



## AGENDA

REGULAR MEETINGS OF THE  
ROCKLIN CITY COUNCIL,  
ROCKLIN PUBLIC FINANCING AUTHORITY  
AND SUCCESSOR AGENCY

January 24, 2017

TIME: 6:00 PM

PLACE: Council Chambers, 3970 Rocklin Road

[www.rocklin.ca.us](http://www.rocklin.ca.us)

### MANNER OF ADDRESSING THE COUNCIL

Citizens may address the City Council on any item on the agenda at the time the item is considered. Citizens wishing to speak may request recognition from the Mayor by raising their hand and stepping to the podium when requested to do so. Speakers will usually be allowed five (5) minutes; however, the Mayor may set shorter time limits. Speakers are asked to identify themselves by stating their name and the city they reside in for the official record.

### STANDARDS OF DECORUM

Any person who disrupts the meeting of the Council, may be barred by the presiding officer from further audience before the Council during that meeting, unless permission to continue be granted by majority vote of the Council.

All remarks shall be addressed to the Council as a body and not to any member thereof, or to staff, or to the public. No person, other than a member of the Council, the City Manager or the City Attorney and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

For items not on the agenda, and for non-hearing items on the agenda the person addressing the Council shall be limited to five minutes, unless the time is adjusted by the presiding officer.

Whenever any group of persons wishes to address the Council on the same subject matter, it shall be proper for the presiding officer to request that a spokesman be chosen by the group to address the Council and, in case additional matters are to be presented at the time by any member of the group, to limit the number of persons so addressing the Council, so as to avoid unnecessary repetition.

As a courtesy to all, please turn off cell phones and other electronic devices during the meeting.

### WRITINGS RECEIVED AFTER AGENDA POSTING

Any writing related to an agenda item for the open session of this meeting distributed to the City Council, Public Financing Authority or Successor Agency less than 72 hours before this meeting is available for inspection at City Hall, 3970 Rocklin Road, Rocklin, during normal business hours. These writings will also be available for review at the council meeting in the public access binder located on the table at the back of the Council Chambers. If you have questions related to this agenda, please call 916-625-5588.

## AMERICANS WITH DISABILITIES ACT

In compliance with the Americans with Disabilities Act, the City of Rocklin encourages those with disabilities to participate fully in the public hearing process. If you have a special need in order to allow you to attend or participate in our public meeting and public hearing processes, including receiving notices, agendas, and other writings in appropriate alternative formats, please contact our office at (916) 625-5588 well in advance of the public meeting or public hearing you wish to attend so that we may make every reasonable effort to accommodate you.

## ELECTRONIC PRESENTATIONS

All persons with electronic presentations for public meetings will be required to bring their own laptop or other form of standalone device that is HDMI or VGA compatible. It is further recommended that presenters arrive early to test their presentations. The City is not responsible for the compatibility or operation of non-city devices or the functionality of non-city presentations.

## POSTING OF AGENDA

In accordance with Government Code Section 54954.2(a) this agenda was posted on the City's bulletin board at City Hall, 3970 Rocklin Road, Rocklin, and City of Rocklin website at [www.rocklin.ca.us](http://www.rocklin.ca.us).

## AGENDA

### INTRODUCTION

1. Meeting called to order at
2. Pledge of Allegiance
3. Roll Call:
  - A. Councilmembers:
  - B. City Personnel:
  - C. Commissioners:

### COUNCIL REPORTS

4. Reports from Boards, Committees, and Commissions (Verbal)

### AGENDA REVIEW

5. Agenda Modifications

## CONSENT CALENDAR

The following routine matters can be acted upon by one motion. Individual items may be removed by the Council for separate discussion. The title is deemed to be read and further reading waived of any ordinance listed on the Consent Calendar for introduction or adoption.

6. [City Council, Public Financing Authority & Successor Agency Meeting Minutes of January 10, 2017](#)
7. [City Council Special Meeting Minutes of January 5, 2017](#)
8. [City Council Special Meeting Minutes of January 7, 2017](#)
9. [Resolution of the City Council of the City of Rocklin Adopting and Authorizing the City Manager to Execute the Agency Report of Public Official Appointments \(FPPC Form 806\)](#)
10. [Resolution of the City Council of the City of Rocklin Authorizing the City Manager to Make Determinations Regarding Industrial Disability Retirements for Safety Employees](#)

Staff Presentation by Jason Johnson

11. [Lease Agreements with the Rocklin Historical Society for the Rocklin Museum Property and St. Mary's Chapel](#)
  - A. [Resolution of the City of Rocklin Approving and Authorizing the City Manager to Execute a Lease Agreement by and between the Rocklin Historical Society and the City of Rocklin \(Rocklin History Museum, 3895 Rocklin Road, Rocklin, CA\)](#)
  - B. [Resolution of the City Council of the City of Rocklin Approving and Authorizing the City Manager to Execute a Lease Agreement by and between the Rocklin Historical Society and the City of Rocklin \(Old St. Mary's Chapel at Peter Hill Heritage Park, Rocklin, CA\)](#)

Staff Presentation by Troy Holt

## CITIZENS ADDRESSING THE CITY COUNCIL

Members of the public may address the City Council at this time on any item of business of interest to the public that is not on the agenda. Speakers are limited to five minutes unless the time is extended by the presiding officer. Council members may briefly respond to statements made or questions asked by a speaker, but may not make any decisions or take action on any item not on the agenda.

12. NAME AND CITY

**RESOLUTIONS**

13. [Resolution of the City Council of the City of Rocklin Authorizing the City Manager to Execute a Rocklin Quarry Adventure Park Master - Agreement](#)

Staff Presentation by Rick Horst

**REPORTS FROM CITY OFFICIALS/DISCUSSION AND POTENTIAL ACTION ITEMS**

14. [Project Noticing](#)

Staff Presentation by Bret Finning

15. Announcements/Brief Reports

16. City Manager Report

**FUTURE AGENDA ITEMS**

**FUTURE STRATEGIC PLANNING ITEMS**

**PUBLIC FINANCING AUTHORITY**

17. No Action Required

**CITY COUNCIL ACTING AS SUCCESSOR AGENCY**

18. No Action Required

**ADJOURNMENT**

19. Meeting Adjourned at



**MINUTES**  
**REGULAR MEETINGS OF THE**  
**ROCKLIN CITY COUNCIL,**  
**ROCKLIN PUBLIC FINANCING AUTHORITY**  
**AND SUCCESSOR AGENCY**



January 10, 2017

TIME: 6:00 PM

PLACE: Council Chambers, 3970 Rocklin Road

[www.rocklin.ca.us](http://www.rocklin.ca.us)

## INTRODUCTION

1. The Regular Meeting of the Rocklin City Council, Rocklin Public Financing Authority and Successor Agency convened at 6:00 p.m. Mayor Yuill presiding.
2. Councilmember Gayaldo led the Pledge of Allegiance.
3. Roll Call:
  - A. Councilmembers: Ken Broadway, Jill Gayaldo, Greg Janda, Joe Patterson, Mayor Scott Yuill
  - B. City Personnel:
    - Ricky A. Horst, City Manager
    - DeeAnne Gillick, Interim City Attorney
    - Jason Johnson, Administration
    - Matt McClure, Public Services
    - Marc Mondell, Community Development
    - Kurt Snyder, Fire
    - Chad Butler, Police
    - Troy Holt, City Manager's Office
    - Michael Young, City Manager's Office
    - Karen Garner, Recreation, Arts & Event Tourism
    - Bret Fining, Community Development
    - Dave Palmer, Community Development
    - Michael Green, Administration
  - C. Commissioners – none.

### 3.5 OATH OF OFFICE

Barbara Ivanusich administered an Oath of Office to appointed Councilmember Jill Gayaldo.

## COUNCIL REPORTS

4. Reports from Boards, Committees, and Commissions (Verbal) – none.

**AGENDA REVIEW**

## 5. Agenda Modifications

Mayor Yuill pulled Item No. 11 for discussion.

**CONSENT CALENDAR**

6. City Council, Public Financing Authority & Successor Agency Meeting Minutes of December 13, 2016
7. Quarterly Building Report
8. Second Reading & Publication: Ordinance No. 1062 of the City Council of the City of Rocklin Modifying Sections of Title 17 of the Rocklin Municipal Code Relating to Multi-Family and Small Lot Single-Family Zoning (Multi-Family and Small Lot Single Family Zoning / ZOA2016-0003)
9. Second Reading & Publication: Ordinance No. 1063 of the City Council of the City of Rocklin Approving a Rezone of Portions of an Approximately 15.7 Acre Site From Retail Commercial (C-2) to Multi-Family Residential (R-3) and Single-Family Residential 3,500 Square Feet Minimum Lot Size (R1-3.5) (Pacific Pointe / Z2016-0003)
10. Second Reading & Publication: Ordinance No. 1064 of the City Council of the City of Rocklin Amending the Five Star General Development Plan for Area 3 (Five Star General Development Plan Amendment [Area 3]/PDG-2016-0003)
11. Pulled for Discussion
12. Resolution No. 2017-3 of the City Council of the City of Rocklin Accepting the Public Work Known as Police Department Parking Lot Extension, Approving the Notice of Completion Thereof, and Authorizing and Directing the Execution and Recordation of Said Notice on Behalf of the City (Western Engineering Contractors, Inc.)
13. Resolution No. 2017-4 of the City Council of the City of Rocklin Amending the Capital Expenditure Budget for Fiscal Year 2016/17
14. Resolution No. 2017-5 of the City Council of the City of Rocklin Amending Exhibit A of Resolution No. 2016-249 (Management Salary Schedule for Fiscal Year 2016-2017)
15. Purchase a Portion of the Property (APN 010-230-003) from the Lui-Taylor Family Trust
  - A. Resolution No. 2017-6 of the City Council of the City of Rocklin Approving a Notice of Exemption Property Acquisition (Portion of APN101-230-003)
  - B. Resolution No. 2017-7 of the City Council of the City of Rocklin Approving and Directing the City Manager to Execute a Purchase and Sale Agreement and Complete Any Related Matters Necessary to Purchase a Portion of the Property (APN 010-230-003) From the Lui-Taylor Family Trust

**Minutes of January 10, 2017**

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Motion to approve Item Nos. 6-10 and 12-15 on the Consent Calendar by Councilmember Janda, seconded by Councilmember Broadway. Passed by the following vote:

Ayes: Janda, Broadway, Gayaldo, Patterson, Yuill  
 Noes: None  
 Absent: None  
 Abstain: None

11. Resolution No. 2017-2 of the City Council of the City of Rocklin Superseding Resolution No. 2016-122 Making Changes to Appointments to the Various Joint Power Agencies, Placer County Committees, and Regional Boards

Mayor Yuill requested Greater Sacramento Area Economic Council be removed from the appointment list.

Motion to approve Item No. 11 removing Greater Sacramento Area Economic Council from the appointment list by Councilmember Janda, seconded by Councilmember Broadway. Passed by the following vote:

Ayes: Janda, Broadway, Gayaldo, Patterson, Yuill  
 Noes: None  
 Absent: None  
 Abstain: None

**SPECIAL PRESENTATIONS**

16. Placer County Library Literacy - Presentation by Angela Perron, Mary George and Rachel Edelstein

Angela Perron and Sophie Bruno provided an update on the Placer County Library Literacy program.

**CITIZENS ADDRESSING THE CITY COUNCIL**

17. NAME AND CITY

Ken Yorde, Rocklin, requested maximum public exposure related to zoning changes.

**PUBLIC HEARINGS**

18. CONTINUED FROM OCTOBER 25, 2016 - Placer Creek Corporate Center Community Facilities District No. 1 Annexation No. 52

A. Resolution of the City Council of the City of Rocklin of Annexation of Territory to Community Facilities District No. 1 (52nd Annexation), Authorizing the Levy of a Special Tax and Submitting Levy of Tax to Qualified Electors (Placer Creek Corporate Center)

Minutes of **January 10, 2017**

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- B. Resolution of the City Council of the City of Rocklin Declaring Results of Special Annexation Election, Determining Validity of Prior Proceedings, and Directing Recording of Amended Notice of Special Tax Lien Pertaining to Community Facilities District No. 1 (52nd Annexation) (Placer Creek Corporate Center)

ITEM CONTINUED OFF CALENDAR

19. CONTINUED FROM OCTOBER 25, 2016 - Placer Creek Corporate Center Community Facilities District No. 5 Annexation No. 40

- A. Resolution of the City Council of the City of Rocklin of Annexation of Territory to Community Facilities District No. 5 (40th Annexation), Authorizing the Levy of a Special Tax, and Submitting Levy of Tax to Qualified Electors (Placer Creek Corporate Center)
- B. Resolution of the City Council of the City of Rocklin Declaring Results of Special Annexation Election, Determining Validity of Prior Proceedings, and Directing Recording of Amended Notice of Special Tax Lien Pertaining to Community Facilities District No. 5 (40th Annexation) (Placer Creek Corporate Center)

ITEM CONTINUED OFF CALENDAR

20. CONTINUED FROM OCTOBER 25, 2016 - Resolution of the City Council of the City of Rocklin Declaring Results of Assessment Ballot Proceeding, Finding no Majority Protest, and Authorizing Levy of Increased Assessments (Landscaping and Lighting District No. 2 ZOB 84) (Placer Creek Corporate Center))

ITEM CONTINUED OFF CALENDAR

## **REPORTS FROM CITY OFFICIALS/DISCUSSION AND POTENTIAL ACTION ITEMS**

21. National League of Cities Annual Membership

Council directed staff to cancel the annual membership.

21.5. Planning Commission Vacancy

Staff Recommendation: Provide Direction on Whether to Appoint a Planning Commissioner from Current Lists of Qualified Planning Commission and City Council Applicants or Follow the Traditional Recruitment Process

Council directed staff to follow the traditional recruitment process and schedule a special meeting on February 9, 2017, at 5:00 p.m. to hold interviews.

22. Announcements/Brief Reports

Mayor Yuill to tour Cots Homeless Shelter on Thursday.



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23. City Manager Report – written report submitted.

24. City Attorney Communications (Verbal) - none

**FUTURE AGENDA ITEMS**

Mayor Yuill requested an update on the Lincoln Shared Fire Services.

**FUTURE STRATEGIC PLANNING ITEMS**

The Strategic Planning Session is scheduled for January 27, 2016, from 8:30 a.m. to 12:30 p.m.

**PUBLIC FINANCING AUTHORITY**

25. No Action Required

**CITY COUNCIL ACTING AS SUCCESSOR AGENCY**

26. No Action Required

**CLOSED SESSION (Read Closed Session Items - Ask for Public Comment)**

27. Under Government Code section 54956.9  
Jason Shearer v. City of Rocklin  
Workers Compensation Appeals Board, No. ADJ9727165

The closed session was cancelled.

**ADJOURNMENT**

28. Meeting Adjourned at 6:43 p.m.

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Scott Yuill, Mayor

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Barbara Ivanusich, City Clerk



**MINUTES**  
**SPECIAL MEETING OF THE**  
**ROCKLIN CITY COUNCIL**



**JANUARY 5, 2017**

**TIME: 6:00 PM**  
**PLACE: COUNCIL CHAMBERS, 3970 ROCKLIN ROAD**  
[www.rocklin.ca.us](http://www.rocklin.ca.us)

**INTRODUCTION**

1. The Special Meeting of the Rocklin City Council convened at 6:30 p.m. Mayor Scott Yuill presiding.
2. Roll Call: Ken Broadway, Greg Janda, Joe Patterson, Mayor Scott Yuill
3. Interview Applicants to Fill City Council Vacancy
  - A. List of Applicants by Random Alpha Draw:
    1. Bill Halldin
    2. Michelle Kopkash - withdrew
    3. Dean Bender
    4. Kari-Ann MacArthur
    5. Mike Mattos
    6. Roger Martinez
    7. Geoffrey McLennan
    8. Jill Gayaldo
    9. Marta Green
    10. Susan Green
    11. Danette Delgado
    12. John Flem
    13. Louis Lopez
    14. William Hansen
    15. Najee Holverstott – not present

The applicants noted above provided an oral statement.

**Public Input:**

- Denise Gaddis, Rocklin, in support of Mike Mattos
- Jody Day, Rocklin Chamber, in support of Bill Halldin
- Maureen Valley, in support of Mike Mattos
- Tony Racojia, Rocklin, select someone sensitive to projects
- Irene Smith in support of Mike Mattos
- Margot Raben in support of Mike Mattos
- Martha Huck in support of Mike Mattos

- Thomas Greener in support of Mike Mattos
- Roger Smith in support of Mike Mattos
- Sherry, Rocklin in support of Mike Mattos

Mayor Yuill called for a break at 7:49 p.m. and reconvened at 8:00 p.m.

After hearing oral statements, Council selected the below applications for questions and answers:

- Bill Halldin
- Dean Bender
- Mike Mattos
- Geoffrey McLennan
- Jill Gayaldo
- Marta Green

After Council deliberations, the following action occurred:

Motion to appoint Jill Gayaldo by Councilmember Broadway, seconded by Mayor Yuill. Passed by the following vote:

Ayes:	Broadway, Yuill, Janda, Patterson
Noes:	None
Absent:	None
Abstain:	None

4. Resolution of the City Council of the City of Rocklin Appointing a Member to Fill the Office of City Councilmember Ken Broadway as a Result of His Election to a Four-Year City Council Term in the November 2016 General Municipal Election

Motion to approve Item 4 by Councilmember Broadway, seconded by Councilmember Janda. Passed by the following vote:

Ayes:	Broadway, Janda, Patterson, Yuill
Noes:	None
Absent:	None
Abstain:	None

Barbara Ivanusich administered the Oath of Office to Jill Gayaldo.

**ADJOURNMENT**

5. Meeting Adjourned at 9:35 p.m.

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Scott Yuill, Mayor

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Barbara Ivanusich, City Clerk



**MINUTES**  
**SPECIAL MEETING OF THE**  
**ROCKLIN CITY COUNCIL**

**JANUARY 7, 2017**

**TIME: 8:00 AM**

**PLACE: COUNCIL CHAMBERS, 3970 ROCKLIN ROAD**  
[www.rocklin.ca.us](http://www.rocklin.ca.us)



**INTRODUCTION**

1. The meeting was called to order at 8:00 a.m.
2. Closed Session  
Under Government Code Seciton 54957  
Public Employment: City Attorney

There being no public input, Mayor Yuill called for the Closed Session at 8:00 a.m.

