

Memorandum

Agenda Item 3a

TO: Bay Area Headquarters Authority

DATE: May 16, 2018

FR: Executive Director

W. I. 9130

RE: Bay Area Metro Center Purchase and Sale Agreement (BAAQMD) – Not to exceed \$5,005,000

Summary

This memorandum requests approval for the Bay Area Headquarters Authority to sell a portion of Unit 2, as defined in Attachment A, to the Bay Area Air Quality Management District (Air District), to be incorporated into Unit 3.

Background

The Air District agreed to participate in the purchase of 390 Main Street in June 2011, and in March 2012, the Authority approved the terms of a Purchase and Sale Agreement pursuant to which the Air District acquired a condominium unit in the building at a purchase price of \$385/rentable square foot (rsf). In October 2016, staff presented BAHA with a plan to offset a portion of the last \$10 million of construction cost overruns through the sale of additional space to the Air District at the same purchase price of \$385/rsf. Other realized funding sources include a BATA toll contribution, an insurance claim related to the power outage in January 2016, a design claim, and a Transportation Fund for Clean Air (TFCA) grant from the Air District. Projected reimbursements from PGE for utility undergrounding and generator modification were not realized, as reflected in the table below. In total, our funding strategy has covered the \$10 million in extra construction cost with about a million dollars to spare.

Update of 10/2016 Approved Budget

<u>Sources (\$ millions)</u>	10/2016 presented to BAHA	5/2018 update
1 BATA toll contribution	\$5.7	\$5.7
2 Air District purchase	4.0	4.4
3 ABAG TI and purchase	0.4	
4 Insurance / Claims		1.7
5 PG&E reimbursement	-0.4	-0.9
6 TFCA grant	0.3	0.3
7 Total	\$10.0	\$11.2

BAHA and the Air District have agreed on terms for the sale of additional space, as reflected in Attachment A, Purchase and Sale Agreement (PSA) and Joint Escrow Instructions. BAHA would sell approximately 11,400 rsf (measured at a load factor of 1.07), but not more than 13,000 rsf, as depicted in Attachment B, to the Air District at the price of \$385/rsf. The Covenants, Conditions, and Restrictions (CC&Rs) dated December 22, 2016 establish BAHA as the owner of Unit 2 and Air District as the owner of Unit 3; the agreement would transfer the

space from Unit 2 to Unit 3, thereby maintaining a four-unit condominium. A civil engineering firm will map and calculate the exact area, and the final purchase price will be determined based upon the final square footage figure.

Execution of the PSA is subject to the approval of the transaction by the Air District and 375 Beale Condominium Corporation.

Recommendation

That the Authority approve the sale of approximately 11,400 rsf, but not more than 13,000 rsf of its Unit 2 on Level 8 to Air District, to be incorporated into Unit 3, in substantially the form of Attachment A, Purchase and Sale Agreement and Joint Escrow Instructions, at a price of \$385/rsf, with a total purchase price not to exceed \$5,005,000, and authorize the Executive Director and Treasurer/Auditor to negotiate and execute the Purchase and Sale Agreement and Joint Escrow Instructions with the Air District and to negotiate and execute amended CC&Rs to reflect the amended condominium map and revised ownership percentages.



Steve Heminger

Attachments

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REQUEST FOR AUTHORITY APPROVAL

Summary of Contract

Contractor:	Bay Area Air Quality Management District (Air District)
Work Project Title:	Purchase and Sale Agreement
Purpose of Project:	Sale of space from BAHA to Air District
Brief Scope of Work:	Sale of space from BAHA to Air District
Sale Proceeds:	Approximately 11,400 rentable square feet (rsf), but not more than 13,000 rsf at a price of \$385/rsf for a total purchase price not to exceed \$5,005,000.
Funding Source:	N/A
Fiscal Impact:	N/A
Motion by Authority:	That the Executive Director or his designee and the Treasurer/Auditor are authorized to execute a Purchase and Sale Agreement and Joint Escrow Instructions and amended Covenants, Conditions, and Restrictions described above and in the Executive Director's memorandum dated May 16, 2018.
BAHA Chair:	<hr/> Jake Mackenzie
Approved:	Date: May 23, 2018

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the ____ day of April, 2018, by and between BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Seller"), and BAY AREA AIR QUALITY MANAGEMENT DISTRICT, a regional air pollution control agency ("Buyer").

WHEREAS, Seller is the owner of two condominium units in the building located at 375 Beale Street in the City and County of San Francisco (the "Building"), which units are identified as Lots 1 and 2 on the Condominium Plan recorded in the Official Records of the City and County of San Francisco as Parcel Map No. 8905 on October 28, 2016 ("Condominium Plan"), a copy of which is attached to Exhibit A to this Agreement; and

WHEREAS, Buyer is the owner of one condominium unit in the Building, identified as Lot 3 on the Condominium Plan; and

WHEREAS, the Association of Bay Area Governments ("ABAG") is the owner of the remaining condominium unit in the Building, identified as Lot 4 on the Condominium Plan; and

WHEREAS, the condominium units identified in the Condominium Plan and related interior and exterior common areas are subject to the terms of that certain Declaration of Covenants, Conditions and Restrictions for 375 Beale Street. recorded in the Official Records of the City and County of San Francisco as 2016K388389 on December 27, 2016 ("CC&Rs"); and

WHEREAS, Buyer desires to purchase from Seller a portion of Lot 2, containing approximately 11,400 sq. ft. located on the 8th floor of the Building (the "8th Flr Additional Space"), as more particularly depicted on Exhibit B attached to this Agreement (the "Additional Space"). IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer hereby agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following (collectively, the "Property"):

(a) The Additional Space, together with all rights, privileges, easements and appurtenances to or affecting the Additional Space set forth in the CC&Rs (collectively, the "Real Property"); and

(b) all of Seller's right, title and interest in and to the furniture and other personal property installed by Seller listed in the table in Exhibit B attached hereto (the "Personal Property").

All capitalized terms not otherwise defined herein shall have the meanings set forth in the CC&Rs.

2. Purchase Price; Independent Consideration.

(a) Purchase Price and Manner of Payment.

(i) Base Purchase Price. The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property at closing shall be Four Million Three Hundred Eighty-nine Thousand Dollars (\$4,389,000.00). The Purchase Price shall be paid in cash or other immediately available funds through the escrow established pursuant to Section 7 below.

(ii) Contingent Purchase Price. At such time as Buyer sells the Real Property to any party other than a successor agency charged with managing air quality in the San Francisco Bay Area, if the net proceeds received by Buyer, after deducting Buyer's share of closing costs, exceeds the Purchase Price set forth in subparagraph (i) above, Buyer shall pay to Seller immediately upon the closing of such sale that portion of such excess equal to the amount, if any, by which the Agency Footprint Actual Cost exceeds the Purchase Price set forth in (i) above. "Agency Footprint Actual Cost" shall mean the total cost actually incurred by Seller in acquiring, remodeling and furnishing the Agency Space (as defined in the CC&Rs) in the amount of \$ _____ multiplied by ____%. The provisions of this Section 2(a)(ii) shall survive the Closing.

(b) Independent Consideration. Upon mutual execution of this Agreement, Buyer shall deliver to Seller in cash the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) (the "Independent Contract Consideration") which amount has been bargained for and agreed to as consideration for Buyer's exclusive option to purchase the Property provided hereunder and for Seller's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, and is nonrefundable in all events.

3. Amendment of Condominium Plan and CC&Rs. Seller and Buyer shall work together cooperatively to develop an amended Condominium Plan modifying the footprints of Lots 2 and 3 and to agree upon any amendments required to the CC&Rs, including without limitation corresponding changes to the percentage ownership interests of each of Buyer and Seller and the exhibits depicting the location and size of each condominium unit. The parties agree that the amendments to the CC&Rs are not intended to otherwise change the respective rights and obligations of the Unit Owners, as currently set forth in the CC&Rs.

4. Seller's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, Seller shall, to the extent Seller has not already done so, deliver or cause to be delivered to Buyer the following, to the extent in Seller's actual possession (collectively, the "Due Diligence Materials") at Seller's sole cost and expense: (a) a current preliminary title report prepared by Title Company with respect to Lots 2 and 3, together with legible copies of all underlying documents referenced therein (collectively, the "Preliminary Report") and (b) copies of any Due Diligence Materials, as defined in that certain Purchase and Sale Agreement and Joint Escrow Instructions dated March __, 2017 with respect to Buyer's acquisition of Lot 3 (the "Lot 3 Purchase Agreement"), pertaining to the Real Property and not previously provided to Buyer pursuant to the Lot 3 Purchase Agreement. The Due Diligence Materials are for Buyer's use in connection with Buyer's investigation of the Property. Buyer acknowledges that, except as otherwise provided in Section 10 below, Seller is not making any

representation or warranty of any kind with respect to the Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by Buyer.

5. Buyer's Review and Seller's Disclaimer.

(a) Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by Buyer and Seller or (ii) the date on which Seller has delivered to Buyer any new Due Diligence Materials or a written statement addressed to Buyer that there are no Due Diligence Materials not delivered to Buyer in connection with its purchase of Lot 3.

(b) Physical Inspection. Buyer hereby acknowledges that it has had ample opportunity to observe and inspect the physical condition of the Additional Space and the building of which it is a part.

(c) Title. Buyer shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by Buyer in writing within the applicable review period shall be deemed approved and shall be referred to as "Permitted Exceptions." In the event that Buyer notifies Seller in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("Objections"), Seller shall have the right, but not the obligation, to cure any of the Objections by removing or causing the Title Company to insure over such Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed if necessary. If Seller is unable to cure any Objections within said thirty (30) day period, or if Seller gives Buyer written notice at any time during said thirty (30) day period stating that Seller declines to attempt to cure any of the Objections, then Buyer will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from Seller, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the Objections (and the Buyer's Condition Precedent described in Section 6(b) of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, Seller shall be obligated to remove from title on or before Closing any monetary liens affecting the Property (other than monetary liens resulting from Buyer's acts).

(d) As-Is Sale. Except as otherwise expressly set forth in Sections 10, 14, and 16 of this Agreement and any of the documents delivered by Seller at Closing, neither Seller nor its directors, officers, employees, agents, representatives or attorneys (collectively, the "Seller Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to Buyer including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the Property for Buyer's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Additional Space, the condition of title thereto, the truth, accuracy or completeness of the Due Diligence Materials, or as to any other past, present or future matter whatsoever. Buyer acknowledges and agrees that it has satisfied itself regarding the condition of

the Property and the foregoing matters, and, except as otherwise provided in this Section 5(d), that the Property will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that Buyer assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

(e) Buyer's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by Seller at Closing or the breach of any covenants in that certain Office Lease (the "Lease") between Seller, as landlord, and Buyer, as tenant, which by their terms survive the termination of the Lease, Buyer, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges Seller, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which Buyer has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. Buyer hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Buyer hereby specifically acknowledges that Buyer has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

Buyer Initials

6. Buyer's Conditions Precedent to Closing. The following are conditions precedent to Buyer's obligation to purchase the Property (the "Buyer's Conditions Precedent"). Buyer's Conditions Precedent are intended solely for the benefit of Buyer and may be waived only by Buyer in writing. In the event any Buyer's Condition Precedent is not satisfied, Buyer may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

(a) Property Condition. Buyer's inspection, review and approval, prior to expiration of the Inspection Period, of the Preliminary Report and any new Due Diligence Materials provided to Buyer pursuant to Section 5 above, which approval shall be deemed given unless Buyer shall give written notice of disapproval prior to the expiration of the Inspection Period.

(b) Amendment of Condominium Plan and CC&Rs. Buyer and Seller have agreed upon amendments to the Condominium Plan and the CC&Rs in accordance with the provisions of Section 3 above, and any required governmental and/or Unit Owner approvals of such amendments have been obtained.

(c) Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to Buyer upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price, insuring fee simple title to Lot 3, as reconfigured, in Buyer, subject only to the Permitted Exceptions and such other exceptions as Buyer shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "Buyer's Title Policy").

(d) Performance by Seller. Seller shall have complied, in all material respects, with all of Seller's duties and obligations contained in this Agreement and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

7. Seller's Conditions Precedent to Closing. The following are conditions precedent to Seller's obligation to sell the Property (the "Seller's Conditions Precedent"). Seller's Conditions Precedent are intended solely for the benefit of Seller and may be waived only by Seller in writing. In the event any Seller's Condition Precedent is not satisfied, Seller may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

(a) Performance by Buyer. Buyer shall have complied, in all material respects, with all of Buyer's duties and obligations contained in this Agreement and all of Buyer's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

(b) Amendment of the Condominium Plan and CC&Rs. Buyer and Seller shall have agreed upon amendments to the Condominium Plan and CC&Rs in accordance with Section 3, and any required governmental and/or Unit Owner approvals of such amendments have been obtained.

(c) Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to Seller upon the Closing an ALTA owner's policy of title insurance (2006) [in the amount of _____], insuring fee simple title to Lot 2, as reconfigured, in Seller, subject only to such exceptions as Seller shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company [during the Inspection Period?] (the "Seller's Title Policy").

8. Escrow; Closing.

(a) Escrow. Upon mutual execution of this Agreement, the parties hereto shall deposit a fully executed copy of this Agreement with First American Title Insurance Company, 1850 Mt. Diablo Blvd., Suite 300, Walnut Creek, California 94596; Escrow Officer: Kitty Schlesinger) (hereinafter "Title Company" or "Escrow Holder") and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase contemplated hereby. Seller and Buyer shall execute such supplemental escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental

escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by Buyer and/or Seller, the terms of this Agreement shall control.

(b) Closing. The parties intend for the consummation of the sale of the Property as provided hereunder (the "Closing") to take place through escrow on such date as may be agreed to by Seller and Buyer, but in no event later than _____ (the "Closing Date").

(c) Seller's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, Seller shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit C (the "Deed");

(ii) Bill of Sale. Two (2) duly executed counterpart originals of a bill of sale with respect to the Personal Property in the form attached to this Agreement as Exhibit D (the "Bill of Sale");

(iii) Amended Condominium Plan and CC&Rs. An amended Condominium Plan and a duly executed and recorded Amended Declaration of Covenants, Conditions and Restrictions for 375 Beale Street, San Francisco; and

(iv) Seller's Certificate. A duly executed Certificate confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 10, except as otherwise may be set forth in the Certificate.

(d) Buyer's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, Buyer shall deliver to Escrow Holder the following:

(i) Bill of Sale. Two (2) duly executed counterpart originals of the Bill of Sale;

(ii) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required); and

(iii) Purchase Price. Immediately available funds in the amount of the Purchase Price plus Buyer's share of Closing Costs.

(e) Additional Closing Documents. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

9. Closing Costs and Prorations. Seller and Buyer agree to the following prorations and allocation of costs ("Closing Costs") regarding this Agreement:

(a) Real Estate Taxes Assessments. Buyer and Seller are each governmental entities and are not subject to real property taxes. In the event there are any assessments which

attach to governmentally owned real property, such assessments shall be prorated and adjusted between Seller and Buyer as of the Closing Date so that Seller shall pay, or give Buyer credit for, any such assessments that accrued on or prior to the Closing Date and Buyer shall pay, or assume, any such assessments that accrue after the Closing Date. The obligations of Buyer and Seller set forth in this Section 9(a) shall survive the Closing.

(b) Property Expenses. Any utilities or other operating expenses attributable to the Additional Space shall be prorated and adjusted between Buyer and Seller as of the Closing Date.

(c) Title Insurance and Escrow Fee. Seller shall pay the premium attributable to the Title Policy and any reasonable and customary escrow fee or charge imposed by Escrow Holder.

(d) Recording Costs. Seller shall pay the cost of recording the Deed and all other documents, if any, recorded pursuant to the terms of this Agreement.

(e) Transfer Taxes. No governmental documentary transfer or transaction taxes or fees shall be payable in connection with this transaction because both Buyer and Seller are exempt governmental entities.

The provisions of this Section 9 shall survive the Closing.

10. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

(a) Power and Authority. Seller has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by Seller to Buyer at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by Seller to Buyer at the Closing and (iii) to complete the transaction contemplated by this Agreement. Seller has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and all of the documents to be executed and delivered by Seller to Buyer at the Closing, (B) the performance by Seller of its obligations under this Agreement and under the documents to be executed and delivered by Seller to Buyer at the Closing and (C) the completion of the transaction contemplated by this Agreement.

(b) Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by Seller to Buyer at the Closing have been duly executed and delivered by Seller and constitute valid and binding obligations of Seller.

(c) No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by Seller to Buyer at the Closing and the performance by Seller of its obligations under this Agreement and under the documents to be executed and delivered by Seller to Buyer at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which Seller is party or by which Seller is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority

applicable to Seller or any judgment, order or decree of any court or governmental authority that is binding on Seller.

(d) Ownership. Seller has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the Property.

(e) Actions. To Seller's knowledge (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the Property, (ii) there are no special assessment proceedings affecting the Property, (iii) there is no litigation pending or threatened in writing against Seller arising out of the ownership or operation of the Property or that might detrimentally affect the Property or the ability of Seller to perform its obligations under this Agreement. Seller shall notify Buyer promptly of any such proceedings or litigation of which Seller becomes aware, and (iv) Seller has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

(f) Contracts for Improvements and Other Encumbrances. To Seller's knowledge, other than possible construction contract retentions for which funds have been reserved by Seller or contracts related to 375 Beale Street generally that will not be assumed by Buyer at Closing, at the time of Closing there will be no outstanding written or oral contracts made by Seller for any improvements to the Property which have not been fully paid for and, except as set forth in the Preliminary Report, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which were not disclosed in writing to Buyer prior to the date of this Agreement.

(g) Hazardous Materials. To Seller's knowledge and except as set forth in the Due Diligence Materials delivered pursuant to this Agreement or the Prior Purchase Agreement, there has been no release, storage, treatment, generation or disposal of Hazardous Materials by Seller, or any other party during Seller's ownership of the Property, on, under or from the Property in violation of any applicable laws, ordinances or regulations. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws.

11. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Power and Authority. Buyer has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by Buyer to Seller at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be

executed and delivered by Buyer to Seller at the Closing and (iii) to complete the transaction contemplated by this Agreement. Buyer has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and the documents to be executed and delivered by Buyer to Seller at the Closing, (B) the performance by Buyer of its obligations under this Agreement and under the documents to be executed and delivered by Buyer to Seller at the Closing and (C) the completion of the transaction contemplated by this Agreement.

(b) Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by Buyer to Seller at the Closing have been duly executed and delivered by Buyer and constitute valid and binding obligations of Buyer.

(c) No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by Buyer to Seller at the Closing and the performance by Buyer of its obligations under this Agreement and under the documents to be executed and delivered by Buyer to Seller at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which Buyer is party or by which Buyer is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to Buyer or any judgment, order or decree of any court or governmental authority that is binding on Buyer.

(d) Buyer's Investigation. Buyer has or, prior to the expiration of the Due Diligence Period, will have examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in Buyer's judgment bear upon the value and suitability of the Property for Buyer's purposes. Buyer acknowledges that, except as otherwise provided herein, Seller has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the Property, and Buyer is relying solely on Buyer's own inspection and examination of such items and not on any representation of Seller.

12. Survival. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and shall survive the execution and delivery of this Agreement, the Deed and the Closing, provided that the representations and warranties set forth in Section 10(d) through (g) shall survive the Closing only for a period of nine (9) months following the Closing Date and, if no claim is made in writing within such period, shall expire and be of no further force and effect.

13. Casualty or Condemnation.

(a) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing, and the cost to repair and/or restore such damage and/or destruction exceeds _____ Dollars (\$ _____), then Buyer shall have the right to terminate this Agreement by written notice to Seller within five (5) business days after Buyer has received written notice from Seller of the occurrence of such casualty and the cost of such repair and/or restoration. In the event of any such termination, Buyer and Seller shall each be

liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(b) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing where (i) the cost to repair and/or restore such damage and/or destruction does not exceed _____ Dollars (\$ _____), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds _____ Dollars (\$ _____) but this Agreement is not terminated pursuant to Section 13(a) above as a result thereof, then the Closing shall occur as scheduled notwithstanding such damage; provided, however, that Seller shall be obligated, at its cost, to restore or repair the Additional Space to its prior condition and shall retain its interest in all insurance proceeds payable in connection with such damage or destruction. Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

(c) In the event a governmental entity commences eminent domain proceedings (or threatens in writing to commence such proceedings) to take any portion of the Additional Space or any other portion of the building in which it is located which would impair Buyer's use of the Additional Space after the date hereof and prior to the Closing, then Buyer shall have the option to terminate this Agreement by written notice to Seller within five (5) business days after Buyer has received written notice from Seller of the occurrence of such commencement or threatened commencement. In the event of any such termination, Buyer and Seller shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(d) In the event a governmental entity commences any such eminent domain proceedings after the date hereof and prior to the Closing and this Agreement is not terminated pursuant to Section 13(c) above as a result thereof, then the Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that Seller's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the Additional Space shall be assigned to Buyer as of the Closing or credited to Buyer if previously received by Seller. Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

14. Seller Covenants.

(a) Continued Operation of the Property. Between Seller's execution of this Agreement and the Closing, Seller shall cause the Property to be operated and maintained in substantially the condition existing upon the date of this Agreement.

(b) Construction Defects. To the extent any warranties relating to the construction of the Additional Space or the Building are not assigned to Buyer at Closing, Seller shall assert and pursue in good faith satisfaction of any warranty claims with respect to any construction defects discovered by Buyer and reported in writing to Seller pertaining to the improvements to the Additional Space or otherwise to the Building but affecting the operation of the Additional Space made by or at the direction of Seller. The foregoing covenant shall survive the Closing of this transaction.

15. Brokers. Each party hereby agrees to indemnify, protect and defend the other (by counsel reasonably acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a real estate commission, finder's fee or other real estate brokerage-type compensation by any person or entity based upon the acts of that party with respect to the transaction contemplated by this Agreement. The obligations of Buyer and Seller under this Section 15 shall survive the Closing.

16. Hazardous Materials Indemnity. Seller shall indemnify, defend and hold harmless Buyer from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by Seller or any of its employees, agents or contractors of Hazardous Materials on, under or from the Additional Space occurring prior to the Closing. As used herein the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the Additional Space, any cost of repair of the Additional Space necessitated by the remediation or removal of Hazardous Materials from the Additional Space and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the Additional Space. The indemnification obligations set forth in this Section 16 shall survive the Closing. Seller expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

17. Miscellaneous.

(a) Notices. Any and all notices, elections, approvals, consents, demands, requests and responses ("Notice") permitted or required to be given under this Agreement shall be given in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section 17(a). Any Notice shall be effective upon receipt but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Notices sent by telecopy shall be effective only if also sent by nationally recognized express overnight courier service for delivery within two (2) business days.

If to Buyer:

Bay Area Air Quality Management District
375 Beale Street, Suite 800
San Francisco, CA 94105
Attn: Deputy Air Pollution Control Officer,
Finance
Tel: 415-749-4629

With a copy to:

Bay Area Air Quality Management District
375 Beale Street, Suite 800

San Francisco, CA 94105
Attn: General Counsel
Tel: 415-749-4920

If to Seller:

Bay Area Headquarters Authority
375 Beale Street, Suite 800
San Francisco, CA 94105
Attn: Andrew B. Fremier
Tel: 415-778-5240

with a copy to:
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94104
Attn: Tony Ratner
Telephone: (415) 954-4448
Email: tratner@fbm.com

If to Escrow Holder:

First American Title Insurance Company
1850 Mt. Diablo Blvd., Suite 300
Walnut Creek, California 94596
Attn: Kitty Schlesinger
Tel: 925-927-2154

(b) Successors and Assigns. Subject to the provisions hereof, this Agreement shall be binding upon the successors and assigns of Seller and Buyer. The parties acknowledge that the right to purchase the Property pursuant to the terms of this Agreement is personal to the Bay Area Air Quality Management District or any successor governmental agency performing the same functions, and Buyer's rights hereunder may not otherwise be assigned without the prior written consent of Seller, which may be withheld in Seller's sole discretion. Any assignment in violation of this Section 17(b) shall be void.

(c) Attorneys' Fees. In the event of any litigation or other proceeding to enforce the provisions of this Agreement or to resolve any dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation or other proceeding shall be entitled to, in addition to any other damages assessed, its or his reasonable attorneys' fees and all other costs and expenses incurred in connection with such litigation or other proceeding.

(d) Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Exhibits. Each of the exhibits attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

(g) Entire Agreement. This Agreement, the exhibits hereto and the Lease constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including, without limitation, any letters of intent previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement.

(h) Captions. The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

(i) Time of the Essence. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

(j) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

BUYER:

SELLER:

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: Jack P. Broadbent
Its: Executive Officer/APCO

By: _____
Name: Steve Heminger
Its: Executive Director

Approved as to form:

Brian Bunger
District Counsel

By: _____
Name: Brian Mayhew
Its: Chief Executive Officer

Approved as to form:

Adrienne D. Weil
General Counsel

EXHIBIT A

CONDOMINIUM PLAN

EXHIBIT B

DEPICTION OF ADDITIONAL SPACE

EXHIBIT C
FORM OF DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will be due and owing.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantor"), hereby grants, transfers and assigns to BAY AREA AIR QUALITY MANAGEMENT DISTRICT, a regional air pollution control agency ("Grantee"), that certain real property located in the City and County of San Francisco, State of California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ____ day of _____, 20__.

"GRANTOR"

BAY AREA HEADQUARTERS AUTHORITY, a
joint powers authority established pursuant to the
California Joint Exercise of Powers Act

By: _____
Name: Steve Heminger
Its: Executive Director

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 _____)
)
COUNTY OF _____)

On _____, 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

A condominium in fee as defined in Civil Code Section 6500, et seq.

Parcel One:

Unit 3, shown as Lot 3 on the Condominium Plan ("Condominium Plan") attached as Exhibit A-2 to the Declaration of Covenants, Conditions and Restrictions for 375 Beale Street, San Francisco recorded December 27, 2016 as Document No. 2016K388389, San Francisco County Records ("Declaration"), as amended by an Amendment to the Declaration, recorded _____ 2018 as Document No. _____, being a subdivision of the Facility (as defined in the Declaration) located on Parcel A of Parcel Map No. 8905, filed October 28, 2016, in Condominium Map Book 130, Page 126, as amended by _____ filed _____, 2018 in Condominium Map Book __, Page __ San Francisco County Records.

Reserving therefrom:

Non-exclusive easements for utilities, encroachment, maintenance and repair, air and light, and a right of access, as set forth in the Declaration.

Parcel Two:

An undivided ____% interest in the Common Area, consisting of the entrance and reception area located on the first floor, and the hallways marked as "Common Area" on the Occupancy Plan attached as Exhibit A-3 to the Declaration ("Occupancy Plan") and as set forth in the Declaration.

Reserving therefrom:

Non-exclusive easements appurtenant to all units for utility services, maintenance and repair, use, enjoyment and for ingress, egress, support and emergency access as set forth in the Declaration.

Parcel Three:

An undivided ____% interest in the "Common Use Easements" and "Ingress and Egress Easements", as shown on the Condominium Plan and as provided for in the Declaration.

Parcel Four:

Non-exclusive easements for utility services, encroachment, maintenance, repair, use and enjoyment, ingress, egress and emergency access, as set forth in the Declaration.

Parcel Five:

Non-exclusive easements to maintain equipment and cabling in the network closets and MPOE room as described in the Declaration.

EXHIBIT D

FORM OF BILL OF SALE

This BILL OF SALE is made and entered into to be effective as of the ____ day of _____, 20__, by and between BAY AREA HEADQUARTERS AUTHORITY ("Seller") and BAY AREA AIR QUALITY MANAGEMENT DISTRICT ("Buyer").

WHEREAS, Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20__ (the "Agreement"), pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller certain additional space, which is being added to the office condominium unit located at 375 Beale Street, Suite 600, in the City and County of San Francisco, State of California which is owned by Buyer, all as more particularly described in the Agreement.

WHEREAS, pursuant to the Agreement, Seller is to convey to Buyer certain office furnishings, equipment and other personal property (collectively, the "Personal Property") listed below.

NOW, THEREFORE, in consideration of Buyer entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, transfers, conveys and assigns all of Seller's right, title and interest in and to the Personal Property, to have and to hold the Personal Property unto the Buyer and its successors and assigns forever.

EXCEPT FOR ANY EXPRESS REPRESENTATIONS OR WARRANTIES SET FORTH IN THE AGREEMENT, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE ABOVE-DESCRIBED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ENVIRONMENTAL CONDITION, AND BUYER ACCEPTS THE ABOVE-DESCRIBED PROPERTY IN AN "AS IS - WHERE IS" CONDITION, WITH ALL FAULTS.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first written above.

BUYER:

SELLER:

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BAY AREA HEADQUARTERS
AUTHORITY

By: _____
Name: Jack P. Broadbent
Its: Executive Officer/APCO

By: _____
Name: Steve Heminger
Its: Executive Director

List of Personal Property

The personal property located at 375 Beale Street, San Francisco CA being transferred by BAHA to the BAAQMD is listed in this table.

Type	Number of Units	Locations	Furniture
Jointly Shared Locations			

