



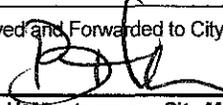
Agenda Date: 10/27/2015

Agenda Item: 5.1

STAFF REPORT

Date: Tuesday, October 27, 2015
To: Bryan H. Montgomery, City Manager
From: Dwayne Dalman, Economic Development Manager
SUBJECT: Authorization to Execute Purchase Agreements for the Purchase of 4.62 acres of land located north of Main Street and east of Oakley Plaza and .20 acres of land located at 3570 Main Street

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Summary and Background

The Cunha family has owned property in Oakley for many years. Some of the property that they own is located in the Downtown corridor. In March of 2015, Cunha family members met with Staff to discuss their desire to sell 4.62 acres of unimproved land located in downtown, north of Main Street and east of Oakley Plaza (APN 037-160-006, 037-160-007, 037-160-018). The property consists of two parcels of land. One .20 acre parcel fronts Main Street, immediately adjacent to the east of the Successor Agency-owned building located at 3330 Main Street. The remaining 4.37 acres of land consists of one parcel that is located north of the frontage parcel and directly south of the railroad right of way and railroad tracks.

In addition to the 4.62 acres of land, the Cunha family co-owns .20 acres of unimproved land located at 3570 Main Street (APN 037-160-025). This vacant, triangular-shaped property is located on the north side of Main Street, directly across from the intersection of Main and Second Street. The property is also immediately adjacent to the City-owned building located at 3231 Main Street. The Cunha's have expressed to staff their desire to sell this property as well.

Note: To facilitate a fair and final resolution on price, Staff has been negotiating with the Cunha family to purchase both parcels at once and at one price. A Closed Session with the City Council will be held at the beginning of the regular Council Meeting to discuss these negotiations and the overall price. A purchase price will be presented as this item is heard, unless the City Council directs that further negotiations take place and this item would be postponed to a future meeting.

Aerial View of the Parcels



Downtown Development

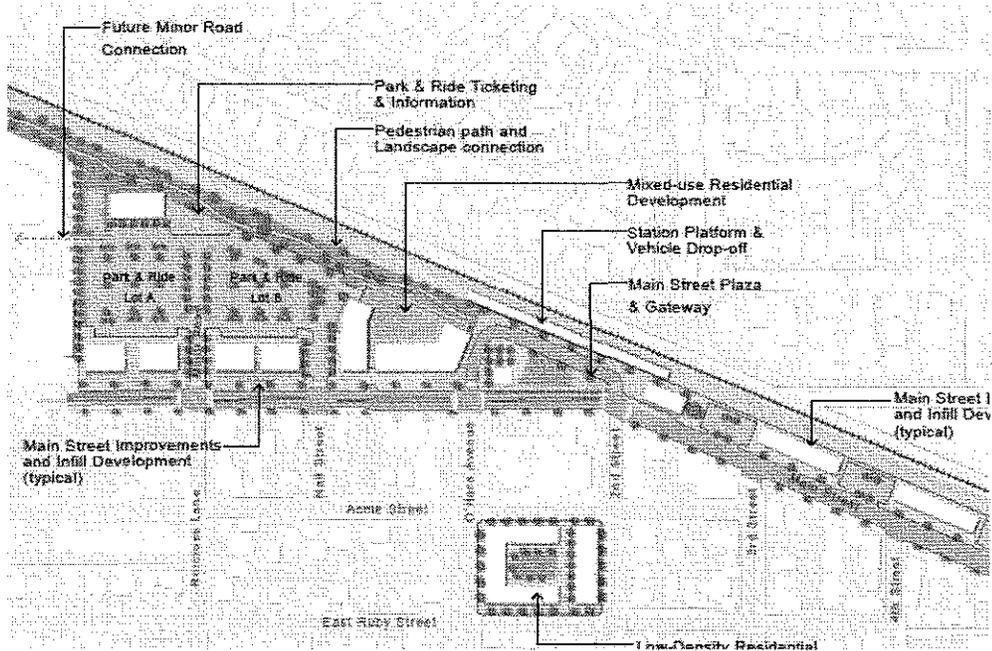
The development of Downtown Oakley is a priority for the City Council. The goal for the community is to have a Downtown that is thriving and vibrant, and will serve as a solid foundation for the economic vitality of Oakley. There are a number of projects that are planned for the downtown in the near future.

Public Works is planning a streetscape improvement project in Downtown from Norcross Lane to 5th Street. The City was successful in securing a \$1.4M federal grant for the improvements. The grant will supplement local funds to design and construct improvements to Main Street, which will be based on the Downtown "Visioning" project and concept plan. This project is scheduled to begin in the spring of next year.

