

COOPERATION AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY WATER DISTRICT FOR THE ESTABLISHMENT OF PROCEDURES FOR REAL PROPERTY TRANSACTIONS

This AGREEMENT is entered into on this \_\_\_\_ day of November, 2011 and is between the CITY OF SAN JOSE, a municipal corporation of the State of California, referred to herein as "CITY" and the SANTA CLARA VALLEY WATER DISTRICT, a California Special District referred to herein as "DISTRICT".

RECITALS

1. The CITY and the DISTRICT routinely conduct real property transactions in furtherance of projects of interest to one or both of the organizations.
2. These real property transactions take various forms, including but not limited to: purchases and sales of fee title interests or easement rights, rights of entry, permissions to enter, or license agreements/permits.
3. In order to complete these various transactions in a manner which utilizes staff resources efficiently, CITY and DISTRICT do mutually desire to agree upon the terms and conditions by which real property transactions will be conducted, absent unusual circumstances.

In view of the above, the parties agree as follows:

SECTION 1, Definitions

- A. "Appraisal" shall be defined as the act or process of developing an independent and unbiased opinion of fair market value; a written or oral statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined fair market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information, which analysis shall be based upon the highest and best use of such property without taking into the effect of the applicable Project thereon.
- B. "CEQA" shall be defined as the California Environmental Quality Act of 1970 and any amendments thereto.
- C. "Due Diligence" shall be defined as any effort by the Grantee necessary for acquisition of Property Rights and shall include, but not be limited to, title report review, HSLA, CEQA, and appraisal.
- D. "Environmental Laws" shall be defined as all federal, state, and local laws, statues, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up.
- E. "Estimate of Approximate Value" shall be defined as an informal, good faith, fair market value estimate prepared by staff internal to CITY or DISTRICT for Nominal Value Real Property Rights

less than or equal to \$25,000. An Estimate of Approximate Value should be supported by recent and relevant comparable sales, if possible, and need not be a lengthy written document.

- F. "Grantee" shall be defined as the entity obtaining or acquiring Property Rights. Either the CITY or DISTRICT may be the Grantee where the other entity is the Grantor.
- G. "Grantor" shall be defined the entity (either the CITY or DISTRICT) conveying or selling Property Rights. Either the CITY or DISTRICT may be the Grantor where the other entity is the Grantee.
- H. "Hazardous Materials" shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environmental or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials products, by-products or waste.
- I. "HSLA" shall be defined as a pre-acquisition hazardous substance liability assessment that includes a Phase I assessment and a Phase II assessment if deemed necessary by the Grantee.
- J. "Mass Appraisal" shall be defined as the process of completing an Appraisal on numerous real property interests as part of one assignment or contract with a real estate appraiser rather than completing Appraisals on a parcel-by-parcel basis.
- K. "Nominal Value Property Rights" shall be defined as Property Rights where both CITY AND DISTRICT staff agree that the fair market value is less than or equal to \$25,000.
- L. "Project" shall be defined as any effort approved and funded by the DISTRICT Board or the CITY Council.
- M. "Property" or "Properties" shall be defined as individual or multiple real property assets owned by either the CITY or the DISTRICT.
- N. "Property Rights" as to the applicable Property(ies), shall include, but not be limited to: purchases and sales of fee title interests or easements, as well as various use rights such as rights of entry, permissions to enter, or license agreements/permits.

SECTION 2, Form of Conveyance of Property Interests

- A. This Agreement shall apply for the transfer of Property Rights where either the CITY or the DISTRICT has allocated funds for the completion or operation of a specific Project, and a transfer of Property Rights relevant to the Project is requested or required by either party, as Grantee, of the other party, as Grantor.
- B. Grantee shall identify the preferred type of Property Rights for the Project. The parties shall in good faith attempt to reach mutual agreement regarding the type of Property Right to be conveyed within thirty (30) days of Grantee's identification thereof in writing to Grantor.

- C. Title to Property Rights shall be transferred as-is, without representation or warranty as to the condition thereof. Title insurance, if any, shall be the responsibility of Grantee to arrange and pay for. Transfer of fee ownership between the parties shall either be by grant or quitclaim deed, as determined by Grantee; provided, however, that Grantee's sole recourse shall be to its title insurance; provided, further, however, that failure of Grantee to obtain desired title insurance shall constitute sufficient cause for Grantee to cancel any proposed transfer.

