REPORT TO MAYOR AND COUNCIL

NO: 13-275

Council Meeting: November 19, 2013

SUBJECT: Discussion and Possible Action Regarding Approval of the Purchase and Sales Agreement for Raynor Activity Center Located at 1500 Partridge Avenue and a Joint Use Agreement for the Raynor Park Open Space Area and Adoption of a Finding that the Purchase and Sales Agreement Does not Constitute a Project Under the California Environmental Quality Act

REPORT IN BRIEF

Raynor Activity Center (RAC) is currently an underutilized City asset that is not being used to deliver City services. It comprises 3.5 acres of the larger 14.7 acre parcel that was purchased by the City in 1979 from the Santa Clara Unified School District. After considering proposals for the long-term lease of RAC, City Council declared RAC as surplus property in May of 2012 and directed staff to conduct a competitive process for its sale. Council also gave direction that the property would not be sold for commercial or residential development.

The City used a two-step process to identify interested parties for negotiation who would submit proposals for the purchase of RAC and ultimately received five proposals. After reviewing proposals, City Council authorized staff to enter negotiations with Stratford School. Stratford is proposing to renovate the existing buildings at the RAC and use them for a private school. California Environmental Quality Act ("CEQA") review of the proposed use will be conducted through the use permit process.

The terms and conditions of the sale are included in Attachment B and are summarized as follows:

- Sales price - $14,050,000
- 45 day due diligence period for property inspections followed by a period of up to six months to obtain a City use permit prior to close of escrow
- Permanent easements for public parking after school hours and on weekends on two parking lots to provide parking for the park
- Joint use agreement for use of a portion of Raynor Park athletic fields for physical education and after-school sports programs

- Construction of a new basketball court in Raynor Park built and maintained at Stratford School's expense that will be open to the public after school and on weekends

Staff recommends approval of the Purchase and Sales Agreement (Attachment B), and Joint Use Agreement for Recreation Purposes of the Raynor Park Recreation Areas (Attachment C) between the City of Sunnyvale and Stratford School. Staff also recommends that upon close of escrow the proceeds of the sale be allocated as follows:

a) Provide $11.5 million in funding for the current capital project for the design, construction, and startup costs of a new branch library located at Lakewood Park; and,
b) Use proceeds of $135,000 to reimburse the General Fund for commercial real estate consulting services with expertise in negotiated sales of public facilities; and,
c) Provide $50,000 to pay for closing cost expenses related to the sale: and,
d) Use remaining proceeds of approximately $2.37 million for design and construction of the Washington Pool Expansion Project advancing its schedule by two years to start design in Fiscal Year 2014/15; and,
e) Upon recordation of the Raynor Park Parcel Map, direct staff to transfer $130,000 from the Water Utility Fund to the General Fund Reserve for Capital Improvement Projects for the Raynor Well parcel.

BACKGROUND

In 2012, the City considered long-term lease proposals for the Raynor Activity Center. Due to the poor conditions of the existing buildings, prospective tenants for a long-term lease faced significant renovation costs. This eroded potential rental income to the City resulting in reconsideration of the alternative to sell the RAC portion of the property. After due consideration by Council, on May 8, 2012, City Council rejected proposals for a long-term lease and approved Resolution No. 533-12 declaring the RAC as surplus property for sale (RTC 12-113). Council gave direction to not allow uses of the property for commercial or residential developments or for uses that do not meet the goals of the City as determined by City Council.

The Raynor Activity Center is part of a larger 14.67 acre parcel that encompasses Raynor Park. Only the Activity Center (former school buildings) that includes 22 classrooms in eight buildings and adjacent parking lots (approximately 3.5 acres) are for sale. A preliminary parcel map was created to define the precise boundaries of the parcel for sale (Attachment A – Preliminary Parcel Map, Parcel 2).

In October, 2012, staff initiated the required 60-day public agency notification period to affordable housing sponsors, park districts and public school districts

pursuant to California Government Code Section 54222. The City received two proposals from school districts and one from the Morgan Autism Center. After a thorough review of the proposals, the City determined that neither of the two school districts qualified due to the RAC not being within their district boundaries and the one remaining offer was not a public agency or school district (RTC 13-069). The three interested proposers were invited to participate in the next step of placing the RAC in the open-market for sale.

The sale of the RAC was approached in a two-step process: 1) Request for Qualifications (RFQ); and, 2) Request for Proposals (RFP) for the offering of the RAC to prospective buyers. Interested parties were informed that proposed uses must conform to Public Facility zoning and that residential or commercial development proposals would not be considered, and that a conditional use permit would be required.

The City received seven responses from the RFQ, all of which proposed school use for the property. City Council approved a Request for Proposals on March 19, 2013 (RTC 13-069) and the RFP was released to six of the RFQ respondents.

The RFP identified the process for the sale of the RAC and included the City's goals and objectives, the permitted uses within the Public Facility zoning for this site, defined the process required to acquire a use permit and described the selection process.

The RFP process closed on May 10, 2013 and the City received five proposals as follows:

- Fremont Union High School
- German International School of Silicon Valley
- Los Altos School District
- Morgan Autism Center
- Stratford School Incorporated

Proposals were evaluated on the following criteria:

1. Purchase price, terms proposed, and contingencies
2. Capacity and intent to close the transaction expeditiously
3. Qualifications and expertise of Proposer and its team
4. Compatibility of the proposed use with the City's objective for the property, including intensity of use, quality, and impacts, and public benefit to the community
5. Overall quality of response

On June 11, 2013, City Council gave authorization to enter into good-faith negotiations with Stratford School Incorporated ("Stratford") to negotiate a purchase and sales agreement.

EXISTING POLICY

Fiscal Policy 7.1 *Land Policies* D.1.9
The net proceeds from the disposition of surplus City property owned by the General Fund shall be placed into the General Fund Reserve for Capital Improvements.

ENVIRONMENTAL REVIEW

The Purchase and Sale Agreement provides that sale of the property is contingent upon Stratford obtaining a use permit from the City for the private school use. Project level CEQA review related to the proposed use by Stratford will be conducted at the time Stratford submits the use permit application, when there is sufficient project detail to be able to conduct meaningful analysis. CEQA review is not required at this time because approval of the Purchase and Sale Agreement alone does not constitute a project within the meaning of CEQA. The Agreement creates a structure, through escrow, to transact a sale, subject to certain conditions. The Agreement furthers the goals of due diligence and planning activities related to the potential operation of a private school on the subject site, but does not at this time approve a development or use, or commit the City to a particular defined development project or use.

DISCUSSION

Purchase and Sales Agreement

The Stratford School offer is contingent upon a 45-day due diligence period whereby Stratford may conduct studies and investigations concerning the state of title and environmental condition of the property. In addition, the sale of the property is contingent upon procuring a use permit from the City and, permitted use of a portion of Raynor Park athletic fields. Stratford proposes to purchase and renovate the existing structures to be used as a private school and to enter a joint field use agreement with the City to provide physical education and after-school sports programs. Stratford has been involved with more than 20 similar conversions of former school campuses over the past 16 years, nine of them within the Bay Area. They currently operate two other schools in Sunnyvale.

On June 25, 2013, Staff entered into exclusive negotiations with Stratford to establish the terms and conditions for the sale of the RAC and have now finalized a Purchase and Sales Agreement for Council consideration (Attachment B). In summary, the purchase price is $14,050,000 and will be sold in “as is” condition. A deposit of $50,000 was received with its proposal and will be deemed non-refundable should Council approve the Purchase and Sales Agreement. Subsequent to approval of the agreement, Stratford will have a 45 day “due diligence period” to investigate and conduct studies on the property to determine whether or not to acquire the property pursuant to the terms and conditions of the Purchase and Sales Agreement. After the 45 day

"due diligence period" if Stratford decides to go forward with the purchase, an additional $50,000 deposit will be required to continue the process for an additional period of approximately six months while Stratford applies for a use permit through the City. Stratford will have six months to secure a use permit for operation of a private school which includes environmental analysis and review by the City Zoning Administrator or Planning Commission as determined by the level of intensity for the proposed use. The six-month period is the general time frame for conducting environmental review and application for a use permit through the City. Assuming the use permit is secured, including the conclusion of any appeal period or final resolution of any appeal, escrow will close within 30 days or sooner. If the City declines to issue a use permit, or if Stratford finds the mitigation measures or use permit conditions to be unacceptable, it may terminate the agreement for the purchase of the Raynor Activity Center.

