

RESOLUTION NO. 2013-012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A PROPERTY PURCHASE AGREEMENT WITH SONOMA MARIN AREA RAIL TRANSIT DISTRICT (SMART) AND AUTHORIZING THE EXECUTION OF GRANT DEED TO SMART

WHEREAS, the Sonoma Marin Area Rail Transit District (SMART) is a regional transportation district created on January 1, 2003, with the passage of California State Assembly Bill 2224 to oversee the development and implementation of passenger rail service in Sonoma and Marin counties (the "SMART Project"); and

WHEREAS, as part of the SMART Project, SMART planned a station site at Wilfred Avenue/Golf Course Drive in the City of Rohnert Park. On July 19, 2006 the SMART Board of Directors certified the SMART Project Final Environmental Impact Report ("2006 FEIR"); and

WHEREAS, in February 2011 the City Council requested that SMART study the feasibility of changing the location of the Rohnert Park Station to a location adjacent to Rohnert Park Expressway; and

WHEREAS, on April 26, 2011 the City Council directed staff to pursue relocation of the Rohnert Park SMART station and to negotiate with SMART a real estate transaction for the property; and

WHEREAS, on February 15, 2012 the SMART Board of Directors adopted Resolution No. 2012-05 (i) approving the Addendum to the 2006 FEIR, (ii) approving the change in location of the proposed Wilfred Avenue/Golf Course Drive to Rohnert Park Expressway; and

WHEREAS, (SMART) desires to acquire City owned property for the purpose of constructing and operating a commuter rail station in Rohnert Park; and

WHEREAS, the City desires to convey the property to SMART in the interest of promoting mass transit and having a SMART station centrally located within the city limits; and

WHEREAS, section 15061 (b) (3) of the CEQA Guidelines exempts activities that are covered under the general rule that CEQA applies only to project that have the potential to cause significant effects on the environment. Where it can be seen with certainty that there is not possibility the activity in question may have a significant effect upon the environment, the activity is not subject to CEQA. The proposed activity only transfers the ownership of the property from the City to SMART. Therefore, this activity is exempt from CEQA because there is no possibility for the conveyance to have an effect on the environment.

WHEREAS, the City Council considered the passage of this Resolution at its regularly scheduled meeting on February 12, 2013, after reviewing the staff report.

NOW, THEREFORE, the City Council of the City of Rohnert Park does hereby resolve, determine, find and order as follows:

Section 1. Recitals. The above referenced recitals are true and correct and material to the adoption of this Resolution.

Section 2. Approval of Property Purchase Agreement. The City Council of the City of Rohnert Park hereby approves the Property Purchase Agreement in substantially similar form as provided for in Exhibit A, attached hereto and incorporated by this reference, and authorizes the Mayor to execute said Agreement on behalf of the City of Rohnert Park.

Section 3. Section 65402 Consistency. The Planning Commission at its regular meeting on January 24, 2013 found that this grant of real property is consistent with the provisions of Government Code section 65402.

Section 4. Approval of Deed. The Mayor is hereby authorized and directed to execute a Grant Deed for and on behalf of the City of Rohnert Park, subject to the terms stated in the Property Purchase Agreement and review and accepted by the City Attorney.

Section 6. Severability. If any action, subsection, sentence, clause or phrase of this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution that can be given effect without the invalid provisions.

DULY AND REGULARLY ADOPTED this 12th day of February, 2013.



CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler City Clerk

Attachment: Property Purchase & Sale Agreement

AHANOTU: AYE BELFORTE: AYE MACKENZIE: AYE CALLINAN: NOE STAFFORD: AYE
AYES: (4) NOES: (1) ABSENT: (0) ABSTAIN: (0)

PROPERTY PURCHASE AGREEMENT SUMMARY
(FEE)

Grantor: City of Rohnert Park

Grantor's Address: 130 Avram Avenue
Rohnert Park, California 94928

Property Address: An approximate 60' strip of land south of Rohnert Park Expressway and north of Seed Farm Drive adjacent to the west side of the SMART's property line in Rohnert Park, California, Area hi-lited in Exhibit ____.

