

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

**6:00 PM**

**THURSDAY, MARCH 29, 2018  
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**

**(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. The November and December Board meetings will be scheduled in consideration of recognized holidays. 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 \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**2.0 INTRODUCTIONS, PRESENTATIONS AND ANNOUNCEMENTS**

None.

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

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

**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 Meeting of the Board of Directors from February 22, 2018**

Review and approval of the Minutes of the Meeting of the Board of Directors from February 22, 2018.

\_\_\_\_\_ **5.2 Review of Cash Requirements for February, 2018 (Standing Finance Committee)**

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 Financials for February, 2018 (Standing Finance Committee)**

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

\_\_\_\_\_ **5.4 Youth Services License Exempt Preschool Job Descriptions (Program, Personnel, Policy, Fee & Legal Review Committee)**

The Program, Personnel, Policy, Fee & Legal Review Committee reviewed and approved the Youth Services License Exempt Preschool Job Descriptions and forwarded them to the Consent Calendar for the Board's review and approval.

\_\_\_\_\_ **5.5 Resolution Number 2018-03: Contract Approval for Regional Park Asphalt Path Repairs Project (Acquisition & Development Committee)**

The Acquisition & Development Committee reviewed and approved Resolution Number 2018-03 and forwarded it to the Consent Calendar for the Board's review and adoption.

Motion by \_\_\_\_\_ second by \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

**6.0 ADMINISTRATOR'S AND DEPARTMENTAL REPORTS**

Please see board reports, fee waiver log, vandalism reports, and project activity report under item 6.0.

**7.0 UNFINISHED BUSINESS**

**7.1 Excess Land Declaration – Mt. Vernon Park (Acquisition & Development Committee)**

Shall the Auburn Area Recreation and Park District (ARD) adopt Resolution Number 2018-04 declaring that the Mt. Vernon Park property (“Nevada Street property”) is in excess of its foreseeable needs?

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

\_\_\_\_\_

Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

**7.2 Resolution Number 2018-05: Mt. Vernon Park Purchase and Sale Agreement (Acquisition & Development Committee)**

**PUBLIC HEARING**

**OPEN PUBLIC HEARING**

**STAFF PRESENTATION**

**PUBLIC COMMENT**

**BOARD DISCUSSIN/ACTION**

**CLOSE PUBLIC HEARING**

Shall the Auburn Area Recreation and Park District (ARD) adopt Resolution Number 2018-05 on the approval of a Purchase and Sale Agreement (“Agreement”) of a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California, referred to as Mt. Vernon Park, more particularly described as Assessor Parcel Number 038-250-081 (“Property”), between ARD and Western Community Housing, Inc. (“WCH”) and make a determination that the Agreement is exempt from CEQA?

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

\_\_\_\_\_

Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

**8.0 NEW BUSINESS**

**\_\_\_\_\_ 8.1 Fee Waiver Request from Foothill Quilters Guild (Standing Finance Committee)**

Shall the Auburn Area Recreation and Park District (ARD) Board of Directors approve the Fee Waiver Request from Foothill Quilters Guild?

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

**\_\_\_\_\_ 8.2 Fiscal Year 2018/2019 Project List and Five-Year Plan Update (Acquisition & Development Committee)**

Shall the Auburn Area Recreation and Park District (ARD) Board of Directors direct staff to begin preliminary work and provide appropriate analysis of the project on the proposed FY 18/19 Project List, and approve the Five-Year Plan Update?

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

**\_\_\_\_\_ 8.3 Preliminary Budget for 2018-2019 (Standing Finance Committee)**

Shall the Auburn Area Recreation and Park District (ARD) Board of Directors approve the Preliminary Budget for 2018-2019?

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

\_\_\_\_\_ 8.4 **Resolution Number 2018-02, Transfer of Equipment Reserve Funds and Transfer of City Trust Fund Reserves (Standing Finance Committee)**

Shall the Auburn Area Recreation and Park District (ARD) approve and adopt Resolution Number 2018-02, a resolution authorizing the transfer of funds from the equipment reserve to reimburse the general fund for the purchase of, and improvement to, the Marsha-Skinner Memorial Sierra Pool's Heater and transfer funds from the City Trust Fund to reimburse the general fund for the purchase of, and improvement to, Railhead Park, Field A and the Herschel Young Park Gateway?

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

\_\_\_\_\_ 8.5 **Letter Supporting SB 929: Website Requirements (Program, Personnel, Policy, Fee & Legal Review Committee)**

This letter was reviewed and approved by the Program, Personnel, Policy, Fee & Legal Review Committee and forwarded to the Board of Directors for review and consideration.

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

\_\_\_\_\_ 8.6 **Claim Against ARD – Broken Windshield**

Shall the Auburn Area Recreation and Park District (ARD) approve or deny a claim against ARD for a chipped windshield at Overlook Park?

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

\_\_\_\_\_  
Gray \_\_\_\_\_ Ainsleigh \_\_\_\_\_ Ferris \_\_\_\_\_ Holbrook \_\_\_\_\_ Lynch \_\_\_\_\_

**Roll Call Vote**

\_\_\_\_\_ **9.0 ITEMS FOR DISCUSSION AND INFORMATIONAL ITEMS**

1. County Mitigation Fund, current balance \$389,982.

\_\_\_\_\_ **10.0 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.

\_\_\_\_\_ **11.0 CORRESPONDENCE/COMMUNICATIONS AND INFORMATIONAL**

None.

\_\_\_\_\_ **12.0 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.

\_\_\_\_\_ **13.0 CLOSED SESSION**

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

**Title: District Administrator**

\_\_\_\_\_ **14.0 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:

3-23-18  
Date

12:55pm  
Time

P. Larson  
Clerk to the Board

**SECTION: 5.0**

**ITEM: 5.1 REVIEW AND APPROVAL OF THE MINUTES  
OF THE MEETING OF THE BOARD OF  
DIRECTORS FROM FEBRUARY 22, 2018**

**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, February 22, 2018, 6:00 p.m., Canyon View Community Center  
471 Maidu Drive, Auburn, CA**

**Board Members**

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

**Board Members**

**Absent:** None

**Staff Present:**

Kahl Muscott, District Administrator  
Joe Fecko, Administrative Services Manager  
Brian Simpson, Facilities & Grounds Manager  
Manouch Shirvanioun, Customer Service/Marketing 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 6:01 p.m. by Chairman Gray.

**(PLEDGE TO THE FLAG)**

**2.0 INTRODUCTIONS, PRESENTATIONS AND ANNOUNCEMENTS**

None.

**3.0 AGENDA REVIEW, CHANGES AND APPROVAL**

A motion was made by Director Lynch and seconded by Director Ferris to approve the agenda with item 8.1 being moved to before item 5.0.

**Roll Call Vote**

Director Gray – Yes  
Director Ainsleigh – Yes  
Director Ferris – Yes  
Director Holbrook – Yes  
Director Lynch – Yes

5 – 0 Motion carries.



#### 4.0 PUBLIC COMMENT

None.

#### Item 8.1 Review of Fee Waiver Request from Placer High School Grad Night (Standing Finance Committee)

Placer Grad Night representatives attended the board meeting requesting a fee waiver of \$836.80.

Bud Rietjens, an Auburn resident gave public comment donating \$100.00 to Placer Grad Night.

Barb Sheldon, a Placer High School parent gave public comment that this event is donation based. ARD is here to serve the community.

A motion was made by Director Lynch and seconded by Director Ferris to approve a fee waiver in the amount of \$436.80 based on receiving \$400.00 worth of donations from individuals for Placer High School Grad Night.

#### Roll Call Vote

Director Gray – Yes  
Director Ainsleigh – Yes  
Director Ferris – Yes  
Director Holbrook – No  
Director Lynch – Yes

4 – 1 Motion carries.

Director Lynch requested the Policy & Procedures for Fee Waivers be revisited at the March, 2018 Program, Personnel, Policy, Fee & Legal Review Committee meeting.

#### 5.0 CONSENT ITEMS

#### 5.1 Review and Approval of the Minutes of the Board of Directors from January 25, 2018

#### 5.3 Review of Cash Requirements for January, 2018 (Standing Finance Committee)

#### 5.4 Review of Financials for January, 2018 (Standing Finance Committee)

A motion was made by Director Holbrook and seconded by Director Ferris to approve the consent calendar.

#### Roll Call Vote

Director Gray – Yes  
Director Ainsleigh – Yes  
Director Ferris – Yes

Director Holbrook – Yes  
Director Lynch – Yes

5 – 0 Motion carries.

## **6.0 ADMINISTRATOR’S AND DEPARTMENTAL REPORTS**

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

Director Ainsleigh requested the Art in the Parks Policy be reviewed at the March, 2018 Program, Personnel, Policy, Fee & Legal Review Committee meeting.

Director Holbrook requested the District Administrator look into options for the quarter machine at the Regional Park Pickle Ball Courts.

Director Holbrook also requested the District Administrator look into purchasing safety cone extension barriers.

## **7.0 UNFINISHED BUSINESS**

None.

## **8.0 NEW BUSINESS**

**8.1 Item 8.1, Review of Fee Waiver Request from Placer High School Grad Night was moved to before item 5.0, Consent Calendar.**

**8.2 Endorsement of Proposition 68: The California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 (Program, Personnel, Policy, Fee & Legal Review Committee)**

A motion was made by Director Lynch and seconded by Director Ainsleigh to Endorse Proposition 68: The California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018.

### **Roll Call Vote**

Director Gray – Yes  
Director Ainsleigh – Yes  
Director Ferris – No  
Director Holbrook – No  
Director Lynch – Yes

3 – 2 Motion carries.

**8.3 Resolution to Prepare Atwood III Engineer's Report for FY 2018/2019 (Acquisition & Development Committee)**

A motion was made by Director Ainsleigh and seconded by Director Lynch to adopt Resolution Number 2018-01, a Resolution Directing SCI Consulting Group to Prepare the Engineer's Report for Fiscal Year 2018-19 for the Continuation of the Annual Assessments for the "Atwood Ranch III Landscaping and Lighting Assessment District."

**Roll Call Vote**

Director Gray – Yes  
Director Ainsleigh – Yes  
Director Ferris – Yes  
Director Holbrook – Yes  
Director Lynch – Yes

5 – 0 Motion carries.

**9.0 ITEMS FOR DISCUSSION AND INFORMATIONAL ITEMS**

1. County Mitigation Fund, current balance \$276,624.

**10.0 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.

None.

**11.0 CORRESPONDENCE/COMMUNICATIONS AND INFORMATIONAL**

None.

**12.0 PUBLIC COMMENT**

None.

**13.0 CLOSED SESSION – Closed Session was cancelled.**

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

**ADJOURNMENT** - As there was no further business, the meeting was adjourned at 7:21 p.m. by Chairman Gray.

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Board Secretary

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Date

**SECTION: 5.0**

**ITEM: 5.2 REVIEW OF CASH REQUIREMENTS FOR  
FEBRUARY, 2018**

**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: \$193,477.20**

Auburn Rec & Park  
 VENDOR CHECK REGISTER REPORT  
 Payables Management

Ranges: From: To: From: To:  
 Check Number First Last Check Date 2/1/2018 2/28/2018  
 Vendor ID First Last Checkbook ID COMM 1ST COMM 1ST  
 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
16349	1099-122	Paula Ainsleigh	2/2/2018	COMM 1ST	PMCHK00002449	\$120.00
16350	1099-264	Philip Green	2/2/2018	COMM 1ST	PMCHK00002449	\$130.00
16351	1099-304	Christina Taylor	2/2/2018	COMM 1ST	PMCHK00002449	\$52.80
16352	1099-53	Patricia Waskowiak	2/2/2018	COMM 1ST	PMCHK00002449	\$25.62
16353	A0002	A&A Stepping Stone Mfg., Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$574.86
16354	A0013	AT&T	2/2/2018	COMM 1ST	PMCHK00002449	\$60.00
16355	A0014	AT&T	2/2/2018	COMM 1ST	PMCHK00002449	\$271.49
16356	A0051	Anderson's Sierra Pipe Co.	2/2/2018	COMM 1ST	PMCHK00002449	\$596.37
16357	AO139	Auburn Ford	2/2/2018	COMM 1ST	PMCHK00002449	\$1,146.82
16358	B0064	Blue Moon Designs	2/2/2018	COMM 1ST	PMCHK00002449	\$225.23
16359	C0004	CAPRI	2/2/2018	COMM 1ST	PMCHK00002449	\$33,400.00
16360	C0072	CIT Technology Fin. Serv., Inc	2/2/2018	COMM 1ST	PMCHK00002449	\$553.57
16361	C0113	Cooks Portable Toilets & Septi	2/2/2018	COMM 1ST	PMCHK00002449	\$1,024.08
16362	C0117	SupplyWorks	2/2/2018	COMM 1ST	PMCHK00002449	\$195.91
16363	C0121	Cota Cole LLP	2/2/2018	COMM 1ST	PMCHK00002449	\$3,645.01
16364	D0010	Diamond Pacific	2/2/2018	COMM 1ST	PMCHK00002449	\$188.19
16365	G0027	Giuliani & Kull, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$1,600.00
16366	G0074	G & H Glass Company	2/2/2018	COMM 1ST	PMCHK00002449	\$339.22
16367	G0077	Gold Country Water	2/2/2018	COMM 1ST	PMCHK00002449	\$59.40
16368	G0092	Green Valley Security, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$1,080.00
16369	H0056	Humana Dental Ins. Co	2/2/2018	COMM 1ST	PMCHK00002449	\$1,888.10
16370	I0018	William Joseph La Flaur	2/2/2018	COMM 1ST	PMCHK00002449	\$675.00
16371	I0014	C.C.D.S.Inc dba Industrial Doo	2/2/2018	COMM 1ST	PMCHK00002449	\$1,425.30
16372	J0010	JeffCo Plumbing, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$356.50
16373	L0027	Pat Larson	2/2/2018	COMM 1ST	PMCHK00002449	\$38.20
16374	L0033	Les Schwab	2/2/2018	COMM 1ST	PMCHK00002449	\$1,142.14
16375	L0094	Lincoln Aquatics	2/2/2018	COMM 1ST	PMCHK00002449	\$334.44
16376	M0028	Maki Heating & A/C, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$123.00
16377	M0035	Meadow Vista Community Center	2/2/2018	COMM 1ST	PMCHK00002449	\$360.00
16378	N0003	Norris Electric, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$3,163.72
16379	O0004	Office Depot	2/2/2018	COMM 1ST	PMCHK00002449	\$223.76
16380	P0005	Placer County Water Agency	2/2/2018	COMM 1ST	PMCHK00002449	\$71.35
16381	P0007	Pacific Gas & Electric Company	2/2/2018	COMM 1ST	PMCHK00002449	\$181.76
16382	R0073	Riebes Auto Parts	2/2/2018	COMM 1ST	PMCHK00002449	\$166.07
16383	S0009	Sierra Saw Sales And Service	2/2/2018	COMM 1ST	PMCHK00002449	\$461.38
16384	S0016	Sam's Club	2/2/2018	COMM 1ST	PMCHK00002449	\$651.77
16385	S0025	Sierra Pacific Turf Supply, In	2/2/2018	COMM 1ST	PMCHK00002449	\$481.02
16386	S0086	Sac-Val Janitorial Supply, Inc	2/2/2018	COMM 1ST	PMCHK00002449	\$1,255.32
16387	S0103	SCI Consulting Group	2/2/2018	COMM 1ST	PMCHK00002449	\$726.60
16388	S0145	SCP Pool Distributors LLC	2/2/2018	COMM 1ST	PMCHK00002449	\$35,517.77
16389	S1000	State Of California/DOJ	2/2/2018	COMM 1ST	PMCHK00002449	\$106.00
16390	T1000	Transamerica Life Insurance	2/2/2018	COMM 1ST	PMCHK00002449	\$460.00
16391	TEMPV	Kathy Van Dam	2/2/2018	COMM 1ST	PMCHK00002449	\$48.24
16392	U0016	Uptown Signs & Graphics, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$534.11
16393	U0026	Union Pacific Railroad	2/2/2018	COMM 1ST	PMCHK00002449	\$1,900.16
16394	V0004	Valley Truck & Tractor Co.	2/2/2018	COMM 1ST	PMCHK00002449	\$3,960.88
16395	W0001	Walker's Office Supplies, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$1,062.98
16396	W0043	West Coast Fire Protection Sys	2/2/2018	COMM 1ST	PMCHK00002449	\$225.00
16397	W0044	Wave	2/2/2018	COMM 1ST	PMCHK00002449	\$1,132.00
16398	Y0002	Yuba Safe & Lock, Inc.	2/2/2018	COMM 1ST	PMCHK00002449	\$790.80
16399	U0019	US Bank	2/7/2018	COMM 1ST	PMCHK00002450	\$5,329.38
16400	F0004	Court-Ordered Debt Collections	2/8/2018	COMM 1ST	PMCHK00002451	\$99.97
16401	S1007	Stationary Engineers, Local 39	2/8/2018	COMM 1ST	PMCHK00002451	\$412.81
16402	T0070	The Goat Works	2/8/2018	COMM 1ST	PMCHK00002451	\$5,000.00
16403	1099-104	Thomas Seibel	2/16/2018	COMM 1ST	PMCHK00002452	\$97.50
16404	1099-117	Juan Aceituno	2/16/2018	COMM 1ST	PMCHK00002452	\$650.00

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
16405	1099-193	Celena Polena	2/16/2018	COMM 1ST	PMCHK00002452	\$260.00
16406	1099-218	Auburn Gymnastics Center	2/16/2018	COMM 1ST	PMCHK00002452	\$630.50
16407	1099-239	Macintosh-Oddo	2/16/2018	COMM 1ST	PMCHK00002452	\$5,184.20
16408	1099-256	Healing Pastures, Inc.	2/16/2018	COMM 1ST	PMCHK00002452	\$97.50
16409	1099-269	Deborah Lynn	2/16/2018	COMM 1ST	PMCHK00002452	\$273.00
16410	1099-271	Kelpro Security	2/16/2018	COMM 1ST	PMCHK00002452	\$1,134.00
16411	1099-277	Foothill Karate Do	2/16/2018	COMM 1ST	PMCHK00002452	\$22.75
16412	1099-291	Isaac Humber	2/16/2018	COMM 1ST	PMCHK00002452	\$136.50
16413	1099-295	Juli Land-Marx, dba Image Net	2/16/2018	COMM 1ST	PMCHK00002452	\$958.33
16414	1099-313	Alison Lloyd	2/16/2018	COMM 1ST	PMCHK00002452	\$1,027.80
16415	1099-341	Twardis, Bryan	2/16/2018	COMM 1ST	PMCHK00002452	\$72.00
16416	1099-343	Faith Petersen	2/16/2018	COMM 1ST	PMCHK00002452	\$594.00
16417	1099-358	Natalia Roberti	2/16/2018	COMM 1ST	PMCHK00002452	\$90.00
16418	1099-359	Tai Batov	2/16/2018	COMM 1ST	PMCHK00002452	\$480.00
16419	A0001	Recology Auburn Placer	2/16/2018	COMM 1ST	PMCHK00002452	\$1,193.58
16420	A0018	Auburn Chamber of Commerce	2/16/2018	COMM 1ST	PMCHK00002452	\$360.00
16421	A0027	Recology Auburn Placer	2/16/2018	COMM 1ST	PMCHK00002452	\$1,250.60
16422	A0051	Anderson's Sierra Pipe Co.	2/16/2018	COMM 1ST	PMCHK00002452	\$603.73
16423	B0064	Blue Moon Designs	2/16/2018	COMM 1ST	PMCHK00002452	\$1,608.75
16424	C0061	California Computer Services	2/16/2018	COMM 1ST	PMCHK00002452	\$5,060.00
16425	C0111	Cal.net	2/16/2018	COMM 1ST	PMCHK00002452	\$66.90
16426	C0113	Cooks Portable Toilets & Septi	2/16/2018	COMM 1ST	PMCHK00002452	\$1,136.08
16427	D0025	Dawson Oil Company	2/16/2018	COMM 1ST	PMCHK00002452	\$1,616.01
16428	D0066	De Lage Landen Financial Servi	2/16/2018	COMM 1ST	PMCHK00002452	\$332.48
16429	F0034	Joe Fecko	2/16/2018	COMM 1ST	PMCHK00002452	\$16.96
16430	F0041	Friends of ARD	2/16/2018	COMM 1ST	PMCHK00002452	\$500.00
16431	G0006	Gold Country Media Publication	2/16/2018	COMM 1ST	PMCHK00002452	\$1,237.12
16432	I0010	Inland Business Systems	2/16/2018	COMM 1ST	PMCHK00002452	\$51.06
16433	K0011	Kaiser Foundation Health Plan,	2/16/2018	COMM 1ST	PMCHK00002452	\$15,196.34
16434	M0019	Kahl Muscott	2/16/2018	COMM 1ST	PMCHK00002452	\$43.35
16435	M0043	Mobile Rock Incorporated	2/16/2018	COMM 1ST	PMCHK00002452	\$550.00
16436	M0098	Meadow Vista County Water Dist	2/16/2018	COMM 1ST	PMCHK00002452	\$663.38
16437	N0012	Nevada Irrigation District	2/16/2018	COMM 1ST	PMCHK00002452	\$661.27
16438	N0048	Normac, Inc.	2/16/2018	COMM 1ST	PMCHK00002452	\$172.78
16439	P0005	Placer County Water Agency	2/16/2018	COMM 1ST	PMCHK00002452	\$2,597.38
16440	P0007	Pacific Gas & Electric Company	2/16/2018	COMM 1ST	PMCHK00002452	\$7,370.91
16441	P0102	Pape' Machinery	2/16/2018	COMM 1ST	PMCHK00002452	\$11,298.12
16442	S0067	Superfast Copy	2/16/2018	COMM 1ST	PMCHK00002452	\$133.30
16443	S0094	Manouch Shirvanioun	2/16/2018	COMM 1ST	PMCHK00002452	\$46.32
16444	S0143	SMOA	2/16/2018	COMM 1ST	PMCHK00002452	\$5,795.00
16445	S0145	SCP Pool Distributors LLC	2/16/2018	COMM 1ST	PMCHK00002452	\$876.69
16446	S0152	SiteOne Landscape Supply, LLC	2/16/2018	COMM 1ST	PMCHK00002452	\$446.73
16447	S0159	Sac Ice	2/16/2018	COMM 1ST	PMCHK00002452	\$1,111.83
16448	S1000	State Of California/DOJ	2/16/2018	COMM 1ST	PMCHK00002452	\$212.00
16449	S1003	Sutter Medical Foundation	2/16/2018	COMM 1ST	PMCHK00002452	\$182.00
16450	TEMPA	Auburn Fellowship Church	2/16/2018	COMM 1ST	PMCHK00002452	\$160.00
16451	V0007	Verizon Wireless	2/16/2018	COMM 1ST	PMCHK00002452	\$620.32
16452	W0001	Walker's Office Supplies, Inc.	2/16/2018	COMM 1ST	PMCHK00002452	\$555.46
16453	W0003	Warehouse Paint Incorporated	2/16/2018	COMM 1ST	PMCHK00002452	\$356.57
16454	W0044	Wave	2/16/2018	COMM 1ST	PMCHK00002452	\$777.76
16455	Y0002	Yuba Safe & Lock, Inc.	2/16/2018	COMM 1ST	PMCHK00002452	\$167.78
16458	G0009	General Wholesale Electric Sup	2/20/2018	COMM 1ST	PMCHK00002455	\$76.74
16459	P0102	Pape' Machinery	2/20/2018	COMM 1ST	PMCHK00002457	\$528.95
16456	S1007	Stationary Engineers, Local 39	2/23/2018	COMM 1ST	PMCHK00002453	\$430.87
16457	S1014	State of California Franchise	2/23/2018	COMM 1ST	PMCHK00002453	\$109.90