The Closed Session ended at 3:40 p.m. with no report.

**ADJOURNMENT**

3. Meeting Adjourned at 3:40 p.m.

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Scott Yuill, Mayor



RESOLUTION NO. 2017

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF ROCKLIN  
ADOPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE  
THE AGENCY REPORT OF PUBLIC OFFICIAL  
APPOINTMENTS (FPPC FORM 806)

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council hereby adopts and approves the City Manager to execute the Agency Report of Public Official Appointments (FPPC Form 806) in the form attached hereto as Exhibit A and by this reference incorporated herein.

PASSED AND ADOPTED this 24<sup>th</sup> day of January, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

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Scott Yuill, Mayor

ATTEST:

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Barbara Ivanusich, City Clerk

EXHIBIT A

**Agency Report of:  
Public Official Appointments**

**A Public Document**

<b>1. Agency Name</b> City of Rocklin		<b>California Form 806</b>	For Official Use Only
Division, Department, or Region (If Applicable)			
Designated Agency Contact (Name, Title) Barbara Ivanusich, City Clerk			
Area Code/Phone Number 916-625-5588	E-mail barbara.ivanusich@rocklin.ca.us	Page <u>1</u> of <u>2</u>	Date Posted: <u>1/24/2017</u> <small>(Month, Day, Year)</small>

**2. Appointments**

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
Placer County Air Pollution Control District Board	▶ Name <u>Janda, Greg</u> <small>(Last, First)</small>  Alternate, if any <u>Broadway, Ken</u> <small>(Last, First)</small>	▶ <u>01 / 10 / 17</u> <small>Appt Date</small>  ▶ <u>1 Year</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>100 +mileage</u>  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input checked="" type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>
Placer County Flood and Drainage Board	▶ Name <u>Broadway, Ken</u> <small>(Last, First)</small>  Alternate, if any <u>Patterson, Joe</u> <small>(Last, First)</small>	▶ <u>01 / 10 / 17</u> <small>Appt Date</small>  ▶ <u>1 Year</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>100.00</u>  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input checked="" type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>
Placer County Transportation Planning Agency Board	▶ Name <u>Broadway, Ken</u> <small>(Last, First)</small>  Alternate, if any <u>Janda, Greg</u> <small>(Last, First)</small>	▶ <u>01 / 10 / 17</u> <small>Appt Date</small>  ▶ <u>1 Year</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>100 +mileage</u>  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input checked="" type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>
Sacramento Area Council of Governments	▶ Name <u>Janda, Greg</u> <small>(Last, First)</small>  Alternate, if any <u>Broadway, Ken</u> <small>(Last, First)</small>	▶ <u>01 / 10 / 17</u> <small>Appt Date</small>  ▶ <u>1 Year</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>200.00</u>  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input checked="" type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>

**3. Verification**

*I have read and understand FPPC Regulation 18702.5. I have verified that the appointment and information identified above is true to the best of my information and belief.*

_____ <small>Signature of Agency Head or Designee</small>	Ricky A. Horst <small>Print Name</small>	City Manager <small>Title</small>	01/24/2017 <small>(Month, Day, Year)</small>
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Comment: \_\_\_\_\_

**Agency Report of:  
Public Official Appointments  
Continuation Sheet**

California **806**  
Form  
A Public Document

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<b>1. Agency Name</b> City of Rocklin	<b>Date Posted:</b> <u>1/24/2017</u> <small>(Month, Day, Year)</small>
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**2. Appointments**

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
Western Placer Waste Management Authority Board	▶ Name <u>Yuill, Scott</u> <small>(Last, First)</small>  Alternate, if any <u>Broadway, Ken</u> <small>(Last, First)</small>	▶ <u>01 / 10 / 17</u> <small>Appt Date</small>  ▶ <u>1 Year</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>100.00</u>  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input checked="" type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>          </u> Other
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ <u>  /  /  </u> <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ Other
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ <u>  /  /  </u> <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ Other
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ <u>  /  /  </u> <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ Other
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ <u>  /  /  </u> <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ Other
	▶ Name _____ <small>(Last, First)</small>  Alternate, if any _____ <small>(Last, First)</small>	▶ <u>  /  /  </u> <small>Appt Date</small>  ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____  ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ Other





## City Council Report



**Subject:** Authorizing the City Manager to Make Determinations Regarding Industrial Disability Retirements for Safety Employees

**Submitted by:** Jason Johnson, Director of Administrative Services      **Date:** January 24, 2017  
 DeeAnne Gillick, Interim City Attorney  
 Kim Sarkovich, ACM/CFO

**Department:** Administrative Services      **Reso. No.** 2017-XX

**Staff Recommendation:** Adopt a resolution Authorizing the City Manager to Make Determinations Regarding Industrial Disability Retirements for Safety Employees.

### BACKGROUND:

The City of Rocklin contracts with California Public Employees Retirement System (CalPERS) for its retirement system. As a part of this contract, CalPERS administers an industrial disability retirement program for local safety members of the retirement system. In accordance with Government Code Section 21156, a local safety member shall be retired for disability only upon the employer's determination that the member is incapacitated physically or mentally for the performance of the usual job duties with the current employer. The disability decision is based on competent medical opinion and all medical and vocational information provided by the member, employer and workers' compensation carrier. The determination is based on actual/present disability, not a prospective inability to perform the job duties.

Currently this authority rests with the City Council. The last time the City Council authorized an industrial disability retirement, the City Council asked if this function could be delegated to the City Manager. Under Government Code Section 21173 the City Council may delegate authority to make industrial disability determinations to a designated City Officer.

### FINDINGS, CONCLUSIONS & RECOMMENDATIONS:

#### Findings:

The City of Rocklin, as a contract member of CalPERS, has available to its public safety employees the provision for an industrial disability retirement. If an employee has a disabling injury or illness that prevents the employee from performing his/her usual job duties, the employee may be eligible for an industrial disability retirement (work-related).

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The City's contract with CalPERS allows that only public safety members ("local safety members") are eligible for an industrial disability retirement.

In all cases where an employee is applying for an industrial disability retirement, the employee is required to submit all medical information provided by the employee, employer and/or workers' compensation carrier.

The determination on an industrial disability retirement for public safety members is made by the local governing body – not CalPERS. As a contracting agency of CalPERS, the City has the authority to make industrial disability decisions for its local safety employees only.

Under Government Code Section 21173 the City Council may delegate authority to make disability determinations to a designated City Officer.

**Conclusions:**

- The function of making determinations regarding industrial disability retirements may be delegated by the City Council to a designated City Officer.
- Authorizing this function to the City Manager will allow for more efficient processing of industrial disability retirement determinations.

**Recommendations:**

- Staff recommends that the City Council adopt a resolution Authorizing the City Manager to Make Determinations Regarding Industrial Disability Retirements for Safety Employees.

**Alternatives:**

- City Council may choose to not adopt the resolution and retain the function of industrial disability retirement determinations for safety employees solely for themselves.

**Fiscal Impact:**

- None.



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Ricky A. Horst, City Manager  
Reviewed for Content



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DeeAnne Gillick, Interim City Attorney  
Reviewed for Legal Sufficiency

RESOLUTION NO. 2017-

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF ROCKLIN  
AUTHORIZING THE CITY MANAGER TO MAKE DETERMINATIONS REGARDING INDUSTRIAL  
DISABILITY RETIREMENTS FOR SAFETY EMPLOYEES

WHEREAS, the City of Rocklin (City) is a contracting agency of the California Public Employees' Retirement System (CalPERS); and,

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency who is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such law; and,

WHEREAS, the City Council of the City of Rocklin has determine upon legal advice that it may delegate authority under Government Code Section 21173 to make such determinations to a designated City officer; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rocklin hereby delegates the authority pursuant to Government Code Section 21173 to the City Manager to make determinations under Government Code Section 21150 et seq., on behalf of the City, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to CalPERS; and,

BE IT FURTHER RESOLVED that the City Manager hereby is authorized to make applications on behalf of the City for industrial disability retirement of safety employees and to initiate requests for reinstatement of such employees who are retired for disability.

PASSED AND ADOPTED this 24<sup>th</sup> day of January 2017, by the following vote:

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

\_\_\_\_\_  
Scott Yuill, Mayor

ATTEST:

\_\_\_\_\_  
Barbara Ivanusich, Secretary



# City Council Report




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**Subject: Approve Lease Agreements with the Rocklin Historical Society for the Rocklin Museum Property and St. Mary's Chapel**

**Submitted by: DeeAnne Gillick, Interim City Attorney**

**Date: January 24, 2017**

**Department: City Attorney**

**Reso. Nos. 2017-\_\_, 2017-\_\_**

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- **Staff Recommendation:** Approve resolutions of the City Council approving two revised Lease Agreements with the Rocklin Historical Society for (1) the Rocklin Museum Property at 3895 Rocklin Road, Rocklin, CA, and (2) the St. Mary's Chapel at Peter Hill Heritage Park.
- 

## BACKGROUND:

In 2000 the Redevelopment Agency of the City of Rocklin purchased the property at 3895 Rocklin Road, the Moon Family Residence, for future use as a museum. In April of 2001 the Redevelopment Agency leased the property to the Rocklin Historical Society for the operation of the Rocklin History Museum.

In 2008 the Redevelopment Agency of the City of Rocklin purchased the Old St. Mary's Chapel Building. In January of 2009 the Redevelopment Agency leased the Old St. Mary's Chapel Building and the immediately adjacent landscaped area and grounds at Peter Hill Heritage Park to the Rocklin Historical Society for the purpose of displaying and operating the historical building and use as an event center.

Redevelopment agencies were dissolved by the state legislature in February of 2012. State law provides that a former Redevelopment Agency is required to create and submit to the Department of Finance a long range property management plan. Once the plan is approved property shall be transferred according to the plan. The Rocklin Redevelopment Agency's long range property management plan provided for transfer of the History Museum and St. Mary's Chapel to the City. The transfers of these properties occurred in 2016 pursuant to City Council Resolution Nos. 2016-264 and 2016-265.

The parties desire to enter into lease agreements with the City of Rocklin, rather than the Redevelopment Agency, and make minor changes to the terms of the leases.

## FINDINGS, CONCLUSIONS & RECOMMENDATIONS:

### Findings:

- The property at 3895 Rocklin Road (Museum Property) has been transferred to the City of Rocklin pursuant to the long range property management plan and Resolution No. 2016-264.

- The Rocklin Historical Society leases the Museum Property and operates the Rocklin History Museum, and desires to continue to do so.
- The Old St. Mary's Chapel located at Peter Hill Heritage Park has been transferred to the City of Rocklin pursuant to the long range property management plan and Resolution No. 2016-265.
- The Rocklin Historical Society leases the St. Mary's Chapel Building and immediately adjacent landscaped area and grounds at Peter Hill Heritage Park for the purpose of displaying and operating the historical building and as an event center, and desires to continue to do so.
- The parties desire to change the cumulative terms of both leases to coincide with each other extending through no later than 2042.
- The parties desire for the St. Mary's Chapel lease to reflect that the Rocklin Historical Society will reimburse the City for costs associated with maintenance of the portion of Peter Hill Heritage Park associated with the lease.
- The termination provisions in both leases have been modified to provide that either party may terminate the leases with one hundred twenty (120) days' notice and also that the City may terminate the leases based on actions by the Tenant or on the leased premises when termination is in the best interests of the City.
- The leases have also been modified to expressly state that any employee or volunteer of the Tenant are not entitled to any City benefits and all benefits are provided through the Employer.

**Recommendations:**

- Staff recommends approval of a Resolution of the City Council of the City of Rocklin Approving and Authorizing the City Manager to Execute a Lease Agreement by and between the Rocklin Historical Society and the City of Rocklin for the Rocklin History Museum located at 3895 Rocklin Road, Rocklin, CA.
- Staff recommends approval of a Resolution of the City Council of the City of Rocklin Approving and Authorizing the City Manager to Execute a Lease Agreement by and between the Rocklin Historical Society and the City of Rocklin for Old St. Mary's Chapel at Peter Hill Heritage Park, Rocklin, CA.

**Alternatives:**

- Do not enter into revised leases between the City and the Rocklin Historical Society and the old lease terms remain in full force and effect as the City is the legal successor of interest to the Redevelopment Agency.




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Ricky A. Horst, City Manager  
 Reviewed for Content




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DeeAnne Gillick, Interim City Attorney  
 Reviewed for Legal Sufficiency



## RESOLUTION NO. 2017-

RESOLUTION OF THE CITY OF ROCKLIN  
 APPROVING AND AUTHORIZING THE CITY MANAGER  
 TO EXECUTE A LEASE AGREEMENT BY AND BETWEEN  
 THE ROCKLIN HISTORICAL SOCIETY AND  
 THE CITY OF ROCKLIN  
 (ROCKLIN HISTORY MUSEUM, 3895 ROCKLIN ROAD, ROCKLIN, CA)

The City Council of the City of Rocklin does resolve as follows:

WHEREAS, the Rocklin Historical Society has been leasing the Property located at 3895 Rocklin Road, Rocklin, California (Museum Property) pursuant to the Lease Agreement dated April 10, 2001 (2001 Lease), by and between the Rocklin Historical Society and the Redevelopment Agency of the City of Rocklin (Agency), as approved by the Redevelopment Agency of the City of Rocklin as Agency Resolution No. 2001-177 RDA;

WHEREAS, the Rocklin Historical Society has been operating the Property pursuant to the 2001 Lease as a local history museum for the City of Rocklin and the surrounding community, and has been providing educational, cultural and entertainment resources for the Rocklin community, and desires to continue to do so;

WHEREAS, The State of California passed legislation dissolving Redevelopment Agencies, and set forth statutes establishing a Successor Agency to the former Redevelopment Agency and an Oversight Board to oversee the dissolution of the former Redevelopment Agency;

WHEREAS, the City Council of the City of Rocklin became the Successor Agency to the Redevelopment Agency of the City of Rocklin by operation of law on February 1, 2012 (California Health & Safety Code subsection 34171 (j)), and the establishment of the Successor Agency to the Redevelopment Agency of the City of Rocklin was approved and ratified by unanimous vote of the City Council on January 10, 2012;

WHEREAS, Effective September 22, 2015 Health & Safety Code Section 34191.5(f) became effective and which provides:

“34191.5(f) Actions to implement the disposition of property pursuant to an approved long-range property management plan shall not require review by the department; and

WHEREAS, the City of Rocklin has accepted the transfer of the Museum Property from the Redevelopment Agency as permitted in the long range property management plan and desires to enter into a lease of the property herein to the Historical Society under the terms described in the lease approved by this Resolution.

NOW THEREFORE, the City of Rocklin resolves as follows:

Section 1. The City of Rocklin hereby approves and authorizes the City Manager to execute a Lease Agreement by and between the Rocklin Historical Society and the City of Rocklin (Rocklin History Museum, 3895 Rocklin Road, Rocklin, CA) in the form attached hereto as Exhibit A and by this reference incorporated herein.

Section 2. The City Clerk is authorized and directed to record said Lease Agreement in the Office of the Placer County Recorder when fully executed and notarized.

PASSED AND ADOPTED this 24<sup>th</sup> day of January, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Scott Yuill, Mayor

ATTEST:

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Barbara Ivanusich, City Clerk

## EXHIBIT A

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**LEASE AGREEMENT BY AND BETWEEN  
THE ROCKLIN HISTORICAL SOCIETY AND  
THE CITY OF ROCKLIN  
(Rocklin History Museum, 3895 Rocklin Road, Rocklin, CA)**

This Lease (Lease) is entered into as of January 24, 2017, by and between the Rocklin Historical Society, a non-profit corporation (Tenant) and the City of Rocklin (City). This Lease is written in support of the cooperative effort on the part of the City of Rocklin and the Rocklin Historical Society to provide a museum for the Rocklin Community. It is emphasized that the formal language of the Lease agreement contained herein should in no way detract from the fine spirit of cooperation that exists between the City of Rocklin and the Rocklin Historical Society to provide the museum.

**RECITALS**

A. City is the current owner of real property located at 3895 Rocklin Road, Rocklin, California, and the improvements located on the real property (collectively, "Property").

B. A Lease Agreement dated April 10, 2001 (2001 Lease), by and between the Rocklin Historical Society and the Redevelopment Agency of the City of Rocklin (Agency), regarding the Property was approved by the Redevelopment Agency of the City of Rocklin as Agency Resolution No. 2001-177 for the purpose of the Rocklin Historical Society to operate a museum.

C. Tenant has been leasing and operating the Property pursuant to the 2001 Lease as a local history museum providing educational, cultural and entertainment resources for the Rocklin community, and desires to continue to do so.

D. The State of California passed legislation dissolving Redevelopment Agencies, and set forth statutes establishing a Successor Agency to the former Redevelopment Agency and an Oversight Board to oversee the dissolution of the former Redevelopment Agency.



E. Effective September 22, 2015 Health & Safety Code Section 34191.5(f) became effective and which provides:

“34191.5(f) Actions to implement the disposition of property pursuant to an approved long-range property management plan shall not require review by the department; and

F. The Long Range Property Management Plan provides for the transfer of the Property to the City of Rocklin as a government use.

G. Due to the above described transfers of the Property, the City is the current successor of interest to the Agency for purposes of the 2009 Lease.

H. Tenant desires to continue to lease from City and City desires to lease to Tenant the existing structure and the immediately adjacent landscaped area and grounds as shown on the plan of the Property attached as Exhibits A (Leased Premises) for the purpose of displaying a building of significant local history and operating the building as Historical Museum for the public benefit of the citizens of Rocklin.

I. This Lease Agreement is entered into to adjust the total cumulative term of the Lease and to reflect the changes to the ownership of the Property due to the dissolution by operation of law of the Redevelopment Agency of the City of Rocklin.

## AGREEMENT

Therefore, for good and valuable consideration the receipt and adequacy of which are acknowledged, the parties agree as follows:

### **Section 1. Termination of 2001 Lease.**

City and Tenant hereby agree that the 2001 Lease by and between the Redevelopment Agency of the City of Rocklin and Tenant regarding the Property approved by Agency Resolution No. 2001-177 RDA is hereby terminated effective immediately.

