

PROPERTY EXCHANGE AGREEMENT

THIS PROPERTY EXCHANGE AGREEMENT (this “**Agreement**”), dated as of _____, 2019 (“**Effective Date**”), is entered into by and between the County of Alameda, a political subdivision of the State of California (“**County**”) and the Hayward Area Recreation and Park District, a California special district (“**HARD**”). County and HARD are hereinafter referred to individually as a “Party” and collectively as the “**Parties**.”

RECITALS

A. County is the owner of that certain real property of approximately 38,363 square feet in size and located at 16640 E. 14th Street in the Ashland area of unincorporated Alameda County, known as Alameda County Assessor’s Parcel No. 080-0078-026-14, and more particularly described in Exhibit A attached hereto (the “**County Property**”). The County Property was conveyed to the County by grant deed from the Alameda County Successor Agency (“**Successor Agency**”) pursuant to the Successor Agency’s Long-Range Property Management Plan (“**LRPMP**”) approved by the Oversight Board to the Successor Agency and the California Department of Finance.

B. HARD is the owner of the real property of approximately 11,151 square feet in size and located at 17482 Boston Road in the City of Hayward, known as Alameda County Assessor’s Parcel No. 080-0057-041, and more particularly described in Exhibit B attached hereto (the “**HARD Property**”). The HARD Property is located adjacent to the County’s Cherryland Community Center.

C. In accordance with the terms and conditions set forth in this Agreement, the County has agreed to convey the County Property to HARD, and HARD has agreed to convey the HARD Property to the County.

D. HARD intends to use the County Property for development of an urban public park and plaza to be known as “Ashland Common” (the “**Ashland Common Project**”). In connection with the conveyance of the County Property to HARD, the County will require the recordation of a covenant and restriction that will require the County Property to be used for public park purposes for a period of not less than thirty (30) years. HARD intends to commence construction of the Ashland Common Park Project by February 2021.

E. The County intends to use the HARD Property to construct a portion of the Cherryland Community Center and lease it to HARD pursuant to that certain Cherryland Community Center Facilities Lease to be entered between the Parties for operation of the community center.

F. The County has determined that the exchange of property pursuant to this Agreement qualifies for exemption from CEQA pursuant to CEQA Guidelines Section 15183, and HARD’s proposed use of the County Property for the Ashland Common Project, as described herein, qualifies for exemption under CEQA Guidelines Section 15332.

G. On November 26, 2019, the County Board of Supervisors held a public hearing in accordance with Government Code Section 52201 and approved a “Section 52201 Report” regarding the disposition of the County Property in accordance with the terms set forth in this Agreement.

H. The County Board of Supervisors has determined that the acquisition of the HARD Property and the exchange of the County Property for the HARD Property pursuant to this Agreement will facilitate the expansion of the Cherryland Community Center, facilitate development of park and recreational facilities, and will be in the best interests of the County and the health, safety and general welfare of the residents and taxpayers of the County.

I. The Board of Directors of HARD has determined that the acquisition of the County Property and the exchange of the HARD Property for the County Property pursuant to this Agreement will facilitate the development of recreation facilities, and will be in the best interests of HARD, its constituents, and the public peace, health, and general welfare of the residents within the Ashland community.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Recitals. The Parties acknowledge that the foregoing recitals are true and correct and are incorporated herein by this reference.

2. Conveyance of County Property to HARD; Restrictions on Use; Development of Ashland Common Project. County shall convey to HARD, and HARD shall accept from County, the County Property in accordance with the terms, covenants and conditions set forth herein. The conveyance of the County Property from County to HARD shall be accomplished by recordation of a grant deed, substantially in the form attached hereto as Exhibit C (the “**County Property Grant Deed**”). County and HARD shall enter into and record in the Official Records of Alameda County (“**Official Records**”) a Declaration of Land Use Restrictions substantially in the form attached hereto as Exhibit D (the “**Land Use Restriction**”) that shall be recorded concurrently with recordation of the County Property Grant Deed, and pursuant to which the County Property shall be restricted for recreation and park purposes and such secondary uses that are not inconsistent with and do not interfere with the recreation and park use for a period of thirty (30) years.