Total Checks: 111

Total Amount of Checks: \$193,477.20

**SECTION: 5.0**

**ITEM: 5.3 REVIEW OF FINANCIALS FOR  
FEBRUARY, 2018**

**DESCRIPTION:**

**INFORMATION: SEE ATTACHED INFORMATION**

**STAFF  
RECOMMENDATION: REVIEW AND APPROVE FINANCIALS**

**PROFIT & LOSS**  
**17/18 Approved Budget**

	Approved Budget FY 17-18	% Of Total	Mid-Yr Revision FY 17-18	% Of Total	2018 February ACTUALS	Last Yr February Actuals	2018 YTD ACTUALS	2018 YTD BUDGET	Last Yr YTD ACTUALS
<b>Operating Revenues</b>									
Program Revenue	1,045,700	20%	1,054,269	20%	75,861	61,019	1,076,793	1,000,094	1,003,843
Facility Revenue	148,155	3%	152,473	3%	11,635	11,768	148,814	150,379	180,657
Misc. Revenue	59,225	1%	54,615	1%	4,238	5,927	36,422	48,615	58,972
Grants & Donations	50,146	1%	22,566	0%	112	62	37,812	22,566	803,028
Interest Income	45,400	1%	45,400	1%	6,778	5,189	53,865	37,950	44,141
Projects Revenue	387,300	7%	382,300	7%	-	-	170,625	-	44,000
Tax Revenue	2,973,655	56%	3,068,784	57%	91,108	83,336	3,116,202	3,091,765	2,998,026
In Kind/Atwood	25,500	0%	22,981	0%	-	-	-	-	-
Trans from Cap Cons/City Trust/Eq Res	616,204		557,261		-	-	-	-	-
<b>Total Operating Revenue</b>	<b>5,351,285</b>	<b>100.00</b>	<b>5,360,649</b>	<b>100.00</b>	<b>189,732</b>	<b>167,301</b>	<b>4,640,533</b>	<b>4,351,369</b>	<b>5,132,667</b>
<b>Expenditures</b>									
Program Expense	274,374	5%	257,195	5%	19,168	16,454	226,775	228,095	228,179
Operating & Supplies	336,100	6%	346,784	7%	20,649	24,540	315,636	320,774	284,887
Utilities Expense	199,800	4%	194,580	4%	4,422	9,937	134,660	177,580	158,936
Professional Services	38,800	1%	31,800	1%	9,432	7,071	36,914	34,958	32,520
Building & Grounds Maintenance	353,098	7%	364,450	7%	43,182	14,968	340,969	332,600	219,587
Property Tax Admin.	63,200	1%	62,878	1%	-	-	51,092	62,878	60,306
Wages	2,085,305	39%	2,115,962	40%	148,069	136,617	1,812,835	1,850,032	1,625,818
Benefits & Payroll Costs	713,282	13%	739,491	14%	65,990	51,530	684,418	682,698	602,660
Fixed Asset Expense	62,178	1%	215,300	4%	34,911	53,602	70,932	210,300	908,217
Capital Improvement Projects	969,000	18%	813,261	15%	3,841	(12,372)	262,591	317,300	187,967
Debt Services	6,000	0%	5,890	0%	2,283	2,228	5,727	5,890	6,022
Special Dept Expenses (equip res.)	-	0%	-	0%	-	-	-	-	-
Project Expenditures	25,000	0%	53,119	1%	-	-	-	-	-
Misc Expense (CalPERS unfunded liab)	180,200	3%	100,800	2%	-	-	-	-	-
<b>Total Expenditures</b>	<b>5,306,337</b>	<b>100.00</b>	<b>5,301,510</b>	<b>100.00</b>	<b>351,947</b>	<b>304,575</b>	<b>3,942,549</b>	<b>4,223,105</b>	<b>4,315,099</b>
<b>Net Revenue Over Expenditures</b>	<b>\$ 44,948</b>	<b>0.84</b>	<b>\$ 59,139</b>	<b>0.84</b>	<b>\$ (162,215)</b>	<b>(137,274)</b>	<b>\$ 697,984</b>	<b>\$ 128,264</b>	<b>\$ 817,568</b>
Annual Contingency Reserve (1-2%)	\$ 450,000		\$ 450,000				\$ 450,000	\$ 450,000	\$ 450,000
Annual Equip Replacement Reserve	\$ 920,531		\$ 920,531				\$ 920,531	\$ 920,531	\$ 758,531
Future Capital Construction Reserve	\$ 955,971		\$ 955,971				\$ 955,971	\$ 955,971	\$ 705,971
ADA Reserve	\$ 70,032		\$ 70,032				\$ 70,032	\$ 70,032	\$ 60,032
CalPERS unfunded liability reserve	\$ 45,800		\$ 45,800				\$ 45,800	\$ 45,800	\$ 45,800
<b>TOTAL RESERVE BALANCES</b>	<b>\$ 2,442,334</b>		<b>\$ 2,442,334</b>				<b>\$ 2,442,334</b>	<b>\$ 2,442,334</b>	<b>\$ 2,020,334</b>



**Auburn Area Recreation and Park District**  
**Balance Sheet**  
**2/28/2018**

	Current YTD
<b>ASSETS</b>	
<u>Current Assets</u>	
Imprest Fund (Petty Cash)	\$580.00
Community 1st Bank	140,857.47
Placer County Treasure-General	4,138,322.17
Placer County Treasurer - City Trust	442,806.62
Accounts Receivable	15,040.30
A/R - 501C3 Group	5,000.00
PCOE Receivables	17,588.00
Prepaid Expenses	910.00
Prepaid Liability Expense	22,266.66
Prepaid Workers Comp Insurance	5,594.68
<b>TOTAL ASSETS</b>	<b>\$4,788,965.90</b>
<b>LIABILITIES AND NET PROFIT</b>	
<u>Current Liabilities</u>	
Prepaid Revenue	\$14,035.35
Gift Certificates	145.00
Compensated Absenses	140,456.15
Sales Tax Payable	159.40
Federal Withholding Payable	(100.00)
Miscellaneous Deductions	100.00
<b>Total Current Liabilities</b>	<b>\$154,795.90</b>
<u>Net Position</u>	
General Fund Balance	\$3,936,185.65
Net Profit (Loss)	697,984.35
<b>Total Net Postion</b>	<b>\$4,634,170.00</b>
<b>TOTAL LIABILITY AND NET POSITION</b>	<b>\$4,788,965.90</b>

Auburn Recreation and Park District

Balance Sheet

As of 2/28/2018

ASSETS

Current Assets

Petty Cash	\$ 580.00
Community 1 <sup>st</sup> Bank	140,857.47
Placer County Treasurer – General Fund	4,138,322.17
Placer County Treasurer – City Trust	442,806.62
Accounts Receivable	15,040.30
A/R – Friends 501C3	5,000.00
Prepaid Liability Expense	22,266.66
Prepaid Workers Comp Ins	5,594.68
PCOE Youth Services Receivable	<u>17,588.00</u>

Total Current Assets \$ 4,788,965.90

Fixed Assets

Fixed Assets: Land	\$ 1,970,546.12
Fixed Assets: Structures	12,137,819.32
Fixed Assets: Equipment	900,314.73
Fixed Assets: Computer Equipment & Software	163,482.81
Fixed Assets: Vehicles	247,332.21
Fixed Assets: Office Furniture & Rec Equipment	83,168.05
Construction In Progress	512,992.66
Less: Accumulated Depreciation	<u>(9,179,522.88)</u>

Total Fixed Assets \$ 6,836,133.02

TOTAL ASSETS \$ 11,625,098.92

Auburn Recreation and Park District

Balance Sheet (Continued)

As of 2/28/2018

LIABILITIES AND NET POSITON

Current Liabilities

Prepaid Revenue	\$14,035.35
Gift Certificates	145.00
Compensated Absences	140,456.15
Sales Tax Payable	159.40
Federal Withholding Payable	(100.00)
Misc Deductions	<u>100.00</u>

Total Current Liabilities \$ 154,795.90

Fund Balances

Investments in Fixed Assets	\$ 6,836,133.02
GFB: Youth Assistance Fund	9,878.78
GFB: General Fund Balance	851,763.94
GFB: Cell Tower Reserves	122,459.24
RFB: Reserved (City Mitigation)	442,806.62
RFB: Equip Replacement Reserve	920,530.72
RFB: Contingency Reserve	450,000.00
RFB: Future Capital Construction	955,971.25
DFB: Arboretum Grant Fund	13,275.73
DFB: Designated – Atwood Fund	(15,386.08)
DFB: Atwood – Equipment Repl Fund	15,603.66
DFB: Calpers – Unfunded Liability Fund	91,600.00
DFB: ADA Reserves	70,031.75
DFB: Shockley Maint Fund	7,650.04

Net Position 860,174.92

Total Assets	\$ 6,836,133.02
Total Unrestricted Funds GFB	984,101.96
Total Reserved Funds	2,769,308.59
Total Designated Funds	<u>182,775.10</u>

TOTAL LIABILITIES AND NET POSITION \$ 11,625,098.92

## **Item 5.4 Cover sheet – Youth Services License Exempt Preschool Job Descriptions**

**Auburn Area Recreation and Park District Policy Committee meeting March, 2018; Board of Directors meeting March, 2018**

### **The Issue**

Shall the Auburn Area Recreation and Park District (ARD) approve the creation of a new job descriptions for a license exempt preschool?

### **Background**

A license exempt preschool<sup>1</sup> has operated at Recreation Park as a contract class for the ARD Recreation Department since 2010. The preschool instructors would like to divest themselves of their business and be retained by ARD as employees. This highly successful preschool will now become an ARD preschool managed through the Youth Services Department.

Four new job descriptions and associated pay scales need to be approved by the ARD Board of Directors.

Note<sup>1</sup>: a preschool is exempt from licensing if the sessions run 12 hours per week or less and are 12 weeks or less in duration. Children may be enrolled in consecutive sessions throughout the year, but may not attend more than 12 hours per week.

### **Recommendation for the Board of Directors**

Review and approve the new job descriptions for the license exempt preschool.

The Policy Committee recommended sending this item to the Consent Calendar with a positive recommendation.

### **Fiscal Impact**

For the upcoming Fiscal Year 18/19, the (conservative) budget for the Youth Services License Exempt Preschool is as follows:

Revenue:	\$60,000
Expenses:	\$52,000

The preschool, as a contracted Recreation Dept. class, netted ARD \$16,000 last Fiscal Year.

### **Attachments**

Youth Services License Exempt Preschool Site Director job description  
Youth Services License Exempt Preschool Teacher 1 job description  
Youth Services License Exempt Preschool Teacher 2 job description  
Youth Services License Exempt Preschool Teacher 3 job description

## **YOUTH SERVICES PROGRAM**

### **LICENSE EXEMPT PRESCHOOL SITE DIRECTOR**

**DEFINITION AND PURPOSE:** Under the general direction of the Youth Services Manager, the Site Director will be responsible for developing and implementing a program of creative learning experiences and enrichments, and recreation activities for preschool students.

**EXAMPLES OF ESSENTIAL JOB FUNCTIONS:**

Responsibilities and duties include, but are not limited to the following:

- Supervises total program for site; demonstrates good judgment
- Maintains positive relationships with students, treating them with respect in all situations; models appropriate behavior
- Provides effective classroom management; supervises classroom routines including toileting and snacks
- Plans and implements a calendar of age-appropriate activities, demonstrating cultural competency and inclusiveness
- Plans and implements a snack calendar, ordering supplies as necessary
- Maintains accurate and current files on all children and staff in the program. Alerts Youth Services Manager of any deficiencies
- Oversees payments. Follows up with outstanding accounts. Processes paperwork in a timely manner
- Addresses any injuries and applies first aid/CPR where appropriate, alerts parents
- Plans, conducts and documents disaster drills for the safety of all children and staff
- Maintains positive relationship with parents, staff, and the public in accordance with the policies and practices of the District; manages confidential information
- Reports suspected child abuse to Child Protective Services in a timely manner. Alerts the Youth Services Manager and provides a copy of the paperwork submitted
- Addresses Workers' Compensation accidents immediately and follows through in accordance with the policies and practices of the District. Reports all accidents/incidents/injuries to the Youth Services Manager and processes essential paperwork in a timely manner
- Creates and maintains an appealing classroom environment, adapting for changing seasons and themes.
- Oversees sanitary practices and cleanliness of the facility, reports cases of lice and contagious illnesses to the Youth Services Manager
- Alerts the Youth Services Manager regarding issues with payments, parents, safety, building maintenance or any area directly impacting the program
- Supervises staff and provides on-the-job training where applicable
- Performs other work/duties as assigned
- Provides input for staff reviews as requested
- Responds to questions from the public

**NON-ESSENTIAL JOB FUNCTIONS:**

Responsibilities and duties include, but are not limited to the following:

- Plans/participates in special events, community involvement and/or field trips
- Provides periodic training/staff meetings for site staff in conjunction with the Youth Services Manager
- Attends departmental meetings as scheduled

*Youth Services Exempt Preschool Site Director*  
*April 1, 2018*

## **KNOWLEDGE, SKILLS AND ABILITIES**

Innovation and creativity; strong organizational skills; effective classroom management; ability to multi-task; work independently; maintain records and prepare reports; communicate effectively both orally and in writing; public speaking skills; demonstrated experience with desktop publishing and other computer applications including word processing, and spreadsheets, preferably on PC based systems; principles and practices common to Youth Services, analyze and resolve unusual situations through application of District policy; meet the public in situations requiring diplomacy and tact.

## **WORK ENVIRONMENT**

The position requires sitting, standing, walking, running, reaching, twisting, turning, kneeling, bending, stooping, squatting and making repetitive hand movements in the performance of daily duties. It requires working in both an indoor, temperature controlled classroom environment and in outdoor environment in all weather conditions including wet, heat, cold, and exposure to dust, pollen and cleaning chemicals. It requires both near and far vision and competent/adequate hearing when supervising children both in the classroom and on the playground. The noise level of the indoor setting can be loud. Must be available to work on days and times assigned, which may include evenings or weekends. Capable of walking, running, standing, playing games up to 90% of the work day, occasionally on uneven terrain. Able to climb stairs, lift items up to 30 lbs., and assist children in case of injury.

## **REQUIRED QUALIFICATIONS**

Department of Justice clearance

High school degree or equivalent. Must be at least 18 years of age. In addition:

At least one year's experience supervising children.

Completed 15 units of Early Childhood Education.

**And/Or:** 6 units in Early Childhood Education and 9 units toward a teacher/recreational or related degree for a total of 15 units.

**And/Or:** A.A. or B.A. degree from an accredited college or university with at least 6 units in Early Childhood Education.

**And/Or:** Child Development Site Supervisor Permit.

**And/Or:** Child Development Program Director Permit.

## **LICENSES, CERTIFICATES AND IMMUNICATIONS**

Current First Aid and Infant/child CPR certifications are required and renewed every two years. Current Negative Tuberculosis skin test is required at the time of employment and updated at any time there is a case reported within our working environment. Mandatory Reporter Training is required and renewed every two years.

One of the following regarding influenza immunization:

*Youth Services Exempt Preschool Site Director*

*April 1, 2018*

- A copy of an immunization record for influenza dated between August 1 and December 1 of each year
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to influenza
- A signed statement from the employee stating that they have declined to be vaccinated against the flu.

One of the following regarding pertussis (whooping cough) immunization:

- A copy of an immunization record for pertussis
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to pertussis

One of the following regarding measles immunization:

- A copy of an immunization record for measles
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to measles
- Proof that the employee was born before 1957 (according to the Advisory Council on Immunization Practices, "adults born before 1957 are generally considered immune to measles and mumps.")

**COMPENSATION:** Full-time/part-time/temporary/seasonal position.

Wage rate range

Full-time union position:

\$15.93 - \$21.32

Part-time/seasonal/temporary non-union position:

\$14.89 - \$19.92

**Auburn Area Recreation and Park District is an Equal Opportunity Employer.**

*Youth Services Exempt Preschool Site Director*

*April 1, 2018*

## **YOUTH SERVICES PROGRAM**

### **LICENSE EXEMPT PRESCHOOL TEACHER 1 (Aide)**

**DEFINITION AND PURPOSE:** Under the general direction of the Youth Services Manager and the Exempt Preschool Director, this position provides support for preschool-aged children to grow and develop through creative play and learning opportunities in a nurturing environment.

#### **ESSENTIAL JOB FUNCTIONS:**

Responsibilities and duties include, but are not limited to the following:

- Follows lead direction of the Youth Services Manager and Director
- Assists with program activities and routines including toileting and snack
- Assists with supervision of students, both in the classroom and on the playground
- Promotes safety at all times, reporting potential safety issues or injuries immediately to the Director. Addressing injuries and applying first aid as appropriate.
- Is nurturing with children, assisting them in learning basic skills
- Treats students with respect, demonstrates cultural competency and inclusiveness, models appropriate behavior
- Maintains accurate reports of children's behavior and/or other concerns and communicate to the Director
- Maintains positive relationships with parents, co-workers, other District employees and the public in accordance with good customer service practices and District policies

#### **NON-ESSENTIAL JOB FUNCTIONS:**

- Assist in the preparation, serving and clean up of snack items
- Assist with basic cleaning duties and maintenance of the room, including setting up and tearing down
- Perform other related work/duties as assigned

#### **KNOWLEDGE, SKILLS AND ABILITIES**

Exhibit creativity and patience with students, maintaining positive relationships and treating them with respect in all situations; possess good communications skills, both oral and written. Ability to follow program procedures and demonstrate good judgment, especially in regard to safety; effective classroom management skills, and observe sanitary practices in the program environment.

#### **WORK ENVIRONMENT**

The position requires sitting, standing, walking, running, reaching, twisting, turning, kneeling, bending, stooping, squatting and making repetitive hand movements in the performance of daily duties. It requires working in both an indoor, temperature controlled classroom environment and in outdoor environment in all weather conditions including wet, heat, cold, and exposure to dust, pollen and cleaning chemicals. It requires both near and far vision and competent/adequate hearing when supervising children both in the classroom and on the playground. The noise level of the indoor setting can be loud. Must be available to work on days and times assigned, which may require substituting. Capable of walking, running, standing, playing games up to 90% of the work day, occasionally on uneven terrain. Able to climb stairs, lift items up to 30 lbs., and assist children in case of injury.

#### **EDUCATION REQUIREMENTS AND QUALIFYING EXPERIENCES**

Position requires the immediate supervision of an Exempt Preschool Teacher 2, 3, Director or Manager.

Department of Justice clearance

High school degree or equivalent. Must be 18 years of age. In addition:

Experience preferred but not required, such as R.O.P., coaching children's sports, babysitting, or volunteering with children's groups such as Boy/Girl Scouts.

*Youth Services Exempt Preschool Teacher 1 (aide)*

*April 1, 2018*



## **LICENSES, CERTIFICATES AND IMMUNIZATIONS**

Current Negative Tuberculosis skin test is required at the time of employment and updated at any time there is a case reported within our working environment.

Mandated Reporter Training is required and renewed every two years.

One of the following regarding influenza immunization:

- A copy of an immunization record for influenza dated between August 1 and December 1 of each year
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to influenza
- A signed statement from the employee stating that they have declined to be vaccinated against the flu.

One of the following regarding pertussis (whooping cough) immunization:

- A copy of an immunization record for pertussis
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to pertussis

One of the following regarding measles immunization:

- A copy of an immunization record for measles
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to measles
- Proof that the employee was born before 1957 (according to the Advisory Council on Immunization Practices, "adults born before 1957 are generally considered immune to measles and mumps.")

**COMPENSATION:** Part-time/temporary/seasonal non-union position.

Wage rate range

\$11.00- \$14.71

**Auburn Area Recreation and Park District is an Equal Opportunity Employer.**

*Youth Services Exempt Preschool Teacher 1 (aide)*

*April 1, 2018*

## **YOUTH SERVICES PROGRAM**

### **LICENSE EXEMPT PRESCHOOL TEACHER 2**

**DEFINITION AND PURPOSE:** Under the general direction of the Youth Services Manager and the Exempt Preschool Director, this position provides support for preschool-aged children to grow and develop through creative play and learning opportunities in a nurturing environment.

#### **ESSENTIAL JOB FUNCTIONS:**

Responsibilities and duties include, but are not limited to the following:

- Follows lead direction of the Youth Services Manager and Director
- Assists with program activities and routines including toileting and snacks
- Assists with supervision of students, both in the classroom and on the playground
- Treats students with respect, demonstrates cultural competency and inclusiveness; models appropriate behavior
- Promotes safety at all times, reporting potential safety issues or injuries immediately to the Director. Addressing injuries and applying first aid as appropriate.
- Is nurturing with children, assisting them in learning basic skills
- Maintains accurate reports of children's behavior and/or other concerns and communicate to the Director
- Maintains positive relationships with parents, co-workers, other District employees and the public in accordance with good customer service practices and District policies
- Demonstrates effective classroom management
- Administers medications as directed by the parent in accordance with proper medical forms and procedures

#### **NON-ESSENTIAL JOB FUNCTIONS:**

- Assist in the preparation, serving and clean up of snack items
- Contribute to the planning and implementation of activities and events as the need arises
- Assist with basic cleaning duties and maintenance of the room, including setting up and tearing down
- Other duties as assigned

#### **KNOWLEDGE, SKILLS AND ABILITIES**

Exhibit creativity, energy and patience with students, maintaining positive relationships and treating them with respect in all situations; possess good communication skills, both oral and written; ability to follow program procedures and demonstrate good judgment. Observe sanitary practices in the program environment; exhibit effective classroom management skills.

#### **WORK ENVIRONMENT**

The position requires sitting, standing, walking, running, reaching, twisting, turning, kneeling, bending, stooping, squatting and making repetitive hand movements in the performance of daily duties. It requires working in both an indoor, temperature controlled classroom environment and in outdoor environment in all weather conditions including wet, heat, cold, and exposure to dust, pollen and cleaning chemicals. It requires both near and far vision and competent/adequate hearing when supervising children both in the classroom and on the playground. The noise level of the indoor setting can be loud. Must be available to work on days and times assigned, which may require substituting. Capable of walking, running, standing, playing games up to 90% of the work day, occasionally on uneven terrain. Able to climb stairs, lift items up to 30 lbs., and assist children in case of injury.

#### **REQUIRED QUALIFICATIONS**

Department of Justice Clearance

*Youth Services Exempt Preschool Teacher 2*

*April 1, 2018*

High school degree or equivalent. Must be at least 18 years of age. In addition:

Completed six units of Early Childhood Education or related units.

Or Child Development Assistant Permit.

Minimum of six months of work experience in a child care program prior to employment.

### **LICENSES, CERTIFICATES AND IMMUNIZATIONS**

A current CPR and Infant/Child First Aid certificates are required and renewed every two years. Current Negative Tuberculosis skin test is required at the time of employment and updated at any time there is a case reported within our working environment. Mandatory Reporter Training is required and renewed every two years.

One of the following regarding influenza immunization:

- A copy of an immunization record for influenza dated between August 1 and December 1 of each year
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to influenza
- A signed statement from the employee stating that they have declined to be vaccinated against the flu.

One of the following regarding pertussis (whooping cough) immunization:

- A copy of an immunization record for pertussis
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to pertussis

One of the following regarding measles immunization:

- A copy of an immunization record for measles
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to measles
- Proof that the employee was born before 1957 (according to the Advisory Council on Immunization Practices, "adults born before 1957 are generally considered immune to measles and mumps.")

**COMPENSATION:** Part-time/seasonal non-union position.

Wage rate range

\$11.55 - \$15.45

**Auburn Area Recreation and Park District is an Equal Opportunity Employer.**

*Youth Services Exempt Preschool Teacher 2*

*April 1, 2018*

## **YOUTH SERVICES PROGRAM**

### **LICENSE EXEMPT PRESCHOOL TEACHER 3**

**DEFINITION AND PURPOSE:** Under the general direction of the Youth Services Manager and the Exempt Preschool Director, this position provides support for preschool-aged children to grow and develop through creative play and learning opportunities in a nurturing environment.

#### **ESSENTIAL JOB FUNCTIONS:**

Responsibilities and duties include, but are not limited to the following:

- Follows lead direction of the Youth Services Manager and Director
- Assists with program activities and routines including toileting and snack
- Assists with supervision of students, both in the classroom and on the playground
- Promotes safety at all times, reporting potential safety issues or injuries immediately to the Director; addressing injuries and applying first aid as appropriate.
- Is nurturing with children, assisting them in learning basic skills
- Treats students with respect, demonstrates cultural competency and inclusiveness; models appropriate behavior
- Maintains accurate reports of children's behavior and/or other concerns and communicate to the Director
- Maintains positive relationships with parents, co-workers, other District employees and the public in accordance with good customer service practices and District policies
- Demonstrates effective classroom management
- Administers medications as directed by the parent in accordance with proper medical forms and procedures
- May substitute as Director in the Director's absence.

#### **NON-ESSENTIAL JOB FUNCTIONS:**

- Assist in the preparation, serving and clean up of snack items
- Contribute to the planning and implementation of activities and events
- Assist with basic cleaning duties and maintenance of the room, including setting up and tearing down if needed
- Communicate with parents regarding student concerns in Director's absence or as needed
- Other duties as assigned

#### **KNOWLEDGE, SKILLS AND ABILITIES**

Exhibit creativity, energy and patience with students, maintaining positive relationships and treating them with respect in all situations; possess good communication skills, both oral and written; ability to follow program procedures and demonstrate good judgment, especially in regard to safety. Observe sanitary practices in the program environment; exhibit effective classroom management skills.

#### **WORK ENVIRONMENT**

The position requires sitting, standing, walking, running, reaching, twisting, turning, kneeling, bending, stooping, squatting and making repetitive hand movements in the performance of daily duties. It requires working in both an indoor, temperature controlled classroom environment and in outdoor environment in all weather conditions including wet, heat, cold, and exposure to dust, pollen and cleaning chemicals. It requires both near and far vision and competent/adequate hearing when supervising children both in the classroom and on the playground. The noise level of the indoor setting can be loud. Must be available to work on days and times assigned, which may require substituting. Capable of walking, running, standing, playing games up to 90% of the work day, occasionally on uneven terrain. Able to climb stairs, lift items up to 30 lbs., and assist children in case of injury.

*Youth Services Exempt Preschool Teacher 3*

*April 1, 2018*

## **REQUIRED QUALIFICATIONS**

Department of Justice clearance

Education: High school degree or equivalent. Must be at least 18 years of age. In addition:

Completed twelve units of Early Childhood Education or related college units.

Or current Child Development Associate (CDA) credential.

Or Child Development Teacher's Permit.

Experience: Minimum of one year of work experience in a child care program.

## **LICENSES, CERTIFICATES AND IMMUNIZATIONS**

Current First Aid and Infant/child CPR certifications are required and renewed every two years. Current Negative Tuberculosis skin test is required at the time of employment and updated at any time there is a case reported within our working environment. Mandatory Reporter Training is required and renewed every two years.

One of the following regarding influenza immunization:

- A copy of an immunization record for influenza dated between August 1 and December 1 of each year
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to influenza
- A signed statement from the employee stating that they have declined to be vaccinated against the flu.

One of the following regarding pertussis (whooping cough) immunization:

- A copy of an immunization record for pertussis
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to pertussis

One of the following regarding measles immunization:

- A copy of an immunization record for measles
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to measles
- Proof that the employee was born before 1957 (according to the Advisory Council on Immunization Practices, "adults born before 1957 are generally considered immune to measles and mumps.")

**COMPENSATION:** Part-time/seasonal non-union position.

Wage rate range

\$13.28 - \$17.77

**Auburn Area Recreation and Park District is an Equal Opportunity Employer**

*Youth Services Exempt Preschool Teacher 3*

*April 1, 2018*

## **Item 5.5 Cover sheet – Resolution #2018-03: Contract Approval for Regional Park Asphalt Path Repairs Project**

**Auburn Area Recreation and Park District Acquisition and Development Committee  
March 21, 2018; Board of Directors Meeting March 29, 2018**

### **The Issue**

Shall the Auburn Recreation District Board of Directors authorize and approve Resolution #2018-03 a resolution approving a contract with Central Valley Engineering & Asphalt Inc. for \$49,764.75 to install the Regional Park Asphalt Path Repairs Project?

### **Background**

The ARD Board of Directors approved the Regional Park Asphalt Path Repairs Project as part of the 2017/2018 Project List. The basic work scope is as follows:

- Remove and replace damaged sections of existing asphalt pathway at approximately 23 different locations within the park.

Seven bids were received for this work. Central Valley Engineering & Asphalt Inc. was the apparent low bid in the amount of \$49,764.75. Second lowest bid (Ace Asphalt) was for \$58,907.00.

### **Recommendation for the Board of Directors**

Staff recommends that the Board of Directors authorize and approve Resolution #2018-03 for the base bid contract with Central Valley Engineering & Asphalt Inc. in the amount of \$49,764.75.

The Acquisition and Development Committee recommended sending this item to the Consent Calendar with a positive recommendation.

### **Fiscal Impact**

Fiscal impact of the approval of the contract with Central Valley Engineering & Asphalt Inc. is \$49,764.75 plus a 5% District controlled contingency of \$2,488.00 for a total of \$52,252.75.

The budget for this project was \$50,000.00 on 2017/2018 Project List.

### **Attachments**

Resolution #2018-03  
Bid Summary  
Proposal from Central Valley Engineering & Asphalt Inc.

RESOLUTION NUMBER 2018-03

A RESOLUTION OF THE GOVERNING BOARD OF DIRECTORS OF THE  
AUBURN AREA RECREATION AND PARK DISTRICT AWARDING A  
CONTRACT FOR THE REGIONAL PARK ASPHALT PATH REPAIR PROJECT

WHEREAS, the Auburn Area Recreation & Park District Board of Directors authorized the Regional Park Asphalt Path Repairs project on the 2017/2018 Project List and

WHEREAS, the Auburn Area Recreation & Park District solicited formal public bids for the construction of the Regional Park Asphalt Path Repairs project and

WHEREAS, the Auburn Area Recreation & Park District received sealed bids on March 8th, 2018 and determined the low bidder,

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

That the Auburn Area Recreation & Park District awards the Regional Park Asphalt Path Repairs Project to Central Valley Engineering & Asphalt based on the lowest base bid sum of \$49,764.75. The District Administrator is authorized to enter into a contract for the Regional Park Asphalt Path Repairs Project with Central Valley Engineering & Asphalt for the base bid of \$49,764.75 and approves a District controlled contingency of 5% or \$2,488.00. The total for all is \$52,252.75.

APPROVED, PASSED, AND ADOPTED ON March 29<sup>th</sup>, 2018 by the following roll call vote:

Ayes:

Noes:

Absent:

Abstain:

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James A. Gray  
Chairman of the Governing Board

ATTEST:

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Patricia Larson  
Clerk to the Governing Board

PROJECT TITLE: REGIONAL PARK ASPHALT REPAIRS PROJECT  
 BID OPENING DATE/TIME: 3 PM MARCH 8TH, 2018  
 LOCATION: ARD DISTRICT OFFICE BOARD ROOM, 471 MAIDU DR. AUBURN CA 95603

BIDDING COMPANY NAME:	J+S Asphalt	Btm Builders	Ace Asphalt	David. Engineering	Sierra Nat'l Constr.	Simpson P Simpson
BID BOND ATTACHED?:	Yes	Yes	Yes	Yes	Yes	Yes
BID BOND AMOUNT:	100%	100%	100%	100%	100%	100%
RECEIVED ADDENDA?:	Yes 1-3	Yes 1-3	Yes 1-3	Yes 1-3	Yes 1-3	Yes 1-3
BID SIGNED?:	Yes	Yes	Yes	Yes	Yes	Yes
BASE BID TOTAL:	\$78,848.00	\$103,883.00	\$58,907.00	\$94,657.99	\$67,789.90	\$60,884.00
ALT. #1	\$29,682.00	\$16,000.00	\$23,725.00	\$28,700.00	\$16,000.00	\$26,551.00
ALT #2:			#2			



PROJECT TITLE: **RENEWAL PARK ASPHALT REPAIRS PROJECT**  
 BID OPENING DATE/TIME: **3 PM MARCH 8TH, 2018**  
 LOCATION: ARD DISTRICT OFFICE BOARD ROOM, 471 MAIDU DR. AUBURN CA 95603

BIDDING COMPANY NAME:	Central Valley Eng.								
BID BOND ATTACHED?:	Yes								
BID BOND AMOUNT:	1070								
RECEIVED ADDENDA?:	Yes 1-3								
BID SIGNED?:	Yes								
BASE BID TOTAL:	\$49,764.75								
ALT. #1	\$21,410.00								
ALT #2:	#1								

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, Central Valley Engineering & Asphalt, Inc., as Principal, and The Guarantee Company of North America USA, 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 (10% of bid amount) Ten Percent of the Total Amount Bid dollars, (\$ 10% of Bid Amount) 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:

Regional Park Asphalt Path Repairs 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 28th day of February 2018.

Date                      Month                      Year

Central Valley Engineering & Asphalt, Inc.

  
Principal

The Guarantee Company of North America USA

  
Attorney-in-Fact, Renee Ramsey

## ACKNOWLEDGMENT

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

State of California  
County of Sacramento )

On February 28, 2018 before me, Breanna Bofman, Notary Public  
(insert name and title of the officer)

personally appeared Renee Ramsey  
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

Breanna Bofman

(Seal)





The Guarantee Company of North America USA  
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Renee Ramsey, John Hopkins, Elizabeth Colodi, Bobbie Beeny, Phillip O. Watkins, Mindy Whitehouse, Jennifer Lakmann, Sara Walliser, John J. Weber, Stephanie Agapoff, Katherine Gordon, Jessica Monlux, Breanna Bofman, Vicky Troyan  
Interwest Insurance Services, LLC

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surely, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31<sup>st</sup> day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 8th day of December 2011, of which the following is a true excerpt.

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 2<sup>nd</sup> day of October, 2015.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

*Stephen C. Ruschak*

*Randall Musselman*

STATE OF MICHIGAN  
County of Oakland

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

On this 2nd day of October, 2015 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company, that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of said company



Cynthia A. Takai  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires February 27, 2024  
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

*Cynthia A. Takai*

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect



IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 28th day of February, 2018

*Randall Musselman*

Randall Musselman, Secretary

P. 2 of 2

**REGIONAL PARK ASPHALT REPAIRS PROJECT**

**BID SCHEDULE-REVISED: ADDENDUM #3**

No.	Item of Work	Quantity	Unit	Unit Price	Item Total
1.	BONDS, INSURANCE, MOBILIZATION	1	LUMP SUM	1200-	1200-
2.	SAWCUT, REMOVE AND RE-PAVE DAMAGED SECTIONS OF EXISTING AC PATHWAY AS DESCRIBED IN THE DRAWINGS (4" OF 1/2" HOT MIX ASPHALT) 22 LOCATIONS	5133	SF	<del>1200</del> 675	<del>1200</del> 3464775
3.	SAWCUT, REMOVE AND REPLACE DAMAGED SECTION OF EXISTING AC PATHWAY AS DESCRIBED IN THE DRAWINGS AT AREA 16 (2" OF 1/2" HOT MIX ASPHALT OVER 4" CLASS 2 AGGREGATE BASE) 1 LOCATION	1413	SF	9-	12717-
4.	MISCELLANEOUS ITEMS NOT COVERED ABOVE INCLUDING: (7) 8' LONG 3/4" PVC WEEP TUBES (AREA 16), 20' OF 2X4 PTF HEADERBOARD (AREA 10) PROVIDE BRIEF WRITTEN DESCRIPTION OF ANY OTHER ITEMS HERE:	1	LUMP SUM	1200-	1200-
				BASE BID TOTAL:	4976475 ✓
1.	ADD ALTERNATE #1 (AT AREA 5): SAWCUT & REMOVE AC, INSTALL TRENCH DRAIN SYSTEM & TIE IN TO EXISTING CATCH BASIN, RE-PAVE (2" OVER EXISTING BASE) AS SHOWN IN ADD ALTERNATE DRAWING.			21410-	21410-
				ADD ALT #1 TOTAL:	21410-
	Provide unit prices for the following items of work to be used should quantities and/or methods of work change during construction:				
1.	EXCAVATION AND CLASS 2 AGGREGATE BASE COMPACTED	1	TON	125-	XXXXXXXXXX

Quantities, if shown on the Bid Schedule are approximate only, being given as a basis for the comparison of bids. The District does not expressly or by implication agree that the actual amounts 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. Additions to or subtractions from any quantities shown in the Bid Schedule will be compensated for by change order.

**SECTION: 6.0**

**BOARD REPORTS, FEE WAIVER LOG,  
VANDALISM REPORTS & PROJECT  
ACTIVITY REPORT**

**INFORMATION:**

**SEE ATTACHMENTS**

**Kahl Muscott**  
**District Administrator**  
**Report to the Board of Directors**  
**March, 2018**

- I will be attending a Placer County Fish and Game Commission meeting on March 28<sup>th</sup>. There is a possibility of getting the Regional Park or Meadow Vista Park ponds as part of the Fishing in the City program stocks trout and/or catfish in local ponds throughout California.
- On the same day, I have been asked to meet with Supervisors Holmes and Montgomery to discuss possible improvements to Overlook Park.
- The CCC crew finished up the Maidu area shaded fuel break. They were out for one more week than was previously scheduled due to having some smaller crews during their time here. They made quite a bit of difference in the previously overgrown sections of that property.
- The Auburn Robalos Swim Team coach notified Sheryl that she is not going to be coaching this summer. This leaves us with a gaping hole to fill and only a few weeks to fill it. We have posted the job on Indeed and we have feelers out around the community, however we will be lucky to find someone on such short notice.
- Auburn Little League is going to be putting a couple of improved batting cages up next to Beggs Field. These are the “fold-out” type cages like we have behind left field at James Field.
- I have been in communication with Cal-Fire about using the Washington Ridge inmate crew to provide fuel load reduction on the Shockley property. This is the same crew that established the shaded fuel break in late 2012. An inspection of the property by Cal Fire should take place within the next few weeks.
- A new gate was added to the Regional Park pickleball courts. This gate will allow users to enter the courts through the un-used corner of the courts, thereby avoiding the current gate that opens up on to an existing court.
- Two projects are waiting on good weather to proceed – the Sierra Pool shade structure and the hole repair at Ashford Park. Wet weather is not conducive to starting either project.
- This year’s Celebrity Chef event allowed Director Ainsleigh and I once again to take credit for the delicious chili created by Paula Ainsleigh.

**Meetings and events attended or planning on attending:**

3/1: Celebrity Chef event

3/5: Martin Van Enoo re: security cameras at Regional Park gym and shop area

3/6: Rotary

3/8: CAPRI Defensive Driver training

3/9: Mendez Construction re: Ashford Park hole

3/13: Rotary

3/14: ARD Safety Committee

3/15: Meeting with new Sierra College intern Genessa

3/16: Diana Boyer – Bike Park

3/19: Finance Committee

3/20: Rotary

3/21: Policy Committee

3/21: A&D Committee

3/22: Director Holbrook, Lt. Pecoraro (APD) re: review of law enforcement calls at ARD Parks in the city  
3/27: Rotary  
3/28: Supervisors Holmes and Montgomery re: Overlook Park improvements  
3/28: Placer County Fish and Game Commission re: Fishing in the City program  
3/29: FMLA training

**Joe Fecko**  
**Administrative Services Manager**  
**Report to the Board of Directors**  
**March, 2018**

Staff has been working with Western Community Housing to finalize the purchase agreement on the Mt Vernon Property. We believe that we have a workable document, ready to be signed by both parties.

The year end is rapidly approaching and the preliminary budget for 2018/2019 is included in the board packets this month.

Staff has also been working with Capture Technology to address the issues the District has at Regional Park. While the security camera design has been finalized, the issue remains the internet connection available at the park. WAVE has fiber optic located at Chana High School, but needs to bore under Richardson Drive in order to bring it to the park. The cost to do so is prohibitive so staff is looking into other options.

**Brian Simpson**  
**Facilities & Grounds Manager**  
**Report to the Board of Directors**  
**March, 2018**

**Meadow Vista**

Ongoing gopher/mole mitigation.

Bathroom renovation project underway.

**Regional Park**

Goose Scram applied to walking trail around pond-ongoing.

Ongoing ball field maintenance between storms.

Gopher mitigation-ongoing.

**Recreation Park**

Field prep on going between storms for little league and Placer High School

Repaired handicap toilet in men's locker room



Arborwell removed several trees from the park. Previously identified as potentially dangerous to the public.

### Overlook

Security camera DVR repaired....again

### CVCC

Ongoing routine maintenance regarding brush removal and fire risk mitigation behind and adjacent to Community Center building. CCC is beginning to work on area behind and across the street from CVCC.

### Ashford

Met with Gabe Mendez Construction to understand how the sink hole by the pond will be repaired. Waiting for dry weather.

### Mike Scheele

#### Landscape Architect/Project Manager

#### Report to the Board of Directors

#### March, 2018

- **Meadow Vista Restroom ADA Upgrade Project:** Project is underway and should be completed by the end of March.
- **Ashford Park Culvert Sinkhole Repair Project:** Project awarded to Gabe Mendez Construction and will be starting when weather conditions are favorable.
- **Bike Park/Pump Track Project:** USBR still needs to sign the FONSI. Staff has been working on and presenting design modifications to address neighbor concerns at A&D meetings. After a signed FONSI is received, the CD's need to be refined, review by USBOR needs to take place, all required permits need to be obtained with bidding and construction to follow. Recent modifications include a "Bikes Only" access/egress pathway being added to the design to help reduce potential bike traffic on the canal trail and per neighborhood request. A painted/signed crosswalk has been added across Maidu Drive at Shirland Canal Path location. USBR requested the crosswalk and in-house staff performed the installation.
- **Regional Park Irrigation Pump System Improvements:** Contractor staff has been working with has decided that in fact a new gate valve needs to be installed between the pond intake and the pump room before any work is done (new filter etc.) in the pump room. They have provided a price for this work. However, this entails hiring a professional diving company to get into the pond and plug the intake so the work can take place. Staff has contacted two companies that perform this work in hopes of obtaining quotes as soon as possible.
- **Regional Park South Play Structure Replacement:** Estimates and design options being obtained from 5 vendors. Staff still planning to narrow down choices to one style per vendor and take to the Board in combination with inviting the public to vote on their favorite via our website or similar. One vendor has come in with an unusually low price so Staff will be looking closer at the structures (warranties, nuts and bolts etc.) to help ensure that there is a level comparison field. Staff is also preparing construction

- documents for a concrete ramp to be installed from the adjacent parking lot to play structure for ADA compliance and planning on having the new play structure built first.
- **Regional Park Asphalt Path Repair Project:** Bids were opened March 8<sup>th</sup> with Central Valley Engineering & Asphalt Inc. providing the low bid right at the Engineers estimate (50K). This work will be awarded now but scheduled for the summertime when conditions are optimum for asphalt paving. Performing this work when the ground is soft will likely result in damaging additional asphalt path areas and require different and more expensive paving methods. Work involves pathway repairs at approximately 23 locations throughout park with additional minor drainage improvements. UAIC has been kept notified of this schedule as they have expressed interest in having a monitor present for 2-3 locations of path repair.
  - **Dry Creek Picnic and Play Area at Regional Park:** Project design/construction documents moved out to March/April for May/June bidding with construction to follow.
  - **Riparian Management Plan/Streambed Alteration Agreement:** USFWS has finally gotten back to the District giving authorization to proceed and outlining the various forms and reports that will need to be filled out as the work is done and what fees will be required.
  - **Recreation Park Sierra Pool Bleacher Shade Structure Replacement:** Project start is imminent and impromptu site meeting with contractor took place 3/14/18. Contractor needs 2-3 clear, dry days to dig and pour the footings and is monitoring the forecast to give the District the best notice possible. After footings are poured there will be a curing time period of 8-12 days before installing the steel shade structure.
  - **Recreation Park Sierra Pool Re-plastering:** No New Action. Pool re-plaster project pushed out to bid in summer 2018.
  - **Atwood Park:** No New Action. Plant material replacement project has been completed.
  - **O&D Plan:** No new action. Staff working with USBR to get draft reviewed and begin process of enhancing the Plan with a 5 year projection or similar. USBR has said they will try to speed this up and get it done soon.
  - **24 Acre Project:** No new action. Two concept plans have been merged into one after public/A&D input and drawing close to final master plan (Foothill Assocs.). Dog park and parking lot were enlarged, bocce courts added, preliminary cost estimate received.
  - **Miscellaneous Items:** Coordinating a previously-promised memorial bench at Sierra Pool, shrub removal/trimming plans at CVCC, guardrail fence installation at Recreation Park completed, monitoring of newly installed landscapes, construction administration on projects under construction, updates of monthly Board reports and A&D Project Activity Reports etc.

**Manouch Shirvanioun**  
**Marketing & Customer Service**  
**Report to the Board of Directors**  
**March, 2018**

2/14/18-3/23/18      2/18/17-3/23/17

Activity Registrations	\$32,000	\$22,000
Day Care/Discovery payments	\$40,000	\$52,000
Facility payments/reservations	\$10,000	\$17,000

Reviewed and approved fee waiver requests  
 Chamber Ambassador Visits

## Leadership Auburn

Worked with different event organizers/league representatives:

- Auburn Little League
- 49er United and 49er FC
- Western States 100
- Placer County Search & Rescue Team
- AR-50, OL Park 4/6-4/7
- Pioneer Day-MV Park, 6/3

### Sheryl Petersen

#### Recreation Services Manager

#### Report to the Board of Directors

#### March, 2018

- Meetings attended: ASR (1), SCB, SF(2), UKE, AATTC
- Spent some time visiting with sponsors for 2018 events and delivering packets.
- Completed Summer Day Camp line up for summer, got to Juli (website).
- Started spring swimming team clinics.
- Continued bringing seasonal employees in for aquatics start up.
- Met with multiple contractors to develop summer activity guide.
- Met with Patti to finalize summer aquatic programs.
- Met with spring interns-(3 times)
- Met Senior Center on travel partner options.
- Met with potential summer Intern.
- Developing marketing materials for the String Fling and Ukulele Magazine.
- Posted String Fling on Facebook and KVMR
- Hand off Summer Activity Guide for graphic work.
- Produced flyer for spring pickleball tournament.

