Alameda counties in the San Francisco Bay Area.

**B.** CCSF's water system includes Crystal Springs Pipeline No. 2, which is located in CCSF's right of way that is situated in part within the geographical limits of County as shown approximately on attached Exhibit A.

**C.** CCSF has developed a Water System Improvement Program (“WSIP”) with the goals of increasing the system’s ability to withstand major seismic events and prolonged droughts and to reliably meet future water demands. As part of WSIP, CCSF proposed the Crystal Springs Pipeline No. 2 Project (the “**Project**”), which includes, among other improvements, the repair and replacement of portions of the existing Crystal Springs Pipeline No. 2 within CCSF's right of way, for the purpose of improving the seismic reliability, water delivery, and drought-management goals outlined in WSIP, for the benefit of County and its residents and businesses.

**D.** County and CCSF have been working cooperatively to identify and address their respective requirements and concerns relating to the construction of the portion of the Project located within County’s boundaries.

**E.** On December 10, 2009, CCSF published a Draft Environmental Impact Report (“**DEIR**”) for the Project. After the close of a forty-five (45)-day public review period on January 26, 2010, CCSF prepared responses to comments on environmental issues received at the public hearings and in writing during the public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document (“**C&R**”), published on \_\_\_\_\_, 2010. A Final Environmental Impact Report (“**FEIR**”) was prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, the Comments and Responses document, and several Errata Sheets, which made minor clerical corrections. Project files on the FEIR are available for public review at the Department offices at 1650 Mission Street, San Francisco, California. Copies of the DEIR and associated reference materials as well as the C&R are also available for review at public libraries in San Francisco, Alameda, and San Mateo Counties.

F. On \_\_\_\_\_, 20\_\_, the San Francisco Planning Commission, acting as lead agency on behalf of the CCSF, certified the FEIR. On \_\_\_\_\_, 20\_\_, the SFPUC approved the Project, and, in so doing, adopted findings under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, including a statement of overriding considerations for the Project's significant and unavoidable impacts, rejected project alternatives, and adopted a mitigation monitoring and reporting program.

G. On \_\_\_\_\_, 20\_\_, County adopted findings under CEQA as a responsible agency, incorporating by reference the CEQA findings of the CCSF, and adopted a mitigation monitoring and reporting program, as applicable to its approval action.

NOW, THEREFORE, in consideration of their mutual covenants in this MOA, the parties agree as follows.

## 1. TERM

This MOA shall become effective on the date it has been fully executed and delivered by both parties ("**Effective Date**"), provided it has been authorized by CCSF and County in a manner required by law. The term of this MOA shall continue in effect thereafter until the earlier of (a) one (1) year after County's acceptance pursuant to Section 3.2(d) of all CCSF's MOA Work (defined in Section 3.2(a)), (b) the ninth (9<sup>th</sup>) anniversary of the Effective Date, or (c) the date this MOA is earlier terminated as provided herein.

If either party breaches a material term of this MOA without the other party's fault and does not cure the breach within thirty (30) calendar days' notice by the non-breaching party, the non-breaching party may terminate this MOA without any penalty or liability of either party to the other; provided, however, if more than thirty (30) days are reasonably required for such cure, the non-breaching party shall not have the right to terminate this MOA on account of such breach if the other party promptly commences the cure within such thirty (30)-day period and diligently prosecutes such cure to completion.

## 2. MEASURES FOR IMPROVEMENT OF PROJECT COORDINATION AND PUBLIC OUTREACH AND COMMUNICATIONS

### 2.1. Press Releases

The parties will use reasonable efforts to provide advance notice to each other concerning all press releases and other information created for public dissemination concerning the Project within the geographical limits of County and to otherwise comply with the provisions of CCSF's Communications and Public Outreach Plan as stated in the attached Exhibit E. The parties designate the following individuals as contact persons (unless specified elsewhere in this MOA) for press releases and other information created for public dissemination:

CCSF: Alison Kastama, (415) 554-0712, cell: (510) 967-9566

County: Joseph A. Lo Coco (650) 363-4102, [jlococo@co.sanmateo.ca.us](mailto:jlococo@co.sanmateo.ca.us) ;  
cell (650) 222-1450.

## 3. CCSF CONSTRUCTION; APPROVAL PROCESS

### 3.1. Required Permits and Approvals

(a) CCSF anticipates the start of construction during the first calendar quarter of 2010 at the locations within County's borders identified on the attached Exhibit B. CCSF or its contractor ("**Contractor**"), will submit applications as required for the licenses, approvals, or permits (collectively, the "**Permit Application(s)**"), including a County of San Mateo Public Works Permit (or Permits) to be issued in the form attached as Exhibit D-1 to govern CCSF's

MOA Work (defined in Section 3.2(a) below) with respect to such locations and traffic-control permits, hauling permits, groundwater discharge permits, sewer inspection permits and tree-removal permits (collectively, the "**Permit Applications**"), as further detailed below:

<b>PERMIT/APPROVAL</b>	<b>ENTITY RESPONSIBLE</b>	<b>COUNTY DEPARTMENT RESPONSIBLE</b>	<b>CONTACT INFORMATION</b>
<b>Traffic control</b>	<b>Contractor</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Hauling</b>	<b>Contractor</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Public Works Permit</b>	<b>CCSF</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Temporary Groundwater Discharge to Storm Sewer</b>	<b>Contractor</b>	<b>Public Works/Road Operations</b>	<b>Diana Shu 650-599-1414</b>
<b>Sanitary Sewer Inspection Permit (if required because of damage to County's sanitary sewer resulting from Project construction work)</b>	<b>Contractor</b>	<b>Public Works/Utilities-Flood Control-Watershed Protection</b>	<b>Mark Chow 650-599-1489</b>

(b) County shall expeditiously process the Permit Applications, and will inform CCSF within ten (10) business days of County's receipt of each Permit Application if additional information is required to complete County's review and approval of such application. Within ten (10) business days after receipt of each complete Permit Application, County will review it and provide CCSF with written approval, or comments explaining the reasons for withholding approval.

(c) Any fees charged CCSF or its Contractor by County for or in connection with any County permit or approval issued with respect to the Project shall not be discriminatory and shall be reasonable and in accordance with fees that the County ordinarily collects from the public with respect to similar permits or approvals.

(d) The parties agree that the following fees will be payable by CCSF in connection with Project-related work within County's borders:

<b>PERMIT TYPE</b>	<b>TYPE OF FEE</b>	<b>ENTITY RESPONSIBLE</b>	<b>AMOUNT</b>
<b>Public Works</b>	Application	<b>CCSF</b>	\$1,500 (one-time payment)
<b>Sanitary Sewer Inspection Permit</b>	Application	<b>Contractor</b>	\$1,500 (one-time payment)

(e) Within ten (10) business days of the issuance of a Public Works Permit, CCSF or its Contractor shall deposit with County the amount of Five Thousand Dollars (\$5,000) as a security deposit for any inspection fees necessitated and required pursuant to Section 3.2(a)(ii) below. Similarly, within ten (10) calendar days of the issuance of a Sanitary Sewer Inspection Permit (if necessary), CCSF shall deposit with County the amount of Five Thousand Dollars (\$5,000) as a security deposit for any inspection fees necessitated and required in connection with such Permit pursuant to Section 3.2(a)(ii) below. Any amounts of any deposit made pursuant to this Section 3.1(e) remaining upon completion of construction that were not expended as stated in Section 3.2(a)(ii) shall be promptly refunded by County to CCSF.

### **3.2. Improvements**

(a) **CCSF Obligations.** In consideration of County's assumption of obligations pursuant to this MOA, CCSF is assuming obligations to improve CCSF and/or County property, following construction of the Project improvements, to a standard that may exceed CCSF's legal obligations as determined by the parties' respective rights and interests in the land or prior legal agreements between the parties. Provided that this MOA remains in effect, CCSF shall undertake improvements as specified in the contract specifications and drawings prepared by or on behalf of County and identified in the attached Exhibit B (the "**Specifications**"). CCSF shall bear the cost of the improvements described in the Specifications ("**CCSF's MOA Work**"). In connection with the performance of CCSF's MOA Work, the construction contract (the "**Construction Contract**") between CCSF and its Contractor shall require Contractor to (i) name County and its directors, officers, agents and employees as co-indemnitees with respect to Contractor's obligation to indemnify and hold harmless CCSF and its directors, officers, agents and employees from all Claims (as defined in Section 4.1 below) directly or indirectly arising out of, connected with, or resulting from the performance or nonperformance of the Project construction work and (ii) obtain and maintain insurance coverages in accordance with CCSF's standard specifications ("**Contractor's Insurance**"), modified to require Contractor's general liability insurance policy to name County and its directors, officers, agents and employees as additional insureds under the terms of the policy.

(b) **County's Approval of Specifications.** CCSF has consulted with County in CCSF's preparation of the Specifications and their incorporation into the Construction Contract. County acknowledges that it has reviewed and approves the Specifications, the Specifications as so prepared are consistent with its requirements, and County has no other requirements regarding CCSF's MOA Work. County represents and warrants that CCSF's Contractor shall not be required to obtain any approvals from County for implementation of CCSF's MOA Work except those specified in Section 3.1. Notwithstanding the foregoing in the event unforeseen local, state, or federal regulatory changes occur after the Effective Date that would require CCSF's Contractor to obtain approvals not listed in section 3.1, CCSF agrees that it shall cause its Contractor to obtain such approvals at its cost.

(c) **Changes to Specifications.** If County desires changes to the Specifications, County shall request such changes in writing. Such proposed changes shall be subject to CCSF's approval, at its sole discretion. County shall bear the expense of all additional costs, if any, resulting from those changes to the Specifications requested by County and agreed to by CCSF, or changes required by application of federal, state, or local laws that were in effect on or before the Effective Date; provided, however, that CCSF shall notify County of any anticipated cost increases, and provide County with a reasonable opportunity to withdraw the request or otherwise amend the Specifications to avoid cost increases. CCSF shall bear the expense of all additional costs, if any, resulting from a change in the Specifications required by the application of federal, state or local laws that become effective after the Effective Date.

(d) If CCSF determines that it is necessary to modify the Specifications because of any changed or newly discovered conditions or other circumstances ("**Changed**

**Circumstances**"), it shall notify County of the possible modification, including full information about the nature and scope of the proposed modification, the reasons for it, the expected impact on the construction schedule. CCSF and County will diligently and in good faith cooperate to review and agree on the response to such Changed Circumstances, and any related amendment to the Specifications, in time for CCSF to meet any response deadline in the Construction Contract related to Changed Circumstances; provided, however, if the parties are unable to agree within fifteen (15) business days after County receives CCSF's notice, CCSF may direct a change to the Specifications if it determines, at its sole discretion, that the change is necessary (i) to preserve the safety or functionality of CCSF's MOA Work, (ii) to obtain a necessary third party approval, (iii) to meet a response deadline under the Construction Contract, or (iv) to avoid cost increases or extensions of the Project construction schedule. Notwithstanding the foregoing, without County's prior, written consent, no change in the Specifications will result in any condition that is unsafe in a material manner or deleteriously impacts in a material manner the safety or functionality of CCSF's MOA Work.

#### (e) County Inspections of CCSF's MOA Work

(i) If County so desires, County may inspect the progress and condition of CCSF's MOA Work daily during the course of construction (each, an **"Elective Inspection"**). At the completion of one or more construction stages of CCSF's MOA Work, however, CCSF shall give County written notice (**"Inspection Notice"**) that a County inspection is required (a **"Necessary Inspection"**), and CCSF shall allow five (5) business days following delivery of such notice for County to perform the Necessary Inspection. All County inspections must comply with the provisions of subsection (ii). When issuing Inspection Notices, CCSF shall also contact (by telephone or in writing) the following County representatives with respect to Necessary Inspections related to the respective area of responsibility for each such representative:

#### County Review and Inspection Review Items

Item	Description	Contact
1	Traffic Control Plan	Road Operations Section, Diana Shu (650) 599-1414 or assigned
2	Pavement Overlay	Road Operations Section, Diana Shu (650) 599-1414 or assigned
3	Discharges of groundwater onto streets or storm drains.	Road Operations Section, Diana Shu (650) 599-1414 or assigned
4	Sanitary Sewer Repair Work	Utilities-Flood Control-Watershed Protection Section – Mark Chow (650) 599-1489 or assigned

(ii) County shall bear the expense of all County inspections, except in instances where repairs to damages to County facilities caused by Contractor's negligence or willful misconduct require County inspection to ensure repairs are completed in accordance with County standards, in which case Contractor shall be responsible for reimbursing County for expenses incurred. County shall coordinate all inspections with CCSF. In conducting any inspections, County shall not take any actions that unreasonably interfere with the Contractor's performance, direct the Contractor's performance in the field, or authorize any additional work.

(iii) If County determines that any of CCSF's MOA Work that has not previously been accepted by County does not comply with the Specifications or the conditions of applicable County permits, County shall provide written notice to CCSF specifying the basis for such rejection. Such notice shall be delivered to CCSF within five (5) business days after an Elective Inspection or in the case of a Necessary Inspection, within five (5) business days after

County's receipt of the Inspection Notice. County's failure to timely notify CCSF of its rejection of any matter shall be deemed County's acceptance of such matter.

**(f) Transfer of Ownership and Warranties.** Once CCSF and County accept a distinct phase of CCSF's MOA Work as completed by Contractor (a "**Completed Phase**"), CCSF shall deliver to County, and County shall execute, a bill of sale (a "**Bill of Sale**") in the form attached in Exhibit D-2 to transfer title of that portion of CCSF's MOA Work. Each Bill of Sale will evidence County's acceptance of the Completed Phase reflected in such Bill of Sale and shall transfer ownership and responsibility for the operation and maintenance of that Completed Phase to County. Upon County's acceptance of each Completed Phase pursuant to a Bill of Sale, CCSF shall indemnify and hold County harmless from any and all stop notices arising from or related to such Completed Phase. In addition, County and CCSF shall act in good faith to take all steps necessary to assign to County the following rights arising under the Construction Contract to the extent relating to each Completed Phase accepted by County (i) any express and implied warranties and guaranties from CCSF's Contractor or suppliers related to the Completed Phase (each a "**Warranty**" and collectively "**Warranties**"), (ii) CCSF's contractual rights related to the correction of nonconforming work to the extent applicable to the Completed Phase, and (iii) the right to pursue any Claim (defined in Section 5.1) against the Contractor for latent defects related to such Completed Phase. Each such assignment with respect to a Completed Phase shall be effective upon or promptly after County's execution and delivery of a Bill of Sale with respect to such Completed Phase, provided that CCSF's obligation to assign the rights described above with respect to such Completed Phase shall be conditioned on Contractor's consent to such assignment. In connection with its assignment of the rights set forth above to County, the Construction Contract shall require Contractor to procure and provide directly to County, promptly upon or coincident with the execution and delivery of a Bill of Sale with respect to a Completed Phase, a maintenance bond in favor of County that will guarantee all of Contractor's obligations with respect to the Warranties applicable to such Completed Phase.

**3.3. Cooperation in Implementation.** CCSF and County agree to cooperate to achieve the implementation of the Project, including but not limited to undertaking those specific obligations described in attached Exhibit C.

## **4. INDEMNIFICATION**

### **4.1. County Indemnification when CCSF Constructs, Installs, or Places County Improvements on behalf of County**

With respect to any of CCSF's MOA Work constructed, installed, or placed by CCSF in accordance with the Specifications, to the fullest extent permitted by law, County shall defend, indemnify, and save harmless CCSF, its Board, commissions, members, officers, employees, agents, or authorized representatives (collectively, "**Indemnitees**"), from and against any and all demands, claims, losses, costs, judgments, awards, penalties, fines, damages, injuries (including, without limitation, injury to or death of an employee of County or its contractors, subcontractors, or consultants), expenses, and liability of every kind (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation) (each, a "**Claim**"), (a) that arise out of, or relate to, directly or indirectly, in whole or in part, any fault, defect, or negligence in the Specifications, except to the extent any Claim results from CCSF's or CCSF's contractor's negligent acts or omissions or willful misconduct, in the construction, placement, or installation of CCSF's MOA Work constructed pursuant to the Specifications, or (b) that arise out of, or relate to, directly or indirectly, in whole or in part, suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by any Indemnitee of any designs, plans, articles, or services included in the Specifications. County's obligations under this Section shall survive the expiration or earlier termination of this MOA.

#### **4.2. County Indemnification when County Constructs, Installs, or Places Improvements**

With respect to any improvements constructed, installed, or placed by County or, other than CCSF's MOA Work, on behalf of County, on or proximate to CCSF's property or right-of-way ("**County's Work**"), County shall assume the defense of, indemnify, and hold harmless Indemnitees from all Claims directly or indirectly arising out of, connected with or resulting from the performance of County's Work. County acknowledges that any Claims that arise out of, result from, or are in any way connected with (a) infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by any Indemnatee of articles or services to be supplied in the performance of County's Work by or on behalf of County or (b) the release or spill of any legally designated hazardous material or waste or contaminated material as a result of County's Work are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity. County's obligations under this Section shall survive the expiration or earlier termination of this MOA.

#### **4.3. Indemnification Procedures**

On request, County shall defend any action, claim, or suit asserting a Claim covered by its indemnification obligations pursuant to this MOA. In any action or proceeding brought against any CCSF Indemnatee by reason of any Claim indemnified by County hereunder, County shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that CCSF shall have the right, but not the obligation, to participate in the defense of any such Claim. County shall pay all costs that may be incurred by any CCSF Indemnatee, including reasonable attorneys' fees, court costs, and all other litigation expenses related to or arising from any Claim. For purposes of this MOA, reasonable attorneys' fees of CCSF when CCSF uses its own attorneys shall include the weighted costs attributable to all salaries, employee benefits, and perquisites received by or payable to such attorneys in connection with their employment by CCSF.

#### **4.4. Assumption of Risk**

County shall assume all risk of

- (a) damage to any and all real or personal property owned or under the control or custody of County and
- (b) any bodily injury or death to and of County's officers, agents, employees, contractors or subcontractors, or their employees

resulting from or incident to the performance of County's Work. This assumption of risk shall not be valid to the extent that a loss is caused by the sole negligence or intentional tort of an Indemnatee.

Notwithstanding the foregoing releases, (i) with respect to any Claim arising from Contractor's acts or omissions, County, as an additional insured, shall be entitled to the benefits of any insurance coverage arising under Contractor's insurance as provided in Section 3.2(a), and (ii) with respect to any Claim arising from or related to any of CCSF's MOA Work, County shall be entitled to the benefit of any express or implied warranties from CCSF's contractors relating to CCSF's MOA Work, as set forth in subsection 3.2(e) [Transfer of Ownership and Warranties].



## 5. MISCELLANEOUS

### 5.1. Notices.

Except as specifically otherwise provided in Section 2, any notice, consent or approval required or permitted to be given under this MOA shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, to the address(es) set forth below or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. The parties' initial addresses are:

#### CCSF:

To: General Manager  
San Francisco Public Utilities Commission  
1155 Market Street, 11th Floor  
San Francisco, CA 94103  
Fax: (415) 554-3161

and Susan Hou, Project Manager  
San Francisco Public Utilities Commission  
1145 Market Street, 6th Floor  
San Francisco, CA 94103  
Fax: (415) 661-4515

and: Alan Johanson, SFPUC Project Construction Manager  
San Francisco Public Utilities Commission  
1145 Market Street, 3rd Floor  
San Francisco, CA 94103  
Fax: (415) 554-1877

#### COUNTY:

To: Director of Public Works  
James C. Porter  
555 County Center  
Redwood City, CA 94063  
Fax 650-361-8220

and: Deputy Director  
Joseph A. Lo Coco  
752 Chestnut Street  
Redwood City, CA 94063  
Fax 650-366-7238

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

## **5.2. Risk of Non-Appropriation of Funds.**

This MOA is subject to the budget and fiscal provisions of CCSF's Charter. CCSF shall have no obligation to make appropriations for this MOA in lieu of appropriations for new or other agreements. County acknowledges that CCSF budget decisions are subject to the discretion of its Mayor and Board of Supervisors.

## **5.3. Certification of Controller.**

The terms of this MOA shall be governed by and subject to the budgetary and fiscal provisions of CCSF's Charter. Notwithstanding anything to the contrary contained in this MOA, there shall be no obligation for the payment or expenditure of money by CCSF under this MOA unless the CCSF's Controller first certifies, pursuant to Section 3.105 of CCSF's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of CCSF after the fiscal year in which the term of this MOA commences, sufficient funds for the funding of construction costs and any other payments required under this MOA are not appropriated, then CCSF may terminate this MOA, without penalty, liability or expense of any kind to CCSF, as of the last date on which sufficient funds are appropriated. CCSF shall use its reasonable efforts to give County reasonable advance notice of such termination.

## **5.4. Severability.**

If any provision of this MOA or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOA, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this MOA shall be valid and be enforceable to the fullest extent permitted by law, provided that the remainder of this MOA can be interpreted to give effect to the intention of the parties.

## **5.5. Good Faith.**

Each party shall use all reasonable efforts and work wholeheartedly and in good faith for the expedited completion of the objectives of this MOA and the satisfactory performance of its terms.

## **5.6. Sole Benefit.**

This MOA is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than the other party to this MOA.

## **5.7. Governing Law.**

This MOA is made under and shall be governed by the laws of the State of California.

## **5.8. Amendment; Waiver.**

Neither this MOA nor any term or provision hereof may be changed or amended, except by a written instrument signed by both parties. Any waiver by CCSF or County of any term, covenant, or condition contained in this MOA must be in writing, and a waiver of one breach shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition.

## **5.9. Counterparts.**

This MOA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## **5.10. Recitals and Exhibits.**

The Recitals set forth above are true and correct and are incorporated into this MOA. The attached exhibits referred to herein are incorporated into and made a part of this MOA.

**5.11. Integration.**

This MOA represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this MOA.

**5.12. Tropical Hardwood and Virgin Redwood Ban.**

Pursuant to §804(b) of the San Francisco Environment Code, CCSF urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither County nor any of its contractors shall include in the Specifications or in any other work performed by or on behalf of County pursuant to or in connection with this MOA any items that are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

**5.13. Nondiscrimination.**

In the performance of this MOA, County shall not discriminate against any employee, subcontractor, applicant for employment with County, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement by their duly authorized representatives.

**CITY AND COUNTY OF SAN FRANCISCO,**  
a California municipal corporation

**COUNTY OF SAN MATEO,**  
a political subdivision of the State of California

By: \_\_\_\_\_  
— Ed Harrington  
General Manager  
Public Utilities Commission

By: \_\_\_\_\_  
President Board of Supervisors

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

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

Authorized by San Francisco Public Utilities  
Commission, Resolution No. \_\_\_\_\_

Authorized by the Board of Supervisors  
Resolution No. \_\_\_\_\_

By: \_\_\_\_\_  
Commission Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Adopted \_\_\_\_\_, 20\_\_

Adopted \_\_\_\_\_, 20\_\_

APPROVED AS TO FORM  
Dennis Herrera, City Attorney

APPROVED AS TO FORM  
\_\_\_\_\_

By: \_\_\_\_\_  
Richard Handel  
Deputy City Attorney

By: \_\_\_\_\_  
John D. Nibbelin  
Deputy County Counsel

**EXHIBITS:**

- A – Depiction of Project Location
- B – Improvements to County Property
- C – Cooperation in Implementation
- D – Form(s) of Public Works Permit and Bill of Sale
  - D-1 Form of Public Works Permit
  - D-2 Form of Bill of Sale
- E. Communications and Public Outreach Plan

**EXHIBIT A**  
**Depiction of Project Location**





**San Francisco Public Utilities Commission**

**Right of Way**

**Exhibit A-1**

**Crystal Springs Pipeline No. 2**

**Alignment in Permittee's Parcels**

**Page 1 of 2**

Mar 24, 2010

Area of Work on Existing SFPUC Pipeline

Area of Encroachment Permit in San Mateo County Right of Way During Pipeline Construction where SFPUC was Granted Permission for Pipeline by Easement or Resolution

Permittee Parcel Number as Referenced in Permit

**SF-#**

SFPUC Parcels / Right of Way (Fee Owned)

SFPUC Parcels / Right of Way (Easement)

SFPUC Parcels / Right of Way (Resolution)

City Boundary

Aerial Photo Date: October 2005

1:1,200

1 inch = 100 feet

0 60 120 180 240 300 Feet





**San Francisco Public Utilities Commission**

**Right of Way**

**Exhibit 1-A**

**Crystal Springs Pipeline No. 2**

**Alignment in Permittee's Parcels**

Page 2 of 2

Mar 24, 2010

Area of Work on Existing SFPUC Pipeline

Area of Encroachment Permit in San Mateo County Right of Way During Pipeline Construction where SFPUC was Granted Permission for Pipeline by Easement or Resolution

Permittee Parcel Number as Referenced in Permit

SFPUC Parcels / Right of Way (Fee Owned)

SFPUC Parcels / Right of Way (Easement)

SFPUC Parcels / Right of Way (Resolution)

City Boundary

Aerial Photo Date: October 2005

1:1,200

1 inch = 100 feet

0 60 120 180 240 300 Feet

Area of Work on Existing SFPUC Pipeline

Area of Encroachment Permit in San Mateo County Right of Way During Pipeline Construction where SFPUC was Granted Permission for Pipeline by Easement or Resolution

Permittee Parcel Number as Referenced in Permit

**EXHIBIT B**  
**CCSF's MOA Work**



**MOA WORK AS PROVIDED IN THE PROJECT DRAWINGS AS DETAILED BELOW**

<b>SITE NO.</b>	<b>Feature</b>	<b>WD-2555 Drawing Number/ Specifications Section</b>	<b>Prepared By</b>	<b>Date</b>	<b>Approximate Stationing</b>	<b>MOA Work and Agreements with San Mateo County</b>
N/A	Typical Details	P0-1 to P0-18	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Typical trench details identified below shall comply with the traffic control plan reviewed and approved by San Mateo County.
Site 1	Between Crystal Springs Road and East of I-280	P1-1	SFPUC Engineering Management Bureau	Jan. 2010	STA 0+15.00 to 8+93.26	Work will be completed without removal of fences. Backfill and restore site to existing grade.
Site 1	Along Crystal Springs Road	P1-2	SFPUC Engineering Management Bureau	Jan. 2010	STA 8+93.26 to 17+54.64	Work will be completed without removal of fences. Backfill and restore site to existing grade.
Site 2	Along Crystal Springs Road (From 40 Searsville Ct. to 1115 Lakeview Dr.)	P2-1, P2-2	SFPUC Engineering Management Bureau	Jan. 2010	STA 0+25 to 8+33.72	Any affected areas of paving and sidewalks shall be restored per San Mateo County Department of Public Works standards.
CP-1	West of Crystal Springs Road/Polhemus Road intersection (adjacent to Site 2)	CP-2	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Any affected areas of paving and sidewalks shall be restored San Mateo County Department of Public Works standards.
N/A	Supplemental Conditions	00800	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Assignment of warranties to County
N/A	Insurance and Requirements	00805	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Insurance and Indemnification Requirements
N/A	Summary of Work	01010	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Description of contract scope, including: 1. Restoration of street and roadway improvements in the public right of way and specific locations within the SFPUC right of way. 2. Restoration of landscaping. 3. Traffic control.
N/A	Environmental	01062	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Specification for environmental monitoring
N/A	Temporary Facilities and Controls	01500	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Specification for barriers, fencing, temporary signage
N/A	Protection of Property	01540	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Specifications for protection of private and public property within San Mateo County limits.
N/A	Traffic Control	01570	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Specifications for traffic control for project per San Mateo County requirements
N/A	Surface Restoration and Improvements	02500	SFPUC Engineering Management Bureau	Jan. 2010	N/A	Specifications for repair for the following items affected by work: pavement, roadway improvements and landscape

## EXHIBIT C

### Cooperation in Implementation

County agrees to cooperate with CCSF in the following areas:

1. If County property is located within 500 feet of any Project location described in Exhibit A, provide reasonable access onto County property upon reasonable notice for CCSF and/or its contractors to perform surveys relating to bird nests and burrowing owls.
2. Provide access to CCSF onto County property to allow installation of necessary noise barriers and vibration monitoring of structures adjacent to the construction zone.
3. Work with CCSF's contractor to establish haul routes. County shall review in a timely manner Contractor's proposed hauling plan, provide comments, and provide its written approval of that plan.
4. Approve solid waste recycling plan that will be limited to a 50% diversion rate. Contractor actions to divert inert solids from disposal in a landfill (as defined in the Integrated Waste Management Act, AB 939) will be limited to 50%.
5. Before commencement of Project construction, CCSF will notify all parties for a Pre-Construction Conference. Attendance at these meetings are recommended but not mandatory.

Department	Area Covered	Contact Phone
Department of Public Works	Unincorporated County	(650) 363-4103
Sheriff's Department	Unincorporated County	(650) 363-4531
California Highway Patrol, CHP	Unincorporated County	
Redwood City Fire	Redwood City	(650) 369-6261
California Department of Forestry, CDF	Unincorporated County	(831) 335-5353

6. Work cooperatively with CCSF's Contractor to establish permit conditions, discharge locations and discharge rates for groundwater and construction discharges. County shall review Contractor's proposed discharge plan within a timely fashion, provide comments, and approve as necessary. CCSF or its Contractor will apply for an appropriate County permit with plans, estimated amounts of release, and specifications to County reviewer for review and approval prior to start of the Project. At no time, will County permit discharges during periods of heavy rainfall. CCSF's Contractor shall not discharge any groundwater and/or surface runoff into County owned sanitary sewer facilities.

**EXHIBIT D**

**FORM(S) OF**  
**PUBLIC WORKS PERMIT,**  
**AND BILL OF SALE**

## EXHIBIT D-1

(SAMPLE)

Department of Public Works  
Road Operations – Permits  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063  
(650) 363-1822 or 363-1852

### PUBLIC WORKS PERMIT

Permit Number:  
Issued:  
Inspection Request:

**MUST CALL FOR INSPECTION 48 HOURS  
BEFORE COMMENCING WORK**

APPLICANT NAME: **SFPUC (ATTN: SUSAN HOU)**

SITE ADDRESS:

APPLICANT INFORMATION

AREA:

CONTRACTOR INFORMATION

SFPUC (ATTN: SUSAN HOU)  
1155 MARKET STREET, 6<sup>TH</sup> FL.  
SAN FRANCISCO, CA 94103

PHONE#1: 415-551-4541

PHONE#2:

PHONE #1:

PHONE #2:

PROJECT NAME: SFPUC CSPL No. 2

PARCEL NUMBER:

PROJECT DESCRIPTION: Install Water Line as shown on approved plans and specs. Provide Traffic Control notification in advance of project. Coordinate with local inspector.

#### TYPE OF PERMIT

ENCROACHMENT:  
CONSTRUCTION (NMRW):  
STREET CLOSURE:  
TRANSPORTATION:  
LANDSCAPING:  
OTHER:

UNDERGROUND SERVICE ALERT (USA) NO.:

DATE OF USA INQUIRY:

SEWER DISTRICT:

COUNTY SIP REQ'D:

SURETY DEPOSIT AMOUNT: \$

INSPECTION DEPOSIT AMOUNT: \$

PERMIT EXPIRATION DATE:

FEE AMOUNT PAID:

The work authorized by this **Permit** shall be subject to all the terms, conditions, and restrictions set forth herein and the Memorandum of Agreement dated as of \_\_\_\_\_, 2010 ("**MOA**") by and between Applicant and the County of San Mateo. The project, as specifically described, is to be strictly construed and no other activity shall be permitted.

**Notify County Road Inspector 48 hrs prior to starting work.**

The parties' respective insurance and indemnity obligations in connection with the construction work authorized by this Permit shall be as stated in the MOA...

#### INSURANCE

Permittee's contractor required to maintain property damage and liability insurance in amounts equivalent to or exceeding the legal minimums as a condition of this Permit.

#### APPROVAL BY DEPARTMENT OF PUBLIC WORKS

This permit was issued by me on:

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

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

**\*\*FOR OFFICE USE ONLY\*\***

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

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

**EXHIBIT D-2**

**FORM OF BILL OF SALE**

**BILL OF SALE**

For good and valuable consideration the receipt of which is hereby acknowledged, CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**Seller**"), does hereby sell, transfer, and convey to the COUNTY OF SAN MATEO, a political subdivision of the State of California ("**Buyer**"), the personal property ("**Personal Property**") owned by Seller and described and located as listed in the attached Schedule 1.

Seller does hereby represent to Buyer that Seller is the lawful owner of the Personal Property, that such Personal Property is free and clear of all encumbrances, and that Seller has the right to sell the same as aforesaid and will warrant and defend title thereto unto Buyer.

