

**AUBURN AREA RECREATION AND PARK DISTRICT  
BOARD OF DIRECTORS  
AGENDA  
MEETING OF THE BOARD OF DIRECTORS**

**6:00 P.M.**

**THURSDAY, JULY 25, 2013  
CANYON VIEW COMMUNITY CENTER, BOARD ROOM  
471 MAIDU DRIVE  
AUBURN, CA**

**Materials related to an item on this Agenda submitted to the District after distribution of the agenda packet are available for public inspection in the District's Office at 471 Maidu Drive, Auburn, CA 95603 during normal business hours.**

**1.0 CALL TO ORDER**

**FLAG SALUTE (Pledge to the Flag)**

The Board of Directors of the Auburn Area Recreation and Park District welcomes you to its meetings. Regular meetings are scheduled at 6 p.m. the last Thursday of each month. Your attendance and interest is encouraged and appreciated. Special accommodations may be made upon request to the District Administrator 72 hours in advance of the meeting.

**Roll Call**

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**2.0 INTRODUCTIONS, PRESENTATIONS AND ANNOUNCEMENTS**

None.

**3.0 AGENDA REVIEW, CHANGES, AND APPROVAL**

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**4.0 PUBLIC COMMENT** – This is the time wherein any person may comment on any item not on the agenda within the subject matter jurisdiction of the Board of Directors. After you are recognized by the Board Chairperson, please come to the lectern and state your name, and address for the record (optional). There is a time limitation of three minutes.

**5.0 CONSENT ITEMS** – (roll call vote) All matters listed under the Consent Calendar are to be considered routine by the Board of Directors and will be enacted by one motion in the form listed. There will be no separate discussion of these items unless, before the Board votes on the motion to adopt, a member or members of the Board, staff or the public requests a specific item to be removed from the Consent Calendar for separate discussion and action.

\_\_\_\_\_ **5.1 Review and Approval of Minutes of the May 30, 2013 Meeting of the Board of Directors**

Review and approval of minutes.

\_\_\_\_\_ **5.2 Review of Cash Requirements for April, 2013 (Standing Finance Committee June, 2013)**

This item was reviewed and approved by the Standing Finance Committee and forwarded to the Board of Directors for review and approval.

\_\_\_\_\_ **5.3 Review of Cash Requirements for May, 2013 (Standing Finance Committee June, 2013)**

This item was reviewed and approved by the Standing Finance Committee and forwarded to the Board of Directors for review and approval.

\_\_\_\_\_ **5.4 Review of Cash Requirements for June, 2013 (Standing Finance Committee July, 2013)**

This item was reviewed and approved by the Standing Finance Committee and forwarded to the Board of Directors for review and approval.

\_\_\_\_\_ **5.5 Review of Financials for April, 2013 (Standing Finance Committee June, 2013)**

This item was reviewed and approved by the Standing Finance Committee and forwarded to the Board of Directors for review and approval.

\_\_\_\_\_ **5.6 Review of Financials for May, 2013 (Standing Finance Committee June, 2013)**

This item was reviewed and approved by the Standing Finance Committee and forwarded to the Board of Directors for review and approval.

\_\_\_\_\_ **5.7 Financials for June, 2013 (Standing Finance Meeting July, 2013)**

This item was reviewed and approved by the Standing Finance Committee and forwarded to the Board of Directors for review and approval.

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

**6.0 ITEMS REMOVED FROM CONSENT CALENDAR FOR SEPARATE ACTION**

**6.1**

**7.0 ADMINISTRATOR’S AND DEPARTMENTAL REPORTS**

Please see reports, fee waiver log, project list and vandalism report under item 7.0.

**8.0 UNFINISHED BUSINESS**

- 8.1 Resolution Number 2013-06, A Resolution of the Board of Directors of the Auburn Area Recreation and Park District, Approving Engineer’s Report, Confirming Diagram and Assessment and Ordering the Continuation of Assessments for Fiscal Year 2013-14 for the Atwood Ranch III Landscaping and Lighting Assessment District (Acquisition & Development Committee June, 2013)**

**PUBLIC HEARING**

**OPEN PUBLIC HEARING**

**STAFF PRESENTATION**

**PUBLIC COMMENT**

**BOARD DISCUSSION/ACTION**

**CLOSE PUBLIC HEARING**

Shall the Auburn Area Recreation and Park District Board of Directors adopt Resolution Number 2013-06?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

- 8.2 Resolution Number 2013-08 Requesting Collection of Charges on Tax Roll for Tax Year 2013-14 (Acquisition & Development Committee June, 2013)**

Shall the Auburn Area Recreation and Park District Board of Directors adopt Resolution Number 2013-08 defending and indemnifying Placer County for collection of Atwood III assessments?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

**9.0 NEW BUSINESS**

**9.1 Audit for Fiscal Year 2012 – 2013 (Standing Finance Committee)**

Shall the Auburn Area Recreation & Park District Board of Directors approve the audit for fiscal year 2012 - 2013?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

**9.2 Resolution Number 2013 -07, A Resolution of the Governing Board of Directors of the Auburn Area Recreation & Park District Approving the Transfer of Funds in the Amount of \$100,000 from the General Fund to the Equipment Reserve Fund, \$100,000 from the General Fund to the Future Capital Construction Reserve, and \$25,000 from the General Fund to the ADA Reserve for a Total of \$225,000 (Standing Finance Meeting June, 2013)**

Shall the Auburn Area Recreation & Park District Board of Directors adopt Resolution Number 2013-07, A Resolution of the Governing Board of Directors of the Auburn Area Recreation & Park District Approving the Transfer of Funds in the Amount of \$100,000 from the General Fund to the Equipment Reserve Fund, \$100,000 from the General Fund to the Future Capital Construction Reserve, and \$25,000 from the General Fund to the ADA Reserve for a Total of \$225,000?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

**9.3 Ashford Park Paving Project**

Shall the Auburn Area Recreation & Park District Board of Directors adopt Resolution Number 2013-09, A Resolution of the Governing Board of Directors of the Auburn Area Recreation & Park District Awarding a Contract for the Ashford Park Paving Renovation Project?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

\_\_\_\_\_ **9.4 Sale of Sprint Lease (Standing Finance Committee)**

Shall the Auburn Area Recreation and Park District Board of Directors approve the sale of the Sprint lease?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

**Roll Call Vote**

\_\_\_\_\_ **9.5 California Special Districts Association 2013 Board Elections**

Shall the Auburn Area Recreation and Park District Board of Directors vote for a candidate for the CSDA Board of Directors 2013 Election?

Motion by \_\_\_\_\_ Second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Smith \_\_\_\_\_ Holbrook \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_

\_\_\_\_\_ **10.0 ITEMS FOR DISCUSSION AND INFORMATIONAL ITEMS**

- 1. PG&E/Placer Land Trust Document Review (Acquisition & Development Committee, see attachment).

\_\_\_\_\_ **11.0 BRIEF ANNOUNCEMENTS AND REPORTS FROM BOARD MEMBERS**

**No action will be taken at this time on any item announced or reported by a Board Member. The Board or a member of the Board may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter so reported, or take action to direct staff to place a matter of business on a future agenda.**

\_\_\_\_\_ **12.0 Board Member Comments:**

Jim Gray, Jim Ferris, Scott Holbrook, Gordon Ainsleigh, and Curt Smith.

\_\_\_\_\_ **12.1 Chairman Appointments:**

<b>Acquisition &amp; Development Committee</b>	Directors Gray & Ainsleigh
--	----------------------------

<b>Party in the Park</b>	Director Holbrook, Director Ferris, & Staff
--------------------------	---

<b>Program, Personnel, Policy &amp; Fee Committee</b>	Directors Holbrook & Ferris
---	-----------------------------

<b>Finance Committee</b>	Directors Holbrook & Smith
--------------------------	----------------------------

<b>User Group Liaisons</b>	Directors Gray & Ainsleigh
<b>Legal Review Committee</b>	Directors Holbrook & Ferris
<b>Sergeant at Arms</b>	District Administrator Kahl Muscott
<b>Public Agency Liaisons</b>	To be determined by the ARD Board Chairman

\_\_\_\_\_ **12.2 District Administrator Appointed Standing Committee:**

<b>Strategic Plan Review Steering Committee</b>	Directors Holbrook, Ferris, Kahl Muscott, Joe Fecko, Pamela Vann
<b>Marketing and Program Plan Committee</b>	Director Ferris and Staff
<b>ADA (American’s With Disabilities Act) Transition Plan Committee</b>	Director Ferris, Kahl Muscott, Joe Fecko, Pamela Vann
<b>Adopt A Park Committee</b>	Director Ainsleigh, Director Ferris, Kahl Muscott, Larry Gray

\_\_\_\_\_ **12.3 Media Representatives** District Administrator Kahl Muscott

\_\_\_\_\_ **12.4 Parliamentarian** District Administrator Kahl Muscott

\_\_\_\_\_ **13.0 CORRESPONDENCE/COMMUNICATIONS AND INFORMATIONAL**

1 Correspondence from Nancy Neuberger regarding pickleball courts and response from District Administrator Kahl Muscott. This item has been discussed and is being reviewed at the Acquisition & Development Committee.

\_\_\_\_\_ **14.0 ITEMS TO BE CONSIDERED AT FUTURE BOARD MEETINGS**

**14.1 FOLLOW-UP INFORMATION FROM THE PREVIOUS BOARD AND/OR COMMITTEE MEETINGS**

None.

**14.2 PENDING ITEMS REQUIRING MORE DETAILED RESEARCH**

None.

\_\_\_\_\_ **15.0 PUBLIC COMMENT** This is the time wherein any person may comment on any item not on the agenda within the subject matter jurisdiction of the Board of Directors. After you are recognized by the Board Chairperson, please come to the lectern and state your name, and address for the record (optional). There is a time limitation of three minutes.

\_\_\_\_\_ 16.0 CLOSED SESSION

16.1 Public Employee Performance Evaluation. (Gov. Code, 54954.5, subd. (e), 54957.)

Title: District Administrator

\_\_\_\_\_ 17.0 OPEN SESSION – REPORT/ACTION ON OR ABOUT CLOSED SESSION

ADJOURNMENT

AUBURN AREA RECREATION AND PARK DISTRICT

This agenda is hereby certified to have been posted as follows:

7-19-13  
Date

1:10 PM.  
Time

T. Larson  
Clerk to the Board

**SECTION: 5.0**

**ITEM: 5.1 REVIEW AND APPROVAL OF MINUTES OF THE  
MAY 30, 2013 BOARD OF DIRECTORS MEETING**

**DESCRIPTION:**

**INFORMATION: SEE ATTACHED MINUTES**

**STAFF  
RECOMMENDATION: BOARD OF DIRECTORS REVIEW & APPROVE  
MINUTES**

**FISCAL IMPACT:**



**Auburn Area Recreation and Park District  
Minutes  
of the Meeting of the Board of Directors  
Thursday, May 30, 2013, 6:00 p.m.  
Canyon View Community Center  
471 Maidu Drive  
Auburn, CA**

**Board Members**

**Present:** Chairman Jim Gray  
Director Jim Ferris  
Director Gordon Ainsleigh  
Director Scott Holbrook

**Board Members**

**Absent:** Director Curt Smith

**Staff Present:**

Kahl Muscott, District Administrator  
Joe Fecko, Administrative Services Manager  
Larry Gray, Facilities & Grounds Manager  
Manouch Shirvanioun, Customer Service/Marketing Manager  
Debbie Thomas, Youth Services Manager  
Sheryl Petersen, Recreation Services Manager  
Patricia Larson, Recording Secretary

**1.0 CALL TO ORDER**

The Meeting of the Board of Directors was called to order at 6:03 p.m. by Chairman Gray.

**2.0 INTRODUCTIONS, PRESENTATIONS AND ANNOUNCEMENTS**

None.

**3.0 AGENDA REVIEW, CHANGES AND APPROVAL**

A motion was made by Director Ainsleigh and seconded by Director Holbrook to approve the agenda.

4 – 0 Motion carries.

**4.0 PUBLIC COMMENT**

None.

**5.0 CONSENT ITEMS**

**5.1 Review and Approval of Minutes of the April 25, 2013 Meeting of the Board of Directors**

**5.2 Financials for March, 2013 (Standing Finance Meeting)**

A motion was made by Director Holbrook and seconded by Director Gray to move item 5.2 to item 6.1 for discussion and approve item 5.1 of the consent calendar.

**Roll Call Vote**

4 – 0 Motion carries.

**6.0 ITEMS REMOVED FROM CONSENT CALENDAR FOR SEPARATE ACTION**

**Item 6.1 – Item 5.2, Financials for March 2013 was moved to item 6.1 for discussion.**

The Board approved the Financials for March 2013 and changed the narrative to numbers 1. and 2. being combined to read as follows: The surplus of \$409,000 is primarily composed of \$202,000 of City Mitigation revenue (reserve) and \$166,000 of RDA (Redevelopment Agency) funds that are most likely a one-time event. The operational surplus (total surplus less RDA funds and City Mitigation revenue) was \$41,000, slightly higher than the \$27,000 that was projected at the mid-year revision of the budget. The rest of the page of the narrative will be renumbered.

A motion was made by Director Holbrook and seconded by Director Gray to approve the narrative with the above changes to be made.

4 – 0 Motion carries.

**7.0 ADMINISTRATOR’S AND DEPARTMENTAL REPORTS**

Board reports, the fee waiver log, project list and vandalism report were provided to the Board under separate cover.

**8.0 UNFINISHED BUSINESS**

**8.1 Ten-Year Project List (Acquisition & Development Committee)**

A motion was made by Director Holbrook and seconded by Director Gray to approve the ten-year project list.

**Roll Call Vote**

3 – 1 – 0 Motion carries.

Director Ainsleigh voted no, Director Smith was absent.

## **9.0 NEW BUSINESS**

### **9.1 Amending 2013/2014 Project List (Acquisition & Development Committee)**

A motion was made by Director Holbrook and seconded by Director Ainsleigh to amend the 2013/2014 project list.

4 – 0 Motion carries.

### **9.2 Railhead Park and Ashford Park Playgrounds (Acquisition & Development Committee)**

A motion was made by Director Gray and seconded by Director Holbrook to approve the purchasing and installation of the equipment for new Gametime playgrounds at Ashford Park and at Railhead Park and adopt Resolution Number 2013-04, A Resolution of the Governing Board of Directors of the Auburn Area Recreation and Park District Authorizing the District Administrator to Enter into a Contract with Gametime, A Playcore Company, to Purchase and Install New ADA Compliant and Code Compliant Playground Equipment for Ashford Park and Railhead Park.

#### **Roll Call Vote**

4 – 0 Motion carries.

### **9.3 Atwood Ranch III (Acquisition & Development Committee)**

A motion was made by Director Holbrook and seconded by Director Ainsleigh to adopt Resolution Number 2013-05, A Resolution of Intention to Continue Assessments for Fiscal Year 2013-14, Preliminarily Approving Engineer's Report, and Providing for Notice of Hearing for the Auburn Area Recreation and Park District, Atwood Ranch III Landscaping and Lighting Assessment District. The Board of Directors adopted this Resolution on the condition that the Atwood III homeowners be notified by SCI Consulting Group of the \$14.00 yearly increase.

#### **Roll Call Vote**

4 – 0 Motion carries.

### **9.4 Letter of Opposition to AB 5 (Ammiano) (Program, Personnel Policy & Fee Committee Meeting)**

A motion was made by Director Holbrook and seconded by Director Ainsleigh to approve sending a letter of opposition on legislative proposal AB 5 (Ammiano), the Homeless Person's Bill of Rights and Fairness Act.

4 – 0 Motion carries.

**10.0 ITEMS FOR DISCUSSION AND INFORMATIONAL ITEMS**

1. Ashford Park Paving Renovation Project (Acquisition & Development Committee).  
The Board reviewed the design for the Ashford Park paving project.
2. Overlook Park Fence Removal (Acquisition & Development Committee).  
The Board reviewed the proposed letter to the Bureau of Reclamation regarding the fence removal.

**11.0 BRIEF ANNOUNCEMENTS AND REPORTS FROM BOARD MEMBERS**

No action will be taken at this time on any item announced or reported by a Board Member. The Board or a member of the Board may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent Meeting concerning any matter so reported, or take action to direct staff to place a matter of business on a future agenda.

Director Gray requested that staff do research to put a history of ARD area together for display at the Recreation Park building.

Director Ferris requested an opinion from staff regarding the Senior Center and possibly the Courthouse Athletic Club at DeWitt Center being taken down in order to make room for the Costco location. Staff will contact Placer County regarding what they intend to do about replacing the Senior Center and Courthouse Athletic Club.

**12.0 Board Member Comments:**

Jim Ferris, Jim Gray, Scott Holbrook, Gordon Ainsleigh & Curt Smith.

**12.1 Chairman Appointments:**

<b>Acquisition &amp; Development Committee</b>	Directors Gray & Ainsleigh
<b>Party in the Park</b>	Directors Holbrook, Ferris & Staff
<b>Program, Personnel, Policy &amp; Fee Committee</b>	Directors Holbrook & Ferris
<b>Finance Committee</b>	Directors Holbrook & Smith
<b>User Group Liaisons</b>	Directors Gray & Ainsleigh
<b>Legal Review Committee</b>	Directors Holbrook & Ferris
<b>Sergeant at Arms</b>	District Administrator Kahl Muscott

**12.2 District Administrator Appointed Standing Committee:**

- |   |  |
|---|--|
| <b>Strategic Plan Review Steering Committee</b>                         | Directors Holbrook, Ferris, Kahl Muscott, Joe Fecko, Pamela Vann |
| <b>Marketing and Program Plan Committee</b>                             | Director Ferris & Staff  |
| <b>ADA (American's With Disabilities Act) Transition Plan Committee</b> | Director Ferris, Kahl Muscott, Joe Fecko, Pamela Vann            |
| <b>Adopt A Park Committee</b>   | Director Ainsleigh, Director Ferris, Kahl Muscott, Larry Gray    |

**12.3 Media Representatives** District Administrator Kahl Muscott

**12.4 Parliamentarian** District Administrator Kahl Muscott

**13.0 CORRESPONDENCE/COMMUNICATIONS AND INFORMATIONAL**

Correspondence was attached.

**14.0 ITEMS TO BE CONSIDERED AT FUTURE BOARD MEETINGS**

None.

**14.1 FOLLOW-UP INFORMATION FROM THE PREVIOUS BOARD AND/OR COMMITTEE MEETINGS**

None.

**14.2 PENDING ITEMS REQUIRING MORE DETAILED RESEARCH**

None.

**15.0 PUBLIC COMMENT**

None.

**16.0 CLOSED SESSION – Closed Session began at 7:25 p.m.**

**OPEN SESSION – No reportable action.**

**ADJOURNMENT** - As there was no further business, the meeting was adjourned at 7:30 p.m. by Chairman Gray.

\_\_\_\_\_  
Board Secretary

\_\_\_\_\_  
Date

**SECTION: 5.0**

**ITEM: 5.2 REVIEW OF CASH REQUIREMENTS FOR  
APRIL, 2013**

**DESCRIPTION: ACCOUNTS PAYABLE**

**INFORMATION: SEE ATTACHED INFORMATION**

**STAFF  
RECOMMENDATION: THIS ITEM WAS REVIEWED BY THE STANDING  
FINANCE COMMITTEE AND FORWARDED TO  
THE BOARD OF DIRECTORS FOR REVIEW AND  
APPROVAL**

**FISCAL IMPACT: \$79,838.73**

Ranges: From: To: From: To:  
 Check Number First Last Check Date 4/1/2013 4/30/2013  
 Vendor ID First Last Checkbook ID UMPQ UMPQ  
 Vendor Name First Last

Sorted By: Check Date

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
55773	C0044	Gold Country Regional Chapter	4/1/2013	UMPQ	PMCHK00002037	\$60.00
55809	A0133	P & G	4/5/2013	UMPQ	PMCHK00002040	\$273.00
55810	C0002	CARPD	4/5/2013	UMPQ	PMCHK00002040	\$100.00
55811	C0072	CIT Technology Fin. Serv., Inc	4/5/2013	UMPQ	PMCHK00002040	\$532.13
55812	C0111	CENTRAL VALLEY BROADBAND	4/5/2013	UMPQ	PMCHK00002040	\$189.90
55813	D0025	Dawson Oil Company	4/5/2013	UMPQ	PMCHK00002040	\$1,916.03
55814	K0011	Kaiser Foundation Health Plan,	4/5/2013	UMPQ	PMCHK00002040	\$16,948.00
55815	K0019	Kronick, Moskovitz, Tiedemann	4/5/2013	UMPQ	PMCHK00002040	: \$36.00
55816	M0048	Joanna McNutt	4/5/2013	UMPQ	PMCHK00002040	\$25.00
55817	N0012	Nevada Irrigation District	4/5/2013	UMPQ	PMCHK00002040	\$4,617.10
55818	N0038	Nevada Placer Chapter	4/5/2013	UMPQ	PMCHK00002040	\$75.00
55819	P0058	Pitney Bowes Credit Corporatio	4/5/2013	UMPQ	PMCHK00002040	\$124.61
55820	P1001	Principal Life Insurance Co-Gr	4/5/2013	UMPQ	PMCHK00002040	\$2,050.40
55821	T1000	Transamerica Life Insurance	4/5/2013	UMPQ	PMCHK00002040	\$380.00
55822	U0028	U.S. Bank Equipment Finance	4/5/2013	UMPQ	PMCHK00002040	\$383.82
55823	S1007	Stationary Engineers, Local 39	4/12/2013	UMPQ	PMCHK00002041	\$232.67
55824	S1010	State Disbursement Unit	4/12/2013	UMPQ	PMCHK00002041	\$87.50
55825	1099-104	Thomas Seibel	4/19/2013	UMPQ	PMCHK00002042	\$162.50
55826	1099-147	Tom Isaac	4/19/2013	UMPQ	PMCHK00002042	\$247.00
55827	1099-171	Marty Cullenward	4/19/2013	UMPQ	PMCHK00002042	\$253.50
55828	1099-178	VDR Inc DBA K9 101	4/19/2013	UMPQ	PMCHK00002042	\$220.50
55829	1099-193	Celena Polena	4/19/2013	UMPQ	PMCHK00002042	\$208.00
55830	1099-203	Susan Thomas	4/19/2013	UMPQ	PMCHK00002042	\$46.80
55831	1099-216	Gerald Harris	4/19/2013	UMPQ	PMCHK00002042	\$135.00
55832	1099-218	Auburn Gymnastics Center	4/19/2013	UMPQ	PMCHK00002042	\$692.25
55833	1099-243	Phillip Dallas	4/19/2013	UMPQ	PMCHK00002042	\$292.50
55834	1099-254	Ralph Kendrick	4/19/2013	UMPQ	PMCHK00002042	\$420.00
55835	1099-256	Annette Cowan	4/19/2013	UMPQ	PMCHK00002042	\$292.50
55836	1099-264	Philip Green	4/19/2013	UMPQ	PMCHK00002042	\$195.00
55837	1099-274	Justen Morris	4/19/2013	UMPQ	PMCHK00002042	\$117.00
55838	1099-278	Daniella Zimmerman	4/19/2013	UMPQ	PMCHK00002042	\$22.00
55839	1099-42	Guadalupe Cook	4/19/2013	UMPQ	PMCHK00002042	\$58.50
55840	1099-49	Paula Duffy	4/19/2013	UMPQ	PMCHK00002042	\$611.00
55841	1099-99	Chris Atkinson	4/19/2013	UMPQ	PMCHK00002042	: \$273.00
55842	A0001	Recology Auburn Placer	4/19/2013	UMPQ	PMCHK00002042	\$1,114.59
55843	A0018	Auburn Chamber of Commerce	4/19/2013	UMPQ	PMCHK00002042	\$500.00
55844	A0133	P & G	4/19/2013	UMPQ	PMCHK00002042	\$273.00
55845	C0004	CAPRI	4/19/2013	UMPQ	PMCHK00002042	\$8,130.00
55846	C0061	California Computer Services	4/19/2013	UMPQ	PMCHK00002042	\$900.00
55847	C0104	Campora Propane Service	4/19/2013	UMPQ	PMCHK00002042	\$46.00
55848	C0111	CENTRAL VALLEY BROADBAND	4/19/2013	UMPQ	PMCHK00002042	\$129.95
55849	C0113	Cooks Portable Toilets & Septi	4/19/2013	UMPQ	PMCHK00002042	\$700.00
55850	D0066	De Lage Landen	4/19/2013	UMPQ	PMCHK00002042	\$535.36
55851	F0023	Jerry Fisher	4/19/2013	UMPQ	PMCHK00002042	\$48.84
55852	F0034	Joe Fecko	4/19/2013	UMPQ	PMCHK00002042	\$26.20
55853	G0045	Greater Sacramento Softball As	4/19/2013	UMPQ	PMCHK00002042	\$1,711.20
55854	H0002	Harris Industrial Gases	4/19/2013	UMPQ	PMCHK00002042	\$140.00
55855	L0016	Loomis Union School District	4/19/2013	UMPQ	PMCHK00002042	\$9,857.50
55856	M0019	Kahl Muscott	4/19/2013	UMPQ	PMCHK00002042	\$25.00
55857	M0070	Matt Willis Screenprint	4/19/2013	UMPQ	PMCHK00002042	\$387.54
55858	M0099	George Eric Menig DBA Menig We	4/19/2013	UMPQ	PMCHK00002042	\$3,875.00
55859	N0003	Norris Electric, Inc.	4/19/2013	UMPQ	PMCHK00002042	\$534.70
55860	N0012	Nevada Irrigation District	4/19/2013	UMPQ	PMCHK00002042	\$872.58
55861	O0016	Flyers Energy LLC	4/19/2013	UMPQ	PMCHK00002042	\$51.52
55862	P0005	Placer County Water Agency	4/19/2013	UMPQ	PMCHK00002042	\$2,776.79
55863	P0007	Pacific Gas & Electric Company	4/19/2013	UMPQ	PMCHK00002042	\$9,897.70

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
55864	P0031	Placer Hills USD	4/19/2013	UMPQ	PMCHK00002042	\$1,250.00
55865	P0058	Pitney Bowes Credit Corporatio	4/19/2013	UMPQ	PMCHK00002042	\$85.30
55866	R0017	Ridge Golf Course, Inc.	4/19/2013	UMPQ	PMCHK00002042	\$450.00
55867	S0110	Sierra Sports Service	4/19/2013	UMPQ	PMCHK00002042	\$2,248.00
55868	S1000	State Of California/DOJ	4/19/2013	UMPQ	PMCHK00002042	\$32.00
55869	S1015	Sutter Medical Foundation	4/19/2013	UMPQ	PMCHK00002042	\$160.79
55870	TEMPB	Bell, Brandon	4/19/2013	UMPQ	PMCHK00002042	\$20.00
55871	TEMPC	Conci, Jacque	4/19/2013	UMPQ	PMCHK00002042	\$20.00
55872	TEMPD	Carolyn Daniels	4/19/2013	UMPQ	PMCHK00002042	\$35.00
55873	TEMPG	Bill Gunning	4/19/2013	UMPQ	PMCHK00002042	\$20.00
55874	TEMPK	Doug Koch	4/19/2013	UMPQ	PMCHK00002042	\$20.00
55875	TEMPL	Erin LaShell	4/19/2013	UMPQ	PMCHK00002042	\$60.00
55876	TEMPM	Addie Mattox	4/19/2013	UMPQ	PMCHK00002042	\$20.00
55877	U0016	Uptown Signs & Graphics, Inc.	4/19/2013	UMPQ	PMCHK00002042	\$209.63
55878	V0013	Pam Vann	4/19/2013	UMPQ	PMCHK00002042	\$31.08
55879	S1007	Stationary Engineers, Local 39	4/26/2013	UMPQ	PMCHK00002043	\$232.67
55880	S1010	State Disbursement Unit	4/26/2013	UMPQ	PMCHK00002043	\$87.50
55881	TEMPD	Cherry Dulaney	4/26/2013	UMPQ	PMCHK00002043	\$20.00
55882	TEMPG	Elaine Gee	4/26/2013	UMPQ	PMCHK00002043	\$25.00
Total Checks: 75						Total Amount of Checks: \$79,838.73



**SECTION: 5.0**

**ITEM: 5.3 REVIEW OF CASH REQUIREMENTS FOR MAY, 2013**

**DESCRIPTION: ACCOUNTS PAYABLE**

**INFORMATION: SEE ATTACHED INFORMATION**

**STAFF  
RECOMMENDATION: THIS ITEM WAS REVIEWED BY THE STANDING  
FINANCE COMMITTEE AND FORWARDED TO  
THE BOARD OF DIRECTORS FOR REVIEW AND  
APPROVAL**

**FISCAL IMPACT: \$144.124.50**

Ranges:	From:	To:	From:	To:
Check Number	First	Last	Check Date	5/1/2013
Vendor ID	First	Last	Checkbook ID	UMPQ
Vendor Name	First	Last		UMPQ

Sorted By: Check Date

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
55884	1099-117	Juan Aceituno	5/3/2013	UMPQ	PMCHK00002044	\$301.60
55885	1099-239	Macintosh-Oddo	5/3/2013	UMPQ	PMCHK00002044	\$2,359.50
55886	1099-252	Donna Lisa Otto	5/3/2013	UMPQ	PMCHK00002044	\$520.00
55887	1099-256	Annette Cowan	5/3/2013	UMPQ	PMCHK00002044	\$78.00
55888	1099-269	Deborah Lynn	5/3/2013	UMPQ	PMCHK00002044	\$19.50
55889	1099-49	Paula Duffy	5/3/2013	UMPQ	PMCHK00002044	\$685.75
55890	1099-5	Daniel Crandall DBA:Current A	5/3/2013	UMPQ	PMCHK00002044	\$241.50
55891	1099-99	Chris Atkinson	5/3/2013	UMPQ	PMCHK00002044	\$28.00
55892	A0014	AT&T	5/3/2013	UMPQ	PMCHK00002044	\$718.13
55893	C0002	CARP	5/3/2013	UMPQ	PMCHK00002044	\$2,500.00
55894	C0041	CPRS	5/3/2013	UMPQ	PMCHK00002044	\$170.00
55895	C0061	California Computer Services	5/3/2013	UMPQ	PMCHK00002044	\$18,362.25
55896	C0072	CIT Technology Fin. Serv., Inc	5/3/2013	UMPQ	PMCHK00002044	\$532.13
55897	C0075	Cintas Corporation	5/3/2013	UMPQ	PMCHK00002044	\$19.11
55898	C0111	CENTRAL VALLEY BROADBAND	5/3/2013	UMPQ	PMCHK00002044	\$189.90
55899	C0113	Cooks Portable Toilets & Septi	5/3/2013	UMPQ	PMCHK00002044	\$1,698.38
55900	D0066	De Lage Landen	5/3/2013	UMPQ	PMCHK00002044	\$53.54
55901	E0011	ECORP Consulting, Inc.	5/3/2013	UMPQ	PMCHK00002044	\$478.08
55902	I0018	ITS A GAS	5/3/2013	UMPQ	PMCHK00002044	\$575.00
55903	K0010	Knorr Systems, Inc.	5/3/2013	UMPQ	PMCHK00002044	\$176.00
55904	L0027	Pat Larson	5/3/2013	UMPQ	PMCHK00002044	\$30.52
55905	M0048	Joanna McNutt	5/3/2013	UMPQ	PMCHK00002044	\$25.00
55906	N0003	Norris Electric, Inc.	5/3/2013	UMPQ	PMCHK00002044	\$386.21
55907	O0016	Flyers Energy LLC	5/3/2013	UMPQ	PMCHK00002044	\$51.35
55908	P0005	Placer County Water Agency	5/3/2013	UMPQ	PMCHK00002044	\$400.47
55909	P0023	PG&E	5/3/2013	UMPQ	PMCHK00002044	\$112.33
55910	P0099	Paradise Post Printing	5/3/2013	UMPQ	PMCHK00002044	\$7,415.22
55911	P1001	Principal Life Insurance Co-Gr	5/3/2013	UMPQ	PMCHK00002044	\$1,986.03
55912	R0017	Ridge Golf Course, Inc.	5/3/2013	UMPQ	PMCHK00002044	\$90.00
55913	S0016	Sam's Club	5/3/2013	UMPQ	PMCHK00002044	\$1,229.83
55914	S0110	Sierra Sports Service	5/3/2013	UMPQ	PMCHK00002044	\$728.00
55915	S1015	Sutter Medical Foundation	5/3/2013	UMPQ	PMCHK00002044	\$218.10
55916	T0058	TELEPACIFIC COMMUNICATIONS	5/3/2013	UMPQ	PMCHK00002044	\$674.11
55917	T1000	Transamerica Life Insurance	5/3/2013	UMPQ	PMCHK00002044	\$380.00
55918	TEMPD	Bill Dougherty	5/3/2013	UMPQ	PMCHK00002044	\$20.00
55919	TEMPF	Ruby Fiorenza	5/3/2013	UMPQ	PMCHK00002044	\$105.00
55920	TEMPG	Mike Giangreco	5/3/2013	UMPQ	PMCHK00002044	\$20.00
55921	TEMPO	Bernice Owczarzak	5/3/2013	UMPQ	PMCHK00002044	\$40.00
55922	V0007	Verizon Wireless	5/3/2013	UMPQ	PMCHK00002044	\$302.69
55923	S1007	Stationary Engineers, Local 39	5/10/2013	UMPQ	PMCHK00002045	\$215.73
55924	S1010	State Disbursement Unit	5/10/2013	UMPQ	PMCHK00002045	\$87.50
55925	TEMPS	Sarah Sullivan	5/10/2013	UMPQ	PMCHK00002045	\$150.00
55926	U0019	US Bank	5/10/2013	UMPQ	PMCHK00002046	\$15,292.40
55927	1099-104	Thomas Seibel	5/17/2013	UMPQ	PMCHK00002047	\$65.00
55928	1099-147	Tom Isaac	5/17/2013	UMPQ	PMCHK00002047	\$107.25
55929	1099-171	Marty Cullenward	5/17/2013	UMPQ	PMCHK00002047	\$214.50
55930	1099-178	VDR Inc DBA K9 101	5/17/2013	UMPQ	PMCHK00002047	\$441.00
55931	1099-193	Celena Polena	5/17/2013	UMPQ	PMCHK00002047	\$793.00
55932	1099-203	Susan Thomas	5/17/2013	UMPQ	PMCHK00002047	\$265.20
55933	1099-218	Auburn Gymnastics Center	5/17/2013	UMPQ	PMCHK00002047	\$130.00
55934	1099-254	Ralph Kendrick	5/17/2013	UMPQ	PMCHK00002047	\$420.00
55935	1099-256	Annette Cowan	5/17/2013	UMPQ	PMCHK00002047	\$78.00
55936	1099-274	Justen Morris	5/17/2013	UMPQ	PMCHK00002047	\$93.60
55937	1099-278	Daniella Zimmerman	5/17/2013	UMPQ	PMCHK00002047	\$30.00
55938	1099-49	Paula Duffy	5/17/2013	UMPQ	PMCHK00002047	\$786.50
55939	1099-99	Chris Atkinson	5/17/2013	UMPQ	PMCHK00002047	\$195.00
55940	A0001	Recology Auburn Placer	5/17/2013	UMPQ	PMCHK00002047	\$743.00

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
55941	A0027	Recology Auburn Placer	5/17/2013	UMPQ	PMCHK00002047	\$1,254.58
55942	A0091	Altara	5/17/2013	UMPQ	PMCHK00002047	\$1,079.82
55943	A0109	ABACUS	5/17/2013	UMPQ	PMCHK00002047	\$172.50
55944	C0061	California Computer Services	5/17/2013	UMPQ	PMCHK00002047	\$140.00
55945	C0111	CENTRAL VALLEY BROADBAND	5/17/2013	UMPQ	PMCHK00002047	\$129.95
55946	D0025	Dawson Oil Company	5/17/2013	UMPQ	PMCHK00002047	\$2,937.42
55947	D0065	DJT Consulting Group, LLC	5/17/2013	UMPQ	PMCHK00002047	\$100.00
55948	D0066	De Lage Landen	5/17/2013	UMPQ	PMCHK00002047	\$535.36
55949	G0077	Gold Country Water	5/17/2013	UMPQ	PMCHK00002047	\$159.75
55950	J0005	J & S Asphalt	5/17/2013	UMPQ	PMCHK00002047	\$3,200.00
55951	J0020	James Marta & Company	5/17/2013	UMPQ	PMCHK00002047	\$1,000.00
55952	K0011	Kaiser Foundation Health Plan,	5/17/2013	UMPQ	PMCHK00002047	\$18,758.00
55953	M0019	Kahl Muscott	5/17/2013	UMPQ	PMCHK00002047	\$48.86
55954	M0098	Meadow Vista County Water Dist	5/17/2013	UMPQ	PMCHK00002047	\$549.63
55955	O0016	Flyers Energy LLC	5/17/2013	UMPQ	PMCHK00002047	\$16.71
55956	P0007	Pacific Gas & Electric Company	5/17/2013	UMPQ	PMCHK00002047	\$8,132.28
55957	P0029	Placer County Environmental He	5/17/2013	UMPQ	PMCHK00002047	\$1,155.00
55958	P0053	Reserve Account	5/17/2013	UMPQ	PMCHK00002047	\$500.00
55959	R0066	Rune Marketing	5/17/2013	UMPQ	PMCHK00002047	\$1,000.00
55960	S0034	Sierra Chemical Co.	5/17/2013	UMPQ	PMCHK00002047	\$734.49
55961	S0094	Manouch Shirvanioun	5/17/2013	UMPQ	PMCHK00002047	\$166.91
55962	S0110	Sierra Sports Service	5/17/2013	UMPQ	PMCHK00002047	\$650.00
55963	S0133	Shelly's Smart Shopper	5/17/2013	UMPQ	PMCHK00002047	\$750.00
55964	S1000	State Of California/DOJ	5/17/2013	UMPQ	PMCHK00002047	\$256.00
55965	TEMPA	Auburn "Host" Lions Club	5/17/2013	UMPQ	PMCHK00002047	\$100.00
55966	TEMPD	Jeane Dekelver	5/17/2013	UMPQ	PMCHK00002047	\$20.00
55967	TEMPH	Amanda Hardman	5/17/2013	UMPQ	PMCHK00002047	\$15.00
55968	TEMPR	Linda Rawson	5/17/2013	UMPQ	PMCHK00002047	\$35.00
55969	TEMPS	Leah Schug	5/17/2013	UMPQ	PMCHK00002047	\$40.00
55970	U0028	U.S. Bank Equipment Finance	5/17/2013	UMPQ	PMCHK00002047	\$383.82
55971	V0013	Pam Vann	5/17/2013	UMPQ	PMCHK00002047	\$47.18
55972	D0013	Deere Credit, Inc	5/23/2013	UMPQ	PMCHK00002048	\$1,981.26
55973	P0021	Petty Cash	5/23/2013	UMPQ	PMCHK00002048	\$292.57
55974	S1007	Stationary Engineers, Local 39	5/23/2013	UMPQ	PMCHK00002048	\$190.73
55975	S1010	State Disbursement Unit	5/23/2013	UMPQ	PMCHK00002048	\$87.50
55726	P0029	Placer County Environmental He	5/31/2013	UMPQ	PMCHK00002050	\$681.00
55976	1099-216	Gerald Harris	5/31/2013	UMPQ	PMCHK00002049	\$390.00
55977	1099-239	Macintosh-Oddo	5/31/2013	UMPQ	PMCHK00002049	\$2,115.75
55978	1099-247	Clifford Johnson	5/31/2013	UMPQ	PMCHK00002049	\$39.00
55979	1099-252	Donna Lisa Otto	5/31/2013	UMPQ	PMCHK00002049	\$40.00
55980	1099-264	Philip Green	5/31/2013	UMPQ	PMCHK00002049	\$38.00
55981	1099-269	Deborah Lynn	5/31/2013	UMPQ	PMCHK00002049	\$19.50
55982	1099-42	Guadalupe Cook	5/31/2013	UMPQ	PMCHK00002049	\$117.00
55983	1099-49	Paula Duffy	5/31/2013	UMPQ	PMCHK00002049	\$715.00
55984	A0133	P & G	5/31/2013	UMPQ	PMCHK00002049	\$273.00
55985	B0020	BSN Sports, Inc.	5/31/2013	UMPQ	PMCHK00002049	\$1,515.10
55986	B0022	Barnum & Celillo Electric, Inc	5/31/2013	UMPQ	PMCHK00002049	\$6,328.00
55987	B0060	Beth's Construction, Inc.	5/31/2013	UMPQ	PMCHK00002049	\$1,850.00
55988	C0061	California Computer Services	5/31/2013	UMPQ	PMCHK00002049	\$690.00
55989	C0072	CIT Technology Fin. Serv., Inc	5/31/2013	UMPQ	PMCHK00002049	\$532.13
55990	C0075	Cintas Corporation	5/31/2013	UMPQ	PMCHK00002049	\$54.22
55991	C0111	CENTRAL VALLEY BROADBAND	5/31/2013	UMPQ	PMCHK00002049	\$189.90
55992	C0113	Cooks Portable Toilets & Septi	5/31/2013	UMPQ	PMCHK00002049	\$900.00
55993	D0029	Don's Backflow Service	5/31/2013	UMPQ	PMCHK00002049	\$286.01
55994	G0027	Giuliani & Kull, Inc.	5/31/2013	UMPQ	PMCHK00002049	\$6,260.00
55995	G0045	Greater Sacramento Softball As	5/31/2013	UMPQ	PMCHK00002049	\$15.00
55996	K0019	Kronick, Moskovitz, Tiedemann	5/31/2013	UMPQ	PMCHK00002049	\$1,258.54
55997	L0023	Vincent Garcia Lopez	5/31/2013	UMPQ	PMCHK00002049	\$23.50
55998	M0048	Joanna McNutt	5/31/2013	UMPQ	PMCHK00002049	\$25.00
55999	N0003	Norris Electric, Inc.	5/31/2013	UMPQ	PMCHK00002049	\$255.48
56000	O0016	Flyers Energy LLC	5/31/2013	UMPQ	PMCHK00002049	\$52.27
56001	P0007	Pacific Gas & Electric Company	5/31/2013	UMPQ	PMCHK00002049	\$1,515.03
56002	P0029	Placer County Environmental He	5/31/2013	UMPQ	PMCHK00002049	\$929.00
56003	P0082	Pickle-Ball, Inc.	5/31/2013	UMPQ	PMCHK00002049	\$63.50

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
56004	P1001	Principal Life Insurance Co-Gr	5/31/2013	UMPQ	PMCHK00002049	\$2,119.04
56005	R0017	Ridge Golf Course, Inc.	5/31/2013	UMPQ	PMCHK00002049	\$90.00
56006	S0016	Sam's Club	5/31/2013	UMPQ	PMCHK00002049	\$892.10
56007	S0093	Patrick Shane	5/31/2013	UMPQ	PMCHK00002049	\$109.89
56008	S0110	Sierra Sports Service	5/31/2013	UMPQ	PMCHK00002049	\$520.00
56009	S1003	Sutter Medical Foundation	5/31/2013	UMPQ	PMCHK00002049	\$915.00
56010	T0058	TELEPACIFIC COMMUNICATIONS	5/31/2013	UMPQ	PMCHK00002049	\$678.53
56011	T1000	Transamerica Life Insurance	5/31/2013	UMPQ	PMCHK00002049	\$380.00
56012	TEMPC	JoAnn Clark	5/31/2013	UMPQ	PMCHK00002049	\$30.00
56013	TEMPH	Nancy Harvey	5/31/2013	UMPQ	PMCHK00002049	\$30.00
56014	TEMPJ	Kathy Jones	5/31/2013	UMPQ	PMCHK00002049	\$37.50
56015	TEMPM	Chris Mayberry	5/31/2013	UMPQ	PMCHK00002049	\$60.00
56016	TEMPR	Nancy Robey	5/31/2013	UMPQ	PMCHK00002049	\$60.00
56017	TEMPW	Jim Wall	5/31/2013	UMPQ	PMCHK00002049	\$12.00
56018	U0027	Utility Cost Management, LLC	5/31/2013	UMPQ	PMCHK00002049	\$66.96
56019	V0007	Verizon Wireless	5/31/2013	UMPQ	PMCHK00002049	\$303.20

Total Checks: 137

Total Amount of Checks: \$144,124.50  
 =====

**SECTION: 5.0**

**ITEM: 5.4 REVIEW OF CASH REQUIREMENTS FOR JUNE, 2013**

**DESCRIPTION: ACCOUNTS PAYABLE**

**INFORMATION: SEE ATTACHED INFORMATION**

**STAFF RECOMMENDATION: THIS ITEM WAS REVIEWED BY THE STANDING FINANCE COMMITTEE AND FORWARDED TO THE BOARD OF DIRECTORS FOR REVIEW AND APPROVAL**

**FISCAL IMPACT: \$285,937.25**

Auburn Rec & Park  
 VENDOR CHECK REGISTER REPORT  
 Payables Management

Ranges: From: To: From: To:  
 Check Number First Last Check Date 6/1/2013 6/30/2013  
 Vendor ID First Last Checkbook ID UMPQ UMPQ  
 Vendor Name First Last

Sorted By: Check Date

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
056023	S1007	Stationary Engineers, Local 39	6/7/2013	UMPQ	PMCHK00002051	\$220.24
056024	S1010	State Disbursement Unit	6/7/2013	UMPQ	PMCHK00002051	\$87.50
056025	S1014	State of California Franchise	6/7/2013	UMPQ	PMCHK00002051	\$169.78
56024	U0019	US Bank	6/10/2013	UMPQ	PMCHK00002052	\$27,907.50
56025	U0019	US Bank	6/10/2013	UMPQ	PMCHK00002053	\$349.36
56026	1099-104	Thomas Seibel	6/14/2013	UMPQ	PMCHK00002054	\$32.50
56027	1099-193	Celena Polena	6/14/2013	UMPQ	PMCHK00002054	\$312.00
56028	1099-203	Susan Thomas	6/14/2013	UMPQ	PMCHK00002054	\$15.60
56029	1099-218	Auburn Gymnastics Center	6/14/2013	UMPQ	PMCHK00002054	\$263.25
56030	1099-223	Linda Pietz	6/14/2013	UMPQ	PMCHK00002054	\$487.50
56031	1099-243	Phillip Dallas	6/14/2013	UMPQ	PMCHK00002054	\$292.50
56032	1099-252	Donna Lisa Otto	6/14/2013	UMPQ	PMCHK00002054	\$975.00
56033	1099-254	Ralph Kendrick	6/14/2013	UMPQ	PMCHK00002054	\$450.00
56034	1099-264	Philip Green	6/14/2013	UMPQ	PMCHK00002054	\$32.00
56035	1099-269	Deborah Lynn	6/14/2013	UMPQ	PMCHK00002054	\$97.50
56036	1099-276	CASH	6/14/2013	UMPQ	PMCHK00002054	\$1,950.00
56037	1099-277	Foothill Karake Do	6/14/2013	UMPQ	PMCHK00002054	\$175.50
56038	1099-278	Daniella Zimmerman	6/14/2013	UMPQ	PMCHK00002054	\$22.00
56039	1099-282	Paul Emery	6/14/2013	UMPQ	PMCHK00002054	\$650.00
56040	1099-49	Paula Duffy	6/14/2013	UMPQ	PMCHK00002054	\$572.00
56041	A0001	Recology Auburn Placer	6/14/2013	UMPQ	PMCHK00002054	\$807.76
56042	A0014	AT&T	6/14/2013	UMPQ	PMCHK00002054	\$715.68
56043	A0027	Recology Auburn Placer	6/14/2013	UMPQ	PMCHK00002054	\$1,236.14
56044	A0051	Anderson's Sierra Pipe Co.	6/14/2013	UMPQ	PMCHK00002054	\$142.71
56045	A0131	Adams Pool Specialities	6/14/2013	UMPQ	PMCHK00002054	\$350.00
56046	A0134	Advanced Intregrated Pest Mana	6/14/2013	UMPQ	PMCHK00002054	\$660.00
56047	A1012	AAUW	6/14/2013	UMPQ	PMCHK00002054	\$80.00
56048	B0011	Challenger Sports Corp.	6/14/2013	UMPQ	PMCHK00002054	\$1,402.50
56049	C0002	CARPD	6/14/2013	UMPQ	PMCHK00002054	\$2,500.00
56050	C0113	Cooks Portable Toilets & Septi	6/14/2013	UMPQ	PMCHK00002054	\$698.38
56051	D0010	Diamond Pacific	6/14/2013	UMPQ	PMCHK00002054	\$965.69
56052	D0015	Department of Social Services	6/14/2013	UMPQ	PMCHK00002054	\$440.00
56053	D0025	Dawson Oil Company	6/14/2013	UMPQ	PMCHK00002054	\$2,053.19
56054	D0066	De Lage Landen	6/14/2013	UMPQ	PMCHK00002054	\$535.36
56055	G0006	Gold Country Media Publication	6/14/2013	UMPQ	PMCHK00002054	\$195.00
56056	G0074	G & H Glass Company	6/14/2013	UMPQ	PMCHK00002054	\$29.03
56057	J0020	James Marta & Company	6/14/2013	UMPQ	PMCHK00002054	\$7,200.00
56058	K0011	Kaiser Foundation Health Plan,	6/14/2013	UMPQ	PMCHK00002054	\$17,527.00
56059	L0027	Pat Larson	6/14/2013	UMPQ	PMCHK00002054	\$31.37
56060	M0019	Kahl Muscott	6/14/2013	UMPQ	PMCHK00002054	\$172.63
56061	M0098	Meadow Vista County Water Dist	6/14/2013	UMPQ	PMCHK00002054	\$1,089.63
56062	N0012	Nevada Irrigation District	6/14/2013	UMPQ	PMCHK00002054	\$1,167.60
56063	P0005	Placer County Water Agency	6/14/2013	UMPQ	PMCHK00002054	\$2,976.95
56064	P0007	Pacific Gas & Electric Company	6/14/2013	UMPQ	PMCHK00002054	\$11,534.97
56065	R0017	Ridge Golf Course, Inc.	6/14/2013	UMPQ	PMCHK00002054	\$90.00
56066	R0066	Rune Marketing	6/14/2013	UMPQ	PMCHK00002054	\$250.00
56067	S0022	Stonesifer's Auburn Safe and L	6/14/2013	UMPQ	PMCHK00002054	\$234.33
56068	S0110	Sierra Sports Service	6/14/2013	UMPQ	PMCHK00002054	\$546.00
56069	S1000	State Of California/DOJ	6/14/2013	UMPQ	PMCHK00002054	\$320.00
56070	TEMPG	Julie Guiraud	6/14/2013	UMPQ	PMCHK00002054	\$55.00
56071	TEMPJ	Sharon Juchau	6/14/2013	UMPQ	PMCHK00002054	\$65.00
56072	TEMPM	Cathy Morgan	6/14/2013	UMPQ	PMCHK00002054	\$155.00
56073	U0016	Uptown Signs & Graphics, Inc.	6/14/2013	UMPQ	PMCHK00002054	\$688.00
56074	U0028	U.S. Bank Equipment Finance	6/14/2013	UMPQ	PMCHK00002054	\$383.82
56075	V0010	Vermont Systems, Inc.	6/14/2013	UMPQ	PMCHK00002054	\$3,684.00
56076	M0070	Matt Willis Screenprint	6/14/2013	UMPQ	PMCHK00002055	\$490.22

Auburn Rec & Park  
 VENDOR CHECK REGISTER REPORT  
 Payables Management

\* Voided Checks

Check Number	Vendor ID	Vendor Check Name	Check Date	Checkbook ID	Audit Trail Code	Amount
56077	1099-99	Chris Atkinson	6/21/2013	UMPQ	PMCHK00002056	\$195.00
56078	C0094	Curt's Auto Body	6/21/2013	UMPQ	PMCHK00002056	\$500.00
56079	F0004	Court-Ordered Debt Collections	6/21/2013	UMPQ	PMCHK00002056	\$169.64
56080	J0012	Deere Credit, Inc.	6/21/2013	UMPQ	PMCHK00002056	\$990.63
56081	S1007	Stationary Engineers, Local 39	6/21/2013	UMPQ	PMCHK00002056	\$220.24
56082	S1010	State Disbursement Unit	6/21/2013	UMPQ	PMCHK00002056	\$87.50
56083	TEMPC	Tyler Campbell	6/21/2013	UMPQ	PMCHK00002056	\$500.00
56084	1099-117	Juan Aceituno	6/28/2013	UMPQ	PMCHK00002057	\$643.50
56085	1099-147	Tom Isaac	6/28/2013	UMPQ	PMCHK00002057	\$351.00
56086	1099-218	Auburn Gymnastics Center	6/28/2013	UMPQ	PMCHK00002057	\$195.00
56087	1099-247	Clifford Johnson	6/28/2013	UMPQ	PMCHK00002057	\$45.50
56088	1099-256	Annette Cowan	6/28/2013	UMPQ	PMCHK00002057	\$575.25
56089	1099-280	Georganna Green	6/28/2013	UMPQ	PMCHK00002057	\$276.25
56090	1099-49	Paula Duffy	6/28/2013	UMPQ	PMCHK00002057	\$1,270.10
56091	1099-53	Patricia Waskowiak	6/28/2013	UMPQ	PMCHK00002057	\$48.12
56092	A0133	P & G	6/28/2013	UMPQ	PMCHK00002057	\$273.00
56093	A0139	Auburn Ford	6/28/2013	UMPQ	PMCHK00002057	\$39,117.40
56094	C0041	CPRS	6/28/2013	UMPQ	PMCHK00002057	\$170.00
56095	C0061	California Computer Services	6/28/2013	UMPQ	PMCHK00002057	\$761.26
56096	C0075	Cintas Corporation	6/28/2013	UMPQ	PMCHK00002057	\$77.91
56097	C0104	Campana Propane Service	6/28/2013	UMPQ	PMCHK00002057	\$356.14
56098	C0111	CENTRAL VALLEY BROADBAND	6/28/2013	UMPQ	PMCHK00002057	\$129.95
56099	C0113	Cooks Portable Toilets & Septi	6/28/2013	UMPQ	PMCHK00002057	\$570.60
56100	D0010	Diamond Pacific	6/28/2013	UMPQ	PMCHK00002057	\$304.33
56101	G0006	Gold Country Media Publication	6/28/2013	UMPQ	PMCHK00002057	\$569.84
56102	K0019	Kronick, Moskovitz, Tiedemann	6/28/2013	UMPQ	PMCHK00002057	\$700.00
56103	P0005	Placer County Water Agency	6/28/2013	UMPQ	PMCHK00002057	\$3,666.61
56104	P0007	Pacific Gas & Electric Company	6/28/2013	UMPQ	PMCHK00002057	\$2,001.99
56105	P1001	Principal Life Insurance Co-Gr	6/28/2013	UMPQ	PMCHK00002057	\$2,119.04
56106	R0017	Ridge Golf Course, Inc.	6/28/2013	UMPQ	PMCHK00002057	\$60.00
56107	S0034	Sierra Chemical Co.	6/28/2013	UMPQ	PMCHK00002057	\$1,026.97
56108	S0110	Sierra Sports Service	6/28/2013	UMPQ	PMCHK00002057	\$364.00
56109	S0137	Soldate Sheet Metal	6/28/2013	UMPQ	PMCHK00002057	\$8,965.00
56110	T0028	The Bank of New York Mellon Tr	6/28/2013	UMPQ	PMCHK00002057	\$121,462.50
56111	TEMPB	Jane Bailey	6/28/2013	UMPQ	PMCHK00002057	\$85.00
56112	TEMPC	Kay Conley	6/28/2013	UMPQ	PMCHK00002057	\$70.00
56113	TEMPF	Stacy Foulke	6/28/2013	UMPQ	PMCHK00002057	\$43.00
56114	TEMPC	Kelly Giacomini	6/28/2013	UMPQ	PMCHK00002057	\$90.00
56115	TEMPH	Timothy Hannan	6/28/2013	UMPQ	PMCHK00002057	\$85.00
56116	TEMPJ	Emma Jackson	6/28/2013	UMPQ	PMCHK00002057	\$50.00
56117	TEMPL	Dana La Sher	6/28/2013	UMPQ	PMCHK00002057	\$15.00
56118	1099-283	Rebecca A. Danielsen	6/28/2013	UMPQ	PMCHK00002058	\$200.00

Total Checks: 98

Total Amount of Checks: \$285,937.25

**SECTION: 5.0**

**ITEM: 5.5 REVIEW OF FINANCIALS FOR APRIL, 2013**

**DESCRIPTION:**

**INFORMATION: SEE ATTACHMENT**

**STAFF**

**RECOMMENDATION: THIS ITEM WAS REVIEWED BY THE STANDING  
FINANCE COMMITTEE AND FORWARDED TO  
THE BOARD OF DIRECTORS FOR  
REVIEW AND APPROVAL**



<b>PROFIT &amp; LOSS (Table 1)</b>					
<b>BUDGET 13/14</b>					
<b><i>Final Approved Budget</i></b>					
	<b>Final Approved</b>	<b>%</b>	<b>April</b>	<b>%</b>	
	<b>Budget</b>	<b>Of Total</b>	<b>ACTUAL</b>	<b>Of</b>	<b>Line Item</b>
<b>Operating Revenues</b>	<b>FY 13-14</b>			<b>Budget</b>	<b>Budget</b>
			<b>YTD</b>		
Program Revenue	\$ 697,400	17.1%	\$ 68,224	6.4	
Facility Revenue	\$ 223,561	5.5%	\$ 55,229	5.2	
Misc. Revenue	\$ 31,400	0.8%	\$ 1,525	0.1	
Grants & Donations	\$ 20,750	0.5%	\$ 10	0.0	
Interest Income	\$ 42,350	1.0%	\$ 2,761	0.3	
Projects Revenue	\$ 495,000	12.2%	\$ 24,000	2.2	
Tax Revenue	\$ 2,374,296	58.3%	\$ 917,001	85.8	
In Kind	\$ -	0.0%	\$ -	0.0	
Transf in from Cap Const & City Trust	\$ 185,459		0	0.0	
<b>Total Operating Revenue</b>	<b>\$ 4,070,216</b>	<b>100.00</b>	<b>1,068,750</b>	<b>100.00</b>	
<b>Expenditures</b>					
Program Expense	\$ 199,650	5.1%	\$ 18,765	11.2	
Operating & Supplies	\$ 292,676	7.5%	\$ 13,872	8.3	
Utilities Expense	\$ 203,955	5.2%	\$ 14,293	8.6	
Professional Services	\$ 57,500	1.5%	\$ 936	0.6	
Building & Grounds Maintenance	\$ 251,125	6.4%	\$ 4,550	2.7	
Property Tax Admin.	\$ 52,200	1.3%	\$ -	0.0	
Wages	\$ 1,376,977	35.2%	\$ 61,259	36.7	
Benefits & Payroll Costs	\$ 606,695	15.5%	\$ 53,245	31.9	
Fixed Asset Expense	\$ 103,459	2.6%	\$ -	0.0	
Capital Improvement Projects	\$ 578,000	14.8%	\$ -	0.0	
Debt Services	\$ 154,942	4.0%	\$ -	0.0	
Special Departmental Expenses	\$ -	0.0%	\$ -	0.0	
Project Expenditures	\$ 35,000	0.9%	\$ -	0.0	
Misc Expense		0.0%		0.0	
<b>Total Expenditures</b>	<b>\$ 3,912,179</b>	<b>100.00</b>	<b>\$ 166,920</b>	<b>100.00</b>	
<b>Net Revenue Over Expenditures</b>	<b>\$ 158,037</b>	<b>3.88</b>	<b>\$901,830</b>		
Annual Contingency Reserve (1-2%)	\$ 444,950		\$ 444,950		
Annual Equip Replacement Reserve	\$ 458,531		\$ 458,531		
Future Capital Construction Reserve	\$ 582,329		\$ 582,329		
ADA Reserve	\$ 54,335		\$ 54,335		
<b>TOTAL RESERVES</b>	<b>\$ 1,540,145</b>		<b>\$ 1,540,145</b>		

As Of 4/30/2013  
For All Segment1s  
For All Segment2s  
For Segment3 0000 To 9999  
For All Segment4s

	Current YTD
<b>ASSETS</b>	
Current Assets	
Imprest Fund (Petty Cash)	\$580.00
Umpqua Bank	57,492.88
Placer County Treasure-General	3,362,024.16
ADA Reserve Account	53,031.75
Placer County Treasurer - City Trust	265,099.97
Cash in Debt Service Fund	119,045.31
Youth Asst. Fund	15,269.40
Atwood Fund	12,076.44
Atwood - Equip Replacement Fund	15,603.66
Arboretum Grant Fund	13,474.41
Shockley Maint Fund	14,803.32
Accounts Receivable	49,549.69
A/R - 501C3 Group	8,028.54
Daycamp Receivables	7,999.92
Prepaid Liability Expense	9,438.82
	<hr/>
Total Current Assets	\$4,003,518.27
Fixed Assets	
Fixed Assets: Land	\$1,156,603.12
Fixed Assets: Structures	11,004,565.58
Fixed Assets: Equipment	604,848.29
Fixed Assets: Computer Equipment & Software	120,351.08
Fixed Assets: Vehicles	209,242.21
Fixed Assets: Office Furniture & Rec Equipment	48,123.75
Construction In Progress	59,431.78
Less: Accumulated Depreciation	(7,671,356.91)
	<hr/>
Total Fixed Assets	\$5,531,808.90
Total Assets	<u><u>\$9,535,327.17</u></u>

LIABILITIES and EQUITY

Auburn Rec & Park  
Balance Sheet  
As Of 4/30/2013  
For All Segment1s  
For All Segment2s  
For Segment3 0000 To 9999  
For All Segment4s

	Current YTD
<b>Current Liabilities</b>	
Prepaid Revenue	\$45.00
Gift Certificates	190.00
Sales Tax Payable	52.53
Worker's Comp Payable	19,245.10
Miscellaneous Deductions	(27.54)
Compensated Absenses	112,453.52
	\$131,958.61
<b>Long Term Liabilities</b>	
Certificates of Participation-Dai Ichi Kangyo	235,000.00
	\$235,000.00
<b>Total Long Term Liabilities</b>	<b>\$235,000.00</b>
<b>Total Liabilities</b>	<b>\$366,958.61</b>
<b>Fund Balances</b>	
GFB: Youth Assistance Fund	\$15,269.40
GFB: General Fund Balance	975,516.54
Investments in Fixed Assets	5,531,808.90
Less: Net of Related Debt	(235,000.00)
RFB: Reserved (City Mitigation)	265,099.97
RFB: Annual Equip Replacement Reserv.	458,530.72
RFB: Annual Contingency Reserve	444,950.00
RFB: Reserved for Future Capital Construction	582,328.72
RFB: Arboretum Grant Fund	13,474.41
RFB: Reserved (Atwood)	12,076.44
RFB: Atwood III-Equip Repl Fund	15,603.66
RFB: General Fund (ADA Reserve)	53,031.75
RFB: Shockley Maint Fund	14,803.32
DFB: Designated (Debt Service Fund)	119,045.31
	901,829.42
<b>Net Profit/(Loss)</b>	<b>901,829.42</b>
	\$5,531,808.90
<b>Total Assets</b>	<b>\$5,531,808.90</b>
<b>Total Reserved Funds</b>	<b>\$1,624,898.99</b>
<b>Total Designated Funds</b>	<b>\$119,045.31</b>
<b>Total Unrestricted Funds</b>	<b>\$1,892,615.36</b>
	\$9,535,327.17
<b>Total Liabilities and Equity</b>	<b>\$9,535,327.17</b>

**SECTION: 5.0**

**ITEM: 5.6 REVIEW OF FINANCIALS FOR MAY, 2013**

**DESCRIPTION:**

**INFORMATION: SEE ATTACHMENT**

**STAFF  
RECOMMENDATION: THIS ITEM WAS REVIEWED BY THE STANDING  
FINANCE COMMITTEE AND FORWARDED TO  
THE BOARD OF DIRECTORS FOR  
REVIEW AND APPROVAL**

<b>PROFIT &amp; LOSS (Table 1)</b>					
<b>BUDGET 13/14</b>					
<b><i>Final Approved Budget</i></b>					
	<b>Final Approved</b>	<b>%</b>	<b>May</b>	<b>%</b>	
	<b>Budget</b>	<b>Of Total</b>	<b>ACTUAL</b>	<b>Of</b>	<b>Line Item</b>
<b>Operating Revenues</b>	<b>FY 13-14</b>				<b>Budget</b>
			<b>YTD</b>		
Program Revenue	\$ 697,400	17.1%	\$ 160,625		13.6
Facility Revenue	\$ 223,561	5.5%	\$ 69,543		5.9
Misc. Revenue	\$ 31,400	0.8%	\$ 2,936		0.2
Grants & Donations	\$ 20,750	0.5%	\$ 310		0.0
Interest Income	\$ 42,350	1.0%	\$ 2,837		0.2
Projects Revenue	\$ 495,000	12.2%	\$ 24,000		2.0
Tax Revenue	\$ 2,374,296	58.3%	\$ 918,296		77.9
In Kind	\$ -	0.0%	\$ -		0.0
Transf in from Cap Const & City Trust	\$ 185,459		0		0.0
<b>Total Operating Revenue</b>	<b>\$ 4,070,216</b>	<b>100.00</b>	<b>1,178,547</b>		<b>100.00</b>
<b>Expenditures</b>					
Program Expense	\$ 199,650	5.1%	\$ 38,688		8.7
Operating & Supplies	\$ 292,676	7.5%	\$ 49,908		11.2
Utilities Expense	\$ 203,955	5.2%	\$ 23,211		5.2
Professional Services	\$ 57,500	1.5%	\$ 4,993		1.1
Building & Grounds Maintenance	\$ 251,125	6.4%	\$ 29,841		6.7
Property Tax Admin.	\$ 52,200	1.3%	\$ -		0.0
Wages	\$ 1,376,977	35.2%	\$ 164,858		37.1
Benefits & Payroll Costs	\$ 606,695	15.5%	\$ 104,959		23.6
Fixed Asset Expense	\$ 103,459	2.6%	\$ 19,052		4.3
Capital Improvement Projects	\$ 578,000	14.8%	\$ 6,520		1.5
Debt Services	\$ 154,942	4.0%	\$ 1,981		0.4
Special Departmental Expenses	\$ -	0.0%	\$ -		0.0
Project Expenditures	\$ 35,000	0.9%	\$ -		0.0
Misc Expense		0.0%			0.0
<b>Total Expenditures</b>	<b>\$ 3,912,179</b>	<b>100.00</b>	<b>\$ 444,011</b>		<b>100.00</b>
<b>Net Revenue Over Expenditures</b>	<b>\$ 158,037</b>	<b>3.88</b>	<b>\$734,536</b>		
Annual Contingency Reserve (1-2%)	\$ 444,950		\$ 444,950		
Annual Equip Replacement Reserve	\$ 458,531		\$ 458,531		
Future Capital Construction Reserve	\$ 582,329		\$ 582,329		
ADA Reserve	\$ 54,335		\$ 54,335		
<b>TOTAL RESERVES</b>	<b>\$ 1,540,145</b>		<b>\$ 1,540,145</b>		

As Of 5/31/2013  
For All Segment1s  
For All Segment2s  
For Segment3 0000 To 9999  
For All Segment4s

	Current YTD
<b>ASSETS</b>	
Current Assets	
Imprest Fund (Petty Cash)	\$580.00
Umpqua Bank	61,084.77
Placer County Treasure-General	3,221,007.02
ADA Reserve Account	53,031.75
Placer County Treasurer - City Trust	265,099.97
Cash in Debt Service Fund	119,045.31
Youth Asst. Fund	12,972.98
Atwood Fund	9,523.31
Atwood - Equip Replacement Fund	15,603.66
Arboretum Grant Fund	13,474.41
Shockley Maint Fund	14,803.32
Accounts Receivable	37,521.05
A/R - 501C3 Group	8,028.54
Daycamp Receivables	3,962.92
Prepaid Liability Expense	4,719.40
	<hr/>
Total Current Assets	\$3,840,458.41
Fixed Assets	
Fixed Assets: Land	\$1,156,603.12
Fixed Assets: Structures	11,004,565.58
Fixed Assets: Equipment	604,848.29
Fixed Assets: Computer Equipment & Software	139,403.33
Fixed Assets: Vehicles	209,242.21
Fixed Assets: Office Furniture & Rec Equipment	48,123.75
Construction In Progress	65,951.84
Less: Accumulated Depreciation	(7,671,356.91)
	<hr/>
Total Fixed Assets	\$5,557,381.21
Total Assets	<u><u>\$9,397,839.62</u></u>

LIABILITIES and EQUITY

## Balance Sheet

As Of 5/31/2013

For All Segment1s

For All Segment2s

For Segment3 0000 To 9999

For All Segment4s

	Current YTD
Current Liabilities	
Prepaid Revenue	\$45.00
Gift Certificates	190.00
Sales Tax Payable	56.96
Worker's Comp Payable	23,447.38
Compensated Absenses	112,453.52
	<hr/>
Total Current Liabilities	\$136,192.86
Long Term Liabilities	
Certificates of Participation-Dai Ichi Kangyo	235,000.00
	<hr/>
Total Long Term Liabilities	\$235,000.00
Total Liabilities	\$371,192.86
Fund Balances	
GFB: Youth Assistance Fund	\$12,972.98
GFB: General Fund Balance	980,366.09
Investments in Fixed Assets	5,557,381.21
Less: Net of Related Debt	(235,000.00)
RFB: Reserved (City Mitigation)	265,099.97
RFB: Annual Equip Replacement Reserv.	458,530.72
RFB: Annual Contingency Reserve	444,950.00
RFB: Reserved for Future Capital Construction	582,328.72
RFB: Arboretum Grant Fund	13,474.41
RFB: Reserved (Atwood)	9,523.31
RFB: Atwood III-Equip Repl Fund	15,603.66
RFB: General Fund (ADA Reserve)	53,031.75
RFB: Shockley Maint Fund	14,803.32
DFB: Designated (Debt Service Fund)	119,045.31
	<hr/>
Net Profit/(Loss)	734,535.31
	<hr/>
Total Assets	\$5,557,381.21
Total Reserved Funds	\$1,622,345.86
Total Designated Funds	\$119,045.31
Total Unrestricted Funds	\$1,727,874.38
	<hr/>
Total Liabilities and Equity	\$9,397,839.62
	<hr/> <hr/>

**SECTION: 5.0**

**ITEM: 5.7 REVIEW OF FINANCIALS FOR JUNE, 2013**

**DESCRIPTION:**

**INFORMATION: SEE ATTACHMENT**

**STAFF**

**RECOMMENDATION: THIS ITEM WAS REVIEWED BY THE STANDING  
FINANCE COMMITTEE AND FORWARDED TO  
THE BOARD OF DIRECTORS FOR  
REVIEW AND APPROVAL**



**PROFIT & LOSS (Table 1)**

**BUDGET 13/14**

***Final Approved Budget***

	Final Approved Budget FY 13-14	%	June ACTUAL	%	Of Line Item Budget
<b>Operating Revenues</b>					
			<b>YTD</b>		
Program Revenue	\$ 697,400	17.1%	\$ 273,361		20.7
Facility Revenue	\$ 223,561	5.5%	\$ 84,240		6.4
Misc. Revenue	\$ 31,400	0.8%	\$ 3,436		0.3
Grants & Donations	\$ 20,750	0.5%	\$ 1,167		0.1
Interest Income	\$ 42,350	1.0%	\$ 5,848		0.4
Projects Revenue	\$ 495,000	12.2%	\$ 24,000		1.8
Tax Revenue	\$ 2,374,296	58.3%	\$ 926,366		70.3
In Kind	\$ -	0.0%	\$ -		0.0
Transf in from Cap Const & City Trust	\$ 185,459		0		0.0
<b>Total Operating Revenue</b>	\$ 4,070,216	100.00	1,318,418		100.00
<b>Expenditures</b>					
Program Expense	\$ 199,650	5.1%	\$ 56,138		6.3
Operating & Supplies	\$ 292,676	7.5%	\$ 72,167		8.1
Utilities Expense	\$ 203,955	5.2%	\$ 44,828		5.0
Professional Services	\$ 57,500	1.5%	\$ 17,008		1.9
Building & Grounds Maintenance	\$ 251,125	6.4%	\$ 57,653		6.5
Property Tax Admin.	\$ 52,200	1.3%	\$ -		0.0
Wages	\$ 1,376,977	35.2%	\$ 288,486		32.5
Benefits & Payroll Costs	\$ 606,695	15.5%	\$ 156,681		17.6
Fixed Asset Expense	\$ 103,459	2.6%	\$ 63,566		7.2
Capital Improvement Projects	\$ 578,000	14.8%	\$ 7,060		0.8
Debt Services	\$ 154,942	4.0%	\$ 124,434		14.0
Special Departmental Expenses	\$ -	0.0%	\$ -		0.0
Project Expenditures	\$ 35,000	0.9%	\$ -		0.0
Misc Expense		0.0%			0.0
<b>Total Expenditures</b>	\$ 3,912,179	100.00	\$ 888,021		100.00
<b>Net Revenue Over Expenditures</b>	\$ 158,037	3.88	\$ 430,397		
Annual Contingency Reserve (1-2%)	\$ 444,950		\$ 444,950		
Annual Equip Replacement Reserve	\$ 458,531		\$ 458,531		
Future Capital Construction Reserve	\$ 582,329		\$ 582,329		
ADA Reserve	\$ 54,335		\$ 54,335		
<b>TOTAL RESERVES</b>	\$ 1,540,145		\$ 1,540,145		

As Of 6/30/2013  
For All Segment1s  
For All Segment2s  
For Segment3 0000 To 9999  
For All Segment4s

	Current YTD
ASSETS	
Current Assets	
Imprest Fund (Petty Cash)	\$580.00
Umpqua Bank	63,815.86
Placer County Treasure-General	2,906,892.70
ADA Reserve Account	53,031.75
Placer County Treasurer - City Trust	265,312.19
Cash in Debt Service Fund	119,045.31
Youth Asst. Fund	12,338.78
Atwood Fund	8,088.47
Atwood - Equip Replacement Fund	15,603.66
Arboretum Grant Fund	13,474.41
Shockley Maint Fund	14,748.00
Accounts Receivable	35,868.86
A/R - 501C3 Group	8,028.54
Daycamp Receivables	8,770.70
	<hr/>
Total Current Assets	\$3,525,599.23
Fixed Assets	
Fixed Assets: Land	\$1,156,603.12
Fixed Assets: Structures	11,004,565.58
Fixed Assets: Equipment	604,810.83
Fixed Assets: Computer Equipment & Software	144,837.28
Fixed Assets: Vehicles	248,359.61
Fixed Assets: Office Furniture & Rec Equipment	48,123.75
Construction In Progress	66,491.68
Less: Accumulated Depreciation	(7,671,356.91)
	<hr/>
Total Fixed Assets	\$5,602,434.94
Total Assets	<u><u>\$9,128,034.17</u></u>

LIABILITIES and EQUITY

## Balance Sheet

As Of 6/30/2013

For All Segment1s

For All Segment2s

For Segment3 0000 To 9999

For All Segment4s

	Current YTD
<b>Current Liabilities</b>	
Prepaid Revenue	\$45.00
Gift Certificates	190.00
Sales Tax Payable	56.96
Worker's Comp Payable	29,203.36
State Tax Withholding Payable	(78.38)
State Disability Ins.-SDI Pay	(81.70)
Compensated Absenses	96,136.14
	<hr/>
Total Current Liabilities	\$125,471.38
<b>Long Term Liabilities</b>	
Certificates of Participation-Dai Ichi Kangyo	120,000.00
	<hr/>
Total Long Term Liabilities	\$120,000.00
Total Liabilities	\$245,471.38
<b>Fund Balances</b>	
GFB: Youth Assistance Fund	\$12,338.78
GFB: General Fund Balance	982,490.45
Investments in Fixed Assets	5,602,434.94
Less: Net of Related Debt	(120,000.00)
RFB: Reserved (City Mitigation)	265,099.97
RFB: Annual Equip Replacement Reserv.	458,530.72
RFB: Annual Contingency Reserve	444,950.00
RFB: Reserved for Future Capital Construction	582,328.72
RFB: Arboretum Grant Fund	13,474.41
RFB: Reserved (Atwood)	8,088.47
RFB: Atwood III-Equip Repl Fund	15,603.66
RFB: General Fund (ADA Reserve)	53,031.75
RFB: Shockley Maint Fund	14,748.00
DFB: Designated (Debt Service Fund)	119,045.31
	<hr/>
Net Profit/(Loss)	430,397.61
	<hr/>
Total Assets	\$5,602,434.94
Total Reserved Funds	\$1,735,855.70
Total Designated Funds	\$119,045.31
Total Unrestricted Funds	\$1,425,226.84
	<hr/>
Total Liabilities and Equity	\$9,128,034.17
	<hr/> <hr/>

**SECTION: 7.0**

**BOARD REPORTS, FEE WAIVER LOG, PROJECT  
LIST AND VANDALISM REPORTS**

**INFORMATION:**

**SEE ATTACHMENTS**

**District Administrator**  
**Report to the Board of Directors**  
**June/July, 2013**

- The Recreation Park building was converted to an undersea kingdom for the PHS grad night. It was quite a spectacle and appears to be the largest and most elaborate set-up I have seen in my 12+ years at ARD.
- Lisa Kodl, Mike Thompson (Pump Track committee) and I met with representatives from UAIC. We applied for a UAIC Community Giving grant for the pump track. We did a short Power Point presentation on the pump track followed by some question and answer.
- Public Notice went out for the Ashford Park parking lot renovation project. Bid opening is July 17<sup>th</sup>.
- I made presentations to two different service clubs re: ARD 101. This is a Power Point presentation that hits on general information about ARD, our programs, events and upcoming projects.
- Presentations for Placer County Area #5 Mitigation Funds for the Ashford Park playground were made to the Meadow Vista MAC and the North Auburn MAC.
- Girl Scout Troop #1345 painted the picnic tables at Meadow Vista Park.

**Meetings and events attended**

6/3: 49er Soccer, PHS at Railhead Park

6/4: Doug Marquand and Gregg Roberts re: changes at PUHSD facility services

6/4: Rotary

6/5: Obstacle Course Race committee

6/5: Placer County Facility Services re: Senior Center

6/5: MV MAC meeting

6/6: Gold Country Rotary re: presentation of ARD 101

6/10: Ian Nimo re: energy savings programs with PG&E and Sierra Business Council

6/11: Rotary

6/11: North Auburn MAC

6/12: UAIC representatives re: Community Giving Grant

6/14: Placer County Facility Services re: Senior Center

6/17: PCWA, Pump Track Committee re: canal at Overlook Park

6/18: Rotary Board meeting

6/18: Happy Tails Committee

6/18: Rotary

6/18: A&D Committee

6/19: Auburn Host Lions re: presentation of ARD 101

6/19: Finance Committee

6/19: Policy Committee

6/19: Movie in the Park Night at Recreation Park

6/21: Party in the Park

**Meetings scheduled to attend**

6/24: USBR staff re: ARD projects

6/25: Rotary

6/26: Obstacle Course Race committee

6/28: Movie in the Park Night for Adults at Recreation Park

July 2013

- The Happy Tails dog event went off without any issues. Attendance was low/average for this first time event, however everyone that attended said they had a good time and asked about bringing the event back next year.
- Vandals spray painted graffiti in many locations at the south end of Recreation Park on during the Movie Night for Adults on June 28<sup>th</sup>. The graffiti was removed or painted over.
- The rubber top section of the Sierra Pool expansion joint continues to fail. Staff has put in some stop gap materials to get us through to this fall, when the expansion joint will be removed.
- The Auburn Journal reported a fire on ARD's 24 acre property at Regional Park on July 2<sup>nd</sup>. The fire was actually on the adjacent 92 acres, home to the future Timberline development.
- USBR informed us that they do not foresee charging ARD for their review of the upcoming projects at Railhead Park (playground, shade structure, landscaping) or for the fence removal at Overlook Park. They still need to complete their reviews, but it should be quick (relative to USBR).

#### **Meetings and events attended**

7/9: Happy Tails committee

7/9: Rotary

7/9: Food Truck Fiesta committee

7/10: Gold Country Chapter CSDA workshop

7/10: Movie Night at Regional Park

7/13: Happy Tails dog event at Recreation Park

7/15: A&D Committee

7/16: Rotary Board meeting

7/16: Rotary

7/17: Chamber Board meeting

7/17: Obstacle Course committee

7/17: Finance Committee

7/17: Policy Committee

7/22: Obstacle Course meeting

7/23: Rotary

7/24: Auburn Community Festival Committee

7/25: Placer Land Trust re: PG&E lands conservation easement

7/29: ARD Fishing Club at Ashford Park

7/30: Rotary

7/31: Obstacle Race

7/31: Movie Night at Recreation Park

**District Administrator**  
**Report to the Board of Directors**  
**June/July, 2013**

- The Recreation Park building was converted to an undersea kingdom for the PHS grad night. It was quite a spectacle and appears to be the largest and most elaborate set-up I have seen in my 12+ years at ARD.
- Lisa Kodl, Mike Thompson (Pump Track committee) and I met with representatives from UAIC. We applied for a UAIC Community Giving grant for the pump track. We did a short Power Point presentation on the pump track followed by some question and answer.
- Public Notice went out for the Ashford Park parking lot renovation project. Bid opening is July 17<sup>th</sup>.
- I made presentations to two different service clubs re: ARD 101. This is a Power Point presentation that hits on general information about ARD, our programs, events and upcoming projects.
- Presentations for Placer County Area #5 Mitigation Funds for the Ashford Park playground were made to the Meadow Vista MAC and the North Auburn MAC.
- Girl Scout Troop #1345 painted the picnic tables at Meadow Vista Park.

**Meetings and events attended**

6/3: 49er Soccer, PHS at Railhead Park

6/4: Doug Marquand and Gregg Roberts re: changes at PUHSD facility services

6/4: Rotary

6/5: Obstacle Course Race committee

6/5: Placer County Facility Services re: Senior Center

6/5: MV MAC meeting

6/6: Gold Country Rotary re: presentation of ARD 101

6/10: Ian Nimo re: energy savings programs with PG&E and Sierra Business Council

6/11: Rotary

6/11: North Auburn MAC

6/12: UAIC representatives re: Community Giving Grant

6/14: Placer County Facility Services re: Senior Center

6/17: PCWA, Pump Track Committee re: canal at Overlook Park

6/18: Rotary Board meeting

6/18: Happy Tails Committee

6/18: Rotary

6/18: A&D Committee

6/19: Auburn Host Lions re: presentation of ARD 101

6/19: Finance Committee

6/19: Policy Committee

6/19: Movie in the Park Night at Recreation Park

6/21: Party in the Park

**Meetings scheduled to attend**

6/24: USBR staff re: ARD projects

6/25: Rotary

6/26: Obstacle Course Race committee

6/28: Movie in the Park Night for Adults at Recreation Park

July 2013

- The Happy Tails dog event went off without any issues. Attendance was low/average for this first time event, however everyone that attended said they had a good time and asked about bringing the event back next year.
- Vandals spray painted graffiti in many locations at the south end of Recreation Park on during the Movie Night for Adults on June 28<sup>th</sup>. The graffiti was removed or painted over.
- The rubber top section of the Sierra Pool expansion joint continues to fail. Staff has put in some stop gap materials to get us through to this fall, when the expansion joint will be removed.
- The Auburn Journal reported a fire on ARD's 24 acre property at Regional Park on July 2<sup>nd</sup>. The fire was actually on the adjacent 92 acres, home to the future Timberline development.
- USBR informed us that they do not foresee charging ARD for their review of the upcoming projects at Railhead Park (playground, shade structure, landscaping) or for the fence removal at Overlook Park. They still need to complete their reviews, but it should be quick (relative to USBR).

### **Meetings and events attended**

7/9: Happy Tails committee  
 7/9: Rotary  
 7/9: Food Truck Fiesta committee  
 7/10: Gold Country Chapter CSDA workshop  
 7/10: Movie Night at Regional Park  
 7/13: Happy Tails dog event at Recreation Park  
 7/15: A&D Committee  
 7/16: Rotary Board meeting  
 7/16: Rotary  
 7/17: Chamber Board meeting  
 7/17: Obstacle Course committee  
 7/17: Finance Committee  
 7/17: Policy Committee  
 7/22: Obstacle Course meeting  
 7/23: Rotary  
 7/24: Auburn Community Festival Committee  
 7/25: Placer Land Trust re: PG&E lands conservation easement  
 7/29: ARD Fishing Club at Ashford Park  
 7/30: Rotary  
 7/31: Obstacle Race  
 7/31: Movie Night at Recreation Park



**Facilities & Grounds Manager**  
**Report to the Board of Directors**  
**July, 2013**

Irrigation repairs all parks (replace sprinklers, fix leaks, and add sprinklers to system).  
Scheduled mowing & string trimming all District Parks.  
Create new gate opening at Meadow Vista Park (access gate to new 4H pathway).  
Repair tennis court walls (Regional & Meadow Vista Parks).  
Ball field maintenance all fields (bolt rip/screen drag, chalk base lines and batter's box).  
Paint picnic tables at Recreation & Meadow Vista Parks (Girl Scout troop did most of the tables at Meadow Vista picnic area).  
Scheduled string trimming of Meadow Vista Arboretum.  
Fertilizing of all District turf areas.  
Brush removal on west end of Railhead Park (outside contractor & staff).  
Setup & cleanup for Party in the Park (fencing, lights, generator).  
Provide extra staff time for large events, with more trash and bathroom runs during the day (Pioneer Days, Railhead & Overlook running events).  
Picnic area preparation all parks (pressure wash/clean BBQ).  
Replace gutters at Regional Park Gym (outside contractor).  
Cleanup goose droppings (Regional and Meadow Vista Parks).  
Install gate and fencing at Railhead irrigation pond (safety issue).  
Install new/rebuilt picnic tables at Railhead (pond area) & Overlook Parks (above Skate Park).  
Setup & take down for Movie in the Park (fencing, props).  
Remove graffiti Recreation Park (rear bathroom, high school equipment container, tennis practice wall, Beggs Field advertising signs).  
Repair drinking fountains (pool, James and Beggs fields).  
Repair crack in asphalt Winchester tennis court.

**Landscape Architect**  
**Report to the Board of Directors**  
**July, 2013**

- **Miscellaneous Items:** Miscellaneous project research, update of project lists, monthly Board report. Miscellaneous project coordination with Larry Gray and Pat Shane. Compiled individual project timelines and made an overall project schedule tasks list for April and May.
- **Tree Removal at Ashford Park:** Coordinate removal with Pat Shane
- **Park Specific Master Plans:** On-going minor revisions to Ten Year Plan.
- **PGE Land Trust Donation Application:** Continued communication with PGE and Stewardship Council. Working on language for the Conservation Easement with Placer Land Trust and in-house staff. Review of additional documents submitted by PGE. Coordination with staff at Stewardship Council. Drafting language for the site specific BPV's (Beneficial Public values).
- **BMX Pump Track and Soccer Field Project:** Continued work creating schematic site plans for pump track at Overlook. Meetings with pump track committee. Meeting with pump track group. Site visit to Railhead to look at alternative ideas. Staff meetings.
- **Ashford Parking Lot and Restroom Remodel:** Coordinating project to go out for bid. Finalizing bid documents and advertisements. Put project to bid and held mandatory pre-bid meeting on July 10. Bid opening July 17. Prepare information for Board packet from bid opening.

- Ashford Park and Railhead Park Playgrounds: Working with Gametime on details and coordinating installment for Ashford. Processing invoices. Gathering information from Gametime regarding footings and installation as requested by USBR for Railhead playground.
- Railhead Park Design: Continued work on drawings for USBR application and eventual construction. Provided USBR with footing details for shade shelter as requested. Continued research for design implementation. Working on construction specifications.
- Sierra Pool Expansion Joint Repair: Reviewed finish engineering drawings and specifications. Continued coordination with engineer from N. Anderson Engineers. Review and process of invoice for first phase of services. Working on bid documents and project schedule to put the project out to bid.
- Pond Cleaning at Ashford and Meadow Vista: Continued attempts to get information from the State of California regarding contractor license requirements. State finally responded that no contractor license is required for this type of work. Meetings with Pat Shane, Larry Gray and Kahl Muscott.
- Approved Project List: Updates to Project List
- Regional Park Gym Floor: Meetings with contractors, coordination of pre-bids. Gathering information for insurance claim. Soliciting preliminary bids. Research on floor replacement.
- Pickleball Courts: Preliminary concepts and pricing to install new pickleball courts within the District. Concept and pricing for renovating the old basketball court at Meadow Vista into a new single court, research and preliminary estimates.
- Meadow Vista Pathway Repair: Revised concept plan and developing exhibits for repair of the pathway. Site meetings with contractors to solicit preliminary bids. Phone research with local paving companies. Developing construction specifications.
- Park Signage: Coordination for new project notification signage at Meadow Vista. Continued monitoring of signage notices at Ashford and Railhead.
- Ashford Park Restroom Remodel: Work on floor plans for restroom remodel. Meeting with Michelle Davis on ADA issues to be resolved. Research for development of specifications and writing preliminary scope of work. Staff meetings. Site analysis. Code research.

**Customer Service/Marketing Manager**  
**Report to the Board of Directors**  
**July, 2013**

Revenues for program registrations, Summer Discovery Day Camp, and facility reservations reflect a small increase in comparison to last year. Discovery Day Camp is the shining star this summer! I continue to promote ARD via direct email marketing, advertising, social media, and having presence in different community events and activities.

In the past two months I met with the Auburn Journal's publisher and his team four times to develop a new marketing and advertising relationship. Also arranged for a meeting where Sheryl and I met the publisher and the manager for their commercial printing division to consider having our activity guides printed by AJ/Gold Country Media.

ARD parks continue to host variety of private and internal events. Coming soon: Zombie Run on 10/26, starting at Recreation Park.

**Recreation Services Manager**  
**Report to the Board of Directors**  
**June/July, 2013**

- Meetings attended: AAUW Board, NNO(2), WIN, SHF, Ukulele Comm.(2), MSNO (3)
- Working with Instructors on Fall Activity Guide.
- Submitted information on Summer Camps and Party in the Park to the Journal.
- Hosted three Robalos Swim Meets.
- Hosted two Mermaids swim meets.
- Showed movie in the park Madagascar, Jerry/Kahl.
- Submitted Instructor Corner information to ARD webmaster.
- Attended Endurance Challenge meeting to get approval for ARD participation.
- Attended the EXPO at the Fairgrounds.
- Had two Happy Tails meetings. Met with Peggy to do a swap for homemade dog treats for awards. The event was well received by the public; all vendors would like to come again next year.
- Met with Robalos Parents Board. Attended VFCAL meeting for Championships.
- Final contact with vendors for PIP. Finish set up PIP.
- Attended Obstacle Scramble meeting (2). Continue looking for sponsors.
- Met with Journal Publisher. Got two articles published.
- Overseeing camps and swimming lessons that started up June 10.
- Held movie for adults, had about 100-130 attendees.
- Sent Activity Guide to Graphics.

**MSNO-Mid-Summer Night Out, AAUW-American Association of University Women, SHF-Auburn Senior Health Fair, PIP-Party in the Park, VFCAL-Valley Foothills Competitive Aquatics League , ACF-Auburn Community Festival, WIN- Women in Network, NNO-National Night Out**

**Coming up this Month**

July 27	Mid-Summer Night Out	Downtown
July 31	Movie: The Lorax	Recreation Park
August 6	National Safety Night Out	Recreation Park
August 17	Ukulele Festival	CVCC
August 23	Food Truck Festival	Recreation Park

**Youth Services Manager**  
**Report to the Board of Directors**  
**July, 2013**

- Our enrollment for summer day camp has shown a small increase over last year. We have excellent staff and things are going smoothly so far.
- Registration opened on July 9<sup>th</sup> for Discovery Club. We are aware that there have been a few changes with school personnel and once school begins, we will see if this has any impact on our Clubs.
- We sincerely appreciate all the help from Larry and his crew when day camp issues arise.
- We look forward to having Kahl, Joe and Larry once again lead our fishing club on July 29<sup>th</sup> at Ashford Park.

FEE WAIVER LOG

DATE	NAME	ORGANIZATION	RENTAL FEES	CUSTODIAL AND PERMIT FEES	WAIVED FEES	CO-SPONSORED EVENT	MONTHLY TOTAL	YTD TOTAL
Apr-13	John Kirkpatrick	Gold Country Wildlife Rescue-Sierra Room, Kitchen, Sunset Room	\$800.00	\$30.00	\$800.00	No		
Apr-13	Karen Neal	Cub Scout Pack 6-Meadow Vista-Regional Park Picnic sites and Amphitheater	\$200.00	\$10.00	\$200.00	No		
Apr-13	Bart O'Brien	Auburn Rotary	\$120.00	\$30.00	\$150.00	No		
							\$1,150.00	\$1,150.00
May-13	James Moore	Auburn "Host" Lions Club- Picnic sites at Recreation Park	\$100.00	\$60.00	\$100.00	No		
May-13	Barbara Crowell	Senior Health Fair-Regional Gym and Lakeside Room	\$1,360.00	\$360.00	\$1,040.00	Yes		
May-13	Kerri Rondoni	Placer Hills School District-Meadow Vista Picnic Sites	\$150.00	\$90.00	\$150.00	No		
							\$1,290.00	\$2,440.00
Jul-13	Barbar Whitley	Girl Scouts-Recreation Picnic area	\$50.00	\$30.00	\$50.00	No		
Jul-13	Patrick King	Auburn Moose Lodge	\$75.00	\$60.00	\$75.00	No		
Jul-13	Joshua Freeman	Auburn Church of Christ	\$150.00	\$90.00	\$150.00	No		
Jul-13	Christine Bunnell	Tracey Bunnell	\$840.00	\$60.00	\$840.00	Yes		
							\$1,115.00	\$3,555.00

**2013/2014 Project List**

<b>PROJECT</b>	<b>Est. Cost</b>	<b>Notes</b>	<b>Est. completion date</b>
<b>Ashford Park</b>			
Restroom Remodel	35,000	Research, drawings and soliciting preliminary quotes for interior remodel	Nov-13
Ashford Path Of Travel Renovation	27,000	Pre-bid meeting held July 10. Bid opening July 17 @ 3PM	Oct-13
Path Of Travel Rest Stops	4,000	Install landing reststops along existing paved roadway for ADA compliance	Oct-13
Parking Lot Renovation	40,000	Pre-bid meeting held July 10. Bid opening July 17 @ 3PM	Oct-13
Playground Replacement	68,000	Design completed, quote received. Contract w/Placer Co. for mitig. Funds pending	Jul-13
ADA Signage	500	Install directional signage throughout park	Dec-13
<b>Recreation Park</b>			
ADA Signage	1,500	Install ADA signage parkwide	Aug-13
Begg's Safety Netting	1,500	Install safety netting over observation area at Begg's Field, ADA compliance	Aug-13
Expansion Joint Pool	35,000	Construction documents completed. Beginning bid process.	Oct-13
<b>Regional Park</b>			
24 Acres Walking Path - In Kind	235,000	DG pathway constructed by Western Care	Jan-14
MP Field Improvements	12,500	Working with Chris Decker on list of possible improvements and costs	TBD
<b>Railhead Park</b>			
Shade Structure and Hardscape	121,200	Site design and letter sent to USBR; USBR responded letting us know they received our information; USBR to review information. Waiting for USBR.	Feb-14
Playground Replacement	61,000	Design and letter sent to USBR; USBR responded letting us know they received our information; USBR to review information. Waiting for USBR.	Jun-14
<b>Meadow Vista Park</b>			
Pathway Repairs	23,000	Design concept plan complete and soliciting pre-bids	Sep-13
Total Projects Fiscal Year	665,200		
Updated July 11, 2013			

7/1/2013

**Vandalism Report**

DATE	LOCATION	VANDALISM	LABOR COSTS	MATERIAL COSTS														
6/28/2013	Recreation Park	Graffiti, significant, APD called	\$320.00	\$200.00, paint														
7/1/2013	Regional Gym	Gym Fan damaged beyond repair	\$20	\$192.43, new fan														
7/1/2013	Sierra Pool	Hole burned into new pool cover	\$0	\$0.00, no repair scheduled														
7/3/2013	Skate Park	Graffiti on interior wall Broke support to shade structure inside skate park	\$60	\$55, new support/paint														
7/4 to 7/8	Regional	Bathroom soap dispensers taken from shop bathrooms	\$40	\$100, new dispensers														
7/13 & 7/14	Regional	All paper products & soap taken from shop bathrooms	\$20	\$30, replace product														
<table border="1"> <thead> <tr> <th>Total</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Labor</td> <td>\$460</td> </tr> <tr> <td>Total for</td> <td>Total for</td> </tr> <tr> <td>Year</td> <td>Year</td> </tr> <tr> <td></td> <td>\$2,295</td> </tr> <tr> <td></td> <td>\$577.43</td> </tr> <tr> <td></td> <td>\$2,691.93</td> </tr> </tbody> </table>					Total	Total	Labor	\$460	Total for	Total for	Year	Year		\$2,295		\$577.43		\$2,691.93
Total	Total																	
Labor	\$460																	
Total for	Total for																	
Year	Year																	
	\$2,295																	
	\$577.43																	
	\$2,691.93																	

Jun-13

**Vandalism Report**

DATE	LOCATION	VANDALISM	LABOR COSTS	MATERIAL COSTS
6/1/2013	Recreation Park	Graffiti on back picnic tables, broken beer bottles, trash Regional Shop	\$60	\$20, paint for tables, could not remove graffiti
6/1/2013	Ashford Park	Broke (2) toilet paper holders in women's restrooms	\$30	\$30, new toilet paper holders
6/3/2013	Overlook	Graffiti in men's restroom	\$20	\$20, paint, could not remove graffiti
6/3/2013	Railhead	Graffiti in men's restroom	\$20	\$20, paint, could not remove graffiti
6/6/2013	Overlook	Fire started in men's restroom 4 of our newly planted trees broken	\$40	
6/7/2013	Skate Park	Graffiti on wall	\$20	\$20, paint
6/9/2013	Regional	Cut tennis court net	\$20	\$250, new net needed
6/11/2013	Regional	Picnic Table destroyed and thrown into pond	\$20	\$250, new table



6/18/2013	Regional/Railhead/ Overlook	Replace handicap signage on eight (8) bathrooms, damaged	\$40.00	\$256.50, signs										
<table border="1"> <tr> <td data-bbox="414 1052 446 1123">Total</td> <td data-bbox="414 779 446 848">Total</td> </tr> <tr> <td data-bbox="446 1052 479 1123">Labor</td> <td data-bbox="446 737 479 926">\$270 material</td> </tr> <tr> <td data-bbox="479 1010 511 1123">Total for</td> <td data-bbox="479 737 511 848">Total for</td> </tr> <tr> <td data-bbox="511 1052 544 1123">Year</td> <td data-bbox="511 779 544 926">Year</td> </tr> <tr> <td data-bbox="511 856 544 947">\$1,835</td> <td data-bbox="511 569 544 709">\$2,144.50</td> </tr> </table>					Total	Total	Labor	\$270 material	Total for	Total for	Year	Year	\$1,835	\$2,144.50
Total	Total													
Labor	\$270 material													
Total for	Total for													
Year	Year													
\$1,835	\$2,144.50													

**Item 8.1 Cover Sheet: PUBLIC HEARING - Resolution Number 2013-06, A Resolution of the Board of Directors of the Auburn Area Recreation & Park District, Approving Engineer's Report, Confirming Diagram and Assessment and Ordering Levy of Assessment for Fiscal Year 2013 – 2014 for the Atwood Ranch III Landscaping & Lighting Assessment District**

**SUBJECT:** Public Hearing and Resolution Approving Engineer's Report, Confirming Diagram and Assessment and Ordering Levy of Assessment for Fiscal Year 2013-14 for the Atwood Ranch III Landscaping and Lighting Assessment District.

**BACKGROUND:**

In 2004, after gaining property owner ballot support, the benefit assessments were first established to provide funding the installation, maintenance and servicing of landscaping, park and recreation facilities in the Auburn Area Recreation and Park District (Atwood Ranch III).

- Balloting Conducted: November-December 2004
- Ballot Results: 100.0 % of the weighted returned ballots were in support of the proposed assessment
- Board Approval of 1<sup>st</sup> Year Assessment Levies: Dec. 16, 2004
- Fiscal Year 2005-06 Approved Rate: \$148.62 per single family equivalent benefit unit (SFE)
- Annual CPI: In each subsequent year, the maximum assessment rate increases by the annual change in the Consumer Price Index, not to exceed 5% per year.
- Fiscal Year 2012-13 Approved Rate: \$148.62 per single family equivalent benefit unit (SFE)

In order to continue to levy the assessments each year, the Board first adopts a resolution initiating the assessment proceedings for the year and directing the engineer of work, SCI Consulting Group, to prepare the annual Engineer's Report for the District. The Board approved this resolution #2013-01 at the February 28, 2013 Board meeting.

SCI Consulting Group prepared the Engineer's Report that includes the special and general benefits from the assessments, the proposed budget for the continued assessments for fiscal year 2013-14, the updated proposed assessments for each parcel in the District, and the proposed assessments per single family equivalent benefit unit for the fiscal year. At the May 30, 2013 Board meeting, the Board reviewed the Engineer's Report and adopted resolution #2013-05 to declare its intention to levy the assessments, preliminarily approve the Engineer's Report, and provide for notice of the annual public hearing.

Each year, in order to continue to levy the assessments for the coming fiscal year, the Board conducts a noticed public hearing and receives public input on the proposed assessments and the services that they would fund. After hearing the public testimony, the Board may take final action on setting the assessment rate, establishing the services and improvements to be funded and ordering the levy of the continued assessments for fiscal year 2013-14.

**PROPOSED RATE AND CPI HISTORY**

The assessments can be levied annually and can be increased by the change in the San Francisco Bay Area Consumer Price Index, not to exceed 5% per year. The following table summarizes the maximum authorized assessment rates and CPI history:

Year	CPI Rate	Max CPI Available to District	CPI Used
FY 06-07	1.95%	1.95%	0.0%
FY 07-08	3.44%	5.39%	0.0%
FY 08-09	3.84%	9.23%	0.0%
FY 09-10	0.01%	9.24%	0.0%
FY 10-11	2.61%	11.85%	0.0%
FY 11-12	1.52%	13.37%	0.0%
FY 12-13	2.92%	16.29%	0.0%
FY 13-14	2.22%	18.51%	9.49%

The following lists the historical revenues and rates for the assessments.

Fiscal Year	Rate / SFE	Annual Revenues
FY 05-06	\$148.62	\$21,252
FY 06-07	\$148.62	\$21,252
FY 07-08	\$148.62	\$21,252
FY 08-09	\$148.62	\$21,252
FY 09-10	\$148.62	\$21,252
FY 10-11	\$148.62	\$21,252
FY 11-12	\$148.62	\$21,252
FY 12-13	\$148.62	\$21,252
FY 13-14	\$162.72	\$23,269

Since levying the initial assessments in fiscal year 2005-06, the assessments have never been raised, in spite of higher costs for maintenance and operations that have been incurred. These increased costs include extra irrigation as well as labor costs to maintain the turf that was installed in 2012, and higher charges to provide monitoring of the wetlands preserve area, as well as general cost increases for maintenance and operations of the Assessment District. Moreover, excess costs that were covered in prior years by the account balance for the assessment have reduced the fund balance substantially. In an effort to offset these cumulative cost increases and maintain a positive fund balance, the proposed assessment rate for Fiscal Year 2013-14 includes a cost of living increase of \$14.10 per single family equivalent unit. In addition, the Auburn Area RPD has taken steps to reduce budget costs from those estimated in Fiscal Year 2012-13 in an effort to minimize the financial impact to property owners in the Assessment District and to keep the assessment rate increase as low as possible.

**PROPOSED FY 2013-14 BUDGET, SERVICES & IMPROVEMENTS**

<b>Summary of revenue and total cost</b>	<b>FY 2013-14</b>
Revenue	\$23,269
Costs:	
Services	\$20,930
Incidentals	\$3,583

- Parks maintained:
  - a. Maintenance of a neighborhood park and tot lot within the development area known as Atwood Ranch III
  
- Other Services:
  - a. Maintenance of trails in the wetlands preserve area
  - b. Irrigation and turf of a small grass area adjacent to the tot lot
  - c. Monitoring of 10.69 acres of wetlands preserve area with associated riparian scrub land, seeps, floodplains and drainage areas to a stormwater detention area
  - d. Reporting four times yearly to the Army Corps of Engineers, including biology reports and project management reports

**RECOMMENDATION:**

It is recommended that the Board hold a public hearing, consider all public comments, and subsequently approve Resolution 2013-06 that would approve the Engineer’s Report, confirm the diagram and assessment, and order the continuation of assessment for fiscal year 2013-14 for Atwood Ranch III Landscaping and Lighting Assessment District as the final step in levying the continued assessments.

**RESULT OF RECOMMENDED ACTION:**

The Board will order the levy of the continued assessments for fiscal year 2013-14, at the increased rate of \$162.72, and will cause those levies to be submitted by SCI Consulting Group to the County Auditor to be included on the 2013-14 property tax bills.

**ATTACHMENTS:**

- Resolution Number 2013-06
- Atwood III 2013 – 14 Engineer’s Report
- Mailer sent to Atwood residents
- Letter of Public Hearing postponement
- Notice of Public Hearing Proof Publication from Auburn Journal

**RESOLUTION NO. 2013-06**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE AUBURN  
AREA RECREATION AND PARK DISTRICT, APPROVING  
ENGINEER'S REPORT, CONFIRMING DIAGRAM AND ASSESSMENT  
AND ORDERING THE CONTINUATION OF ASSESSMENTS FOR  
FISCAL YEAR 2013-14 FOR THE ATWOOD RANCH III LANDSCAPING  
AND LIGHTING ASSESSMENT DISTRICT**

WHEREAS, on January 27<sup>th</sup>, 2005, by its Resolution No. 2005-01, after receiving a weighted majority of ballots in support of the proposed assessment, this Board ordered the formation of and levied the first assessment within the Auburn Area Recreation and Park District, Atwood Ranch III Landscaping and Lighting Assessment District (the "Assessment District") pursuant to the provisions of Article XIID of the California Constitution, and the Landscaping and Lighting Act of 1972 (the "Act"), Part 2 of Division 15 of the California Streets and Highways Code (commencing with Section 22500 thereof); and

WHEREAS, the first Engineer's Report for Fiscal Year 2005-06 described how the assessment district would be established, determined the uses of the assessment funds, established the methodology by which the assessments would be applied to properties in the District, established that the assessment is subject to an annual adjustment tied to the annual change in the Consumer Price Index for the San Francisco Bay Area, and stated that the assessment would continue year-to-year until terminated by the District Board of Directors; and

WHEREAS, although the methodology by which the assessments are applied to properties in the District does not change from year to year, a new Engineer's Report is prepared each year in order to establish the CPI adjustment for that year; the new maximum authorized assessment rate for that year; the budget for that year; and the amount to be charged to each parcel in the District that year, subject to that year's assessment rate and any changes in the attributes of the properties in the District, including but not limited to use changes, parcel subdivisions, and/or parcel consolidations; and

WHEREAS, by Resolution No. 2013-01, the District Board ordered the preparation of an Engineer's Report for the Atwood Ranch III Landscaping and Lighting Assessment District (the "District") for fiscal year 2013-14; and

WHEREAS, pursuant to said Resolution, the Engineer's Report was prepared by SCI Consulting Group, Engineer of Work, in accordance with Section 22565, et seq., of the Streets and Highways Code (the "Report") and Article XIID of the California Constitution; and

WHEREAS, by Resolution No. 2013-05, the District Board preliminarily approved the Engineer's Report for said District and set a date for a Public Hearing; and

WHEREAS, said report was duly made and filed with the Clerk of the Board and duly considered by this Board and found to be sufficient in every particular, whereupon it was determined that the report should

stand as the Engineer's Report for all subsequent proceedings and that July 25<sup>th</sup>, 2013, at the hour of 6:00 p.m. in the Canyon View Community Center, located at 471 Maidu Drive, Auburn, California, 95603 were appointed as the time and place for a hearing by this Board on the question of the levy of the proposed assessment, notice of which hearing was given as required by law; and

WHEREAS, at the appointed time and place the hearing was duly and regularly held, and all persons interested and desiring to be heard were given an opportunity to be heard, and all matters and things pertaining to the continuation of assessment were fully heard and considered by the Board, and all oral statements and all written protests or communications were duly heard, considered and overruled, and this Board thereby acquired jurisdiction to order the continuation of assessment and the confirmation of the diagram and assessment prepared by and made a part of the Engineer's Report to pay the costs and expenses thereof.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE AUBURN AREA RECREATION AND PARK DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The public interest, convenience and necessity require that the levy be made.

SECTION 2. The Assessment District benefited by the improvements and assessed to pay the costs and expenses thereof, and the exterior boundaries thereof, are as shown by a map thereof filed in the office of the Clerk of the Board, which map is made a part hereof by reference thereto.

SECTION 3. The Engineer's Report as a whole and each part thereof, to wit:

(a) the Engineer's estimate of the itemized and total costs and expenses of maintaining the improvements and of the incidental expenses in connection therewith;

(b) the diagram showing the assessment district, plans and specifications for the improvements to be maintained and the boundaries and dimensions of the respective lots and parcels of land within the Assessment District; and

(c) the assessment of the total amount of the cost and expenses of the proposed maintenance of the improvements upon the several lots and parcels of land in the Assessment District in proportion to the estimated special benefits to be received by such lots and parcels, respectively, from the maintenance, and of the expenses incidental thereto;

are finally approved and confirmed.

SECTION 4. Final adoption and approval of the Engineer's Report as a whole, and of the plans and specifications, estimate of the costs and expenses, the diagram and the assessment, as contained in the report as hereinabove determined and ordered, is intended to and shall refer and apply to the report, or any portion thereof as amended, modified, or revised or corrected by, or

pursuant to and in accordance with, any resolution or order, if any, heretofore duly adopted or made by this Board.

SECTION 5. That assessments for fiscal year 2013-14 shall be continued at the rate of one hundred sixty-two dollars and seventy-two cents (\$162.72) per single family equivalent benefit unit as specified in the Engineer's Report for fiscal year 2013-14, with estimated total annual assessment revenues as set forth in the Engineer's Report; and

SECTION 6. The assessment to pay the costs and expenses of the maintenance of the improvements for fiscal year 2013-14 is hereby levied. For further particulars pursuant to the provisions of the Landscaping and Lighting Act of 1972, reference is hereby made to the Resolution Directing Preparation of Engineer's Report.

SECTION 7. Based on the oral and documentary evidence, including the Engineer's Report, offered and received at the hearing, this Board expressly finds and determines (a) that each of the several lots and parcels of land will be specially benefited by the maintenance of the improvements at least in the amount if not more than the amount, of the assessment apportioned against the lots and parcels of land, respectively, and (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, the aforesaid finding and determination as to special benefits.

SECTION 8. Immediately upon the adoption of this resolution, but in no event later than the third Monday in August following such adoption, the Clerk of the Board shall file a certified copy of the diagram and assessment and a certified copy of this resolution with the Auditor of the County of Placer. Upon such filing, the County Auditor shall enter on the County assessment roll opposite each lot or parcel of land the amount of assessment thereupon as shown in the assessment. The assessments shall be collected at the same time and in the same manner as County taxes are collected and all laws providing for the collection and enforcement of County taxes shall apply to the collection and enforcement of the assessments. After collection by the County, the net amount of the assessments, after deduction of any compensation due the County for collection, shall be paid to the Atwood Ranch III Landscaping and Lighting Assessment District.

SECTION 9. Upon receipt of the moneys representing assessments collected by the County, the County shall deposit the moneys in the District Treasury to the credit of the improvement fund previously established under the distinctive designation of the Assessment District. Moneys in the improvement fund shall be expended only for the maintenance, servicing, construction or installation of the improvements.

SECTION 10. The Clerk of the Board shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 25<sup>th</sup> day of July, 2013.

---

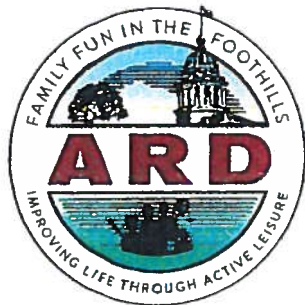
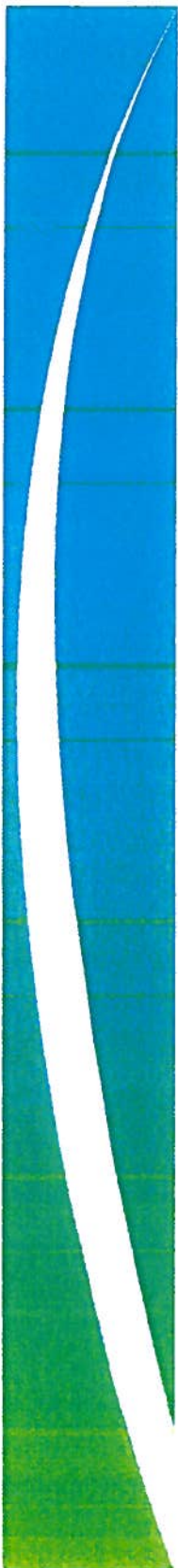
James A. Gray  
Chair, Board of Directors

ATTEST:

---

Pat Larson, Clerk of the Board





# AUBURN AREA RECREATION & PARK DISTRICT

ATWOOD RANCH III LANDSCAPING AND  
LIGHTING ASSESSMENT DISTRICT

## ENGINEER'S REPORT

MAY, 2013

PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 AND  
ARTICLE XIID OF THE CALIFORNIA CONSTITUTION

ENGINEER OF WORK:  
**SCIConsultingGroup**  
4745 MANGELS BLVD.  
FAIRFIELD, CALIFORNIA 94534  
PHONE 707.430-4300  
FAX 707.430-4319  
WWW.SCI-CG.COM

## **AUBURN AREA RECREATION AND PARK DISTRICT**

---

### **BOARD OF DIRECTORS**

James A. Gray, Chairman  
Curt Smith, Vice Chairman  
H. Gordon Ainsleigh, Director  
Jim Ferris, Director  
Scott R. Holbrook, Director

### **DISTRICT ADMINISTRATOR**

Kahl Muscott

### **ADMINISTRATIVE SERVICES MANAGER**

Joe Fecko

### **CLERK/SECRETARY OF THE BOARD AND TO THE DISTRICT ADMINISTRATOR**

Pat Larson

### **DISTRICT LEGAL COUNSEL**

Constantine C. Baranoff

### **ENGINEER OF WORK**

SCI Consulting Group  
Lead Assessment Engineer, John Bliss, M. Eng., P.E.

## TABLE OF CONTENTS

---

INTRODUCTION .....	1
ASSESSMENT BACKGROUND.....	1
ASSESSMENT PROCESS .....	1
ENGINEER'S REPORT AND CONTINUATION OF ASSESSMENTS .....	2
LEGAL ANALYSIS .....	2
COMPLIANCE WITH CURRENT LAW .....	4
PLANS & SPECIFICATIONS .....	5
FISCAL YEAR 2013-14 ESTIMATE OF COST AND BUDGET .....	6
ATWOOD RANCH III LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT .....	6
METHOD OF APPORTIONMENT.....	9
METHOD OF APPORTIONMENT .....	9
DISCUSSION OF BENEFIT .....	9
BENEFIT FACTORS.....	10
GENERAL VERSUS SPECIAL BENEFIT .....	12
METHOD OF ASSESSMENT.....	13
ASSESSMENT APPORTIONMENT .....	13
APPEALS AND INTERPRETATION .....	14
ASSESSMENT .....	15
SUMMARY COST ESTIMATES .....	16
ASSESSMENT DIAGRAM.....	19
APPENDIX A – ASSESSMENT ROLL, FY 2013-14 .....	21

**LIST OF FIGURES**

---

FIGURE 1 – ESTIMATE OF COST ..... 7

FIGURE 2 - ATWOOD RANCH III LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT SUMMARY  
COST ESTIMATES, FISCAL YEAR 2013-14 ..... 16

## INTRODUCTION

---

### ASSESSMENT BACKGROUND

The Auburn Area Recreation and Park District, Atwood Ranch III Landscaping and Lighting Assessment District (the "Assessment District"), was formed by a mailed ballot proceeding in 2004 to provide funding for the maintenance and improvement of the neighborhood park facilities and wetlands preserve areas adjacent to the properties in the Atwood Ranch III subdivision that forms the Assessment District (the "Improvements"). The Atwood Ranch III subdivision is located south of Atwood Road, generally to the northwest of the intersection of Bean Road and Kemper Road. The subdivision will be comprised of 143 single family residences. This Assessment District formation resulted from agreements or conditions of development approval between the Auburn Area Recreation and Park District ("RPD") and the property owner, Morrison Homes, Inc., whereby the RPD and property owner agreed on neighborhood park maintenance to improve the appeal of the community, and maintenance of wetlands preserve areas pursuant to Army Corps of Engineers mandates.

### ASSESSMENT PROCESS

In 2004, the Auburn Area Recreation and Park District Board of Directors (the "Board") conducted an assessment ballot proceeding pursuant to the requirements of Article XIII D of the California Constitution ("The Taxpayer's Right to Vote on Taxes Act") and the Landscaping and Lighting Act of 1972. During this ballot proceeding, property owners in the Assessment District were mailed a notice and ballot for the proposed Assessment District. A 45-day period was provided for balloting and a public hearing was conducted on December 16, 2004. After the close of the public input portion of the public hearing, all ballots returned within the 45-day balloting period were tabulated.

The tabulation results determined that the assessment ballots submitted in opposition to the proposed assessments did not exceed the assessment ballots submitted in favor of the assessments (with each ballot weighted by the proportional financial obligation of the property for which the ballot was submitted).

As a result, the Board gained the authority to approve the levy of the assessments for fiscal year 2005-06 and to continue to levy them in future years. The assessments are subject to an annual adjustment tied to the Consumer Price Index for the San Francisco Bay Area as of December of each succeeding year, with the maximum annual adjustment not to exceed 5%. In the event that the annual change in the CPI exceeds 5%, any percentage change in excess of 5% can be cumulatively reserved and can be added to the annual change in the CPI for years in which the CPI change is less than 5%. Including the authorized annual adjustment, the maximum fiscal year 2013-14 assessment rate per equivalent dwelling unit for the Atwood Ranch III Landscaping and Lighting Assessment District is \$178.37. The proposed assessment rate per EDU for fiscal year 2013-14 is \$162.72, which is less than the maximum authorized assessment rate.

## ENGINEER'S REPORT AND CONTINUATION OF ASSESSMENTS

In each subsequent year for which the assessments will be continued, the Board must direct the preparation of an Engineer's Report, budgets and proposed assessments for the upcoming fiscal year. After the Engineer's Report is completed, the Board may preliminarily approve the Engineer's Report and proposed assessments and establish the date for a public hearing on the continuation of the assessments. This Report was prepared pursuant to the direction of the Board by Resolution No. 2013-01 adopted on February 28<sup>th</sup>, 2013.

This Engineer's Report ("Report") was prepared to establish the budget for the continued improvements and services that would be funded by the proposed 2013-14 assessments, determine the benefits received from the assessments and the method of assessment apportionment to lots and parcels within this area. This Report and the proposed assessments have been made pursuant to the Landscaping and Lighting Act of 1972, Part 2 of Division 15 of the California Streets and Highways Code (the "Act") and Article XIID of the California Constitution (the "Article"). This Report is the detailed Engineer's Report required by the Article and the report required by Section 22565 of the Act.

Following submittal of this Report to the Board for preliminary approval, the Board may, by Resolution, call for the Public Hearing on the continued assessments for park maintenance and improvements. This hearing is scheduled for June 27<sup>th</sup>, 2013 at 6:00 p.m. After the close of the hearing, the Board may take action to approve the continuation of the assessments for fiscal year 2013-14. If the assessments are so confirmed and approved, the levies will be submitted to the County Auditor/Controller in June 2013 for inclusion on the property tax roll for Fiscal Year 2013-14.

The maintenance of 10.69 acres of wetlands preserve areas was provided by the developer for the first five years after the Assessment District was formed in Fiscal Year 2005-06. Following that time period, the wetlands preserve areas maintenance services were to be provided by the Auburn Area Recreation and Park District. Maintenance of the wetlands preserve areas is now provided by the Auburn Area RPD.

## LEGAL ANALYSIS

### PROPOSITION 218

This assessment was formed consistent with Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996, and is now Article XIIC and XIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property.

Proposition 218 describes a number of important requirements, including a property-owner balloting, for the formation and continuation of assessments, and these requirements are satisfied by the process used to establish this assessment.

#### **SILICON VALLEY TAXPAYERS ASSOCIATION, INC. V SANTA CLARA COUNTY OPEN SPACE AUTHORITY**

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority ("SVTA vs. SCCOSA"). This ruling is the most significant court case in further legally clarifying the substantive assessment requirements of Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special, not general, benefit
- The services and/or improvements funded by assessments must be clearly defined
- Special benefits are directly received by and provide a direct advantage to property in the assessment district

#### **DAHMS V. DOWNTOWN POMONA PROPERTY**

On June 8, 2009, the 4<sup>th</sup> Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

#### **BONANDER V. TOWN OF TIBURON**

On December 31, 2009, the 1<sup>st</sup> District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based on in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

#### **BEUTZ V. COUNTY OF RIVERSIDE**

On May 26, 2010 the 4th District Court of Appeals issued a decision on the Steven Beutz v. County of Riverside ("Beutz") appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services was not explicitly calculated, quantified and separated from the special benefits.

#### **GOLDEN HILL NEIGHBORHOOD ASSOCIATION V. CITY OF SAN DIEGO**

On September 22, 2011, the San Diego Court of Appeal issued a decision on the Golden Hill Neighborhood Association v. City of San Diego appeal. This decision overturned an assessment for street and landscaping maintenance in the Greater Golden Hill neighborhood of San Diego, California. The court described two primary reasons for its



decision. First, like in *Beutz*, the court found the general benefits associated with services were not explicitly calculated, quantified and separated from the special benefits. Second, the court found that the City had failed to record the basis for the assessment on its own parcels.

#### COMPLIANCE WITH CURRENT LAW

This Engineer's Report is consistent with the requirements of Article XIII C and XIII D of the California Constitution and with the *SVTA* decision because the improvements to be funded are clearly defined; the benefiting property in the Assessment District enjoys close and unique proximity, access and views to the Improvements; the Improvements serve as an extension of usable land area for benefiting properties in the Assessment District; and such special benefits provide a direct advantage to property in the Assessment District that is not enjoyed by the public at large or other property. In addition, the improvements are directly available to and will directly benefit property in the Assessment District; and the improvements provide a direct advantage to property in the Assessment District that would not be received in absence of the Assessments.

This Engineer's Report is consistent with *Beutz*, *Dahms* and *Greater Golden Hill* because the Services will directly benefit property in the Assessment District and the general benefits have been explicitly calculated and quantified and excluded from the assessments. Moreover, while *Dahms* could be used as the basis for a finding of 0% general benefits, this Engineer's Report establishes a more conservative measure of general benefits.

The Engineer's Report is consistent with *Bonander* because the Assessments have been apportioned based on the overall cost of the improvements and proportional special benefit to each property.



## PLANS & SPECIFICATIONS

---

Following is a description of the Services that are provided for the benefit of property in the Assessment District. This Assessment District was created as a condition of development for the corresponding developments. Accordingly, prior to these developments, the level of Service in these areas was effectively zero. The formula below describes the relationship between the final level of improvements, the baseline level of service (pre-development) had the assessment not been instituted, and the enhanced level of improvements funded by the assessment.

<b>Final Level of Service</b>	=	<b>Baseline Level of Service (zero, pre-development)</b>	+	<b>Enhanced Level of Service</b>
-----------------------------------	---	--	---	--------------------------------------

The work and improvements ("Improvements") proposed to be undertaken by the Auburn Area Recreation & Park District and the Atwood Ranch III Landscaping and Lighting Assessment District, (the "Assessment District") and the costs thereof paid from the levy of the annual assessments provide special benefit to Assessor Parcels within the Assessment District as defined in the Method of Assessment herein. Consistent with the Landscaping and Lighting Act of 1972, (the "Act") the work and improvements are generally described as follows:

Installation, maintenance and servicing of public improvements, including but not limited to, labor, materials, supplies, utilities and equipment, as applicable, for property within the Assessment District that is owned or maintained by the Auburn Area Recreation & Park District. Any plans and specifications for these improvements will be filed with the District Administrator of the Auburn Area Recreation & Park District and are incorporated herein by reference.

As applied herein, "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation and servicing of any improvement, including repair, removal or replacement of all or any part of any improvement; providing for the life, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury; the removal of trimmings, rubbish, debris, and other solid waste; the cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

"Servicing" means the furnishing of electric current, or energy, gas or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements; or water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

## FISCAL YEAR 2013-14 ESTIMATE OF COST AND BUDGET

---

### ATWOOD RANCH III LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT

#### DESCRIPTION OF IMPROVEMENTS

Within the Assessment District, the existing and proposed improvements are generally described as maintenance of a neighborhood park and tot lot within the development area known as Atwood Ranch III, as well as trails in the wetlands preserve area; irrigation and turf of a small grass area adjacent to the tot lot; monitoring of 10.69 acres of wetlands preserve area (located within the area currently known as Lots B and C) with associated riparian scrub land, seeps, floodplains and drainage areas to a stormwater detention area; and reporting four times yearly to the Army Corps of Engineers, including biology reports and project management reports.

**FIGURE 1 – ESTIMATE OF COST**  
**Auburn Area Recreation and Park District**  
**Atwood Ranch III Landscaping & Lighting Assessment District**  
**Estimate of Cost 2013-14**

Beginning Fund Balance, June 30, 2013		\$6,699.18
Equipment Replacement Reserve Balance, June 30, 2013		\$15,603.66
<b>Installation, Maintenance &amp; Servicing Costs</b>		
Maintenance Labor (Incl. Roll-Ups)	\$7,500.00	
Water Costs	\$4,530.00	
Park Equipment Replacement	\$0.00	
Park Improvements (turf, irrigation)	\$2,500.00	
Preserve Monitoring	\$6,400.00	
Subtotal		\$20,930.00
<b>Incidental Costs</b>		
County Collection Charges	\$232.69	
Insurance	\$450.00	
Administrative Costs	\$2,900.00	
Subtotal		\$3,582.69
<b>Total Costs</b>		<b>\$24,512.69</b>
Less:		
Contribution from Other Sources for General Benefit		(\$1,243.73)
<b>Total Improvement District Budget</b>		
(Net Amount to be Assessed)		<b>\$23,268.96</b>

---

**Budget to Assessment**

Total Budget		\$23,268.96
Total EDU Units		143
Rate per EDU Unit		\$162.72

---

NOTE: The maintenance of 10.69 acres of wetlands preserve areas was provided by the developer for the first five years after the Assessment District was formed. Following that time period, the wetlands preserve area maintenance is to be provided by the Auburn Area RPD.

Beginning in 2012, the Auburn Area RPD, by agreement with the Homeowners' Association, commenced maintenance of additional improvements installed and paid for by the HOA in the former "natural turf" area adjacent to the tot lot, including installation and maintenance of irrigation and turf.

Since levying the initial assessments in fiscal year 2005-06, the assessments have never been raised, in spite of higher costs for maintenance and operations that have been incurred. These increased costs include extra irrigation as well as labor costs to maintain the turf that was installed in 2012, and higher charges to provide monitoring of the wetlands preserve area, as well as general cost increases for maintenance and operations of the Assessment District. Moreover, excess costs that were covered in prior years by the account balance for the assessment have reduced the fund balance substantially. In an effort to offset these cumulative cost increases and maintain a positive fund balance, the proposed assessment rate for Fiscal Year 2013-14 includes a cost of living increase of \$14.10 per single family equivalent unit. In addition, the Auburn Area RPD has taken steps to reduce budget costs from those estimated in Fiscal Year 2012-13 in an effort to minimize the financial impact to property owners in the Assessment District and to keep the assessment rate increase as low as possible.

## METHOD OF APPORTIONMENT

---

### METHOD OF APPORTIONMENT

This section of the Engineer's Report includes an explanation of the benefits to be derived from the installation, maintenance and servicing of neighborhood park improvements and wetlands preserve areas; and the methodology used to apportion the total assessment to properties within the Atwood Ranch III Landscaping and Lighting Assessment District.

The Atwood Ranch III Landscaping and Lighting Assessment District consists of all Assessor Parcels within the boundaries as defined by the Assessment Diagram included within this Report and the Assessor Parcel Numbers listed within the included Assessment Roll. The method used for apportioning the assessments is based upon the proportional special benefits to be derived by the properties in the Atwood Ranch III Landscaping and Lighting Assessment District, over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two step process: the first step is to identify the types of special benefit arising from the improvements, and the second step is to allocate the assessments to property based on the estimated relative special benefit for each type of property.

### DISCUSSION OF BENEFIT

In summary, the assessments can only be levied based on the special benefit to property. This benefit is received by property over and above any general benefits. Moreover, such benefit is not based on any one property owner's use of the Assessment District's neighborhood parks or wetlands preserve areas, or a property owner's specific demographic status. With reference to the requirements for assessments, Section 22573 of the Landscaping and Lighting Act of 1972 states:

*"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

Proposition 218, as codified in Article XIID of the California Constitution, has confirmed that assessments must be based on the special benefit to property:

*"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*

The following benefit categories summarize the types of special benefit to residential, commercial, industrial and other lots and parcels resulting from the installation, maintenance and servicing of lighting improvements to be provided with the assessment proceeds. These categories of special benefit are derived from the statutes passed by the

California Legislature and other studies which describe the types of special benefit received by property from maintenance and improvements such as those proposed by the Auburn Area Recreation & Park District and the Atwood Ranch III Landscaping and Lighting Assessment District. These types of special benefit are summarized as follows:

- A. PROXIMITY TO IMPROVED PARK AREAS WITHIN THE ASSESSMENT DISTRICT.
- B. ACCESS TO IMPROVED PARK AREAS WITHIN THE ASSESSMENT DISTRICT.
- C. IMPROVED VIEWS WITHIN THE ASSESSMENT DISTRICT.
- D. EXTENSION OF A PROPERTY'S OUTDOOR AREAS AND GREEN SPACES FOR PROPERTIES WITHIN CLOSE PROXIMITY TO THE IMPROVEMENTS.
- E. CREATION OF INDIVIDUAL LOTS FOR RESIDENTIAL USE THAT, IN ABSENCE OF THE ASSESSMENTS, WOULD NOT HAVE BEEN CREATED.

In this case, the recent the SVTA v. SCCOSA decision provides enhanced clarity to the definitions of special benefits to properties in three distinct areas:

- Proximity
- Expanded or improved access
- Views

The SVTA v. SCCOSA decision also clarifies that a special benefit is a service or improvement that provides a direct advantage to a parcel and that indirect or derivative advantages resulting from the overall public benefits from a service or improvement are general benefits. The SVTA v. SCCOSA decision also provides specific guidance that park improvements are a direct advantage and special benefit to property that is proximate to a park that is improved by an assessment:

*The characterization of a benefit may depend on whether the parcel receives a direct advantage from the improvement (e.g. proximity to a park) or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g. general enhancement of the district's property values).*

Proximity, improved access and views, in addition to the other special benefits listed above further strengthen the basis of these assessments.

## BENEFIT FACTORS

The special benefits from the Improvements are further detailed below:

### PROXIMITY TO IMPROVED PARK AREAS WITHIN THE ASSESSMENT DISTRICT

Only the specific properties within close proximity to the Improvements are included in the Assessment District. Therefore, property in the Assessment District enjoys unique and valuable proximity and access to the Improvements that the public at large and property outside the Assessment District do not share.



In absence of the assessments, the Improvements would not be provided and the park areas in the Assessment District would be degraded due to insufficient funding for maintenance, upkeep and repair. Therefore, the assessments provide Improvements that are over and above what otherwise would be provided. Improvements that are over and above what otherwise would be provided do not by themselves translate into special benefits but when combined with the unique proximity and access enjoyed by parcels in the Assessment District, they provide a direct advantage and special benefit to property in the Assessment District.

#### **ACCESS TO IMPROVED PARK AREAS WITHIN THE ASSESSMENT DISTRICT**

Since the parcels in the Assessment District are nearly the only parcels that enjoy close access to the Improvements, they directly benefit from the unique close access to improved park areas that are provided by the Assessments. This is a direct advantage and special benefit to property in the Assessment District.

#### **IMPROVED VIEWS WITHIN THE ASSESSMENT DISTRICT**

The RPD, by maintaining these park areas, provides improved views to properties in the Assessment District. The properties in the Assessment District enjoy close and unique proximity, access and views of the Improvements; therefore, the improved and protected views provided by the Assessments are another direct and tangible advantage that is uniquely conferred upon property in the Assessment District.

#### **EXTENSION OF A PROPERTY'S OUTDOOR AREAS AND GREEN SPACES FOR PROPERTIES WITHIN CLOSE PROXIMITY TO THE IMPROVEMENTS**

In large part because it is cost prohibitive to provide large open land areas on property in the Assessment District, the residential and other benefiting properties in the Assessment District do not have large outdoor areas and green spaces. The park areas within the Assessment District provide additional outdoor areas that serve as an effective extension of the land area for proximate properties because the Improvements are uniquely proximate and accessible to property in close proximity to the Improvements. The Improvements, therefore, provide an important, valuable and desirable extension of usable land area for the direct advantage and special benefit of properties with good and close proximity to the Improvements.

#### **CREATION OF INDIVIDUAL LOTS FOR RESIDENTIAL USE THAT, IN ABSENCE OF THE ASSESSMENTS, WOULD NOT HAVE BEEN CREATED**

Typically, the original owner/developer of the property within the Assessment District agreed to the assessments. As parcels were sold, new owners were informed of the assessments through the title reports, and in some cases, through Department of Real Estate "White Paper" reports that the parcels were subject to assessment. Purchase of property was also an "agreement" to pay the assessment. Moreover, in absence of the assessments, the lots within the Assessment District would not have been created. These lots, and the improvements they support, are a special benefit to the property owners.

## GENERAL VERSUS SPECIAL BENEFIT

The proceeds from the Atwood Ranch III Landscaping and Lighting Assessment District would be used to fund improvements and increased levels of maintenance to the amenities adjoining the properties in the Assessment District. In absence of the Atwood Ranch III Landscaping and Lighting Assessment District, such improvements would not be provided and the properties would not be subdivided and improved to the same extent. The Assessment District is specifically proposed to provide additional and improved public resources in the Assessment District. The park improvements provided by the Atwood Ranch III Landscaping and Lighting Assessment District increase recreational opportunities to the homes within the Atwood Ranch III development, providing benefit to the development itself and are deemed to be of special benefit. In absence of the assessments, these public resources would not be created and revenues would not be available for their continued maintenance and improvement. Therefore, the assessments solely provide special benefit to property in the Assessment District over and above the general benefits conferred by the general facilities of the Assessment District.

Although these Improvements may be available to the general public at large, the park area within the Assessment District is specifically designed, located and created to provide additional and improved public resources for property inside the Assessment District, and not the public at large. Other properties that are either outside the Assessment District or within the Assessment District and not assessed, do not enjoy the unique proximity, access, views and other special benefit factors described previously. These Improvements are of special benefit to properties located within the Assessment District because they provide a direct advantage to properties in the Assessment District that would not be provided in absence of the Assessments.

There is no widely-accepted or statutory formula for calculating general benefit. General benefits are benefits from improvements or services that are not special in nature, are not "particular and distinct" and are not "over and above" benefits received by other properties. The SVTA vs. SCCOSA decision provides some clarification by indicating that general benefits provide "an indirect, derivative advantage" and are not necessarily proximate to the improvements.

In the 2009 Dahms case, the court upheld an assessment that was 100% special benefit on the rationale that the services funded by the assessments were directly provided within the assessment district. It is also important to note that the improvements and services funded by the assessments in Pomona are similar to the improvements and services funded by the Assessments described in this Engineer's Report and the Court found these improvements and services to be 100% special benefit. Also similar to the assessments in Pomona, the Assessments described in this Engineer's Report fund improvements and services directly provided within the Assessment District and every benefiting property in the Assessment District enjoys proximity and access to the Improvements. Therefore, Dahms establishes a basis for minimal or zero general benefits from the Assessments.



Although the analysis used to support these assessments concludes that the benefits are solely special, as described above, consideration is made for the suggestion that a portion of the benefits are general. General benefits cannot be funded by these assessments - the funding must come from other sources.

One measure of general benefits from park and recreation Improvements is the percentage of time such park and recreation Improvements are used by individuals who are not residents, employees, customers or property owners in the Assessment District. Field surveys conducted by SCI in many other similar communities in California have found that for similar local parks such as those within the Assessment District, typically 5% of the park users do not live or work within the Assessment District. This is a measure of the general benefits to the public at large.

5%	(General Benefit)
+ 95%	(Special Benefit)
= 100%	(Total Benefit)

The maintenance and servicing of these improvements is also partially funded, directly and indirectly from other sources including the Auburn Area Recreation and Park District, and Placer County as well as other public agencies. This funding comes in the form of grants, special programs, and general funds, as well as direct maintenance and servicing of facilities (e.g. curbs, gutters, streets, drainage systems, etc.) This funding from other sources more than compensates for general benefits, if any, received by the properties within the assessment district. The sum total of this contribution exceeds the 5% minimum needed to offset any general benefit, as noted above.

## METHOD OF ASSESSMENT

The second step in apportioning assessments is to determine the relative special benefit for each property. This process involves determining the relative benefit received by each property in relation to a single family home, or, in other words, on the basis of Equivalent Dwelling Units (EDU). This EDU methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments. For the purposes of this Engineer's Report, all properties are designated an EDU value, which is each property's relative benefit in relation to a single family home on one parcel. In this case, the "benchmark" property is the single family detached dwelling which is one Equivalent Dwelling Unit or one EDU.

## ASSESSMENT APPORTIONMENT

The proposed assessments for the Atwood Ranch III Landscaping and Lighting Assessment District would provide direct and special benefit to properties in this Assessment District. Atwood Ranch III is a residential single family development project

consisting of 143 single family homes. As such, each residential property receives similar benefit from the proposed improvements. Therefore, the Engineer has determined that the appropriate method of apportionment of the benefits derived by all parcels is on a dwelling unit basis. All improved properties or properties proposed for development are assigned an EDU factor equal to the number of dwelling units developed or planned for the property. The assessments are listed on the Assessment Roll in Appendix A.

#### **APPEALS AND INTERPRETATION**

Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the District Administrator or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the District Administrator or his or her designee will promptly review the appeal and any information provided by the property owner. If the District Administrator or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the District Administrator or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the District Administrator or her or his designee, may refer their appeal to the Board of Directors of the Auburn Area Recreation & Park District and the decision of the Board of Directors of the Auburn Area Recreation & Park District shall be final.

## ASSESSMENT

---

WHEREAS, the Board of Directors of the Auburn Area Recreation & Park District, County of Placer, California, by its Resolution No. 2013-01 adopted on February 28<sup>th</sup>, 2013, ordered the initiation of proceedings for the continuation of the assessments for the Atwood Ranch III Landscaping and Lighting Assessment District for Fiscal Year 2013-14, pursuant to the provisions of the Landscaping and Lighting Act of 1972 and Article XIID of the California Constitution (collectively "the Act");

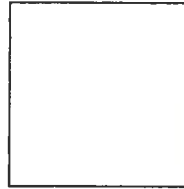
WHEREAS, said Resolution directed the undersigned Engineer of Work to prepare and file a report presenting an estimate of costs, a diagram for the Assessment District and an assessment of the estimated costs of the improvements upon all assessable parcels within the Assessment District, to which Resolution and the description of said proposed improvements therein contained, reference is hereby made for further particulars;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under said Act and the order of the Board of said Auburn Area Recreation & Park District, hereby make the following assessment to cover the portion of the estimated cost of said improvements, and the costs and expenses incidental thereto to be paid by the Assessment District.

The amount to be paid for said improvements and the expense incidental thereto, to be paid by the Atwood Ranch III Landscaping and Lighting Assessment District for the fiscal year 2013-14, is generally as follows in Figure 2 on the next page.

SUMMARY COST ESTIMATES

FIGURE 2 - ATWOOD RANCH III LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT SUMMARY COST ESTIMATES, FISCAL YEAR 2013-14



As required by the Act, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of the Atwood Ranch III Landscaping and Lighting Assessment District. The distinctive number of each parcel or lot of land in the said Atwood Ranch III Landscaping and Lighting Assessment District is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby assess and apportion said net amount of the cost and expenses of said improvements, including the costs and expenses incident thereto, upon the parcels and lots of land within the Atwood Ranch III Landscaping and Lighting Assessment District, in accordance with the special benefits to be received by each parcel or lot from the improvements, and more particularly set forth in the Cost Estimate and Method of Assessment hereto attached and by reference made a part hereof.

The assessments are made upon the parcels or lots of land within the Atwood Ranch III Landscaping and Lighting Assessment District, in proportion to the special benefits to be received by the parcels or lots of land, from said improvements.

The assessment is subject to an annual adjustment tied to the Consumer Price Index-U for the San Francisco Bay Area as of December of each succeeding year (the "CPI"), with a maximum annual adjustment not to exceed 5%. Any change in the CPI in excess of 5% shall be cumulatively reserved as the "Unused CPI" and shall be used to increase the maximum authorized assessment rate in years in which the CPI is less than 5%. The maximum authorized assessment rate is equal to the maximum assessment rate in the first fiscal year the assessment was levied adjusted annually by the minimum of 1) 5% or 2) the change in the CPI plus any Unused CPI as described above.

Property owners in the Assessment District, in an assessment ballot proceeding, approved the initial fiscal year benefit assessment for special benefits to their property including the CPI adjustment schedule, so the assessment may continue to be levied annually and may be adjusted by up to the maximum annual CPI adjustment without any additional assessment ballot proceeding. In the event that in future years the assessments are levied at a rate less than the maximum authorized assessment rate, the assessment rate in a subsequent year may be increased up to the maximum authorized assessment rate without any additional assessment ballot proceeding.


The change in the CPI from December 2011 to December 2012 was 2.22% and the Unused CPI carried forward from the previous fiscal year is 16.29%. Therefore, the maximum authorized assessment rate for fiscal year 2013-14 is increased by 18.51%, which equates to \$178.37 per single family equivalent benefit unit. The estimate of cost and budget in this Engineer's Report proposes assessments for fiscal year 2013-14 at the rate of \$162.72, which is less than the maximum authorized assessment rate.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Placer for the fiscal year 2013-14. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of said County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2013-14 for each parcel or lot of land within the said Atwood Ranch III Landscaping and Lighting Assessment District.

Dated: May 15, 2013

Engineer of Work

By 

John W. Bliss, License No. C52091



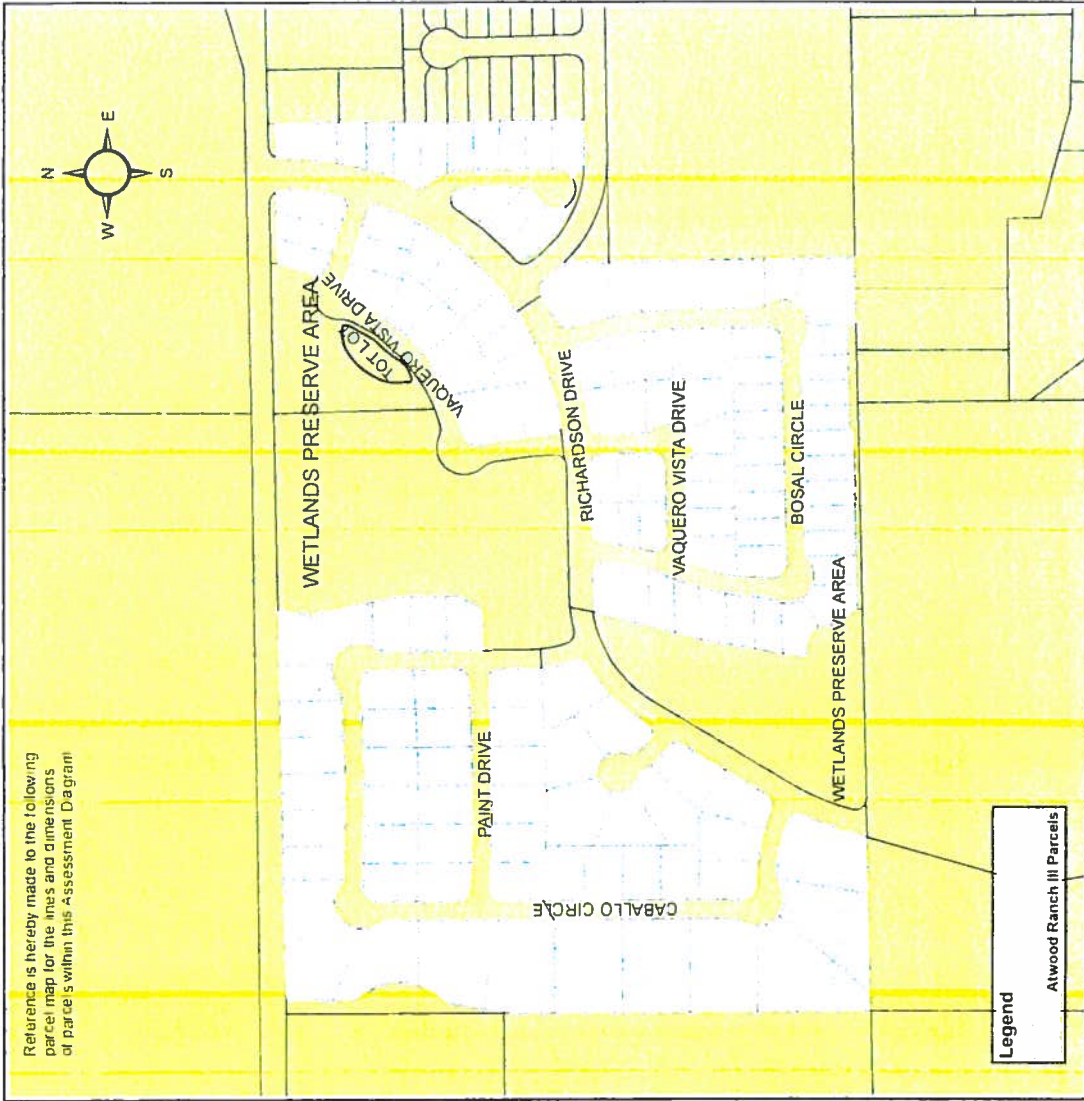
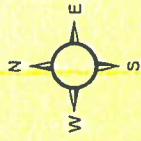
## ASSESSMENT DIAGRAM

---

The boundaries of the Atwood Ranch III Landscaping and Lighting Assessment District are displayed on the following Assessment Diagrams.



Reference is hereby made to the following parcel map for the lines and dimensions of parcels within this Assessment Diagram



APNs  
 051-440-001-000 through 051-440-032-000  
 051-450-001-000 through 051-450-057-000  
 051-460-001-000 through 051-460-020-000  
 051-470-001-000 through 051-470-034-000

FILED IN THE OFFICE OF THE DISTRICT ADMINISTRATOR OF THE AUBURN AREA RECREATION & PARK DISTRICT, COUNTY OF PLACER, CALIFORNIA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013

DISTRICT ADMINISTRATOR, AUBURN AREA RPD

RECORDED IN THE OFFICE OF THE DISTRICT ADMINISTRATOR OF THE AUBURN AREA RECREATION & PARK DISTRICT, COUNTY OF PLACER, CALIFORNIA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013

DISTRICT ADMINISTRATOR, AUBURN AREA RPD

AN ASSESSMENT WAS CONFIRMED AND LEVIED BY THE BOARD OF DIRECTORS OF THE AUBURN AREA RPD ON THE LOTS, PIECES AND PARCELS OF LAND ON THIS ASSESSMENT DIAGRAM ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2013 FOR THE FISCAL YEAR 2013-14. AND SAID ASSESSMENT DIAGRAM AND THE ASSESSMENT ROLL FOR SAID FISCAL YEAR WERE FILED IN THE OFFICE OF THE DISTRICT ADMINISTRATOR OF THE AUBURN AREA RECREATION AND PARK DISTRICT, COUNTY OF PLACER, CALIFORNIA, ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2013.

REFERENCE IS HEREBY MADE TO SAID RECORDED ASSESSMENT ROLL FOR THE EXACT AMOUNT OF EACH ASSESSMENT LEVIED AGAINST EACH PARCEL OF LAND

DISTRICT ADMINISTRATOR, AUBURN AREA RPD

NOTE  
 REFERENCE IS HEREBY MADE TO THE MAPS AND DEEDS REFERENCE TO THE PUBLIC OFFICE OF THE ASSESSOR OF THE COUNTY OF PLACER, CALIFORNIA, FOR THE LOCATION OF THE LINES AND DIMENSIONS OF EACH PARCEL SHOWN HEREIN. THOSE MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH PARCELS. EACH PARCEL IS IDENTIFIED IN SAID MAPS BY ITS DISTINCTIVE ASSESSOR'S PARCEL NUMBER

**AUBURN AREA RECREATION & PARK DISTRICT  
 ATWOOD RANCH III  
 LANDSCAPING & LIGHTING ASSESSMENT DISTRICT  
 ASSESSMENT DIAGRAM**

SCI Consulting Group, 4745 Mangels Blvd  
 Fairfield, CA 94534 (707) 430-4300

AUBURN AREA RECREATION & PARK DISTRICT  
 ATWOOD RANCH III ASSESSMENT DISTRICT  
 ENGINEER'S REPORT, FY 2013-14





## APPENDIX A – ASSESSMENT ROLL, FY 2013-14

---

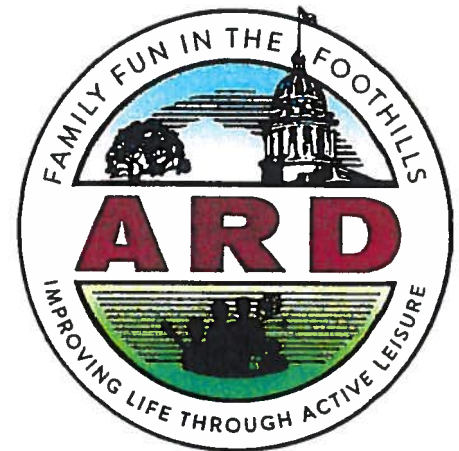
The Assessment Roll (a listing of all parcels assessed within the Atwood Ranch III Landscaping and Lighting Assessment District, and the amount of the assessments) will be filed with the Clerk of the Board and is, by reference, made part of this report and is available for public inspection during normal office hours.

Each lot or parcel listed on the Assessment Roll is shown and illustrated on the latest County Assessor records and these records are, by reference made part of this report. These records shall govern for all details concerning the description of the lots or parcels.

**Parks Make Life Better!**  
AUBURN AREA RECREATION AND PARK DISTRICT  
123 RECREATION DRIVE  
AUBURN, CA 95603



*Vacquero Vista Drive  
(new turf installed in 2012)*



# AUBURN AREA RECREATION AND PARK DISTRICT

Dear Atwood Ranch III Property Owner,

As you may know, the Auburn Area Recreation and Park District (ARD) maintains the neighborhood park near your home on Vacquero Vista Drive. We hope you agree that having a local park with play equipment for young children and a grassy area really adds to our quality of life. What a great place for summer picnics! In addition to maintaining this park area, ARD also monitors the adjacent wetland preserve which gives your neighborhood an important drainage and stormwater detention area.

You are probably aware that you pay an annual assessment on your property taxes that funds these services and improvements in your neighborhood. For the first time since the assessment began in 2005, the **annual rate** for a single family home will be increased by \$14.10 from \$148.62 to \$162.72 for the 2013-2014 fiscal year. The assessment has an annual Consumer Price Index increase available to it, however, for the past 7 years ARD has been able to avoid an increase by keeping our costs down. Rising maintenance costs for the turf and play areas including mowing and water costs for irrigation, along with rising wetland monitoring costs, have led us to enact this increase. We have worked to keep our budget costs as low as possible to minimize the increase in your rate. The chart below shows how the assessment funds are projected to be used in the 2013-2014 fiscal year. All of the money collected is spent in your neighborhood and not used by the State or other agencies.

We hope that you make full use of your neighborhood park throughout the rest of the year. Do not hesitate to contact us with your ideas and concerns at (530) 885-0611 ext. 102, or by email at [plarson@auburnrec.com](mailto:plarson@auburnrec.com). For more information, we also invite you to attend our public hearing.

Sincerely,

Auburn Area Recreation and Park District

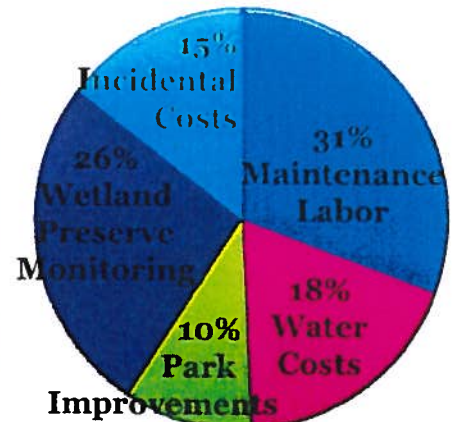


### **ARD services include:**

Park Equipment Maintenance  
Turf Mowing and Irrigation  
Trail Maintenance  
Wetland Monitoring



## 2013-2014 Budget



### **Public Hearing:**

June 27th, 2013  
6:00 p.m.  
District Office  
Board Room  
471 Maidu Dr.  
Auburn, CA





---

## AUBURN AREA RECREATION AND PARK DISTRICT

---

June 20, 2013

### Re: Public Hearing Postponement

Dear Atwood Ranch III Property Owner,

The Auburn Area Recreation and Park District (ARD) public hearing to consider approval of the engineer's report, confirming diagram and assessment and ordering the continuation of assessments for Fiscal Year 2013/2014 for the Atwood Ranch III Landscaping and Lighting Assessment District, originally scheduled for June 27<sup>th</sup>, has been postponed due to scheduling conflicts.

**The new date for the public hearing is Thursday, July 25<sup>th</sup>.** The hearing will take place during the ARD Board of Directors Meeting, starting at 6pm. The meeting takes place at the Canyon View Community Center, 471 Maidu Dr., Auburn, CA.

Please feel free to contact me with any questions. I can be reached at (530) 885-0611 ext. 102 or at [kmuscott@auburnrec.com](mailto:kmuscott@auburnrec.com).

Sincerely,

Kahl Muscott  
District Administrator

**NOTICE OF PUBLIC HEARING**

16509774

**NOTICE OF PUBLIC HEARING FOR THE AUBURN AREA RECREATION AND PARK DISTRICT, ATWOOD RANCH III LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT, FOR FISCAL YEAR 2013-14**

NOTICE IS HEREBY GIVEN that the Auburn Area Recreation and Park District intends to conduct a public hearing for the CONTINUATION of the benefit assessments in fiscal year 2013-14 that funds the Atwood Ranch III Landscaping and Lighting Assessment District.

The public hearing to consider the ordering of installation, maintenance and servicing of public recreational facilities and improvements, and the levy of the assessments for fiscal year 2013-14 shall be held on **Thursday, July 25, 2013 at 6:00 p.m.** at the Canyon View Community Center located at 4711 Maidu Drive, Auburn, California. The proposed fiscal year 2013-14 assessment rate for the Atwood Ranch III Landscaping and Lighting Assessment District is \$162.72 per single family equivalent benefit unit. Members of the public are invited to provide comment at the public hearing, or, in writing, which is received by the Auburn Area Recreation & Park District on or before Thursday, July 25, 2013.  
**PUBLISHED IN AUBURN JOURNAL: JULY 9, 2013**

The above space is reserved for Court/County Filed Date Stamp


**PROOF OF PUBLICATION  
(2015.5 C.C.P.)**

**STATE OF CALIFORNIA  
County of Placer**

I am a citizen of the United States and employed by a publication in the County aforesaid. I am over the age of eighteen years, and not a party to the mentioned matter. I am the principal clerk of The Auburn Journal, a newspaper of general circulation, in the City of Auburn, which is printed and published in the County of Placer. This newspaper has been judged a newspaper of general circulation by the Superior Court of the State of California, in and for the County of Placer, on the date of May 26, 1952 (Case Number 17407). The notice, of which the attached is a printed copy (set in type not smaller than nonpareil) has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

**JULY 9**

I certify, under penalty of perjury, that the foregoing is true and correct.

  
Terry Clark

Dated in Auburn, California

**JULY 9, 2013**

**PROOF OF PUBLICATION  
THE AUBURN JOURNAL  
1030 High Street  
Auburn, CA 95604-5910**

## **Item 8.2 Cover Sheet: A Resolution to Indemnify Placer County for Collection of Atwood III Assessments**

**Auburn Area Recreation and Park District Acquisition and Development Committee Meeting, June 2013; Board of Directors meeting July, 2013**

### **THE ISSUE:**

Shall the Auburn Area Recreation and Park District (ARD) adopt a resolution defending and indemnifying Placer County for collection of Atwood III assessments?

### **BACKGROUND:**

Placer County collects the assessment for the Atwood III Lighting and Landscape District on behalf of ARD. Placer County requires that agencies such as ARD (in this case) defend and indemnify the County from any legal challenges to the assessment.

### **RECOMMENDATION:**

Approve Resolution 2013-08

### **FISCAL IMPACT**

There is no fiscal impact to approving this resolution. Not approving the resolution could have fiscal impacts due to possible non-collection.

### **ATTACHMENTS:**

Resolution 2013-08

RESOLUTION NO. 2013-08

REQUESTING COLLECTION OF CHARGES ON TAX ROLL  
FOR TAX YEAR 2013-14

TAX CODE NUMBER 84150

DIRECT CHARGE NAME Auburn Area Recreation and Park District, Atwood Ranch  
III Landscaping and Lighting Assessment District

Whereas, the Auburn Area Recreation and Park District (hereinafter "District") requests the County of Placer collect on the County tax rolls certain charges which have been imposed pursuant to Article XIID of the California Constitution and the Landscaping and Lighting Act of 1972, by the District, attached hereto, and

Whereas, the County has required as a condition of the collection of said charges that the District warrant the legality of said charges and defend and indemnify the County from any challenge to the legality thereof,

Now, Therefore, Be It Hereby Resolved by the Board of Directors of District that:

1. The Auditor-Controller of Placer County is requested to attach for collection on the County tax rolls those taxes, assessments, fees and/or charges, attached hereto.
2. The District warrants and represents that the taxes, assessments, fees and/or charges imposed by the District and being requested to be collected by Placer County comply with all requirements of state law, including but not limited to Articles XIIC and XIID of the California Constitution (Proposition 218).
3. The District releases and discharges County, and its officers, agents and employees from any and all claims, demands, liabilities, costs and expenses, damages, causes of action, and judgments, in any manner arising out of the collection by County on the property tax roll of any taxes, assessments, fees and/or charges on behalf of District.
4. In consideration for the County's collection of the charge through the County's property tax roll, the District agrees to and shall defend, indemnify and hold harmless the County, its officers, agents and employees (the "Indemnified Parties") from any and all claims, demands, liabilities, costs and expenses, damages, causes of action, and judgments, in any manner arising out of the collection by County of any of District's said taxes, assessments, fees and/or charges requested to be collected by County for District, or in any manner arising out of District's establishment and imposition of said taxes, assessments, fees

and/or charges. District agrees that, in the event a judgment is entered in a court of law against any of the Indemnified Parties as a result of the collection of one of District's taxes, assessments, fees and/or charges, the County may offset the amount of the judgment from any other monies collected by County on behalf of District, including property taxes.

5. The District agrees that its officers, agents and employees will cooperate with the County by responding to all inquiries referred to District by County from any person concerning the District's taxes, assessments, fees and/or charges, and that District will not refer such persons to County officers and employees for response.
6. The District agrees to pay the County for the reasonable and ordinary charges to recoup its costs of placement and collection on the tax rolls at the agreed upon rate of 1% of the taxes, assessments, fees and/or charges, as provided by Government Code sections 29304 and 51800.

PASSED AND ADOPTED by District this 25th day of July, 2013, by the following vote on roll call:

AYES

NOES

ABSENT

---

James A. Gray  
CHAIR, BOARD OF DIRECTORS

ATTEST:

---

Pat Larson  
SECRETARY TO THE BOARD OF DIRECTORS



## **Item 9.1 Cover Sheet for Presentation of Annual Audit**

**Auburn Area Recreation and Park District Standing Finance Meeting July 17, 2013, Board of Directors meeting July 25, 2013**

**Subject:** Presentation of Annual Audit

**The Issue:** Board review of the Annual Audit

**Background:** The Fiscal Year 2012-2013 financial audit is now complete and ready to be presented to the Board of Directors. This is the third annual audit performed by James Marta and Company, LLP, thereby completing the three year contract.

**Recommendation:** The Finance Committee forwarded the audit to the Board with a positive recommendation. Staff recommends that the Board review the 2012-2013 Annual Audit and add their approval.

**Attachment(s):** Fiscal Year 2012/2013 Audited Financial Statements with Auditor's Report.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**FINANCIAL STATEMENTS  
WITH  
INDEPENDENT AUDITOR'S REPORT**

**FOR THE FISCAL YEAR ENDED**

**MARCH 31, 2013**

AUBURN AREA RECREATION AND PARK DISTRICT

MARCH 31, 2013

---

**BOARD OF DIRECTORS**

Gordon Ainsleigh

Jim Ferris

Jim Gray

Scott Holbrook

Curtis Smith

\* \* \* \*

District Administrator  
Kahl Muscott

AUBURN AREA RECREATION AND PARK DISTRICT

MARCH 31, 2013

---

TABLE OF CONTENTS

	<u>PAGE</u>
Independent Auditor's Report	1
Management's Discussion and Analysis	4
<b>BASIC FINANCIAL STATEMENTS</b>	
Government-Wide Financial Statements	
Statement of Net Position	10
Statement of Activities	11
Fund Financial Statements	
Balance Sheet – Governmental Funds	12
Reconciliation of the Governmental Funds Balance Sheet To the Statement of Net Position	13
Statement of Revenues, Expenditures and Changes in Fund Balances - Governmental Funds	14
Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balances to the Statement of Activities	15
Notes to the Financial Statements	16
<b>REQUIRED SUPPLEMENTARY INFORMATION</b>	
Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual – General Fund	29
Footnote to Required Supplementary Information	30
<b>SUPPLEMENTARY INFORMATION</b>	
Combining Balance Sheet – Non-Major Funds	31
Combining Statement of Revenues, Expenditures and Changes in Fund Balance – Non-Major Funds	32
<b>OTHER INDEPENDENT AUDITOR'S REPORT</b>	
Independent Auditor's Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed In Accordance With <i>Government Auditing Standards</i>	33



**James Marta & Company LLP**

*Certified Public Accountants*

*Accounting, Auditing, Consulting, and Tax*

---

## INDEPENDENT AUDITOR'S REPORT

Board of Directors  
Auburn Area Recreation and Park District  
Auburn, California

### **Report on the Financial Statements**

We have audited the accompanying financial statements of the governmental activities, the general fund and the aggregate remaining fund information of the Auburn Area Recreation and Park District (the District), as of and for the year ended March 31, 2013, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States and the State Controller's Minimum Audit Requirements for California Special Districts. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

**Opinions**

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the general fund and the aggregate remaining fund information of the Auburn Area Recreation and Park District as of March 31, 2013, and the respective changes in financial position for the year then ended in conformity with accounting principles generally accepted in the United States of America.

**Other Matters**

*Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis and Statement of Revenues, Expenditures and Changes in Fund Balance – Budget and Actual – General Fund on pages 4-9 and page 29 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Other Information*

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the District's basic financial statements. The supplementary information, as listed in the table of contents, is presented for purposes of additional analysis and is not a required part of the basic financial statements.

The supplementary information, as listed in the table of contents, is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplementary information, as listed in the table of contents, is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

**Other Reporting Required by Government Auditing Standards**

In accordance with *Government Auditing Standards*, we have also issued our report dated June 7, 2013 on our consideration of the District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control over financial reporting and compliance.

*James Marta & Company LLP*

James Marta & Company LLP  
Certified Public Accountants  
June 7, 2013

## **MANAGEMENT'S DISCUSSION AND ANALYSIS**



# AUBURN AREA RECREATION AND PARK DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

MARCH 31, 2013

---

In conjunction with the financial statements that begin on page 10, our discussion and analysis of the District's financial activity provides an overview of the financial health of Auburn Area Recreation and Park District (ARD).

This annual report consists of a variety of financial statements that not only provide an understanding of the current years activities but also provide insight on the long term financial health of the District.

### 1. Statement of Net Position or Balance Sheet

This statement is the result of compiling the Total Assets of the District minus its Total Liabilities. The three components of Net Position are:

1. investment in capital assets net of related debt
2. restricted assets
3. unrestricted assets

A continuing increase in assets generally reflects a healthy condition and is a good indicator that the District is in good financial shape. Decreasing assets generally reflect the opposite condition.

### 2. Statement of Activities or Income Statement

This statement ultimately reports the District's net revenue from all of its activities. These revenues minus the expenses related to generating the revenues result in either a surplus or a deficit. The District's activities are all Governmental in nature and are financed primarily through property tax levies.

These two government-wide statements reflect the changes in ARD's net position and how it has changed from previous years. They represent the best way to measure ARD's health or financial condition. In assessing ARD's "health", one must also consider the impact of changes in the property tax base as well as the condition of the District's facilities.

### 3. Fund Financial Statements

Fund accounts are set up because governments receive resources from a variety of sources for a variety of purposes. Governments must be able to demonstrate that they are using resources for the purposes for which they were given. These fund financial statements provide more detailed information on the individual funds or fund types that ARD uses to manage and account for its activities. The District has the following funds:

1. General Fund
2. City Mitigation Fund
3. Youth Assistance Fund
4. Atwood Park Fund

# AUBURN AREA RECREATION AND PARK DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

MARCH 31, 2013

---

### Reporting the District's Most Significant Funds

Fund financial statements begin on page 12 and provide detailed information about the most significant funds – not the district as a whole. The District's Board of Directors establishes these funds to help it control and manage money for particular purposes or to show that it is meeting legal responsibilities for using certain taxes and other monies.

ARD has one major fund – Governmental. Most of the District's basic services are reported as governmental funds which focus on how money flows into and out of those funds and the balances remaining at year end that are available for spending. These funds are reported using an accounting method called modified accrual accounting, which measures cash and all other financial assets that can be readily converted to cash. The governmental fund statements provide a detailed short term view of the District's general government operations and the basic services it provides. Governmental fund information helps you determine whether there are more or fewer financial resources that can be spent in the near future to finance the District's programs. We describe the relationship between governmental activities (reported in the Statement of Net Position and the Statement of Activities) and governmental funds in reconciliation that accompanies the fund financial statements.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**MANAGEMENT'S DISCUSSION AND ANALYSIS**

**MARCH 31, 2013**

**Financial Analysis**

**Governmental Activities**

	<u>2013</u>	<u>2012</u>
<b>ASSETS</b>		
Current Assets	\$ 3,172,488	\$ 2,724,305
Capital Assets, net	<u>5,532,181</u>	<u>5,907,895</u>
 Total Assets	 <u>8,704,669</u>	 <u>8,632,200</u>
<b>LIABILITIES</b>		
Current Liabilities	202,759	163,866
Long-term liabilities:	<u>235,000</u>	<u>345,000</u>
 Total Liabilities	 <u>437,759</u>	 <u>508,866</u>
<b>NET POSITION</b>		
Invested in capital assets, net of related debt	5,297,181	5,562,895
Restricted	119,045	119,045
Unrestricted	<u>2,850,684</u>	<u>2,441,394</u>
 Total Net Position	 <u>\$ 8,266,910</u>	 <u>\$ 8,123,334</u>
 Restricted funds are composed of Debt Service Funds of:	 \$119,045	 \$119,045
Unrestricted Funds are composed of:		
City Mitigation funds:	\$264,880	\$67,676
Equipment Reserve funds:	\$458,531	\$383,531
Contingency Reserve funds:	\$444,950	\$594,950
Future Capital Construction Reserves:	\$582,329	\$414,329
Arboretum Reserve:	\$13,474	\$19,948
Atwood III reserves:	\$19,895	\$19,942
Youth Assistance:	\$16,972	\$15,489
Shockley Maintenance Reserves:	\$15,205	\$34,389
ADA Reserve:	\$53,032	\$8,840
Unrestricted General Fund balance:	\$981,416	\$882,300

**AUBURN AREA RECREATION AND PARK DISTRICT**

**MANAGEMENT'S DISCUSSION AND ANALYSIS**

**MARCH 31, 2013**

The Net Position of the District as a whole increased by \$143,576 from 4/1/12 to 3/31/13. The District's programs for governmental activities include general government. The District had no business-type activities in 2012-2013. A comparison of each programs revenues and expenses for the current year and prior year is presented below.

	<u>2013</u>	<u>2012</u>
<b><u>Governmental Activities</u></b>		
<b>REVENUES</b>		
Program Revenues:		
Charges for Services	\$ 743,096	\$ 770,595
General Revenues:		
Property Taxes	2,494,460	2,354,453
Rents & Concessions	253,546	173,700
Interest Income	43,605	40,086
Grants & Contributions	243,633	133,957
Other General Revenues	41,138	8,986
Loss on disposition of assets	(48,176)	-
Total Revenues	<u>3,771,302</u>	<u>3,481,777</u>
<b>PROGRAM EXPENSES</b>		
General Government	3,611,776	3,599,292
Interest on Long-Term Debt	<u>15,950</u>	<u>22,380</u>
Total Program Expenses	<u>3,627,726</u>	<u>3,621,672</u>
<b>CHANGE IN NET POSITION</b>	<u>\$ 143,576</u>	<u>\$ (139,895)</u>

**Reconciliation of Budget**

The final budget approved by the Board of Directors on March 31, 2012 reflected a deficit of \$4,377 inclusive of all capital improvement projects as well as a contribution of \$5,000 from the operating budget to the required ADA reserve (\$5,000). The budget forecast also reflected an anticipated 4% further decline in property tax revenues as well as a negative "tax adjustment" of \$40,000. Fortunately neither of these occurred. Due to the stabilized revenues and continuing cost controls, the mid-year budget revision reflected a surplus of \$24,170. General fund capital improvements totaled \$127,000. The Board of Directors also passed a resolution to cap the amount in the contingency reserve to \$445,000.

# AUBURN AREA RECREATION AND PARK DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

MARCH 31, 2013

Pursuant to the approval of the mid-year budget revision, the City of Auburn advised the District of a major construction project within the City limits that generated additional unbudgeted City mitigation revenues of \$195,000.

Further, in February of 2013, the County of Placer advised the District that, due to the dissolution of Redevelopment Agencies ("RDA's") certain refunds of previously committed funds at the County and City levels would be returned to ARD. The District expects these funds to be unusual and of a one-time nature. The total refunded amount was approximately \$166,500.

As a result of these unbudgeted revenues, the District recorded a surplus of \$409,000 mostly made up of \$361,500 of the above referenced additional income. The surplus from continuing operations was \$47,500, slightly above the amount forecast at the mid-year budget revision.

### Administration

The District's note payable on the certificate of participation issue is due on February 1 and August 1 each year. The final payment on the certificate is scheduled to be made on August 1, 2014.

	Balance <u>April 1, 2012</u>	<u>Additions</u>	<u>Retirements</u>	Balance <u>March 31, 2013</u>
Certificates of Participation	<u>\$ 345,000</u>	<u>\$ -</u>	<u>\$ (110,000)</u>	<u>\$ 235,000</u>

### Capital Assets

#### The Year in Review and Our Future Outlook

ARD undertook several projects associated with its Capital Improvement Program. All projects in fiscal year 2012/2013 were funded through the General Fund. Some of the notable projects included the following:

1. Renovation of the shade structures at Regional Park, Fields B&C
2. Security cameras at Recreation Park
3. Painting of the Regional Park Community Center
4. Regional Park Field C conversion from softball to baseball
5. Replacement of the Recreation Park gym floor

**AUBURN AREA RECREATION AND PARK DISTRICT**

**MANAGEMENT'S DISCUSSION AND ANALYSIS**

**MARCH 31, 2013**

---

While still facing revenue challenges, the District's finances have at least stabilized for the time being.

1. The District's overall property tax revenues have continued to decline since fiscal year 07/08 as follows:

2007/2008:	\$2,711,000
2008/2009:	\$2,695,000
2009/2010:	\$2,628,000
2010/2011:	\$2,443,000
2011/2012:	\$2,354,000
2012/2013:	\$2,139,000 (projected) - Actual was \$2,328,000

This revenue shortfall represents a roughly 21% decline from the highs of 2007/2008.

The District has been able to balance its budgets each year through attrition, cost cutting, control of benefit expenses and shrewd purchasing of supplies and services. This past year has seen a stabilization of property tax revenues as well as increases in program and rental revenues. While we are cautiously optimistic that the economy has bottomed out, we will continue to budget conservatively to maintain a strong balance sheet and to keep the parks in peak condition.

Should any member of the public have questions regarding this report, District management may be contacted at the following address:

Auburn Area Recreation and Park District  
471 Maidu Drive  
Auburn, CA 95603  
(530) 885-0611

## **BASIC FINANCIAL STATEMENTS**

AUBURN AREA RECREATION AND PARK DISTRICT

STATEMENT OF NET POSITION

MARCH 31, 2013

---

	<u>Governmental Activities</u>
<b>ASSETS</b>	
Cash and investments	\$ 2,978,913
Cash with fiscal agent	119,045
Accounts receivable	42,792
Prepaid expenses	31,738
Capital Assets, net of accumulated depreciation	<u>5,532,181</u>
Total Assets	<u>8,704,669</u>
<b>LIABILITIES</b>	
Accrued payroll	76,491
Compensated absences	112,454
Deposits	13,814
Long-term liabilities:	
Due within one year	115,000
Due in more than one year	<u>120,000</u>
Total Liabilities	<u>437,759</u>
<b>NET POSITION</b>	
Invested in capital assets, net of related debt	5,297,181
Restricted	119,045
Unrestricted	<u>2,850,684</u>
Total Net Position	<u>\$ 8,266,910</u>

The accompanying notes are an integral part of these financial statements.



**AUBURN AREA RECREATION AND PARK DISTRICT**

**STATEMENT OF ACTIVITIES**

**FOR THE FISCAL YEAR ENDED MARCH 31, 2013**

<u>Functions/Programs</u>	<u>Expenses</u>	<u>Program Revenues</u>			<u>Net (Expense)</u>
		<u>Charges For</u>	<u>Operating</u>	<u>Capital</u>	<u>Revenue and</u>
		<u>Services</u>	<u>Contributions</u>	<u>Contributions</u>	<u>Change in</u>
			<u>and Grants</u>	<u>and Grants</u>	<u>Net Assets</u>
					<u>Governmental</u>
					<u>Activities</u>
Governmental activities:					
Recreation	\$3,611,776	\$ 743,096	\$ 243,633	\$ -	\$ (2,625,047)
Interest on long-term debt	15,950	-	-	-	(15,950)
Total governmental activities	<u>\$3,627,726</u>	<u>\$ 743,096</u>	<u>\$ 243,633</u>	<u>\$ -</u>	<u>(2,640,997)</u>
General revenues:					
					2,494,460
					43,605
					253,546
					41,138
					(48,176)
					<u>2,784,573</u>
					143,576
					<u>8,123,334</u>
					<u>\$ 8,266,910</u>

The accompanying notes are an integral part of these financial statements.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**BALANCE SHEET - GOVERNMENTAL FUNDS**

**MARCH 31, 2013**

	<u>General Fund</u>	<u>Non-Major Funds</u>	<u>Total Governmental Funds</u>
<b>ASSETS</b>			
Cash and investments	\$ 2,677,166	\$ 301,747	\$ 2,978,913
Cash with Fiscal Agent	119,045	-	119,045
Accounts receivable	42,792	-	42,792
Prepaid expenses	31,738	-	31,738
	<u>2,870,741</u>	<u>301,747</u>	<u>3,172,488</u>
Total Assets	<u>\$ 2,870,741</u>	<u>\$ 301,747</u>	<u>\$ 3,172,488</u>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>Liabilities:</b>			
Accrued payroll	\$ 76,491	\$ -	\$ 76,491
Compensated absences	112,454	-	112,454
Deposits	13,814	-	13,814
	<u>202,759</u>	<u>-</u>	<u>202,759</u>
Total Liabilities	<u>202,759</u>	<u>-</u>	<u>202,759</u>
<b>Fund Balances:</b>			
Nonspendable	31,738	-	31,738
Restricted	119,045	-	119,045
Committed	1,567,521	301,747	1,869,268
Unassigned	949,678	-	949,678
	<u>2,667,982</u>	<u>301,747</u>	<u>2,969,729</u>
Total Fund Balances	<u>2,667,982</u>	<u>301,747</u>	<u>2,969,729</u>
Total Liabilities and Fund Balances	<u>\$ 2,870,741</u>	<u>\$ 301,747</u>	<u>\$ 3,172,488</u>

The accompanying notes are an integral part of these financial statements.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET TO THE  
STATEMENT OF NET POSITION**

**MARCH 31, 2013**

---

Total fund balances - governmental funds		\$ 2,969,729
--	--	--------------

In governmental funds only current assets are reported.  
In the statement of net position, all assets are reported,  
including capital assets and accumulated depreciation.

Capital assets at historical cost	13,203,166	
Accumulated depreciation	<u>(7,670,985)</u>	

Net		5,532,181
-----	--	-----------

Long-term liabilities: In governmental funds, only current liabilities are reported. In the statement of net position, all liabilities, including long-term liabilities, are reported. Long-term liabilities relating to governmental activities consist of:

Certificates of Participation		<u>(235,000)</u>
-------------------------------	--	------------------

Total net position - governmental activities		<u>\$ 8,266,910</u>
--	--	---------------------

**AUBURN AREA RECREATION AND PARK DISTRICT**

**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND  
BALANCES - GOVERNMENTAL FUNDS**

**FOR THE FISCAL YEAR ENDED MARCH 31, 2013**

	<u>General Fund</u>	<u>Non-Major Funds</u>	<u>Total Governmental Funds</u>
<b>REVENUES</b>			
Program revenues	\$ 743,096	\$ -	\$ 743,096
Rents and concessions	250,609	2,937	253,546
Grants and donations	37,740	10,853	48,593
Interest income	41,441	2,164	43,605
Project revenue	-	195,040	195,040
Tax revenue	2,473,207	21,253	2,494,460
Misc. revenues	41,138	-	41,138
	<u>3,587,231</u>	<u>232,247</u>	<u>3,819,478</u>
Total revenues			
<b>EXPENDITURES</b>			
Recreation	3,070,567	33,598	3,104,165
Capital outlay	175,931	-	175,931
Debt service:			
Principal	110,000	-	110,000
Operating leases	4,142	-	4,142
Interest	15,950	-	15,950
	<u>3,376,590</u>	<u>33,598</u>	<u>3,410,188</u>
Total expenditures			
Excess (deficiency) of revenues over (under) expenditures	<u>210,641</u>	<u>198,649</u>	<u>409,290</u>
Fund balance - April 1, 2012	<u>2,457,341</u>	<u>103,098</u>	<u>2,560,439</u>
Fund balance - March 31, 2013	<u>\$ 2,667,982</u>	<u>\$ 301,747</u>	<u>\$ 2,969,729</u>

The accompanying notes are an integral part of these financial statements.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**RECONCILIATION OF THE GOVERNMENTAL FUNDS STATEMENT OF  
REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES TO THE  
STATEMENT OF ACTIVITIES**

**FOR THE FISCAL YEAR ENDED MARCH 31, 2013**

---

Net Change in fund balances		\$ 409,290
Amounts reported for governmental activities in the Statement of Activities are different because of the following:		
Acquisitions of capital assets are reported in governmental funds as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense.		
Capital outlay	137,979	
Depreciation expense	<u>(465,517)</u>	(327,538)
Gains and losses on the disposal of capital assets is reported in the government- wide statement of activities, but is not recorded in the governmental funds.		
		(48,176)
Repayment of principal on long-term debt is reported as an expenditure in governmental funds. However, the repayment reduces long-term liabilities in the statement of net position.		
		<u>110,000</u>
Change in net position of governmental activities		<u>\$ 143,576</u>

# AUBURN AREA RECREATION AND PARK DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2013

---

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### A. ORGANIZATION

The financial statements of the Auburn Area Recreation and Park District are prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). The District's reporting entity applies all relevant Governmental Accounting Standards Board (GASB) pronouncements.

The Auburn Area Recreation and Park District was formed under Section 5780.15 of the California Public Resources Code. The District operates under a Board of Directors and provides the following services: maintaining recreation and park facilities, recreational services and general administrative services.

#### B. BASIS OF PRESENTATION

##### Government-wide Financial Statements

The statement of net position and the statement of activities display information about the District. These statements include the financial activities of the overall government, except for fiduciary activities. Eliminations have been made to minimize the double counting of internal activities.

The government-wide statement of net position presents information on all of the District's assets and liabilities, with the difference between the two presented as net position. Net position is reported as one of three categories: invested in capital assets, net of related debt; restricted or unrestricted. Restricted net position is further classified as either net position restricted by enabling legislation or net position that is otherwise restricted.

The government-wide statement of activities presents a comparison between direct expenses and program revenues for each function or program of the District's governmental activities. Direct expenses are those that are specifically associated with a service, program, or department and are, therefore, clearly identifiable to a particular function. The District does not allocate indirect expenses to functions in the statement of activities. Program revenues include charges paid by the recipients of goods or services offered by a program, as well as grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues, which are not classified as program revenues, are presented as general revenues of the District, with certain exceptions. The comparison of direct expenses with program revenues identifies the extent to which each governmental function is self-financing or draws from the general revenues of the District.

The District reports all direct expenses by function in the Statement of Activities. Direct expenses are those that are clearly identifiable with a function. Depreciation expense is specifically identified by function and is included in the direct expense function. Interest on long-term liabilities is considered an indirect expense and is reported separately in the Statement of Activities.

# AUBURN AREA RECREATION AND PARK DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2013

---

### C. BASIS OF PRESENTATION (CONTINUED)

#### Fund Financial Statements

Fund financial statements report detailed information about the District. The focus of governmental fund financial statements is on major funds rather than reporting funds by type. Each major governmental fund is presented in a separate column.

### D. MEASUREMENT FOCUS AND BASIS OF ACCOUNTING

#### Government-Wide Financial Statements

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements are met. Expenses are recorded when liabilities are incurred.

#### Governmental Fund Financial Statements

Governmental fund financial statements (i.e. balance sheet and statement of revenues, expenditures and changes in fund balances) are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenue resulting from exchange transactions, in which each party gives and receives essentially equal value, is recorded under the accrual basis when the exchange takes place. On a modified accrual basis, revenue is recorded in the fiscal year in which the resources are measurable and become available. "Available" means the resources will be collected within the current fiscal year or are expected to be collected soon enough thereafter to be used to pay liabilities of the current fiscal year. For the District, "available" means collectible within the current period or within 60 days after year-end.

Non-exchange transactions, in which the District receives value without directly giving equal value in return, include property taxes, grants, and entitlements. Under the accrual basis, revenue from property taxes is recognized in the fiscal year for which the taxes are levied. Revenue from grants and entitlements is recognized in the fiscal year in which all eligibility requirements have been satisfied. Eligibility requirements include timing requirements, which specify the year when the resources are to be used, or the fiscal year when use is first permitted; matching requirements, in which the District must provide local resources to be used for a specified purpose; and expenditure requirements, in which the resources are provided to the District on a reimbursement basis. Under the modified accrual basis, revenue from non-exchange transactions must also be available before it can be recognized.

Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

# AUBURN AREA RECREATION AND PARK DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2013

---

### E. FUND ACCOUNTING

The accounts of the District are organized on the basis of funds or account groups, each of which is considered to be a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures or expenses, as appropriate. District resources are allocated to and accounted for in individual funds based upon the purpose for which they are to be spent and the means by which spending activities are controlled. The District funds and account groups are as follows:

#### Governmental Funds:

*General Fund* is the general operating fund of the District. It is used to account for all transactions except those required or permitted by law to be accounted for in another fund.

*Special Revenue Funds* are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specific purposes. The District maintains three special revenue funds:

1. *City Mitigation Fund*
2. *Youth Assistance Fund*
3. *Atwood Park Fund*

### F. CASH AND CASH EQUIVALENTS

For purposes of the statement of net position/balance sheet, the District considers all short-term highly liquid investments, including restricted assets, and amounts held with the fiscal agent to be cash and cash equivalents. Amounts held with the fiscal agent and investments held are available on demand to the District.

### G. CAPITAL ASSETS

Capital assets, which can include property, facilities and equipment, are capitalized at total acquisition cost, provided such cost exceeds \$1,000 and the expected useful life of the asset is more than three years. Depreciation is recorded on all depreciable capital assets on a straight-line basis over the following estimated useful lives:

<u>Asset</u>	<u>Years</u>
Structures	20
Equipment	10
Computer Equip.	3
Vehicles	8
Furniture	10
Small Tools	5



# AUBURN AREA RECREATION AND PARK DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2013

---

### H. DUE FROM OTHER GOVERNMENTS

The District's receivables include amounts due from other governmental agencies and consist mostly of specific planning grants. Management has determined that the District's receivables are fully collectible. Accordingly, no allowance for doubtful accounts has been made.

### I. VACATION, SICK LEAVE AND OTHER COMPENSATED ABSENCES

District employees are entitled to certain compensated absences based on the length of their employment, which will be paid to them upon separation from the District. Compensated absences accumulate and are accrued when they are earned and reported as a liability in the government-wide financial statements. The balance at March 31, 2013 was \$112,454.

### J. FUND BALANCE

In accordance with Governmental Accounting Standards Board (GASB) Statement No. 54, "*Fund Balance Reporting and Governmental Fund Type Definitions*", the District is required to report fund balances in the following categories: Nonspendable, Restricted, Committed, Assigned and/or Unassigned.

*Nonspendable Fund Balance* reflects assets not in spendable form, either because they will never convert to cash (prepaid expense) or must remain intact pursuant to legal or contractual requirements.

*Restricted Fund Balance* reflects amounts that can be spent only for the *specific purposes* stipulated by constitution, external resource providers, or through enabling legislation.

*Committed Fund Balance* reflects amounts that can be used only for the *specific purposes* determined by a formal action of the government's highest level of decision-making authority: the Board of Directors. Commitments may be established, modified, or rescinded only through resolutions approved by the Board of Directors.

*Assigned Fund Balance* reflects amounts intended to be used by the government for *specific purposes* but do not meet the criteria to be classified as restricted or committed. Under the District's adopted policy, only the Board of Directors is authorized to assign amounts for specific purposes.

*Unassigned Fund Balance* represents the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications.

When expenditures are incurred for purposes of which restricted, committed, assigned and unassigned fund balances are available, the District considers restricted funds to have been spent first, followed by committed, assigned and unassigned, respectively.

# AUBURN AREA RECREATION AND PARK DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2013

---

### **K. RESTRICTED NET POSITION**

The government-wide statement of net position reports \$119,045 as restricted, which is restricted under a debt covenant.

### **L. USE OF ESTIMATES**

The financial statements have been prepared in conformity with generally accepted accounting principles and, as such, include amounts based on managements' informed estimates and judgments, with consideration given to materiality. Actual results could differ from those amounts.

### **M. RISK MANAGEMENT**

The District is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters for which the District carries insurance as described in Note 9.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

**2. CASH AND INVESTMENTS**

The District maintains commercial bank accounts and accounts with the Placer County Treasurer.

The District's cash balances at March 31, 2013 are:

	General Fund	Atwood Park Fund	City Mitigation Fund	Youth Assistance Fund	Government- Wide
<u>Administrative Department</u>					
Imprest Fund (Petty Cash)	\$ 580				\$ 580
Umpqua Bank	54,701				54,701
Placer County Treasurer - General	2,540,174				2,540,174
ADA Reserve Account	53,032				53,032
Placer County Treasurer - City Trust			\$ 264,880		264,880
Youth Assistance Fund - In District				\$ 16,972	16,972
Atwood III Fund		\$ 4,291			4,291
Atwood III - Equipment Replacement Fund		15,604			15,604
Arboretum Grant Fund	13,474				13,474
Shockley Maintenance Fund	15,205				15,205
Total Operating Cash	2,677,166	19,895	264,880	16,972	2,978,913
Cash in Debt Service Fund	119,045				119,045
Total Cash and Cash Equivalents	\$ 2,796,211	\$ 19,895	\$ 264,880	\$ 16,972	\$ 3,097,958

Pooled Funds:

The District maintains substantially all of its cash in the Placer County Treasury. The County pools and invests the cash. These pooled funds are carried at cost which approximates fair value. Interest earned is deposited quarterly into participating funds. Any investment losses are proportionately shared by all funds in the pool.

Because the deposits are maintained in a recognized pooled investment fund under the care of a third party and the share of the pool does not consist of specific, identifiable investment securities owned by the District, no disclosure of the individual deposits and investments or related custodial risk classifications is required.

In accordance with applicable State laws, the Placer County Treasurer may invest in derivative securities. However, at March 31, 2013, the Placer County Treasurer has represented that the Treasurer's pooled investment fund contained no derivatives or other investments with similar risk profiles.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

---

Deposits - Custodial Credit Risk

The carrying amount of the District's accounts was \$54,701 and the bank balance was \$79,175 at March 31, 2013. Deposits held in banks and in the revolving fund are insured up to \$250,000 by the Federal Depository Insurance Corporation. All cash held by financial institutions at March 31, 2013 was fully insured.

Cash with Fiscal Agent

At March 31, 2013, funds totaling \$119,045 were held at the Bank of New York as reserve for the payment of the Certificates of Participation.

Interest Rate Risk

The District does not have a formal investment policy that limits cash and investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates. At March 31, 2013, the District had no significant interest rate risk related to cash and investments held.

Credit Risk

The District does not have a formal investment policy that limits its investment choices other than the limitations of State law.

Concentration of Credit Risk

The District does not place limits on the amount it may invest in anyone issuer. At March 31, 2013, the District had no concentration of credit risk.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

**3. PROPERTY AND EQUIPMENT**

Capital assets activity for the year ended March 31, 2013, was as follows:

	<u>Balance</u> <u>April 1, 2012</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance</u> <u>March 31, 2013</u>
Governmental Activities				
Capital Assets, not being depreciated:				
Land	\$1,156,603	\$ -	\$ -	\$1,156,603
Construction in progress	<u>100,745</u>	<u>11,099</u>	<u>(52,412)</u>	<u>59,432</u>
Total Capital Assets, not being depreciated	<u>1,257,348</u>	<u>11,099</u>	<u>(52,412)</u>	<u>1,216,035</u>
Capital assets, being depreciated:				
Buildings and improvements	10,970,726	130,262	(96,422)	11,004,566
Equipment & Furniture	763,935	53,568	(44,180)	773,323
Vehicles	225,642		(16,400)	209,242
Total Capital Assets, being depreciated	<u>11,960,303</u>	<u>183,830</u>	<u>(157,002)</u>	<u>11,987,131</u>
Total Accumulated Depreciation	(7,309,757)	(465,517)	104,289	(7,670,985)
Total Capital Assets, being depreciated, Net	<u>4,650,546</u>	<u>(281,687)</u>	<u>(52,713)</u>	<u>4,316,146</u>
Governmental Activities Capital Assets, Net	<u>\$5,907,894</u>	<u>(\$270,588)</u>	<u>(\$105,125)</u>	<u>\$5,532,181</u>

**Depreciation**

Depreciation expense was charged to government functions as follows:

Recreation	<u>\$ 465,517</u>
------------	-------------------

# AUBURN AREA RECREATION AND PARK DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2013

---

### 4. PROPERTY TAX AND ASSESSMENTS

Assessments attach as an enforceable lien on property as of January 1. Taxes are levied on March 1 and are payable in two installments, April 15 and November 15. The County of Placer bills and collects assessments and apportions collections to the District.

### 5. CONTINGENCIES

As of March 31, 2013, the District did not have any pending litigation or potential non-disclosed liabilities that management believes would have a material effect on the financial statements.

### 6. EMPLOYEE RETIREMENT PLAN

#### A. PLAN DESCRIPTION

The District's defined benefit pension plan, Miscellaneous Plan for Auburn Area Recreation and Park District, provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. The plan is part of the Public Agency portion of the California Public Employees Retirement Systems (CalPERS), a cost sharing multiple-employer plan administered by CalPERS, which acts as a common investment and administrative agent for participating public employees within the State of California. A menu of benefit provisions as well as their requirements is established by state statute within the Public Employee's Retirement Law. The District selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through board resolution. CalPERS issues a separate comprehensive annual financial report. Copies of the CalPERS' annual financial report may be obtained from the CalPERS Executive Office – 400 P Street, Sacramento, CA 95814.

#### B. FUNDING POLICY

The Auburn Area Recreation and Park District is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members. The actuarial methods and assumptions used are those adopted by the CalPERS Board of Administration. The required employer contribution rate for year ended March 31, 2013 was 10.436% through June 30, 2012 and 10.626% from July 1, 2012 through March 31, 2013 for miscellaneous employees. The contribution requirements of the plan members are established by state statute and the employer contribution rate is established by and may be amended by CalPERS.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

**C. ANNUAL PENSION COST**

For the year ended March 31, 2013, the Auburn Area Recreation and Park District's actual combined contributions were \$195,392. The required contribution for the year ended March 31, 2013 was determined as part of the June 30, 2010 actuarial valuation using the entry age normal actuarial cost method with the contributions determined as a percent of pay. The actuarial assumptions included (a) 7.75% investment rate of return (net of administrative expenses); (b) projected salary increases that vary by duration of service ranging from 3.25% to 14.45% for miscellaneous members, and (c) 3% cost-of-living adjustment. Both (a) and (b) include an inflation component of 3%. The actuarial value of the plan's assets was determined using a technique that smoothes the effect of short-term volatility in the market value of investments over a two to five year period depending on the size of investment gain and/or losses. The plan's unfunded actuarial liability is being amortized.

**7. GENERAL LONG-TERM DEBT**

At March 31, 2013, the general long-term debt consisted of the following:

	Balance			Balance
	<u>April 1, 2012</u>	<u>Additions</u>	<u>Retirements</u>	<u>March 31, 2013</u>
Certificates of Participation	<u>\$ 345,000</u>	<u>\$ -</u>	<u>\$ (110,000)</u>	<u>\$ 235,000</u>

Certificates of Participation:

Refunding Certificates of Participation in the amount of \$1,500,000 were issued through the California Special Districts Association Finance Corporation. The 1996 series Z COPs were issued to refinance the construction costs of a gymnasium/community center. The District has entered into a lease agreement with the California Special Districts Association Finance Corporation and Dai Ichi Kangyo Bank whereby the District agrees to lease the property for the purpose of financing the project. The District will make semi-annual payments equal to the debt payments, which are due in annual installments of \$50,000 to \$120,000 through August, 2015, with interest at 3.65% to 5.3%. The balance at March 31, 2013 was \$235,000. The annual requirements to amortize the 1996 series Z COPs payable outstanding as of March 31, 2013 are as follows:

Year			
Ending			
<u>March 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2014	\$ 115,000	\$ 9,763	\$ 124,763
2015	120,000	3,300	123,300
	<u>\$ 235,000</u>	<u>\$ 13,063</u>	<u>\$ 248,063</u>

**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

**8. FUND BALANCES**

The District reports fund balances in accordance with Governmental Accounting Standards Board Statement No. 54. All fund balance categories are reported in the aggregate on the face of the balance sheet. All components of those fund balances and specific purposes are identified as follows:

	<u>General Fund</u>	<u>Non-Major Funds</u>	<u>Totals</u>
Nonspendable:			
Prepaid Expenses	<u>\$ 31,738</u>		<u>\$ 31,738</u>
Restricted:			
Debt Service Fund	<u>119,045</u>		<u>119,045</u>
Committed:			
Annual Contingency	444,950		444,950
Future Capital Construction	582,329		582,329
Annual Equipment Replacement	458,531		458,531
City Mitigation Fund		\$ 264,880	264,880
Shockley Maintenance Fund	15,205		15,205
Arboretum Grant Fund	13,474		13,474
Atwood III Reserves		19,895	19,895
Youth Assistance		16,972	16,972
ADA Reserve	<u>53,032</u>		<u>53,032</u>
Total Committed	<u>1,567,521</u>	<u>301,747</u>	<u>1,869,268</u>
Unassigned	949,678		949,678
Total Fund Balances	<u><u>\$ 2,667,982</u></u>	<u><u>\$ 301,747</u></u>	<u><u>\$ 2,969,729</u></u>

**9. JOINT VENTURE**

The District is a member of the California Association for Park and Recreation Indemnity (CAPRI), a joint powers authority. The relationship between the District and CAPRI is such that CAPRI is not a component unit of the District for financial reporting purposes.



**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

**9. JOINT VENTURE (Continued)**

CAPRI provided liability, property and workers' compensation coverage for the District. CAPRI is governed by a Board consisting of representatives from member agencies. The Board controls their operations, including selection of management and approval of operating budgets, independent of any influence by the member agencies beyond their representation on the Board. Each member agency pays a contribution commensurate with the level of coverage requested and shares surpluses and deficits proportionate to their participation in the joint powers authority. Full financial statements are available separately from California Association for Park and Recreation Indemnity at 6341 Auburn Blvd, Suite A, Citrus Heights, CA 95621. Condensed information for CAPRI is as follows:

<b>A. <u>Entity</u></b>	<u>CAPRI</u>
<b>B. <u>Purpose</u></b>	To pool member contributions and realize the advantages of self-insurance.
<b>C. <u>Participants</u></b>	As of June 30, 2012, 61 member districts.*
<b>D. <u>Governing Board</u></b>	Seven representatives employed by members.
<b>E. <u>Payments for the Current Year</u></b>	<u>\$ 89,183</u>
<b>F. <u>Condensed Financial</u></b>	June 30, 2012* (Audited)
Total Assets	<u>\$ 24,162,459</u>
Total Liabilities	\$ 10,767,178
Net Assets	<u>13,395,281</u>
Total Liabilities and Net Assets	<u>\$ 24,162,459</u>
Total Revenues	\$ 6,661,931
Total Expenses	<u>(3,915,415)</u>
Change in Net Assets	<u>\$ 2,746,516</u>
<u>Member Agencies Share of Year-End Assets, Liabilities, or Net Assets</u>	**

\* Most current information available.

\*\* Has not been calculated.

**AUBURN AREA RECREATION AND PARK DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2013**

---

**10. SUBSEQUENT EVENTS**

The District's management evaluated its fiscal year 2013 financial statements for subsequent events through June 7, 2013, the date the financial statements were available to be issued. Management is not aware of any subsequent events that would require recognition or disclosure in the financial statements.

**REQUIRED SUPPLEMENTARY  
INFORMATION**

**AUBURN AREA RECREATION AND PARK DISTRICT**

**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND  
BALANCE – BUDGET AND ACTUAL – GENERAL FUND**

**FOR THE FISCAL YEAR ENDED MARCH 31, 2013**

	Budgeted Amounts		Actual	Variance with Final Budget Favorable (Unfavorable)
	Original	Final		
<b>REVENUES</b>				
Program revenues	\$ 689,750	\$ 686,900	\$ 743,096	\$ 56,196
Rents and concessions	203,019	195,119	250,609	55,490
Grants and donations	8,500	27,500	37,740	10,240
Interest income	36,350	41,850	41,441	(409)
Project revenue	-	7,800	-	(7,800)
Tax revenue	2,200,736	2,369,328	2,473,207	103,879
Misc. revenues	16,500	18,700	41,138	22,438
Total revenues	<u>3,154,855</u>	<u>3,347,197</u>	<u>3,587,231</u>	<u>240,034</u>
<b>EXPENDITURES</b>				
Recreation	2,997,148	3,009,693	3,070,567	(60,874)
Capital outlay	14,500	169,100	175,931	(6,831)
Debt service:				
Principal and Interest	<u>147,584</u>	<u>144,234</u>	<u>130,092</u>	<u>14,142</u>
Total expenditures	<u>3,159,232</u>	<u>3,323,027</u>	<u>3,376,590</u>	<u>(53,563)</u>
Excess (deficiency) of revenues over (under) expenditures	<u>(4,377)</u>	<u>24,170</u>	<u>210,641</u>	<u>186,471</u>
Fund balance - April 1, 2012	<u>2,457,341</u>	<u>2,457,341</u>	<u>2,457,341</u>	<u>-</u>
Fund balance - March 31, 2013	<u>\$ 2,452,964</u>	<u>\$ 2,481,511</u>	<u>\$ 2,667,982</u>	<u>\$ 186,471</u>

**AUBURN AREA RECREATION AND PARK DISTRICT**  
**FOOTNOTE TO REQUIRED SUPPLEMENTARY INFORMATION**

**MARCH 31, 2013**

---

**SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Through the budget, the District board sets the direction of the District, allocates its resources and establishes its priorities. The annual budget serves from April 1<sup>st</sup> to March 31<sup>st</sup>, and is a vehicle that accurately and openly communicates these priorities to the community and other public agencies. Additionally, it establishes the foundation of effective financial planning by providing resources for planning that permit the evaluation of District performance.

The District's budget is prepared and based on four expenditure categories: personnel, supplies and services, minor capital outlay and capital improvement programs. The first three listed are considered operational in nature or known as recurring costs. Capital improvement projects are asset acquisitions, facilities, systems and infrastructure improvements, and those items "outside" the normal operational budget. These are normally one-time costs.

## **SUPPLEMENTARY INFORMATION**

**AUBURN AREA RECREATION AND PARK DISTRICT  
COMBINING BALANCE SHEET – NON-MAJOR FUNDS**

**MARCH 31, 2013**

---

	<b>Atwood Park Fund</b>	<b>City Mitigation Fund</b>	<b>Youth Assistance Fund</b>	<b>Total Non-major Funds</b>
<b>ASSETS</b>				
Cash and investments	\$ 19,895	\$ 264,880	\$ 16,972	\$ 301,747
<b>FUND BALANCES</b>				
<b>Fund Balances:</b>				
Committed	\$ 19,895	\$ 264,880	\$ 16,972	\$ 301,747

**AUBURN AREA RECREATION AND PARK DISTRICT**  
**COMBINING STATEMENT OF REVENUES, EXPENDITURES**  
**AND CHANGES IN FUND BALANCE – NON-MAJOR FUNDS**  
**FOR THE FISCAL YEAR ENDED MARCH 31, 2013**

	<u>Atwood Park Fund</u>	<u>City Mitigation Fund</u>	<u>Youth Assistance Fund</u>	<u>Total Non-major Funds</u>
<b>REVENUES</b>				
Rents and concessions	\$ -	\$ -	\$ 2,937	\$ 2,937
Grants and donations	-	-	10,853	10,853
Interest income	-	2,164	-	2,164
Project revenue	-	195,040	-	195,040
Tax revenue	<u>21,253</u>	<u>-</u>	<u>-</u>	<u>21,253</u>
Total revenues	21,253	197,204	13,790	232,247
<b>EXPENDITURES</b>				
Recreation	<u>21,291</u>	<u>-</u>	<u>12,307</u>	<u>33,598</u>
Total expenditures	<u>21,291</u>	<u>-</u>	<u>12,307</u>	<u>33,598</u>
Excess (deficiency) of revenues and other financing sources over (under) expenditures and other uses	(38)	197,204	1,483	198,649
Fund balance - April 1, 2012	<u>19,933</u>	<u>67,676</u>	<u>15,489</u>	<u>103,098</u>
Fund balance - March 31, 2013	<u>\$ 19,895</u>	<u>\$ 264,880</u>	<u>\$ 16,972</u>	<u>\$ 301,747</u>



**OTHER INDEPENDENT AUDITOR'S REPORT**



**James Marta & Company LLP**  
**Certified Public Accountants**

*Accounting Auditing Tax and Consulting*

---

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON  
COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL  
STATEMENTS PERFORMED IN ACCORDANCE  
WITH GOVERNMENT AUDITING STANDARDS**

**INDEPENDENT AUDITOR'S REPORT**

Board of Directors  
Auburn Area Recreation and Park District  
Auburn, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of Auburn Area Recreation and Park District (the "District"), as of and for the year ended March 31, 2013, and the related notes to the financial statements, which collectively comprise the District's basic financial statements, and have issued our report thereon dated June 7, 2013.

**Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the District's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as described below, we identified certain deficiencies in internal control that we consider to be material weaknesses.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financials statements will not be prevented, or detected and corrected on a timely basis. We consider the following deficiency to be a material weakness: 2013-1.

**2013-1 Depreciation expense**

Observation

During our testing of fixed assets, we found that the depreciation expense recorded for fiscal year 2013 was understated. This resulted in a misstatement in the net value of fixed assets of approximately \$105,372.

Recommendation

This error stemmed from how the District's fixed asset/depreciation spreadsheet is built. We discussed this error with management during fieldwork. We recommend that the District post Adjusting Journal Entry #5 to correct the error and consider changes to the fixed asset/depreciation spreadsheet to prevent future errors.

Corrective Action Plan

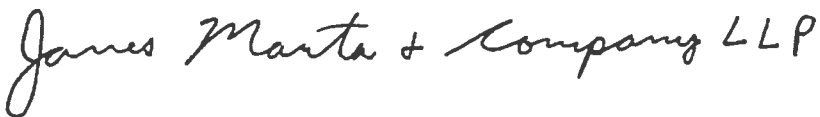
Management has posted the correcting entry.

**Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the District's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

**Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



James Marta & Company LLP  
Certified Public Accountants  
June 7, 2013



## James Marta & Company LLP

*Certified Public Accountants*

*Accounting, Auditing, Consulting, and Tax*

---

### MANAGEMENT LETTER

To the Management  
Auburn Area Recreation and Park District  
Auburn, CA, 95603

We have recently completed the audit of the financial statements of Auburn Area Recreation and Park District (the "District") and have issued our report thereon dated June 7, 2013. In planning and performing our audit of your financial statements for period ending March 31, 2013, we applied generally accepted auditing standards (GAAS) as we considered your internal control over financial reporting as a basis for designing our auditing procedures. We did this for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of your internal controls.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, we identified certain deficiencies in internal control that we consider to be material weaknesses, and communicated them in writing to management and those charged with governance in a separate letter dated June 7, 2013. Although our audit was not designed to provide assurance on the internal control structure and its operation, we noted certain matters that we are submitting for your consideration for the improvement of the District's accounting and financial reporting functions. We will be pleased to discuss these comments in further detail at your convenience, perform any additional study of these matters, or assist you in implementing the recommendations. We will review the status of these comments during our next audit engagement. This letter does not affect our report dated June 7, 2013 on the financial statements of the Auburn Area Recreation and Park District .

#### **Current Year Recommendations**

##### **2013-2 Fund Balances**

###### Observation

Fund balances per the general ledger at the end of the fiscal year should equal the prior year's ending fund balances per the audit report. We found that total unadjusted fund balances (after elimination of the fixed assets and long-term debt) per the general ledger totaled \$2,560,491. The same fund balances per the fiscal year 2012 audited financials totaled \$2,560,439 – a difference of \$52.

While we consider this amount to be trivial to the financial statements as a whole, it is important that the financials flow correctly from one year to the next.

###### Recommendation

The District should consider posting AJE-2 and AJE-3 on the "Adjusting Journal Entry" report to ensure that the books match the audited financial statements as of 3/31/13.

**Current Year Recommendations (Continued)**

**2013-3            Depreciation Expense**

Observation

During our testing of fixed assets, we noted ten assets (in the “Structures” category) that were depreciated beyond their original cost. The excess depreciation totaled \$7,654.

Recommendation

While we consider a misstatement of \$7,654 to be immaterial to the financial statements as a whole, we are required to note such misstatements to you. We have recorded a “Proposed Journal Entry” (PJE-6) to document this error. The District should not post this entry in fiscal year 2013. If the District wishes to correct the error, we recommend correction in fiscal year 2014.

**2013-4            Time Sheets**

Observation

During our testing of payroll, we noted the hours on two employee’s time sheets did not match the amount in the payroll system. One employee was over paid by a half hour and the other employee was under paid by a half hour. Both employees were scorekeepers whose time was entered into the District’s Timeclock software from a paper time sheet at a later time by a different employee.

Recommendation

The auditor recommends at least two people, including the employees’ direct manager approve entries into the Timeclock software to ensure those entries match the employees’ approved paper timesheet.

**Status of Prior Year Recommendations**

**2012-1    Prepaid Insurance Expense**

Observation

The prepaid insurance expense per the unadjusted books was inclusive of amounts carried over from a prior year. As the policy period for the District’s insurance (liability, property and workers’ compensation) is July 1 to June 30, only one quarter of the value of each of the current year policies should appear as prepaid insurance expense at March 31, 2012.

Recommendation

The auditor has recorded an adjusting journal entry for \$26,153 to correct the balance of prepaid insurance at March 31, 2012. The district should post this entry to correct the books.

In future periods, the balance of prepaid expenses should be reviewed periodically and at year-end to ensure its accuracy.

Status: Implemented.

**Status of Prior Year Recommendations (Continued)**

**2011-06 Compensated Absences Cap, Accrual**

Observation

The District Administrator's balance of compensated absences appears to exceed the cap as described in the District' personnel manual. Per the District records, the District Administrator has accumulated 657 hours of Personal Time Leave as of March 31, 2011. Per the personnel manual, an employee in the 11th year of service has a cap of 576 hours.

Further, we found that in our recalculation of vacation hours available at March 31, 2011 that four of the five employees that we tested appeared to have ending vacation hour balances that were understated. The net understatement identified in our sample was 6.05% of the total tested – or \$9,421 if projected over the entire accrued vacation population. No errors were identified in the accrual of personal days.

Recommendation

The policy states, "When an employee accrues Personal Time Leave in excess of 320 hours beyond the number of hours which that employee can earn during one year, the employee shall cease accruing Personal Time Leave until he or she has used sufficient time to reduce it to the cap." It is important that policies be enforced. However, the policy is not clear on whether an employee can earn Personal Time Leave above the cap. In addition, the caps allowed create a significant liability that is due and payable when an employee leaves. The board may want to consider reducing the caps.

Management should review its calculation of available vacation hours at March 31, 2011 to ensure accuracy of the balance moving forward.

Management Response:

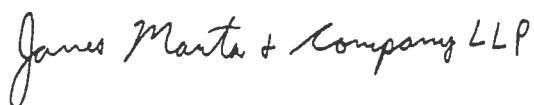
Accounting will begin printing a bimonthly report of PTO time from the Great Plains accounting software and reviewing same for maximum accrual allowances.

Status: Implemented.

We believe that the implementation of these recommendations will provide Auburn Area Recreation and Park District with a stronger system of internal accounting control while also making its operations more efficient. We will be happy to discuss the details of these recommendations with you and assist in any way possible with their implementation.

This report is intended solely for the information and use of the Board of Directors, management, and others within the administration and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,



James Marta & Company LLP  
Certified Public Accountants  
June 7, 2013



## James Marta & Company LLP

*Certified Public Accountants*

*Accounting, Auditing, Consulting, and Tax*

---

### COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE

Board of Directors  
Auburn Area Recreation and Park District  
Auburn, California

We have audited the financial statements of Auburn Area Recreation and Park District (the "District") as of and for the year ended March 31, 2013, and have issued our report thereon dated June 7, 2013. Professional standards require that we advise you of the following matters relating to our audit.

#### **Our Responsibility under Generally Accepted Auditing Standards**

As communicated in our engagement letter dated March 1, 2011 and addendum dated April 9, 2013 our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of Auburn Area Recreation and Park District solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

We have provided our comments regarding significant control deficiencies over financial report and material weaknesses and other matters noted during our audit in a separate letter to you dated June 7, 2013.

#### **Planned Scope and Timing of the Audit**

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

### **Compliance with All Ethics Requirements Regarding Independence**

The engagement team, and others in our firm, as appropriate, have complied with all relevant ethical requirements regarding independence.

### **Other Information in Documents Containing Audited Financial Statements**

Pursuant to professional standards, our responsibility as auditors for other information in documents containing the District's audited financial statements does not extend beyond the financial information identified in the audit report, and we are not required to perform any procedures to corroborate such other information. However, in accordance with such standards, we have applied certain limited procedures, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements.

Our responsibility also includes communicating to you any information which we believe is a material misstatement of fact. Nothing came to our attention that caused us to believe that such information, or its manner of presentation, is materially inconsistent with the information, or manner of its presentation, appearing in the financial statements.

### **Qualitative Aspects of the District's Significant Accounting Practices**

#### *Significant Accounting Policies*

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by Auburn Area Recreation and Park District is included in Note 1 to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during the 2013 fiscal year. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

#### *Significant Accounting Estimates*

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments. There are no sensitive accounting estimates affecting the financial statements.

#### *Financial Statement Disclosures*

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. There are no sensitive disclosures affecting the District's financial statements.

### **Significant Difficulties Encountered during the Audit**

We encountered no significant difficulties in dealing with management relating to the performance of the audit.



**Uncorrected and Corrected Misstatements**

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole. The attached schedule (*Proposed Journal Entries Report*) summarizes uncorrected financial statement misstatements whose effects in the current and prior periods, as determined by management, are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. The following material misstatements that we identified as a result of our audit procedures were brought to the attention of, and corrected by, management: *See attached Adjusting Journal Entries Report.*

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the District's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

**Representations Requested from Management**

We have requested certain written representations from management, which are included in the attached letter dated June 7, 2013.

**Management's Consultations with Other Accountants**

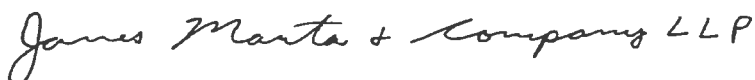
In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

**Other Significant Findings or Issues**

In the normal course of our professional association with Auburn Area Recreation and Park District, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the District's auditors.

This report is intended solely for the information and use of the Board of Directors and management of Auburn Area Recreation and Park District and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,



James Marta & Company LLP  
Certified Public Accountants  
June 7, 2013

**ADJUSTING JOURNAL ENTRIES REPORT**

<b>Adjusting Journal Entry JE# 1</b>	2111.1		
To adjust Youth Assistance Fund to reflect revenue and expenses unrecorded to fund for 2012-2013 as PBC			
9-000-1040-000 Placer County Treasure-General		252.00	
9-000-3080-000 GFB: Youth Assistance Fund		252.00	
9-000-1080-000 Youth Asst. Fund			252.00
9-000-3120-000 GFB: General Fund Balance			252.00
<b>Total</b>		<u>504.00</u>	<u>504.00</u>
<b>Adjusting Journal Entry JE# 2</b>	6001		
To adjust City Mitigation fund to reflect March interest			
9-000-3120-000 GFB: General Fund Balance		240.00	
9-000-3025-000 RFB Reserved (City Mitigation)			240.00
<b>Total</b>		<u>240.00</u>	<u>240.00</u>
<b>Adjusting Journal Entry JE# 3</b>	6001		
To adjust retained earnings to balance with PY report			
9-000-3120-000 GFB: General Fund Balance		53.00	
9-000-3080-000 GFB: Youth Assistance Fund			1.00
9-000-7365-000 Miscellaneous Expense			52.00
<b>Total</b>		<u>53.00</u>	<u>53.00</u>
<b>Adjusting Journal Entry JE# 5</b>	4452		
To correct depreciation expense for fiscal year 2012-2013.			
9-000-3010-000 Investments in Fixed Assets		105,372.00	
9-000-1440-000 Less: Accumulated Depreciation			105,372.00
<b>Total</b>		<u>105,372.00</u>	<u>105,372.00</u>

NOTE: There is no Adjusting Journal Entry #4 for the fiscal year 2012-2013 audit.

**PROPOSED JOURNAL ENTRIES REPORT**

<b>Proposed JE# 6</b>	4452		
To document depreciation of fixed assets in excess of their original cost. DO NOT POST			
9-000-1440-000 Less: Accumulated Depreciation		7,654.00	
9-000-3010-000 Investments in Fixed Assets			7,654.00
<b>Total</b>		<u>7,654.00</u>	<u>7,654.00</u>



## AUBURN AREA RECREATION AND PARK DISTRICT

### MANAGEMENT REPRESENTATION LETTER

June 7, 2013

To: James Marta & Company LLP

This representation letter is provided in connection with your audit of the financial statement of the governmental activities, the general fund and the aggregate remaining fund information of Auburn Area Recreation and Park District as of March 31, 2013 and for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions on whether the basic financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows, where applicable, of the various opinion units of Auburn Area Recreation and Park District in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

Except where otherwise stated below, immaterial matters less than \$32,800 collectively are not considered to be exceptions that require disclosure for the purpose of the following representations. This amount is not necessarily indicative of amounts that would require adjustment to or disclosure in the financial statements.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of June 7, 2013:

#### Financial Statements

- We have fulfilled our responsibilities, as set out in the terms of the audit engagement dated March 1, 2011 and the engagement letter addendum dated April 9, 2013, for the preparation and fair presentation of the financial statements of the various opinion units referred to above in accordance with U.S. GAAP.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.

- Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
- Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
- The effects of uncorrected misstatements summarized in the attached schedule and aggregated by you during the current engagement are immaterial, both individually and in the aggregate, to the applicable opinion units and to the financial statements as a whole.
- The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
- All component units, as well as joint ventures with an equity interest, are included and other joint ventures and related organizations are properly disclosed.
- All funds and activities are properly classified.
- All funds that meet the quantitative criteria in GASB Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, and GASB Statement No. 37, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments: Omnibus*, for presentation as major are identified and presented as such and all other funds that are presented as major are considered important to financial statement users.
- All net assets components and fund balance classifications have been properly reported.
- All revenues within the statement of activities have been properly classified as program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.
- All expenses have been properly classified in or allocated to functions and programs in the statement of activities, and allocations, if any, have been made on a reasonable basis.
- All interfund and intra-entity transactions and balances have been properly classified and reported.
- Special items and extraordinary items have been properly classified and reported.
- Deposit and investment risks have been properly and fully disclosed.
- Capital assets, including infrastructure assets, are properly capitalized, reported, and if applicable, depreciated.
- All required supplementary information is measured and presented within the prescribed guidelines.
- With regard to investments and other instruments reported at fair value:
  - The underlying assumptions are reasonable and they appropriately reflect management's intent and ability to carry out its stated courses of action.
  - The measurement methods and related assumptions used in determining fair value are appropriate in the circumstances and have been consistently applied.
  - The disclosures related to fair values are complete, adequate, and in conformity with U.S. GAAP.
  - There are no subsequent events that require adjustments to the fair value measurements and disclosures included in the financial statements.

### **Information Provided**

- We have provided you with:


- Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements of the various opinion units referred to above, such as records, documentation, meeting minutes, and other matters;
  - Additional information that you have requested from us for the purpose of the audit; and
  - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- All transactions have been recorded in the accounting records and are reflected in the financial statements.
  - We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
  - We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
    - Management;
    - Employees who have significant roles in internal control; or
    - Others where the fraud could have a material effect on the financial statements.
  - We have no knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, vendors, regulators, or others.
  - We are not aware of any pending or threatened litigation and claims whose effects should be considered when preparing the financial statements and we have not consulted legal counsel concerning litigation or claims.
  - We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
  - There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in accounting, internal control, or financial reporting practices.
  - Auburn Area Recreation and Park District has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
  - We have disclosed to you all guarantees, whether written or oral, under which Auburn Area Recreation and Park District is contingently liable.
  - We have disclosed to you all significant estimates and material concentrations known to management that are required to be disclosed in accordance with GASB Statement No. 62 (GASB-62), *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.
  - We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.
  - There are no:
    - Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.
    - Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62.
    - Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62

- Auburn Area Recreation and Park District has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset or future revenue been pledged as collateral, except as disclosed to you.
- We have complied with all aspects of grant agreements and other contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

- We believed that the actuarial assumptions and methods used to measure pension and other postemployment benefit liabilities and costs for financial accounting purposes are appropriate in the circumstances. We are unable to determine the possibility of a withdrawal liability in a multiemployer benefit plan.
- Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, lines of credit, or similar arrangements have been properly disclosed.

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned financial statements.

  
\_\_\_\_\_  
Kahl Muscott, District Administrator

  
\_\_\_\_\_  
Joe Fecko, Administrative Services Manager

**Item 9.2 Cover Sheet for Transfer of General Funds to Reserves**

Auburn Area Recreation and Park District June, 2013 Finance Committee meeting, Board of Directors meeting July 25, 2013

**Subject:** Adoption of Resolution #2013-07, approving the transfer of general fund surplus to Equipment, Future Capital Construction and ADA Reserve Funds.

**The Issue:** Shall the Auburn Area Recreation and Park District transfer funds from the general fund surplus to the referenced reserves.

**Background:** As a result of unexpected Redevelopment Agency (“RDA”) revenues transferred to the District due to the State mandated dissolution of RDA’s in the amount of \$166,000 in addition to an operational surplus of approximately \$50,000, staff recommends that a transfer of these surplus funds be made to reserves. Staff further recommends that \$100,000 of the surplus be transferred to the Equipment Reserve and \$100,000 to the Future Capital Construction Reserve for a total of \$200,000. These additions to the reserves are prudent as the ten (10) year park specific master plan and the five (5) year obsolescence list have several large expenditures planned. Continual funding of these reserves at maximum possible levels will be required to complete the projects and replace equipment as necessary.

**Recommendation:** At the June, 2013 Finance Committee meeting, the committee members recommended transferring the funds as described above plus an additional \$25,000 of general funds be transferred to the ADA Reserve.

The totals would then be:  
\$100,000 to the Equipment Reserve  
\$100,000 to the Future Capital Construction Reserve  
\$25,000 to the ADA Reserve  
**\$225,000 TOTAL**

Staff recommends that the Board adopt Resolution 2013-07, approving the transfer of funds as detailed above.

**Fiscal Impact:** Since the majority of these funds are a result of a (potential) one time infusion of revenue, there is very little impact to the general fund. There will be a transfer of approximately \$75,000 from operationally generated general funds to the reserves. The balance of the transfers will be from one-time revenue generated by “refunds” of RDA funds.



**Attachments**

Resolution #2013-07

RESOLUTION NUMBER 2013-07

A RESOLUTION OF THE GOVERNING BOARD OF DIRECTORS OF THE AUBURN AREA RECREATION AND PARK DISTRICT APPROVING THE TRANSFER OF FUNDS IN THE AMOUNT OF \$100,000 FROM THE GENERAL FUND TO THE EQUIPMENT RESERVE FUND, \$100,000 FROM THE GENERAL FUND TO THE FUTURE CAPITAL CONSTRUCTION RESERVE, AND \$25,000 FROM THE GENERAL FUND TO THE ADA RESERVE FOR A TOTAL OF \$225,000

WHEREAS, the Auburn Area Recreation & Park District Board of Directors does hereby resolve the following:

That the Auburn Area Recreation & Park District shall transfer \$100,000 from the general fund to the equipment reserve fund, \$100,000 from the general fund to the future capital construction reserve, and \$25,000 from the general fund to the ADA reserve for a total of \$225,000.

APPROVED, PASSED, AND ADOPTED ON July 25, 2013 by the following roll call vote:

Ayes:

Noes:

Absent:

Abstain:

---

James A. Gray  
Chairman of the Governing Board

ATTEST:

---

Clerk to the Governing Board

## **Item 9.3 Cover sheet – Ashford Park Paving Project**

**July 25, 2013 Board of Directors Meeting**

**Subject: Approve a resolution accepting a construction bid of \$64,994.85 for the paving alterations at Ashford Park.**

### **The Issue**

Should Auburn Recreation District Board of Directors approve a Resolution authorizing the District Administrator to accept a bid from Gabe Mendez for \$64,994.85 for the paving renovations at Ashford Park and to enter into a construction contract with Gabe Mendez for this project? Staff also recommends the Board approve a 10% contingency for this project of \$6,499.00. Staff believes a 10% contingency is appropriate for this project

### **Background**

Engineered Drawings and Specifications have been completed for Ashford Park paving renovation project by Giuliani and Kull Engineers. The estimate for the project, including engineering and survey work was published on the 2013/2014 approved project list is \$67,000. Engineering and survey contracts with Giuliani and Kull totaled \$6,260. The District, through a public competitive bid process has received five bids from interested contractors. The lowest, Gabe Mendez, is \$64,994.85. Gabe Mendez is the lowest responsible and responsive bidder for this project. The total costs for the project including the survey, engineering and Gabe Mendez bid totals \$71,254.85. Project costs exceed the projected budget by \$4,254.85.

### **Recommendation**

Staff recommends approving the Resolution authorizing the District Administrator to execute a contract for the construction of the paving renovation at Ashford Park Staff recommends the Board approve a 10% contingency for this project of \$6,499.00.

### **Alternatives Available to the Board of Directors**

Don't approve a Resolution authorizing the District Administrator to execute a contract for the paving renovation project at Ashford Park.

### **Fiscal Impact**

Fiscal impact of awarding a contract for the re-roof is \$64,994.85 plus a 10% contingency of \$6,499.00.

### **Attachments**

Bid Summary  
Resolution to Award Contract  
Notice of Award letter  
Proposal (from Gabe Mendez)

**JULY 17, 3:00 PM BID RESULTS  
ASHFORD PARK PAVING PROJECT**

<u>CONTRACTOR NAME</u>	<u>AMOUNT</u>
1. PBM CONSTRUCTION	\$75,498
2. P & P CONSTRUCTION	\$89,872
3. WESTERN ENGINEERING	\$88,255
4. GABE MENDEZ	\$64,994.85
5. BRCO CONSTRUCTION	\$117,100

RESOLUTION NUMBER 2013-09

A RESOLUTION OF THE GOVERNING BOARD OF DIRECTORS OF THE  
AUBURN AREA RECREATION AND PARK DISTRICT AWARDING A  
CONTRACT FOR THE ASHFORD PARK PAVING RENOVATION PROJECT

WHEREAS, the Auburn Area Recreation & Park District Board of Directors does hereby resolve the following:

That the Auburn Area Recreation & Park District awards the project based on the lowest grant total sum of \$64,994.85. The District Administrator is authorized to enter into a contract for the Ashford Park paving renovation project with Gabe Mendez, Inc. for the base bid of \$64,994.85 and approves a District controlled contingency of 10% or \$6,449.48.

APPROVED, PASSED, AND ADOPTED ON July 25, 2013 by the following roll call vote:

Ayes:

Noes:

Absent:

Abstain:

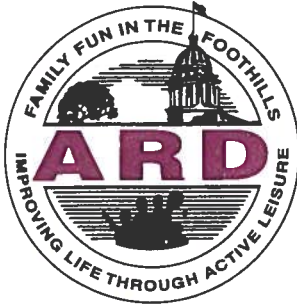
---

James A. Gray  
Chairman of the Governing Board

ATTEST:

---

Clerk to the Governing Board



---

## AUBURN AREA RECREATION AND PARK DISTRICT

---

July 26, 2013

Gabe Mendez  
9390 Ridge Road  
Newcastle, CA 95658

**RE: Ashford Park Paving Renovation Project – Notice of Award**

Dear Mr. Mendez,

Auburn Area Park and Recreation District (ARD) is pleased to inform you that the District Board of Directors has awarded your company the construction contract for the Ashford Park Paving Renovation Project at your bid cost of \$64,994.85 for the base bid.

Enclosed please find (2) copies of the Articles of Agreement as attached in the Contract Documents for this subject project. Please sign all (2) copies of the Articles of Agreement and return them as soon as possible. Please provide ARD, concurrent with the execution of the Articles of Agreement, the following documents as outlined in the Contract Documents.

- Performance Bond for 100% of the contract;
- Payment Bond for 50% of the contract;
- Standard Form of Endorsement Insurance.

In addition, please submit the required insurance certificates for this project. The signed contracts along with the bonds and insurance certificates must be returned to our office within fifteen (15) days from the date of this notification, not including Sundays.

As is customary, we are requesting a construction schedule and emergency phone contact list be submitted before construction begins. We are targeting an August 21, 2013 construction start date. Contract Documents identify twenty-five (25) working days for this project. I will be representing the District as the project manager and will be available for a pre-construction conference to be scheduled. You may contact me at (530) 885-0611 x107 to coordinate a preconstruction conference. Please include ARD and your subcontractors in the preconstruction conference.

We are looking forward to working with you and if there any questions please do not hesitate to contact me.

Sincerely,

Pamela Vann  
Landscape Architect #4674

cc: ARD Board of Directors  
Kahl Muscott, District Administrator

**AUBURN AREA RECREATION AND PARK DISTRICT  
STATE OF CALIFORNIA**

**PROPOSAL**

For the construction of the

**ASHFORD PARK PAVING RENOVATION PROJECT**

To the District Administrator of the Auburn Area Recreation and Park District

The undersigned declares that he has examined the locations of the proposed work, that he has examined the specifications, and all the contract documents, and hereby proposes to furnish all materials, labor, equipment, and perform all the work in strict accordance with said specifications, and contract documents in consideration of the attached schedule.

The undersigned further agrees that, upon written acceptance of this bid, he will within **FIFTEEN** days of receipt of such notice execute a formal contract agreement with the Auburn Area Recreation and Park District, with necessary bonds and certificate and standard form endorsement of insurance. He also agrees that, in the case of default in executing the contract, the proceeds of the check or bond accompanying his bid shall become the property of the Auburn Area Recreation and Park District. The Contractor acknowledges this is a prevailing wage job subject to California Labor Code 1770 – 1780.

The undersigned agrees that, if awarded the contract, he will commence the work upon written notice to proceed and shall diligently prosecute the same to completion before the expiration of **25 working days** from the date of said written notice to proceed.

Bids are to be submitted for the entire work.

**The Auburn Park and Recreation District will award the contract, if at all, to the lowest responsible bidder with the lowest Grand Total as shown on the Bid Schedule.**

The bidder shall set forth each total for the item, and for each lump sum work a total for the item, all in clearly legible Arabic figures in the respective spaces provided for this purpose.

The award of the contract, if it is awarded, will be to the lowest responsible responsive bidder whose bid complies with the requirements set forth herein. The determination of the lowest bid will be evaluated based upon each bidder's Grand Total amount, which is the total sum of the project.

The following quantities are approximate only, being given as a basis for the comparison of bids, and the Auburn Area Recreation and Park District does not expressly or by implication agree that

the actual amount of work will correspond therewith and reserves the right to increase or decrease the amount of any portion of the work or to omit portions of the work as may be deemed necessary or advisable.

Bidder acknowledges receipt of the following addenda:

---

---

---

---

---

---

---

---

---

---

July 17, 2013  
Date:

Gabe Mendez, Inc.  
Name of Firm

Contractor's License:

9390 Ridge Road  
Business Address

a. Class: A HAZ

b. Number: 293782

c. Expiration Date: 10/31/2013

(916) 663-3372  
Phone Number

Gabe Mendez  
Signature of Responsible Official



# Contract Bid Form

Project: Ashford Park  
Submitted By:

Date: July 17, 2013

	ITEM	UNIT	UNIT COST	QUANTITY	TOTAL
<b>A</b>	<b>EARTHWORK</b>				
	Earthwork - import and placement	CY	62.35	50.0	3,117.50
	Site compaction	SF	.75	3500.0	3,325.00
	Export demolition material	CY	30.50	35.0	1,067.50
	Clear and grub	SF	2.50	500.0	1,250.00
	Sawcut and remove existing AC & Concrete.	SF	.75	3500.0	2,625.00
				<b>Subtotal A</b>	<b>11,385.00</b>
<b>B</b>	<b>STORM DRAINAGE</b>				
	Drain Pipe - 8"	LF	51.50	30.0	1,545.00
	Inlet	EA	2,450	1.0	2,450.00
	Rock Outfall Protection	SF	5.65	100.0	565.00
				<b>Subtotal B</b>	<b>4,560.00</b>
<b>C</b>	<b>RETAINING WALLS</b>				
	Stacked Block Wall	SF	49.85	175.0	8,723.75
				<b>Subtotal C</b>	<b>8,723.75</b>
<b>D</b>	<b>PAVING &amp; CONCRETE</b>				
	3" AC	SF	2.64	3350.0	8,844.00
	4" AB	SF	1.39	3770.0	5,240.30
	Concrete curb	LF	36	28.0	1,008.00
	Concrete Stairs	SF	57.35	200.0	11,470.00
	Railing	LF	125	60.0	7,500.00
	Concrete Flat Work	SF	9.39	420.0	3,943.80
				<b>Subtotal D</b>	<b>36,006.10</b>
<b>E</b>	<b>AMENITIES</b>				
	Signage	EA	135	2.0	270
	Pavement marking	LS	550	1.0	550
				<b>Subtotal E</b>	<b>820.00</b>
<b>F</b>	<b>WINTERIZATION AND EROSION CONTROL</b>				
	Construction fencing	LS	250	1.0	250.00
	Silt fencing	LS	1,150	1.0	4,150.00
	Inlet protection	EA	100	1.0	100.00
				<b>Subtotal F</b>	<b>1,500.00</b>

## SUMMARY OF COSTS & FEES

<b>A</b>	<b>EARTHWORK</b>	11,385.00	
<b>B</b>	<b>STORM DRAINAGE</b>	4,560.00	
<b>C</b>	<b>RETAINING WALLS</b>	8,723.75	
<b>D</b>	<b>PAVING &amp; CONCRETE</b>	36,006.10	
<b>E</b>	<b>AMENITIES</b>	820.00	
<b>F</b>	<b>WINTERIZATION AND EROSION CONTROL</b>	1,500.00	
	<b>TOTAL</b>	<b>64,994.85</b>	

**AUBURN AREA RECREATION AND PARK DISTRICT  
STATE OF CALIFORNIA**

**DESIGNATION OF SUBCONTRACTORS**

The following list of subcontractors is submitted with the proposal and made a part thereof.

If the Contractor fails to specify a subcontractor for any portion of the work to be performed under the contract, he shall be deemed to have agreed to perform such portion himself, and he shall not be permitted to subcontract that portion of the work except under the conditions hereinafter set forth.

Subletting or subcontracting of any portion of the work for which no subcontractor was designated in the original bids shall only be permitted in cases of public emergency or necessity, and then only after receiving written approval from the Engineer.

The name and location of the shop or office of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the project and that portion of the work to be performed by the subcontractor is as follows:

1. NAME: Mark Wallace Masonry  
ADDRESS: P.O. Box 6745 Auburn, CA. 95604  
CONTRACT ITEMS: Concrete + Wall AMOUNT: \$ 27,926.55
2. NAME: Sierra Striping  
ADDRESS: 9725 Del Road Suite A. Roseville, CA  
CONTRACT ITEMS: Striping AMOUNT: \$ 735.00
3. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTRACT ITEMS: \_\_\_\_\_ AMOUNT: \$ \_\_\_\_\_
4. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTRACT ITEMS: \_\_\_\_\_ AMOUNT: \$ \_\_\_\_\_
5. NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTRACT ITEMS: \_\_\_\_\_ AMOUNT: \$ \_\_\_\_\_

AUBURN AREA RECREATION AND PARK DISTRICT  
STATE OF CALIFORNIA

**NONCOLLUSION AFFIDAVIT TO ACCOMPANY PROPOSAL**

Gabriel V. Mendez, being first duly sworn, deposes and says that he or she is Vice-President of Gabe Mendez, INC., the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

July 17, 2013  
(Date)

Gabe Mendez  
(Signature)

Gabe Mendez, Inc.  
Name of Firm

9390 Ridge Road

Newcastle, Ca. 95658  
Business Address

Contractor's License:

a. Class: A, HAZ

b. Number: 293782

c. Expiration Date: 10/31/2013

(916) 663-3372

Phone Number

Gabe Mendez  
Signature of Responsible Official

**AUBURN AREA RECREATION AND PARK DISTRICT  
STATE OF CALIFORNIA**

**BIDDER'S BOND TO ACCOMPANY PROPOSAL**

KNOW ALL MEN BY THESE PRESENTS,

That we, GABE MENDEZ, INC., as Principal, and LIBERTY MUTUAL INSURANCE COMPANY, a corporation authorized to transact a general surety business in the State of California, as Surety, are held and firmly bound unto AUBURN AREA RECREATION AND PARK DISTRICT (hereinafter called the Obligee) in the full and just sum of \*\*TEN PERCENT (10%) OF AMOUNT BID\*\* dollars, (\$ \*\*10%\*\*) for the payment whereof in lawful money of the United States, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said PRINCIPAL has submitted the accompanying bid for:

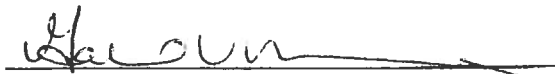
Ashford Park Paving Renovation Project

NOW, THEREFORE, if the said contract be timely awarded to the Principal and the Principal shall, within such time as may be specified, enter into the contract in writing, and give bond, with surety acceptable to the Obligee for the faithful performance of the said contract, then this obligation shall be void; otherwise to remain in full force and effect.

Signed and Sealed this 15th day of July 2013.

GABE MENDEZ, INC.

LIBERTY MUTUAL INSURANCE COMPANY



Principal



Attorney-in-Fact, Karen Amin

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of San Joaquin }

On July 15, 2013 before me, Jennifer Loper, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Karen Amin  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Jennifer Loper  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Bidder's Bond to Accompany Proposal

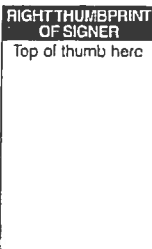
Document Date: July 15, 2013 Number of Pages: 1

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Karen Amin

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: Liberty Mutual Insurance Company

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6103299

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Daniel M. Connolly; David Schnapp; Diane Kelley; Karen Amin

all of the city of Lodi, state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of May, 2013.

American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: *Gregory W. Davenport*  
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss  
COUNTY OF KING

On this 1st day of May, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.

By: *KD Riley*  
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5.** Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of JULY, 2013.

By: *David M. Carey*  
David M. Carey, Assistant Secretary



Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

## **Item 9.4 Cover Sheet for Sale of Sprint Lease**

ARD Finance Committee meeting July 19, 2013; ARD Board meeting July 25, 2013

### **Subject:**

Sale of Sprint Lease to ComCap Group

### **The Issue:**

Shall the Auburn Area Recreation and Park District Board of Directors recommend approval of the sale of the Sprint lease to ComCap Group?

### **Background:**

Sprint leases the cell phone tower on the left field line of James Field. The District has entertained offers to sell the Sprint lease several times over the last 3 years. The latest was considered in 2012. That offer was from Unison and was found to be unattractive for several reasons, including inadequate financial terms. The cash flow payment represented a six year payback.

Several months ago, ComCap Group approached staff regarding their interest in purchasing the Sprint lease. While staff advised the Group of the District's interest, no offer was forthcoming until the week of May 24, 2013. A letter of Intent was received on that date, offering \$246,000 for the lease and an Easement Purchase Agreement (EPA) was received on May 28, 2013. Staff reviewed the EPA and returned revisions of same back to ComCap for their consideration. There remain two revision issues unresolved and negotiations continue. In the interim, staff contacted an independent third party who represents Cell Tower clients in real estate and contract issues. While that company felt that the contract itself was fairly straightforward and the terms acceptable, they concurred with staff that the financial aspects of the agreement are inadequate. The Sprint lease expires in 2038 and per the attached spreadsheet, is valued at approximately \$1,000,000 including the annual 3% adjustment, assuming Sprint renews the contract every 5 years as per agreement. Assuming that the District invests every payment at an average rate of 5% (over the next 25 years, it is very likely that an average 5% investment rate is feasible) then the Sprint payments have a future value of approximately \$1,950,000. Sprint has a 30 day cancellation clause in the contract, but that is not reciprocal. ComCap was notified on the week of June 24 of the inadequacy of their offer and they have responded with a request that the District name a fair price for the lease.

The quandary for the District is the question of risk. The Sprint contract has 25 years remaining (until 2038). However, Sprint can cancel at any time. So by retaining the lease, the District is

gambling that Sprint will carry the lease until term and receive the full (\$1,000,000) lease payments. Conversely, the District has the opportunity to eliminate the risk entirely by selling the lease to ComCap for \$255,000 (there was a slight increase in the offer due to additional lease revenue recently put in place by Sprint). This represents approximately an eleven (11) year cash flow payment. Staff believes that this is still inadequate and that the lease is worth more than that amount. We believe that a sale representing 50% of the expected lease payments, or \$500,000, would be attractive and acceptable to the District. The future value of \$500,000 in the year 2038, at a 5% investment rate would be \$1,693,000.

**Recommendation:**

At the July Finance Committee meeting, the board members forwarded this item to the full board with a negative recommendation and directed staff to continue with negotiations. Although staff recommends that the Board of Directors reject the current offer as it stands and give direction to continue negotiating with ComCap, it also believes that the Board should be apprised of the state of negotiations at this time.

**Alternatives available to the Board**

- 1) Accept the current offer of \$255,000 from ComCap Group.

**Attachments**

ComCap Easement Purchase Agreement  
Sprint Lease spreadsheet



**EASEMENT PURCHASE AND ASSIGNMENT OF LEASE AGREEMENT**

This Easement Purchase and Assignment of Lease Agreement ("Agreement") dated [ ] to be effective [ ] (the "Effective Date"), is by and between [ ] as Grantor ("Grantor" as used herein shall mean the seller, assignor, and grantor of the Telecommunications Easement as hereinafter defined), and Land Leases, LLC, a Delaware limited liability company, as Grantee ("Grantee" as used herein shall mean the purchaser, assignee, and grantee of the easement, assignees of grantee, or successors-in-interest to grantee); and

WHEREAS Grantor owns certain real property (the "Property" as more fully described in the legal description attached hereto as Exhibit A) located at:

[ ]; and

WHEREAS Grantor, by use of a lease or license (a copy or description of which is annexed hereto as Exhibit B, the "Telecom Tenant Lease"), has leased a portion of the Property ("Existing Telecom Lease Area" as more fully described in Exhibit C attached hereto) to a telecommunications company for telecommunications purposes and said company is [ ] ("Telecom Tenant"); and

WHEREAS Grantor intends to sell, assign, set over, convey and transfer the Telecom Tenant Lease to Grantee; and

WHEREAS Grantor intends to grant to Grantee an exclusive easement (subject to the Telecom Tenant Lease) for telecommunications purposes (the "Telecommunications Easement" or the "Easement") on the Property as more fully described herein and in Exhibit E attached hereto; and

WHEREAS Grantor intends to provide Grantee with a non-exclusive easement to allow ingress and egress; and

WHEREAS Grantor intends to provide Grantee with a non-exclusive easement to install and maintain utilities; and

WHEREAS Grantor intends to allow Grantee to use the Easement in order that Grantee may lease space to tenants in the telecommunications business; and

WHEREAS Grantee and Grantor intend to exchange good and valuable consideration.

NOW THEREFORE, In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. GRANT OF EASEMENT, SALE AND ASSIGNMENT OF TELECOM TENANT LEASE**

- a. Grantor grants to Grantee the Easement.
- b. Grantor hereby sells, assigns, sets over, conveys and transfers to Grantee all of its right, title and

interest in and to the Telecom Tenant Lease. Upon the Effective Date, this Agreement:

- c. is a grant of the Easement (subject to the Telecom Tenant Lease); and
- d. sells, transfers and assigns Grantor's interest in the Telecom Tenant Lease; and
- e. designates Grantee as the lessor under the Telecom Tenant Lease; and
- f. is a grant of the Non-Exclusive Utility Easement (as defined in Section 9) and the Non-Exclusive Access Easement (as defined in Section 10); and
- g. constitutes a purchase of the Telecom Tenant Lease.

**2. USE.**

The Easement granted herein may be used for telecommunication related activities, the transmission and reception of radio communication signals which may entail the construction, installation, improvement, enlargement, removal, maintenance, repair, replacement and operation of facilities, towers, antennas, cables, wires, microwave dishes, equipment shelters and/or cabinets and telecommunications equipment. At Grantee's expense, Grantee has and shall have the right to erect and maintain on the Easement improvements, personal property and facilities necessary to operate a communications system, including, without limitation, radio transmitting, and receiving antennas, microwave dishes, ~~equipment shelters and/or cabinets and related cables and utility lines and a location based system,~~ antenna(s), coaxial cable, base units and other associated equipment ("Equipment"). At any time during the Term (as defined below), and at Grantee's expense, Grantee shall have the right to alter, replace, expand, enhance, and upgrade the Equipment. The Equipment shall remain the exclusive property of Grantee or its tenant(s). At any time during the Term of this Agreement, and upon expiration or termination, Grantee or its tenant(s) shall have the right, in its sole discretion, to remove the Equipment ~~and shall have the right to remove the Equipment~~

Formatted: Strikethrough

Comment [j1]: As defined, Grantor includes assignees

**3. TERM.**

Commencing upon the Effective Date, the Term of this Agreement shall be for [a perpetual period or \_\_\_\_\_ ( ) years] (the "Term") DRAFTING NOTE: REMOVE FOR PERPETUAL TERM; [and terminate on \_\_\_\_\_ (the "Reversion Date")].

**4. PURCHASE PRICE.**

On or about the Effective Date, Grantee shall pay to Grantor one, and only one, lump-sum payment (the "Purchase Price") in an amount equal to [\_\_\_\_\_] as payment in full for the Term. Grantor hereby acknowledges and agrees that such Purchase Price constitutes all payments and other amounts due and payable by Grantee for the Term and that Grantor shall not

be entitled to any other compensation, fees, commissions, reimbursements, contributions, purchase monies or other payments under this Agreement or otherwise in connection with this Agreement, the Easement, the non-exclusive easements granted hereunder, the assignment of the Telecom Tenant Lease or the performance of Grantor's other obligations under this Agreement and the Telecom Tenant Lease. In the event that Telecom Tenant or Replacement Telecom Tenant (as defined in Section 6(b)) is obligated to pay to the Grantor under the Telecom Tenant Lease or a Replacement Telecom Tenant Lease (as defined in Section 6(b)) any fees (other than base rent and any escalations thereto), for the purpose of utility service or access or tax reimbursement, Grantor shall continue to be entitled to such fees, although Grantee may collect and distribute same to Grantor.

**5. TERMINATION.**

Grantor may not terminate this Agreement. This Agreement and the Easement shall automatically terminate upon abandonment by Grantee for a period of five (5) years following notice and opportunity to cure as provided herein. Only after Grantee has failed to respond following notice and opportunity to cure as provided herein, may Grantor seek to terminate this Agreement with respect to the preceding sentence. In the event of material breach of this Agreement by Grantee, Grantor shall properly deliver notice and provide Grantee with opportunity to cure as provided in this Agreement. Grantee may terminate this agreement at any time according to the notice provisions of this Agreement. ~~When it there is a tenant on the site and grantee abandons it, who gets the minimum rent?~~

**6. RIGHT OF REPLACEMENT.**

- a. [Intentionally omitted.]
- b. **Right of Replacement and Grantor Consent.** In the event that Telecom Tenant terminates the Telecom Tenant Lease or otherwise breaches the Telecom Tenant Lease or vacates the Property, Grantee may lease, sublease, license, transfer or assign all or a portion of the Easement to a replacement telecom tenant or tenants (each, a "Replacement Telecom Tenant") on terms that are consistent with the terms of the Telecom Tenant Lease including but not limited to indemnification of Grantor and liability for hazardous substances, and shall name Grantor as an additional insured. (Each such lease, sublease, license, transfer or assignment, a "Replacement Telecom Tenant Lease".) Grantee shall provide notice and copies of all Replacement Telecom Tenant Leases to Grantor prior to commencement of same. ~~Except that grantee is entitled to 50% of base payment of additional tenant even if existing tenant vacates tower~~
- c. **Grantee Renewal Rights.** Grantee has and shall have the option to extend the term of the Telecom Tenant Lease or a Replacement Telecom Tenant Lease as such renewal terms may exist in the Telecom Tenant Lease or a Replacement Telecom Tenant Lease, upon the same terms and conditions as provided therein (provided rent may be increased). Grantee may allow

Telecom Tenant or Replacement Telecom Tenant to renew the Telecom Tenant Lease or Replacement Telecom Tenant Lease, as applicable DRAFTING NOTE: REMOVE FOR PERPETUAL TERM: [even though such renewal may result in a term for Telecom Tenant or Replacement Telecom Tenant longer than the Term provided to Grantee under this Agreement]. ~~Notwithstanding the foregoing, Telecom Tenant renewal or Replacement Telecom Tenant Lease term may not exceed beyond the Reversion Date of the tower without approval of Grantor, which may not be unreasonably withheld, delayed, denied or varied and will not constitute any further covenant of the Grantor. Grantor shall be deemed given by Grantor, with Grantor's failure to respond within 15 days of a notice as provided herein. Who gets the minimum rent? Who gets the minimum rent?~~

- d. **Agent and Attorney in Fact.** Grantee is hereby appointed Agent and Attorney in Fact of Grantor solely for the purposes outlined in this paragraph 6 subsection d in the performance of the grants and obligations created by this Agreement, the Telecom Tenant Lease and any Replacement Telecom Tenant Lease, including: for the purposes of establishing Grantee's right and authority in the Telecom Tenant Lease or a Replacement Telecom Tenant Lease, including renewal, affirmation, or amendment to the Telecom Tenant Lease or a Replacement Telecom Tenant Lease; and to lease to Replacement Telecom Tenants; and to grant a leasehold interest in the Easement to Replacement Telecom Tenants; and to sign applications, documents, permits, or other documents required by local governmental authorities in connection with the use of the Property pursuant to this Agreement.
- e. **Replacement Telecom Tenant Utilities.** In the event that the utilities servicing the Property are insufficient to service Replacement Telecom Tenant, or that the location of the non-exclusive easement for utilities granted hereunder is insufficient to provide utility service, Grantor agrees to cooperate with Grantee, Replacement Telecom Tenant, and the utility service provider, their contractors, invitees, or agents to relocate the utility service, effectively restating the non-exclusive utility easement and/or upgrade and improve the utility service at the Property. Any work performed under this section shall be at no cost to Grantor (provided that Grantor shall be responsible for the payment of any costs necessary to maintain utilities to the extent required under the Telecom Tenant Lease), and shall not require the payment of additional fees by Grantee, Telecom Tenant or Replacement Telecom Tenant to Grantor unless required by law. Any work performed under this section shall be performed in a workmanlike manner and according to applicable law.
- f. **Waiver of Grantor Liens.** Grantor acknowledges that the Equipment and any related items brought to the Easement by Grantee, Telecom Tenant, Replacement

**Comment [j2]:** In that scenario, tenant would be deemed a replacement tenant and grantee would receive that rent. I did remove the minimum schedule rent per your request.

**Comment [j3]:** Addressed in Sec 24

Telecom Tenant, or their designees, is and shall remain Grantee's, Telecom Tenant's, Replacement Telecom Tenant's or such designee's personal property, as applicable. Grantor waives any rights it may have to assert any liens, encumbrances or adverse claims, statutory or otherwise, against the Equipment, including any rights it may have in its capacity as Grantor under this Agreement.

Grantor Relocation Rights. Grantor shall have the right to relocate the Equipment and the Equipment on the Property. Such right shall be subject to the terms of Grantor's Relocation Policy, which shall be provided to Grantee upon request. Grantor shall provide Grantee and its successors-in-interest with written notice of any relocation of the Equipment on the Property. Grantor shall provide Grantee with written notice of any relocation of the Equipment on the Property. Grantor shall provide Grantee with written notice of any relocation of the Equipment on the Property.

**7. FURTHER ASSIGNMENT.**

This Agreement and the Grantee's rights hereunder may be assigned by Grantee to secured parties. Grantee's Lender (as defined in Section 22(d)), successors-in-interest, acquiring entities or individuals, Telecom Tenant, Replacement Telecom Tenants, and any other party to whom Grantee may be required to provide collateral or demonstrate creditworthiness. Grantee may freely assign this Agreement in part or in its entirety, and any or all of its rights hereunder, including the right to receive rent payments. Upon the Effective Date, Grantee may pledge, assign, mortgage, grant a security interest, or otherwise encumber its interest in and to this Agreement. Execution of this Agreement shall constitute notice to Grantor of assignment of this Agreement to Grantee's secured party and/or Grantee's Lender contemporaneously with or after the Effective Date. Grantee or its successors-in-interest shall provide to Grantor written notice of other future, subsequent assignments. Upon absolute assignment, Grantee shall be relieved of all liabilities and obligations under this Agreement, provided that the recipient of such absolute assignment agrees to be bound by the terms of this Agreement. Following such assignment, Grantor shall look solely to the secured party, successors-in-interest or subsequent assignees for performance under this Agreement and all obligations hereunder.

**8. TAXES.**

- a. **Payment of Property Taxes.** All property taxes, including but not limited to the taxes levied by the jurisdiction in which the Property is located, shall be paid by Grantor prior to delinquency or default. Grantor shall be solely responsible for payment of all taxes and assessments now or hereafter levied, assessed or imposed upon the Property, or imposed in connection with the execution, delivery, performance or recordation hereof, including without limitation any sales, income, documentary or other transfer taxes. Grantee shall have no obligation or liability with regard to the payment of property or other taxes.
- b. **Grantee Discharge of Tax and Other Payment Obligations of Grantor.** Grantee may file, record, serve and/or deliver a request for notice of default, deficiency or sale upon any person or entity to whom a tax, assessment, or other payment is due from Grantor. If any such payment is not paid by Grantor when due (or within the time specified by such person or entity, if applicable), and if the failure of such a payment could result in a lien superior to the interests created by this Agreement, Grantee shall have the right, but not the obligation, at any time, in addition to its other rights hereunder and under applicable law, to pay and/or discharge such payment due, together with any penalty and interest thereon. Grantor shall reimburse Grantee immediately upon payment by Grantee thereof. If Grantee so elects by written notice to Grantor, then the amount reimbursable by Grantor to Grantee may become a lien properly documented, executed and recorded upon Grantor's right, title and interest in the land upon which the Property is located. Such lien may be foreclosed to the extent permitted by applicable law. Grantor shall promptly provide Grantee notice of such payments or obligations if Grantee shall be subrogated to the rights of the person to whom the payment was due, and such lien shall have such priority and benefit from such other rights and remedies, including foreclosure, as were formerly available to such person with respect to the payment.
- c. **Grantee Discharge of other Grantor Obligations.** If, after reasonable notice and opportunity to cure, Grantee determines in its reasonable discretion that Grantor has failed to perform any covenant, obligation or duty which Grantor is bound to perform under this Agreement, or any other agreement or applicable law relating to this Agreement or the Easement or the Property, then Grantee shall have the right, but not the obligation, at any time, to perform such covenant.

**Comment [j4]:** We don't actively operate equipment on a site, any taxes directly attributable to the carrier is an obligation of the carrier.

obligation or duty. Grantor shall, within thirty (30) days of receipt of an invoice therefore, reimburse Grantee for all costs and expenses incurred by Grantee.

Replacement Telecom Tenant for any time period that access is impeded or denied.

#### 9. NON-EXCLUSIVE UTILITY EASEMENT.

As part of the consideration provided for this Agreement, Grantor has granted to Grantee, and to Telecom Tenant and Replacement Telecom Tenants, the right to install and maintain utilities at its own cost and expense (provided that Grantor shall be responsible for the payment of any costs necessary to maintain utilities to the extent required under the Telecom Tenant Lease), and to improve the present utilities on the Easement (including, but not limited to, the installation of emergency power generators). Such utilities may include, but are not limited to, the installation of power and telephone service cable, wires, switches, boxes and the like, to service the Easement and the Equipment at all times during the Term of this Agreement. The rights granted under this Section 9 are collectively referred to as the "Non-Exclusive Utility Easement". The Non-Exclusive Utility Easement provided hereunder shall have the same Term as this Agreement. Grantor agrees to cooperate with and assist Grantee and/or Telecom Tenant or Replacement Telecom Tenant to acquire necessary utility service, at no cost to Grantor (except as provided above), and without requiring payment of additional rent or fees by Grantee, Telecom Tenant or Replacement Telecom Tenant. Grantee shall use commercially reasonable efforts to cause Telecom Tenant or Replacement Telecom Tenant to, where practicable, install separate meters for utilities for their use. In the event separate meters are not installed, except as otherwise provided in the Telecom Tenant Lease, Telecom Tenant or Replacement Telecom Tenant shall pay the periodic charges for all utilities attributable to its use to Grantor (at Grantor's cost for the utility) to the extent such payments are required pursuant to the Tenant Telecom Lease or a Replacement Telecom Lease, as applicable, who shall diligently correct any variation, interruption or failure of utility service.

#### 10. NON-EXCLUSIVE ACCESS EASEMENT.

As part of the consideration for this Agreement, Grantor has granted to Grantee, and to Telecom Tenant and Replacement Telecom Tenants, an easement in, under and across the Property adequate to allow ingress and egress to the Easement. Grantee and Telecom Tenant or Replacement Telecom Tenants shall have unrestricted access to the Easement pursuant to the term of the existing Telecom Tenant Lease or Replacement Telecom Tenant Lease, as applicable, twenty-four hours per day, seven days per week for any permitted use hereunder. Grantee shall coordinate in good faith with Grantor for any unusual access needs. Grantor may, and Grantee may permit Telecom Tenant or Replacement Telecom Tenant to, at its own cost and expense, use any and all lawful means of restricting access to the Easement, including, the construction of a fence. The rights granted under this Section 10 are collectively referred to as the "Non-Exclusive Access Easement". Should Grantor, its employees or agents impede or deny access to Grantee, Telecom Tenant, Replacement Telecom Tenant or its employees or agents, Grantor shall pay to Grantee an amount equal to the actual damages incurred by Grantee as measured by any charges or fees assessed against Grantee by Telecom Tenant or

#### 11. ZONING, PERMITTING AND COMPLIANCE WITH LAWS.

- a. **Zoning and Permitting.** At no cost to Grantor, Grantor agrees to cooperate with Grantee, Telecom Tenant, or Replacement Telecom Tenant in obtaining all licenses and permits or authorizations from all applicable governmental and/or regulatory entities ("Governmental Approvals") (including, without limitation, zoning and land use authorities, and the Federal Communication Commission (FCC)) which may be required for any permitted use of the Easement. Grantor hereby appoints Grantee and, to the extent authorized by Grantee, Telecom Tenant, Replacement Telecom Tenant and/or any other designee of Grantee as agent and attorney in fact for all land use and zoning permit applications. Grantor agrees to cooperate with and to allow Grantee, Telecom Tenant, or Replacement Telecom Tenant, at no cost to Grantor, to obtain a title report, zoning approvals and variances and land-use permits. Grantor expressly grants to Grantee, Telecom Tenant or Replacement Telecom Tenant, or their designees, a right of access to the Property to perform surveys, soil tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Grantee's or Telecom Tenant's or Replacement Telecom Tenant's intended use of the Easement will be compatible with Grantee's, Telecom Tenant's or Replacement Telecom Tenant's engineering specifications, system design, operations and Governmental Approvals. Such testing shall be at no cost to Grantor. Notwithstanding the foregoing, Grantee, Telecom Tenant and Replacement Telecom Tenant may not change the zoning classification of the Property without first obtaining Grantor's written consent.
- b. **Compliance with Laws.** Grantee shall use commercially reasonable efforts to enforce Telecom Tenant and Replacement Telecom Tenant obligations to comply with all applicable laws.

#### 12. INTERFERENCE AND QUIET ENJOYMENT.

- a. **Grantee Interference.** Grantee shall not use the Easement and Existing Telecom Lease Area in a manner that interferes with the use of the Property by Grantor or other lessees or licensees of Grantor, with rights in the Property (excluding the Easement) superior to Grantee (subject to the rights of Grantee under this Agreement, including without limitation, the Non-Exclusive Utility Easement and the Non-Exclusive Access Easement).
- b. **Grantor Interference.** Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to, use any portion of the Property or the Easement in a way which interferes with the operations of Telecom Tenant, Replacement Telecom

Tenant, or other of Grantee's lessees or licensees, or to interfere with the Non-Exclusive Utility Easement or the Non-Exclusive Access Easement. Such interference shall be deemed a material breach by Grantor. Grantor may not directly or indirectly induce, invite, or conspire to induce or invite any lessee or licensee including Telecom Tenant, Replacement Telecom Tenant or other of Grantee's lessees or licensees to use or lease space in direct competition with Grantee's Easement. Upon written notice from Grantee, Telecom Tenant, or Replacement Telecom Tenant, Grantor shall be responsible for terminating any such interference. Should Grantor fail to cease promptly any such interference, Grantee, Telecom Tenant or Replacement Telecom Tenant shall have the right to bring a court action to enjoin such interference, and Grantee shall have the right, in its sole discretion, to terminate this Agreement. It is agreed and understood by the parties that a continuing interference may cause irreparable injury to Grantee, Telecom Tenant and/or Replacement Telecom Tenant, and that such interference may be grounds for immediate termination of this Agreement by Grantee, in its sole discretion.

- c. **Grantor Interference with Construction.** Provided that construction is proceeding pursuant to a building permit or other required municipal or governmental approvals, and according to drawings or exhibits as provided to Grantor, Grantor shall not interfere with any aspects of construction. Such interference may include, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Equipment. Grantor further acknowledges that it will be responsible for any costs and damages (including, fines and penalties) that are directly attributable to Grantor's interference with construction.
- d. **Quiet Enjoyment.** Grantor covenants that Grantee, Telecom Tenant, Replacement Telecom Tenant and each other tenant that Grantee may grant a lease to relating to the Easement shall have quiet and peaceful possession of the Easement, the Non-Exclusive Utility Easement and the Non-Exclusive Access Easement throughout the Term of this Agreement. Except for emergency threatening life, Grantor will not intentionally disturb Telecom Tenant's, or Replacement Telecom Tenant's or such other tenant's, occupancy, as long as Grantee is not in default hereunder, after notice and the expiration of any applicable grace or cure period, or, even if Grantee is in default under the Easement, so long as Telecom Tenant, Replacement Telecom Tenant or such other tenant is not in default under the existing Telecom Tenant Lease, any Replacement Telecom Tenant Lease or any other applicable lease.

### 13. ENVIRONMENTAL REPRESENTATIONS AND HAZARDOUS SUBSTANCES.

- a. **Grantee Environmental Representations.** Grantee shall not introduce or use any Hazardous Substance

(hereinafter defined) on the Property or the Easement in violation of any applicable federal, state or local environmental laws.

- b. **Grantor Representation.** Grantor represents that it has no knowledge of any substance, chemical or waste (collectively "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance not caused solely by Grantee, that have occurred or which may occur on the Property.
- c. **Mutual Indemnification.** Each party (subject to Section 13(d) with respect to Grantee) agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. Grantor agrees to defend, indemnify, protect and hold Grantee harmless from claims resulting from actions on the Property not caused solely by Grantee during the Term of this Agreement. This indemnification shall survive the termination or expiration of this Agreement.
- d. **Grantee Limitation.** Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. Liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination that is shown by clear evidence to have been solely caused by a release of a Hazardous Substance by Grantee after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

### 14. MAINTENANCE AND REPAIR.

Grantor shall, at its expense, keep and maintain the Property in a commercially reasonable condition and repair during the Term of this Agreement, normal wear and tear and casualty excepted. Upon termination or expiration of this Agreement, and where required by the Telecom Tenant Lease or Replacement Telecom Tenant Lease, Telecom Tenant and Replacement Telecom Tenant shall maintain and restore the Easement to the condition

(as much as practicable) existing on the commencement date, normal wear and tear and casualty excepted. Grantee may, at its option, assume Telecom Tenant's or Replacement Telecom Tenant's obligation to remove Equipment and restore the Easement to the condition existing on the Telecom Tenant Lease commencement date.

#### 15. SUBORDINATION.

Grantee agrees to subordinate this Agreement to any mortgage or trust deed which may be placed on the Property, provided the mortgagee or trustee shall ensure to Grantee the right to possession of the Easement, the Non-Exclusive Utility Easement and the Non-Exclusive Access Easement, in the event of a default or foreclosure, and other rights granted herein provided Grantee is not in default beyond any applicable grace or cure period, such assurance to be in writing and in a non-disturbance form acceptable to all parties concerned. Such mortgagee or trustee shall further assure that Grantee shall have the continuing right to collect rents, fees and other payments from Telecom Tenant or Replacement Telecom Tenant and any other tenant of Grantee contemplated hereunder. Grantor shall provide a non-disturbance agreement in a form acceptable to all parties concerned for any mortgagee or trustee that has a mortgage or trust deed currently placed on the Property.

#### 16. CASUALTY AND CONDEMNATION.

If, prior to the expiration of the Term of this Agreement, all or any material portion of the Property is damaged, destroyed, or taken by governmental authority, Grantee may, in its sole discretion, terminate this Agreement (with notice provided herein). If Grantee does not elect to exercise its option to terminate this Agreement as aforesaid, this Agreement shall remain in full force and effect. Nothing contained herein shall be deemed to prevent Grantee, Telecom Tenant, Replacement Telecom Tenant, or their designees from making a separate claim in any condemnation proceedings for business interruption, damage(s) to personal property or moving or relocation expenses. Grantee shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the Grantee's personal property and its interest under this Agreement and/or the Telecom Tenant Lease or Replacement Telecom Tenant Lease throughout the Term of this Agreement, as applicable. Grantor shall not settle or compromise any insurance claim or condemnation award relating to the Easement without Grantee's prior written approval, which shall not be unreasonably withheld.

#### 17. REPRESENTATIONS AND COVENANT OF GRANTOR.

Grantor represents and warrants to Grantee, as of the date hereof, that:

- a. The Telecom Tenant Lease, this Agreement and any other documents executed by Grantor in connection with it constitute the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with their terms.

- b. The execution, delivery and performance by Grantor of the Telecom Tenant Lease and this Agreement and the transactions contemplated hereby and thereby do not and will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or of any agreement to which Grantor is a party including mortgages and deeds of trust, or by which Grantor or the Easement is bound and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.
- c. All required permits, licenses, consents, approvals and other authorizations in connection with Grantor's execution, delivery or performance of the Telecom Tenant Lease and this Agreement and such other documents and the transactions contemplated hereby and thereby have been obtained and are and will remain in full force and effect.
- d. There is no pending or threatened action, suit or proceeding that, if determined against Grantor or otherwise affecting the Property, would adversely affect Grantor's ability to enter into the Telecom Tenant Lease or this Agreement or such other documents or to perform its obligations hereunder or thereunder.
- e. A true, correct, and complete copy of the Telecom Tenant Lease (including all amendments, modifications, supplements, waivers, renewals and extensions thereof) and of each memorandum of lease, memorandum of commencement, non-disturbance agreement, estoppel certificate, assignment, sublease and other instrument or agreement executed by Grantor or Telecom Tenant in connection therewith or relating thereto, together with all amendments or supplements thereof (if any), is attached hereto as Exhibit B.
- f. Except as disclosed on the preliminary title report and as listed in Exhibit D, Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Property, the Easement or in and to the Telecom Tenant Lease to any other person, and Grantor holds such right, title and interest free and clear of liens or other encumbrances.
- g. Other than the Telecom Tenant Lease and this Agreement, there are no agreements, arrangements or understandings to which Grantor is a party or by which Grantor is bound, relating to the Telecom Tenant Lease or to the Easement.
- h. The Telecom Tenant Lease constitutes the legal, valid and binding obligation of Telecom Tenant, enforceable against Telecom Tenant in accordance with its terms.
- i. Grantor has not breached or defaulted in Grantor's obligations under the Telecom Tenant Lease, and Telecom Tenant has not breached or defaulted in Telecom Tenant's obligations under the Telecom Tenant Lease.

- j. There exists no fact or circumstance which, with the giving of notice or lapse of an applicable cure period, or both, would constitute a breach or default by Grantor or Telecom Tenant under the Telecom Tenant Lease.
- k. At no time prior to the date hereof has Grantor delivered or received notice of a breach or default by either Grantor or Telecom Tenant under the Telecom Tenant Lease or notice of any fact, condition or circumstance which, with the giving of notice or the lapse of an applicable cure period, or both, would constitute a breach or default by either Grantor or Telecom Tenant under the Telecom Tenant Lease.
- l. Neither Telecom Tenant, nor its agents or contractors has notified Grantor of any intention or desire to terminate the Telecom Tenant Lease or surrender or abandon the Telecom Tenant Lease, and Grantor knows of no facts or circumstances that lead Grantor to believe or suspect that Telecom Tenant will exercise any right to terminate or surrender or abandon the Telecom Tenant Lease or that Telecom Tenant intends to do so.
- m. Telecom Tenant's use and enjoyment of the Easement and Existing Telecom Lease Area does not depend upon any license or easement (other than licenses and Easement that are granted in the Telecom Tenant Lease or in this Agreement) for ingress or egress access or utility purposes. Notwithstanding the foregoing, if Telecom Tenant's use and enjoyment of the Easement and Existing Telecom Lease Area does depend upon any such license or agreement, then, to the extent Grantor has the right to, Grantor hereby assigns all of its right, title and interest in and to such license or agreement to Telecom Tenant or licensee and such license or agreement shall, for the purposes of this Agreement, be deemed to be included in the Telecom Tenant Lease.
- n. Grantor has complied with all applicable laws which may affect the Property or the Telecom Tenant Lease.

Grantor covenants to Grantee that, during the Term of this Agreement, Grantor shall comply with all applicable laws which may affect the Property, the Telecom Tenant Lease or any Replacement Telecom Tenant Lease.

#### 18. REPRESENTATIONS OF GRANTEE.

Grantee represents and warrants to Grantor, as of the date hereof, that:

- a. This Agreement and all other documents executed by Grantee in connection with it constitute the legal, valid and binding obligation of Grantee, enforceable against Grantee in accordance with their terms, except that such enforcement (i) may be limited by bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and (ii) is subject to the availability of equitable remedies, as determined in the

discretion of the court before which such a proceeding may be brought.

- b. Grantee is a validly existing limited liability company and the signatory of this document has the authority to do so under the documents forming the existence of the limited liability company. The execution, delivery and performance by Grantee of this Agreement does not and will not violate or conflict with any provision of Grantee's organizational documents or of any agreement to which Grantee is a party or and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantee is subject.
- c. Any permits, licenses, consents, approvals and other authorizations which are required to be obtained in connection with Grantee's execution, delivery or performance of this Agreement have been obtained and are and will remain in full force and effect.
- d. There is no pending or threatened action, suit or proceeding that, if determined against Grantee, would adversely affect Grantee's ability to enter into this Agreement or to perform its obligations hereunder.

#### 19. INSURANCE.

- a. During the Term of this Agreement, to the extent required under the Telecom Tenant Lease or a Replacement Telecom Tenant Lease, as applicable, Telecom Tenant or Replacement Telecom Tenant shall maintain a liability insurance policy in an aggregate amount of One Million and no/100 Dollars (\$1,000,000.00), and the policy shall name Grantor and Grantee as an additional insured, Telecom Tenant's or Replacement Telecom Tenant's master policy of liability insurance may satisfy this requirement.
- b. During the Term of this Agreement, Grantor shall maintain commercial general liability insurance on the Property providing coverage in an aggregate amount of not less than one million dollars (\$1,000,000.00) in combined bodily injury or property damage liability which policy shall name Grantee and Grantee's Lender as an additional insured.
- c. Throughout the Term of this Agreement, Grantor shall also maintain "all risk" property insurance covering fire and extended coverage and other perils of direct or indirect physical loss or damage insuring all improvements located at the Property, for the full value thereof, naming Grantee and Grantee's Lender as an additional insured.
- d. Grantor and Grantee hereby mutually release each other (and their successors or assigns) from liability, and waive all right of recovery against the other, for any loss or damage provided such loss or damage is covered by their own respective property insurance policies. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

20. INDEMNIFICATION.

Grantor and Grantee shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's breach of this Agreement or the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, or contractors of the indemnifying party. This indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The provisions of this section shall survive the expiration or termination of this Agreement. None of Grantee, Telecom Tenant, or Replacement Telecom Tenant shall be responsible to Grantor, or any third party, for any claims, costs or damages (including fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property, the Easement, or the Existing Telecom Lease Area. The parties agree that property insurance policies may affect the operation of this section.

of the Telecom Tenant Lease, or default under or breach by Replacement Telecom Tenant of the Replacement Telecom Tenant Lease, not more than thirty (30) days from discovery of the default. Grantee shall have ~~the right to cure the default~~ (15) days to commence cure of the default, unless the default constitutes a threat to human life.

- b. **Grantor Default.** Grantee shall provide written notice of a default or breach of this Agreement, or of Tenant Telecom Lease, or Replacement Telecom Lease, not more than thirty (30) days from discovery of the default. Grantor shall have ~~the right to cure the default~~ 15 days to cure the default.
- c. **Delivery.** All forms of Notice shall be delivered by Certified Mail Return Receipt Requested, and/or a nationally recognized Overnight courier. Notice shall be deemed accepted upon proof of delivery. Notices shall be delivered:

**Comment [j5]:** We can make this 45 days. In most cases, anything property owner will ask us to do, we will need to turn around and require of the tenant pursuant to the terms of the lease(s) we are assuming. Here, the timeframe to cure in the lease is 30 days, so we added a small cushion so that we can actually turn around and make the request and still comply with curing.

**Formatted:** Strikethrough

**Formatted:** Not Strikethrough

**Comment [j6]:** The timeframe to cure in the lease is 30 days, so we must remain consistent

As to Grantor:

[  
 ]

As to Grantee:  
Land Leases, LLC  
9755 Dogwood Road, Suite 105  
Roswell, GA 30075  
Attention: Chief Operating Officer

- d. **Lender Notice.** Provided that Grantee has advised Grantor in writing of the name and address of the holder of any loan which is or may become secured by a lien on Grantee's (or any successor to Grantee's) interest in this Agreement and the Easement ("Grantee's Lender"), Grantor shall also notify Grantee's Lender of any default by Grantee under this Agreement, the Telecom Tenant Lease, or any Replacement Telecom Tenant Lease and agrees that, notwithstanding any provisions of this Agreement to the contrary, no notice of termination of this Agreement shall be effective unless Grantee's Lender shall have received notice of default giving rise to such termination and (i) in the case of any such default that can be cured by the payment of money, until sixty (60) days shall have elapsed following the Grantee's Lender's receipt of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice and following the time when Grantee's Lender shall have become entitled under its security instrument or other loan documents to remedy the same, including such time as may be necessary to acquire possession of the Easement area if possession is necessary to effect such cure, provided Grantee's Lender, with reasonable diligence, shall (a) pursue such

21. DISPUTE RESOLUTION.

- a. **Jurisdiction.** This Agreement shall be construed under the laws of the State of [ ] .
- b. **Arbitration.** The parties shall first utilize arbitration in the event of a dispute.
- c. **Damages.** The parties may enforce this Agreement and their rights under applicable law, and may seek specific performance, injunction, appointment of a receiver and any other equitable rights and remedies available under applicable law. Money damages may not be an adequate remedy for the harm caused to Grantee by a breach or default by Grantor hereunder, and Grantor waives the posting of a bond. Damages as against Grantee shall be limited to the amount of consideration received by Grantor under this Agreement, following any insurance settlement which may have effect.
- d. **Attorneys' Fees.** The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs, whether through arbitration or a court of competent jurisdiction. Nothing in this agreement shall be construed to limit the remedies available to the parties under applicable law. All damages or other sums payable by one party to another hereunder shall bear interest from the date incurred or payable until paid at a rate equal to the lesser of (a) ten percent (10%) per annum and (b) the highest rate permitted by applicable law.

22. NOTICE.

- a. **Grantee, Telecom Tenant, or Replacement Telecom Tenant Default.** Grantor shall provide written notice of a default under or breach of this Agreement by Grantee, or default under or breach by Telecom Tenant



remedies as are available to it under its security instrument or other loan documents so as to be able to remedy the default, and (b) thereafter shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, Grantee's Lender shall have no obligation to cure any such default.

### 23. ESTOPPEL AND FURTHER ASSURANCES.

Upon request by a party to this Agreement, the other party shall execute, acknowledge, and deliver a Certificate of Estoppel and Further Assurances ("Certificate"), containing the following statements:

- a. this Agreement is a true and exact copy of the Agreement between the parties hereto;
- b. there are no amendments hereof (or, if not so, stating what amendments there may be);
- c. this Agreement is then in full force and effect;
- d. to the best of its knowledge, there are no disputes, offsets, defenses or counterclaims with respect to the payment of sums reserved hereunder;
- e. to the best of its knowledge, there is no default by the party requesting such document in the performance of the terms, covenants and conditions of this Agreement;
- f. in the event that there is a default, specification of same and cure, if any.

The Certificate shall be executed and delivered to the requesting party within fifteen (15) days of receipt, provided the request for Certificate is delivered according to the Notice provisions of this Agreement. In addition, the parties shall, upon the written request of the other party, execute and deliver documents to evidence the terms and conditions of this Agreement.

### 24. RIGHT OF FIRST REFUSAL AND REVENUE SHARING.

- a. Grantor grants to Grantee a right of first refusal to acquire through assignment, purchase, or other means any other lease for telecommunications purposes on the Property outside the Easement. Grantor shall deliver to Grantee by certified mail, return receipt requested, a written copy of any offer regarding the rights of first refusal granted herein. Grantee shall have fifteen (15) business days to match the terms of any offer by delivering written notice of Grantee's exercise of the right of first refusal.
- b. Revenue Sharing. When a new telecommunications tenant ~~(other than a Residential Telephone Tenant)~~ ~~other than a Residential Telephone Tenant~~ executes a lease for space within the Easement and commences rent payment, except as provided below in this Section 24(b), Grantee will collect such rent with Grantee retaining ~~\_\_\_\_\_~~ 11% percent (~~\_\_\_\_\_~~ 11%) of the rent

collected and Grantee remitting ~~\_\_\_\_\_~~ 11% percent (~~\_\_\_\_\_~~ 11%) of the ~~rent~~ ~~collected~~ collected to Grantor. ~~Notwithstanding the foregoing~~ ~~Grantee shall be obligated to collect and remit from all such communications tenants for the period of the term of such agreement as defined in the lease. Payment of such revenue shall be made to Grantor and Grantee, including a scheduled calculation of "Minimum Scheduled Rent". Should the rent collected equal or exceed the then Minimum Scheduled Rent, such date of "Minimum Scheduled Rent Deficit" shall not occur and shall be applied against any such future rent collected within the term of such agreement and payments of any such "Minimum Scheduled Rent Deficit".~~

### 25. MISCELLANEOUS.

- a. **Bankruptcy.** Grantee does not consent to rejection in bankruptcy, and Grantor shall provide notice and a copy of any filing to Grantee and Grantee's Lender (provided that the notice contemplated under Section 22(d) has been provided to Grantor) or their successors-in-interest at the notice address.
- b. **Foreclosure.** Although Grantor may provide a Subordination, Non-Disturbance, and Attornment ("SNDA") agreement from mortgagee(s), Grantor shall have and maintain an obligation to notify Grantee and Grantee's Lender (provided that the notice contemplated under Section 22(d) has been provided to Grantor) or their successors-in-interest immediately of a notice of default and/or a notice of foreclosure received under Grantor's mortgage. Failure to do so will constitute a material breach of this Agreement by Grantor.
- c. **Severability.** In the event that any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability. The remaining provisions of this Agreement shall remain in full force and effect.
- d. **Entire Agreement.** This Agreement and any documents, certificates, instruments and agreements referred to herein constitute the entire agreement between Grantor and Grantee. Without limiting the generality of the foregoing, Grantor acknowledges that it has not received or relied upon any advice of Grantee or its representatives regarding the merits or tax consequences of this Agreement.
- e. **Counterparts.** This Agreement may be executed in counterparts each of which, when taken together, shall constitute a single agreement.
- f. **Amendments, Etc.** This Agreement may not be amended or modified unless in writing signed by the parties and consented to by Grantee's Lender. No act

Formatted: Strikethrough

or failure to act shall be deemed to constitute an amendment, modification or termination hereof.

- g. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. This Agreement shall run with the land upon which the Easement is located.
- h. **Waiver.** Should a party fail to require strict performance by the other of any term of this Agreement or any rights it may assert, such failure shall not be deemed a waiver of any subsequent breach or default in any term, covenant, or conditions of this Agreement.
- i. **Recording and Memorandum.** Grantor and Grantee shall, on or after the Effective Date, acknowledge, execute and record the exchange of rights created under this Agreement in the Form of Telecommunications Easement attached hereto as Exhibit F. Grantee's interest in this Agreement and the Easement is intended to be, and shall be, an interest in real property. Grantee may use such documents or instruments to perfect the security thereof, which may include a UCC or other applicable instrument.
- j. **Third Party Beneficiary.** Grantee's Lender shall be a third party beneficiary to the provisions of this Agreement which apply to any Grantee's Lender.

- k. **Conflicts of Interest.** Except with the prior written approval of the Grantee, neither the Grantor nor any immediate family member of the Grantor shall have any financial or other relationship with any employee, subcontractor, agent or provider of equipment or services to the Grantee or any transaction of any type in which the Grantee or any of its affiliated entities is involved, and the Grantor shall not receive or remit to any employee of Grantee any compensation.

**26. SCHEDULE OF EXHIBITS.**

**Exhibit A...LEGAL DESCRIPTION OF THE PROPERTY**

**Exhibit B...TELECOM TENANT LEASE**

**Exhibit C...EXISTING TELECOM LEASE AREA**

**Exhibit D...TITLE ENCUMBRANCES**

**Exhibit E...EASEMENT AREA DESCRIPTION**

**Exhibit F...FORM OF TELECOMMUNICATIONS EASEMENT**

*[SIGNATURE PAGES TO FOLLOW]*

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTOR:

\_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY \_\_\_\_\_ } ss.

On this \_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as of \_\_\_\_\_.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTEE: Land Leases, LLC

\_\_\_\_\_  
John F. Gutowski, Chief Operating Officer

STATE OF ~~GEORGIA~~ }  
\_\_\_\_\_  
COUNTY OF ~~FULTON~~ } ss.

} ss.  
~~Formatted: Strikethrough~~  
~~Formatted: Strikethrough~~  
~~Formatted: Strikethrough~~  
~~Formatted: Strikethrough~~

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared John F. Gutowski, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chief Operating Officer of Land Leases, LLC.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

*To be inserted upon receipt of Title Commitment.*

EXHIBIT B

TELECOM TENANT LEASE

*Telecom Tenant Lease*

EXHIBIT C

EXISTING TELECOM LEASE AREA

*1. In the absence of a specific lease area,*

EXHIBIT D

TITLE ENCUMBRANCES

*Intentionally Blank*



**EXHIBIT E**

**EASEMENT AREA DESCRIPTION**

In the event of a discrepancy between the area actually occupied by the Equipment and the area described below, the described area shall be understood to also include any portion of the actual used area not captured by the description or as may have been granted to the Existing Telecom Tenant that is currently outlined in the Existing Telecom Tenant Leases referenced in Exhibit B. Grantor may elect to engage a professional surveyor, the product of which may be substituted upon Grantee acceptance for the contents herein. The part of the Property described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the Property used and leased by Grantor as the Existing Telecom Lease Area under the Telecom Tenant Lease(s) including but not limited as follows:

**EXCLUSIVE EASEMENT PARCEL**

The parcel of land located at [redacted]

**Comment [J7]:** This will be the existing Sprint lease area

**Expanded Easement Area**

That certain additional lease area measuring the equivalent total of two hundred fifty (250) square feet in a location to be determined by the [redacted] telecommunications tenant collocating on that certain telecommunications tower within the Existing Telecom Lease Area described above with such location approved by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed.

**Formatted:** Highlight

**NON-EXCLUSIVE UTILITY EASEMENT and NON-EXCLUSIVE ACCESS EASEMENT SPACE**

The part of the Property, described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the Property used by utility providers and leased by Grantor as the Existing Telecom Lease Area under the Telecom Tenant Lease(s) including but not limited as follows:

**Utilities and Telecommunications.** Grantee is herein granted, consistent with the Existing Telecom Tenant Leases, a non-exclusive easement in, to, under and over the portions of the Property for ingress and egress to the Easement Area, shaft ways, chase ways, soffits, risers, columns, crawl spaces, rafters, or any other space for placement of cables, wiring, etc., which is necessary to install, operate and maintain the telecommunications equipment and/or personal property, together with the right to use such easement for the development, repair, maintenance and removal of utilities and/or cables providing service to the Easement Area and any related activities and uses [redacted]

**Access.** Grantee is herein granted, consistent with the Existing Telecom Tenant Leases, all rights of ingress and egress to and from the Easement Area, across the Property described in Exhibit A hereto, providing access to a publicly dedicated roadway, including but not limited to [redacted], along with the right to use such access easement for the development, repair, maintenance and removal of utilities providing service to the Easement Area and any related activities and uses [redacted]

EXHIBIT F

FORM OF TELECOMMUNICATIONS EASEMENT

Record and Return to  
Name: Lisa King  
Address: TITLEVEST AGENCY, Inc.  
41 Wall Street, 10<sup>th</sup> Floor  
New York, NY 10005

TELECOMMUNICATIONS EASEMENT

This Easement dated \_\_\_\_\_, 2012, to be effective \_\_\_\_\_, 2012, is by and between «Seller Is\_Seller\_1\_Entity\_Type», with principal offices at «Seller Is\_Street\_Address», «Seller Is\_City», «Premises\_State», «Premises\_Zip\_Code» (“Grantor” grantor of the easement) and AND LEASES LLC, a Delaware limited liability company (“Grantee” grantee of the easement) with principal offices at 9755 Dogwood Road, Suite 105, Roswell, Georgia 30075.

WHEREAS Grantor owns certain real property located

Block «Block» Lot «LOT»

«Premises\_Street\_Address», «Premises\_City», «Premises\_State», «Premises\_Zip\_Code» and as more particularly described in Exhibit A attached hereto (“Property”).

WHEREAS Grantor intends to grant to Grantee an exclusive easement (subject to the Telecom Tenant Lease(s)) for telecommunications purposes on the Property, and

WHEREAS Grantor intends to provide Grantee with a non-exclusive easement to allow ingress and egress; and

WHEREAS Grantor intends to provide Grantee with a non-exclusive easement to install and maintain utility; and

WHEREAS Grantor intends to allow Grantee to use the Easement in order that Grantee may lease space to Tenants in the telecommunications business and as described in Exhibit B (“Description of Telecom Tenant Lease(s)”) and

WHEREAS Grantee and Grantor intend to exchange good and valuable consideration, and

**NOW THEREFORE, In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:**

Asset File = «Asset\_File\_»

**1. GRANT OF EASEMENT.** Grantor grants to Grantee an exclusive easement (subject to the Telecom Tenant Lease(s)) for telecommunications purposes over and across the land described in Exhibit C, as the EXCLUSIVE EASEMENT PARCEL ("Easement Area Description").

**2. USE.** The Telecommunications Easement (hereinafter, the "Easement") granted herein may be used for telecommunication related activities, the transmission and reception of radio communication signals which may entail the construction, installation, improvement, enlargement, removal, maintenance, repair, replacement and operation of facilities, towers, antennas, cables, wires, microwave dishes, equipment shelters and/or enclosures and telecommunications equipment. At Grantee's expense, Grantee has and shall have the right to erect and maintain on the Easement improvements, personal property and facilities necessary to operate a communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters, cabinets and related cables and utility lines and a location based system, antenna(s), coaxial cable, base units and other associated equipment ("Equipment"). At any time during the Term, and at Grantee's expense, Grantee shall have the right to alter, replace, expand, enhance and upgrade the Equipment. The Equipment shall remain the exclusive property of Grantee or its tenant(s). At any time during the Term of this Agreement, and upon expiration or termination, Grantee or its tenant(s) shall have the right, in its sole discretion, to remove the Equipment.

**3. TERM.** Commencing upon the Effective Date, the Term of this Agreement shall be for «TERM» and terminate on \_\_\_\_\_ (the "Reversion Date").

**4. PURCHASE PRICE.** On or about the Effective Date, Grantee shall pay to Grantor one, and only one, lump-sum payment (hereinafter, "Purchase Price") in an amount agreed by the parties as payment in full for the Term.

**5. TERMINATION.** Grantor may not terminate this Agreement. This agreement and the Easement shall terminate upon abandonment by Grantee for a period of at least five (5) years.

**6. NON-EXCLUSIVE UTILITY EASEMENT.** As part of the consideration provided for this Agreement, Grantor grants to Grantee, the right to install and maintain utilities at its own cost and expense, and to improve the present utilities on the Easement (including, but not limited to, the installation of emergency power generators) as set forth on Exhibit C, NON-EXCLUSIVE UTILITY EASEMENT AND NON-EXCLUSIVE UTILITY ACCESS EASEMENT SPACE. Such utilities include, but are not limited to, the installation of power and telephone service cable, wires, conduits, boxes and the like, to service the Easement and the Equipment (defined above) and the Term of this Agreement (collectively, the "Non-Exclusive Utility Easement"). The Non-Exclusive Utility Easement provided hereunder shall have the same Term as this Agreement.

**7. NON-EXCLUSIVE ACCESS EASEMENT.** As part of the consideration for this Agreement, Grantor grants to Grantee an easement in, under and across the Property adequate to allow ingress and egress to the Easement as set forth on Exhibit C, NON-EXCLUSIVE UTILITY EASEMENT AND NON-EXCLUSIVE UTILITY ACCESS EASEMENT SPACE. The Non-Exclusive Access Easement provided hereunder shall have the same Term as this Agreement.

Asset File = «Asset\_File»

**8. REPRESENTATIONS OF GRANTOR.** Grantor represents and warrants to Grantee, as of the date hereof that:

- a. This Agreement and any other documents executed by Grantor in connection with it constitute the legal, valid and binding obligation of Grantor, enforceable against Grantor, in accordance with their terms.
- b. The execution, delivery and performance by Grantor of this Grant of easement easement and will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or of any agreement to which Grantor is a party, including mortgages and deeds of trust, or by which Grantor or the Property is bound. It will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.
- c. All required permits, licenses, consents, approvals and other authorizations in connection with Grantor's execution, delivery or performance of this Agreement and such other documents have been obtained and are and will remain in full force and effect.
- d. There is no pending or threatened action, suit or proceeding that, if determined against Grantor, would adversely affect Grantor's ability to grant this easement or such other documents or to perform its obligations hereunder.
- e. Grantor owns one hundred percent (100%) of the fee title to the Property and the Grantor's interest in the Easement.
- f. Except as disclosed on the public title report attached as Exhibit D attached hereto and made a part hereof, Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Easement, to any other person.
- g. There are no judgments, arrangements or understandings to which Grantor is a party or by which Grantor is bound, relating to the Easement.
- h. Grantor shall comply with all applicable laws which may affect the Property.

**9. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. This Agreement shall run with the land upon which the Easement is located.

**10. NOTICE.**

- a. **Grantee Default.** Grantor shall provide written notice of a default or breach of this Agreement, not more than thirty (30) days from discovery of the default. Grantee shall have one-hundred and eighty (180) days to commence cure of the default, unless the default constitutes a threat to human life.

Asset File # "Asset File #"

- b. **Grantor Default.** Grantee shall provide written notice of a default or breach of this Agreement or of Tenant Telecom Lease or Replacement Telecom Lease not more than thirty (30) days from discovery of the default. Grantor shall have thirty (30) days to cure the default.
- c. **Delivery.** All forms of Notice shall be delivered by Certified Mail Return Receipt Requested or a nationally recognized Overnight courier. Notice shall be deemed accepted upon proof of delivery. Notices shall be delivered:

As to Grantor            «Seller 1»  
                                  «Seller 1» Street Address»  
                                  «Seller 1» City», «Seller 1» State» «Seller 1» Zip Code»

As to Grantee            Land Leases LLC  
                                  9755 Dogwood Road, Suite 105  
                                  Roswell, Georgia 30075

**11. RIGHT OF FIRST REFUSAL.** Grantor grants to Grantee a right of first refusal to acquire through assignment, purchase, or other means any other Telecom Tenant Lease on this Property. Grantor shall deliver to Grantee by certified mail, (upon receipt requested), a written copy of any offer regarding the rights of first refusal granted herein. Grantee shall have fifteen (15) business days to match the terms of any offer by delivering written notice of Grantee exercise of the right of first refusal.

**12. SUBORDINATION.** Grantee shall agree to subordinate this Agreement to any mortgage or trust deed which may be placed on the Property, provided the mortgagee or trustee shall ensure to Grantee the right to possession of the Easement in the event of a default or foreclosure, and other rights granted herein provided Grantee is not in default beyond any applicable grace or cure period. Such assurance to be in writing and in a non-disturbance form acceptable to all parties concerned. Such mortgagee or trustee shall further assure Grantee shall have the continuing right to receive rents, fees and other payments from Telecom Tenant or Replacement Telecom Tenant. Grantor shall provide a non-disturbance agreement in a form acceptable to all parties concerned for any mortgagee or trustee which has a mortgage or trust deed currently placed on the Property.

**13. Schedule of Exhibits.**

- Exhibit A..... LEGAL DESCRIPTION OF THE PROPERTY
- Exhibit B..... DESCRIPTION OF TELECOM TENANT LEASE(S)
- Exhibit C..... EASEMENT AREA DESCRIPTION
- Exhibit D..... TITLE ENCUMBRANCES

*[Signature pages and exhibits intentionally omitted.]*

Asset File # «Asset File #»

Sprint lease income  
James Field (Recreation Park)

Year	annual income
	3% annual kicker
2013	\$25,920
2014	\$26,698
2015	\$27,499
2016	\$28,323
2017	\$29,173
2018	\$30,048
2019	\$30,950
2020	\$31,878
2021	\$32,835
2022	\$33,820
2023	\$34,834
2024	\$35,879
2025	\$36,956
2026	\$38,064
2027	\$39,206
2028	\$40,383
2029	\$41,594
2030	\$42,842
2031	\$44,127
2032	\$45,451
2033	\$46,814
2034	\$48,219
2035	\$49,665
2036	\$51,155
2037	\$52,690
2038	\$54,271
Total	\$999,295

**SECTION 9.0**

**ITEM: 9.5 CALIFORNIA SPECIAL DISTRICTS ASSOCIATION  
2012 BOARD ELECTION**

**DESCRIPTION:**

**INFORMATION: SEE ATTACHMENTS**

**STAFF**

**RECOMMENDATION: BOARD OF DIRECTORS REVIEW INFORMATION  
FROM CSDA , VOTE FOR A CANDIDATE FOR A  
REPRESENTATIVE TO THE CSDA BOARD OF  
DIRECTORS IN YOUR REGION FOR SEAT A**



**California Special  
Districts Association**  
*Districts Stronger Together*

## **CALIFORNIA SPECIAL DISTRICTS ASSOCIATION**

### **2013 BOARD ELECTIONS**

#### **MAIL BALLOT INFORMATION**

Dear Member:

A mail ballot has been enclosed for your district's use in voting to elect a representative to the CSDA Board of Directors in your Region for Seat B. Each of CSDA's six (6) regional divisions has three seats on the Board. Each of the candidates is either a board member or management-level employee of a member district located in your geographic region. Each Regular Member (district) in good standing shall be entitled to vote for one (1) director to represent its region.

We have enclosed the candidate statements for each candidate who submitted one. Please vote for **only one** candidate to represent your region in Seat B and be sure to sign, date and fill in your member district information (*in some regions, there may only be one candidate*). If any part of the ballot is not complete, the ballot will not be valid and will not be counted.

Please utilize the enclosed return envelope to return the completed ballot. Ballots must be received at the CSDA office at 1112 I Street, Suite 200, Sacramento, CA 95814 by **5:00pm on Friday, August 2, 2013**.

If you do not use the enclosed envelope, please mail in your ballot to:

**California Special Districts Association**  
**Attn: 2012 Board Elections**  
**1112 I Street, Suite 200**  
**Sacramento, CA 95814**

Please contact Charlotte Lowe toll-free at 877.924.CSDA or [charlottel@csgda.net](mailto:charlottel@csgda.net) with any questions.



## **Ginger Root – CSDA Board of Directors, Region 2**

It has been my privilege to serve on the CSDA Board of Directors for the last five years. The first two years I was appointed and the last three years I was elected. I have served the last two years as Treasurer of CSDA. I am currently a contract Clerk of the Board of Directors and CEO of three fire districts, Clerk of the Board of a fourth fire district, and Clerk of the Board and General Manager of one sanitary district. I live in Stockton - less than an hours' drive to the CSDA offices and have easy access to meetings. CSDA Board is a commitment of time and money and I want to continue that commitment and would be honored if you would vote for me.

Thank you,  
Ginger Root

## Candidate Statement

Gil Albiani  
Cosumnes Community Services District -- Director of the Board

A sincere thank you to my colleagues on the Cosumnes Community Services District for nominating me for a position on the California Special Districts Association Board.

Thank you also for your consideration and your support.

I have served as a Board member of the Cosumnes CSD since 2004 and I am a past President of the Board. I have extensive and varied board member experience, having served on the Board of the California Association of Realtors, the Sacramento Metro Chamber, where I currently serve as a PAC member and Methodist Hospital Sacramento.

I am a past Chair of the California State Fair Board of Directors having been appointed by two separate Governors. I served as President of the Board of the Sacramento Association of Realtors in 1990, the American Lung Association of Sacramento in 1999, and Mercy Foundation in 2004. I currently serve as a Board member of the Dignity Health Sacramento Service Area.

With this varied experience I bring to the position of Board member an understanding of the role a Board member plays. In every position I have been blessed to have served, I have always been looked upon as an idea person. I bring to the position of Board member the wisdom that comes with age, but the energy and enthusiasm of a teenager.

Your vote will be appreciated and you can rest assured that you will never regret it.

Sincerely,



**Candidate Statement**

**David J. Pierson  
For  
2013 CSDA Board of Directors, Region 2, Seat B**

**I would appreciate your vote in this upcoming election to represent you on the CSDA Board.**

**I have experience dealing with the needs of special districts from serving as a Director on the Sacramento Metropolitan Fire District Board. I previously served as a union president and would bring a new perspective to the Board to help special districts in dealing with labor issues. With the recent budget cuts, our district like many others in the state has had to do more with less. I want to take these experiences and combine them to serve you on the CSDA Board and help you get the education and training necessary to ensure keeping your money local as well as maintaining a high level of service delivery.**

**I look forward to your support in this upcoming election.**

**Sincerely,**

**David J. Pierson**



**CSDA BOARD OF DIRECTORS  
ELECTION 2013**  
*All Fields Must Be Completed for ballot to be counted.  
(Please vote for only one.)*

**REGION TWO**

●  
*Seat B - term  
ends 2017*

- Ginger Root\***  
*Lincoln Rural County Fire Protection District*
- Gil Albiani**  
*Cosumnes Community Services District*
- Wesley Gilbert**  
*Butte County Resource Conservation District*
- Dave Pierson**  
*Sacramento Metropolitan Fire District*

*\* incumbent*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Member District: \_\_\_\_\_

**Must be received by 5pm, August 2, 2013. CSDA, 1112 I Street, Suite 200, Sacramento, CA 95814**

## **Item 10.1 Cover sheet – PG&E Fee Title Land donation – Document Review**

**Auburn Area Recreation and Park District December 2010 Acquisition and Development Committee meeting; December 2010 Board of Director’s meeting; March 2011 Acquisition and Development Committee meeting; March 2011 Board of Director’s Meeting; October 2011 Acquisition and Development Meeting; October 2011 Board of Director’s meeting; January 2012 Board of Director’s meeting; February 2012 Acquisition and Development Committee; August 2012 Board of Director’s meeting; July 2013 Board of Director’s meeting**

### **The Issue**

An initial review of the Transaction Documents that will need ARD approval to move forward with the fee title land donation from PG&E.

### **Background**

The Stewardship Council’s is a private, nonprofit foundation responsible for developing and implementing a land conservation plan for 140,000 + acres of land owned by PG&E. As part of this plan, PG&E will make portions of the 140,000 acres available for fee title donation to organizations interested in preserving and enhancing the lands consistent with six Beneficial Public Values (BPV). Those six BPV are:

- Habitat protection
- Preservation of open space
- Outdoor public recreation
- Sustainable forestry
- Agricultural uses
- Cultural and historical resources

ARD applied for fee title donation for a +/- 42 acre parcel of land adjacent to and including Christian Valley Park (“CV site”, attached Map 4) and for three parcels that combine to form a +/- 22 acre land area off of Bell Rd. and New Airport Rd. (“Bell Rd. site”, attached Map 5). The Stewardship Council Board of Directors has approved ARD’s application.

In January 2012, ARD was asked to sign a Letter of Intent to the Stewardship Council. This letter was approved by the ARD Board of Directors.

ARD has been working with staff from PG&E, the Stewardship Council and Placer Land Trust to come to an agreement on 7 documents specific to the fee title donation. Those documents are as follows:

- 1) Transaction Agreement: This is the main document that spells out what is taking place (PG&E giving a fee title donation of land to ARD).
- 2) Environmental Agreement (Exhibit K): This is the document that deals with any present and future environmental issues on the property.
- 3) License Agreement for Non-Invasive Investigation Activities: This document allows ARD to enter the property and conduct due diligence type testing and surveys.
- 4) License Termination Agreement (Exhibit D): This is specific to the Christian Valley property and terminates the current agreement ARD has with PG&E for the use of the ball field and surrounding area. The new agreement will cover both the new property and the ball field.
- 5) Confidential Information Exchange and Non-disclosure Agreement: This document deals with the confidentiality of certain documents (if any) and how to proceed.
- 6) Grant Deed: This document details the rights of PG&E to continue with certain activities on the property that are mandated by federal and state law.

- 7) Conservation Easement: This is the document that will grant a conservation easement to the Placer Land Trust. As of the writing of this report, certain sections of the document are still being negotiated.

It should be noted that documents #1 – 6 are specific to the Christian Valley property. The documents for the Bell Rd. property will closely mirror what is found in the Christian Valley property documents.

ARD's attorneys at KMTG have reviewed and are ok with documents numbers 1 – 5 (above). Document #6 is still being reviewed and document #7 has yet to be sent to the attorney.

### **Recommendation**

Staff recommends that the Board of Directors review the documents and provide feedback at the July Board of Directors meeting. The Board of Directors is encouraged to contact staff with questions over the next month. The plan is to have ARD Board, at the August, 2013 Board meeting, adopt a Resolution, approving the documents and authorizing the District Administrator to sign the documents.

A tentative timeline for the approval of these documents is attached.

### **Fiscal Impact**

With the exception of ARD staff time, there have been no fiscal impacts to this point. The Stewardship Council has agreed to pay for up to \$5,000 in attorney fees for review of the Transaction Documents. As of the writing of this report, the attorneys have billed \$3,087.50 for their review of the documents.

### **Attachments**

- 1) Transaction Agreement
- 2) Environmental Agreement (Exhibit K)
- 3) License Agreement for Non-Invasive Investigation Activities
- 4) License Termination Agreement (Exhibit D)
- 5) Confidential Information Exchange and Non-disclosure Agreement
- 6) Grant Deed
- 7) Conservation Easement
- 8) Transaction Document timeline

Watershed: Drum  
Planning Unit: Lower Drum  
County: Placer  
APN: 077-050-044-000  
SBE Indexing No.: 135-31-73E-1

## TRANSACTION AGREEMENT

### **(FEE TITLE CONVEYANCE)**

THIS TRANSACTION AGREEMENT ("**Agreement**") is made and entered into as of \_\_\_\_\_, \_\_\_\_\_ (the "**Effective Date**"), by and among **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation ("**Grantor**"), **AUBURN RECREATION AND PARK DISTRICT**, a [\_\_\_\_\_] ("**Fee Grantee**") and **PLACER LAND TRUST**, [a California non-profit public benefit corporation] ("**Easement Grantee**"; Fee Grantee and Easement Grantee being collectively referred to herein as the "**Grantees**" and individually as a "**Grantee**"). Grantor and the Grantees are sometimes collectively referred to herein as the "**Parties**."

#### RECITALS:

A. **[Note: The Agreement is drafted assuming that the property description for the Property will be completed before the Agreement is executed.]** Grantor is the owner of that certain land located in County of Placer, State of California, and more particularly described in Exhibit A (the "**Property**"), which is part of a larger legal parcel of land also shown on Exhibit A ("**Parcel**"). **[The Property/A portion of the Property]** is currently licensed by Grantor to Fee Grantee pursuant to that certain License Agreement executed January 18, 2001 (the "**License**") between Grantor and Fee Grantee.

B. Grantor is a party to that certain Settlement Agreement (the "**Settlement Agreement**") as modified and approved by the Public Utilities Commission of the State of California (the "**Commission**") in its Opinion and Order of December 18, 2003 (Decision 03-12-035).

C. In furtherance of the Settlement Agreement, and to provide additional detail regarding the implementation of the "Land Conservation Commitment" (defined below), the parties to the Settlement Agreement and other interested parties entered into that certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "**Stipulation**").

D. The Settlement Agreement and the Stipulation (collectively, the "**Governing Documents**") require Grantor to ensure that approximately 140,000 acres of watershed lands, all owned by Grantor (collectively, the "**Watershed Lands**"), including the Property, are conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The obligations of Grantor with respect to the Watershed Lands are set forth in detail in Appendix E of the Settlement Agreement (as further explicated in Section 12 of the Stipulation), and are defined therein as the "**Land Conservation Commitment**."

E. Pursuant to the Governing Documents, the Pacific Forest and Watershed Lands Stewardship Council, a California non-profit public benefit corporation (the "**Stewardship Council**") was created to oversee and carry out the Land Conservation Commitment. The Governing Documents require the Stewardship Council to develop a Land Conservation Plan for protection of the Watershed Lands for the benefit of the citizens of California (the "**LCP**"). The LCP is required to include, among other things, objectives to preserve and/or enhance the beneficial public values identified on each parcel of Watershed Lands. The LCP was formally adopted by the Stewardship Council and submitted to Grantor in November 2007. Grantor subsequently provided the LCP to the Commission in April 2008 as part of its application seeking authorization for a streamlined approval process for real property transactions necessary to implement the LCP.

F. The Legislature of the State of California, as set forth in California Civil Code Section 815 et seq., has found and declared it to be the public policy and in the public interest of this state to encourage the preservation of land predominantly in its natural, scenic, agricultural, historical, forested, or open-space condition, and that it is "in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations."

G. As required by the Governing Documents, the LCP establishes a set of objectives to preserve the beneficial public values of the Property. The activities to be carried out and uses anticipated to occur on the Property to facilitate the preservation of the beneficial public values on the Property will be further defined by the Stewardship Council in the Land Conservation and Conveyance Plan (the "**LCCP**") for the Property (such activities and uses being collectively referred to herein as the "**LCCP Activities**").

H. In furtherance of the Land Conservation Commitment and the above-described public policy purposes, but subject to the reservations and restrictions provided herein and in the deed to Fee Grantee, Grantor desires to convey to Fee Grantee fee title to the Property.

I. Also in furtherance of the Land Conservation Commitment and the above-described public policy purposes, but subject to the reservations and restrictions provided herein and in the deed to Fee Grantee, the parties desire that Fee Grantee grant a conservation easement over the Property to Easement Grantee. Easement Grantee is a "qualified conservation organization" as defined by Section 170(h)(3) the Internal Revenue Code and is eligible to hold a conservation easement pursuant to Section 815.3 of the California Civil Code.

J. The Parties desire to enter into this Agreement to facilitate and memorialize, among other things (1) review and inspection of the Property, title and certain due diligence materials by the Grantees, (2) preparation and approval of a mutually acceptable baseline conditions report establishing the current conditions on the Property, (3) subdivision of the Parcel so that the Property and the portion of the Parcel that is not part of the Property (the "**Remainder Parcel**") constitute separate legal parcels, (4) Grantor's conveyance to Fee Grantee of fee title to the Property, (5) Fee Grantee's immediate grant of the conservation easement to Easement Grantee, and (6) the concurrent development of a funding agreement with the Stewardship Council.

K. The Parties each desire through this Agreement and the other agreements to be entered pursuant hereto, to ensure the permanent protection of the beneficial public values on the Property as identified in the LCP while allowing the ongoing use of the Property by Grantor or others for hydroelectric operations, water delivery and other related activities, to acknowledge and honor existing third party uses, and to affirmatively enable implementation of the LCCP Activities.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:



1. CONVEYANCES.

1.1 Fee Interest. Subject to the terms and conditions contained in this Agreement and the agreements contemplated hereby, Grantor shall convey the Property to Fee Grantee pursuant to the terms and provisions of the [Grant Deed, Reservation of Rights and Easements, and Assignment of Rights] attached hereto as Exhibit B (the "**Grant Deed**"). Grantor's conveyance of the fee interest in the Property shall also include the easements, rights and privileges appurtenant to the Property.

1.2 Conservation Easement. Subject to the terms and conditions contained in this Agreement and the agreements contemplated hereby, Fee Grantee shall grant and convey to Easement Grantee a conservation easement over the Property pursuant to the terms and provisions of the [Conservation Easement Agreement] (the "**Conservation Easement**"), the initial form of which is attached hereto as Exhibit C and which shall be completed in accordance with Section 7.5 below.

The above conveyances and transfers contemplated by this Section 1 are collectively referred to in this Agreement as the "**Conveyances**."

2. TERMINATION OF LICENSE. Subject to the terms and conditions contained in this Agreement and the agreements contemplated hereby, concurrently with the closing of the Conveyances, Grantor and Fee Grantee shall terminate the License pursuant to the terms and provisions of the License Termination Agreement attached hereto as Exhibit D (the "**License Termination Agreement**").

3. TITLE; TITLE INSURANCE.

3.1 Title. It shall be a condition precedent to the Grantees' obligation to close escrow that Grantor convey fee title to the Property to Fee Grantee, and Fee Grantee convey the Conservation Easement to Easement Grantee subject only to the following exceptions (the "**Permitted Encumbrances**"):

below;

(a) The Reserved Rights and other rights contemplated by Section 3.2

(b) In the case of Fee Grantee, the Conservation Easement;

(c) To the extent applicable, the lien of general and special real property taxes and assessments, not delinquent;

(d) The title exceptions shown in the Preliminary Report dated as of \_\_\_\_\_, prepared by Placer Title Company (the "**Title Company**") and attached hereto as Exhibit E (the "**Title Report**"). Copies of the instruments underlying any exceptions referred to in the Title Report (the "**Title Documents**") shall be provided with the Due Diligence Materials (as defined in Section 4.1 below);

(e) All matters and exceptions of record approved or deemed approved by the Grantees' pursuant to Section 3.3 below;

(f) Any matters affecting title to the Property created by or with the consent of the Grantees;

(g) All matters which would be disclosed by a physical inspection or survey of the Property; and

(h) Easements and other rights reserved by Grantor pursuant to the terms and provisions of this Agreement.

3.2 Reserved Rights; Water Rights. The Parties acknowledge that the Grant Deed includes certain reservations of rights in favor of Grantor (the "**Reserved Rights**") which shall be retained by Grantor and expressly excluded from the Conveyances. In addition, the Grantees acknowledge that Grantor shall reserve in the Grant Deed all riparian water rights inherent in and part and parcel of the Property, all appropriative surface water rights (including, but not limited to, any appropriative surface water rights having a point of diversion, place of storage, or place of use on the Property), all prescriptive surface water rights, and all other right, title and interest of any nature whatsoever in and to the surface waters which are now or hereafter located or flowing on, under or abutting the Property. Grantor shall also reserve in the Grant Deed the right to enter onto the Property and take such other reasonable action as may be necessary to enforce PG&E's Reserved Water Rights. No later than ten (10) days prior to close of escrow, Grantor shall provide information concerning easements to be reserved and easements, leases or rights granted to others by Grantor.

3.3 Title Objections. Within ten (10) days following the commencement of the Inspection Period, the Grantees shall review the Title Documents. The failure of a Grantee to object to any exceptions to title shown in the Title Report within ten (10) days following the commencement of the Inspection Period, which objection shall be in writing and shall specifically delineate the reasons therefor, shall be deemed to be an approval by such Grantee of the condition of title to the Property. If any of the exceptions to title shown in the Title Report or other title matters disclosed by Grantor pursuant to Section 3.2 are objectionable to either or both of the Grantees, Grantor may, at its sole election, agree to remove such objectionable items or otherwise satisfy the objecting Grantee with respect to such items prior to close of escrow. If Grantor is unable or unwilling to remove any such objectionable items or otherwise satisfy the objecting Grantee with respect thereto, such Grantee shall have the right, upon written notice to Grantor given within five (5) days after Grantor's notice of refusal or inability to remove the exceptions, to terminate this Agreement. If such Grantee elects to terminate this Agreement, Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination.

3.4 Title Insurance. Upon the close of escrow, (a) Fee Grantee shall cause the Title Company to issue to Fee Grantee CLTA title insurance coverage insuring that fee simple title to the Property is vested in Fee Grantee, and (b) Easement Grantee may, at its option, cause the Title Company to issue to Easement Grantee CLTA title insurance coverage insuring the real property interest created by the Conservation Easement in favor of Easement Grantee.

3.5 Failure of Conditions. If prior to the close of escrow Grantor discloses to the Grantees or either of the Grantees discovers that (a) title to the Property is subject to defects, limitations or encumbrances other than Permitted Encumbrances, or (b) any representation or warranty of Grantor contained in this Agreement is, or as of the Closing Date will be, untrue, then such Grantee shall, within three (3) days following such Grantee's receipt of such information, give Grantor and the other Grantee written notice of its objection thereto, which objection shall be in writing and shall specifically delineate the reasons therefor. If such Grantee fails to furnish Grantor with such an objection notice within said three (3) day period, such Grantee shall be deemed to have irrevocably waived any right to object to such information, and this Agreement shall continue in full force and effect. However, if such Grantee furnishes Grantor with such an objection notice within said three (3) day period, Grantor may elect by notice to the Grantees either (i) to attempt to cure or otherwise remedy such Grantee's objection (in which event, Grantor may postpone the close of escrow for up to thirty (30) days to effect said cure) or (ii) not to cure or otherwise remedy such Grantee's objection. Each of the Grantees acknowledges and agrees that Grantor shall have no obligation to cure any objection. If Grantor is unable or unwilling to cure such Grantee's objection and both of the Grantees fail to waive the objection within ten (10) days after notice thereof from

Grantor, this Agreement will terminate automatically, Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination.

4. GRANTEES' REVIEW OF PROPERTY.

4.1 Due Diligence Materials. Within five (5) business days after the Effective Date, Grantor shall provide the Grantees with certain documents and other materials, including, without limitation, the documents listed on Exhibit F attached hereto (collectively, the "**Due Diligence Materials**"). The Due Diligence Materials shall be governed by a Confidential Information Exchange and Nondisclosure Agreement attached hereto as Exhibit H (each a "**Nondisclosure Agreement**") entered by Grantor with each of the Grantees prior to or concurrently with the execution hereof. The Due Diligence Materials are for the Grantees' sole use in evaluating the Property, and the Grantees shall keep such material strictly confidential as more particularly set forth in Section 4.7. The Grantees acknowledge that the Due Diligence Materials are being made available to the Grantees as a courtesy, and that Grantor does not make any representation or warranty, express or implied, as to the accuracy or completeness of the Due Diligence Materials, and each of the Grantees agrees that it has not been authorized to rely upon the documents, reports and other materials included in the Due Diligence Materials, including, without limitation, the Environmental Reports (as defined in Section 5.2 below) and that Grantor shall have no liability for the contents and accuracy of the Due Diligence Materials. Each of the Grantees acknowledges and agrees that Grantor and its affiliates have gone through numerous management changes and personnel changes over the years, and the employees who currently manage the Property may have little or no knowledge of the location or contents of the files and records relating to the Property. In light of the voluminous files and records of Grantor, and the uncertainty of the location or content of such files, each of the Grantees acknowledges and agrees that it will rely solely on its own investigations in making its decision to accept the Conveyances.

4.2 Right of Inspection.

(a) For a period not to exceed sixty (60) days following the Effective Date of this Agreement (the "**Inspection Period**"), the Grantees and their authorized representatives, may enter onto the Property at any reasonable time and from time to time to survey and inspect the Property. No invasive testing, including, but not limited to, soil and groundwater sampling, may be conducted on the Property unless and until the testing plans and procedures are approved in writing by Grantor. Grantor may withhold its approval, or grant approval subject to such conditions as Grantor may determine, in its sole and absolute discretion.

(b) To facilitate entry upon the Property by the Grantees, concurrent with the execution and delivery of this Agreement, each Grantee shall execute and deliver to Grantor the License Agreement for Non-Invasive Activities in the form attached hereto as Exhibit G (each an "**Entry License**").

(c) The Grantees shall provide to Grantor copies of all reports and studies prepared by or on behalf of either or both of them, promptly upon receipt thereof.

4.3 [Intentionally Deleted]

4.4 [Intentionally Deleted]

4.5 Indemnification. Without limiting the terms of each Entry License, each Grantee, jointly and severally, shall indemnify, defend (with counsel approved by Grantor), protect and hold Grantor, its officers, directors, employees, agents and contractors (collectively, "**Indemnitees**") harmless from and against any and all losses, costs, claims, damages, liabilities, or causes of action (including attorneys' fees

and costs) (collectively, "**Claims**") arising out of or in any way connected with the Property and occurring as a result of any entry upon the Property, or activities conducted thereon by either Grantee, its agents, contractors or employees prior to close of escrow, including Claims arising from the passive or active negligence of the Indemnitees, but excluding Claims to the extent arising from the gross negligence or willful misconduct of an Indemnitee, and the Grantees shall return the Property as nearly as possible to the same condition the Property was in prior to such entry or activities.

4.6 Right to Terminate. If, for any reason, either or both of the Grantees are not satisfied with the results of its inspections of the Property and/or their review of the Due Diligence Materials, each Grantee shall have the right to terminate this Agreement by written notice to Grantor given prior to the expiration of the Inspection Period. Such notice of termination shall specify in detail the basis for such Grantee's termination of this Agreement. If neither Grantee affirmatively terminates this Agreement prior to the expiration of the Inspection Period, such election shall be deemed the Grantees' approval of all matters relating to the Property, including, but not limited to, the physical condition of the Property, the possible uses of the Property and any limitations thereon. If the Grantees elect not to terminate this Agreement as permitted above, (a) the Grantees shall have no further right to terminate this Agreement, except in accordance with the provisions of Section 3.5, Section 13, Section 15 or Section 16.2 below (regardless of any changes in the condition of the Property or any facts or circumstances of which either or both of the Grantees may become aware following the Inspection Period); and (b) in addition to all other claims waived by the Grantees hereunder, each of the Grantees shall be deemed to have waived any and all rights or claims against Grantor with respect to matters discovered prior to the expiration of the Inspection Period. If either or both of the Grantees elect to terminate this Agreement as permitted above, Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination; and the Grantees shall promptly provide Grantor with copies of any and all inspection reports regarding the Property prepared by or on the behalf of either or both of them.

4.7 Confidentiality. Until close of escrow, and permanently thereafter if this Agreement shall terminate prior to the close of escrow, all Confidential Information (as defined in the Nondisclosure Agreement) shall be governed by the Nondisclosure Agreement.

4.8 Survival. The covenants, agreements and obligations of the Grantees contained in this Agreement and in each Entry License and each Nondisclosure Agreement shall survive the termination of this Agreement or the close of escrow and the recordation of the Conservation Easement and the Grant Deed.

## 5. CONDITION OF PROPERTY; DISCLOSURES.

5.1 AS IS CONDITION. THE GRANTEEES HAVE BEEN STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, POTENTIAL ENVIRONMENTAL HAZARDS ARISING FROM THE PRESENCE ON OR ABOUT THE PROPERTY OF HAZARDOUS SUBSTANCES (AS DEFINED IN THE ENVIRONMENTAL AGREEMENTS (AS DEFINED IN SECTION 14.2(b) BELOW)). EXCEPT AS EXPRESSLY HEREINAFTER PROVIDED IN SECTION 12 AND WITHOUT LIMITING GRANTOR'S OBLIGATIONS UNDER THE ENVIRONMENTAL AGREEMENTS, NEITHER GRANTOR, NOR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS MAKES OR HAS MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO THE PHYSICAL CONDITION OF THE PROPERTY, THE USES OF THE PROPERTY OR ANY LIMITATIONS THEREON, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY PERTAINING TO ZONING, ENVIRONMENTAL OR OTHER LAWS, REGULATIONS OR GOVERNMENTAL REQUIREMENTS; THE UTILITIES ON THE PROPERTY, THE COSTS OF OPERATING THE

PROPERTY OR ANY OTHER ASPECT OF THE ECONOMIC OPERATIONS ON THE PROPERTY; THE CONDITION OF THE SOILS OR GROUNDWATERS OF THE PROPERTY; TOXIC MATERIALS OR HAZARDOUS SUBSTANCES ON OR UNDER THE PROPERTY; OR ANY OTHER MATTER BEARING ON THE USE, VALUE OR CONDITION OF THE PROPERTY. GRANTOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CONDITION OF TITLE TO THE PROPERTY, AND EACH OF THE GRANTEEES AGREES THAT IT WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY.