AARC – All American Rib Cookoff, AATTC – All American Tri-Tip Cookoff, ACHF- Auburn Community Harvest Festival, ASR- Auburn Sunset Rotary, PIP-Party in the Park, SCB- Senior Center Board, SF String Fling, SHF-Auburn Senior Health Fair, UKE- Ukulele Festival, VFCAL-Valley Foothills Competitive Aquatics League,

### Coming up this Month

#### April

3	Stroke and Turn Begins	Sierra Pool
13	String Fling Showcase	Strum Shop, Roseville
20	String Fling Concert	Bethlehem Lutheran Church
21	String Fling Workshops	CVCC
	Robalos Try-outs	Sierra Pool
25	Back in Sync	Stella Room
26	ARD Board Meeting	CVCC
	Robalos Try-outs	Sierra Pool
27	Back to Swim Night	CVCC
28	Fishing Derby	Regional Park
30	Mermaids Practice Begins	Sierra Pool

**Debbie Thomas**  
**Youth Services Manager**  
**Report to the Board of Directors**  
**March, 2018**

- Planning and purchasing for spring break day camp
- Planning and purchasing for summer day camp themes
- Purchasing for snack and other site supplies at Sam's, Smart & Final, Office Depot
- Preparation of registration packets and activity guide information for summer
- Staff attended a mandatory United Way meeting regarding the food program
- Skyridge Director presented at the Skyridge kindergarten information night on March 22
- Meeting with Karen Rothstein from California Prep regarding possible funding for our summer camp as an enrichment for their online school
- Substituting at sites for minimum days and absent staff
- Continued preparation for possible transition of preschool to the Youth Services Department
- Safety Meeting March 10
- Finance Meeting March 19
- Policy Meeting March 21
- FMLA Meeting March 29 & board meeting
- Interviewing & hiring for summer staff & volunteers

FEE WAIVER LOG

DATE	NAME	ORGANIZATION	RENTAL FEES	CUSTODIAL AND PERMIT FEES	WAIVED FEES	CO-SPONSORED EVENT	MONTHLY TOTAL	YTD TOTAL
Jan-18	Pat Little	Special Olympics NorCal Regional Gym	\$585.00	\$300.00	\$292.50	No		
Jan-18	Keith Nesbitt	Auburn Chamber of Commerce Monthly Networking Lunch- Sierra Room	\$1,080.00	\$840.00	\$864.00	No		
Jan-18	Jean Hexon	Western States Trail Foundation Foothills Room	\$180.00	\$60.00	\$180.00	No		
							\$1,336.50	\$6,753.80
Feb-18	Robin Soares	Styrdige School PTC-Splash Pool	\$150.00	\$30.00	\$75.00	Yes		
Feb-18	Sarah Tucker	Placer High School Grad Night- Recreation Park building and Pool	\$3,884.00	\$725.00	\$3,447.20	No		
							\$3,522.20	\$10,351.00
Mar-18	Denise DiMiccil	Auburn Senior Center-Lakeside Room and Regional Gym	\$1,680.00	\$120.00	\$1,344.00	No		
Mar-18	Denise DiMiccil	Auburn Senior Center-Picnic sites and Bocce courts at Rec. Park	\$160.00	\$30.00	\$119.00	No		
Mar-18	Barbara Weiss	AAUW-Sunset Room	\$120.00	\$30.00	\$108.00	No		
Mar-18	Gillian Lofrano	Placer Hills Firefighters-Pioneer Day at Meadow Vista Park	\$225.00	\$120.00	\$112.50	No		
Mar-18	Bree Renz	Auburn FOK Center/CA Salsang Society-Lakeside Room	\$120.00	\$30.00	\$108.00	No		
Mar-18	Caryn Perry	Foothill Quilters Guild	\$3,760.00	\$1,020.00	Pending	review by board		
							\$1,791.50	\$12,142.50

3/20/18

**Vandalism Report**

<b>DATE</b>	<b>LOCATION</b>	<b>VANDALISM</b>	<b>LABOR COSTS</b>	<b>MATERIAL COSTS</b>
5-Mar-18	Regional	Graffiti Removal-Restrooms	\$200.00	\$180.00
3/20/2018	Recreation	Old Tires Dumped	\$20	\$0.00
<b>Total labor costs</b>			<b>\$220.00</b>	<b>Total \$180.00</b>
<b>Total for year</b>			<b>\$590.00</b>	<b>material costs Total for year \$850.00</b>

2/15/18

**Vandalism Report**

DATE	LOCATION	VANDALISM	LABOR COSTS	MATERIAL COSTS
5-Feb-18	Regional	Graffiti Removal	\$60.00	\$35.00
2/6/2018	Regional	Drinking Fountain	\$250	\$600.00
Total labor costs			\$310.00	Total \$635.00
Total for year			\$370.00	material costs Total for year \$670.00

1/18/18

**Vandalism Report**

**DATE** 15-Jan-18      **LOCATION** Regional      **VANDALISM** Graffiti Removal      **LABOR COSTS** \$60.00      **MATERIAL COSTS** \$35.00

Total labor costs      \$60.00      Total      \$35.00  
material costs  
Total for      year      \$35.00



<b>2017/2018 PROJECT ACTIVITY REPORT</b>		<b>UPDATED 03/15/18</b>	
<b>PROJECT</b>	<b>EST. COST</b>	<b>NOTES</b>	<b>EST. COMPLETED</b>
<b>RECREATION PARK</b>			
Sierra Pool Re-Plastering	100,000.00	Both City and County Permits/Approvals have been obtained but not enough time to bid and perform the work prior to pool opening Feb. 1st. Will bid July 2018 and construct Sept-Dec 2018 instead.	DECEMBER 2018
Bleacher Shade Structure	150,000.00	Project start is imminent and impromptu site meeting with contractor took place 3/14/18. Contractor needs 2-3 clear, dry days to do pour the footings for the structure and is monitoring the forecast to give the District the best notice possible.	MAR 2018
<b>RAILHEAD PARK</b>			
Field "A" Turf Renovation Project	60,000.00	Project completed.	OCTOBER 2017
<b>BELL ROAD SITE</b>			
Planning/CEQA/Construction Documents	517,000.00	Project site has been removed from ARD consideration.	DECEMBER 2017
<b>PLACER HILLS POOL</b>			
ADA Path of Travel	10,000.00	Minor sidewalk repair to be done in-house in the off season	APRIL/MAY 2018
<b>REGIONAL PARK</b>			
Regional Park South Play Structure	140,000.00	Estimates and design options being obtained from 5 vendors. Staff still planning to narrow down choices to one style per vendor and take to the Board in combination with inviting the public to vote on their favorite via our website or similar. One vendor has come in with an unusually low price so Staff will be looking closer at the structures (warranties, nuts and bolts etc.) to help ensure that there is a level comparison field. Staff is also preparing construction documents for a concrete ramp to be installed from parking lot to play structure for ADA compliance and planning on having the new play structure built first.	JUNE/JULY 2018

AC Pathway Repairs Project	50,000.00	Project bids were openend March 8th and recommendation of award to low bidder Central Valley Engineering & Asphalt is being sent to this committee and to the board. During bidding it was determined that significant savings could be realized and project "unknowns" reduced if the work was done in the summer when the ground was firm and dry. As such, the project will be awarded now but work will be scheduled for after July 16th park music festival. United Auburn Indian Community is requesting notification on this project and they have been made aware of the new construction schedule.	CONSTRUCT LATE JULY 2018
Dry Creek Picnic ADA improvements	15,000.00	Design being revised, bid package being formed in house, AB52 consultation completed. UAIC determined no further inquiry needed on this project.	DESIGN MARCH/APRIL BID & INSTALL MAY/JUNE 2018
<b>OVERLOOK PARK</b>			
Planning and CEQA	90,000.00	Project to be pushed back due to review delays at USBR	TBD
<b>CVCC</b>			
Bike Park - Design, CEQA, NEPA etc.	100,000.00	USBR still needs to sign the FONSI. Staff has been working on and presenting design modifications to address neighbor concerns at A&D meetings. After a signed FONSI is received, the CD's need to be refined, review by USBOR needs to take place, all required permits need to be obtained with bidding and construction to follow. Recent modifications include a "Bikes Only" access/egress pathway being added to the design to help reduce potential bike traffic on the canal trail and per neighborhood request.	TBD
Bike Park - Construction	175,000.00		TBD
<b>MEADOW VISTA PARK</b>			
ADA Parking & Path of Travel	60,000.00	Project completed.	OCTOBER 2017
ADA Restroom Interior Renovation	60,000.00	Work is underway. Project duration is set for 25 working days. Signage alerting the public that the restrooms will be closed during the construction period has been posted. There are portable restrooms with handwash station already present at the site.	MARCH/APRIL 2018
<b>OPERATION AND DEV. PLAN</b>			
CEQA/NEPA costs	25,000.00	USBR review delayed due to budget issues.	TBD

<b>MULTI-PARK ITEMS</b>			
Streambed Alteration Agreement (no labor)		44,000.00	USFWS has finally gotten back to the District giving authorization to proceed and outlining the various forms and reports that will need to be filled out as the work is done and what fees will be required.
Carry over projects from 2016 2017 list in YELLOW			
<b>Fiscal Year Projects Total:</b>		1,596,000.00	TBD

## **Item 7.1 Cover sheet – Excess Land Declaration – Mt. Vernon Park**

**Auburn Area Recreation and Park District Acquisition and Development Committee  
March 21, 2018; Board of Directors meeting March 29, 2018**

### **The Issue**

Shall the Auburn Area Recreation and Park District (“ARD”) adopt Resolution # 2018-04 declaring that the Mt. Vernon Park property (“Nevada St. property”) is in excess of its foreseeable needs?

### **Background**

ARD is the owner of a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California, referred to as Mt. Vernon Park. The park land was donated to ARD from Richard Rader and Carolyn Hardwick. The funding to improve the property was through mitigation fees of \$85,929 paid to the City of Auburn from the Affordable Housing Development Corporation, the developers of the nearby Palm Terrace Apartments.<sup>1</sup> Approximately 1 acre of the property directly off of Nevada St. features a short DG pathway a couple of picnic table locations. There is no parking at the property. This park is underutilized, especially when compared to any of ARD’s other parks and facilities. As such, ARD has deemed this to be excess land.

State law authorizes local governments, including special districts, to maintain an inventory of real property. State law also authorizes local governments to declare certain real property to be in excess of their foreseeable needs. Upon such a declaration, the property becomes eligible to be sold, transferred, or auctioned in accordance with various surplus procedures state law provides.

By separate action on this agenda, the Board of Directors will be requested to approve a Purchase and Sale Agreement for the Mt. Vernon Park property. The declaration that this property is surplus property, because it is no longer necessary for the District’s long-term development plans, is a formal determination that must be made prior to the Board adopting the resolution approving the agreement.

The purposes for the proposed disposition of the Nevada Street Property are discussed more fully in the separate staff report that accompanies the action item concerning the sale of the property. Staff recommends the Board approve this requested action to allow the district to properly invoke the surplus procedure for selling the Nevada Street Property.

Note<sup>1</sup>: As noted in the separate action on this agenda, the proposed purchasers of this property are planning on keeping all of the park improvements in place and available to the public.

### **Recommendation for the Board of Directors**

Staff recommends that the ARD Board of Directors adopt Resolution # 2018-04, declaring that the Mt. Vernon Park property (“Nevada St. property”) is in excess of its foreseeable needs.

The ARD Acquisition and Development Committee forwarded this item to the Board of Directors for consideration.

**Fiscal Impact**

The estimated annual costs to maintain Mt. Vernon Park are \$4,500 - \$5,500.

**Attachments**

Resolution #2018 -04  
MOU with WCH

**RESOLUTION NO. 2018-04**

**RESOLUTION OF THE AUBURN AREA RECREATION  
AND PARK DISTRICT BOARD OF DIRECTORS FINDING THAT CERTAIN DISTRICT  
PROPERTY (MT. VERNON PARK) IS IN EXCESS OF THE DISTRICT'S FORSEEABLE NEEDS**

**WHEREAS**, Government Code section 50569 authorizes local agencies to make an inventory of lands they hold, own, or control as well as to determine that such land that is in excess of their foreseeable needs;

**WHEREAS**, the Auburn Area Recreation and Park District ("ARD") owns a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California, more particularly described as Assessor Parcel Number 038-250-081 ("Nevada Street Property") and referred to as Mt. Vernon Park;

**WHEREAS**, ARD does not have any further need for, nor plans or resources to develop a park or other district facility on the Nevada Street Property.

**THEREFORE, BE IT RESOLVED**, consistent with Government Code 50569, the ARD Board of Directors ("Board") determines that the Nevada Street Property (Mt. Vernon Park) is in excess of its foreseeable needs.

**BE IT FURTHER RESOLVED**, that the Board finds that this declaration of excess property is exempt from the California Environmental Quality Act ("CEQA") exempt under 14 California Code of Regulations, section 15061(b)(3), because it can be seen with certainty that there is no possibility that this determination of excess property may have a significant effect on the environment.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the Board of Directors of the Auburn Area Recreation and Park District at a regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

**ATTEST:**

\_\_\_\_\_  
**James A. Gray**  
**Chairman of the Governing Board**

\_\_\_\_\_  
**Patricia Larson**  
**Clerk to the Governing Board**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of May 2, 2016 by and between Western Community Housing, Inc. ("WCH"), a California nonprofit public benefit corporation, and The Auburn Area Recreation & Parks District ("ARD") (collectively the "Parties") with reference to the following matters.

### RECITALS

A. WCH and ARD intend to work together over a 90 day period ("Initial Feasibility Period"), starting from the date of this MOU, to research the feasibility of WCH developing a 6.7 gross acre park land site fronting Nevada Street, City of Auburn - APN: 038-250-081 (the "Property") owned by the ARD as an affordable senior housing project with supportive social services for low-income elderly individuals. It is anticipated that the Property will be purchased by a limited partnership of which WCH will be the managing general partner ("MGP"), to facilitate the funding of the acquisition of the Property and development of the Project by applying and being awarded low-income housing tax credits from the California Tax Credit Allocation Committee ("CTCAC") and other public sources.

B. WCH plans to develop no more than 80 units, a CTCAC threshold for rural areas, of quality affordable housing to low-income seniors with area median incomes ("AMI") ranging from 30% to 60% AMI (the "Project") and ARD intends to sell the Property to WCH.

C. WCH and ARD wish to enumerate the responsibilities and investigative efforts that each party will undertake and assume in connection with the ultimate sale and purchase of the Property, terms and conditions to be later agreed upon in a development agreement between the Parties ("Development Agreement") at the end of the Initial Feasibility Period.

NOW THEREFORE, in consideration of the recitals hereof and the mutual covenants and agreement contained in this MOU, the Parties agree as follows:

**Initial Feasibility:** WCH shall research and report its findings on the listed development items below to ARD on the following development issues:

1. **Environmental:** WCH shall research and review all environmental aspects of the Property, including biological resources, cultural resources, wetlands, easements and restrictions and surrounding land uses.
2. **Entitlements with City:** WCH shall research and review the Property's by-right zoning and planning, including verification of its Multiple-Family Residential District designation, any required conditional use permits, waivers and density bonus agreement, and potential releases required from prior land use deed restrictions, such as a park use, that may be needed to develop the Property. Preliminary site plans shall be prepared and discussed with the City.

3. **Construction Improvements to Property:** Upon feedback from the City's Planning Department on R-3 or R-4 development design guidelines and density, WCH shall review the costs associated with improving the Property to a buildable state, pursuant to a preliminary site plan.
4. **Market:** WCH shall research the market competition of the Project, comparing other existing or planned affordable and market rate senior communities in the City and County.
5. **Public subsidies:** WCH shall research all potential subsidies from public agencies that typically would be available to develop the Project, including tax credit and bond programs.

**Review Process:**

1. Parties shall have 30 days to review and discuss the findings of the feasibility items listed in 1 to 5 above after the end of the Initial Feasibility Period and agree to proceed with a Development Agreement (including a development timeline) and Purchase and Sale Contract, to be approved by the City and WCH.
2. If feasible, Parties to propose terms and conditions for drafting the Development Agreement and Purchase and Sale Contract, to present to the ARD Board, the Auburn City Council and WCH's Board of Directors for approvals.

**Agreements:**

1. Development Agreement
2. Purchase and Sale Contract

Upon agreement of the terms set forth in this MOU evidenced by signatures below, the Parties agree to proceed with the Initial Feasibility Period as described herein. This MOU is non-binding and shall only provide the framework to draft a mutually agreed upon Development Agreement and Purchase and Sale Contract between the Parties for final approval.

AGREED:

Western Community Housing, Inc.

Auburn Area Recreation & Parks District

  
Scott Gayner  
Senior Portfolio Manager/Director of Development

 4/30/16  
Kahl Muscott  
ARD District Administrator



## **Item 7.2 Cover sheet – Resolution #2018-05: Mt. Vernon Park Purchase and Sale Agreement**

**Auburn Area Recreation and Park District Acquisition and Development Committee  
March 21, 2018; Board of Directors Meeting March 29, 2018**

### **The Issue**

Shall the Auburn Area Recreation and Park District (“ARD”) adopt Resolution #2018-05 on the approval of a Purchase and Sale Agreement (“Agreement”) of a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California, referred to as Mt. Vernon Park, more particularly described as Assessor Parcel Number 038-250-081 (“Property”), between ARD and Western Community Housing, Inc. (“WCH”) and make a determination that the Agreement is exempt from CEQA?

### **Background**

ARD is the owner of a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California, referred to as Mt. Vernon Park. The park land was donated to ARD from Richard Rader and Carolyn Hardwick. The funding to improve the property was through mitigation fees of \$85,929 paid to the City of Auburn from the Affordable Housing Development Corporation, the developers of the nearby Palm Terrace Apartments. The improvements took place on approximately 1 acre of the property directly off of Nevada St. and features a short DG pathway and a couple of picnic table locations. There is no parking at the property. This park is underutilized, especially when compared to any of ARD’s other parks and facilities. As such, ARD has deemed this to be excess land.

WCH is a nonprofit housing corporation that promotes affordable housing and provides social services to low-income senior and family households. WCH has expressed interest in purchasing the Property from ARD to develop an affordable housing project. On April 28, 2016, the ARD Board of Directors approved an MOU for an Initial Feasibility Period to research the sale of the Mt. Vernon Park property to WCH. An extension to that MOU was granted by the ARD Board on July 28, 2016.

ARD and WCH have negotiated the terms of WCH’s purchase of the Property and memorialized them in the Purchase and Sale Agreement and Joint Escrow Instructions. For ARD to have the authority to sell the property, it must invoke Government Code section 50570, which governs the sale of surplus property for the development of affordable housing to a “housing” or “nonprofit” corporation. ARD must also request a determination pursuant to Government Code section 65402(c) regarding the conformity of the disposition of the Property with the City of Auburn’s general plan.

The finding required by section 65402(c) was made by the City of Auburn Planning Commission on February 6, 2018. The following statutory findings, and facts supporting the findings, satisfy the requirements of Government Code Section 50570.

1. *The local agency is selling the real property held or controlled by it and found to be in excess of foreseeable needs pursuant to Government Code section 50569, to a housing corporation or nonprofit corporation as defined in Government Code section 50568.*

*Facts:* Yes, the ARD is selling District-owned Property, which it has determined to be surplus property in accordance with Government Code section 50569, to WCH, which is both a housing corporation and nonprofit corporation. Section 50570 allows ARD to “sell or otherwise transfer any real property...held or controlled by it and found to be in excess of foreseeable needs under this article, to any housing corporation ...for housing available to persons and families of low or moderate income at affordable housing cost”. Further, if WCH thereafter develops the Property through tax credit financing via an affordable housing limited partnership, such structure is consistent with Section 50569 because WCH will remain in control of the partnership as its managing general partners in conformance with similar regulatory financing conditions associated with providing assistance for affordable housing (such as mandating a non-profit have majority control of the general partner and that the project contain restrictive covenants limiting its use to affordable housing for 55 years). This deed restriction can be found in Section 7.8 on page 28 of the DRAFT Agreement.

2. *The property is to be made available for housing to “persons and families of low or moderate income” at “affordable housing cost” as defined in Health and Safety Code section 50052.5.*

*Facts:* Yes, WCH develops and builds all units in their projects as 100% affordable housing and rents them to those with low to moderate income levels, as defined in Health and Safety Code section 50052.5.

3. *Before a local agency disposes of real property, if the city has adopted an applicable general plan or part thereof, the location, purpose and extent of such disposition must be submitted to and reported upon by the planning agency having jurisdiction, as to the conformity of the disposition with the general plan.*

*Facts:* Yes, ARD has requested and obtained a determination from the City of Auburn Planning Commission that the sale of the Property conforms with the City’s general plan. As noted, the Planning Commission made that finding at its February 6, 2018 meeting.

It should also be noted that the property is zoned High Density Residential “R3”.

In addition, the following questions have been asked regarding the proposed sale of this property:

4. *How can this property be developed as anything other than a park if mitigation fees were used to create the park?*

*Facts:* The park as developed will remain in place after the property is acquired and developed as affordable housing.

5. *How can ARD sign a contract for sale for which no compensation will be forthcoming for three years?*

Facts: ARD will remain the owners of the property during these three years and the park will remain open to the public. During this three year period, WCH will be performing further Due Diligence on the sale and possible development of the property. This three year period also gives notice to the public of the impending development. All potential buyers would be bound by this statute.

6. *What is the future value of \$400,000 in three years?*

Facts: Based on a 5% estimated appreciation value, \$400,000 is worth \$345,535.

In addition to the above findings, staff notes that two CEQA exemptions are being invoked for this transaction. The attached resolution includes language adopting a specific exemption for surplus real property transactions as well as the “common sense” exemption.

The property has been posted with a “Proposed Project Location” sign, and a notice of public hearing was sent out to the Auburn Journal on 2/21/18. A copy of the subsequent article from the Auburn Journal is attached.

A copy of an article from the Sacramento Business Journal is also attached.

**Recommendation for the Board of Directors**

Recommend that the ARD Board of Directors adopt Resolution # 2018-05, on the approval of a Purchase and Sale Agreement of a 6.7 gross acre park land site fronting Nevada Street, referred to as Mt. Vernon Park, in Auburn, California, more particularly described as Assessor Parcel Number 038-250-081, between ARD and Western Community Housing, Inc. and make a determination that the Agreement is exempt from CEQA.

The ARD Acquisition and Development Committee forwarded this item to the Board of Directors for consideration.

**Fiscal Impact**

If the Board approves the proposed Purchase and Sale Agreement, ARD would receive \$400,000 in revenue upon the closing of the sale of the Property. It should be noted that closing of the sale of the property will not occur until 3 years after signing of the PSA.

ARD has spent \$8,111 to this point for its due diligence research on this proposed sale. This amount includes the cost for an appraisal and attorney time.

**Attachments**

Resolution #2018-05  
California Government Code §50568 - 50573  
Purchase and Sale Agreement  
Auburn Journal article  
Sacramento Business Journal article

**RESOLUTION NO. 2018-05**

**RESOLUTION OF THE AUBURN AREA RECREATION  
AND PARK DISTRICT BOARD OF DIRECTORS APPROVING A PURCHASE AND  
SALE AGREEMENT OF SURPLUS PROPERTY LOCATED AT NEVADA  
STREET (“MT. VERNON PARK”) AND CEQA DETERMINATION.**

**WHEREAS**, the Auburn Area Recreation and Park District (“ARD”) holds and controls a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California, more particularly described as Assessor Parcel Number 038-250-081 (“Property”) and referred to as Mt. Vernon Park, that is in excess of ARD’s foreseeable needs pursuant to Government Code section 50569;

**WHEREAS**, Western Community Housing, Inc. (“WCH”) is a California nonprofit public benefit corporation whose charitable purpose is to promote affordable housing and provide social services to low-income senior and family households;

**WHEREAS**, WCH has significant experience is developing and operating affordable housing communities by serving as the managing general partner in over 80 affordable housing limited partnerships which each own and operate affordable communities throughout California.

**WHEREAS**, WCH intends to acquire the Property and develop it through an affordable housing limited partnership of which WCH will control to make housing available to persons and families of low or moderate-income at affordable housing cost;

**WHEREAS**, the ARD has negotiated the terms and conditions of the finance and purchase of the Property by WCH in a Purchase and Sale Agreement (“Agreement”);

**WHEREAS**, the Agreement will restrict the ownership of the Property consistent with the requirements of Government Code section 50570;

**WHEREAS**, the Property is in the City of Auburn (“City”) and the location, purpose and extent of the disposition of the Property has been submitted to and reported upon to the City Planning Commission, and the Commission has determined that disposition of the Property is in conformity with the adopted general plan or part thereof in accordance with Government Code section 65402(c).

**THEREFORE, BE IT RESOLVED**, that the ARD Board of Directors (“Board”) approves the Purchase and Sale Agreement, a copy of which is attached as Exhibit A to this Resolution, and authorizes the ARD District Administrator to execute such agreement,

**BE IT FURTHER RESOLVED**, that the Board finds that the approval of the Agreement is exempt from the California Environmental Quality Act (“CEQA”) as a sale of surplus property under 14 California Code of Regulations, section 15312. Specifically, the Board finds that the Property is not a property of statewide, regional, or area-wide significance as the sale, and the contemplated development thereafter, would not have impacts extending beyond the county in which the project would be located and would not have any of the characteristics described in 14 California Code of Regulations, section 15206(b)(2).

**BE IT FURTHER RESOLVED**, that the Board finds that the sale of the Subject Property is additionally exempt under 14 California Code of Regulations, section 15061(b)(3), because it can be seen with certainty that there is no possibility the sale may have a significant effect on the environment. Any development that occurs after the sale of the Subject Property would be carried out by a private party and would be subject to its own entitlement and CEQA process. Any environmental impacts associated with development as proposed in the Agreement would accordingly be fully considered and addressed prior to any development being undertaken at the Subject Property.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the Board of Directors of the Auburn Area Recreation and Park District at a regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

**ATTEST:**

\_\_\_\_\_  
**James A. Gray**  
**Chairman of the Governing Board**

\_\_\_\_\_  
**Patricia Larson**  
**Clerk to the Governing Board**


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**GOVERNMENT CODE - GOV**
**TITLE 5. LOCAL AGENCIES [50001 - 57550]** (*Title 5 added by Stats. 1949, Ch. 81.*)

**DIVISION 1. CITIES AND COUNTIES [50001 - 52203]** (*Division 1 added by Stats. 1949, Ch. 81.*)

**PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5]** (*Part 1 added by Stats. 1949, Ch. 81.*)

**CHAPTER 2. Public Property [50300 - 50573]** (*Chapter 2 added by Stats. 1949, Ch. 81.*)

**ARTICLE 10. Surplus Real Property [50568 - 50573]** (*Article 10 added by Stats. 1971, Ch. 1737.*)

**50568.** Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Persons and families of low or moderate income" means persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code.

(b) "Limited dividend housing corporation" means any joint venture, partnership, limited partnership, trust, limited liability company, or corporation organized or existing under the laws of this state or authorized to do business in this state and subject to the restrictions of Division 24 (commencing with Section 33000) of the Health and Safety Code.

(c) "Housing corporation" means a corporation organized pursuant to the Community Land Chest Law (Chapter 2 (commencing with Section 35100) of Part 3 of Division 24 of the Health and Safety Code).

(d) "Nonprofit corporation" means a nonprofit corporation formed under or subject to the provisions of Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and whose articles of incorporation provide that the corporation has been organized exclusively to provide housing facilities for persons and families of low or moderate income.

(*Amended by Stats. 1994, Ch. 1010, Sec. 143. Effective January 1, 1995.*)

**50569.** On or before December 31 of each year, each local agency as defined in Section 54951 shall make an inventory of all lands held, owned or controlled by it or any of its departments, agencies or authorities to determine what land, including air rights, if any, is in excess of its foreseeable needs. A description of each parcel found to be so in excess of needs shall be made a matter of public record. Any citizen, limited dividend corporation, housing corporation or nonprofit corporation, shall upon request be provided with a list of said parcels without charge.

(*Added by Stats. 1971, Ch. 1737.*)

**50570.** Notwithstanding the provisions of Sections 54222 and 54223, a local agency, or any department, agency or authority thereof may lease, sell or grant or otherwise transfer any real property, including air rights owned, held or controlled by it and found to be in excess of foreseeable needs under this article, to any housing corporation, limited dividend corporation or nonprofit corporation, upon such terms and conditions as any other provisions of law notwithstanding the local agency may deem to be best suited to the development of the parcel for housing available to persons and families of low or moderate income at affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code. The deed or other instrument of conveyance shall provide that whenever the ownership of the land or the mortgagor corporation is no longer composed of a majority of the nonprofit or limited dividend sponsors, title to the land shall revert to the local agency. The deed or other instrument of conveyance shall also contain a recital that the grantor local agency or department, agency or authority thereof has made the finding required by this section and such recital shall be conclusive in favor of purchasers or encumbrancers for value.

(*Amended by Stats. 1980, Ch. 1076.*)

**50572.** Property may be transferred under this article only after a public hearing, but without regard to other provisions of this code concerning leases of real property.

*(Added by Stats. 1971, Ch. 1737.)*

**50573.** Any person or family of low or moderate income, housing corporation, limited dividend housing corporation, or nonprofit corporation may bring an action to enforce the provisions of this article relating to the inventory pursuant to Section 50569.

*(Amended by Stats. 1979, Ch. 1191.)*

**PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

This PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made and entered into as of September \_\_, 2017 (the "**Agreement Date**"), by and between WESTERN COMMUNITY HOUSING, INC., a California nonprofit public benefit corporation along with its successors and assigns ("**Purchaser**"), and THE AUBURN AREA RECREATION & PARKS DISTRICT ("**Seller**").

RECITALS:

A. Seller is the owner of a 6.7 gross acre park land site fronting Nevada Street, in Auburn, California - APN: 038-250-081 (the "**Property**") which is more particularly described on Exhibit A hereto.

B. Seller views the Property as surplus land pursuant to the California Government Code Section 54220, *et seq.*, and contemplates its disposition in conformance therewith.

C. Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller, upon the terms and conditions hereinafter set forth, the Property. Purchaser desires to use the Property to develop an affordable housing project ("**Project**").

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree that the terms and conditions of this Agreement and the instructions to Fidelity National Title Company, 4400 MacArthur Blvd., Suite 200, Newport Beach, California 92660, Attention: Ginger McCally ("**Escrow Holder**") with regard to the escrow created pursuant hereto (the "**Escrow**") are as follows:

AGREEMENT:

**ARTICLE I**

**PURCHASE AND SALE**

Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, for the Purchase Price and upon the terms and conditions hereinafter set forth in this Agreement.

**ARTICLE II**

**PURCHASE PRICE; PURCHASE PRICE ADJUSTMENTS**

2.1 **Purchase Price.** The purchase price (the "**Purchase Price**") for the Property shall be Four Hundred Thousand Dollars (\$400,000).

2.2 **Payment of Purchase Price.** The Purchase Price shall be paid by Purchaser as follows:



2.2.1 Initial Deposit. Within five (5) Business Days after the execution and delivery to Escrow Holder of this Agreement by both Seller and Purchaser, Purchaser shall deposit in cash, by a confirmed wire transfer of immediately available funds ("Immediately Available Funds"), the amount of Five Thousand Dollars (\$5,000) (the "Initial Deposit"). Escrow Holder shall place the Initial Deposit in a federally insured interest bearing account which is consistent with the timing requirements of this transaction and reasonably satisfactory to Purchaser and Seller (the "Escrow Account"), pending disbursement in accordance with the terms of this Agreement. Any interest earned on the Initial Deposit while held by Escrow Holder shall be added to and become a part of the Initial Deposit. The Initial Deposit shall be refundable to Purchaser until Purchaser delivers to Seller and Escrow Holder the Due Diligence Approval Notice notifying Seller that all of the Due Diligence Conditions have been satisfied or waived and Purchaser delivers the Financing Approval Notice notifying Seller that the Financing Condition has been satisfied or waived. In the event (a) for any reason or no reason, Purchaser elects to terminate this Agreement prior to the Due Diligence Deadline, or (b) Purchaser fails to timely provide the Due Diligence Approval Notice prior to the Due Diligence Deadline, or (c) after having timely delivered the Due Diligence Approval Notice, Purchaser fails to deliver the Financing Approval Notice prior to the Financing Deadline, then Escrow Holder shall return the Initial Deposit to Purchaser in Immediately Available Funds (less any escrow and title cancellation fees and charges, which Purchaser hereby agrees to pay).

2.2.2 Additional Deposits. Along with the Initial Deposit, pursuant to Article III below, Purchaser shall deposit, as necessary, a Second Deposit, with Escrow all applicable to the Purchase Price. The Initial Deposit and Second Deposit, are collectively referred to herein as the "Deposits" and shall mean such total amount deposited with Escrow Holder by Purchaser (including any interest earned on such funds while held by Escrow Holder).

2.2.3 Disposition of Deposits. The rights of Purchaser and Seller to the Deposits shall be as follows: (a) upon the Close of Escrow, the Deposits shall be applied to the payment of the Purchase Price pursuant to Section 2.2.4 below; (b) if the Close of Escrow fails to occur because any Purchaser Closing Condition or Seller Closing Condition hereunder is not satisfied (or waived) for any reason other than a default by Purchaser hereunder, then the Deposits shall be returned to Purchaser; or (c) if the Close of Escrow fails to occur due to a material default by Purchaser under this Agreement, the Deposits shall be retained by Seller as liquidated damages pursuant to Section 8.1 below; (d) if the Close of Escrow fails to occur due to failure of the Financing Contingency, the Seller shall be entitled to retain any such sums released from the Escrow Holder pursuant to the provisions of Section 3.7 below . Notwithstanding, Purchaser's rights to retain its Deposits pursuant to this Agreement based on certain conditions, Purchaser acknowledges and agrees that as additional consideration to Seller, all due diligence materials, environmental assessments and studies, consultant reports, site plans and surveys , etc., Purchaser's Information (defined below) shall be shared with and provided to Seller, upon written request for same from Seller, at no cost to Seller irrespective of whether Purchaser terminates this Agreement.

2.2.4 Closing Funds. No later than 10:00 a.m. (Pacific Time) on the Closing Date, Purchaser shall deposit or cause to be deposited with Escrow Holder, in

Immediately Available Funds, the sum of (a) an amount equal to the Purchase Price minus the Deposits (the “**Purchase Price Balance**”), plus (b) any amounts in addition to the Deposits and the Purchase Price Balance as are necessary to pay Purchaser’s share of closing costs, prorations and charges payable pursuant to this Agreement.

### ARTICLE III

#### **DUE DILIGENCE CONDITIONS AND PURCHASER’S DUE DILIGENCE**

As used herein, (a) the “**Due Diligence Deadline**” means 5:00 p.m. (Pacific Time) on the date that is one hundred twenty (120) days following three (3) years from the Opening of Escrow, (b) the “**Due Diligence Conditions**” means, collectively, the matters described in Section 3.1 through Section 3.6 below, (c) the “**Financing Deadline**” means the earlier to occur of (i) Purchaser’s satisfaction, in its sole discretion of the Financing Condition, or (ii) the Outside Closing Date, and (d) the “**Financing Condition**” means collectively, the matters described in Section 3.7 below. Purchaser’s obligations under this Agreement shall be subject to the satisfaction or waiver of all of the Due Diligence Conditions described in Section 3.1 through Section 3.6 below no later than the Due Diligence Deadline (or such later time as is specifically provided for in Section 3.1.3 solely with respect to any New Title Exception which arises after the Due Diligence Deadline and prior to the Close of Escrow) and the satisfaction or waiver of the Financing Condition described in Section 3.7 below no later than the Financing Deadline. The obligations of the parties with respect to the Due Diligence Conditions and the Financing Condition are as set forth below in this Article III.

#### 3.1 Title.

3.1.1 Purchaser’s Review of Title. Within ninety (90) days after the Opening of Escrow, Seller shall deliver, or caused to be delivered, to Purchaser: (a) a preliminary title report for the Property (the “**Title Report**”) by Fidelity National Title Company or such other title company mutually agreed to by the parties (the “**Title Company**”), and (b) all underlying documents evidencing exceptions to title referred to in the Title Report. After Opening of Escrow, Purchaser shall have the option to acquire an ALTA/ACSM Land Title Survey, with respect to the Property (the “**ALTA Survey**”). The Title Report, such underlying documents evidencing title exceptions therein, and the ALTA Survey (if acquired) are referred to herein collectively as the “**Title Documents**”.

3.1.2 Title Objections. Purchaser shall have thirty (30) days following three (3) years from the Opening of Escrow (the “**Title Notice Deadline**”) to either approve of the exceptions to title and other matters contained in the Title Documents or deliver written notice to Seller and Escrow Holder (the “**Title Objection Notice**”) specifying any title objections or other matters in the Title Documents to which Purchaser objects or conditionally approves (collectively, “**Title Objections**”). Purchaser’s failure to timely deliver a Title Objection Notice shall be deemed to be Purchaser’s approval of all of the exceptions to title and other matters shown in or disclosed by the Title Documents and any update thereof received by Purchaser prior to the Title Notice Deadline. Seller shall have until 5:00 p.m. (Pacific Time) on the day that is five (5) days following the Title Notice

Deadline to elect, in Seller's sole discretion, by written notice to Purchaser (the "**Title Response Notice**") to either (i) agree to remove or cure some or all of the Title Objections (or to satisfy the conditions of Purchaser's approval thereof) prior to the Closing Date and as a condition to the Close of Escrow (in each case, a "**Cure**"), or (ii) to advise Purchaser that Seller is unable or unwilling to Cure any or all of the Title Objections. Seller may Cure any Title Objection by causing the Title Company to insure over such Title Objection (by issuance of a title policy endorsement or otherwise), so long as such cure is reasonably satisfactory to Purchaser. Seller's election pursuant to any Title Response Notice shall be at Seller's sole option and discretion; it being understood Seller has no obligation to Cure (or attempt to Cure) any Title Objections other than as expressly provided in this **Section 3.1**. If Seller fails to timely deliver to Purchaser the Title Response Notice, it shall be conclusively deemed that Seller has informed Purchaser that Seller is unable or unwilling to Cure any of the Title Objections. If Seller advises Purchaser in Seller's Title Response Notice (or is deemed to have advised Purchaser) that Seller is unable or unwilling to Cure any or all of the Title Objections, then Purchaser shall have until the date that is ten (10) days following the Title Notice Deadline to either terminate this Agreement or to waive such Title Objections pursuant to a written notice delivered to Seller.

**3.1.3 New Title Exceptions.** If any amendment or supplement to the Title Report issued after the Title Notice Deadline reveals any new defect or exception to title which is not disclosed by the Title Documents (a "**New Title Exception**"), Purchaser shall have the same rights to object to or conditionally approve such New Title Exception as provided in **Section 3.1.2** above with respect to the Title Documents; **provided, however,** Purchaser must deliver any Title Objection Notice to Seller and Escrow Holder within five (5) Business Days after Purchaser's receipt of the amendment or supplement to the Title Report which discloses the New Title Exception, and Purchaser must elect to terminate this Agreement or waive any Title Objections for New Title Exceptions within five (5) Business Days after Seller advises Purchaser in Seller's subsequent Title Response Notice (or is deemed to advise Purchaser) that Seller is unable or unwilling to commit to Cure some or all of the Title Objections regarding the New Title Exceptions. Notwithstanding anything to the contrary contained herein, any defect or exception to title for matters which would be disclosed by an inspection of the Property or an updated ALTA Survey shall not constitute a New Title Exception; it being understood that any updated ALTA Survey must be obtained by Purchaser, if at all (and any Title Objections based upon matters disclosed by the updated ALTA Survey or by any amendment or supplement to the Title Report based upon an updated ALTA Survey must be made by Purchaser) prior to the Title Notice Deadline as set forth in **Section 3.1.2** above.

**3.1.4 Seller's Cure of Title Objections.** Seller's election pursuant to any Title Response Notice to attempt to Cure any Title Objection shall be at Seller's sole option and discretion; it being understood Seller has no obligation to Cure any Title Objections other than as expressly provided in this **Section 3.1**. If Seller does not elect to commit to Cure any Title Objection then Purchaser's sole recourse shall be to either: (a) terminate this Agreement, in which event (i) the Deposits (to the extent made by Purchaser) shall be promptly returned to Purchaser, and (ii) except for the Surviving Obligations, neither Seller or Purchaser shall have any further liability or obligation to the other under this Agreement, or (b) proceed to the Close of Escrow under this Agreement and take title to the Property

subject to such Title Objections which Seller has not committed to Cure, without any reduction in the Purchase Price, in which case such Title Objections which Seller has not committed to Cure shall become Permitted Exceptions.

3.1.5 Seller Monetary Liens. Notwithstanding anything to the contrary set forth above in this Section 3.1, Seller shall remove all Seller Monetary Liens as title exceptions from the Title Policy on or before the Close of Escrow. As used herein, "**Seller Monetary Liens**" means any deed of trust or mortgage which secures payment of a loan obtained by Seller; provided, however, "Seller Monetary Liens" shall specifically exclude (1) any of the foregoing caused or created by Purchaser or those for which Purchaser is responsible, (2) liens for non-delinquent taxes and assessments for the Current Tax Fiscal Period or subsequent years following the Close of Escrow, and (3) mechanics liens which are being contested by Seller so long as Seller causes the Title Company to insure over such mechanics liens by issuance of a title endorsement or removal of such mechanics liens as exceptions to coverage in the Title Policy.

### 3.2 Physical Inspections.

3.2.1 Inspections, Tests and Studies. After the Opening of Escrow, Seller shall permit Purchaser and Purchaser's authorized agents, consultants, representatives and contractors to enter upon the Property during reasonable business hours to make and conduct such reasonable non-invasive or invasive environmental evaluations, such as a "Phase I" environmental assessment (including intrusive or destructive evaluation, investigation, inspection, testing or study) and other non-invasive or invasive inspections, investigations, tests and studies (including, subject to Purchaser's Indemnity duties, in Section 3.9.2 below, intrusive or destructive evaluation) of the physical condition of the Property as Purchaser may elect to make or obtain prior to the Due Diligence Deadline. Purchaser may obtain any "Phase II" environmental assessment if: (a) Purchaser's Phase I environmental assessment recommends a Phase II, or (b) any of Purchaser's lenders require a Phase II. Any evaluations, inspections, investigations, tests or studies made or conducted by or on behalf of Purchaser or any of Purchaser's agents, consultants, representatives or contractors with respect to the Property and any entries by Purchaser or Purchaser's agents, consultants, representatives or contractors in, on or about the Property are referred to herein collectively as the "**Purchaser's Property Investigations**".

3.2.2 Performance of Inspections, Tests and Studies. If Purchaser desires access to the Property for any Purchaser's Property Investigation, Purchaser shall give prior oral or written notice to Seller of Purchaser's intention to enter the Property. Purchaser shall not interfere with any activities or work being performed at the Property by Seller or any of its agents, employees or personnel or any other person or entity, or otherwise interfere with the use and maintenance of the Property. Purchaser shall bear the cost of all Purchaser's Property Investigations, including all costs associated with Purchaser's Indemnity of Seller as noted in Section 3.9.2 below.

3.2.3 Approval or Disapproval of Inspections, Tests and Studies. Purchaser shall have until the Due Diligence Deadline to approve in Purchaser's sole and absolute discretion the results of any Purchaser's Property Investigations as Purchaser deems

appropriate by delivering a Due Diligence Approval Notice to Seller and Escrow Holder. Purchaser's failure to deliver a Due Diligence Approval Notice to Seller and Escrow Holder prior to the Due Diligence Deadline shall be deemed to be a failure of this Due Diligence Condition set forth in this Section 3.2 and Purchaser's election to terminate this Agreement pursuant to Section 3.8 below.

3.2.4 Purchaser's Delivery of Information to Seller. Upon Seller's written request following the termination of this Agreement, Purchaser agrees (subject to author's permission) to deliver to Seller, promptly following the receipt thereof by Purchaser and at no cost to Seller, copies of any and all surveys, environmental assessments, environmental reports, tests, studies, zoning, entitlements and related documentation obtained by Purchaser from independent third parties by or on behalf of Purchaser with respect to the physical condition or environmental investigation of the Property before or after the execution and delivery of this Agreement, including any ALTA Survey obtained by Purchaser and those surveys, assessments, reports, tests, studies and test results involving the structural, geologic, environmental or other condition of the Property (collectively, the "Purchaser's Information"); provided such Purchaser's Information does not include Purchaser's financing, lending, TCAC and related financial information. Seller hereby acknowledges that Purchaser has not made and does not make any warranty or representation regarding the truth, completeness or accuracy of any Purchaser's Information.

### 3.3 Review of Plans, Permits, Reports and Related Information.

3.3.1 Seller's Documents. Prior to the Agreement Date or within fourteen (14) days after the Opening of Escrow, Seller will cause to be delivered to Purchaser or make available to Purchaser (either in hand or electronically), copies of all of the following items to the extent such items exist currently and are in Seller's possession or control and relate to the Property: (a) a survey or topography map of the Property, if available; (b) property tax bill(s) for the prior tax fiscal year; (c) any leases, rental agreements, or contracts with third-parties concerning the Property; (d) any soils reports, geotechnical reports, Americans with Disabilities Act reports, and property condition, structural or engineering studies or reports, including the Existing Environmental Reports referred to in Section 3.4 below; (e) any subdivision maps, licenses, permits, approvals and authorizations from governmental agencies, departments and authorities with respect to zoning, planning, and building and safety; (f) any architect agreement, engineering contract, and other agreement and contract entered into by or on behalf of Seller for the construction and development of the Property (if any); and (g) any and all documentation associated with any challenges, objections, public comments or potential disputes relating to the Property, this Agreement or the Project. All such documents, materials and other items delivered or made available to Purchaser or Purchaser's Representatives by Seller are referred to herein collectively as "Seller's Documents". Following the Agreement Date and until the Due Diligence Deadline, Seller shall continue to advise Purchase of receipt or the availability of any new, updated or changes to Seller's Documents and shall make any updated, new or changed Seller's Documents (along with all of the original Seller's Documents) available to Purchaser on-line, electronically or at Seller's offices at reasonable times and upon reasonable prior notice.

3.3.2 Disclaimer Regarding Seller's Documents. Purchaser acknowledges that there are certain documents, materials and data and the processing of licenses, permits, approvals and authorizations for the Property which are not in the possession or control of Seller but are only contained in the local land authority files and are available to Purchaser or Purchaser's Representatives as a matter of public record. Purchaser further acknowledges that many of the Seller's Documents which Seller shall deliver or make available to Purchaser in connection with Purchaser's evaluation of the Property were prepared by third parties other than Seller and, in some instances, may have been prepared prior to Seller's ownership of the Property. Seller represents and warrants to Purchaser that Seller's Documents previously or hereafter delivered or made available to Purchaser are true, accurate and complete copies of the originals.

3.3.3 Reserved Documents. In no event shall Seller be obligated to deliver or make available to Purchaser or any of Purchaser's agents, consultants, representatives and/or contractors any of the following items (collectively, "Reserved Documents"): (a) any purchase and escrow agreements and correspondence pertaining to Seller's acquisition of the Property; (b) any third party purchase inquiries, correspondence and documents pertaining to the potential acquisition of the Property by any past or prospective purchasers (other than documents relating to title or the physical or environmental condition of the Property); (c) any appraisals and any economic evaluations of the Property; (d) any construction bids, construction budgets or other documents with respect to Seller's cost to acquire the Property and/or improve the Property; (e) Seller's internal budgets, financial projections, reports or correspondence prepared by Seller or any advisor exclusively for Seller or any of Seller's members or investors and any other internal documents; and (f) any documents or materials which are subject to the attorney/client privilege.

3.3.4 Approval or Disapproval of Seller's Documents. Purchaser shall have until the Due Diligence Deadline to approve in Purchaser's sole and absolute discretion all of the Seller's Documents by delivering a Due Diligence Approval Notice to Seller and Escrow Holder. Purchaser's failure to deliver a Due Diligence Approval Notice to Seller and Escrow Holder prior to the Due Diligence Deadline shall be deemed to be a failure of this Due Diligence Condition set forth in this Section 3.3 and Purchaser's election to terminate this Agreement pursuant to Section 3.8 below.

3.4 Section 25359.7 of Health and Safety Code. Section 25359.7 of the California Health and Safety Code requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath the real property to provide written notice of such to a Purchaser of the real property. Seller represents that the sole inquiry and investigation Seller has conducted in connection with the environmental condition of the Property is to obtain and/or review the environmental assessments and studies listed on Exhibit B hereto (collectively, the "Existing Environmental Reports"), and that except as specifically described in the Existing Environmental Reports, to Seller's knowledge, no release of hazardous substance has come to be located on or beneath the Property. In furtherance of the foregoing, (a) Purchaser acknowledges Purchaser's receipt of the foregoing notice given pursuant to Section 25359.7 of the California Health and Safety Code; (b) Purchaser is, or will be prior to the expiration of the Due Diligence Deadline, fully aware of

the matters described in the Existing Environmental Reports. The agreements set forth in this Section 3.4 shall survive the Close of Escrow and the recordation of the Grant Deed, and shall not merge into the Grant Deed or any other documents or instruments delivered at the Close of Escrow.

3.5 Governmental Approvals and Other Inquiries. Prior to the Due Diligence Deadline, Purchaser and Purchaser's authorized agents, consultants, representatives and contractors shall have the right, as part of Purchaser's due diligence investigation, to contact the local land use authority and other governmental authorities about various aspects of the Property, including but not limited to utilities, design review of the Project, working with the local land use authority to receive approval from the local land use authority to re-zone the Property to an applicable zoning for the Project, seeking a conditional use permit or similar entitlement for the Project, applicable concessions through the local land use authority's affordable housing density bonus program to receive a density approval (as applicable), site plan approval, or any other entitlements required for the Project from the local land use authority or other applicable government agencies, including but not limited to environmental clearances such as CEQA (California Environmental Quality Act) approvals and/or NEPA approvals (National Environmental Protection Act), (collectively, the "**Governmental Approvals**"). Purchaser shall have until the Due Diligence Deadline to approve, the results of any inquiries which Purchaser desires to make of the local land use authority and any other governmental authorities and/or any approvals which Purchaser obtains relating to the Property and the Project by delivering a Due Diligence Approval Notice to Seller and Escrow Holder. Purchaser's failure to timely deliver a Due Diligence Approval Notice to Seller and Escrow Holder prior to the Due Diligence Deadline shall be deemed to be a failure of this Purchaser Due Diligence Condition set forth in this Section 3.5 and Purchaser's election to terminate this Agreement pursuant to Section 3.8 below.

3.6 Natural Hazard Disclosure. Within ninety (90) days following the Opening of Escrow, Seller shall deliver to Purchaser a Natural Hazard Disclosure Statement in the form provided under California law stating whether the Property lies within the following natural hazard areas or zones (the "**Natural Hazard Areas**"): (a) a special flood hazard area designated by the Federal Emergency Management Agency (California Civil Code Section 1102.17); (b) an area of potential flooding (California Government Code Section 8589.4); (c) a very high fire hazard severity zone (California Government Code Section 51183.5); (d) a wild land area that may contain substantial forest fire risks and hazards (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 Title Company or another qualified expert as described in California Civil Code Section 1102.4(c) (the "**Natural Hazard Expert**") may be engaged by Seller to examine the maps and other information specifically made available to the public by governmental agencies with respect to the Natural Hazard Areas and the written results of the Natural Hazard Expert's examination shall be delivered to Purchaser prior to the Due Diligence Deadline.

### 3.7 Financing Contingency.

3.7.1 Tax Credit Financing. Notwithstanding anything to the contrary contained in this Agreement, Purchaser and Seller expressly acknowledge and agree that Seller's obligation to sell the Property to Purchaser and Purchaser's ability to purchase the

Property from Seller is conditioned upon the Project receiving the Governmental Approvals, as described in Section 3.5 above and subject to clear title as described in Section 3.1 above, prior to Purchaser applying for tax credits, as described in this Section 3.1.7, and expressly conditioned upon Purchaser's receipt and acceptance, in Purchaser's sole and absolute discretion, of a satisfactory preliminary reservation letter for tax credits ("**PR Letter**") from the state of California Tax Credit Allocation Committee ("**TCAC**") for the Project. Applications for the first round of 9% tax credits from TCAC for 2021 are submitted in approximately March 2021 ("**TCAC 1st Round**") with PR Letters for the 2021 TCAC 1st Round scheduled to be announced around June or July of 2021. Purchaser shall notify Seller in writing promptly after receiving notice of Purchaser's receipt or denial of a PR Letter for 2021 TCAC 1st Round. If Purchaser receives a PR Letter for the 2021 TCAC 1st Round, Purchaser shall notify Seller in writing on or before the Financing Deadline as to whether or not Purchaser will accept such PR Letter. If Purchaser fails to receive a PR Letter for tax credits from 2021 TCAC 1st Round in an amount satisfactory to Purchaser, then Seller and Purchaser hereby mutually agree to immediately cancel Escrow, return Deposit to Purchaser, and terminate this transaction, unless extended as provided for below.

(a) Financing Extension. In the event that Purchaser does not receive a PR Letter for tax credits from the 2021 TCAC 1st Round and wishes to apply for 9% tax credits from TCAC in the second round of competitive applications occurring in approximately July 2021 (the "**TCAC 2nd Round**"), Purchaser shall have the right to a financing extension ("**Financing Extension**") for Close of Escrow to facilitate such application which Financing Extension shall end fifteen (15) Business Days after Purchaser receives from TCAC the results of the TCAC 2nd Round applications; provided however, in consideration for such Financing Extension, the Purchase Price shall be increased by five percent (5%). Such Financing Extension shall be exercised by Purchaser providing written notice to Seller and Escrow no later than five (5) Business Days after the final award date of tax credits showing Purchaser's failure to receive a PR Letter in the TCAC 1st Round. The Initial Deposit shall remain refundable subject to Purchaser receiving a PR Letter from TCAC for tax credits, in an amount satisfactory to Purchaser, in the TCAC 2nd Round and Close of Escrow by the Closing Date. Upon Purchaser's receipt of a satisfactory PR Letter (whether from the TCAC 1st Round or the TCAC 2nd Round), within fifteen (15) Business Days of receiving such satisfactory PR Letter, Purchaser shall provide written notice to Seller of receipt of such PR Letter and deposit with Escrow a second deposit of Twenty Five Thousand Dollars (\$25,000) ("**Second Deposit**"), nonrefundable, applicable to the Purchase Price.

(b) 2022. Purchaser shall have the right, at its sole discretion, to apply for tax credits in 2022 TCAC 1<sup>st</sup> and 2<sup>nd</sup> rounds pursuant to the same annual process explained in 3.7.1(a).

(c) Purchaser and Seller agree that if the Purchaser does not receive and accept a PR Letter satisfactory to Purchaser in 2021 or 2022, then Purchaser shall have the unilateral right, in Purchaser's sole and absolute discretion, either to terminate this Agreement and cancel Escrow by written notice to Seller and Escrow Holder, without any liability of any kind to Purchaser or Seller, and to receive the return of the



Deposits (with all accrued interest thereon), or to elect to extend the Close of Escrow a second time to apply for tax credits with a bond allocation as stated below.

(d) Other than the receipt of any funds from Escrow pursuant to the provisions of this Agreement, Seller shall not have any right whatsoever to seek or recover any other damages from Purchaser or pursue any other remedy, including without limitation any right to seek specific performance of this Agreement, Seller hereby waiving all such rights in the same manner as set for in Section 8.1 below.

(e) Second Financing Extension. In the event that Purchaser wishes to extend Escrow a second time and apply for tax credits in the TCAC 4% noncompetitive tax credits rounds in early 2023 with a bond allocation from California Debt Limit Allocation Committee (“CDLAC”) or pursue other financing available to the Project, Purchaser shall have the right to a second financing extension for Close of Escrow (“Second Financing Extension”); provided however, in consideration for such Second Financing Extension, the Purchase Price shall be increased by another five percent (5%). Such Second Financing Extension shall be exercised by Purchaser providing written notice to Seller and Escrow no later than five (5) Business Days after the final award date of tax credits showing Purchaser’s failure to receive a PR Letter in the TCAC 2nd Round of 2022.

(f) Outside Closing Date. Bonds typically allocated from CDLAC are required to close 90 (ninety) days after the allocation approval date which will coincide with Close of Escrow on the Property. Close of Escrow for the Second Financing Extension shall not extend beyond December 31, 2023 (“Outside Closing Date”). If Purchaser fails to close Escrow by the Outside Closing Date, then Escrow shall immediately cancel and Seller shall retain all funds released to it from Escrow pursuant to this Agreement.

3.7.2 Governmental Loans. Purchaser shall have until ninety (90) days following three (3) years from the Opening of Escrow, to secure an appraisal of the Property to comply with financing sources and obtain loan commitments for the Project from a lender or lenders acceptable to Purchaser in its sole and absolute discretion, including, without limitation, (a) a financing commitment from the City of Auburn, (b) a financing commitment from the Placer County or its housing authority, and/or (c) financing commitments from other government agencies or sources.

### 3.8 Failure of Purchaser Due Diligence Conditions.

3.8.1 Due Diligence Approval Notice. If, for any reason or no reason whatsoever, any of the Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above are not satisfied or if Purchaser, in Purchaser’s sole and absolute discretion, is not satisfied with any aspect of the Property, including the physical inspections, the Existing Environmental Reports, or any Seller’s Documents, the Natural Hazard Expert’s report, the Existing Environmental Reports or any new environmental reports, any disclosures, any

presently operative or proposed governmental laws and regulations (including building, zoning and land use laws) to which the Property may be subject, or the size, condition and suitability of the Property for Purchaser's contemplated use thereof, then Purchaser may, at Purchaser's sole option, elect to terminate this Agreement by delivering written notice to Seller and Escrow Holder at any time prior to the Due Diligence Deadline; provided, however, the Due Diligence Condition set forth in Section 3.1.1 above shall be deemed to have been satisfied and approved by Purchaser unless prior to the Title Notice Deadline Purchaser delivers a Title Objection Notice to Seller and Escrow Holder. The Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above shall be deemed to have failed and be disapproved by Purchaser unless prior to the Due Diligence Deadline Purchaser delivers to Seller and Escrow Holder a written notice that such Purchaser Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above have been satisfied or waived by Purchaser (the "**Due Diligence Approval Notice**"). If Purchaser delivers the Due Diligence Approval Notice to Seller, then all of the Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above shall be deemed satisfied or waived. Purchaser shall be entitled to waive any of the Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above at any time prior to the Due Diligence Deadline. Any such waiver by Purchaser of the Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above shall be made in writing by Purchaser, including by Purchaser's delivery of a Due Diligence Approval Notice to Seller and Escrow Holder.

3.8.2 **Financing Approval Notice.** The Financing Condition set forth in Section 3.7 above shall be deemed to have failed unless prior to the Financing Deadline Purchaser delivers to Seller and Escrow Holder a written notice that such Financing Condition has been satisfied or waived by Purchaser and that Purchaser elects to proceed with the purchase of the Property in accordance with this Agreement (the "**Financing Approval Notice**"). If Purchaser delivers a Financing Approval Notice to Seller and Escrow Holder, then it shall be conclusively presumed that Purchaser has either satisfied or waived the Financing Condition. Purchaser shall be entitled to waive the Financing Condition at any time prior to the Financing Deadline. Any such waiver by Purchaser of the Financing Condition shall be made in writing by Purchaser, including by Purchaser's delivery of a Financing Approval Notice to Seller and Escrow Holder.

3.8.3 **Termination of Agreement.** If Purchaser fails, for any reason or no reason, to timely provide the Due Diligence Approval Notice with respect to all of the Due Diligence Conditions (including Purchaser's approval of Seller's response or deemed response to any Title Objections) or Purchaser fails to deliver the Financing Approval Notice with respect to the Financing Condition, then this Agreement shall automatically terminate, Escrow Holder shall return the Initial Deposit to Purchaser (less any escrow and title cancellation fees and charges, which Purchaser hereby agrees to pay), and neither Purchaser nor Seller shall have any further rights or obligations under this Agreement except for Purchaser's and Seller's obligations under Section 3.2, Section 3.8, Section 3.9, Section 4.7, Section 5.3, Article VII and Section 10.7 (the "**Surviving Obligations**"), which Surviving Obligations shall survive any such termination.

3.8.4 **Failure Due to Material Breach.** Nothing contained herein shall be deemed or construed to relieve Seller or Purchaser of any liability or waive any of

Purchaser's or Seller's remedies if any Due Diligence Condition is not satisfied due to a material breach by Seller or Purchaser under this Agreement or if the Financing Condition is not satisfied due to a breach by Purchaser under this Agreement.

### 3.9 Investigations, Obligations and Indemnity.

3.9.1 Inspection Obligations. Purchaser agrees that when performing any Purchaser's Property Investigations, Purchaser and Purchaser's agents, consultants, representatives and/or contractors shall be obligated to: (a) comply with all terms of applicable laws and regulations regarding any Purchaser's Property Investigations; (b) not interfere with any activities taking place on the Property or any other operation, use and maintenance of the Property; (c) not damage any part of the Property or any adjacent property; (d) not injure or otherwise cause bodily harm to Seller, any of its agents, employees and personnel, or any other person or entity; (e) not permit any labor or materials liens to attach to the Property or any adjacent property by reason of the Purchaser's Property Investigations and promptly remove or cause to be removed (by bonding or otherwise) any such liens which attach to the Property or any adjacent property; (f) reasonably restore the Property to its condition before any Purchaser's Property Investigations were undertaken; and (g) comply with the provisions of Section 3.2.1 and Section 3.2.2 above.

3.9.2 Purchaser's Indemnity. Purchaser shall keep the Property free from all liens arising out of any Purchaser's Property Investigations and shall indemnify, defend (with counsel reasonably satisfactory to Seller), protect, and hold Seller, Seller's member(s) and each of their members, officers, trustees, beneficiaries, employees, representatives, agents, lenders, related and affiliated entities, successors and assigns (collectively, the "Seller Parties") harmless from and against any and all claims, demands, liabilities, judgments, penalties, losses, costs, damages, and expenses (including reasonable attorneys' and experts' fees and costs) to the extent arising from any Purchaser's Property Investigations (exclusive of the financial effects of the discovery of presently existing Hazardous Materials on the Property, except to the extent Purchaser or Purchaser's agents, consultants, representatives and/or contractors exacerbated such condition or breached this Agreement in conducting such Purchaser's Property Investigations). In addition to the foregoing indemnity, if there is any material damage to the Property caused by Purchaser's Property Investigations, Purchaser shall immediately restore the Property (or, at Seller's option, pay to Seller upon demand the cost to restore the Property) to the reasonably same condition existing prior to Purchaser's Property Investigations.

## ARTICLE IV

### ESCROW AND CLOSE OF ESCROW

4.1 Escrow Instructions. Upon execution of this Agreement by both Purchaser and Seller, the parties shall deposit a copy of a fully-executed counterpart of this Agreement with Escrow Holder and this Agreement shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated by this Agreement. For purposes of this Agreement, the Escrow shall be deemed opened on the date Escrow Holder shall have received a fully executed original or originally executed counterparts of this Agreement from both Seller

and Purchaser (the “**Opening of Escrow**”). Escrow Holder shall promptly notify Purchaser and Seller in writing of the date of the Opening of Escrow. Seller and Purchaser agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any such additional or supplementary escrow instructions, the terms of this Agreement shall control.

#### 4.2 Close of Escrow and Closing Date.

4.2.1 Close of Escrow. As used in this Agreement, the “**Close of Escrow**” shall mean the consummation of the purchase and sale transaction contemplated by this Agreement, as evidenced by authorization to Escrow Holder to record the Grant Deed in the Official Records of the County Recorder’s Office of Placer County, California (the “**Official Records**”), the Title Company’s irrevocable commitment to issue the Title Policy to Purchaser, and Seller’s receipt of the entire amount of the Purchase Price. The Close of Escrow shall occur on the Closing Date. Each party shall timely deposit with Escrow Holder the funds, documents and supplementary written escrow instructions required by this Agreement in order to consummate the Close of Escrow in accordance with this Agreement.

4.2.2 Closing Date. The Close of Escrow shall occur on or before the date that is within one hundred eighty (180) days (in conformance with TCAC regulations) from Purchaser’s receipt of a satisfactory PR Letter for the Project along with the satisfaction or waiver of Sections 3.1 through 3.7 above and Purchaser Closing Conditions, or such other date upon which both the Purchaser and Seller may mutually agree, subject to the terms set forth in this Agreement (the “**Closing Date**”); provided, however, that if the Closing Date has not occurred by the Outside Closing Date, then Purchaser may terminate this Agreement by written notice to Seller given at any time prior to the Outside Closing Date, in which event this Agreement shall automatically terminate, Escrow Holder shall return the Initial Deposit to Purchaser (less any funds payable or already released to Seller pursuant to this Agreement), and neither Purchaser nor Seller shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

4.2.3 Early Purchase. Purchaser, at its sole discretion, shall have the right to purchase the Property within 180 days after the three (3) year anniversary from the Opening of Escrow (“**Early Purchase**”), by giving Seller and Escrow thirty (30) days prior written notice, purchasing the Property with a cash down payment of fifty percent (50%) of the Purchase Price (“**Down Payment**”) and the balance structured as a two year note (“**Note**”), at five percent (5%) interest only, payable quarterly, secured by a first deed of trust, with principal and any unpaid interest all due in two years from the Down Payment. If this Early Purchase option is used by Purchaser, the Initial Deposit and Second Deposit, if such deposits were deposited prior to the Early Purchase, would be applied to the Down Payment. No prepayment penalty would occur if Purchaser pays off the Note prior to its maturity.

4.2.4 Possession. Seller shall deliver possession of the Property to Purchaser at the Close of Escrow, subject only to the Permitted Exceptions.

4.3 Conveyance. At the Close of Escrow, Seller shall convey to Purchaser fee simple title to the Property by a grant deed ("**Grant Deed**"), subject only to the Permitted Exceptions. The Grant Deed shall provide that the Documentary Transfer Tax shall not be filed in the Official Records and shall instead be reflected on a separate document to be delivered to the Placer County Recorder along with the Grant Deed.

4.4 Closing Documents.

4.4.1 Seller's Closing Documents. Upon the Close of Escrow, Seller shall deliver to Escrow Holder for delivery to Purchaser, as applicable, all of the following documents: (a) the Grant Deed, executed and acknowledged by Seller; (b) a certificate of non-foreign status in accordance with the requirements of Internal Revenue Code Section 1445, as amended (the "**FIRPTA Certificate**"), executed by Seller; (c) a California Form 593-C with respect to the Property (the "**California 593-C Form**"), executed by Seller; (d) evidence of the existence, organization and authority of Seller and of the authority of the person executing documents on behalf of Seller reasonably satisfactory to the Title Company; and (e) such other documents as may be reasonably required by Escrow Holder or the Title Company (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement).

4.4.2 Seller's Deliveries Outside of Escrow. Within fourteen (14) days after the Opening of Escrow, Seller shall deliver to Purchaser, outside of Escrow at the offices of Seller originals (or, if originals are not in the possession of Seller, the best copies, if any, in the possession of Seller) the Seller's Documents.

4.4.3 Purchaser's Closing Payments and Documents. At the Close of Escrow, in addition to the Deposits, the Purchase Price Balance and Purchaser's delivery of any additional funds necessary to pay Purchaser's share of prorations and closing costs hereunder, Purchaser shall also deliver the following to Escrow Holder for delivery to Seller upon the Close of Escrow: (a) a preliminary change of ownership report completed for the transaction contemplated hereby in accordance with California Revenue & Taxation Code Sections 480.3 and 480.4, executed by Purchaser; (b) evidence of the authority of Purchaser and of the authority of the person(s) executing documents on behalf of Purchaser reasonably satisfactory to the Title Company; and (c) such other documents as may be reasonably required by Escrow Holder or the Title Company (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement).

4.5 Actions of Escrow Holder. On the Closing Date, Escrow Holder shall promptly undertake and follow the procedures below with respect to the Close of Escrow (all of which shall be considered as having taken place simultaneously, and no delivery or transaction below shall be considered as having been made until all deliveries and transactions have been accomplished):

4.5.1 Disbursement of Funds. Escrow Holder shall disburse all funds deposited with Escrow Holder by Purchaser as follows:

- (a) Pay all closing costs which are to be paid through Escrow (including recording fees, Title Policy charges and Escrow fees) and any payments due in connection with the release or reconveyance of any Seller Monetary Liens as provided in Section 3.1.5 above, all in accordance with the Closing Statements.
- (b) After (i) debiting Seller all closing costs which are chargeable to the account of Seller in accordance with the Closing Statement executed by Seller, and (ii) either debiting or crediting Seller (as appropriate) for the net amount of the prorations and adjustments made pursuant to this Agreement in accordance with the Closing Statement executed by Seller, disburse the balance of the Purchase Price (as adjusted pursuant to clause (i) and clause (ii) immediately above) to Seller in accordance with separate wiring instructions to be delivered to Escrow Holder by Seller.
- (c) Disburse any remaining funds to Purchaser in accordance with separate wiring instructions to be delivered to Escrow Holder by Purchaser.

4.5.2 Recordation. Escrow Holder shall cause the Grant Deed (and any other documents which the parties hereto may mutually direct) to be recorded in the Official Records and obtain conformed copies thereof for distribution to Purchaser and Seller.

4.5.3 Delivery of Documents. Escrow Holder shall: (a) direct the Title Company to issue the Title Policy to Purchaser; (b) deliver to Purchaser and Seller conformed copies of the Grant Deed as recorded in the Official Records; (c) combine the two (2) original counterparts of the General Assignment delivered into Escrow by Seller and Purchaser into two (2) fully executed originals of the General Assignment, and deliver to Seller one (1) fully executed original of the General Assignment; and (d) deliver to Purchaser the executed originals of the FIRPTA Certificate, the California Form 593-C and one (1) fully executed original of the General Assignment.

#### 4.6 Closing Costs.

4.6.1 Seller's Closing Costs. Seller shall pay (a) the basic premium for a CLTA policy of title insurance with respect to the Title Policy, (b) all legal and professional fees and fees of other consultants incurred by Seller, (c) one-half (½) of the Documentary Transfer Taxes and recording fees payable in connection with the recordation of the Grant Deed, (d) one-half (½) of all Escrow fees and Escrow costs related to the purchase and sale of the Property (but no Escrow fees and Escrow costs related to any financing obtained by Purchaser, all of which shall be paid by Purchaser), and (e) Escrow Holder's fees, if any, for acting as the Natural Hazard Expert.

4.6.2 Purchaser's Closing Costs. Purchaser shall pay (a) the cost of the Title Policy in excess of the basic premium for a CLTA policy of title insurance, if desired, (b) the cost of any endorsements to the Title Policy, (c) the cost of the ALTA Survey, if any, (d) the cost of any title insurance coverage required by any lender to Purchaser or any other party in connection with any other financing obtained by Purchaser, (e) the cost of establishing the Escrow Account, if any, (f) all legal and professional fees and fees of other

consultants incurred by Purchaser, (g) any and all Escrow fees and costs and any other costs and expenses whatsoever related any financing obtained by Purchaser, (h) one-half (½) of all Escrow fees and Escrow costs related to the purchase and sale of the Property, and (i) one-half (½) of the Documentary Transfer Taxes and recording fees payable in connection with the recordation of the Grant Deed.

4.6.3 General Allocation. Any other closing costs and expenses which are not addressed in Section 4.6.1 and Section 4.6.2 above shall be borne equally between Purchaser and Seller.

4.7 Real Estate Commissions. The parties represent and warrant to each other that there are no brokers being used in connection with this Agreement and accordingly no real estate commissions are due to any broker at the Closing Date.

4.8 Real Estate Reporting Person. Escrow Holder is hereby designated the “real estate reporting person” for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and the Closing Statements or any other any settlement statement prepared by Escrow Holder or the Title Company shall so provide. Upon the Close of Escrow, Seller shall cause Escrow Holder to file a Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

4.9 Prorations.

4.9.1 General. The following items set forth below in this Section 4.9 are to be adjusted and prorated between Seller and Purchaser as of 11:59 p.m. on the day immediately preceding the day upon which the Close of Escrow occurs (the “Adjustment Time”) (such that Purchaser shall be deemed to own the Property, and therefore entitled to any revenues and responsible for any expenses, for the entire day upon which the Close of Escrow occurs). Such adjustments and prorations shall be calculated on the actual days of the applicable month in which the Close of Escrow occurs and all annual prorations shall be based upon a three hundred sixty-five (365)-day year. The net amount resulting from the prorations and adjustments provided for in this Section 4.9 (along with the allocation of closing costs in accordance with Section 4.6 above) shall be added to (if such net amount is in Seller’s favor) or deducted from (if such net amount is in Purchaser’s favor) the funds to be delivered at Close of Escrow by Purchaser in payment of the Purchase Price. Any other closing prorations and adjustments which are customarily made in similar real property sales transactions and are not addressed in this Section 4.9 shall be made between Purchaser and Seller in accordance with the customary practice for commercial real estate transactions of similar size in Placer County, California.

4.9.2 Real Estate Taxes and Assessments. For purposes of this Agreement, “Property Taxes” means real estate or ad valorem real property taxes, assessments (including installments of all community facilities district assessments and any business improvement district charges and principal and interest installments due on any community facilities district or local improvement district liens) and personal property taxes with respect to the Property. Property Taxes shall be prorated as of the Adjustment Time based upon the latest available tax bill. Any Property Taxes which may be paid in

installments shall be prorated based upon such installments and, notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to pre-pay or to bear (by credit or debit) the prepayment of any amount due for Property Taxes (including special amounts payable for any community facilities district and other assessments) other than the installments due for the Current Tax Fiscal Period. Seller shall be responsible for (a) all Property Taxes assessed for any period prior to the Current Tax Fiscal Period and (b) that portion of the Property Taxes assessed for the Current Tax Fiscal Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Fiscal Period to the Adjustment Time, inclusive, whether or not the same shall be payable prior to the Adjustment Time. Purchaser shall be responsible for (i) all Property Taxes assessed for any period after the Current Tax Fiscal Period, and (ii) that portion of the Property Taxes assessed for the Current Tax Fiscal Period, determined on the basis of the number of days following the Adjustment Time through the last day of the Current Tax Fiscal Period, inclusive. The term "**Current Tax Fiscal Period**" shall mean the fiscal period of the applicable taxing or charging authority during which the Close of Escrow occurs. If the latest available tax bill is not the bill for the Current Tax Fiscal Period, then Property Taxes shall be prorated based upon the latest tax information then available (including previous tax bills, current assessments and other information available from the taxing authorities) and Purchaser and Seller shall re-prorate the Property Taxes following the Close of Escrow as soon as the tax bill for the Current Tax Fiscal Period becomes available, but in all events no later than the Final Proration Adjustment as provided in Section 4.9.4 below. Any supplemental assessment of Property Taxes which is made following the Close of Escrow or any increase in Property Taxes which is assessed following the Close of Escrow arising out of the construction and development of the Improvements, the sale of the Property to Purchaser or a subsequent sale or change in ownership thereafter, and/or arising out of any construction or improvements to the Property performed following the Close of Escrow, shall be paid by Purchaser when assessed. To the extent that any supplemental assessment of Property Taxes is applicable to any period prior to the Closing Date, it shall be the responsibility of Seller. Refunds of Property Taxes for the Current Tax Fiscal Period, net of the costs of pursuing any tax contest or protest proceedings and collecting such refunds, shall be prorated in proportion to the respective shares of the Property Taxes for the Current Tax Fiscal Period borne by Seller and Purchaser hereunder.

4.9.3 **Operating Expenses.** As used herein, "**Operating Expenses**" shall mean all costs and expenses (other than Property Taxes, which shall be prorated in accordance with Section 4.9.2 above) with respect to the operation and maintenance of the Property, including all fees and charges (if any) for landscaping, maintenance, sewer, water, electricity and other utilities; assessments payable under any declaration of covenants, conditions and restrictions, reciprocal easement agreement or similar agreement; and periodic fees payable under operating licenses and permits for the Property. Such Operating Expenses and expenses shall be prorated as of the Adjustment Time such that Seller shall be responsible for all Operating Expenses attributable on an accrual basis to the period prior to the Adjustment Time and Purchaser shall be responsible for all Operating Expenses attributable on an accrual basis to the period from and after the Adjustment Time. Purchaser shall effectuate the transfer of all utilities (if any) which are in Seller's name to Purchaser's name as of the Close of Escrow, and where necessary, open a new account in Purchaser's name and post any deposits for utility service to the Property with the utility companies.



Purchaser and Seller shall cooperate to have all utility meters read by the appropriate utility companies as of the Close of Escrow. Seller shall be entitled to recover any and all deposits held by any utility companies for utility service to the Property in any Seller's name as of the date of the Close of Escrow. With respect to any Operating Expenses which cannot be prorated at the Close of Escrow based upon the actual amounts of such Operating Expenses (whether because the applicable utility meters are not read by the appropriate utility companies or their representatives as of the Adjustment Time or because current invoices or bills for any of such Operating Expenses (other than utilities) are unavailable on or before the Closing Date), such Operating Expenses shall be estimated and prorated at Close of Escrow based upon the latest information available (including the most recent invoices or bills and the operating history) and a final and conclusive readjustment of any Operating Expense item shall be made upon receipt of the actual invoice or bill, but in all events no later than the Final Proration Adjustment as provided in Section 4.9.4 below. Seller shall be entitled to recover any and all deposits held by any utility companies for the provision of utility service to the Real Property in any Seller's name as of the date of the Close of Escrow.

4.9.4 Closing Statement; Final Proration Adjustment. At least one (1) full Business Day prior to the Closing Date, Seller and Purchaser shall agree upon the allocation of costs and expenses to be made in accordance with Section 4.6 above and the prorations to be made in accordance with this Section 4.9 and submit to Escrow Holder executed pro forma closing statements prepared by Escrow Holder for Purchaser and Seller (collectively, the "Closing Statements"). The Closing Statements shall be utilized for purposes of making the adjustments for closing costs and prorations to the amount of funds to be deposited by Purchaser for payment of the Purchase Price upon the Close of Escrow. As soon as practicable following the Close of Escrow (but in no event later than six (6) months after the Close of Escrow), Seller and Purchaser shall reprorate the expenses set forth in this Section 4.9 based upon actual bills or invoices received after the Close of Escrow (if original prorations were based upon estimates) and any other items necessary to effectuate the intent of the parties that all expense items be prorated as provided above in this Section 4.9 (the "Final Proration Adjustment"). Any reprorated items shall be promptly paid to the party entitled thereto. Any errors or omissions in computing adjustments at the Close of Escrow shall be promptly corrected, but only so long as the party seeking to correct such error or omission has notified the other party of such error or omission no later than the Final Proration Adjustment. The proration of expenses at the Final Proration Adjustment shall be final and conclusive; there shall be no further proration or adjustment following the Final Proration Adjustment. The provisions of this Section 4.9 (and Section 4.6 and Section 4.7 above) shall survive the Close of Escrow and shall not merge into the Grant Deed and the other documents and instruments delivered at the Close of Escrow.

## ARTICLE V

### CLOSING CONDITIONS

5.1 Purchaser's Closing Conditions. Following the Financing Deadline, Purchaser's obligation to consummate the purchase of the Property shall be subject only to the satisfaction or

Purchaser's written waiver of the conditions set forth in this Section 5.1 below (collectively, the "**Purchaser Closing Conditions**") on or before the earlier of (a) the time periods specified below in each subsection of this Section 5.1, or (b) the Closing Date. The obligations of Purchaser and Seller with respect to the Purchaser Closing Conditions are as set forth below in each subsection of this Section 5.1.

5.1.1 **Delivery of Title Policy.** Upon the Close of Escrow, the Title Company shall be irrevocably committed to issue to Purchaser a CLTA Policy of Title Insurance in the amount of the Purchase Price insuring fee title to the Property is vested in Purchaser subject only to the Permitted Exceptions (the "**Title Policy**"). Purchaser may elect to obtain an ALTA Extended Coverage Policy of Title Insurance at the Close of Escrow, in which event the issuance of ALTA Extended Coverage shall be a Purchaser Closing Condition. Without limiting the foregoing, any ALTA Survey required by the Title Company for the issuance of the ALTA Extended Coverage Title Policy shall be prepared and delivered at Purchaser's sole cost and expense and shall be obtained prior to the Title Notice Deadline. Notwithstanding anything to the contrary contained in this Section 5.1.1 or elsewhere in this Agreement, neither the Title Notice Deadline nor the Due Diligence Deadline nor the Closing Date shall be extended to allow Purchaser to obtain, or review or object to any matters disclosed by an ALTA Survey or any updated title report(s) based thereon. As used in this Agreement, the term "**Permitted Exceptions**" shall mean (a) all matters set forth in the Title Documents and any updated title report(s) which Purchaser approves (or is deemed to approve) pursuant to Section 3.1 (other than any Seller Monetary Liens which Seller is obligated to remove or cause to be removed pursuant to Section 3.1.5 above); (b) non-delinquent Property Taxes (including non-delinquent community facilities district, business improvement district or local improvement district assessments); (c) the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code relating to the period from and after the Closing, if any, including supplemental assessments resulting from the transfer of the Property to Purchaser; (d) all zoning restrictions, regulations and requirements, all building codes and all other applicable laws, ordinances and governmental regulations affecting the Property; (e) all matters directly or indirectly caused by or arising through Purchaser or any Purchaser Parties; and (f) all matters existing with the written consent of Purchaser.

5.1.2 **Seller's Obligations.** As of the Closing Date, Seller shall have performed all of Seller's material obligations under this Agreement required to be performed by Seller prior to or at the Close of Escrow, including delivery to Escrow Holder of all of the documents referred to in Section 4.4.1 above.

5.1.3 **Seller's Representations.** As of the Closing Date, Seller's representations contained in Section 7.1 below of this Agreement shall be true and correct in all material respects.

5.2 **Seller Closing Conditions.** Seller's obligation to consummate the sale of the Property is subject only to the satisfaction or Seller's written waiver of the conditions set forth in this Section 5.2 below (collectively, the "**Seller Closing Conditions**") on or before the earlier of (a) the time periods specified below in each subsection of this Section 5.2, or (b) the Closing

Date. The obligations of Purchaser and Seller with respect to the Seller Closing Conditions are as set forth below in this Section 5.2.

5.2.1 Delivery of Due Diligence Approval Notice. No later than the Due Diligence Deadline, Purchaser shall have delivered to Seller and Escrow Holder the Due Diligence Approval Notice notifying Seller of Purchaser's unconditional approval or waiver of all of the Due Diligence Conditions set forth in Section 3.1 through Section 3.6 above and Purchaser's election to proceed with the acquisition of the Property in accordance with Section 3.8.1 above.

5.2.2 Delivery of Financing Approval Notice. No later than the Financing Deadline, Purchaser shall have delivered to Seller and Escrow Holder the Financing Approval Notice notifying Seller that the Financing Condition has been unconditionally satisfied or waived by Purchaser in accordance with Section 3.8.2 above.

5.2.3 Delivery of Purchase Price. On or before 10:00 a.m. (Pacific Time) on the Closing Date, Purchaser shall have deposited into Escrow Immediately Available Funds in the amount of the Purchase Price plus any amounts in addition to the Purchase Price as are necessary to pay Purchaser's share of the costs, expenses and prorations required to be borne by Purchaser hereunder.

5.2.4 Purchaser's Obligations. As of the Closing Date, in addition to delivery of the Purchase Price funds as provided in Section 5.2.3 above, Purchaser shall have performed all of Purchaser's other material obligations under this Agreement, including delivery to Escrow Holder of all of the documents referred to in Section 4.4.3 above.

5.2.5 Purchaser's Representations. As of the Closing Date, all of Purchaser's representations and warranties contained herein shall be true and correct in all material respects.

5.3 Failure of Closing Conditions. If any or all of the Purchaser Closing Conditions are not timely satisfied or expressly waived in writing by Purchaser on or before the earlier of the respective dates set forth in each subsection of Section 5.1 above or the Closing Date, Purchaser may elect, in Purchaser's sole and absolute discretion, to terminate this Agreement; provided, however, nothing contained herein shall be deemed or construed to relieve Seller or Purchaser of any liability or waive any of Purchaser's or Seller's remedies if any Purchaser Closing Condition is not satisfied due to a material breach by Seller or Purchaser under this Agreement. If any of the Seller Closing Conditions are not satisfied or expressly waived in writing by Seller on or before the earlier of the respective dates set forth in each subsection of Section 5.2 above or the Closing Date, Seller may elect, in Seller's sole and absolute discretion, to terminate this Agreement; provided, however, nothing contained herein shall be deemed or construed to relieve Purchaser or Seller of any liability or waive any of Seller's or Purchaser's remedies if any Seller Closing Condition is not satisfied due to a material breach by Purchaser or Seller under this Agreement. In the event this Agreement is terminated for any reason other than a material breach by Purchaser under this Agreement, the Deposits and the Purchase Price Balance and any other funds deposited into Escrow by Purchaser shall be returned to Purchaser in Immediately

Available Funds (less any escrow and title cancellation fees and charges, which Purchaser hereby agrees to pay).

## ARTICLE VI

### AS IS

Pursuant to this Agreement, Seller has or will make the Property available to Purchaser for inspection. Purchaser acknowledges that Purchaser's decision to purchase the Property and proceed to Close of Escrow hereunder shall be as a result of said inspection and other investigations and studies made regarding the Property and the viability of Purchaser's proposed use of the Property. Purchaser acknowledges and agrees that, except as otherwise set forth in this Agreement, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, regarding the Property or documents, studies, maps and information pertaining to the Property or the use or development thereof, and specifically, that, except as otherwise set forth herein, Seller has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Property of hazardous substances. Purchaser further acknowledges and agrees that having been given the opportunity to inspect the Property and conduct its feasibility studies, Purchaser will rely solely on its own investigation of the Property and not upon any report or information provided or to be provided by Seller or any employee, broker, consultant or agent of Seller and that Purchaser agrees to accept the Property in its "AS-IS" condition. Purchaser also acknowledges that it will evaluate the viability of its proposed use of the Property. Seller is not liable or bound in any manner by any verbal or written statements, representations, information or reports pertaining to the Property or the operation thereof, furnished by any broker, agent, employee, servant or other person. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS-IS" condition and basis with all faults. Consideration for the sale of the Property "AS-IS" is built into the Purchase Price. The provisions of this Article shall survive the Close of Escrow.

## ARTICLE VII

### REPRESENTATIONS, WARRANTIES AND COVENANTS.

7.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser that the following matters set forth below in this Section 7.1 are true and correct as of the Agreement Date. Subject to Section 7.2 below, the representations and warranties in this Section 7.1 will be deemed to be remade by Seller as of the Close of Escrow as the facts then exist.

7.1.1 Authority. Seller has the legal right, power and authority to enter into this Agreement and the documents required to be delivered by Seller pursuant to the terms of this Agreement (the "Seller Closing Documents") and to consummate the transactions contemplated hereby. The execution, delivery and performance of this

Agreement and the Seller Closing Documents have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement and the Seller Closing Documents.

7.1.2 Binding Obligations. This Agreement has been, and the Seller Closing Documents will be as of the Close of Escrow, duly executed by Seller and this Agreement is, and the Seller Closing Documents will be as of the Close of Escrow, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws affecting the rights of creditors generally and general principles of equity.

7.1.3 Foreign Person Affidavit. Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

7.1.4 Bankruptcy Matters. Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Seller's creditors, suffered the appointment of a receiver to take possession of any of Seller's assets, suffered the attachment or other judicial seizure of any of Seller's assets, admitted Seller's inability to pay Seller's debts as they come due, or made an offer of settlement, extension or composition to Seller's creditors generally.

7.1.5 Specially Designated Nationals and Blocked Persons. Seller is not (a) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") pursuant to Executive Order No. 133224, 66 Fed. Reg. 49079 (the "**Order**") or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or any other similar agency (such lists are collectively referred to as the "**Lists**"); (b) a person or entity who has been determined to be subject to the prohibitions contained in the Order; or (c) owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined to be subject to the prohibitions contained in the Order.

7.1.6 ERISA Matters. Seller is acting on Seller's own behalf and Seller is neither (a) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") which is subject to Title 1 of ERISA, nor (b) a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended, which is subject to Section 4975 of the Internal Revenue Code of 1986. Seller's assets do not constitute "plan assets" of one or more of such plans within the meaning of Department of Labor Regulation Section 2510.3-101 and Seller will not be reconstituted as a plan or as an entity whose assets constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101.

7.1.7 Tenant Leases. There are no leases or rental agreements for the occupancy of the Property.

7.1.8 Seller's Documents. Seller has delivered or made available to Purchaser at the offices of Seller or at the Property all of the documents and materials with

respect to the Property which are currently in the possession of Seller, other than the Reserved Documents. Seller has instructed its agents to deliver or make available to Purchaser all of the materials and documents with respect to the Property which are in the possession of Seller's agents (other than the Reserved Documents).

7.1.9 Access. The Property has full and free access to and from public streets and roads, and to Seller's knowledge, there are no facts or conditions that could result in the termination of the present access from or to the Property to or from any such existing highways and roads, or in the termination or expiration of any conditional use permits, or other governmental permits or approvals (if any exist) necessary for the use and operation of the Property.

7.1.10 Adjacent Development. Seller does not have knowledge of any existing or intended use of any adjacent or nearby property (that is, property within five (5) miles of the Property) that might adversely affect the use or value of the Project.

7.1.11 Disclosure and Compliance. Seller has not been served with, and to Seller's knowledge, there is no suit, action, or arbitration, bond issuance or proposal therefor, proposal for public improvement assessments, pay-back agreement, paving agreement, road expansion or improvement agreement, utility moratorium, use moratorium, improvement moratorium, or legal, administrative, or other proceeding or governmental investigation or requirement, formal or informal, existing or pending or threatened that affects the Property or which adversely affects Seller's ability to perform hereunder, or other charge or expense upon or relating to the Property, which has not been disclosed to Purchaser in writing prior to the Agreement Date. There is no suit, action, arbitration or other proceeding affecting or involving Seller and the Property.

7.1.12 No Adverse Soil Conditions. To Seller's knowledge, there are no soil or geological conditions affecting the Property that could materially and adversely affect the Property, or the ownership thereof by Purchaser. To Seller's knowledge, the condition of the soil at the Property is such that it will support the contemplated improvements thereon for the Project for the foreseeable life of the Project without the need for unusual or new sub-surface excavations, fill, footings, caissons or other installations.

7.1.13 No Default. To Seller's knowledge, Seller is not in default under the terms of any agreement pertaining to the Property, nor has any event occurred that shall constitute a default by Seller under such documents and instruments following the passage of time, nor has Seller received any notice of any default under any agreement pertaining to the Property.

7.1.14 No Hazardous Waste. To Seller's knowledge, there are no "hazardous materials" (as defined below) located on, in, under or at the Property and Seller has received no notice of any violation or claimed violation of any law, rule, or regulation relating to hazardous materials. During Seller's ownership of the Property and, to Seller's knowledge, prior to Seller's ownership of the Property, the Property has not been used for the storage of hazardous materials. During Seller's ownership of the Property, and to Seller's knowledge, prior to Seller's ownership of the Property, there have been no spills or

leaks of hazardous materials on or at the Property or on any property within one thousand (1,000) feet of the Property boundaries. There are no underground storage tanks of any kind on or under the Property. During Seller's ownership of the Property and, to Seller's knowledge, prior to Seller's ownership of the Property, the Property has not been the subject of an environmental audit or assessment. The Property has all required environmental permits relating to air and water quality. To Seller's knowledge, there are no abandoned landfills or other closed hazardous materials storage or disposal sites on or at the Property. To Seller's knowledge, the Property has not been the subject of either an investigation by federal, state or local officials or private litigation as a result of the handling of hazardous materials. During Seller's ownership of the Property and, to Seller's knowledge, prior to Seller's ownership of the Property, no significant accident or other incident that resulted in hazardous materials contamination has ever occurred on or at the Property. To Seller's knowledge, (i) no neighboring facilities have ever been the subject of an investigation by federal, state or local officials or the subject of private litigation as a result of their handling hazardous materials and (ii) no accident or other incident resulting in hazardous materials contamination has ever occurred on neighboring properties. For the purposes of this Agreement, the phrase "hazardous materials" shall include, without limitation, each of the following: asbestos materials; PCB transformers; toxic, hazardous or contaminated waste, substance or material; oil; petroleum; and oil and petroleum by-products.

7.1.15 No Litigation. Seller has not been served with, and to Seller's knowledge, there is no pending litigation or threatened litigation, or asserted or unasserted claims, relating to the Property.

7.1.16 No Notices. Seller has not received, and has no knowledge of, any notification from any city, county, state or federal authority having jurisdiction over the Property or of any utility providing service requiring any work to be done to, or affecting the use of, the Property or any portion thereof. Seller has received no notification from any insurance carrier, nor is Seller aware, of defects or inadequacies in the Property that if not corrected would result in termination of insurance coverage or increase insurance costs.

7.1.17 No Undisclosed Assessments. To Seller's knowledge, there are no taxes, assessments (special, general or otherwise) or bonds of any nature affecting the Property, or any portion thereof, except as disclosed in the Title Report. Seller has no understanding or agreement with any taxing authority respecting the imposition or deferment of any taxes or assessments respecting the Property.

7.1.18 No Untrue Statements. Seller has made no untrue statements or representation in connection with this Agreement, and all items from Seller transferred or delivered and/or given to Purchaser are genuine, true, correct and complete copies of what they purport to be. Additionally, (i) said items have not been amended, modified, or supplemented other than as also transferred or delivered and/or given to Purchaser, (ii) no item that should have been transferred, delivered and/or given to Purchaser has not been so transferred, delivered and/or given, and (iii) all such items fairly present the information set forth in a manner that is not misleading. Seller has not failed to state or disclose any material fact in connection with the transactions contemplated by this Agreement. Seller has no knowledge of any facts and Seller has not misrepresented any facts that would prevent

Purchaser from developing and operating the Property with the Project after the Close of Escrow.

7.1.19 No Violation of Other Agreements. Neither this Agreement nor anything provided to be done hereunder (including, but not limited to, the transfer of the Property to the Purchaser) violates or shall violate any contract, document, understanding, agreement or instrument to which Seller is a party or by which Seller may be bound, or any contract, document, understanding, agreement or instrument affecting the Property to which Seller is a party.

7.1.20 Service Contracts. There are no contracts or other oral or written agreements to which Seller is a party for services, supplies or materials, affecting the use, operation or management of the Property that will survive the Close of Escrow.

7.1.23 Storm Water. All storm water flowing from the Property drains either into a public system or onto a permitted location and through easements, if any, for the benefit of the Property in which latter event Seller shall cause the same to be insured by the Title Insurer.

7.1.24 Title. At the Closing fee simple title to the Property shall be conveyed to Purchaser in a good and marketable condition, free and clear of all liens, encumbrances, agreements, encroachments, leases, tenancies, mechanics' liens, materialmen's liens, and other interests affecting all or any portion of the Property, or any interest therein other than (i) current non-delinquent real property taxes (but not assessments), and (ii) the Permitted Title Exceptions.

7.1.25 Utilities Available. All utilities necessary for the operation of the Property in accordance with its intended use are available to the Property.