In addition to the streetscape improvements, the City applied for and was awarded a \$100,000 grant to conduct a Downtown Priority Development Area (PDA) Study. The study provided the City with vital information relevant to the benefits of a potential San Joaquin Joint Powers Authority (JPA) Station and a Tri Delta Transit park and ride lot would bring to the Downtown PDA, in terms of economic expansion including new retail/commercial uses as well as job creation.

The plan included detailed mapping of potential project sites, which were narrowed down to one preferred site approved by the City Council on September 8, 2015. As shown on the preferred site plan, both Cunha properties are integral to the preferred site plan. The 4.62 acre property is located in the area identified as the Park & Ride Lot A & B, and the .20 acre triangle-shaped property is located in the general area identified as the Main Street Plaza & Transit Station.

4.2 FOCUS AREA



Purchase Price

In order to assist in determining the value of the 4.62 acre property, an appraisal was ordered and completed. The appraisal, dated August 25, 2015, concluded a value of \$1,580,000 for the property but with the assumption that the needed roadway for the property was installed. After the appraisal was completed, a broker representative for the Cunha's indicated that they would be willing to accept less than the appraised value for the property, in part due to the fact that the roadway cost is so significant.

A formal appraisal has not been completed on the .20 acres triangle-shaped of property; however, market estimates place this uniquely-shaped frontage property at somewhere between \$4.00 and \$5.00 per square foot.

Based on the discussions during Closed Session held at the beginning of the regular Council Meeting to discuss these negotiations and the overall price, a purchase price will be presented as this item is heard, unless the City Council directs that further negotiations take place and consideration of the purchase postponed.

Fiscal Impact

If Council formally considers approval of this Agreement, a proposed purchase price will be presented at the Council Meeting. The anticipated improvements to the properties include a park & ride lot, commercial development and a transit station. It should be noted that the park & ride lot does not take up the entire 4.62 acre larger property. The land fronting Main Street is available for commercial development and could be sold in the future to accommodate new development. The City would realize sales proceeds at that time.

In addition to the direct financial impact of the purchase and possible land sales, the train station is anticipated to be a catalyst for future transit-oriented development in the downtown area, including retail, office and residential

development. These anticipated developments will increase property values and property taxes as well as provide local employment opportunities.

Recommendation

Staff recommends that the Council adopt the resolution approving the Real Property Purchase Agreements for the purchase of 4.62 acres of land located north of Main Street and east of Oakley Plaza and .20 acres of land located at 3570 Main Street.

Attachments

1. Resolution
2. Real Property Purchase Agreements

RESOLUTION NO. _____-10

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AUTHORIZING THE CITY MANAGER TO EXECUTE REAL PROPERTY
PURCHASE AGREEMENTS FOR THE PURCHASE OF 4.62 ACRES OF LAND
LOCATED NORTH OF MAIN STREET AND EAST OF OAKLEY PLAZA AND
8,712 SQUARE FEET OF LAND LOCATED AT 3570 MAIN STREET**

BE IT RESOLVED by the City Council of the City of Oakley that the City Manager is hereby authorized and directed to sign on behalf of the City certain Real Property Purchase Agreements for the purchase of 4.62 acres of real property located north of Main Street and east of Oakley Plaza (APN 037-160-006, 037-160-007, 037-160-018) and 8,712 square feet of land located at 3570 Main Street (APN 037-160-025).

The foregoing resolution was introduced at a regular meeting of the Oakley City held on the 27th day of October 2015, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Doug Hardcastle, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is entered into this October 27th, 2015 (the date upon which this Agreement was approved by the governing board of the City of Oakley, and hereinafter referred to as (the "**Effective Date**") by and between the Cunha Family Limited Partnership, referred to herein as ("**Seller**") and the City of Oakley, a political subdivision of the State of California ("**BUYER**"). Seller and Buyer are hereinafter referred to collectively as the "**Parties**".

WHEREAS, Seller is the owner of that certain real property in the City of Oakley, Contra Costa County, California, known as APN 037-160-006, 037-160-007, and 037-160-018, located north of Main Street and east of Oakley Plaza in the City of Oakley, California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**");

WHEREAS, in accordance with the terms and conditions contained herein, Buyer desires to purchase, and Seller desires to sell, the Land together with all improvements located thereon and all easements, hereditaments, and appurtenances belonging to or inuring to the benefit of Seller and pertaining to the Land (all of the foregoing collectively hereinafter, the "**Property**");

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

1. **Agreement to Sell and Purchase; As Is Purchase**. Seller agrees to sell and Buyer agrees to purchase the Property subject to the terms and conditions of this Agreement.
2. **Purchase Price**. To Be Determined ("**Purchase Price**")
3. **Conveyance of Title**. At the close of escrow, Seller shall convey by grant deed to Buyer marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, leases and taxes except:
 - (a) taxes for the fiscal year in which the escrow for this transaction closes, which shall be prorated as of the close of escrow and handled in accordance with Section 4986 of the California Revenue and Taxation Code; and
 - (b) such other conditions, liens, encumbrances, restrictions and exceptions as may be approved in writing by Buyer ("**Permitted Exceptions**").
4. **Escrow; Escrow Instructions**. Within five (5) business days following the Effective Date, the Parties shall open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of Old Republic Title Company located at Concord, 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 collectively shall serve as the joint escrow instructions of Buyer and Seller for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent.

5. **Title Documents.** Within seven (7) days following the opening of escrow, Seller shall deliver or cause to be delivered to Buyer a preliminary title report ("**Preliminary Report**") on the Property issued by the Title Company, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters of record affecting Seller's title to the Property, together with copies of all documents relating to exceptions listed in the Preliminary Report ("**Title Exceptions**") and complete and legible copies of all instruments referred to therein, as requested by Buyer. Buyer shall approve or disapprove each Title Exception within ten (10) days following Buyer's receipt of the Preliminary Report. Buyer's failure to object within such period shall be deemed to be a disapproval of the Title Exceptions.

If Buyer objects or is deemed to have disapproved any Title Exception, Seller shall use its best efforts at Seller's sole expense to remove from title or otherwise satisfy each such exception no later than fourteen (14) days after Buyer's written objection and such satisfaction shall be in a form that is reasonably satisfactory to Buyer. If Seller fails to remove or satisfy any Title Exception to the satisfaction of Buyer, Buyer shall have the option, in its sole discretion, to terminate this Agreement or to accept title subject to such exception.

It shall be a condition to the close of escrow that Title Company shall deliver to Buyer, within five (5) days after Buyer has approved the Preliminary Report pursuant to this Section, and in no event later than seven (7) days prior to the close of escrow, a title commitment for an CLTA Title Insurance Policy ("**Title Policy**") to be issued by Title Company in the amount of the Purchase Price for the benefit and protection of Buyer, showing title to the Property vested in Buyer, subject only to the Permitted Exceptions, including such endorsements as may reasonably be requested by Buyer, and committing Title Company to issue the Title Policy to Buyer upon the close of escrow.

Inspection Period

Buyer acknowledges that SELLER desires to sell the Property in its "as-is" condition. The parties agree that an Inspection Period not to exceed sixty (60) days following the Effective Date of this Agreement will be granted for the BUYER to further evaluate and specifically inspect the property. BUYER and BUYER's authorized representatives, may enter onto the Property at any reasonable time upon giving the occupant at least twenty-four hours advance notice and from time to time to survey and inspect the Property. Testing may be conducted, including, but not limited to, soil and groundwater sampling. BUYER shall pay costs of all inspection and testing services.

BUYER will undertake the Due Diligence at its sole cost and expense. BUYER will indemnify, defend with counsel reasonably acceptable to SELLER, and hold SELLER harmless from all claims (including claims of lien for work or labor performed or materials or supplies furnished), demands, liabilities, losses, damages, costs, fees, and expenses, including SELLER's reasonable attorney fees, costs, and expenses, arising from the acts or activities of BUYER or BUYER's representatives in, on, or about the Property during or arising in connection with the BUYER's inspections of the Property. BUYER shall return the Property as nearly as possible to the same condition the Property was in prior to such entry or activities.

6. **Closing Documents and Funds.**

(a) Seller.

(1) Within ten (10) days following the opening of escrow, Seller shall deposit into escrow all of the following:

- (i) a Grant Deed, substantially in the form attached hereto as Exhibit B ("**Grant Deed**"), duly executed and acknowledged, conveying to Buyer good and marketable fee simple title to the Property, subject only to exceptions approved pursuant to this Agreement;
- (ii) Seller's affidavit of non-foreign status and Seller's certification that Seller is a resident of California, each executed by Seller under penalty of perjury as required by state and federal law;
- (iii) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) Unless Seller elects to have the following charges deducted from the funds to be distributed to Seller at close of escrow, no later than five (5) business days prior to close of escrow, Seller shall deposit into escrow immediately available funds in the amount necessary to pay all governmental conveyance fees and transfer taxes.

(b) Buyer.

(1) Within five (5) days prior to close of escrow, Buyer shall deposit into escrow such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) No less than five (5) business days prior to the close of escrow, Buyer shall deposit into escrow immediately available funds in an amount is equal to:

- (i) the Purchase Price as adjusted by any prorations between the Parties; and
- (ii) the premium for a CLTA title insurance policy;
- (iii) the recording fees; and
- (iv) its respective notary fees.

7. **Close of Escrow.** Unless this Agreement is terminated pursuant to the terms hereof or extended by mutual written consent of the Parties, escrow shall close no later than the date which is sixty (60) days after escrow is opened. The Escrow Agent shall close escrow by: (i) causing the Grant Deed to be recorded in the official records of Contra Costa County, California; (ii) issuing the Title Policy and delivering same to Buyer; (iii) delivering to Seller the monies constituting the Purchase Price less prorated amounts and charges to be paid by or on behalf of Seller; and (iv) delivering to Buyer the original Grant

Deed, together with a conformed copy thereof indicating recording information thereon. Possession of the Property shall be delivered to Buyer at the close of escrow.

8. **Default.** The failure of either party to meet, comply with or perform any material covenant, agreement or obligation hereunder, within the time limits and in the manner required, either prior to or at Closing, for any reason other than the termination of this Agreement pursuant to a right to so terminate expressly set forth in this Agreement or if any representation, warranty or covenant set forth herein of either party is untrue or inaccurate in any material respect shall constitute a default under this Agreement. The party who so fails or delays shall be entitled to (i) terminate this Agreement (by delivering notice to the non-defaulting party, Escrow and Title Company); (ii) pursue any and all of its rights under this Agreement at law or in equity, or (iii) treat this Agreement as being in full force and effect and pursue the specific performance of this Agreement.

9. **Prorations.** At the close of escrow, the Escrow Agent shall make the following prorations: property taxes shall be prorated as of the close of escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered.

10. **Buyer's Conditions to Closing.** The close of escrow and Buyer's obligation to purchase the Property are conditioned upon: (i) the performance by Seller of each obligation to be performed by Seller under this Agreement within the applicable time period, or the waiver by Buyer of such obligation; and (ii) the commitment by Title Company to issue and deliver the Title Policy, subject only to the Permitted Exceptions.

Should any condition to closing fail to occur, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Buyer to Seller or deposited with the Escrow Agent by or on behalf of Buyer. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

11. **Studies, Reports and Investigations; Governmental Approvals; Hazardous Substances.** Seller agrees to make available to Buyer within five (5) business days following the Effective Date, any and all information, studies, reports, investigations and other obligations concerning or relating to the Property which are in Seller's possession or which are reasonably available to Seller, 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 the compliance by the Property with Environmental Laws (as defined in Exhibit C).

Nothing in this Agreement or otherwise shall bind or otherwise affect Seller's discretion in making or declining to make any findings necessary to grant any land use approvals or entitlements for any proposed development of the Property contemplated by Buyer. Buyer acknowledges and agrees that it is solely responsible for all necessary approvals from the appropriate governmental and/or regulatory entities needed for development of the Property, including, but not limited to, re-zoning of the Property, all necessary entitlements and necessary building permits.

The acquisition price for Seller's Parcel and Other Improvements reflects the fair market value of Seller's Parcel without the presence of contamination. If the Seller's Parcel being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, Buyer may in its sole discretion elect to recover its clean-up costs from those who caused or contributed to the contamination or to terminate this Agreement immediately without further obligation to Seller. Seller shall further indemnify, defend, save and hold harmless the Buyer from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on Seller's Parcel, , save and except claims, costs or litigation arising through the sole willful misconduct of the Buyer, its agents or employees.

Buyer further agrees as part of the consideration herein that Seller will not, use, generate, manufacture, store, dump, bury, leak or dispose of any flammable, explosive or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent on the Seller's Parcel, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency. In such event Buyer will, at its sole expense, remove, cleanup or otherwise mitigate such problem, and will further release and indemnify Buyer from any and all liability arising from such problem.

12. **Seller's Conditions to Closing.** The close of escrow and Seller's obligation to sell the Property pursuant to this Agreement are conditioned upon: (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement within the applicable time period, or waiver by Seller of such obligation; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the close of escrow.

13. **Seller's Representations.** Seller is the owner of the Property and has all right, title and interest to transfer the same to Buyer.

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

15. **Buyer's Representations, Warranties and Covenants.** Buyer represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the close of escrow: (i) have been duly authorized, executed, and delivered by Buyer; (ii) are binding obligations of Buyer; and (iii) do not violate the provisions of any agreement to which Buyer is a party. Buyer further represents and warrants that the persons who have executed this Agreement on behalf of Buyer have are duly authorized to do, that Buyer has the legal right to enter into this Agreement and to perform all of its terms and conditions, and this Agreement is enforceable against Buyer in accordance with its terms.

16. **Damage and Destruction.** In the event of any damage or other loss to the Property, or any portion thereof, caused by fire or other casualty prior to the close of escrow in an amount not exceeding \$25,000, Buyer shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that Seller shall: (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the close of escrow the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the close of escrow in an amount in excess of \$25,000, Buyer may elect either to terminate this Agreement upon written notice to Seller, or to consummate the purchase of the Property, in which case Seller shall (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the close of escrow the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event Buyer elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Buyer shall be returned to Buyer, and all rights and obligations hereunder shall terminate.

17. **Brokers.** Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities 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.

18. **Assignment.** Buyer shall not have the right to assign any rights and obligations under this Agreement to any party without the prior written approval by Seller.

19. **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:

- (i) 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;
- (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;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been

received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

City: City of Oakley
3231 Main Street
Oakley, California 94561
Attn: City Manager
Telephone: (925) 625-7000
Facsimile: (925) 625-9194

20. **Litigation Costs.** If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which such Party may be entitled.

21. **Waivers; Modification.** No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

22. **Successors.** This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assignees of the Parties.

23. **Provisions Not Merged With Deeds.** None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by the Grant Deed, and neither the Grant Deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. Without limiting the generality of the foregoing, Seller's representations, warranties and covenants contained herein shall survive the close of escrow.

24. **Construction.** 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.

25. **Action or Approval.** Where action and/or approval by Buyer is required under this Agreement, Buyer's Executive Director may act on and/or approve such matter unless the Executive Director determines in his or her discretion that such action or approval requires referral to Buyer's Board for consideration. The time periods afforded Buyer for any event, inspection, feasibility, due diligence, escrow closing or otherwise shall not be extended by any such referral to Buyer's Board.

26. **Entire Agreement.** This Agreement, including Exhibits A to C attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the

subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter thereto.

27. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

28. **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.

29. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

30. **Parties Not Co-Venturers.** Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

31. **Non-Liability of Officials, Employees and Agents.** No member, official, employee or agent of Buyer shall be personally liable to Seller or its successors in interest in the event of any default or breach by Buyer or for any amount which may become due to Seller or its successors in interest pursuant to this Agreement.

32. **Time of the Essence.** Time is of the essence for each condition, term, obligation and provision of this Agreement.

33. **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.

34. **Time for Performance.** When the time for performance of any obligation under this Agreement is to be measured from another event, such time period shall include the day of the other event. If the day of the time for performance is not a regular business day, then the time for such performance shall be by the regular business day following such day.

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

BUYER:

CITY OF OAKLEY

By: _____
Bryan H. Montgomery
Its: City Manager

ATTEST:

By: _____
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

City General Counsel

SELLER:

Cunha Family Limited Partnership

By: _____
Title: _____

Exhibit A

PROPERTY
(Attach legal description.)

Exhibit B

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

Cunha Family Limited Partnership, a _____ (herein called "**Seller**"), hereby grants to **THE CITY OF OAKLEY**, a political subdivision of the State of California (herein called "**Grantee**"), the real property (the "**Property**") legally described in the document attached hereto, labeled **Exhibit A**, and incorporated herein by this reference.

1. The Property is pursuant to a Purchase and Sale Agreement (the "**Agreement**") entered into by and between the Seller and the Grantee and dated October 27, 2015. The Property is also conveyed subject to any easements and permitted exceptions of record.

2. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenants shall run with the land.

3. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument obtained by Grantee to finance the purchase of the Property, provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

4. The covenants against discrimination contained in paragraph 2 of this Grant Deed shall remain in perpetuity and shall be binding for the benefit of the Seller, its successors and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Seller and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Seller is or remains an owner of any land or interest therein to which such covenants relate. The Seller and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Seller, its successors and such aforementioned parties.

5. In the event of any express conflict between this Grant Deed or the Agreement, the provisions of this Grant Deed shall control.

IN WITNESS WHEREOF, the Seller and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized this _____ day of _____, 20____.

By: _____
[NAME, TITLE]

The provisions of this Grant Deed are hereby approved and accepted.

Executive Director

By:

Title:

EXHIBIT A to GRANT DEED

Property Description

Exhibit C

HAZARDOUS MATERIALS; ENVIRONMENTAL LAWS

“Environmental Laws” shall mean all present and future federal, state and local laws, statutes, rules regulations, ordinances, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, license approvals or other entitlements, or rules of common law pertaining to the protection of the environment, natural resources, wildlife, human health or safety, or employee or community right-to-know requirements related to the work being performed pursuant to this Agreement.

“Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; or (6) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is entered into this October 27th, 2015 (the date upon which this Agreement was approved by the governing board of the City of Oakley, and hereinafter referred to as (the "**Effective Date**") by and between the Cunha Family Limited Partnership, referred to herein as ("**Seller**") and the City of Oakley, a political subdivision of the State of California ("**BUYER**"). Seller and Buyer are hereinafter referred to collectively as the "**Parties**".

WHEREAS, Seller is the owner of that certain real property in the City of Oakley, Contra Costa County, California, known as APN 037-160-025, located at 3570 Main Street in the City of Oakley, California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**");

WHEREAS, in accordance with the terms and conditions contained herein, Buyer desires to purchase, and Seller desires to sell, the Land together with all improvements located thereon and all easements, hereditaments, and appurtenances belonging to or inuring to the benefit of Seller and pertaining to the Land (all of the foregoing collectively hereinafter, the "**Property**");

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

1. **Agreement to Sell and Purchase; As Is Purchase.** Seller agrees to sell and Buyer agrees to purchase the Property subject to the terms and conditions of this Agreement.

2. **Purchase Price.** To Be Determined ("**Purchase Price**")

3. **Conveyance of Title.** At the close of escrow, Seller shall convey by grant deed to Buyer marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, leases and taxes except:

(a) taxes for the fiscal year in which the escrow for this transaction closes, which shall be prorated as of the close of escrow and handled in accordance with Section 4986 of the California Revenue and Taxation Code; and

(b) such other conditions, liens, encumbrances, restrictions and exceptions as may be approved in writing by Buyer ("**Permitted Exceptions**").

4. **Escrow; Escrow Instructions.** Within five (5) business days following the Effective Date, the Parties shall open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of Old Republic Title Company located at Concord, 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 collectively shall serve as the joint escrow instructions of Buyer and Seller for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent.

5. **Title Documents.** Within seven (7) days following the opening of escrow, Seller shall deliver or cause to be delivered to Buyer a preliminary title report ("**Preliminary Report**") on the Property issued by the Title Company, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters of record affecting Seller's title to the Property, together with copies of all documents relating to exceptions listed in the Preliminary Report ("**Title Exceptions**") and complete and legible copies of all instruments referred to therein, as requested by Buyer. Buyer shall approve or disapprove each Title Exception within ten (10) days following Buyer's receipt of the Preliminary Report. Buyer's failure to object within such period shall be deemed to be a disapproval of the Title Exceptions.

If Buyer objects or is deemed to have disapproved any Title Exception, Seller shall use its best efforts at Seller's sole expense to remove from title or otherwise satisfy each such exception no later than fourteen (14) days after Buyer's written objection and such satisfaction shall be in a form that is reasonably satisfactory to Buyer. If Seller fails to remove or satisfy any Title Exception to the satisfaction of Buyer, Buyer shall have the option, in its sole discretion, to terminate this Agreement or to accept title subject to such exception.

It shall be a condition to the close of escrow that Title Company shall deliver to Buyer, within five (5) days after Buyer has approved the Preliminary Report pursuant to this Section, and in no event later than seven (7) days prior to the close of escrow, a title commitment for an CLTA Title Insurance Policy ("**Title Policy**") to be issued by Title Company in the amount of the Purchase Price for the benefit and protection of Buyer, showing title to the Property vested in Buyer, subject only to the Permitted Exceptions, including such endorsements as may reasonably be requested by Buyer, and committing Title Company to issue the Title Policy to Buyer upon the close of escrow.

Inspection Period

Buyer acknowledges that SELLER desires to sell the Property in its "as-is" condition. The parties agree that an Inspection Period not to exceed sixty (60) days following the Effective Date of this Agreement will be granted for the BUYER to further evaluate and specifically inspect the property. BUYER and BUYER's authorized representatives, may enter onto the Property at any reasonable time upon giving the occupant at least twenty-four hours advance notice and from time to time to survey and inspect the Property. Testing may be conducted, including, but not limited to, soil and groundwater sampling. BUYER shall pay costs of all inspection and testing services.

BUYER will undertake the Due Diligence at its sole cost and expense. BUYER will indemnify, defend with counsel reasonably acceptable to SELLER, and hold SELLER harmless from all claims (including claims of lien for work or labor performed or materials or supplies furnished), demands, liabilities, losses, damages, costs, fees, and expenses, including SELLER's reasonable attorney fees, costs, and expenses, arising from the acts or activities of BUYER or BUYER's representatives in, on, or about the Property during or arising in connection with the BUYER's inspections of the Property. BUYER shall return the Property as nearly as possible to the same condition the Property was in prior to such entry or activities.

6. **Closing Documents and Funds.**

(a) **Seller.**

(1) Within ten (10) days following the opening of escrow, Seller shall deposit into escrow all of the following:

- (i) a Grant Deed, substantially in the form attached hereto as Exhibit B ("**Grant Deed**"), duly executed and acknowledged, conveying to Buyer good and marketable fee simple title to the Property, subject only to exceptions approved pursuant to this Agreement;
- (ii) Seller's affidavit of non-foreign status and Seller's certification that Seller is a resident of California, each executed by Seller under penalty of perjury as required by state and federal law;
- (iii) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) Unless Seller elects to have the following charges deducted from the funds to be distributed to Seller at close of escrow, no later than five (5) business days prior to close of escrow, Seller shall deposit into escrow immediately available funds in the amount necessary to pay all governmental conveyance fees and transfer taxes.

(b) **Buyer.**

(1) Within five (5) days prior to close of escrow, Buyer shall deposit into escrow such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) No less than five (5) business days prior to the close of escrow, Buyer shall deposit into escrow immediately available funds in an amount is equal to:

- (i) the Purchase Price as adjusted by any prorations between the Parties; and
- (ii) the premium for a CLTA title insurance policy;
- (iii) the recording fees; and
- (iv) its respective notary fees.

7. **Close of Escrow.** Unless this Agreement is terminated pursuant to the terms hereof or extended by mutual written consent of the Parties, escrow shall close no later than the date which is sixty (60) days after escrow is opened. The Escrow Agent shall close escrow by: (i) causing the Grant Deed to be recorded in the official records of Contra Costa County, California; (ii) issuing the Title Policy and delivering same to Buyer; (iii) delivering to Seller the monies constituting the Purchase Price less prorated

amounts and charges to be paid by or on behalf of Seller; and (iv) delivering to Buyer the original Grant Deed, together with a conformed copy thereof indicating recording information thereon. Possession of the Property shall be delivered to Buyer at the close of escrow.

8. **Default.** The failure of either party to meet, comply with or perform any material covenant, agreement or obligation hereunder, within the time limits and in the manner required, either prior to or at Closing, for any reason other than the termination of this Agreement pursuant to a right to so terminate expressly set forth in this Agreement or if any representation, warranty or covenant set forth herein of either party is untrue or inaccurate in any material respect shall constitute a default under this Agreement. The party who so fails or delays shall be entitled to (i) terminate this Agreement (by delivering notice to the non-defaulting party, Escrow and Title Company); (ii) pursue any and all of its rights under this Agreement at law or in equity, or (iii) treat this Agreement as being in full force and effect and pursue the specific performance of this Agreement.

9. **Prorations.** At the close of escrow, the Escrow Agent shall make the following prorations: property taxes shall be prorated as of the close of escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered.

10. **Buyer's Conditions to Closing.** The close of escrow and Buyer's obligation to purchase the Property are conditioned upon: (i) the performance by Seller of each obligation to be performed by Seller under this Agreement within the applicable time period, or the waiver by Buyer of such obligation; and (ii) the commitment by Title Company to issue and deliver the Title Policy, subject only to the Permitted Exceptions.

Should any condition to closing fail to occur, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Buyer to Seller or deposited with the Escrow Agent by or on behalf of Buyer. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

11. **Studies, Reports and Investigations; Governmental Approvals; Hazardous Substances.** Seller agrees to make available to Buyer within five (5) business days following the Effective Date, any and all information, studies, reports, investigations and other obligations concerning or relating to the Property which are in Seller's possession or which are reasonably available to Seller, 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 the compliance by the Property with Environmental Laws (as defined in Exhibit C).

Nothing in this Agreement or otherwise shall bind or otherwise affect Seller's discretion in making or declining to make any findings necessary to grant any land use approvals or entitlements for any proposed development of the Property contemplated by Buyer. Buyer acknowledges and agrees that it is solely responsible for all necessary approvals from the appropriate governmental and/or regulatory entities needed for development of the Property, including, but not limited to, re-zoning of the Property, all necessary entitlements and necessary building permits.

The acquisition price for Seller's Parcel and Other Improvements reflects the fair market value of Seller's Parcel without the presence of contamination. If the Seller's Parcel being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, Buyer may in its sole discretion elect to recover its clean-up costs from those who caused or contributed to the contamination or to terminate this Agreement immediately without further obligation to Seller. Seller shall further indemnify, defend, save and hold harmless the Buyer from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on Seller's Parcel, , save and except claims, costs or litigation arising through the sole willful misconduct of the Buyer, its agents or employees.

Buyer further agrees as part of the consideration herein that Seller will not, use, generate, manufacture, store, dump, bury, leak or dispose of any flammable, explosive or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent on the Seller's Parcel, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency. In such event Buyer will, at its sole expense, remove, cleanup or otherwise mitigate such problem, and will further release and indemnify Buyer from any and all liability arising from such problem.

12. **Seller's Conditions to Closing.** The close of escrow and Seller's obligation to sell the Property pursuant to this Agreement are conditioned upon: (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement within the applicable time period, or waiver by Seller of such obligation; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the close of escrow.

13. **Seller's Representations.** Seller is the owner of the Property and has all right, title and interest to transfer the same to Buyer.

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

15. **Buyer's Representations, Warranties and Covenants.** Buyer represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the close of escrow: (i) have been duly authorized, executed, and delivered by Buyer; (ii) are binding obligations of Buyer; and (iii) do not violate the provisions of any agreement to which Buyer is a party. Buyer further represents and warrants that the persons who have executed this Agreement on behalf of Buyer have are duly authorized to do, that Buyer has the legal right to enter into this Agreement and to

perform all of its terms and conditions, and this Agreement is enforceable against Buyer in accordance with its terms.