SECTION 3, Due Diligence

- A. Grantee shall determine the extent of Due Diligence that is required for each Property transaction. Except as may be agreed on an extraordinary basis in any given individual transaction (e.g., as may be necessary to reflect the unique character of a transaction), all transactions shall be on an as-is basis as to all matters, including without limitation legal and physical, concerning the Property Rights, without representation or warranty.
- B. Except as may be agreed on an extraordinary basis in any given individual transaction, CITY AND DISTRICT agree to include the following provisions as part of various transactions, as such provisions are more specifically agreed for each transaction type:

All transactions: Grantee shall release Grantor from all costs, losses, claims and liabilities arising out of or connected with the legal or physical condition of the Property as of the date of transfer, including without limitation, those related to Hazardous Materials.

All transactions involving transfer of fee title: Grantee shall indemnify, defend and hold Grantor harmless from all costs, losses, claims and liabilities arising out of or connected with: i) the physical condition of the Property as of the date of transfer, including without limitation, those related to Hazardous Materials, and ii) Grantee's use of the Property.

All transactions involving transfer of less than fee title: Grantee shall indemnify, defend and hold Grantor harmless from all costs, losses, claims and liabilities arising out of or connected with Grantee's use of the Property.

Grantee, at Grantee's discretion may elect to undertake an HSLA, or to complete no HSLA or no further HSLA or equivalent environmental contamination evaluation. In such cases as Grantee elects to undertake Due Diligence, Grantor shall authorize Grantee's access for HSLA and other Due Diligence purposes in writing within 30 days of Grantee's written request for same, which authority to access shall be in the form of a limited right of entry entered into on a cooperatively expedited basis pursuant to this Agreement. The DISTRICT's right of entry is commonly referred to as a "Permission to Enter." Grantor shall also provide any and all informational materials or historical documentation (or access to files containing or which may contain the same) in support of Grantee's HSLA, which materials or documentation (or files) are actually known to Grantor's real estate manager within 30 calendar days of Grantor's receipt of Grantee's written request. Grantor's real estate manager shall not be required to investigate the existence of any such materials or documentation (or files containing the same), other than to make inquiry to the likely Grantor custodian(s) thereof; any such materials or documentation (or files containing the same) are provided without representation or warranty as to accuracy or completeness thereof.

- C. If requested in writing by Grantor, all HSLA and other Due Diligence documentation generated through the efforts of the Grantee shall be delivered to the Grantor and the Grantee concurrently.

- D. All costs for Due Diligence, including without limitation all investigations, preparation and approval by applicable government agencies of any remediation plans necessary to remediate to the level minimally required for Grantee's intended use of the Property ("Remediation Plans"), and estimates of the costs to undertake such Remediation Plans, shall be borne by the Grantee. Hazardous Materials which are the subject of any such Remediation Plans are referred to herein as "Known Hazardous Materials".

SECTION 4, REMEDIATION OF KNOWN HAZARDOUS MATERIALS

- A. Known Hazardous Materials remediation costs shall be borne by the Grantor to the maximum amount of the value of the Property Rights to be received by Grantor from Grantee. At Grantor's option, remediation of Known Hazardous Materials may be completed by Grantor prior to transfer of Property Rights; completion shall be evidenced by approval thereof by applicable government agencies in form and content reasonably acceptable to Grantee. Upon issuance of such approval, Grantor shall have no further responsibility for Known Hazardous Materials remediation or costs associated therewith. In the event that Grantor does not elect to complete remediation of Known Hazardous Materials prior to transfer of Property Rights, remediation of Known Hazardous Materials and the costs associated therewith shall be the sole responsibility of the Grantee; in such event, the value of the unremediated Property to be received by Grantor from Grantee shall be reduced (but not below zero) by the estimated costs of remediation, as determined by Grantee and reasonably approved by Grantor ("Estimated Remediation Costs").
- B. Notwithstanding 4.A. to the contrary, if the Estimated Remediation Costs exceed the value of the Property Rights to be received by Grantor from Grantee, Grantor shall have the right to refuse the transfer of the Property Rights or pay the excess remediation costs.
- C. Notwithstanding 4.B. to the contrary, Grantee may elect to pay for the cost of remediation above and beyond the value of the Property Rights to be received by Grantor from Grantee, in which event the transaction shall continue.

