

**OVERSIGHT BOARD  
TO THE TAFT SUCCESSOR AGENCY  
SPECIAL MEETING AGENDA  
Wednesday, June 21, 2017, 4:00 PM**

**Taft City Hall Conference Room  
209 E. Kern Street  
Taft, CA 93268**

**CALL TO ORDER**

**ROLL CALL** Randy Miller, Chairman  
Gary Bray, Vice-Chairman  
Teresa Binkley, Board Member  
Dr. Debra Daniels, Board Member  
Teresa Hitchcock, Board Member  
Don Koenig, Board Member  
Dr. Kathy Orrin, Board Member

**1. MINUTES**  
January 18, 2017

**Recommendation** – Approve minutes from the January 18, 2017 Special Meeting.

**2. PUBLIC HEARING – APPROVING A PURCHASE AND SALE AGREEMENT WITH SMS HOLDING COMPANY LLC DISPOSING OF REAL PROPERTY, APN 220-290-08**

**Recommendation** –

- 1) Motion to adopt a resolution entitled **A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE TAFT COMMUNITY DEVELOPMENT AGENCY APPROVING A PURCHASE AND SALE AGREEMENT WITH SMS HOLDING COMPANY LLC IN ACCORDANCE WITH THE LONG RANGE PROPERTY MANAGEMENT PLAN AND THE DISSOLUTION LAWS**
- 2) Motion to transmit this Resolution and all exhibits hereto, each of which is incorporated herein, to the Department of Finance pursuant to Sections 34179(h) and 34181 of the Dissolution Act and the LRPMP.

**3. PUBLIC COMMENTS**

**4. BOARD MEMBER COMMENTS**

**5. ADJOURNMENT**

**AMERICANS WITH DISABILITIES ACT  
(Government Code Section 54943.2)**

The City of Taft City-City Hall is accessible to persons with disabilities. Disabled individuals who need special assistance (including transportation) to attend or participate in any meeting of the Taft City Council or other public meeting, may request assistance at the Office of the City Clerk, City of Taft, 209 E. Kern Street, Taft, California or by calling (661) 763-1222. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

I, Darnell Porter, declare as follows:

That an agenda was posted on a public information bulletin board located near the door of the Civic Center Council Chamber on June 15, 2017, at \_\_\_\_\_ a.m./p.m pursuant to 1987 Brown Act Requirements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15, 2017, at Taft, California.

\_\_\_\_\_  
Signature

**OVERSIGHT BOARD  
TO THE TAFT SUCCESSOR AGENCY  
ANNUAL MEETING MINUTES  
January 18, 2017, 2:30 PM**

The Annual Meeting of the Oversight Board, held on Wednesday, January 18, 2017, was held in the Administrative Conference Room at Taft City Hall, 209 E. Kern Street, Taft, CA 93268. The meeting was called to order at 2:40 p.m. with the following members present: Board Members Dr. Kathy Orrin, Teresa Binkley, Don Koenig and Dr. Debra Daniels and Deputy City Clerk Darnell Porter.

Absent: Chairman Randy Miller, Vice Chairman Gary Bray and Board Member Teresa Hitchcock.

- At this time board members voted to appoint Kathy Orrin as Chairman Pro Tem for this meeting only.

**1. MINUTES**

January 28, 2016.

Minutes were tabled to the next committee meeting due to insufficient quorum of attendees for said item.

**2. RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS 17-18) FOR JULY 2017 THROUGH JUNE 2018**

Binkley presented the Report stating that the property tax revenue has been increasing.

Moved by Koenig, seconded by Daniels, to adopt a resolution entitled **A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF TAFT APPROVING AND ADOPTING A RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS 16-17) FOR THE PERIOD JULY 1, 2016 THROUGH JUNE 30, 2017, PURSUANT TO THE PROVISIONS SET FORTH IN HEALTH AND SAFETY CODE SECTION 34177(I)** (*Resolution No. OB-2017-18*) and authorize the Finance Director to forward the Certified ROPS to the County Auditor- Controller, the Department of Finance, and the State Controller by February 1, 2017.

AYES: Daniels, Binkley, Koenig, Orrin  
ABSENT: Miller, Bray, Hitchcock  
PASSED: 4-0

**3. PUBLIC COMMENTS**

There were none.

**4. BOARD MEMBER COMMENTS**

Binkley stated that there will be a special meeting held at a later date.

**ADJOURNMENT** - by unanimous vote of the Board, the meeting adjourned at 3:00 p.m.

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Darnell Porter, Deputy City Clerk

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Randy Miller, Chairman



# Oversight Board Agenda Report

**DATE:** JUNE 21, 2017

**TO:** BOARD MEMBERS

**AGENDA MATTER:**

**PUBLIC HEARING – APPROVING A PURCHASE AND SALE AGREEMENT WITH SMS HOLDING COMPANY LLC DISPOSING OF REAL PROPERTY, APN 220-290-08**

**SUMMARY STATEMENT:**

As of February 1, 2012 the former Taft Community Development Agency was dissolved pursuant to the Dissolution Laws and as a separate public entity, corporate and politic the Successor Agency administers the enforceable obligations of the former Agency and otherwise unwinds the former Agency's affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board").

The Successor Agency prepared a Long Range Property Management Plan (also referred to herein as the "LRPMP") addressing the future disposition and use of all real property of the former Agency.

The Successor Agency has negotiated the terms of a Purchase and Sale Agreement ("Agreement") with SMS Holding Company, LLC, a California limited liability company ("Buyer") for the sale of approximately 0.41 acres of vacant real property located at the corner of Gardner Field Road and Enterprise Way in the City (APN: 220-290-08) ("Property").

The Property is listed on the LRPMP as a property to be sold by the Successor Agency, with the proceeds of sale to be transferred to the County of Kern for distribution to the taxing entities pursuant to Section 34191.5(c)(2)(B) of the Dissolution Laws.