### **Section 2. Lease of Premises.**

City leases to Tenant and Tenant leases from City the Property identified as the Leased Premises on the terms and conditions set forth in this Lease.

### **Section 3. Use.**

A. Tenant agrees to use the Leased Premises for the purpose of operating a museum for the public benefit and all other operations incident to the conduct of its business and for no other use. Tenant agrees not to use the Leased Premises for any unlawful purpose.

B. Tenant shall not commit any acts on the Leased Premises nor use the Leased Premises in any manner that will increase the existing rates for or cause cancellation of any fire, liability, or other insurance insuring the Leased Premises or the improvements on the Leased Premises. Tenant shall comply with all requirements of City's insurance carrier that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Leased Premises and the improvements on the Leased Premises.

C. Tenant shall not commit any waste or any public or private nuisance upon the Leased Premises.

D. Tenant shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to the use of the Leased Premises.

**Section 4. Term.**

The term of this Lease shall be for a period of ten (10) years, commencing on January 24, 2017 and unless terminated sooner in accordance with this Lease, ending on January 24, 2027 (Term).

**Section 5. Automatic Renewal; No Renewal if in Default.**

- A. The Term of this Lease shall be automatically extended for one or more periods of five (5) years per extension (Extension Period), up to a total cumulative term of twenty-five (25) years through no later than January 24, 2042, unless either party notifies the other in writing of its intent not to renew, which notice shall be given at least one hundred twenty (120) days prior to the termination date of the then current Term or Extension Period. Should Tenant be in default of any term or condition of the Lease at the expiration of the Term or any Extension Period, Tenant's right to the automatic extension privilege shall be void, and this Lease shall then terminate upon the expiration of the then current Term or Extension Period. All terms and conditions of this Lease shall continue during the Extension Period(s).
- B. Either party may terminate this lease upon providing the other party with written notice at least one hundred twenty (120) days prior to the termination date. Further, the City may terminate the lease for any reason based on acts committed in connection with the Tenant or the leased premises which the City deems detrimental to its best interest.
- C. Tenant shall maintain its non-profit status in good standing and file all required governmental reports and filings. Should the non-profit status not be maintained in good standing, the City may, at its option terminate this lease or provide Tenant with a reasonable period to correct any deficiencies.

**Section 6. Rent.**

Tenant shall pay to City during the Term (including any Extension Period) of this Lease as yearly rental for the Leased Premises the sum of One and 00/100 Dollars (\$1.00) per year, which shall be paid upon commencement of this Lease and on the first anniversary of the commencement of the Lease, and on each subsequent anniversary of the commencement of the Lease during the Term, including any Extension Period.

**Section 7. Operations.**

Tenant shall continuously during the entire Lease Term, including any Extension Periods, conduct Tenant's business in the Leased Premises and shall keep the Leased Premises open for business, as is customary for businesses of similar character, and to conduct the business in accordance with sound business practices during the following hours:

- A. No less than 1 evening during the week for a minimum duration of 2 hours;
- B. No less than 2 hours on each weekend;
- C. Holiday schedules may vary from the above requirement.

**Section 8. Taxes.**

Pursuant to California Revenue and Taxation Code section 107.6, Tenant is notified that the property interest acquired by Tenant in the Leased Premises under this Agreement may be subject to property taxation as a possessory interest in real property, and Tenant may be subject to the payments of property taxes levied on that interest.

**Section 9. Personal Property Taxes.**

During the Term, including any Extension Periods, Tenant shall pay all taxes assessed against and levied upon fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Leased Premises prior to delinquency, and when possible Tenant shall cause these fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of City. If any of Tenant's fixtures, furnishings, equipment, and other personal property is assessed and taxed with City's real property, Tenant shall pay to City Tenant's share of the taxes within ten (10) days after delivery to Tenant by City of a statement in writing setting forth the amount of the taxes applicable to Tenant's property.

**Section 10. Alterations.**

Tenant shall not make or suffer to be made, any alterations of the Leased Premises, or any part of the Leased Premises, without the prior written consent of the City Manager or his or her designee. Any additions to, or alterations of, the Leased Premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to City. Any alterations shall be in conformance with the requirements of all municipal, state, and federal authorities.

**Section 11. Maintenance and Repair.**

A. Tenant acknowledges that Tenant is leasing the Leased Premises on an “as is” basis. Tenant shall, subject to City’s obligations under this Lease, at all times during the Term, and at Tenant’s sole cost and expense, keep, maintain, and repair the building and other improvements upon the Leased Premises in good and sanitary order and condition. The standard of maintenance and repair shall be consistent with the policies of the City of Rocklin.

B. Tenant agrees on the last day of the Term, including any Extension Periods, or on sooner termination of this Lease to surrender the Leased Premises with appurtenances, in the same condition as when received, reasonable use and wear and damage by fire, act of God, or by the elements excepted. Tenant shall regularly sweep and clean the sidewalks adjacent to the Leased Premises, as needed, and shall be responsible for keeping the Leased Premises free of debris.

### **Section 12. Compliance with Law.**

Tenant shall, at Tenant's sole cost, comply with all of the requirements of all municipal, state, and federal authorities pertaining to the use of the Leased Premises. Tenant shall not commit, or suffer to be committed, waste upon the Leased Premises, or nuisance or other act or thing that may disturb the quiet enjoyment of the neighborhood.

### **Section 13. Insurance.**

A. Tenant agrees to procure and maintain public liability insurance from a responsible insurance company authorized to do business in California, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury or death to any person or damage to Leased Premises, for any claim demands, or causes of action of any person arising out of accidents occurring on the Leased Premises during the Term, including any Extension Period, or arising out of Tenant's use of the Leased Premises. City, its officers, employees, and volunteers shall be added as insureds with respect to liability; provided, that coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code §2782(b). Tenant shall maintain Worker’s Compensation insurance as required by law.

B. Tenant shall provide to City the full policy limits of Tenant’s insurance, with coverage at least as broad as, and limits no less than, as specified in this Lease Agreement.

C. Each policy of insurance shall be issued by a responsible insurer in the names of City and Tenant. Tenant shall deliver a certificate for each insurance policy to City with all relevant endorsements. Each policy of insurance shall be primary and noncontributory with any policies carried by City and, to the extent obtainable, any loss

shall be payable notwithstanding any act or negligence of City that might otherwise result in forfeiture of insurance. Each insurance policy shall provide that a thirty (30) day notice of cancellation and of any material modification of coverage shall be given to all named insureds. The insurance coverage required under this Section may be carried by Tenant under a blanket policy insuring other locations of Tenant's business, provided that the Leased Premises covered by this Agreement are specifically identified as included under that policy. Tenant agrees that upon the failure to insure as provided in this Agreement, or to pay the premiums for the insurance, City may contract for the insurance and pay the premiums, and all sums expended by City for the insurance shall be considered additional rent under this Agreement and shall be immediately repayable by Tenant.

D. Tenant agrees that in the event of loss due to any of the perils for which it has agreed to provide bodily injury and property damage coverage, Tenant shall look solely to its insurance for recovery. Tenant hereby grants to City, on behalf of any insurer providing bodily injury or property damage to Tenant or City with respect to the services of the Tenant herein, a waiver of any right to subrogation which any such insurer of said Tenant may acquire against the City by virtue of the payment of such loss under such insurance.

E. City shall maintain fire and extended coverage, and at City's option, earthquake insurance, throughout the Term, including any Extension Periods, in an amount equal to at least ninety percent (90%) of the replacement value of the building that includes the Leased Premises, together with other insurance as may be required by City's lender or by any governmental agency. Tenant waives any right of recovery from City, City's officers and employees, and City waives any right of recovery from Tenant, Tenant's officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement.

#### **Section 14. Indemnification of City.**

Tenant, as a material part of the consideration to be rendered to City under this Lease, agrees to indemnify and defend City from any claims, demands, and causes of action of any nature and any expense incident to the defense, for physical injury to or death of persons or loss of or damage to Leased Premises of any kind including other goods, wares, merchandise, and items of display, occurring on or about the Leased Premises that grow out of or are connected with Tenant's use and occupation of the Leased Premises or the condition of the Leased Premises, or from the failure of Tenant to keep the Leased Premises in good condition and repair, as provided in this Lease. Unless caused by the active negligence, sole negligence or willful misconduct of City or unless

the condition is one for which City has expressly assumed the responsibility for remedying and the condition is not caused by Tenant.

**Section 15. Free From Liens.**

Tenant shall keep the Leased Premises and the Property free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

**Section 16. Abandonment.**

Tenant shall not vacate or abandon the Leased Premises at any time during the Term; and if Tenant shall abandon, vacate, or surrender the Leased Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Leased Premises shall, at the option of City, be deemed abandoned.

**Section 17. Signs.**

Signs placed or permitted to be placed upon the exterior of or in the windows of the Leased Premises shall be in compliance with the City of Rocklin Sign Ordinance (Rocklin Municipal Code Chapter 17.75) and all other applicable laws, rules, regulations, policies, and guidelines adopted by, or under the authority granted by, the Rocklin City Council. Normal sign permit fees charged by the City shall be paid by the Tenant.

**Section 18. Utilities.**

Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone service, and all other services or utilities, except sewage (which is to be paid by City) used in, upon, or about the Leased Premises by Tenant or any of Tenant's subtenants, licensees, or concessionaires during the Term. If any utility is not separately metered, Tenant shall reimburse City for Tenant's pro rata share of the cost of the utility determined according to the gross floor area of the Leased Premises as it relates to the total gross leasable area of the portion of the Property that is separately metered and that contains the Leased Premises.

**Section 19. Entry.**

Subject to reasonable prior notice to Tenant, Tenant shall permit City's agents to enter into and upon the Leased Premises at all reasonable times.

**Section 20. Assignment and Subletting.**

Tenant shall not assign this Lease, or any interest in this Lease, and shall not sublet the Leased Premises or any part of them, or any right or privilege appurtenant to them, or

permit any other person other than the agents and servants of Tenant to occupy or use the Leased Premises without the prior written consent of City.

**Section 21. Default.**

A. Each of the following shall constitute an event of default (Event of Default) under this Lease:

(i) if Tenant fails to make any payment required by the provisions of this Lease, when due;

(ii) if Tenant fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Lease;

(iii) if Tenant abandons the Leased Premises before the end of the Term; or

(iv) if all or substantially all of Tenant's assets shall be placed in the hands of a receiver or trustee and if this receivership or trusteeship continues for a period of thirty (30) days, or should Tenant make an assignment for the benefit of creditors, or be adjudicated bankrupt, or should Tenant institute any proceedings under any state or federal bankruptcy act in which Tenant seeks to be adjudicated bankrupt, or seeks to be discharged of debts, or should any voluntary proceeding be filed against this Tenant under the bankruptcy laws and Tenant consents to it and acquiesces by pleading or default.

B. Upon the occurrence of an Event of Default, City shall have the right at any time afterwards to elect to terminate the Lease and Tenant's right to possession under the Lease.

**Section 22. Holding Over.**

Any holding over after the expiration of the Term, including any Extension Period, with the consent of City, shall be construed to be a tenancy from month-to-month, cancelable upon thirty (30) days' written notice, and a rental upon all terms and conditions as existed during the last year of the Term, including any Extension Period. Any holding over after the expiration of the Term, including any Extension Period, without the consent of City, shall be construed to be a tenancy-at-will at a Monthly Rent of One Thousand and 00/100 Dollars (\$1,000.00) per month but otherwise on the terms and conditions in this Lease.

**Section 23. Notices.**



Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either party to the other, this notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing and forwarded by certified mail, addressed as follows:

If to City:                      City of Rocklin  
    Attention: City Manager  
    3980 Rocklin Road  
    Rocklin, California 95677

If to Tenant:                    President  
    Rocklin Historical Society  
    P.O. Box 752  
    Rocklin, California 95677

Either party may change this address by written notice by certified mail to the other.

**Section 24. Successors in Interest.**

The covenants in this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties to this Lease; and all of the parties to this Lease shall be jointly and severally liable.

**Section 25. Force Majeure.**

If either party shall be delayed or prevented from the performance of any act required under this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated, performance of this act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of the delay; provided, however, nothing in this Section shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant except as may be provided elsewhere in this Lease.

**Section 26. Partial Invalidity.**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this Lease shall remain in full force and shall in no way be affected, impaired, or invalidated.

**Section 27. Captions.**

The various headings and numbers in this Lease and the grouping of the provisions of this Lease into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part of this Lease.

**Section 28. Time.**

Time is of the essence in this Lease.

**Section 29. No Oral Agreements.**

This Lease includes in full each agreement of every kind between the parties concerning the Leased Premises, and all preliminary negotiations and agreements of any kind or nature are merged in this Lease, and there are no oral agreements or implied covenants made in connection with this Lease.

**Section 30. Authority.**

If Tenant is a corporation, trust, or general or limited partnership, all individuals executing this Agreement on behalf of that entity represent that they are authorized to execute and deliver this Agreement on behalf of that entity. If Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Agreement, deliver to City evidence of that authority and evidence of due formation, all satisfactory to City. If Tenant is a partnership, Tenant shall furnish City with a copy of Tenant's partnership agreement and with a certificate from Tenant's attorney, stating that the partnership agreement.

**Section 31. Governing Law**

This lease shall be governed by and construed in accordance with the laws of the State of California.

The parties have executed this Lease on the day and year first above written.

SIGNATURES ON FOLLOWING PAGE

CITY OF ROCKLIN

By: \_\_\_\_\_  
Ricky A. Horst, City Manager

ROCKLIN HISTORICAL SOCIETY

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

APPROVED AS TO FORM:

\_\_\_\_\_  
DeeAnne Gillick  
Interim City Attorney

ATTEST:

\_\_\_\_\_  
Barbara Ivanusich  
City Clerk

State of California )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me  
\_\_\_\_\_, notary public,

(Notary Name and Title)

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.

My Commission Expires: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Notary Public in and for said county and state

State of California )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me  
\_\_\_\_\_, notary public,

(Notary Name and Title)

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.

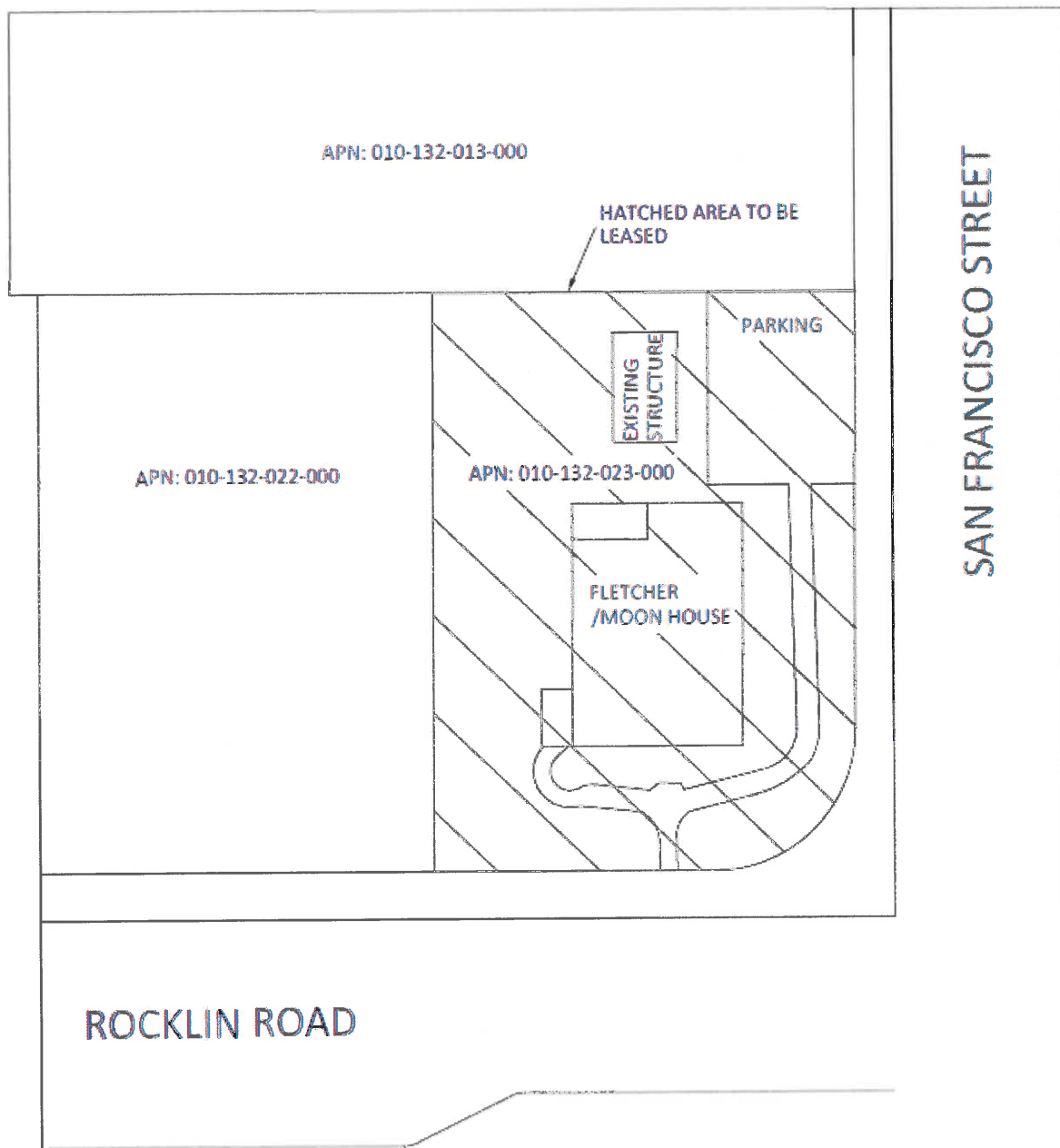
I certify under penalty of perjury under the laws of the State of California that the  
foregoing paragraph is true and correct.