SECTION 5, VALUATION OF PROPERTIES

- A. The value of Property Rights shall be the aggregate value of all Property Rights owned by either one of the CITY or the DISTRICT necessary to implement a specific Project.
- B. Nominal Value Property Rights (less than or equal to \$25,000)
  - 1. The preferred method for determining the fair market value of any Nominal Value Property Rights shall be an Estimate of Approximate Value (EAV) completed by staff internal to the Grantee.
  - 2. Staff internal to the Grantor shall accept or reject the Grantee's conclusion sum of the EAV in writing within 30 calendar days of receipt of Grantee's conclusion of sum of the EAV; if Grantor does not accept or reject (together with its own EAV, as provided below) Grantee's EAV in writing within such time period, that sum shall become the fair market value of the transaction. For good cause, Grantor may extend the time in which to accept or reject Grantee's EAV for up to twenty days by giving prior written notice to Grantee. One such extension shall be permitted.
  - 3. Where staff internal to the Grantor rejects Grantee's EAV, Grantor's rejection must include its own EAV, with reasonable support. The midpoint between the sums of the Grantee's and the Grantor's EAV shall become the fair market value of the transaction.

C. Non-Nominal Value Property Rights (greater than \$25,000)

1. Where staff internal to the Grantee and or the Grantor determine the estimate of value to be in excess of \$25,000, Grantee shall present an initial written offer (IWO) to purchase Property Rights necessary for its Project at the amount that is equal to the fair market value determined by Grantee's written Appraisal report prepared by an Appraiser from the lists in Exhibit A-1 or A-2 respectively. Said Appraisal shall be reviewed, approved, and paid for by Grantee. Within 30 days, Grantor staff shall convey its intent in writing to recommend either acceptance or rejection of Grantee's IWO to Grantee
2. If Grantor rejects Grantee's IWO, the Grantor shall independently hire an appraiser from the lists in Exhibit A-1 or A-2 respectively at Grantor's sole expense, and present Grantor's Appraisal report to Grantee within 60 days of rejection of Grantee's IWO. If the difference between the Grantee's and Grantor's appraised values is greater than 20% of the Grantee's initial offer, Grantor shall have the right to be reimbursed the reasonable costs, not to exceed five thousand dollars (\$5,000.00), of its independent Appraisal. If the difference between the Grantee's and Grantor's appraised value is less than or equal to 20% of the Grantee's initial offer, Grantee and Grantor shall split the values to arrive at a fair market value. By way of illustration, if Grantee's IWO is \$90,000 and Grantor appraises the Property Rights at \$103,500, the \$13,500 difference would be 15% of the Grantee's IWO. Since this difference is less than 20% of the Grantee's IWO, the parties would then split the \$103,500 and \$90,000 values to arrive at the fair market value: \$96,750.

If the difference between the Grantee's and Grantor's appraised value is greater than 20%, the issue shall be elevated to the District's Chief Executive Officer and the City Manager or their delegates for resolution, which resolution shall occur, if at all, within 30 days of presentation of Grantor's Appraisal report to Grantee.

3. Appraisals shall be conducted through the following process:
  - a. The real estate appraisal process shall be conducted as described above. Each party shall be provided with an advance written notice of intent to appraise by the other party and shall be offered the opportunity to accompany the real estate appraiser during their inspection of the Property or Properties.
  - b. Grantor and Grantee have exchanged their respective initial lists of competitively selected real estate appraisers: Exhibit A-1 for the CITY's competitively selected real estate appraisers and Exhibit A-2 for the DISTRICT's list of competitively selected real estate appraisers, respectively. Exhibits A-1 and A-2 are attached hereto and incorporated by reference into this Agreement.

CITY and DISTRICT further agree and understand that:

- i. Exhibits A-1 and A-2 must include real estate appraisers who are licensed by the California Office of Real Estate Appraisers (OREA) and who are in good standing with the OREA. Any appraiser who is found to not be licensed with and in good standing with OREA shall be

automatically omitted from Exhibit A-1 and or Exhibit A-2 until such time as licensure and or good standing with the OREA is restored.