To finance development of the Ashland Common Project, HARD has applied for financing under the State of California Statewide Park Development and Community Revitalization Program (“**SPP**”); provided however, HARD intends to commence construction of the Ashland Common Project by not later than February 2021, using SPP funds if awarded, or other financial resources available to HARD. HARD intends to develop the Ashland Common Park Project substantially in accordance with the conceptual plan attached hereto as Exhibit E (the “**Ashland Common Conceptual Plan**”).

3. Conveyance of HARD Property to County. HARD shall convey to County, and County shall accept from HARD, the HARD Property in accordance with the terms, covenants and

conditions set forth herein. The conveyance of the HARD Property from HARD to County shall be accomplished by recordation of a grant deed, substantially in the form attached hereto as Exhibit F (the “**HARD Property Grant Deed**”).

4. Consideration. HARD and County each agree that, taking the Land Use Restriction into account, the fair market value of the HARD Property is substantially equivalent to the fair market value of the County Property, and that subject to the obligations of each Party set forth in this Agreement, neither Party shall be obligated to pay further consideration to the other Party in connection with the conveyance of the County Property to HARD and the HARD Property to County pursuant to this Agreement.

5. Escrow; Escrow Instructions. No later than five (5) business days following the Effective Date, the Parties shall open an escrow to consummate the exchange of property pursuant to this Agreement at the office of _____ Title Company located at _____, California (“**Title Company**” or “**Escrow Agent**”) or such other title company as may be mutually agreed upon by the Parties. Upon the opening of escrow, the Parties shall deposit with the Escrow Agent an executed copy of this Agreement, which together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent shall serve as the joint escrow instructions of the Parties for the property conveyances contemplated hereby.

6. Title Documents – HARD Property. No later than seven (7) business days following the Effective Date, HARD shall deliver or cause to be delivered to County an updated title report for the HARD Property (“**HARD Property Preliminary Report**”) setting forth all liens, encumbrances, easements, restrictions, conditions, and other matters of record affecting the HARD Property (“**HARD Property Title Exceptions**”) together with copies of all instruments referred to therein, as requested by County. County shall approve or disapprove each HARD Property Title Exception within seven (7) days following County’s receipt of the HARD Property Preliminary Report and documents relating to the HARD Property Title Exceptions. Upon County’s failure to object within such period, any HARD Property Title Exceptions that are not disapproved shall be deemed to be HARD Property Permitted Exceptions (as defined in Section 9).

If County objects to any HARD Property Title Exception, HARD shall use its best efforts at HARD’s sole expense to remove from title or otherwise satisfy each such exception no later than five (5) business days prior to the close of escrow and in a form that is reasonably satisfactory to County. If HARD fails to remove or satisfy any HARD Property Title Exception to the satisfaction of County, County shall have the option, in its sole discretion, to terminate this Agreement or to accept title subject to such exception. In the event County elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of either Party shall be returned to that Party, and all rights and obligations of the Parties hereunder shall terminate.

7. Title Documents – County Property. No later than seven (7) business days following the Effective Date, County shall deliver or cause to be delivered to HARD an updated title report for the County Property (“**County Property Preliminary Report**”) setting forth all liens, encumbrances, easements, restrictions, conditions, and other matters of record affecting the County Property (“**County Property Title Exceptions**”) together with copies of all instruments

referred to therein, as requested by HARD. HARD shall approve or disapprove each County Property Title Exception within seven (7) days following HARD's receipt of the County Property Preliminary Report and documents relating to the County Property Title Exceptions. Upon HARD's failure to object within such period, any County Property Title Exceptions that are not disapproved shall be deemed to be County Property Permitted Exceptions (as defined in Section 9).

If HARD objects to any County Property Title Exception, County shall use its best efforts at County's sole expense to remove from title or otherwise satisfy each such exception no later than five (5) business days prior to the close of escrow and in a form that is reasonably satisfactory to HARD. If County fails to remove or satisfy any County Property Title Exception to the satisfaction of HARD, HARD shall have the option, in its sole discretion, to terminate this Agreement or to accept title subject to such exception. In the event HARD elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of either Party shall be returned to that Party, and all rights and obligations of the Parties hereunder shall terminate.