16. **Damage and Destruction.** In the event of any damage or other loss to the Property, or any portion thereof, caused by fire or other casualty prior to the close of escrow in an amount not exceeding \$25,000, Buyer shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that Seller shall: (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the close of escrow the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the close of escrow in an amount in excess of \$25,000, Buyer may elect either to terminate this Agreement upon written notice to Seller, or to consummate the purchase of the Property, in which case Seller shall (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the close of escrow the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event Buyer elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Buyer shall be returned to Buyer, and all rights and obligations hereunder shall terminate.

17. **Brokers.** Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities 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.

18. **Assignment.** Buyer shall not have the right to assign any rights and obligations under this Agreement to any party without the prior written approval by Seller.

19. **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:

- (i) 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;
- (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;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or

certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

City: City of Oakley
3231 Main Street
Oakley, California 94561
Attn: City Manager
Telephone: (925) 625-7000
Facsimile: (925) 625-9194

20. **Litigation Costs.** If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which such Party may be entitled.

21. **Waivers; Modification.** No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

22. **Successors.** This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assignees of the Parties.

23. **Provisions Not Merged With Deeds.** None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by the Grant Deed, and neither the Grant Deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. Without limiting the generality of the foregoing, Seller's representations, warranties and covenants contained herein shall survive the close of escrow.

24. **Construction.** 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.

25. **Action or Approval.** Where action and/or approval by Buyer is required under this Agreement, Buyer's Executive Director may act on and/or approve such matter unless the Executive Director determines in his or her discretion that such action or approval requires referral to Buyer's Board for consideration. The time periods afforded Buyer for any event, inspection, feasibility, due diligence, escrow closing or otherwise shall not be extended by any such referral to Buyer's Board.

26. **Entire Agreement.** This Agreement, including Exhibits A to C attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter thereto.

27. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

28. **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.

29. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

30. **Parties Not Co-Venturers.** Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

31. **Non-Liability of Officials, Employees and Agents.** No member, official, employee or agent of Buyer shall be personally liable to Seller or its successors in interest in the event of any default or breach by Buyer or for any amount which may become due to Seller or its successors in interest pursuant to this Agreement.

32. **Time of the Essence.** Time is of the essence for each condition, term, obligation and provision of this Agreement.

33. **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.

34. **Time for Performance.** When the time for performance of any obligation under this Agreement is to be measured from another event, such time period shall include the day of the other event. If the day of the time for performance is not a regular business day, then the time for such performance shall be by the regular business day following such day.

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

BUYER:

CITY OF OAKLEY

By: _____

Bryan H. Montgomery

Its: City Manager

ATTEST:

By: _____
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

City General Counsel

SELLER:

Cunha Family Limited Partnership

By: _____
Title: _____

Exhibit A

PROPERTY
(Attach legal description.)

Exhibit B
GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

Cunha Family Limited Partnership, a _____ (herein called "**Seller**"), hereby grants to **THE CITY OF OAKLEY**, a political subdivision of the State of California (herein called "**Grantee**"), the real property (the "**Property**") legally described in the document attached hereto, labeled **Exhibit A**, and incorporated herein by this reference.

1. The Property is pursuant to a Purchase and Sale Agreement (the "**Agreement**") entered into by and between the Seller and the Grantee and dated October 27, 2015. The Property is also conveyed subject to any easements and permitted exceptions of record.

2. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenants shall run with the land.

3. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument obtained by Grantee to finance the purchase of the Property, provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

4. The covenants against discrimination contained in paragraph 2 of this Grant Deed shall remain in perpetuity and shall be binding for the benefit of the Seller, its successors and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Seller and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Seller is or remains an owner of any land or interest therein to which such covenants relate. The Seller and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Seller, its successors and such aforementioned parties.

5. In the event of any express conflict between this Grant Deed or the Agreement, the provisions of this Grant Deed shall control.

IN WITNESS WHEREOF, the Seller and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized this _____ day of _____, 20____.

By: _____
[NAME, TITLE]

The provisions of this Grant Deed are hereby approved and accepted.

Executive Director

By:

Title:

EXHIBIT A to GRANT DEED

Property Description

Exhibit C

HAZARDOUS MATERIALS; ENVIRONMENTAL LAWS

“Environmental Laws” shall mean all present and future federal, state and local laws, statutes, rules regulations, ordinances, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, license approvals or other entitlements, or rules of common law pertaining to the protection of the environment, natural resources, wildlife, human health or safety, or employee or community right-to-know requirements related to the work being performed pursuant to this Agreement.

“Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; or (6) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.