5.2 Hazardous Substances Disclosure; Fee Grantee Release and Indemnity.

Grantor, at some time during its ownership or use of the Property, as well as tenants and/or other third parties, both prior to and during Grantor's ownership of the Property, may have handled, treated, stored and/or released Hazardous Substances and referred to herein as "**Hazardous Substances**") on the Property. Furthermore, structures and other improvements on the Property may contain Hazardous Substances. In addition, the Property may contain naturally-occurring Hazardous Substances. Some of these Hazardous Substances may contain chemicals known to the State of California to cause cancer or reproductive toxicity. The Due Diligence Materials include a copy of the environmental reports relating to the Property described on Exhibit I attached hereto (the "**Environmental Reports**"), and the Grantees may utilize the Environmental Reports in their due diligence review; provided, however, the Grantees acknowledge and agree (a) that Grantor makes absolutely no representations or warranties as to the truth, accuracy or completeness of any information contained in the Environmental Reports or the methods upon which said information was obtained by the issuers of the Environmental Reports, (b) that the Grantees will not rely in any manner upon the information contained in the Environmental Reports and (c) that neither Grantor nor the preparer of any of the Environmental Reports shall have any liability whatsoever to the Grantees for any incomplete, false, inaccurate or misleading matters or information, if any, contained in the Environmental Reports. The Grantees have been strongly advised to investigate the existence of Hazardous Substances on, under, about or otherwise affecting the Property. The Grantees further acknowledge that, except as otherwise provided in the Environmental Agreements, Grantor shall not in any manner be responsible to the Grantees for the presence of any Hazardous Substances on, under, about or otherwise affecting the Property. The Environmental Agreements set forth the agreement of Grantor and the Grantees with regard to Hazardous Substances.

5.3 Seismic Disclosure Requirements.

Grantor is, or may be, required under California law to disclose if the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area designated by the Federal Emergency Management Agency (Government Code Section 8589.3); (b) an area of potential flooding shown on a dam failure inundation map (Government Code Section 8589.4); (c) a very high fire hazard severity zone ("**Fire Hazard Severity Zone**") (Government Code Section 51183.5); (d) a wildland area that may contain substantial forest fire risks and hazards ("**Wildland Fire Zone**") (Public Resources Code Section 4136); (e) an earthquake fault zone (Public Resources Code Section 2621.9); or (f) a seismic hazard zone (Public Resources Code Section 2694). The Grantees acknowledge and understand that: (i) if the Property is located in a Fire Hazard Severity Zone, the owner is subject to the maintenance requirements of Government Code Section 51182; and (ii) if the Property is located in a Wildland Fire Zone, it is subject to the maintenance requirements of Public Resources Code Section 4291, and it is not the State of California's responsibility to provide fire protection services to any building or structure located within a Wildland Fire Zone unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Public Resources Code Section 4142. In addition, if the Property is situated in one or more of the hazard zones described above, the ability to improve the Property, obtain insurance, or receive assistance after a disaster may be limited. The Grantees further acknowledge that the maps on which the natural hazard disclosures are based only estimate where natural hazards exist, and are not definitive indicators of whether or not a property will be affected by a natural disaster. Grantor has employed the services of JCP-LGS (which, in such capacity is herein called "**Natural Hazards Expert**") to examine the maps and other information specifically made available to the public by government agencies

for the purpose of enabling Grantor to fulfill the foregoing disclosure obligations. A copy of the Natural Hazards Disclosure Report ("**Natural Hazards Report**") prepared by the Natural Hazards Expert is attached to this Agreement as Exhibit J. The Grantees acknowledge that the Natural Hazards Report deals with matters within the scope of the Natural Hazards Expert's professional license or expertise. Grantor shall not be liable for any error, inaccuracy or omission of any information relating to natural hazards disclosures not within its personal knowledge. Except as expressly provided herein, Grantor is making and has made no representations regarding the seismic, geologic or other natural hazards affecting the Property, or the effect thereof on the future use or development of the Property, and each of the Grantees should make its own inquiry and investigation of such hazards. Further, each of the Grantees hereby waives, to the fullest extent permitted by law, any other disclosure requirements relating to natural hazards imposed on Grantor by California law.

5.4 Release. Subject to the provisions of the Environmental Agreements which shall control rights and obligations between Grantor and the Grantees regarding Hazardous Substances, each of the Grantees hereby waives, releases and forever discharges Grantor from any and all claims, actions, causes of action, demands, liabilities, damages, costs, expenses or compensation whatsoever, whether direct or indirect, known or unknown, foreseeable or unforeseeable, which it may have at the close of escrow or which may arise in the future on account of or in any way arising out of or connected with the Property, including: (i) the physical condition, nature or quality of the Property, including geologic conditions; (ii) the quality of the labor and materials included in any buildings or other improvements or fixtures comprising a portion of the Property (including latent defects); (iii) the presence of asbestos and lead-based paint; (iv) the failure of the Property, including the existing improvements thereon, to comply with applicable Laws (as defined below) including, without limitation, the ADA (as defined below); and (v) the inaccuracy or incompleteness of plans, drawings, specifications, Due Diligence Materials, Environmental Reports or other documents provided by Grantor. Each of the Grantees hereby waives the protection of California Civil Code Section 1542, which reads as follows:

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

Fee Grantee's Initials: \_\_\_\_\_

Easement Grantee's Initials \_\_\_\_\_

As used above, the term "**Laws**" means all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the parties, which may affect or be applicable to the Property or any part of the Property (including, without limitation, any subsurface area) or the use of the Property, including, without limitation, the Americans with Disabilities Act of 1990 and all regulations promulgated thereunder (the "**ADA**"), Title 24 of the California Administrative Code, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Property.

5.5 Survival. The covenants, agreements and obligations of the Grantees contained in this Section 5 shall survive the termination of this Agreement or the close of escrow and the recordation of the Conservation Easement and the Grant Deed.

6. BASELINE CONDITION REPORT.

6.1 Preparation of Baseline Documentation Report. Within \_\_\_\_\_ (\_\_) days following the end of the Inspection Period (the "**BDR Commencement Date**"), Easement Grantee shall commence, or caused to be commenced, the preparation of a Baseline Documentation Report (the "**Baseline Report**") documenting the specific biological and physical conditions of the Property. To the extent that Easement Grantee is using third party consultants to prepare the Baseline Report, Grantor shall have the right to approve or disapprove of any consultant retained by Easement Grantee to prepare the Baseline Report. Grantor shall not unreasonably withhold its approval of such consultant, but may condition its approval on the execution and delivery by such consultant of an Entry License. As necessary prior to and during the preparation of the draft Baseline Report, Fee Grantee, the Stewardship Council and Easement Grantee shall meet and confer to discuss the specific biological and physical condition of the Property to be documented in the Baseline Report. If requested by the Grantees, Grantor shall participate in such discussions. The draft Baseline Report shall be completed and delivered to Grantor, Fee Grantee and the Stewardship Council within \_\_\_\_\_ (\_\_) days following the BDR Commencement Date. **[note: timing of preparation may need to be adjusted to address seasonal conditions such as snow cover.]**

6.2 Contents of Baseline Report. The Parties acknowledge and agree that the Baseline Report must be prepared to clearly document the specific biological and physical conditions which are the subject of the Conservation Easement, recognizing that it will be used as a resource tool to evaluate changes in the conditions and use of the Property in relation to the condition and use of the Property as of the Closing Date. The Baseline Report, however, is not intended to preclude the use of other evidence to establish the condition of the Property as of Closing Date if there is a controversy over its then-existing condition, nor is the Baseline Report to be used to change or interfere with the Reserved Rights. The Baseline Report must contain the following elements: (a) the preparer's authorship qualifications; (b) a statement of the conservation purpose of the Conservation Easement; (c) a description of the Property's improvements, such as infrastructure and roads; (d) a description of the biological and natural features of the Property, such as the physical setting, hydrology, geology, soils/erosion, vegetation and other sensitive features; (e) a detailed description of the beneficial public values of the Property; (f) maps and plans of the Property; (g) photographs of key features and reference points; (g) an acknowledgement statement reciting that the Baseline Report is an accurate representation of the Property as of the Closing Date; (h) such other information which is reasonably required to document the specific conditions of the Property which are the subject of the Conservation Easement.

6.3 Review and Approval of Baseline Report. Grantor and Fee Grantee shall either approve the draft Baseline Report or provide Grantee and the others with comments to the draft Baseline Report within \_\_\_\_\_ (\_\_) days following their receipt of the draft Baseline Report. If Grantor, Fee Grantee or the Stewardship Council provides comments to the draft Baseline Report, within \_\_\_\_\_ (\_\_) days following Grantee's receipt of such comments, Grantee shall incorporate such comments into the draft Baseline Report (or provide specific objections to those comments that are not acceptable to Easement Grantee), and return the revised draft Baseline Report to Grantor, Fee Grantee and the Stewardship Council. The approval process set forth in this Section 6.3 shall continue until Grantor, Fee Grantee and Easement Grantee approve the draft Baseline Report. If Grantor, Fee Grantee and Easement Grantee have not approved the draft Baseline Report on or before the date which is \_\_\_\_\_ (\_\_) days following the BDR Commencement Date, the Parties shall submit for resolution any disputed elements of the draft Baseline Report pursuant to the terms of Section 6.4. Within \_\_\_\_\_ (\_\_) days following approval of the Baseline Report, Grantor, Fee Grantee and Easement Grantee shall each sign four (4) original counterparts of the Baseline Report and cause the counterparts to be delivered into Escrow. Following approval of the Baseline Report by Grantor, Fee Grantee and Easement Grantee, the Stewardship Council's role shall be to accept the final Baseline Report as part of its adoption of the LCCP for the Property.



6.4 Dispute Resolution. The Parties acknowledge and agree that the Baseline Report is an objective report. Notwithstanding the foregoing, if the Parties are unable to resolve any elements of the draft Baseline Report within the time period set forth above, the Parties shall mutually select an independent expert to review and evaluate the disputed elements within \_\_\_\_\_ (\_\_) days following a Party's written request. If the Parties are unable to mutually select an independent expert, the Stewardship Council shall select the independent expert within \_\_\_\_\_ (\_\_) days following a Party's written request. The independent expert shall review and evaluate each of the positions on the disputed element and shall select one of those positions within \_\_\_\_\_ (\_\_) days following its appointment. The determination of the independent expert shall not be binding on the Parties. If the Parties are unable to resolve any elements of the draft Baseline Report within \_\_\_\_\_ (\_\_) days following the determination of the independent expert, the matter shall be submitted to mediation in accordance with Section 17.16 below. If the Parties are unable to resolve any elements of the draft Baseline Report through mediation in accordance with Section 17.16 below, this Agreement will terminate automatically, Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination.

6.5 Allocation of Expenses. Easement Grantee shall be responsible for all costs and expenses incurred in connection with the preparation of the Baseline Report; provided, however, each of the Parties shall be responsible for its own costs incurred in connection with the review and approval of the Baseline Report as set forth in Section 6.3. All expenses incurred in connection with the dispute resolution process set forth in Section 6.4 shall be divided equally among the Parties involved.

6.6 Retention of Final Baseline Report. Each of the Grantees shall retain a copy of the Baseline Report on file at their respective addresses for notices set forth in Section 17.9.

6.7 Finalization of Conservation Easement. To the extent modifications to the Conservation Easement are necessary (a) to make it consistent with the information set forth in the Baseline Report, or (b) to complete any incomplete or bracketed provisions in the Conservation Easement, the Parties shall cooperate in good faith to agree upon such modifications to the Conservation Easement.

7. [Intentionally Deleted.]

8. EVIDENCE OF FUNDING.

8.1 Preparation of Funding Agreements. No later than one hundred eighty (180) days following the Effective Date ("**FA Completion Date**"), each of the Grantees and the Stewardship Council shall have reached a final agreement on a funding agreement for the Property (each a "**Funding Agreement**") to address the Stewardship Council's funding obligations with respect to the Property. Each Funding Agreement shall incorporate and refine the LCCP Activities which have been identified for the Property and shall not conflict with Grantor's Reserved Rights.

8.2 Grantor Review and Approval of Funding Agreement. Each Funding Agreement shall be subject to Grantor's approval based on Grantor's consideration, in Grantor's sole discretion, of the risk of interference with the Reserved Rights and other rights retained by Grantor in accordance with this Agreement, and compliance of each Funding Agreement with the Governing Documents and the LCP and such other reasonable considerations regarding the ongoing preservation activities on the Property.

9. TAX NEUTRALITY. The Governing Documents require that Stewardship Council ensure that the totality of dispositions in each affected county under the Land Conservation Commitment will be "tax neutral" for that county (the "**Tax Neutrality Requirement**"). The obligations of Grantor to close escrow are hereby conditioned upon Grantor determining, in



Grantor's sole discretion, that the Tax Neutrality Requirement for the county in which the Property is located has been or will be satisfied.

10. SUBDIVISION. At closing, the Property and the Remainder Parcel must comply with the California Subdivision Map Act ("**Map Act**") (Government Code Section 66410, et seq.) as separate legal parcels ("**Map Act Compliance**"). Certain exemptions to the Map Act apply to public utilities and/or to governmental entities that may apply to the Conveyances. In all events, the Conveyances shall be conditioned upon confirming Map Act Compliance or obtaining such Map Act Compliance prior to the close of escrow, which compliance shall be determined by Grantor, in Grantor's sole and absolute discretion. Fee Grantee shall take all actions necessary to obtain Map Act Compliance to Grantor's satisfaction, including, but not limited to, the approval and filing of a lot line adjustment, final subdivision map or parcel map, as applicable. Each of the Grantees further acknowledges and agrees that Grantor makes no representation or warranty with respect to the Map Act Compliance, and each of the Grantees hereby waives all claims against Grantor that may arise out of losses, expenses or damages suffered or incurred by the Grantees as a result of the need for the Map Act Compliance, or the failure to obtain Map Act Compliance. The Grantees further acknowledge and agree that in the event that any governmental approval required for Map Act Compliance imposes conditions or restrictions on other property of Grantor, the decision to accept or reject such conditions will be at Grantor's sole discretion.

11. NECESSARY APPROVALS. The Conveyances require the approval ("Governmental Approval") of the Commission, and the obligations of each of the Parties to close escrow are hereby conditioned upon obtaining such Governmental Approval at or prior to the close of escrow. Each of the Grantees acknowledges and agrees that Governmental Approval shall not be deemed to have occurred for purposes of this Agreement unless and until the Commission approves the Conveyances in a form that is final, unconditional and unappealable, including exhaustion of all administrative appeals or remedies before the Commission, and such Governmental Approval is approved by Grantor in its sole and absolute discretion, including, without limitation, Grantor's approval of the proposed accounting and ratemaking treatment of the Conveyances. Each of the Grantees further acknowledges and agrees that Grantor makes no representation or warranty with respect to the Governmental Approval, and each of the Grantees hereby waives all claims against Grantor which may arise out of losses, expenses or damages suffered or incurred by the Grantees as a result of the need for the Governmental Approval or the failure of the Commission to approve the Conveyances. Each of the Grantees agrees to provide any information and assistance deemed necessary or appropriate by Grantor to facilitate the Commission's processing of Grantor's request for approval, including, but not limited to, providing appropriate Grantee representatives to testify as witnesses at hearings, if any.

12. REPRESENTATIONS AND WARRANTIES.

12.1 Grantor's Representations. Grantor hereby represents and warrants to the Grantees that Grantor has full right, power and authority to enter into this Agreement and consummate the Conveyances; provided, however, that the foregoing representation and warranty is subject to Map Act Compliance (as more particularly described in Section 10 above) and to Grantor's receipt of any required Governmental Approval (as more particularly described in Section 11 above).

12.2 Easement Grantee's Representations. In consideration of Grantor entering into this Agreement, Easement Grantee makes the following representations and warranties, each of which is material, is being relied upon by Grantor (the continued truth and accuracy of which shall constitute a condition precedent to Grantor's obligations hereunder) and shall fully survive the close of escrow and the recordation of the Conservation Easement:

(a) Easement Grantee is a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the State of California. This Agreement and all documents

executed by Easement Grantee which are to be delivered upon close of escrow are, or at the time of close of escrow will be, (i) duly authorized, properly executed and delivered by Easement Grantee, (ii) legal, valid and binding obligations of Easement Grantee enforceable in accordance with their terms at the time of close of escrow, and (iii) not in violation of any agreement or judicial order to which Easement Grantee is a party or to which it is subject.

(b) Easement Grantee is an experienced real property and conservation easement holder, and is represented by counsel in connection with this transaction. Easement Grantee specifically acknowledges that it is acquiring the Conservation Easement in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, without any representations or warranties of Grantor, express or implied, written or oral, as to the nature or condition of title to the Property, the physical condition of the Property, the uses of the Property or any limitations thereon. Easement Grantee is relying solely upon, and, as of the expiration of the Inspection Period will have conducted, its own analysis of the Property as it deems necessary or appropriate in so acquiring the Conservation Easement (including, without limitation, an analysis of any and all matters concerning the condition, use, sale, enhancement or suitability for enhancement of the Property). Easement Grantee is not relying in any way upon any representations, statements, agreements, warranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Grantor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) The representations and warranties of Easement Grantee set forth in this Agreement shall be true on and as of the close of escrow as if those representations and warranties were made on and as of such time.

12.3 Fee Grantee's Representations. In consideration of Grantor entering into this Agreement and as an inducement to Grantor to enter into this Agreement and convey the Property to Fee Grantee, Fee Grantee makes the following representations and warranties, each of which is material, is being relied upon by Grantor (the continued truth and accuracy of which shall constitute a condition precedent to Grantor's obligations hereunder) and shall fully survive the close of escrow and the recordation of the Grant Deed:

(a) Fee Grantee is a [REDACTED]. This Agreement and all documents executed by Fee Grantee which are to be delivered upon close of escrow are, or at the time of close of escrow will be, (i) duly authorized, properly executed and delivered by Fee Grantee, (ii) legal, valid and binding obligations of Fee Grantee enforceable in accordance with their terms at the time of close of escrow, and (iii) not in violation of any agreement or judicial order to which Fee Grantee is a party or to which it is subject.

(b) Fee Grantee is an experienced real property operator, and is represented by counsel in connection with this transaction. Fee Grantee specifically acknowledges that it is acquiring the Property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, without any representations or warranties of Grantor, express or implied, written or oral, as to the nature or condition of title to the Property, the physical condition of the Property, the uses of the Property or any limitations thereon. Fee Grantee is relying solely upon, and, as of the expiration of the Inspection Period will have conducted, its own analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Grantor (including, without limitation, an analysis of any and all matters concerning the condition, use, sale, enhancement or suitability for enhancement of the Property). Fee Grantee is not relying in any way upon any representations, statements, agreements, warranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Grantor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) The representations and warranties of Fee Grantee set forth in this Agreement shall be true on and as of the close of escrow as if those representations and warranties were made on and as of such time.

13. CONDITIONS PRECEDENT.

13.1 Conditions to Easement Grantee's Obligations. Easement Grantee's obligation under this Agreement to accept the Conservation Easement is subject to the fulfillment or waiver of each of the following conditions precedent:

(a) Easement Grantee shall have elected to proceed with the Conveyances under Section 4.6 above;

(b) The Baseline Report shall have been completed and approved by the Parties in accordance with Section 6 above;

(c) The funding condition set forth in Section 8 above shall have been satisfied;

(d) Map Act Compliance shall have been completed (or shall be completed immediately prior to the Conveyances);

(e) The Title Company shall be prepared to issue at close of escrow the title insurance policy described in Section 3.4 upon payment of its regularly scheduled premium therefor, subject only to the standard printed exceptions to such title insurance policy and the Permitted Encumbrances; and

(f) Grantor and Fee Grantee shall have performed each and every covenant contained in this Agreement to be performed by Grantor or Fee Grantee, as applicable, at or prior to close of escrow.

13.2 Conditions to Fee Grantee's Obligations. Fee Grantee's obligation under this Agreement to accept the conveyance the Property is subject to the fulfillment or waiver of each of the following conditions precedent:

(a) Fee Grantee shall have elected to proceed with the Conveyances under Section 4.6 above;

(b) The Baseline Report shall have been completed and approved by the Parties in accordance with Section 6 above;

(c) The funding condition set forth in Section 8 above shall have been satisfied;

(d) Map Act Compliance shall have been completed (or shall be completed immediately prior to the Conveyances);

(e) The Title Company shall be prepared to issue to Fee Grantee at close of escrow the title insurance policy described in Section 3.4 upon payment of its regularly scheduled premium therefor, subject only to the standard printed exceptions to such title insurance policy and the Permitted Encumbrances; and

(f) Grantor and Easement Grantee shall have performed each and every covenant contained in this Agreement to be performed by Grantor or Easement Grantee, as applicable, at or prior to close of escrow.

13.3 Conditions to Grantor's Obligations. Grantor's obligation under this Agreement to consummate the Conveyances is subject to the fulfillment or waiver of each of the following conditions precedent:

- (a) Governmental Approval shall have been obtained;
- (b) The Baseline Report shall have been completed and approved by the Parties in accordance with Section 6 above;
- (c) The funding condition set forth in Section 8 above shall have been satisfied;
- (d) Map Act Compliance shall have been completed (or shall be completed immediately prior to the Conveyances);
- (e) The Tax Neutrality Requirement shall have been satisfied; and
- (f) the Grantees shall have timely performed each and every covenant contained in this Agreement to be performed by either or both of the Grantees.

13.4 Satisfaction of Conditions. The Parties agree that Map Act Compliance may not be waived by any of the Parties. Other than Map Act Compliance (a) Easement Grantee may waive any of the conditions precedent set forth in Section 13.1, (b) Fee Grantee may waive any of the conditions precedent set forth in Section 13.2, and (c) Grantor may waive any of the conditions precedent set forth in Section 13.3. Subject to the foregoing and to the provisions of Section 16 below, in the event that any of the conditions precedent set forth in this Section 13 shall not be satisfied or waived at or prior to the Closing Date (or such earlier date as shall be provided in this Agreement for the satisfaction thereof), then the party whose obligations are subject to such condition precedent shall have the right to terminate this Agreement, Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination.

#### 14. ESCROW.

14.1 Establishment and Close of Escrow. No fewer than five (5) business days prior to the Closing Date (as defined below), the Parties shall open an escrow with the Title Company (sometimes also referred to herein as the "**Escrow Holder**"). Close of escrow shall occur no later than at 8:00 a.m. California time on the date that is sixty (60) days after Government Approval has been obtained and Map Act Compliance has been achieved (or will be achieved at the close of escrow) (the "**Closing Date**"), provided that all conditions precedent set forth in Section 13 have been satisfied or waived; provided, however, that in no event shall the Closing Date occur after [REDACTED] (the "**Outside Date**"). If close of escrow has not occurred on or prior to the Outside Date, the provisions of Section 16 below shall apply.

14.2 Deposits into Escrow.

(a) At or prior to close of escrow, Easement Grantee shall deposit or cause to be deposited with the Title Company the following:

(i) Easement Grantee's counterpart of the Conservation Easement duly executed by Easement Grantee;

(ii) Easement Grantee's counterpart of the Environmental Agreement (Easement Grantee), duly executed by Easement Grantee in the form attached hereto as Exhibit L (the "**Easement Grantee Environmental Agreement**") duly executed by Easement Grantee;

(iii) Easement Grantee's share of the fees and charges described in Section 14.4;

(iv) The amount, if any, payable to Grantor by Easement Grantee pursuant to Section 14.5; and

(b) At or prior to close of escrow, Fee Grantee shall deposit or cause to be deposited with the Title Company the following:

(i) Fee Grantee's counterpart of the Conservation Easement duly executed by Fee Grantee;

(ii) Fee Grantee's counterpart of the License Termination Agreement, duly executed by Fee Grantee;

(iii) Fee Grantee's counterpart of the Environmental Agreement (Fee Grantee), duly executed by Fee Grantee in the form attached hereto as Exhibit K (the "**Fee Grantee Environmental Agreement**", duly executed by Fee Grantee (the Easement Grantee Environmental Agreement and the Fee Grantee Environmental Agreement being referred to collectively herein as the "**Environmental Agreements**");

(iv) Fee Grantee's share of the fees and charges described in Section 14.4; and

(v) The amount, if any, payable to Grantor by Fee Grantee pursuant to Section 14.5.

(c) At or prior to close of escrow, Grantor shall deposit or cause to be deposited with the Title Company the following:

(i) The Grant Deed, prepared and duly executed by Grantor in recordable form;

(ii) Grantor's counterpart of the License Termination Agreement, duly executed by Grantor;

(iii) Grantor's counterpart of the Fee Grantee Environmental Agreement, duly executed by Grantor;

(iv) Grantor's counterpart of the Easement Grantee Environmental Agreement, duly executed by Grantor;

(v) Affidavits certifying that Grantor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and California Revenue and Taxation Code Section 18662(e) ("**Affidavits**");

(vi) Grantor's share of the fees and charges described in Section 14.4; and

(vii) The amount, if any, payable by Grantor pursuant to Section 14.5.

14.3 Closing. After all the requirements of Section 14.2 have been satisfied and all conditions precedent set forth in Section 13 have been satisfied or waived, the parties shall instruct the Title Company to close escrow by, among other actions:

(a) If applicable, recording the map or other instrument necessary to achieve Map Act Compliance and instructing the Placer County Recorder to deliver the map or other instrument to Grantor after recording;

(b) Recording the Grant Deed and instructing the Placer County Recorder to deliver the Grant Deed to Fee Grantee after recording;

(c) Recording the Conservation Easement and instructing the Placer County Recorder to deliver the Conservation Easement to Easement Grantee after recording;

(d) Recording the Environmental Agreements and instructing the Placer County Recorder to deliver the original Environmental Agreements to Grantor after recording;

(e) Delivering to each of the Parties an "as-recorded" conformed copy of the Conservation Easement, Grant Deed and Fee Grantee Environmental Agreement; and

(f) Delivering to Grantor and Fee Grantee fully executed counterparts of the License Termination Agreement;]

(g) Delivering to the Grantees the Affidavits and an "as-recorded" conformed copy of the Grant Deed, the Conservation Easement and Environmental Agreements, and issuing and delivering to Easement Grantee and Fee Grantee, respectively, the policies of title insurance described in Section 3.4.

14.4 Costs. In connection with the transactions contemplated by this Agreement, Grantor, Fee Grantee and Easement Grantee shall pay all transfer taxes and closing costs in accordance with the following:

(a) Grantor shall bear the cost of the recording fees for recordation of the Grant Deed and the Environmental Agreements; and

(b) Easement Grantee shall bear the cost of the recording fees for recordation of the Conservation Easement, and Fee Grantee shall pay any real property conveyance or documentary transfer taxes charged by the County and, if any, by the City, in which the Property is located and payable with respect to the Grant Deed, escrow fees charged by the Title Company, the cost of any ALTA or other survey required by the Title Company in order to issue the policies of title insurance

described in Section 3.4, and the premium and endorsement charges for the policy of title insurance described in Section 3.4.

14.5 Prorations. Except for real property taxes affecting the Property, all income and expense items related to the Property shall be prorated as of close of escrow, including, without limitation, the current fiscal year's installments of any assessments encumbering the Property, rents and other charges under any leases and utility charges. The net amount due Grantor from Fee Grantee under this Section 14.5, if any, shall be delivered by Fee Grantee to the Title Company prior to close of escrow. The net amount due Fee Grantee from Grantor under this Section 14.5, if any, shall be delivered by Grantor to the Title Company prior to close of escrow. To the extent that the amount of any of the foregoing income and expense items shall not have been determined as of the close of escrow, such income and expense items shall be prorated as of close of escrow as soon thereafter as such amount is determined, and Grantor shall promptly make to Fee Grantee, and/or Fee Grantee shall promptly make to Grantor, any payments required by such prorations. Following the close of escrow, Grantor will arrange for a refund of the real property taxes which are allocable to the period following the close of escrow in accordance with Section 5096.7 of the California Tax and Revenue Code, and Fee Grantee will fully cooperate with Grantor in securing such a refund. Fee Grantee acknowledges and agrees that it shall not be entitled to any portion of such refund.

14.6 Possession of Property. Subject to the Permitted Encumbrances, Fee Grantee shall retain possession of the Property upon close of escrow.

## 15. CONDEMNATION.

15.1 Condemnation by Non-Grantee Entity. In the event of any taking of more than fifty percent (50%) of the land area of the Property in eminent domain proceedings instituted by a governmental entity other than Fee Grantee (a "**Non-Grantee Entity**"), or under threat of condemnation by a Non-Grantee Entity prior to the Closing, each Grantee shall have the right to terminate this Agreement by giving to Grantor written notice of termination within five (5) days following the date of such taking. In the event of a taking of fifty percent (50%) or less of the land area of the Property prior to the close of escrow or in the event that the Grantees shall not elect to terminate the Agreement as aforesaid, each of the Grantees shall remain obligated to perform its obligations under this Agreement, and Grantor shall retain the portion of any condemnation award attributable to Grantor's interest in the Property. For the purposes of this Section 15.1, a taking in condemnation shall mean the taking of possession or the vesting of fee title to the Property in a Non-Grantee Entity pursuant to the exercise of the power of eminent domain or pursuant to a deed given in lieu or in contemplation thereof.

15.2 Condemnation by Fee Grantee. In the event Fee Grantee institutes eminent domain proceedings with respect to all or a portion of the Property, then immediately upon the filing of any such proceedings: (i) all conditions to Fee Grantee's obligations under this Agreement shall be deemed waived by Fee Grantee, and (ii) Fee Grantee's obligations to close escrow on the terms and conditions set forth in this Agreement shall be absolute and unconditional. The Parties acknowledge and agree that in no event shall just compensation for the Property in any eminent domain action filed by a Grantee be affected by the donative nature of the transactions contemplated hereunder. This Section 15.2 shall not apply to any taking in condemnation (as defined in Section 15.1 above) that occurs after termination of this Agreement, including, without limitation, termination on account of a default by a Grantee.



16. DEFAULT.

16.1 Grantee's Default.

(a) In the event that the Conveyances shall not be consummated because of a default by a Grantee, Grantor may unilaterally terminate this Agreement and the Escrow (as applicable) by giving written notice to the Grantees and the Escrow Holder. Thereupon, Grantor shall be released from all obligations under this Agreement and Grantor may exercise or pursue any remedy or cause of action conferred upon Grantor under applicable law or at equity; provided, however, that Grantor's recovery of monetary damages against either Grantee shall be limited to reimbursement of actual, out of pocket costs and expenses incurred by Grantor in connection with this Agreement up to a maximum amount of \$25,000 in the aggregate (the "**Recovery Cap**"). In addition, Escrow Holder shall return any and all documents and instruments to the Parties who deposited same, and all title and escrow cancellation charges shall be charged to the Grantees.

(b) Nothing contained in this Section 16.1 shall serve to waive or otherwise limit (1) Grantor's remedies or damages for claims of Grantor against either or both of the Grantees with respect to any obligations of the Grantees that, by the terms of this Agreement, survive the close of escrow or any termination of this Agreement before the close of escrow, or (2) liability of the Grantees under the Entry License or the Nondisclosure Agreement (as applicable).

16.2 Grantor's Default. If the escrow under this Agreement shall not be closed because of a default by Grantor, the Grantees shall have, at their option and as their sole joint remedies, the following:

(a) The joint right to pursue specific performance of this Agreement, provided that each of the Grantees elects such remedy and waives in writing any right it may have to bring an action for, or assert, any damages against Grantor for such default of Grantor. Except as provided in Section 16.2(b), in no event shall the Grantees be entitled to any damages as a result of a default by Grantor under this Agreement.

(b) As an alternative to the remedy provided in Section 16.2(a), the Grantees shall have the joint right to terminate this Agreement, whereupon neither Grantee shall have the right to proceed under Section 16.2(a), all title and escrow cancellation charges shall be charged to Grantor, if any, and none of the Parties shall have any further rights or obligations hereunder, except those which expressly survive termination, and except that each Grantee shall be entitled to reimbursement from Grantor of its actual, out of pocket costs and expenses incurred by Grantees in connection with this Agreement; provided, however that the Grantees' maximum aggregate recovery from Grantor shall not exceed the Recovery Cap.



17. MISCELLANEOUS.

17.1 Operation of the Property Prior to Closing. During the period from the date of Grantor's execution of this Agreement to the close of escrow, Grantor shall act with respect to the Property in accordance with its pre-existing practices as if the Property were not to be conveyed to Fee Grantee. Grantor agrees not to enter into any new lease, management agreement or maintenance or service contract that will be binding on Fee Grantee after the Conveyances close, without the prior written consent of the Grantees, which consent shall not be unreasonably withheld or delayed; provided, however, Grantor may extend any existing lease, management agreement or maintenance or service contract without the prior written consent of the Grantees if such extension shall not extend beyond the Closing Date; otherwise, such extension shall require the Grantees' prior written consent, which consent shall not be unreasonably withheld or delayed. Nothing herein shall prevent or inhibit Grantor from exercising any of the Reserved Rights.

17.2 Survival of Grantor's Representations and Warranties. The representations and warranties of Grantor contained in Section 12.1 of this Agreement shall not survive the close of escrow. Notwithstanding the foregoing, in the event a Grantee discovers prior to the close of escrow that any representations or warranties made by Grantor are untrue or inaccurate, or that Grantor failed to make any material disclosures to the Grantees regarding the Property (collectively, "**Disclosure Defects**"), Grantor shall bear no liability for such matters, and such Grantee shall, as its sole remedy (provided that Grantor has not breached an express covenant set forth in this Agreement), elect either to (a) waive such matters and complete the Conveyances in accordance with the terms of this Agreement or (b) terminate this Agreement, whereupon Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination. The Grantees' consent to the close of escrow pursuant to this Agreement shall conclusively demonstrate their waiver of any Disclosure Defects known to either or both of them prior to the close of escrow, and the Grantees shall not be entitled to make any claim or bring any action for damages against Grantor arising out of any Disclosure Defects.

17.3 Time of Essence. Time is of the essence of this Agreement and each and every provision hereof.

17.4 Further Assurances. Each party hereto agrees to execute and deliver to the other party such further documents or instruments as may be necessary or appropriate in order to carry out the intentions of the parties as contained in this Agreement.

17.5 No Assignment by Grantees; Assignment by Grantor; Binding Effect. This Agreement is the result of an extensive review and selection process, and each of the Grantees has been selected based upon its specific qualifications. Each of the Grantees agrees that it shall have no right to assign its rights and obligations under this Agreement. Each of the Grantees acknowledges and agrees that Grantor shall have the right to assign or otherwise convey its rights and/or obligations under this Agreement and/or with respect to the Property without the consent of the Grantees, provided that Grantor provides written notice of such assignment or conveyance, and the assignee assumes the remaining obligations of Grantor under this Agreement. Said assignee shall be substituted as Grantor hereunder and shall be entitled to the benefit of and may enforce the Grantees' covenants, representations and warranties hereunder as if such assignee were the original Grantor hereunder. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors and assigns of the parties hereto.

17.6 Severability. If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severable; provided, however, if such unenforceability or

invalidity alters the substance of this Agreement (taken as a whole) so as to deny any of the Parties, in a material way, the realization of the intended benefit of its bargain, such Party may terminate this Agreement within thirty (30) days after the final determination by notice to the other Parties. If any of the Parties so elects to terminate this Agreement, then this Agreement shall be terminated, Grantor shall pay the escrow termination fee, if any, and the Parties shall thereupon each be released from any obligations under this Agreement, except those which expressly survive termination.

17.7 Governing Laws. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

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

17.9 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be either personally delivered or transmitted by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, such as FedEx or Airborne Express, addressed to the parties as follows:

**[Note to drafter: confirm addresses remain correct.]**

If to Grantor:

If by registered or certified mail, return receipt requested:

Director, Land Management  
Pacific Gas and Electric Company  
P.O. Box 770000, Mail Code BOB1Q  
San Francisco, CA 94177

With a copy to:

Wendy T. Coleman, Esq.  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120

If by personal delivery or overnight courier:

Director, Land Management  
Pacific Gas and Electric Company  
245 Market Street, Room 1B071-1  
San Francisco, CA 94105

With a copy to:

Wendy T. Coleman, Esq.  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B30A  
San Francisco, CA 94105

If to Fee Grantee:

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

If to Easement Grantee:

---

---

---

---

The date of any notice or communication shall be deemed to be the date of receipt if delivered personally, or the date of the receipt or refusal of delivery if transmitted by mail or overnight courier. Any party may change the address for notice by giving notice to the other party in accordance with this Section 17.9.

17.10 Prior Agreements. This Agreement and the exhibits hereto, together with each Nondisclosure Agreement and Entry License, contain the entire understanding of the parties relating to the subject matter hereto and shall supersede any prior written or oral agreements or communications between the parties pertaining to such subject matter.

17.11 Attorneys' Fees. In the event that any party shall bring an action to enforce its rights under this Agreement, or relating to the interpretation hereof, whether for declaratory or other relief, the prevailing party in any such proceeding shall be entitled to recover from the other party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing party incurred in connection with such proceeding and any appeal thereof (including, but not limited to, the reasonable costs of discovery, investigation, preparation for trial, professional or expert consultation and testimony). A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The non-prevailing party shall also pay the attorneys' fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. For purposes hereof, the reasonable fees of Grantor's in-house attorneys who perform services in connection with any such action are recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by Grantor's Law Department. Any such fees and costs incurred prior to judgment, award, or decree may be included in any judgment, award or decree entered in such proceeding in favor of the prevailing party. Any such fees, costs and expenses incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

17.12 Confidentiality. Except (a) for disclosure of the terms of this Agreement to the Stewardship Council, (b) to the extent required by law, and (c) to the extent requested by any governmental or quasi-governmental authority (including, without limitation, the California Public Utilities Commission and the Federal Energy Regulatory Commission), none of the Parties shall disclose the terms of this Agreement to any third party without the prior written consent of the other Parties.

17.13 Limitation on Liability. Each of the Parties expressly agrees that the obligations and liabilities of the other Parties under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, affiliates, members, representatives, stockholders or other principals and representatives of such Parties. Notwithstanding anything to the contrary, Grantor's liability, if any, arising in connection with this Agreement or with the Property shall be limited to Grantor's interest in the Property for the recovery of any judgment against

Grantor, and Grantor's liability shall not extend to any other property or assets of Grantor. The limitations of liability contained in this Section 17.13 shall apply equally and inure to the benefit of the present and future officers, directors, employees, agents, affiliates, members, representatives, stockholders or other principals and representatives of the Parties, and their respective heirs, successors and assigns.

17.14 Exhibits. The following Exhibits are attached hereto and incorporated by reference into this Agreement:

- Exhibit A - Legal Description of Property
- Exhibit B – Grant Deed
- Exhibit C – Conservation Easement
- Exhibit D – License Termination Agreement
- Exhibit E – Preliminary Report
- Exhibit F – List of Due Diligence Materials
- Exhibit G – Form of Entry License
- Exhibit H – Form of Nondisclosure Agreement
- Exhibit I – List of Environmental Reports
- Exhibit J – Natural Hazards Report
- Exhibit K – Fee Grantee Environmental Agreement
- Exhibit L – Easement Grantee Environmental Agreement

17.15 [Intentionally Deleted]

17.16 Mediation.

(a) Except as provided in this Section, the Parties agree to first negotiate and then mediate with respect to any claim or dispute arising out of or relating to this Agreement, before resorting to court action. Any Party may initiate settlement negotiations by providing written notice to the other Parties, setting forth the subject of the claim or dispute. The Parties agree to cooperate in scheduling negotiations and to participate in the settlement negotiations in good faith. If the Parties fail to settle such claim or dispute within thirty (30) days after the date of mailing of the notice initiating settlement negotiations or within such additional time period as the Parties may agree in writing, the Parties agree to submit the matter to JAMS for mediation. Any Party may commence mediation by providing to JAMS and the other Parties a written request for mediation, setting forth the subject of the claim or dispute and the relief requested. Except as provided herein or by written agreement of the Parties, the mediation shall be conducted in Placer County pursuant to the JAMS rules. The Parties will cooperate in selecting a mediator from the JAMS panel of neutrals, and in scheduling the mediation proceedings. The Parties agree to participate in the mediation in good faith, and to share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their employees, agents, experts and attorneys, and by the mediator and any other JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, but evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If JAMS should no longer exist at the time the claim or dispute arises, the matter shall be submitted to its successor entity, or if there is no such successor entity, to the American Arbitration Association or other similar organization mutually agreed upon by the Parties, and except as provided herein or by mutual agreement of the Parties, the mediation rules of such successor or alternate organization shall apply. Except as may be expressly set forth in any written settlement agreement, should the matter be settled by negotiation or mediation prior to commencing court action, each Party shall pay its own attorneys' fees and costs. Except as provided in Section 17.16(b), no Party may commence an action arising out of or relating to this Agreement until expiration of the negotiation period and completion of the initial mediation

session in accordance with this Section. If any Party commences an action with respect to a claim or dispute covered by this Section without first attempting to resolve the matter through negotiation and mediation, or refuses to negotiate or mediate after a request has been made, then that Party shall not be entitled to recover attorneys' fees and costs, even if such fees and costs would otherwise be available to that party in such action.

(b) Any Party may seek equitable relief to preserve the status quo prior to participating in the negotiation and mediation proceedings required pursuant to Section 17.16(a). In addition, matters that are within the jurisdiction of probate, small claims, or bankruptcy court are excluded from mandatory negotiation and mediation hereunder.

(c) The provisions of this Section 17.16 may be enforced by any court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all fees and costs, including reasonable attorneys' fees, to be paid by the party against which enforcement is ordered. The covenants of the Parties contained in this Section 17.16 shall survive the expiration or earlier termination of this Agreement or the close of escrow.

17.17 References to "Days" and "Business Days". As used in this Agreement, references to "days" mean calendar days, and references to "business days" mean Monday through Friday, inclusive, but excluding any day which is recognized as a legal holiday by the State of California or the United States. If the last day of any time period stated in this Agreement, or the date of a party's performance, falls on a day that is not a business day, then the duration of such time period or expiration of the performance date will be extended so that such time period ends on or performance date is extended to, the next succeeding business day.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day and year first above written.

GRANTOR:

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

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

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

Its: \_\_\_\_\_

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

EASEMENT GRANTEE:

PLACER LAND TRUST,  
a California nonprofit corporation

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

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

Its: \_\_\_\_\_

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

FEE GRANTEE:

AUBURN RECREATION AND PARK DISTRICT,  
a [\_\_\_\_\_]

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

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

Its: \_\_\_\_\_

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

**NOTE:** THE PARTIES ARE TO SPECIFICALLY ACKNOWLEDGE THEIR AGREEMENT WITH SECTION 5.4 HEREOF BY PLACING THEIR SIGNATURES WHERE INDICATED BELOW SUCH SECTION.

EXHIBIT K

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

[INSERT NAME OF PG&E  
REPRESENTATIVE]  
PACIFIC GAS AND ELECTRIC COMPANY  
P.O. Box 770000, Mail Code N10A  
San Francisco, CA 94177

ENVIRONMENTAL AGREEMENT  
(Fee Grantee)

THIS ENVIRONMENTAL AGREEMENT ("Agreement"), dated as of \_\_\_\_\_, \_\_\_\_\_, executed by and between AUBURN RECREATION AND PARK DISTRICT, a \_\_\_\_\_ ("Grantee") and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("Grantor"), is entered into with reference to that certain Transaction Agreement dated \_\_\_\_\_, \_\_\_\_\_, by and among Grantee, Placer Land Trust and Grantor ("Transaction Agreement"), pursuant to which Grantee is acquiring from Grantor that certain real property described on Attachment A hereto and made a part hereof (the "Property").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Definitions. The following terms have the meanings ascribed to them below for purposes of this Agreement:

1.1. "Closing Date" means \_\_\_\_\_.

1.2. "Environmental Requirements" means all applicable present and future laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, judicial, administrative and regulatory decrees, directives and judgments of all governmental agencies, departments, commissions and boards, relating to the protection of human health or safety, or regulating or relating to industrial hygiene or environmental conditions, or the protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including, without limitation, all requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of Hazardous Substances, whether solid, liquid or gaseous in nature, into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, whether solid, liquid or gaseous in nature.

1.3. "Hazardous Substances" means any hazardous or toxic material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government under any Environmental Requirements. For purposes of this Agreement, Hazardous Substances include, without limitation, any material or substance:

(a) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or



"toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) ("CERCLA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1151 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the River and Harbor Act of 1899 (33 U.S.C. § 401 et seq.); the National Emission Standard for Asbestos (40 C.F.R. § 61.140 et seq.), the OSHA Construction Standards (29 C.F.R. § 1926.1001 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Oil Pollution Act (33 U.S.C. § 2701 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.); the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.); the Atomic Energy Act of 1954, (42 U.S.C. §2011 et seq.); the Nuclear Waste Policy Act of 1982 (42 U.S.C. §10101 et seq.); the Medical Waste Management Act (Cal. Health & Safety Code §25015 et seq.); the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.); the Carpenter-Presley-Tanner Hazardous Substance Account Act ( Cal. Health and Safety Code § 25300 et seq.); the Hazardous Waste Act (Cal. Health & Safety Code § 25100 et seq.); and all rules and regulations of the United States or California Environmental Protection Agency or any successor agency, or any other state or federal department, board or agency, or any other agency or governmental board or entity having jurisdiction, as any of the foregoing have been, or are hereafter amended from time to time; or

(b) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any State of the United States or any political subdivision thereof; or which cause, or is listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or

(c) the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons or to the environment; or

(d) that contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(e) that contains lead-based paint or other lead contamination, polychlorinated biphenyls or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

(f) that contains radon gas.

1.4. "Remediation" refers to the process of, and all work and planning performed in connection with, the investigation, testing for, monitoring, remediation, containment, transportation, removal and disposal or recycling of Hazardous Substances from the Property and any other property to which Hazardous Substances originating on the Property have migrated or may migrate in the future, and the repair and restoration of the Property, and restoration and mitigation of affected natural resources, regardless of whether such actions are required by Environmental Requirements.

1.5. “Necessary Remediation” means Remediation required by any governmental agency which has jurisdiction over the Remediation pursuant to the Environmental Requirements, to address Hazardous Substances, to enable the current use of the Property as of the Closing Date.

2. Allocation of Responsibility for Hazardous Substances.

2.1. Generally. In general, Grantor shall (as between Grantor and Grantee) bear the cost for the Necessary Remediation of Hazardous Substances which have been released to soil and/or groundwater prior to the Closing Date. Grantor shall have the right, but not the obligation, to perform the Remediation for which it is responsible. Grantee shall (as between Grantor and Grantee) bear responsibility for the reasonable management of Hazardous Substances existing on the Property, and, shall bear the cost, risk and responsibility for releases of Hazardous Substances to soil or groundwater occurring on and after the Closing Date. Grantee shall have the obligation to perform all Necessary Remediation with funding supplied by Grantor for the Necessary Remediation for which Grantor is responsible, unless Grantor elects to perform the Remediation. To ensure that Grantee understands the risks inherent in Grantee's execution of this Agreement, Grantor has strongly advised Grantee to investigate the condition and suitability of all aspects of the Property and all matters affecting the value or desirability of the Property, or that may be perceived to affect the value or desirability of the Property, including, without limitation, the potential environmental hazards arising from the presence of Hazardous Substances on, under, about, adjacent to or affecting the Property. Grantee hereby acknowledges and confirms that it has been afforded the opportunity to, and has, as of the date hereof, performed all environmental inspections, tests and studies, including, without limitation, invasive testing and/or groundwater sampling on, under, about or adjacent to the Property, which Grantee and its environmental consultants and engineers have deemed necessary to assess the condition of the Property and to assume the risk of the release and indemnity provided for in this Agreement.

2.2. Environmental Reports. Grantor, as part of the Land Conservation Commitment, has prepared certain Environmental Reports concerning the Property. Copies of these Environmental Reports have been provided to Grantee.

2.3. Grantor Responsibility for the Cost of Necessary Remediation of Pre-Closing Hazardous Substance Releases.

(a) As set forth in this Section 2.3(a), Grantor shall retain responsibility for the cost of Necessary Remediation of Hazardous Substance releases in soil and groundwater, which are present on the Property prior to the Closing Date, except to the extent that Grantee causes, in whole or in part, such Hazardous Substance contamination or to the extent that such Necessary Remediation is the result, in whole or in part, of Grantee's active or passive negligence. If Grantor releases Hazardous Substances to soil or groundwater on the Property on or after the Closing Date, Grantor shall be responsible for the cost of Necessary Remediation of such releases. Without limiting the foregoing general retention of responsibility, more specifically, Grantor shall retain responsibility for the Necessary Remediation of Hazardous Substances in the following circumstances:

(i) Grantor shall be responsible for the cost of Necessary Remediation of releases of Hazardous Substance present in soil and groundwater on the Property prior to the Closing Date, including Necessary Remediation of Hazardous Substances which were either:

1. Caused by the Grantor;
2. Caused by a licensee, lessee or tenant of the Property (excluding Grantee and any invitee of Grantee); or
3. Caused by another third party.

(ii) Grantor shall be responsible for the cost of Necessary Remediation related to asbestos or lead paint that were released to soil or groundwater prior to the Closing Date.

(b) Grantor's retention of responsibility in this Section 2.3 shall exclude:

(i) Remediation of naturally-occurring Hazardous Substances,

(ii) Remediation of Hazardous Substances present at background or ambient concentrations;

(iii) Remediation of contamination caused in whole or in part by Grantee or as a result of Grantee's active or passive negligence, including Grantee's exacerbation of any Hazardous Substance release present as of the Closing Date, as identified in the Environmental Reports;

(iv) Remediation of lessee or tenant-owned Hazardous Substances which had not been released to soil or groundwater as of the Closing Date;

(v) Liability to parties other than Grantee (i.e. successors and assigns of Grantee); and

(vi) Responsibility assumed by Grantee pursuant to this Agreement, including as set forth in Sections 2.1 and 2.4 of this Agreement.

(c) Grantor shall have the right, but not the obligation, to perform all Remediation for which it is responsible under this Agreement, if Grantor so chooses. Grantor shall have the right, but not the obligation, to reasonably control any Remediation activities for which Grantor is responsible if the Grantor so chooses, including when the work is performed by Grantee, and shall have the right to coordinate all communications with any governmental agency regarding the same. Grantee shall not communicate with any governmental agency regarding any Remediation activities for which Grantor is responsible without the prior notice to, consultation with and obtaining the consent of the Grantor, which shall not be unreasonably withheld or delayed, and, if such consent is granted, without allowing the Grantor to participate in and lead any such communications. Grantor shall have the right, but not the obligation, to remediate to a more stringent level than that which constitutes Necessary Remediation, at Grantor's cost.

#### 2.4. Grantee Responsibility for Necessary Remediation of Certain Hazardous Substances.

(a) Grantee shall be responsible for the Necessary Remediation of Hazardous Substance contamination at the Property to the extent the Grantee caused all or part

of such contamination, and to the extent any invitee of Grantee caused all or part of such contamination, and to the extent such contamination or the cost of the Necessary Remediation of such contamination resulted, in whole or in part, from Grantee's active or passive negligence.

(b) Grantee shall be responsible for the Necessary Remediation of Hazardous Substances released to soil or groundwater on and after the Closing Date (except for Hazardous Substance releases by Grantor on or after the Closing Date).

(c) Grantee will look solely to the lessee or tenant for Necessary Remediation related to asbestos or lead paint in buildings or other structures, owned by a lessee or tenant of Grantee as of the Closing Date. Grantee will look solely to the lessee or tenant for the Remediation of Hazardous Substances released by the lessee or tenant, including releases from lessee or tenant-owned structures on or after the Closing Date.

(d) Grantee's obligation to perform all Necessary Remediation. As of the Closing Date, Grantee shall have responsibility to reasonably manage all Hazardous Substances on the Property, and to perform of all Necessary Remediation on the Property, unless Grantor elects to perform such Remediation pursuant to Section 2.3(c) of this Agreement.

2.5. Performance and Completion of Necessary Remediation. Any Necessary Remediation performed hereunder shall be conducted in a manner consistent with applicable Environmental Requirements and shall be considered complete when the party conducting the Necessary Remediation obtains from the California Department of Toxic Substances Control or other governmental agency with jurisdiction over the matter, a "No Further Action Letter," "Certificate of Completion," or other governmental certification indicating that additional Remediation is not required for the current land use.

2.6. Access; Property Restoration; Recording or Deed Restriction. Grantee hereby acknowledges and agrees that Grantor shall have a reasonable right of access to and entry on the Property at all times upon twenty-four (24) hour notice to conduct all necessary actions to address any Hazardous Substances for which Grantor has responsibility under this Agreement. Grantor's actions to address the Hazardous Substances for which it has responsibility shall be made with reasonable efforts to not interfere with the Grantee's use of the Property. Upon completion of the actions to address the Hazardous Substances for which it has responsibility, Grantor shall make reasonable efforts to restore the Property to the condition it was in prior to the commencement of the actions to address Hazardous Substances for which it has responsibility. Grantor and Grantee acknowledge and agree that attainment of an appropriate remediation standard for Necessary Remediation at the Property may require recordation of a deed restriction limiting certain uses of the Property or other similar land use control instruments concerning the Property. In the event that such a deed restriction or land use control instrument is required, Grantee shall cooperate in the recording of such document in the appropriate office of the County where the Property is located.

### 3. Release.

3.1. Grantee, for itself, and for any future owners of all or a part of the Property, and each of their respective predecessors, successors, assigns, licensees, officers, directors, employees, agents, partners, shareholders, transferees, parent and subsidiary corporations, legal representatives, heirs, beneficiaries, executors and administrators (together with Grantee, "Releasing Parties") hereby fully and forever releases, exonerates, discharges

and covenants not to sue Grantor and/or each and all of its past, present and future officers, directors, partners, employees, agents, representatives, shareholders, attorneys, affiliates, parent and subsidiary corporations, divisions, insurance carriers, heirs, legal representatives, beneficiaries, executors, administrators, predecessors, transferees, successors (including, without limitation, lenders who become successors-in-title) and assigns (hereinafter "Released Parties") of, from and for any and all losses (including diminution in the value of the Property and other consequential damages), costs, claims, demands, actions, suits, orders, causes of action, obligations, controversies, debts, expenses, accounts, damages, judgments and liabilities of whatever kind or nature, and by whomsoever asserted, in law, equity or otherwise (each a "Claim" and, collectively, "Claims") that the Releasing Parties or the Property may suffer or claim to suffer, based in whole or in part on the presence, or threatened or suspected presence, generation, processing, use, management, treatment, storage, disposal, Remediation, transportation, recycling, emission or release or threatened emission or release, whether in the past, present or future, of any Hazardous Substances on, about, from, adjacent to or affecting the Property, including, without limitation, Claims arising from the passive or active negligence of the Released Parties. Notwithstanding the foregoing, Grantee and the Releasing Parties do not release, exonerate, discharge and covenant not to sue Grantor for Claims for which Grantor is responsible under Section 2 of this Agreement.

3.2. Grantee represents and warrants to Grantor that it is the sole and lawful owner of all right, title and interest in and to every Claim that Grantee purports to release herein, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm, association, corporation or other entity, any right, title or interest in any such Claim. In the event that such representation is false, and any such Claim is asserted against any of the Released Parties, by any party or entity who is the assignee or transferee of such Claim, then Grantee shall fully indemnify, defend and hold harmless the Released Party against whom such Claim is asserted from and against such Claim and from all actual costs, fees, expenses, liabilities and damages that that party incurs as a result of the assertion of such Claim.

#### 4. Indemnity.

4.1. By Grantor. Grantor agrees and covenants, at its sole cost and expense, to indemnify, protect, defend and hold Grantee harmless, from and against any and all Claims (including, without limitation, the payment of damages, the payment of the actual fees and expenses of experts, attorneys and others and the payment of "response costs" under CERCLA or any other Environmental Requirements) arising from or relating, in whole or in part, to Grantor's failure to perform or discharge Grantor's responsibilities and obligations set forth in Section 2.3 of this Agreement. Notwithstanding the foregoing, Grantor shall have no obligation to indemnify, protect, defend or hold the Grantee harmless, from and against any Claims for which Grantee is responsible under Section 2.4 of this Agreement.

4.2. By Grantee. Grantee agrees and covenants, at its sole cost and expense, to indemnify, protect, defend and hold Grantor harmless, from and against any and all Claims (including, without limitation, the payment of damages, the payment of the actual fees and expenses of experts, attorneys and others and the payment of "response costs" under CERCLA or any other Environmental Requirements) arising from or relating, in whole or in part, to Grantee's failure to perform or discharge Grantee's responsibilities and obligations set forth in Section 2.4 of this Agreement. Notwithstanding the foregoing, Grantee shall have no obligation to indemnify, protect, defend or hold the Grantor harmless, from and against any Claims for which Grantor is responsible under Section 2.3 of this Agreement.

5. Statutory Waiver.

5.1. Grantee acknowledges that it may hereinafter discover facts different from or in addition to those that it now knows or believes to be true with respect to the matters which are the subject of this Agreement, and agrees that this Agreement shall remain in effect in all respects, notwithstanding the discovery of such different or additional facts. In addition, Grantee understands and agrees that its agreements and covenants contained in this Agreement extend to all claims of any nature and kind, known or unknown, suspected or unsuspected, based in whole or in part on facts existing in the past or as of the date hereof, and in that regard, Grantee acknowledges that it has read, considered and understands the provisions of Section 1542 of the California Civil Code which reads as follows:

Section 1542. General Release

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

5.2 Based upon the advice of its counsel, Grantee knowingly and voluntarily waives and relinquishes any and all rights that it may have under Section 1542 as well as under the provisions of all comparable, equivalent, or similar statutes and principles of common law or other decisional law of any and all states of the United States or of the United States. Grantee understands and acknowledges the significance and consequences of this waiver and hereby assumes the risk of any injuries, losses or damages that may arise from such waiver.

Grantee: \_\_\_\_\_

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

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

Notwithstanding the foregoing, Grantee does not release, exonerate, discharge and covenant not to sue Grantor for Claims for which Grantor is responsible under Section 2 of this Agreement.

6. Notice by Grantee. Grantee shall promptly notify Grantor of any discovery of a release of Hazardous Substances on the Property. Grantee shall promptly notify Grantor of any notice of potential liability for costs of Remediation (whether or not covered by Section 2), and following such notification (or the determination by Grantor of its potential liability for such costs) provide such information and reports with respect to such potential liability and the status of Hazardous Substances on the Property as Grantor shall reasonably request.

7. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor as follows:

7.1. Grantee has in all respects voluntarily and knowingly executed this Agreement.

7.2. Grantee has had an opportunity to seek and has sought independent legal advice from attorneys of its choice with respect to the advisability of executing this Agreement.

7.3. Grantee has made such investigation of the facts pertaining to this Agreement as it deems necessary.

7.4. The terms of this Agreement are contractual and are the result of negotiation between Grantee and Grantor.

7.5. This Agreement has been carefully read by Grantee and the contents hereof are known and understood by Grantee.

7.6. Grantee is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business in the state in which the Property is located and the persons executing this Agreement on behalf of Grantee have the full right and authority to execute this Agreement on behalf of Grantee and to bind Grantee without the consent or approval of any other person or entity. This Agreement is (i) duly authorized, properly executed and delivered by Grantee, (ii) legal, valid and binding obligations of Grantee enforceable in accordance with its terms at the time of the Closing Date, and (iii) not in violation of any agreement or judicial order to which Grantee is a party or to which it is subject.

## 8. Mandatory Negotiation and Mediation.

8.1. Except as provided in Section 8.2, Grantor and Grantee agree to first negotiate and then mediate with respect to any claim or dispute arising out of or relating to this Agreement, before resorting to court action. Either party may initiate settlement negotiations by providing written notice to the other party, setting forth the subject of the claim or dispute. Grantee and Grantor agree to cooperate in scheduling negotiations and to participate in the settlement negotiations in good faith. If Grantee and Grantor fail to settle such claim or dispute within thirty (30) days after the date of mailing of the notice initiating settlement negotiations or within such additional time period as the parties may agree in writing, the parties agree to submit the matter to JAMS (or other similar organization such as the American Arbitration Association mutually agreed upon by the parties) for mediation. If an organization other than JAMS is agreed upon by the parties to conduct the mediation hereunder, all references to JAMS shall be deemed changed to the selected organization. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the claim or dispute and the relief requested. Except as provided herein or by written agreement of the parties, the mediation shall be conducted in Placer County pursuant to the JAMS rules. The parties will cooperate in selecting a mediator from the JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties agree to participate in the mediation in good faith, and to share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either of the parties, their employees, agents, experts and attorneys, and by the mediator and any other JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, but evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If JAMS should no longer exist at the time the claim or dispute arises, the matter shall be submitted to its successor entity, or if there is no such successor entity, to the American Arbitration Association or other similar organization mutually agreed upon by the parties, and except as provided herein or by mutual agreement of the

parties, the mediation rules of such successor or alternate organization shall apply. Except as may be expressly set forth in any written settlement agreement, should the matter be settled by negotiation or mediation prior to commencing court action, each party shall pay its own attorneys' fees and costs. Except as provided in Section 8.2, neither party may commence an action arising out of or relating to this Agreement until expiration of the negotiation period and completion of the initial mediation session in accordance with this Section 8.1. If either party commences an action with respect to a claim or dispute covered by this Section 8.1 without first attempting to resolve the matter through negotiation and mediation, or refuses to negotiate or mediate after a request has been made, then that party shall not be entitled to recover attorneys' fees and costs, even if such fees and costs would otherwise be available to that party in such action.

8.2. Either party may seek equitable relief to preserve the status quo prior to participating in the negotiation and mediation proceedings required pursuant to Section 8.1. In addition, matters that are within the jurisdiction of probate, small claims, or bankruptcy court are excluded from mandatory negotiation and mediation hereunder.

8.3. The provisions of this Section 8 may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all fees and costs, including reasonable attorneys' fees, to be paid by the party against which enforcement is ordered. The covenants of Grantor and Grantee contained in this Section 8 shall survive the expiration or earlier termination of this Agreement or the Closing Date.

## 9. Miscellaneous.

9.1. Grantee acknowledges (a) this Agreement is the result of extensive good faith negotiations between Grantee and Grantor through their respective counsel, (b) Grantee's counsel has carefully reviewed and examined this Agreement before execution by Grantee, and (c) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

9.2. In the event that either party shall bring an action to enforce its rights under this Agreement, or relating to the interpretation hereof, whether for declaratory or other relief, the prevailing party in any such proceeding shall be entitled to recover from the other party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing party incurred in connection with such proceeding and any appeal thereof (including, but not limited to, the reasonable costs of discovery, investigation, preparation for trial, professional or expert consultation and testimony). Grantee shall also pay all attorneys' fees and costs Grantor incurs in defending this Agreement or otherwise protecting Grantor's rights in any voluntary or involuntary bankruptcy case, assignment for the benefit of creditors, or other insolvency, liquidation or reorganization proceeding involving Grantee or this Agreement, including all motions and proceedings related to relief from an automatic stay, lease assumption or rejection, use of cash collateral, claim objections, disclosure statements and plans of reorganization. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The non-prevailing party shall also pay the attorneys' fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. Any such fees, costs and expenses incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to



any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

9.3. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Grantee and Grantor. No transfer of an interest in the Property or this Agreement by Grantee or its assignees shall operate to relieve Grantee of its obligations hereunder. This Agreement shall not create or bestow any right in any third party. Grantee and Grantor agree that no third party beneficiary to this Agreement exists and that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.4. The failure of either party to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any of such terms, nor shall it militate against the right of such party to insist upon strict compliance herewith at any later time.

9.5. This Agreement shall not constitute or be construed as an admission of liability or fact by either party for any purpose whatsoever.

9.6. Each party shall execute, acknowledge and deliver to the other party all documents, and shall take all actions reasonably required by the other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Agreement.

9.7. The representations, warranties, covenants, and agreements of the parties contained in this Agreement shall survive the Closing Date.

9.8. Time is of the essence of this Agreement.

9.9. This Agreement shall be governed by the laws of the State of California.

9.10. Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, and the validity of the remainder shall remain unaffected.

9.11. This Agreement sets forth the entire understanding of Grantee and Grantor in connection with the subject matter hereof, and Grantee acknowledges that Grantor has made no statement, representation or warranty relating to the Property upon which Grantee has relied or that acted as an inducement for Grantee to enter into this Agreement. Grantee's obligations under this Agreement may not be altered or amended in any respect except by a writing executed by both Grantee and Grantor. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be duly executed as of the date first written above.

GRANTOR:

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

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

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

GRANTEE:

AUBURN RECREATION AND PARK DISTRICT,  
a \_\_\_\_\_

\_\_\_\_\_,  
\_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

**ATTACHMENT A**  
**LEGAL DESCRIPTION**



**CERTIFICATE OF ACKNOWLEDGMENT  
OF NOTARY PUBLIC**

STATE OF CALIFORNIA )  
 ) §§  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

**LICENSE AGREEMENT**  
**FOR NON-INVASIVE INVESTIGATION ACTIVITIES**

This License Agreement for Non-Invasive Investigation Activities (this “**License Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”) by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called “**PG&E**”, and AUBURN RECREATION AND PARK DISTRICT, a \_\_\_\_\_, hereinafter called “**Licensee**.”

R E C I T A L S:

A. PG&E owns the real property identified as Assessor’s Parcel Number 077-050-044-000, State Board of Equalization Number 135-31-73E-1 hereinafter called the “**Property**”, in the County of Placer, State of California.

B. PG&E and Licensee are concurrently entering into a Transaction Agreement regarding the Property (the “**Transaction Agreement**”).

C. In connection with the Transaction Agreement, Licensee wishes to enter the Property (or to cause Licensee's Representatives (as defined below) to enter the Property) to perform the following activities (hereinafter collectively referred to as “**Licensee’s Activities**”): \_\_\_\_\_ *[insert applicable activities, e.g., land survey, inspect improvements, conduct an appraisal, conduct an archeological and a biological investigation (no soil disturbance or minimal disturbance of surface with hand tools only), forest resource inventory field work.]* [Licensee’s Activities shall be conducted solely on a portion of the Property as shown on **EXHIBIT “A”** attached hereto and by this reference made a part hereof (the “**License Area**”).]

D. Licensee has requested permission for Licensee and Licensee’s Representatives to enter the License Area and conduct Licensee's Activities, and PG&E is willing to grant such permission subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, PG&E and Licensee hereby agree as follows:

1. Non-Invasive Investigation. Subject to the terms and conditions set forth in this License Agreement, PG&E grants to Licensee a personal, non-exclusive and non-possessory right and license to enter, and for Licensee to allow Licensee’s contractors, consultants, representatives, and agents (“**Licensee’s Representatives**”) to enter, at reasonable times, the License Area for the sole purpose of performing Licensee's Activities. All of Licensee’s Activities shall be performed at Licensee’s sole cost and expense. This License Agreement gives Licensee a license only and does not constitute a grant by PG&E of any ownership, leasehold, easement or other similar property interest or estate.

2. Term; Termination; Surrender. This License Agreement shall commence on the Effective Date and expire on \_\_\_\_\_, unless sooner terminated (the “**Term**”). **Notwithstanding the foregoing, PG&E may terminate this License Agreement, at any time,**

**for any reason or no reason, including, without limitation, pursuant to the provisions of General Order No. 69-C of the California Public Utilities Commission (the "CPUC"), upon twenty-four (24) hours written notice to Licensee.** Upon the expiration or termination of this License Agreement, Licensee shall remove all personal property of Licensee and Licensee's Representatives, remove all debris and waste material resulting from Licensee's Activities, and repair and restore the Property as nearly as possible to the condition that existed prior to Licensee's entry hereunder to PG&E's satisfaction. Licensee shall bear the entire cost of such removal, repair and restoration, and PG&E shall have no liability for any losses or damages caused by or related to any termination of this License Agreement. In the event Licensee fails to comply with the requirements of this Section, PG&E may elect, at Licensee's expense, to remove such personal property, debris and waste material and to perform such removal, repair or restoration as necessary. Licensee shall pay such costs and expenses within ten (10) days after receipt of an invoice therefor. Licensee's obligations under this Section shall survive the expiration or termination of this License Agreement.

3. Condition of the Property. Licensee accepts the Property "as is", in its existing physical condition, without any representation or warranty by PG&E, express or implied, or any duty or obligation on the part of PG&E to maintain the Property.

4. Licensee's Covenants.

(a) Legal Compliance. Licensee agrees, at Licensee's sole cost and expense, to promptly comply, and cause all of Licensee's Representatives to promptly comply, with (i) all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, (ii) the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to Licensee's Activities or Licensee's use or occupancy of the Property, and (iii) any liens, encumbrances, leases, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Licensee has notice, which may be applicable to the Property (collectively, "**Legal Requirements**") regardless of when they become effective, insofar as they relate to Licensee's Activities or the use or occupancy of the Property by Licensee. Licensee shall obtain, at Licensee's sole cost and expense, any and all necessary permits, authorizations and approvals applicable to Licensee's Activities and to evidence compliance with all Legal Requirements. PG&E shall have a right to observe Licensee's Activities at any time to confirm Licensee's compliance with the requirements of this License Agreement and applicable Legal Requirements. If PG&E determines in its reasonable discretion that there may be specific Legal Requirements to be satisfied by Licensee in connection with Licensee's Activities, Licensee shall furnish satisfactory evidence of such compliance upon request by PG&E. The judgment of any court of competent jurisdiction, or the admission of Licensee in any action or proceeding against Licensee, whether or not PG&E is a party in such action or proceeding, that Licensee has violated any Legal Requirement relating to the use or occupancy of the Property, shall be conclusive of that fact as between PG&E and Licensee.

(b) Notification of Investigations, Orders or Enforcement Proceedings. Licensee agrees to notify PG&E in writing within three (3) business days after obtaining knowledge of any investigation, order or enforcement proceeding that in any way relates to the Property, or the occurrence of any contamination or suspected contamination on, within or underlying the Property. Such notice shall include a complete copy of any order, complaint,

agreement, or other document that may have been issued, executed or proposed, whether draft or final.

(c) Use of Property. Licensee agrees that neither Licensee nor Licensee's Representatives shall in any way interfere or permit any interference with the use of the Property by PG&E or its tenants or other permitted users. Interference shall include, but not be limited to, any activity by Licensee or Licensee's Representatives that places any of PG&E's gas or electric facilities in violation of any of the applicable provisions of General Order Nos. 95 (Overhead Electric), 112 (Gas), and 128 (Underground Electric) of the CPUC or of any other applicable provisions of the laws and regulations of the State of California or other governmental agencies under which the operations of utility facilities are controlled or regulated, including, but not limited to, the CPUC and the Federal Energy Regulatory Commission ("FERC"). Neither Licensee nor Licensee's Representatives shall erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of PG&E's high-voltage electric conductors than the minimum clearances set forth in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety, which minimum clearances are incorporated herein by reference, but under no circumstances closer than ten (10) feet from any energized electric conductors or appliances. Neither Licensee nor Licensee's Representatives shall drill, bore, or excavate under any circumstances.

(d) Procedure for Entry. Licensee agrees that at least two (2) business days prior to any entry by Licensee or any Licensee Representative upon the Property, Licensee shall notify **Aimee Crawford, Senior Land Consultant at 5555 Florin-Perkins, #100, Sacramento, CA 95826** ("PG&E's Representative") at **(916) 386-5347** so that a representative of PG&E may be present to observe Licensee's Activities to ensure safety and protection of PG&E's Property and compliance with the terms and conditions of this License Agreement. At the time of each such notification, Licensee shall inform PG&E's Representative whether a representative of any governmental entity or agency (other than Licensee) will be present during the planned activities.

(e) Licensee's Activities. Licensee agrees that Licensee and Licensee's Representatives shall notify PG&E of any potential safety, environmental or other hazards to any people or property arising out of, or associated with, Licensee's Activities or stemming from conditions caused by Licensee, so that PG&E may take appropriate precautions. Licensee agrees that Licensee shall conduct Licensee's Activities in such a manner so as to protect the Property, PG&E's utility facilities, the environment, and human health and safety. Licensee shall not make use of the Property in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Property by PG&E or others entitled to use the Property. In the event PG&E determines that Licensee's Activities in any way endanger the Property, PG&E's utility facilities, the environment, or human health or safety, PG&E may, in PG&E's sole and absolute discretion, require that Licensee halt Licensee's Activities until appropriate protective measures may be taken to eliminate such endangerment to PG&E's satisfaction. Licensee waives claims against PG&E resulting from any delay under this Section. PG&E's right to halt activities under this Section shall not in any way affect or alter Licensee's insurance or indemnity obligations under this License Agreement, nor shall it relieve Licensee from any of Licensee's obligations hereunder that pertain to health, safety, or the protection of the environment.



(f) Non-Interference. Licensee agrees to coordinate Licensee's Activities to strictly avoid any interference with PG&E's or its tenant's use of the Property and any adjoining lands owned by PG&E.

(g) Site Security. Licensee agrees that Licensee and Licensee's Representatives shall comply with any and all of PG&E's on-site safety and security requirements and any other rules and regulations that may be applicable to Licensee's Activities at the Property. Licensee agrees to cooperate with PG&E and to abide by any and all orders or instructions issued by PG&E, its employees, agents or representatives. PG&E reserves the right to restrict access to the Property in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with PG&E's response thereto, or if emergency repairs or maintenance are required to PG&E's facilities, wherever located, or otherwise when PG&E deems it advisable to do so, including in connection with events and emergencies occurring or affecting PG&E's business operations located elsewhere than in the immediate vicinity of the Property.

(h) FERC Project. Licensee acknowledges that the Property was acquired for, and is devoted to hydroelectric purposes, by PG&E [and is a part of the FERC Project No. \_\_\_\_\_], and this License Agreement is made subject to the right of PG&E to use the Property for such purposes; and to use the Property whenever in the interest of PG&E's service to the public it shall be deemed necessary to do so. Licensee agrees that Licensee's use of the Property shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use.

5. Indemnification; Release.

(a) Licensee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless PG&E, its parent corporation, subsidiaries, affiliates, and their officers, managers, directors, representatives, agents, employees, transferees, tenants, successors and assigns (each, an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), including Claims arising in whole or in part from the passive or active negligence of the Indemnitees, but excluding Claims to the extent arising from the gross negligence or willful misconduct of an Indemnitee, which are connected with Licensee's Activities, or the entry on, occupancy or use of, the Property by Licensee or Licensee's Representatives, or the exercise by Licensee of Licensee's rights hereunder, or the performance of, or failure to perform, Licensee's duties under this License Agreement, including, but not limited to, Claims arising out of: (i) injury to or death of persons, including, but not limited to, employees of PG&E, Licensee or Licensee's Representatives; (ii) injury to property or other interest of PG&E, Licensee, Licensee's Representatives, or any third party; or (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to the environment and including any liability imposed by law or regulation without regard to fault. Without limiting the generality of the foregoing, Licensee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of or in connection with any labor performed on the Property by, or at the request or for the benefit of, Licensee. In the event any action or proceeding is brought against any Indemnitee for any Claim against which Licensee is obligated to indemnify or provide

a defense hereunder, upon written notice from PG&E, Licensee shall defend such action or proceeding at Licensee's sole expense by counsel approved by PG&E, which approval shall be in PG&E's reasonable discretion.

(b) Licensee's Activities shall be conducted at Licensee's sole risk and expense, and Licensee accepts all risk relating to Licensee's occupancy and use of the Property. PG&E shall not be liable to Licensee for, and Licensee hereby waives and releases PG&E and the other Indemnitees from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on or about the Property.

(c) Licensee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Licensee, or any of Licensee's Representatives, to comply with the insurance requirements set forth in **EXHIBIT "B"**.

(d) The provisions of this Section 5 shall survive the expiration or termination of this License Agreement and closing under the Transaction Agreement.

6. Additional Activities. Licensee shall not perform any activities or investigations beyond Licensee's Activities specifically authorized by this License Agreement without the prior written consent of PG&E, which consent shall be in PG&E's sole and absolute discretion, and the prior consent, to the extent required by applicable Legal Requirements, of any governmental authority having jurisdiction, including, but not limited to, the CPUC or the FERC.

7. Reserved Rights. PG&E reserves the right to use the Property for any and all purposes whatsoever, including, without limitation, the right to use the Property for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so.

8. Insurance. Licensee shall procure, carry and maintain in effect throughout the Term of this License Agreement, with respect to the License Area and the use, occupancy and activities of Licensee and Licensee's Representatives on or about the License Area, in a form and with deductibles acceptable to PG&E and with such insurance companies as are acceptable to PG&E, the insurance specified in **EXHIBIT "B"** and by this reference made a part hereof. All such policies shall contain endorsements that the insurer shall give PG&E and its designees at least thirty (30) days' advance written notice of any change, cancellation, termination, failure to renew or lapse of insurance. Upon Licensee's execution of this License Agreement, and thereafter at least thirty (30) days prior to the expiration date of any policy, Licensee shall provide PG&E with evidence of the insurance coverage, or continuing coverage, as applicable, required by this License Agreement as more specifically set forth in **EXHIBIT "B"**. Licensee's rights under this License Agreement shall not become effective, and Licensee and Licensee's Representatives shall not enter the Property nor commence or conduct any activity whatsoever on the Property unless and until the insurance coverage required by this License Agreement is in effect and current proof of insurance has been provided to PG&E. Licensee is also responsible for the compliance of Licensee's Representatives with the insurance requirements, provided that Licensee may, with PG&E's written consent in PG&E's sole and absolute discretion, permit Licensee's Representatives to maintain coverages and limits lower than those specified, so long as the coverages and limits required by Licensee are commercially reasonable in light of applicable circumstances. Licensee's

Representatives shall not enter the Property nor commence any activity whatsoever on the Property without the insurance coverage required by this License Agreement being in effect and current proof of insurance having been provided to PG&E from each such contractor, consultant, representative, or agent, respectively. The requirements of this Section and **EXHIBIT "B"** shall in no event limit the liability of Licensee under this License Agreement. PG&E reserves the right to review and modify from time to time the coverages and limits of coverage required hereunder, as well as the deductibles and/or self-insurance retentions in effect from time to time. In the event that Licensee or any of Licensee's Representatives fail at any time during the Term to procure, carry or maintain, the insurance required under this Section and **EXHIBIT "B"**, or fail to deliver such policies or certificates as required, PG&E may, at its option, terminate this License Agreement, upon written notice to Licensee, in which event Licensee shall immediately vacate the Property and comply with the provisions concerning the condition of the Property on expiration or termination set forth in Section 3 above.

9. Mechanics' Liens. Licensee shall keep the Property free and clear of all mechanics' liens arising, or alleged to arise, in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by Licensee or at Licensee's request or for Licensee's benefit. If any mechanics' liens are placed on the Property in connection with Licensee's use or activities, Licensee shall diligently pursue all necessary actions to remove such liens from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute. Notwithstanding anything to the contrary set forth in this License Agreement, if any such lien is not released and removed within thirty (30) days, PG&E at its sole option, may immediately take all actions necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including attorneys' fees and costs, incurred by PG&E in connection with such lien shall be due and payable by Licensee within thirty (30) days after receipt of a written demand therefor, accompanied by reasonable supporting documentation.

10. Notices. Any notices or communications hereunder shall be in writing and shall be personally delivered, or sent by first class mail, certified or registered, postage prepaid, or by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at the address or addresses listed below, or to such other address or addresses as such party may from time to time designate in writing. Notices shall be deemed received upon actual receipt or refusal of the notice by the party being sent the notice.

If to PG&E by standard U.S. mail or by registered or certified mail, return receipt requested:

Manager, Land Management  
PG&E Land Management  
2730 Gateway Oaks Drive  
Room 220  
Sacramento, CA 95833  
Telephone: (916) 923-7071

With a copy to:

Law Department  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120  
Attn: Senior Director & Lead Counsel, Corporate and Commercial Group  
(Real Estate)  
Telephone: (415) 973-4377

And a copy to PG&E's Representative at the address set forth above

And a copy to:

James Struhs  
Environmental Affairs  
Pacific Gas and Electric Company  
1108 Murphys Grade Road,  
Angels Camp, CA 95222  
Telephone: (209) 736-6608

If to PG&E by personal delivery or overnight courier:

Manager, Land Management  
PG&E Land Management  
2730 Gateway Oaks Drive  
Room 220  
Sacramento, CA 95833  
Telephone: (916) 923-7071

With a copy to:

Law Department  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120  
Attn: Senior Director & Lead Counsel, Corporate and Commercial Group  
(Real Estate)  
Telephone: (415) 973-4377

And a copy to PG&E's Representative at the address set forth above

And a copy to:

James Struhs

Environmental Affairs  
Pacific Gas and Electric Company  
1108 Murphys Grade Road,  
Angels Camp, CA 95222  
Telephone: (209) 736-6608

If to Licensee:

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

11. Governing Law. This License Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

12. Entire Agreement. Without limiting the continued effectiveness of the Transaction Agreement or that certain Confidential Information Exchange and Nondisclosure Agreement between Licensee and PG&E, this License Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This License Agreement may not be amended except by a written agreement executed by both parties.

13. Binding Effect. This License Agreement and the covenants and agreements herein contained shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns, subject to the limitations on assignment set forth in this License Agreement.

14. Assignment. This License Agreement is personal to Licensee, and Licensee shall not assign, transfer, convey or encumber the license and other rights herein granted or any portion thereof or interest herein.

15. Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, and including any appeal thereof, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings, and bankruptcy litigation. The non-prevailing party shall also pay the attorney's fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this License Agreement. For purposes hereof, the reasonable fees of PG&E's in-house attorneys who perform services in connection with any such

action shall be recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by PG&E's Law Department.

16. No Waiver. Any waiver with respect to any provision of this License Agreement shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this License Agreement by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this License Agreement.

17. No Offsets. Licensee acknowledges that PG&E is executing this License Agreement in its capacity as the owner of real property, and not in its capacity as a public utility company or provider of electricity and natural gas. Notwithstanding anything to the contrary contained herein, no act or omission of PG&E or its employees, agents or contractors as a provider of electricity and natural gas shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of PG&E and Licensee under this License Agreement. Further, Licensee covenants not to raise as a defense to Licensee's obligations under this License Agreement, or assert as a counterclaim or cross-claim in any litigation or arbitration between PG&E and Licensee relating to this License Agreement, any claim, loss, damage, cause of action, liability, cost or expense (including, without limitation, attorneys' fees) arising from or in connection with PG&E's provision of (or failure to provide) electricity and natural gas.

18. No Dedication; No Third Party Beneficiary. Nothing herein contained shall be deemed to be a gift or dedication of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. The right of the public or any person, including Licensee and Licensee's Representatives, to make any use whatsoever of the License Area or any portion thereof, other than as expressly permitted herein or as expressly allowed by a recorded map, agreement, deed or dedication, is by permission and is subject to the control of PG&E in its sole and absolute discretion. The provisions of this License Agreement are for the exclusive benefit of the parties and their successors and assigns, and shall not be deemed to confer any rights upon any person, except such parties and their successors and assigns, subject to the limitations on assignment set forth in this License Agreement. No obligation of a party under this License Agreement is enforceable by, or is for the benefit of, any other third parties.

19. Captions. The captions in this License Agreement are for reference only and shall in no way define or interpret any provision hereof.

20. Time. Except as otherwise expressly provided herein, the parties agree that as to any obligation or action to be performed hereunder, time is of the essence.

21. Severability. If any provision of this License Agreement shall be invalid or unenforceable, the remainder of this License Agreement shall not be affected thereby, and each provision of this License Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this License Agreement can be determined and effectuated.

22. Counterparts. This License Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

23. Survival. The waivers of claims or rights, the releases and the obligations of Licensee under this License Agreement to indemnify, protect, defend and hold harmless PG&E and other Indemnitees shall survive the expiration or earlier termination of this License Agreement, and so shall all other obligations or agreements of PG&E and Licensee hereunder which by their terms survive the expiration or earlier termination of this License Agreement.

24. Authority; Execution; Conditions to Effectiveness. The parties and the individuals executing this License Agreement on behalf of the parties, each represent, by executing this License Agreement, that he or she is duly authorized to do so and to bind the respective party to its terms. The submission of this License Agreement for examination or execution does not constitute an approval of the terms herein, or an offer to license the License Area in accordance with the terms and conditions contained herein, and this License Agreement shall not become effective unless and until it has been executed and delivered by both PG&E and Licensee, and Licensee delivers to PG&E current proof of insurance for Licensee and Licensee’s Representatives as set forth in Section 8 above.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the date set forth below each signature, effective upon the Effective Date first written above.

“PG&E”  
  
PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

“Licensee”  
  
AUBURN RECREATION AND PARK  
DISTRICT,  
a 

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

EXHIBITS “A” and “B” attached

**EXHIBIT A**  
**THE LICENSE AREA**



## EXHIBIT B

### INSURANCE REQUIREMENTS

Licensee shall procure and maintain the following insurance coverage, and Licensee is also responsible for the compliance of Licensee's contractors, consultants, representatives, and agents with the following insurance requirements:

A. Workers' Compensation and Employers' Liability

1. Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal.
2. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000) each accident for injury or death.

B. Commercial General Liability

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.
2. The limit shall not be less than Two Million Dollars (\$2,000,000) each occurrence/ Four Million Dollars (\$4,000,000) aggregate for bodily injury, property damage and personal injury. In addition, such insurance shall insure the performance by Licensee of its indemnity and other contractual obligations under the License Agreement.
3. Coverage shall (a) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of work performed by or for the Licensee or any other obligation or liability under the License Agreement, and (b) be endorsed to specify that the Licensee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute to it.

C. Business Auto

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."
2. The limit shall not be less than Two Million Dollars (\$2,000,000) each accident for bodily injury and property damage.

D. Additional Insurance Provisions

1. Upon execution of the License Agreement, Licensee shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Licensee.

**LCC - Non-Invasive Investigation License (Rev. 10/11/11)**

2. The documentation shall state that coverage shall not be changed, cancelled, terminated, failed to be renewed or lapsed, except after thirty (30) days prior written notice has been given to PG&E.
3. PG&E may inspect the original policies or require complete certified copies, at any time.
4. Should Licensee have the right under this License Agreement to self-insure for any required insurance, Licensee shall be liable to PG&E for the full equivalent of insurance coverage which would have been available to PG&E if the applicable insurance policies had been obtained by Licensee from a third party insurer, in full compliance with the provisions of this EXHIBIT "B", and shall pay on behalf of or indemnify PG&E for all amounts which would have been payable by the third party insurer. In addition, Licensee shall act with the same promptness and subject to the same standards of good faith as would apply to a third party insurance company.

**EXHIBIT D**

**LICENSE TERMINATION AGREEMENT**

This License Termination Agreement (this "**Agreement**") dated as of \_\_\_\_\_, \_\_\_\_\_ is made by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("**Licensor**"), and the AUBURN RECREATION AND PARK DISTRICT, a [\_\_\_\_\_] ("**Licensee**").

**RECITALS:**

A. Licensor and Licensee are parties to that certain License Agreement executed January 18, 2001 (the "**License**").

B. The License relates to certain land located in the County of Placer, State of California, and more particularly described in the License (the "**Premises**").

C. Licensor, Licensee and Placer County Land Trust, [a California non-profit public benefit corporation] are parties to that certain Transaction Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ (the "**Transaction Agreement**"), pursuant to which Licensor has agreed to convey to Licensee, and Licensee has agreed to accept, fee title to the Premises [and additional real property].

D. Concurrently with Licensor's conveyance to Licensee of the Premises pursuant to the Transaction Agreement, Licensor and Licensee desire to terminate the License in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the respective promises and covenants of the parties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. Incorporation of Recitals; Definitions. Licensor and Licensee acknowledge that the foregoing Recitals A through D are true and correct and form the basis for this Agreement. Unless otherwise defined herein, the capitalized words and terms used in this Agreement shall have the meanings ascribed to them in the Transaction Agreement.

2. Termination. Licensor and Licensee hereby terminate the License as of the date and time of the Closing Date under the Transaction Agreement (the "**Termination Date**"). From and after the date on which the License is terminated in accordance with this Agreement, Licensee and Licensor shall have no further rights, obligations, or claims with respect to each other arising under the License, except for any obligations of Licensee under the License which by their terms expressly survive the termination of the License, and except for obligations arising under this Agreement. This Agreement shall in no way limit, expand, modify or otherwise affect the rights and obligations of Licensor and Licensee under the Transaction Agreement, the Grant

Deed, the Fee Licensee Environmental Agreement, or any other agreement entered into between Licensor and Licensee pursuant to or in connection with the Transaction Agreement (collectively, the "**Transaction Documents**").

3. Representations, Warranties, and Covenants of Licensee. Licensee represents, warrants, and covenants that:

(a) Licensee is the current "Licensee" under the License and is the sole holder of the license interest created under the License.

(b) Licensee has not voluntarily, by operation of law or otherwise: (i) previously assigned the License or any of the interest of the "Licensee" therein; (ii) previously sublicensed the Premises or any part thereof; (iii) hypothecated, mortgaged or granted any security interest in the leasehold estate created under the License; (iv) created any lien or encumbrance upon the leasehold estate created under the License; or (v) divested itself of the license interest created under the License.

(c) The License is in full force and effect and has not been previously amended except as noted above.

(d) Licensee has performed all of the obligations of the "Licensee" under the License, and there are no events or conditions which, with the giving of notice or the elapse of any cure period, or both, required under the License would constitute a breach or default by Licensee under the License.

(e) Licensor has performed all of the obligations of the "PG&E" under the License, and there are no events or conditions which, with the giving of notice or the elapse of any cure period, or both, required under the License would constitute a breach or default by Licensor under the License.

(f) Licensee has no claims, rights of set off, actions, causes of action or demands against Licensor arising out of, related to or connected with the License or the Premises.

4. Release.

(a) Without limiting any of the Transaction Documents, Licensee, for itself, and for any future owners of all or a part of the Premises, and each of their respective predecessors, successors, assigns, licensees, officers, directors, employees, agents, partners, shareholders, transferees, parent and subsidiary corporations, legal representatives, heirs, beneficiaries, executors and administrators (together with Licensee, "**Releasing Parties**") hereby fully and forever releases, exonerates, discharges and covenants not to sue Licensor and/or each and all of its past, present and future officers, directors, partners, employees, agents, representatives, shareholders, attorneys, affiliates, parent and subsidiary corporations, divisions, insurance carriers, heirs, legal representatives, beneficiaries, executors, administrators, predecessors, transferees, successors (including, without limitation, lenders who become successors-in-title) and assigns (hereinafter "**Released Parties**") of, from and

for any and all losses (including diminution in the value of the Premises and other consequential damages), costs, claims, demands, actions, suits, orders, causes of action, obligations, controversies, debts, expenses, accounts, damages, judgments and liabilities of whatever kind or nature, and by whomsoever asserted, in law, equity or otherwise (each a "**Claim**" and, collectively, "**Claims**") that the Releasing Parties or the Premises may suffer or claim to suffer, based in whole or in part on, arising out of, or connected with, either directly or indirectly, any term, provision, matter, fact, event or occurrence related to the License, or related to any licensor/licensee relationship between Licensee and Licensor.

(b) Licensee represents and warrants to Licensor that it is the sole and lawful owner of all right, title and interest in and to every Claim that Licensee purports to release herein, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm, association, corporation or other entity, any right, title or interest in any such Claim. In the event that such representation is false, and any such Claim is asserted against any of the Released Parties, by any party or entity who is the assignee or transferee of such Claim, then Licensee shall fully indemnify, defend and hold harmless the Released Party against whom such Claim is asserted from and against such Claim and from all actual costs, fees, expenses, liabilities and damages that that party incurs as a result of the assertion of such Claim.

(c) Licensee acknowledges that it may hereinafter discover facts different from or in addition to those that it now knows or believes to be true with respect to the matters which are the subject of this Agreement, and agrees that this Agreement shall remain in effect in all respects, notwithstanding the discovery of such different or additional facts. In addition, Licensee understands and agrees that its agreements and covenants contained in this Agreement extend to all claims of any nature and kind, known or unknown, suspected or unsuspected, based in whole or in part on facts existing in the past or as of the date hereof, and in that regard, Licensee acknowledges that it has read, considered and understands the provisions of Section 1542 of the California Civil Code which reads as follows:

Section 1542. General Release

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

(d) Based upon the advice of its counsel, Licensee knowingly and voluntarily waives and relinquishes any and all rights that it may have under Section 1542 as well as under the provisions of all comparable, equivalent, or similar statutes and principles of common law or other decisional law of any and all states of the United States or of the United States. Licensee understands and acknowledges the significance and consequences of this waiver and hereby assumes the risk of any injuries, losses or damages that may arise from such waiver.

5. No Security Deposit. Licensee hereby confirms that no security deposit is held by Licensor in connection with the License.

6. Miscellaneous.

(a) In the event that either party shall bring an action to enforce its rights under this Agreement, or relating to the interpretation hereof, whether for declaratory or other relief, the prevailing party in any such proceeding shall be entitled to recover from the other party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing party incurred in connection with such proceeding and any appeal thereof (including, but not limited to, the reasonable costs of discovery, investigation, preparation for trial, professional or expert consultation and testimony). Licensee shall also pay all attorneys' fees and costs Licensor incurs in defending this Agreement or otherwise protecting Licensor's rights in any voluntary or involuntary bankruptcy case, assignment for the benefit of creditors, or other insolvency, liquidation or reorganization proceeding involving Licensee or this Agreement, including all motions and proceedings related to relief from an automatic stay, lease assumption or rejection, use of cash collateral, claim objections, disclosure statements and plans of reorganization. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The non-prevailing party shall also pay the attorneys' fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. Any such fees and costs incurred prior to judgment, award, or decree may be included in any judgment, award or decree entered in such proceeding in favor of the prevailing party. Any such fees, costs and expenses incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Licensee and Licensor. No transfer of an interest in the Premises or this Agreement by Licensee or its assignees shall operate to relieve Licensee of its obligations hereunder. This Agreement shall not create or bestow any right in any third party. Licensee and Licensor agree that no third party beneficiary to this Agreement exists and that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

(c) This Agreement shall not constitute or be construed as an admission of liability or fact by Licensor or Licensee for any purpose whatsoever.

(d) Each party agrees to execute, acknowledge and deliver to the other party all documents, and shall take all actions reasonably required by the other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Agreement.

(e) Time is of the essence of this Agreement.

(f) This Agreement shall be governed by the laws of the State of California.

(g) Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, and the validity of the remainder shall remain unaffected.

(h) This Agreement sets forth the entire understanding of Licensee and Licensor in connection with the subject matter hereof. The obligations of each party under this Agreement may not be altered or amended in any respect except by a writing executed by both Licensee and Licensor. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**LICENSOR:**

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

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

Its: \_\_\_\_\_

**LICENSEE:**

AUBURN RECREATION AND PARK DISTRICT,  
a [\_\_\_\_\_]

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

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

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



CONFIDENTIAL INFORMATION EXCHANGE  
AND  
NONDISCLOSURE AGREEMENT

THIS AGREEMENT is effective as of the \_\_\_\_ day of \_\_\_\_\_ (the "Effective Date"), 200\_\_\_\_, by and between Pacific Gas and Electric Company, a California corporation ("Company"), and Auburn Recreation and Park District, a \_\_\_\_\_ (the "Receiving Party"). Company and the Receiving Party are collectively referred to herein as the "Parties," or individually as a "Party."

In consideration of the mutual covenants set forth below, the Parties hereby agree as follows:

1. "Confidential Information" shall mean any and all agreements and associated documents (regardless of whether such agreement(s) and associated documents are executed or in draft form), tests, reports, documents, analyses, and opinions, technical, financial, business and other information of any kind whatsoever, provided to Receiving Party by or on behalf of the Company, its parent company, its subsidiaries or affiliates and/or third parties, including the Pacific Forest and Watershed Lands Stewardship Council (the "Council"), that are related to the purpose of this Agreement as defined in paragraph 2 and that are marked as confidential or accompanied by a cover letter or other transmittal document indicating such writing or some or all of the information therein is to be treated as Confidential Information. Confidential Information shall not include information that as evidenced through written documentation:

(a) was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement by the Receiving Party;

(b) was or becomes known by the Receiving Party at the time of disclosure on a non-confidential basis from a source, other than the Company or the

Council, lawfully having possession of and the right to disclose such information;

(c) is disclosed with the prior written approval of the Company; or

(d) is used or disclosed pursuant to a court order, subpoena or other lawful order of a court or governmental authority of competent jurisdiction in accordance with paragraph 5 below.

2. The purpose of this Agreement (the "Purpose") is to permit the Company to transmit or exchange Confidential Information to or with the Receiving Party hereto for the purpose Receiving Party's evaluation and review of such Confidential Information in connection with Receiving Party's intended acceptance of a real property interest in the real property located in Placer County, California, identified as Assessor's Parcel Number 077-050-044-000 and State Board of Equalization Numbers 135-31-73E-1 (the "Property").

3. Subject to paragraph 5 hereof, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Receiving Party, the Receiving Party agrees to keep the Confidential Information in strict confidence and not disclose such Confidential Information to third parties or any other persons except employees, agents, consultants, or subcontractors of the Receiving Party with a "need to know" in order to accomplish the Purpose stated above, and provided that such third parties shall first have agreed in writing to be bound by a materially similar obligation of confidentiality with respect to such Confidential Information as to which the Receiving Party is bound. The Receiving Party shall keep the Confidential Information in a safe and secure location. In the event that the Receiving Party learns of a disclosure or use of the Confidential Information not permitted under this Agreement, or reasonably believes such disclosure or use to have occurred, the Receiving Party shall immediately

notify the Company in writing and shall cooperate with the Company in every reasonable way to help the Company regain possession of such Confidential Information and to prevent its further unauthorized use.

4. The Receiving Party shall use any Confidential Information received hereunder only for use consistent with the Purpose.

5. Notwithstanding the foregoing, the Receiving Party shall have the right to disclose Confidential Information to the extent legally compelled by public notice requirements (if Receiving Party is a governmental entity), deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process, provided that the Receiving Party shall give the Company prompt written notice and sufficient opportunity to object to such use or disclosure, or to request confidential treatment of the Confidential Information and provided further that in the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the terms hereof, the Receiving Party agrees to provide only that limited portion of the Confidential Information that it is advised by written opinion of Receiving Party's counsel is legally required and to exercise reasonable efforts to obtain written assurances that confidential treatment will be accorded the Confidential Information.

6. The Receiving Party hereby acknowledges that the Company is the owner or licensee of the Company's Confidential Information. Nothing contained in this Agreement will be construed as obligating the Company to disclose Confidential Information, or as granting to or conferring on the Receiving Party, expressly or by implication, any rights or license to the Company's Confidential Information.

7. The Receiving Party is aware, and will advise its representatives who are informed of the matters that are the subject of this Agreement, of the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities and on the communication of such information to any other person when it is

reasonably foreseeable that such other person is likely to purchase or sell such securities in reliance upon such information. Subject to Section 5, the Receiving Party will not disclose any information or make any news release, advertisement, public communication, response to media inquiry or other public statement regarding this Agreement, the Confidential Information disclosed, the Purpose, and/or potential commercial relationship between the Parties, or the performance hereunder without the prior written consent of the Company. The Receiving Party will not make any reference to the Company or to the existence of this Agreement in any advertising or other publication (except for confidential, internal company publications), without the prior written consent of the Company, and the Receiving Party will not associate or in any way connect its name, trademark or any other intellectual property right to any name, trademark or any other intellectual property right of the Company without the Company's prior written consent. The fact that the Parties have entered into this Agreement does not constitute, nor does it imply in any way, endorsement by one Party of the other, and neither Party will indicate or imply that the other Party endorses, recommends, or vouches for it in any form of written, verbal, or electronic advertisement, communication, or any other business development effort, without the other Party's prior written consent.

8. All of the Receiving Party's duties of confidentiality and non-use shall, with respect to Confidential Information, continue until such time that Confidential Information is no longer deemed confidential by PG&E or falls within one of the exceptions set forth in Section 1.

9. Upon the Company's request, if the conveyance does not close in accordance with the terms of the Transaction Agreement, the Receiving Party shall promptly return to the Company hereunder any and all Confidential Information, including all written material, photographs, models, compounds, compositions and the like made available or supplied by the Company to the Receiving Party, and all copies and derivatives thereof, unless otherwise instructed in writing by the Company. Without limiting the foregoing, , if the conveyance does not close in accordance with the terms of the Transaction Agreement, the Receiving Party shall return all

Confidential Information provided upon completion of the Purpose unless otherwise agreed upon by the Parties in writing.

10. Without limiting the Receiving Party's ability to participate in meetings, hearings or other proceedings that are open to the public, the Receiving Party shall contact state or federal officials and representatives, regarding the Property only with the prior written consent of the Company and, if the Company so elects, only if the Receiving Party is accompanied by the Company's designated representative for the Property.

11. The Receiving Party agrees that, in addition to whatever remedies may be available to the Company under applicable law, the Company shall be entitled to obtain injunctive relief with respect to any actual or threatened violation of this Agreement by the Receiving Party. It is further understood and agreed that no failure or delay by the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

12. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, and including any appeal thereof, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings, and bankruptcy litigation. The non-prevailing party shall also pay the attorney's fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding

sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement. For purposes hereof, the reasonable fees of Company's in-house attorneys who perform services in connection with any such action shall be recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by Company's Law Department.

13. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.

14. This Agreement shall be binding upon the Parties, their successors, and assigns. Neither Party shall assign this Agreement nor any Confidential Information received from the other Party pursuant to this Agreement without the other Party's prior written consent.

15. This Agreement contains the entire understanding between the Parties with respect to Confidential Information received hereunder. No change, modification, or waiver of this Agreement shall be made effective unless in writing and signed by an authorized representative of each Party.

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

17. The covenants and agreements set forth in this Agreement are each deemed separate and independent, and if any such covenant or agreement is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason,

including without limitation by reason of such covenant or agreement extending for too great a period of time or over too great a geographical area, or by reason of its being too extensive in any other respect, such covenant or agreement, to the specific extent that it is unenforceable, shall be deemed automatically deleted from this Agreement and shall be interpreted to extend only over the maximum period of time and geographical area, and to the maximum extent in all other respects, as to which it is valid and enforceable, in order to effectuate the Parties' intent to the greatest extent possible. Any such deletion or interpretation shall have no effect on the validity or enforceability of any remaining provision of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized representatives as of the date set forth above.

<b>Pacific Gas and Electric Company</b>
By: _____
Printed: _____
Title: _____
Date: _____

<b>Auburn Recreation and Park District,</b> a _____
By: _____
Printed: _____
Title: _____
Date: _____

Recorded at the request of, and  
when recorded return to:

Placer Land Trust  
Attn: Executive Director  
11661 Blocker Drive, Suite 110  
Auburn, CA 95603

---

**DEED OF CONSERVATION EASEMENT**  
**(ARD PROPERTY, Placer County)**

**Comment [JAD1]:** ARD may want to consider providing a colloquial property name, or we could call it "ARD Bell Road Property" or something generic like that.

On this \_\_\_\_\_ day of \_\_\_\_\_, **the Auburn Recreation and Park District, a** \_\_\_\_\_ having an address at \_\_\_\_\_ (hereinafter the "**Grantor**"), for full and fair consideration paid, hereby grant to Placer Land Trust, a California nonprofit public benefit corporation, having an address at 11661 Blocker Drive, Suite 110, Auburn, CA, 95603 (hereinafter the "**Grantee**") the following described conservation easement (hereinafter the "**Easement**") on real estate in the County of Placer in the State of California, designated as Placer County Assessor's Parcel Number \_\_\_\_\_, and more particularly described in Exhibit A, attached hereto and made a part hereof by reference (hereinafter the "**Property**"); exclusively for the purpose as follows:

1. **PURPOSE.** The purpose of this Easement is as follows (hereinafter the "**Purpose**"): (a) to ensure that the Property, with the exception of \_\_\_\_\_ as described in Recital L herein, will be retained in perpetuity in its natural, scenic, forested, recreational, agricultural, or open space condition; and (b) to prevent any use of the Property that will significantly impair the Conservation Values as described in Recital F herein. Grantor and Grantee intend that this Easement will confine the use of the Property only to such activities that are consistent with the purposes and terms of this Easement.
2. **RECITALS.** The following recitals are incorporated in this Easement.
  - A. The Grantor is the sole owner in fee simple of the Property, which consists of approximately \_\_\_\_\_ acres of land with \_\_\_\_\_ structures.
  - B. Grantee is a publicly supported, tax-exempt nonprofit public benefit organization under Section 501(c)(3) and qualified to acquire and hold conservation easements for public benefit under Section 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (hereinafter the "**Internal Revenue Code**"). Grantee is also qualified to acquire and hold conservation easements in California under Sections 815 and 816 of the California Civil Code. Grantee's

primary purpose is the preservation of natural and agricultural land in Placer County.

- C. Pacific Gas and Electric Company, a public utility corporation (hereinafter “**PG&E**”), transferred to Grantor fee title in the Property in accordance with that certain Grant Deed, recorded in the Official Records of the County of \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, as Instrument Number \_\_\_\_\_ (hereinafter the “**Grant Deed**”), attached hereto as Exhibit and incorporated herein by reference, subject to (1) PG&E’s reservation of certain rights in and to the Property, as set forth in the Grant Deed (hereinafter “**PG&E Reserved Rights**”), and (2) those legally-enforceable third-party rights to use the Property in effect as of the Effective Date, as listed on Exhibit attached hereto and incorporated herein by reference (hereinafter the “**Existing Third-Party Uses**”).
- D. PG&E transferred fee title to the Property to Grantor in connection with PG&E’s implementation of the “Land Conservation Commitment,” defined below, provided for in the following documents and described more fully below:
- (a) That certain Settlement Agreement (hereinafter the “**Settlement Agreement**”) as modified and approved by the Public Utilities Commission of the State of California (hereinafter the “**Commission**”) in its Opinion and Order of December 18, 2003 (Decision 03-12-035); and
  - (b) That certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (hereinafter the “**Stipulation**”).
- E. The Settlement Agreement and the Stipulation (hereinafter, collectively, the “**Governing Documents**”) require PG&E to ensure that approximately 140,000 acres of watershed lands, all located in California and owned by PG&E as of the date the Governing Documents were entered into (hereinafter, collectively, the “**Watershed Lands**”), are conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values (hereinafter, collectively, the “**Beneficial Public Values**” or “**BPVs**”). A Land Conservation Commitment constitutes the obligations of PG&E to convey fee title and conservation easements to Watershed Lands, and to protect the Beneficial Public Values of the Watershed Lands, as well as certain other obligations related thereto (hereinafter the “**Land Conservation Commitment**”), as set forth in detail in the Governing Documents.
- F. The Property is included in the Watershed Lands, and contains significant natural values of great importance to Grantor, Grantee, the people of Placer County and the State of California. The Property includes the specific Beneficial Public Values identified on Exhibit attached hereto and incorporated herein by reference (hereinafter, collectively, the “**Conservation Values**”). The Conservation Values are further described in the *Baseline Documentation Report for \_\_\_\_\_, Placer County*, dated \_\_\_\_\_, incorporated by this reference and on file in the office of the Grantee (hereinafter the “**Baseline Documentation Report**”), which consists of reports, maps, photographs, and other documentation that the Grantor and Grantee agree provide, collectively, an accurate representation of the Property and the existing Beneficial

Public Values at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement.

- G. The protection of the Property is consistent with multiple goals and objectives of the State of California. The Legislature of the State of California, as set forth in California Civil Code section 815 et seq., has found and declared it to be the public policy and in the public interest of this state to encourage the preservation of land predominantly in its natural, scenic, agricultural, historical, forested, or open space condition.
- H. The protection of the Property is consistent with the County of Placer’s public policy to “protect and conserve open space, natural resources and agricultural lands throughout the county” and is consistent with the goals of the Placer County General Plan (1994) and the Placer Legacy Open Space and Agricultural Conservation Program (2000).
- I. The Governing Documents require that conservation easements include an express reservation of a right for continued operation and maintenance of hydroelectric facilities and associated water delivery facilities, including, project replacements and improvements required to meet existing and future water delivery requirements for power generation and consumptive water use by existing users, compliance with any Federal Energy Regulatory Commission (hereinafter the “FERC”) license, FERC license renewal or other regulatory requirements.
- J. The Governing Documents also include a requirement that conservation easements encumbering Watershed Lands honor existing agreements for economic uses, including consumptive water deliveries.
- K. Pursuant to the Governing Documents, the Pacific Forest and Watershed Lands Stewardship Council, a California nonprofit public benefit corporation (hereinafter the “**Stewardship Council**”), was created to oversee and carry out the Land Conservation Commitment. Pursuant to the Governing Documents, the Stewardship Council developed a plan for protection of the Watershed Lands for the benefit of the citizens of California (hereinafter the “**Land Conservation Plan**” or “**LCP**”). The LCP includes, among other things, objectives to preserve and/or enhance the Beneficial Public Values identified on each parcel of Watershed Lands, including the Property.
- L. Grantor and Grantee each desires through this Easement to ensure the permanent protection of the Conservation Values on the Property, subject to PG&E’s Reserved Rights and the Existing Third-Party Uses, and, with the exception of \_\_\_\_\_, as further described and depicted in Exhibit \_\_\_\_\_, attached hereto and made a part hereof by reference (hereinafter the “**Building Envelope**” or “**Hydro Zone**” or \_\_\_\_\_). Grantor and Grantee further intend (a) to honor Existing Third-Party Uses as described in Exhibit \_\_\_\_\_ and (b) to continue to permit compatible and beneficial uses of the Property including but not limited to outdoor recreation by the general public, cultural resource utilization, and sustainable forestry and agricultural practices. While Existing Third-Party Uses do not supersede the Purpose, it is intended that this Easement shall allow

**Comment [JAD2]:** ARD and PG&E need to determine if a Building Envelope or Hydro Zone is necessary. PLT does not currently see the need for either. For now, I have left these references in the easement (until we can customize them if needed, or delete them if not).



uses on the Property that are consistent with the protection and preservation of each of the Beneficial Public Values in harmony with each other. While permitted actions required or taken to protect and preserve one or more individual Conservation Values may impair, on an individual and stand-alone basis, one or more other Beneficial Public Values, Landowner and Easement Holder understand that achieving the Conservation Purposes requires the preservation and protection, on balance, of all of the Beneficial Public Values actually existing on the Property, to the extent possible. It is recognized that in protecting and/or enhancing one or more of the Beneficial Public Values, another Beneficial Public Value may be impaired, but this is not meant to be a permanent occurrence, nor a reason to re-prioritize one Beneficial Public over another. All attempts should be made to balance on a collective basis, the whole Property whenever possible. This Easement prohibits use of the Property for any purpose that would impair, degrade or interfere with the Conservation Purposes on a collective, not individual basis, taking into account the relative condition and quality of each of the Beneficial Public Values on the Property as of the date of this Easement.

M. In furtherance of the Land Conservation Commitment and the above-described public policy purposes, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity according to the terms and conditions of this Easement.

### 3. INCORPORATION OF PURPOSE AND RECITALS.

NOW THEREFORE, in consideration of the foregoing Purpose and Recitals, for the benefit of the general public, and pursuant to the laws of the State of California; the Grantor and Grantee have established this Easement on, over, and across the Property consisting of the foregoing Purpose and Recitals and the following terms, covenants, restrictions, conditions, exhibits, and affirmative rights that the Grantor has voluntarily granted to Grantee, which shall run with and bind the Property in perpetuity.

### 4. RESTRICTIONS AND RESERVED RIGHTS. To further accomplish the Purpose of this Easement, the Grantor and Grantee agree to the following restrictions and reserved rights.

4.1 **Subdivision.** The Property shall remain in unified ownership, which may be joint or undivided, but without division, subdivision, partition or other legal or *de facto* creation of lots or parcels in separate ownership. The foregoing does not prohibit the lease of all or a portion of the Property if otherwise consistent with the terms of this Easement.

4.2 **Development.** No new structures of any kind, temporary or permanent, may be constructed, located, placed, or installed on the Property, with the following exceptions.

- (a) Existing \_\_\_\_\_ / Building Envelope / Hydro Zone, as defined in Exhibit \_\_\_\_\_. Grantor reserves to itself and its successors and assigns the right to maintain, alter or remove structures within the Existing \_\_\_\_\_ / Hydro Zone, or the right to construct, maintain, alter, improve, remove, and replace structures within the Building Envelope / Hydro Zone as it may be created in the future, including a maximum of \_\_\_\_\_, as set forth and limited by the terms and conditions in

Exhibit

- (b) ~~Ranch Recreational and Maintenance~~ Structures and Improvements. Grantor reserves to itself and its successors and assigns the right to construct, erect, maintain, alter, improve, remove, and replace ~~agricultural-recreational~~ and maintenance structures and improvements that are necessary to facilitate the ~~agricultural-recreational~~ use of the Property as part of the BPVs, and that are specifically allowed and described in the Management Plan, ~~including such as:~~ fences, gates, ~~corrals, pens, barns, beehives, concrete slabs,~~ shade structures, picnic shelters, picnic tables, benches, playgrounds, restrooms, maintenance/storage facilities, interpretive kiosks and displays, roadways, sidewalks, curbs, gutters, parking lots, lighting, irrigation systems, sewer and storm water systems required by local jurisdictions, hardscape or natural trails, boardwalks and bridges.
- (c) Property Signage. Property signage as required by PG&E, Commission. Grantor or Grantee to acknowledge persons or organizations contributing funds or approval for the purchase of the Easement or the protection of the Property (~~hereinafter, individually or collectively, "Funders"~~) is allowed as generally described in the Management Plan. Signs on exterior fence lines deterring trespassing or clarifying allowed or prohibited uses, and signs as needed for Americans with Disabilities Act compliance or for public health and safety, are allowed.

**4.3 Transfer of Rights.** All rights to develop or use the Property that are prohibited or inconsistent with this Easement are extinguished, and cannot be used now or in the future to use or transfer development rights to other land not subject to this Easement, or to permit, entitle or otherwise facilitate increased development density or increased natural resource use or extraction on other land not subject to this Easement.

**4.4 Land Use.** Land uses that significantly impair the Conservation Values of the Property or are inconsistent with the purpose of this Easement are prohibited. Without limiting the generality of the foregoing, the following land uses and activities on the Property are expressly prohibited:

- (a) Industrial activity. Any and all industrial activity on the Property is prohibited.
- (b) Mining and excavation activity. Mining and the removal or extraction of soil or minerals from the Property is prohibited. Filling, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes, is prohibited. However, Grantor reserves the right to permit limited excavation of the surface of the Property to create recreational and maintenance structures and improvements as described in Section 4.2(b) above, or for ecological or scientific research or archaeological investigation, if conducted under then current generally accepted professional standards without adverse impact to the Conservation Values.
- (c) Commercial activity. Any and all commercial activity on the Property is prohibited.

- (d) ~~Planting, introduction or dispersal of non-native invasive plant or animal species. This prohibition shall not apply to non-native animals (including but not limited to cattle, sheep, goats, dogs, insects used for biological control) and non-native livestock feed (such as alfalfa and hay) that may be an integral part of the Grantor's management of the property, subject to the Management Plan.~~
- (e) ~~Overgrazing. Overgrazing, as further defined in the Management Plan, is prohibited.~~
- (f) ~~Tree Cutting. This Easement shall not prohibit the Grantor from cutting or removing trees from within the Building Envelope or along a driveway to access the Building Envelope as described in Exhibit \_\_\_\_, nor shall this Easement prohibit the Grantor from cutting or removing trees as reasonably necessary to control insects and disease and to prevent personal injury, property damage or wildfire, or for post-fire recovery activities. Otherwise, the cutting, removal or harvesting of native trees on the Property is prohibited, except cutting and removal of trees as specifically limited and defined in the Management Plan. The foregoing shall not prohibit the Grantor from developing and, with the prior written approval of the Grantee, implementing a long-range plan for the growing and/or harvesting of trees in a manner that is generally accepted forestry practices and consistent with the agricultural purpose of this Easement. For the purposes of this Easement, "cutting" includes limbing and pruning.~~
- (g) ~~Soil Degradation. Activities and uses otherwise permitted under this Easement, which result in significant degradation in soil quality, are prohibited.~~
- (hc) ~~Motorized-Off-road motorized~~ vehicles. The use of motorized vehicles off of established road is prohibited, except: (i) if by Grantor or under the Grantor's control for property management, or (ii) if the use of motorized vehicles is by Grantee for the purposes of monitoring and enforcing this Easement and the Management Plan.
- (if) ~~Roads. The construction or creation of new roads and the widening of existing roads, for purposes other than creating a roadway and/or parking area for the public to access the Property for recreational use,~~ is prohibited. Maintenance of existing roads is allowed.
- (jg) ~~Dumping. The dumping or accumulation of trash, ashes, garbage, inoperative or unserviceable vehicles, equipment or parts thereof, waste, or other debris on the Property including, without limitation Hazardous Materials, is prohibited. For the purposes of this instrument, "Hazardous Materials" shall mean any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulations, or requirements as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment. This prohibition shall not be construed to prevent the use, storage, or disposal of organic matter or compost that is not detrimental to the Conservation Values. No filling, dumping, excavation, or other alteration may be made to the surface or subsurface of the Property or to its surface~~

waters or wetlands.

- 4.5 Water Quality and Water Protection.** Activities and uses otherwise permitted under this Easement, which result in significant damage or degradation of water quality, are prohibited. Stockpiling animal wastes, compost, loose soil or toxic materials in a manner whereby runoff or leakage adversely affects water quality, is prohibited. Discharge of any septic waste, wastewater, toxic waste, pollution, or other environmentally harmful substances into surface waters, springs or drainages on the Property is prohibited.

Furthermore, specifically regarding the Bear River, activities or uses otherwise permitted under this Easement, which result in significant damage or degradation to the water quality, natural function, or physical condition of the Bear River, are prohibited. Such damaging or degrading activities or uses include, but are not limited to, dams, impoundments, diversions, channelization, excessive sedimentation, excessive nutrient enrichment, and the destruction of native riparian vegetation.

- 4.6 Water and Mineral Rights.** Grantor warrants that the Property includes all surface and subsurface mineral rights, including all mining and quarrying rights and all right to excavate or remove subsurface oil, gas, and other minerals, all geothermal energy rights (hereinafter, collectively the “**Mineral Rights**”). To the best of Grantor’s knowledge, the Property includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on the or otherwise appurtenant to the Property (hereinafter, collectively, the “**Water Rights**”).

Grantor reserves all Water Rights, provided that such Water Rights, if any, are used on the Property in a manner not inconsistent with the purpose and terms of this Easement, and provided that any and all Water Rights necessary to maintain or restore the Conservation Values are used accordingly.

Grantor shall not transfer, encumber, sell, lease, or otherwise separate the Mineral Rights or Water Rights from the Property, or in the case of Water Rights, in any way diminish or reduce the historic use of the Water Rights, without the consent of the Grantee. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of the Grantee.

Grantor may not dam, impound, or alter the channel of the Bear River.

- 4.7 Surface Alterations.** As of the date of this grant, there are surface alterations on the Property, as documented in the Baseline Documentation Report. Any new alteration to the surface of the Property is prohibited, with the exception of the following reserved rights of the Grantor:

- (a) Grantor reserves the right to make new surface alterations reasonably necessary to manage the Property and to create and maintain recreational and maintenance structures and improvements as described in Section 4.2(b) above ~~to maintain~~

~~existing uses of the Property, including surface alterations necessary to access the Property boundary by motorized vehicle to maintain fences and otherwise manage the Property.~~

(b) Subject to Exhibit, the Grantor reserves the right to make surface alterations within the Building Envelope / Hydro Zone and to create a potential future driveway to access the Building Envelope / Hydro Zone.

~~(c) Grantor reserves the right, consistent with the Management Plan and subject to the prior written consent of Grantee, to establish and maintain unpaved and non-motorized footpaths and recreational trails for use by the general public that do not harm the Conservation Values of the Easement.~~

**4.8 Fire Suppression.** This Easement shall not prohibit Grantor from retaining and satisfying the obligation to comply with any applicable local, state, and federal laws regarding the prevention and suppression of wildfire.

**4.9 Express Third Party Uses.** Exhibit hereto describes the existing third party uses of the Property that Grantor and Grantee recognize as permitted uses (hereinafter “**Express Third Party Uses**”). Grantor retains the right to maintain, renew, and replace all agreements memorializing the Express Third Party Uses (hereinafter “**Third Party Use Agreements**”) and to engage in all activities reasonably required to comply with Grantor’s obligations with respect to the Express Third Party Uses, subject to the following conditions:

- (a) Any (i) increase in the intensity, or (ii) expansion of the location or size, or (iii) change in the use, of an Express Third Party Use, whether through a new agreement or an amendment to an existing agreement, that Grantor determines in Grantor’s reasonable discretion exercised in good faith are likely to significantly impair the Conservation Value shall be subject to Grantee’s prior written consent, which consent shall not be unreasonably withheld, conditions or delayed by Grantee.
- (b) All Third Party Use Agreements existing on the Effective Date of this Easement are identified in Exhibit. As Third Party Use Agreements are renewed or replaced, either with an existing or new user, Grantor, in consultation with Grantee, shall include contractual provisions to bring the continuation of the Express Third Party Use and the preservation of the Conservation Values into alignment to the fullest extent reasonably practicable.
- (c) If Grantor or Grantee discovers any default under a Third Party Use Agreement that significantly impairs the Conservation Values (and if Grantee makes such discovery, Grantee gives Grantor written notice thereof), Grantor shall use reasonable efforts to enforce or otherwise remedy such violation, at Grantor’s sole expense.

**4.10 Public Access and Informal Uses.** Grantor and Grantee recognize that the Property has been used by third parties for recreational, cultural, and other non-commercial or

**Comment [JAD3]:** Joe asked about cell towers. I wonder if adding cell towers would overburden these properties with infrastructure, thus significantly minimizing the BPVs. I’m open to discussion.



informal purposes without formal written agreements to conduct such activities (hereinafter “**Informal Uses**”). Grantor and Grantee further recognize that access to the Property is inherent or may be inherent in the enjoyment of the Conservation Values and the Informal Uses. Consistent with the objectives articulated in the Governing Documents to provide continued reasonable access by the public to the Watershed Lands, Grantor shall allow public access to the Property and Informal Uses on the Property that are substantially consistent with the public access and Informal Uses existing on the Effective Date of this Easement. Grantor reserves the right to make reasonable rules and regulations to control, limit, or, as necessary, exclude Informal Uses and public access. Grantor shall not allow Informal Uses that significantly impair the Conservation Values. If Grantor desires to allow new public access or informal uses or expansion of public access or informal uses on the Property, Grantee’s advance written approval is required, which approval shall not be unreasonably withheld.

On an ongoing basis, not less than annually, Grantor shall provide Grantee with information describing the public access and Informal Uses on the Property for the purpose of Grantee’s assessment of Grantor’s compliance with the Easement. This information may be used to update the Management Plan to further ensure the protection of the Conservation Values, and such update could include further control, limitation, or exclusion of Informal Uses necessary to ensure the protection of the Conservation Values.

As outlined in paragraph 5(b) herein, Grantee or its designee may access the Property for purposes of monitoring and enforcing this Easement and the Management Plan. Additionally, with prior approval of Grantor, Grantee or its designee may lead educational tours as allowed, limited, and described in the Management Plan.

Grantor and Grantee claim all of the rights and immunities against liability for injury to the fullest extent allowable by law.

**4.11 PG&E Reserved Rights.** All rights and obligations of Grantor and Grantee under this Easement are subject to the PG&E Reserved Rights specified in the Grant Deed in Exhibit. In the event PG&E notifies Grantor of its intention to exercise any of the PG&E Reserved Rights, Grantor shall notify Grantee, in writing, of said intention within sixty (60) days.

**5. GRANTEE’S AFFIRMATIVE RIGHTS.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- (a) To identify, preserve and protect the Conservation Values, and to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and the Management Plan.
- (b) To access, enter upon, monitor, inspect, observe, and study the Property, including the right to access the Property, including the Building Envelope, by motorized vehicle over and on roads owned by Grantor and any rights-of-way or other access ways now or hereafter available to Grantor for access to the Property, at reasonable times not more

often than four times per year except when necessary to prevent a violation or potential violation of the terms of this Easement or to monitor and observe specific activities to ensure compliance with the terms of this Easement and the Management Plan. Grantor shall provide Grantee with keys, combinations, instructions or other means to open any locked gates that are on the Property and/or that are necessary to access the Property. Grantee will make reasonable efforts to notify Grantor prior to entry onto the Property except when immediately necessary to prevent a violation of the terms of this Easement. Notwithstanding anything to the contrary contained herein, Grantee when entering or traveling on the Property for inspection or monitoring purposes shall be entitled to travel on all existing roads on the Property.

- (c) To prevent any activity on, use of or practice on the Property that is inconsistent with the purpose and terms of this Easement and the Management Plan and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 8 below.
- (d) To require that Grantor's reserved rights be exercised in a manner that avoids unreasonable or significant harm to the Conservation Values.
- (e) To erect and maintain Property signage as defined in the Management Plan.
- (f) To pursue damages from third parties, but not to the exclusion of any right of the Grantor to seek damages or relief from any third party for damage to the Property.

**6. RIGHTS OF LANDOWNER.** In addition to any specific reserved rights set forth in Section 4 above, Grantor reserves to itself, its representatives, assigns, and all future transferees, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that do not significantly impair the Conservation Values, are not expressly prohibited herein, and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following activities and uses are specifically reserved as Grantor's rights as owner of the Property:

- (a) The ownership and right to sell or transfer the Property in its entirety.
- (b) Those rights relative to the Existing \_\_\_\_\_ / Building Envelope / Hydro Zone specified in the Easement.
- (c) The right to control predatory and invasive animals (including feral pigs) by the use of selective control techniques.
- (d) The right to utilize the Property for recreational or educational purposes (including, without limitation, hiking, horseback riding, hunting, and fishing) that are compatible with the protection of the Conservation Values and require or cause no significant surface alteration or other development or impairment of the land.
- (e) All rights for the management and improvement of the Property that are specifically allowed by the Management Plan.

## 7. NOTICE TO GRANTEE, GRANTEE APPROVAL.

- 7.1 Means of Notice.** Any notices to Grantee required in this Easement shall be sent by first class postage prepaid mail, or other courier providing reliable proof of delivery, or served personally to the following person and address, or other person or address as may be hereafter specified:

Placer Land Trust  
Attn: Executive Director  
11661 Blocker Drive, Suite 110  
Auburn, CA 95603

All other communication shall be made by reasonable means under the circumstances, provided that facsimile and electronic mail (hereinafter "E-mail") will not be deemed received unless accompanied by delivery of one of the foregoing methods. For routine communication, Grantee may be contacted by telephone, facsimile, or E-mail as follows:

Telephone: (530) 887-9222  
Facsimile: (530) 888-7720  
E-mail: [info@placerlandtrust.org](mailto:info@placerlandtrust.org)

It shall be the duty and responsibility of the Grantee, or its assigns, representatives or successors to notify the Grantor of any and all change of address to which legal notice is to be directed, in writing, by certified U.S. Mail, or other such equivalent mail delivery, within thirty (30) days of such change. Grantee will also endeavor to inform Grantor of any other changes to its contact information.

- 7.2 Purpose and Content of Notice.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain activities as permitted and limited in Section 4 above, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner consistent with the terms and Purpose of this Easement. Further, the purpose of notice is to prevent Easement violations through a cooperative approach. Notices to Grantee or requests for Grantee consent, required or contemplated hereunder, must include, at a minimum, sufficient information, including the nature, scope, design, location, timetable, and any other material aspect of the proposed activity, in sufficient detail to enable Grantee to determine whether proposed plans are consistent with the requirements of this Easement.
- 7.3 Process of Notice and Approval.** Whenever notice to Grantee is required, and unless otherwise specified to the contrary in this Easement, Grantor shall notify Grantee in writing not less than 30 days prior to the date Grantor intend to undertake the activity in question. Where Grantee's approval is required, as in Section 4 above, Grantee shall grant or withhold its approval in writing within 30 days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement and the protection of the Conservation Values.



**7.4 Failure to Respond.** If Grantee approval is required under the terms of this Easement prior to the exercise of a reserved right that is the subject of the notification and request for approval, failure of Grantee to respond within forty-five (45) days shall be deemed to be approval of any activity not specifically prohibited by or materially inconsistent with this Easement.

**7.5 Transfers of Ownership.** Grantor may transfer of any interest in the Property, including but not limited to any sale, gift, conveyance, or phased transfer subject to Grantee's approval and the conditions herein. Grantor agrees to give written notice to Grantee of the intended transfer at least thirty (30) days prior to the date of the beginning of such transfer. Prior to any such transfer, Grantor shall provide written notice to the prospective transferee(s) that the Property is subject to this Easement, with a copy of this notice provided to Grantee. Prior to Grantor's transfer of the Property, Grantor shall pay, or cause to be paid, to Grantee an unrestricted sum of Ten Thousand Dollars (\$10,000.00) in consideration of the increased cost of Easement stewardship. If Grantor fails to provide the notice and \$10,000.00 as required herein, Grantee may withhold approval of the transfer. Grantor shall provide Grantee with written proof of any transfer of ownership within fifteen (15) days after the date of any such transfer, which notice shall include a certified copy of the grant deed.