Grantee: Sonoma-Marin Area Rail Transit District

Grantee's Address: 5401 Old Redwood Highway
Petaluma, California 95401

Assessor's Parcel No.: Portion of 143-051-044 and the City of Rohnert Park's Right Of Way known as Northwest Boulevard (Seed Farm Drive) – Assessor's Map Book 143, Page 05

Acquisition: Grantee proposes to acquire the Property in fee.

Purchase Price: **ONE DOLLAR (\$1.00)**

Exhibits: Exhibit A - Legal Description
Exhibit B - Grant Deed

PROPERTY PURCHASE AGREEMENT
(FEE)

THIS PROPERTY PURCHASE AGREEMENT (this "Agreement") is entered into as of the _____ day of February, 2013 ("Effective Date"), by and between the **CITY OF ROHNERT PARK**, a California municipal corporation and general law city ("Grantor"), and the **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**, a public agency ("Grantee"). Grantor and Grantee are sometimes referred to herein individually as a "party," and collectively as the "parties."

RECITALS

A. Grantee is a regional transportation district created on January 1, 2003, with the passage of California State Assembly Bill 2224 to oversee the development and implementation of passenger rail service in Sonoma and Marin counties (the "SMART Project"). Grantee owns approximately 70 miles of railroad right-of-way ("Right-of-Way") on which it is constructing and will operate the SMART Project.

B. As part of the SMART Project, Grantee planned a station site at Wilfred Avenue/Golf Course Drive in the City of Rohnert Park. On July 19, 2006, the SMART Board of Directors ("Board") certified the SMART Project Final Environmental Impact Report ("2006 FEIR"), which evaluated the entire rail and pathway project, including Wilfred station site in Rohnert Park.

C. In February 2011, the Grantor's City Council requested that Grantee study the feasibility of changing the location of the Rohnert Park station to a location adjacent to Rohnert Park Expressway. In furtherance of that request, Grantor offered \$35,000 to fund the cost of the required environmental review under the requirements of the California Environmental Quality Act ("CEQA").

D. On June 1, 2011, Grantee's Real Estate Committee considered the Rohnert Park Expressway station site alternative and directed staff to return to the Board with additional information, including environmental review in compliance with CEQA. Staff prepared an Addendum to the 2006 FEIR ("the Addendum") pursuant to CEQA and the State CEQA Guidelines (California Code of Regulations, title 14, §15000 et seq.). The Addendum reviewed the potential environmental impacts of the change in location of the proposed rail station from Wilfred Avenue/Golf Course Drive to Rohnert Park Expressway.

E. On February 15, 2012, the Board adopted Resolution No. 2012-05 (i) approving the Addendum to the 2006 Final EIR, (ii) approving the change in location of the proposed North Rohnert Park Station from Wilfred Avenue/Golf Course Drive to

Rohnert Park Expressway, and (iii) directing staff to file a notice of determination in accordance with the provisions of CEQA and the State CEQA Guidelines.

F. In order to construct a station site at Rohnert Park Expressway, Grantee will need additional land adjacent to its right-of-way.

Grantor owns certain land, which includes approximately 1.79 acres generally located south of Rohnert Park Expressway and north of Seed Farm Drive and immediately adjacent to the west side of the SMART's property line in Sonoma County, in the City of Rohnert Park, California, as more particularly described in Article 1 below (the "Real Property").

G. On April 26, 2011, the Rohnert Park City Council voted to recommend the relocation of the station from Wilfred Avenue/Golf Course Drive site to a location near Rohnert Park Expressway in order to be a part of the new "City Center" and Priority Development Area (PDA). In approving this Agreement, the City Council has further determined that the sale of the Real Property to Grantor for transit related purposes serve an important public purpose in terms of promoting mass transit and would also further Grantor's plans for the City Center and PDA.

H. In accordance with the provisions of California Public Utilities Code Section 105096(a), Grantee is authorized to acquire property.

I. Grantor is willing to sell fee title to the Real Property, together with all buildings, structures, improvements, landscaping, irrigation systems, machinery, fixtures and equipment affixed or attached to the Real Property and all easements and rights appurtenant to the Real Property (as more particularly described in Article 2 below) to Grantee, and Grantee desires to purchase the Property from Grantor, on the terms and conditions set forth hereinafter.