My Commission Expires: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Notary Public in and for said county and state

EXHIBIT A

Map/Diagram of Leased Premises





## RESOLUTION NO. 2017-

RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF ROCKLIN APPROVING AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE A LEASE AGREEMENT BY AND BETWEEN  
THE ROCKLIN HISTORICAL SOCIETY AND  
THE CITY OF ROCKLIN  
(Old St. Mary's Chapel at Peter Hill Heritage Park, Rocklin, CA)

The City Council of the City of Rocklin does resolve as follows:

WHEREAS, the Rocklin Historical Society has been leasing the Old St. Mary's Chapel Building located at Peter Hill Heritage Park, Front Street and Rocklin Road, since January 2009 pursuant to the Lease Agreement (2009 Lease), by and between the Rocklin Historical Society and the Redevelopment Agency of the City of Rocklin (Agency), as approved by the Redevelopment Agency of the City of Rocklin pursuant to Resolution No. 2008-361 RDA;

WHEREAS, the Rocklin Historical Society has been operating the St. Mary's Chapel, the first church structure built in the City of Rocklin, as a place of historic interest and an events center pursuant to the 2009 Lease, and desires to continue to do so;

WHEREAS, the State of California passed legislation dissolving Redevelopment Agencies, and set forth statutes establishing a Successor Agency to the former Redevelopment Agency and an Oversight Board to oversee the dissolution of the former Redevelopment Agency;

WHEREAS, the City Council of the City of Rocklin became the Successor Agency to the Redevelopment Agency of the City of Rocklin by operation of law on February 1, 2012 (California Health & Safety Code subsection 34171 (j)), and the establishment of the Successor Agency to the Redevelopment Agency of the City of Rocklin was approved and ratified by unanimous vote of the City Council on January 10, 2012.

WHEREAS, Effective September 22, 2015 Health & Safety Code Section 34191.5(f) became effective and which provides:

"34191.5(f) Actions to implement the disposition of property pursuant to an approved long-range property management plan shall not require review by the department; and

WHEREAS, the City of Rocklin has accepted the transfer of the museum property from the Redevelopment Agency as permitted in the long range property management plan and desires to enter into a lease of the property herein to the Historical Society under the terms described in the lease approved by this Resolution.

NOW THEREFORE, the City Council of the City of Rocklin resolves as follows:

Section 1. The City Council of the City of Rocklin hereby approves and authorizes the City Manager to execute a Lease Agreement by and between the Rocklin Historical Society and the City of Rocklin (Old St. Mary’s Chapel at Peter Hill Heritage Park, Rocklin, CA) in the form attached hereto as Exhibit A and by this reference incorporated herein.

Section 2. The City Clerk is authorized and directed to record said Lease Agreement in the Office of the Placer County Recorder when fully executed and notarized.

PASSED AND ADOPTED this 24<sup>th</sup> day of January, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

\_\_\_\_\_  
Scott Yuill, Mayor

ATTEST:

\_\_\_\_\_  
Barbara Ivanusich, City Clerk

## EXHIBIT A

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**LEASE AGREEMENT BY AND BETWEEN  
THE ROCKLIN HISTORICAL SOCIETY AND  
THE CITY OF ROCKLIN  
(Old St. Mary's Chapel at Peter Hill Heritage Park, Rocklin, CA)**

This Lease (Lease) is entered into as of January 24, 2017, by and between the Rocklin Historical Society, a non-profit corporation (Tenant) and the City of Rocklin (City). This Lease is written in support of the cooperative effort on the part of the City of Rocklin and the Rocklin Historical Society to preserve historic structures of importance to the Rocklin Community and provide access to those structures for all citizens. It is emphasized that the formal language of the Lease agreement contained herein should in no way detract from the fine spirit of cooperation that exists between the City of Rocklin and the Rocklin Historical Society to maintain, operate, and provide access to the Old St. Mary's Chapel as a place of historic interest and an events center.

**RECITALS**

A. City holds a ground lease from the Union Pacific Railroad for the real property located adjacent to the Union Pacific Railroad tracks at the corner of Rocklin Road and Front Street, Rocklin, California, and the improvements located on the real property (collectively, "Property").

B. A lease agreement dated January 31, 2009 (2009 Lease), by and between the Rocklin Historical Society and the Redevelopment Agency of the City of Rocklin (Agency), was approved on January 29, 2009 by the Redevelopment Agency of the City of Rocklin pursuant to Resolution No. 2009-361 RDA for the existing St. Mary's Chapel Building, and the immediately adjacent landscaped area and grounds, for the purposes of displaying a building of significant local history and operating the building as an event center for the public benefit of the citizens of Rocklin.

C. Tenant has been leasing and operating the Property pursuant to the 2009 Lease and desires to continue to do so.

D. The State of California passed legislation dissolving Redevelopment Agencies, and set forth statutes establishing a Successor Agency to the former Redevelopment Agency and an Oversight Board to oversee the dissolution of the former Redevelopment Agency.



E. Effective September 22, 2015 Health & Safety Code Section 34191.5(f) became effective and which provides:

“34191.5(f) Actions to implement the disposition of property pursuant to an approved long-range property management plan shall not require review by the department; and

F. The Long Range Property Management Plan provides for the transfer of the St. Mary’s Chapel Building to the City of Rocklin as a government use.

G. Due to the above described transfers of the St. Mary’s Chapel Building, the City is the current successor of interest to the Agency for purposes of the 2009 Lease.

H. Tenant desires to continue to lease from City and City desires to lease to Tenant the existing structure and the immediately adjacent landscaped area and grounds as shown on the plan of the Property attached as Exhibits A (Leased Premises) for the purpose of displaying a building of significant local history and operating the building as an event center for the public benefit of the citizens of Rocklin.

**AGREEMENT**

Therefore, for good and valuable consideration the receipt and adequacy of which are acknowledged, the parties agree as follows:

**Section 1. Termination of 2009 Lease.**

City and Tenant hereby agree that the 2009 Lease by and between the Redevelopment Agency of the City of Rocklin and Tenant regarding the Leased Premises approved by Agency Resolution No. 2009-361 RDA is hereby terminated effective immediately.

**Section 2. Lease of Premises.**

City leases to Tenant and Tenant leases from City the Leased Premises on the terms and conditions set forth in this Lease.

**Section 3. Use.**

A. Tenant agrees to use the Leased Premises for the purpose of displaying a building of significant local history, providing limited public access to the interior of the building, operating the building as an event center for the public benefit of the citizens of Rocklin and all other operations incident to the conduct of its business and for no other use. Tenant agrees not to use the Leased Premises for any unlawful purpose.

B. Tenant shall not commit any acts on the Leased Premises nor use the Leased Premises in any manner that will increase the existing rates for or cause cancellation of any fire, liability, or other insurance insuring the Leased Premises or the improvements on the Leased Premises. Tenant shall comply with all requirements of City's insurance carrier that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Leased Premises and the improvements on the Leased Premises.

C. Tenant shall not commit any waste or any public or private nuisance upon the Leased Premises.

D. Tenant shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to the use of the Leased Premises.

#### **Section 4. Term.**

The term of this Lease shall be for a period of ten (10) years, commencing on January 24, 2017, and unless terminated sooner in accordance with this Lease, ending on January 24, 2027 (Term).

#### **Section 5. Automatic Renewal; No Renewal if in Default.**

A. The Term of this Lease shall be automatically extended for one or more periods of five (5) years per extension (Extension Period), up to a total cumulative term of twenty five (25) years through no later than January 24, 2042, unless either party terminates the lease or otherwise notifies the other in writing of its intent not to renew, which notice shall be given at least one hundred twenty (120) days prior to the termination date of the then current Term or Extension Period. Should Tenant be in default of any term or condition of the Lease at the expiration of the Term or any Extension Period, Tenant's right to the automatic extension privilege shall be void, and this Lease shall then terminate upon the expiration of the then current Term or Extension Period. All terms and conditions of this Lease shall continue during the Extension Period(s).

B. Either party may terminate this lease upon providing the other party with written notice at least one hundred twenty (120) days prior to the termination date. Further, the City may terminate the lease for any reason based on acts committed in connection with the Tenant or the leased premises which the City deems detrimental to its best interest.

C. Tenant shall maintain its non-profit status in good standing and file all required governmental reports and filings. Should the non-profit status not be maintained in good standing, the City may, at its option terminate this lease or provide Lessee with a reasonable period to correct any deficiencies.

**Section 6. Rent.**

Tenant shall pay to City during the Term (including any Extension Period) of this Lease as yearly rental for the Leased Premises the sum of One and 00/100 Dollars (\$1.00) per year, which shall be paid upon commencement of this Lease and on the first anniversary of the commencement of the Lease, and on each subsequent anniversary of the commencement of the Lease during the Term, including any Extension Period.

**Section 7. Operations.**

A. Tenant shall continuously during the entire Lease Term, including any Extension Periods, keep the Leased Premises open for business and conduct the business as is customary for businesses of similar character, and in accordance with sound business practices.

B. Tenant and City agree that any rental income for the Leased Premises shall be used solely by Tenant for the public purpose of maintaining the Leased Premises and furthering historic preservation in the City of Rocklin and that full disclosure of operations, revenues, and expenditures is vital to the public trust. Tenant shall prepare an annual report and operations plan which shall include a full report of the prior year's operations and a general financial accounting, as well as an operational plan for the coming year with a financial projection of revenues and expenses. Tenant shall submit the annual report and operations plan for review by the City on the first anniversary of the commencement of the Lease, and on each subsequent anniversary of the commencement of the Lease during the Term, including any Extension Period. Failure to prepare and submit the operations plan shall be considered a material breach of this lease.

**Section 8. Taxes.**

Pursuant to California Revenue and Taxation Code section 107.6, Tenant is notified that the property interest acquired by Tenant in the Leased Premises under this Agreement may be subject to property taxation as a possessory interest in real property, and Tenant may be subject to the payments of property taxes levied on that interest.

**Section 9. Personal Property Taxes.**

During the Term, including any Extension Periods, Tenant shall pay all taxes assessed against and levied upon fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Leased Premises prior to delinquency, and when possible Tenant shall cause these fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of City. If any of Tenant's fixtures, furnishings, equipment, and other personal property is assessed and taxed with City's real property, Tenant shall pay to City Tenant's share of the taxes within ten (10)

days after delivery to Tenant by City of a statement in writing setting forth the amount of the taxes applicable to Tenant's property.

**Section 10. Tenant Volunteer and Employees**

Any employee or volunteer working at the leased premise shall be an employee or volunteer of Tenant and not the City of Rocklin. Tenant shall be solely responsible for the conduct of its volunteers and employees and expressly agrees that no employee or volunteer working or volunteering shall be entitled to any City benefits, including Worker's Compensation or other City insurance benefits.

**Section 11. Alterations.**

Tenant shall not make or suffer to be made, any alterations of the Leased Premises, or any part of the Leased Premises, without the prior written consent of the City Manager or his or her designee. Any additions to, or alterations of, the Leased Premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to the City. Any alterations shall be in conformance with the requirements of all municipal, state, and federal authorities, rules, regulations and applicable codes.

**Section 12. Maintenance and Repair.**

A. Tenant acknowledges that Tenant is leasing the Leased Premises on an "as is" basis. Tenant shall, subject to City's obligations under this Lease, at all times during the Term, and at Tenant's sole cost and expense, keep, maintain, and repair the building and other improvements upon the Leased Premises in good and sanitary order and condition. The standard of maintenance and repair shall be consistent with other public buildings maintained by the City of Rocklin and the City.

B. Tenant agrees on the last day of the Term, including any Extension Periods, or on sooner termination of this Lease to surrender the Leased Premises with appurtenances, in the same condition as when received, reasonable use and wear, and damage by fire, act of God, or by the elements excepted. Tenant shall regularly sweep and clean the sidewalks adjacent to the Leased Premises, as needed, and shall be responsible for keeping the Leased Premises free of debris.

**Section 13. Compliance with Law.**

Tenant shall, at Tenant's sole cost, comply with all of the requirements of all municipal, state, and federal authorities pertaining to the use of the Leased Premises. Tenant shall not commit, or suffer to be committed, waste upon the Leased Premises, or nuisance or other act or thing that may disturb the quiet enjoyment of the neighborhood.

**Section 14. Insurance.**

A. Tenant agrees to procure and maintain public liability insurance from a responsible insurance company authorized to do business in California, with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) for injury or death to any person or damage to Leased Premises, for any claim demands, or causes of action of any person arising out of accidents occurring on the Leased Premises during the Term, including any Extension Period, or arising out of Tenant's use of the Leased Premises. City, its officers, employees, and volunteers shall be added as insureds with respect to liability; provided, that coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code §2782(b). Tenant shall maintain Worker's Compensation insurance as required by law.

B. Tenant shall provide to City the full policy limits of Tenant's insurance, with coverage at least as broad as, and limits no less than, as specified in this Lease Agreement.

C. Each policy of insurance shall be issued by a responsible insurer in the names of City and Tenant. Tenant shall deliver a certificate for each insurance policy to City with all relevant endorsements. Each policy of insurance shall be primary and noncontributory with any policies carried by City and, to the extent obtainable, any loss shall be payable notwithstanding any act or negligence of City that might otherwise result in forfeiture of insurance. Each insurance policy shall provide that a thirty (30) day notice of cancellation and of any material modification of coverage shall be given to all named insureds. The insurance coverage required under this Section may be carried by Tenant under a blanket policy insuring other locations of Tenant's business, provided that the Leased Premises covered by this Agreement are specifically identified as included under that policy. Tenant agrees that upon the failure to insure as provided in this Agreement, or to pay the premiums for the insurance, City may contract for the insurance and pay the premiums, and all sums expended by City for the insurance shall be considered additional rent under this Agreement and shall be immediately repayable by Tenant.

D. Tenant agrees that in the event of loss due to any of the perils for which it has agreed to provide bodily injury and property damage coverage, Tenant shall look solely to its insurance for recovery. Tenant hereby grants to City, on behalf of any insurer providing bodily injury or property damage to Tenant or City with respect to the services of the Tenant herein, a waiver of any right to subrogation which any such insurer of said Tenant may acquire against the City by virtue of the payment of such loss under such insurance.

E. City shall maintain fire and extended coverage, and at City's option, earthquake insurance, throughout the Term, including any Extension Periods, in an amount equal to at least ninety percent (90%) of the replacement value of the building that includes the Leased Premises, together with other insurance as may be required by City's lender or by any governmental City. Tenant waives any right of recovery from City, City's officers and employees, and City waives any right of recovery from Tenant, Tenant's officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement.

**Section 15. Indemnification of City.**

Tenant, as a material part of the consideration to be rendered to City under this Lease, agrees to indemnify and defend City from any claims, demands, and causes of action of any nature and any expense incident to the defense, for physical injury to or death of persons or loss of or damage to Leased Premises of any kind including other goods, wares, merchandise, and items of display, occurring on or about the Leased Premises that grow out of or are connected with Tenant's use and occupation of the Leased Premises or the condition of the Leased Premises, or from the failure of Tenant to keep the Leased Premises in good condition and repair, as provided in this Lease. Unless caused by the active negligence, sole negligence or willful misconduct of City or unless the condition is one for which City has expressly assumed the responsibility for remedying and the condition is not caused by Tenant.

**Section 16. Free From Liens.**

Tenant shall keep the Leased Premises and the Property free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

**Section 17. Abandonment.**

Tenant shall not vacate or abandon the Leased Premises at any time during the Term; and if Tenant shall abandon, vacate, or surrender the Leased Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Leased Premises shall, at the option of City, be deemed abandoned.

**Section 18. Signs.**

Signs placed or permitted to be placed upon the exterior of or in the windows of the Leased Premises shall be in compliance with the City of Rocklin Sign Ordinance (Rocklin Municipal Code Chapter 17.75) and all other applicable laws, rules, regulations, policies, and guidelines adopted by, or under the authority granted by, the Rocklin City Council or the City. Normal sign permit fees charged by the City shall be paid by the City

**Section 19. Utilities.**

A. Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone service, and all other services or utilities, except sewage (which is to be paid by City) used in, upon, or about the Leased Premises by Tenant or any of Tenant's subtenants, licensees, or concessionaires during the Term. If any utility is not separately metered, Tenant shall reimburse City for Tenant's pro rata share of the cost of the utility determined according to the gross floor area of the Leased Premises as it relates to the total gross leasable area of the portion of the Property that is separately metered and that contains the Leased Premises.

B. Tenant shall be responsible at Tenant's sole cost and expense for the maintenance and upkeep of the ornamental landscaping associated with the patio and assembly area. City shall be responsible for the landscape maintenance of the park area, including the lawn area, not associated with the Tenant maintained patio and assembly area.

**Section 20. Entry.**

Subject to reasonable prior notice to Tenant, Tenant shall permit City and City's agents to enter into and upon the Leased Premises at all reasonable times.

**Section 21. Assignment and Subletting.**

Tenant shall not assign this Lease, or any interest in this Lease, and shall not sublet the Leased Premises or any part of them, or any right or privilege appurtenant to them, or permit any other person other than the agents and servants of Tenant to occupy or use the Leased Premises without the prior written consent of City.

**Section 22. Default.**

A. Each of the following shall constitute an event of default (Event of Default) under this Lease:

- (i) if Tenant fails to make any payment required by the provisions of this Lease, when due;
- (ii) if Tenant fails to prepare and submit the annual operations plan when due;
- (iii) if Tenant fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Lease;

- (iv) if Tenant abandons the Leased Premises before the end of the Term; or
- (v) if all or substantially all of Tenant's assets shall be placed in the hands of a receiver or trustee and if this receivership or trusteeship continues for a period of thirty (30) days, or should Tenant make an assignment for the benefit of creditors, or be adjudicated bankrupt, or should Tenant institute any proceedings under any state or federal bankruptcy act in which Tenant seeks to be adjudicated bankrupt, or seeks to be discharged of debts, or should any voluntary proceeding be filed against this Tenant under the bankruptcy laws and Tenant consents to it and acquiesces by pleading or default.

B. Upon the occurrence of an Event of Default, City shall have the right at any time after providing notice of default to Tenant and a 30 day period to elect to terminate the Lease and Tenant's right to possession under the Lease.

**Section 23. Holding Over.**

Any holding over after the expiration of the Term, including any Extension Period, with the consent of City, shall be construed to be a tenancy from month-to-month, cancelable upon thirty (30) days' written notice, and a rental upon all terms and conditions as existed during the last year of the Term, including any Extension Period. Any holding over after the expiration of the Term, including any Extension Period, without the consent of City, shall be construed to be a tenancy-at-will at a Monthly Rent of Ten Thousand and 00/100 Dollars (\$10,000.00) per month but otherwise on the terms and conditions in this Lease.