The negotiated price for the Property under the Agreement is \$2,050, which is not less than the fair market value of the Property. The Successor Agency published notice of the proposed sale and the sale of the Property to the Buyer pursuant to the Agreement complies with the Community Redevelopment Law and the Dissolution Laws and is in the best interests of the taxing entities.

The Successor Agency review and approved to transmit the resolution and all exhibits to the Oversight Board and the Department of Finance on June 20, 2017.

**RECOMMENDED ACTION**

- 1) Motion to adopt a resolution entitled **A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE TAFT COMMUNITY DEVELOPMENT AGENCY APPROVING A PURCHASE AND SALE AGREEMENT WITH SMS HOLDING COMPANY LLC IN ACCORDANCE WITH THE LONG RANGE PROPERTY MANAGEMENT PLAN AND THE DISSOLUTION LAWS**
- 2) Motion to transmit this Resolution and all exhibits hereto, each of which is incorporated herein, to the Department of Finance pursuant to Sections 34179(h) and 34181 of the Dissolution Act and the LRPMP.

**IMPACT ON BUDGET (Y/N):** No

**ATTACHMENT (Y/N):** Yes, Resolution and Purchase and Sale Agreement

**PREPARED BY:** Finance Director

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE  
SUCCESSOR AGENCY TO THE TAFT COMMUNITY  
DEVELOPMENT AGENCY APPROVING A PURCHASE AND SALE  
AGREEMENT WITH SMS HOLDING COMPANY LLC IN  
ACCORDANCE WITH THE LONG RANGE PROPERTY  
MANAGEMENT PLAN AND THE DISSOLUTION LAWS**

**WHEREAS**, the City of Taft (“City”) is a municipal corporation organized and operating under the laws of the State of California; and

**WHEREAS**, the Successor Agency to the Taft Community Development Agency (“Successor Agency”) is a public body corporate and politic, organized and operating under Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code, and the successor the former Taft Community Development Agency (“former Agency”) that was previously a community redevelopment agency organized and existing pursuant to the Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* (“CRL”); and

**WHEREAS**, Assembly Bill x1 26 (“AB x1 26”) added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code (as modified, in part, and determined constitutional by the California Supreme Court in the petition *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 and as further amended from time to time, the “Dissolution Laws”) provided for the dissolution of all redevelopment agencies and the winding down of the affairs of such dissolved redevelopment agencies; and

**WHEREAS**, as of February 1, 2012 the former Agency was dissolved pursuant to the Dissolution Laws and as a separate public entity, corporate and politic the Successor Agency administers the enforceable obligations of the former Agency and otherwise unwinds the former Agency’s affairs, all subject to the review and approval by a seven-member oversight board (“Oversight Board”); and

**WHEREAS**, Health and Safety Code Section 34191.5(b) required the Successor Agency to prepare a “long-range property management plan” (also referred to herein as the “LRPMP”) addressing the future disposition and use of all real property of the former Agency; and

**WHEREAS**, the Successor Agency prepared an LRPMP and the LRPMP prepared by the Successor Agency was approved by the Oversight Board and the DOF; and

**WHEREAS**, the Successor Agency has negotiated the terms of a Purchase and Sale Agreement (“Agreement”) with SMS Holding Company LLC, a California limited liability company (“Buyer”) for the sale of approximately 0.41 acres of vacant real property located at the corner of Gardner Field Road and Enterprise Way in the City (APN: 220-290-08) (“Property”); and

**WHEREAS**, the Property is listed on the LRPMP as a property to be sold by the Successor Agency, with the proceeds of sale to be transferred to the County of Kern for distribution to the taxing entities pursuant to Section 34191.5(c)(2)(B) of the Dissolution Laws; and

**WHEREAS**, the purchase price for the Property under the Agreement is \$2,050, which is not less than the fair market value of the Property; and

**WHEREAS**, the Oversight Board published notice of the proposed sale and held a public hearing in accordance with Section 33431 of the CRL; and

**WHEREAS**, the sale of the Property to the Buyer pursuant to the Agreement complies with the CRL and the Dissolution Laws and is in the best interests of the taxing entities.

**NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE TAFT COMMUNITY DEVELOPMENT AGENCY:**

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

Section 2. The Oversight Board hereby approves the Agreement in substantially the form attached hereto as Attachment No. 1, which is incorporated herein. A copy of the Agreement when executed shall be placed on file in the office of the Oversight Board Secretary.

Section 3. The Chair of the Oversight Board shall sign the passage and adoption of this Resolution and thereupon the same shall take effect and be in force.

Section 4. The Successor Agency Executive Director is hereby directed to transmit this Resolution and all exhibits hereto, each of which is incorporated herein, to the Oversight Board and the Department of Finance pursuant to Sections 34179(h) and 34181 of the Dissolution Act and the LRPMP.

**APPROVED AND ADOPTED** this 21<sup>th</sup> day of June 2017.

**OVERSIGHT BOARD TO THE SUCCESSOR  
AGENCY TO THE TAFT COMMUNITY  
DEVELOPMENT AGENCY**

\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Secretary

STATE OF CALIFORNIA                    )  
COUNTY OF KERN                        ) ss.  
CITY OF TAFT                             )

I, Darnell Porter, Secretary of the Oversight Board to the Successor Agency to the Taft Community Development Agency, hereby certify that the foregoing resolution was duly adopted by the Oversight Board to the Successor Agency to the Taft Community Development Agency, at its special meeting held on the 21<sup>st</sup> day of June, 2017, and that it was so adopted by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Secretary

**ATTACHMENT 1**

**PURCHASE AND SALE AGREEMENT**

[to be attached]

# **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

**SELLER:** Successor Agency to the Taft Community  
Development Agency

**BUYER:** SMS Holding Company LLC, a California  
limited liability company

**DATED:** June 20, 2017

(APN 220-290-08)

## BASIC TERMS

Buyer: SMS Holding Company LLC, a California limited liability company

Buyer's Address: SMS Holding Company LLC, a California limited liability company  
Attention: Steve Sheffield  
9105 Langley Road  
Bakersfield, CA 93312  
Email address: sheffcon@aol.com  
Tel. (661) 201-8520  
Fax: (661) \_\_\_-\_\_\_\_

City: The City of Taft

Contingency Date: [October 23, 2017] [**Not fewer than 100 days following approval by Oversight Board and submittal of agreement to DOF**]

Closing Date (or Closing) Estimated to occur by October 31, 2017, but not later than the Outside Date

Deed: A grant deed in the form of Exhibit B hereto

Effective Date: June 20, 2017

Escrow Holder: Ticor Title Company of California  
10000 Stockdale Highway, Suite 101  
Bakersfield, CA 93311  
Tel: (661) 847-7008  
Fax: (661)-846-5627  
Attention: Susan Buck, Escrow Officer  
(direct: (661) 847-7008; email: scerribuck@ticortitle.com  
(or another escrow holder mutually acceptable to Buyer and Seller)

Independent Consideration Amount: Fifty Dollars (\$50.00)

Outside Date: November 10, 2017; provided that such date may be extended by mutual written agreement signed by Seller and Buyer

Purchase Price: Two Thousand Fifty Dollars (\$2,050.00).

Real Property: That property described in Exhibit A hereto; the subject property is sometimes referred to as APN 220-290-08

Seller: Successor Agency to the Taft Community Development Agency

Seller's Address:

209 East Kern Street  
Taft, California 93268  
Attention: Teresa Binkley, Finance Director  
Tel. (661) 763-1350, extension 18  
Fax: (661) 765-2480  
Email: Tbinkley@cityoftaft.org

Title Company:

Ticor Title Company of California  
10000 Stockdale Highway, Suite 101  
Bakersfield, CA 93311  
Tel: (661) 847-7008  
Attention: \_\_\_\_\_, Title Officer  
(direct: (661) \_\_\_\_-\_\_\_\_; email: \_\_\_\_\_@ticortitle.com)  
(or another title insurer mutually acceptable to Buyer and Seller)

**PURCHASE AND SALE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** (“Agreement”) is made and entered into as of June 20, 2017 (the “Effective Date”) by and between Seller and Buyer.

**RECITALS**

- A.** Seller is the fee owner of the Real Property. The Real Property is unimproved.
- B.** Buyer currently owns the land and building which abuts the Real Property.
- C.** Seller has offered to sell to Buyer the Real Property described herein for the price and subject to the terms set forth below. Buyer has considered the offer by Seller and agrees to buy from Seller the Real Property, as more specifically described below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**1. Purchase and Sale.** Seller hereby agrees to sell the Real Property to Buyer, and Buyer hereby agrees to purchase the Real Property from Seller, on the terms and conditions set forth in this Agreement. The term Real Property means the fee interest in the Real Property to be conveyed by a grant deed in the form of the Deed

**1. Payment of Consideration.** As consideration for the sale of the Real Property from Seller to Buyer, Buyer shall, at the Closing (as defined below), pay to Seller the Purchase Price for the Real Property.

**2. Escrow and Independent Consideration.**

(a) **Opening of Escrow.** For the purposes of this Agreement, the escrow (“Escrow”) shall be deemed opened (“Opening of Escrow”) on the date that Escrow Holder receives a copy of this Agreement fully executed by Buyer and Seller. Buyer and Seller shall use their best efforts to cause the Opening of Escrow to occur on or before five (5) business days after the Effective Date. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. This Agreement will constitute escrow instructions to the Escrow Holder. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no such instruments shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of such instruments and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no such instruments shall extinguish any obligations imposed by this Agreement or any other agreement between Seller and Buyer.

(b) Independent Consideration. Within five (5) days after the Effective Date, Buyer shall pay to Seller the Independent Consideration Amount to be retained by Seller as non-refundable independent consideration. The Independent Consideration Amount has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and Seller holding the Real Property off the market for a period commencing as of the Effective Date and continuing until the Outside Date and for the rights and privileges granted to Buyer herein, including any and all rights granted to Buyer to terminate this Agreement under the circumstances provided for herein. Notwithstanding anything to the contrary contained in this Agreement, the Independent Consideration Amount shall be non-refundable in all events, except for (i) Seller's default hereunder, (ii) the failure of the Oversight Board to approve the sale of the Real Property as provided under this Agreement, and (iii) actions by the California Department of Finance ("DOF") which prevent the disposition of the Real Property to Buyer as provided under this Agreement. If the Closing occurs, a credit shall be applied to the Purchase Price based upon payment of the Independent Consideration Amount.

(c) Closing. For purposes of this Agreement, the "Closing" or "Closing Date" shall be the date the Deed (as defined below) is recorded pursuant to applicable law in the county in which the Real Property is located. Unless changed in writing by Buyer and Seller, the Closing shall occur on the Closing Date, or as soon thereafter as the conditions precedent to closing are satisfied pursuant to Sections 5 and 6 of this Agreement. If the Closing has not, for any reason, occurred by the Closing Date, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the outside Closing Date (i.e. the Outside Date); provided, however, that if either party is in default under this Agreement at the time of such termination, then such termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party.

**3. Seller's Delivery of Real Property and Formation Documents.** Within ten (10) days after the Effective Date, Seller shall deliver to Buyer the following items (collectively, the "Property Documents"):

(a) Such reasonable proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction consistent with the terms of this Agreement, including without limitation approval of the Oversight Board of the sale of the Real Property by Seller to Buyer.

