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**CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION & DEVELOPMENT  
300 Muir Road  
Martinez, CA 94553**

**Telephone: (925) 674-7878**

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TO: Members, Board of Supervisors

FROM: Maureen Toms, Deputy Director 

DATE: March 28, 2016

SUBJECT: Agenda Item D 4 - Request to accept new material under the provisions of the Better Government Ordinance

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County Code Section 25-2.206 (Better Government Ordinance) requires that *“all such staff material must be distributed to the policy body and be made available to the public 96 hours before the scheduled meeting.”* The code allows the policy body, by a three-fourths vote, to waive these limits, *“when, in its judgment, it is essential to do so, providing that the County Administrator, appropriate Department head, or staff member furnishes to the Board of Supervisors or other body a written explanation as to why the material could not be provided to the Board or other policy and the general public within the above time limits.”*

The Real Property Division of the Public Works Department, County Counsel, and the Department of Conservation and Development have been working together on the disposition of property held by the former redevelopment agency. Since the property is within the jurisdiction of the City of Walnut Creek and the funds to cover the cost of acquisition are likely to come from the City's affordable housing program, terms of the Purchase and Sale Agreement needed to be modified to meet their future requirements. The attached revised Purchase and Sale Agreement for your consideration is in redline/strikeout and format, as well as a clean version. We respectfully request that the Board: 1) waive the time limits on the availability of staff materials for agenda items; and 2) accept the additional material for consideration.

Cc: D. Twa, County Administrator  
S. Anderson, County Counsel

Attachments



Parcel Numbers: 148-180-050, 051, & 052  
Project Name: Sale of Las Juntas Parcels  
Project Number: 4500-6X5489

Grantor: County of Contra Costa  
Address: Las Juntas Way  
Walnut Creek, California

**PURCHASE AND SALE AGREEMENT BETWEEN  
CONTRA COSTA COUNTY  
AND  
HABITAT FOR HUMANITY EAST BAY/SILICON VALLEY, INC.**

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This Agreement ("Agreement") is dated \_\_\_\_\_, 2016 (the "Effective Date"), and is between the County of Contra Costa, a political subdivision of the State of California, as the Housing Successor to the Contra Costa County Redevelopment Agency ("County"), and Habitat for Humanity East Bay/Silicon Valley, Inc., a California non-profit public benefit corporation ("Grantee").

**RECITALS**

- A. County is the owner of approximately 2.05 acres of real property located off of Las Juntas Way in Walnut Creek, California, consisting of three Assessor's Parcel Numbers (APNs) 148-180-050, 051 & 052, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").
- B. County desires to sell, and Grantee desires to purchase, the Property under the terms and conditions of this Agreement.
- C. The City of Walnut Creek, California (the "City") is loaning Grantee some or all of the Purchase Price, as defined below. At the close of Escrow, as defined below, the parties City intends to record a deed of trust and a regulatory agreement against the Property (together, the "City Documents"), to (i) secure repayment of the City's loan to Grantee, and (ii) to restrict the use of the Property.
- ~~C.D.~~ At the close of Escrow, the County and Grantee are required to record a regulatory agreement against the Property for the benefit of the County that restricts the use of the Property.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

- 1. **Purchase and Sale.** Subject to the terms and conditions in this Agreement, County agrees to sell and Grantee agrees to purchase, the Property for the purchase price of Three Million Dollars (\$3,000,000.00) (the "Purchase Price").
- 2. **Conditions Precedent to County's Performance.** The County's obligation to perform under this Agreement is subject to the satisfaction of the conditions in Sections 2.1 through 2.4, below.
  - 2.1. Grantee's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow.
  - 2.2. Grantee's execution of the Regulatory Agreement in recordable form, in a form approved by both the County and Grantee. The "Regulatory Agreement" is an agreement that (i) requires the Grantee to construct, or cause to be constructed, on the Property residential

units that are affordable to moderate-income or low-income households (each, an "Affordable Unit"), (ii) requires each Affordable Unit to remain affordable for at least a 45-year period that begins upon the sale of the Affordable Unit to the initial eligible purchaser, and (iii) is recorded against the Property.

A. The County agrees that the Regulatory Agreement will be subordinate to the City Documents.

B. If requested by Grantee, the County agrees to subordinate the Regulatory Agreement to a construction lender, provided the subordination agreement includes a 120-day notice and cure period.