**Section 24. Notices.**

Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either party to the other, this notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing and forwarded by certified mail, addressed as follows:



If to City:                      City of Rocklin  
    Attention: City Manager  
    3970 Rocklin Road  
    Rocklin, California 95677

If to Tenant:                    President  
    Rocklin Historical Society  
    P.O. Box 1  
    Rocklin, California 95677

Either party may change this address by written notice by certified mail to the other.

**Section 25. Successors in Interest.**

The covenants in this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties to this Lease; and all of the parties to this Lease shall be jointly and severally liable.

**Section 26. Force Majeure.**

If either party shall be delayed or prevented from the performance of any act required under this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated, performance of this act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of the delay; provided, however, nothing in this Section shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant except as may be provided elsewhere in this Lease.

**Section 27. Partial Invalidity.**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this Lease shall remain in full force and shall in no way be affected, impaired, or invalidated.

**Section 28. Captions.**

The various headings and numbers in this Lease and the grouping of the provisions of this Lease into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part of this Lease.

**Section 29. Time.**

Time is of the essence in this Lease.

**Section 30. No Oral Agreements.**

This Lease includes in full each agreement of every kind between the parties concerning the specific terms of the City's lease of the Premises to the Tenant, and all preliminary negotiations and agreements pertaining to the terms upon which the City will lease the Premises to the Tenant are merged in this Lease, and there are no oral agreements or implied covenants made in connection with this Lease.

**Section 31. Authority.**

If Tenant is a corporation, trust, or general or limited partnership, all individuals executing this Agreement on behalf of that entity represent that they are authorized to execute and deliver this Agreement on behalf of that entity. If Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Agreement, deliver to City evidence of that authority and evidence of due formation, all satisfactory to City. If Tenant is a partnership, Tenant shall furnish City with a copy of Tenant's partnership agreement and with a certificate from Tenant's attorney, stating that the partnership agreement.

**Section 32. Governing Law**

This lease shall be governed by and construed in accordance with the laws of the State of California.

The parties have executed this Lease on the day and year first above written.

SIGNATURES ON FOLLOWING PAGE

CITY OF ROCKLIN

By: \_\_\_\_\_  
Ricky A. Horst, City Manager

ROCKLIN HISTORICAL SOCIETY

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

APPROVED AS TO FORM:

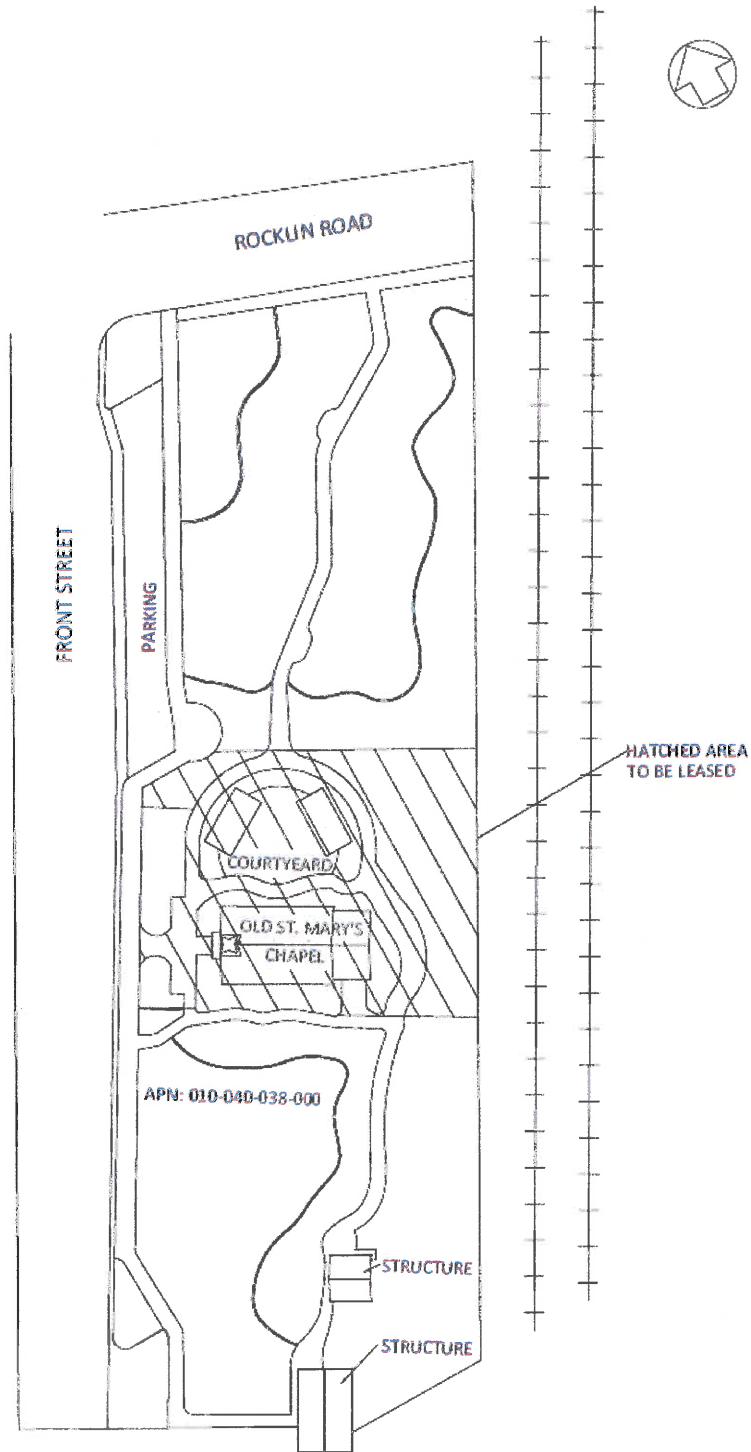
\_\_\_\_\_  
DeeAnne Gillick  
Interim City Attorney

ATTEST:

\_\_\_\_\_  
Barbara Ivanusich  
City Clerk

Exhibit A

Map/Diagram of Leased Premises





## City Council Report

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**Subject:** Rocklin Adventures at Quarry Park Master Agreement

**Submitted by:** Ricky A. Horst

**Date:** January 24, 2017

**Department:** Office of the City Manager

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**Staff Recommendation:** Approve Resolution 2017-XXX, A resolution of the City Council of the City of Rocklin authorizing the City Manager to execute the Master Agreement between the City of Rocklin and Legacy Family Adventures, Rocklin, LLC (LFA).

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### BACKGROUND:

One of the fundamentals of contemporary economic development is that you have to build community where people want to live – not just exist, but live their life in a convenient and experienced filled way. Any economic practitioner will tell you that there is no such thing as a silver bullet when it comes to building a great community. You will need to pursue many different strategies all at once – a jobs strategy, public safety strategy, land use strategy, transportation strategy, education strategy, housing strategy, etc. to be successful. In 2016 we announced two additional strategies, 1) Advancing the Innovations Concept in Rocklin and 2) the Creation of the Quarry District, Quarry Park and Event Tourism.

States and Cities across the US recognize the importance of the visitor economy. With the City of Rocklin facing development “build out” in the near future, it is necessary that we find other economic engines to fuel our economy and provide the fiscal resources to sustain our community lifestyle. It makes intuitive sense that promoting a destination to visitors would provide benefits to broaden economic development.

The Quarry District is a destination in the heart of Old Town Rocklin with a focus on art, entertainment, park and open space and community gathering places. Strategic public investment will and is capturing the interest of private investment attracting a mix of housing, retail, restaurant, professional and service oriented businesses. The Quarry District capitalizes on assets such as the granite quarries and the City’s rich history leveraging them to create a unique experience for residents, businesses and visitors.

Place-making combines elements of the built environment in a compelling way that attracts people – it is the essence of real estate development. Creative place-making takes that concept further, with the place-making led by arts and cultural considerations that help shape not only the physical character of

place, but also its social character. Creative place-making, done well, can deliver high value to its stakeholders, including the community, developers and public/private partners.

Through creative place-making, communities have the opportunity to become healthier places to live and work. Research has shown a strong connection between art and cultural assets in a community and social outcomes, including improvements in health, social connections, safety, housing burden, and economic well-being. Local governments also receive benefits such as increased tax revenues, job growth and reduced public safety risk.

Strategic Plan Objective 3.8 *“Expand the Quarry District concept and consider a focus on art, music and food that compliments and leverages existing assets including public buildings and spaces. The Quarry District should be positioned as a unique, regional asset to attract private investment and tourism and expand community events.”*

In a memorandum to the City Council dated August 2011, the Quarry Park was first introduced. The memo in part read, *“Herein provided is a concept designed to create a conversation and potential strategy toward the preservation and building up of the downtown; to re-energize, re-new its purpose and functional value...”*

On October 25, 2011, during the City Council retreat, now known as the Strategic Planning Conference, the Quarry Park concept was given strategic value and found its way into the strategic plan. As introduced, *“Quarry Park is designed to capitalize on our historical assets, natural resources and existing infrastructure in the provision of a destination center. The project needs to include uses that bring in people who will shop, dine and recreate downtown and add significant foot traffic to surrounding (Quarry District) businesses.”*<sup>1</sup>

This initial introduction was intended to start a conversation and the conversation continued and evolved overtime. In June 2013, the conversation continued with *“Quarry Park, a Placemaking Venue Project.”* Some of the vision, put into words included, *“Quarry Park contains the outlines of the once bustling early California granite industry. Close your eyes and imagine a cluster of retail specialty shops nestled adjacent to the Quinn and Big Gun Quarry. Imagine vintage architecture, antique fixtures, and walking paths adjacent to Quinn Lake creating a relaxing and enjoyable atmosphere for shopping, dining, recreating and discovering some of Rocklin’s most colorful history.”*<sup>2</sup>

In late August of 2013, the Quarry District and Quarry Park began to materialize as we identified Quarry Park as a catalyst project. Strategic Plan Objective 1.13 states, *“Enhance city-wide special events through incorporation of arts and cultural experiences for all residents”* [and visitors alike]. With Phase I, now complete, the City introduced Quarry Park and the Platinum Living Amphitheater to the community in April 2016 and has now completed season one.

In August 2016, in a presentation to the City Council, The Rocklin Adventures concept was formally introduced to:

<sup>1</sup> City Council Retreat – Strategic Framework, Quarry Village Concept, Memorandum dated October 25, 2011

<sup>2</sup> Quarry Park, a Placemaking Venue Project, Memorandum dated June 17, 2013

- Energize and enhance the Rocklin community's unique appeal assets
- Increase development and commerce in the Quarry District
- Be a catalyst for sustainable tax revenue on a year round basis
- Provide much needed family entertainment to the region
- Take advantage of the Big Gun Quarry and other cultural assets
- Be a source for information and history in the development of Rocklin
- Provide a venue for all ages to enjoy physical activity in a safe, fun environment

In 2013 we recognized that for the past couple of decades, we have relied primarily upon the development of vacant land to absorb growth at the expense of the town core. At that time we concluded, in part because of necessity, but also because we should, we ought to re-think our goals and objectives and move the downtown development forward; not as we once tried but as we now should do.

Since the Adventure Park concept was publicly introduced in August 2016, the City had a third-party consultant evaluate the elements, terms and conditions under which a park can be feasible. Staff recognizes that we do not have the pre-requisite experience or expertise in the design or management of such a facility and therefore have been working with a local firm (Legacy Family Entertainment herein referenced as Legacy Family Adventures – Rocklin LLC for this proposed project) which has the experience and expertise to make the ultimate project successful.

The Adventure Park concept and plan does not involve the former quarry structures, namely the Big Gun shed and will have no effect on those structures or any of the equipment which remain within those structures. The Adventure Park utilizes the Big Gun Quarry Pit and the immediately adjacent property without disturbing, in any manner, the historically designated remains of the quarry structures. Quarry Park was previously evaluated from an environmental standpoint in a Mitigated Negative Declaration adopted by the City Council. Further environmental analysis will be conducted following the thirty (30) percent design and will be evaluated and presented for adoption to the City Council in the near future.

Therefore, in order to move this proposed Adventure Park concept forward and to further determine the scope and full design of the Adventure Park, the City and Legacy Family Adventures – Rocklin LLC seek to enter into one Master Agreement to facilitate the ultimate project. The Parties agree as part of this Master Agreement that LFA and the City will perform certain duties and have obligations, duties and responsibilities for the three phases of the proposed project identified as the 1) Thirty Percent Design, 2) the Design Build Assistance, and 3) the Operation phase of the project after construction.

Moving forward with the Thirty Percent Design will enable the City to more thoroughly evaluate the Adventure Park design, enable the City to solicit proposals from a design builder, conduct the necessary environmental review and then to return to the City Council with a further recommendation relative to building the proposed project, approving a final design and environmental and authorizing further expenditure of funds to build the project. At any point during the process prior to construction, the City may terminate the Master Agreement at its sole discretion.

**FINDINGS, CONCLUSIONS & RECOMMENDATIONS:**

- 30 Percent Design Phase: LFA will produce a Design/Development Package to the thirty percent design level which will include schematic drawings and information suitable for a request for proposals (qualifications) for a design build construction of an adventure park.
- Design Build Assistance: Should the City Council authorize City staff to proceed with a Design-Build firm or other construction contract, the City desires to have the design assistance of LFA to provide advice and assistance in the final design and construction phase (Design-Build Phase) of the project. [Based on City Council approval of a Design Build Criteria Package, the City will issue a RFQ (Request for Qualifications) for a design-build team. A primary benefit of a design-build firm. A primary benefit of a design-build approach is the savings of time and money. If approved LFA will prepare a set of plans which will be included as part of the RFQ package soliciting design-build firm interest. The City will then select design-build firms based on qualifications. Each qualified design-build firm will submit their proposal for the project to include guaranteed maximum price and completion date. The selected design-build firm, as approved by the City Council, will work to submit construction drawings for permitting purposes and so construction can commence. Staff Presentation and recommendation of design-build award and funding package will be provided to the City Council for their approval as to whether or not the project continues to move forward.]
- Operating Phase: Upon completion of the Project and authorization by the City to operate under a temporary or final certificate of occupancy, LFA will be the operator of the Adventure Park and related activities on the Project Site in the manner set forth in the Operating Terms including scope, duties, rights, obligations, compensation, responsibilities of LFA and the City. However, the current operating term highlights have been attached for ease of City Council consideration.

**Conclusions:**

- The Action before the City Council at this time is the authorization for the City Manager to execute the Rocklin Adventures of Quarry Park Master Agreement. The Master Agreement specifically authorized the following three phases:
  1. 30 Percent Design Phase: The scope and services described in Exhibit "C" of the Rocklin Adventures at Quarry Park Master Agreement shall be a fixed fee of Sixty-Five Thousand Dollars. Reimbursable expenses shall not exceed Thirty-Five Hundred Dollars. Contract to be executive by the Office of the City Manager with funding from the City Economic Development Fund. (Note: \$45,000 will be paid during the 30 Percent Design Phase with the balance of \$20,000 to be paid from construction funds if and when the City Council authorizes construction to move forward.)
  2. Design Build Assistance: This Design Build Assistance Phase describes the consulting services to be performed during the Design Build/Construction of the Adventure Park. The City shall not be obligated to pay for any services unless expressly requested by the City in writing. The cost of services shall not exceed Five Thousand dollars per month. Determinations shall be made by the City Manager with funding from the City Economic



Development Fund. Scope and services are described in Exhibit “D” of the Rocklin Adventures at Quarry Park Master Agreement.

3. Operating Phase: Should it be determined that the City will move forward with the construction and operations of the Rocklin Adventures at Quarry Park, LFA will serve as the Park Operator. The Operating Phase is one of three phases referenced in the Master Agreement and defines the terms, responsibilities, liabilities and obligations of the parties for this Operating Phase of the project. The details that will govern the operating phase can be found in Exhibit “E” of the Master Agreement.

**Recommendations:**

- Authorize the City Manager to execute the Master Agreement with LFA to move the Rocklin Adventures at Quarry Park forward.

**Alternatives:**

- Elect to stop the project and not move forward

**Fiscal Impact:**

- 30 Percent Design Phase: The scope and services described in Exhibit “A” of the Rocklin Quarry Adventure Park Master Agreement shall be a fixed fee of Sixty-Five Thousand Dollars. Reimbursable expenses shall not exceed Thirty-Five Hundred Dollars. Contract to be executed by the Office of the City Manager with funding from the City Economic Development Fund. (Note: \$45,000 will be paid during the 30 Percent Design Phase with the balance of \$20,000 to be paid from construction funds if and when the City Council authorizes construction to move forward.)
- Design Build Assistance: This Design Build Assistance Phase describes the consulting services to be performed during the Design Build/Construction of the Adventure Park. The City shall not be obligated to pay for any services unless expressly requested by the City in writing. The cost of services shall not exceed Five Thousand dollars per month. Determinations shall be made by the City Manager with funding from the City Economic Development Fund. Scope and services are described in Exhibit “D” of the Rocklin Quarry Adventure Park Master Agreement.
- Operating Phase: Should it be determined that the City will move forward with the construction and operations of the Rocklin Adventures at Quarry Park, LFA will serve as the Park Operator. The Operating Phase is one of three phases referenced in the Master Agreement and defines the terms, responsibilities, liabilities and obligations of the parties for this Operating Phase of the potential project. The detail of which can be found in Exhibit “E” of the Master Agreement. Section 9.1 of the Operating Phase provides the details pertaining to how revenues generated by the Adventure Park will be allocated and spent between the City and LFA and how the City’s initial investment to pay for construction of the Park will be re-paid. The attached highlight’s provides details on the key features of this portion of the Master Agreement.



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Ricky A. Horst, City Manager  
Reviewed for Content



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DeeAnne Gillick, Interim City Attorney  
Reviewed for Legal Sufficiency

Attached:

Master Agreement along with Exhibits

Support Materials:

- Legacy Family Entertainment Parks and People Profile
- Rocklin Adventures Schematic Site Plan – (subject to further review, environmental analysis and review and approval by the City Council)
- Daily Attendance/Revenue/Hours – Year I Projections
- August 8, 2016 Rocklin Quarry Adventures Council Presentation Slides
- Overview of Hawaiian Falls, an Investment Memorandum, for Operating Year 2015 and 2016

## Rocklin Adventures at Quarry Park Master Agreement Highlights

- Master Agreement Contains three Phases – Initial Design, Assistance with Design Build and Operating Phase
- The City will own the land and all the improvements in the project. LFA will assist in the initial design and ultimately operate the Adventure Park.
- Initial Term Operating is twenty (15) years with two (2) additional ten (10) years options
- Capital Improvements:
  - I. After the design-build contractor’s warranty period, LFA shall make repairs and new Capital Improvements to the facility.
  - II. LFA shall annually prepare and submit to City a current Capital Improvement Plan to be submitted with the annual report that identifies contemplated capital improvements to the premises projected to occur during the next 24 months. The Capital Improvement Plan shall be reviewed and approved by the City Manager or designee prior to the final approval by FLA.
  - III. LFA shall secure or provide capital improvements through their useful life
  - IV. LFA shall prepare a statement of annual Standard Operating Expenses which shall be reviewed and approved by the City Manager or designee prior to the final approval by FLA. Inflationary adjustments permitted after year three (3)
- City shall not have any liability for any LFA operational losses.
- City’s exposure to losses associated with debt service is mitigated by access to the Capital Reserve Fund, ability to terminate for not making debt service payments, review and approval of the Capital Reserve annual plan and review and approval of the Standard Operating Expenses.
- Net Operating Revenue Sharing: The Parties agree to the following order of priority:
  - I. Net Operating Revenues are Gross Revenues less cost of good purchased less LFA’s Standard Operating Expenses.
    - II. From Net Operating Revenues, LFA will pay the City on an quarterly basis towards the City’s annual debt service of the original investment in the Adventure Park construction. The Debt Service is capped at 3.25 Million dollars. The Debt Service shall include interest at four (4) percent. This sum has been amortized over ten (10) years and shall be paid annually until paid in full. Commencing in year 11 , LFA will pay the City three hundred and fifty thousand dollars (\$350,000) as payment in full for the City’s share of the construction cost of a parking lot.

III. Capital Reserve – Sixty thousand dollars (\$60,000) annually (Capped at \$500,000.00) for continual Capital Improvements of the Adventure Park. This fund can be used in the event there is a shortfall of revenues necessary to meet debt service payments.

IV. Repair and Maintenance Fund – Fifty thousand dollars (\$50,000) annually for repairs and maintenance.

V. Advertising and Marketing Expenses – Seventy Five thousand dollars (\$75,000) annually for advertising/marketing.

VI. Profit Sharing – First \$150,000 to LFA, Second \$150,000 to City of Rocklin.

VII. Additional Profit Sharing – Shall be allocated with 70% to LFA and 30% to City after initial \$150,000 (50/50 after original debt service has been paid off).

- LFA shall provide financial reports on a quarterly basis and a annual Financial Report within ninety (90) days of the end of each Fiscal Year. City may request an audited annual Financial Report at any time and costs shared equally.
- LFA shall outreach to Rocklin residents and Rocklin based businesses for the opportunity to be employed in or provide services to Adventure Park.
- Parking will be further identified in the design and environmental phase with some joint parking and limited exclusive parking for the Adventure Park that will not interfere with City activities
- A Conditional Use Permit will be obtained and will outline the permitted activities and other operational elements (noise, hours of operation etc.)
- LFA is responsible for maintenance in the Adventure Park and must disclosure all financial records upon request by the City.
- The City is responsible for repairs to parking lots and other infrastructure in the same manner it is presently.
- LFA and any vendors/concessionaires shall fully indemnify the City of Rocklin related to any accidents and injuries and shall be fully responsible for all costs of insurance at specified acceptable risk levels
- Remedies and Early Termination as specified, including:
  - Failure to pay City the debt service payments in any two consecutive years
  - Commencing at Year 12 the City can provide three (3) years notice to terminate for any reason



*Legacy Family Entertainment*

The mission of Legacy Family Entertainment is to “serve families by bringing them closer together” through quality, wholesome entertainment.

Legacy carries out this mission by honoring its commitments, treating others with dignity and respect and an unwavering devotion to integrity.

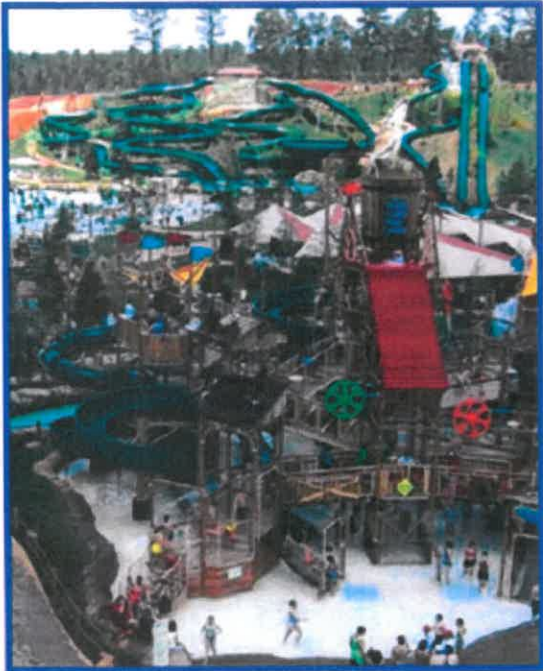
Legacy Family Entertainment principals have built and operated more family entertainment parks than any other group in the world.

Over 40 water parks, adventure parks, theme parks, family entertainment centers and event venues built by the principals of Legacy are in operation in North America, Australia, the South Pacific, Asia and Europe.

Most recently, an LFE affiliate developed and operated six waterparks, an adventure park and a banquet center ([www.hfalls.com](http://www.hfalls.com)) in public/private partnerships with six cities in Central and North Texas.



# PARKS AND PEOPLE



**Project:** Worlds of Fun  
**Location:** Kansas City, MO  
**Description:** New development of \$40m, 160-acre theme park  
**Year:** 1972  
**Owner:** Hunt Midwest Enterprises (Lamar Hunt)  
**Scope:** David Busch VP/GM responsible for development/P&L



**Project:** Oceans of Fun, 5th waterpark in America  
**Location:** Kansas City, MO  
**Description:** New development of \$10m, 40-acre theme park  
**Year:** 1982  
**Owner:** Hunt Midwest Enterprises (Lamar Hunt)  
**Scope:** David Busch VP/GM responsible for development/P&L



**Project:** Waterworld USA Sacramento  
**Location:** Sacramento, CA  
**Description:** Redevelopment of \$6m, 11-acre water park  
**Year:** 1986  
**Owner:** Family Recreation Enterprises (partnership founded by David Busch)  
**Scope:** Owner/Operator, Public/Private



**Project:** Waterworld USA Phoenix  
**Location:** Glendale, AZ  
**Description:** Redevelopment of \$8m, 23-acre water park  
**Year:** 1988  
**Owner:** Family Recreation Enterprises  
**Scope:** Owner/Operator, Public/Private



**Project:** Big Surf  
**Location:** Tempe, AZ  
**Description:** Redevelopment of \$10m, 15-acre water park  
**Year:** 1989  
**Owner:** Family Recreation Enterprises  
**Scope:** Owner/Operator



**Project:** Paradise Island  
**Location:** Sacramento, CA  
**Description:** \$6m, 3-acre amusement park  
**Year:** 1993  
**Owner:** Family Recreation Enterprises  
**Scope:** Owner/Operator, Public/Private



**Project:** Waterworld USA San Francisco  
**Location:** Concord, CA  
**Description:** \$10m, 24-acre regional waterpark  
**Year:** 1995  
**Owner:** Family Recreation Enterprises  
**Scope:** Owner/Operator, Public/Private



**Project:** Wild Waters  
**Location:** Beijing, China  
**Description:** \$15m, 30-acre waterpark  
**Year:** 1997  
**Owner:** Republic of China  
**Scope:** Project Manager/Operations Management



**Project:** Hawaiian Waters/Gaifu, HI  
**Location:** Kapolei, HI  
**Description:** \$18m, 25-acre waterpark  
**Year:** 1999  
**Owner:** Waters of Kapolei, LLC  
**Scope:** Project Manager, Management



**Project:** Hawaiian Falls Firewheel  
**Location:** Garland, TX  
**Description:** \$6m, 8-acre micro waterpark  
**Year:** 2003  
**Owner:** Horizon Family Entertainment (partnership founded by David Busch)  
**Scope:** Owner/Operator, Public/Private





**Project:** Geyser Falls Water Theme Park  
**Location:** Philadelphia, MS  
**Description:** 520m, 24-acre regional waterpark  
**Year:** 2004  
**Owner:** Mississippi Band of Choctaw Indians  
**Scope:** Development/Management



**Project:** Hawaiian Falls - The Colony  
**Location:** The Colony, TX  
**Description:** 58m, 8-acre micro waterpark  
**Year:** 2004  
**Owner:** Horizon Amusement SW (partnership founded by David Busch)  
**Scope:** Development/Management



**Project:** Bahama Beach  
**Location:** Dallas, TX  
**Description:** 512m, 6-acre micro waterpark  
**Year:** 2005  
**Owner:** City of Dallas, TX  
**Scope:** Management, Public/Private



**Project:** Hawaiian Falls - Mansfield  
**Location:** Mansfield, TX  
**Description:** 58m, 7-acre micro waterpark  
**Year:** 2008  
**Owner:** Mansfield Family Entertainment (LLC owned by David Busch)  
**Scope:** Owner/Operator, Public/Private



**Project:** Wet 'N Wild - Arizona  
**Location:** Glendale, AZ  
**Description:** 535m, 30-acre mega waterpark  
**Year:** 2009 (June)  
**Owner:** Village Road Show/North America  
**Scope:** Development Rights/Sold to Village Road Show



**Project:** Outward Bound Adventure Center  
**Location:** Pulau Ubin, Singapore  
**Description:** 542m, 21-acre adventure waterpark  
**Year:** 1997  
**Owner:** National Youth Council  
**Scope:** Design/Build/Operate



**Project:** Hawaiian Falls/Roanoke  
**Location:** Roanoke, TX (DFW)  
**Description:** 58m, 7-acre mega waterpark  
**Year:** 2011 (June)  
**Owner:** Horizon Family Holdings, LLC  
**Scope:** Owner/Operator, Public/Private



**Project:** Hawaiian Falls/Waco  
**Location:** Waco, TX  
**Description:** 59m, 8-acre family waterpark  
**Year:** 2012  
**Owner:** Horizon Family Holdings, LLC  
**Scope:** Owner/Operator, Public/Private



**Project:** Hawaiian High Adventures  
**Location:** Pflugerville, TX  
**Description:** 54m, 3-acre family adventure waterpark  
**Year:** 2014 (June)  
**Owner:** Horizon Family Holdings, LLC  
**Scope:** Owner/Operator, Public/Private



**Project:** Aloha Event Center  
**Location:** Pflugerville, TX  
**Description:** 53m, 24,000 sq. ft. event center  
**Year:** 2014 (October)  
**Owner:** Horizon Family Holdings, LLC  
**Scope:** Owner/Operator, Public/Private



**Project:** Hawaiian Falls  
**Location:** Pflugerville, TX  
**Description:** 521m, 22-acre family waterpark  
**Year:** 2014 (June)  
**Owner:** Horizon Family Holdings, LLC  
**Scope:** Owner/Operator, Public/Private

# David Busch

## PRESIDENT



Mr. David Busch has been in the family entertainment business for over 40 years with bottom-line responsibility for 25 entities ranging from theme parks, NBA basketball to water parks and adventure parks. Mr. Busch has developed and operated more major family water parks, theme parks and adventure parks than anyone in the industry today.

### SIGNIFICANT ACCOMPLISHMENTS

- VP/General Manager of Worlds of Fun/Oceans of Fun with annual attendance of 1.7 million and 2,500 season employees
- Over 6,000 young people work each summer at parks built and operated by companies which Mr. Busch founded or led
- Founder of Family Recreation Enterprises, developer of four water parks and family entertainment centers in California and Texas
- Currently, founder and owner of six water parks, one adventure park and one event center in Central and North Texas
- Developed and operated 20 water parks, theme parks, adventure parks and event centers in seven states from Mississippi to Hawaii
- Co-founder of AttractRev, a digital marketing firm focused exclusively on the entertainment industry
- Established 12 public/private ventures in partnership with 10 separate communities in California, Arizona and Texas
- Board member of YFC, Campus Life, Christian Medical/Dental Association, Salute to Valor and other charitable and non-profit organizations
- Each year over four million guests attend parks built and operated by companies Mr. Busch founded or led

# Russell Moy

## DIRECTOR / OUTDOOR ADVENTURES

### SIGNIFICANT ACCOMPLISHMENTS

- Mechanical engineering, Farnborough College of Technology, UK
- Developed over 100 adventure training systems and projects in New Zealand, Australia, Singapore, Malaysia, Japan and the U.S.
- Recipient of the Queen Elizabeth scholarship: Studied best operational practices for adventure based recreation and adventure education facilities worldwide
- Developed \$42m award-winning Outward Bound Adventure Center in Pulau Ubin, Singapore
- Founder and developer of Outward Bound Adventure Training Systems in Australia
- Developed over 50 sports climbing walls in the U.S.
- Established consulting and development company designing and implementing Adventure structures and facilities to various establishments, including the Australia and Singaporean military, Outward Bound Singapore, Australia, Brunei, Malaysia and Japan.
- Over 1,000 installations of Aquatic Climbing walls in the U.S. and Europe
- Over 50 facilities throughout Australasia and SE Asia used his designs
- Pioneered adventure park/challenge course concept at Hawaiian High Adventures, Austin, Texas



Russell has established himself and his companies as leaders in the development of adventure-based recreation. No single person has designed or installed more adventure systems in the world than Mr. Moy. After 33 years in the industry, Russell excels at finding new and progressive ways for individuals both young and old to experience adventure in a safe, fun and controlled manner.



# John Hughes

## VICE PRESIDENT



John Hughes has been in the entertainment business for 20 years starting in radio and record promotion after graduation from Texas A & M. He went on to be on the opening team for Hard Rock Café and opened facilities all over North America. This experience prepared him for his position as regional head of SMG Management, the biggest third-party manager of entertainment facilities in America. As General Manager of Ford Park Sports and Entertainment Complex in Beaumont, TX. John oversees a staff over 200 at the 220-acre complex. The facility has over 1.3 paid guests per year with revenues exceeding \$15 million. John is particularly adept at operating systems, metrics and leadership. John and his wife are proud parents of two grade school age boys and one girl.

### SIGNIFICANT ACCOMPLISHMENTS

- Entertainment and corporate marketing skills developed at Warner Music Group, the largest record company in the world, NYC
- Pioneered and developed corporate partnership strategy for Hard Rock Café, Int., as head of strategic partnerships
- Key member of Hard Rock Café new facility opening team with emphasis on operations and marketing
- Developed promotional partnerships with American Express, PepsiCo, Anheuser-Busch and General Motors
- 10-year veteran of SMG, the largest facility management company in the world with responsibility for Texas operations
- Oversees all business aspects of Ford Park, the 220-acre five venue sports, convention and entertainment complex in Jefferson County (Beaumont), TX with annual paid attendance of 1.3 million and annual spectator visitation of over 3 million.

# Lynda Kelly

## GENERAL MANAGER / ADVENTURE PARKS

### SIGNIFICANT ACCOMPLISHMENTS

- Bachelor of Science degree in Outdoor Education and Psychology with a focus in Adventure Education from Towson State University, Towson, Maryland
- Founder, owner and practitioner of 3 successful businesses which currently includes Energetic Care Wellness, LLC serving over 1,000 clients since its inception
- Past member of the prestigious YOSAR team (Yosemite Search and Rescue) with numerous rescues over three years. Rescue examples include: stranded or injured individuals on El Capitan, numerous high angle rescues; remote back-country rescues and many others
- Certified Emergency Medical Technician; CPR and BLS certified; fitness expert; ACE Certified Group Fitness instructor; Certified Pilates Instructor; CA licensed massage therapist
- Masters & Doctorate in Spiritual Science (non-academic)
- Avid rock climber, backpacker, canyoneer and enjoys most any safe adventure outdoors



Being among the first in the country to obtain a Bachelor of Science degree in Outdoor Education and Psychology with a focus in Adventure Education, Lynda Kelly has over 30 years' experience in the fields of management, leadership, entrepreneurship, physical fitness, and outdoor adventure. She is uniquely qualified to lead Rocklin Quarry Adventures as general manager and head of operations.

# Mark Wagner

CFO



In his 35 years in Northern California, Mark Wagner has enjoyed great success in the professional accounting and financial management fields across a wide variety of industries including family entertainment, the wine industry and consumer goods.

## SIGNIFICANT ACCOMPLISHMENTS

- Bachelor of Science degree in Accounting and 35-year career in professional accounting and financial management
- 15 years in finance and management of world-renowned wineries including Mirassou, Sebastiani, and Cuavasion
- As CFO of Family Recreation Enterprises, responsible for all aspects of administration and accounting for three theme parks with over 1,000 employees and annual attendance of 1,000,000 guests. He also helped engineer a success sale of Family Recreation Enterprises to Six Flags
- As CFO of Guenoc, helped guide the sale process to Langtry Estates, large consolidator of consumer goods companies
- Six years as CFO of Annie's Homegrown, an industry leading packaged food company with annual sales exceeding \$60 million. Mr. Wagner was instrumental in sale of the company to a New York based private equity firm

# Dave Matthews

REVENUE DIRECTOR

Dave Matthews has over 25 years' experience in the Sacramento area as a business leader, IT innovator, business analyst and restaurant pioneer. Senior level consultant with over 25 years of consulting experience, providing leadership and businesses knowledge to multiple companies around the Sacramento area. Acknowledged for combining business insight and expertise to develop and execute strategic projects quickly and effectively. Strong interpersonal skills including a solid focus on customer service and teamwork. Recognized as a particularly efficient communicator who is quick to develop rapport with clients and is able to adapt strategies and plans to meet each specific client's needs.

Dave assisted the state of California in completing a large technology integration project with a budget over 750 million dollars taking nine years to complete. His role included a key position as the business architect, combining his technical knowledge of the system along with the business process to help ensure a successful implementation.

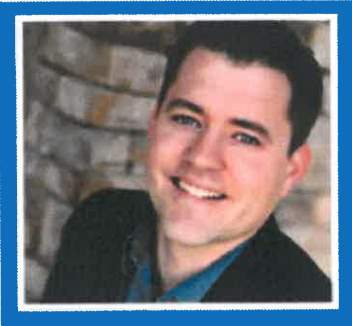


## SIGNIFICANT ACCOMPLISHMENTS

- Co-founder and owner of Manderes, Folsom, CA; recently recognized as one of the Top 100 craft beer bars and restaurants in the United States
- Instrumental in designing and implementing 750 million dollar technology integration project with the State of California
- Specialties include serving as business architect in information technology for several major companies in the Sacramento area combining technical knowledge with the business process
- Founder of The Kendrick Group, Inc., an information technology company focused on small businesses and start-ups
- In his management position at Blue Shield of California, he oversees all aspects of business and technology development as it pertains to the customer experience

# Barry Griffith

## MARKETING MANAGER



In his ten years in the marketing field, Barry has played key sales and marketing roles for large companies and has been involved in company start-ups in Northern California. Growing business through expertise in sales, and marketing, Barry brings a broad knowledge of the tools and techniques necessary in an increasingly digital age.

### SIGNIFICANT ACCOMPLISHMENTS

- Founder and Owner of Spotlight Marketing, a digital marketing company serving clients in the Sacramento area since 2009
- Co Founder and Owner of AttractRev, an internet and group sales focused marketing company exclusively serving the attractions industry
- CMO of the Fellowship Chamber, an association of business leaders and individuals in the Sacramento region
- Various salesman recognition awards from Cintas, a leading business services and uniform supplier globally
- Bachelor of Arts degree in Business Administration & Marketing from Fresno Pacific University, Fresno, CA

# Daron Anderson

## DEVELOPMENT DIRECTOR

### SIGNIFICANT ACCOMPLISHMENTS

- Led project preservation or completion efforts on over 22 projects including a 754-unit master-planned mixed use development; a 17 lot residential infill project; 62,000 square foot office and retail center
- Provided acquisition, due diligence and entitlement consulting on over 500 residential units and a 60-acre mixed-use commercial center
- Has saved both the developer and municipalities significant time and fees through value-engineering, revised improvement plans, bond settlement negotiations and numerous other entitlement and development quandaries in the projects he has directed or consulted on in San Diego, Roseville, Rocklin, Granite Bay and Sacramento
- Has established regional offices for real estate and development companies including site selection, staffing, policies and procedures and revenue generation
- With a Master's of Science in Human Resources and Organization Development and having explored the Rocklin quarries from age six, he is particularly well suited to play a key role in the development and operation of Rocklin Quarry Adventures



As a Rocklin native, Daron has over 40 years of knowledge in development and construction in the Rocklin/Roseville/Loomis communities. He has 25 years of project development experience in real estate, land acquisition, planning, entitlement, DREO asset management, consulting and contracting.

# Brian Busch

## GROUP SALES MANAGER



Brian Busch has grown up in the family entertainment business as the son of parents who built and operated restaurants and family entertainment parks throughout the world. After graduating from Texas Christian University he immediately made his mark in the water park and adventure park fields as the leading group sales representative at several Hawaiian Falls parks including Mansfield, Roanoke and Garland.

### SIGNIFICANT ACCOMPLISHMENTS

- Manager of group sales at Hawaiian Falls/Mansfield
- Most ticket sales and revenue off 14 sales managers and representatives at Hawaiian Falls in 2016
- 12 months as Youth with a Mission representative in Hong Kong, China, India and eight other Asian countries
- Graduate of TCU in marketing and communications
- Supervisor of food service, Hawaiian Falls/Roanoke
- Supervisor of retail operations, Hawaiian Falls
- Marketing/sales intern, Zig Ziglar Corporation
- Marketing intern, Orasi Economic Development Corporation
- Everest Urgent Care, sales representative

# Rick Bastrup

## CREATIVE CONSULTANT

### SIGNIFICANT ACCOMPLISHMENTS

- Creative and thematic creator of Soak City water parks
- Designer and thematic creator for Universal Florida Jaws ride" and other park attractions
- Winner of Golden Key award, given to the best designer in the amusement themed amusement industry annually
- Other notable assignments include: Wet n Wild, Hawaiian Falls, Paradise Island, Waterworld/Itlyland Park, Amazing Jakes Restaurants, Santa Cruz Beach Boardwalk, Gilroy Gardens and many, many more
- Designed themed rides and entertainment facilities in China and South Korea
- "Golden Ticket Award" along with a number of innovation awards from IAAPA and World Water Park Association



Rick Bastrup is known in the family entertainment industry as one of the pioneers in transforming amusement parks and water parks into themed-resort like atmospheres. In his 36 years as owner/founder of R & R Design Concepts, he has transformed hundreds of amusement facilities all over the world.

# Jerad Wells

## RISE DESIGN AND ADVENTURE CONSULTANT

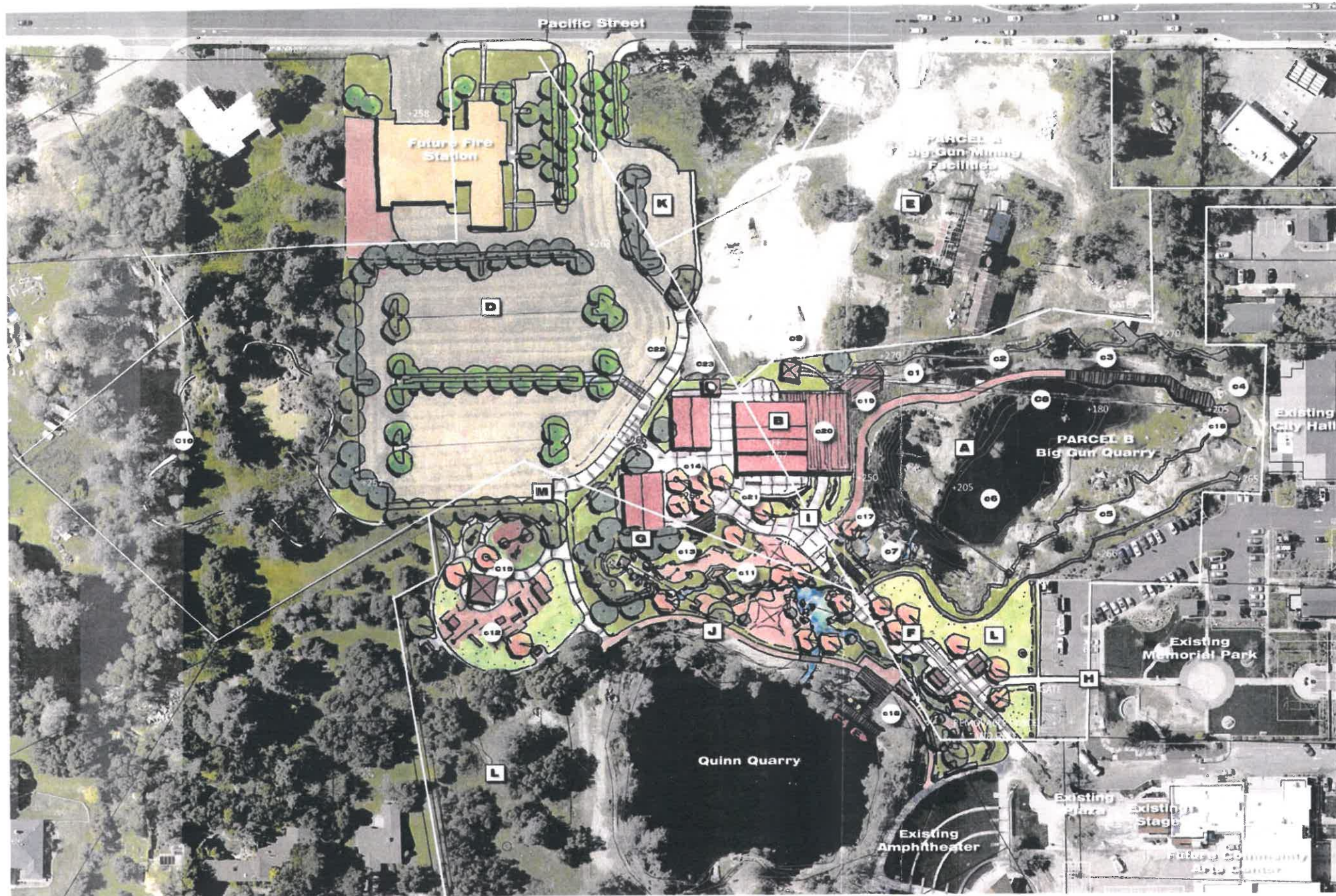


Jerad Wells began his journey into the Adventure Amusement industry as a professional rock climber at the age of 16. Jared has an impressive list of accomplishments, combined with a love for the sport of climbing and a passion for sales, marketing, and business development. Jerad brings over 20 years of knowledge, experience and expertise in the Adventure Amusement Industry.

### SIGNIFICANT ACCOMPLISHMENTS

- Professional rock climber at the age of 16, climbing and competing throughout North America and Europe
- Lead the charge on the overseas parcel buying and wholesale channel sales into the worlds' diamond markets
- Business Development Manager for the Outdoor Industry Association gaining tremendous insight on product development, sourcing, logistics, manufacturing, supply chain and specialty retail
- CEO of Eldorado Climbing Walls, one of the nations' premier custom climbing wall design-build firms. Starting as Director of Business Development and eventually being promoted to the company CEO
- Led Eldorado Climbing Walls to take on such challenges as designing and installing the worlds' largest, outdoor, man made climbing wall for the Boy Scouts of America
- Developed new company, HeadRush, a leading supplier of belay systems, helmets and equipment for the outdoor amusement industry

<i>Position</i>	<i>Name</i>	<i>Location</i>	<i>Experience</i>
President	David Busch	El Dorado Hills, CA	40 years
VP/Outdoor Adventures	Russell Moy	Fredericksburg, MD	35 years
VP/Water/Adventure Parks	John Hughes	Beaumont, TX	25 years
CFO	Mark Wagner	Yucaville, CA	30 years
General Manager/ Safety & Security Chief	Lynda Kelly	Ei Dorado Hills, CA	20 years
Director of Marketing	Barry Griffith	Roseville, CA	10 years
Director of Revenue	Dave Matthews	Rancho Murieta, CA	25 years
Group Sales Manager	Brian Busch	Sacramento, CA	4 years
Operations/Safety Consultant	Jerad Wells	Denver, CO	20 years
Operations/Safety Supervisor	TBD	TBD	TBD



**LEGEND**

- A BIG GUN QUARRY PIT - ROCKLIN QUARRY ADVENTURES
- B ROCKLIN QUARRY ADVENTURES - TICKETING, CAFE, SUPPORT SERVICES FACILITY - 6,000 S.F.
- C QUARRY PIT ADVENTURES
  - c1 Jump Wall  
Free Fall  
King Swing  
Climbing
  - c2 Gully  
Via Ferrata High Climbing  
Rapelling
  - c3 Main Wall  
Via Ferrata Jr.  
Barn Swing  
Wall Cargo Net  
Climbing
  - c4 City Wall
  - c5 Sunny Side Wall  
Rapelling  
Free Fall  
Aerial adventures
  - c6 Pond in Quarry
  - c7 Hanging Garden & Waterfall
  - c8 Main Zip Line
  - c9 Zip Line Tower
  - c10 Nature Trail
  - c11 "Kids Kingdom" with water stream play  
Boulder Climb  
Kids Zip  
Aqua Talker  
Barn Swing Jr.
  - c12 "Amazing Maze"
  - c13 Overlook viewing deck
  - c14 Entry Gathering Plaza
  - c15 Birthday pavilion and Restroom
  - c16 Quinn Boathouse  
Paddle Boats
  - c17 Access Trail to bottom
  - c18 Zip Line Deck in bottom of quarry
  - c19 Ground school deck - 1,000 s.f.
  - c20 Deck - 4,000 s.f.
  - c21 Rockery Retaining Walls
  - c22 Drop Off
  - c23 Water Tank
- D PARKING - ROCKLIN QUARRY ADVENTURES +/- 200 CARS
- E EXISTING BIG GUN QUARRY STRUCTURES ON PARCEL A
- F QUARRY CAR RAIL TRACKS EXTENDED
- G (2) 40'X60' SHADE STRUCTURES FOR PICNICKING
- H PEDESTRIAN CONNECTION TO MEMORIAL PARK
- I END OF MINING CAR RAIL
- J PUBLIC ACCESS THROUGH TO PARKING LOT
- K TEMPORARY GRAVEL PARKING IF NEEDED
- L QUARRY PARK PICNICKING
- M PUBLIC ACCESS TO AMPHITHEATER



BIG GUN QUARRY LOOKING NORTH



not to scale



**Rocklin Quarry Adventures**

Legacy Family Entertainment

**SCHEMATIC SITE PLAN**

JOB# :LFE.16077


DATE: 1.06.17



FUHRMAN LEAMY  
LAND GROUP  
DESIGN • SERVICE • SOLUTIONS


**ROCKLIN ADVENTURES  
DAILY REVENUE CALENDAR**

	January		February		March		April		May		June		July		August		September		October		November		December	
	1 Mon	2 Tues	1 Thur	2 Fri	1 Sun	2 Mon	1 Tues	2 Wed	1 Fri	2 Sat	1 Sat	2 Sun	1 Tues	2 Wed	1 Fri	2 Sat	1 Sun	2 Mon	1 Wed	2 Th	1 Fri	2 Sat		
Attendance			closed		600		100		500	600		500	600	7105	650	650	7105	650	75	75	350	350		
Team Training/Groups	\$2.00		closed		\$1,000		\$200		\$1,000	\$1,200		\$1,000	\$1,200	\$14,210	\$1,300	\$1,300	\$14,210	\$1,300	\$150	\$150	\$700	\$700		
Birthdays Parties	\$0.57				\$285		\$57		\$285	\$342		\$285	\$342	\$4,050	\$371	\$371	\$4,050	\$371	\$43	\$43	\$200	\$200		
Picnic and Banquet	\$1.33				\$665		\$133		\$665	\$798		\$665	\$798	\$9,450	\$865	\$865	\$9,450	\$865	\$100	\$100	\$466	\$466		
Food Service-non catered	\$1.70				\$650		\$170		\$650	\$1,020		\$650	\$1,020	\$12,079	\$1,105	\$1,105	\$12,079	\$1,105	\$128	\$128	\$595	\$595		
All Park Package (\$39.99/34.8k)	\$15.36				\$7,680		\$1,536		\$7,680	\$9,216		\$7,680	\$9,216	\$109,133	\$9,984	\$9,984	\$109,133	\$9,984	\$1,152	\$1,152	\$5,376	\$5,376		
Junior Park Package (\$29.99/15.5k)	\$5.09				\$2,545		\$509		\$2,545	\$3,054		\$2,545	\$3,054	\$36,164	\$3,309	\$3,309	\$36,164	\$3,309	\$382	\$382	\$1,782	\$1,782		
Rentals (lockers, shoes, outerwear)	\$0.40				\$200		\$40		\$200	\$240		\$200	\$240	\$2,842	\$260	\$260	\$2,842	\$260	\$30	\$30	\$140	\$140		
Misc. (photos, VIP parking, cabanas)	\$0.48				\$240		\$48		\$240	\$288		\$240	\$288	\$3,410	\$312	\$312	\$3,410	\$312	\$36	\$36	\$168	\$168		
Revenue Share	\$0.52				\$260		\$52		\$260	\$312		\$260	\$312	\$3,695	\$338	\$338	\$3,695	\$338	\$39	\$39	\$182	\$182		
Sponsorship	\$0.45				\$225		\$45		\$225	\$270		\$225	\$270	\$113	\$113	\$113	\$1,197	\$293	\$34	\$34	\$158	\$158		
Gift and Souvenirs	\$0.52				\$260		\$52		\$260	\$312		\$260	\$312	\$3,695	\$338	\$338	\$3,695	\$338	\$39	\$39	\$182	\$182		
<b>Total Daily Revenue</b>	\$0		\$0		\$14,210		\$2,842		\$14,210	\$17,052		\$14,210	\$17,052	\$201,924	\$18,473	\$18,473	\$201,924	\$18,473	\$2,132	\$2,132	\$9,947	\$9,947		
Attendance			100		350		100		650	600		650	300	650	75	75	650	75	75	500	500			
Team Training/Groups	\$2.00		\$400		\$700		\$200		\$1,300	\$1,200		\$1,300	\$600	\$1,300	\$150	\$150	\$1,300	\$150	\$150	\$1,000	\$1,000			
Birthdays Parties	\$0.57		\$114		\$200		\$57		\$371	\$342		\$371	\$171	\$371	\$43	\$43	\$371	\$43	\$43	\$285	\$285			
Picnic and Banquet	\$1.33		\$266		\$466		\$133		\$865	\$798		\$865	\$999	\$865	\$100	\$100	\$865	\$100	\$100	\$665	\$665			
Food Service-non catered	\$1.70		\$340		\$595		\$170		\$1,105	\$1,020		\$1,105	\$510	\$1,105	\$128	\$128	\$1,105	\$128	\$128	\$650	\$650			
All Park Package (\$39.99/34.8k)	\$15.36		\$3,072		\$5,376		\$1,536		\$9,984	\$9,216		\$9,984	\$4,608	\$9,984	\$1,152	\$1,152	\$9,984	\$1,152	\$1,152	\$7,680	\$7,680			
Junior Park Package (\$29.99/15.5k)	\$5.09		\$1,018		\$1,782		\$509		\$3,309	\$3,054		\$3,309	\$1,527	\$3,309	\$382	\$382	\$3,309	\$382	\$382	\$2,545	\$2,545			
Rentals (lockers, shoes, outerwear)	\$0.40		\$80		\$140		\$40		\$260	\$240		\$260	\$120	\$260	\$30	\$30	\$260	\$30	\$30	\$200	\$200			
Misc. (photos, VIP parking, cabanas)	\$0.48		\$96		\$168		\$48		\$312	\$288		\$312	\$144	\$312	\$36	\$36	\$312	\$36	\$36	\$240	\$240			
Revenue Share	\$0.52		\$104		\$182		\$52		\$338	\$312		\$338	\$156	\$338	\$39	\$39	\$338	\$39	\$39	\$260	\$260			
Sponsorship	\$0.45		\$90		\$158		\$45		\$293	\$270		\$293	\$135	\$293	\$34	\$34	\$293	\$34	\$34	\$225	\$225			
Gift and Souvenirs	\$0.52		\$104		\$182		\$52		\$338	\$312		\$338	\$156	\$338	\$39	\$39	\$338	\$39	\$39	\$260	\$260			
<b>Total Daily Revenue</b>	\$0		\$5,684		\$9,947		\$2,842		\$18,473	\$17,052		\$18,473	\$8,526	\$18,473	\$2,132	\$2,132	\$18,473	\$2,132	\$2,132	\$14,210	\$14,210			




**Rocklin Quarry Adventures**


**August 8 , 2016**



**Quarry District**




**Strategic Plan Objective 3.8**  
*Expand the Quarry District concept and consider a focus on arts, music and food that complements and leverages existing assets including public building and spaces. The Quarry District should be positioned as a unique, regional asset to attract private investment and tourism and expand community events.*



**Vision**

The Quarry District is a destination in the heart of Rocklin with a focus on arts, entertainment, park and open space areas and community gathering places. Strategic public investment captures the interest of private investment, attracting a mix of housing, retail, restaurant, professional and service oriented businesses. The Quarry District capitalizes on assets such as the granite quarries and the City's rich history, leveraging them to create a unique experience for our residents, businesses and visitors.



**Planning History**

The Quarry District – Preserving and Building Upon the City's Inner Core

"Herein provided is a "concept" designed to create a conversation and potential strategy toward the preservation and building up of the downtown; to re-energize, re-new its purpose and functional value..."

August 2011



**ROCKLIN**  
CALIFORNIA

### Planning History

“Place making capitalizes on a local community’s assets, inspiration and potential, ultimately creating good spaces that promote public health, happiness and wellbeing.”

“Quarry Park is envisioned to provide residents and visitors to the City, a destination that provides a variety of uses both to entertain and commune with nature; designed to capitalize on our historic assets, natural resources and existing infrastructure.”

August 27, 2013

**ROCKLIN**  
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### Quarry District Presentation

1/25/14 Strategic Planning Session

Quarry District Boundary

Quarry District

Rick Horst, City Manager  
Rick Farwell, Director Public Services

City of Rocklin, California

**ROCKLIN**  
CALIFORNIA

### Quarry Park Amphitheater Opens

2016 Concert Series & Events

**Strategic Plan Objective 1.13**  
Enhance city-wide Special Events through incorporation of arts and cultural experiences for all residents

**ROCKLIN**  
CALIFORNIA

### Rocklin Adventures

ROCKLIN ADVENTURES  
ROCK, RABBIT, AND RAPPID!

**ROCKLIN**  
CALIFORNIA

Rocklin Adventures

## ROCKLIN ADVENTURES

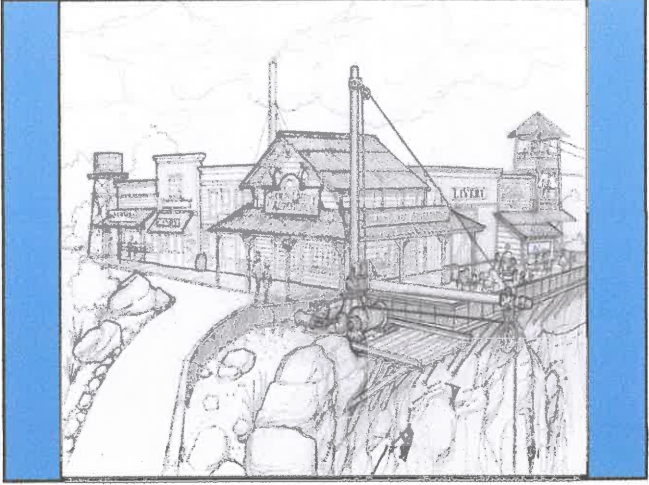
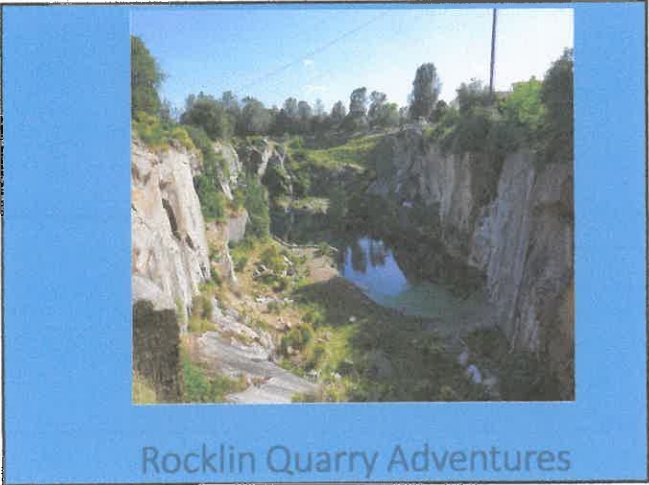
- KEY OBJECTIVES
  - ENERGIZE AND ENHANCE THE ROCKLIN COMMUNITY'S UNIQUE APPEAL AND ASSETS
  - INCREASE DEVELOPMENT AND COMMERCE IN THE QUARRY DISTRICT
  - BE A CATALYST FOR SUSTAINABLE TAX REVENUE ON A YEAR-ROUND BASIS
  - PROVIDE MUCH NEEDED FAMILY ENTERTAINMENT TO NORTHERN CALIFORNIA
  - TAKE ADVANTAGE OF THE BIG BOY QUARRY, A ONE-OF-A-KIND ASSET
  - BE A SOURCE FOR INFORMATION AND HISTORY ON THE DEVELOPMENT OF THE WEST
  - PROVIDE A VENUE FOR ALL AGES TO ENJOY PHYSICAL ACTIVITY IN A SAFE, FUN ENVIRONMENT

**ROCKLIN**  
CALIFORNIA

Rocklin Adventures



## ROCKLIN ADVENTURES

- LEGACY FAMILY ENTERTAINMENT, LLC
  - OVER 40 YEARS IN THE FAMILY ENTERTAINMENT BUSINESS; 50 MILLION GUESTS, 100,000+ EMPLOYEES
  - CURRENTLY OWNS SEVEN WATERPARKS AND TWO ADVENTURE PARKS
  - DESIGNED AND BUILT 20 ADVENTURE PARKS AROUND THE WORLD
  - OVER 100 THEMED AMUSEMENT ATTRACTIONS AROUND THE WORLD
  - DESIGNED AND IMPLEMENTED TEAM BUILDING AND SCHOOL CURRICULUM OVER 30 YEARS





- Paddle boats
- Kayaks
- Remote control boats
- Benches/observation


## Rocklin's History & Nature Tour

Guests will learn the story of Rocklin as they take a self-guided tour through Quarry Park. Utilizing historic pictures and stories, guests will know about the people and events that forged the community into one of the great places to live and visit in all of California. While they are at it, guests can also learn of nature's wonders as they walk the forest and quarry areas.



Table 29  
PAC FINANCIAL OPERATING STATEMENTS  
FINANCIAL HIGHLIGHTS

Item/Event	2010/11	2011/12	2012/13	2013/14	2014/15
<b>Revenue</b>					
Admission Package	\$3,109,824	\$7,797,070	\$7,889,918	\$2,999,118	\$1,122,281
Local Grants	\$391,876	\$91,872	\$208,771	\$234,223	\$228,817
Residual Revenue	\$1,234,800	\$1,117,974	\$1,789,891	\$1,648,808	\$1,702,841
Swimwear	\$716,000	\$861,509	\$993,591	\$872,549	\$1,114,930
Concessions	\$1,193,204	\$4,854,239	\$1,931,222	\$1,672,517	\$1,515,822
Parkday Rentals	\$724,888	\$11,208	\$783,975	\$772,881	\$64,972
Merchandise	\$189,794	\$218,172	\$234,888	\$212,892	\$234,978
Other Revenue	\$8,975,249	\$6,381,817	\$4,297,212	\$5,729,999	\$4,298,877
<b>Operating Expenses</b>					
Salaries	\$791,866	\$1,111,718	\$1,919,788	\$1,615,864	\$2,014,229
Payroll	\$1,917,385	\$1,227,024	\$1,727,717	\$1,797,983	\$1,814,524
Franchise/Rentals	\$125,000	\$138,362	\$131,930	\$214,292	\$275,614
Utilities	\$42,704	\$42,897	\$43,778	\$43,682	\$41,892
Advertising	\$731,788	\$1,814,255	\$1,888,890	\$2,229,880	\$2,177,979
Repairs	\$171,041	\$131,892	\$131,135	\$173,080	\$142,646
Supplies	\$59,149	\$62,211	\$61,739	\$49,893	\$47,497
Amortization	\$19,162	\$12,878	\$96,772	\$27,308	\$94,371
C.R.A.	\$88,797	\$84,861	\$87,107	\$81,293	\$84,998
Management Fees	\$16,812	\$169,644	\$1,763,819	\$151,841	\$167,999
Capital/Equipment	\$0	\$0	\$0	\$0	\$0
<b>Operating Results</b>					
Fixed	\$213,928	\$785,071	\$6,968,131	\$286,770	\$810,054
Variable	\$12,496	\$13,276	\$13,796	\$13,885	\$13,537
Net Available	\$462,485	\$1,498,347	\$11,981,924	\$500,655	\$823,591
Net Profit	\$12,914	\$148,479	\$1,996,821	\$175,768	\$192,742
<b>Other Financials</b>					
Term, Reserve Deposits	\$2,116,717	\$3,213,944	\$1,028,542	\$1,441,712	\$3,258,513
Operating Profit	\$9,797,827	\$861,707	\$1,996,821	\$1,136,227	\$1,141,334
<b>Other</b>					
Loan Repayment	(\$21,699)	(\$72,000)	(\$80,000)	(\$64,000)	(\$82,000)
Net Profit	\$7,566,128	\$1,089,707	\$2,226,821	\$1,072,227	\$1,059,334



ROCKLIN  
CALIFORNIA

## Rocklin Adventures

Next Steps:

- Authorization to Prepare a Design Criteria Package (30% Level Plans) necessary for the preparation and submittal of a Request of Qualifications (RFQ) for selection of a design build firm. Staff presentation scheduled for September 13, 2016.
  - I. Selection of Design Team and Design - Build Consultant
  - II. Letter of Intent - Post Development Park Operations Management Group
- Based on Design Criteria Package - City issues a RFP for a design-build team. A primary benefit of a design-build approach is the savings of time and money. The typical process that most cities follow for capital projects is a design-bid-build process where a design professional is hired to prepare a set of plans that are bid on by contractors and then awarded to the low responsible bidder. City will select up to three design build firms based on qualifications. Each design build firm submits their proposal for the project to include guaranteed maximum price and completion date. Selected design build firm works to submit drawings for permitting purposes and commences construction. Staff presentation and recommendation of design build award and funding package scheduled in three to six months (time approximate) from date of Design Criteria Package Authorization.



## Overview of Hawaiian Falls

SourceCapital | LLC

Overview

Disclosure

THIS INVESTMENT MEMORANDUM (THE "MEMORANDUM") HAS BEEN PREPARED BY SOURCE CAPITAL, LLC ("SOURCE CAPITAL") SOLELY FOR INFORMATION PURPOSES FROM INFORMATION SUPPLIED BY HORIZON FAMILY HOLDINGS, LLC.

BY ACCEPTING THIS MEMORANDUM, THE RECIPIENT ACKNOWLEDGES AND AGREES THAT: (I) ALL OF THE INFORMATION CONTAINED HEREIN IS CONFIDENTIAL AND MAY NOT BE DISTRIBUTED TO OTHER PARTIES; (II) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE RECIPIENT WILL NOT REPRODUCE THIS MEMORANDUM, IN WHOLE OR IN PART; (III) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IF THE RECIPIENT DOES NOT WISH TO PURSUE THIS MATTER, THE RECIPIENT WILL RETURN THIS MEMORANDUM TO SOURCE CAPITAL AS SOON AS PRACTICABLE, TOGETHER WITH ALL OTHER MATERIAL RELATING TO THE COMPANY; AND (IV) ANY PROPOSED ACTIONS BY THE RECIPIENT WHICH ARE INCONSISTENT IN ANY MANNER WITH THE FOREGOING AGREEMENTS WILL REQUIRE THE PRIOR WRITTEN CONSENT OF SOURCE CAPITAL. FURTHERMORE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE RECIPIENT AGREES NOT TO DISCUSS THIS TRANSACTION WITH ANY PERSON, ANY EMPLOYEE OR VENDOR OR CUSTOMER OF THE COMPANY EXCEPT WHERE RECIPIENT HAS OBTAINED WRITTEN PERMISSION TO DO SO FROM SOURCE CAPITAL.

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ADDITIONAL INFORMATION

UNDER NO CIRCUMSTANCES SHOULD THE COMPANY BE CONTACTED DIRECTLY OR INDIRECTLY BY YOU. ALL INQUIRIES AND REQUESTS FOR INFORMATION SHOULD BE DIRECTED TO SOURCE CAPITAL, LLC.



**Horizon**

5 water parks

2 multi-purpose parks (water, adventure, event center)

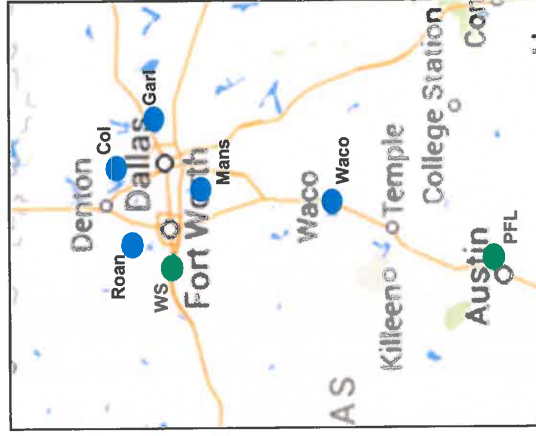
Attractive markets: DFW, Austin, Waco

1 million+ visitors in 2015

**Overview**

**Company Overview**

- Horizon Family Holdings, LLC, (“Horizon” or the “Company”) through its wholly-owned subsidiaries, operates five water parks and two multi-purpose parks (water, adventure, event center), all under the trade name of “Hawaiian Falls”
- Horizon’s parks are located in high-growth, attractive demographic areas: Dallas-Fort Worth (“DFW”) (5 parks), Austin (1 park), and Waco (1 park)
- Horizon is owned by Source Capital, an Atlanta-based private equity firm



Hawaiian Falls Parks

Park	Type	Opened	Construction		Lessor	Attendance	
			Cost (mm)	Operating		2014	2015(p)*
Garland	WP	2003	\$10.5	May-Sept	City of Garland (Ground); CNL Income Partners (Fixtures)	163,818	164,854
The Colony	WP	2004	\$11.1	May-Sept	City of Colony (Ground); CNL Income Partners (Fixtures)	181,381	185,531
Mansfield	WP	2009	\$12.5	May-Sept	City of Mansfield	179,562	176,470
Roanoke	WP	2011	\$12.7	May-Sept	City of Roanoke	122,623	129,582
Waco	WP	2012	\$10.5	May-Sept	City of Waco	113,849	131,342
Pflugerville	WP/AP/EC	2014	\$28.3	Year-round	Pflugerville Development Corporation	130,916	149,994
White Settlement	WP/AP/EC	2014	\$14.9	Year-round	City of White Settlement	76,955	103,406
						969,104	1,041,179

\*For presentation purposes, 2015(p) based on YTD actual through July and estimate of performance through year-end.



Horizon

Established brand in a large, growing marketplace

Unique public/private partnership

Well-maintained parks

Limited DFW competition; no competition in Austin & Waco markets

Veteran operations leadership



Overview

## Company Overview (cont'd)

- Hawaiian Falls brand – with 14+ years in the DFW marketplace, Hawaiian Falls is firmly established as a leading family entertainment attraction throughout the North Texas region (which includes close to 8 million residents)
- Public/private partnership – all 7 parks were developed through unique public/private partnerships with local municipalities – as a result, the Company enjoys innumerable special considerations and opportunities only available to city-operated facilities
- All parks have been well-maintained – annual off-season repair and maintenance plan combined with capital improvements have kept the parks in top shape (no significant maintenance costs anticipated in preparation for the 2016 operating season)
- Only competitors in the DFW area are i) Hurricane Harbor in Arlington, TX (Six Flags property targeted at teens/amusement guests) and, ii) NRH20, North Richland, a municipally owned and operated water park
  - There are no competitors in the Waco or Austin markets
- Veteran park management team and park-level leadership led by:
  - Clint Hill - North Texas Regional Director: with Horizon since 2004 and responsible for operations of the five parks in the DFW area
  - Evan Barnett - Regional VP: with Horizon since 2003 and held positions including GM of Garland/Colony as well as GM and oversight of park openings at Mansfield, Roanoke, Waco and Pflugerville

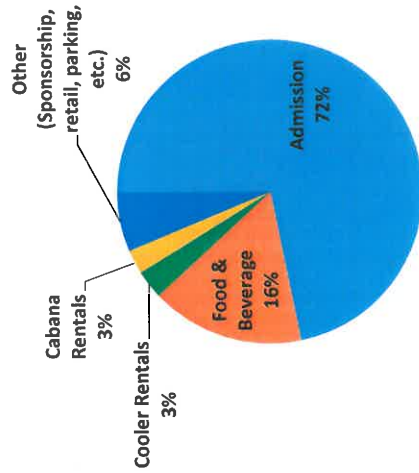


Overview

## Company Overview (cont'd)

- The Company's water parks operate from mid-May to early-September; the 2 multi-purpose parks offer adventure & event center attractions year-round
- Horizon's 2 multi-purpose parks had partial openings in 2014 (while construction was incomplete); 2015 is the first year of full operations
- Over 70% of the Company's revenue is admission income which can be broken into four primary categories:
  - Gate admissions – daily pass admissions retail from \$20 to \$26 depending on the park
  - Season passes – listed price of \$100 (though typically sold at promotional discount); approximately \$4.1 million in 2015 season passes sold
  - Group events – Horizon's sales team leads outbound effort to book group events (20+ people); pricing varies by event; (\$5 million+ in group events expected for the 2015 season)
  - