

Meeting Date: 6/9/2015

Report Type: Staff/Discussion

Report ID: 2015-00487

Title: Approving the Sale of City Property at 3012 State University Drive to University Enterprises Inc.

Location: Districts 3 and 6

Recommendation: Pass a Resolution: 1) determining that pursuant to City Code Section 3.88.090 that the sale of the City property at 3012 State University Drive without bidding is in the best interest of the City; 2) approving the sale of City property at 3012 State University Drive (APN No. 079-0200-001 and 046) ("City Property") to University Enterprises Inc. for \$2,274,233, plus interest (the "Sales Proceeds") and the obligation to replace the McAuliffe Fields at the City's Army Depot East Park site; 3) approving the Lease and Purchase and Sale Agreement for the City Property with University Enterprises Inc. and authorizing the City Manager or his designee to execute the Agreement; 4) appropriating the Sales Proceeds to the Utilities Department Water Fund (Fund 6005); 5) authorizing the City Manager or his designee to execute the Lease Agreement for the City Property with University Enterprises Inc.; 6) authorizing the City Manager or his designee to execute the Replacement Fields Project Agreement with University Enterprises Inc.; 7) authorizing the City Manager or his designee to sign escrow instructions and take all actions necessary to close this sale transaction for the City Property after payment of the Sales Proceeds and completion of the Replacement Fields Project; 8) authorizing the Lease of the Army Depot East Park site to the East Sacramento Babe Ruth and the Sacramento Men's Senior Baseball Leagues after completion of the Replacement Fields Project; and 9) authorizing the City Manager or his designee to make any necessary budgetary adjustments associated with the sale of the City Property at 3012 State University Drive.

Contact: James L. Combs, Director, (916) 808-8526, Department of Parks and Recreation

Presenter: James L. Combs, Director, (916) 808-8526, Department of Parks and Recreation

Department: Parks & Recreation Department

Division: Park Development Services

Dept ID: 19001121

Attachments:

1-Description/Analysis

2-Background

3-Map

4-Lease Purchase Agreement

5-Resolution

City Attorney Review

Approved as to Form
Sheryl Patterson
5/28/2015 3:37:07 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 5/21/2015 1:46:15 PM

Description/Analysis

Issue Detail: At its December 2, 2014 meeting, the City Council passed Motion 2014-0297 authorizing the City Manager or his designee to negotiate the sale to California State University, Sacramento of an 11± acre City property at the southeast corner of the intersection of State University Drive and College Town Drive (APNs 079-0200-001 and - 046). The approved business terms included the relocation of the ballfield improvements on the City property to the Army Depot East Park site. Negotiations are complete and staff is now requesting approval of a Lease and Purchase and Sale Agreement (“Agreement”) with University Enterprises, Inc. (“University”), who will purchase the 11± acre property for installment payments totaling \$2,274,233 plus interest over a 10 year period and undertake reconstruction of the ballfields which cost is estimated at \$5.2 million. The payments will reimburse the Department of Utilities (DOU) Water Fund (Fund 6005) for its cost to purchase the property plus interest. The University intends to develop the property for student housing and supportive retail uses.

The 11± acre site is currently leased to the East Sacramento Babe Ruth League and the Sacramento Men’s Senior Baseball League (the “Leagues”) and was developed by the Leagues as Dan McAuliffe Memorial Ballfields. The improvements include two lighted baseball diamonds meeting AAA Minor League standards, bleachers, parking, a concession building and restrooms, and children’s play area. The lease (City Agreement 2000-221) expires on December 31, 2015.

Per the terms of the Agreement, upon expiration of the current League lease, the City will lease the property to the University, who in turn will sublease the site to the Leagues at the same \$150 per year rate until replacement facilities can be constructed at Army Depot Park, a 20-acre park site that includes one baseball field located at the northwest corner of the intersection of Florin Perkins Road and Okinawa Road in the Army Depot complex (APN 062-0010-037). The City will grant the Leagues a long term lease for the Army Depot East Park site consistent with the terms of the current League lease, upon completion of the recreation improvements by University, with assistance from the Leagues. The Leagues can continue to use the recreation improvements at the current location until the improvements at Army Depot East Park are complete.

Policy Considerations: The 11± acre property was acquired by the DOU as part of a 100-acre site used to develop the E. A. Fairbairn Water

Treatment Plant. The 11± acre property was never utilized for water treatment plant improvements and has recently been deemed as surplus. Monies from the sale of the property will be deposited into the City's Water Fund in compliance with Proposition 218.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed agreement provides for continuation of the existing use at the McAuliffe Memorial Ballfields and the future reconstruction and expansion of the Army Depot Park site to include two baseball fields based on the conceptual plan. Prior to construction, the design plans would be analyzed to determine if there would be any significant environmental impacts. It is anticipated that the project would be exempt from environmental review under the California Environmental Quality Act (CEQA) as reconstruction, new small structures, and minor alteration to land and under CEQA Guidelines sections 15302, 15303 and 15304.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Approval of the Lease and Purchase and Sale Agreement allows funds to be available for other DOU Water Fund needs, allows the University to expand its campus, and requires the McAuliffe Baseball Fields be rebuilt to benefit the Leagues and the community by adding recreational improvements to the underutilized Army Depot East Park site. Both the City and University Enterprises, Inc. obtained appraisals of the 11± acre property. The purchase price plus the estimated replacement fields cost is commensurate with the current fair market value of the property.

Financial Considerations: Sale of the 11± acre site enables the City to recoup its investment at a price that includes interest over the 53 years since the property was purchased, and to deposit the proceeds into the City's Water Fund in compliance with Proposition 218. The purchase price of \$2,274,233 was determined based on the original acquisition price for the 11± acre site, which was inflated to 2014 values using the Pooled Money Investment Account (PIMA), a historical investment fund, and the City's Pool A fund, which was established in 1981.

In addition, University agrees to design and construct replacement recreation facilities to include two lighted adult baseball diamonds which meet AAA Minor League standards, along with a batting cage, score board, fencing, a concession and restroom building, picnic area, and parking lot, along with off-site and on-site utility and street improvements at the Army Depot East Park site. While costs to construct the improvements at the park are currently estimated at \$5.2 million, the University anticipates it will encounter cost savings based on an understanding that a portion of the work may be performed by League volunteers, some of the materials and equipment may be relocated from the existing site, and some materials and/or equipment may be donated items that will reduce the Project's costs.

University does not currently have sufficient funds to purchase the property and undertake the replacement recreation improvements at Army Depot East Park. Within 30 days of the execution date of the Agreement, University will make a \$10,000 deposit to the City. Thereafter, a minimum annual payment of \$200,000 shall be due each year on January 31st, with the first installment payment due on January 31, 2016. Interest on the purchase price will accrue from January 1, 2015 based on the Local Agency Investment Fund (LAIF) rate. The University can decide at any time to terminate the Agreement, including if the cost for the replacement fields Project substantially exceeds the \$5.2 million estimate, and it would forfeit the deposit and the interest payments. The City will retain ownership of the property until the purchase price is fully paid and the ballfields are reconstructed. If the University terminates the Agreement, then the City would sell the property to reimburse University for its principal payments and would use the sales proceeds to repay the Utility Fund.

Local Business Enterprise (LBE): Not applicable.

Background

3012 State University Drive Property: 11 acres in size; APNs 079-0200-001 and -046. In 1958 the City Department of Utilities (DOU) purchased a 100-acre site in East Sacramento to accommodate the water needs of a growing population. The majority of the property was developed with the E.A. Fairbairn Water Treatment Plant. The portion of the property south of College Town Drive was purchased between 1961 and 1972 for potential plant expansion, but remained vacant into the early 1990s. In 1993, the DOU determined that the site was not needed for expansion of the water plant in the near term and City Agreement No. 93-148 was approved to lease the 11-acre College Town Drive site to the East Sacramento Babe Ruth League and the Sacramento Men's Senior Baseball League (the "Leagues") for development of two baseball fields. The Leagues raised \$75,000, City contributed \$40,000, the Sacramento Municipal Utilities District loaned \$290,000 for lighting, and donated materials and labor valued at over \$2 million towards development of the two fields to meet AAA Minor League standards. The work was completed in 1997 on the baseball complex known as Dan McAuliffe Memorial Ballparks. The Leagues pay the City \$150 annually in rent for the ground lease which provides them exclusive use of the property, which they also rent to other baseball teams. The lease has been renewed and amended; the current lease (City Agreement No. 2000-221) will expire on December 31, 2015.

The Foundation for California State University, Sacramento recently inquired about purchasing the property to expand on-campus housing. The site is surrounded by the campus and would lend itself well to the student housing use. DOU has indicated it no longer needs the property for expansion of the water treatment plant and would like to sell the property as surplus, returning the funds to the City's Water Fund for another use.

Army Depot Park Site: 20 acres in size; APN 062-0010-037.

The City owns park property at the prior Army Depot complex along Okinawa Street. The property is developed with one baseball field, a concession building and gravel parking area. The improvements were constructed by the US Army when it owned the Depot, but the field and building are in poor condition.

Key Components of the Lease-Purchase Agreement

1. The City agrees to sell the College Town Drive property to the University for \$2,274,233, plus interest over the Agreement term. Following execution of the Agreement, the University will make a \$10,000 deposit toward the purchase of the property. Thereafter, University will make a minimum payment of \$200,000 no later than January 31 of each year (beginning with first installment payment due on January 31, 2016). The City will retain the interest portion of the payments as the lease price if the University terminates the Agreement, along with the deposit.
2. The City will grant the University a right of entry in the near term to undertake site

evaluation and a ground lease that would not be effective until January 1, 2016 (after the League lease expires). As a condition of the lease, the University will sublease the property to the Leagues at the same \$150 annual rate to allow for continued use of McAuliffe Ballparks. The sublease shall include the obligation for the Leagues to relocate to the Army Depot site once the University has developed the two new fields which meet AAA Minor Leagues standards at the Army Depot site.

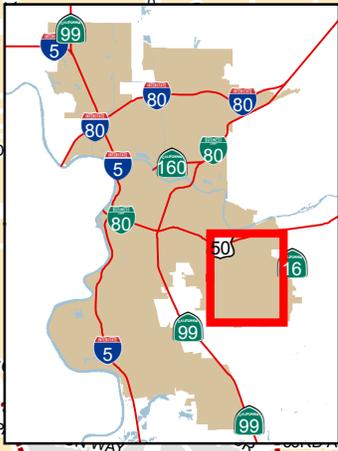
3. The City will enter into a construction agreement with the University for its development of the two ball fields with lighting, parking lot, restrooms and a concession stand (the "Project") at the Army Depot site. The University is to develop the fields for the new baseball complex at the Army Depot site according to the plans and specifications approved by the City, based on the conceptual site plan with an estimated construction cost of \$5.2 million as of 2014. City will coordinate with the University and the Leagues regarding the plans and specifications. City and the University would execute the Replacement Fields Project Agreement to allow the University to undertake the improvement work at no cost to the City. The University is also required to prepare the construction plans and specifications and fund the cost for Parks staff plan review, City building permits and inspections, and other related activities.
4. City acknowledges that the work will remove the existing field and improvements from the Army Depot site. The field improvements to be undertaken by the University may be phased and undertaken in part with donated labor and materials. The parties expect that the Leagues will provide some volunteer assistance in developing the new fields, and will agree to relocate their existing facilities and equipment to the new Army Depot site.
5. The new baseball complex may be named after Dan McAuliffe, and/or the complex, fields and other facilities may be named based on sponsors donating funds, materials and/or labor for the Project. The City will consult with the Leagues regarding naming of the complex or facilities after Dan McAuliffe.
6. Once the new fields and ancillary facilities have been developed at the Army Depot site and City accepts those improvements, City will assume maintenance responsibility. City's acceptance of the improvements may be in phases as the work is completed.
7. City will work with the Leagues to provide them with a lease for the new fields at the Army Depot site so that they have the same rights to use the fields in exchange for assuming maintenance. The Leagues will be granted the rights to use these fields and to rent out the fields to other groups in a similar fashion to the current arrangement at McAuliffe Ballparks. While the Army Depot Park would no longer be open to the public, the improvements would benefit the residents who participate in baseball leagues that would use the new improvements. The City will make arrangements to relocate the existing Little

League and other groups who currently use the Army Depot baseball field before construction commences.

3012 State University Drive site
APN 079-0200-001 and -046
11 acres

Army Depot Park site
APN 062-0010-037
20 acres

College Town Drive
Army Depot
City Limits



LEASE-PURCHASE AGREEMENT

SELLER: CITY OF SACRAMENTO
BUYER: UNIVERSITY ENTERPRISES, INC.
PROPERTY: 3012 STATE UNIVERSITY DRIVE
DATED: June 9, 2015

LEASE AND PURCHASE AND SALE AGREEMENT

This Lease and Purchase and Sale Agreement (this "Lease-Purchase Agreement" or "Agreement") is made and entered into as of the Execution Date by and between Buyer and Seller, which are also referred to individually as "Party" and collectively as "Parties."

Background

A. Seller acquired the ±11-acre Property between 1961 and 1972 for a total amount of \$93,900 as part of the acquisition of property for the expansion of the Fairbairn Water Treatment Facility located next to the California State University, Sacramento ("Sacramento State") campus.

B. The Property is surplus land and has been leased to the East Sacramento Babe Ruth League and the Sacramento Men's Senior Baseball League (collectively "Leagues") since 1993. The Leagues developed the Property to include two lighted baseball diamonds that meet AAA Minor League standards, along with bleachers, a concession building, restrooms, tot lot, and parking area, and the complex is known as the Dan McAuliffe Memorial Ballparks (collectively the "McAuliffe Complex"). The costs of the improvements that were completed in 1997 was approximately \$2,369,000. The Leagues have maintained the improvements and the McAuliffe Complex in good condition. The current lease (City Agreement No. 2000-221, the "League Lease") requires payment of \$150 annually and expires on December 31, 2015.

C. Seller has determined that it no longer needs to retain ownership of the Property for future expansion of the Fairbairn Water Treatment Facility. Buyer desires to purchase the Property for future development of primarily student housing and ancillary retail uses to benefit Sacramento State's operations.

D. Seller desires to sell the Property to recoup its investment and to deposit the proceeds into the City's Water Fund to comply with Proposition 218. If the funds used to acquire the Property had been invested instead in the Pooled Money Investment Account (PIMA), a historical investment fund, and Seller's Pool A fund established in 1981, the amount of the return through 2014, including the original acquisition price, would have been \$2,274,233.

E. Seller also desires that the McAuliffe Complex be rebuilt at a different location to benefit the Leagues and the community. The Parties believe that many of the existing improvements at the McAuliffe Complex can be relocated to other property owned by Seller at the Army Depot East Park, which is the site of an underused baseball field in poor condition that was originally built by the Army.

F. In 2007, Seller adopted a Master Plan and completed environmental review for improvements to the Army Depot East Park, which is a ±20 acre site to be developed for baseball fields. Seller has not undertaken any of the Master Plan improvements due to lack of funding.

G. Seller has prepared preliminary plans to rebuild the McAuliffe Complex at the Army Depot East Park site (the "Replacement Fields Project"), and the cost for the baseball park improvement and necessary street frontage improvements is approximately \$5.2 million as of 2014 (the "Replacement Fields Cost").

H. Buyer has agreed to cooperate with the Leagues and Seller to assume the costs to for the Replacement Fields Project as part of the consideration to purchase the Property. At the expiration of the term of the existing League Lease, Seller will issue a new lease of the Property to Buyer, and Buyer will issue a sublease to the Leagues at the same rental rate to allow for continued baseball operations until Buyer has arranged for construction of the Replacement Fields Project. The sublease will require the Leagues to cooperate with the Buyer in the Replacement Fields Project. Seller will grant the Leagues a long-term lease for the Army Depot East Park if the Leagues perform their obligations under the Buyer-Leagues sublease.

I. Buyer does not currently have sufficient funds to pay the Purchase Price and undertake the Replacement Fields Project. Therefore, Buyer and Seller have arranged for Buyer to pay the Purchase Price over the Term of this Lease-Purchase Agreement. Payment of the Purchase Price over the Term will require payment of interest for the remaining balance owed at the Local Agency Investment Fund (LAIF) rate, which applies to investment of surplus funds by local agencies, to comply with Proposition 218 requirements. Buyer will be permitted to accelerate the Term to close Escrow and obtain ownership of the Property sooner, thereby avoiding additional interest charges, at Buyer's election.

J. Buyer and Seller obtained appraisals of the Property and agree that the Purchase Price plus the estimated Replacement Fields Cost is commensurate with the current fair market value of the Property.

Agreement

In consideration of the information contained in the Background and the mutual covenants, commitments, and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which has been acknowledged and verified, Buyer and Seller agree as follows:

1. **Defined Terms.** The terms listed below shall have the following meanings throughout this Agreement:

Execution Date:	The date this Agreement is executed by Seller after its approval by the City Council of the City of Sacramento, as listed on the cover page of this Agreement.
Seller:	The City of Sacramento, a municipal corporation ("City").

Seller's Address:	City of Sacramento Office of the City Manager Attention: John F. Shirey New City Hall 915 I Street, 5 th Floor Sacramento CA 95814 Phone No.: (916) 808-1222 Fax No.: (916) 808-7618 E-Mail: jshirey@cityofsacramento.org
Seller's Counsel:	Office of the City Attorney Attention: Sheryl Patterson 915 I Street, Fourth Floor Sacramento, CA 95814 Phone No.: (916) 808-5346 Fax No.: (916) 808-7455 E-Mail: spatterson@cityofsacramento.org
Buyer:	University Enterprises, Inc., a California corporation
Buyer's Address:	University Enterprises, Inc. California State University, Sacramento Attention: Jim Reinhart, Executive Director 6000 J Street Sacramento CA 95819-6063 Phone No.: (916) 278-7001 Fax No.: (916) 278-4884 E-Mail: jim.reinhart@csus.edu
Buyer's Counsel:	Kronick, Moskovitz, Tiedemann and Girard Attn: Jeffrey Mitchell 400 Capitol Mall, 27 th Floor Sacramento, CA 95814 Phone No.: (916) 321-4500 Fax No.: (916) 321-4555 E-Mail: jmitchell@kmtg.com

Property:	That certain parcel of land located in the City of Sacramento, County of Sacramento, State of California, consisting of approximately 11.46 net acres of land area, APN No. 079-0200-001 and 046, described in <u>Exhibit 1</u> (the "Legal Description," which may need to be revised before Closing), including, but not limited to, all mineral and water rights and with all of the existing easements, rights-of-way and other appurtenances used or connected with the use or enjoyment of the Property, together with all of the personal property that may be located on the Property as of the Closing Date as described in the General Assignment and Bill of Sale in <u>Exhibit 2</u> (the "General Assignment").
League Lease:	The lease between Seller and the East Sacramento Babe Ruth League and the Sacramento Men's Senior Baseball League (the "Leagues"), City Agreement No. 2000-221, which expires on December 31, 2015. A copy of the League Lease, including all amendments, has been provided to Buyer.
Property Lease:	The lease between Seller and Buyer of the Property to commence as of January 1, 2016 (the "Property Lease Commencement Date") and expiring on the Closing Date.
Purchase Price:	The total Purchase Price for the Property is \$2,274,233, plus interest accruing as of January 1, 2015 through the Closing Date as provided in <u>Sections 4 and 7</u> .
Developer:	The entity selected by Buyer to develop the Property after the Closing Date.
Escrow Holder:	The escrow agent assigned by the Title Company for this transaction.
Escrow Instructions:	The form of the instructions to be issued by Seller and Buyer to Escrow Holder are in <u>Exhibit 3</u> , in addition to the terms and conditions set forth in this Agreement for the Escrow.

Closing Date:	December 31, 2026 or such later or earlier date in accordance with <u>Sections 6 and 13</u> , respectively.
Term:	The period from the Execution Date to the Closing Date.
Title Company:	The company to be selected by Buyer.
Preliminary Title Report:	The report issued by the Title Company describing the title to the Property and any encumbrances.

2. Exhibits. The following Exhibits are defined in this Agreement and are attached and incorporated into this Agreement by this reference:

- Exhibit 1** Legal Description
- Exhibit 2** General Assignment and Bill of Sale Form
- Exhibit 3** Escrow Instructions Form
- Exhibit 4** Grant Deed Form
- Exhibit 5** Replacement Fields Cost Estimate
- Exhibit 6** Army Depot East Park Site
- Exhibit 7** Right of Entry Form
- Exhibit 8** Property Lease Form
- Exhibit 9** Form of Replacement Fields Project Agreement
- Exhibit 10** Form of Sublease between Buyer and Leagues

3. Purchase and Sale. Subject to the discretion afforded to each Party and compliance with all of the terms, covenants, and conditions in this Agreement, Buyer agrees to purchase the Property from Seller, and Seller agrees to sell the Property to Buyer at the Purchase Price, plus the Replacement Fields Cost as further defined in Section 12, which collectively is the "Consideration" for the sale of the Property to Buyer. The Property shall be conveyed to Buyer from Seller by means of a Grant Deed in the form attached as Exhibit 4. All other interests of Seller in the Property (including any personal property) shall be transferred and assigned by Seller to Buyer pursuant to the General Assignment in the form attached as Exhibit 2.

4. Purchase Price. The Purchase Price shall be Two Million Two Hundred Seventy Four Thousand Two Hundred and Thirty Three Dollars (\$2,274,233.00), which is the "Principal Price," plus interest on the unpaid balance compounded annually, commencing on January 1, 2015, based on the applicable LAIF rate or similar index if the LAIF is discontinued during the Term. Buyer shall pay the Purchase Price to Seller prior to the Closing Date in accordance with provisions in Sections 7 and 17.

5. Deposit. Within thirty days (30) days of the Execution Date of this Agreement, Buyer shall pay Seller the sum of Ten Thousand Dollars (\$10,000.00) (the

“Deposit”), in the form of a certified or cashier’s check or wired funds as an advance against payment of the Purchase Price for Property. Buyer shall be credited the amount of the Deposit, but excluding any interest during the Term, against the remaining balance of the Purchase Price through escrow in accordance with provisions in Section 17. Buyer shall forfeit the Deposit if Buyer terminates or breaches this Agreement as provided in Section 27, other than termination resulting from the breach of this Agreement by Seller.

6. Term. The “Term” of this Agreement shall commence on the Execution Date and shall expire on the Closing Date, which date shall be no later than December 31, 2026 (the “Initial Expiration Date”), unless Buyer exercises its option to extend the Term for up to an additional five (5) years to December 31, 2031 (the “Final Expiration Date”). Buyer shall provide written notice to Seller of Buyer’s exercise of its option to extend the Term no later than December 31, 2025, and no earlier than December 31, 2020, and the notice shall specify the length of the extension of the Term.

7. Purchase Price Installment Payments. Seller grants to Buyer the right to pay the Purchase Price in installments during the Term of this Agreement. Based on the Initial Expiration Date, Buyer shall make annual payments against the Principal Price and the accrued interest in the minimum amount of Two Hundred Thousand Dollars (\$200,000.00). The installment payments shall be due on January 31st of each year, with the first installment payment due on January 31, 2016.

(a) If Buyer fails to make payment when due each year, after Seller’s written notice to Buyer and the expiration of a thirty (30) calendar day grace period following the date of such notice, a late fee of Ten Thousand Dollars (\$10,000.00) shall be owing and the amount shall be added to the Principal Price and interest shall accrue at the rate set forth in Section 4 until the installment payment and the late fee is paid.

(b) Buyer may also pay all or a portion of the outstanding interest accrued and owing with each installment payment, in its sole discretion. If Buyer pays Seller more than the minimum amount owed with each installment payment, Buyer shall designate how much of the excess amount should be allocated to reduce the Principal Price balance and/or to pay all or a portion of the accrued interest. Unless otherwise specified in writing, or otherwise required by law, all payments received by Seller shall be applied in the following manner: first, to accrued but unpaid interest, and second, to the payment of principal.

(c) If Buyer exercises its right to extend the Term as set forth in Section 6, then Buyer may also request a reduction in the minimum amount of the subsequent annual installment payments against the balance of the Principal Price and the accrued interest to One Hundred and Fifty Thousand Dollars (\$150,000.00).