8. Title Policies. It shall be a condition to the close of escrow that Title Company shall by not later than five (5) business days prior to the close of escrow: (A) deliver to County, a title commitment for a CLTA Owner's Title Insurance Policy (or in County's election, an ALTA policy) ("**County Title Policy**") to be issued by Title Company in an amount to be determined by County for the benefit and protection of County, showing title to the HARD Property vested in County, subject only to the HARD Property Permitted Exceptions, including such endorsements as may reasonably be requested by County, and committing Title Company to issue the County Title Policy to County upon the close of escrow, and (B) deliver to HARD, a title commitment for a CLTA Owner's Title Insurance Policy (or in HARD's election, an ALTA policy) ("**HARD Title Policy**") to be issued by Title Company in an amount to be determined by HARD for the benefit and protection of HARD, showing title to the County Property vested in HARD, subject only to the County Property Permitted Exceptions, including such endorsements as may reasonably be requested by HARD, and committing Title Company to issue the HARD Title Policy to HARD upon the close of escrow.

9. Conveyance of Title. At the close of escrow: (A) HARD shall convey by grant deed to County fee simple title to the HARD Property, free and clear of all recorded and unrecorded liens, encumbrances, restrictions, easements, and leases, except: (i) liens for nondelinquent general and special taxes, assessments and/or bonds; and (ii) such other conditions, liens, encumbrances, restrictions, easements and exceptions approved in writing by County or deemed approved by County as provided in Section 6 (all of the foregoing, are collectively hereinafter referred to as the "**HARD Property Permitted Exceptions**"), and (B) County shall convey by grant deed to HARD fee simple title to the County Property, free and clear of all recorded and unrecorded liens, encumbrances, restrictions, easements, and leases, except: (x) liens for nondelinquent general and special taxes, assessments and/or bonds; and (y) such other conditions, liens, encumbrances, restrictions, easements and exceptions approved in writing by HARD or deemed approved by HARD as provided in Section 7 (all of the foregoing, are collectively hereinafter referred to as the "**County Property Permitted Exceptions**").

10. Closing Documents.

(a) HARD.

A. No later than three (3) business days prior to the Closing Date, HARD shall deposit into escrow all of the following:

(i) A duly executed and acknowledged Certificate of Acceptance for the County Property as required by Government Code Section 27281;

(ii) The HARD Property Grant Deed, duly executed and acknowledged;

(iii) A duly executed and acknowledged copy of the Land Use Restriction;

(iv) Certificates required by Section 1445 of the Internal Revenue Code of 1986, and the California Revenue and Taxation Code Section 18815; and

(v) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transactions contemplated hereby.

B. No less than one (1) business day prior to the close of escrow, HARD shall deposit into escrow immediately available funds in the amount equal to HARD's share of escrow fees, conveyance fees and recording fees, and the cost of the HARD Title Policy.

(b) County.

(A) No later than three (3) business days prior to the Closing Date, County shall deposit into escrow all of the following:

(i) A duly executed and acknowledged Certificate of Acceptance for the HARD Property as required by Government Code Section 27281;

(ii) The County Property Grant Deed, duly executed and acknowledged;

(iii) A duly executed and acknowledged copy of the Land Use Restriction;

(iv) Certificates required by Section 1445 of the Internal Revenue Code of 1986, and the California Revenue and Taxation Code Section 18815; and

(v) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transactions contemplated hereby.

B. No less than one (1) business day prior to the close of escrow, County shall deposit into escrow immediately available funds in the amount equal to County's share

of escrow fees, conveyance fees and recording fees, and the cost of the County Title Policy.

11. Close of Escrow and Delivery of Possession. Unless this Agreement is terminated pursuant to the terms hereof, escrow shall close by the date (“**Closing Date**”) which is () days after the Effective Date, but subject to extension as agreed upon by the Parties in writing with a copy thereof provided to the Escrow Agent. The Escrow Agent shall close escrow by:

(1) recording each of the following in the Official Records: (i) the Land Use Restriction, (ii) the HARD Property Grant Deed, and (iii) the County Property Grant Deed;

(2) issuing the County Title Policy and delivering same to County;

(3) issuing the HARD Title Policy and delivery the same to HARD;

(4) delivering to County and to HARD conformed copies of each of the following indicating recording information thereon: (a) the Land Use Restriction, (b) the HARD Property Grant Deed, and (c) the County Property Grant Deed.

Possession of the HARD Property shall be delivered to County at the close of escrow. Possession of the County Property shall be delivered to HARD at the close of escrow.

12. Closing Costs. County and HARD shall each pay one-half of all closing costs and escrow fees, recording fees, conveyance fees and transfer taxes (if any) applicable to the conveyance of the HARD Property to County and the conveyance of the County Property to HARD. County shall pay the cost of the County Title Policy, and HARD shall pay the cost of the HARD title policy.

13. Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: (i) any bond or assessment that constitutes a lien on the HARD Property at the close of escrow shall be assumed by County; and (ii) any bond or assessment that constitutes a lien on the County Property at the close of escrow shall be assumed by HARD. Utility and sewer service charges shall be prorated as of the close of escrow.

14. Intentionally omitted.

15. Conditions to Closing. (a) The close of escrow and County’s obligation to acquire the HARD Property and convey the County Property are conditioned upon the following (“**County Closing Conditions**”): (i) the performance by HARD of each obligation to be performed by HARD under this Agreement within the applicable time period, or the waiver by County of such obligation; (ii) HARD’s representations and warranties contained in this Agreement being true and correct as of the date hereof and the close of escrow; (iii) the commitment by Title Company to issue and deliver the County Title Policy, subject only to the HARD Property Permitted Exceptions; and (iv) County’s approval of the condition of the HARD Property pursuant to Section 16. If any County Closing Condition fails to be satisfied, excepting any such conditions that have been waived by County, County shall have the right, exercisable by giving written notice to

HARD, to cancel the escrow, terminate this Agreement, and recover any and all amounts (if any) deposited with the Escrow Agent by or on behalf of County. The exercise of this right by County shall not constitute a waiver by County of any other rights County may have at law or in equity.

(b) The close of escrow and HARD's obligation to acquire the County Property and convey the HARD Property are conditioned upon the following ("**HARD Closing Conditions**"):

- (i) the performance by County of each obligation to be performed by County under this Agreement within the applicable time period, or the waiver by HARD of such obligation;
- (ii) County's representations and warranties contained in this Agreement being true and correct as of the date hereof and the close of escrow;
- (iii) the commitment by Title Company to issue and deliver the HARD Title Policy, subject only to the County Property Permitted Exceptions; and
- (iv) HARD's approval of the condition of the County Property pursuant to Section 16.

If any HARD Closing Condition fails to be satisfied, excepting any such conditions that have been waived by HARD, HARD shall have the right, exercisable by giving written notice to County, to cancel the escrow, terminate this Agreement, and recover any and all amounts (if any) deposited with the Escrow Agent by or on behalf of HARD. The exercise of this right by HARD shall not constitute a waiver by HARD of any other rights HARD may have at law or in equity.

16. Due Diligence; AS-IS Conveyance. (a) Each Party represents and warrants that it has had an opportunity prior to the Effective Date to examine, inspect and conduct tests of the property to be conveyed to such Party pursuant to this Agreement. During the period ("**Due Diligence Period**") commencing upon the Effective Date and ending at 5:00 p.m. on the date that is seven (7) business days following the Effective Date ("**Due Diligence Period Termination**"):

- (A) County shall have the right to perform due diligence regarding the investigation, assessment, and monitoring of the environmental condition of the HARD Property, and unless County elects to terminate this Agreement pursuant to the terms hereof, County will acquire the HARD Property in its "AS IS" condition as such condition exists at the Due Diligence Period Termination, subject only to the representations, warranties and covenants of HARD described in Sections 18 and 19, and
- (B) HARD shall have the right to perform due diligence regarding the investigation, assessment, and monitoring of the environmental condition of the County Property, and unless HARD elects to terminate this Agreement pursuant to the terms hereof, HARD will acquire the County Property in its "AS IS" condition as such condition exists at the Due Diligence Period Termination, subject only to the representations, warranties and covenants of County described in Sections 20 and 21.

(b) Each Party grants to the other the right to enter its property for the purpose of performing the due diligence activities set forth in Section 16(a), above. Each Party shall obtain the prior written consent of the other Party before conducting any drilling, boring or other invasive testing or inspections. Each Party agrees to indemnify and defend the other Party from any claim resulting from the first Party's entry onto or inspection of or in relation to any activity which the first Party, or its agents, conduct on the other Party's property, unless such claim arises from the property owner Party's negligence, willful misconduct, illegal act or breach of this Agreement, or from any pre-existing condition.

(c) If County fails to approve the condition of the HARD Property or its feasibility for County's intended use by the Due Diligence Period Termination, County shall have the right, exercisable by giving written notice to HARD, to cancel the escrow, terminate this Agreement,

and recover all amounts (if any) deposited with the Escrow Agent by or on behalf of County. The exercise of this right by County shall not constitute a waiver by County of any other rights County may have at law or in equity. If County fails to deliver notice of its election to terminate the Agreement by the Due Diligence Termination date, County shall be deemed to have conclusively approved the condition of the HARD Property and to have agreed to accept the HARD Property on the Closing Date in its condition as of the Due Diligence Period Termination, subject to Sections 22 and 23 below.

(d) If HARD fails to approve the condition of the County Property or its feasibility for HARD's intended use by the Due Diligence Period Termination, HARD shall have the right, exercisable by giving written notice to County, to cancel the escrow, terminate this Agreement, and recover any and all amounts (if any) deposited with the Escrow Agent by or on behalf of HARD. The exercise of this right by HARD shall not constitute a waiver by HARD of any other rights HARD may have at law or in equity. If HARD fails to deliver notice of its election to terminate the Agreement by the Due Diligence Termination date, HARD shall be deemed to have conclusively approved the condition of the County Property and to have agreed to accept the County Property on the Closing Date in its condition as of the Due Diligence Period Termination, subject to Sections 22 and 23 below.

17. Studies, Reports and Investigations. Each Party agrees to make available to the other Party within two (2) business days following the Effective Date, any and all information, studies, reports, investigations, contracts, leases, rental agreements and other obligations concerning or relating to its respective property that is within such Party's possession or reasonably available to such Party, including without limitation surveys, studies, reports and investigations concerning the property's physical, environmental or geological condition, habitability, or the presence or absence of Hazardous Materials in, on or under the property and its compliance with Environmental Laws (as defined in Section 18).

18. HARD's Representations and Warranties. HARD represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the close of escrow shall at the time of their delivery: (i) be duly authorized, executed, and delivered by HARD; (ii) be the binding obligations of HARD; (iii) collectively be sufficient to transfer all of HARD's right, title and interest in and to the HARD Property; and (iv) not be in violation of the provisions of any agreement to which HARD is a party or that affects the HARD Property. HARD further represents and warrants that the persons who have executed this Agreement on behalf of HARD have been duly authorized to do so, that HARD has the legal right to enter into this Agreement and to perform all of its terms and conditions, and that Agreement is enforceable against HARD in accordance with its terms.

HARD further represents and warrants that except as disclosed in writing to County, as of the Effective Date hereof and as of the close of escrow:

(a) Except for any HARD Property Permitted Exceptions and any agreements that have been disclosed to County in writing, there are no leases, licenses, contracts or other agreements relating to the HARD Property which will be in force after the Closing Date.

(b) There is no pending (nor has HARD received notice of any threatened) action, litigation, condemnation or other proceeding against the HARD Property or against HARD with respect to the HARD Property.

(c) HARD has received no notice from any governmental authority having jurisdiction over the HARD Property to the effect that the HARD Property is not in compliance with applicable laws and ordinances (including any laws concerning the use, generation, handling, disposal or storage of Hazardous Materials (as defined below)).

(d) HARD has not received any notice from any insurer of defects or conditions relating to the HARD Property that must be corrected.

(e) There has been no release of any Hazardous Material (as defined below) at, under or upon the HARD Property.

The term “**Hazardous Material**” means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

The term “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

HARD shall notify County of any facts that would cause any of the representations contained in this Agreement to be untrue as of the close of escrow. If County reasonably believes that any such fact materially and adversely affects the HARD Property, County shall have the option to terminate this Agreement by delivering written notice thereof to HARD. In the event County elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of either Party shall be returned to that Party, and all rights and obligations hereunder shall terminate.

19. HARD's Covenants. HARD covenants that from the Effective Date of this Agreement and through the close of escrow, HARD: (i) shall not permit any liens, encumbrances, or easements to be placed on the HARD Property other than HARD Property Permitted Exceptions; (ii) shall not without the prior written consent of County, enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the HARD Property that would be binding on County or the HARD Property after the close of escrow; (iii) shall not permit any act of waste or act that would tend to diminish the value of the HARD Property for any reason, except that caused by ordinary wear and tear; and (iv) shall maintain the HARD Property in its condition as of the date hereof, ordinary wear and tear excepted, and shall manage the HARD Property substantially in accordance with HARD's established practices.

20. County Representations, Warranties and Covenants. County represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the close of escrow shall at the time of their delivery: (i) be duly authorized, executed, and delivered by County; (ii) be the binding obligations of County; (iii) collectively be sufficient to transfer all of County's right, title and interest in and to the County Property; and (iv) not be in violation of the provisions of any agreement to which County is a party or that affects the County Property. County further represents and warrants that the persons who have executed this Agreement on behalf of County have been duly authorized to do so, that County has the legal right to enter into this Agreement and to perform all of its terms and conditions, and that Agreement is enforceable against County in accordance with its terms.

County further represents and warrants that except as disclosed in writing to HARD, as of the Effective Date hereof and as of the close of escrow:

(a) Except for any County Property Permitted Exceptions and any agreements that have been disclosed to HARD in writing, there are no leases, licenses, contracts or other agreements relating to the County Property which will be in force after the Closing Date.

(b) There is no pending (nor has County received notice of any threatened) action, litigation, condemnation or other proceeding against the County Property or against County with respect to the County Property.

(c) County has received no notice from any governmental authority having jurisdiction over the County Property to the effect that the County Property is not in compliance with applicable laws and ordinances (including any laws concerning the use, generation, handling, disposal or storage of Hazardous Materials (as defined above)).

(d) County has not received any notice from any insurer of defects or conditions relating to the County Property that must be corrected.

(e) There has been no release of any Hazardous Material at, under or upon the County Property.

County shall notify HARD of any facts that would cause any of the representations contained in this Agreement to be untrue as of the close of escrow. If HARD reasonably believes that any such fact materially and adversely affects the County Property, HARD shall have the option to terminate this Agreement by delivering written notice thereof to County. In the event HARD elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of either Party shall be returned to that Party, and all rights and obligations hereunder shall terminate.

21. County's Covenants. County covenants that from the date of this Agreement and through the close of escrow, County: (i) shall not permit any liens, encumbrances, or easements to be placed on the County Property other than County Property Permitted Exceptions; (ii) shall not without the prior written consent of HARD, enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the County Property that would be binding on HARD or the County Property after the close of escrow; (iii) shall not permit any act of waste or act that would tend to diminish the value of the County Property for any reason, except that caused by ordinary wear and tear; and (iv) shall maintain the County Property in its condition as of the date hereof, ordinary wear and tear excepted, and shall manage the County Property substantially in accordance with County's established practices.

22. Damage and Destruction. (a) In the event of any damage or other loss to the HARD Property, or any portion thereof, caused by fire, flood or other casualty prior to the close of escrow in an amount not exceeding \$50,000, as agreed upon by the Parties, County shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and acquire the HARD Property as provided in this Agreement, provided that HARD shall: (i) assign and transfer to County all of HARD's rights under any insurance policy covering the damage or loss, and all claims for monies payable from HARD's insurer(s) in connection with the damage or loss, and (ii) pay to County at the close of escrow the amount of HARD's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the HARD Property or any portion thereof prior to the close of escrow in an amount in excess of \$50,000, as agreed upon by the Parties, County may elect either to terminate this Agreement upon written notice to HARD, or to consummate the acquisition of the HARD Property, in which case HARD shall (i) assign and transfer to County all of HARD's rights under any insurance policy covering the damage or loss, and all claims for monies payable from HARD's insurer(s) in connection with the damage or loss, and (ii) pay to County at the close of escrow the amount of HARD's deductible under the insurance policy or policies covering the damage or loss. If County elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of either Party shall be returned to that Party, and all rights and obligations of the Parties hereunder shall terminate.

(b) In the event of any damage or other loss to the County Property, or any portion thereof, caused by fire, flood or other casualty prior to the close of escrow in an amount not exceeding \$50,000, as agreed upon by the Parties, HARD shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and acquire the County Property as provided in this Agreement, provided that County shall: (i) assign and transfer to HARD all of County's rights under any insurance policy covering the damage or loss, and all claims for monies payable from County's insurer(s) in connection with the damage or loss, and (ii) pay to HARD at the close of escrow the amount of County's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the County Property or any portion thereof prior to the close of escrow in an amount in excess of \$50,000, as agreed upon by the Parties, HARD may elect either to terminate this Agreement upon written notice to County, or to consummate the acquisition of the County Property, in which case County shall (i) assign and transfer to HARD all of County's rights under any insurance policy covering the damage or loss, and all claims for monies payable from County's insurer(s) in connection with the damage or loss, and (ii) pay to HARD at the close of escrow the amount of County's deductible under the insurance policy or policies covering the damage or loss. If HARD elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of either Party shall be returned to that Party, and all rights and obligations of the Parties hereunder shall terminate.

23. Condemnation. (a) If prior to Close of Escrow, a material portion of the HARD Property is taken by eminent domain (or an action of eminent domain has been commenced against all or any portion of the HARD Property) (excluding for purposes of this Section, the exercise of any eminent domain powers by the County), upon HARD's receipt of notice thereof HARD shall promptly notify County of such fact, and County shall have the option to terminate this Agreement upon notice to HARD given not later than ten (10) days after County's receipt of HARD's notice. If County elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of County shall be returned to County, and all rights and obligations of the Parties hereunder shall terminate. If County does not exercise such option to terminate this Agreement, HARD shall assign to County at the close of escrow, and County shall be entitled to negotiate for, receive, and keep, all awards, and rights to receive future awards, for such taking by eminent domain, and the transaction contemplated by this Agreement shall be consummated pursuant to the terms hereof, without any reduction in value of the consideration for the HARD Property.

(b) If prior to Close of Escrow, a material portion of the County Property is taken by eminent domain (or an action of eminent domain has been commenced against all or any portion of the County Property) (excluding for purposes of this Section, the exercise of any eminent domain powers by HARD), upon County's receipt of notice thereof County shall promptly notify HARD of such fact, and HARD shall have the option to terminate this Agreement upon notice to County given not later than ten (10) days after HARD's receipt of County's notice. If HARD elects to terminate this Agreement, all documents and funds (if any) deposited into escrow by or on behalf of HARD shall be returned to HARD, and all rights and obligations of the Parties hereunder shall terminate. If HARD does not exercise such option to terminate this Agreement, County shall assign to HARD at the close of escrow, and HARD shall be entitled to negotiate for, receive, and keep, all awards, and rights to receive future awards, for such taking by eminent

domain, and the transaction contemplated by this Agreement shall be consummated pursuant to the terms hereof, without any reduction in value of the consideration for the County Property.

24. Releases.

(a) County Release of HARD. Except as set forth in the representations and warranties of HARD in this Agreement (or in any document executed by HARD pursuant to this Agreement), and except for a breach by HARD of its obligations under this Agreement (or under any document executed by HARD pursuant to this Agreement) or the gross negligence, illegal act or willful misconduct of HARD, effective as of the Closing Date, County, on behalf of itself and anyone claiming by, through or under County, hereby waives its right to recover from, and fully and irrevocably releases, HARD, the HARD Board, and its respective elected officials, officers, employees, directors, representatives, attorneys and agents (the "HARD Released Parties") from any and all claims, responsibility and/or liability that County may have or hereafter acquire against any of the HARD Released Parties for any claims, fines, penalties, fees, costs, loss, liability, damage, expenses, demands, action or cause of action arising from or related to the condition of the HARD Property (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the HARD Property, or its suitability for any purpose whatsoever.

The release set forth in this Section 24(a) includes claims (other than claims for the presence of Hazardous Materials on, under or about the Property prior to the Close of Escrow) of which County is presently unaware or which County does not presently suspect to exist which, if known by County, would materially affect County's release of the Released Parties. County specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, County agrees, represents and warrants that County realizes and acknowledges that factual matters now unknown to County may have given or may hereafter give rise to causes of action, claims, fines, penalties, fees, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and County further agrees and represents that the waivers and releases herein have been negotiated and agreed upon in light of that realization, and that County nevertheless hereby intends to release, discharge and acquit the HARD Released Parties from any such unknown causes of action, claims, fines, penalties, fees, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, County, on behalf of itself and anyone claiming by, through or under County, hereby assumes the above-mentioned risks, and hereby expressly waives any right County and anyone claiming by, through or under County, may have under Section 1542 of the California Civil Code, which reads as follows:

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

County's Initials: _____

(b) HARD Release of County. Except as set forth in the representations and warranties of County in this Agreement (or in any document executed by County pursuant to this Agreement), and except for a breach by County of its obligations under this Agreement (or under any document executed by County pursuant to this Agreement) or the gross negligence, illegal act or willful misconduct of County, effective as of the Closing Date, HARD, on behalf of itself and anyone claiming by, through or under HARD, hereby waives its right to recover from, and fully and irrevocably releases, County, the County Board, and its respective elected officials, officer, employees, directors, representatives, attorneys and agents (the "County Released Parties") from any and all claims, responsibility and/or liability that HARD may have or hereafter acquire against any of the County Released Parties for any claims, fines, penalties, fees, costs, loss, liability, damage, expenses, demands, action or cause of action arising from or related to the condition of the County Property (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever.

The release set forth in this Section 24(b) includes claims (other than claims for the presence of Hazardous Materials on, under or about the County Property prior to the Close of Escrow) of which HARD is presently unaware or which HARD does not presently suspect to exist which, if known by HARD, would materially affect HARD's release of the Released Parties. HARD specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, HARD agrees, represents and warrants that HARD realizes and acknowledges that factual matters now unknown to HARD may have given or may hereafter give rise to causes of action, claims, fines, penalties, fees, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and HARD further agrees and represents that the waivers and releases herein have been negotiated and agreed upon in light of that realization, and that HARD nevertheless hereby intends to release, discharge and acquit the County Released Parties from any such unknown causes of action, claims, fines, penalties, fees, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, HARD, on behalf of itself and anyone claiming by, through or under HARD, hereby assumes the above-mentioned risks, and hereby expressly waives any right HARD and anyone claiming by, through or under HARD, may have under Section 1542 of the California Civil Code, which reads as follows:

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

HARD's Initials: _____

The provisions of this Section 24 shall survive the termination of this Agreement.

24. Miscellaneous.

24.1 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

County:

County of Alameda
1221 Oak Street, Suite 555
Oakland, CA 94612
Attn: _____

HARD:

Hayward Area Recreation and Park District
1099 E Street
Hayward, CA 94541
Attn: General Manager

24.2 No Brokers. Each Party hereby represents and warrants to the other Party that it has retained no broker or other party to whom a commission or finder's fee is due with respect to the transactions contemplated hereby. Each Party shall defend, indemnify and hold the other Party harmless from and against all claims, expenses, costs, or arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

24.3 Intentionally omitted.

24.4 Entire Agreement. This Agreement, together with Exhibits A through F, attached hereto and incorporated herein by reference, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements with respect thereto.

24.5 No Merger. The obligations stated herein that are intended to operate after the Closing Date shall not merge with the transfer of title to the County Property or the HARD Property, but shall remain in effect until fulfilled as provided herein.

24.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to interpret or enforce the provisions hereof shall be filed in the Superior Court for the County of Alameda.

24.7 Interpretation; Captions. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

24.8 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by HARD or County of any of the provisions of this Agreement.

24.9 Amendments. This Agreement may be modified or amended only by an instrument in writing executed by both HARD and County.

24.10 Assignment Prohibited. This Agreement and the rights conferred hereunder may not be assigned by operation of law or otherwise absent the express written consent of the Parties.

24.11 Escrow Cancellation Charges. If the escrow fails to close by reason of a default by HARD or County hereunder, such defaulting party shall pay all escrow or other Title Company charges. If the escrow fails to close for any reason other than default by HARD or County, then HARD and County shall each pay one-half of such charges.

24.12 Further Assurances. County and HARD each agree to undertake such other actions as may reasonably be necessary to carry out the intent of this Agreement, including without limitation, the execution of any additional documents which may be required to effectuate the transactions contemplated hereby.

24.13 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

24.14 Non-Liability of Officials, Employees and Agents. No member, officer, director, official, employee, or agent of County or HARD shall be personally liable in the event of any default or breach hereunder by either Party.

24.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which taken together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY OF ALAMEDA, a political subdivision of the State of California

By: _____

Name: _____

Title: _____

Approved as to form:

County Counsel

HAYWARD AREA RECREATION DISTRICT, a California special district

By: _____

Print Name: _____

Title: _____