J. The parties desire to close escrow and transfer the Real Property (hereinafter the "Closing") on or before the Closing Date (as defined in Article 5 below).

K. The parties desire to enter into this Agreement to set forth the terms and conditions of the sale of the Real Property to Grantee.

AGREEMENT

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

ARTICLE 1- INCORPORATION OF RECITALS

1.1 Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated into and form a part of this Agreement.

ARTICLE 2- PROPERTY; TITLE

2.1 Property Included in Sale. Subject to Grantor's reservation of a utility easement and the power of termination described in Sections 2.2 and 2.3 below, Grantor hereby agrees to sell and convey to Grantee, and Grantee hereby agrees to purchase from Grantor, subject to the terms and conditions set forth herein, the following:

- a. that certain trip of real property approximately 60 feet wide and generally located at the south of Rohnert Park Expressway and north of Seed Farm Drive immediately adjacent to the west side of the SMART property line in Rohnert Park, California, and more particularly and legally described in Exhibit A attached hereto (the "Real Property"); and
- b. all rights, privileges and easements appurtenant to the Real Property, to the extent such rights, privileges and easements appurtenant exist, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water, water rights, and water stock relating to the Real Property, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Real Property (all of which are collectively referred to as the "Appurtenances"); and [The City is looking into the status of any mineral rights and may want to reserve these rights.]
- c. all improvements and fixtures located on the Real Property, as well as all other buildings and structures presently located on the Real Property(all of which are collectively referred to as the "Improvements").]

The Real Property and Improvements are hereinafter collectively referred to as the "Property."

2.2 Reservation of Utility Easement. Grantor will reserve a utility easement in a ten-foot (10') strip together with the right of ingress and egress to maintain such utilities on the westerly boundary of the Property running parallel to Grantee's railroad tracks as provided in the Grant Deed. Grantor agrees that the additional utilities permitted by this utility easement will be installed in a manner that is mutually agreed upon by the parties and that minimizes an interruption to the operations of Grantee's transit system.

2.3 Restriction on use of Property and Power of Termination. Grantee agrees that the Property may only be used for public purposes related to the operation of a transit station as provided in the Grant Deed and that Grantee's use of the Property is also subject to a power of termination vested in Grantor (the "Power of Termination") in the event that Grantee: (a) is dissolved as a public entity; or (b) discontinues using the Property for rail or transit purposes. Such Power of Termination may be exercised in the manner provided in the Grant Deed.

- 2.4 Title to Property. Subject to Grantor's reservation of a utility easement and the Power of Termination described in Sections 2.2 and 2.3 above, and except for the representations, warranties and covenants made by Grantor in Section 4.2.4 and 6.2 and the matters approved by Grantee pursuant to Section 5.1.2 of Article 5 (the "Permitted Exceptions"), Grantee is acquiring the property in an "AS IS" condition as of the Close of Escrow..

ARTICLE 3 - PURCHASE PRICE

- 3.1 Purchase Price. The purchase price ("Purchase Price") for the Property shall be **ONE DOLLAR (\$1.00)**.
- 3.2 Payment. The Purchase Price shall be payable all in cash at the Close of Escrow (defined below) as follows:
- a. On or before the Closing Date as set forth in Section 5.1 below, Grantee shall deposit into Escrow the full Purchase Price. The Purchase Price shall be held in an interest-bearing account and interest thereon shall be held for the account of Grantee. In the event the sale of the Property is not consummated because of the failure of any condition or any other reason except a default under this Agreement solely on the part of Grantee, the Purchase Price together with all interest accrued thereon shall immediately be returned to Grantee.
 - b. The Purchase Price shall be paid to Grantor in cash at the Close of Escrow in accordance with the provisions of Section 5.2.2 below.

ARTICLE 4 - CONDITIONS TO PURCHASE

- 4.1 Conditions Precedent to Grantor's Obligations to Sell. The obligation of Grantor to sell the Property to Grantee is expressly conditioned upon the satisfaction prior to Close of Escrow of each of the conditions set forth in this Section 4.1, each of which is for the benefit of the Grantor and any or all of which may be waived by Grantor, in writing, at Grantor's option. After the Close of Escrow, any such condition that has not been satisfied shall be treated as having been waived in writing. If any condition set forth in this Section 4.1 is not fully satisfied or waived in writing by Grantor, this Agreement shall terminate, but without releasing Grantee from liability if Grantee defaults in the performance of any such covenant or agreement to be performed by Grantee before such termination.
- 4.1.1 On the Closing Date (defined below), Grantee shall not be in default in the performance of any covenant or agreement to be performed by Grantee under this Agreement, including its obligation to deliver into escrow the documents referenced in Section 5.1.2 below.

4.1.2 On the Closing Date, all representations and warranties made by Grantee in Article 6 hereof shall be true and correct as if made on and as of the Closing Date, without exceptions.

4.2 Conditions Precedent to Grantee's Obligations to Purchase. The obligations of Grantee to purchase the Property from Grantor is expressly conditioned upon the satisfaction prior to the Close of Escrow of each of the conditions set forth in this Section 4.2, each of which is for the benefit of Grantee and any or all of which may be waived by Grantee, in writing, at Grantee's option. After the Close of Escrow, any such condition that has not been satisfied shall be treated as having been waived in writing. Except as expressly noted otherwise in this Section 4.2, Grantee agrees to accept the Property "AS IS." Notwithstanding the foregoing, if any condition set forth in this Section 4.2 is not fully satisfied or waived in writing by Grantee, this Agreement shall terminate, but without releasing Grantor from liability if Grantor defaults in the performance of any such covenant or agreement to be performed by Grantor before such termination.

4.2.1 Grantee shall have sixty (60) days from the Effective Date to satisfy or waive the following conditions, as determined by Grantee in its sole discretion:

- a. [Intentionally omitted.]
- b. Title Report. Grantee has reviewed and approved of title to the Property, as evidenced by a current extended coverage preliminary title report dated _____ 2012 ("PTR"), accompanied by copies of all documents referred to in the report, and has also reviewed and approved of all existing easements, covenants, restrictions, leases, agreements or other documents which affect the Property and which are not disclosed by the PTR, or, if no such documents exist, it has received and approved of the certification of Grantor to that effect.

4.2.2 On the Closing Date, Grantor shall not be in default in the performance of any covenant or agreement to be performed by Grantor under this Agreement.

4.2.3 On the Closing Date, all representations and warranties made by Grantor in Article 6 hereof shall be true and correct as if made on and as of the Closing Date, without exceptions.

4.2.4 The physical condition of the Property shall be substantially the same on the Closing Date as on the Effective Date, reasonable wear and tear and loss by casualty excepted, and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing, would, in Seller's sole discretion, materially adversely affect the value of the Property or the ability of Seller to utilize the Property for its intended purposes.

- 4.2.5 On the Closing Date, the Title Company shall be unconditionally and irrevocably committed to issue to Grantee an American Land Title Association Owner's Policy Form (Amended 6/17/06) of title insurance, with creditors rights exceptions or exclusions removed and with liability in the amount of the Purchase Price, containing all endorsements requested by Grantee, insuring Grantee that fee simple absolute title to the Property is vested in Grantee subject only to the Permitted Exceptions and Grantor's Power of Termination (collectively, the "Title Policy").

ARTICLE 5 - CLOSING AND ESCROW

- 5.1 Deposits Into Escrow. Within ten (10) days after execution of this Agreement by Grantee and Grantor, Grantee shall establish an escrow with Stewart Title of California, Inc. (the "Title Company"), at its office located at 1101 College Avenue, Suite 100, Santa Rosa, California, 95404. A copy of this Agreement, duly executed by both parties, shall be deposited therein. Prior to or on the Closing Date, the following shall be deposited into escrow with the Title Company:

- 5.1.1 Grantee. Grantee shall deposit cash in the amount of the Purchase Price, together with additional funds in an amount necessary for closing costs and Grantee's share of prorations, as set forth below.