(d) As of the Closing Date, Buyer shall pay Escrow Holder the remaining Principal Price balance plus accrued interest and any late fees still owing, minus the Deposit, as set forth in Section 17.

(e) If Buyer, for whatever reason other than Seller’s default, terminates this Agreement, is in default of its obligations and Seller issues notice of default in accordance

with the provisions of Section 27 which Buyer fails to timely cure, or fails to proceed with Closing; Buyer shall be entitled to reimbursement of all of the installment payments of the Principal Price paid to Seller, minus accrued interest as of the date of termination of this Agreement. Seller's obligation to make this reimbursement payment is contingent on Buyer providing Seller with possession of the Property in a satisfactory condition with no alterations of the Property other than removal of the improvements existing as of the Effective Date and as may be approved by Seller in writing during the Term of this Agreement and as set forth in the Replacement Fields Project Agreement. Seller's source of payment shall only be the sales proceeds of the Property as set forth in Section 27(g).

8. As-Is Purchase. As a material inducement to Seller to execute this Agreement, Buyer acknowledges, represents and warrants as follows:

(a) Buyer has or will fully examine and inspect the Property, together with such other documents and materials with respect to the Property which Buyer deemed necessary or appropriate in connection with its investigation and examination of the Property. Buyer has accepted the physical condition, value, use, leasing, operation, tax status, income and expenses of the Property, with the exception of Buyer's Contingencies per Section 15. The Property will be purchased by Buyer "AS IS" and "WHERE IS" and with all faults. Buyer has decided to purchase the Property solely on the basis of its own independent investigation and not in reliance on any reports, documents or other information Seller may have disclosed or provided to Buyer.

(b) Buyer has the right to conduct environmental site assessments of the Property after the Execution Date and prior to the Property Lease Commencement Date (the "Feasibility Period") to determine the presence or absence of Hazardous Substances on, below or adjacent to the Property and the suitability of the Property for Buyer's intended use. Seller has not made, does not make, and has not authorized anyone else to make any representation as to the present or future physical condition, value, presence or absence of Hazardous Substances, violation of any Environmental Laws, leasing, operation, use, tax status, income and expenses, or any other matter or thing pertaining to the Property. Buyer acknowledges that other than the representations and warranties of Seller set forth in Section 24, no other representation or warranty has been made by Seller and that in entering into this Agreement Buyer does not rely on any other representation or warranty.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF THE CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE.

9. Development of Property. Buyer acknowledges and accepts that Seller will not be liable to Buyer regarding any inability of Buyer or Developer to use and develop the Property for Buyer's intended use, even if such planned use or development project is referenced in this Agreement, and agrees with the following provisions:

(a) Seller shall not be bound by any verbal or written statements, representations, real estate broker's "setups," or other information pertaining to the Property that may have been furnished by any real estate broker or agent. Even though Seller is a government agency with regulatory authority over development of property within the jurisdictional boundaries of the City of Sacramento, Seller shall not be liable to Buyer for any verbal or written statements, representations, or other information that any of Seller's officers, employees, agents, or contractors may have disclosed to Buyer or Developer regarding the ability to develop the Property for Buyer's intended use.

(b) Seller, acting as a government agency with municipal land use regulatory authority, retains the right in connection with its review of any applications for development of the Property that Buyer or its agents, affiliates or subsequent purchaser may file to consider the consistency of the proposed project with the adopted plans and zoning regulations, the environmental impacts of the project pursuant to the California Environmental Quality Act, to impose conditions and mitigation measures that may modify the project, and to elect not to approve the project or issue any permits that may be required to develop the Property. Seller shall have no obligation whatsoever to exercise its legislative and discretionary municipal land use regulatory authority in any particular manner to benefit Buyer. This Agreement shall not be construed as a "development agreement" within the meaning of Government Code Section 65864 *et seq.*

10. Seller's Disclosure and Buyer's Release and Indemnity. Seller and Buyer agree to the following provisions with regard to the physical condition of the Property, the financial condition of the Property, the value of the Property, the suitability of the Property for Buyer's intended or desired use, the accuracy or completeness of any information from Seller reviewed by Buyer in connection with its investigations of the Property, and the accuracy or completeness of Seller's Replacement Field Cost plans and estimates as referenced in Section 12, provided prior to the Execution Date which may have been relied upon by Buyer in deciding to purchase the Property.

(a) In accordance with California Health and Safety Code Section 25359.7, California Government Code Sections 8589.3, 8589.4 and 51183.5, and California Public Resources Code Sections 2621.9, 2694 and 4136 (collectively the "Disclosure Statutes"), Seller discloses that there could have been a release of Hazardous Substances, as defined below, on or beneath the Property which substances may remain on or beneath the Property and constitute contamination under the Environmental Laws. Seller does not warrant that the lessees under the League Lease did not release Hazardous Substances, that the buildings on the Property do not contain Hazardous Substances, or that the Property does not contain other unsuitable materials used to build the McAuliffe Complex.

(b) Seller has made a good faith effort to identify all reports in its possession regarding the condition of the Property and the release of any Hazardous Substances and the presence of any underground storage tanks in, on or about the Property, and discloses to Buyer that to the best of its knowledge no such information exists. With respect to Seller's obligation under the Disclosure Statutes, Buyer agrees that Seller has satisfied the statutory requirements. Seller has or will provide Buyer with the opportunity to inspect the Property and conduct tests of the soil, groundwater, and any buildings and materials on the Property

during the Feasibility Period as part of Buyer Contingencies (see Section 15). Buyer acknowledges that any condition of the Property which Buyer discovers or desires to correct or improve during the Term and prior to or after Closing shall be at Buyer's sole expense.

(c) The Natural Hazards Report, if any, as defined in Section 23 shall not be deemed to constitute a representation or warranty by Seller as to the presence or absence in or around the Property of any conditions that are the subject of the Disclosure Statutes.

(d) For the purposes of this Agreement, the term "Hazardous Substances" means any chemical substance, material, controlled substance, object, condition, waste, living organism, or combination thereof which is or may be hazardous to human health or safety or to the environment due to its ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, reproductive toxicity, infectiousness, radioactivity, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, and polychlorinated biphenyls (PCBs), which are now or may become in the future during the Term or thereafter listed, defined or regulated in any manner by any Environmental Law or regulation.

(e) For the purposes of this Agreement, the term "Environmental Law(s)" means any and all federal, state and local environmental, health, or safety related laws, regulations, ordinances, codes, decrees, directives, standards, rules, guidelines, permits, and decision of federal and state courts as currently existing and as may be amended, enacted, issued or adopted in the future during the Term or thereafter, which due to the presence or potential presence of Hazardous Substances are or become applicable to the Property or persons or entities who own, occupy, use, visit, or work on or in the Property. Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as set forth in 42 USCA 9601 *et seq.*, the California Hazardous Waste Control Laws as set forth in California Health and Safety Code Sections 21500 *et seq.*, and the California Porter Cologne Act as set forth in California Water Code Section 13000 *et seq.*

(f) If Buyer (or its approved assignee) proceeds to Closing with actual knowledge of any matter discovered during the Term and prior to Closing with respect to the Property which is in conflict with any of Seller's representations and warranties in this Agreement, Buyer (and its assignee) shall be deemed to have waived such Seller's representations and warranties to the extent inconsistent with Buyer's (or its assignee's) actual knowledge.

(g) Upon the Property Lease Commencement Date, excluding Claims (defined below) from third parties that accrued prior to that date, Buyer shall assume the risk of the condition of the Property, and shall defend, indemnify and hold Seller harmless as follows:

- i. The following release and waiver of Claims shall be referred to as the "Release." Buyer, on its own behalf and on behalf of each of its successors and assigns and each and all of its and their respective members, partners, officers, directors, employees, parents, affiliates and subsidiaries, and each of their respective successors and assigns (collectively, "Waiver Parties") hereby fully, forever, irrevocably and

unconditionally waives and releases Seller and its respective officers, employees, agents, and representatives and their respective successors and assigns (collectively, "Released Parties") from: (i) any and all claims, liabilities, losses, obligations, orders, requirements, restrictions, liens, penalties, fines, charges, debts, demands, damages, costs, expenses, counterclaims, suits, proceedings, actions, causes of action, costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) of any kind and nature whatsoever, whether known or unknown, anticipated or unanticipated, whether foreseeable or unforeseeable, and howsoever arising or accruing (collectively, the "Claims"), that the Waiver Parties, or any of them, ever had, now have, or may have against the Property or the Released Parties pertaining to the Property, arising or accrued prior to the effective date of the Property Lease; and (ii) any and all conditions of the Property, including, without limitation, any and all actual, threatened or potential Claims, and Claims for contribution under any law relating to Hazardous Substances, whether under any foreign, federal, state or local law (both statutory and non-statutory) or Environmental Laws, and, whether asserted or demanded by a third party against any of the Waiver Parties or incurred directly or indirectly by any of the Waiver Parties themselves, that any of the Waiver Parties may now or hereafter have against any of the Released Parties and that arise in connection with or in any way are related to: (a) the physical condition of the Property, the financial condition of the Property, the value of the Property, the suitability of the Property for Buyer's intended use, management or operation of the Property, or the accuracy or completeness of any information reviewed by Buyer in connection with its investigations of the Property and which may have been relied upon by Buyer in deciding to purchase the Property; (b) any handling of any Hazardous Substances at, beneath, to, from, or about the Property; (c) any compliance or non-compliance with Environmental Laws regarding any Hazardous Substances or any handling related thereto at, beneath, to, from, or about the Property; (d) any acts, omissions, services or other conduct related to any of the foregoing items "(a)" through "(c)," inclusive; and/or (e) any condition, activity, or other matter respecting the Property that is not addressed by any of the foregoing items "(a)" through "(d)," inclusive; Provided, however, that Waiver Parties do not release Released Parties from any third party Claims that are incurred, related to, arising from, or accruing prior to the Property Lease Commencement Date, nor do Waiver Parties release Released Parties to the extent Claims relate to or arise from the negligence or willful misconduct of Released Parties during the Term.

- ii. The following indemnification of Claims shall be referred to as the "Indemnity." Buyer shall defend, hold harmless and indemnify the Released Parties and each of them from and against all third party Claims that are incurred, related to, arising from, or accruing after the

Property Lease Commencement Date for the matters that are covered under the provisions of the foregoing subsection. Released Parties shall defend, hold harmless and indemnify the Waiver Parties and each of them from and against all third party Claims that are incurred, related to, arising from, or accruing prior to the Property Lease Commencement Date.

(h) For the foregoing Release of Claims, to the fullest extent not prohibited by law, Buyer expressly and specifically waives the benefits of Section 1542 of the California Civil Code (“Section 1542”), which is excerpted below and any successor laws:

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

Buyer has been advised by its legal counsel and understands the significance of this waiver of Section 1542 relating to unknown, unsuspected, and concealed Claims, and Buyer specifically represents that Buyer has carefully reviewed the Release provisions with its legal counsel and the Parties agree that the Release provisions are a material part of this Agreement. Buyer acknowledges that it fully understands, appreciates and accepts all of the terms and provisions in this Section 10.

(i) Buyer acknowledges that the foregoing Release of Claims is voluntary and without any duress or undue influence, and is given in consideration for Seller’s consent to sell the Property to Buyer under the terms of this Agreement. Buyer expressly acknowledges that during the Term it may discover facts different from or in addition to those which it believes to be true as of the Property Lease Commencement Date with respect to the Release of Claims. Buyer agrees that the foregoing Release and Indemnity shall be and remain effective in all respects notwithstanding such different or additional facts, except in instances of fraud or willful and wrongful acts or omission of the Released Parties.

(j) Buyer represents and warrants to Seller that it has not and will not assign or transfer to any person or entity any matter under the foregoing Release and Indemnity and hold Seller harmless from and against any and all Claims based on or arising out of any such assignment or transfer, or purported assignment or transfer. However, the Parties acknowledge that Buyer may desire to assign its rights under this Agreement to another entity (the “Developer”) which Buyer selects to develop the Property for its intended use. Any such assignment requires Seller’s written approval and the assignee must enter into an agreement with Seller to execute the same Release and Indemnity provisions as set forth above prior to Closing.

(k) The provisions of this Section 10 shall survive the Closing and the recording of the Grant Deed conveying the Property from Seller to Buyer (or Developer as the

assignee), except that the foregoing Section 10(j) shall not apply to any subsequent sale or lease of the Property following Closing.

11. Maintenance of Property and Commitments. From the Execution Date of this Agreement until the Closing, Seller shall not: (a) be obligated to undertake any maintenance or repairs of the Property; or (b) take or authorize any action with regard to the Property, including making any commitments or representations to any third party, including governmental authorities and lenders, or adjoining or surrounding property owners; but excluding actions necessary to protect the public health, safety or welfare. In particular, Seller shall not renew or extend the League Lease, but subject to Buyer's compliance to sublease the Property to the Leagues as described in Section 12.

12. Property Lease and Replacement Fields Project.

(a) **Property Lease.** Seller shall issue to Buyer, after completion of Buyer's investigations of the Property as set forth in Section 15 (Buyer's Contingencies), a lease for the Property during the Term generally in the form provided as Exhibit 8 (the "Property Lease").

(b) **Sublease.** As a material term of this Agreement, Buyer shall permit the Leagues to continue to lease, occupy and operate the Property under the terms of a sublease between Buyer and the Leagues at the rental rate of One Hundred and Fifty Dollars (\$150.00) per year, generally in the form provided as Exhibit 10. Seller grants to Buyer all of Seller's rights to ownership of the improvements (buildings and fixtures) on the Property at the expiration of the League Lease. Buyer may require or authorize the Leagues under the sublease to:

- i. Pay all utility and service charges for operation and maintenance of the Property and improvements;
- ii. Pay to the County of Sacramento all personal property taxes which may be levied against the personal property of the Leagues, and pay the possessory interest tax levied pursuant to Section 107.6 of the California Revenue and Taxation Code, as required by the County Assessor's Office, if any;
- iii. Maintain insurance coverages naming both Buyer and Seller as additional insureds and indemnifying both Buyer and Seller for any Claims (as defined in Section 10);
- iv. Use the Property only for the existing Dan McAuliffe Memorial Ballparks operations, not to discriminate in rental of the facilities, and not to make any further improvements to the Property;
- v. Cooperate with Buyer in relocating the existing improvements on the Property (the "McAuliffe Complex improvements") to the Seller's Army

Depot East Park site without charging Buyer the value of such improvements;

- vi. Require Leagues to assist with removal from the Property and installation at the Army Depot East Park site the McAuliffe Complex improvements which can reasonably be relocated, with the expectation that some or all of the relocation work performed by the Leagues will be donated labor to the extent reasonable;
- vii. Waive any claims related to the interruption of League play resulting from the demolition and/or removal of the existing facilities at the McAuliffe Complex and the length of time required to complete construction of the Replacement Fields Project, with the expectation that interruption of League games will be minimized; and
- viii. Vacate the Property no later than thirty (30) calendar days after the Replacement Fields Project has been constructed to Seller's satisfaction in accordance with the list of improvements set forth in the Replacement Fields Cost Estimate attached as Exhibit 5.

(c) **Replacement Fields Project.** As a material term of this Agreement and part of the Consideration for the sale of the Property to Buyer, Buyer shall construct the Replacement Fields Project at the Seller's Army Depot East Park site as depicted in Exhibit 6. The required improvements are intended to be consistent with the type and size of the existing McAuliffe Complex improvements located on the Property as of the Execution Date, which meet AAA Minor League standards, and are listed in the Replacement Fields Cost Estimate. The Parties acknowledge that reasonable changes to the list of improvements in the Replacement Fields Cost Estimate may be necessary or desirable due to the site conditions at the Army Depot East Park site and any other matters as mutually agreed to by the Parties. The Parties also acknowledge that pursuant to Section 1.7 of the Replacement Fields Project Agreement (Exhibit 9 to this Agreement), Buyer reserves the right to elect not to proceed with the Replacement Fields Project if the approved Budget (as defined in and to be prepared as part of that Agreement) for the Project substantially exceeds the Replacement Fields Cost Estimate. Seller agrees to cooperate with Buyer in seeking grants and donations to assist with the costs of the Replacement Fields Project. Seller and Buyer shall enter into the Replacement Fields Project Agreement generally in the form provided as Exhibit 9, once Buyer is ready to commence construction of the Replacement Fields Project. However, Buyer shall provide Seller with at least six months advance written notice of Buyer's intent to undertake the Replacement Fields Project to allow Seller time to make arrangements to relocate the Little League and other groups who use the Army Depot East Park field. During this six month period, Seller shall remove its personal property not affixed to the land and terminate any leases, licenses or other encumbrances that would interfere with construction of the Replacement Fields Project in accordance with the terms of that agreement. The Closing for the sale of the Property to Buyer is contingent on Buyer's completion of all of the required Replacement Fields Project improvements at the Army Depot East Park site to the reasonable satisfaction of Seller. If Buyer arranges for the

construction of the Replacement Fields Project prior to completion of payment of the Purchase Price, Buyer may sublease the Property and retain the sublease proceeds.

(d) **Army Depot East Park Lease.** Seller intends to grant to the Leagues a lease for a portion of the Army Depot East Park after completion of the Replacement Fields Project. The rental rate for that new lease is subject to negotiation between Seller and Leagues with regard to the estimated revenue that Leagues will receive from rentals of the new fields versus the League's cost to maintain the improvements, with a reasonable allocation of funds for capital maintenance and replacement expenses, utilities, and operating costs, with the expectation that the Leagues will allow public use of the fields at a reasonable price in return for granting Leagues the exclusive right to occupy and operate that portion of the Army Depot East Park site which contains the new ballfields at a nominal rental rate. At the Leagues discretion, the Army Depot East Park may be renamed as the Dan McAuliffe Memorial Ballparks. Nothing contained in this Agreement is intended or shall be construed to make Seller's and Leagues approval of a lease for the Army Depot East Park a condition precedent to Closing.

13. Escrow and Closing. The Escrow process for the purchase and sale of the Property between Buyer and Seller shall be as follows:

(a) **Opening of Escrow.** The escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Buyer and Seller agree to provide Escrow Holder with a copy of this fully executed Agreement when Buyer is ready to close Escrow after completion of the Replacement Fields Project. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Provided as Exhibit 3 is the form of the "Escrow Instructions," which Buyer and Seller shall complete and execute and deliver to Escrow Holder on the date that Buyer and Seller mutually agreed upon. Buyer and Seller agree to execute, deliver and abide by any reasonable or customary supplemental escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction; provided, however, no such instructions or instruments shall conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of Escrow Holder's instructions or instruments and the terms of this Agreement and the Escrow Instructions, then the terms of this Agreement and the Escrow Instructions shall control.

(b) **Payments before Opening of Escrow.** All of Buyer's Purchase Price installment payments shall be paid to Seller directly and not to Escrow Holder. It is the Parties' intent that Escrow Holder will not hold any funds owed to Seller by Buyer except for the final payment of the Purchase Price required for Closing. The payment of the Deposit shall be paid to Seller and Buyer will be credited for the Deposit towards payment of the Purchase Price at Closing.

(c) **The Closing.** On the Closing Date, all matters to be performed under this Agreement incident to the sale of the Property and the final installment payment of the Purchase Price (collectively, "Closing") shall be performed at the offices of Escrow Holder, or other mutually acceptable location agreed to in writing by Buyer and Seller. Notwithstanding anything in this Section 13 to the contrary, the Parties agree to use

commercially reasonable efforts to pre-close the transaction (i.e., deliver signed documents into Escrow) on the business day immediately preceding the then-scheduled date of Closing. For purposes of this Agreement, the actual Closing Date shall be the date that the City Grant Deed in the form attached as Exhibit 4 is recorded pursuant to applicable law in Sacramento County, California. Unless changed in writing by the Parties, the Closing shall occur on the Closing Date, subject to Buyer's and Seller's respective rights to accelerate or extend the Closing Date and to terminate this Agreement, that are expressly set forth this Agreement and/or the Escrow Instructions.

(d) **Possession of the Property.** As of the Property Lease Commencement Date, Buyer shall obtain rights to the full possession of the Property and any other items as described in this Agreement are to be delivered by Seller to Buyer as of that date. Because Seller will deliver possession of the Property to Buyer prior to the Closing Date, Seller shall not be obligated to provide the Property at Closing that is free and clear of all prior uses and/or occupancies. Buyer will assume responsibility for the physical condition of the Property from the Property Lease Commencement Date and thereafter until the Closing Date.

(e) **Closing Acceleration or Extension.** The Parties have set the Closing Date based on the Term of this Agreement to allow Buyer time to pay the Purchase Price in installments. The Closing Date may be set at a sooner date, by mutual agreement of the Parties, whenever Buyer is willing and able to pay the balance of the Purchase Price after Buyer has arranged for and completed construction of the Replacement Fields Project to Seller's reasonable satisfaction. If on the Closing Date, Seller is unable to convey title as provided in this Agreement, then Seller shall have the right to extend the Closing for a period of up to thirty (30) days ("Seller's Extension Period") by giving Buyer and Escrow Holder written notice of the need to extend the Closing Date.

14. Independent Consideration. Contemporaneously with the execution and delivery of this Agreement, Buyer has delivered to Seller and Seller hereby acknowledges the receipt of funds in the amount of One Hundred Dollars (\$100.00) (the "Independent Contract Consideration"), which amount the Parties bargained for and agreed to as consideration for Buyer's right to purchase the Property pursuant to this Agreement and for Seller's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and shall be retained by Seller notwithstanding any other provision of this Agreement.

15. Buyer's Contingencies. Buyer's obligation to consummate the purchase of the Property is subject to the satisfaction or waiver, on or before the Closing Date, of the following conditions precedent (collectively, "Buyer's Contingencies"), which are for Buyer's benefit only. If this Agreement is not terminated before the Closing Date, then Buyer shall be deemed to have waived all of Buyer's Contingencies, this Agreement shall remain in full force and effect, and the Closing shall occur subject to the terms and conditions of this Agreement and the Escrow Instructions.

(a) **Title Review.** Seller has delivered to Buyer a Preliminary Title Report prior to the Execution Date. During the Feasibility Period and prior to Closing, Buyer may order an updated Preliminary Title Report. As part of the Escrow Instruction, the exceptions which Buyer will permit to remain on title (the "Permitted Exceptions") are to be listed therein. The Permitted Exceptions shall include lien (or liens) to secure payment of real estate taxes or assessments and all other state, county and local taxes, charges, and bonds (general, special or otherwise), imposed or assessed, and any recorded easement interests held by other entities. Buyer shall be satisfied with title to the Property, subject only to the Permitted Exceptions, as reflected in the Preliminary Title Report, by the Property Lease Commencement Date and as of Closing.

(b) **Inspections and Studies.** Buyer has or will investigate the suitability of the Property for Buyer's intended uses during the Feasibility Period. Buyer's investigations may include without limitation, Subdivision Map Act requirements, zoning, availability and cost of providing utilities, sewers and storm drains, topographic studies, and environmental site assessments. Upon termination of the Feasibility Period, Buyer may either give Seller written notice that Buyer (i) approves the condition and suitability of the Property, or (ii) disapproves the condition or suitability of the Property for any reason or no reason, which notice must be received by Seller no later than 5:00 p.m. on the first business day after the expiration of the Feasibility Period. In the event that Buyer fails to timely approve the condition and suitability of the Property pursuant to (i) above, such failure shall be deemed to be a disapproval of the condition and suitability of the Property in accordance with (ii) above. In the event Buyer disapproves or is deemed to have disapproved the condition and suitability of the Property pursuant to this Section 15(b), this Agreement shall terminate automatically, and: (i) Seller shall return the Deposit to Buyer; and (ii) neither Party shall have any rights or obligations arising out of this Agreement, except as otherwise set forth in this Agreement.

(c) **Representations and Warranties.** All representations and warranties of Seller contained in this Agreement shall be materially true and correct as of the Property Lease Commencement Date and as of the Closing Date.

(d) **No Default.** Seller is not in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement as of the Property Lease Commencement Date and as of the Closing Date.