Except as provided above and in the Memorandum of Agreement dated \_\_\_\_\_ ("**MOA**") between Buyer and Seller, Seller has not made and does not make any express or implied warranty or representation of any kind whatsoever with respect to the Personal Property, including but not limited to: title; merchantability of the Personal Property or its fitness for any particular purpose; the design or condition of the Personal Property; the quality or capacity of the Personal Property; workmanship or compliance of the Personal Property with the requirements of any law, rule, specification or contract pertaining thereto; patent infringement or latent defects. Subject to any warranties or other remedies provided or assigned to Buyer pursuant to the MOA, Buyer accepts the Personal Property on an "AS IS, WHERE IS" basis.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY AND COUNTY OF SAN FRANCISCO,  
a California municipal corporation

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

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the personal property conveyed by the foregoing Bill of Sale to the County of San Mateo a political subdivision of the State of California, is hereby accepted pursuant to [Board of Supervisors'] Resolution No. \_\_\_\_\_, approved \_\_\_\_\_, 20\_\_.

Dated: \_\_\_\_\_, 20\_\_

COUNTY OF SAN MATEO,  
a political subdivision of the State of California

## **EXHIBIT E**

### **Crystal Springs Pipeline No. 2 Replacement Project Communications and Public Outreach Plan for County**

#### **PROJECT COORDINATION AND PUBLIC OUTREACH AND COMMUNICATIONS**

##### **1.1. Community Outreach - Prior to Commencement of Construction**

CCSF and its communications consultants will conduct targeted community outreach and information dissemination during the period prior to the commencement of Project construction. Outreach during this period shall include efforts such as:

- (a) Direct mail of a Project Information/Fact Sheet to adjacent neighbors and stakeholders as deemed necessary by CCSF or requested by County.
- (b) Informational meetings as needed with County staff and officials, property owners, emergency-related agencies, representatives of impacted schools, nearby business or merchants and other neighborhood groups.
- (c) Creation of a Project web page, searchable or organized for easy navigation to a particular segment of the construction, with street level updates on construction activities.

##### **1.2. Community Outreach – Immediate Pre-construction Period (After Notice to Proceed to Contractor)**

CCSF and its communications consultants will conduct targeted community outreach and information dissemination during the period immediately prior to construction (i.e., after issuance of "Notice to Proceed" to CCSF's contractor (approximately 4 – 6 weeks prior to start of construction). Outreach during this period shall include efforts such as:

- (a) Direct mail and/or "door hangers" of a Project Information/Fact Sheet (bilingual where appropriate) to adjacent neighbors and stakeholders, to include a construction schedule, safety information, and Project contact information/website.
- (b) Distribution of news releases and newspaper advertisements if needed.
- (c) Meetings with school staff, nearby business groups, and other neighborhood groups as needed or requested.
- (d) Direct contact with affected property owners to answer questions, offer walk-through, ensure removal of personal property from construction area, etc.
- (e) Frequent updating of Project web page.
- (f) E-mail dissemination of project updates or schedule changes would be disseminated where appropriate.
- (g) In April 2010, the SFPUC will host a Peninsula informational event so that invited community, civic, business, governmental and media leaders have a deeper understanding of all WSIP-related projects and when they will happen in their area. This informational event will include the CSPL2 project. Members who attend will be asked to contribute their e-mail address

to the e-mail blast updates and will have the option of determining which projects they are interested in.

### **1.3. Community Outreach – During Construction**

CCSF and its consultants will conduct targeted community outreach/information dissemination, and respond to resident concerns and issues for the duration of the construction period. Outreach during this period shall include efforts such as:

- (a) Staffing of a Project public information liaison in the area through our project office sites.
- (b) A construction toll-free hotline phone number, to be staffed 24 hours a day, 7 days a week.
- (c) Direct mail and “door hangers” of a Project Information/ Construction Update to adjacent neighbors and stakeholders, to include updated construction schedule, advance notice of construction activities, safety information, and Project contact information/website.
- (d) On-site signage providing Project contact information, website, and other information.
- (e) Additional signage such as alternate biking/pedestrian/driving detour signage will direct residents accordingly to avoid targeted construction area.
- (f) Advance notice to immediate neighborhood and wider community of street closures, lane closures, and detours.
- (g) Newspaper advertisements, radio, or other publicity, as needed.
- (h) Frequent updating of Project web page.
- (i) Utilize San Mateo ALERT to keep residents, businesses and property owners of upcoming construction traffic impacts or temporary road closures.

### **1.4 Community Outreach – Mutual Advance Notice and Cooperation**

The parties will endeavor to provide advance notice to each other concerning all press releases and other information created for public consumption concerning the Project within the sphere of influence of County. The parties designate the following individuals as contact persons (unless specified elsewhere in this MOA) for press releases and other information created for public consumption:

CCSF: Alison Kastama – Peninsula Regional Liaison (415) 554-0712,  
cell: (510) 967-9566

County: Joseph A. Lo Coco – Deputy Director, Road Services, (650) 363-4102,  
cell (650) 222-1450.