- 5.1.2 Grantor. Grantor shall deposit into escrow prior to the Closing Date all instruments and other documents necessary to remove of record all liens or other encumbrances affecting title to the Property, as shown in the Preliminary Title Report dated _____, except for the following exceptions which Grantee hereby approves (the "Permitted Exceptions"):

- [to be provided by SMART after review of title report]

In addition, Grantor shall deposit: (a) a grant deed substantially in the form of Exhibit B attached hereto (the "Grant Deed"), duly executed and acknowledged by Grantor; (b) an Affidavit of Non-Foreign Status in accordance with Section 1445(b)(2) of the United States Internal Revenue Code, as amended, and the Income Tax Regulations promulgated thereunder, executed by Grantor, and substantially in the form attached hereto as Exhibit C and on which Grantee is entitled to rely, that Grantor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code; (c) satisfactory evidence that no California withholding of tax is required with respect to the sale of the Property; and (d) a closing statement in form and content satisfactory to both parties.

- 5.1.3 Escrow Instructions. Grantor and Grantee shall prepare and file joint escrow instructions with the escrow agent in accordance with this Agreement.
- 5.1.4 Additional Deposits. Grantor and Grantee shall each deposit such other instruments as are reasonably required by the escrow holder or otherwise

required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof, including, without limitation, an agreement (the "Designation Agreement") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Code and the regulations promulgated thereunder, and executed by Seller, Buyer and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit C and, in any event, shall comply with the requirements of Section 6045(e) of the Internal Revenue Code and the regulations promulgated thereunder.

5.2 Close of Escrow.

5.2.1 Escrow shall close within sixty (60) days of execution of this Agreement (the "Outside Closing Date") unless extended by Grantee at Grantee's sole option. Grantee shall give Grantor and the Title Company written notice specifying the actual Closing Date selected by Grantee at least five (5) business days prior to such Closing Date.

5.2.2 Closing of Escrow. When all conditions precedent specified in Article 4 hereof have been either satisfied or waived by Grantor or Grantee, and the Title Company has received all necessary cash and documents, but in any event prior to the Outside Closing Date, the Title Company shall immediately cause the following to occur (the "Close of Escrow"):

5.2.2.1 Record Grant Deed. Record the Grant Deed in the Official Records of the County where the Property is located. The date the Grant Deed is recorded is the "Closing Date."

5.2.2.2 Pay to Grantor. Pay to Grantor the Purchase Price.

5.2.2.3 Tax Filing. If applicable, the Title Company shall file the information return for the sale of the Property required by Section 6045 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder, which requires that a tax return be filed with the Internal Revenue Service in connection with the sale of real property in which a broker is involved.

5.2.2.4 Title Policy. The Title Company shall issue to Grantee the Title Policy described in Section 4.2.5.

5.3 Closing Costs and Prorations.

5.3.1 Closing Costs. Grantee and Grantor each shall pay its own attorney's and broker's fees in connection with negotiating this Agreement and closing the transactions contemplated hereby. Grantee shall pay recording costs, if any, escrow fees and the title insurance premium for the Title Policy (if a policy of title insurance is desired by Grantee).

- 5.3.2 Prorations. All current income from the Property, if any, and all current taxes, assessments, utilities, maintenance charges and similar expenses of the Property, determined using the accrual method of accounting, shall be prorated on the basis of a thirty (30) day month between Grantor and Grantee as of the Closing Date, and, to the extent of information then available, such prorations shall be made as of the Close of Escrow. Such prorations shall be adjusted, if necessary, and completed after the Closing Date as soon as final information becomes available. Such income and expenses of the Property for the period before the Closing Date shall be for the account of Grantor, and such income and expenses for the period on and after the Closing Date shall be for the account of Grantee. Grantor shall pay all taxes, assessments, and other expenses relating to the Property that are allocable to the period before the Closing Date. Grantor shall immediately pay to Grantee all income from the Property received by Grantor either before or after the Closing Date that are allocable to the period on or after the Closing Date.
- 5.3.3 Possession. Except as otherwise provided in this Agreement, Grantor shall transfer possession of the Property to Grantee on the Closing Date.

ARTICLE 6 - REPRESENTATIONS AND WARRANTIES

6.1 Authority.

- 6.1.1 Grantor's Authority. Grantor is a municipal corporation created under the laws of the State of California. Grantor has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Grantor have been duly and validly authorized by all necessary action on the part of Grantor and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
- 6.1.2 Grantee's Authority. Grantee is a public agency created under the laws of the State of California. Grantee has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Grantee have been duly and validly authorized by all necessary action on the part of Grantee and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Grantee, enforceable against Grantee in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

- 6.2 Environmental Compliance. Except as expressly provided below, Grantor represents and warrants to Grantee that during the time in which Grantor owned the Property, neither Grantor nor, to the best of Grantor's knowledge, any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the Property or transported to or from the Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively "Hazardous Materials") and that there is no proceeding or inquiry by any governmental authority (including without limitation, the California State Department of Health Services) with respect to the presence of any such Hazardous Materials on the Property or the migration thereof from or to other property. Notwithstanding the foregoing, Grantee expressly acknowledges the ongoing environmental monitoring resulting from the presence of Hazardous Materials stemming from an underground storage tank ("UST") that the Grantor removed in 1992 from the adjacent City corporate yard. While the environmental reports and related documents on the removal and clean up provided to Grantee by Grantor indicate that the remediation is virtually complete and the risk of leaching onto the Property being acquired by Grantee is negligible, Grantor agrees to assume full responsibility for any Hazardous Materials contamination related to the UST or any other prior City-related use on the Property and expressly agrees to indemnify, defend, and hold harmless Grantee, Grantee's officers, agents and employees (hereinafter, collectively, the "Indemnified Parties"), from and against, and shall reimburse the Indemnified Parties for, any and all losses, claims, liabilities, damages, injunctive relief, injuries to person, property or natural resources, fines, penalties, costs, expenses, including, without limitation, attorneys' fees, expenses and court costs, actions, and causes of action (collectively, "Costs and Liabilities"), to the extent arising directly or indirectly, in whole or in part, out of the release, alleged discharge, alleged deposit, or alleged presence, of any Hazardous Materials at, on, under or from the Property, or in the soil, groundwater or soil vapor on, or under the Property where such Hazardous Materials first became present prior to the transfer of the Property from the Grantor to Grantee at the close of escrow, whether or not known to Grantor, whether foreseeable or unforeseeable, regardless of the source of such release, discharge, deposit or presence.

In the event Grantor is required by any governmental authority to cause the remediation of any Hazardous Materials on the Property for which Grantor is responsible under this Section 6.2, Grantee agrees to promptly provide reasonable access to the Property upon request and to fully cooperate with Grantor and such governmental authority (at no cost to Grantee) to the extent required for the remediation of the Hazardous Materials on the Property.

- 6.3 Brokers. Grantor has not dealt with any investment adviser, real estate broker or finder, or incurred any liability for any commission or fee to any investment adviser, real estate broker or finder, in connection with the sale of the Property to Grantee under this Agreement. Grantee has not dealt with any investment adviser, real estate broker or finder, or incurred any liability for any commission or fee to

any investment adviser, real estate broker or finder, in connection with the purchase of the Property by Grantee or this Agreement.

- 6.4 Tax Matters. Grantor is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder, which require the withholding of tax on the sale of real estate by a foreign person, subject to certain exemptions. No California withholding of tax or reporting pursuant to California Revenue and Taxation Code Sections 18661, 18662 and 18668 will be required with respect to the sale of the Property by Grantor, which requires the withholding of taxes in connection with the sale of California real property, subject to certain exceptions.

ARTICLE 7 - COVENANTS

- 7.1 Operation of Property. Between the Effective Date and the Closing Date, Grantor shall not execute any lease affecting the Property, without the prior approval of Grantee, which approval may be withheld in the sole and absolute discretion of Grantee. Between the Effective Date and the Closing Date, Grantor shall manage, operate, maintain and repair the Property in accordance with sound property management practice and comply with laws applicable to the Property.
- 7.2 Representations and Warranties. All representations and warranties made by Grantor in Article 6 hereof shall survive the Close of Escrow. Grantor shall indemnify and defend Grantee against and hold Grantee harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by Grantee if any representation or warranty made by Grantor in Article 6 hereof was untrue or incorrect in any respect when made or that may be caused by any breach by Grantor of any such representation or warranty.
- 7.3 Transfers Prohibited. Between the date of this Agreement and the Closing Date, Grantor shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Property, or any part thereof or interest therein.
- 7.4 Personal Injury and Property Damage Prior to Closing Date. Grantor shall indemnify and defend Grantee against and hold Grantee harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or based on any condition, event or circumstance relating to the Property that existed or occurred before the Closing Date, or any personal injury or property damage occurring in, on or about the Property before the Closing Date.
- 7.5 Indemnification. Except as otherwise provided in Section 7.4 above, each party hereby agrees to indemnify the other party and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any misrepresentations or breach of warranty or breach of covenant made by such party

in this Agreement or in any document, certificate, or exhibit given or delivered to the other pursuant to or in connection with this Agreement. The indemnification provisions of this Section 7.5 shall survive beyond the delivery of the grant deed and transfer of title, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

- 7.6 Municipal Well. Grantee expressly acknowledges that there is a municipal well that produces potable water located on Grantor's remaining property in close proximity to the Property. Grantee will cooperate with Grantor to ensure that Grantee's development and use of the Property will not interfere with the operation of the existing municipal well.

ARTICLE 8- REMEDIES

- 8.1 If the Close of Escrow does not occur because of Grantor's default under or breach of this Agreement, then Grantee shall have the right to pursue any and all remedies available to Grantee at law or in equity, including the right to seek damages or to require specific performance of this Agreement.

ARTICLE 9 - GENERAL PROVISIONS

- 9.1 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and insure to the benefit of the successors and assigns of the parties hereto.
- 9.2 Merger of Prior Agreements. This Agreement contains all of the covenants, conditions, and agreements between the parties with respect to the purchase and sale of the Property and shall supersede all prior correspondence, agreements, and understandings, both verbal and written, between the parties with respect to the subject matter hereof. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.
- 9.3 Attorney's Fees. In the event either party to this Agreement institutes legal action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, all such costs, expenses and attorneys' fees and disbursements incurred shall be included in and as a part of such judgment. The prevailing party shall include without limitation a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding.
- 9.4 Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be delivered either by hand (including by courier or reputable overnight delivery service) or deposited in the United States Mail,

registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

To Grantor: Gabriel Gonzalez, City Manager
City of Rohnert Park
130 Avram Avenue
Rohnert Park, California 94928

To Grantee: SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
5401 Old Redwood Highway
Petaluma, California 95401
Attention: Farhad Mansourian, General Manager

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing. The foregoing addresses may be changed by notice to the other party as herein provided.

- 9.5 Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of California. In any suit, action, or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in and for the County of Sonoma.
- 9.6 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.
- 9.7 Time. Time is of essence of every provision herein contained in this Agreement.
- 9.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.
- 9.9 Exhibits. All Exhibits and attachments hereto are hereby incorporated herein by reference thereto.
- 9.10 Construction. Grantor and Grantee acknowledge that each party has reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with the transactions contemplated by this Agreement. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language.

- 9.11 Terms Generally. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “approval,” “consent” and “notice” shall be deemed to be preceded by the word “written.”
- 9.12 Further Assurances. From and after the date of this Agreement, Grantor and Grantee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.
- 9.13 Partial Invalidity. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.
- 9.14 Waivers. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

—[THIS SPACE INTENTIONALLY LEFT BLANK]—

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date(s) set forth below, effective as of the day and year first above written.

GRANTEE:
SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT

By: _____
Valerie Brown, Chair
Board of Directors

APPROVED AS TO SUBSTANCE FOR
GRANTEE:

By: _____
Farhad Mansourian
General Manager

APPROVED AS TO FORM FOR
GRANTEE:

DISTRICT COUNSEL

By: _____
Robert Pittman, Deputy County Counsel
County of Sonoma

GRANTOR:
CITY OF ROHNERT PARK

By: _____

City Council

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO SUBSTANCE
FOR GRANTOR:

Gabriel A. Gonzalez, City Manager

APPROVED AS TO FORM
FOR GRANTOR:

CITY ATTORNEY

By: _____
_____, Deputy City Attorney
City of Rohnert Park

EXHIBIT A
LEGAL DESCRIPTION

APN

[TO BE PROVIDED]

APN

[TO BE PROVIDED]

EXHIBIT B
FORM OF GRANT DEED

[TO BE PROVIDED]