7.1.26 Zoning and Other Governmental Information. Seller has received no notice of and, to Seller's knowledge, there is no pending or threatened request, application or proceeding to alter or restrict the zoning or other use restrictions applicable to the Property; there is no plan, study or effort by any governmental authority or agency or any private party or entity that in any way affects or would affect the authorization of the current use and operation of the Property. There is no pending or threatened action or governmental proceeding in eminent domain, zoning change, rent control or otherwise that would directly or indirectly affect the Property, nor does Seller know of any fact that might give rise to such a proceeding; all governmental and regulatory licenses, franchises, certificates and permits respecting the Property that are necessary for the operation of the Property by Purchaser in accordance with its intended use, if any, are possessed by Seller and will be transferred to Purchaser at the Close of Escrow.

7.2 Change in Representations. In no event shall Seller be liable to Purchaser for, or be deemed to be in default pursuant to this Agreement by reason of any inaccuracy of a representation or warranty which results from any change that occurs between the Agreement Date and the Close of Escrow and is expressly permitted under the terms of this Agreement or is beyond the control of Seller to prevent or which does not have a material adverse effect on the Property. If Seller notifies Purchaser in writing at least ten (10) Business Days prior to the Close of Escrow of any fact(s) which are outside of Seller's control and causes to be untrue any of



Seller's representations and warranties in Section 7.1 above which has a material adverse effect on the Property, then within five (5) Business Days after Purchaser's receipt of such written notification from Seller, Purchaser may elect, in Purchaser's sole and absolute discretion, to terminate this Agreement by notice in writing to Seller. Purchaser must elect, by a writing received by Seller within such five (5) Business Day period (and the Closing Date shall be adjourned, if necessary, for the period of time necessary for Purchaser's five (5)-Business Day election period), to either (a) terminate this Agreement and the Escrow, in which event Purchaser shall be entitled to the return of the Deposits (to the extent made by Purchaser) and Seller and Purchaser shall be relieved of all further obligations and liabilities under this Agreement (except for the Surviving Obligations, which shall survive any such termination), or (b) proceed with the transaction contemplated by this Agreement, in which event the representations and warranties made by Seller in Section 7.1 above shall be qualified upon the Close of Escrow to the extent modified or qualified by or in the written notification from Seller to Purchaser. In the event that Seller does not receive such written notice from Purchaser within such five (5) Business Day period indicating which election Purchaser has decided to make, then Purchaser shall be deemed to have elected to proceed with the transaction contemplated by this Agreement, with the representations and warranties in Section 7.1 above modified or qualified to the extent provided herein. Purchaser shall have no right to terminate this Agreement or any recourse against Seller for any such qualification to Seller's representations and warranties which does not have a material adverse effect on the Property or which results from a change that occurs between the Agreement Date and the Close of Escrow and is expressly permitted under the terms of this Agreement or is beyond Seller's control to prevent. The foregoing shall be Purchaser's sole and exclusive remedy in the event of a breach prior to the Close of Escrow of the representations and warranties made by Seller in Section 7.1 above that is caused by a fact or occurrence that is wholly outside of Seller's control.

7.3 Definition of Seller's Knowledge. For purposes of this Agreement, (a) whenever the phrase "to Seller's knowledge", "to the knowledge of Seller" or other references to the knowledge of Seller are used or made, they shall be deemed to refer to the present actual (as opposed to constructive or imputed) knowledge of any principal, officer or employee of Seller, without any investigation or inquiry whatsoever by such individual.

7.4 Purchaser's Representations, Warranties and Waivers. Purchaser represents and warrants to Seller that the following matters are true and correct as of the Agreement Date and will be true and correct as of the Close of Escrow.

7.4.1 Authority. Purchaser has the legal right, power and authority to enter into this Agreement the documents required to be delivered by Purchaser pursuant to this Agreement (the "Purchaser Closing Documents") and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the Purchaser Closing Documents have been duly authorized and no other action by Purchaser is requisite to the valid and binding execution, delivery and performance of this Agreement and the Purchaser Closing Documents.

7.4.2 Binding Obligations. This Agreement has been, and the Purchaser Closing Documents have been or as of the Close of Escrow will be, duly executed by Purchaser and this Agreement is, and the Purchaser Closing Documents will be as of the

Close of Escrow, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws affecting the rights of creditors generally and general principles of equity.

7.4.3 Bankruptcy Matters. Purchaser has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Purchaser's creditors, suffered the appointment of a receiver to take possession of any of Purchaser's assets, suffered the attachment or other judicial seizure of any of Purchaser's assets, admitted Purchaser's inability to pay Purchaser's debts as they come due, or made an offer of settlement, extension or composition to Purchaser's creditors generally.

7.4.4 Specially Designated Nationals and Blocked Persons. Neither Purchaser nor any beneficial owner of Purchaser (a) is listed on any of the Lists; (b) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (c) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

7.4.5 ERISA Matters. Purchaser is acting on Purchaser's own behalf and Purchaser is neither (a) an employee benefit plan as defined in Section 3(3) of ERISA which is subject to Title 1 of ERISA, nor (b) a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended, which is subject to Section 4975 of the Internal Revenue Code of 1986. Purchaser's assets do not constitute "plan assets" of one or more of such plans within the meaning of Department of Labor Regulation Section 2510.3-101 and Purchaser will not be reconstituted as a plan or as an entity whose assets constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101.

7.5 Survival. The representations and warranties of Seller set forth in Section 7.1 above and the representations and warranties of Purchaser set forth in Section 7.4 above shall survive the Close of Escrow and the recordation of the Grant Deed and shall not merge into the Grant Deed or any of the other documents or instruments delivered at the Close of Escrow.

7.6 Seller's Operating Covenants. Seller hereby covenants and agrees with Purchaser that, from and after the Agreement Date and until the Close of Escrow:

7.6.1 Additional Encumbrances. Seller shall not knowingly subject the Property to any new encumbrance, charge or lien which will survive the Close of Escrow, other than matters affecting title to the Property which are permitted by this Agreement.

7.6.2 Insurance. Seller will maintain in full force and effect fire and extended coverage insurance upon the Property in the full replacement value thereof, and commercial general liability insurance with respect to damage or injury to persons or property occurring on the Property in such amounts and with such coverage as are currently maintained by Seller as of the Agreement Date.

7.6.3 Tenant Leases. Seller shall not enter into a lease or other agreement for the occupancy or possession of any of the Property without the prior written approval of Purchaser.

7.7 Purchaser Represented by Counsel. Purchaser hereby represents and warrants to Seller that: (a) Purchaser is not in a significantly disparate bargaining position in relation to Seller; (b) Purchaser is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (c) Purchaser is purchasing the Property for business, commercial, investment or other similar purposes.

7.8 Restrictive Covenant to be Recorded on Title. Purchaser acknowledges that in accordance with California Government Code section 50570, the deed or conveyance transferring title of the Property pursuant to this Agreement shall contain the following restrictive covenant, in identical or substantially similar language:

"In entering into this conveyance, GRANTOR's Board of Directors has found that the property conveyed is in excess of GRANTOR's foreseeable needs for real property to serve GRANTOR's programs, policies, and planned developments and improvements.

This conveyance is subject to the following two conditions: (1) that the ownership of the property conveyed shall be held by a limited partnership whose primary purpose is to provide affordable housing with a qualified affordable housing focused nonprofit organization to serve as the managing general partner ("Nonprofit MGP") for which the majority general partner interest vests with the Nonprofit MGP and adheres to IRC 42 requirements and regulations for purpose of compliance of the Low-income Housing Tax Credit ("CTCAC") program; and (2) that the property limit is used for affordable housing for 55 years (the "Reversion Conditions"), Such Reversion Conditions may be reflected in the grant of conveyance or similar instrument such as a restrictive covenant that may be subordinated to lien holders and CTCAC Regulatory Agreement to facilitate financing the development of the affordable project. Upon the failure of the Reversion Conditions, title to the property conveyed shall revert to and revest, upon notice of default and after a 90 day failure to cure period, in GRANTOR, and GRANTEE shall lose and forfeit all of its rights, title, and interest in and to the whole of the conveyed premises and to the improvements and fixtures on it, and GRANTOR shall have the right of re-entry to the PROPERTY."

## ARTICLE VIII

### TERMINATION AND REMEDIES

8.1 SELLER'S REMEDIES. IF THE CLOSE OF ESCROW FAILS TO OCCUR AS A RESULT OF A DEFAULT BY PURCHASER HEREUNDER, THEN

SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO PURCHASER AND SELLER SHALL BE ENTITLED TO RETAIN ALL OF THE DEPOSITS AS LIQUIDATED DAMAGES. PURCHASER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY PURCHASER, AND AGREE THAT ALL OF THE DEPOSITS AND THE PAYMENT BY PURCHASER OF ALL ESCROW AND TITLE CANCELLATION CHARGES AND FEES IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT PURCHASER BREACHES THIS AGREEMENT BY DEFAULTING IN THE COMPLETION OF THE PURCHASE OF THE PROPERTY, ALL OF THE DEPOSITS AND THE PAYMENT BY PURCHASER OF ALL ESCROW AND TITLE CANCELLATION CHARGES AND FEES SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE PAID BY PURCHASER TO SELLER AS SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST PURCHASER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY PURCHASER; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT APPLY TO OR LIMIT SELLER'S RIGHTS OR REMEDIES FOR, AND SHALL NOT LIQUIDATE PURCHASER'S LIABILITY FOR, (A) PURCHASER'S OBLIGATIONS TO PAY TO SELLER ALL ATTORNEYS' FEES AND COSTS OF SELLER TO ENFORCE THE PROVISIONS OF THIS SECTION 8.1 AND/OR THE SURVIVING OBLIGATIONS, AND (C) THE ABILITY AND RIGHT OF SELLER TO ENFORCE THE SURVIVING OBLIGATIONS. THE PAYMENT OF ALL OF THE DEPOSITS AND THE PAYMENT BY PURCHASER OF ALL ESCROW AND TITLE CANCELLATION CHARGES AND FEES AS LIQUIDATED DAMAGES IS NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

\_\_\_\_\_  
Purchaser's Initials

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

8.2 PURCHASER'S REMEDIES. SUBJECT TO SECTION 5.2, IF THE CLOSE OF ESCROW FAILS TO OCCUR AS A RESULT OF A DEFAULT BY SELLER HEREUNDER, THEN PURCHASER SHALL BE ENTITLED TO ELECT, AS PURCHASER'S SOLE REMEDY FOR SUCH FAILURE TO CLOSE, EITHER TO: (A) TERMINATE THIS AGREEMENT BY GIVING SELLER TIMELY WRITTEN NOTICE AT OR PRIOR TO THE CLOSE OF ESCROW, AND UPON SUCH TERMINATION, ALL OF THE DEPOSITS (TO THE EXTENT MADE BY PURCHASER) SHALL BE RETURNED TO PURCHASER AND SELLER SHALL REIMBURSE PURCHASER FOR THE DOCUMENTED THIRD PARTY OUT-OF-POCKET COSTS ACTUALLY INCURRED BY PURCHASER IN CONNECTION WITH THIS TRANSACTION, OR (B) PURSUE THE SPECIFIC PERFORMANCE OF THIS AGREEMENT. SELLER AND PURCHASER ACKNOWLEDGE THAT THEY HAVE

**READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 8.2 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.**

\_\_\_\_\_  
**Purchaser's Initials**

\_\_\_\_\_  
**Seller's Initials**

## **ARTICLE IX**

### **DAMAGE OR CONDEMNATION**

9.1 **Right to Terminate for Material Condemnation or Casualty.** If, prior to the Close of Escrow, all or any portion of the Property is taken by eminent domain, or is the subject of a pending or a contemplated taking (collectively, "**Condemnation**") or the Property is altered, destroyed or damaged to a material degree by fire, flood, act of God or any other casualty (collectively, a "**Casualty**"), Seller shall notify Purchaser thereof promptly after Seller obtains knowledge of such fact. If such Condemnation or Casualty is "Material" (as defined below), then Purchaser shall have the right to terminate this Agreement by written notice to Seller and Escrow Holder within thirty (30) Business Days following notification to Purchaser of such Condemnation or Casualty (and, if necessary, the Closing Date shall be extended by the number of days necessary to provide Purchaser with this full thirty (30) Business Day period). If this Agreement is terminated pursuant to this Section 9.1 due to such Material Condemnation or Material Casualty, then neither party shall have any further rights or obligations hereunder except for the Surviving Obligations, which shall survive such termination, and the Deposits (to the extent made by Purchaser) shall be promptly returned to Purchaser (less any escrow and title cancellation fees and charges which Purchaser hereby agrees to pay). If Purchaser does not timely elect, in writing, to terminate this Agreement as provided in this Section 9.1, Purchaser shall be conclusively deemed to have waived any right to terminate this Agreement by reason of such Material Condemnation or Material Casualty and the parties shall proceed to the Close of Escrow as provided in Section 9.2 or Section 9.3 below, respectively.

9.2 **Failure to Terminate for Material Condemnation or Condemnation Not Material.** If Purchaser fails to deliver written notice of termination within the time period set forth in Section 9.1 above following a Material Condemnation or if the Condemnation is not Material, then: (a) the parties shall proceed with the Close of Escrow for this transaction in accordance with the terms of this Agreement, without reduction of the Purchase Price; (b) Seller shall not compromise, settle or adjust any claims with respect to such Condemnation without Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; and (c) Seller shall assign to Purchaser all awards or any rights to collect awards with respect to such Condemnation upon the Close of Escrow.

9.3 **Failure to Terminate for Material Casualty or Casualty Not Material.** If Purchaser fails to deliver written notice of termination within the time period set forth in Section 9.1 above following a Material Casualty or the Casualty is not Material, then (a) the parties shall proceed with the Close of Escrow for this transaction in accordance with this Agreement without reduction of the Purchase Price; (b) Seller shall not be obligated to repair any damage or

destruction (but Seller may make emergency repairs which are necessary or required pursuant to applicable law or to prevent injury or loss to persons or property) and Purchaser shall accept the Property in its then damaged condition; (c) at the Close of Escrow, if the Casualty is covered by Seller's insurance policy (if any), then Purchaser shall receive a credit against the Purchase Price in an amount equal to the deductible under Seller's insurance policy; and (d) Seller shall assign to Purchaser all of Seller's rights in the resulting insurance proceeds for such Casualty (net of Seller's reasonable costs of collecting the same and net of any reasonable costs of repairs and/or clean up paid for by Seller); provided, however, that in no event shall the sum of such credit for the deductible and the amount of the insurance proceeds assigned to Purchaser pursuant to subsection (c) and subsection (d) hereinabove exceed the lesser of (1) the Purchase Price or (2) the cost to complete the repair of the Casualty following the Close of Escrow.

9.4 Definition of Material Casualty or Material Condemnation. For purposes of this Article IX, (a) "**Material**", with respect to Condemnation, means any Condemnation where the value of the Property or the portion thereof taken by the Condemnation exceeds Fifty Thousand Dollars (\$50,000); and (b) "**Material**", with respect to Casualty, means any Casualty such that the cost of repairs and/or clean-up is greater than Fifty Thousand Dollars (\$50,000). Any dispute as to the value of the portion of the Property taken by the Condemnation or the costs of such repair of the Property shall be initially referred, within five (5) Business Days after written notice to a party by the other party, to a mutually selected independent architect for resolution. The fees and expenses of the independent architect shall be paid equally by Purchaser and Seller, and the parties shall cooperate with the independent architect by providing such information as the independent architect may reasonably require to resolve the dispute.

## ARTICLE X

### MISCELLANEOUS

10.1 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when delivered by U.S. mail, registered or certified, return receipt requested, postage prepaid, or by overnight delivery service showing receipt of delivery, or by personal delivery. Such notices shall be sent to the parties at the following addresses, or such other address as may otherwise be indicated by any such party in writing.

If to Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, California \_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Purchaser:

Western Community Housing, Inc.  
151 Kalmus Drive, Suite J-5  
Costa Mesa, California 92626  
Attention: Scott Gayner  
scott@wchousing.org

If to Escrow Holder

Fidelity National Title Company

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

Notices as aforesaid shall be effective upon actual receipt, or when receipt is refused.

10.2 Entire Agreement; Participation in Drafting. This Agreement constitutes the entire understanding of the parties and all prior agreements, representations, and understandings between the parties, whether oral or written, are deemed null and void, all of the foregoing having been merged into this Agreement. The parties acknowledge that each party and such party's counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation or enforcement of this Agreement or any amendments or exhibits to this Agreement or any document executed and delivered by either party in connection with this Agreement.

10.3 Agreement Binding on Parties.

10.3.1 Successors and Assigns. Subject to Section 10.3.2 and Section 10.3.3 below, this Agreement, and the terms, covenants, and conditions contained herein, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto.

10.3.2 Assignment by Purchaser. Purchaser may assign Purchaser's rights under this Agreement without Seller's consent only so long as the following conditions are satisfied: (a) the Initial Deposit must have been deposited into Escrow by Purchaser; (b) Purchaser shall deliver to Seller written notice of such assignment and a copy of the fully executed written assignment agreement between Purchaser and such assignee no later than three (3) Business Days prior to the Close of Escrow, and (c) assignee is a limited partnership whose primary purpose is to provide affordable housing with a qualified affordable housing focused nonprofit organization to serve as the managing general partner for which the majority general partner interest vests with such nonprofit managing general partner.

10.3.3 Assignment by Seller. Seller may assign Seller's rights to payment of the Purchase Price under this Agreement without Purchaser's consent only so long as all of the following conditions are satisfied: (a) the assignee of Seller must be an affiliate of Seller which is directly or indirectly controlled by Seller; and (b) the assignee must expressly assume in writing all of Seller's obligations under this Agreement and Seller shall deliver to Purchaser written notice of such assignment and a copy of the fully executed written assignment and assumption agreement between Seller and such assignee no later than three (3) Business Days prior to the Close of Escrow.

10.4 Severability. If for any reason, any provision of this Agreement shall be held to be unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement and to the extent any provision of this Agreement is not determined to be unenforceable, such provision, or portion thereof, shall be, and remain, in full force and effect.

10.5 CALIFORNIA LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

10.6 Exhibits/Modifications/Entire Agreement. Exhibits A and B attached hereto shall be deemed a part hereof. This Agreement, including exhibits, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever, either expressed or implied, except as may expressly be set forth herein. Any and all future modifications of this Agreement will be effective only if it is in writing and signed by both Purchaser and Seller. The terms and conditions of such future modifications of this Agreement shall supersede and replace any inconsistent provisions in this Agreement.

10.7 Dispute Costs. In the event any dispute between the parties with respect to this Agreement results in litigation, arbitration or other proceeding, the prevailing party shall be reimbursed by the party not prevailing in such proceeding for all reasonable costs and expenses, including reasonable attorneys' and experts' fees and costs, court reporter transcription fees (if any), filing and case service fees and arbitration fees incurred by the prevailing party in connection with such litigation, arbitration or other proceeding and any appeal thereof. Such costs, expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any. The provisions of this Section 10.7 shall survive any termination of this Agreement or the Close of Escrow and the recordation of the Grant Deed, and shall not be deemed merged into the Grant Deed or any other document or instrument delivered at the Close of Escrow.

10.8 Time of the Essence; Business Days. Time is of the essence in the performance of each of the parties' respective obligations contained in this Agreement. Unless the context otherwise requires, all periods terminating on a given day, period of days, or date shall terminate at 5:00 p.m. (Pacific Time) on such date or dates. References to "days" shall refer to calendar days except if such references are to Business Days. The term "Business Days" shall mean and refer to days which are not a Saturday, Sunday or a legal holiday under the laws of the State of California. Notwithstanding the foregoing, if any period terminates on a Saturday, Sunday or



legal holiday under the laws of the State of California, the termination of such period shall be on the next succeeding Business Day. The time in which any act provided under this Agreement is to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday or legal holiday under the laws of the State of California, and then it is also so excluded.

10.9 Required Actions of Purchaser and Seller. Purchaser and Seller agree to execute such instruments and documents as may be reasonably required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions of this Agreement.

10.10 Facilitation of Agreement. Each of the parties agrees to cooperate in good faith and to execute and deliver such other documents and to take such other action as may be necessary to carry out the intent of this Agreement, including but not limited to Seller executing any additional documents to facilitate the transfer of all tangible and intangible property identified by Purchaser relating to the Property.

10.11 Multiple Counterparts. This Agreement may be executed in multiple counterparts (each of which is to be deemed original for all purposes). The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon so long as such signature page is attached to any other counterpart of this Agreement identical thereto except having additional signature pages executed by the other parties to this Agreement attached thereto.

10.12 Electronic Signatures. Seller and Purchaser each (a) has agreed to permit the use from time to time, where appropriate, of telecopy or other electronic signatures in order to expedite the transaction contemplated by this Agreement, (b) intends to be bound by its respective telecopy or other electronic signature, (c) is aware that the other will rely on the telecopied or other electronically transmitted signature, and (d) acknowledges such reliance and waives any defenses to the enforcement of this Agreement and the documents affecting the transaction contemplated by this Agreement based on the fact that a signature was sent by telecopy or electronic transmission only.

10.13 Limitations on Benefits. It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser and Seller and their permitted successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, Purchaser and Seller or their respective successors and assigns as permitted hereunder. Nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party a beneficiary of any term or provision of this Agreement or any instrument or document delivered pursuant hereto, and Purchaser and Seller expressly reject any such intent, construction or interpretation of this Agreement.

10.14 Interpretation. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) all Exhibits attached hereto are incorporated herein by reference; (b) the section and subsection headings contained in this Agreement are for convenience only and in no way enlarge or limit the scope or meaning of the various sections or subsections hereof; (c) all dollar amounts are expressed in United States currency; (d) all defined terms in this Agreement include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders; (e) references herein to “Sections,” subsections, paragraphs and other subdivisions without reference to a document are to designated Sections, subsections, paragraphs and other subdivisions of this Agreement; (f) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (g) the words “hereof,” “herein,” “thereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision; (h) the word “including” or “includes” means “including, but not limited to” or “includes without limitation”; (i) the words “approval,” “consent” and “notice” shall be deemed to be preceded by the word “written”; (j) any reference to this Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Agreement, Exhibits and other instruments, documents and agreements as originally executed or existing and as the same may from time to time be supplemented, modified or amended; and (k) unless otherwise specifically provided, all references in this Agreement to a number of days shall mean calendar days rather than Business Days.

10.15 No Partnership/Fiduciary Relationship. The parties acknowledge and agree that the relationship created by this Agreement between Seller, on the one hand, and Purchaser, on the other hand, is one of contract only, and that no partnership, joint venture or other fiduciary or quasi-fiduciary relationship is intended or in any way created hereby between Seller and Purchaser.

10.16 Survival of Covenants. Except as expressly set forth in this Agreement, the covenants, indemnities, representations and warranties of Purchaser and Seller set forth in this Agreement shall not survive the recordation of the Grant Deed and the Close of Escrow and shall be deemed merged into the Grant Deed upon its recordation.

**[END OF TEXT; SIGNATURES FOLLOW ON  
IMMEDIATELY SUCCEEDING PAGES]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Agreement Date.

PURCHASER:

WESTERN COMMUNITY HOUSING, INC.  
a California non-profit, public benefit corporation

By: \_\_\_\_\_  
Graham Espley-Jones, President

**[SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT AND JOINT  
ESCROW INSTRUCTIONS]**

**SELLER:**

Auburn Area Recreation & Parks District

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

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

Title: \_\_\_\_\_

**[SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT AND JOINT  
ESCROW INSTRUCTIONS]**

**ACCEPTANCE BY ESCROW HOLDER:**

FIDELITY NATIONAL TITLE COMPANY hereby acknowledges that it has received originally executed counterparts or a fully executed original of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2017

FIDELITY NATIONAL TITLE COMPANY

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

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

Title: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

All that certain real property situated in the County of Placer, State of California, described as follows:

*{Insert legal description}*

Assessor's Parcel Number: 038-250-081