(e) **Title Insurance.** The conveyance by the Seller of good and marketable fee title to the Property, as evidenced by a standard form American Land Title Association ("ALTA") title insurance policy to be issued by the Title Company in the amount of the Purchase Price, or the amount as set by Buyer, and containing endorsements reasonably required by Buyer ("Buyer's Title Policy"), insuring fee simple title, which is free and clear of all liens and encumbrances subject only to the Permitted Exceptions set forth in the Escrow Instructions.

(f) **League Estoppel.** Buyer may require that Seller obtain from Leagues, prior to the Lease Commencement Date, an estoppel confirming that the League Lease is in full force and effect and that Seller is not in default thereunder.

(g) **Replacement Fields Project Costs.** As provided in Section 1.7 of the Replacement Fields Project Agreement, Buyer may elect not to proceed with the Replacement Fields Project if the approved Budget for the Project substantially exceed the Replacement Fields Cost Estimate, which was based on costs in 2014. In that event, Buyer shall notify Seller in writing of its decision, which shall be deemed to be termination of this Agreement for Buyer's convenience.

16. Seller's Contingencies. Seller's obligation to sell the Property to Buyer is subject to the satisfaction or waiver, on or before the Closing Date, of the following conditions precedent ("Seller's Contingencies"), which are for Seller's benefit only. If this Agreement is not terminated before the Closing Date, then Seller shall be deemed to have waived all of Seller's Contingencies, this Agreement shall remain in full force and effect, and the Closing shall occur subject to the terms and conditions of this Agreement and the Escrow Instructions.

(a) **Representations and Warranties.** All representations and warranties of Buyer contained in this Agreement shall be materially true and correct as of the Property Lease Commencement Date and as of the Closing Date.

(b) **No Default.** Buyer is not in default in the performance of any material covenant or agreement to be performed by Buyer under this Agreement.

17. Buyer's Deliveries to Escrow. At least one (1) business day before the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Buyer's Delivered Items"):

(a) **Funds.** The balance of the Purchase Price as defined in Section 4, minus the Deposit, in the form of a certified or cashier's check or wired funds, plus Buyer's Costs, and Buyer's share of the General Expenses, all as defined in Section 20.

(b) **Preliminary Change of Ownership Report.** A Preliminary Change of Ownership Report fully completed by Buyer (the "Preliminary Change of Ownership Report").

(c) **Authority.** Such proof of Buyer's authority and authorization to enter into this Agreement, on the part of each individual or entity comprising Buyer, and to consummate the transaction contemplated in this Agreement as may be reasonably requested by Seller or Title Company.

(d) **Further Documents or Items.** Any other documents or items reasonably required to close the transaction contemplated by this Agreement.

(e) **Failure to Deliver.** If Buyer is in default of its obligation to deliver any of the Buyer's Delivered Items and Buyer's counterparts to the jointly delivered items into Escrow timely in accordance with the terms of this Agreement, then Seller shall be entitled to pursue any and all rights available to Seller under this Agreement, at law or in equity.

18. Seller's Deliveries to Escrow. At least one (1) business day before the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Seller's Delivered Items"):

(a) **Grant Deed.** The City to Buyer Grant Deed in the form attached as Exhibit 4. The title transferred thereunder shall be subject to all real property taxes and assessments and all other state, county and local taxes, charges, and bonds (general, special or otherwise), imposed or assessed, which are not yet due and payable as of the Closing Date, matters ascertainable by a reasonable inspection and survey of the Property, and the Permitted Exceptions as described in the Escrow Instructions.

(b) **Title Affidavit.** A customary "seller's affidavit" as may reasonably be required by Title Company in connection with issuance of Buyer's Title Policy with elimination of certain pre-printed exceptions.

(c) **Further Documents or Items.** Any other documents or items as may be reasonably requested by Buyer or Title Company to close the transactions contemplated by this Agreement.

(d) **Failure to Deliver.** If Seller is in default of its obligation to deliver any of the Seller's Delivered Items and Seller's counterparts to the jointly delivered items into Escrow timely in accordance with the terms of this Agreement, then Buyer shall be entitled to pursue any and all rights available to Buyer under this Agreement, at law or in equity.

19. Joint Deposits Into Escrow. On or before one (1) business day before the Closing Date, Seller and Buyer shall execute, acknowledge where required, complete required insertions, and jointly deposit into Escrow two (2) original counterparts of the following documents:

(a) **General Assignment and Bill of Sale.** General Assignment and Bill of Sale in the form attached as Exhibit 2.

(b) **Closing Statement.** Closing Statement in a form reasonably acceptable to Buyer and Seller showing the allocation of Buyer's Costs, Seller's Costs, Escrow Expenses, and General Expenses, all as defined in Section 20, and disbursements to be made by Escrow Holder.

20. Costs and Expenses. If there is a Closing and the Property is transferred from Seller to Buyer, then the costs and expenses of this transaction shall be allocated between Seller and Buyer as follows:

(a) **Seller's Costs.** Seller shall bear the following costs and expenses at Closing: (i) one-half (1/2) of the Escrow Expenses; (ii) Seller's share of General Expenses; (iii) the cost of recording all releases and other documents to remove all monetary liens, if any, that are recorded against the Property and the cost of recording all other documents that Seller

desires to record; (iv) all of the document recording fees for the City to Buyer Grant Deed; and (v) all County and City transfer taxes, if required (collectively, "Seller's Costs").

(b) **Buyer's Costs.** Buyer shall bear the following costs and expenses at Closing: (i) an ALTA standard coverage owner's title policy and any endorsements being paid by Buyer; (ii) one-half (1/2) of Escrow Expenses; (iii) Buyer's share of the General Expenses; and (iv) all title policy insurance costs for any deed of trust (collectively, "Buyer's Costs").

(c) **Escrow and General Expenses.** Buyer and Seller shall pay, respectively, Escrow Holder's customary and reasonable charges to buyers and sellers for document drafting, recording and miscellaneous charges (the "Escrow Expenses"). If, through no fault of either Buyer or Seller, Escrow fails to close, Buyer and Seller shall share equally all of the Escrow Expenses; however, if the Closing fails to close as the result of the default of either Party, then such defaulting party shall bear all of the Escrow Expenses. All other costs and expenses for the Closing which are not listed in this Agreement shall be allocated between Buyer and Seller in accordance with the customary practice in Sacramento County, California (the "General Expenses.") Each Party shall bear the costs of its own attorneys and consultants in connection with the negotiation and preparation of this Agreement and the consummation of the transactions contemplated in this Agreement.

(d) **Proration of Income and Expenses.** Once Buyer obtains possession of the Property by means of the Property Lease, Buyer will assume the obligation for maintenance and operation of the Property and retain any income under permitted subleases. Therefore, Escrow Holder will not need to allocate any income or expenses at Closing.

(e) **Property Taxes.** Under the terms of the Property Lease, Buyer will assume responsibility to pay all general and special real and personal property and ad valorem taxes, assessments and all other state, county and local taxes, charges, and bonds (general, special or otherwise), imposed or assessed, if any, whether payable in installments or not, including, without limitation, all supplemental taxes attributable to the period after the Lease Commencement Date to the Closing. Therefore, no allocation of such taxes, assessment and charges shall be required at Closing. During the term of the League Sublease, Buyer may require the Leagues to pay all of the property taxes and assessments referenced above.

(f) **Utility Charges and Service Contracts.** Under the terms of the Property Lease, Buyer will make arrangements with the utility companies to continue utility services and with any other company providing services to the Property as of the Lease Commencement Date. Buyer shall be responsible for the payment of all utility and service bills during the Term and after the Closing.

21. Closing Procedure. When the Title Company is ready to issue the Buyer's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall close Escrow was of the specified Closing Date, or at a sooner date with approval of both Parties, in the manner and order provided below:

(a) **Date; Counterparts.** Escrow Holder shall date all instruments as of the date of the Closing (if not dated), and combine all counterparts of instruments delivered to Escrow Holder in counterparts.

(b) **Document Recordation.** Escrow Holder shall record the Grant Deed in the Official Records of the Recorder's Office (the "Official Records").

(c) **Preliminary Change of Ownership Report.** Escrow Holder shall submit the Preliminary Change of Ownership Report to the Recorder's Office concurrently with the submission of the Grant Deed for recordation.

(d) **Notification; Disburse Funds.** Escrow Holder shall provide telephonic or e-mail notice to Buyer and Seller (and their respective counsel) that the Closing has occurred, deliver the final Closing Statement in accordance with Section 22 to each Party by facsimile or e-mail, and disburse funds. In disbursing funds, Escrow Holder shall debit or credit (as provided herein) all Buyer's Costs, Seller's Costs, the balance of the Purchase Price for the Property to Seller; and disburse the remaining funds, if any, to Buyer.

(e) **Title Policy.** Escrow Holder shall cause its Title Company to issue the Buyer's Title Policy to Buyer in accordance with the Escrow Instructions.

(f) **Informational Reports.** Escrow Holder shall file any information reports required by Internal Revenue Code Section 6045(e), as amended.

22. Post-Closing Instructions. Promptly after the Closing, Escrow Holder shall deliver the following instruments:

(a) **To Seller.**

- i. One (1) copy of the recorded City to Buyer Grant Deed;
- ii. One (1) fully-executed original of the General Assignment; and
- iii. One (1) copy each of the Preliminary Change of Ownership Report, the Documentary Transfer Tax Statement, and the final Closing Statement.

(b) **To Buyer.**

- i. One copy of the recorded City to Buyer Grant Deed;
- ii. One (1) fully-executed original of the General Assignment;
- iii. One (1) copy each of the Preliminary Change of Ownership, the Report Documentary Transfer Tax Statement, and the final Closing Statement.

(c) **To Counsel.** Copies of all documents delivered to Buyer and Seller following the Closing.

23. Exclusion of Seller's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to allow Buyer to purchase the Property, Buyer agrees with the following statements:

(a) By execution of this Agreement, Buyer acknowledges and agrees that, with the exception of those representations and warranties specifically set forth in this Agreement, Seller has not made, does not make, and specifically negates and disclaims any representations or warranties of any kind or character whatsoever, whether express or implied, oral or written, past or present, with regard in any way to the transactions described in this Agreement.

(b) No person acting on behalf of Seller is authorized to make any representations or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, with regard to the Property, including without limitation: (i) its value; (ii) its nature, condition or quality (including, without limitation, its water, soil and geology); (iii) its compliance with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (iv) its suitability for activities which Buyer may desire to conduct thereon; (v) its suitability for the development, remodeling or improvements desired by Buyer, or the ability of Buyer to develop, remodel or improve the Property for its planned project; (vi) the income to be derived from the Property; (vii) the habitability, merchantability, profitability, or fitness for a particular purpose of the Property; (viii) the environmental condition of the Property; and (ix) the manor, quality, state of repair or lack of repair of any improvements on the Property.

(c) As of the Closing, to the extent permitted by law, Buyer shall be deemed to have knowingly, voluntarily and intentionally waived the right to the disclosures ("Natural Hazards Disclosures") set forth in: (i) California Government Code Section 8589.3 (a special flood area); (ii) California Government Code Section 8589.4 (dam failure inundation area); (iii) California Government Code Section 51183.5 (earthquake fault zone); (iv) California Public Resources Code Section 2621.9 (seismic hazard zone); (v) California Public Resources Code Section 4136 (wildland fire area); and (vi) California Public Resources Code Section 2694 (high fire severity area). This waiver by Buyer includes, to the extent permitted by law, any remedies Buyer may have for Seller's nondisclosure of the Natural Hazards Disclosures. At its sole discretion and expense, Buyer may elect to engage a consulting firm to prepare a Natural Hazards Report to ascertain whether or not the Property is subject to any natural hazards as listed above.

24. Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations and warranties as of the Execution Date and as of the Closing, each of which is material and is being relied upon by Buyer, and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations under this Agreement:

(a) **Power.** Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

(b) **Requisite Action.** All requisite action, including, without limitation, approval by the Sacramento City Council and all other pertinent review and approval by any other person or entity affiliated with Seller, has been taken by Seller in connection with entering into this Agreement as of the Execution Date and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement. No additional consent of any individual, officer, director, shareholder, partner, member, manager, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required for Seller to execute this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

(c) **Individual Authority.** The individual(s) executing this Agreement and the instruments referenced in this Agreement on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement and the instruments referenced in this Agreement.

(d) **No Conflict.** Neither the execution and delivery of this Agreement, the documents or instruments referenced in this Agreement, nor incurring the obligations, consummation of the transactions, and compliance with the terms of this Agreement conflict with or will result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Seller is a party or that affects the Property.

(e) **Third Party Notices and Consents.** The assignment of the Personal Property as set forth in the General Assignment does not require notice to or the consent of any governmental entity or private party.

(f) **Specifically Designated National and Blocked Persons.** Seller (i) is not listed in the Annex to, or otherwise subject to the provisions of United States Presidential Executive Order 13224 issued on September 24, 2001 ("Executive Order"); (ii) does not have its name on the U.S. Department of the Treasury, Office of Foreign Assets Control's ("OFAC") most current list of "Specifically Designated National and Blocked Persons"; and (iii) is not otherwise affiliated with an entity or person listed above. This provision shall survive Closing.

(g) **Hazardous Substances.** Seller has not received any notice from the United States Environmental Protection Agency, the State of California Department of Toxic Substances Control, or the Sacramento County Environmental Management Agency, or any other federal, state, county or municipal entity or agency that regulates Hazardous Substances or public health risks or other environmental matters, or any private party or person claiming any violation of, or requiring compliance with, any Environmental Laws or demanding payment or contribution for any Hazardous Substances in, on, under, upon or affecting the Property.

(h) **Third Party Payments.** To Seller's actual knowledge, all bills and claims for labor performed or materials furnished to or for the benefit of the Property for all periods of

time prior to the Closing have been paid in full and there are no mechanics' or materialmen's liens (whether or not perfected) on or affecting the Property.

(i) **Liens.** There is no lien or debt of any kind encumbering the Property that would need to be assumed by Buyer.

(j) **Defaults.** Seller is not in default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting this Agreement or the Property.

(k) **Lawsuits.** To the best of Seller's knowledge, as of the Execution Date, there is no pending or threatened suit, claim, action or arbitration, or legal, administrative, or other proceeding or governmental investigation, formal or informal, including but not limited to personal injury, eminent domain, condemnation, or any judgment, or moratorium which affects the Property or Buyer's anticipated development of the Property.

25. Exclusion of Buyer's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller agrees that by execution of this Agreement, Seller acknowledges and agrees that, with the exception of those representations and warranties specifically set forth in this Agreement, Buyer has not made, does not make, and specifically negates and disclaims any representations or warranties of any kind or character whatsoever, whether express or implied, oral or written, past or present, with regard in any way to the transactions described in this Agreement.

26. Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer makes the following representations and warranties as of the Execution Date and at and as of the Closing. Each of the following Buyer representations and warranties each of which is material and is being relied upon by Seller, and the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder.

(a) **Power.** Buyer's legal entity is in good standing with the Secretary of the State of California and the State Franchise Tax Board and Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

(b) **Requisite Action.** All requisite action (corporate, partnership, trust or otherwise) has been taken by Buyer in connection with entering into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement. No additional consent of any individual, officer, director, shareholder, partner, member, manager, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required for Buyer to execute this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

(c) **Individual Authority.** The individuals executing this Agreement and the instruments referenced in this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions set forth in this Agreement.

(d) **No Conflict.** Neither the execution and delivery of this Agreement, the documents or instruments referenced in this Agreement, nor incurring the obligations, consummation of the transactions, and compliance with the terms of this Agreement conflict with or will result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

27. Remedies. If the sale of the Property is not consummated in accordance with the terms of this Agreement due to the default of either Party, or the termination of this Agreement for the convenience of either Party, the remedies available are as follows:

(a) **Remedies Upon Seller's Default.** If Seller fails to allow for the Closing as contemplated in this Agreement in a timely manner because of a default by Seller (and Buyer is not also in default), then Buyer may (i) terminate this Agreement by delivery of written notice to Seller and Escrow Holder and terminate the Property Lease, or (ii) purchase the Property (or if necessary, seek specific performance of this Agreement); provided that Seller shall be provided at least ten (10) business days to cure such default. If Buyer terminates this Agreement due to Seller's default, Buyer shall only be entitled to a full refund of the Deposit, reimbursement of the Principal Price payments, and reimbursement of accrued interest payments paid to Seller by Buyer. However, the amount owed by Seller shall not exceed the net sales proceeds from sale of the Property and Seller shall have a period of up to 12 months to sell the Property in order to make payment to Buyer. Seller shall not be liable for Buyer's costs or expenses incurred during the Feasibility Period or for any costs or expenses incurred by Buyer related to planning for the future development of the Property or the Replacement Fields Project. If Buyer has undertaken construction of the Replacement Fields Project prior to Seller's default, Seller shall reimburse Buyer for its actual expenses incurred, but Seller shall have a period of at least one year to secure funding to make such reimbursement.

(b) **Remedies Upon Buyer's Termination of Agreement.** If Buyer decides not to proceed with constructing the Replacement Fields Project and terminates this Agreement by delivery of written notice to Seller and Escrow Holder, Buyer shall only be entitled to reimbursement of the Principal Price payments paid to Seller by Buyer. However, the amount owed by Seller shall not exceed the net sales proceeds from sale of the Property and Seller shall have a period of up to 12 months to sell the Property in order to make payment to Buyer. Seller shall not be liable for Buyer's costs or expenses incurred during the Feasibility Period or for any costs or expenses incurred by Buyer related to planning for the future development of the Property or the Replacement Fields Project.

(c) **Remedies Upon Buyer's Default.** If Buyer fails to allow for the Closing as contemplated in this Agreement in a timely manner because of a default by Buyer, then the Seller may terminate this Agreement by delivery of written notice to Buyer and Escrow

Holder, provided that Buyer shall be provided at least ten (10) business days to cure such default. If Seller terminates this Agreement due to Buyer's default, Buyer shall only be entitled to a refund of the Principal Price payments, but excluding reimbursement of accrued interest which shall be retained by Seller as rent for the term of the Property Lease prior to its termination. However, the amount owed by Seller shall not exceed the net sales proceeds from sale of the Property and Seller shall have a period of up to 12 months to sell the Property in order to make payment to Buyer.

(d) **Monetary Damages.** Except as specifically set forth above, in no event will either Party be liable to the other Party for monetary damages due to breach of this Agreement, or for the costs of enforcement of this Agreement, including, without limitation, attorneys' fees and legal costs.

(e) **Deposit.** Notwithstanding any other term, provision or condition in this Agreement, if Buyer fails or refuses to complete the transaction contemplated in this Agreement for any reason or cause other than (i) the default of Seller, (ii) the failure of Seller to Close by the Closing Date, or (iii) Buyer's contingencies as provided in Section 15; then this Agreement shall be deemed an option agreement and the amount of the Deposit shall be deemed an option fee paid to Seller.

(f) **Escrow Expenses.** If Buyer fails to allow for the Closing as contemplated in this Agreement for any reason, including, without limitation, termination as permitted under Buyer's Contingencies (Section 15), Buyer shall be liable for all of the Escrow Expenses.

(g) **Buyer's Liability.** Other than loss of the Deposit, payment of accrued interest on the Purchase Price, and payment of the Escrow Expenses, Buyer shall have no further liability to Seller of any kind whatsoever by reason of the termination and/or non-performance of this Agreement by Buyer.

(h) **Reimbursement of Buyer's Payments.** If for any reason the Closing does not occur and Seller is obligated to reimburse Buyer for payments made by Buyer to Seller during the term of this Agreement, the amount owed by Seller shall not exceed the net sale proceeds from the sale of the Property at the time of the termination or cancellation of this Agreement and Seller shall have a period of up to 12 months to sell the Property in order to make payment to Buyer.

28. City Right of First Refusal. If for any reason at any time after Closing and prior to initiation of the construction of improvements to the Property for Buyer's planned housing development project, Buyer decides not to proceed with the project and desires to sell the Property, Buyer shall first offer to City the right to purchase the Property at the greater of (i) all costs incurred by Buyer in acquiring, holding and developing the Property minus rent received under a sublease and the costs Buyer incurred for the Replacement Fields Project (collectively "Buyer's Costs"); or (ii) its then fair market value based on an appraisal. Buyer shall provide written notice to City at least ninety (90) days before the date Buyer is to offer the Property for sale and City shall have thirty (30) days thereafter to convey to Buyer in writing whether the City desires to purchase the Property. If City does

not provide notice of its desire to purchase the Property within the specified period, then Buyer shall no longer be obligated to sell the Property to City. City may record a memorandum of this Agreement prior to Closing to provide notice of this repurchase right.

(a) **Establishment of Purchase Price.** If City desires to purchase the Property, Buyer shall cooperate with City in the selection of an appraiser and the appraisal instructions to estimate the fair market value of the Property, City shall pay for the appraisal, and the valuation as set by the appraiser shall be binding on the Parties. If Buyer and City are unable to agree to the selection of an appraiser, then each Party shall independently hire an appraiser to prepare an appraisal report and a copy of each report shall be provided to the other Party. Thereafter, the Parties shall negotiate for a period not to exceed thirty (30) days to determine if they can mutually agree to the purchase price. If the Parties are still unable to agree to a purchase price, then the two appraisers shall select a third appraiser to review the two appraisals and select the one which he/she determines is the most accurate valuation of the Property's fair market value, and that market value estimate shall be final and binding on the Parties. The cost of the third appraiser shall be split between the Parties.

(b) **Purchase of the Property.** Once the purchase price (the greater of Buyer's Costs or fair market value) has been set, City shall have thirty (30) days to provide written notification to Buyer whether City is willing to proceed with purchase of the Property at the established purchase price. If City provides notice of intent to purchase the Property, the Parties shall cooperate in closing that transaction and shall use commercially reasonable efforts to complete the transaction expeditiously, but no later than sixty (60) days from the date of the written notice. If City purchases the Property, City shall assume any leases and related agreements between Buyer and any tenants occupying the Property. If City does not provide notice of its intent to purchase the Property within the specified period or does not proceed to purchase the Property, then Buyer shall no longer be obligated to sell the Property to City. If the City purchases the Property, the purchase shall be in an as-is, where-is condition and City will provide releases and waivers of claims comparable to those provided by Buyer under this Agreement.

(c) **Termination of City's Right.** The City's right to purchase the Property as set out above shall terminate once Buyer has either assigned its rights under this Agreement to Developer with Seller's consent, or Buyer or Developer has been issued a building permit to commence construction of the first building on the Property after Closing.

(d) **Binding on Successors and Assigns.** The provisions in this Section 28 shall inure to and bind successors in interest in Buyer's legal entity. Buyer's obligations set forth in this Section 28 are covenants that run with the land. Seller has the right, but not the obligation, to record a Memorandum of this Agreement to provide notice of this covenant to prospective purchasers of the Property. The provisions in this Section 28 shall survive Closing and extend until termination of City's right to purchase the Property as set forth above.

(e) **Foreclosure and Bankruptcy.** The provisions set forth in this Section 28 shall not apply if the Property after Closing is: (i) sold, transferred, conveyed, or assigned to any

purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or under a power of sale contained in any loan documents for which the Property is encumbered as security for repayment; (ii) is assigned to Buyer's lender in lieu of foreclosure; (iii) if Buyer files a petition as a debtor in any bankruptcy or other insolvency proceeding; or (iv) if a court has appointed a liquidator or receiver to control substantially all of Buyer's assets which includes the Property. The foregoing provisions include Buyer's successors in interest and shall survive Closing.

29. Right of Entry. Seller will issue a permit for Buyer to enter the Property after execution of this Agreement using the form provided as Exhibit 7 to conduct due diligence inspections and testing, including, without limitation, soil testing, asbestos and lead paint testing of any buildings on the Property, and surveying, staking, and potholing, and to allow Buyer to address Buyer's Contingencies as set forth in Section 15. However, Buyer's activities shall not interfere with the Leagues' use of the Property under the existing League Lease.