Parcel Map

Prior to completing the sale process, the City will need to record a parcel map creating RAC as a separate parcel. A preliminary parcel map has been prepared (Attachment A) to divide the City's property into three parcels: Parcel 1 (11.131 acres) Raynor Park, Parcel 2 (3.546 acres) Raynor Activity Center, and Parcel 3 (0.171) Raynor Well. Stratford's purchase of the RAC, Parcel 2 of the Preliminary Map includes three parking areas to be owned and maintained by Stratford. Easements were created over the largest two parking areas - one on Partridge Avenue and one adjacent to the south-side of the buildings for access by the general public to the park after school hours and on weekends. The existing angle parking located along Partridge Avenue is currently part of the street right-of-way. The parcel map makes this part of Parcel 2 but reserves an easement for public access over the existing sidewalk.

Parcel 3 is being created so the City will retain ownership of the existing drinking water well located on the property. Easements have also been created over Parcel 2 for water system facilities which include underground pipelines electrical equipment, and an emergency generator.

Raynor Park Joint Use Agreement with Stratford School

Stratford's proposal is contingent upon the City allowing priority use of a portion of the athletic fields and open space during school hours for physical education and after-school sports programs. The City owns and maintains the Raynor Park open space (see Attachment A – Parcel 1) as part of the parks system and it is operated as part of the City's recreational programs. The City's recreational program is managed on a reservation fee based system for the benefit of organized sports teams and the public in general.

Staff negotiated with Stratford to finalize the terms of a Joint Use Agreement (Attachment C) for use of a portion of the Raynor Park open space. Priority use

will be given to Stratford for use during school hours of Area 1 and Area 2 as depicted in Attachment C – Exhibit B. School hours are Monday through Friday from 8:00 a.m. to 3:00 p.m. and typically run from late August to early June. Area 1 will be available for public use during school hours when not being used by Stratford. The remaining Park area will be available for public use in accordance with the City's reservation system. Additionally, Stratford will have priority use of Area 1 and Area 2 for after school activities and sports programs during hours that range from 4:00 p.m. to 6:00 p.m. on certain days and specifically identified in Exhibit C of Attachment C. In consideration of Park field use, Stratford will maintain its student population with at least 51% of students that reside in the City of Sunnyvale based on a 5-year rolling average to maintain priority field use.

Community Services Division staff met with three youth sports groups who utilize Raynor Park fields for organized sports activities. The groups provided details about their respective programs and related field use. Staff discussed potential impacts to field availability and the City's ability to provide alternative park sites should the addition of Stratford School at Raynor Activity Center be realized. Although the groups will lose some access to the Raynor Park fields, City staff provided alternative locations that currently meet the youth sports group's needs. City staff will continue to evaluate Raynor Park field allocation and use to maintain safe shared access for user groups.

Stratford proposes to construct a basketball court, at no cost to the City, adjacent to the school site as shown on Exhibit "B" of Attachment C and identified as Area 2. Stratford will be required to procure a building permit for construction of the basketball court and is subject to review and approval as part of the use permit process for the School. The basketball court will not include lighting for night time use. Stratford will have priority use of the basketball court from 8:00 a.m. to 6:00 p.m. on school days during the regular school year, and from 8:00 a.m. to 3:00 p.m. during summer school days. Stratford will maintain the basketball court in a clean and safe condition for public use at all times and will make it available to the public during after school hours, on weekends, and holidays during park hours.

The Joint Use Agreement has a term of 25 years and may be renewed for two 10-year extensions provided the City and Stratford agree. It would only become effective if the use permit is issued and the sale effectuated.

Disposition of Funds

If Council approves the sale of the RAC, (after completing the environmental analysis and reviewing the conditions of a use permit), upon close of escrow the City will receive $14 million (some closing costs will be deducted from the sale price). Council Fiscal Policy 7.1 – Land Policy D.1.9 requires the net proceeds from the disposition of surplus City property owned by the General Fund shall be placed into the General Fund Reserve for Capital Improvements. Staff has

confirmed that the original purchase of the Raynor property in 1979 was from the General Fund.

Based on previous Council direction the proceeds from the sale will be used to pursue a branch library at Lakewood Park. Staff estimates that a branch library of approximately 12,000 square feet would cost approximately $11.5 million. This size would be large enough to incorporate a community room that could replace the existing recreation building at Lakewood Park and be used for both library services and recreational programs. Estimated costs for the branch library include everything needed to open the branch including design, construction, and startup costs such as book collections, furniture, and computer equipment.

Proceeds in the amount of $135,000 would be used to reimburse the General Fund for real estate professional services with expertise in negotiated sales of public facilities to private entities (RTC 12-272).

The remainder of approximately $2.37 million will be available. These funds should be used for capital improvements in accordance with City policy. One such use of these funds could be to accelerate the Washington Pool Expansion Project. This project is currently funded from Park Dedication Fees over a four year period beginning in Fiscal Year 2016/17 in the total amount of $6,615,174. Using some of the proceeds from the RAC would allow the project to be advanced by two years and would free up approximately $2.37 million in Park Dedication Fees for other park capital project needs or land acquisition. Washington Pool needs to be replaced now but was scheduled in Fiscal Year 2016/17 primarily so enough revenue could accumulate in the Park Dedication Fund to cover project expenses.

The value of Parcel 3 – Raynor Well was appraised at $130,000. A fund transfer will be made from the Water Utility Fund to the General Fund Reserve for Capital Projects to account for the transfer.

Current Tenants at the Raynor Activity Center

In 2012, tenants of the Raynor Activity Center were informed of the City's plans to sell the Raynor Activity Center and were told they must vacate the premises by June 30, 2013. The artist studios have been vacant since June 30, 2013. In light of continued negotiations in June 2013, the June 30, 2013 deadline was extended to November 2013 for My Dream Academy, allowing them time to secure a new location. My Dream Academy has leased another site in Sunnyvale and is scheduled to vacate the premises in November as scheduled. The Philatelic Library found a place in Redwood City to relocate and will vacate the premises by November 30, 2013. The buildings used by the City for storage of office furniture will be emptied and the furniture moved to a new storage location.

FISCAL IMPACT

The City will realize the loss of rental revenue of approximately $170,000 annually, which has already been reflected in the budget and long-term financial plan. Maintenance and repairs for the RAC in Fiscal Year 12/13 was approximately $30,000, previous years averaged approximately $60,000 and will be eliminated once the RAC is sold. The Fiscal Year 2013/14 Adopted Budget included revenues from the sale of the RAC, as well as a project to construct the Lakewood branch library, both preliminarily estimated at $8 million. The budget and long-term financial plan also removed the ongoing rental revenue from the RAC, (approximately $170,000 per year) and included net new ongoing operating costs for the branch library of about $250,000 per year. The intent was to use the proceeds from the sale to fund the branch library, with the proceeds determining the ultimate size of the facility. The budget also included $6.6 million for the renovation and expansion of Washington Pool, funded by Park Dedication funds.

Sale of the RAC will provide sufficient revenue to fully fund a new 12,000 square foot branch library including start-up costs. After covering the expenses associated with the real estate transaction an additional $2.37 million in revenue will be available to fund other capital projects. Staff is recommending that these funds be allocated to the Washington Pool Expansion Project. This will supplant funding from Park Dedication Fees, freeing up an equal amount of funds for other park related projects.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

City staff met with the current permitted users of the Raynor Park to review and discuss Stratford's proposed use of a portion of the Park area.

Notices for the public meeting on this issue were sent to surrounding neighborhood associations by electronic mail using the citywide neighborhood association listing. My Dream Academy and the remaining tenant at the RAC were notified of the public hearing.

ALTERNATIVES

1. Council finds that approval of the Purchase and Sales Agreement for the Raynor Activity Center is not a project under CEQA and directs staff to conduct further environmental analysis as part of the use permit process.

2. Council authorizes the City Manager to execute the Purchase and Sales Agreement between the City of Sunnyvale and Stratford School, Inc. for the sale of the Raynor Activity Center located at 1500 Partridge Avenue.
3. Council authorizes the City Manager to execute the Joint Use Agreement between the City of Sunnyvale and Stratford School, Inc. for the use of Raynor Park.
4. Council directs that upon close of escrow for the Raynor property that proceeds from the sale be used as follows:
    a. Provide $11.5 million in funding for the current capital project for design, construction, and startup costs of a new branch library located at Lakewood Park; and
    b. Use proceeds of $135,000 to reimburse the General Fund for commercial real estate consulting services with expertise in negotiated sales of public facilities; and
    c. Use a portion of the proceeds in the amount of $50,000 for closing costs related to the sale of the Raynor Activity Center; and
    d. Use remaining proceeds of approximately $2.37 million for design and construction of the Washington Pool Expansion Project advancing its schedule by two years to start design in Fiscal Year 2014/15; and
    e. Upon recordation of the Raynor Park Parcel Map, direct staff to transfer $130,000 from the Water Utility Fund to the General Fund Reserve for Capital Improvement Projects.
5. Do not approve the Purchase and Sales Agreement between the City of Sunnyvale and Stratford School and give direction on disposition of the Raynor Activity Center as Council deems appropriate.

RECOMMENDATION

Staff recommends Alternatives No. 1, 2, 3, and 4:

1. Council finds that approval of the Purchase and Sales Agreement for the Raynor Activity Center is not a project under CEQA and directs staff to conduct further environmental analysis as part of the use permit process.
2. Council authorizes the City Manager to execute the Purchase and Sales Agreement between the City of Sunnyvale and Stratford School, Inc. for the sale of the Raynor Activity Center located at 1500 Partridge Avenue.
3. Council authorizes the City Manager to execute the Joint Use Agreement between the City of Sunnyvale and Stratford School, Inc. for the use of Raynor Park.
4. Council directs that upon close of escrow for the Raynor property that proceeds from the sale be used as follows:

a. Provide $11.5 million in funding for the current capital project for design, construction, and startup costs of a new branch library located at Lakewood Park; and

b. Use proceeds of $135,000 to reimburse the General Fund for commercial real estate consulting services with expertise in negotiated sales of public facilities; and

c. Use a portion of the proceeds in the amount of $50,000 for closing costs related to the sale of the Raynor Activity Center; and

d. Use remaining proceeds of approximately $2.37 million for design and construction of the Washington Pool Expansion Project advancing its schedule by two years to start design in Fiscal Year 2014/15; and

e. Upon recordation of the Raynor Park Parcel Map, direct staff to transfer $130,000 from the Water Utility Fund to the General Fund Reserve for Capital Improvement Projects.

Raynor Activity Center is currently an underutilized City asset that is not being used to deliver City services. After evaluating the potential for a long-term lease of the property it became clear that because of the extensive renovations needed, selling the property was the City's best alternative to realize the value of the asset. Selling the property will provide funding to create a branch library for a segment of the community that is currently underserved. Because of the significant demand for the property through an open and competitive process, the sales price is more than the City will need for a branch library allowing other much needed capital improvements to be funded.

Reviewed by:

Kent Steffens, Director, Public Works
Prepared by: Christina Uribe, Acting Property Administrator

Reviewed by:

Grace Leung, Director, Finance

Approved by:

Gary M. Luebbers, City Manager

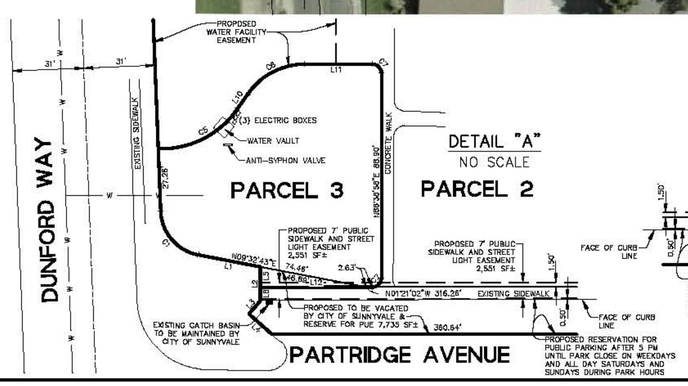
Attachments

A. Preliminary Parcel Map of Raynor Activity Center
B. Purchase and Sales Agreement between the City of Sunnyvale and Stratford School Incorporated
C. Joint Use Agreement Between the City of Sunnyvale and Stratford School for Recreation Purposes of the Raynor Park Recreation Areas

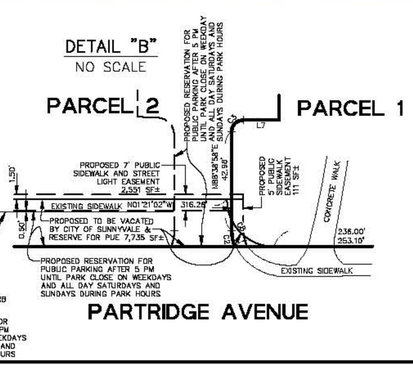
ATTACHMENT A

© BKF ENGINEERS

ATTACHMENT A



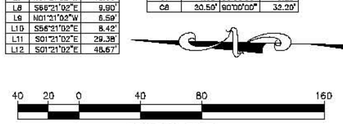
DETAIL "A"
NO SCALE



DETAIL "B"
NO SCALE

LINE TABLE		
LINE	BEARING	LENGTH
L1	S09°32'43"W	27.58'
L2	N89°38'58"E	14.88'
L3	S49°38'38"E	7.48'
L4	S40°21'22"W	13.43'
L5	N89°38'58"E	8.85'
L6	N89°38'58"E	8.00'
L7	N01°21'02"W	15.98'
L8	S88°21'02"E	9.90'
L9	N01°21'02"W	8.59'
L10	S56°21'02"E	8.42'
L11	S01°21'02"E	29.38'
L12	S01°21'02"E	48.67'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	20.00'	76°52'47"	26.84'
C2	20.00'	20°29'15"	7.15'
C3	5.00'	90°00'00"	7.85'
C4	15.00'	65°00'00"	17.02'
C5	40.00'	57°06'14"	39.87'
C6	30.00'	95°00'00"	28.80'
C7	4.00'	90°00'00"	6.28'
C8	30.50'	60°00'00"	32.20'



OWNER
CITY OF SUNNYVALE
458 WEST OLIVE AVENUE
SUNNYVALE, CA 94088

SUBDIVIDER
CITY OF SUNNYVALE
456 WEST OLIVE AVENUE
SUNNYVALE, CA 94088

BASIS OF BEARINGS
THE BEARINGS N01°20'00"W OF THE CENTER LINE OF QUAIL AVENUE, BETWEEN FOUND MONUMENTS, AS SHOWN ON MAP OF TRACT NO. 2060, FILED FOR RECORD ON JUNE 20, 1958 IN BOOK 94 OF MAPS AT PAGES 40 & 41, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

MAP NOTES
1. ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

SURVEYOR'S STATEMENT
THIS PRELIMINARY MAP WAS PREPARED BY ME OR UNDER MY DIRECTION, AT THE REQUEST OF AMY FONSECA OF THE CITY OF SUNNYVALE ON SEPTEMBER 20, 2012.

JOHN KOROYAN, P.L.S. NO. 8883
LICENSE EXPIRES 12-31-2013

SEPTEMBER 10, 2013
DATED

LICENSED LAND SURVEYOR JOHN KOROYAN No. 8883 STATE OF CALIFORNIA

LEGEND

	PROPOSED BOUNDARY LINE
	EXISTING BOUNDARY LINE
	CENTER LINE
	EASEMENT LINE
	LOT LINE
SD	STORM DRAIN LINE
SS	SANITARY SEWER LINE
W	WATER LINE
PUE	PUBLIC UTILITY EASEMENT

1850 TECHNOLOGY DRIVE
SUITE 150
SAN JOSE, CA 95110
408-467-9100
408-467-9199 (FAX)
BKF
ENGINEERS | SURVEYORS | PLANNERS

PRELIMINARY MAP
RAYNOR PARK
1500 PARTRIDGE AVENUE, SUNNYVALE, CA 94087

SANTA CLARA COUNTY CALIFORNIA

SUNNYVALE

No.	Revisions

Date: 09-10-2013
Scale: 1" = 40'
Design: JKK
Drawn: JC
Approved: DT
Job No: 20180178

Drawing Number:

1 OF 1

ATTACHMENT B

EXCLUSIVE PURCHASE AND SALE AGREEMENT
OF SURPLUS CITY REAL PROPERTY

This Exclusive Purchase and Sale Agreement of Surplus City Real Property (the "**Agreement**") is made and entered into on November_____, 2013 by and between the City of Sunnyvale ("**SELLER**") and Stratford Schools, Inc. a California corporation, or its designee ("**BUYER**").

RECITALS

The purchase and sale of the real property located at 1500 Partridge Avenue in the City of Sunnyvale, CA, is predicated on the following facts:

A. WHEREAS, SELLER is the owner of all that certain real property located at and commonly known as 1500 Partridge Avenue, in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described in **Exhibit "A,"** which is attached hereto and incorporated herein by this reference, and depicted as Parcel 2 on that certain preliminary parcel map attached to this Agreement as **Exhibit "B"** and incorporated herein by this reference (the "**Land**"). BUYER and SELLER acknowledge that the Property encompasses approximately 3.546 acres, more or less; and.

B. WHEREAS, SELLER also owns all buildings and improvements located on the Land, including but not limited to eight former school buildings containing approximately 22 classrooms, together with parking areas, driveways, landscaping, hardscape and related improvements and fixtures (collectively the "**Improvements**"); and

C. WHEREAS, SELLER also owns all intangible property used in connection with the ownership and operation of the Land and Improvements, including but not limited to, available plans; and all governmental licenses, permits, authorizations, consents, variances, waivers, approvals and the like for the Land and Improvements (collectively, the "Intangible Property" and together with the Land and the Improvements, the "**Property"**); and

D. WHEREAS, it is the intention of SELLER prior to the Close of Escrow (as defined herein), and as a condition thereof, to record an approved Parcel Map subdividing the Land into a legal lot, with all required easements, dedications and reservations as reasonable and appropriate; and

E. Whereas, the purchase and sale of the Land is conditioned upon (i) the BUYER procuring a Use Permit together with conditions from the SELLER for the operation so of a private school; and, (ii) the SELLER'S recordation of a Parcel Map (as identified herein) depicting the Land as a separate legal lot.

F. WHEREAS, BUYER submitted an offer to purchase the Property and the City Council of SELLER ("**City Council**") directed that exclusive negotiations with BUYER commence following review of all bids.

NOW, THEREFORE, the parties hereto agree as follows:

1. **PURCHASE AND SALE**: The BUYER hereby agrees to purchase the Property from SELLER, and the SELLER agrees to sell and convey the Property to BUYER, on the terms and conditions set forth in this Agreement.

2. **PURCHASE PRICE**: The Purchase Price for the Property shall be Fourteen Million Fifty Thousand Dollars ($14,050,000.00).

3. **INITIAL DEPOSITS**: On May 10, 2013, BUYER paid directly to SELLER the sum of Fifty Thousand Dollars ($50,000) (the "Initial Deposit"). Upon approval of the Agreement by the City Council at a duly authorized meeting, and upon execution of this Agreement by an authorized representative of the City (the "**Effective Date**"), the Initial Deposit shall become non-refundable, except in the event of a default by SELLER hereunder SELLER shall be entitled to all interest earned on this deposit. SELLER shall hold the Initial Deposit in trust until the Close of Escrow or until it must be returned to BUYER HEREUNDER. When Escrow closes, the Initial Deposit shall be credited toward the purchase price. If escrow does not close except in the event of default by SELLER hereunder, the SELLER shall retain the Initial Deposit as consideration for exclusive negotiations with BUYER. The Initial Deposit shall be in the nature of a non-refundable option payment applicable to the Purchase Price.

4. **DUE DILIGENCE PERIOD AND ADDITIONAL DEPOSIT**: The BUYER shall have 45 days following the Effective Date, a period of time estimated to end on January 3, 2014 (the "Due Diligence Period"), to investigate and conduct studies on the Property. During this period, BUYER and its representatives, agents, consultants and contractors, shall have an opportunity to investigate and inspect all aspects of the Property, subject to the provisions of Paragraph 16, Right of Entry, and to determine, in the BUYER's sole and absolute discretion, whether or not to acquire the Property pursuant to the terms and conditions set forth herein. Any studies undertaken by BUYER during the Due Diligence Period will be at BUYER's expense. SELLER shall provide to BUYER full access to SELLER's files and records relating to the Property, and BUYER shall have the right to review and copy any title reports, surveys, toxic and soil studies and all other correspondence and documents relating to the Property that are in SELLER's possession, at SELLER's offices during normal business hours, upon not less than 24 hours prior notice to SELLER. SELLER agrees that if additional documentation relating to the Property comes into SELLER's possession after expiration of the Due Diligence Period, SELLER shall provide copies of such documents promptly to BUYER. BUYER acknowledges that SELLER makes no representation or warranty whatsoever as to the accuracy or completeness of any information provided to BUYER or made available to BUYER under this paragraph.

BUYER shall, in BUYER's sole and unfettered discretion, remove any contingencies with respect to BUYER's inspection of the Property within the 45-day Due Diligence Period. BUYER contingencies may include, among other things:

(1) Property inspections;
(2) Review of the existing state of title to the Property

(a) On or before the end of the Due Diligence Period, if BUYER elects to go forward with the purchase, BUYER shall (i) provide SELLER with written notice of its removal of inspection contingencies, and (ii) remit to the SELLER (as defined in Paragraph 9 of this Agreement) an additional deposit of $50,000 (the "**Additional Deposit**" and together with the Initial Deposit, the "**Purchase Deposits**"), to be held by the SELLER and administered as set forth in this Agreement. The Additional Deposit is consideration to SELLER to continue exclusive negotiations with BUYER for an additional period of time, reasonably estimated to be up to six months, during which time BUYER shall apply for and SELLER shall consider in good faith and in accordance with the SELLER's municipal code, a Use Permit (as hereinafter defined) and development plan for SELLER's intended improvement and use of the Property as a private elementary and middle school. The Additional Deposit shall be non-refundable upon remittance to the SELLER by BUYER, except in the event of default by SELLER or as otherwise as set forth in this Agreement, and shall be credited against the purchase price at Close of Escrow.

(b) If BUYER fails on or before 5 p.m. Pacific Time on the last day of the Due Diligence Period to (i) give written notice to SELLER that BUYER is removing inspection contingencies, or (ii) deposit with the SELLER the Additional Deposit, then BUYER shall be deemed to have disapproved contingencies and this Agreement shall automatically terminate, in which event SELLER shall instruct the Escrow Holder to terminate escrow, the Initial Deposit shall be retained by SELLER**,** and neither party shall have any obligation to the other under this Agreement, except for those obligation which may expressly survive the termination of this Agreement.

(c) The entire Purchase Deposits shall be credited toward the purchase price at close of escrow. All interest on any portion of the Purchase Deposits held in escrow shall accrue to the benefit of SELLER.

5. **USE PERMIT AND ENVIRONMENTAL CLEARANCE:**

(a) BUYER shall apply for and secure a conditional use permit (**"Use Permit**") from the City of Sunnyvale for renovation and use of the Property as a private pre-school, elementary and middle school. The City of Sunnyvale shall timely process the Use Permit and shall include environmental analysis under the California Environmental Quality Act (CEQA). The level of intensity of the proposed use will determine if the Use Permit is evaluated by the Zoning Administrator or the Planning Commission. Reasonable conditions may be

placed upon the Property or use to enhance the project and/or reduce effects on surrounding properties and the environment. The foregoing notwithstanding, the City Council's approval of this Agreement shall constitute an acknowledgment by the City that BUYER's proposed use of the Property as a private school preschool, elementary and middle school, is a permitted use under the current General Plan and zoning for the Land.

(b) In the event a Use Permit is either denied or is not issued to BUYER by SELLER on or before the date which is six (6) months following the Effective Date for any reason, or a Use Permit is granted on terms and conditions that render BUYER's intended renovation, development and use of the Property financially or practically infeasible (in BUYER's sole discretion), then BUYER may either:

(i) terminate this Agreement by giving written notice of such termination to SELLER and Escrow Holder, in which event (A) Escrow Holder shall return all instruments and documents deposited into the escrow to the parties depositing the same, (B) if the Use Permit is either denied or not issued within six months the Initial Deposit shall be retained by SELLER and the SELLER shall return the Additional Deposit to BUYER, and (C) if the Use Permit is issued and BUYER determines that the conditions or mitigations are infeasible, SELLER shall retain the Purchase Deposits, and (D) neither party shall have any obligation to the other under this Agreement, except for those obligation which may expressly survive the termination of this Agreement; or

(ii) seek available administrative remedies with respect to denial of the Use Permit, in which event Close of Escrow shall be extended as necessary for all administrative appeals to be exhausted.

(c) In the event the City issues a Use Permit to BUYER on terms and conditions acceptable to BUYER, but the Use Permit is timely appealed by any third party, then BUYER may either:

(i) Proceed as set forth in subparagraph (b)(i), above; or

(ii) defend the appeal at BUYER's expense as the real party in interest, in which event Close of Escrow shall be extended as necessary for all administrative and judicial appeals to be exhausted, but in no event longer than the date which is two (2) years from the Effective Date unless such date is extended by the written consent of BUYER and SELLER (the "**Closing Deadline**") .

6. **PARCEL MAP:** During escrow, SELLER shall process and record a parcel map ("**Parcel Map**") in accordance with the California Subdivision Map Act, depicting the Land as a separate legal lot. The SELLER take all necessary action to process, approve and record the Parcel Map at the SELLER's expense, and shall not impose any conditions, impositions or exactments on the recordation of the Parcel Map that would

survive this Agreement or run with the land as to the BUYER or the Property except those already shown on the preliminary parcel map (Exhibit B). The Parcel Map may establish or confirm the existence of dedications and/or easements for public utilities and other easements consistent with the proposed use and development of the Property by BUYER. Recordation of the Parcel Map shall be a condition precedent to the Close of Escrow hereunder. **If in the future the SELLER's water system facilities, which are shown in an easement on the preliminary parcel map, are abandoned and no longer in use for more than one consecutive year, SELLER agrees to cooperate to abandon its easement rights.**

7. **JOINT USE AGREEMENT**: As a condition to Close of Escrow, as defined herein, and as further consideration for SELLER and BUYER's agreement hereunder, SELLER and BUYER shall enter into and record a joint use agreement for the use of recreational fields adjacent to the Property, and for construction and use of a basketball court thereon, in substantially the form attached to this Agreement as **Exhibit "C"**, attached hereto and incorporated herein by this reference.

8. **PAYMENT OF PURCHASE PRICE**: When the Use Permit is secured, including the conclusion of any appeal period or final resolution of any appeal, escrow shall close within 30 days or sooner thereafter, provided, however, that SELLER may allow BUYER upon written an extension of such date up to 30 days if necessary, SELLER's consent to which shall not be unreasonably withheld, for BUYER to be ready to complete the Close of Escrow. If an appeal is filed following issuance of a Use Permit, then Section 5(c) shall apply. BUYER shall deposit prior to the close of escrow date, the amount of the purchase price less the Purchase Deposits previously deposited by BUYER plus any additional monies required to close escrow, by cash, wire transfer, or a cashier's check made payable to the Escrow Holder, as defined in Paragraph 9 below

9. **ESCROW:**

(a) Within five (5) working days following Effective Date, SELLER shall open an escrow with First American Title Company, located at 1737 North 1st Street, Suite 100, San Jose, California, 95112 Attn.: Diane Burton, Escrow Officer, Tel: (925) 201-6603, e-mailDBurton@firstam.com. All references in this Agreement to "**Escrow Holder**" are to this title company. This Agreement shall constitute instructions to Escrow Holder. BUYER and SELLER shall execute such additional escrow instructions as maybe required to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement and as BUYER and SELLER may approve, which approval shall not be unreasonably withhold.

(b) Unless this Agreement has been terminated pursuant to the terms hereof, and subject to satisfaction of the conditions set forth in Paragraphs 5 and 6 hereof, BUYER shall provide SELLER with a written notice of the Close of Escrow at least seven (7) days in advance of such Closing, but in no event shall escrow close later than the Closing Deadline.

(c) "Close of Escrow" or "Closing" shall mean the moment when all the parties to escrow have fully performed their respective duties as provided in paragraphs (d) and (e) below, respectively, and the Escrow Holder has filed the documents for record and made distributions. Title shall be conveyed and possession delivered to BUYER upon Close of Escrow and recordation of the grant deed.

(d) On or before the Closing Date established in Subparagraph (b), above, SELLER shall deposit with Escrow Holder all of the following: (i) the fully executed and acknowledged grant deed conveying the Property to BUYER; (ii) one fully executed and acknowledged counterpart of the Joint Use Agreement; (iii) SELLER's escrow instructions sufficient to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement; (iv) the affidavits described in paragraph (f) below; and (v) any other documents, records, or agreements required from SELLER hereunder that have not previously been delivered, or which are otherwise reasonably required by the Title Company (as defined below) in order to close the transaction as contemplated hereby.

(e) On or before the Closing Date established in Subparagraph (b), above, BUYER shall deposit with Escrow Holder all of the following: (i) the Purchase Price, less the amount of Purchase Deposits previously paid; (ii) cash in an amount sufficient to pay BUYER's share of closing costs and prorations as required in this Agreement; (iii) one fully executed and acknowledged counterpart of the Joint Use Agreement; (iv) BUYER's escrow instructions sufficient to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement, and (v) any other documents, records, agreements, or funds required from BUYER hereunder that have not previously been delivered, or which are otherwise reasonably required by the Title Company (as defined below) in order to close the transaction as contemplated hereby.

(f) For BUYER's sole benefit, and in addition to the conditions to Close of Escrow set forth in Paragraphs 4, 5, and 6 of this Agreement, BUYER's obligation to complete the purchase of the Property is subject to satisfaction of the following conditions at or prior to the Closing Deadline, unless waived by BUYER in writing: (i) SELLER shall have timely performed its obligations under paragraph (d) above; and (ii) SELLER shall have executed and delivered to Escrow Holder an affidavit or affidavits satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, as well as California Revenue and Taxation Code Sections 18661, et seq. If any condition described in this paragraph (f) is not reasonably satisfied (or waived by BUYER in writing) on or prior to the Closing Deadline, the same shall be deemed a default by SELLER under this Agreement, and Paragraph 18(b) shall apply.

(g) For SELLER's sole benefit, SELLER's obligation to complete the sale of the Property is subject to BUYER's timely delivery of documents and funds as required by subparagraph (e) above (subject to BUYER's rights under Paragraphs 4 through 6 of this Agreement). If such condition is not timely satisfied (or waived by SELLER in writing) on or prior to Closing Deadline (, (i) the Escrow

shall terminate immediately upon receipt by Escrow Holder of notification from SELLER of the failure of such condition, and BUYER and SELLER shall share equally any applicable escrow cancellation fees, (ii) Escrow Holder shall return all instruments and documents deposited into the Escrow to the parties depositing the same, (iii) if such failure condition constitutes a default under this Agreement by BUYER, all Purchase Deposits not already held by SELLER shall be remitted to SELLER.

10. **CLOSING COSTS AND PRORATIONS**: SELLER shall pay any and all city and/or county documentary transfer taxes arising from this transaction, one half of all escrow costs and fees, and the premium for standard CLTA title coverage BUYER's title policy issued under Paragraph 12 below. BUYER shall pay one-half of all escrow costs and fees. BUYER shall also pay the title insurance premium for extended ALTA coverage and any endorsements to the title policy requested by BUYER. Each party shall bear its own attorney's fees incurred in connection with this transaction. Rents, real property taxes, and any other expenses of the Property shall be prorated as of the Close of Escrow. Security deposits, advance rentals, and the amount of any future lease credits shall be credited to BUYER. The amount of any bond or assessment which is a lien shall be assumed by BUYER.

11. **NO REPRESENTATIONS OR WARRANTIES**:

(a) **PROPERTY SOLD "AS IS". SELLER AND BUYER AGREE THAT THE PROPERTY SHALL BE SOLD, AND THAT BUYER SHALL ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE, "AS IS, WHERE IS, WITH ALL FAULTS", WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT FOR THE WARRANTY OF TITLE TO BE GIVEN IN THE GRANT DEED SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER BY SELLER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. BY ENTERING INTO THIS AGREEMENT, BUYER REPRESENTS AND WARRANTS THAT AS OF CLOSING DEADLINE, BUYER SHALL HAVE SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY AND ITS SUITABILITY FOR THE DEVELOPMENT PURPOSES INTENDED BY BUYER. THE PROPERTY IS SOLD IN "AS IS" CONDITION, INCLUDING WITHOUT LIMITATION AS TO ANY HAZARDOUS MATERIALS CONTAMINATION. IN PURCHASING THE PROPERTY, BUYER IS RELYING SOLELY UPON ITS OWN INSPECTION AND INVESTIGATION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, AS TO HAZARDOUS MATERIALS CONTAMINATION AND GEOLOGICAL CONDITIONS INCLUDING EARTHQUAKE FAULTS AND NOT UPON ANY**

REPRESENTATION, WARRANTY, STATEMENT, STUDY, REPORT, DESCRIPTION, GUIDELINE, OR OTHER INFORMATION OR MATERIALS MADE OR FURNISHED BY SELLER OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER. BUYER ACKNOWLEDGES THAT NEITHER SELLER NOR ANY AGENT OF SELLER HAS MADE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS AS TO ANY MATTERS CONCERNING THE PROPERTY. ANY STATEMENT NOT EXPRESSLY CONTAINED IN THIS AGREEMENT SHALL NOT BIND SELLER, AND BUYER EXPRESSLY WAIVES ANY RIGHT OF RECISION AND/OR CLAIM FOR DAMAGES, AGAINST SELLER OR ITS AGENTS BY REASON OF ANY STATEMENT, REPRESENTATION, WARRANTY, AND/OR PROMISE NOT CONTAINED IN THIS AGREEMENT. BUYER'S AGREEMENT TO PURCHASE THE PROPERTY "AS IS" IS A MATERIAL INDUCEMENT TO SELLER TO AGREE TO SELL THE PROPERTY AT THE PURCHASE PRICE PROVIDED HEREIN.

(b) **<u>RELEASE AND WAIVER</u>. BUYER, FOR BUYER AND BUYER'S SUCCESSORS IN INTEREST, RELEASES SELLER FROM, AND WAIVES ALL CLAIMS AND LIABILITY AGAINST SELLER FOR OR ATTRIBUTABLE TO, ANY STRUCTURAL, PHYSICAL, OR ENVIRONMENTAL CONDITION AT THE PROPERTY, INCLUDING WITHOUT LIMITATION, CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY, OR REMOVAL OF ANY HAZARDOUS SUBSTANCES IN, AT, ABOUT, OR UNDER THE PROPERTY, OR FOR, CONNECTED WITH, OR ARISING OUT OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON CERCLA (COMPREHENSIVE ENVIRONMENTAL RESPONSES, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. §§ 9601 ET SEQ., AS AMENDED BY SARA [SUPERFUND AMENDMENT AND REAUTHORIZATION ACT OF 1986], AND AS MAY BE FURTHER AMENDED FROM TIME TO TIME), THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, 42 U.S.C. §§ 6901 ET SEQ., OR ANY RELATED CLAIMS OR CAUSES OF ACTION OR ANY OTHER FEDERAL OR STATE BASED STATUTORY OR REGULATORY CAUSES OF ACTION FOR ENVIRONMENTAL CONTAMINATION AT, IN, OR UNDER THE PROPERTY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE AGREEMENTS OF BUYER SET FORTH IN THIS SUBPARAGRAPH 11(b) SHALL BE DEEMED REAFFIRMED AS OF THE CLOSE OF ESCROW AND SHALL SURVIVE THE CLOSE OF ESCROW AND SHALL NOT BE MERGED THEREIN. BUYER IS FAMILIAR WITH, AND HEREBY WAIVES ITS RIGHTS, IF ANY, UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:**

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

BUYER INDICATES ITS ACKNOWLEDGMENT OF THE FOREGOING PROVISIONS OF SUBPARAGRAPHS BY INITIALING BELOW:

BUYER: _____

12. **TITLE**: BUYER acknowledges receipt and examination of Escrow Holder's Preliminary Title Report (the "**Preliminary Report**") dated September 18, 2012, issued by First American Title Insurance Company, San Jose Office (the **Title Company**"), under Order No. 0192-4172936 (JR), which is marked **Exhibit "C"** and attached hereto and incorporated herein by reference. BUYER shall take fee title to the Property by grant deed subject to the following ("**Permitted Exceptions**"):

(a) the lien of current, non-delinquent real estate taxes and assessments;

(b) the lien of any supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code;

(c) the exceptions set forth in the Preliminary Report except (i) any and all deeds of trust, mortgages and other monetary liens on the Property (other than liens for taxes and assessments that accrue with respect to periods after Closing and liens that result from the actions of BUYER), and (ii) exceptions to title the Title Company has agreed to remove upon BUYER's request prior to the end of the Due Diligence Period; and

(d) any other exceptions which are requested, solely caused by or approved in writing by BUYER.

Upon Close of Escrow, SELLER shall cause Escrow Holder to issue a CLTA standard coverage owner's policy of title insurance, or, at BUYER's election, an ALTA extended coverage policy of title insurance, in the amount of the Purchase Price, insuring that title to the Property is vested in BUYER. BUYER shall pay the difference in premium between a CLTA policy and an ALTA policy. BUYER will pay and be solely responsible for, and shall hold the SELLER harmless from, all costs and expenses in connection with the acquisition such extended title coverage, including without limitation, the cost of any ALTA survey required therefor.

13. **POSSESSION**: Possession shall be delivered to BUYER upon Close of Escrow and recordation of the grant deed.

14. **NOTICES**: All notices under this Agreement shall be in writing and sent by (a) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, (b) by a nationally recognized overnight courier such as Airborne Express, or Federal Express, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or (c) by personal delivery, in which case notice shall be deemed delivered upon such date of delivery, or (d) by fax in which case notice shall be deemed delivered on the date of such transmission if received by the recipient's fax machine on or prior to 5:00 p.m., local time of the recipient; or if the transmission is received by the recipient's fax machine after such time, it shall be deemed to have been delivered on the next business day (a contemporaneous fax transmission receipt, or fax transmission log, from the sending party's fax machine which states the date and time of a successful transmission to the fax machine of the recipient will constitute prima facie evidence of the date and time such transmission was received by the fax machine of the recipient for purposes of this Agreement), as follows. Notice via electronic mail (e-mail) transmission will have been deemed to have been duly given on the date of transmission to the email addresses below, if followed by service of notice via one of the above methods:

SELLER: Kent Steffens, Director of Public Works
Engineering Department
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086
Facsimile: (408)

With a copy to: City Attorney's Office
City of Sunnyvale
456 W. Olive Avenue
P.O. Box 3707
Sunnyvale, CA 94088-3707
Facsimile: (408) 730-7468

BUYER: Stratford Schools, Inc.
12930 Saratoga Avenue, Suite A-2
Saratoga, CA 95070
Attn: Clay Stringham
Facsimile: (408) 725-1978

With a copy to: Cox, Castle & Nicholson
555 California Street, 10th Floor
San Francisco, CA 94104

Attn: Paul N. Dubrasich, Esq.
Facsimile: (415) 262-5199

ESCROW HOLDER: First American Title Company
1737 North 1st Street, Suite 100
San Jose, CA 95112
Attn: Diane Burton
Facsimile: (866)648-7806

Said addresses may be changed from time to time by notice to the other party as provided for in this section.

15. **NO BROKERS; NO COMMISSION**: BUYER represents that it has not entered into any agreement or incurred any obligation which might result in any obligation of the SELLER to pay a sales commission, brokerage commission or finder's fee on this transaction to any person or entity. BUYER shall indemnify, defend and hold harmless SELLER from claims, demands, or judgments arising by reason of any breach of the terms of this paragraph. The obligations of this paragraph shall survive Close of Escrow.

16. **RIGHT OF ENTRY**: During the Due Diligence Period, BUYER and its designated agents and independent contractors shall have the right to enter on the Property to the extent necessary for the purpose of conducting tests, engineering studies, and investigations. Prior to entering the Property, BUYER agrees to submit evidence satisfactorily to SELLER of at least Two Million Dollars ($2,000,000) of liability insurance naming SELLER as an additional insured. BUYER shall conduct such inspections, tests, studies, and investigations in such a manner as shall comply with all applicable laws and regulations, avoid damage to the Property, and minimize any interference with any occupant, tenant, or user of the Property. BUYER agrees to repair any damage it or its agents or independent contractors shall cause to the Property, keep the Property free and clear of any mechanics or marterialmens liens arising from BUYER's entry BUYER shall indemnify, defend, and hold SELLER harmless from and against any and all claims, demands, costs, expenses, damages, losses, attorney's fees and liabilities (including, but not limited to, claims of mechanics' liens) incurred or sustained by SELLER as a result of or in connection with any acts of BUYER, its agents, employees, or independent contractors pursuant to the right granted by this paragraph.

17. **DOCUMENTS RELATED TO PROPERTY**: BUYER shall provide SELLER with copies of any final reports, test, studies, surveys, engineering plans and specifications and architectural drawings and specifications regarding the Property prepared by or on behalf of BUYER promptly upon their finalization or, if SELLER requests these in writing, within fifteen (15) days following any such request or upon a termination of this Agreement for any reason. SELLER agrees that BUYER shall make no representations or warranties regarding the accuracy or completeness of any such materials, nor shall

BUYER assume any liability with respect to any matter or information referred to or contained in such materials, nor shall SELLER have any claim against BUYER or any consultant or contractor of BUYER arising out of such materials. All such materials shall be subject to the proprietary rights of the consultant or contractor that prepared them and any limitations on use imposed by them.

18. **DEFAULT AND REMEDIES**:

(a) **<u>BUYER DEFAULT/LIQUIDATED DAMAGES</u>: BY PLACING THEIR INITIALS IMMEDIATELY BELOW, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES IN THE EVENT BUYER FAILS TO TIMELY PURCHASE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT BECAUSE OF A DEFAULT BY BUYER, THAT THE AMOUNT OF BUYER'S DEPOSIT HEREUNDER (AS THE SAME IS INCREASED FROM TIME TO TIME UNDER THE TERMS OF THIS AGREEMENT) IS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES IN THE EVENT OF BUYER'S DEFAULT, AND THAT IN THAT EVENT BUYER FAILS TO TIMELY PURCHASE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT BECAUSE OF A DEFAULT BY BUYER, SELLER SHALL THEREUPON BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER, AND, SELLER SHALL BE ENTITLED TO RETAIN BUYER'S DEPOSIT (AS SAME MAY BE INCREASED BY THE TERMS HEREOF) AS LIQUIDATED DAMAGES.**

SELLER'S INITIALS _____ **BUYER'S INITIALS** _____

19. **RISK OF LOSS**: BUYER represents to SELLER that the improvements located on the Property are a material factor in BUYER's purchase of the Property. Accordingly, the following shall apply in the event of damage to or destruction of the improvements on the Property prior to Close of Escrow:

(a) Minor Damage. In the event of loss or damage to the improvements on the Property or any portion thereof which is not "Major" (as hereinafter defined), this Agreement shall remain in full force and effect provided that SELLER shall assign to BUYER all insurance proceeds covering the casualty, if any, and the Purchase Price shall be reduced by the amount of any self-insured retention or deductible under Seller's insurance policy. Upon Closing, full risk of loss with respect to the Property shall pass to BUYER.

(b) Major Damage. In the event of "Major" loss or damage to the improvements located on the Property, then BUYER shall notify SELLER whether BUYER wishes to (i) terminate this transaction, in which case this Agreement shall terminate and the Additional Deposit shall be returned to BUYER, or (ii) proceed with the transaction, in which case SELLER shall assign to BUYER all insurance

proceeds covering the casualty, if any, and the Purchase Price shall be reduced by the amount of any self-insured retention or deductible under Seller's insurance policy.

(c) Definition of "Major" Loss or Damage. For purposes of Sections 19(a) and 19(b), "Major" loss or damage refers to loss or damage to the Property hereof such that the cost of repairing or restoring the premises in question to substantially the same condition which existed prior to the event of damage would be equal to or greater than $500,000.00.

20. **TIME OF THE ESSENCE**: Time is of the essence of this Agreement as to each and every provision hereof.

21. **ENTIRE AGREEMENT**: This Agreement represents the entire and integrated agreement of the parties hereto. Both parties hereto expressly acknowledge, warrant, and understand that there are no statements, representations, inducements, or agreements made by or between the parties hereto or their respective agents and representatives, except as expressly set forth herein. No amendment, supplement or termination hereof shall be valid except by way of a writing subscribed by the parties hereto.

22. **DUPLICATE ORIGINALS**: This Agreement may be executed in one (1) or more duplicate originals, each of which shall be deemed an original for all purposes.

23. **HEADINGS**: The section and subsection headings used in this Agreement are for convenience of reference only. They shall not be construed to limit or extend the meaning of any part of this Agreement and shall not be deemed relevant in resolving any questions or interpretation or construction of any section of this Agreement.

24. **SUCCESSORS AND ASSIGNS; ASSIGNMENT:** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns; provided, however, prior to the close of Escrow, BUYER shall not assign or transfer this Agreement or any interest, right, or obligation in this Agreement without the prior written consent of the SELLER and any such assignment or transfer without such written consent shall be null and void, which consent shall not be unreasonably withheld. The foregoing notwithstanding, BUYER may assign its interest in this Agreement to: (i) a related entity or a newly formed single purpose entity formed by BUYER for the purpose of taking title to the Property if BUYER is the majority owner of such assignee, or (ii) an entity acquiring the Property solely as a financing or sale/leaseback vehicle for BUYER (in either of such events, SELLER's prior consent shall not be required, but concurrent notice of such assignment shall be given to SELLER and to Escrow Agent). The following conditions shall apply to any permitted assignment: (a) the assignee shall specifically assume the obligations of BUYER under this Agreement and under any additional escrow instructions executed pursuant hereto and shall be bound by all approvals previously given by BUYER hereunder; and (b) no such assignment shall relieve BUYER of its obligations hereunder, and Stratford Schools, Inc. shall be the operator of the proposed school during the term hereof and as of the Close of Escrow.

25. **GOVERNING LAW**: This Agreement shall be construed and enforced in accordance with the laws of the State of California.

26. **SEVERABILITY**: In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of such provision shall not be affected thereby.

27. **LEGAL EFFECT OF DOCUMENT**: No representation, warranty or recommendation is made by SELLER, BUYER, their respective agents, employees or attorneys regarding the legal sufficiency, legal effect, or tax consequences of this Agreement or the transaction, and each signatory is advised to submit this Agreement to his or her attorney before signing it.

28. **ATTORNEY'S FEES**: in the event either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees.

29. **RECORDING QUITCLAIM ON TERMINATION OF AGREEMENT**: If this Agreement is terminated, BUYER agrees, if requested by SELLER, to execute, acknowledge, and deliver a quitclaim deed to SELLER within seven (7) days after termination and to execute, acknowledge, and deliver any other documents required by any title company to remove any cloud from the Property.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

SELLER: CITY OF SUNNYVALE:	BUYER: STRATFORD SCHOOLS, INC.
_____	_____
Title: City Manager Name: Gary Luebbers	Title: Name:
_____	_____
Date	Date

APPROVED AS TO FORM:

_____

City Attorney

Exhibits to Real Property Purchase and Sale Agreement:

Exhibit "A" Legal Description
Exhibit "B" Preliminary Parcel Map
Exhibit "C" Form of Joint Use Agreement
Exhibit "D" Title Company Preliminary Report (Dated September 18, 2012)

Exhibit "A"
LEGAL DESCRIPTION

Real property in the City of Sunnyvale , County of Santa Clara, State of California, described as follows:

BKF
ENGINEERS · SURVEYORS · PLANNERS

September 10, 2013
BKF No. 20116076

Legal Description

PARCEL 2
(Raynor Park)

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being a portion of Parcel One as described in that certain Agreement for Sale of Real Property, between Santa Clara Unified School District and City of Sunnyvale, a municipal corporation, recorded July 3, 1979 in Book E611 at Page 549, Official Records of Santa Clara County and a portion of the lands described in that certain Deed of Dedication for Public Street Purposes, conveyed from Jefferson Union School District of Santa Clara County to City of Sunnyvale, recorded in Book 4979 at Page 304, Official Records of said County, more particularly described as follows:

Beginning at the southwesterly corner of the lands described in said Deed of Dedication (4979 O.R. 304), said corner being also a point on the westerly line of Quail Avenue, being 62.00 feet in width;

Thence leaving said corner and along said westerly line of Quail Avenue and being also the westerly line of said Deed of Dedication (4979 O.R. 304), North 01°20'00" West, 647.18 feet to the beginning of a tangent curve to the left, having a Radius of 40.00 feet;

Northwesterly along said curve, through a central Angle of 92°14'30", for an arc Length of 64.40 feet to the southerly line of Dunford Way, being 62.00 feet in width, as said southerly line was established by said Deed of Dedication (4979 O.R. 304);

Thence along said southerly line of Dunford Way, South 86°25'30" West, 336.59 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and said southerly line of Dunford Way, the following ten (10) courses and distances:

1. South 01°21'02" East, 464.90 feet;
2. South 88°38'58" West, 185.42 feet;
3. North 01°21'02" West, 6.59 feet to the beginning of a tangent curve to the left, having a Radius of 15.00 feet;
4. Northwesterly along said curve, through a central Angle of 65°00'00", for an arc Length of 17.02 feet;
5. North 66°21'02" West, 9.90 feet;
6. South 88°38'58" West, 110.88 feet;
7. North 01°21'02" West, 15.56 feet to the beginning of a tangent curve to the left, having a Radius of 5.00 feet;
8. Northwesterly along said curve, through a central Angle of 90°00'00", for an arc Length of 7.85 feet;
9. South 88°38'58" West, 42.98 feet to the beginning of a tangent curve to the left, having a Radius of 20.00 feet;
10. Southwesterly along said curve, through a central Angle of 20°29'15", for an arc Length of 7.15 feet to a point of intersection of a line drawn 31.00 feet easterly, right angle measurement, from the

westerly line of said Deed of Dedication (4979 O.R. 304), said westerly line being also the center line of Partridge Avenue;

Thence along said parallel line, North 01°21'02" West, 360.64 feet;

Thence leaving said parallel line, the following three (3) courses and distances:

1. North 40°21'22" East, 13.43 feet;
2. South 49°38'38" East, 7.46 feet;
3. North 88°38'58" East, 6.00 feet to a point of intersection with the northerly prolongation of the easterly line of said Deed of Dedication (4979 O.R. 304), said point being also at the intersection of a line drawn 51.50 feet easterly, right angle measurement, from the center line of said Partridge Avenue;

Thence along said parallel line, the following eight (8) courses and distances:

1. South 01°21'02" East, 48.67 feet to the beginning of a tangent curve to the left, having a Radius of 4.00 feet;
2. Southeasterly along said curve, through a central Angle of 90°00'00", for an arc Length of 6.28 feet;
3. North 88°38'58" East, 88.90 feet to the beginning of a tangent curve to the left, having a Radius of 4.00 feet;
4. Northeasterly along said curve, through a central Angle of 90°00'00", for an arc Length of 6.28 feet;
5. North 01°21'02" West, 29.38 feet to the beginning of a tangent curve to the left, having a Radius of 30.00 feet;
6. Northwesterly along said curve, through a central Angle of 55°00'00", for an arc Length of 28.80 feet;
7. North 56°21'02" West, 8.42 feet to the beginning of a tangent curve to the right, having a Radius of 40.00 feet;
8. Northwesterly along said curve, through a central Angle of 57°06'14", for an arc Length of 39.87 feet to said southerly line of Dunford Way;

Thence along said southerly line of Dunford Way, North 86°25'30" East, 288.45 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 3.546 acres, more or less.

For BKF Engineers

John Koroyan

John Koroyan, P.L.S. No. 8883

SEPT. 10, 2013

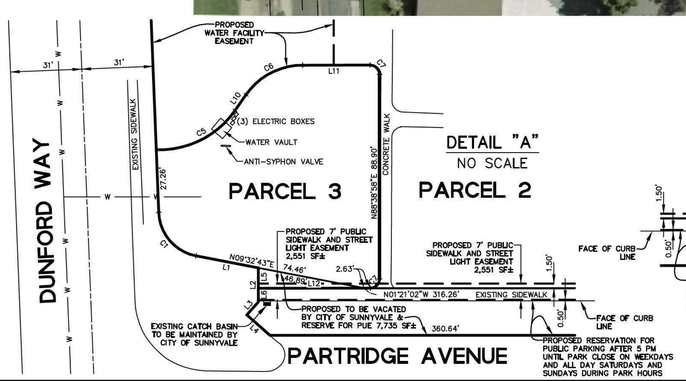
Dated

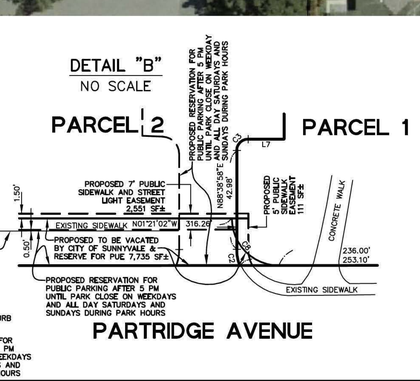
LICENSED LAND SURVEYOR
JOHN KOROYAN
No. 8883
STATE OF CALIFORNIA

Exhibit "B"

PRELIMINARY PARCEL MAP

© BKF ENGINEERS





LINE TABLE		
LINE	BEARING	LENGTH
L1	S09°32'43"W	27.58'
L2	N88°38'58"E	14.86'
L3	S49°38'38"E	7.46'
L4	S40°21'22"W	13.43'
L5	N88°38'58"E	8.86'
L6	N88°38'58"E	6.00'
L7	N01°21'02"W	15.56'
L8	S66°21'02"E	9.90'
L9	N01°21'02"W	6.59'
L10	S56°21'02"E	8.42'
L11	S01°21'02"E	29.38'
L12	S01°21'02"E	48.67'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	20.00'	76°52'47"	26.84'
C2	20.00'	20°29'15"	7.15'
C3	5.00'	90°00'00"	7.85'
C4	15.00'	65°00'00"	17.02'
C5	40.00'	57°06'14"	39.87'
C6	30.00'	55°00'00"	28.80'
C7	4.00'	90°00'00"	6.28'
C8	20.50'	90°00'00"	32.20'

40 20 0 40 80 160
SCALE IN FEET

OWNER
CITY OF SUNNYVALE
456 WEST OLIVE AVENUE
SUNNYVALE, CA 94088

SUBDIVIDER
CITY OF SUNNYVALE
456 WEST OLIVE AVENUE
SUNNYVALE, CA 94088

BASIS OF BEARINGS
THE BEARINGS N01°20'00"W OF THE CENTER LINE OF QUAIL AVENUE, BETWEEN FOUND MONUMENTS, AS SHOWN ON MAP OF TRACT NO. 2060, FILED FOR RECORD ON JUNE 20, 1958 IN BOOK 94 OF MAPS AT PAGES 40 & 41, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

MAP NOTES
1. ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

LEGEND
- PROPOSED BOUNDARY LINE
- EXISTING BOUNDARY LINE
- CENTER LINE
- EASEMENT LINE
- LOT LINE
- SD — STORM DRAIN LINE
- SS — SANITARY SEWER LINE
- W — WATER LINE
- PUE — PUBLIC UTILITY EASEMENT

SURVEYOR'S STATEMENT
THIS PRELIMINARY MAP WAS PREPARED BY ME OR UNDER MY DIRECTION, AT THE REQUEST OF AMY FONSECA OF THE CITY OF SUNNYVALE ON SEPTEMBER 20, 2012.

John Koroyan
JOHN KOROYAN, P.L.S. NO. 8883
LICENSE EXPIRES 12-31-2013

SEPTEMBER 10, 2013
DATED

LICENSED LAND SURVEYOR JOHN KOROYAN No. 8883 STATE OF CALIFORNIA

1650 TECHNOLOGY DRIVE
SUITE 650
SAN JOSE, CA 95110
408-467-9100
408-467-9199 (FAX)
BKF ENGINEERS | SURVEYORS | PLANNERS

PRELIMINARY MAP
RAYNOR PARK
1500 PARTRIDGE AVENUE, SUNNYVALE, CA 94087
SANTA CLARA COUNTY, CALIFORNIA

SUNNYVALE

No.	Revisions

Date: 09-10-2013
Scale: 1" = 40'
Design: JVK
Drawn: JG
Approved: DT
Job No: 20156076

Drawing Number:
1 OF 1