- ii. Exhibits A-1 and A-2 may be modified from time to time by written notification as CITY and DISTRICT update their respective lists of competitively selected real estate appraisers.
- c. Standard instructions or a Notice to Proceed to the real estate appraisers shall be maintained as Exhibits B1 & B2, which are attached hereto and incorporated by reference into this Agreement. The standard instructions or Notice to the real estate appraisers shall not be modified excepting by mutual written consent of both the CITY and the DISTRICT, which consent shall not be unreasonably withheld.
- d. Each party shall use its standard appraisal selection process for hiring a real estate appraiser.
- e. To the extent possible, appraisals shall reflect value with and without remediation of Known Hazardous Materials pursuant to applicable Remediation Plans.

#### SECTION 6, Closing Mechanics; Prorations

Grantee shall determine whether any transactions shall be completed with or without use of third party escrows. Unless otherwise agreed by the parties in any given transaction, it is contemplated that value of the Property Rights to be received by Grantor from Grantee shall be paid upon the date of transfer. Taxes, assessments and other recurring costs on any Property (if any) shall be prorated between the parties as of the date of closing. In the event that any such costs have been prepaid and will not be assessed or otherwise applicable to Grantee upon acquisition of title, Grantor shall not be entitled to collect such prepayments from Grantee. Any fees associated with title insurance, escrow services, recordation and transfer of title shall be borne by Grantee.

#### SECTION 7, Representations and Warranties

Except as expressly otherwise set forth herein, neither CITY nor DISTRICT make any representations or warranties as to properties that are or that may be subject to the provisions of this Agreement.

#### SECTION 8, Reserved

#### SECTION 9, Efficiency Meet and Confer Planning and Follow Up Meetings

CITY and DISTRICT agree to regularly meet and confer a minimum of three times each calendar year to actively and cooperatively:

1. Exchange information about planned or anticipated real estate transactions between the CITY and DISTRICT;
2. Jointly prepare transaction schedules including appraisal and governing body or officer staff recommendations, and identify responsible parties/points of contact;
3. Monitor progress of attaining transaction schedules;

4. Group real estate appraisal assignments (i.e. complete mass appraisals) to reduce costs; and to
5. Combine or package real estate approval recommendations to their respective governing bodies or officers to efficiently utilize staff time.

CITY shall be represented by the Senior Executive Analyst and Deputy Director, Office of Economic Development or their delegates. DISTRICT shall be represented by the Real Estate Services Unit Manager, Engineering Unit Manager and the Deputy Operating Officer or their delegates.

#### SECTION 10, Form of Transfer Documents

The parties shall cooperate in good faith to develop, as soon as reasonably possible but in any event no more than six months from the date of this Agreement, a set of templates reflecting the terms and conditions of this Agreement, which templates (unless otherwise agreed by the parties in any given transaction) shall be used as the base documents for transactions undertaken pursuant to this Agreement. Such templates shall include purchase and sale agreements, grant deeds, quitclaim deeds, easements, rights of entry, licenses, permits and forms of other documents commonly employed between the parties.

#### SECTION 11, Implementation of Agreement

Notwithstanding any provisions to the contrary herein, this Agreement does not: 1) obligate either party to complete any transfer of Property Rights, 2) delegate authority to either party's staff to complete any such transaction, 3) waive or otherwise modify any requirement of law or policy which is applicable to any such transaction, the application of which requirements may affect the timing or other terms of this Agreement, or 4) waive or limit either parties' rights under California Code of Civil Procedure sections 1230.010 et seq ("Eminent Domain Law"). For the avoidance of doubt, unless otherwise agreed between the parties on a case by case basis, in no event shall the provisions of this Agreement apply to the acquisition of any Property Rights undertaken pursuant to Eminent Domain Law, each party reserving to itself sole discretion to determine if and when it is in its best interests to pursue such acquisition.

This Agreement does obligate each party to cause its respective staff to work together in good faith to achieve the intent of this Agreement, which is to provide a standard framework within which the transfer of Property Rights may be accomplished between CITY and DISTRICT in the ordinary course of business. In any specific case where staff are unable to reach agreement on terms of transfer based on the framework established by this Agreement, or disagree regarding the interpretation of this Agreement or the applicability thereof to the particular proposed transaction, the parties agree to progressively escalate their negotiation to the level of City Manager of the CITY and Chief Executive Officer of the District. In the event the City Manager and Chief Executive Officer are unable to reach a resolution within thirty (30) days of the matter being referred to their joint attention, either party (acting through the City Manager or Chief Executive Officer) may upon written notice to the other party elect to terminate the application of this Agreement to that particular transaction.