A.C. Under the terms of the Regulatory Agreement, the Regulatory Agreement will be released with respect to a particular Affordable Unit upon the initial sale of that Affordable Unit to an eligible purchaser, provided a resale restriction in a form reasonably satisfactory to the County is simultaneously recorded against the Affordable Unit.

2.2-2.3. On or before the Close of Escrow, Grantee shall satisfy its obligations under Section 6.3, below.

2.3-2.4. Grantee must perform all of its obligations under this Agreement.

3. **Conditions Precedent to Grantee's Performance.** The Grantee's obligation to perform under this Agreement is subject to the following conditions:

3.1. County's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow.

3.2. County's performance of its obligations under this Agreement.

3.3. At the close of Escrow, fee title to the Property must vest in the Grantee by the Grant Deed, free and clear of all liens, encumbrances, assessments, leases (recorded and unrecorded), and taxes, except for any exceptions approved in writing by Grantee prior to the expiration of the feasibility period described in Section 4, below; provided, however, if Grantee does not provide a written objection to any of the following exceptions from the Preliminary Report dated March 8, 2016, issued by Old Republic Title Company prior to the expiration of said feasibility period, Grantee shall be deemed to have approved of said exceptions:

A. Covenants, conditions, restrictions and reservations of record, listed as exception 7 and 9.

B. Easements or rights of way of record over said property, listed as exceptions 8 and 10.

C. Other approved exceptions listed as exceptions 11 and 12.

3.4. At the close of Escrow, the Title Company, as defined below, must be prepared to issue a CLTA title insurance policy in the full amount of the Purchase Price, subject only to the approved exceptions, pursuant to Section 3.3 ("Title Policy").

4. **Feasibility Period.** Grantee has a 90-day period from the execution of this Agreement to review the condition and suitability, in Grantee's sole discretion, of the Property for Grantee's

intended use, including but not limited to development costs, financial and market feasibility, hazardous materials, condition of title, and the physical condition of the Property.

5. **Financing Period.** Grantee has a 180-day period from the execution of this Agreement to secure and approve, in Grantee's reasonable discretion, the availability and suitability of the financing necessary to complete the acquisition.
6. **Escrow.** By this Agreement, the County and the Grantee establish an escrow with Old Republic Title Company, 555 12<sup>th</sup> Street, Suite 2000, Oakland, California (the "Title Company"), its Escrow No. 1117014769-JM ("Escrow"). If, for any reason, the named Title Company is unable to handle this transaction through the Close of Escrow, the County's Real Property Agent assigned to oversee the conveyance of this Property will select an alternate title company to handle the transaction, and notify Grantee in writing of the identity and address of the successor title company and the new escrow number. Thereafter, the alternate title company will be the "Title Company" for purposes of this Agreement. Grantee hereby authorizes County to prepare escrow instructions and file escrow instructions with said Title Company, on behalf of Grantee, in accordance with this Agreement. This includes authorization of the Title Company to withhold pro rata taxes, liens, and assessments on the Property conveyed.
  - 6.1. Fees and Title Insurance. The Grantee shall pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the Grantee, the premium charged therefor.
  - 6.2. County's Deposit into Escrow. On or before the close of Escrow, County will deliver into Escrow with the Title Company the following documents:
    - A. A grant deed, in recordable form and properly executed on behalf of County, in a form approved by Grantee ("Grant Deed") conveying to Grantee the Property in fee simple absolute, subject only to the approved exceptions, pursuant to Section 3.3.
    - B. Copies of any effective leases, rental agreements or any other agreements, if any, that the Grantee has agreed in writing, are to remain in effect after Grantee takes title.
    - C. County's affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended [26 USCA §1445] ("FIRPTA Affidavit"); and
    - D. County's affidavit as contemplated by the Revenue and Taxation Code § 18662 ("Withholding Affidavit").
    - E. The Regulatory Agreement, in recordable form and properly executed on behalf of County and Grantee, restricting the use of the Property in accordance with its terms.
  - 6.3. Deposit of Purchase Price into Escrow by Grantee. Prior to the close of Escrow, Grantee will deposit the Purchase Price into Escrow with the Title Company.
  - 6.4. Close of Escrow. Escrow shall close upon the conveyance of the Property to the Grantee. On the closing date, the Title Company shall close Escrow as follows:
    - A. Record the Grant Deed, marked for return to the Grantee care of Janice Jensen,

President and Chief Executive Officer for the Grantee (which shall be deemed delivery to the Grantee);

- B. Record the Regulatory Agreement, marked for return to Maureen Toms, Deputy Director of Department of Conservation and Development (which shall be deemed delivery to the County);
- C. Issue the Title Policy, if requested to do so by the Grantee;
- D. Prorate taxes, assessments, rents and other charges as provided by this Agreement;
- E. Disburse to the County the Purchase Price, less prorated amounts and charges to be paid by or on behalf of County;
- F. Prepare and deliver to the County and to the Grantee one signed copy of the Title Company's closing statement showing all receipts and disbursements of the Escrow.

If the Title Company is unable to simultaneously perform all of the instructions set forth above, the Title Company shall notify the County and the Grantee and retain all funds and documents pending receipt of further instructions from the County.

- 7. **Payment of Property Taxes and Assessments.** All ad valorem real property taxes and any penalties and costs thereon, and all installments of any bond or assessment that constitute a lien on the Property shall be cleared and paid by County as of the date title shall vest in Grantee by the recordation of the deed herein pursuant to Sections 4986, 5082, and 5086 of the Revenue and Taxation Code of the State of California, if unpaid as of the date title vests.
- 8. **County's Representations and Warranties.** County makes the following representations and warranties with the understanding that these representations and warranties are material and are being relied upon by Grantee. County represents and warrants to the Grantee that as of the date of this Agreement and as of the Close of Escrow:
  - 8.1. Marketable Title. County is the owner of the Property and has marketable and insurable fee simple title to the Property clear of restrictions, leases, liens and other encumbrances, subject only to the exceptions from the Preliminary Report dated March 8, 2016, issued by Old Republic Title Company. No leases, rental agreements, licenses, or any other agreements allowing any third party rights to use the Property are or will be in force unless prior consent has been given by the Grantee in writing. County shall not permit any liens, encumbrances, easements, or other agreements to be placed on the property other than the exceptions from the Preliminary Report dated March 8, 2016, issued by Old Republic Title Company, nor shall County enter into any agreement that would affect the Property that would be binding on the Grantee after the Close of Escrow without the prior written consent of the Grantee.
  - 8.2. Property History. County has disclosed to the Grantee all information and records known to and maintained by County in connection with the history of the Property, including, without limitation, information and records concerning the swimming pool and other improvements that were previously at the Property (activity including, without limitation, when the swimming pool was demolished and filled, and the process of removal). Any information that County has delivered to the Grantee is accurate and County has disclosed all known facts with respect to the Property's prior use and history.

- 8.3. Property Information. County has disclosed to the Grantee all reports and studies conducted by and/or maintained by County or County's consultants, including, without limitation, environmental report(s) and arborist report(s). County has provided Grantee with all reports in County's possession, with respect to the Property.
- 8.4. Condition of Property. County has disclosed to the Grantee all information, records and studies maintained by County in connection with the Property concerning hazardous substances and that County is not concealing any knowledge of the presence of contamination or hazardous substances on, from or under the Property. Any information that County has delivered to the Grantee either directly or through County's agents is accurate and County has disclosed all material facts with respect to the Property.
- 8.5. Other Matters Affecting Property. To the best of County's knowledge, there are not presently any actions, suits, or proceedings pending or, to the best of County's knowledge, threatened against or affecting the Property or the interest of County in the Property or its use that would affect County's ability to consummate the transaction contemplated by this Agreement. Further, there are not any outstanding and unpaid arbitration awards or judgments affecting title to any portion of the Property. To the best of County's knowledge there are not presently any pending or threatened condemnation, eminent domain or similar proceedings affecting the Property. County shall promptly notify Grantee of any of these matters arising in the future.
- 8.6. County's Authority. That this Agreement and all other documents delivered prior to or at the Close of Escrow have been authorized, executed, and delivered by County; are binding obligations of the County; and are collectively sufficient to transfer all of County's rights to the Property.
9. **Grantee's Representations and Warranties**. Grantee warrants that, the Grantee's Board of Directors has authorized Grantee to enter into this Agreement, and upon execution, this Agreement shall constitute a binding obligation of the Grantee.
10. **"AS-IS" Condition of the Property**. GRANTEE ACKNOWLEDGES AND AGREES THAT, UNDER THE TERMS OF THIS AGREEMENT, THE COUNTY IS SELLING AND GRANTEE IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, AND THAT THE GRANTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY INCLUDING, WITHOUT LIMITATION: (I) THE PHYSICAL QUALITY, NATURE, ADEQUACY, AND CONDITION OF THE PROPERTY, INCLUDING SOILS, GEOLOGY, AND ANY GROUNDWATER, (II) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (III) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, MERCHANTABILITY, FITNESS, SUITABILITY, VALUE, OR ADEQUACY FOR ANY PARTICULAR PURPOSE, (IV) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PROPERTY, (V) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (VI) THE PRESENCE OF HAZARDOUS MATERIALS, AS DEFINED BELOW, ON, UNDER, OR WITHIN THE PROPERTY OR ANY ADJOINING OR NEIGHBORING PROPERTY, (VII) THE CONDITION OF TITLE TO THE PROPERTY, AND (VIII) THE ECONOMICS OF THE OPERATION OF THE PROPERTY. FOR THE PURPOSES OF THIS SECTION 9, "HAZARDOUS MATERIALS" MEANS ANY SUBSTANCE, MATERIAL, OR WASTE WHICH IS OR MAY BECOME DESIGNATED, CLASSIFIED OR REGULATED AS BEING "TOXIC," "HAZARDOUS," OR A "POLLUTANT" UNDER ANY FEDERAL OR STATE LAW OR REGULATION.

11. **Survival.** All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the assignment, expiration or termination of this Agreement and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.
12. **Right of Entry.** From and after the Effective Date of this Agreement and at all times until this Agreement is terminated or title vests in the Grantee, Grantee and Grantee's designated persons shall have the right at all reasonable times to enter on the Property for the purposes of the Grantee, including but not limited to conducting soil and environmental tests, surveys, engineering studies and other examinations and investigations of the Property. Grantee will defend, indemnify and hold County harmless against any damages, loss or liability or costs' arising from Grantee's or Grantee's designated persons' entry onto the Property, including but not limited to attorney's fees and costs.
13. **Possession of the Property.** Possession of the Property shall be delivered to the Grantee at the Close of Escrow.
14. **Notices.** All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing and delivered in person, by overnight carrier, or by First Class U.S. Mail. The place for delivery of all notices given under this Agreement shall be as follows:

County: Karen A. Laws  
 Real Estate Division/Public Works Department  
 255 Glacier Drive  
 Martinez, CA 94553  
 Telephone: 925-313-2228

Grantee: Habitat for Humanity East Bay/Silicon Valley  
 Janice Jensen, President and Chief Executive Officer  
 2619 Broadway  
 Oakland, CA 94612  
 Telephone: 510-803-3314

or to such other addresses as Grantee and County may respectively designate by written notice to the other. Delivery shall be deemed effective: on the same day if delivery is made in person; on the next day after the date of mailing if delivery is made by overnight carrier; or on the fifth day following the date of mailing, if delivery is made by First Class U.S. Mail.

15. **Assignment, Successors and Third-Party Rights.** Grantee may not assign its rights under this Agreement without the prior written consent of the County. This Agreement inures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, successors, and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.
16. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the parties with respect to the Grantee's purchase of the Property from the County. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties that are not embodied or incorporated by reference herein. The Parties further agree that no other covenant, representation, inducement, promise, or statement not set forth in this Agreement is valid or binding.



17. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
18. **Further Assurances.** Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents as may be necessary, expedient, or proper in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.
19. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.
20. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
21. **Governing Law.** This Agreement is governed by the laws of the State of California.

**CONTRA COSTA COUNTY**

**HABITAT FOR HUMANITY EAST BAY/  
SILICON VALLEY, INC.**

By \_\_\_\_\_  
Julia R. Bueren  
Director of Public Works

By \_\_\_\_\_  
Name:  
Title:

RECOMMENDED FOR APPROVAL:

By \_\_\_\_\_  
Maureen Toms  
Deputy Director, Department of  
Conservation and Development

By \_\_\_\_\_  
Karen A. Laws  
Principal Real Property Agent

APPROVED AS TO FORM:  
Sharon L. Anderson, County Counsel

By \_\_\_\_\_

Exhibit A - Legal Description

Parcel Numbers: 148-180-050, 051, & 052  
Project Name: Sale of Las Juntas Parcels  
Project Number: 4500-6X5489

Grantor: County of Contra Costa  
Address: Las Juntas Way  
Walnut Creek, California

**PURCHASE AND SALE AGREEMENT BETWEEN  
CONTRA COSTA COUNTY  
AND  
HABITAT FOR HUMANITY EAST BAY/SILICON VALLEY, INC.**

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**RECITALS**

- A. County is the owner of approximately 2.05 acres of real property located off of Las Juntas Way in Walnut Creek, California, consisting of three Assessor's Parcel Numbers (APNs) 148-180-050, 051 & 052, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").
- B. County desires to sell, and Grantee desires to purchase, the Property under the terms and conditions of this Agreement.
- C. The City of Walnut Creek, California (the "City") is loaning Grantee some or all of the Purchase Price, as defined below. At the close of Escrow, as defined below, the City intends to record a deed of trust and a regulatory agreement against the Property for the benefit of the City (together, the "City Documents"), to (i) secure repayment of the City's loan to Grantee, and (ii) restrict the use of the Property to housing that is affordable to moderate-income or low-income households.
- D. At the close of Escrow, the County and Grantee are required to record a regulatory agreement against the Property for the benefit of the County that restricts the use of the Property.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

- 1. **Purchase and Sale.** Subject to the terms and conditions in this Agreement, County agrees to sell and Grantee agrees to purchase, the Property for the purchase price of Three Million Dollars (\$3,000,000.00) (the "Purchase Price").
- 2. **Conditions Precedent to County's Performance.** The County's obligation to perform under this Agreement is subject to the satisfaction of the conditions in Sections 2.1 through 2.4, below.
  - 2.1. Grantee's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow.
  - 2.2. Grantee's execution of the Regulatory Agreement in recordable form, in a form approved by both the County and Grantee. The "Regulatory Agreement" is an agreement that (i) requires the Grantee to construct, or cause to be constructed, on the Property residential

units that are affordable to moderate-income or low-income households (each, an "Affordable Unit"), (ii) requires each Affordable Unit to remain affordable for at least a 45-year period that begins upon the sale of the Affordable Unit to the initial eligible purchaser, and (iii) is recorded against the Property for the benefit of the County.

- A. The County agrees that the Regulatory Agreement will be subordinate to the City Documents.
- B. If requested by Grantee, the County agrees to subordinate the Regulatory Agreement to a construction lender's deed of trust, provided the subordination agreement includes an opportunity for the County to cure a default by Grantee under the construction loan documents and a 120-day notice and cure period.
- C. Under the terms of the Regulatory Agreement, the Regulatory Agreement will be released with respect to a particular Affordable Unit upon the initial sale of that Affordable Unit to an eligible purchaser, provided a resale restriction in a form reasonably satisfactory to the County is simultaneously recorded against the Affordable Unit.

2.3. On or before the Close of Escrow, Grantee shall satisfy its obligations under Section 6.3, below.

2.4. Grantee must perform all of its obligations under this Agreement.

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3.1. County's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow.

3.2. County's performance of its obligations under this Agreement.

3.3. At the close of Escrow, fee title to the Property must vest in the Grantee by the Grant Deed, free and clear of all liens, encumbrances, assessments, leases (recorded and unrecorded), and taxes, except for any exceptions approved in writing by Grantee prior to the expiration of the feasibility period described in Section 4, below; provided, however, if Grantee does not provide a written objection to any of the following exceptions from the Preliminary Report dated March 8, 2016, issued by Old Republic Title Company prior to the expiration of said feasibility period, Grantee shall be deemed to have approved of said exceptions:

A. Covenants, conditions, restrictions and reservations of record, listed as exception 7 and 9.

B. Easements or rights of way of record over said property, listed as exceptions 8 and 10.

C. Other approved exceptions listed as exceptions 11 and 12.

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review the condition and suitability, in Grantee's sole discretion, of the Property for Grantee's intended use, including but not limited to development costs, financial and market feasibility, hazardous materials, condition of title, and the physical condition of the Property.

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6. **Escrow.** By this Agreement, the County and the Grantee establish an escrow with Old Republic Title Company, 555 12<sup>th</sup> Street, Suite 2000, Oakland, California (the "Title Company"), its Escrow No. 1117014769-JM ("Escrow"). If, for any reason, the named Title Company is unable to handle this transaction through the Close of Escrow, the County's Real Property Agent assigned to oversee the conveyance of this Property will select an alternate title company to handle the transaction, and notify Grantee in writing of the identity and address of the successor title company and the new escrow number. Thereafter, the alternate title company will be the "Title Company" for purposes of this Agreement. Grantee hereby authorizes County to prepare escrow instructions and file escrow instructions with said Title Company, on behalf of Grantee, in accordance with this Agreement. This includes authorization of the Title Company to withhold pro rata taxes, liens, and assessments on the Property conveyed.
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    - B. Copies of any effective leases, rental agreements or any other agreements, if any, that the Grantee has agreed in writing, are to remain in effect after Grantee takes title.
    - C. County's affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended [26 USCA §1445] ("FIRPTA Affidavit"); and
    - D. County's affidavit as contemplated by the Revenue and Taxation Code § 18662 ("Withholding Affidavit").
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  - 6.4. Close of Escrow. Escrow shall close upon the conveyance of the Property to the Grantee. On the closing date, the Title Company shall close Escrow as follows:

- A. Record the Grant Deed, marked for return to the Grantee care of Janice Jensen, President and Chief Executive Officer for the Grantee (which shall be deemed delivery to the Grantee);
- B. Record the Regulatory Agreement, subject only to the liens of the City Documents, marked for return to Maureen Toms, Deputy Director of Department of Conservation and Development (which shall be deemed delivery to the County);
- C. Issue the Title Policy, if requested to do so by the Grantee;
- D. Prorate taxes, assessments, rents and other charges as provided by this Agreement;
- E. Disburse to the County the Purchase Price, less prorated amounts and charges to be paid by or on behalf of County;
- F. Prepare and deliver to the County and to the Grantee one signed copy of the Title Company's closing statement showing all receipts and disbursements of the Escrow.

If the Title Company is unable to simultaneously perform all of the instructions set forth above, the Title Company shall notify the County and the Grantee and retain all funds and documents pending receipt of further instructions from the County.

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8. **County's Representations and Warranties.** County makes the following representations and warranties with the understanding that these representations and warranties are material and are being relied upon by Grantee. County represents and warrants to the Grantee that as of the date of this Agreement and as of the Close of Escrow:
  - 8.1. Marketable Title. County is the owner of the Property and has marketable and insurable fee simple title to the Property clear of restrictions, leases, liens and other encumbrances, subject only to the exceptions from the Preliminary Report dated March 8, 2016, issued by Old Republic Title Company. No leases, rental agreements, licenses, or any other agreements allowing any third party rights to use the Property are or will be in force unless prior consent has been given by the Grantee in writing. County shall not permit any liens, encumbrances, easements, or other agreements to be placed on the property other than the exceptions from the Preliminary Report dated March 8, 2016, issued by Old Republic Title Company, nor shall County enter into any agreement that would affect the Property that would be binding on the Grantee after the Close of Escrow without the prior written consent of the Grantee.
  - 8.2. Property History. County has disclosed to the Grantee all information and records known to and maintained by County in connection with the history of the Property, including, without limitation, information and records concerning the swimming pool and other improvements that were previously at the Property (activity including, without limitation, when the swimming pool was demolished and filled, and the process of removal). Any information that County has delivered to the Grantee is accurate and County has

disclosed all known facts with respect to the Property's prior use and history.

8.3. Property Information. County has disclosed to the Grantee all reports and studies conducted by and/or maintained by County or County's consultants, including, without limitation, environmental report(s) and arborist report(s). County has provided Grantee with all reports in County's possession, with respect to the Property.

8.4. Condition of Property. County has disclosed to the Grantee all information, records and studies maintained by County in connection with the Property concerning hazardous substances and that County is not concealing any knowledge of the presence of contamination or hazardous substances on, from or under the Property. Any information that County has delivered to the Grantee either directly or through County's agents is accurate and County has disclosed all material facts with respect to the Property.

8.5. Other Matters Affecting Property. To the best of County's knowledge, there are not presently any actions, suits, or proceedings pending or, to the best of County's knowledge, threatened against or affecting the Property or the interest of County in the Property or its use that would affect County's ability to consummate the transaction contemplated by this Agreement. Further, there are not any outstanding and unpaid arbitration awards or judgments affecting title to any portion of the Property. To the best of County's knowledge there are not presently any pending or threatened condemnation, eminent domain or similar proceedings affecting the Property. County shall promptly notify Grantee of any of these matters arising in the future.

8.6. County's Authority. That this Agreement and all other documents delivered prior to or at the Close of Escrow have been authorized, executed, and delivered by County; are binding obligations of the County; and are collectively sufficient to transfer all of County's rights to the Property.

9. **Grantee's Representations and Warranties.** Grantee warrants that, the Grantee's Board of Directors has authorized Grantee to enter into this Agreement, and upon execution, this Agreement shall constitute a binding obligation of the Grantee.