30. Challenge to Agreement. In the event of any action instituted by a third party challenging the validity of any portion of this Agreement, including, without limitation, the proceedings taken for its approval (including the CEQA requirements), or any other act undertaken by the Parties in furtherance of this Agreement, the Parties agree to cooperate in the defense of the action. In all such litigation, the following shall apply:

(a) Seller may, in its sole discretion, either defend such litigation or tender its defense to Buyer. In the event that Seller determines to defend the action itself, Buyer shall be entitled, subject to court approval, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each Party shall bear its own attorney fees and costs.

(b) In the event that Seller determines to tender the defense of the action to Buyer, Seller shall promptly notify Buyer of its determination. Buyer shall, upon such notice from Seller, either i) promptly notify Seller that Buyer declines to defend the action; or ii) notify Seller that Buyer, at Buyer's sole expense, will defend the action on its behalf and on behalf of Seller through counsel reasonably acceptable to Seller, in which case Buyer shall have the right to settle such action, provided Buyer accepts defense and obligation without reservation, and that such settlement does not obligate Seller to make any payment or perform any obligation, or otherwise prejudice Seller, without Seller's consent thereto. Buyer shall bear all attorney fees and costs associated with such defense from and after the date of the tender. However, Seller may at any time after the tender elect to assume representation of itself; in that event, from and after the date Seller gives notice of its election to do so, Seller shall be responsible for its own attorney fees and costs incurred thereafter.

(c) If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, the following shall apply:

- (i) If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, Buyer shall pay the entire cost thereof, without right of offset, contribution or indemnity from Seller, irrespective of anything to the contrary in the judgment or order.
- (ii) Seller and Buyer shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments to this Agreement that may be needed to allow for the contemplated sale of the Property to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified in Section 32(m) shall apply. If agreement is not reached, either Party shall have the right to terminate this Agreement for its convenience without liability to the other Party by giving written notice to the other Party.
- (iii) In the event that amendment is not required, and the court's judgment or order requires Seller to engage in other or further proceedings, Seller agrees to comply with the terms of the judgment or order expeditiously as long as Seller is not required to incur additional costs.

31. Tax Deferred Exchange. Upon the request of Buyer or its approved assignee (the "Requesting Party") to this Agreement, the Seller (the "Non-Requesting Party") agrees to reasonably cooperate with the Requesting Party in consummating the sale of the Property as part of a simultaneous or non-simultaneous tax-deferred exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, provided that: (i) the Non-Requesting Party shall not be required to take title to any property other than the Property or incur any additional liabilities or financial obligations as a consequence of such cooperation, and (ii) the respective Closing Date shall not be delayed or extended thereby.

(a) The Requesting Party shall have the right to assign its rights and obligations hereunder to a qualified intermediary (the "Intermediary"), who will cause the respective Closing to occur on the Requesting Party's behalf. All of the Requesting Party's liabilities, representations and warranties under this Agreement shall remain those of the Requesting Party and the Non-Requesting Party shall not seek recourse against the Intermediary with respect to such liabilities or for the breach of any such representations or warranties. Performance by an Intermediary in effectuating an Exchange shall be treated as if such performance were made by the Requesting Party, and the Requesting Party shall remain the primary obligor for the full and timely performance of all obligations of the Requesting Party under this Agreement. In the event of any breach of such representations, warranties, covenants or other obligations, the Non-Requesting Party may proceed directly against the Requesting Party.

(b) The Non-Requesting Party shall not be required to assume any liabilities as a result of the Exchange transaction that are in addition to those which would exist if the transaction were effectuated as a sale by the Requesting Party and not effectuated as an Exchange.

(c) The Requesting Party hereby agrees to indemnify, defend (with counsel reasonably satisfactory to the Non-Requesting Party) and hold harmless the Non-Requesting Party from and against any and all claims, loss, cost, damage, or expense (including, without limitation, reasonable attorneys' fees) incurred by the Non-Requesting Party and arising out of or relating to the Non-Requesting Party's participation in the Exchange.

32. General Provisions.

(a) **Damage to Property.** If after the Property Lease Commencement Date and prior to Closing, all or any portion of the Property to be conveyed is damaged by earthquake, flood, or other natural casualty (collectively "Damage"), Seller shall immediately notify Buyer of such Damage. Buyer shall nonetheless proceed with the Closing and take the Property with such Damage. The risk of loss of the Property from any cause shall be transferred to Buyer upon Closing.

(b) **Condemnation.** If (i) any portion of the Property is taken or appropriated by a public or quasi-public authority exercising the power of eminent domain, or (ii) there is any taking of land lying in the bed of any street, road, highway or avenue, open or proposed, or any change of grade of such street, road, highway or avenue in front of or adjoining all or any part of the Property; then Buyer shall proceed with the purchase of the Property and receive all of the award or payment made in connection with such taking. Notwithstanding the foregoing, Buyer shall not be obligated to proceed with the purchase of the Property if it determines, in its sole discretion, that the remaining Property would no longer serve Buyer's intended purpose.

(c) **Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party, with a copy to such Party's counsel, if any, as provided in the Section 1, the "Defined Terms," and shall be personally delivered, sent by overnight mail (FedEx® or another carrier that provides receipts for all deliveries), or sent by certified mail, postage prepaid, return receipt requested. All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver due to changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the Parties' respective counsels is for information only, is not required for valid Notice, and does not alone constitute Notice under this Agreement. Buyer and Seller agree that Notices may be given hereunder by the Parties' respective counsel, and that, if any communication is to be given hereunder by Buyer's or Seller's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Section.

(d) **Brokers.** Each Party represents and warrants to the other Party that it has not dealt with any broker or finder in connection with this transaction. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including, without

limitation, reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such Party or on its behalf with any broker or finder in connection with the transaction contemplated in this Agreement. The foregoing indemnity shall survive both the Closing or the termination of this Agreement.

(e) **Assignment.** This Agreement may not be assigned without the other Party's express written consent.

(f) **No Joint Venture.** Nothing in this Agreement shall be construed to create a principal and agent, a partnership, joint venture, or any other association or other relationship between the Parties.

(g) **Survival.** Notwithstanding any provision of this Agreement to the contrary, the provisions of this Agreement shall survive Closing and shall not merge into the Grant Deed. The covenants, representations, limitations, hold harmless, indemnification and release obligations made by each Party shall survive the Closing.

(h) **Cooperation.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be reasonably required in order to consummate the purchase and sale contemplated in this Agreement and shall use all commercially reasonable efforts to accomplish the Closing in accordance with the provisions of this Agreement. The Parties acknowledge that given the length of time of the Term of this Agreement, there may be a need for the Parties to cooperate and make accommodations or changes with regards to the terms of the Property Lease, the Replacement Fields Project Agreement, and the Escrow and Closing provisions in this Agreement.

(i) **Computation of Time Periods.** Time is of the essence of every provision in this Agreement. All references herein to a particular time of day shall be deemed to refer to Sacramento, California time. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. The term "business day" as used in this Agreement shall mean each day other than a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided in this Agreement, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(j) **Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile or pdf signature shall be deemed an original signature.

(k) **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement,

and shall not be used for the interpretation or determination of the validity of this Agreement or any provision of this Agreement.

(l) **No Obligations to Third Parties.** Except as otherwise expressly provided in this Agreement in Section 12, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to this Agreement to, any other person or entity including, without limitation, a Developer selected by Buyer after the Execution Date.

(m) **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties.

(n) **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision of this Agreement.

(o) **Time Extension.** No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(p) **Partial Invalidity.** If any term or provision of this Agreement, or the application of any term or provision to any person or circumstance, is held to be invalid or unenforceable, or is found to be prohibited by law; the remainder of this Agreement and the application of any term or provision to any person or circumstance (other than those provisions or applications which were held invalid, unenforceable, or prohibited) shall not be affected and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(q) **Applicable Law.** The Agreement was made in and is to be performed entirely within the State of California, and its interpretation, its construction and the remedies for its enforcement or breach are to be applied pursuant to, and in accordance with, the laws of the State of California for contracts made and to be performed therein.

(r) **Venue and Alternative Dispute Resolution.** The Parties agree to submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento, California. Nothing in this Agreement shall be construed to prohibit the Parties from engaging in alternative dispute resolution processes prior to initiating legal proceedings, including, without limitation, mediation and arbitration, upon the discretion and mutual consent of the Parties.

(s) **Limitation of Legal Action.** No initiation of legal proceedings shall be filed by a Party unless such action is filed within one hundred and eighty (180) days from the date of discovery by the aggrieved Party of the facts underlying the claim of default, and the date of discovery being that the date that the facts became known or should have become known to the aggrieved Party based on the circumstances of the default.

(t) **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement

between, and the final expression of, Buyer and Seller with respect to the subject matter in this Agreement. No subsequent agreement, representation or promise made by either Party, or by or to an employee, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound by such agreement, representation or promise.

(u) **Construction.** The Parties hereby acknowledge and agree that: (i) each Party is of equal bargaining strength; (ii) each Party has actively participated in the drafting, preparation and negotiation of this Agreement; (iii) each Party has consulted with such Party's own independent counsel and such other professional advisors as such Party has deemed appropriate, relating to any and all matters contemplated under this Agreement; (iv) each Party and such Party's counsel and advisors have reviewed this Agreement; (v) each Party has agreed to enter into this Agreement following such review and the rendering of such advice; and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions of this Agreement, or any amendments to this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Execution Date.

SELLER:

CITY OF SACRAMENTO,
a municipal corporation

By: _____
John F. Shirey, City Manager

Approved as to Form:

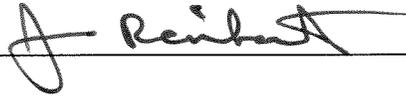
By: _____
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

BUYER:

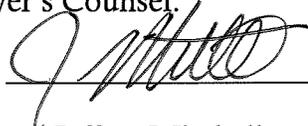
UNIVERSITY ENTERPRISES, INC.,
a California Corporation

By: _____


Name: Jim Reinhart

Title: Executive Director

Buyer's Counsel:

By: _____


Name: Jeffrey Mitchell

Title: Attorney for Buyer

EXHIBIT 1

Legal Description

(based on the League Lease, which description will need to be verified prior to Closing)

The land situated in the County of Sacramento, City of Sacramento, State of California, described as follows:

All that portion of the Northeast one-quarter of Section 15, Township 8 North, Range 5 East, Mount Diablo Base and Meridian described as follows:

Beginning at a concrete monument set in the North line of the lands of the Grantors herein from whence the Northwest corner of said Section 15 bears South 87°38'44" West 3053.94 feet distant; thence from said point of beginning, South 88°50'40" West, along said North line, a distance of 318.10 feet; thence, leaving said North line, South 43°39'23" West 19.73 feet to a point in the East line of that certain 0.421 acre tract of land described as parcel No. 2 in the decree quieting title dated February 2, 1933, recorded in the office of the Recorder of Sacramento County in Book 407 of the Official Records, page 46; thence, South 01°31'27" East, along said East line, a distance of 473.08 feet to the Northwest corner of the lands now or formerly of George W. Taylor as said lands were conveyed by deed recorded in the office of the Recorder of Sacramento County in Book 1315 of Official Records, page 257; thence, Easterly, along the South line of the lands of the Grantors herein, North 88°25'33" East 834.15 feet; thence, leaving said South line North 01°10'50" West 485.40 feet to a point in the North line of the lands of the Grantors herein; thence, along said North line South 88°20'33" West 504.97 feet to the point of beginning and containing 8.891 acres of land, more or less.

Assessor Parcel No. 079-0200-001

A portion of the Northeast $\frac{1}{4}$ of Section 15, Township 8 North, Range 5 East, M.D.B. & M., described as follows:

Beginning at the Northwesterly corner of Parcel 5 conveyed by the Final Order of Condemnation recorded in Volume 69-09-22 at page 368, Official Records of Sacramento County; thence from said point of beginning along the Northerly line of said parcel and the Easterly extension thereof North 89°54'03" East 766.66 feet; thence leaving said line South 72°05'32" West 805.40 feet to a point in the Westerly line of said parcel, which point is 186.80 feet Northerly, measured at right angles from the "B12" line at Engineer's Station "B12"28÷51.95 of the Department of Public Works' Survey on Road 03-Sac-50 Post Mile 2.9/12.8; thence along said Westerly line North 00°03'58" West 246.32 feet to the point of beginning.

Assessor's Parcel No. 079-0200-046

EXHIBIT 2

GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE (this "Assignment") is made and dated as of _____, 201_ (the "Effective Date"), by the City of Sacramento, a municipal corporation, ("Assignor"), in favor of _____, a California _____ ("Assignee").

Recitals

Assignor is the owner of that certain real property located in the County of Sacramento, State of California, more particularly described in Exhibit A, which is attached and incorporated in this Assignment by this reference (together with all improvements thereon, the "Property"). Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____ (the "Purchase Agreement"). Concurrently herewith, Assignor is conveying to Assignee Assignor's interest in the Property pursuant to a grant deed.

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

1. **Assignment.** Assignor hereby grants, assigns, transfers, conveys, and delivers to Assignee and Assignee hereby assumes all of Assignor's right, title, and interest in and to the following described property to the extent it relates solely to the Property (collectively, the "Personal Property"):

(a) **Tangible Personal Property.** The "Tangible Personal Property" means all of the items which may remain on the Property as of the Closing Date. The Tangible Personal Property is in a used condition and Assignor makes no representations or warranties, express, implied, or statutory, as to the condition or state of repair of the Tangible Personal Property, including warranties of fitness or merchantability, it being expressly understood that the Tangible Personal Property is being sold to Assignee in its present "as is, where is" condition and with all faults. All such Tangible Personal Property is being transferred with the Property, and Assignor has no obligation to remove such Tangible Personal Property prior to Closing.

(b) **Contracts.** All contracts listed below and attached hereto and incorporated herein (collectively, the "Contracts"):

None

(c) **Entitlements.** All rights, entitlements and/or approvals to develop the Property which have been granted by governmental entities having jurisdiction or authority over the Property, and any certificates evidencing compliance therewith, including, without limitation, all variances, conditional use permits, special permits, exceptions, rezonings, general plan amendments, parcel maps, tentative maps, development agreements, permits,

licenses, applications, any other governmental approvals and consents (if any) relating to the Property.

2. **General.**

(a) **Successors and Assigns.** This Assignment shall be binding on the parties hereto and shall inure to the benefit of their respective heirs, successors, and assigns.

(b) **Governing Law.** The Assignment was made in and is to be performed entirely within the State of California, and its interpretation, its construction and the remedies for its enforcement or breach are to be applied pursuant to, and in accordance with, the laws of the State of California for contracts made and to be performed therein.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first written above.

ASSIGNEE:

a California

ASSIGNOR:

CITY OF SACRAMENTO,
a municipal corporation

By: _____
Print Name:
Title:

By: _____
John F. Shirey, City Manager

Dated: _____

Dated: _____

APPROVED AS TO FORM:

BY: _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

EXHIBIT 3

ESCROW INSTRUCTIONS

Date:

**Re: Conveyance of that certain real property located at _____ Street in the City and County of Sacramento, State of California (the "Property").
Your Escrow No. _____ (the "Escrow").**

Dear _____:

This letter constitutes the joint escrow instructions of the City of Sacramento, a municipal corporation ("Seller") and _____ a California _____ ("Buyer") to _____ Title Company (alternatively referred to herein as "Escrow Holder" or "Title Company"), with respect to the transfer of that certain real property located in the City and County of Sacramento, State of California, as described in Exhibit A (the "Property") of the Lease-Purchase Agreement (as hereinafter defined), a copy of which is attached.

The Purchase Agreement.

These Escrow Instructions relate to that certain Lease and Purchase and Sale Agreement, dated as of _____, 20__ (the "Purchase Agreement"), by and between the Seller and Buyer. Capitalized terms not defined herein shall have the meaning ascribed to them in the Purchase Agreement. The transfer of the Property is to be consummated through the Escrow.

I. The Transaction.

Fee simple, free and clear title to the Property shall be conveyed directly to Buyer from Seller by Grant Deed (the "Grant Deed").

In consideration of the obligations and covenants of Buyer set forth in the Purchase Agreement, Buyer shall pay to Seller at Closing the remaining amount of the Purchase Price owed as of DATE, which amount is _____ (\$_____) (the "Purchase Price Balance"). The Purchase Price Balance amount is based on (i) crediting Buyer for all of Purchase Price principal payments paid to Seller through the Closing Date plus the amount of the Deposit, and (ii) charging Buyer for the remaining Purchase Price principal owed, plus interest on that amount for the period from January 1, 20__ to the Closing Date, all in accordance with terms of the Purchase Agreement.

II. Instructions.

A. Documents to Be Received in Escrow: Prior to and as a condition of Closing, you shall confirm receipt of the following documents, which may be executed in counterparts:

1. One (1) original Grant Deed in favor of Buyer (executed and acknowledged by Seller);
2. One (1) original General Assignment and Bill of Sale (executed by Buyer and Seller) (the "General Assignment");
3. One (1) Form 1099-S, executed by Buyer (the "1099");
4. Such additional documents as may be required by you to establish to your satisfaction the authority of Buyer, Seller, and any persons signing documents on their behalf to complete this transaction.

B. Funds to Be Received in Escrow: Prior to and as a condition of Closing, you shall confirm receipt from Seller of the Deposit previously paid by Buyer and the total amount of the Purchase Price Balance (the "Funds").

III. Conditions to Closing.

Escrow Holder is authorized and instructed to close the Escrow (the "Closing") and complete the transactions described herein when and only when all of the following conditions have been satisfied:

A. You have received written confirmation from Seller and Buyer that they have reviewed and approved a final closing statement prepared by you and approved by Seller and Buyer (the "Final Statement");

B. Escrow Holder has returned to _____, on behalf of Buyer and the undersigned, on behalf of Seller, a facsimile copy of this letter duly executed on behalf of Escrow Holder in the space provided below, with an original to follow by mail at the address listed above;

C. Escrow Holder has received all of the above described documents, instruments and Funds, and shall have confirmed that all such documents are fully executed, in recordable form (if such documents are to be recorded) and that all exhibits have been attached thereto, including, without limitation, the legal descriptions;

D. The Title Company is irrevocably committed and prepared to issue, and immediately upon Closing does issue, to Buyer as the insured, an ALTA Owner's Policy, with coverage in the amount of _____ (\$_____), insuring free and clear fee simple title to the Property is vested in Buyer (the "Owner's Policy"); and

E. Escrow Holder is in a position to comply with all instructions provided in connection with this Escrow and you are ready, willing and able to close the Escrow in accordance with such instructions and you receive oral or written confirmation from _____, on behalf of Seller and _____, on behalf of Buyer, authorizing you to close this transaction.

IV. Close of Escrow.

Escrow Holder is authorized to close the Escrow on the Closing Date (as defined in Section V below). On the Closing Date, Escrow Holder is to accomplish the following tasks, in the following order:

A. Verify that all documents are in recordable form and have all exhibits attached;

B. Attach the legal description to the documents as applicable;

C. Compile originals of any document delivered to you in counterparts, and verify that such documents are all fully executed and acknowledged where necessary for recording;

D. Insert the Closing Date into the various documents that have a blank space for the date;

E. Record the documents referenced below in the Official Records of Sacramento County in the following order:

1. Grant Deed from City to Buyer.

F. Wire to the account of Seller pursuant to separate wiring instructions the Purchase Price Balance less recording charges and costs, title exam fees, if any, escrow and other closing charges, and costs, in such amount as provided in the Purchase Agreement and set forth on the Final Statement;

G. Issue the ALTA Owner's Policy;

H. Issue the Final Statement, certified by Escrow Holder; and

I. Within three (3) days of the Closing Date, Escrow Holder is to:

1. Deliver a copy of the Grant Deed, General Assignment, and any other documents where originals are not available to: The City of Sacramento, Real Estate Services, 915 I Street, 2nd Floor, Sacramento CA 95814, on behalf of Seller; and

2. Deliver the original of the Grant Deed and Owner's Policy and any other documents where originals are not available to:

_____ on behalf of Buyer.

V. Closing Costs.

The Purchase Price, escrow fees, title insurance premiums and other closing costs and charges shall be allocated in accordance with the Purchase Agreement and set forth on the Final Statement.

VI. Time for Close of Escrow.

Escrow Holder is to close the Escrow on the "Closing Date" which shall be the earliest date on which Escrow Holder is able to comply with all of the conditions and requirements of the escrow instructions for the parties, but in any event on or before 5:00 p.m. Pacific Time on _____ 20__. In the event that the Escrow is not consummated on or before _____, 20__, you are directed to request further instructions from _____, on behalf of Seller, and _____ or the undersigned, on behalf of Buyer, prior to closing the Escrow or terminating the Escrow.

VII. Permitted Title Insurance Exceptions.

Buyer hereby agrees to permit the following exceptions to the ALTA owner's title insurance as listed in the Preliminary Title Report dated _____ 20__):

Items

Please sign and return to the undersigned a copy of this letter of instructions, which signature shall serve to acknowledge your receipt and acceptance of these instructions. These instructions must be fully executed without deviation except to the extent that the instructions are amended by the undersigned. Thank you for your assistance with this matter.

Very truly yours,

Buyer

On behalf of Seller, the undersigned hereby joins in the foregoing escrow instructions.

The City of Sacramento,
a municipal corporation

John F. Shirey
City Manager

Attachment: Lease and Purchase and Sale Agreement

ACCEPTANCE BY ESCROW HOLDER

On behalf of _____ Title Company, a _____ corporation, hereby acknowledges that it has received a fully executed copy of the foregoing Escrow Instructions and the Lease and Purchase and Sale Agreement by and between the City of Sacramento, as Seller, and _____ as Buyer, and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder. Escrow Holder shall execute two (2) originals of this Acceptance by Escrow Holder and deliver one (1) original to Seller and Buyer promptly following the opening of Escrow.

Dated: _____, 20__

_____ Title Company,
a _____ corporation

By: _____

Name: _____

Title: _____

EXHIBIT 4

CITY TO BUYER GRANT DEED FORM

**RECORDING REQUESTED BY
AND FOR THE BENEFIT OF THE
CITY OF SACRAMENTO**

**NO FEE DOCUMENT
Government Code Section 6103**

**Grantor is a government agency and is exempt
from the payment of Transfer Tax pursuant to
Revenue and Taxation Code Section 11922**

WHEN RECORDED MAIL TO:

(Space Above for Recorder's Use)

MAIL TAX STATEMENTS TO:

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF SACRAMENTO, a municipal corporation, ("**Grantor**"), hereby grants to _____, a California _____, ("**Grantee**"), all right, title, and interest in and to that certain real property situated in the City of Sacramento, County Sacramento, State of California, as described in Exhibit A, which is attached and incorporated in this Grant Deed by this reference.

Grantor has caused this Grant Deed to be duly executed on _____,
201_.