## 8. GRANTEE'S REMEDIES.

**8.1 Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor. If the violation has occurred, Grantee has the right and authority to demand corrective action from the party causing the violation, sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

**8.2 Injunctive Relief.** If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. Nothing in this Easement shall be construed to impair Grantee's right to seek temporary or permanent injunctive relief, including emergency relief, *ex parte* as necessary, to enforce the terms of this Easement against a violation or threatened violation hereof.

**8.3 Damages.** Grantee shall be entitled to recover actual damages from Grantor for actions by Grantor in violation of the terms of this Easement or causing injury to any Conservation Values protected by this Easement, including, without limitation, actual

**Comment [JAD4]:** Joe asked about Grantor's remedies and suggested that this whole section should be made reciprocal. I will check with my attorney, but generally conservation easements provide the Grantee with the remedies to correct violations (not the Grantor), so I suspect we need to leave it as is.

damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. In any action brought to enforce the obligations of Grantor under this Agreement, the judgment or decree shall be enforceable as far as the issue of monetary damages only in an amount not exceed the Purchase Price in the aggregate, with the Purchase Price being the amount paid by Grantee to Grantor for this Easement.

- 8.4 Emergency Enforcement.** If Grantee, in its reasonable discretion, determines that immediate action is required to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for the period provided for cure to expire. In the event Grantee takes action pursuant to this Section, Grantee shall as soon as reasonably practical give notice to Grantor of the situation giving rise to the need for immediate action and the action taken and to be taken.
- 8.4 Scope of Relief.** Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 8.2 above, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 8.5 Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor following a breach by Grantor of the terms of this Easement that remains uncured after the expiration of the cure period, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action Grantee shall pay all costs and expenses of suit and reasonable attorneys' fees incurred by Grantor in the defense of such action. Grantor or Grantee, as applicable, shall reimburse the prevailing party for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered through mediation as described in Section 10 below, or as ordered by a court of competent jurisdiction.
- 8.6 Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**8.7 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural environmental causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement caused by earthquake, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In addition, Grantor shall have no liability under this Easement to prevent or remediate any naturally-occurring deterioration or degradation of the Conservation Values or damage to the Property or Conservation Values caused by acts of Grantee or third parties.

**9. NOTICE TO GRANTOR.**

**9.1 Means of Notice.** Any notices to Grantor required in this Easement shall be sent by first class postage prepaid mail, or other courier providing reliable proof of delivery, or served personally to the following person and address, or other person or address as may be hereafter specified:

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

All other communication shall be made by reasonable means under the circumstances. For routine communication, Grantor may be contacted by telephone as follows:

Telephone: \_\_\_\_\_

It shall be the duty and responsibility of the Grantor, or its heirs, assigns, representatives or successors to notify the Grantee of any and all change of address to which legal notice is to be directed, in writing, by certified U.S. Mail, or other such equivalent mail delivery, within 30 days of such change. Grantor will also endeavor to inform Grantee of any other changes to their contact information.

**9.2 Grantor's Designee.** In the event that the Property is ever owned by a trust, business entity, or any common or jointly held ownership, the Grantor shall provide Grantee with written notice of a designated representative, who shall be responsible for the receipt of notices on behalf of Grantor hereunder. The approval of, or notice to, the designated representative shall be deemed the approval of, or notice to, the entity or all owners, as the case may be.

**10. MEDIATION.** If a dispute arises between the Grantor and Grantee (hereinafter, each individually a "**Party**", and collectively the "**Parties**") concerning use or activities on the Property, either Party may refer the dispute to mediation by request made in writing to the other, and the Parties agree not to proceed with the use or activity pending resolution of the dispute. Within ten (10) days of the receipt of such a request, the Parties shall select a single trained and impartial mediator. If the Parties are unable to agree on the selection of a single mediator, then the Parties shall, within fifteen (15) days of receipt of the initial request,

jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

- (a) Purpose. The purpose of the mediation is to: (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the Parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Easement.
- (b) Participation. The mediator may meet with the Parties and their counsel jointly or *ex parte*. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.
- (c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a Party.
- (d) Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- (e) Costs. The costs of the mediator shall be borne equally by Grantor and Grantee; the Parties shall bear their own expenses, including attorneys' fees, individually.

## 11. COSTS, LIABILITIES, TAXES AND ENVIRONMENTAL COMPLIANCE.

- 11.1 **Control.** Grantor acknowledges that Grantee has neither possessory rights in the Property, nor any responsibility or right to control, maintain, or keep up the Property other than those rights assigned to Grantee in Section 5 above, and those rights assigned to Grantee in the Management Plan. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an "owner" or "operator" with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USCA Section 9601 *et seq.*) or any successor or related law (hereinafter "CERCLA"), and corresponding state statute.
- 11.2 **Taxes.** Grantor shall pay and discharge before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property and any uses thereof by competent authority (hereinafter, collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall

furnish Grantee with satisfactory evidence of payment upon request. Grantee may, at its discretion, pay any outstanding Taxes and shall then be entitled to reimbursement by Grantor.

**11.3 Liens.** Grantor represents that as of the date of this grant, there are no liens or mortgages outstanding against the Property, except any listed in Exhibit A that are subordinated to Grantee's rights under this Easement. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Grantee's rights under this Easement. Under no circumstances may Grantee's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Property, including without limitation those arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

**11.4 Hold Harmless.** Grantor shall indemnify, defend, and hold harmless Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, in each case, due solely to the acts of Grantor and its employees, agents, and contractors and the heirs, personal representatives, successors; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and corresponding state statute by Grantor and its employees, agents, and contractors and the heirs, personal representatives, successors, in any way affecting, involving, or relating to the Property; and (3) the release in, on, from, or about the Property by Grantor and its employees, agents, and contractors and the heirs, personal representatives, successors, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment.

**Comment [JAD5]:** Joe suggested that this should be made reciprocal. I can see some areas that could be made reciprocal, and I will check with my attorney on how best to accomplish this.

**11.5 Liability Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor shall provide Grantee with a certificate of insurance naming Grantee as additional insured.

**Comment [JAD6]:** Joe suggested this should be reciprocal. But ARD is the property owner and manager, and the one inviting people onto the property; therefore I believe ARD is liable for ownership issues. I don't know why PLT should accept any additional liability here.

**11.6 Permits and Applicability of Other Laws.** Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and

local laws, regulations, and requirements. Nothing herein shall be construed to: (i) supersede or exempt the Property from the application of laws and regulations affecting land uses on the Property, or to (ii) permit any activity otherwise prohibited by existing or future laws and regulations imposed by any federal, state, or local government or governmental agency having jurisdiction of the Property, or to (iii) prohibit the imposition of further land use restrictions consistent with the terms of this Easement and Management Plan by Grantor or by operation of law.

- 11.7 Environmental Laws and Remediation.** Grantor is solely responsible, and Grantee has no responsibility whatsoever, for the operation of the Property or the monitoring of hazardous and other conditions thereon. Grantor is solely responsible for compliance with any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement relating to environmental conditions or hazardous substances. Notwithstanding any other provision of this Easement to the contrary, the Parties do not intend, and the Easement shall not be construed, such that it creates in the Grantee obligations or liabilities of a person described in 42 U.S. Code Section 9607(a)(3) or any successor or related law.

If there occurs a release in, on, or about the Property of any substance which causes damage to the values protected by this Easement and either Grantor caused the release or Grantor is required by federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement to take steps to assure its containment and remediation, including any cleanup and restoration that may be required, Grantor agrees to take all such steps unless the release was caused by Grantee, in which case Grantee shall be responsible for those costs.

## **12. CONSERVATION EASEMENT REQUIREMENTS UNDER STATE AND FEDERAL LAW.**

- 12.1 Qualified Organization.** As described in Recital B, Grantee is an organization qualified to accept and hold agricultural conservation easements. The acceptance of this Deed of Agricultural Conservation Easement is consistent with the Grantee's mission to work with willing landowners to permanently preserve natural and agricultural lands in the Placer County region.
- 12.2 Voluntary and Involuntary Assignment, Executory Limitation, Successors.** Grantee may voluntarily assign its rights and obligations under this Easement and its interest in this Easement only to an organization that is: (i) qualified to hold a conservation easement under Section 815.3 of the California Civil Code, (ii) experienced in holding and monitoring conservation easements on properties similar to the Property, and (iii) willing and financially able to assume all of the responsibilities imposed on the Grantee under this Easement. Before assigning its interest in this Easement, Grantee shall provide written notice of such intention to transfer to both the Sierra Nevada Conservancy (hereinafter "SNC") or its successor organization, and the Grantor (hereinafter "Transfer Notice"). To the extent possible under the circumstances of the transfer, Grantee will provide the Transfer Notice to Grantor and SNC at least 60 days prior to the date of transfer. The Transfer Notice shall identify

the proposed assignee and include a description of how the proposed assignee meets the assignee designation criteria set forth in this section. The failure of Grantee to provide the Transfer Notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way. If SNC or the Grantor does not approve the proposed assignee, SNC or the Grantor shall provide the other party and the Grantee with the reasons behind such decision. SNC's or Grantor's approval of the transfer may not be unreasonably withheld.

Further, if Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, or to be authorized to acquire and hold conservation easements under Sections 815 and 816 of the California Civil Code, then SNC shall, in consultation with Grantor, select an assignee that meets all the designation criteria specified in this section. If SNC is unable to identify an assignee that: (i) meets all the designation criteria specified in this section, and (ii) is willing to accept such assignment, then SNC may elect to serve as such assignee. Notwithstanding the foregoing, SNC may elect to exercise the rights of Grantee hereunder during any period that a successor assignee for Grantee is not yet in place.

As conditions to any assignment of this Easement, Grantee and/or SNC shall: (i) require the assignee to expressly agree in writing to assume Grantee's obligations hereunder, and (ii) ensure that assignee has the resources to fulfill its obligations under the Easement.

Upon any liquidation or dissolution of SNC, SNC or the State of California shall have the right to assign SNC's rights and obligations under this section to another entity that has a conservation mission and level of expertise consistent with that of SNC and sufficient resources and capacity to carry out the obligations of SNC.

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and any heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

### 13. EXTINGUISHMENT, VALUATION, AND CONDEMNATION.

- 13.1 Extinguishment.** The Grantor and Grantee, and subsequent landowners and holders of the Easement, cannot voluntarily extinguish the Easement. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph 13.2 below.



**13.2 Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which the Parties stipulate to have a fair market value determined by the standard practice of determining the appraised value of the Property with and without the Easement at the time of termination. This appraisal valuation is to be completed following accepted Internal Revenue Service and Unified Standards of Professional Appraisal Practice (USPAP) standards, with the value of the Easement being the difference between the value of the Property at its highest and best use according to economic value, and the value of the Property with this Easement in effect, as of the date of the appraisal.

**13.3 Condemnation.** If all or any part of the Property is acquired by exercise of the power of eminent domain or by purchase in lieu of a related condemnation proceeding, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting there from and to have their interests valued separately to the extent reasonably possible. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall first be paid out of the amount recovered. Then, the Grantee's share of the amount recovered after expenses shall be equal to the proportion that the value of the portion of the Easement that is so taken (based upon the total value for the Easement set forth in Section 13.2 above) bears to the fair market value of the fee interest in the Property that is so taken. Any remaining amount shall be paid to the Grantor. Notwithstanding anything to the contrary contained in this Section 13.3, Grantor shall be entitled to the full amount of any condemnation award, proceeds from a purchase in lieu of a related condemnation proceeding or any other type of compensation with respect to the Building Envelopes.

**13.4 Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section 13 in a manner consistent with its stated conservation purposes.

#### 14. GENERAL PROVISIONS.

**14.1 Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of California.

**14.2 Liberal Construction.** This Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of California State Civil Code, Sections 815 and 816. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**14.3 Joint Obligation.** A person's obligation hereunder as Grantor, or successor owner of the Property, shall be joint and several, and will cease, if and when such person or entity ceases to have any present, partial, contingent, collateral, or future interest in the

**Comment [JAD7]:** Joe asked why Grantee would get any recovery, if Grantee does not own the property. As I understand it, the reason is because the Grantee owns the easement, which has a financial value as a portion of the overall value of the property, and therefore Grantee should be compensated for that financial loss just like the Grantor is compensated for its financial loss, on a proportional basis. In our past experience, conservation easements can vary in value from 35-65% of the fee title value, but of course it depends on the property and the terms of the easement and the specific proportion would be subject to a qualified appraisal.



Property (or pertinent portion thereof), but only to the extent that the Property (or relevant portion thereof) is then in compliance herewith. Responsibility of owners for breaches of this Easement that occur prior to the transfer of title will survive such transfer, provided that the new owner shall also be responsible for bringing the Property into compliance.

- 14.4. Subsequent Deeds and Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The grant or transfer of any new or existing easement or license for public or private ingress and egress through or across the Property or benefitting any other Property not subject to this Easement is prohibited. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- 14.5. Estoppel Certificates.** Upon request by Grantor, Grantee shall execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which indicates the extent to which, to the best of Grantee's knowledge after due inquiry, the Property is in compliance with the terms of this Easement, after an inspection by Grantee made at Grantor's cost within a reasonable time after Grantor's written request therefore. Such certificate shall be limited to the condition of the Property as of Grantee's most recent inspection.
- 14.6 Amendment.** The Parties recognize that circumstances could arise which justify amendment of certain of the terms, covenants, or restrictions contained in this Easement, and that some activities may require the discretionary consent of Grantee. To this end, Grantor and Grantee have the right to agree to amendments and discretionary consents to this Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Grantee, such amendment or discretionary consent furthers or is not inconsistent with the purpose of this Easement. Amendments will become effective upon the signature of both Parties and recording at the Placer County Recorder's Office. Notwithstanding the foregoing, the Grantor and Grantee have no right or power to consent to any action or agree to any amendment that would increase the level of residential development permitted by the terms of this Easement or limit the term or result in termination of this Easement, or adversely affect the qualification of this Easement or the status of Grantee under applicable laws, including the Internal Revenue Code.
- 14.7 Economic Hardship.** In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Parties that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Section 13 above. In addition, the inability of Grantor, or

its heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

- 14.8 Waiver of Certain Defenses.** The failure or delay of Grantee, for any reason whatsoever, to discover a violation or initiate an action to enforce this Easement shall not constitute a waiver or estoppel of its rights to do so at a delayed or later time. Grantor hereby waives any defense of laches, estoppel or prescription with regard to the enforcement of all other terms of this Easement.
- 14.9 Severability.** If any provision of this Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Easement and the application of such provision to any other person, or in any other circumstance, shall remain valid.
- 14.10 Entire Agreement.** This instrument (including all Attachments) sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 14.11 No Forfeiture.** Nothing contained herein will result in a forfeiture of this Easement or reversion to Grantor of any rights conveyed hereby.
- 14.12 Standing to Enforce.** Only Grantee and Grantor may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, nor any rights in the Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.
- 14.13 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 14.14 Additional Conservation Grants.** Nothing contained in this Easement shall be construed either to limit the Grantor's rights to take additional conservation actions, such as further restrictions on the use of all or a portion of the Property, or to limit Grantor's right to cease using the Property for activities permitted herein in order to protect the Conservation Values of the Property, or otherwise.
- 14.15 Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**Comment [JAD8]:** Joe suggested a term limit be set, perhaps of one year or less. I will check with my attorney, but I think PLT wants to retain the rights indefinitely. One reason for this is – that actually benefits ARD – is that by keeping the rights indefinitely, rather than putting everything on a timeline, the parties could have more freedom to make corrections to minor violations over time in a more appropriate and cost-effective fashion.

**14.16 Recordation.** Grantee shall record this instrument in timely fashion in the official records of Placer County, California, and may re-record it at any time as may be required to preserve its rights in this Easement.

**TO HAVE AND TO HOLD** the said Easement unto the said Grantee and its successors and assigns forever.

**IN WITNESS WHEREOF** Grantor and Grantee have set their hands on the day and year first above written.

**Grantor:**                     Auburn Recreation and Park District                      
\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_

**Grantee:** Placer Land Trust  
11661 Blocker Drive, Suite 110  
Auburn, CA 95603  
  
\_\_\_\_\_  
Fred Yeager  
President  
  
\_\_\_\_\_  
Gregg McKenzie  
Treasurer

**SCHEDULE OF EXHIBITS**

- Exhibit A    Legal Description of Property
- Exhibit B    Grant Deed & PG&E Reserved Rights
- Exhibit C    Existing Third Party Uses
- Exhibit D    Existing Beneficial Public Values

Exhibit E Existing \_\_\_\_\_ / Building Envelope / Hydro Zone Description, Restrictions and Allowable Activities

Note: Notary acknowledgements also attached as unnumbered pages.

**Exhibit A**

**Legal Description of Property**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF PLACER, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

**PROPERTY**

**Comment [JAD9]:** Insert legal description for each Property.

Exhibit A (continued)

**MAP**

**Comment [JAD10]:** Insert parcel map for each Property.

**Exhibit B**  
**Grant Deed and PG&E Reserved Rights**

**Comment [JAD11]:** PG&E to provide?

Exhibit B

**Exhibit C**

**Existing Third Party Uses**

**Comment [JAD12]:** PG&E to provide?

Exhibit C



## Exhibit D

### Existing Beneficial Public Values

The purpose of conservation easements for Land Conservation Commitment is to protect the Beneficial Public Values (BPVs) of the properties in the Land Conservation Plan (LCP).

The specific BPVs for this Property are summarized below and described in more detail in the Baseline Documentation Report:

- (a) Habitat for plants, trees and wildlife that are native to the area.
- (b) Scenic character of the Property, including viewsheds from adjoining public roadways.
- (c) Recreational access and use of the Property, including hiking, exercising, picnicking, having group gatherings, playing games, relaxing, enjoying recreational amenities (such as playgrounds and dog parks), and similar recreational uses that are not incompatible with the Conservation Values of the Property.

(d)

**Comment [JAD13]:** This is my first attempt; ARD should perfect this language.

**Comment [JAD14]:** Are there any other BPVs specific to either property?

**Exhibit E**

**Comment [JAD15]:** If necessary.

**Existing \_\_\_\_ / Building Envelope / Hydro Zone Description, Restrictions and Allowable Activities**

**1. DESCRIPTION**

**Comment [JAD16]:** This was left in for illustrative purposes only. Hopefully most/all of this can go away.

General Description with acreages

**a) Geographic Description**

The Existing \_\_\_\_ / Building Envelope / Hydro Zone are geographically located using Geographic Positioning Systems (GPS) and Geographic Information Systems technology, which at the time of the recordation of this Easement locates geographic points with a degree of accuracy within approximately 30 feet; the Parties agree that the geographic description of the Existing \_\_\_\_ / Building Envelope / Hydro Zone may vary by this 30-foot amount. The coordinate system for the GPS points listed below is NAD\_1983\_StatePlane\_California\_11\_FIPS\_0402\_Feet.

The Existing \_\_\_\_ is contained within an area bounded by the following GPS points, listed counter-clockwise starting at \_\_\_\_:

GPS Point	Northing	Easting	Description
1			
2			
3			
4			
5			
6			
7			

The Building Envelope is contained within an area bounded by the following GPS points, listed counter-clockwise starting at \_\_\_\_\_:

GPS Point	Northing	Easting	Description
1			
2			
3			
4			

The Hydro Zone is contained within an area bounded by the following GPS points, listed counter-clockwise starting at \_\_\_\_\_:

GPS Point	Northing	Easting	Description
1			
2			
3			
4			

Although it is not required by this Easement, the Grantor may, at its own cost, survey the Existing \_\_\_\_\_ / Building Envelope / Hydro Zone to create a legal description to more precisely define this area; in such case, the resulting legal description, if approved by the Parties in writing, would replace the above geographic description of the Existing \_\_\_\_\_ / Building Envelope / Hydro Zone.

**b) Map**

This map of the Property shows the approximate location of the Existing \_\_\_\_\_ / Building Envelope / Hydro Zone, with GPS points noted.

**MAP**

## 2. RESTRICTIONS

The Existing Homesite may remain on the Property until the Grantor commences development of the Building Envelope as described herein. Building, construction, and residential use of the Existing Homesite and of the Building Envelope are mutually exclusive. The Building Envelope shall not be developed unless and until the Existing Homesite is removed as outlined herein. The Building Envelope shall be maintained in its predominantly natural condition, similar to the remainder of the Property, unless and until the Existing Homesite has been removed. This Easement limits the number of residences on the Property to a maximum of one; either the Existing Homesite, or a residence within the Building Envelope if it is developed according to this Easement, but never both at the same time.

The objective of the Building Envelope contingency within this Easement is to allow the construction of a single-family residence in a location further away from \_\_\_\_\_ and remove or minimize the development impact on \_\_\_\_\_. Development for, of, and within the Building Envelope shall not commence until the Existing Homesite is removed from the Property and written approval is provided by the Grantee to proceed. Grantee's written approval to proceed with development of the Building Envelope shall include acknowledgement that the Grantor has met the following conditions regarding the removal of the Existing Homesite:

- a) Any and all semi-permanent and permanent structures have been physically removed from the Property, not including roads or concrete pads (or similar ground-level support structures), the removal of which would create an unreasonable financial burden on Grantor and/or result in significant damage to the Conservation Values, such as erosion and sedimentation into \_\_\_\_\_. Additionally, the existing structure built over and around a natural spring on the Existing Homesite may remain, because it could in the future contribute to the protection of the Conservation Values.
- b) With the exception of existing fencing and any agricultural infrastructure otherwise allowable by this Easement, any and all temporary structures have been physically removed from the Property, unless Grantee approves an exception in writing.
- c) Any and all underground rooms, cellars, storage areas or other excavations on the Property, whether improved or unimproved, are empty and are sealed off for safety, with adequate descriptions of such provided to Grantee.
- d) Grantor took reasonable precautions to ensure that the removal of the Existing Homesite was done in an ecologically sensitive manner, without significant damage to the Conservation Values and with particular sensitivity to \_\_\_\_\_, which is very close to the Existing Homesite. These reasonable precautions eliminated or minimized: erosion and sedimentation into \_\_\_\_\_, ground and native vegetation disturbance from transportation and from heavy machinery, and the spread of invasive plant species.
- e) Grantor will cause a Phase 1 Environmental Site Assessment ("**Phase 1**") to be performed to assess the Existing Homesite; the resulting Phase 1 report will be provided to Grantee for review. The purpose of the Phase 1, and subsequent Phase 2 Environmental Site Assessment ("**Phase 2**") if required and performed, is for the Parties to (i) identify any environmental problem(s) in the Existing Homesite that specifically degrade, impair or endanger the health or natural function of \_\_\_\_\_,

**Comment [JAD17]:** Again, this was left in for illustrative purposes only. Hopefully most/all of this can go away.

(ii) assess whether the problem(s) are significant, (iii) assess whether the problem(s) might worsen upon the removal of structures in the Existing Homesite, and (iv) determine what financially feasible actions may be taken by Grantor to adequately contain or remedy the problem(s). If no significant environmental problems are found in the Phase 1, or if Grantee determines that the environmental problem(s) found in the Phase 1 do not significantly affect \_\_\_\_\_, or if the Grantor identifies a way to contain the environmental problem(s) to Grantee's satisfaction, then Grantee will not require Grantor to cause a Phase 2 to be performed. However, if the Phase 1 recommends a Phase 2 to examine any potentially important environmental problems that Grantee believes may significantly impact \_\_\_\_\_, Grantee determines that the problem(s) may worsen upon the removal of structures in the Existing Homesite, and Grantee determines that there are no financially feasible actions that may be taken by Grantor to adequately contain or remedy the problem(s), then Grantee may at its discretion require Grantor to cause a Phase 2 to be performed; the resulting Phase 2 report will be provided to Grantee for review. Grantee at its discretion may require any significant environmental problems identified by the Phase 1 or Phase 2 reports to be contained by the Grantor prior to commencement of development in the Building Envelope.

- f) Any and all personal property has been removed from the Property, unless Grantee approves an exception in writing.
- g) Any and all residential lease(s) on the Property has been terminated.
- h) Copies of keys or combinations to any locks on the Property have been provided to Grantee.
- i) No occupant or tenant physically resides on the Property.

Once these conditions have been met and Grantee provides written approval, Grantor may commence with development within the Building Envelope. Upon the commencement of development in the Building Envelope, the Existing Homesite will be managed and maintained to protect the Conservation Values, similar to the remainder of the Property.

Grantor shall ensure that no activity in the Building Envelope is inconsistent with the protection of the Conservation Values on the remainder of the Property, with the exception of those activities in the Building Envelope that may affect the scenic values of the Property.

The following development limitations are designed to minimize the impact of development of the Building Envelope to the Property's scenic values; additionally, these limitations shall also apply to the Existing Homesite:

- a) The single-family residence shall have a footprint of not greater than 2,500 square feet in size.
- b) The single-family residence shall be one story.
- c) The Grantee shall approve in writing the color of the exterior paint, if any, of the single-family residence and any other building prior to its construction and prior to any painting or re-painting. Grantee's approval shall not be unreasonably withheld, provided the exterior color is an earth tone that blends with the property and minimizes the visibility of the residence from locations outside the Property.
- d) Regarding conformance with Placer County Zoning Ordinance and related

regulations, all structures, including the single-family residence, shall comply with Placer County's Zoning Ordinance FBX-10 that is in effect on the Property as of the date of this Easement, regardless of future changes in zoning

For the purposes of this Easement, commencement of initial construction within the Building Envelope shall mean (a) any actual construction activity on the Property for the purposes of the Building Envelope that impacts the Conservation Values (including but not limited to grading for a driveway or pad), or (b) any activity in the Building Envelope for which a permit is required and has been obtained from Placer County, or such other local, State or federal agency having jurisdiction over the construction (including the construction of structures, installation of wells and septic systems, foundations or preparatory earth work for the construction of structures). Grantor reserves to itself and its successors and assigns the right in perpetuity to maintain, alter, improve and replace any structures, provided any maintenance, alteration, improvement or replacement it is materially consistent with the structures' original size and scale, and consistent with the restrictions set forth herein.

### **3. ALLOWABLE ACTIVITIES**

Grantor reserves to itself and its successors and assigns the right to construct, maintain, alter, and improve, remove, and replace structures in the Existing \_\_\_\_\_ / Building Envelope / Hydro Zone, subject to the restrictions in this Easement. Grantor shall be entitled to make other use of the Existing \_\_\_\_\_ / Building Envelope / Hydro Zone as permitted by Placer County's Zoning Ordinance \_\_\_\_\_ that is in effect on the Property as of the date of this Easement, provided such use is not inconsistent with the protection of the Conservation Values.

**Comment [JAD18]:** Again, this was left in for illustrative purposes only. Hopefully most/all of this can go away.

RECORDING REQUESTED BY AND RETURN TO:

DRAFT FOR DISCUSSION ONLY  
DO NOT DISTRIBUTE

**PACIFIC GAS AND ELECTRIC COMPANY**  
245 Market Street, N10A, Room 1015  
P.O. Box 770000  
San Francisco, California 94177

Location: City/Uninc \_\_\_\_\_  
Recording Fee \$ \_\_\_\_\_  
Document Transfer Tax \$ \_\_\_\_\_  
 This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).  
 Computed on Full Value of Property Conveyed, or  
 Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

(SPACE ABOVE FOR RECORDER'S USE ONLY)

Signature of declarant or agent determining tax

LD 2138-05-0053

DEED

**GRANT DEED, RESERVATION OF RIGHTS AND EASEMENTS, GRANT OF RIGHT OF WAY, AND ASSIGNMENT OF RIGHTS**

**I. CONVEYANCE OF FEE**

**PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation, hereinafter called Grantor, hereby grants, without warranty express or implied, to the **AUBURN RECREATION AND PARK DISTRICT**, a special district of the State of California, hereinafter called Grantee, the real property ("**Property**"), situated in the unincorporated area of the County of Placer, State of California, described as follows:

as described in EXHIBIT A attached hereto and made a part hereof.

(APN #077-050-044-000)  
(SBE #135-31-73E-1)

In connection with such grant, Grantor and Grantee have agreed, for good and valuable consideration, that Grantor shall reserve certain easements and rights, as more fully described in Section III below.

**II. RECITALS**

A. Grantor is a party to that certain Settlement Agreement ("**Settlement Agreement**") as modified and approved by the Public Utilities Commission of the State of California ("**CPUC**") in its Opinion and Order of December 18, 2003 (Decision 03-12-035).

B. In furtherance of the Settlement Agreement, and to provide additional detail regarding the implementation of the "Land Conservation Commitment" (defined below), the parties to the Settlement Agreement and other interested parties entered into that certain

Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (“**Stipulation**”).

C. The Settlement Agreement and the Stipulation (collectively, “**Governing Documents**”) require Grantor to ensure that approximately 140,000 acres of watershed lands, all owned by Grantor (collectively, “**Watershed Lands**”), including the Property, are conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The obligations of Grantor to convey fee interests and/or conservation easements and protect such beneficial public values on the Watershed Lands, as well as certain other obligations related thereto, are set forth in detail in Appendix E of the Settlement Agreement (as further explicated in Section 12 of the Stipulation), and are defined therein as the “**Land Conservation Commitment.**”

D. Pursuant to the Governing Documents, the Pacific Forest and Watershed Lands Stewardship Council, a California non-profit public benefit corporation (“**Stewardship Council**”) was created to oversee and carry out the Land Conservation Commitment. Pursuant to the Governing Documents, the Stewardship Council developed a plan for protection of the Watershed Lands for the benefit of the citizens of California (“**Land Conservation Plan**” or “**LCP**”). The LCP includes, among other things, objectives to preserve and/or enhance the beneficial public values identified on each parcel of Watershed Lands.

E. Grantor has used and continues to use the Property for the purposes of generating and transmitting hydroelectric energy, managing and monitoring the flow of water over the existing waterways for consumptive and non-consumptive uses, conducting various biological and land use studies mandated by the Federal Energy Regulatory Commission (“**FERC**”) (collectively, “**Hydroelectric Facilities and associated Water Delivery Facilities**”), and for other purposes as described more fully in the Reservation of Rights contained herein.

F. Consistent with the terms of the Governing Documents, Grantor and Grantee desire to ensure the permanent protection of the beneficial public values on the Property as identified in the LCP while allowing the ongoing use of the Property by Grantor for hydroelectric operations, water delivery and other related activities, and acknowledging and honoring the existing third party uses.

### III. RESERVATION OF RIGHTS AND EASEMENTS

Grantor expressly reserves the right to engage in or invite or permit others to engage in the activities and uses set forth below (collectively, the “**Reserved Rights**”) as Grantor may determine in Grantor’s sole discretion exercised in good faith is required for Grantor’s continued operation and maintenance of Hydroelectric Facilities and associated Water Delivery Facilities. Grantor will use reasonable efforts to notify and consult with Grantee in advance of the exercise of the Reserved Rights, and use reasonable efforts to employ methods and practices that will not significantly impair the beneficial public values.

Grantor’s Reserved Rights are actions or activities that Grantor determines in its sole discretion exercised in good faith are necessary to fulfill requirements by any one or more of the



following: (a) the CPUC or FERC, (b) other governmental entities, (c) any applicable law, ordinance, rule or regulation of local, state or federal governmental entity, (d) any third party agreements entered into by Grantor in good faith or by which Grantor is bound, or (e) professional practices, standards and/or policies governing the ownership, maintenance, and/or operation of the Hydroelectric Facilities and associated Water Delivery Facilities.

(1) Reserving to PG&E all riparian water rights inherent in and part and parcel of the Property, all appropriative surface water rights (including, but not limited to, any appropriative surface water rights having a point of diversion, place of storage, or place of use on the Property); all prescriptive surface water rights; and all other right, title and interest of any nature whatsoever in and to the surface waters (including subsurface flow) which are now or hereafter located or flowing upon or abutting the Property;

(2) The rights for PG&E's existing and future facilities for transformation, transmission and distribution of electric energy and for communication purposes within the strips of land described below and also the rights to reconstruct, replace, remove, maintain and use the same as PG&E shall at any time and from time to time deem necessary, together with the rights to excavate for, construct, install, repair, reconstruct, replace, remove, maintain and use, at any time and from time to time, additional facilities for the transformation, transmission and distribution of electric energy and for communication purposes, consisting of such devices and equipment with suitable concrete pads and adequate protection therefor necessary for transforming electric energy, one or more lines of towers, poles and/or other structures, wires and cables, including both underground and overhead ground wires, and all necessary and proper foundations, footings, cross arms and other appliances and fixtures for use in connection with said towers, poles and/or other structures, wires and cables; all to be on land described as follows:

(a) Strips of land of the uniform width of 20 feet, lying 10 feet on each side of the alignment of the existing electric distribution and communications pole line facilities; strips of land of the uniform width of 10 feet, lying 5 feet on each side of the alignment of the existing underground electric and communication facilities;

(3) The right of ingress to and egress from said easement areas over and across said real property by means of any and all existing and future roads and lanes thereon; if such there be, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to Grantee and to use said roads, lanes, or routes to provide access to any of PG&E's easements and facilities on lands adjacent to said real property.

(4) The right to install, maintain and use gates in all fences which now or shall hereafter cross said real property.

(5) The rights to trim and cut down and clear away any and all trees and brush now or hereafter on or near PG&E's facilities and the further right to trim and to cut down and clear away any trees on the property adjacent to said facilities which in the opinion of PG&E

may be a hazard to such facilities by reason of the danger of falling thereon or contacting transmission or distribution wires, or may interfere with the exercise of PG&E's reserved rights.

#### IV. TERMS OF GRANT

The conveyance by Grantor to Grantee pursuant to this Grant Deed, Reservation of Rights and Easements, and Assignment of Rights is subject to: (a) a lien securing payment of real estate taxes and assessments; (b) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority; (c) all matters that would be disclosed by a physical inspection or survey of the Property or that are actually known to Grantee; and (d) all contracts, leases, licenses, covenants, conditions, easements, restrictions, liens, encumbrances and other exceptions of record or unrecorded.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the Property. All future conveyances of the fee interest in the Property shall be consistent with the terms of the Governing Documents. In accordance with Section 12 b (4) of the Stipulation, Grantee, and its successors and assigns shall not convey all or any portion of the fee interest in the Property to any governmental entity, public agency, or Native American tribe without the prior written consent of the Grantor, which consent shall be in Grantor's sole discretion exercised in good faith.

#### V. MISCELLANEOUS

*[Note: This provision is currently under review]* If any provision of this Grant Deed, Reservation of Rights and Easements, and Assumption of Rights shall be unenforceable or invalid, the same shall not affect the remaining provisions hereof and to this end the provisions hereof are intended to be and shall be severable.

The real property hereby conveyed is no longer necessary or useful to Grantor in the performance by it of its duties to the public.

The California Public Utilities Commission, in Decision No. \_\_\_\_\_, has approved transfer of the Property under State of California Public Utilities Code Section 851.

Dated \_\_\_\_\_, 20\_\_\_\_.

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

By

Attested

PG&E Transaction Documents schedule

<b>Date</b>	<b>Task</b>	<b>Party</b>	<b>Deadline</b>	<b>Notes</b>
<b>July</b>	ARD counsel complete review of draft CE for CV* (anticipate similar forms at Bell Property).	ARD	Early July	*CV=Christian Valley
	PLT provide comments on TA for CV property to PG&E.	PLT	Early July	
	PLT provide draft CE for Bell Property to ARD staff.	PLT	Early July	Agreed upon changes to CE for CV to be incorporated.
	PG&E provide TA for Bell property with any agreed upon changes to CV TA reflected.	PG&E	7/17/13	
	Draft transaction documents (TA, CE, EA etc.) posted for ARD BOS meeting	ARD	7/18/13	
	ARD BOS provide review & comments on TA, CE, EA and appropriate grant documents on both CV and Bell properties.	ARD	7/25/13	
	PLT – Board review/ approval of final form draft agreements?	PLT	Date?	
	SC to draft CE baseline funding agreement. PLT to conduct preliminary baseline work.	SC/PLT	N/A	No specific deadline, complete early fall.
	ARD & PLT provide draft CE's to SC/PG&E for review.	ARD/PLT	8/1/13	-Assumes ARD/PLT staff can address comments provided by BOD in 5 business days.
	ARD & PLT provide any final changes to TA to PG&E for approval.	ARD/PLT	8/1/13	-Assumes ARD staff can address comments provided by BOD in 5 business days.
<b>August</b>	SC/PG&E provide comments on draft CE's to ARD/PLT.	SC/PG&E	8/14/13	- Assumes SC & counsel can turn it around in 10 business days. -Assumes materials for ARD BOS to be posted 1- wk in advance.
	Final draft transaction documents posted for ARD BOD meeting.	ARD	8/19/13	-Assumes final changes to CE can be reviewed/confirmed in 3 business days.
	ARD BOD provide final approval of transaction documents for CV/Bell Property. (CE, TA, EA, Grant Deed)	ARD	8/29/13	

PG&E Transaction Documents schedule

<b>September</b>	SC release grant funding for topo surveys/wetlands work.	SC	9/2/13	Assumes TA signed by ARD BOS at 8/25 mtng.
	Develop CE Funding Agreement for PLT	SC/PLT	Mid-September	In advance of LCCP.
	Final CE's, grant deed provided to SC staff for inclusion in LCCP.	ARD/PLT	9/ 18/13	
	Final Draft LCCP posted for SC Planning Committee meeting.	SC	9/25/13	
<b>October</b>	SC Planning Committee Preliminary Approval of LCCP.	SC	10/02/13	PC Meeting Date.
	Draft LCCP posted for public review	SC	10/7/13	Assumes no substantial comments from SC Planning Committee.
	Topo surveys/wetland studies completed.	ARD	End of October?	
<b>November</b>	Close of SC public review period.	SC	11/07/13	
	SC Planning Committee Meeting final approval of LCCP (as needed).	SC	12/11/13	-If public comments warrant consideration and/or changes, staff may elect to provide the revised LCCP and/or any comments to the PC for final approval.
<b>January 2014</b>	SC provide public notice of proposed LCCP approval at Board Mtng.	SC	Mid/Late December	-Occurs 30 days in advance of Board Meeting date (TBD)
	SC Board Approve LCCP	SC	Board Meeting date TBD	
<b>Feb/March 2014</b>	Regulatory reviews initiated (851 with CPUC)	PG&E		-Assumes Board approval
<b>August/September 2014</b>	Finalize documents for close of escrow	PG&E ARD/PLT		-Assumes 6-9 months for CPUC & FERC approvals.

**SECTION 13.0**

**ITEM: CORRESPONDENCE/COMMUNICATIONS AND INFORMATIONAL**

1. Correspondence from Nancy Neuberger regarding pickleball courts and response from District Administrator Kahl Muscott. This item has been discussed and is being reviewed at the Acquisition & Development Committee.

May 31, 2013

Boards of Directors  
Auburn Recreation District  
123 Recreation Drive  
Auburn CA 95603

Dear Board Members,

We are writing to you with a request for additional Pickleball courts within the Auburn Recreation District.

Our numbers have more than tripled in the past two year with more people adding to our numbers every week.

Pickleball is the fastest growing sport for seniors in California.

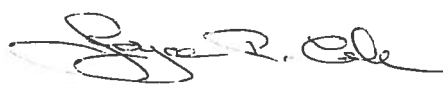
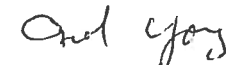
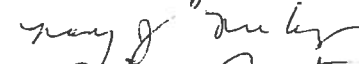
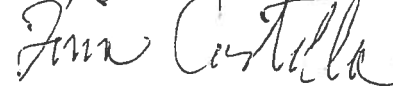
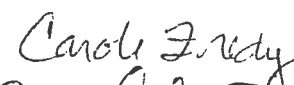



Of the total population of Auburn, 37% are aged 45-64 and 19% are aged over 65. That makes a total population over 45 years old of 56%.

While we make emphasis on the senior population, Pickleball is enjoyed by all ages and is currently played at several schools in the area. It is truly a family sport.

Thank you for considering our request and we look forward to seeing additional courts in the near future.

Respectfully,

Auburn Area Pickleball Players

Name:	Signature:	Zip Code:
Joyce Cole		95722
Carol Young		95602
Nancy Neuburger		95722
Tina Costello		95959
Carole Fredy		95703
Ellen Geil		95602
Jackie Conci		95603
Melinda Ahrens		95602

Name:	Signature:	Zip Code:
RICHARD SHEPHERD	<i>R. S. Shepherd</i>	95722
Linda Martin	<i>Linda Martin</i>	95703
Marge Privara	<i>Marge Privara</i>	95722
Marie Green		
Mary Schubauer		
Rhae Truitt	<i>Rhae Truitt</i>	95403
Robbin Maloney		
Suzanne Scott		
Cindy <del>Read</del> BOGAN	<i>C. Bogan</i>	95722
Terri Kulp	<i>Terri Kulp</i>	95603
Peggy Potter	<i>Peggy Potter</i>	95713
Vicky Solomito		
Vickie Harris	<i>Vickie Harris</i>	95945
Laura Glassco	<i>Laura Glassco</i>	95602
Ellinor Whaley	<i>Ellinor S. Whaley</i>	95722
Tina Porter	<i>Tina Porter</i>	95603
Melinda Ahrens	<i>Melinda Ahrens</i>	95602
Jean Kelly	<i>Jean Kelly</i>	95722
Hedda Shepherd	<i>Hedda Shepherd</i>	
<i>Mallory Potter</i>	<i>Mallory Potter</i>	95602
Judy McDonald	<i>Judy McDonald</i>	95713
Morgan Potter	<i>Morgan S. Potter</i>	95603
Jan Mullanly	<i>Jan Mullanly</i>	95713
Rick Mullanly	<i>Rick Mullanly</i>	95713
JACK COLE	<i>Jack Cole</i>	95722



## AUBURN AREA RECREATION AND PARK DISTRICT

June 20, 2013

Nancy Neuburger  
P.O. Box 1356  
Meadow Vista, CA 95722-1356

Dear Nancy,

Due to scheduling conflicts, the June, 2013 Board of Directors meeting of the Auburn Area Recreation and Park District (ARD) has been cancelled.

Your letter and petition re: more pickle ball courts, which was discussed at the June 18<sup>th</sup> Acquisition and Development Committee will be further considered at the July 15<sup>th</sup> Acquisition and Development Committee meeting (4pm). The letter and petition will also be included in the Board packet for the ARD Board of Directors meeting on Thursday, July 25<sup>th</sup>. That meeting takes place at 6pm. All meetings will take place in the Board Room at the Canyon View Community Center (471 Maidu Dr., Auburn).

Please feel free to contact me with any questions. I can be reached at (530) 885-0611 ext. 102 or at [kmuscott@auburnrec.com](mailto:kmuscott@auburnrec.com).

Sincerely,

Kahl Muscott  
District Administrator

cc: Auburn Area Recreation and Park District Board of Directors



Log In Create an Account Contact Us E-edition Subscriber Services Coupons & Deals Auburn Trader Special Sections

May 30, 2013 | Your Neighbor Since 1872

# Auburn Journal



Search

NEWS SPORTS LIVING OPINION MULTIMEDIA CALENDAR OBITUARIES CLASSIFIEDS

Thursday May 30 2013 | 0 comments

## Auburn Endurance Challenge gears up for comeback Event seeks to get everyday citizens engaged

By: Jon Schultz, Journal Staff Writer



### Related Stories

Warning to anglers on toxic Gold Rush legacy in some fish

Coloma's 'visitors from space' to be revisited

15 DUI arrests in Placer County over holiday weekend

Sierra College unveils 20-year plan

Arson suspect awaits psychiatric evaluation



The City of Auburn is teaming with the Auburn Recreation District to [resuscitate](#) and reinvigorate an old event that strived to make the average citizen feel more a part of the Endurance Capital claim.

Called the Auburn Endurance Challenge, the yearlong ongoing event to log 100 miles of exercise emerged about 10 years ago with some short-lived success.



However, the group of volunteers organizing it couldn't keep up with the workload and it fizzled out after three years, the 500 or so first-year participants dwindling by the hundreds, said Harvey Roper, Endurance Capital Committee member.

Now, it is gearing up for a return in January 2014 with a new look.

Instead of miles, it will be hours logged, and it will be tiered - people can choose to do 100, 200 or 300 hours, said Sheryl Petersen, ARD recreation services manager. While the standard distance activities will remain part of the challenge, ARD will offer a lineup of at least a dozen classes participants can take toward reaching their goal, Petersen said.

Nordics walking, swimming, Zumba, dance and youth basketball are among the offerings, she said.

"Sure, some of the super athletes do 100 miles in a day," Roper said, "but this is for the people in the Auburn area and their kids to develop a healthy lifestyle."

ARD's involvement, along with the addition of a website for people to log their progress, is critical to the success of the event's return, he said. The

ARD and Endurance Capital Committee will be having monthly meetings to coordinate the challenge, Petersen said.

**UNITED**

The United MileagePlus Explorer Card.

Earn 30,000 Bonus Miles

EXPLORE NOW

Intro Offer: First Year Free

**UNITED**

The United MileagePlus Explorer Card.

You're

Earn 30,000 Bonus Miles

EXPLORE NOW

Intro Offer: First Year Free

ads not by this site

**Metal Roofs, Siding & Materials!**

**McELROY METAL** -Quality -Service -Performance

5300 83rd Street  
Sacramento, CA  
(800) 950-8448

view website

POTTERY BARN

FREE SHIPPING

plus UP TO 25% OFF SELECT BAGGAGE

SHOP NOW

**Flyerboard**

LEASE Building Like New!  
New Interior Two bathroom  
630 and 420 sq ft  
Plenty of parking  
201 May 174 Color \$1500  
Please call  
(415) 927-1235, (530)346-2344

"When we first did this ... it was really successful and a lot of people jumped on. It was a little too much administration for our volunteer group to handle," Roper said. "So we're thinking this partnership with ARD and having it web-based would be more feasible and easier to maintain."

Auburn resident Peggy Seitzinger had two babies in strollers when the Endurance Challenge was first born around 2003 and saw it as an opportunity to set a goal and, at the same time, get outside with her children.

"I thought it was great," Seitzinger said. "I'm someone who works really well with a challenge in front of me. ... I found some easy loops right through town, and found that if we were in town, that we would make sure we had tennis shoes with us and do some laps."

Now, with it returning, she's thinking about ways to mix it up and take on the challenge in a new way.

"It would be interesting to see what else I could apply that to, or do the challenge with my children walking the miles as well," Seitzinger said. "They're 10 and 12 now, so that would be a cool thing to see if we could do that 100 miles together."

Auburn Mayor Kevin Hanley originally came up with the concept that spawned the first Endurance Challenge event, and he even took it on himself, he said.

He's pleased to see that it's making a comeback.

"What I did was I just used to run from my house to Placer High, run around the track and record those miles," Hanley said. "I enjoyed seeing people doing it and getting excited. ... It's something I think will be a fun, hopefully annual, program."

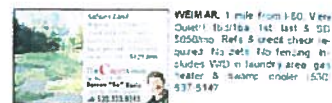
He did offer up a suggestion: Hand out T-shirts as the reward for completing the challenge opposed to the commemorative pin that had formerly been the prize. The Endurance Capital Committee has requested \$1,000 for prizes for the event on this year's budget.

"People love wearing T-shirts," Hanley said, adding that he used to do a polar bear swim in the middle of winter and the T-shirt he got at the end always served as a nice incentive. "Like the polar bear challenge, you would get one each year you did it."

Jon Schultz can be reached at [jons@goldcountrymedia.com](mailto:jons@goldcountrymedia.com). Follow him on Twitter @Jon\_AJNews

**Keywords:**

Auburn Endurance Challenge Auburn Recreation District Endurance Capital Committee



Local display advertising by PaperG

Collection of 85 Luxurious townhomes in a gated community

MODELS OPEN DAILY 10-6

Starting in the low \$300's

see homes

7028 Orchard Circle  
Perry

The Orchard  
AT PENNY PARK

CONTRIBUTE TO THIS STORY

SEND LETTER TO THE EDITOR

SEND STORY IDEAS

SEND CORRECTIONS

SIGN UP FOR OUR EMAIL NEWSLETTER

Add a comment ...

Comment using...

Warning: <http://www.auburnjournal.com/node/233699> is unreachable

Facebook social plugin

LAW OFFICES OF STEPHEN J. JOHNSON

**\$100 off**

Attorney fees

Lowest fee Guarantee

website >

Quick Links

Visit our other Publications

View our other websites



Log In Create an Account Contact Us E-edition Subscriber Services Coupons & Deals Auburn Trader Special Sections

June 7, 2013 | Your Neighbor Since 1872

# Auburn Journal

84°F  
Clear

High: 105 F  
Low: 69 F

Search

NEWS SPORTS LIVING OPINION MULTIMEDIA CALENDAR OBITUARIES CLASSIFIEDS

Thursday Jun 06 2013 | 0 comments

## Canyon cottage offers tranquil lifestyle, breathtaking views

By: [Gloria Young](#)



When she and her husband, Jim, decided to downsize, Auburn's Norma Ferris wanted "a cottage small and a waterfall."

They found their cottage and although it wasn't beside a waterfall, stunning views of the American River Canyon and, in the distance, water tumbling down Lake Clementine Dam, were a good substitute.



Their 10 acres — about two and a half fenced and cultivated — give the Ferrises a front-row seat on the Foresthill Bridge and the American River's north fork. But the property was definitely a diamond in the rough when they first set eyes on it.

First impressions didn't inspire Norma Ferris, who went out first with a Realtor to see it. The 1950s-era home looked its age and then some. The land around it was overgrown and debris strewn.

"It was so bad I didn't want to look at it again," she said.

But the proximity to the river intrigued Jim Ferris. When he went on his own to take a look, he asked if there was access to the river. The answer was yes.

It took a lot of work and several years to restore the house and create the picturesque retreat the couple envisioned.

They removed Dumpster loads of trash and jack hammered the concrete in front of the house. They cleared paths, planted a lawn and put in raised beds for vegetables. They built a wood shop and a playhouse for the grandchildren — now converted into an exercise space. There's even an outdoor shower, enclosed on three sides with a slatted wall that matches the fence beyond. There's a garden shed, a coop for the chickens, a shelter for their donkey and goat and a run for

the five dogs.

There's an herb garden, fruit trees and grape vines. Instead of wine, they make grape juice.

"It's very good," Norma Ferris said.

The raised beds, which overlook the canyon, are filled with peppers, eggplant, squash,

**CAROLYN METZKER**  
**LYON REAL ESTATE**  
 916.532.4237  
 DRE # 01851721  
 CAROLYNMETZKER.COM

### Related Stories

**Media Life: Future U.S. president had Del Oro High grad moment**

**'The Train' rolls into town; Rogar brings it back home**

**Fire, art heat up the streets for two-day festival**

**All those years ago ... June 6, 1963**

**The Fairly Good Mother: The real toy story**

**AVENGERS ALLIANCE**  
 TM & Copyright © 2012 Marvel and Subs.  
**IRONMAN**  
 PLAY NOW

**Roper's Jewelers**  
 Downtown Auburn 515 Locust Way • 530-883-6111  
 North Auburn 2388 Grass Valley Hwy • 530-883-6111

### Flyerboard

**LEASE** Building Like New!  
 New Home Two Bedrooms  
 Full Bath Bright  
 Hardwood Floors  
 Call Mary Ann Egan 530-883-6111  
 M. Egan  
 (530) 527-1235 (530) 348-2344

**Teachers Parents**  
**Students Play**  
 Parents Play & Party  
 Children's  
 Music & Dance  
 Call Mary Ann Egan 530-883-6111  
 M. Egan  
 (530) 527-1235 (530) 348-2344



chard, beans, lettuces, onions, cucumbers and lots of tomatoes — all in various stages of growth. Tending them is a pastime Norma Ferris enjoys.

"I'm out gardening as much as I can," she said. "I love working in the garden during the summer. We pretty much eat out of it."

The overflow of produce goes to friends and neighbors.

The entrance to the front yard of the cottage is through a picket fence. Inside, green lawn is intersected with gravel paths. On each side, perennials in a profusion of colors line the perimeter.

The house got a makeover, too, with new paint, roof and facings. Green shutters, artistic finishes and a rooster weather vane on the roof enhance the cottage ambiance.

Towering shade trees, planted at the time the home was constructed, create a shady oasis.

"We love it," Norma Ferris said.

The deck makes the most of the exceptional view. It's where the Ferrises greet the day over morning coffee and brew sun tea during relaxing afternoons.

Jim Ferris estimates the view stretches for 20 miles, all the way to Dutch Flat. In winter, they can see the snowcapped Sierra.

"My favorite season is whatever season we're in," Ferris said. "It's different every single day."

The deck is an ideal place for bird watching. Two feeders attract a constant stream of humming birds. There are hawks, geese during the migration season and even eagles. Once Jim Ferris saw a stream of brown pelicans circling the sky above the canyon.

For the Ferrises, part of being in the wild land is critter encounters.

"It's a little like living in a safari camp," he said

Raccoons are frequent visitors and there are occasional skunks, coyotes and bobcats.

The Ferrises have chased away bears and were able to save a goat from a mountain lion attack. But Jim Ferris said he's only seen a couple of rattlers.

"Deer come up and wander the fence line, (but don't attempt to cross it)," he said.

The Ferrises focus on "sustainable gardening" and "sustainable living." Part of that is maintaining several composting bins.

"Everything we clip we feed to the animals or we compost it," he said.

The water comes from a well and there's also a spring on the property.

An important part of living in forestland is maintaining defensible space. And the property is a textbook example of that. They keep the mandated fire-break area free of brush, weeds and other ladder fuels, hiring someone to come out every two years to do the work.

"We also plant fire-resistant plants," Jim Ferris said.

According to calfire.ca.gov, in January 2005, state law extended the defensible space clearance around homes and structures from 30 feet to 100 feet.

"One hundred feet dramatically increases the chance of your home surviving a wildfire," the site says. "This defensible space also provides for firefighter safety when protecting homes during a wildfire."

The Ferrises have lived in the Auburn area for 23 years, initially purchasing a large home on Wise Road. They've lived in their canyon house for the past 16 years. They are active in the community and Jim Ferris is serving his second term on the Auburn Recreation District board of directors.

"My favorite part (of living on the edge of the canyon) is the tranquility – peace, nature, having animals around us and having wild creatures around us," he said.

**Keywords:**

[Jim and Norma Ferris American River Canyon](#)

20TH ANNUAL FATHER'S DAY  
 HUGE MULTI-FAMILY YARD SALE  
 Healthy For Life Team Hands & Health Fundraiser  
 SAVE \$10  
**HALF OFF**  
 Unconditioned Units  
**\$70 PER MONTH**  
 2012 BEST OF THE BEST  
 today's specials >  
**QUARTZ DRIVE**  
 FREE USE of truck!

**CONTRIBUTE TO THIS STORY**

SEND LETTER TO THE EDITOR

SEND STORY IDEAS

SEND CORRECTIONS

SIGN UP FOR OUR EMAIL NEWSLETTER

# Get up, stand up and head to Party in the Park

This year's fest will pay tribute to Bob Marley

BY AMY LOBENBERG

JOURNAL CORRESPONDENT

About 4,000 Auburn residents are expected to attend this year's tribute to the life and legacy of Bob Marley at Auburn Park and Recreation District's (ARD) annual Party in the Park. The free reggae-themed event will feature live music from bands, various food vendors, a kids' zone and live demonstrations.

ARD Board Member Scott Holbrook has played a large part in organizing Party in the Park since its conception in 2000. His goal every year is to make sure the event includes something



AUBURN JOURNAL FILE

If past events are any indicator, Party in the Park will draw a park-full of party-ready music lovers on June 21.

## PARTY:

continued from A1  
for everyone.

"Being an ARD member, I wanted to give the community here in Auburn a place to bring their family to see top-notch touring and recording acts," Holbrook said. "This year we will be celebrating the music of Bob Marley. Reggae is very fun, danceable, and family friendly."

Featured bands will include: "The Arden Park Roots," a reggae/rock/funk group from Sacramento, and "One Drop Redemption," a Bob Marley and the Wailers tribute band.

According to ARD Recreation Services Manager Sheryl Petersen, there will be live demonstrations by the Auburn Gymnastics Center and Zumba instructor Donna Lisa Otto between musical acts, as well as face painting, a mobile rock wall, water slides, ponies and carnival rides. Some food vendors will include: Flying Pig BBQ, Rainbow Snow, Sherry's Ice Cream, and Pizza Express.

"Take advantage of the free shuttle with parking at the county parking lots at Bell and Richardson beginning at 5:30 p.m.,"

• SEE PARTY PAGE A2

### PARTY IN THE PARK

**When:** June 21. Vendors will set up by 5 p.m., music will begin at 6, and the main acts will start at 8 and end by 10.

**Where:** Regional Park

**Cost:** The event is free to attend and free to park. There are fees for the carnival area, which vary from single ride tickets to unlimited ride wristbands. There will be a free shuttle at the county parking lots on Bell Road and Richardson Drive.

**Information:** Visit [partyinthepark.net](http://partyinthepark.net)

**Volunteer:** To help with set-up and clean-up, call (530) 885-8461.

Auburn Journal

6-12-13



# Triple-digit days spark water rush

Pools in the area provide relief from humidity, temperatures

**BY GUS THOMSON**  
JOURNAL STAFF WRITER

The National Weather Service office in Sacramento is forecasting temperatures in the triple digits for the foothills through at least Tuesday.

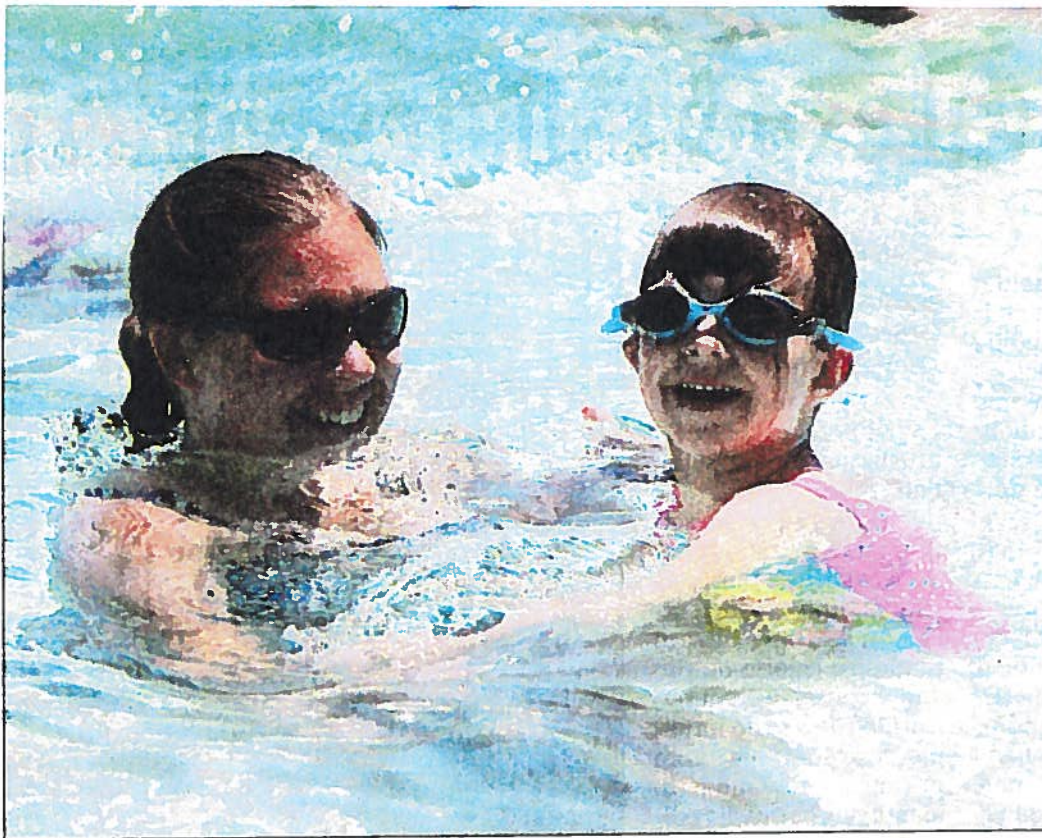
And that's a signal for Auburn residents of all ages to visit the Sierra Pool in Auburn's Recreation Park. With water temperatures hovering around 80 degrees as the thermometer

• SEE HEAT PAGE A6



**MICHAEL KIRBY • AUBURN JOURNAL**  
Cameron Baskett, 4, cools down in the "mushroom" water feature at the Sierra Pool children's play area at Auburn's Recreation Park. Triple-digit temperatures are making the park a magnet for residents trying to beat the sweltering heat this weekend.

*Auburn Journal*  
June 30, 2013



Auburn resident Celeste Boggs gives her daughter, Victoria Boggs, a swim lesson at the Sierra Pool as the two take to the water to beat the heat Friday.

MICHAEL KIRBY •  
AUBURN JOURNAL

## HEAT: Opt for water, not energy drinks, to prevent dehydration

continued from A1

soars above 100, the venerable pool and adjoining splash area for younger children has been a destination now for 60 years.

Foresthill has a community pool, but with no splash area for the children, Marila Peoples said she was happy to make the 19-mile drive to the Auburn pool for son, Jonas, 5, to enjoy the watery play park.

"Normally in Foresthill, we escape the heat," Peoples said. "But it's really hot now and this is a good place for Jonas, who is just learning to swim."

Safer than the cooler waters of the American River and more accessible, the Sierra-Marsha Skinner Pool was built in a community effort in 1953.

Kathee McCarl, head lifeguard at Sierra Pool, said the 237-person capacity has never been reached during the five summers she has worked there but could be tested over the weekend. On Friday, more than 30 people

**"It's going to be hot. The big thing with this is it's a longer duration heat wave and the lows at night in Auburn are going to be quite warm because you're in the thermal belt."**

Karl Swanberg, meteorologist, National Weather Service

had already lined up before the pool opened at 11 a.m. On weekdays, the public swim lasts until 3:30 p.m. On weekends, pool hours are 1-5 p.m.

The weather bureau is predicting a high temperature in the Auburn area on Sunday of 102 degrees. There will be scant relief at night, with the overnight low in the mid to upper 70s, said meteorologist Karl Swanberg.

Things won't get any better on Monday, with a forecast daytime high of 103 and a low hovering somewhere between 77 and 82 degrees, he said.

"It's going to be hot," Swanberg said. "The big thing with this is it's a longer duration heat wave and the lows at night in Auburn are going to be quite warm because

you're in the thermal belt."

Tuesday promises to be even hotter, peaking out at 104 again with overnight lows in the mid-70s to around 80, the Weather Service says.

"There's some potential for some cooling on Wednesday but the key word is 'some,'" Swanberg said. "The expected high temperatures Wednesday should be in the upper 90s to maybe 102."

Humidity levels will decrease through Sunday but then start rising again through Tuesday because of a southerly flow of moisture, he said.

McCarl said her poolside advice to beat the heat is to leave the Monsters and Rockstars at home. So-called energy drinks can promote dehydration,

something that could prove a problem on 100-plus degree days, she said.

"People need to bring lots of water," McCarl said. "Because they get dehydrated really fast in the heat."

Joan Estey, another Foresthill resident, had come to Sierra Pool with grandsons Waylon Markus, 8, and Andrew Markus, 6.

"My grandsons have been coming here since they were babies," Estey said. "This is wonderful, especially for young children, and reasonably priced."

Estey was enjoying a dip in the cooler temperatures of the pool, as well.

"It's extremely rare to have these temperatures," Estey said. "And it has been unusual weather, considering it was pouring Monday and Tuesday. In my opinion, one of the best ways to cool off is to come to Recreation Park."

Reach Gus Thomson at  
gust@goldcountrymedia.com.



## 'A tired dog is a happy dog'

Bradford Kellogg was at the Ashley Memorial Dog Park Tuesday with dogs Cooper and Zeppelin getting in a little exercise. Kellogg is the owner of Bradford Pet Sitting and is at the dog park almost every day.

"I've been working with dogs since 2005," Kellogg said. "A tired dog is a happy dog, and a happy dog doesn't cause mischief."

Bradford brings as many as five dogs to the park at a time and throws a ball for hours as they retrieve.



Cooper (left) and Zeppelin get some exercise at the Ashley Memorial Dog Park Tuesday.



PHOTOS BY MICHAEL KIRBY • AUBURN JOURNAL

*July 10, 2013*