10. **"AS-IS" Condition of the Property.** GRANTEE ACKNOWLEDGES AND AGREES THAT, UNDER THE TERMS OF THIS AGREEMENT, THE COUNTY IS SELLING AND GRANTEE IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, AND THAT THE GRANTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY INCLUDING, WITHOUT LIMITATION: (I) THE PHYSICAL QUALITY, NATURE, ADEQUACY, AND CONDITION OF THE PROPERTY, INCLUDING SOILS, GEOLOGY, AND ANY GROUNDWATER, (II) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (III) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, MERCHANTABILITY, FITNESS, SUITABILITY, VALUE, OR ADEQUACY FOR ANY PARTICULAR PURPOSE, (IV) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PROPERTY, (V) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (VI) THE PRESENCE OF HAZARDOUS MATERIALS, AS DEFINED BELOW, ON, UNDER, OR WITHIN THE PROPERTY OR ANY ADJOINING OR NEIGHBORING PROPERTY, (VII) THE CONDITION OF TITLE TO THE PROPERTY, AND (VIII) THE ECONOMICS OF THE OPERATION OF THE PROPERTY. FOR THE PURPOSES OF THIS SECTION 9, "HAZARDOUS MATERIALS" MEANS ANY SUBSTANCE, MATERIAL, OR WASTE WHICH IS OR MAY BECOME DESIGNATED, CLASSIFIED OR

REGULATED AS BEING "TOXIC," "HAZARDOUS," OR A "POLLUTANT" UNDER ANY FEDERAL OR STATE LAW OR REGULATION.

11. **Survival.** All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the assignment, expiration or termination of this Agreement and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.
12. **Right of Entry.** From and after the Effective Date of this Agreement and at all times until this Agreement is terminated or title vests in the Grantee, Grantee and Grantee's designated persons shall have the right at all reasonable times to enter on the Property for the purposes of the Grantee, including but not limited to conducting soil and environmental tests, surveys, engineering studies and other examinations and investigations of the Property. Grantee will defend, indemnify and hold County harmless against any damages, loss or liability or costs' arising from Grantee's or Grantee's designated persons' entry onto the Property, including but not limited to attorney's fees and costs.
13. **Possession of the Property.** Possession of the Property shall be delivered to the Grantee at the Close of Escrow.
14. **Notices.** All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing and delivered in person, by overnight carrier, or by First Class U.S. Mail. The place for delivery of all notices given under this Agreement shall be as follows:

County: Karen A. Laws  
Real Estate Division/Public Works Department  
255 Glacier Drive  
Martinez, CA 94553  
Telephone: 925-313-2228

Grantee: Habitat for Humanity East Bay/Silicon Valley  
Janice Jensen, President and Chief Executive Officer  
2619 Broadway  
Oakland, CA 94612  
Telephone: 510-803-3314

or to such other addresses as Grantee and County may respectively designate by written notice to the other. Delivery shall be deemed effective: on the same day if delivery is made in person; on the next day after the date of mailing if delivery is made by overnight carrier; or on the fifth day following the date of mailing, if delivery is made by First Class U.S. Mail.

15. **Assignment, Successors and Third-Party Rights.** Grantee may not assign its rights under this Agreement without the prior written consent of the County. This Agreement inures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, successors, and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.
16. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the parties with respect to the Grantee's purchase of the Property from the County. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties that are not embodied or incorporated by reference



herein. The Parties further agree that no other covenant, representation, inducement, promise, or statement not set forth in this Agreement is valid or binding.

17. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
18. **Further Assurances.** Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents as may be necessary, expedient, or proper in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.
19. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.
20. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
21. **Governing Law.** This Agreement is governed by the laws of the State of California.

**CONTRA COSTA COUNTY**

**HABITAT FOR HUMANITY EAST BAY/  
SILICON VALLEY, INC.**

By \_\_\_\_\_  
Julia R. Bueren  
Director of Public Works

By \_\_\_\_\_  
Name:  
Title:

RECOMMENDED FOR APPROVAL:

By \_\_\_\_\_  
Maureen Toms  
Deputy Director, Department of  
Conservation and Development

By \_\_\_\_\_  
Karen A. Laws  
Principal Real Property Agent

APPROVED AS TO FORM:

Sharon L. Anderson, County Counsel

By \_\_\_\_\_

Exhibit A - Legal Description