GRANTOR:

CITY OF SACRAMENTO, a municipal
corporation

By: _____
John F. Shirey, City Manager

[Notary Acknowledgment Required]

Exhibit A
Legal Description

The land situated in the County of Sacramento, City of Sacramento, State of California, described as follows:

APN:

EXHIBIT 5
REPLACEMENT COST ESTIMATE
(as of 2014)

ESTIMATE OF PROBABLE CONSTRUCTION COST

City of Sacramento Department of Parks and Recreation

Park Planning and Design Services Division

Project Name: **Army Depot (Phase 1, Two Full Size Baseball Fields)**

Estimate Level: **Conceptual**

Estimate Date: **5/9/14**

Estimate By: **J. Nittka**

Demolition of Existing Field and Installation of two new 325' fields

Item #	Item Description	Quantity	Unit	Unit Cost	Line Item Cost	Subtotal
1	Temporary Construction Fence to Install	2,300	LF	\$2.00	\$4,600	
3	Demolition Two Story Announcer Building	1	LS	\$12,000.00	\$12,000	
4	Demolition shade shelter	1	LS	\$2,500.00	\$2,500	
5	Clearing and Grubbing	415,550	SF	\$0.12	\$49,866	
6	Paving Demolition	36,000	SF	\$2.00	\$72,000	
7	Fencing Fabric to remove and dispose	900	LF	\$15.00	\$13,500	
8	Backstop Demolition	1	LS	\$11,000.00	\$11,000	
9	Trees to be removed and disposed	4	EA	\$1,200.00	\$4,800	
10	Site Staking	415,550	SF	\$0.05	\$20,778	
11	Erosion and Sediment Control	415,550	SF	\$0.07	\$29,089	
12	Site Grading	415,550	SF	\$0.20	\$83,110	
13	12" Storm Drain Line (over sized for future phase tie in)	2,100	LF	\$50.00	\$105,000	
14	Cleanouts	10	EA	\$1,100.00	\$11,000	
15	Drain Inlets	12	EA	\$1,500.00	\$18,000	
16	Storm Drain tie in in the street	1	LS	\$5,000.00	\$5,000	
17	2" Domestic Water line	800	LF	\$22.00	\$17,600	
18	1" Domestic Water line	400	LF	\$17.00	\$6,800	
19	6" Fire Hydrant Lateral	460	LF	\$40.00	\$18,400	
20	Fire Hydrant Assembly	3	EA	\$3,500.00	\$10,500	
21	6" Backflow Preventer with Fees	1	LS	\$140,000.00	\$140,000	
22	2" Backflow Preventer with Fees	1	LS	\$19,000.00	\$19,000	
23	Drinking Fountain	2	EA	\$5,000.00	\$10,000	
24	Restroom (4 Stalls) with Concession	1	LS	\$350,000.00	\$350,000	
25	Picnic Shelter	1	LS	\$85,000.00	\$85,000	
26	Picnic Tables	10	EA	\$1,450.00	\$14,500	

27	Park Rules and ADA signs	3	EA	\$225.00	\$675
28	Concrete Monument Park Sign	1	LS	\$5,000.00	\$5,000
29	Electrical Transformer/ new service	1	EA	\$20,000.00	\$20,000
30	Security Lighting	10	EA	\$5,000.00	\$50,000
31	Reuse Parking Lot Lighting	6	EA	\$3,500.00	\$21,000
32	Electrical wiring & conduit	4,500	LF	\$18.00	\$81,000
33	Electrical Pull Box with Security Upgrades	20	SF	\$1,200.00	\$24,000
34	Reused Baseball Field Lighting	2	EA	\$125,000.00	\$250,000
35	Aggregate Base	1,740	CY	\$30.00	\$52,200
36	Concrete paving	20,000	SF	\$8.50	\$170,000
37	Infield Fines	62,000	SF	\$2.00	\$124,000
38	Unfired bricks at pitchers mound and home plate	2	EA	\$1,250.00	\$2,500
39	Bases, Pitching Rubber and Home Plate	2	EA	\$2,100.00	\$4,200
40	Asphalt Paving for 60 Space Parking Lot	24,000	SF	\$3.25	\$78,000
41	Parking Lot Striping	1	LS	\$7,500.00	\$7,500
42	Truncated Domes	6	EA	\$120.00	\$720
43	Vertical Curb #3	1,200	LF	\$30.00	\$36,000
44	18" Concrete Curbing under fencing	2,400	LF	\$20.00	\$48,000
45	Batting Cages	1	LS	\$12,000.00	\$12,000
46	New 4' Chain Link Fencing	1,200	LF	\$28.00	\$33,600
47	New 10' Wing Fencing	400	LF	\$55.00	\$22,000
48	Baseball Backstop	2	EA	\$52,000.00	\$104,000
49	4' Fencing with reused fence fabric	2,400	LF	\$19.00	\$45,600
50	Foul Ball Poles to Install (reused)	2	LS	\$1,200.00	\$2,400
51	Reused Score Board	2	LS	\$15,000.00	\$30,000
52	Poly-Cap Protective Guard to Install	2,400	LF	\$8.00	\$19,200
53	Relocation of Bleachers	2	EA	\$2,200.00	\$4,400
54	Players Benches	8	EA	\$1,250.00	\$10,000
55	Dugout Shade Structures	4	EA	\$16,000.00	\$64,000
56	Bat Racks	4	EA	\$900.00	\$3,600
57	Trash Receptacles	8	EA	\$900.00	\$7,200
58	Score Keeper Table and Bench	2	EA	\$1,250.00	\$2,500
59	Relocate & Install Storage Container	4	EA	\$800.00	\$3,200
60	Automatic Parking Lot Gates	1	EA	\$75,000.00	\$75,000
61	Automatic Irrigation	291,330	SF	\$1.25	\$364,163
62	Booster Pump	1	LS	\$22,000.00	\$22,000

63	Irrigation Controller	1	LS	\$28,000.00	\$28,000
64	Turf, Hydroseeding	203,760	SF	\$0.50	\$101,880
65	Shrub Planting	87,570	SF	\$1.30	\$113,841
66	Landscape Weed Fabric	87,570	SF	\$0.25	\$21,893
67	Bark Mulch	1,080	CY	\$45.00	\$48,600
68	Plant Establishment Period	291,330	SF	\$0.08	\$23,306
Construction Subtotal					\$3,251,219
Design & Construction Contingency (20% Construction Cost)					\$650,244
Engineering, Fees, Inspection, Etc.					\$812,805
Renovation of Existing Baseball Field Total Cost					\$4,714,268

ESTIMATE OF PROBABLE CONSTRUCTION COST

City of Sacramento Department of Parks and Recreation

Park Planning and Design Services Division

Project Name: Army Depot Okinawa Street Frontage Improvements

Estimate Level: Conceptual

Estimate Date: 5/9/14

Estimate By: J. Nittka

Frontage Improvements only along phase 1 park improvements (930 LF)

Item #	Item Description	Quantity	Unit	Unit Cost	Line Item Cost	Subtotal
1	Clearing and Grubbing	1	LS	\$5,000.00	\$5,000.00	
3	Curb and Gutter Type 2*	930	LF	\$35.00	\$32,550.00	
4	Sidewalk*	5,600	SF	\$15.00	\$84,000.00	
5	Curb Ramp with Domes	2	EA	\$3,500.00	\$7,000.00	
6	Driveway & Median Modification	1	EA	\$10,000.00	\$10,000.00	
7	12" Storm Drain Line	930	LF	\$60.00	\$55,800.00	
8	Drain Inlets	5	EA	\$3,500.00	\$17,500.00	
9	Manhole	2	EA	\$5,000.00	\$10,000.00	
10	Signing and Striping	1	LS	\$6,500.00	\$6,500.00	
11	Street Lighting	10	EA	\$10,000.00	\$100,000.00	
Construction Subtotal						\$328,350

Design & Construction Contingency (20% Construction Cost) \$65,670

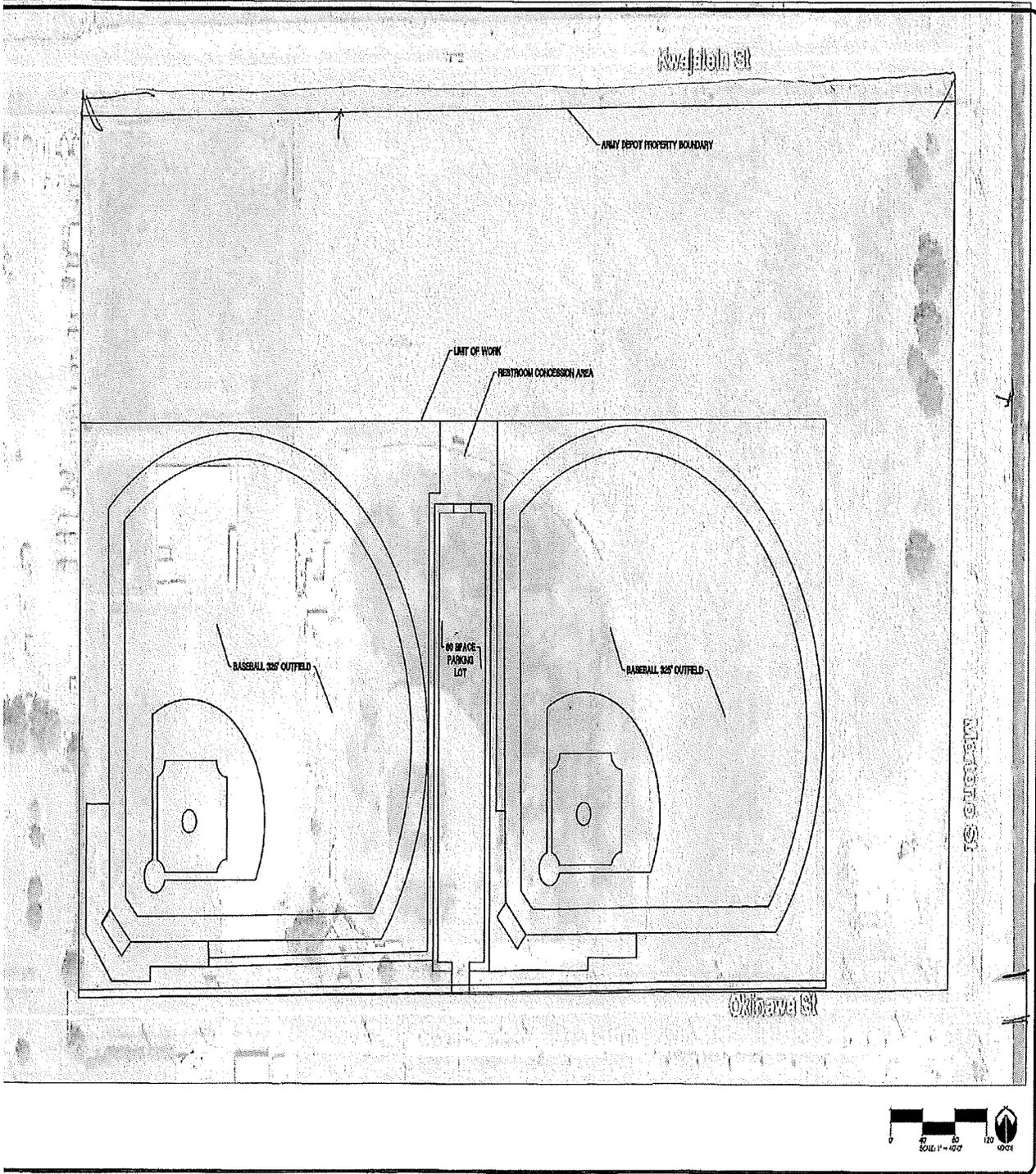
Construction Total Cost \$394,020

Engineering, Fees and Inspection, Etc. \$98,505

Total Estimated Project Cost \$492,525

*Includes excavation, grading and 6" AB

EXHIBIT 6 DEPICTION OF ARMY DEPOT EAST PARK



CITY OF SACRAMENTO
 DEPARTMENT OF PARKS & RECREATION
 PARK PLANNING DESIGN SECTION
 LANDSCAPE ARCHITECTURE SECTION
 916 I STREET, FLOOR 3, SACRAMENTO, CA 95814

ARMY DEPOT
 PHASE 1 BASEBALL FIELD PROJECT
 PRELIMINARY PLAN FOR ESTIMATING PURPOSES ONLY

LANDSCAPE ARCHITECT
 CIVIL ENGINEER
 REGISTERED PROFESSIONAL
 LANDSCAPE ARCHITECT
 CIVIL ENGINEER
 DATE: 05/14/2014
 SCALE: 1/8"=1'-0"
 PROJECT NO.: 14-00000000

SHEET 10

**EXHIBIT 7
RIGHT OF ENTRY FORM**

**RIGHT OF ENTRY AGREEMENT
FOR MCAULIFFE FIELD COMPLEX PROPERTY**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement"), is made and entered into as of _____, 201__, by and between the City of Sacramento a municipal corporation, and _____, a _____, ("CONTRACTOR").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to allow CONTRACTOR to enter upon CITY's real property located at _____ Assessor's Parcel Number _____, (the "Premises) for the following Permitted Activities:

2. DEFINITION OF CONTRACTOR

For purposes of this Agreement, all references to CONTRACTOR shall include CONTRACTOR's officers, employees, agents, contractors, subcontractors, officers, invitees, volunteers, and others acting under its or their authority.

3. NO INTERFERENCE

No work performed by CONTRACTOR shall cause any interference with the constant, continuous and uninterrupted use of the Premises by CITY, its officers, agents, contractors, lessees, licensees, and invitees. Nothing shall be done or suffered to be done by CONTRACTOR at any time which would cause damage to or destruction of the facilities, equipment, or other property or appurtenances of CITY, and its lessees or licensees. CONTRACTOR agrees to reimburse CITY for any such damage or destruction, or upon mutual agreement, to replace or restore said facilities, equipment, or other property to CITY's satisfaction.

4. ALL EXPENSES TO BE BORNE BY CONTRACTOR

CONTRACTOR shall bear any and all costs and expenses associated with any work performed by CONTRACTOR on the Premises, or any costs or expenses incurred by CITY relating to this Agreement.

5. TERM; TERMINATION

- A. The grant of rights herein made to CONTRACTOR shall commence on _____, 201__ and shall terminate on _____, 201__, unless sooner terminated as herein provided, or at such a time when CONTRACTOR has completed its use of the Premises, whichever is earlier. CONTRACTOR agrees to notify the CITY Representative in writing when it has completed its use of the Premises if earlier than the termination date.
- B. This Agreement may be terminated by either party for cause with ten (10) days written notice to the other party.

6. RESTORATION

Except for the Permitted Activities listed in Section 1, CONTRACTOR agrees to restore any portion of the Premises that may be damaged from the use of the Premises by CONTRACTOR to as close to the condition it was in prior to CONTRACTOR's entry onto the Premises as reasonably possible.

7. INSURANCE

During the entire term of this Agreement, and until final completion of the Permitted Activities, CONTRACTOR shall maintain in full force and effect at its own cost and expense the following insurance coverage. It is understood and agreed by CONTRACTOR that its liability to CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Workers' Compensation Insurance within statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts.
 - i. Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars

(\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of CONTRACTOR. No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services by CONTRACTOR on the Premise under this Agreement.” _____
(CONTRACTOR’s initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: CITY and its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects to general liability related to, or arising from, this Agreement.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR’s insurance coverage shall be primary insurance as respects CITY and its officials, employees, agents and volunteers. Any insurance or self-insurance maintained by CITY or its officials, employees, agents or volunteers, shall be in excess of CONTRACTOR’s insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY or its officials, employees, agents or volunteers.
- (3) Coverage shall state that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests’ rating of not less than

A.V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 8 must be declared to and approved by CITY's Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

CONTRACTOR shall provide initial insurance documents to CITY prior to execution this Agreement. Failure to keep such insurance certificates and endorsements current will be considered a material breach by CONTRACTOR of this Agreement. CITY may cancel this Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall request and verify that its contractors, and all subcontractors, maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

8. PERMITS

Prior to beginning any work, CONTRACTOR, at its sole expense, shall obtain all necessary permits to perform the work contemplated by this Agreement.

9. MECHANICS' LIENS

CONTRACTOR shall pay in full all persons who perform labor or provide materials for any work to be performed by CONTRACTOR on the Premises. CONTRACTOR shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against any property of CITY for such work performed. CONTRACTOR shall indemnify and hold harmless the CITY from and against any and all liens, claims, demands, costs or expenses of any nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

10. COMPLIANCE WITH LAWS

In the use of the Premises covered by this Agreement, CONTRACTOR shall comply with all applicable federal, state, and local laws, regulations, and enactments affecting the work. CONTRACTOR shall use only such equipment as is consistent with safety, both as concerns CONTRACTOR, and its employees, the officers, agents, employees, and property of CITY and the public in general. CONTRACTOR (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. If any failure by CONTRACTOR to comply with any such laws, regulations, and enactments shall result in any fine, penalty, cost or charge being assessed, imposed or charged against CITY, CONTRACTOR shall reimburse and indemnify CITY for any such fine, penalty, cost or charge, including without limitation, attorney's fees, court costs and expenses.

11. WAIVER OF BREACH

The waiver by CITY of the breach of any condition, covenant, or agreement herein contained to be kept, observed, and performed by CONTRACTOR shall in no way impair the right of the CITY to avail itself of subsequent breach thereof.

12. ASSIGNMENT – SUBCONTRACTING

CONTRACTOR shall not assign this Agreement, or any interest therein, without the written consent of CITY and any attempt to so assign shall be void. CONTRACTOR is permitted to subcontract all or any portion of the work herein described, but CONTRACTOR shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement. This Agreement shall bind the successors of either party in the same manner as if they were expressly named.

13. HOLD HARMLESS

CONTRACTOR shall release and hold CITY harmless for loss of or damage to property and equipment of CONTRACTOR and its officers, employees, agents, contractors, subcontractors, invitees, volunteers, and others acting under its or their authority while such property or equipment is in or on the Premises, except where such loss of or damage to property and equipment results from the negligence or willful misconduct of CITY and its officials, employees, agents or volunteers. CONTRACTOR and its officers, employees, agents, contractors, subcontractors, invitees, volunteers, and others acting under its or their authority have inspected the Premises or will inspect the Premises prior to commencement of any work under this Agreement and represent to CITY that: (a) they accept the Premises in its present condition; (b) they will make the Premises safe for any activity under their care and control on the Premises, whether or not Permitted Activities; and (c) CITY is not and shall not be obligated to make Premises safe or suitable for use by CONTRACTOR or for anyone on the Premises at the invitation or sufferance of CONTRACTOR, or otherwise to prepare the Premises or access to the Premises in any manner whatsoever. CITY does not assume, by this Agreement or otherwise, any responsibility for, or to protect against, any loss, damage, theft or vandalism of any property or material which CONTRACTOR or its officers, employees, agents, contractors, subcontractors, invitees, volunteers, and others acting under its or their authority may place upon the Premises.

14. INDEMNITY

To the fullest extent allowed by law, CONTRACTOR shall defend, indemnify and hold harmless CITY and its officials, employees, agents, and volunteers from and against any and all claims, actions, penalties, losses, liabilities, damages, or expenses of any nature, including payment of attorney's fees, whether for personal injury, property damage, economic losses or violation of any law or regulation, arising out of or in any way directly or indirectly related to or resulting from the use of the Premises or any action or activity of CONTRACTOR under this Agreement, except to the extent attributable to the negligence or willful misconduct of CITY and its officials, employees, agents or volunteers.

15. REPRESENTATIVE CONTACT INFORMATION

Any and all notices or demands by or from either party shall be in writing, and shall be served either personally or by mail. If served personally, service shall be conclusively

deemed made at the time of service. If served by mail, service of notices or demands shall be conclusively deemed made as of the time of deposit in the United States mail, postage paid. Such notices shall be provided to CITY and CONTRACTOR Representatives as follows:

For CITY:

City of Sacramento
Attn: _____
Park and Recreation Development
915 I Street, 3rd Floor
Sacramento, CA 95814
Phone: 916-808-_____
email: _____@cityofsacramento.org

For CONTRACTOR:

16. NUISANCE

CONTRACTOR shall at all times conduct its use of the Premises in such a manner that it shall not constitute a public or private nuisance.

17. ACCESS TO BE MAINTAINED

CONTRACTOR agrees that access to the Premises and the surrounding area will be preserved for fire equipment at all times.

18. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement may be instituted and maintained in state or federal courts located in the State of California only, and the venue for any such litigation shall be in Sacramento County. The parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

19. ATTORNEY'S FEES AND COSTS

Any party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party's reasonable costs and expenses, including attorney's fees.

20. TRESPASS.

If CONTRACTOR or anyone under its control or direction remains on the Premises after the termination or cancellation of this Agreement or acts in excess of the rights given under this Agreement, CONTRACTOR and anyone on the Premises at CONTRACTOR's invitation or sufferance shall be deemed a trespasser and shall be liable to CITY for damages as a trespasser.

21. COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts; each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

22. ENTIRE AGREEMENT – MODIFICATION

This Agreement and the exhibits attached hereto constitute the entire agreement between the parties concerning the subject matter thereof. No alteration, modification, or variation of the terms of this Agreement shall be valid unless made in writing and executed by both parties.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement on the date hereinabove first written:

CITY

CONTRACTOR

By: _____

By: _____

Director, Parks and Recreation Department

Name:
Title:

Approved as to form:

By: _____

Senior Deputy City Attorney

Attest:

By: _____

Assistant City Clerk

**EXHIBIT 8
PROPERTY LEASE**

LEASE AGREEMENT

3012 STATE UNIVERSITY DRIVE

THIS LEASE AGREEMENT ("Lease") is executed at Sacramento, California, on _____, 2015 (the "Execution Date") between the CITY OF SACRAMENTO, a municipal corporation ("Landlord" or "City"), and UNIVERSITY ENTERPRISES, INC., a California corporation, ("Lessee"), which are individually referred to as "Party" and collectively as "Parties." In consideration of the mutual benefits to be derived from this Lease and the representations, warranties, covenants and conditions set forth in this Lease and in the Lease-Purchase Agreement between the Parties dated _____, 2015, which is incorporated into this Lease by this reference, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. DESCRIPTION OF PREMISES. Landlord leases to Lessee, and Lessee leases from Landlord, on the terms and conditions set forth below, the "Premises" situated in the City of Sacramento, County of Sacramento, State of California, described as being a ±11-acre parcel of land located at 3012 State University Drive (APN No. 079-0200-001 and 046) as shown on the diagram attached as Exhibit "A" and as described in the legal description attached as Exhibit "B." Lessee has inspected the Premises and accepts the Premises in its "as is" condition as of the Lease Commencement Date.

2. TERM. This Lease shall be effective as of January 1, 2016, which date shall be known as the "Lease Commencement Date." The length of this Lease (the "Term") shall be as follows:

- (a) The "Initial Term" of this Lease shall be for ten (10) years, commencing on the Lease Commencement Date and terminating at 5:00 p.m. on December 31, 2026, unless sooner terminated when Lessee becomes the owner of the property constituting the Premises.
- (b) Lessee is granted an option to extend the Term of the Lease for a five (5) year period (the "Extension Term") following expiration of the Initial Term, by giving written notice to Landlord no later than December 31, 2025.
- (c) If Landlord determines that Lessee has been in full compliance with the terms and conditions of this Lease during the Initial Term, then Landlord shall approve Lessee's request no later than one hundred and eighty days (180) days before the expiration of the Initial Term. If Landlord approves Lessee's request, the Term of the Lease shall continue through the end of the Extension Term. If Lessee has been in default of its obligations under this Lease or has violated any other provision of this Lease during the Initial Term, as set forth in one or more written

notices issued by Landlord, even if such defaults were waived by Landlord or later remedied by Lessee; Landlord, in its sole discretion, may deny the Extension Term request or may grant a shorter Extension Term period. The Lease Term shall expire as of the date set forth in Landlord's written notice to approve, deny, or conditionally approve the Extension Term request.

3. **OCCUPANCY AND SUBLEASE.** By signing this Lease, Lessee accepts the Premises as being in good and sanitary order, condition and repair, and in the size and condition represented by Landlord. Lessee will take possession of the Premises as of the Lease Commencement Date and shall become liable for the protection and maintenance of the Premises as of that date. However, Lessee is not required to occupy the Premises and may sublease the Premises as provided for in this Lease and in accordance with the provisions of the Lease-Purchase Agreement.

4. **RENT AND DEPOSIT.** The following provisions specify Lessee's obligation to make payments to Landlord during the Lease Term:

- (a) No rent shall be owed as long as Lessee has subleased the Premises to the East Sacramento Babe Ruth League and/or the Sacramento Men's Senior Baseball League (the "Sublessees") at a sublease rate of not more than One Hundred and Fifty Dollars (\$150.00) in accordance with the terms of the Lease-Purchase Agreement between the Parties.
- (b) No security deposit shall be owed in consideration of Lessee's payment to Landlord of the Deposit under the terms of the Lease-Purchase Agreement.

5. **UTILITIES AND SERVICES.** Lessee shall arrange for and pay SMUD for electrical services and PG&E for gas services, and shall arrange for all other utilities and services required for operation of the Premises, including, without limitation, trash removal by a commercial waste hauler, janitorial services, pest control, security services, and telephone services. Lessee may assign this requirement to its Sublessees.

6. **TAXES.** Lessee shall require its Sublessees to pay to the County of Sacramento all personal property taxes which may be levied against the personal property of Sublessee, and payment of possessory interest tax pursuant to Section 107.6 of the California Revenue and Taxation Code, as required by the County Assessor's Office, if any.

7. **USE.** The Premises are leased to the Lessee for the purpose of operation of the Dan McAuliffe Memorial Ballparks. Lessee shall not use, or allow the use, of the Premises for any other purpose without Landlord's prior written consent.

8. **INSURANCE HAZARDS.** Lessee and its Sublessee shall not use or store any equipment or materials which could create a fire hazard, which use or storage would be prohibited under standard fire insurance policies. Lessee shall, at its sole cost and expense, comply with any and all requirements under the All Risks insurance policy required to be maintained under this Lease.

9. **ALTERATIONS OF PREMISES.** With the exception of the removal of the existing improvements as set forth in the Lease-Purchase Agreement, Lessee and its Sublessee shall not make any alterations of, or improvements to, the Premises without the prior written consent of Landlord.

10. **OWNERSHIP OF TENANT IMPROVEMENTS.** All alterations, improvements, additions, or fixtures which are permanently affixed to realty, which may be made or installed on the Premises by Lessee and/or its Sublessee shall be the property of the Lessee under the terms of the Lease-Purchase Agreement.

11. **SURRENDER OF PREMISES AT END OF TERM.** In the event that Lessee does not purchase the Premises from Landlord under the terms of the Lease-Purchase Agreement, Lessee agrees on the last day of the Term, or sooner termination of this Lease, to surrender the Premises to Landlord in "broom clean" condition, reasonable use and wear excepted.

12. **HOLDOVER.** If Lessee shall for any reason holdover beyond the Term with Landlord's consent, express or implied, such holding over shall not be a renewal of this Lease but shall be a month-to-month tenancy subject to the terms and conditions of this Lease or subject to such other terms as Landlord may specify. Upon the expiration of the Term of the Lease, to the extent authorized under California law, Landlord may, without formal demand or notice of any kind, reenter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law, or by force or otherwise to remove Lessee, Sublessee, and any other person or subtenant therefrom without being liable for any damages from such action.

13. **WASTE/NUISANCE.** Lessee shall, at its sole cost or under its sublease with Sublessee, keep and maintain the Premises in a safe, clean, sanitary, orderly and attractive condition. Lessee shall not commit, or suffer to be committed, any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of the adjacent properties by their respective owners.

14. **NONDISCRIMINATION.** Lessee agrees that in operation of the Premises by Lessee or Sublessee, no discrimination, distinction, or restriction shall be made on account of the sex, color, race, religion, disability, ancestry, sexual orientation, medical condition, marital status, or national origin of a person or group contrary to the provisions of Section 51 of the Civil Code of the State of California, which is incorporated in this Lease by this reference, or any other applicable federal, state, or local law prohibiting discrimination.

15. **MAINTENANCE OF THE PREMISES.** Lessee or its Sublessee shall maintain the Premises, in the same order and condition as when received, except for wear and tear in the usual and ordinary operation of Lessee's business, until the improvements on the Premises are to be removed under the terms of the Lease-Purchase Agreement. Landlord shall have no maintenance responsibilities for the Premises.

16. COMPLIANCE WITH LAWS. Lessee shall, at its sole cost and expense, comply with all of the requirements of all local, state and federal laws and regulations currently in effect and as such requirements may change in the future which pertain to Lessee's and its Sublessee's use and occupancy of the Premises. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Landlord is a party thereto or not, that Lessee has violated any federal, state or local statute, ordinance or regulation in its use or operation of the Premises shall be conclusive of the fact as between Landlord and Lessee.

Lessee represents, warrants, and covenants that Lessee will remain in compliance with all applicable local, state and federal laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment (collectively the "Environmental Laws"), and that Lessee will not permit to occur any release, generation, storage, disposal or treatment of any hazardous material as that term is defined in any of the Environmental Laws. Lessee shall immediately notify Landlord of any release, generation, storage, disposal or treatment in violation of the Environmental Laws and Lessee shall take such necessary remediation measures at Lessee's sole cost and expense to the complete satisfaction of Landlord. Lessee shall immediately notify Landlord of any complaints, citations, inquires or notices from any governmental entity relating to compliance with Environmental Laws. Lessee represents, warrants and covenants that it has or will obtain all governmental permits relating to its use and operation of the Premises as required by applicable Environmental Laws, and that such permits will remain in effect and Lessee will comply with all of the permit requirements during the Term.

17. INDEMNITY. This Lease is made upon the express condition that Lessee shall defend, indemnify and hold harmless Landlord and its officers, employees and agents from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the Landlord's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities arise out of or are in any way connected with Lessee's and its employees, agents, invitees, and contractors and sublessee's use and occupancy of the Premises and performance of its rights and obligations under this Lease, whether or not such Liabilities are caused in part by Landlord or its officers, employees or agents; provided, however, that the foregoing indemnity does not apply to the extent Liabilities arise from the negligence or willful misconduct of Landlord and its officers, employees or agents. This indemnity provision shall survive the termination or expiration of this Lease.

18. INSURANCE REQUIREMENTS. During the Term of this Lease, Lessee shall either purchase, at its sole cost and expense, and maintain in full force the following insurance coverages, which may be provided under a self-insurance program, or require its Sublessee to provide such coverages on its behalf:

- (a) General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 covering liability arising from premises, operations, independent contractors, personal injury, products completed, operations and liability assumed under any insured contract.
- (i) The amount of the policy shall not be less than One Million Dollars (\$1,000,000), Single Limit Per Occurrence, issued by an admitted insurer, or insurers, as defined by the California Insurance Code.
 - (ii) The policy shall include coverage for premises, operations, products and completed operations and contractual liability and liquor liability for the term of the policy. Liquor liability insurance shall not be required if Lessee completes the following certification:

“I certify that alcohol will not be served on the Premises under this Lease.” _____ (Lessee initials)
 - (iii) The policy shall also include a fire legal liability limit of \$250,000 per occurrence.
 - (iv) The policy shall provide that the City of Sacramento, its officers, employees, and agents are to be named as "additional insureds."
 - (v) The policy shall stipulate that this insurance will operate as primary insurance and that no other insurance held by Landlord or other named insured will be called on to contribute to a loss covered thereunder.
 - (vi) The policy shall be placed with an insurer with a Bests' rating of not less than A.V.
 - (vii) Landlord shall be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.
- (b) Worker's Compensation and Employer's Liability Insurance for all employees of Lessee shall be maintained in strict compliance with State laws, and include a waiver of subrogation in favor of Landlord. The Employer's Liability Insurance limit shall be not less than One Million Dollars (\$1,000,000).
- (c) For all of the improvements and personal property at the Premises, a policy of standard fire and all risk extended coverage for damages from special perils, including fire, flood, acts of nature, vandalism and malicious endorsements, shall be maintained in the amount of one hundred percent (100%) of the full replacement value. The proceeds from this policy shall be used by Lessee for the replacement of the personal property and restoration of the Premises.

- (d) Lessee and its Sublessee shall agree to waive all rights against Landlord and its officers, employees and agents for recovery of damages to the extent Lessee's and Sublessee's damages are covered by the insurance required under this Section, except to the extent those damages result from the negligence or willful misconduct of Landlord or its officers, employees and agents. Neither Landlord nor its officers, directors, employees, or agents shall be liable to Lessee, Sublessee, or to any insurance company (by way of subrogation or otherwise) insuring Lessee or Sublessee for any loss or damage to any building, structure or other tangible item, when such loss is caused by any of the perils that are or could be insured against under a standard policy of full Replacement Cost insurance for fire, theft and all risk coverage, or losses under workers' compensation laws and benefits (including, without limitation, consequential damages, business interruption or loss of profits in connection therewith); even though such loss or damage might have been occasioned by the negligence, gross negligence or willful misconduct of Landlord, its officers, directors, employees, or agents. Lessee and its Sublessee shall notify its respective insurance carriers of this provision and shall obtain all necessary endorsements to the insurance policies of Lessee and Sublessee to give effect to this waiver of subrogation.
- (e) Lessee shall furnish Landlord with certificate(s) of insurance and with original endorsements effecting coverage required by this Section prior to the Lease Commencement Date. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Lessee shall furnish Landlord with insurance certificates annually to verify continued coverage during the Term. The certificates and endorsements are to be forwarded to:

EBIX
PO Box 257
Portland, MI, 48875-0257
Phone: (800) 763- 9687
Fax: (770) 325-3340
Email: CertsOnly-Portland@ebix.com

- (f) Failure of Lessee and its Sublessee to maintain the required insurance coverages will be considered a material breach of this Lease. It is understood and agreed that approval of the insurance certificates and policies by Landlord shall in no way affect the terms and conditions of the indemnity provision in Section 17 of this Lease, which shall remain in full force and effect. By specifying the minimum insurance coverages in this Section, Landlord does not represent that the coverage and limits will necessarily be adequate to protect Lessee and its Sublessee and such coverage and limits shall not be deemed as a limitation on Lessee's' liability under the indemnity provision in Section 17 of this Lease.

- (g) The insurance requirements in this Section are subject to review and revision every five years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards.

19. ENTRY BY OWNER. Lessee shall permit Landlord and its officers, employees, agents and contractors to enter the Premises at all reasonable times with a minimum of 24 hours' advance notice from Landlord, (except in the case of emergency, in which case Landlord may enter as reasonably necessary) for the purpose of: (a) inspecting the Premises to verify Lessee's compliance with the provisions of this Lease, and (b) posting notices of non-liability for any permitted alterations and improvements; without any liability to Lessee or its Sublessee for any loss of occupation or quiet enjoyment of the Premises. Landlord shall use its best efforts to not interfere with the operation of Lessee's and its Sublessee's operations on the Premises during such entry.

20. DAMAGE OR DESTRUCTION OF IMPROVEMENTS. In the event of a partial or complete destruction of the improvements on the Premises during the Term, from any cause other than the permitted removal of improvements as set forth in the Lease-Purchase Agreement for which Landlord may be responsible to repair according to the provisions of Civil Code Section 1929 is hereby waived by Lessee.

21. NO ASSIGNMENT OR SUBLETTING. Other than subleasing the Premises to the Sublessee, Lessee shall not assign this Lease, or any interest, right or obligation under this Lease to any person or entity. Any such assignment or subletting without the Landlord's express written consent shall be void and Landlord shall have the right to terminate this Lease without any liability to Lessee. This Lease shall not be assignable to Lessee's lender or anyone holding a security interest in the personal property located at the Premises, or by operation of law, without the prior written consent of Landlord. Landlord may withhold its approval of any assignment or subletting of this Lease by Lessee in Landlord's sole and absolute discretion.

22. INSOLVENCY/RECEIVER. In the event of (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee or Sublessee, (b) a general assignment by Lessee of Sublessee for the benefit of creditors, or (c) any action taken or suffered by Lessee or Sublessee under any insolvency or bankruptcy act, shall constitute a breach of this Lease by Lessee.

23. REMEDIES OF LANDLORD. Lessee shall be deemed to be in breach of this Lease after Landlord issues written notice to Lessee which specifies the nature of the violation and Lessee has not cured the breach within the period set forth in the notice. The cure period established by Landlord shall be a reasonable period of time for Lessee to cure a non-monetary breach. Landlord shall have the right to recover from Lessee any costs, expenses or damages under Landlord's right to indemnification against liability arising from or related to Lessee's acts or omissions occurring prior to termination of this Lease, the costs for removal of mechanic's liens or other liens, and the failure of Lessee to comply with other obligations and requirements as set forth in this Lease.

24. **NOTICES.** Any and all notices or demands by or from either party shall be in writing and served either personally or by mail. If served personally, service shall be conclusively deemed made at the time of service. If served by mail, service of notices or demands shall be conclusively deemed made as of the time of deposit in the United States mail, postage paid, or if by certified mail, return receipt requested.

Any notice or demand to Landlord or Lessee may be given to:

LANDLORD:

City of Sacramento
Department of Parks and Recreation
Attn: Support Services Manager
915 I Street, 3rd Floor
Sacramento, CA 95814
(916) 808-5172

LESSEE:

University Enterprises, Inc.
California State University,
Sacramento
Attn: Executive Director
6000 J Street
Sacramento CA 95819
(916) 278-7001

Any party may change the address for notice by giving written notice to the other party as set forth above.

25. **WAIVER.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.

26. **BINDING ON SUCCESSORS.** The covenants and conditions in this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of Lessee.

27. **NO JOINT VENTURE.** The parties to this Lease do not constitute a joint venture, partnership or association other than that of landlord and tenant pursuant to this Lease.

28. **TIME.** Time is of the essence in the performance of Lessee's obligations under this Lease.

29. **EXCUSABLE DELAYS.** If the performance of any act required by this Lease to be performed by either party is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials or permits, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to perform the act; the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

30. **NO WARRANTIES BY LANDLORD.** Landlord makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for Lessee's

specified use. Lessee represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering this Lease relying only upon facts ascertained from said independent investigation.

31. **CAPTIONS.** The title or headings to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

32. **ENTIRE AGREEMENT; MODIFICATION.** The Parties have each carefully reviewed this Lease and have agreed to each term in this Lease. No ambiguity shall be presumed to be construed against either party. This Lease contains all of the terms and conditions as agreed upon by the Parties, and supersedes any and all oral or written communications by and between the Parties. No waiver, alteration, modification, or amendment of this Lease shall be valid unless made in writing and signed by the Parties.

33. **LEASE-PURCHASE AGREEMENT.** Nothing in this Lease is intended to modify or alter the terms and conditions set forth in the Lease-Purchase Agreement between the Parties. In the event of any conflict between the terms and conditions set forth in this Lease with the terms and conditions set forth in the Lease-Purchase Agreement, the terms and conditions set forth in the Lease-Purchase Agreement shall prevail.

IN WITNESS WHEREOF, Landlord and Lessee have executed this Lease on the date herein above first written.

LESSEE:

LANDLORD:

UNIVERSITY ENTERPRISES, INC.,
a California corporation

CITY OF SACRAMENTO,
a Municipal Corporation

BY: _____

BY: _____

Name:

Title:

For: John F. Shirey, City Manager

Approved as to Form:

Date: _____

BY: _____

Senior Deputy City Attorney

Attest:

BY: _____

Assistant City Clerk

EXHIBIT A
PREMISES DIAGRAM

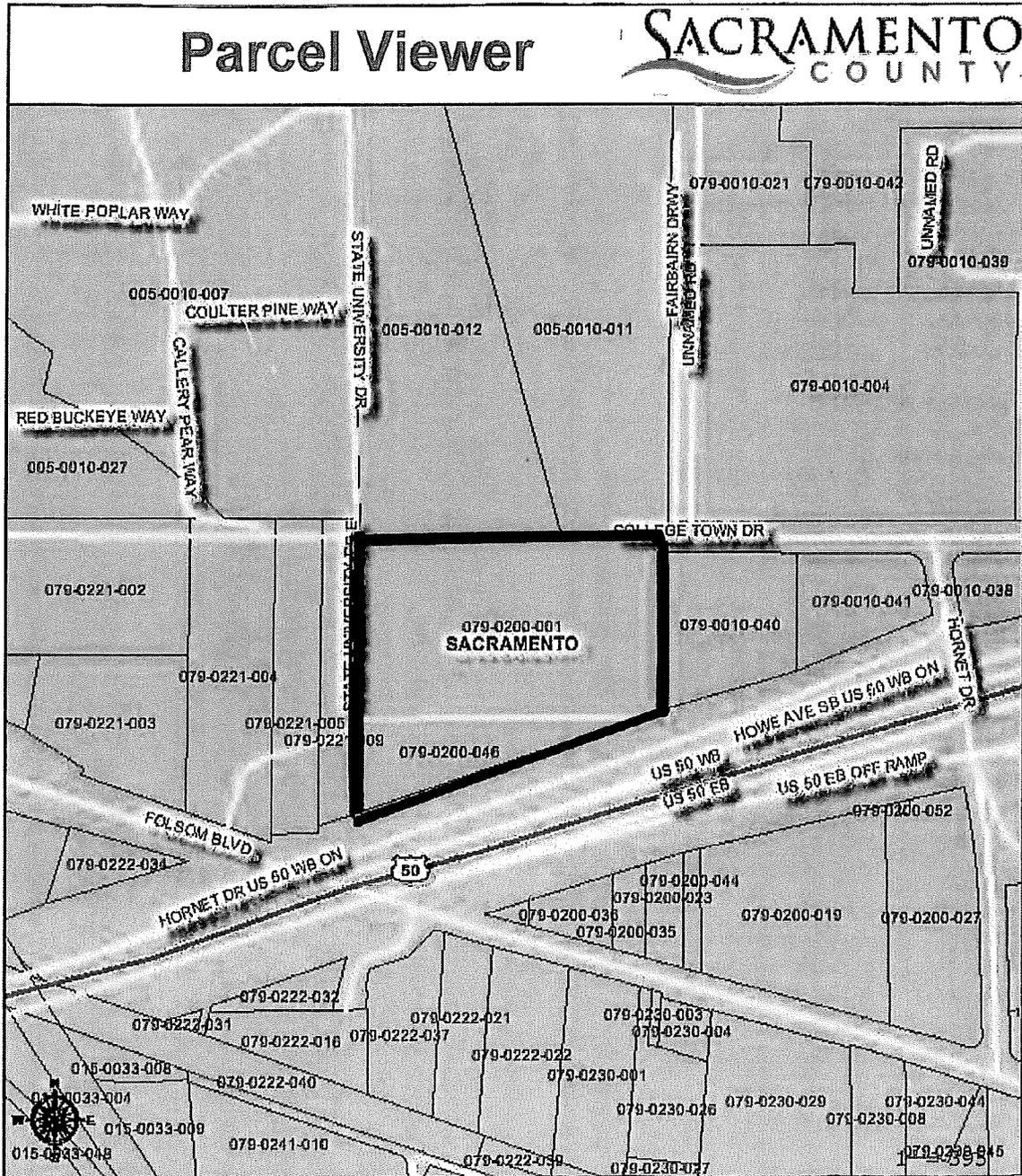


EXHIBIT B

LEGAL DESCRIPTION

The land situated in the County of Sacramento, City of Sacramento, State of California, described as follows:

All that portion of the Northeast one-quarter of Section 15, Township 8 North, Range 5 East, Mount Diablo Base and Meridian described as follows:

Beginning at a concrete monument set in the North line of the lands of the Grantors herein from whence the Northwest corner of said Section 15 bears South 87°38'44" West 3053.94 feet distant; thence from said point of beginning, South 88°50'40" West, along said North line, a distance of 318.10 feet; thence, leaving said North line, South 43°39'23" West 19.73 feet to a point in the East line of that certain 0.421 acre tract of land described as parcel No. 2 in the decree quieting title dated February 2, 1933, recorded in the office of the Recorder of Sacramento County in Book 407 of the Official Records, page 46; thence, South 01°31'27" East, along said East line, a distance of 473.08 feet to the Northwest corner of the lands now or formerly of George W. Taylor as said lands were conveyed by deed recorded in the office of the Recorder of Sacramento County in Book 1315 of Official Records, page 257; thence, Easterly, along the South line of the lands of the Grantors herein, North 88°25'33" East 834.15 feet; thence, leaving said South line North 01°10'50" West 485.40 feet to a point in the North line of the lands of the Grantors herein; thence, along said North line South 88°20'33" West 504.97 feet to the point of beginning and containing 8.891 acres of land, more or less.

Assessor Parcel No. 079-0200-001

A portion of the Northeast $\frac{1}{4}$ of Section 15, Township 8 North, Range 5 East, M.D.B. & M., described as follows:

Beginning at the Northwesterly corner of Parcel 5 conveyed by the Final Order of Condemnation recorded in Volume 69-09-22 at page 368, Official Records of Sacramento County; thence from said point of beginning along the Northerly line of said parcel and the Easterly extension thereof North 89°54'03" East 766.66 feet; thence leaving said line South 72°05'32" West 805.40 feet to a point in the Westerly line of said parcel, which point is 186.80 feet Northerly, measured at right angles from the "B12" line at Engineer's Station "B12"28÷51.95 of the Department of Public Works' Survey on Road 03-Sac-50 Post Mile 2.9/12.8; thence along said Westerly line North 00°03'58" West 246.32 feet to the point of beginning.

Assessor's Parcel No. 079-0200-046

EXHIBIT 9
REPLACEMENT FIELDS PROJECT AGREEMENT

**AGREEMENT FOR DESIGN AND CONSTRUCTION
OF ARMY DEPOT EAST PARK SITE IMPROVEMENTS**

This Park Design and Construction Agreement (“Agreement”) is entered into on _____, 20__ (“Effective Date”) by and between the **CITY OF SACRAMENTO**, a municipal corporation (“City”), and **UNIVERSITY ENTERPRISES, INC.**, a California corporation (“University”), who are collectively referred to as “Parties” and individually as “Party.”

BACKGROUND

- A. City owns an approximate 20 acre parcel of land (Assessor Parcel No. 062-0010-037) depicted in Exhibit A (“Army Depot Property” or “Property”), which is located near the intersection of Florin Perkins Road and Elder Creek Road and known as the Army Depot East Park (“Park”). The Army Depot Property currently contains a small baseball field and storage buildings and vacant open space. City approved a park master plan for this Park in July of 2007 (the “Master Plan”) and conducted environmental review for the Master Plan. The Master Plan, a copy of which is provided in Exhibit B, includes removal of the existing improvements and constructing a large lighted adult league baseball regulation field, additional baseball fields, a batting cage, score board, fencing, a concession and restroom building, picnic area, and parking lot. The Master Plan is included only as a reference; the Parties understand and agree that the “Replacement Fields Project” (defined below), while consistent with the Master Plan, is not intended to include all of the components shown in the Master Plan.
- B. Under the terms of the Lease-Purchase Agreement between the City and University Enterprises, Inc. (“University”) dated _____, 2015 (City Agreement No. 2015-____), as part of the consideration for the sale to University of the City property located at 3012 State University Drive (the “University Property”), University was to arrange for development of a portion of the Army Depot Property to reconstruct the existing Park to implement a portion of the Master Plan. Under the Lease-Purchase Agreement, the scope of the improvements to the Army Depot Property included two lighted adult baseball fields which meet AAA Minor League standards, along with a batting cage, score board, fencing, a concession and restroom building, picnic area, and parking lot, along with off-site and on-site utility and street improvements (the “Replacement Fields Project” or “Project”).
- C. The scope of work and cost estimates as of 2014, along with a preliminary site plan, for the Replacement Fields Project were included in the Lease-Purchase Agreement. These improvements are intended to replace the existing Dan McAuliffe Memorial Ballparks (the “McAuliffe Complex”) at the University Property, which University

controls under a lease with the City, pursuant to the terms of the Lease-Purchase Agreement. The University subleases the University Property to the East Sacramento Babe Ruth League and the Sacramento Men's Senior Baseball League (collectively "Leagues").

- D. University is ready to begin the design and construction of the Replacement Fields Project. City understands that this work will require the closure of the existing baseball field and the removal of any tenant(s) and any City personal property on the Army Depot Property prior to commencement of construction under this Agreement.
- E. Although the larger Army Depot complex is known to have contained hazardous materials in the soil and groundwater due to the activities of the U.S. Army during its operation of the Depot, the City's Army Depot Property was certified by the federal government as not having a history of any storage, release or disposal of hazardous materials, and no such materials were discovered during the Army's environment site assessment and remediation work prior to the transfer of the Property to the City. Therefore, it is the Parties' understanding that construction of the Replacement Fields Project will not require the disposal or remediation of any hazardous materials.
- F. The design and construction of the Replacement Fields Project will require plan review, building permits, and construction inspection services by City, and the Project will be constructed in accordance with plans and specifications as approved by City.
- G. University is willing to proceed with the design and construction of the Replacement Fields Project based on the Parties' understanding that a portion of the work may be performed by League volunteers, some of the materials and equipment may not be new because they will be relocated from the McAuliffe Complex, and some materials and equipment may not be the same as what City has installed in its other parks because University and/or the Leagues may accept donated items to reduce the Project's costs.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, City and University hereby agree as follows:

ARTICLE I DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS

1.0 Background Incorporated. The foregoing information contained in the Background is true and correct, and is part of this Agreement.

1.1 Design and Construction. University will design and construct the Replacement Fields Project at the Army Depot Property in accordance with the terms of this Agreement and will convey ownership of the improvements to the City upon completion. City agrees that this Agreement will serve as the right of entry for the University and its contractors, subcontractors, agents and volunteers to enter and occupy the Army Depot Property from the Effective Date until either Final Acceptance or expiration of the maintenance warranty period as described below. University shall accept the Property in its current condition and City shall not be obligated to prepare the Property for the Project or remove any existing improvements; provided, however, that City shall remove any personal property not affixed to the land from the Army Depot Property and terminate any leases, licenses or other encumbrances that would interfere with construction of the Replacement Fields.

1.2 Schedule. University shall complete the construction of the Replacement Fields Project no later than _____ (____) months (the "Project Schedule") from the date that City approves the Project Plans (defined below in Section 1.3). The Parties anticipate that the Project construction will be completed no later than _____ (the "Completion Date").

1.3 Construction Document Preparation. University shall prepare and submit to the City's Parks Department, Landscape Architectural Section (LAS) for approval the construction plans and specifications for the Replacement Fields. The construction plans and specifications shall include all of the improvements described in the Lease-Purchase Agreement. University shall submit the plans and specifications to the LAS at the 35, 75, and 100-percent design phases of completion. The LAS staff will use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve the construction plans and specifications in a prompt and timely manner. LAS may withhold approval of any document until University has obtained all required approvals from other City departments and public entities or utilities, as applicable. Once LAS has approved the construction plans and specifications (the "Project Plans"), University may submit them to the City's Community Development Department for plan review and issuance of building permits.

1.4 Environmental Review. Although not identical, the Replacement Fields Project is consistent with the adopted Master Plan and the environmental documents certified or approved by the City at the time of the Master Plan adoption. The City's design review process described in Section 1.3, as well as plan review and building permit processes, constitute ministerial review actions and, therefore no further environmental review of the Project is required unless the Project changes such that it deviates substantially from the conceptual plans set forth in the Lease Purchase Agreement. The Completion Date set forth in this Agreement is based on the assumption that no further environmental review will be needed before construction of the Replacement Fields Project can commence. If additional environmental documentation is determined by the City to be needed, then the Completion Date shall be extended to account for the time required to complete the necessary environmental documentation and associated approvals.

1.5 City's Costs. In addition to University's costs to plan, design and construct the Project, University shall also fund City's LAS staff costs to review and approve the design plans, construction plans and specifications, and inspect the work, along with City's building permit plan review and permit costs. The estimated City's LAS staff costs are listed in Exhibit C. Within thirty (30) days following the delivery to University of a fully executed original of this Agreement, University shall pay City as a deposit the amount of City's LAS staff costs. Within thirty (30) days after Final Acceptance, City shall return to University whatever balance remains, if any, of the funds paid by University for City's LAS staff costs.

1.6 Budget. Prior to final approval of the Project Plans, University shall submit to City a budget for the work (the "Budget") which identifies the sources and uses for all of the construction costs to be paid by University, and the value of work to be donated by the Leagues and others. The purpose of City's review is to verify that the Project improvements can be completed with the scope of the Budget. If any City funds are to be made available to cover any portion of the Project improvements as set forth in the Lease-Purchase Agreement, that funding will be made available to University.

1.7 University Right to Terminate Project. In the event the approved Budget substantially exceeds the Replacement Cost Estimate contained in the Lease Purchase Agreement, University has the right, in its discretion, to cease work on the Replacement Fields Project and to terminate this Agreement. In such an event, the rights and responsibilities of the parties shall be governed by Section 7(e) of the Lease Purchase Agreement.

1.8 Construction. University covenants that the Replacement Fields Project will be constructed in compliance with the LAS approved plans and specifications, and any modifications thereto required by City's Community Development Department in accordance with this Agreement, and the applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the Project Plans, subject to change orders issued in accordance with the provisions of Section 1.16. During the Replacement Fields Project University and its contractors and subcontractors shall have the right to exercise exclusive control over the construction site and to exclude all others from the Site, including City, except as provided in Section 1.11.

1.9 Representatives. University shall provide a site construction superintendent ("Site Superintendent") and the City shall provide a project manager ("Project Manager") who will serve as their respective points of contact with respect to construction of the Replacement Fields Project.

(a) The Site Superintendent will be on-site as necessary and will generally be available by telephone or otherwise at all reasonable times. The Site Superintendent shall have complete authority over University's construction contractor and subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans.

(b) The Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The Project Manager shall also have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.13.

1.10 Commencement and Completion of Project. University shall require its contractor to promptly commence construction of the Replacement Fields Project after City's issuance of the building permits and to diligently work to complete the construction in a timely and efficient manner on or before the Completion Date, but subject to the need for phasing the work to allow for use of volunteer labor and donated materials, if University elects to use such labor and materials. However, once construction has commenced, University shall not abandon the work or fail to complete the Project.

1.11 Inspection. University covenants that City, and any other public entities or public utilities to whom any portion of the Project improvements will be conveyed, will be permitted to inspect the Project during construction and shall have access to the Army Depot Property for this purpose at all times. City agrees to make City inspectors available for inspection of the Project work during construction within forty-eight (48) hours after receipt of the request from University or its contractor (Saturdays, Sundays and Holidays excepted). Should a City inspector find any nonconformance or noncompliance with the Project Plans, the Project Manager shall notify the Site Superintendent of such nonconformance or noncompliance. Thereafter, the Project Manager and the Site Superintendent, in consultation with the City building inspector, shall jointly determine the corrective action required. If the Project Manager and the Site Superintendent are unable to agree upon the corrective action, the Project Manager shall have authority to make such determination, with University having a right of appeal to the Director of the Parks and Recreation Department or to City Manager who may delegate his or her authority over such matter.

1.12 Prevailing Wages. Except for persons who willingly volunteer their labor, University shall require all of its contractors and subcontractors to pay their construction workers not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of Industrial Relations at the time that University issues the solicitation for bids for the Project (pursuant to Labor Code Section 1773). The University's contractor shall be required to follow the City's labor compliance procedures and file its certified payroll records using City's computerized labor tracking system. The City will issue and record a Notice of Completion after Final Completion (defined below in Section 2.1) of the Project. City will cooperate with University to also insure compliance with its labor compliance monitoring obligations, if any.

1.13 Unforeseen Cost Increase. If University encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project costs in excess of the Budget, and neither City nor University nor the Leagues voluntarily agree to bear such cost increase, then a change order shall be issued to modify the Project improvements not yet constructed in order to bring the Project costs back within the Budget.

In this latter event, University and LAS shall meet and confer in an attempt to agree upon the modifications. If the Parties are unable to agree, LAS shall have the final authority to make such determination and identify Project improvements to be deleted or changed by issuance of a field order to University to bring the Project costs within the approved Budget. The Completion Date shall be extended by the number of days, if any, required to implement the modifications to the Project.

1.14 Performance and Payment Bonds. University is required to obtain performance and payment bonds from its prime contractor in the full amount of construction contract and name City as an additional obligee. The payment bond may be released upon expiration of the stop payment notice claim period after recording of the Notice of Completion. On Final Completion (defined below in Section 2.1), the amount of the performance bond will be reduced to reflect the value of the maintenance work if performed by University (see Section 2.5).

1.15 Insurance. Prior to the commencement of construction of the Project, University shall furnish to City a certificate(s) of insurance as set forth below for the Project construction period until Final Completion, as well as through the end of the warranty period (see Section 2.7), with an insurance carrier acceptable to City.

The minimum insurance coverage shall be as follows: (i) Commercial General Liability insurance in the amount of not less than one million dollars per occurrence, (ii) Automobile Liability insurance in the amount of not less than one million dollars for owned and non-owned vehicles, and (iii) workers compensation insurance with a waiver of subrogation.

The Commercial General Liability and Automobile policy certificates shall include an endorsement naming the City as an additional insured and preclude the cancellation or reduction in coverage before City receives at least 10 days prior notice. The policy holder may be the University and/or its construction contractor for the construction period and University and/or its landscape maintenance contractor for the maintenance and warranty periods.

1.16 Contracts and Change Orders. University shall be responsible for entering into all contracts and issuing any change orders required for the construction of the Project; provided, however, University shall not be required to enter into any change orders that would increase the Project costs in excess of the Budget unless additional funds or donations are secured as set forth in Section 1.13. All change orders require approval of the LAS, which approval shall not be unreasonably delayed, conditioned, or withheld.

ARTICLE II ACCEPTANCE OF THE WORK

2.0 Completion. When construction of the Project is substantially complete, University shall provide written notice to the City requesting final inspection. The notice shall not be issued until the turf has been established, which is generally 30 days for sod and

90 days for hydro seeding. Within ten (10) business days following the date of receipt of University's written notice, the City shall conduct a final inspection of the construction of the Project ("Final Inspection"). At the Final Inspection, University, or its contractor, shall demonstrate and instruct City personnel in the operation, adjustment, and maintenance of all equipment or systems included in the Project.

2.1 Final Inspection. If during the Final Inspection City determines that the Project has not been fully completed in accordance with the Project Plans, City shall prepare a punch list of all items to be completed and send the list to University within ten (10) business days following the date of the Final Inspection. University shall arrange for the completion and repair of the punch list items to occur in a prompt and diligent manner. Upon completion of the punch list work, University shall send City a request for another Final Inspection and within ten (10) business days following the date of receipt of University's written notice, City shall conduct another Final Inspection. If City determines that the punch list work is complete, City shall promptly deliver a certificate of "Final Completion" to University and record a Notice of Completion. If the City determines that the punch list work is not complete, then City and University shall repeat the Final Inspection/punch list procedures specified in this section until the successful completion of the punch list work.

2.2 As-Built Drawings. Within ten (10) business days after the Final Completion is issued, University shall provide City with a Mylar copy of "as-built" record drawings for the Project with certification by a licensed landscape architect or civil engineer in the State of California as to accuracy and completeness.

2.3 Release of Liens. Prior to issuance of the Final Acceptance letter, University shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid, including the release of any lien claims. Upon request of the City, University shall provide lien releases under California Civil Code Section 8138 to assure that payment of any outstanding claims of the University's contractors, subcontractors, and suppliers have been paid.

2.4 Final Acceptance. The "Final Acceptance" of the Project improvements shall occur after a successful Final Inspection, issuance of the Final Completion certificate, submittal of all certified payroll records, the period to file a stop payment notice after recording the Notice of Completion has expired, and the as-built drawings have been submitted. City's acceptance of the Project improvements shall not be unreasonably withheld, delayed, or conditioned. Title to the Project improvements will transfer to the City as of the date of Final Acceptance.

2.5 Park Maintenance. University shall maintain the Park, including all of the Project improvements, landscape maintenance, and trash pickup, at University's expense until Final Acceptance. Thereafter, City shall be responsible for maintenance of the Park. For purposes of this Section 2.5, "park maintenance" includes capital repairs or restoration necessitated by vandalism or acts of God. Maintenance shall meet the City's Park Landscape Maintenance Services General Plans and Specifications, and shall include the

performance and maintenance activities necessary in order to keep any manufacturer's warranties in full force and effect during the warranty period (see Section 2.7).

2.6 Indemnification. University shall indemnify, defend and hold harmless City and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by University and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by University; but excluding Claims to the extent they arise because of the negligence or willful misconduct of City or its officers, employees and agents.

Nothing in this Agreement shall be construed as a waiver by either Party of any immunity or defense it may have relating to any such Claim, including, without limitation, immunity or defenses relating to design review and construction inspection. With respect to the acts or omissions of the University's agents, University's indemnity obligation shall be limited to the acts or omissions of University's authorized agents acting within the course and scope of such agency.

2.6.1. Indemnification Regarding Hazardous Substances. University further agrees and covenants to, and shall fully indemnify, defend and hold harmless, City and its officers, employees and agents from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Property of any hazardous materials or substances as defined under federal and state laws and regulations, by University and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by University to undertake the Project. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project, provided such incorporation is performed in accordance with applicable laws in effect at the time of construction.

2.6.2. Duration of Indemnification Obligations. Except for the indemnification for Hazardous Substances as set forth above, the indemnification obligations in this Section 2.6 shall terminate two years after the expiration of the warranty period defined in Section 2.7.

2.6.3. Additional Provisions Regarding Indemnification Obligations. City does not, and shall not be deemed to, waive any rights against University which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.14. The scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms, but only to the extent allowed

pursuant to Civil Code section 2782. No specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the Parties unless specifically so provided.

Except as may otherwise be specifically and expressly provided in this Section 2.6 relating to Claims based upon allegations of the sole active negligence or willful misconduct on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Project.

University shall include or cause to be included the following language in all contracts or agreements issued by University relating to the design, construction, operation, repair, and maintenance of the Project, provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782 as follows:

“Contractor agrees and covenants to, and shall, fully indemnify, defend, and hold harmless the City of Sacramento and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Project by Contractor and/or its officers, employees, agents, subcontractors, or any other person or entity employed or hired by Contractor.”

2.6.4 Waiver by University. In addition to University's obligations to indemnify, hold harmless, and defend City as set forth above, University, and on behalf of its assigns, transferees, and successors, hereby waives and releases any and all claims of whatever sort or nature that may arise against City or its officers, employees and agents in connection with University's design, construction, operation, repair and/or maintenance of the Park, except for Claims arising from the negligence or willful misconduct of the City or its officers employees and agents. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the Parties expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all Claims as described in this Section 2.6 which the Parties do not know or suspect to exist. The provisions of this Section 2.6.4 shall survive expiration of this Agreement.

2.7 Warranty. University hereby warrants that the Project improvements will be free from any defects in materials and workmanship for a period of one (1) year following the date of Final Acceptance. Notwithstanding the foregoing, University's warranty excludes damages or defects caused by: (i) ordinary wear and tear of the Project improvements under normal usage, (ii) abuse or neglect by other persons, (iii) vandalism and acts of God, and (iv) City employees and agents. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project, but the warranty contained in this Section 2.7 shall be the exclusive warranty of University, and all other express or implied warranties are expressly disclaimed.

Should any failure of any of the Project improvements, or any portion thereof, occur within the one (1)-year warranty period, University shall promptly cause the needed repairs to be made without any expense or cost to City. Warranty work is distinguished from the Park maintenance work described in Section 2.5. City is hereby authorized to make repairs if University fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide University with an opportunity to meet and confer regarding such warranty work and University shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances.

In case of an emergency when delay in undertaking the repairs could cause a safety hazard to the public, City may make the necessary repairs without prior notice to University at University's cost. In all cases where City has had to take action to undertake the repairs, University shall reimburse City for its actual and reasonable costs and expenses, including direct and indirect costs, within thirty (30) days from the date of the invoice which includes all supporting documentation.

ARTICLE III MISCELLANEOUS

3.0 Entire Agreement. This Agreement represents the entire agreement of the Parties relating to the subjects covered by this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms of this Agreement.

3.1 Exhibits. All of the attached exhibits are incorporated by reference into this Agreement.

3.2 Notices. Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective (a) on personal delivery, (b) on the second business day after mailing by certified or registered United States Mail, return receipt requested or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of

general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the Party at the address shown below:

If to City: City of Sacramento
City Manager
New City Hall, 5th floor
915 I Street
Sacramento, CA 95814

If to University: University Enterprises Inc.
Attention: _____, Project Manager
ADDRESS
CITY, STATE ZIP CODE

3.3 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or default are due to war, acts of terrorism, insurrection, strikes, walkouts, riots, energy shortages, energy rationing, floods, drought, rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted for the period of the enforced delay, or for such longer period as may be mutually agreed upon.

3.4 Relationship Between Parties. University and the City agree that: (a) the relationship between them is, is intended to be, and shall at all times remain, in connection with the transactions contemplated by this Agreement, that of a private entity as to University and a public agency as to the City; and (b) no Party is intended to be or shall be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of any other Party or any of its affiliates and no Party intends to ever assume such status.

3.5 No Third Party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity, which is not a Party to this Agreement, and the Parties expressly disclaim any such third-party benefit. In particular, the rights, if any, of the Leagues with regards to the design and construction of the Project improvements and use of the Park after Final Acceptance shall be limited to the terms and conditions set forth in the Park lease between the Leagues and City, if any.

3.6 Governing Law and Venue. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

3.7 Counterparts and Digital Signatures. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page. A facsimile or other electronic signature shall be deemed an original signature.

3.8 Severability. If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

3.9 Authority to Bind. Each person signing this Agreement warrants that it is authorized to bind its respective Party on whose behalf they sign.

3.10 Time is of the Essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO,

UNIVERSITY

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

EXHIBIT A

EXISTING ARMY DEPOT EAST PARK



EXHIBIT B

ARMY DEPOT EAST PARK MASTER PLAN

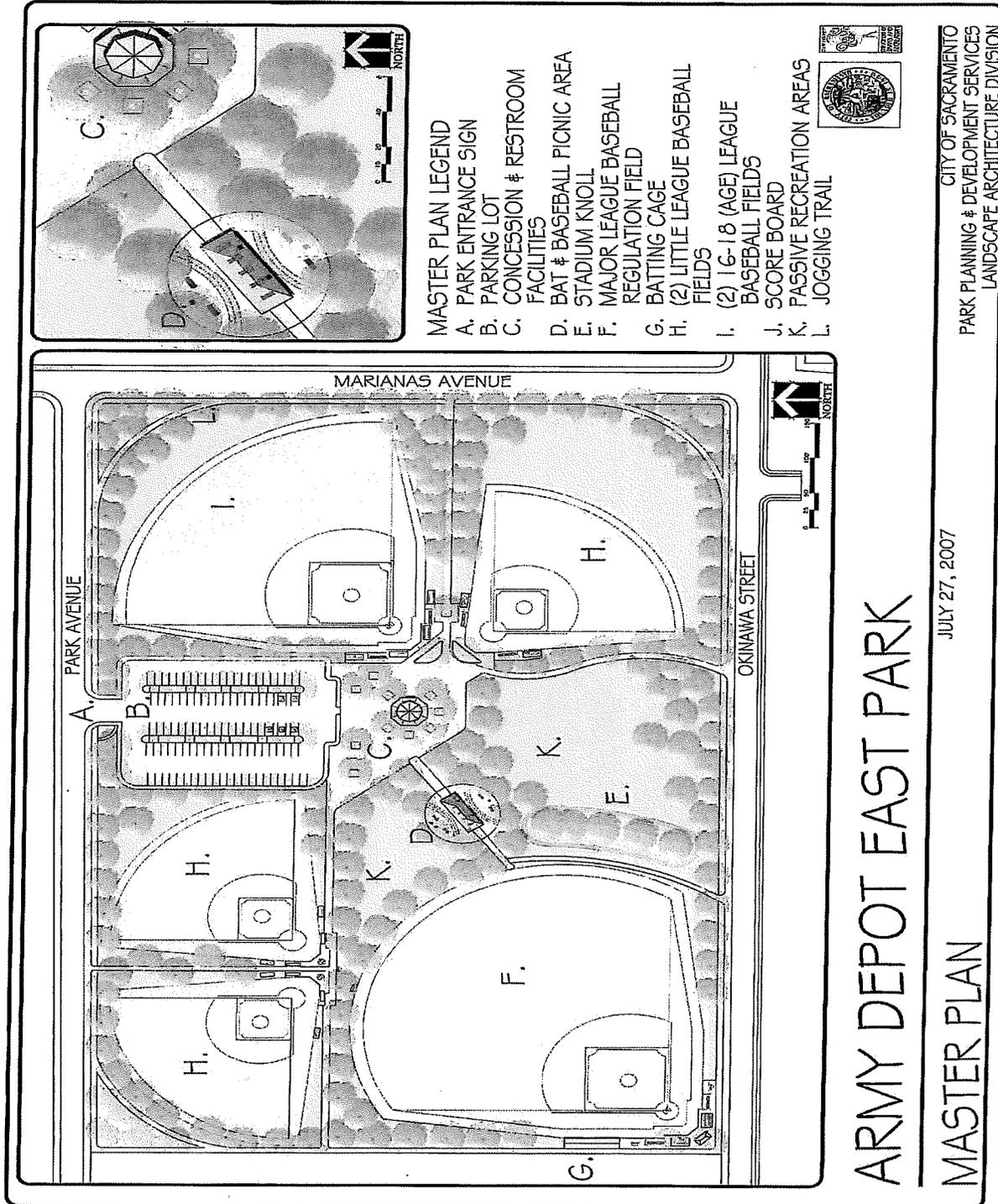


EXHIBIT C

CITY ESTIMATED COSTS

	LAS Staff Costs *	
001	Administration	\$
100	Planning	\$
201	Design	\$
501	Construction Inspection	\$
505	Labor Compliance	\$
508	Construction Management	\$_____
<hr/>		
	<i>Subtotal LAS Staff Costs (to be paid in advance)</i>	\$
	Other City Costs	
	Art in Public Places (2% of \$_____)	\$
	Plan Review	\$
	Building Permits	\$
	<i>Subtotal</i>	\$

Total City Costs to be Paid by University	\$
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Notes:

**Estimated LAS staff costs including overhead rate; at end of Project construction any funds remaining in this account will be refunded to University.*

EXHIBIT 10

FORM OF SUBLEASE BETWEEN BUYER AND LEAGUES

GROUND LEASE

This Ground Lease ("Lease") is entered into as of _____, 2015 ("Execution Date"), between UNIVERSITY ENTERPRISES, INC., a California non-profit corporation ("Lessor"), and EAST SACRAMENTO BABE RUTH LEAGUE and the SACRAMENTO MEN'S SENIOR BASEBALL LEAGUE, a California non-profit organization, (jointly and severally referred to as "Lessee"), collectively referred to as the "Parties" and singularly as "Party".

WHEREAS, Lessor and the City of Sacramento ("City") are parties to that certain Lease Purchase Agreement dated as of June 9, 2015 (the "LPA"), pursuant to which Landlord will initially lease and ultimately purchase from the City that certain real property owned by the City and located in the City of Sacramento (the "Leased Premises"), a legal description of which is attached as **Exhibit "A"**; and

WHEREAS, the League previously leased the Leased Premises directly from the City; and

WHEREAS, under the terms of the LPA, Lessor has agreed to make the Premises available for the League's use on the terms set forth herein until such time as the Lessor has completed the construction of the alternative baseball facilities described in the LPA.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Lease

a. The Leased Premises are leased to Lessor by the City pursuant to the LPA. This Lease is subject to each of the terms and conditions of the LPA to the extent such terms and conditions govern use of the Leased Premises (**Exhibit "B"**, attached hereto and incorporated herein). As used herein, the term "Leased Premises" includes Lessee's lease of Lessor's personal property located at the Leased Premises, the ownership of which was transferred to Lessor by City at the expiration of the prior lease between Lessee and City.

b. Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased Premises herein described together with all improvements thereto existing as of the Execution Date.

2. Term

a. The term of this Lease shall be effective from January 1, 2016 until December 31, 2026, subject to early termination by Lessor in accordance with Sections 2.b, 4 or 24, or in the event of a breach of any of the terms or conditions of the Lease.

b. Lessor may terminate this Lease early in connection with completion of the improvements to the Army Depot East Park property described in the LPA, which date may be substantially earlier than December 31, 2026. In the event Lessor terminates this Lease pursuant to this Section 2.b, Lessor shall provide Lessee with not less than sixty (60) days written notice prior to the date of termination.

3. Rent

a. Lessee shall annually pay rent in the sum of one hundred fifty dollars (\$150.00) to Lessor on or before January 1st of each year. Each rental payment shall be made to:

University Enterprises, Inc.
California State University, Sacramento
Attn: Jim Reinhart, Executive Director
6000 J Street
Sacramento, CA 95819-6063

A late charge of five percent (5%) of the amount due shall be added to any amount which is not received by Lessor on or before the due date.

b. If Lessee, with Lessor's consent, holds over and continues in possession of the Lease Premises after expiration of the Term of this Lease, including any extended term, Lessee's continued occupancy of the Leased Premises shall be deemed tenancy from month-to-month at a monthly rental rate of \$150 per month, subject to all terms and conditions of this Lease.

4. Permitted Use

a. Lessee shall, during the term of this Lease, occupy, maintain, and operate the Leased Premises for the purposes of furnishing recreation activities for the public's benefit, primarily baseball. Lessee's failure to so occupy, maintain, and operate the Leased Premises shall result in termination of the Lease. Lessor shall have the right to prohibit, or order discontinuance of, any use or activity on the Leased Premises that Lessor determines, in its sole discretion, is not a permitted use.

b. Lessee shall not operate any amplified sound or music system in a manner which interferes with the reasonable enjoyment by the public of adjacent areas or of private citizens within adjacent private property. Lessee shall immediately comply with any written request of Lessor concerning the use of such sound system including, but not limited to, a request to: (1) cease the use of said equipment; or (2) reduce the level of sound output of such system.

c. Lessee shall not commit, suffer or permit any waste or nuisance on the Leased Premises or any acts to be done thereon in violation of any law or ordinance, and shall permit Lessor and its agents to enter the Property at reasonable times to inspect the same.

5. No Warranties by Lessor

Lessor makes no representation or warranty concerning the suitability of the Leased Premises or of the state of the law concerning the Leased Premises which Lessee may contemplate. Lessee represents and warrants that it has independently made a full and thorough investigation and examination of the Leased Premises and that it is entering this Lease relying only upon facts ascertained from said independent investigation.

6. Lessor's right of Entry

Lessor and its agents shall have the right to enter upon the Leased Premises at all reasonable times for the purpose of inspecting, maintaining, and repairing any of the property and the improvements thereon.

7. Maintenance of Improvements

a. During the term of this Lease, Lessee shall be responsible for the maintenance of two baseball fields. Lessee may request permission to construct additional capital improvements on the Leased Premises, but any such construction is subject to the prior written approval of Lessor and City, which approval may be withheld by Lessor or City for any reason.

b. Any request to construct improvements shall be accompanied by tentative plans of intended improvements, which plans shall be subject to prior written review and approval by Lessor and City.

c. Any work undertaken pursuant to this Section 7 shall be prosecuted by Lessee with reasonable diligence. Each capital improvement project shall be completed within an acceptable and reasonable duration after commencement of its construction, and all capital improvements shall be completed and ready for use during the term of this Lease. Failure, regardless of cause, to complete construction in accordance with the schedule approved by Lessor shall, at Lessor's election exercised by notice, terminate this Lease. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to Lessor as required by this Lease, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.

d. Lessee shall defend and indemnify Lessor and City against all liability and loss of any type arising out of work performed on the Leased Premises by Lessee, together with reasonable attorney's fees and all costs and expenses incurred by Lessor and City in negotiating, settling, defending, or otherwise protecting against such claims.

e. On completion of any work of improvement, Lessee shall notify Lessor of all changes in plans or specifications made during the course of the work. Lessor acknowledges that it is common practice in the construction industry to make numerous minor changes during the course of construction. Changes that do not substantially alter plans and specifications previously approved by Lessor do not constitute a breach of Lessee's obligation.

f. Upon termination or expiration of this Lease, Lessee shall have the right to remove, at Lessee's sole cost and expense, any of the improvements placed by Lessee during the term of this Lease, provided that Lessee provides Lessor written notice of such election. In the event of expiration of this Lease, any equipment or improvement as directed by Lessor shall be removed within ninety (90) days of the Lease expiration date. In the event of Lease termination, any equipment or improvement as directed by Lessor shall be removed no later than the effective termination date. In removing its property from the Leased Premises, Lessee shall not damage the property or any improvements thereon belonging to Lessor or City. In the event that Lessee does not provide written notice of Lessee's agreement to remove improvements or does not complete removal within the timeframes set by Lessor pursuant to this Section 7, said improvements placed by Lessee shall become the property of Lessor without the requirement of reimbursement to the Lessee therefor.

8. Operation and Maintenance of Premises

a. Lessee agrees that the Leased Premises shall be operated by Lessee as a non-profit organization.

b. Lessee agrees that no discrimination, distinction, or restriction shall be made on account of sex, color, race, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation contrary to the provisions of Section 51 of the Civil Code of the State of California, as that section may be amended from time-to-time and which section is incorporated herein by reference as if set forth herein in full. Upon a final determination by a court of competent jurisdiction that Lessee has violated said section, this Lease may, at Lessor's option, be deemed forfeited.

c. Lessee shall pay all charges and assessments for water, sewer, drainage, heat, gas, electricity or other utilities; the disposal of garbage, recycling, and green waste; and all other public service conveniences used on said the Leased Premises during the term thereof.

d. Lessee shall maintain the Leased Premises on a year round basis at Lessee's sole expense, including, but not limited to, water system for turfed areas, baseball backstops, protective fencing, bleachers, grounds, structures, appurtenances, and all other incidentals necessary for the safe operation of baseball activities.

e. Lessee shall keep the Leased Premises and the areas immediately adjacent thereto in a high degree of cleanliness and repair at all times and shall conduct

its operation in such a way as to prevent the escape of baseballs and other sports equipment from these activities.

f. Lessee shall keep all developed and undeveloped areas in a clean, weed-free, and well-mowed condition.

g. Lessee shall keep all structures in good repair and well painted.

h. Lessee shall keep all fences in good repair. This requirement shall include, but not be limited to:

1. Keeping all rails properly connected.

2. Keeping all fence wires from extending to the point where they can injure persons walking by.

i. Any bleachers or other seating facilities shall be constructed and maintained strictly in accordance with federal, state and local safety standards applicable to such improvements. This requirement shall include, but not be limited to, the duty to immediately correct any conditions which constitutes a hazard to persons using said bleachers.

j. Lessee shall maintain in good condition rails along the sides and back of all bleachers. Such rails shall be maintained in a manner which complies with federal, state, and local safety laws.

k. Lessee shall ensure that all garbage and trash is packed up and hauled from the site on a regular basis, promptly following each use of the Leased Premises.

l. Upon Lessee's failure to properly maintain the Leased Premises, Lessor shall have the right to perform such maintenance work at Lessee's expense, but such right shall not be construed as constituting a legal obligation upon Lessor to perform such duties. Lessee shall promptly reimburse Lessor for any costs incurred by Lessor in maintaining the Leased Premises.

m. Lessee expressly waives all rights to make repairs at the expense of Lessor as provided in Civil Code sections 1941 and 1942 or any other provisions of law.

9. Reporting and Notification Requirements

a. Lessee agrees to secure and provide all necessary licenses and permits and shall pay before delinquency all lawful taxes, assessments, fees, or charge which at any time may be levied by the State of California, County of Sacramento, City of Sacramento, or any tax or assessment levying body on any interest on this Lease or possessory right which Lessee may have in or to premises or improvements thereon by reason of its use and occupancy or otherwise, as well as taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances, and equipment

owned or used by it in or about premises. Lessee shall provide Lessor with current copies of all necessary licenses as they are renewed.

b. Lessee shall provide Lessor with an annual financial statement indicating revenues produced from the operation of the Leased Premises and the manner in which said revenues were expended or retained.

c. Lessee shall annually provide Lessor with a list of Lessee's officers including names, addresses, and telephone numbers, and shall notify Lessor of any changes in officers. This list shall be provided on or before the fifteenth (15) day of February.

10. Security Devices

Lessee may provide at its own expense any legal devices, installations, or equipment designed for the purpose of protecting the Leased Premises from theft, burglary, or vandalism; provided, however, that written approval for any such installation be obtained from Lessor.

11. Indemnity and Hold Harmless

Lessee shall assume the defense of, and indemnify and save harmless Lessor and City, and their respective officers, employees, and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, or arising out of or connected in any way with the use and operation of the Leased Premises by Lessee, whether within or without the scope of this Lease, and whether or not it is caused in part by a party indemnified hereunder. The foregoing includes, but is not limited to, any attorney fees reasonably incurred by Lessor and City. The obligations of Lessee under this Section 11 expressly includes claims concerning the condition of the Leased Premises or improvements thereto, including without limitation compliance with the Americans with Disabilities Act or other similar local, state and federal laws.

12. Compliance with Law

a. Lessee shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the specific activity of Lessee on the Leased Premises. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether lessor be a party thereto or not, that Lessee has violated any such ordinance or statute in the use of the Leased Premises shall be conclusive of the fact as between Lessor and Lessee.

b. Lessee represents, warrants and covenants that Lessee will remain in compliance will all applicable federal, state and local laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and

safety and protection of the environment ("Environmental Laws"), and that Lessee will not permit to occur any release, generation, storage, disposal or treatment of any hazardous material as that term is defined in any of the Environmental Laws. Lessee shall immediately notify Lessor of any such release, generation, storage, disposal or treatment and Lessee shall take such necessary remediation measures at Lessee's expense to the complete satisfaction of Lessor. Lessee shall immediately notify Lessor of any complaints, citations, inquiries or notices from any governmental entity relating to compliance with Environmental Laws. Lessee represents, warrants and covenants that all governmental permits relating to the use or operation of the Leased Premises required by applicable Environmental Laws are and will remain in effect, and Lessee will comply with them.

13. Insurance

a. **Liability Insurance.** Lessee shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 20 26 11 85 (or its equivalent), insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring upon the Leased Premises (including improvements thereto), and operations incidental or necessary thereto occurring on the Leased Premises or any part of the Leased Premises, contractual liability (which includes coverage of the indemnity obligations in Section 11), damage or loss of goods or vessels in Lessee's care, custody or control, mobile equipment and other vehicles not licensed for highway use, such insurance to afford protection in an amount not less than One Million (\$1,000,000) each occurrence and annual aggregate, and fire damage legal liability with limits of One Million Dollars (\$1,000,000) for the Leased Premises.

b. **Worker's Compensation Insurance.** Lessee represents to Lessor that it has no employees and that all work performed on the Leased Premises will be performed by volunteers or licensed and insured contractors, and not by employees of Lessee. Unless and until such time as Lessee has employees, it shall not be required to obtain Worker's Compensation insurance. In the event Lessee does hire employees, it shall be required to obtain insurance to protect against claims under Worker's Compensation and Employer's Liability Acts. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and federal statutes and regulations. If Lessee is required to obtain Worker's Compensation insurance, Lessee shall furnish written evidence of such insurance to Lessor before any employee performs work on the Leased Premises.

c. The required insurance shall be issued by an admitted insurer or insurers as defined by the California Insurance Code with a Bests' rating of no less than A:VII, and shall provide that the following institutions and their officers, employees, and agents, are named as "Additional Insureds" under the policy, and the policy shall stipulate that this insurance will operate as Primary Insurance and that no other insurance effected by Lessor or other Additional Insured will be called on to contribute to a loss covered thereunder:

1. Lessor (University Enterprises, Inc.);
2. California State University Sacramento;
3. California State University System;
4. Board of Trustees of the California State University System;
5. The State of California; and
6. City of Sacramento.

d. Endorsements of Insurance. Lessee shall furnish Lessor with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by this Lease within fifteen (15) days of execution and in any event prior to engaging in any operation or activity set forth in this Lease. Policies and endorsements shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

e. No policy required by this Lease shall be suspended, cancelled, terminated by any party to the policy, or reduced in coverage or in limits, unless Lessee has provided thirty (30) days prior written notice by certified mail, return receipt requested, to Lessor. If Lessee fails to maintain any insurance required under this Lease, Lessor may take out such insurance of the required types and coverages and the cost of such required insurance shall be chargeable to Lessee, and Lessee shall reimburse Lessor for the cost thereof within ten (10) days of receipt of an invoice therefor.

f. Lessee hereby waives any right of recovery and/or subrogation against Lessor due to loss of, or damage to, the Leased Premises or any property of Lessee, whether or not such perils have been insured, self-insured or are non-insured, and shall cause its insurance carriers to include such a waiver of subrogation in all applicable policies.

14. Assignment. Subletting, Hypothecation. Etc.

Lessee shall not directly or indirectly assign, sublet, or hypothecate any interest in the leasehold estate under this Lease without the prior written consent of the Lessor, which may be withheld for any reason. Lessee shall not directly or indirectly use, or permit to be used, the property improvements for security for any debt. Excepting only a change in name, the term "assignment" shall include any change in the form of business entity of the Lessee, any merger or consolidation of Lessee from that of a California non-profit organization, whether voluntarily or by operation of law; provided, however that a change of status due only to a change in the California Corporation Code shall not be deemed to be an assignment. Lessee shall not have the right to sublet the paved parking area on the Leased Premises.

15. Advertising Signage

During the term of this Lease, Lessee shall have the right to place suitable advertising on the Leased Premises and to retain the revenues therefrom to be used for operation and maintenance of the Leased Premises. All signage shall comply with the City's sign regulations and Lessor's sign policies. The Leased Premises are publicly-owned resources that are being leased to the Lessee for the limited purposes set forth in this Lease.

Lessee agrees not to display commercial advertisements that promote alcohol, cigarettes, adult entertainment or establishments, or any message which appeals primarily to a prurient interest or is obscene. Additionally, Lessor has and may in the future enter into exclusivity product and service agreements which restrict the ability to advertise competing products and/or services on property owned or controlled by Lessor. Prior to installation of all proposed advertising or sponsorship signs, the size, location and content must be approved by Lessor to avoid conflict with Lessor's product and service agreements and compliance with Lessor's sign policies. All signs on the Leased Premises existing as of the Execution Date are permitted.

16. Cooperation in Relocation of Facilities; Waiver of Claims of Interruption

a. Lessee acknowledges that under the terms of the LPA, Lessor has the right to acquire title to the Leased Premises and that the LPA contemplates the construction of replacement fields by Lessor at the Army Depot East Park property (referred to in the LPA as the "Replacement Fields Project".) Lessee agrees to cooperate with Lessor in all aspects of Lessor's completion of the Replacement Fields Project, including: a) cooperating in the relocation of improvements from the Leased Premises to the Army Depot East Park property as determined by Lessor to be advantageous; b) adjusting the schedule of League activities on the Leased Premises to accommodate the relocation of improvements; and c) providing such other assistance to Lessor in the Replacement Fields Project as Lessor and Lessee jointly determine would be beneficial to completion of the Replacement Fields Project.

b. Lessee hereby waives and releases any claims it may have against Lessor arising from or in any way related to the demolition and/or removal of the existing facilities at the Leased Premises and the length of time required to complete construction of the Replacement Fields Project. In making this waiver and release of claims, Lessee expressly and specifically waives the benefits of Section 1542 of the California Civil Code ("Section 1542"), which provides:

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

Lessee has been advised by its legal counsel and understands the significance of this waiver and release of Section 1542 relating to unknown or unsuspected claims, and Lessee specifically represents that Lessee has carefully reviewed the release provisions with its legal counsel and the Parties agree that the release provisions are a material part of this Lease. Lessee acknowledges that it fully understands, appreciates and accepts all of the terms and provisions in this Section 16. Lessee expressly acknowledges that it may discover facts different from or in addition to those which it believes to be true as of the Lease Commencement Date with respect to this release, and that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts, except in instances of fraud or willful and wrongful acts or omission of the Lessor.

17. Non-Waiver

The waiver by Lessor of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any sum due hereunder by Lessor shall not be deemed to be a waiver of any prior occurring breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular sum so accepted, regardless of Lessor's knowledge of such prior existing breach at the time of acceptance of such sum.

18. Captions

The captions of the various articles and paragraphs of this Lease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope of intent of this lease or any part or parts of this Lease.

19. Entire Agreement

This Lease contains the entire agreement between the two parties. No promise, representation, warranty, or covenant not included this Lease has been or is relied on by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Leased Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

20. Surrender

a. At the end of the term of this Lease, or at any time this Lease may be terminated, Lessee shall surrender to Lessor said the Leased Premises in as good order and condition as reasonable use and wear thereof shall permit. After such surrender, Lessee shall have no right, title, or interest in the premises or improvements thereon, except as specified in Section 7 of this Lease. In the event that Lessee shall hold over at the end of the term of this Lease with the consent of the Lessor, such

holding over shall be from month-to-month only subject to the terms and conditions of this Lease, but shall not be a renewal hereof, and the rental to be paid shall be at the rate prevailing under the terms of this Lease.

b. Materials, equipment, and other personal property owned by the Lessee or its officers or volunteers and not removed from the Leased Premises prior to the date of surrender shall become the sole property of the Lessor and shall not be treated as abandoned property. Reuse, relocation or disposal of these items will be at the sole discretion of the Lessor and not subject to any notice, sale or reimbursement to Lessee.

21. Notices

Any and all notices or demands by or from Lessor to Lessee, or Lessee to Lessor, shall be in writing. They shall be served either personally or by mail. If served personally, service shall be conclusively deemed made at the time of service. If served by mail, service of notices or demands shall be conclusively deemed made as of the time of deposit in the United States mail, postage paid.

Any notice or demand to Lessor or Lessee may be given to:

LESSOR:

University Enterprises, Inc.
California State University, Sacramento
Attn: Jim Reinhart, Executive Director
6000 J Street
Sacramento, CA 95819-6063

LESSEE:

East Sacramento Babe Ruth League
c/o Christopher Patrick Knudsen
PO Box 19801
Sacramento CA 95819

Sacramento Men's Senior Baseball
League
c/o Mr. Bill Iliff
1131 41st Street
Sacramento, CA 95819

Any party hereto shall change the address for notice by giving written notice to the other party according to this Section 21.

22. Arbitration of Disputes: Attorney's Fees

In the event of a dispute between the parties as to any term or condition of this agreement, except as to the provisions set forth in Sections 11 and 13, such dispute shall be submitted to final and binding arbitration, utilizing the commercial arbitration rules of the American Arbitration Association. The provisions of Section 11 shall be subject to judicial enforcement. Any violation of the provisions of Section 13 shall result in immediate termination of this Lease. In any arbitration proceeding, each party shall bear its own attorney fees and costs; the parties shall split equally the cost of the arbitrator, irrespective of the outcome of the proceeding.

23. Amendment in Writing

This agreement may be amended only by a writing signed by both parties.

24. Lessee Default

The occurrence of any one or more of the following events shall constitute a material default of this Lease by Lessee:

- a. The vacating of the Leased Premises or the abandonment of the Leased Premises for sixty (60) consecutive days.
- b. The failure by Lessee to make any payment of Rent or to make any other payment required to be made by Lessee as and when due, where such failure shall continue for a period of three (3) days after the date due.
- c. The failure by Lessee to provide Lessor with reasonable evidence of insurance required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.
- d. Except as expressly otherwise provided in this Lease, the failure of Lessee to perform, comply, or observe any of the terms, covenants, conditions or provisions of this Lease, where such failure continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a default under the terms of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

25. Lessor's Remedies

- a. In the event of a default of the terms of this Lease by Lessee, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default, Lessor may terminate Lessee's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. Lessor reserves the right to pursue any other remedy available under law, including any legal or equitable remedy, or specific performance of Lessee's obligations, as Lessor deems appropriate.
- b. The expiration or termination of this Lease and/or termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnification provision of this Lease.

26. Lessee is Not Entitled to Relocation Benefits

Lessee expressly acknowledges (i) that Lessee's right of possession of the Leased Premises initially arose after the date of City's acquisition of the Leased Premises; and (ii) that Lessee was informed by City and Lessor that (a) the Leased Premises were acquired for a public use and will be available to Lessee only in the interim between such acquisition and development of the Leased Premises; (b) that development for such public use may result in termination of this tenancy sooner than would otherwise be expected; and (c) that the date of such future development is currently unknown but that Lessor will promptly notify Lessee when such date becomes known. In the event this Lease is terminated for any reason, neither Lessee nor Lessee's sublessees (if any) shall be entitled to relocation benefits under state or federal law. Lessee shall include this Section 26 in any and all subleases of the Property.

27. No Joint Venture

The parties to this Lease do not constitute a joint venture, partnership, or association other than that of landlord and tenant pursuant to this Lease.

28. Time of Essence

Time is expressly declared to be in the essence of this agreement.

LESSEE:

Sacramento Men's Senior Baseball League
a California non-profit organization

By: _____
President

East Sacramento Babe Ruth League

By: _____
President

LESSOR:

University Enterprises, Inc.,
a California non-profit corporation

By: _____
Jim Reinhart, Executive Director

Exhibit A

Legal Description of Leased Premises

Exhibit B

Copy of Lease Purchase Agreement

RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

June 9, 2015

APPROVING AGREEMENT: SALE OF CITY PROPERTY AT 3012 STATE UNIVERSITY DRIVE TO UNIVERSITY ENTERPRISES INC.

BACKGROUND

- A. Between 1961 and 1972, City acquired property south of College Town Drive to expand the Fairbairn Water Treatment Plant. In 1993, the Department of Utilities (DOU) determined that the site was not needed for expansion of the water plant and an 11± acre site (APN 079-0200-001 and -046) , the “City Property,” was leased to the East Sacramento Babe Ruth League and the Sacramento Men’s Senior Baseball League. The Leagues developed the site with “McAuliffe Fields”, including two lighted ballfields (meeting AAA Minor League standards), parking, a restroom and concession building and children’s play area. The McAuliffe Fields are operated under a lease (City Agreement No. 2000-221) at a rate of \$150 per year and this lease will expire on December 31, 2015 (the “League Lease”).
- B. University Enterprises Inc. (“University”) wishes to purchase the City Property to expand on-campus housing for California State University, Sacramento. DOU has determined it no longer needs the City Property and would like to sell the property as surplus and return the sale proceeds to its Water Fund (Fund 6005) for another use.
- C. The City owns a 20± acre park property at the prior Army Depot complex (APN 062-0010-037) known as the Army Depot East Park. The Park is underutilized and is developed with a baseball field, concession building and gravel parking area. The field and building are in poor condition.
- D. University and City have agreed that the purchase price should be \$2,274,233 plus interest to be paid over a 10 year period, plus undertaking reconstruction of the McAuliffe Fields at the Army Depot East Park. The University will lease the City Property until they have completed payment and the reconstruction of the existing fields.
- E. Upon expiration of the League Lease, the City will lease the City Property to University, who in turn will sublease the site to the Leagues at the same rate until the replacement fields at the Army Depot East Park are completed.
- F. Upon completion of the replacement fields at Army Depot East Park, the City will grant the East Sacramento Babe Ruth League and the Sacramento Men’s Senior

Baseball League a long term lease for the Army Depot Park consistent with the terms of the current lease.

- G. The Lease and Purchase and Sale Agreement includes the form of the Lease with the University and the Replacement Fields Project Agreement.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Pursuant to City Code Section 3.88.090, the sale of 3012 State University Drive (APN Number 079-0200-001 and -046), the “City Property,” without bidding is in the best interest of the City.
- Section 2. Approving the sale of City Property to University Enterprises Inc. for \$2,274,233 plus interest (the “Sales Proceeds”), with payment over a 10 year term with the option for a five year extension, plus the obligation to replace the McAuliffe Fields at the City’s Army Depot East Park site.
- Section 3. The City Manager or the City Manager’s designee is authorized to execute the Lease and Purchase and Sale Agreement with University Enterprises Inc.
- Section 4. Appropriate the Sales Proceeds to the Department of Utilities Water Fund (Fund 6005).
- Section 5. The City Manager or the City Manager’s designee is authorized to execute the Lease Agreement for the City Property with University Enterprises Inc., which requires University to sublease the City Property to the Leagues under the same terms and conditions as the existing League Lease.
- Section 6. The City Manager or the City Manager’s designee is authorized to execute the Replacement Fields Project Agreement with University Enterprises Inc. once the University is ready to commence the work.
- Section 7. The City Manager or the City Manager’s designee is authorized to sign escrow instructions and take all actions necessary to close the sale of the City Property after payment of the Sales Proceeds and completion of the Replacement Fields Project.
- Section 8. The City Manager or the City Manager’s designee is authorized to execute a Lease of the Army Depot East Park site to the East Sacramento Babe Ruth and the Sacramento Men’s Senior Baseball Leagues upon completion of the Replacement Fields Project on substantially the same terms and conditions as the existing League Lease.

Section 9. The City Manager is authorized to make any necessary budgetary adjustments associated with the sale of the City Property at 3012 State University Drive.