Understanding the potentially unique nature of each Property transaction, it is agreed that the final decision as to whether or not to transfer or accept a transfer of Property Rights, and the terms and conditions applicable thereto, will be within the discretion of the DISTRICT's Board or CITY's Council and their respective delegates.

SECTION 12, Modification

This Agreement may be amended only by an instrument signed by the Parties.

SECTION 13, Termination

This Agreement may be terminated by action of either the Board or the Council, acting unilaterally.

SECTION 14, Time is of the Essence

DISTRICT and CITY recognize that time is of the essence in all matters covered by this Agreement. Therefore, both agree that they will endeavor to respond promptly to inquiries or communications from one to the other relating to matters encompassed within this AGREEMENT.

SECTION 15, Independent of Other Agreements

For the avoidance of doubt, the terms of this Agreement are not intended to govern the transfer of Property Rights which are the subject of project-specific arrangements addressed in other agreements between the parties; by way of example only, the Collaborative Action Plan and Agreement governing the development and operation of joint trail projects.

(Remainder of page intentionally blank)

SECTION 16, Notices

Any notice or delivery of other communication pursuant to this Agreement must be in writing and must be personally delivered or mailed via U.S. mail, return receipt requested, addressed as follows:

To CITY: City of San Jose  
Real Estate Services and Asset Management  
200 East Santa Clara Street, T-4  
San Jose, CA 95113  
Attn: Senior Executive Analyst

To DISTRICT: Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, Ca 95118  
Attn: Real Estate Services Unit Manager

**CITY OF SAN JOSE**

**SANTA CLARA VALLEY WATER DISTRICT**

\_\_\_\_\_  
**DENNIS D. HAWKINS, CMC**  
City Clerk

\_\_\_\_\_  
**DONALD F. GAGE**  
Chair/Board of Directors

**ATTEST:**

\_\_\_\_\_  
**MICHELLE L. KING**  
Clerk/Board of Directors  
Date: \_\_\_\_\_

**Approved as to form:**

**Approved as to form:**

\_\_\_\_\_  
**Kenneth Johnson**  
Senior Deputy City Attorney

\_\_\_\_\_  
**Brian C. Hopper**  
Assistant District Counsel

**EXHIBITS A-1 and A-2**

**EXHIBIT A-1 CITY's - PROPOSED APPRAISER LISTS**

<b>MAI Appraisers</b>
The Reitman Group
Carneghi – Blum & Associates, Inc.
Burchard & Rinehart
Smith & Associates Inc.
J. Kaeuper & Company
Patrick Idiart & Associates

**EXHIBIT A-2 DISTRICT's - PROPOSED APPRAISER LISTS**

<b>MAI Appraisers</b>
Associated Right of Way Services, Inc.
Bender Rosenthal, Inc.
Schmidt-Prescott Group
Smith & Associates Inc.
Hansen & Co., Inc.
DIAZ DIAZ & BOYD

<b>Non-MAI Appraisers</b>
Desmond, Marcello & Amster
Schmidt-Prescott Group
Hansen & Co., Inc.
Smith & Associates Inc.
Associated Right of Way Services, Inc.

**EXHIBIT B-1**  
**CITY NOTICE TO PROCEED**  
**NOTICE TO PROCEED**

In accordance with the Master Agreement for Appraisal Services between the City of San José (hereinafter "CITY") and \_\_\_\_\_ (hereinafter "APPRAISER") as executed by the CITY on \_\_\_\_\_ (hereinafter "AGREEMENT"); you are hereby authorized to proceed, upon execution by the CITY of this NOTICE TO PROCEED, to prepare a \_\_\_\_\_ type of appraisal (hereinafter "APPRAISAL") for the purpose of establishing "fair market value," of the property described in Paragraph 2, below.

If the City indicates below that this appraisal may result in condemnation, "fair market value" shall be defined as set forth in Section 1263.320 of the California Code of Civil Procedure. If the City indicates below that this appraisal is for a voluntary acquisition, APPRAISER shall develop an opinion of the highest and best use of the property described in paragraph 2 below, in conformance with Rule 1-3(b) of the 'Uniform Standards of Professional Appraisal Practice' as published by the Appraisal Standards Board, The Appraisal Foundation and make a finding of 'Market Value' in accordance with the 'Definitions' as contained within such standards.

This appraisal may result in condemnation of the appraised property.

This appraisal is for a voluntary acquisition of the appraised property.

1. Before commencing appraisal activities pursuant to this Notice to Proceed, the APPRAISER shall advise the property owner, through written notice, ("Notice"), of the CITY's decision to appraise the property. The Notice shall explain: 1) that the owner's property is within the named area required for the public project necessitating the take ("Project"); 2) if applicable, that all or a portion of the owner's property, (which must generally be described), may be acquired for public use; and, 3) that the owner or the owner's representative shall have the opportunity to accompany the appraiser on an inspection of the property. APPRAISER shall give this notice to owner within a period of time reasonably calculated to permit the Owner to accompany appraiser if he or she so desires. A copy of such Notice shall be included as an attachment within the APPRAISAL.

2. The APPRAISAL shall include on the cover page of each original copy:

Project Name: \_\_\_\_\_

Date of Valuation: \_\_\_\_\_

Date of APPRAISAL: \_\_\_\_\_

Assessor's Parcel(s) Number(s): \_\_\_\_\_

Thomas Brothers Map Book, Page and Grid Numbers: \_\_\_\_\_

Work Request Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

Fund Number: \_\_\_\_\_

Appropriation Number: \_\_\_\_\_

Responsibility Code: \_\_\_\_\_

All Project references within the APPRAISAL shall use the Project Name as noted above.

Property to be appraised:

ASSESSOR'S PARCEL NO.	PROPERTY OWNER
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3. The APPRAISAL to be prepared in conformance with this NOTICE shall be delivered to the CITY on or before \_\_\_\_\_. CITY may extend date for completion of the appraisal services provided or assess liquidated damages as set forth in EXHIBIT D, "TIME FOR COMPLETION - LIQUIDATED DAMAGES."

The APPRAISAL shall be completed in accordance with Uniform Standards of Professional Appraisal Practice [USPAP] standards, except as otherwise herein instructed. Any appraisal shall note any departures from USPAP standards not specifically authorized in this NOTICE TO PROCEED and explain the reasons for those departures.

In completion of the Appraisal, the Appraiser additionally shall be required to contact Principal City Planner, \_\_\_\_\_ [Name] at \_\_\_\_\_ [phone number] to determine City Planning opportunities and constraints which may determine "highest and best use".

In addition Appraiser shall be required to contact Senior Civil Engineer, \_\_\_\_\_ [Name] at \_\_\_\_\_ [phone number] determine dedication requirements, if any. The APPRAISAL shall include a clearly defined statement of the specific assignment. Each APPRAISAL shall also include, as appropriate, the following general information:

- Legal description of the appraised property(ies)
- Physical description of the property(ies) appraised and used as comparisons;
- Assessor Parcel Number(s), Site Address(es), Owner's Name(s) and Phone Number(s), Tenant's Name(s) and Phone Number(s) for property(ies) appraised or used as comparisons;
- Plat map[s] of the appraised property(ies);
- Identification of date of contact with the Principal Planner;
- Current zoning and general plan designations for the appraised property(ies) as well as any prominent use restrictions on the property(ies) that would affect value;
- Dated photographs of the appraised property;
- The Title Report on the appraised property(ies) included as attachment;
- Indication of the date of field inspection identifying existing improvements, if any;
- Three (3) to five (5) year sale history with date, price and, if known, terms and inclusions;

- A description of any portion of the appraised property(ies) remaining after severance of the appraised property(ies); .
- Identification of uneconomic remnants, actual or potential;
- The name and phone number of any individuals, relied upon in reaching conclusions of use and/or value for the appraised or comparable property(ies);
- (For comparable properties only) comparable sales data sheets including confirmation of sales data including name, title and phone number of persons relied upon, noting the date of confirmation, a comprehensive comparison and analysis between sales and subject properties and a statement of scope and process of investigation to confirm and report comparable site data;
- Location maps identifying comparable sites noting Assessor’s Parcel Number for each comparable property of large enough scale to identify comparable properties and locate them in the field.

In its analysis of valuation, the Appraisal shall include the following:

- A statement of assumptions and limiting conditions;
- An analysis and support for highest and best use of the property;
- Analysis as to whether the highest and best value is as “stand alone” or as “joinder”;
- If highest value is as “joinder”, analysis and statement of “contributory value”;
- A discussion of zoning, General Plan, highest and best use differences between the appraised property(ies) and comparable properties;
- Statement and analysis of dedication requirements, if any and relationship to highest and best use;
- An analysis of any title exceptions and their effects upon value;
- A description of the reasoning that supports the analyses, opinions and conclusion(s) of value as set forth in USPAP standard 2-2(a)(ix);
- Application of all appropriate valuation approaches utilized in coming to the appraised value and, if any valuation approaches were excluded, a discussion of reasons for exclusion;
- Description of basis for market conditions adjustments, including time;
- A reconciliation of the differences of value that may result from use of multiple appraisal approaches;
- An analysis of effect of existing improvements on value of appraised property(ies);
- An analysis of any benefits or damage accruing to the remainder property because of the take, whether or not the damages are caused by a portion of the Project located on the part taken;
- An analysis of exclusion of affects of the public Project necessitating the take. (conformance with California Government Code of Civil Procedure Section 1263.330);
- Comparison of “cost to cure” versus value of “full severance”<sup>1</sup> by demonstrating the total estimated severance damages to the remainder which would occur if not cured (the estimate of the cost-to-cure may not exceed the estimated severance damages);
- A statement of conclusion of value.

4. Additional Instructions:

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<sup>1</sup> Per “Appraisal Guidelines”, published by California Department of Transportation Right of Way and Asset Management Program Appraisal Branch.

\_\_\_\_\_  
\_\_\_\_\_  
Appraiser shall review and consider, as appropriate, the attached documents:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The City shall pay to Appraiser as and for full compensation for the APPRAISAL created pursuant to this Notice to Proceed \_\_\_\_\_ and NO/100 DOLLARS (\$\_\_\_\_\_).
6. For all work performed under this AGREEMENT pursuant to this NOTICE TO PROCEED, the CITY shall act through a designee appointed by the Director of the Office of Economic Development. Said designee, shall be the City's Senior Executive Analyst unless CITY so indicates in writing.
7. The Senior Executive Analyst shall have the authority to approve the Appraisal performed pursuant to this Agreement unless otherwise indicated in writing.
8. CITY shall have the right to terminate this AGREEMENT without cause, by giving not less than seven (7) days written notice of termination.
9. Appraiser shall submit to CITY three (3) original copies of the Appraisal Report and one (1) PDF copy on disk, unless a different number of original copies is specified in the Notice to Proceed.

Date:

APPROVED:

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

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

Title: Real Property Agent

**(to be supplied)**

## EXHIBIT B-2

### SCOPE OF SERVICES

Appraiser shall prepare a fair market value appraisal report of the real property interests described as: \_\_\_\_\_, for the property identified by APN \_\_\_\_\_, and located at \_\_\_\_\_. The report shall conform to the latest Uniform Standards of Professional Appraisal Practice ("USPAP") standards for federally sponsored projects, and, shall include, but not be limited to, the following:

#### Forms

- Title Page
- Letter of Transmittal (include Effective Date of Value and Date of Report)
- Table of Contents
- Certificate of Appraiser
- Limiting Conditions and Assumptions
- Parcel Occupancy Data Form, listing names and addresses of owners and tenants
- Maps:
  - Plat Map (clearly delineate subject parcel and proposed take)
  - Comparable Map (clearly delineate location of each comparable sales parcel in relation to location of subject parcel)
- Photographs: Subject Parcel(s), identified and each comparable Sales Parcel(s) identified.

#### Analysis

Per USPAP standards, the Appraiser must *summarize* the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions, and conclusions. The Appraiser must be certain that the information provided is sufficient for the client and intended users to adequately understand the *rationale* for all opinions and conclusions.

#### General Information

The DISTRICT will require the Appraiser to include in the appraisal report a clearly defined statement of the specific assignment. The DISTRICT may also require the following general information in the appraisal report:

- Identify purpose and intended use of appraisal;
- Definition of market value and source;
- Parcel inspection date;
- Verify property owner invited to accompany Appraiser during inspection;
- Property rights/interests being appraised;
- Names of owners of each interest appraised;
- Analysis of significant area, City and neighborhood data;
- Description of improvements;
- Meet with a senior level planner for vacant land or more complex acquisitions excluding existing single family residences;
- Highest and Best Use analysis;
- Legal description of the appraised property(ies);
- Physical description of the property(ies) appraised and used as comparisons;
- Assessor Parcel Number(s), Site Address(es), Owner's Name(s) and Phone Number(s), Tenant's Name(s) and Phone Number(s) for property(ies) appraised or used as comparables;
- Comparable property adjustment grid;
- Lease or rental rate adjustment grid;
- Plat map[s] of the appraised property(ies);
- Current zoning and general plan designations for the appraised property(ies) as well as any prominent use restrictions on the property(ies) that would affect value;
- Dated photographs of the appraised property;

- Indication of the date of field inspection identifying existing improvements, if any;
- 3 to 5 year sale history with date, price and, if known, terms and inclusions;
- A description of any portion of the appraised property(ies) remaining after severance of the appraised property(ies);
- Identification of uneconomic remnants, actual or potential;
- The name and phone number of any individuals, relied upon in reaching conclusions of use and/or value for the appraised or comparable property(ies);
- For comparable properties only, comparable sales data sheets including confirmation of sales data including name, title and phone number of persons relied upon, noting the date of confirmation, a comprehensive comparison and analysis between sales and subject properties and a statement of scope and process of investigation to confirm and report comparable site data; and
- Location maps identifying comparable sites noting Assessor's Parcel Number for each comparable property of large enough scale to identify comparable properties and locate them in the field.

In its analysis of valuation, the DISTRICT may require the Appraiser to include in the appraisal report the following:

- A statement of assumptions and limiting conditions;
- An analysis and support for highest and best use of the property;
- Analysis as to whether the highest and best value is as "stand alone" or as "assemblage";
- If highest value is as "assemblage", analysis and statement of "contributory value";
- Nominal value analysis and justification, if applicable;
- A discussion of zoning, general plan, highest and best use differences between the appraised property(ies) and comparable properties;
- Statement and analysis of dedication requirements, if any and relationship to highest and best use;
- An analysis of any title exceptions and their effects upon value;
- A description of the reasoning that supports the analyses, opinions and conclusion(s) of value as set forth in USPAP standards;
- Application of all appropriate valuation approaches utilized in coming to the appraised value and, if any valuation approaches were excluded, a discussion of reasons for exclusion;
- Description of basis for market conditions adjustments, including time;
- A reconciliation of the differences of value that may result from use of multiple appraisal approaches;
- An analysis of effect of existing improvements on value of appraised property(ies);
- General description of public project ("Project");
- An analysis of any benefits or damage accruing to the remainder property because of the take, whether or not the damages are caused by a portion of the Project located on the part taken;
- An analysis of exclusion of affects of the Project necessitating the take. (conformance with California Government Code of Civil Procedure Section 1263.330);
- Comparison of "cost to cure" versus value of "full severance" by demonstrating the total estimated severance damages to the remainder which would occur if not cured (the estimate of the cost-to-cure may not exceed the estimated severance damages);
- Three Approaches to Market Value -explain if any of the approaches are excluded:
  - Sales Approach: Comparison to subject showing the amount of each adjustment in a grid or table including the rationale for each adjustment.
  - Income Approach: Income, vacancy and loss, operating expenses, capitalization and discount rates and economic rent supported.

- Cost Approach: Data sources used, all causes of depreciation, and basis for estimates and total.

- Reconcile the quality and quantity of data available and in the approaches used;
- Where applicable, analyze benefits and damages analysis;
- Where applicable, analyze before and after valuation;
- Where applicable, analyze fixtures and equipment valuation;
- Where applicable, analyze goodwill;
- Where applicable; analyze riparian corridor valuation;
- Where applicable; analyze creek land valuation;
- Where applicable; analyze mitigation rights valuation;
- Where applicable; analyze conservation rights valuation;
- Residential Monthly Fair Market Rent, excluding utilities, when requested; and
- Conclusion of value as of date of value.