(b) To the extent in the possession of Seller, all materials related to pending or threatened litigation involving the Real Property, including correspondence, complaints, court orders, settlements, and judgments to the extent such matters are within the actual knowledge of the Executive Director of the Successor Agency, no investigation with respect thereto having been undertaken.

(c) All contracts, agreements or instruments, if any, to which Seller is a party pertaining to the Real Property.

In addition, Seller shall cause Escrow Holder to obtain and deliver to Buyer a Natural Hazard Report as provided for under Sections 1102 and 1103 of the California Civil Code (the "Natural Hazard Report") within twenty (20) calendar days after the Opening of Escrow, but in no event later than the thirtieth (30<sup>th</sup>) day after the Effective Date; provided that the cost for the Natural Hazard Report shall be borne by Buyer.

**4. Buyer's Right of Entry.** From and after the Opening of Escrow through the earlier to occur of the termination of this Agreement or the Contingency Date, or as otherwise agreed in writing by Seller prior to when entry is effected, Buyer and Buyer's employees, agents, consultants and contractors shall have the right to enter upon the Real Property during normal business hours, provided reasonable prior notice has been given to Seller.

(a) Investigation of the Real Property. In addition to the foregoing, the Buyer shall have the right, at its sole cost and expense, prior to the Contingency Date, to make such evaluations, inspections, tests or investigations as Buyer deems necessary or appropriate, including any "Phase 1" or "Phase 2" investigations of the Real Property. If, based upon such evaluations, inspections, tests or investigations, Buyer determines that it, in its sole discretion, does not wish to proceed with purchase of the Real Property based upon the condition of the Real Property, Buyer may cancel this Agreement by giving written notice of termination to Seller on or before the Contingency Date. If Buyer does not cancel this Agreement by the time allowed under this Section 4, Buyer shall be deemed to have approved the evaluations, inspections and tests as provided herein and to have elected to proceed with this transaction on the terms and conditions of this Agreement. Seller shall be provided a copy of all reports and test results provided by Buyer's environmental consultant promptly after receipt by the Buyer of any such reports and test results without any representation or warranty as to their accuracy or completeness.

Buyer shall bear all costs, if any, associated with restoring the Real Property to substantially the same condition prior to its testing by or on behalf of Buyer if requested to so do by Seller but excluding any latent defects or Hazardous Materials (as defined below) discovered by Buyer during its investigation of the Real Property. Buyer agrees to indemnify, protect, defend (with counsel satisfactory to Seller) and hold Seller and the Real Property free and harmless from and against all costs, claims, losses, liabilities, damages, judgments, actions, demands, attorneys' fees or mechanic's liens arising out of or resulting from any entry or activities on the Real Property by Buyer, Buyer's agents, contractors or subcontractors and the contractors and subcontractors of such agents, but in no event shall the indemnity of this Section include the discovery of pre-existing conditions by Buyer or any such liabilities, costs, etc. arising from the negligence or willful misconduct of Seller and/or its consultants. The indemnity obligations of Buyer set forth in this Section 4(a) shall survive any termination of this Agreement or the Close of Escrow.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water

Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §6901 et seq.

(b) No Warranties as To the Real Property. The physical condition and possession of the Real Property, is and shall be delivered from Seller to Buyer in an “as is” condition, with no warranty expressed or implied by Seller, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Real Property for development purposes. In addition, Seller makes no representations, warranties or assurances concerning the Real Property, its suitability for any particular use or with regard to the approval process for entitlements as to the Real Property.

(c) Buyer Precautions after Closing. Upon and after the Closing, Buyer shall comply with all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Real Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Real Property (“Governmental Requirements”) with respect to Hazardous Materials.

## **5. Buyer’s Conditions Precedent and Termination Right.**

(a) Conditions Precedent. The Closing and Buyer’s obligation to consummate the purchase of the Real Property under this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, “Buyer’s Contingencies”), which are for Buyer’s benefit only.

(i) Title Review. Within twenty (20) calendar days after the Opening of Escrow, but in no event later than the thirtieth (30<sup>th</sup>) day after the Effective Date, Seller shall cause the Title Company to deliver to Buyer a preliminary title report (the “Report”) describing the title to the Real Property, together with copies of the plotted easements and the exceptions (the “Exceptions”) set forth in the Report; provided that the cost of the Report shall be borne by Buyer. Seller acknowledges that the Buyer’s Title Policy shall include an endorsement against the effect of any mechanics’ liens; Seller will provide such indemnity or other assurances as necessary to induce the Title Company to provide such endorsement. On or before the Contingency Date, Buyer shall have approved in writing, in Buyer’s sole discretion, any matters of title disclosed by the following (collectively, the “Title Documents”): (i) the Report; (ii) the Exceptions; (iii) the legal description of the Real Property and (iv) any survey Buyer desires to obtain at Buyer’s sole cost and expense. Buyer shall have the same rights to approve or disapprove any exceptions to title that are not created by Buyer and that come into existence after issuance of the Report but prior to Closing. Seller shall, on or before the Closing, remove all deeds of trust, mortgages, and delinquent taxes (but not the lien for any real property taxes or assessments not yet delinquent).

(ii) Buyer’s Title Policy. On or before the Closing, the Title Company shall, upon payment (by Seller in accordance with Section 9(a)) of the Title Company’s premium, have agreed to issue to Buyer, a standard ALTA owner’s policy of title insurance insuring only as to matters of record title (“Standard Buyer’s Title Policy”) in the amount of the Purchase Price showing fee title to the Real Property vested solely in Buyer and subject only to the (i) the standard,

preprinted exceptions to Buyer's Title Policy; (ii) liens to secure payment of real estate taxes or assessments not yet delinquent; (iii) matters affecting the Real Property created by or with the written consent of Buyer; and (iv) those matters specifically approved in writing by Buyer. Buyer shall have the right, at its sole cost and expense, to obtain coverage beyond that offered by a standard ALTA policy (such as an owner's extended coverage ALTA policy); provided, however, that Buyer's ability to obtain such extended coverage shall not be a Buyer's Contingency and Buyer's obligations hereunder shall in no way be conditioned or contingent upon obtaining such extended coverage. Buyer shall have sole responsibility for obtaining, and bearing the cost of, any endorsements and for any survey or other matters required by the Title Company for such extended coverage.

In the event Buyer enters into a loan agreement to generate moneys to purchase the Real Property from Seller under this Agreement, Buyer and not Seller shall be responsible for the title insurance, closing costs and any other costs, fees or expenses in relation to Buyer obtaining such loaned moneys. The sale shall be all cash to Seller.

(iii) Inspections and Studies. On or before the Contingency Date, Buyer shall have approved in writing, in Buyer's sole and absolute discretion, the results of any physical and legal inspections, investigations, tests and studies Buyer elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; soils, seismic and geologic reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations as Buyer may elect to make or obtain.

(iv) Natural Hazard Report. Within twenty (20) calendar days after the Opening of Escrow, but in no event later than the thirtieth (30<sup>th</sup>) day after the Effective Date, Seller shall cause the Escrow Holder to provide the Natural Hazard Report to Buyer prior to the Contingency Date; provided that Buyer shall bear the cost to prepare such Natural Hazard Report.

(v) Property and Formation Documents. On or before the Contingency Date, Buyer shall have approved in writing, in Buyer's sole discretion, the terms, conditions and status of all of the Property Documents.

(vi) Delivery of Documents. Seller's delivery of all documents described in Section 7, below.

(vii) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be true and correct as of the date made and materially true and correct as of the Closing.

(viii) Title Company Confirmation. The Title Company shall have confirmed that it is prepared to issue the Buyer's Title Policy consistent with the provisions of this Agreement.

(ix) Oversight Board and DOF Approval. The Oversight Board and, if required as a condition of the issuance of title insurance or by either party hereto, approval by DOF, shall have been given as to the disposition of the Real Property by Seller to Buyer under this Agreement.

(x) Consents. All necessary agreements and consents of all parties to consummate the transaction contemplated by this Agreement will have been obtained and furnished by Seller to Buyer.

(xi) No Default. As of the Closing, Seller shall not be in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement.

(b) Termination Right. Each of paragraphs (b) (i) and (ii) below shall operate independently and each shall entitle the respective party to terminate this Agreement, as follows:

(i) If the Independent Consideration Amount is not paid by Buyer to Seller by the time set forth therefor in Section 2(b) of this Agreement, then Seller may terminate this Agreement by giving notice thereof to Buyer.

(ii) If any of Buyer's Contingencies are not be met by the Contingency Date, Buyer may, by written notice to Seller, terminate this Agreement.

If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer, unless Seller is in default hereunder, in which case Seller shall pay all such fees. If the Agreement has not been terminated pursuant to (i) or (ii) of this Section 5(b) and Buyer has neither terminated this Agreement in writing ("Termination Notice") on or before 5:00 p.m. on the Monday preceding the scheduled Closing ("Termination Notice Deadline"), then all such Buyer's Contingencies shall be deemed to have been satisfied and this Agreement shall continue pursuant to its terms. If Buyer has not delivered a Termination Notice prior to the Termination Notice Deadline, such Buyer's Contingencies shall be deemed to have been satisfied.

If this Agreement is terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer, unless Seller is in default hereunder, in which case Seller shall pay all such fees.

(c) Seller's Cure Right. Buyer shall notify Seller, in Buyer's Termination Notice, of Buyer's disapproval or conditional approval of any Title Documents. Seller shall then have the right, but not the obligation, to (i) remove from title any disapproved or conditionally approved Exception(s) (or cure such other title matters that are the basis of Buyer's disapproval or conditional approval of the Title Documents) within five (5) business days after Seller's receipt of Buyer's Termination Notice, or (ii) provide assurances reasonably satisfactory to Buyer that such Exception(s) will be removed (or other matters cured) on or before the Closing. With respect to any such Exception, it shall be sufficient for purposes hereof for Seller to commit in writing, within the applicable period, to remove such Exception at or before the Closing. Seller's failure to remove such Exception after committing to do so shall be a default hereunder. An Exception shall be deemed removed or cured if Seller furnishes Buyer with evidence that the Title Company will issue the Buyer's Title Policy, as defined herein, at the Closing deleting such Exception or providing an endorsement (at Seller's expense) reasonably satisfactory to Buyer concerning such Exception. If Seller cannot or does not remove or agree to remove any of the disapproved Exception(s) (or cure other matters) within such five (5) business day period, Buyer shall have three (3) business days after the expiration of such five (5) business day period to give Seller written notice that Buyer elects to proceed with the purchase of the Real Property subject to the disapproved Title

Document(s), it being understood that Buyer shall have no further recourse against Seller for such disapproved Title Exception(s). For the avoidance of doubt, if Buyer fails to give such notice within such three (3) business day period, Buyer will be deemed to have elected to terminate this Agreement.

**6. Seller's Conditions Precedent and Termination Right.** The Closing and Seller's obligations with respect to the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following condition precedent ("Seller's Contingencies"), which are for Seller's benefit only:

(a) Completion of Title Review. Seller shall have received written confirmation from Buyer on or before the Contingency Date that Buyer has completed its review of title and that the condition of title is satisfactory.

(b) Confirmation Concerning Site. Seller shall have received written confirmation from Buyer on or before the Contingency Date that Buyer has reviewed the condition of the Real Property, including without limitation concerning Hazardous Materials, zoning and suitability, and approves the condition of the Real Property.

(c) Confirmation Regarding Buyer's Title Policy. Seller shall have received written confirmation from Buyer on or before the Contingency Date that Buyer has approved a pro forma title policy.

(d) Oversight Board and DOF Approval. The approval by the Oversight Board and DOF shall have been given as to the disposition of the Real Property by Seller to Buyer under this Agreement.

(e) Delivery of Documents. Buyer's delivery of all documents described in Section 8, below.

Should any of Seller's Contingencies not be met by the respective times set forth for the satisfaction for such contingency, Seller may, by written notice to Buyer, terminate this Agreement; such termination rights shall be in addition to those termination rights of Seller as set forth in Section 5(b)(i). If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer.

**7. Seller's Deliveries to Escrow Holder.**

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

(i) Deed. The Deed.

(ii) FIRPTA/Tax Exemption Forms. The Transferor's Certification of Non-Foreign Status in the form attached hereto as Exhibit C (the "FIRPTA Certificate"), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable (the "California Exemption Certificate").

(iii) Hazard Disclosure Report. Consistent with the terms of this Agreement, Seller shall cause Escrow Holder to obtain and deliver to Buyer, at Buyer's cost, a Natural Hazard Report as provided for under Sections 1102 and 1103 of the California Civil Code (the "Natural Hazard Report") before the Closing.

(iv) Possession of Real Property. Possession of the Real Property free of any tenancies or occupancy.

(v) Authority. Such evidence of Seller's authority and authorization to enter into this Agreement and to consummate this transaction.

(vi) Final Escrow Instructions. Seller's final written escrow instructions to close escrow in accordance with the terms of this Agreement.

(vii) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company which are consistent with the terms of this Agreement.

(b) Failure to Deliver. Should any of Seller's Delivered Items not be timely delivered to Escrow, Buyer may, by written notice to Seller, terminate this Agreement; provided, however, that Buyer may (but shall not be obligated to) in such notice provide Seller with five (5) business days to deliver all of Seller's Delivered Items. If Buyer's notice provides Seller such five (5) business days to deliver Seller's Delivered Items, and if Seller's Delivered Items are not delivered within such period, then this Agreement shall automatically terminate without further action or notice. In the event of any such termination, any cash deposited by Buyer shall immediately be returned to Buyer. Under no circumstances shall Buyer have any responsibility to or duty to pay consultants or real estate brokers retained by Seller, Seller being solely responsible in connection with any such contractual arrangements of Seller.

**8. Buyer's Deliveries to Escrow**. At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate ("Buyer's Delivered Items"):

(a) Purchase Price. The Purchase Price, less amounts which Seller confirms in writing to Escrow Holder were theretofore paid to Seller as the Independent Consideration Amount, together with additional funds as are necessary to pay Buyer's closing costs set forth in Section 9(b) herein. In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3-1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 10(b) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 593 to Title Company at or immediately after Closing.

(b) Change of Ownership Report. One (1) original Preliminary Change of Ownership Report.

(c) Final Escrow Instructions. Buyer's final written escrow instructions to close escrow in accordance with the terms of this Agreement.

(d) Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and to consummate the transaction contemplated hereby as may be reasonably requested by Seller or the Title Company.

(e) Moneys for Buyer's Real Estate Broker. Buyer shall deposit any moneys due and payable to any broker retained by Buyer in connection with the sale of the Real Property by Seller to Buyer.

(f) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

**9. Costs and Expenses.**

(a) Seller's Costs. If the transaction contemplated by this Agreement is consummated, then Seller shall be debited for and bear the following costs: (i) costs and charges associated with the removal of encumbrances to the extent hereafter approved by Seller at its option; (ii) Seller's share of prorations (as described in Section 10 hereof); and (iii) costs, if any, allocable to Seller under this Agreement and costs for such services as Seller may additionally request that Escrow perform on its behalf (which foregoing items collectively constitute "Seller's Costs and Debited Amounts").

(b) Buyer's Costs. If the transaction contemplated by this Agreement is consummated, then Buyer shall bear the following costs and expenses: (i) Buyer's share of prorations (as described in Section 10 hereof); (ii) the premium for title insurance based on the Purchase Price, and, if applicable, the cost for any survey required in connection with the delivery of an ALTA owner's extended coverage policy of title insurance; (iii) all escrow charges; (iv) documentary recording fees, if any; (v) documentary transfer tax, if any; (vi) recording and other costs of closing; (vii) the cost of the Natural Hazard Report; (viii) costs, if any, for such services as Buyer may additionally request that Escrow perform on its behalf; and (ix) any costs associated with Buyer borrowing money in order to pay to Seller the Purchase Price (collectively, "Buyer's Costs and Debited Amounts").

(c) Generally. Each party shall bear the costs of its own attorneys, consultants, and real estate brokers in connection with the negotiation and preparation of this Agreement and the consummation of the transaction contemplated hereby. Buyer represents to Seller that Buyer and not Seller shall be solely responsible for payment in connection with the services of any consultants, finders or real estate brokers engaged by Buyer in connection with the purchase of the Real Property from the Seller. Seller represents to Buyer that Seller has not engaged the services of any consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer.

**10. Prorations; Withholding.**

(a) All revenues (if any) and expenses relating to the Real Property (including, but not limited to, property taxes, utility costs and expenses, water charges and sewer rents and

refuse collection charges) shall be prorated as of the Closing Date; provided that all delinquent taxes shall be satisfied at the expense of Seller. Not less than five (5) business days prior to the Closing, Seller shall deliver to Buyer a tentative schedule of prorations for Buyer's approval (the "Proration and Expense Schedule"). If any prorations made under this Section shall require final adjustment after the Closing, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjustment proration shall be paid promptly in cash to the party entitled thereto.

(b) In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code (the "Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Title Company shall withhold three and one-third percent (3-1/3%) of the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed copies of California Form 593 to Title Company at or immediately after Closing, (iii) two (2) copies of California Form 593 shall be delivered by Title Company to Seller, and (iv) on or before the 20<sup>th</sup> day of the month following the month title to the Real Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Title Company shall remit such funds withheld from the Purchase Price, together with one (1) copy of California Form 593 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Title Company as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 593), to the California Franchise Tax Board.

**11. Closing Procedure.** When the Title Company is unconditionally prepared (subject to payment of the premium therefor) to issue the Buyer's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) Recording. Escrow Holder shall cause the Deed to be recorded pursuant to applicable law in the county in which the Real Property is located and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) Disburse Funds. Escrow Holder shall debit or credit (as provided herein) all Buyer's Costs and Debited Amounts, Seller's Costs and Debited Amounts and General Expenses, prorate matters and withhold funds as provided herein. The Purchase Price, less any applicable debits or credits (including any liens as to which such liens and the amount to satisfy such liens shall have been confirmed in writing by Seller to Escrow Holder) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions). Seller authorizes Escrow Holder to request demands for payment and to make such payments from the Purchase Price (or such other funds, if any, as are advanced by Seller) to defray the cost of removing deeds of trust, liens and other encumbrances (but not for obligations of Buyer). Escrow Holder shall disburse on behalf of Buyer such moneys as are deposited by Buyer (in addition to the Purchase Price and Buyer's share of closing costs) as the commission for Buyer's real estate broker, if any (unless Buyer's real estate broker shall deliver a written statement to Escrow Holder which indicates that Buyer has arranged to pay Buyer's Real Estate Broker outside escrow and that payment of such remuneration is a matter with respect to which Escrow Holder and Seller need not be concerned).

(c) Documents to Seller. Escrow Holder shall deliver to Seller a conformed copy of the Deed, and documents, if any, recorded on behalf of any lender, as duly recorded among the official land records of the County of Kern, and a copy of each other document (or copies thereof) deposited into Escrow by Buyer pursuant hereto.

(d) Documents to Buyer. Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), and a conformed copy of each of the Deed as duly recorded among the official land records of the County of Kern, the Natural Hazard Report, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 7.

(e) Title Company. Escrow Holder shall cause the Title Company to issue the Buyer's Title Policy to Buyer.

(f) Closing Statement. Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party.

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

(h) Possession. Possession of the Real Property shall be delivered to Buyer at the Closing.

## **12. Representations and Warranties.**

(a) Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Real Property, Seller makes the following representations and warranties as of the Effective Date and as of the Closing, each of which is material and is being relied upon by Buyer (and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder), and all of which are material inducements to Buyer to enter into this Agreement (and but for which Buyer would not have entered into this Agreement) and shall survive Closing:

(i) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated, subject to the approval of the Oversight Board and, as may be applicable, DOF.

(ii) Subject to the approval of the Oversight Board and, as may be applicable, DOF, all requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby.

(iii) Subject to the approval of the Oversight Board and, as may be applicable, DOF, the individual executing this Agreement and the instruments referenced herein on behalf of Seller has the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

(iv) Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the

consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Seller is a party or that affect the Real Property, including, but not limited to, any of the Title Documents or the Property Documents.

(v) There is no pending litigation nor, to the best knowledge of the Executive Director of the Successor Agency, threatened litigation, which does or will adversely affect the right of Seller to convey the Real Property.

(vi) Seller has made no written or oral commitments to or agreements with any governmental authority or agency materially and adversely affecting the Real Property, or any part hereof, or any interest therein, which will survive the Closing.

(vii) There are no leases or rental agreements in effect as to the Real Property.

(viii) To the best knowledge of the Executive Director of the Successor Agency, Seller is not in default of its obligations under any contract, agreement or instrument to which Seller is a party pertaining to the Real Property.

(ix) To the best knowledge of the Executive Director of the Successor Agency, there are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Real Property for work performed or commenced for Seller or on Seller's behalf prior to the date of this Agreement.

(x) To the best knowledge of the Executive Director of the Successor Agency, there are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Real Property that will be binding upon Buyer or the Real Property after the Closing. To the best knowledge of the Executive Director of the Successor Agency, there are no oral contracts or other oral agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Real Property.

(xi) There are not as of the Effective Date, nor will there be as of the Closing, any written or oral leases or contractual rights or options to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Real Property or any part thereof, and no person other than Buyer shall have any right of possession to the Real Property or any part thereof as of the Closing.

(xii) No person, excepting Seller, has possession or any rights to possession of the Real Property or portion thereof.

(b) Subsequent Changes to Seller's Representations and Warranties. If, prior to the Closing, Buyer or Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then the party who has learned, discovered or become aware of such Representation Matter shall promptly give written

notice thereof to the other party and Seller's representations and warranties shall be automatically limited to account for the Representation Matter. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change. If Buyer does not elect to terminate this Agreement, Seller's representation shall be qualified by such Seller Representation Matter and Seller shall have no obligation to Buyer for such Seller Representation Matter.

(c) Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Real Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller (and the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder), and all of which shall survive Closing:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or by which any of Buyer's properties are bound.

(d) Subsequent Changes to Buyer's Representations and Warranties. If, prior to the Closing, Seller or Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation Matter"), then the party who has learned, discovered or become aware of such Buyer's Representation Matter shall promptly give written notice thereof to the other party and Buyer's representations and warranties shall be automatically limited to account for the Buyer's Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change. If Seller does not elect to terminate this Agreement, Buyer's representation shall be qualified by such Buyer's Representation Matter and Buyer shall have no obligation to Seller for such Buyer's Representation Matter.

**13. Fair Value Price.** The Purchase Price is believed by each of the parties to this Agreement to represent the fair market value of the Real Property, and to represent a fair value price

for the Real Property. This Agreement does not require that Buyer undertake any improvements to the Real Property. At such time, if any, as Buyer makes improvements to the Real Property, the costs for planning, designing, and constructing such improvements shall be borne exclusively by the Buyer and the Buyer shall construct or cause to be constructed such improvements in compliance with all applicable labor standards and wage rate requirements to the extent such labor and wage requirements are applicable.

Buyer, including but not limited to its contractors and subcontractors, shall be responsible to comply with Labor Code Section 1720, et seq., if applicable, and its implementing regulations, regarding the payment of prevailing wages (the "State Prevailing Wage Law"), if applicable, and, if applicable, federal prevailing wage law ("Federal Prevailing Wage Law" and, together with State Prevailing Wage Law, "Prevailing Wage Laws") with regard to the construction of improvements to the Real Property, but only if and to the extent such sections are applicable to the development of the Real Property. Insofar as the parties understand that Buyer is paying a fair market price for the Real Property, the parties believe that the payment of prevailing wages will not be required. In any event, Buyer shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Laws, neither the Seller nor the City makes any final representation as to the applicability or non-applicability of the Prevailing Wage Laws to improvements to the Real Property, or any part thereof. Buyer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold each of the Seller and the City, and their respective officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Buyer's acts or omissions pertaining to the compliance with the Prevailing Wage Laws as to the Real Property. This Section 13 shall survive Closing.

#### **14. General Provisions.**

(a) Condemnation. If any material portion of the Real Property shall be taken or appropriated by a public or quasi-public authority exercising the power of eminent domain, Buyer shall have the right, at its option, to (i) terminate this Agreement or (ii) proceed with the purchase of the Real Property and receive all of the award or payment made in connection with such taking.

(b) Notices. All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party as provided in the Basic Terms section above, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), sent by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (provided that a successful transmission report is received). All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties' respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

(c) Brokers. Seller assumes sole responsibility for any consultants or brokers ("Seller's Agents") it may have retained in connection with the sale of the Real Property (and Buyer shall have no responsibility in connection with such matters). Seller represents to Buyer that Seller has engaged no consultants, finders or real estate brokers in connection with the sale of the Real

Property to the Buyer, and there are no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Seller agrees to and does hereby indemnify and hold the Buyer free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the Seller in connection with this Agreement. Buyer assumes sole responsibility for any consultants or brokers ("Buyer's Agents") it may have retained in connection with the purchase of the Real Property (and Seller shall have no responsibility in connection with such matters). Buyer represents to Seller that Buyer has engaged no consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer, and there are no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement other than Buyer's costs with respect to Buyer's real estate broker, if any. Buyer agrees to and does hereby indemnify and hold the Seller free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the Buyer in connection with this Agreement.

(d) Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

(e) Cooperation. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof and, following Closing.

(f) Remedies. Without limitation as to the availability of other remedies, this Agreement may be enforced by an action for specific enforcement.

(g) Time. Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as

otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(h) Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A signature by facsimile or as an attachment to electronic mail in “Portable Document Format” (PDF), or “Tagged Image File Format” (TIFF) shall be deemed an original signature.

(i) Captions. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(j) Obligations to Third Parties. City shall be deemed to be a third party beneficiary of this Agreement. Excepting only for the City, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

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

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

(m) Applicable Law. This Agreement shall be governed by and construed in accordance with the local law of the State of California.

(n) Exhibits and Schedules. The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

(o) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement is executed without reliance on any oral or written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(p) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(q) Assignment. Neither party may assign its rights under this Agreement without the prior consent of the other party.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

**“SELLER”**

**SUCCESSOR AGENCY TO THE TAFT  
COMMUNITY DEVELOPMENT AGENCY**, a  
public entity, corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**“BUYER”**

**SMS HOLDING COMPANY LLC**, a California  
limited liability company

By: \_\_\_\_\_  
Name: Steve Sheffield  
Its: Managing Member

Acceptance by Escrow Holder:

Ticor Title Company of California hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between the Successor Agency to the Taft Community Development Agency, a public entity, corporate and politic (“Seller”), and SMS Holding Company LLC, a California limited liability company (“Buyer”) and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 201\_

TICOR TITLE COMPANY OF CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Kern, described as follows:

[to come]

APN 220-290-08

**EXHIBIT B**

**DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

SMS Holding Company LLC, a  
California limited liability company  
9105 Langley Road  
Bakersfield, CA 93312  
Attn: Steve Sheffield

APN: 220-290-08

[Space above for recorder.]

**DOCUMENTARY TRANSFER TAX**

\$ \_\_\_\_\_

\_\_\_\_\_ computed on the consideration or value of  
property conveyed; OR

\_\_\_\_\_ computed on the consideration or value less  
liens or encumbrances remaining at time of sale.

\_\_\_\_\_  
Signature of Declarant or Agent determining tax - Firm  
Name

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Successor Agency to the Taft Community Development Agency, a public entity, corporate and politic (“Grantor”), hereby grants to SMS Holding Company LLC, a California limited liability company (“Grantee”), that certain real property located in the County of Kern, State of California, more particularly described on **Attachment No. 1** attached hereto and incorporated herein by this reference (the “Property”), subject to existing easements, restrictions and covenants of record.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 201\_\_.

**SUCCESSOR AGENCY TO THE TAFT  
COMMUNITY DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT NO. 1 TO GRANT DEED**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Kern, described as follows:

[to come]

APN 220-290-08

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT C**

**FIRPTA CERTIFICATE**

**TRANSFEROR'S CERTIFICATE OF NON-FOREIGN STATUS**

To inform SMS Holding Company LLC, a California limited liability company ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of certain real property to the Transferee by the Successor Agency to the Taft Community Development Agency (the, "Transferor"), the undersigned hereby certifies the following:

1. The Transferor is not a foreign person or citizen, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Transferor's social security number or U.S. employer identification number is as follows: \_\_\_\_\_.

3. The Transferor's home or office address is:

\_\_\_\_\_  
\_\_\_\_\_

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document.

\_\_\_\_\_  
Successor Agency to the Taft Community  
Development Agency