

**EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is entered into this \_\_\_ day of \_\_\_\_\_, 2026 ("**Effective Date**") by and between the CUPERTINO UNION SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**District**") and the CITY OF CUPERTINO, a California municipal corporation ("**City**"). District and City are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

A. The District is the owner in fee, of approximately 1.48 acres of vacant land located at 10480 Finch Avenue, Cupertino, California 95014, commonly known as Assessor Parcel Number 375-40-067, and as more particularly described in the legal description attached to this Agreement as **Exhibit A** and depicted on **Exhibit A-1** attached hereto ("**District Property**").

B. Section 17536 of the Education Code authorizes the District’s Governing Board ("**Board**") to exchange any of its real property for real property of another person or private business firm upon such terms and conditions as the Parties may agree, and in accordance with the procedural requirements of Education Code section 17536 et seq.

C. The District desires to exchange the District Property for real property to be selected by the District as set forth in this Agreement ("**Exchange Property**") in accordance with the terms and conditions of this Agreement. Upon selection of the Exchange Property, pursuant to the terms of this Agreement, a legal description of the Exchange Property shall be attached to this Agreement as **Exhibit A-2**. The District Property and the Exchange Property are sometimes hereinafter referred to collectively as the "**Properties**" or each a "**Property**."

D. This Agreement shall be effective upon the last to occur of:

(i) the Board adopts a resolution by two-thirds vote of its members at a duly called Board meeting declaring its intent to enter into this exchange agreement with the City, in accordance with Education Code section 17537, and declared the District Property exempt surplus land within the meaning of Government Code sections 54221(b)(1) and 54221(f)(1)(C) ("**Resolution of Intention**"); and

(ii) The City Council adopts a resolution for the acquisition of the District Property pursuant to applicable law.

**AGREEMENT**

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Agreement and incorporating the recitals above, the Parties agree as follows:

**ARTICLE 1  
EXCHANGE OF DISTRICT PROPERTY AND EXCHANGE PROPERTY**

**1.1 Agreement to Exchange.** Subject to all the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, District and City agree to exchange the District Property and the Exchange Property, respectively, each including, without limitation, such Party's interest, if any, in all mineral, oil, gas and other hydrocarbon substances on and under the properties as well as all development rights, air rights, water, water rights and water

stock relating to the Properties and any other easements, rights-of-way or appurtenances, used in connection with the beneficial use and enjoyment of the Properties.

**1.2 Identification of Exchange Property.** During the term of this Agreement, the District shall use good faith efforts to identify the Exchange Property. Within five (5) days after the expiration of the City Due Diligence Period (defined in Section 2.2.1), City shall provide the names of three (3) real estate brokers with extensive experience in commercial/residential income producing properties and with whom City has previously transacted business. The District, at its discretion and its financial responsibility, may utilize the services of all, some or none of the named brokers to identify potential exchange properties. City may also identify one or more properties currently owned by City (the "**City Properties**" or a "**City Property**") for consideration by the District in accordance with Section 2 of this Agreement. City shall provide the District with the Due Diligence Materials (as defined in Section 2.1) for the City Properties, if any, and City's valuation of the fair market value of the interest to be acquired by the District in the City Properties, if any. Although City agrees to cooperate with the District in the selection of the Exchange Property, it is the responsibility of the District to identify the Exchange Property pursuant to this Agreement and to determine whether the fair market value of the Exchange Property (including the City Properties) is of equal value to the District Property. If the Exchange Property ultimately selected by the District is not a City Property, the District, not City, shall be solely responsible for contracting directly with the Property Owner of such Exchange Property. City does not intend to, and is not required by this Agreement to, ever take title to any Exchange Property. Therefore, City shall not have any liability or obligation with respect to any circumstance or condition on any Exchange Property, whether before or after the Close of Escrow (as defined in Section 3.2). Without limiting the foregoing, City shall not have any liability for any act, condition or circumstance that the District or any of its employees, agents, representatives or contractors commits, creates or discovers on or at any Exchange Property, nor any obligation or liability to any Property Owner (as defined in Section 2.3.1.1) other than as expressly set forth in this Agreement.

**1.3 Consideration.** It is the intent of the Parties that the Exchange Property shall be of equal value to the District Property, and the District Property shall be conveyed in consideration for the Exchange Property. The value of the Exchange Property ("**EP Exchange Value**") shall not exceed the DP Exchange Value (as defined in Section 1.3.1 below) unless the District determines, in its sole discretion, that it is willing to acquire a property worth more than the DP Exchange Value. In the event the Exchange Property is worth less than the DP Exchange Value, City shall pay to the District in cash the difference between the DP Exchange Value and the EP Exchange Value ("**Additional Cash**"). In the event the Exchange Property is worth more than the DP Exchange Value, the District shall be responsible for the payment of the difference between the EP Exchange Value and the DP Exchange Value. Notwithstanding the foregoing, in the event that the District has not identified the Exchange Property in sufficient time to permit the simultaneous closing of the Exchange Property with the closing of the District Property by the Closing Date (as defined in Section 3.2), City shall have the right to acquire the District Property for the cash consideration of the DP Exchange Value; provided, however, that the net proceeds of the DP Exchange Value ("**DP Exchange Value Net Proceeds**") shall remain in a Holding Escrow (as defined in Section 3.2) after the Closing pursuant to Section 3.2 until such time as the District identifies and acquires the Exchange Property or the District determines, at its absolute sole discretion, that the DP Exchange Value New Proceeds shall be released to the District. The District shall not be subject to any penalty, fine, or additional charge for failure to identify the Exchange Property by the Closing Date. The District's failure to identify the Exchange Property shall not be construed as a breach of this Agreement or a condition to the District's obligation to close on the transfer of the District Property to City.

**1.3.1 District Property Exchange Value; No Additional Consideration.** City and the District agree that the District Property valuation ("**DP Exchange Value**") shall be Ten

Million Four Hundred Thousand Dollars (\$10,400,000). No further consideration or compensation shall be required by either Party except as expressly set forth in this Agreement.

**1.4 Initial Deposit.** Within three (3) business days after the Opening of Escrow, City shall deposit into Escrow the sum of Fifty Thousand Dollars (\$50,000) ("**Initial Deposit**"). The Initial Deposit shall remain in Escrow and, following the expiration of the City Due Diligence Period, shall be deemed liquidated damages (pursuant to Section 6.1). If City timely terminates this Agreement on or before the expiration of the City Due Diligence Period in accordance with this Agreement, Escrow Holder shall return the Initial Deposit to the City.

## **ARTICLE 2 INSPECTIONS AND REVIEW**

**2.1 Delivery of Due Diligence Materials.** Within ten (10) business days after the Opening of Escrow (as defined in Section 3.1), the District shall deliver to City, without representation or warranty as to the accuracy of the information contained therein, any and all documents, reports, agreements, or other items in its possession or control relating to the District Property or within its agents' or representatives' possession or control, including but not limited to (collectively, the "**Due Diligence Materials**"): (i) copies of surveys, engineering studies, plans, soil reports, environmental reports, maps, leases, service contracts or other material documents relating to the condition of the District Property that are in District's possession or control; and (ii) pursuant to Section 2.6, approved a Title Report. Within ten (10) days after City has identified any City Properties, City shall deliver to the District, without representation or warranty as to the accuracy of the information contained therein, copies of the Due Diligence Materials relating to the City Properties. Any Due Diligence Materials shall be provided to the other Party without any recourse or liability of any type or nature. Each Party assumes all risk of any kind with regard to the use of and reliance upon any of the Due Diligence Materials provided by the other Party. Neither Party is relying upon the other Party for any information related to, concerning, or involving the respective properties for this transaction, including, without limitation, the fair market value of the Properties.

### **2.2 Inspections.**

**2.2.1 City Due Diligence Period.** The due diligence period for City shall begin on City's receipt of the Due Diligence Materials required to be delivered by the District pursuant to Section 2.1 and last until 5:00 p.m. Pacific Time on the date sixty (60) days thereafter ("**City Due Diligence Period**"). During the term of the Agreement, including without limitation during the City Due Diligence Period, City and its representatives, agents, engineers, consultants, contractors, and designees shall have the right to enter onto the District Property, for purposes of examining, inspecting and investigating the District Property and the feasibility of using the District Property for City's intended purposes, including the site, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, hazardous materials or wastes, if any, and, at City's sole and absolute discretion, determining whether the District Property is acceptable to City. During the term of the Agreement, including without limitation during the City Due Diligence Period, City may, in City's sole and absolute discretion and cost, perform without limitation: (i) completion of environmental tests and studies, such as without limitation, a Phase I and Phase II environmental site assessments, and any additional tests, studies and assessments desired by City; (ii) engineering evaluations, including geotechnical evaluation, if needed or desired; (iii) compliance with the California Environmental Quality Act ("**CEQA**"), if applicable; (iv) any other surveys, engineering and soils tests and other tests, studies or inspections deemed necessary by City in its sole discretion and obtained at City's expense; and (v) review of any information and materials provided by the District pursuant to Section 2.1 above or elsewhere in this Agreement. City shall provide the District with copies of any third party inspection report prepared pursuant to this section. If City

determines, in its sole judgment and discretion, that the District Property is not suitable for its intended purposes, City may, by written notice to District prior to the expiration of the City Due Diligence Period, terminate this Agreement and cancel the Escrow pursuant to Section 2.5.1.

**2.2 District Due Diligence Period.** The District shall have the same inspection rights as set forth in Section 2.1, including a sixty (60) day due diligence period ("**District Due Diligence Period**"), with respect to the Exchange Property(ies). If the Exchange Property is a City Property, the District's review of the physical condition and feasibility of the Exchange Property(ies), may at the District's sole and absolute discretion and cost, include without limitation: (i) completion of environmental tests and studies, such as without limitation, a Phase I and Phase II environmental site assessments, and any additional tests, studies and assessments desired by the District; (ii) engineering evaluations, including geotechnical evaluation, if needed or desired; (iii) compliance with the CEQA if applicable; (iv) any other surveys, engineering and soils tests and other tests, studies or inspections deemed necessary by the District in its sole discretion and obtained at the District's expense; and (v) review of any information and materials provided by other Parties pursuant to Section 2.1 above or elsewhere in this Agreement. The District Due Diligence Period shall begin on the date the Exchange Property is identified by the District, as confirmed in writing to City. The Parties acknowledge and agree that the District may conduct due diligence for more than one potential Exchange Property and that the provisions set forth in this Section 2.2 shall apply to each such Exchange Property.

**2.3 Conditions of Access to District Property and Exchange Property for Inspections.** City and its agents, representatives and designees shall have the right with respect to the District Property, and the District and its agents, representatives and designees shall have the right with respect to the Exchange Property, if the Exchange Property is a City Property, to access such property during the term of this Agreement, including the Due Diligence Period, in accordance with the following terms and conditions:

**2.3.1.1** Such Party ("**Inspecting Party**") shall provide the Party that owns the applicable Property ("**Property Owner**") with written notice of the dates on which the Inspecting Party or its representatives or designees intend to access the Exchange Property at least two (2) business days in advance of any access to the Exchange Property. Property Owner or its representative may be present for any inspections, tests or studies.

**2.3.1.2** The Inspecting Party will permit only employees, agents, licensed contractors, consultants or other individuals who have a reasonable reason to be on the Property to enter upon the Exchange Property as a result of the Inspecting such Party's actions.

**2.3.1.3** The Inspecting Party will assume full responsibility for proper characterization, manifesting, storage and disposal of any materials or wastes generated as a result of any sampling conducted by or for the Inspecting Party, and following written request will provide the Party Owner a copy of documents evidencing these actions.

**2.3.1.4** The Inspecting Party agrees to comply with all applicable laws, regulations, rules and permits pertaining to its investigations and testing on and of Exchange Property or any part thereof, including, but not limited to, the Occupational Health & Safety Act and all applicable environmental, health and safety laws and regulations, whether federal, state or local. The Inspecting Party shall obtain or cause its consultants to obtain, at Inspecting Party's sole cost and expense prior to commencement of any investigative activities on the Exchange Property, a policy of commercial general liability insurance covering liability of the Inspecting Party for claims of personal injury or property damage caused during any of Inspecting Party's investigative activities. Such policy of insurance shall be an occurrence policy and shall have liability limits of not less than Two Million Dollars (\$2,000,000.00) combined single limit per

occurrence for bodily injury, personal injury and property damage liability. Such insurance policy shall name Property Owner as an additional insured. The Inspecting Party agrees to indemnify, defend and hold harmless the Property Owner from any and all damages, claims, losses, liabilities, causes of action, proceedings, costs and expenses of any kind whatsoever (including, without limitation, attorneys' fees and fees of expert witnesses) for physical damage or personal injury to the extent caused by Inspecting Party or its agents, assignees, designees or representatives during their entry on the Property prior to the Close of Escrow; provided, however, the foregoing indemnity shall not apply with respect to any claims arising out of the mere discovery of any adverse condition at the Property, any preexisting conditions at the Exchange Property or any acts or omissions of Property Owner, its officers, directors, owners, agents or employees. The foregoing indemnity shall survive the Close of Escrow or the earlier termination of this Agreement.

**2.3.1.5** Upon an Inspecting Party's completion of any investigations and testing on and of an Exchange Property, the Inspecting Party shall promptly restore the Property to substantially the condition it was in prior to engaging in the work, including the repair or replacement of any and all physical damage to the Exchange Property to the extent caused by and during the Inspecting Party's access; provided, however, that in no event shall an Inspecting Party have any obligation pursuant to this Section to remedy any pre-existing condition on or under the Exchange Property. The Inspecting Party agrees to promptly pay before delinquency for any and all labor and materials expended or used by the Inspecting Party or its agents, representatives or designees in connection with any and all investigations on a Property. In the event any mechanics' liens are placed on an Exchange Property resulting from work by an Inspecting Party or its agents, representatives or designees, the Inspecting Party will take prompt action to remove or bond over such liens at the Inspecting Party's sole expense and will indemnify, defend, protect and hold the Party Owner harmless from and against all such claims.

**2.3.2 Extension of Due Diligence Periods.** The Parties acknowledge that the activities contemplated during the City and District Due Diligence Periods shall be completed within the applicable Due Diligence Periods provided for in this Agreement, unless otherwise agreed by the Parties in writing.

**2.4 AS-IS Acquisition.** Based on the inspection rights set forth in the preceding paragraphs and in reliance on the due diligence of each Party, the District and City acknowledge and agree that, except for the limited warranties and representations expressly set forth in this Agreement, the exchange of the Properties is made solely on an AS- IS WHERE-IS BASIS, WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED. But for the foregoing understanding and agreement, the Parties would not have entered into this transaction. Each Party acknowledges that due to the expertise, experience and business acumen of both Parties and their respective consultants, each Party has the ability to conduct a complete and thorough due diligence of the respective Properties and would not close the transaction unless totally satisfied with the respective Property, and has otherwise conducted an exhaustive and complete due diligence which would enable the taking of the respective Property in an AS-IS WHERE-IS BASIS WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED. (except as specifically set forth in this Agreement.)

## **2.5 Termination During Due Diligence Period.**

**2.5.1 City's Termination Notice.** If, for any reason, City, in its sole and absolute discretion is dissatisfied with the District Property, City shall notify District and Escrow Holder in writing ("**City's Termination Notice**") on or before the expiration of the City Due Diligence Period of City's desire to terminate this Agreement and cancel the Escrow. Should City elect to terminate the Agreement before or at the conclusion of the City Due Diligence Period, then Escrow Holder shall immediately return the Initial Deposit to City and the District and City shall

share equally in any cancellation costs imposed by the Escrow Holder, and neither Party shall have any further liability or obligations under this Agreement except as expressly stated to survive termination. City's failure to deliver the City's Termination Notice on or before the expiration of the City Due Diligence Period shall be conclusively deemed City's approval of the District Property.

**2.5.2 District's Due Diligence Notice.** District shall notify City and Escrow Holder in writing ("**District's Due Diligence Notice**") on or before the expiration of the District Due Diligence Period of District's approval or disapproval of the Due Diligence Materials applicable to the Exchange Property, the condition of the Exchange Property and District's investigations with respect thereto. District's disapproval of any of said items shall constitute District's election to terminate the Exchange Property transaction and cancel that Escrow. District's failure to deliver District's Due Diligence Notice on or before the expiration of the District Due Diligence Period shall be conclusively deemed District's approval thereof, provided District fails to deliver District's Due Diligence Notice within ten (10) days after District's receipt of written notice by City of said failure to deliver District's Due Diligence Notice on or before the expiration of the Due Diligence Period. In the event the District disapproves of the Exchange Property, the District shall continue to use good faith efforts to identify the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date. However, if the District does not identify or is not prepared to close on the Exchange Property by the Closing Date, the provisions of Section 1.3 of this Agreement shall control.

**2.6 Title Review.** During each Parties' respective Due Diligence Period, each Party shall obtain a preliminary title report for each respective Property, together with copies of all written instruments creating the exceptions specified therein, and plat maps plotting all easements specified therein (collectively, and together with the Title Report delivered pursuant to Section 2.1, the "**Title Reports**"). City shall notify District in writing ("**City's Objection Notice**") no later than ten (10) days after City's receipt of the Title Report for the District Property of any objections City may have to the title exceptions contained in the Title Report for the District Property, which notice shall set forth the explanation for the disapproval and requested tasks and timelines to address the disapproved items. City's failure to provide District with a City's Objection Notice within said period shall constitute City's approval of all exceptions to title shown on the Title Report for the District Property, provided District provides City ten (10) days written notice of said failure to deliver City's Objection Notice within said period. District shall have a period of ten (10) days after receipt of City's Objection Notice in which to deliver written notice to City ("**District's Notice**") of District's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. If the District is unable or unwilling to eliminate the Defect (or to commit to do so by Close of Escrow) during such time period, then except with respect to Forbidden Defects, City's sole remedy shall be to elect, by written notice to the District and Escrow Agent on or before the date ten (10) business days after the later of the expiration of such 10-day period or the date the District gives City and Escrow Agent written notice that the District will not eliminate the Defect on or before the Close of Escrow, to either (a) terminate this Agreement, or (b) waive the Defect. Furthermore, for the purpose of this paragraph, District's cure may include the acquisition by District, at District's expense, of a title insurance endorsement related to the objected to exception reasonably acceptable to City. Any extension of the time to review the Title Report for the District Property shall only occur in strict accordance with the following paragraph. Except as otherwise provided in this Agreement, if this Agreement is cancelled pursuant to this paragraph, the earnest money and any interest thereon shall be refunded to City, this Agreement shall thereupon be null and void and of no force or effect and City and the District shall have no further obligations or liabilities hereunder. Notwithstanding the foregoing, District represents, warrants and agrees with respect to the District Property that as of the Close of Escrow the District Property shall not be subject to any of the following (hereinafter referred to as "**Forbidden Defects**"): (a) any mortgages, deeds of trust, security agreements,

judgments, liens, or claims of lien, except for the lien of current real property taxes not yet due and payable; (b) any options, rights of first refusal or other title matters customarily deemed in the County in which the District Property is located to render real property unmarketable, (c) any leases or rights of possession; and (d) any Defects that the District has committed to eliminate on or before the Close of Escrow. In addition, District represents, warrants and agrees that as of the Close of Escrow, the District Property shall not be subject to any leases, rental agreements or other rights of occupancy of any kind, whether oral or written.

Upon the issuance of any amendment or supplement to the Title Report for the District Property which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that City's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) business days following City's and its counsel's receipt of the instrument(s) creating such additional exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new matter and City shall not be entitled to object to any exception that was in a previous title report for which the time for objection has already come and passed.

If the Exchange Property (i.e., the property acquired by the District) is a City Property (within the meaning of Section 1.2), then, in reciprocal nature with the foregoing, District shall notify City in writing ("**District's Objection Notice**") on or before the expiration of the Due Diligence Period of any objections District may have to the title exceptions contained in the Title Report for the City Property. District's failure to provide City with a District's Objection Notice within said period shall constitute District's approval of all exceptions to title shown on the Title Report for the City Property, provided City provides District ten (10) days written notice of said failure to deliver District's Objection Notice within said period. City shall have a period of ten (10) days after receipt of District's Objection Notice in which to deliver written notice to District ("**City's Notice**") of City's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. If City notifies District of its election to decline to remove and cure the objected to items, District shall have the right, by written notice delivered to City within ten (10) days after District's receipt of City's Notice, to agree to either (i) accept the City Property as the Exchange Property subject to the objected to items, in which event District shall take title at the Close of Escrow subject to the objected to items, without any adjustment to or credit against the EP Exchange Value or (ii) to continue to use good faith efforts to identify other Exchange Property for which the condition of title is acceptable to District in sufficient time to permit the Closing to occur by the Closing Date, then City may acquire the District Property for cash in accordance with Section 1.3 of this Agreement. Furthermore, for the purpose of this paragraph, City's cure may include the acquisition by City at City's expense a title insurance endorsement related to the objected to exception reasonably acceptable to the District. Any extension of the time to review the Title Report for the Exchange Property shall only occur in strict accordance with the following paragraph.

Upon the issuance of any amendment or supplement to the Title Report for the Exchange Property which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that District's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) business days following District's and its counsel's receipt of the instrument(s) creating such additional exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new matter and District shall not be entitled to object to any previously known exception or requirement for which the time for objection has already come and passed.

**2.7 Existing Leases or Contracts on the District Property.** After the Effective Date and prior to the Close of Escrow, the District shall, at the District's expense, terminate all leases and

rights of occupancy and any other contract on the District Property and all tenants and occupants shall vacate the District Property on or before the date thirty (30) days prior to the date of the close of escrow.

**2.8 Natural Hazard Disclosure Report.** Upon Opening of Escrow, Escrow Holder shall order and deliver to City a commercial natural hazard disclosure report from Disclosure Source for the District Property ("**District Property NHD Report**"). The District shall be responsible to pay for the District Property NHD Report. Upon location of an Exchange Property, Escrow Holder shall order at the District's expense a NHD Report for the Exchange Property and deliver same to the District.

### **ARTICLE 3 ESCROW**

**3.1 Opening of Escrow.** Within two (2) business days following the execution of this Agreement by District and City, the Parties shall open an escrow ("**Escrow**") with Chicago Title Company ("**Escrow Holder**"), at its offices located at 344 Walnut Avenue, Suite 116, Fremont, California, 94538; Attn: Vicky Guo at Vicky.Guo@ctt.com or 510-494-7106, by causing an executed copy of this Agreement to be delivered to Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("**Opening of Escrow**"). Escrow Holder shall sign and accept this Agreement on the execution page and provide the date of Opening of Escrow to each of the Parties pursuant to Section 8.4. Chicago Title Company ("**Title Company**") shall also provide title insurance services as provided in this Agreement.

**3.2 Close of Escrow; Closing Date.** Escrow shall close on the date thirty (30) days after the expiration of the City Due Diligence Period ("**Closing Date**"), unless mutually extended by the Parties in writing, provided that the conditions to Closing described in Section 4 below have been satisfied. The terms the "**Close of Escrow**", and/or the "**Closing**" are used herein to mean the date the respective Grant Deed (as the term is defined in Section 3.4) are recorded in the Office of the County Recorder of Santa Clara County. Possession of the District Property shall be delivered to City at the Close of Escrow free and clear of all tenancies, lessees, occupants, licensees, and all possessory rights of any kind or nature. At the Close of Escrow, either (i) possession of the Exchange Property (and the Additional Cash, if applicable) shall be delivered to District free and clear of all tenancies, lessees, occupants, licensees, and all possessory rights of any kind or nature, except for any Permitted Exceptions, as set forth and defined in Section 4.1.4, or (ii) the DP Exchange Value New Proceeds shall be delivered to District or held in a post-closing holding Escrow ("**Holding Escrow**") until an Exchange Property is identified and acquired, in the sole and absolute discretion of District, which shall be made evident by appropriate instructions to the Escrow Holder. The City shall have no rights with respect to the Holding Escrow.

**3.3 Escrow Instructions.** Only Sections 1, 2.6, 2.8, 3, 4.1, 4.2, 4.4, 4.5, 4.7, 5.3 and 8 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, the District and City agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail as between the Parties. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. The Parties agree to execute additional instructions, documents and forms provide by Escrow Holder that are reasonably necessary to

close Escrow.

Escrow Holder shall deliver the City Title Policy to the City and instruct the Santa Clara County Recorder to mail the City Grant Deed to City at the address set forth in Section 8.4 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Santa Clara County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that Party's instructions.

All funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

**3.4 Deliveries by City.** No later than 1:00 p.m. on the business day preceding the Closing Date, if the Exchange Property is a City Property, City shall deliver to Escrow Holder:

- (a) A grant deed to be attached as **Exhibit "B-1"** to this Agreement ("**Grant Deed – Exchange Property**") conveying to District fee simple title to the Exchange Property, duly executed and acknowledged by the City, or owner of the Exchange Property;
- (b) The Certificate of Acceptance in the form attached to the Grant Deed – District Property (as defined in Section 3.5);
- (c) A certificate of non-foreign status in the form as required by Escrow Holder pursuant to Section 3.6.6;
- (d) A Preliminary Change of Ownership ("**PCOR**") as required by the County of Santa Clara for the District Property; and
- (e) Any and all other sums (in Good Funds) and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including City's portion of prorations, if any.

**3.5 Deliveries by District.** No later than 1:00 p.m. on the business day preceding the Closing Date, District shall deliver to Escrow Holder:

- (a) A grant deed in the form of **Exhibit "B-2"** attached to this Agreement ("**Grant Deed – District Property**") conveying to the City fee simple title to the District Property, duly executed and acknowledged by District;
- (b) The Certificate of Acceptance in the form attached to the Grant Deed – Exchange Property (as defined in Section 3.4);
- (c) A certificate of non-foreign status in the form required by Escrow Holder to be executed by the District pursuant to Section 3.6.6;
- (d) A PCOR for the Exchange Property, if applicable; and
- (e) All other sums and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including the Escrow fees and District's portion of prorations, if any, and to close the transaction related to the Exchange Property if applicable.

**3.6 Closing, Recording and Disbursements.** On or before the Closing Date, and when all of the conditions precedent to the Close of Escrow set forth in Section 4 of this Agreement have been satisfied or waived, in whole or in part, in writing, Escrow Holder shall take the actions set forth in this Section 3.6.

**3.6.1 Recording.** Escrow Holder shall cause the Grant Deeds to be recorded in the Official Records of Santa Clara County, California.

**3.6.2 Disbursement of Funds.** Escrow Holder shall disburse or hold the DP Exchange Value, less prorations and costs chargeable to District, if any, in accordance with the District's instructions which may be in a Holding Escrow.

**3.6.3 Title Policy.** Escrow Holder shall deliver (i) the City Title Policy (as defined in Section 4.2.4) to City; and (ii) the Exchange Title Policy (as defined in Section 4.1.4) to District.

**3.6.4 Delivery of Documents to District and City.** Escrow Holder shall deliver to the respective Parties a conformed copy of the respective Grant Deeds and any other documents (or copies thereof) deposited by the other Party with Escrow Holder pursuant to this Agreement. The original of the Grant Deeds shall be returned to the respective Parties after recordation.

**3.6.5 Real Property Taxes.** With respect to the District Property, both Parties are tax exempt entities so real estate taxes do not need to be prorated. With respect to the Exchange Property which is not a City Property, the real estate taxes shall be prorated.

**3.6.6 Non-Foreign Certificate.** On or before Close of Escrow, each Party will deposit with Escrow Agent certificates in form reasonably satisfactory to Escrow Agent that provides the information required by Section 1445 of the Internal Revenue Code of 1986, as amended, and by Sections 18805 and 26131 of the California Revenue and Taxation Code, for an exemption to the withholding of taxes under those Sections, if and to the extent that such federal and/or state Sections are applicable. If a Party fails to provide any such required certificate, funds may be withheld from it in accordance with those Sections.

### **3.7 Payment of Costs.**

**a. District Property.** With respect to the District Property, District shall pay (i) cost of the NHD Report, (ii) any transfer fees, and (iii) ½ of escrow fees. With respect to the District Property, City shall pay: (i) City Title Policy; (ii) any additional title charges pursuant to Section 4.2.4; and (iii) ½ of escrow fees.

**Note to Escrow:** No recording fees shall be charged as both Parties are exempt pursuant to Government Code Section 27387. In addition, the conveyance in this Agreement is exempt from documentary transfer tax pursuant to California Revenue and Taxation Code Section 11922 because the City, grantee, is a political subdivision acquiring title to the District Property.

**b. Exchange Property.** With respect to the Exchange Property, the Property Owner shall pay (i) the NHD Report, (ii) any transfer fees, (iii) the Exchange Property Title Policy (as specified in Section 2.6), and (iv) ½ of escrow fees. With respect to the Exchange Property, District shall pay: (i) any additional title charges pursuant to Section 4.1.4; and (ii) ½ of escrow fees. District shall also pay all additional escrow fees imposed by Escrow for the Holding Escrow.

**c. Closing Statement.** At least two (2) business days prior to the Closing Date, Escrow Holder shall furnish the District and the City with a preliminary Escrow closing statement which shall include each Party's respective shares of costs with respect to the District Property. The preliminary closing statement shall be approved in writing by the Parties. As soon as reasonably

possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

**d. Escrow Cancellation Fees.** If this Agreement and the Escrow are terminated by a Party pursuant to a provision in this Agreement, the Parties shall split the escrow cancellation fee. If this Agreement and the Escrow are terminated due to a default by a Party, the default Party shall be solely responsible to pay the escrow cancellation fee.

**e. Attorney's Fees.** Each Party shall be responsible to pay the attorney fees of its legal counsel in the preparation and negotiation of this Agreement.

**3.8 Authority of Executive Director.** The Executive Director of the District or his/her designee, in his/her sole and exclusive discretion on behalf of the District, shall have authority to approve written requests for extending any deadline, waiving any requirements or amending this Agreement on behalf of the District.

**3.9 Authority of City Manager.** The City Manager of the City or his/her designee, in his/her sole and exclusive discretion on behalf of the City, shall have authority to approve written requests for extending any deadline, waiving any requirements or amending this Agreement on behalf of the City.

#### **ARTICLE 4 CONDITIONS PRECEDENT TO CLOSE OF ESCROW**

**4.1 Conditions Precedent to District's Obligations.** District's obligation to transfer the District Property and Close Escrow, are subject to the satisfaction or written waiver, in whole or in part, by District of each of the conditions precedent set forth in this Section 4.1.

**4.1.1 Identity of Exchange Property.** Subject to Section 1.2 of this Agreement, the District shall have identified the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date; provided, however that if the District has not identified the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date, or if the condition set forth in Section 4.1.4 is not satisfied by the Closing Date, City may acquire the District Property for cash in accordance with Section 1.3 of this Agreement.

**4.1.2 City's Performance.** City shall have performed all of the obligations required by the terms of this Agreement to be performed by City on or before the Close of Escrow. In the event District alleges that City is in default, District shall notify City in writing and describe in reasonable detail the alleged default in detail. City shall have a reasonable time, but not more than fifteen (15) business days, to cure any alleged default.

**4.1.3 City Deliveries Made.** City has deposited with Escrow Holder all documents required of City by this Agreement.

**4.1.4 Exchange Property Title Policy.** The Title Company has committed to issue to District an ALTA non-extended title policy, or at District's choice, an ALTA extended coverage owner's policy of title insurance ("**Exchange Property Title Policy**"), with liability in the amount of the EP Exchange Value, or greater if required in District's sole discretion but at District's expense, showing fee title to the Exchange Property vested in the District, subject only to:

- (a) the standard printed exceptions and exclusions contained in the form of the Title Policy specified by District as commonly used by Title Company;

- (b) title exceptions approved by District pursuant to Section 2.5;
- (c) title exceptions resulting from documents being recorded or delivered through Escrow pursuant to this Agreement; and
- (d) any other exceptions approved in writing by District in its sole and absolute discretion.

The terms of sub-sections (a) through (d), inclusive, being herein collectively referred to as the "**Permitted Exceptions.**"

**4.1.5 Representations and Warranties.** All representations and warranties made by City in this Agreement are true and correct as of the Closing as though made at that time. All such representations and warranties by City shall survive the Close of Escrow and recording of the grant deed for a period of eighteen (18) months.

**4.2 Conditions Precedent to City's Obligations.** City's obligation to exchange for the District Property, upon the Close of Escrow, shall be subject to the satisfaction or written waiver, in whole or in part, by City of each of the conditions precedent set forth in this Section 4.2.

**4.2.1 District's Performance.** The District shall have performed all of the obligations required by the terms of this Agreement to be performed by the District on or before the Close of Escrow. In the event City alleges that District is in default, City shall notify District in writing and describe in reasonable detail the alleged default in detail. District shall have a reasonable time, but not more than fifteen (15) business days, to cure any alleged default.

**4.2.2 District Deliveries Made.** District has deposited with Escrow Holder all documents required of District by this Agreement.

**4.2.4 City Title Policy.** Title Company has committed to issue to City an ALTA non extended, or at City's choice, an ALTA extended coverage owner's policy of title insurance ("**City Title Policy**"), with liability in the amount of the DP Exchange Value, showing fee title to the District Property vested in City, at City's sole cost and expense and subject only to:

- (a) the standard printed exceptions and exclusions contained in the form of the Title Policy specified by District as commonly used by Title Company;
- (b) title exceptions approved by City pursuant to Section 2.5 of this Agreement;
- (c) title exceptions resulting from documents being recorded or delivered through Escrow pursuant to this Agreement; and
- (d) any other exceptions approved in writing by City in its sole and absolute discretion.

The terms of sub-sections (a) through (d), inclusive, being herein collectively referred to as the "**Permitted Exceptions.**"

**4.2.5 Representations and Warranties.** All representations and warranties made by District in this Agreement shall be true and correct as of the Closing as though made at that time. All such representations and warranties by the District shall survive the Close of Escrow and recording of the grant deed for a period of eighteen (18) months.

**4.2.6 Existing Leases.** On or before the date thirty (30) days prior to the Close of Escrow, the District shall vacate all portions of the District Property and shall terminate all leases, rental agreements and other rights of occupancy encumbering the District Property and shall be ready, willing and able to deliver the District Property to City at Close of Escrow free and clear of all leases, agreements, occupancies and occupants.

**4.2.7 Exchange Property Owner Obligations.** If the Exchange Property has been identified, the Property Owner shall have performed all of the obligations to be performed by the Property Owner pursuant to or required by the terms of this Agreement as well as any other agreement relating to the transfer of the Exchange Property.

**4.2.8 Personal Property.** Prior to the Close of Escrow, the District shall remove or cause to be removed from the District Property all personal property currently located on the District Property. However, if there is any personal property on the District Property as of the date scheduled for the Close of Escrow, then in addition to all other rights and remedies available to City at law or in equity (a) if City nevertheless elects to close Escrow, then upon the Close of Escrow, such personal property shall be deemed abandoned by the District and, at the election of City, shall be the property of City, and (b) upon written demand from City, whether before or after the Close of Escrow, the District, at the District's expense, immediately shall remove any such personal property from the District Property.

**4.3 Hazardous Materials; Environmental Compliance.** As a result of the Parties' respective inspections pursuant to Section 2.2, each Party intends to satisfy itself that the District Property and Exchange Property, as applicable, is not in violation of any federal, state, or local law, ordinance, or regulation relating to Hazardous Materials, industrial hygiene, or to the environmental conditions on, under, or about the respective District Property or Exchange Property, or any portion thereof, including, but not limited to, soil and groundwater conditions ("**Environmental Laws**"). If, at any time prior to the expiration of the City Due Diligence Period, City determines that the District Property, or any portion thereof, is in violation of said Environmental Laws, City may elect to terminate this Agreement and cancel the Escrow by delivering written notice to that effect to the District and Escrow Holder, thereby rendering this entire Agreement invalid, void, and unenforceable. If at any time prior to the expiration of the District Due Diligence Period, the District determines that the Exchange Property, or any portion thereof, is in violation of said Environmental Laws, the District shall have the right to continue to locate an alternative Exchange Property or, at the District's sole discretion, have the DP Exchange Value retained in escrow at the Closing pursuant to Section 1.3, but in no event shall the District be permitted to terminate this Agreement solely on such basis so long as the District has the option to continue to locate an alternative Exchange Property or receive the DP Exchange Value in cash. The term "**Hazardous Materials**" when used in this Agreement shall mean any hazardous waste, hazardous substance, hazardous materials or toxic substances as defined, as of the Closing Date, in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395), Hazardous Waste Control Law (Health and Safety Code section 25100-25250.25); the Hazardous Materials Transportation Act, as amended (Title 49 United States Code sections 1801-1819); and any substance defined as "hazardous waste" in Health and Safety Code section 25117 or as a "hazardous substance" in Health and Safety Code section 25316, and in the regulations adopted and publications promulgated under these laws. The term Hazardous Materials shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation as of the Closing Date.

**4.4 Satisfaction of Conditions.** Where satisfaction of any of the foregoing conditions requires action by District or City, each Party shall use its diligent best efforts, in good faith, and at its own cost, to satisfy such condition. Where satisfaction of any of the foregoing conditions requires the approval of a Party, such approval shall be in such Party's sole and absolute discretion.

**4.5 Waiver.** District may at any time or times, at its election, waive any of the conditions set forth in Section 4.1 above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by District and delivered to City. City may at any time or times, at its election, waive any of the conditions set forth in Section 4.2 above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by City and delivered to District.

**4.6 Compliance with California Law.** The Close of Escrow shall be conditioned upon compliance with all applicable California laws relating to the acquisition of real property.

**4.7 Failure of Contingency.** Neither Party shall be obligated to close Escrow pursuant to this Agreement unless and until all contingencies in its favor set forth in this Agreement are satisfied or waived in writing. To the extent that the failure of a contingency in a Party's favor is the result of a breach or default by another Party, the non-defaulting Party(ies) shall have all rights and remedies provided in this Agreement against the defaulting Party.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES-BROKERAGE COMMISSIONS**

**5.1 District's Representations and Warranties.** District hereby makes the following representations and warranties to City, each of which (i) is material and relied upon by City in making its determination to enter into this Agreement, (ii) is to the actual knowledge of District true in all respects as of the Effective Date and shall be true in all respects on the Closing Date, and (iii) shall survive the Close of Escrow for eighteen (18) months:

- (a) The District is a school district duly organized and validly existing under the laws of the State of California, and this Agreement and the execution and delivery thereof by the person designated below have been specifically authorized by the Board. District has full right, power, and authority to enter into this Agreement and to perform District's obligations hereunder. This Agreement and all other documents delivered by District to City now or at the Close of Escrow, have been or will be duly executed and delivered by District and are legal, valid, and binding obligations of District, sufficient to convey to City good and marketable title to the District Property, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which District is a party.
- (b) There are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the District Property or relating to the ownership, maintenance, use or operation of the District Property.
- (c) The District has not received any written notices nor has any actual knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the District Property.

- (d) There are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy and/or use of or otherwise affecting the District Property by any person or entity, except for matters of record approved by City pursuant to Section 2.5.
- (e) District is not actually aware that the District Property, or District, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the District Property or construction of any improvement thereon. District has received no written notice of any such violation of applicable law. City shall make its own independent determination of the feasibility of the use of the District Property for City's intended use.
- (f) District has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.3) to occur on, at, about, or within the District Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the District Property, or any portion thereof.
- (g) The District has not received any written notice from any governmental agency or entity of, and has no knowledge of, any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking in connection with the District Property.
- (h) The District has no knowledge of any existing, pending, threatened or contemplated actions or circumstances that would materially interfere with the development of the District Property for City's intended purposes, other than as expressly stated in this Agreement.

If District becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by District hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, District will give immediate written notice of such changed fact or circumstance to City, but such notice shall not release District of any liabilities or obligations with respect thereto. For the purpose of the foregoing warranties and representations, the knowledge requirement shall be based on actual written notice to District's designated person in a form which would provide actual notice to a person without a duty of inquiry. The District's designated person is solely limited to Carrie Andrews personally and does not include her or any of District's agents, advisors or consultants.

**5.2 City's Representations and Warranties.** City hereby makes the following representations and warranties to District, each of which (i) is material and relied upon by District in making its determination to enter into this Agreement, (ii) is to the actual knowledge of City true in all respects as of the Effective Date and shall be true in all respects on the Closing Date, and (iii) shall survive the Close of Escrow for eighteen (18) months. With respect to any warranty or representation set forth in Section 5.2(b) through (f), inclusive, related to the "Exchange Property" such representation and warranty shall only apply if the Exchange Property (i.e., the property acquired by the District) is owned by City (i.e., one of the City Properties as defined in Section 1.2):

- (a) City has full right, power, and authority to enter into this Agreement and to perform City's obligations hereunder. This Agreement and all other documents delivered by City to District now or at the Close of Escrow, have been or will be duly executed and delivered by City and are legal, valid, and binding obligations of City, sufficient to convey to District good and marketable title to the Exchange

Property, if it is a City Property, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which City is a Party.

- (b) There are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the Exchange Property or relating to the ownership, maintenance, use or operation of the Exchange Property.
- (c) City has not received any written notices nor has any actual knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the Exchange Property.
- (d) There are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy of the Exchange Property by any person or entity, except for matters of record approved by District pursuant to Section 2.5.
- (e) City is not actually aware that the Exchange Property, or City, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the Exchange Property or construction of any improvement thereon. City has received no written notice of any such violation of applicable law. District shall make its own independent determination of the feasibility of the use of the Exchange Property for District's intended use.
- (f) City has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.3) to occur on, at, about, or within the Exchange Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the Exchange Property, or any portion thereof.
- (g) City has not received any written notice from any governmental agency, or entity of, and has no knowledge of, any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking in connection with the Exchange Property, if the Exchange Property is owned by City.
- (h) City has no knowledge of any existing, pending, threatened or contemplated actions or circumstances that would materially interfere with the District's use of the Exchange Property, if the Exchange Property is owned by City, other than as expressly stated in this Agreement.

If City becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by City hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, City will give immediate written notice of such changed fact or circumstance to District, but such notice shall not release City of any liabilities or obligations with respect thereto. For the purpose of the foregoing warranties and representations, the knowledge requirement shall be based on actual written notice to City's designated person in a form which would provide actual notice to a person without a duty of inquiry. City's designated person shall be the City Manager, personally, and shall not include any of City's agents, advisors or consultants.

**5.3 Brokerage Commissions.** There shall be no real estate commissions paid or owed by either District or City. Each Party represents and warrants to the other that it has not dealt with

any broker, agent or finder in connection with this Agreement in any manner that would give rise to any claim for brokerage commissions or finder's fees against the other Party. Each Party shall indemnify, defend and hold harmless the other Party from and against any and all costs and liabilities including, without limitation attorneys' fees, for causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying Party in connection with this Agreement. The foregoing representation and indemnity shall survive the termination of this Agreement.

**ARTICLE 6  
DEFAULT**

**6.1 Liquidated Damages. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT DAMAGES THE DISTRICT SHALL SUSTAIN AS A RESULT OF ANY SUCH DEFAULT WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. THE PARTIES HEREBY AGREE THAT LIQUIDATED DAMAGES IN THE AMOUNT OF THE INITIAL DEPOSIT (AS SET FORTH IN SECTION 1.4) SHALL BE RELEASED TO THE DISTRICT. CITY AND THE DISTRICT AGREE THAT THE DISTRICT'S RIGHT TO RETAIN THE INITIAL DEPOSIT SHALL BE THE SOLE REMEDY OF THE DISTRICT IN THE EVENT OF SUCH A DEFAULT UNDER THIS AGREEMENT BY CITY. THE PAYMENT OF SUCH AMOUNT IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE §3275 OR §3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE DISTRICT UNDER CALIFORNIA CIVIL CODE §§1671, 1676 AND 1677. THE DISTRICT WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE CITY'S OBLIGATION TO PURCHASE THE DISTRICT PROPERTY (INCLUDING WITHOUT LIMITATION THE PROVISIONS OF CIVIL CODE SECTIONS 1680 AND 3389), AND WAIVES ANY RIGHT TO SEEK, CLAIM OR OBTAIN PUNITIVE DAMAGES OR SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY OTHER DAMAGES OR REMEDY FOR SUCH A BREACH BY CITY. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT CITY'S LIABILITY TO THE DISTRICT UNDER THE INDEMNIFICATION IN SECTION 2.2 ABOVE OR FOR ATTORNEYS' FEES AND COSTS AS PROVIDED IN SECTION 8.3 BELOW. ANY AND ALL BREACHES OR DEFAULTS BY CITY OF ANY NATURE OR KIND SHALL BE SUBJECT TO NOTICE AND RIGHT TO CURE WITHIN THE FIFTEEN (15) DAY CURE PERIOD SET FORTH IN SECTION 4.1.2.**

**DISTRICT'S INITIALS \_\_\_\_\_ CITY'S INITIALS \_\_\_\_\_**

**6.2 District's Default.** In the event the District shall breach or default under any of the terms and provisions of this Agreement (after any applicable notice and 15-day cure period set forth in Section 4.2.1), City shall have the right, but not the obligation, in addition to any other rights or remedies which it may have at law or in equity, to (a) terminate this Agreement and the Escrow created hereby, in which event the Initial Deposit, and City shall be entitled to the immediate refund of any funds deposited by City into Escrow or released to District for or related to the District Property, including all interest earned thereon; and thereafter neither Party will have any further rights or obligations hereunder except those which are expressly stated to survive such termination, or (b) pursue the right of specific performance to obtain the District Property. For clarification, City shall have the right to terminate this Agreement and receive the Initial Deposit without prejudice to City's claims against the District for the District's breach of this Agreement.

**ARTICLE 7  
RIGHT OF FIRST REFUSAL**

INTENTIONALLY DELETED.

**ARTICLE 8  
MISCELLANEOUS**

**8.1 Costs of Inspections.** All costs related to the Parties' due diligence inspections and testing, and production of and/or reproduction of the Due Diligence Materials shall be the sole responsibility of the Party expending such costs.

**8.2 California Law.** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California.

**8.3 Attorneys' Fees.** If either Party files any action or brings any proceedings against the other(s) arising out of this Agreement, or is made a party to any action or proceeding brought by a third party in connection with this Agreement, then, as between the Parties, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment.

**8.4 Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery, or electronic mail addressed as follows:

To District:                      Cupertino Union School District  
    10301 Vista Drive  
    Cupertino, CA 95014  
    Attn: Superintendent

With a copy to:                      Dannis Woliver Kelley  
    200 California Street, Suite 400  
    San Francisco, CA 94111  
    Attn: Clarissa R. Canady, Esq.  
    Email: [ccanady@dwkesq.com](mailto:ccanady@dwkesq.com)

To City:                                      City of Cupertino  
    10300 Torre Avenue  
    Cupertino, CA 95014  
    Attn: City Manager  
    Email: [CityManager@cupertino.gov](mailto:CityManager@cupertino.gov)

With a copy to:                      City of Cupertino  
    10300 Torre Avenue  
    Cupertino, CA 95014  
    Attn: Floy Andrews, City Attorney  
    Email: [fandrews@awattorneys.com](mailto:fandrews@awattorneys.com)

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) business days after deposit

in the United States mail. Copied recipients of notices may be provided their copies via email. If transmitted by email (with a PDF attachment), notice shall be given effective upon confirmation of transmission during normal business hours or, if transmission after normal business hours, then on the following business day.

**8.5 Authority.** The person(s) executing this Agreement warrant on behalf of a Party that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

**8.6 Execution in Counterpart.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart.

**8.7 Assignment.** No Party shall, voluntarily or by operation of law, assign, or otherwise transfer any of its rights or obligations under this Agreement, including, without limitation, transferring ownership of any Property to another Party (except as provided in this Agreement), without obtaining the prior written consent of the other Party, which consent may be withheld by the other Party in its sole discretion. The preceding sentence shall not apply to retaining agents, consultants or subcontractors to perform some of a Party's obligations under this Agreement for and on behalf of such Party.

**8.8 Third Party Beneficiaries.** Nothing in this Agreement shall be construed to confer any rights upon any person or entity not a signatory to this Agreement.

**8.9 Binding on Heirs.** This Agreement shall be binding upon the Parties hereto and their respective heirs, representatives, transferees, successors, and assigns.

**8.10 Time of the Essence.** Time is of the essence for each provision of this Agreement in which time is an element.

**8.11 Time.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday or state or national holiday.

**8.12 Cooperation with Further Documents.** The Parties each acknowledge that it may be necessary to execute documents other than those specifically referred to in this Agreement to complete the transaction. Both Parties hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

**8.13 Condemnation.** In the event the District Property is taken, in whole or in part, or designated to be taken by condemnation proceedings, or proceedings in lieu thereof, prior to the Close of Escrow, City shall have until the Close of Escrow within which to elect to either cancel this Agreement and receive a refund of City's Initial Deposit or to Close Escrow without reduction in the DP Exchange Value, in which event the District shall assign to City all rights to condemnation awards in form reasonably satisfactory to City.

**8.14 Entire Agreement of Parties.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether

oral or written. This Agreement may be amended or modified only by a written instrument executed by the Parties.

**8.15 Waiver.** No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a Party of any remedy provided in this Agreement or at law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or at law or in equity, except as otherwise expressly provided in this Agreement.

**8.16 Effect of Recitals.** The Recitals above are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and the Parties acknowledge and agree that they are each bound by same.

**8.17 Section References.** Any reference to any section of this Agreement cited without a decimal includes all sections following the cited section. For example, a reference to Section 5 includes 5.1, 5.1(a) et seq.

**8.18 Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**8.19 Venue.** Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the County of Santa Clara, State of California, and each Party expressly waives its right, under part II, title IV of the California Code of Civil Procedure, to cause any such actions or proceedings to be instituted or prosecuted elsewhere.

**8.20 Interpretation.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto.

**8.21 Covenants to Survive Escrow.** The covenants and agreements contained in this Agreement that by their terms or nature are intended to survive the Close of Escrow shall survive the Close of Escrow.

**8.22 Conflicts of Interest.** No director, officer, official, representative, agent or employee of District or City shall have any financial interest, direct or indirect, in this Agreement.

**8.23 Nondiscrimination.** There shall be no discrimination by the Parties against any person on account of race, color, religion, sex, marital status, national origin, or ancestry in the performance of their respective obligations under this Agreement.

**8.24 Rights and Remedies are Cumulative.** Except as may be otherwise expressly stated in this Agreement (which includes the liquidated damage provision in Section 6.1), the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party.

**8.25 Parties Represented by Counsel.** The Parties acknowledge that: (a) neither Party is in a significantly disparate bargaining position in relation to the other Party; and (b) the District and City are each represented by legal counsel in connection with the transactions contemplated by this Agreement.

**8.26 Electronic Execution.** This Agreement may be executed electronically in compliance with UETA and ESIGN using a qualified national service provider such as DocuSign or AdobeSign.

**8.27 Exhibits.** Exhibits A, A-1, A-2, and B-2 , attached hereto, as well as B-1, to be attached, are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers, as of the Effective Date.

**DISTRICT:**

CUPERTINO UNION SCHOOL DISTRICT, a public school district

By: \_\_\_\_\_  
Satheesh Madhathil, Board President

Dated: \_\_\_\_\_, 2026

**ATTEST:**

By: \_\_\_\_\_  
Sylvia Leong, Board Clerk

APPROVED AS TO FORM:

DANNIS WOLIVER KELLEY

By: \_\_\_\_\_  
Clarissa Canady, Esq.  
District Counsel

**CITY:**

CITY OF CUPERTINO, a California municipal corporation

By: \_\_\_\_\_  
Tina Kapoor, City Manager

Date: \_\_\_\_\_, 2026

**ATTEST:**

By: \_\_\_\_\_  
Lauren Sapudar, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Floy Andrews, City Attorney

**ACCEPTED BY ESCROW HOLDER:**

CHICAGO TITLE COMPANY, a California corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Escrow Officer

**Escrow Opened Date:** \_\_\_\_\_,  
2026

## EXHIBIT A

### Legal Description of District Property

That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows

PARCEL ONE:

BEGINNING AT A STAKE STANDING ON SOUTHERLY LINE OF LAND, NOW OR FORMERLY OF COYKENDALL AND IN THE CENTER OF TANTAU AVENUE; RUNNING THENCE ALONG SAID SOUTHERLY LINE OF LAND NOW OR FORMERLY OF COYKENDALL AND SOUTHERLY LINE OF LANDS NOW OR FORMERLY OF P. MILLER, N. 87° 45' W. 12.82 CHS. TO THE CENTER OF MILLER AVENUE, RUNNING THENCE ALONG THE CENTER OF SAID AVENUE S. 0° 30' W. 20' FEET; THENCE STILL ALONG THE CENTER OF SAID AVENUE S. 87° 45' E. (AT 20 FEET LEAVE SAID AVENUE) 36 IKS. TO A STAKE STANDING AT THE NORTHEASTERLY CORNER OF A TRACT OF LAND CONVEYED BY F. W. TANTAU TO ZLIAS MILLER; THENCE ALONG THE EASTERLY LINE OF SAID MILLER TRACT, S. 2° 15' W. 7.735 CHS. TO A STAKE; THENCE S. 87° 45' E. 12.43 CHS. TO THE CENTER OF SAID TANTAU AVENUE AND THENCE ALONG THE CENTER OF SAID TANTAU AVENUE N. 2° 15' E. 8.035 CHS. TO THE PLACE OF BEGINNING; CONTAINING TEN 10; ACRES AND BEING A PORTION OF THE QUITO RANCHO, AS SURVEYED FEBRUARY 19, 1891 BY JOHN COOMBE SURVEYOR & C.E.

EXCEPTING THEREFROM:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4 INCH IRON PIPE SET ON THE SLY LINE OF "TRACT NO. 550 LOREE ESTATES UNIT NO. 2" A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON 1/3/49, IN BOOK 22 OF MAPS, AT PAGES 4 AND 5, AT THE NORTHEASTERLY CORNER OF THAT CERTAIN 10 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FRED W. TANTAU TO O.M. TUPPER, DATED 2/28/1891, RECORDED 2/28/1891, IN [BOOK 134 OF DEEDS, PAGE 370](#), SANTA CLARA COUNTY RECORDS; RUNNING THENCE FROM SAID POINT OF BEGINNING, NORTH 87° 45' WEST ALONG THE SOUTHERLY LINE OF SAID TRACT NO. 550 AND ALONG THE SOUTHERLY LINE OF "TRACT NO. 1312 CASA DEL SOL NO. 2", A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 16, 1964 IN BOOK 51 OF MAPS, AT PAGE 10, FOR A DISTANCE OF 575.00 FEET; THENCE LEAVING THE SAID SOUTHERLY LINE OF TRACT NO. 1312 AND RUNNING SOUTH 2° 16' WEST AND PARALLEL WITH THE EASTERLY LINE OF SAID 10 ACRE TRACT, FOR A DISTANCE OF 270.00 FEET; RUNNING THENCE NORTH 87° 45' WEST AND PARALLEL WITH THE SAID SOUTHERLY LINE OF TRACT NO. 1312, FOR A DISTANCE OF 255 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN 20.25 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FRED W. TANTAU, TO ELIAS MILLER, DATED FEBRUARY 12, 1891, RECORDED FEBRUARY 12, 1891, IN [BOOK 135 OF DEEDS, PAGE 440](#), SANTA CLARA COUNTY RECORDS; RUNNING THENCE SOUTH 0° 15' WEST ALONG SAID LAST NAMED LINE, FOR A DISTANCE OF 317.00 FEET; THENCE LEAVING THE SAID EASTERLY LINE OF THE 20.25 ACRE TRACT AND RUNNING SOUTH 87° 45' EAST AND PARALLEL WITH THE SAID SOUTHERLY LINE OF TRACT NO. 1312 AND THE SAID SOUTHERLY LINE OF TRACT NO. 550, FOR A DISTANCE OF 830 FEET, MORE OR LESS, TO A POINT IN THE CENTER LINE OF TANTAU AVENUE; RUNNING THENCE NORTH 2° 15' EAST ALONG THE SAID CENTER LINE OF TANTAU AVENUE AND ALONG THE SAID EASTERLY LINE OF THE 10 ACRE TRACT, FOR A DISTANCE OF 587.00 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE QUITO RANCHO.

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PARCEL TWO:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO A. C. ANDERSEN, ET UX, BY FRANCES E. PARRISH IN THE DEED [RECORDED IN BOOK 826 OF DEEDS, AT PAGE 42](#), OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHERLY LINE OF SAID LANDS ABOVE REFERRED TO, N. 88° 19' 16" W. 13.62 FEET TO A POINT DISTANT EASTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF MILLER AVENUE; THENCE LEAVING SAID NORTHERLY LINE, ALONG A LINE PARALLEL TO SAID CENTERLINE OF MILLER AVENUE, S. 0° 22' 18" E. 15.15 FEET; THENCE S. 65° 18' 11" E. 13.97 FEET TO THE EASTERLY LINE OF SAID LANDS CONVEYED TO ANDERSEN; THENCE ALONG SAID LAST MENTIONED EASTERLY LINE, N. 2° 17' 55" E. 20.60 FEET TO THE POINT OF BEGINNING, BEING A PORTION OF THE QUITO RANCHO.

PARCEL THREE:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO A. C. ANDERSEN, ET UX, BY FRANCES E. PARRISH IN THE DEED [RECORDED IN BOOK 826 OF DEEDS, AT PAGE 42](#), OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHERLY LINE OF SAID LANDS ABOVE REFERRED TO, N. 88° 19' 16" WEST 13.62 FEET TO A POINT DISTANT EASTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF MILLER AVENUE; THENCE LEAVING SAID NORTHERLY LINE ALONG A LINE PARALLEL TO SAID CENTERLINE OF MILLER AVENUE, S. 0° 22' 18" E. 2.64 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE ARC OF A CURVE TO THE LEFT, FROM A TANGENT WHICH BEARS S. 89° 05' 21" W., HAVING A RADIUS OF 950.00 FEET, THROUGH A CENTRAL ANGLE OF 1° 12' 27", AN ARC LENGTH OF 20.02 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHERLY PROLONGATION OF THE CENTERLINE OF MILLER AVENUE; THENCE ALONG SAID SOUTHERLY PROLONGATION OF THE CENTERLINE OF MILLER AVENUE, S. 0° 22' 18" E. 2.74 FEET; THENCE S. 65° 18' 11" E. 22.10 FEET TO A POINT DISTANT EASTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES FROM SAID CENTERLINE OF MILLER AVENUE; THENCE ALONG A LINE PARALLEL TO SAID CENTERLINE OF MILLER AVENUE, N. 0° 22' 18" W. 12.51 FEET TO THE TRUE POINT OF BEGINNING, AND BEING A PORTION OF THE QUITO RANCHO.

EXCEPTING THEREFROM THOSE PORTIONS OF PARCELS ONE, TWO AND THREE CONVEYED TO THE COUNTY OF SANTA CLARA BY GRANT DEED RECORDED APRIL 10, 1996 AS [DOCUMENT NO. 0013251350 OFFICIAL RECORDS](#).

PARCEL FOUR:

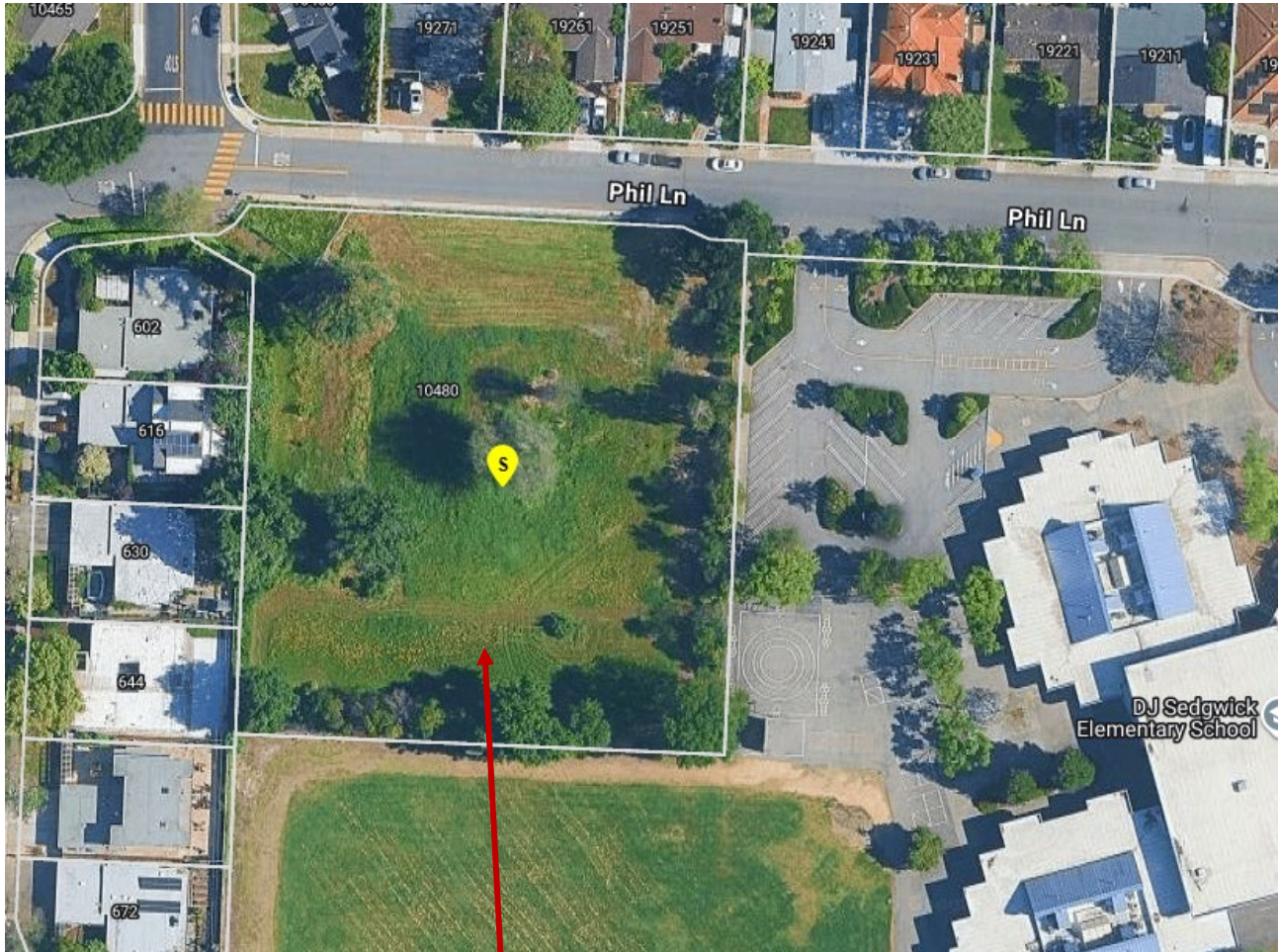
AN EASEMENT FOR THE PURPOSE OF MAINTAINING, REPAIRING, REPLACING AND USING A PIPELINE FOR CONVEYING WATER IN AND ACROSS THE PROPERTY MORE PARTICULARLY DESCRIBED, TO-WIT:

A STRIP OF LAND SIX (6) FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF TANTAU AVENUE 57 FEET NORTH 2° 16' EAST OF THE SOUTHEASTERLY CORNER OF THAT PROPERTY TO BE TAKEN BY PLAINTIFF AND DESCRIBED IN THE COMPLAINT ON FILE IN THIS ACTION; THENCE NORTH 87° 45' WEST IN A STRAIGHT LINE FOR A DISTANCE OF 67 FEET, MORE OR LESS; RUNNING THENCE SOUTH 2° 16' WEST IN A STRAIGHT LINE 67 FEET TO THE SOUTHERLY LINE OF THAT PROPERTY TAKEN BY FINAL JUDGMENT OF CONDEMNATION RECORDED NOVEMBER 2, 1955 IN [BOOK 3322, PAGE 184](#) OFFICIAL RECORDS.

**EXHIBIT A-1**

**Visual Depiction of District Property**



District Property

**EXHIBIT A-2**

**Legal Description of the Exchange Property**

[Exhibit to be completed after the Effective Date pursuant to Section 1.2  
if Exchange Property is confirmed by District.]

**EXHIBIT B-1**

**Grant Deed – Exchange Property**

[Exhibit to be completed after the Effective Date pursuant to Section 3.4  
if Exchange Property is confirmed by District.]

**EXHIBIT B-2**

**Grant Deed – District Property**

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014  
City Clerk

APN 375-40-067

(Space Above This Line for Recorder’s Office Use  
Only)

THE UNDERSIGNED GRANTOR  
DECLARES:  
Documentary Transfer Tax is: \$-0-  
pursuant to R&T Code Section 11922

(Exempt from Recording Fee per Gov. Code  
§6103)

**GRANT DEED**

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, CUPERTINO UNION SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California (“**Grantor**”) hereby grants to the CITY OF CUPERTINO, a California municipal corporation (“**Grantee**”) that certain real property in the City of Cupertino, County of Santa Clara, State of California, legally described on Exhibit A attached hereto and incorporated herein by reference (“**Property**”).

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by its respective officers or agents hereunto as of the date below.

**GRANTOR:**

CUPERTINO UNION SCHOOL DISTRICT, a  
public school district

By: NOT TO BE EXECUTED UNTIL CLOSING  
Satheesh Madhathil,  
Board President

Dated: \_\_\_\_\_, 2026

ATTEST:

By: \_\_\_\_\_  
Sylvia Leong, Board Clerk

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by Grant Deed executed by CUPERTINO UNION SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California as "Grantor" to the CITY OF CUPERTINO, a municipal corporation ("**City**"), is hereby accepted by the undersigned officer and agent of City and the City consents to the recording of the Grant Deed.

Signed and dated on \_\_\_\_\_, 2026 at City of Cupertino, California.

**CITY:**

CITY OF CUPERTINO, a municipal corporation

By: \_\_\_\_\_  
Tina Kapoor, City Manager

## EXHIBIT A TO GRANT DEED

### LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Cupertino, County of Santa Clara, State of California legally described as follows:

PARCEL ONE:

BEGINNING AT A STAKE STANDING ON SOUTHERLY LINE OF LAND, NOW OR FORMERLY OF COYKENDALL AND IN THE CENTER OF TANTAU AVENUE; RUNNING THENCE ALONG SAID SOUTHERLY LINE OF LAND NOW OR FORMERLY OF COYKENDALL AND SOUTHERLY LINE OF LANDS NOW OR FORMERLY OF P. MILLER, N. 87° 45' W. 12.82 CHS. TO THE CENTER OF MILLER AVENUE, RUNNING THENCE ALONG THE CENTER OF SAID AVENUE S. 0° 30' W. 20' FEET; THENCE STILL ALONG THE CENTER OF SAID AVENUE S. 87° 45' E. (AT 20 FEET LEAVE SAID AVENUE) 36 IKS. TO A STAKE STANDING AT THE NORTHEASTERLY CORNER OF A TRACT OF LAND CONVEYED BY F. W. TANTAU TO ZLIAS MILLER; THENCE ALONG THE EASTERLY LINE OF SAID MILLER TRACT, S. 2° 15' W. 7.735 CHS. TO A STAKE; THENCE S. 87° 45' E. 12.43 CHS. TO THE CENTER OF SAID TANTAU AVENUE AND THENCE ALONG THE CENTER OF SAID TANTAU AVENUE N. 2° 15' E. 8.035 CHS. TO THE PLACE OF BEGINNING; CONTAINING TEN 10/100 ACRES AND BEING A PORTION OF THE QUITO RANCHO, AS SURVEYED FEBRUARY 19, 1891 BY JOHN COOMBE SURVEYOR & C.E.

EXCEPTING THEREFROM:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A 34 INCH IRON PIPE SET ON THE SLY LINE OF "TRACT NO. 550 LOREE ESTATES UNIT NO. 2" A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON 1/3/49, IN BOOK 22 OF MAPS, AT PAGES 4 AND 5, AT THE NORTHEASTERLY CORNER OF THAT CERTAIN 10 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FRED W. TANTAU TO Q.M. TUPPER, DATED 2/28/1891, RECORDED 2/28/1891, IN [BOOK 134 OF DEEDS, PAGE 370](#), SANTA CLARA COUNTY RECORDS; RUNNING THENCE FROM SAID POINT OF BEGINNING, NORTH 87° 45' WEST ALONG THE SOUTHERLY LINE OF SAID TRACT NO. 550 AND ALONG THE SOUTHERLY LINE OF "TRACT NO. 1312 CASA DEL SOL NO. 2", A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 16, 1954 IN BOOK 51 OF MAPS, AT PAGE 10, FOR A DISTANCE OF 575.00 FEET; THENCE LEAVING THE SAID SOUTHERLY LINE OF TRACT NO. 1312 AND RUNNING SOUTH 2° 15' WEST AND PARALLEL WITH THE EASTERLY LINE OF SAID 10 ACRE TRACT, FOR A DISTANCE OF 270.00 FEET; RUNNING THENCE NORTH 87° 45' WEST AND PARALLEL WITH THE SAID SOUTHERLY LINE OF TRACT NO. 1312, FOR A DISTANCE OF 255 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN 20.25 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FRED W. TANTAU, TO ELIAS MILLER, DATED FEBRUARY 12, 1891, RECORDED FEBRUARY 12, 1891, IN [BOOK 135 OF DEEDS, PAGE 440](#), SANTA CLARA COUNTY RECORDS; RUNNING THENCE SOUTH 0° 15' WEST ALONG SAID LAST NAMED LINE, FOR A DISTANCE OF 317.00 FEET; THENCE LEAVING THE SAID EASTERLY LINE OF THE 20.25 ACRE TRACT AND RUNNING SOUTH 87° 45' EAST AND PARALLEL WITH THE SAID SOUTHERLY LINE OF TRACT NO. 1312 AND THE SAID SOUTHERLY LINE OF TRACT NO. 550, FOR A DISTANCE OF 830 FEET, MORE OR LESS, TO A POINT IN THE CENTER LINE OF TANTAU AVENUE; RUNNING THENCE NORTH 2° 15' EAST ALONG THE SAID CENTER LINE OF TANTAU AVENUE AND ALONG THE SAID EASTERLY LINE OF THE 10 ACRE TRACT, FOR A DISTANCE OF 587.00 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE QUITO RANCHO.

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PARCEL TWO:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO A. C. ANDERSEN, ET UX, BY FRANCES E. PARRISH IN THE DEED [RECORDED IN BOOK 826 OF DEEDS, AT PAGE 42](#), OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHERLY LINE OF SAID LANDS ABOVE REFERRED TO, N. 88° 19' 16" W. 13.62 FEET TO A POINT DISTANT EASTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF MILLER AVENUE; THENCE LEAVING SAID NORTHERLY LINE, ALONG A LINE PARALLEL TO SAID CENTERLINE OF MILLER AVENUE, S. 0° 22' 18" E. 15.15 FEET; THENCE S. 65° 18' 11" E. 13.97 FEET TO THE EASTERLY LINE OF SAID LANDS CONVEYED TO ANDERSEN; THENCE ALONG SAID LAST MENTIONED EASTERLY LINE, N. 2° 17' 55" E. 20.60 FEET TO THE POINT OF BEGINNING, BEING A PORTION OF THE QUITO RANCHO.

PARCEL THREE:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO A. C. ANDERSEN, ET UX, BY FRANCES E. PARRISH IN THE DEED [RECORDED IN BOOK 826 OF DEEDS, AT PAGE 42](#), OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHERLY LINE OF SAID LANDS ABOVE REFERRED TO, N. 88° 19' 16" WEST 13.62 FEET TO A POINT DISTANT EASTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF MILLER AVENUE; THENCE LEAVING SAID NORTHERLY LINE ALONG A LINE PARALLEL TO SAID CENTERLINE OF MILLER AVENUE, S. 0° 22' 18" E. 2.64 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE ARC OF A CURVE TO THE LEFT, FROM A TANGENT WHICH BEARS S. 89° 06' 21" W., HAVING A RADIUS OF 950.00 FEET, THROUGH A CENTRAL ANGLE OF 1° 12' 27", AN ARC LENGTH OF 20.02 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHERLY PROLONGATION OF THE CENTERLINE OF MILLER AVENUE; THENCE ALONG SAID SOUTHERLY PROLONGATION OF THE CENTERLINE OF MILLER AVENUE, S. 0° 22' 18" E. 2.74 FEET; THENCE S. 65° 18' 11" E. 22.10 FEET TO A POINT DISTANT EASTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES FROM SAID CENTERLINE OF MILLER AVENUE; THENCE ALONG A LINE PARALLEL TO SAID CENTERLINE OF MILLER AVENUE, N. 0° 22' 18" W. 12.51 FEET TO THE TRUE POINT OF BEGINNING, AND BEING A PORTION OF THE QUITO RANCHO.

EXCEPTING THEREFROM THOSE PORTIONS OF PARCELS ONE, TWO AND THREE CONVEYED TO THE COUNTY OF SANTA CLARA BY GRANT DEED RECORDED APRIL 10, 1996 AS [DOCUMENT NO. 0013251350 OFFICIAL RECORDS](#).

PARCEL FOUR:

AN EASEMENT FOR THE PURPOSE OF MAINTAINING, REPAIRING, REPLACING AND USING A PIPELINE FOR CONVEYING WATER IN AND ACROSS THE PROPERTY MORE PARTICULARLY DESCRIBED, TO-WIT:

A STRIP OF LAND SIX (6) FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF TANTAU AVENUE 57 FEET NORTH 2° 16' EAST OF THE SOUTHEASTERLY CORNER OF THAT PROPERTY TO BE TAKEN BY PLAINTIFF AND DESCRIBED IN THE COMPLAINT ON FILE IN THIS ACTION; THENCE NORTH 87° 46' WEST IN A STRAIGHT LINE FOR A DISTANCE OF 57 FEET, MORE OR LESS; RUNNING THENCE SOUTH 2° 16' WEST IN A STRAIGHT LINE 57 FEET TO THE SOUTHERLY LINE OF THAT PROPERTY TAKEN BY FINAL JUDGMENT OF CONDEMNATION RECORDED NOVEMBER 2, 1955 IN [BOOK 3322, PAGE 184](#) OFFICIAL RECORDS.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2026 before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL: