

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

**ARTICLE 1**

**1. Parties**

- 1.1. This Agreement of Purchase and Sale of Real Property and Escrow Instructions (the "Agreement"), dated \_\_\_\_\_, is entered into by and between the BIG PINE VOLUNTEER FIRE PROTECTION DISTRICT, as Buyer ("Buyer"), and the CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, as Seller ("Seller").

**ARTICLE 2**

**2. Recitals**

- 2.1. Seller is the owner of real property located in the County of Inyo, State of California, identified as Assessor's Parcel Number 03-210-38 and a portion of Assessor's Parcel Number 03-210-37, consisting of approximately 1.017 acres of land as further described according to the legal description set forth on Exhibit A, attached hereto and incorporated by this reference, and the block building thereon (collectively, the "Property").
- 2.2. Buyer has leased the Property for the past 45 years for its operation of the Big Pine Volunteer Fire Department.
- 2.3. The Property is being sold without water rights and Seller will retain all water, oil and mineral rights to the Property.
- 2.4. Buyer intends to continue to operate the Big Pine Volunteer Fire Department on the Property.
- 2.5. The Property is improved with a block building, a metal building, and an asphalt parking area. Except for the block building, all other Improvements and related personal property are the property of Buyer and are not being sold by this Agreement.
- 2.6. Seller appraised the Property and determined the fair market value to be \$155,000.
- 2.7. MWH Americas, Inc., conducted Phase I and Phase II Environmental Site Assessments (collectively, "ESA Reports") on January 26, 2011, and February 24, 2011, respectively. The parties agree that the findings stated in the ESA Reports will serve as the baseline for the environmental

condition of the Property at the time of sale.

- 2.8. In consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this Agreement, it is understood and agreed by and between the parties as follows in Articles 3 through 12:

### ARTICLE 3

#### 3. **Purchase Price**

- 3.1. The purchase price ("Purchase Price") for the Property is One-Hundred Fifty Five Thousand Dollars (\$155,000).
- 3.1.1. The Purchase Price will not be changed to include or deduct any costs to Buyer or Seller related to this Transaction. Each party is responsible for any costs or attorney's fees related to review of this Agreement or this Transaction.

### ARTICLE 4

#### 4. **Definitions**

- 4.1. Agreement is defined in Section 1.1.
- 4.2. Appraisal is defined as an opinion of value.
- 4.3. Business Day means a day other than a Saturday, Sunday, or California State holiday.
- 4.4. City is defined as the City of Los Angeles.
- 4.5. City Approval is as defined in Section 8.2.1.
- 4.6. Claims means any and all liens, claims of lien, suits, actions, causes of action, claims, charges, costs, fees (including, without limitation, attorneys' fees and consultants' fees), assessments, liabilities, damages, demands, judgments, fines, penalties, or losses of any kind or nature whatsoever, whether known or unknown, fixed or contingent.
- 4.7. Closing is defined as a meeting of the parties to a real estate transaction held to execute and/or deliver mortgage, title, and escrow documents, the Purchase Price, and other funds, including without limitation, the documents and funds as described in Article 9.
- 4.8. Closing Conditions are defined in Article 8.
- 4.9. Closing Date is defined in Section 9.2.

- 4.10. Consent means the consent or approval of, or notice to or filing with, any Person or Governmental Entity.
- 4.11. Deed is defined in Section 9.3.1.
- 4.12. Effective Date is defined as the date the Agreement is fully executed by both parties.
- 4.13. Environmental Laws mean any and all existing or hereinafter adopted or amended federal, state, or local statutes, common law, ordinances, regulations, rules, orders, decrees, or governmental policies regulating, relating to, or imposing liability (including, but not limited to, response, removal, and remediation costs) or standards of conduct or performance concerning the natural environment, pollution control, Hazardous Substances, or toxic, dangerous, restricted, or designated substances, wastes, or materials. Environmental Laws include, without limitation, the following federal and state laws, amendments thereto, and all regulations, rules, orders, decrees, and governmental policies promulgated thereunder: (a) the Comprehensive Environmental Response, Compensation, and Liability Act (commonly referred to as CERCLA or Superfund), 42 U.S.C. § 9601, et seq.; (b) the Resource Conservation and Recovery Act (commonly referred to as RCRA), 42 U.S.C. § 6901, et seq.; (c) the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), 33 U.S.C. § 1251, et seq.; (d) the Clean Air Act, 42 U.S.C. § 7401, et seq. (e) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; (f) the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (commonly referred to as TSCA); (g) the Federal Insecticide, Fungicide, and Rodenticide Act (commonly referred to as FIFRA), 7 U.S.C. § 136, et seq.; (h) the Emergency Planning and Community Right-to-Know Act (commonly referred to as EPCRA), 42 U.S.C. § 11001, et seq.; (i) the Atomic Energy Act and Low-Level Radioactive Waste Policy Amendments Act, 42 U.S.C. § 2011, et seq.; (j) the Nuclear Waste Policy Act, 42 U.S.C. § 10101, et seq. (commonly referred to as NWPA); (k) the Porter-Cologne Water Quality Control Act, California Water Code § 13000, et seq.; (l) the Carpenter-Presley-Tanner Hazardous Substance Account Act (commonly referred to as HSAA), California Health and Safety Code § 25300, et seq.; (m) the Safe Drinking Water and Toxic Enforcement Act (commonly referred to as Proposition 65), California Health and Safety Code § 25249.5, et seq.; (n) the California Hazardous Waste Control Law, California Health and Safety Code § 25100, et seq.; (o) California's hazardous materials release response plan and inventory laws set forth in California Health and Safety Code § 25500, et seq.; and (p) California's underground storage of hazardous substances laws set forth in California Health and Safety Code § 25280, et seq.

- 4.14. EPA means the United States Environmental Protection Agency.
- 4.15. Escrow Holder is Inyo-Mono Title Company.
- 4.16. Exceptions are defined as any encumbrance, reservation, or limitation on the title or Property.
- 4.17. Fire Department Approval is defined as approval by the Big Pine Volunteer Fire Protection District Board of Directors.
- 4.18. Governmental Entity means any entity or body exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to federal, state, local, or municipal government, including any department, commission, board, agency, bureau, subdivision, instrumentality, official, or other regulatory, administrative or judicial authority thereof, including any authority or other quasi-governmental entity established by a Governmental Entity to perform any of such functions.
- 4.19. Hazardous Substance means (a) any substance, product, waste, or other material of any nature that is or becomes listed, regulated, or addressed under any Environmental Law; (b) any substance, product, waste, or other material of any nature that may give rise to liability under any Environmental Law or under any other statutory or common-law tort theory; (c) any substance, product, waste, or other material that is explosive, corrosive, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is regulated by a Governmental Entity as a hazardous material; (d) petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas useable for fuel, and any mixture thereof; (e) asbestos; (f) polychlorinated biphenyls; (g) urea formaldehyde foam insulation; (h) fossil fuel combustion wastes, including fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste; (i) solid wastes resulting from the extraction and processing of ore; (j) cement kiln dust wastes; (k) lead, arsenic, mercury, chromium, and other metals; (l) volatile organic compounds and semi-volatile organic compounds; (m) polycyclic/polynuclear aromatic hydrocarbons; (n) perchlorate; and (o) radon gas.
- 4.20. Improvement is defined as a building or other relatively permanent structure or development located on, or attached to, land.
- 4.21. Indemnitees means Seller, the Board of Water and Power Commissioners of the Department of Water and Power of the City of Los Angeles, the City, and all of their respective officers, agents, employees, insurers, successors, and assigns.

- 4.22. Lease is defined as a contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.
- 4.23. Personal Property is defined as all tangible property that is not classified as real estate.
- 4.24. Preliminary Report is defined in Section 5.1.
- 4.25. Property is defined in Section 2.1.
- 4.26. Purchase Price is defined in Section 3.1.
- 4.27. Release of Hazardous Substances means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into groundwater, surface water, soil, soil vapor, or air, or otherwise into the environment, as well as continuing migration through groundwater, surface water, soil, soil vapor, or air, or otherwise through the environment.
- 4.28. Tax means any and all taxes imposed by a Governmental Entity, including charges for federal, state, local or foreign net or gross income, gross receipts, net proceeds, sales, use, ad valorem, franchise, withholding, payroll, employment, excise, property, deed, stamp, alternative or add-on minimum, environmental, profits, windfall profits, transaction, license, service, occupation, severance, transfer, unemployment, social security, workers' compensation, capital, premium and other Taxes, assessments, customs, duties, fees, levies or other governmental charges of any nature whatever, whether disputed or not, together with any interest, penalties, additions to Tax or additional amounts with respect thereto, excluding in all cases any expense related to any Permit.
- 4.29. Title Company is Inyo-Mono Title Company.
- 4.30. Title Objection is defined in Section 5.3.1.
- 4.31. Transaction is defined as the purchase of the Property.

## ARTICLE 5

### 5. **Buyer's Contingencies**

- 5.1. **Preliminary Report**. Buyer will obtain a preliminary title report ("Preliminary Report") dated no earlier than ninety (90) days before the Closing Date covering the Property, together with a legible copy of all Exceptions shown in the Preliminary Report, including each document, map, and survey referred to in the Preliminary Report.

- 5.2. Environmental Assessment Report. Buyer acknowledges receipt of the ESA Reports dated January 26, 2011, and February 24, 2011, by MWH Americas, Inc.
- 5.3. Approval of Title. Buyer's obligation to purchase the Property is expressly conditioned on Buyer's approval of the condition of title of the Property in accordance with the following procedure:
- 5.3.1. Buyer's Approval of Preliminary Report. Buyer will have twenty-one (21) days after issuance to review the Preliminary Report and to deliver written notice of any objection to the matters disclosed therein ("Title Objection") to Seller. If Buyer fails to give such notice on or before twenty-one (21) days after issuance, Buyer will be deemed to have accepted the matters disclosed in the Preliminary Report.
- 5.3.2. Permitted Exceptions. Upon Fire Department Approval, all Exceptions are deemed approved by Buyer, including but not limited to: (a) exceptions for a lien for local real estate taxes and assessments not yet due or payable, including (without limitation) special taxes under Gov. Code §§53311-53368.3 or installment assessments under Streets & Highways Code §§8500-8887, and (b) the standard preprinted Exceptions and exclusions of the Title Company.
- 5.3.3. Title Objections. With respect to any Title Objection, Seller will have thirty (30) Business Days after receipt of Buyer's Title Objection to give notice to Buyer in writing, stating either (a) the manner in which Seller will remove or cure such Title Objection, or (b) that Seller will not remove or cure such Title Objection. If Seller fails to deliver such notice within the time specified in this Section 5.3.3, Seller shall be deemed to have elected not to remove or cure such Title Objection.
- 5.3.4. Seller Elects Not to Cure. If Seller elects not to cure or remove a Title Objection (or is deemed to have so elected), or Seller's cure is not acceptable to Buyer, then Buyer will have twenty (20) Business Days thereafter to provide Seller with written notice that Buyer (a) will proceed with the purchase of the Property, waive such Title Objection, and accept the Exception shown in the Preliminary Report as a Permitted Exception, or (b) is terminating this Agreement.
- 5.3.5. Additional Encumbrances. If any encumbrance or other exception to title arises or is discovered after the delivery of the Preliminary Report ("Additional Encumbrance"), the party discovering such

Additional Encumbrance must promptly give written notice to the other. No later than five (5) Business Days after delivery of the notice of such Additional Encumbrance, Buyer will deliver written notice to Seller specifying whether the Additional Encumbrance is a Title Objection or a Permitted Exception. If Buyer objects to the Additional Encumbrance, the parties will proceed in the same manner as set forth above for Title Objections in Sections 5.3.3 and 5.3.4.

- 5.4. Due Diligence. Buyer's obligation to purchase the Property is expressly conditioned on its approval, in its sole discretion, of the condition of the Property and all other matters concerning the Property, including without limitation economic, financial, and accounting matters relating to or affecting the Property or its value, and the physical and environmental condition of the Property. Buyer will have until Fire Department Approval to conduct such investigations as Buyer may choose ("Due Diligence") to determine, in its sole discretion, whether this contingency is met. Upon delivery to Seller of this Agreement executed by Buyer, Buyer will also deliver written notice to Seller accepting the Property, which acceptance shall be conditioned upon satisfaction of Buyer's Closing Conditions. Alternatively, Buyer shall deliver written notice to Seller before approval or termination of this Agreement. If Buyer fails to give either notice, Buyer will be deemed to have elected to terminate this Agreement.
- 5.5. Access to Property. Buyer acknowledges that it is thoroughly familiar with the Property and that it has occupied and used the Property as a fire station for more than 45 years. As part of its Due Diligence, Buyer may investigate economic, financial, and accounting matters relating to or affecting the Property or its value, and conduct inspections, tests and studies with respect to the physical and environmental condition of the Property and Seller recommends that Buyer do so. Buyer and Buyer's consultants, agents, engineers, inspectors, contractors, and employees ("Buyer's Representatives") must be given reasonable access to the Property during regular business hours for the purpose of performing such Due Diligence. Buyer will undertake the Due Diligence at its sole cost and expense. Buyer will indemnify and hold the Indemnitees harmless, and at the option of the City, defend the Indemnitees with counsel satisfactory to the City, from any and all Claims arising from the acts or activities of Buyer or Buyer's Representatives in, on, or about the Property during or arising in connection with Buyer's inspections of the Property.
- 5.6. Assumption of Risk. Subject to the other provisions of this Agreement, Buyer agrees that it assumes the risk that an adverse condition of the Property may not have been revealed by its own Due Diligence. Buyer agrees that Seller will have no obligation to repair, correct, or compensate Buyer for any condition of the Property, including contamination, the

presence of Hazardous Substances or Release of Hazardous Substances, defects in the Improvements, noncompliance with applicable laws including, without limitation, zoning laws, building codes, and the Americans with Disabilities Act, whether or not such condition of the Property would have been disclosed by Buyer's Due Diligence.

- 5.7. Termination for Failure of a Contingency. Any cancellation fee, cost, or other costs of the Escrow Holder or the Title Company resulting from this termination for failure of a contingency will be borne by the terminating party or the party whose action or failure to act resulted in the termination.
- 5.8. Survival. The provisions of this Article 5 shall survive the Closing.

## ARTICLE 6

### 6. Seller's Preclosing Covenants

- 6.1. No Amendments or Agreements. On or after the Effective Date, Seller will not enter into any Lease or other agreement of any type affecting the Property, without Buyer's prior written consent.
- 6.2. Notification. Seller will promptly notify Buyer of any material change in any condition with respect to the Property or of any material event or circumstance that occurs prior to the Effective Date that makes any representation or warranty of Seller under this Agreement untrue or misleading.

## ARTICLE 7

### 7. Representations and Warranties

- 7.1. Effect of Representations and Warranties. Each representation and warranty in this Article 7: (a) is material and being relied on by the party to which the representation and warranty is made; (b) is true in all respects as of the Effective Date; (c) must be true in all respects on the Closing Date; and (d) will survive the Closing, except as otherwise provided in this Agreement.
- 7.2. Seller's Representations and Warranties. Despite anything to the contrary in this Agreement, Seller warrants and represents as of the Effective Date that:
- 7.2.1. No Condemnation. To Seller's knowledge, Seller has received no written notice of any presently pending or contemplated special assessments or proceedings to condemn or demolish the Property or any part of it, or any proceedings to declare the Property or any part of it a nuisance.



7.3. Buyer's Representations and Warranties. Buyer warrants and represents, and specifically discloses and indemnifies Indemnitees, as follows:

7.3.1. Indemnity. Buyer, on behalf of itself and its successors and assigns, hereby undertakes and agrees to indemnify and hold the Indemnitees harmless, and at the option of the City, defend the Indemnitees with counsel satisfactory to the City, from and against any and all Claims that the Indemnitees may pay, sustain, suffer, or incur by reason of or in connection with Buyer's tenancy, ownership, use, and/or occupancy of the Property. Buyer shall not settle any claim without the prior written approval of Seller. Seller shall not unreasonably withhold such approval.

7.3.2. Environmental Indemnity. Buyer, on behalf of itself and its successors and assigns, further undertakes and agrees to indemnify and hold the Indemnitees harmless, and at the option of the City, defend the Indemnitees with counsel satisfactory to the City, from and against any and all Claims that are incurred by or asserted against the Indemnitees as a result of or in connection (a) Buyer's failure to comply with any Environmental Law; (b) the Release of Hazardous Substances on, under, or from the Property; or (c) the presence of Hazardous Substances on or under any other properties, lands, or waters as a result of the Release of Hazardous Substances or other acts, errors, or omissions by Buyer or Buyer's officers, employees, agents, contractors, customers, guests, invitees, or lessees. Buyer's environmental indemnification obligations shall exist regardless of any negligence on the part of Indemnitees, except for the sole negligence or willful misconduct of the Indemnitees. Further, Buyer's environmental indemnification obligations shall apply and be effective for all accidents, occurrences, and events that give rise to Claims, even if the Claims are asserted against the Indemnitees after Closing. The Indemnitees' right to indemnification under this Section 7.3 shall be in addition to any other rights or remedies that the Indemnitees have under law or under other provisions of this Agreement.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: GAB KK MKC B D J. S.

7.4. "As-Is" Purchase. As a material inducement to Seller's extension and delivery of this Agreement, Buyer does hereby acknowledge, represent, warrant and agree to and with Seller that, except as otherwise expressly provided in this Agreement: (a) Buyer is expressly purchasing the Property in its existing condition "as is, where is, and with faults" and specifically and expressly without any warranties, representations or guarantees,

either express or implied, of any kind, nature, or type whatsoever from or on behalf of Seller with respect to all facts, circumstances, conditions and defects; (b) Seller has specifically bargained for the assumption by Buyer of all responsibility for past, present and future actual and potential liability with the Property of any kind, source and or nature and for Buyer's assumption of all responsibility to inspect and investigate the Property and of all risk of; (c) Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property and any or all known and unknown actual or potential liabilities associated with it; (d) Seller is not making and has not made any warranty or representation with respect to any materials or other data provided by Seller to Buyer (whether prepared by or for Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property or for any other purpose; and (e) by reason of all the foregoing, Buyer assumes the full risk of any liability, loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property. Seller hereby disclaims all warranties of any kind or nature whatsoever (including warranties of condition, merchantability, habitability and fitness for particular purposes) whether expressed or implied, including, but not limited to warranties with respect to the Property, tax liabilities, zoning, land value, subdivision or land use, availability of access or utilities, ingress or egress, governmental approvals, or the soil conditions of the Property. Buyer further acknowledges that Buyer is buying the Property "as is" and in its present condition and that except as otherwise expressly provided in this Agreement, Buyer is not relying upon any representation of any kind or nature made by Seller, or any of its employees or agents or Seller group with respect to the Property, and that, in fact, no such representations were made except as expressly set forth in this Agreement. Further and without in any way limiting any other provision of this Agreement, Seller makes no warranty with respect to the presence of Hazardous Substances on or under the Property (or any parcel in proximity thereto), or the Release of Hazardous Substances on, under, or from the Property. By acceptance of this Agreement and the Deed, Buyer acknowledges that Buyer's opportunity for inspection and investigation of the Property has been adequate to enable Buyer to make Buyer's own determination with respect to the presence of Hazardous Substances on or under the Property (or any parcel in proximity thereto), and as to any Release of Hazardous Substances on, under, or from the Property. Furthermore, Buyer's closing, hereunder shall be deemed to constitute an express waiver of Buyer's and its successors' and assigns' rights to sue Seller and of Buyer's right to cause Seller to be joined in an action brought under any Environmental Law. Buyer and Seller intend for

Section 7.3.2 and this Section 7.4 to be construed as an agreement made in accordance with 42 U.S.C. § 9607(e) and California Health and Safety Code § 25364.

- 7.5. General Release. Without in any way limiting the generality of the preceding paragraphs, Buyer, on behalf of itself, its successors and assigns, specifically acknowledges and agrees that it forever waives, releases and discharges any claim it has, might have had or may have against Seller, with respect to the Property or the condition of the Property, any and all known and unknown, either patent or latent, actual and/or potential liabilities associated with the Property and the compliance with any Environmental Law, or occupational protection, subdivision or land use laws or requirements or liability for violations thereof, or any other state of facts which exist with respect to the Property. Buyer waives the benefit of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Seller and Buyer have each initialed this Section 7.5 to further indicate their awareness and acceptance of each and every provision of this Agreement.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: GAB K.K MRC B/H J.F.S.

- 7.6 Buyer specifically acknowledges that Buyer has carefully reviewed the foregoing provisions and discussed its import with legal counsel, is fully aware of its consequences, and that the provisions of this paragraph are a material part of this Agreement. Further, Buyer and Seller specifically acknowledge and agree that each and every provision of Article 7 shall survive the expiration of this Agreement and the delivery of the Deed and the Closing.

## ARTICLE 8

### 8. Closing Conditions

- 8.1. Buyer's Closing Conditions. All obligations of Buyer under this Agreement are subject to the fulfillment, before or at the Closing, of each of the following conditions ("Buyer's Closing Conditions"). Buyer's Closing Conditions are solely for Buyer's benefit and any or all of Buyer's Closing

Conditions may be waived in writing by Buyer in whole or in part without prior notice.

8.1.1. Title. It is a Buyer's Closing Condition that, on the Closing Date, Seller convey to Buyer marketable fee simple title to the Property by execution and delivery of a grant deed and that Buyer is able to obtain a title insurance policy ("Title Policy") at closing in a form acceptable to Buyer.

8.1.2. Buyer's ability to purchase the Property is subject to the approval and execution of this Agreement by the Big Pine Volunteer Fire Protection District Board of Directors.

8.2. Seller's Closing Conditions. Seller's obligation to sell the Property is expressly conditioned on the fulfillment of each condition precedent at or before the Closing ("Seller's Closing Conditions"). Seller's Closing Conditions are solely for Seller's benefit and any of Seller's Closing Conditions may be waived in writing by Seller in whole or in part without prior notice.

8.2.1. City Approval. Seller's ability to sell the Property is subject to the approval of this Agreement by the Board of Water and Power Commissioners of the Department of Water and Power of the City of Los Angeles and possible subsequent action and review by the Los Angeles City Council pursuant to Charter (hereinafter "City Approval"). Pursuant to *FSPP v. City of Los Angeles* (1998) 65 Cal. App. 4th 650, 661, and the laws of the State of California, Buyer realizes and acknowledges that it cannot rely upon the representations of anyone acting on behalf of, or claiming to act on behalf of Seller or as Seller's agent relating to the probability of the Agreement being approved and that this Transaction may or may not be consummated.

8.2.2. Record of Survey. Seller will monument the Property and will file the Record of Survey.

8.2.3. Purchase Price. Buyer must have delivered the Purchase Price to Escrow Holder.

8.2.4. Buyer's Representations, Warranties, and Covenants. The representations and warranties of Buyer in this Agreement must be true in all material respects on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date. Buyer must have performed and complied with all covenants, agreements, and conditions

required by this Agreement to be performed or complied with by it before or on the Closing Date.

- 8.3. Termination for Failure of a Closing Condition. This Transaction is structured as a completely voluntary transaction. If Buyer's Closing Conditions or Seller's Closing Conditions, as the case may be, have not been previously approved or waived, this Agreement may be terminated by the party in whose favor the Closing Condition runs by written notice to the other. If this Agreement is so terminated, the parties will have no further obligation or liability under this Agreement or right to specific performance, declaratory relief or money damages. Any cancellation fee, cost, or other costs of the Escrow Holder or the Title Company resulting from this termination for failure of a closing condition will be equally borne by Buyer and Seller, unless satisfaction of the condition(s) is within the control of Buyer or Seller, in which case the party having had such control shall be solely responsible for any cancellation fee, cost, or other costs of the Escrow Holder or Title Company from the termination.

## ARTICLE 9

### 9. Closing

- 9.1. Escrow. Escrow will be opened with the Escrow Holder on the execution of this Agreement. Buyer and Seller will promptly execute such additional escrow instructions, on the Escrow Holder's request, as are reasonably required to consummate the transaction contemplated by this Agreement and are not inconsistent with this Agreement.
- 9.2. Closing Date. Seller and Buyer agree that the Closing will occur on the "Closing Date." The Closing Date will be a date mutually agreeable to Buyer and Seller, but no later than October 31, 2016. The Closing will be at the offices of Escrow Holder or such other place as the parties may agree.
- 9.3. Seller's Deposit of Documents and Funds. Seller must deposit into escrow the following documents duly executed by Seller:
- 9.3.1. Deed: The duly executed and acknowledged grant deed ("Deed") conveying the Property to Buyer.
- 9.3.2. Additional Documents: Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable to convey the Property in accordance with this Agreement.

9.4. Buyer's Deposit of Documents and Funds. Buyer must deposit into escrow the following funds and documents duly executed by Buyer in form and substance reasonably satisfactory to Seller:

9.4.1. Purchase Price: The Purchase Price in accordance with Article 3.

9.4.2. Conveyance Documents: Such documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.5. Closing Costs. Closing costs will be allocated as follows:

9.5.1. Buyer will pay all of the escrow costs, including without limitation, Escrow Holder's costs;

9.5.2. Buyer will pay the cost of the Preliminary Report and Title Policy, including without limitation, Title Company's costs.

9.6. Broker's Commission; Indemnity. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this Transaction, through any licensed real estate broker or person who can claim a commission or finder's fee as a procuring cause of the sale contemplated in this Agreement. If any other broker or finder perfects a claim for a commission or finder's fee based on any contract, dealings, or communication with a party ("Indemnifying Party"), then the Indemnifying Party must indemnify, defend, and hold the other party ("Non-indemnifying Party") harmless from all costs and expenses (including reasonable attorney fees and costs of defense) incurred by the Non-indemnifying Party in connection with such claim.

9.7. Possession. Seller will deliver exclusive right of possession of the Property to Buyer on the Closing Date.

## ARTICLE 10

### 10. Future Sale/Transfer of Property

10.1. Condemnation. If before the Closing Date any action or proceeding is commenced for the condemnation or exercise of the rights of eminent domain of the Property or any portion of it, or if Seller is notified by the duly authorized officer of a duly empowered condemning authority of the intent to commence such action or proceeding ("Condemnation") and if such Condemnation would materially and adversely affect the use or operation of the Property, have the effect of decreasing the square footage of the Improvements, or reduce or eliminate access to the Property, then Buyer may either (a) terminate this Agreement or (b)

proceed with the Closing without modifying the terms of this Agreement and without reducing the Purchase Price, on the condition that Seller must assign and turn over, and Buyer will be entitled to keep, all awards for the Condemnation that accrue to Seller. Seller may not negotiate, resist, or stipulate to any Condemnation without Buyer's written consent. Seller must notify Buyer of any notice of Condemnation of all or any portion of the Property within five (5) days after the receipt of this notice, and Buyer must exercise its option(s) as provided in this Section 10.1 within ten (10) days after receipt of such notice. If necessary, the Closing Date will be extended to give Buyer the full ten (10) day period to make such election.

## ARTICLE 11

### 11. Remedies for Default

11.1. WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND DAMAGES. NEITHER BUYER NOR SELLER WILL HAVE THE RIGHT TO SPECIFIC PERFORMANCE OR TO RECOVER DAMAGES IF THE OTHER PARTY FAILS TO CONVEY (OR TO PURCHASE) THE PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT, AND IF SUCH FAILURE CONSTITUTES A DEFAULT UNDER THIS AGREEMENT, NEITHER BUYER NOR SELLER WILL HAVE THE RIGHT TO RECEIVE ANY MONEY DAMAGES. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS SECTION 11.1 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

Seller's Initials: \_\_\_\_\_

Buyer's Initials: MT MKC *N.K.* *Emb* *J. L.S.*

## ARTICLE 12

### 12. General

12.1. Notices. Any notices relating to this Agreement must be given in writing and will be deemed sufficiently given and served for all purposes when delivered personally, by generally recognized overnight courier service, by facsimile (provided that sender retains a printed confirmation of delivery to the facsimile number provided below), or five (5) days after deposit in the United States mail certified or registered, return receipt requested, with postage prepaid, addressed as follows:

If to Buyer:

Big Pine Volunteer Fire Protection District  
PO Box 382  
Big Pine, CA 93513

With copy to:

Office of the County Counsel  
County of Inyo  
P.O. Drawer M  
Independence, CA 93526

If to Seller:

James G. Yannotta  
Manager of Aqueduct  
City of Los Angeles  
Department of Water and Power  
300 Mandich Street  
Bishop, CA 93514-3449

With copy to:

Office of the City Attorney  
City of Los Angeles  
Department of Water and Power  
111 N. Hope Street, Room 340  
P.O. Box 51111  
Los Angeles, CA 90051

Either party may change its address by written notice to the other given in the manner set forth above.

- 12.2. Entire Agreement. This Agreement and all exhibits referred to in this Agreement constitute the complete, exclusive, and final statement of the terms of the agreement with respect to the Property between Buyer and Seller and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the parties. The language in all parts of this Agreement will be construed as a whole in accordance with its fair meaning and without regard to California Civil Code §1654 or similar statutes. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.
- 12.3. Amendments and Waivers. No addition to or modification of this Agreement will be effective unless it is made in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver will not be enforceable by another party unless it is made in writing and signed by the waiving party.



- 12.4. Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
- 12.5. No Merger. This Agreement, each provision of it, and all warranties and representations in this Agreement will survive the Closing and will not merge in any instrument conveying title to Buyer. All representations, warranties, agreements, and obligations of the parties will, despite any investigation made by any party to this Agreement, survive Closing, and the same will inure to the benefit of and be binding on the parties' respective successors and assigns.
- 12.6. References. Unless otherwise indicated, (a) all article and section references are to the articles and sections of this Agreement; and (b) all references to days are to calendar days. Whenever, under the terms of this Agreement, the time for performance of a covenant or condition falls on a Saturday, Sunday, or California state holiday, such time for performance will be extended to the next Business Day. The headings used in this Agreement are provided for convenience only and this Agreement will be interpreted without reference to any headings. The date of this Agreement is for reference purposes only and is not necessarily the date on which it was entered into.
- 12.7. Governing Law. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of California without regard to conflict of law principles.
- 12.8. Intentionally Omitted.
- 12.9. Jointly Drafted by the Parties. Each of the parties hereto acknowledges that it had a full and fair opportunity to review and revise the terms of this Agreement and that this Agreement has been drafted jointly by all of the parties hereto. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of another party.
- 12.10. Termination. Upon thirty (30) Business Days prior written notice prior to City Approval, this Agreement may be terminated or cancelled at any time by either party, for any reason or for no reason at all, and may be terminated and cancelled completely without cause. If this Agreement is so terminated, the parties will have no further obligation or liability under this Agreement or right to specific performance, declaratory relief or

money damages. Any cancellation fee, cost, or other costs of the Escrow Holder or the Title Company resulting from this termination for failure of a contingency or closing condition will be borne by the terminating party or the party whose action or failure to act resulted in the termination.

- 12.11. Time. Time is of the essence in the performance of the parties' respective obligations under this Agreement.
- 12.12. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 12.13. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party to this Agreement or give any third person any right of subrogation or action over against any party to this Agreement.
- 12.14. Interpretation. Throughout this Agreement, (a) the plural and singular numbers will each be considered to include the other; (b) the masculine, feminine, and neuter genders will each be considered to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes" and "including" are not limiting.
- 12.15. No Attorney's Fees. In the event of any action or suit under, or to enforce, this Agreement, the parties shall be responsible for their own costs, expenses and attorney's fees incurred. The prevailing party shall not be entitled to reasonable attorneys' fees.
- 12.16. No Consequential/Punitive Damages. In no event shall either party be liable to the other party under any provision of this Agreement for any indirect, incidental, punitive or consequential damages, losses, damages, costs or expenses including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole in or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a party may be liable to the other party under another agreement will not be considered to be indirect, incidental, punitive or consequential damages hereunder.

- 12.17. Independent Counsel. Each party was represented by legal counsel during the negotiation and execution of this Agreement. Each party shall be responsible for its own, respective, fees and expenses of legal counsel and consultants incurred as a result of this Agreement or the transactions contemplated thereby.
- 12.18. Authority. Buyer and Seller agree that the person executing this Agreement on behalf of Buyer and Seller, respectively, has the authority and power to do so and to bind Buyer and Seller, respectively, in accordance with the provisions set forth herein.
- 12.19. Assignment. Buyer may not assign any of its rights under this Agreement.
- 12.20. Modification. This Agreement may not be modified except by a written instrument executed by all parties or their permitted successors in interest.
- 12.21. No Joint Venture. Nothing herein contained shall be construed to create a joint venture or partnership or to create the relationship of principal and agent or of any association between the parties hereto.
- 12.22. Further Assurances. Each party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

(Signatures follow on next page)

IN WITNESS WHEREOF, the parties have executed this Agreement on:

**BUYER:**

BIG PINE VOLUNTEER FIRE  
PROTECTION DISTRICT  
BY  
BOARD OF DIRECTORS

Date: 4-27-2016

By:   
JERI STOUT

Date: 4-27-2016

By:   
MIKE CARRINGTON

Date: 4/27/16

By:   
GREGORY BIRD

Date: 4/27/16

By:   
KERRY KOONTZ

Date: 4/27/16

By:   
BRIAN HOWARD

**AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS** is entered into and accepted on the dates indicated by our signatures affixed hereto.

**SELLER:**

DEPARTMENT OF WATER AND POWER  
OF THE CITY OF LOS ANGELES BY  
BOARD OF WATER AND POWER COMMISSIONERS

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

By: \_\_\_\_\_  
**DAVID H. WRIGHT**  
Interim General Manager

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

And: \_\_\_\_\_  
**BARBARA E. MOSCHOS**  
Secretary

**AUTHORIZED BY:**

Resolution No. \_\_\_\_\_  
Adopted \_\_\_\_\_

**APPROVED BY COUNCIL ON:**

\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
MICHAEL N. FEUER, CITY ATTORNEY

APR 06 2016  
BY John BeNUM  
JOHN BEANUM  
DEPUTY CITY ATTORNEY

## TABLE OF EXHIBITS

Exhibit A: Legal Description

**EXHIBIT A**

**LEGAL DESCRIPTION**

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That portion of the easterly 270.00 feet of Block 68, of the Town of Big Pine, County of Inyo, State of California, per Official Map of said Town filed for record in Book 1, page 48 of Maps in the office of the County Recorder of said County, being northerly of the southerly 381.65 feet of said Block 68, and contiguous with the northerly line of that parcel of real property described in Deed recorded in Official Records, Volume 69, page 339, in said Recorder's office, and bound on the northerly by a line starting on the easterly line of said Block 68, 567.94 feet northerly of the southeasterly corner of said Block 68, and running southwesterly to the end point on the westerly line of said easterly 270.00 feet of Block 68, located northerly 559.17 feet of the southwesterly corner of said easterly 270.00 feet of Block 68.

EXCEPTING therefrom that portion of said Block 68 per Deed, recorded in Book 38, page 233, and per Deed, recorded in Official Records Volume 49, page 53.

CONTAINING 1.017 acres, more or less.

RESERVING unto the City of Los Angeles Department of Water and Power, three Utility Easements and Rights-of-Way to set power poles and guy wires; to construct, maintain, and repair power lines, underground conduit, appurtenant fixtures, and equipment; and the right to trim trees at anytime, in such a manner as to prevent interference with the same, together with the right of ingress and egress, all in, over, under, and across that portion of the real property conveyed herein, and described as follows:

1. A strip of land 10.00 feet wide, lying 5.00 feet on each side of the following described center line:

COMMENCING at a point on the northerly line of the above described parcel being 124.14 feet westerly of the northeasterly corner of said parcel; thence in a southeasterly direction to the end point on the easterly line of the above described parcel being 38.30 feet southerly of said northeasterly corner.

2. The southerly 5.00 feet of the above described parcel.
3. The easterly 31.00 feet of the above described parcel.

SUBJECT to the Easement Deed to the State of California, for public highway purposes recorded in Official Records, Volume 49, page 55, in said Recorder's office.

ALSO SUBJECT TO any and all easements, covenants, conditions, restrictions, and other matters of record.

**END OF DESCRIPTION**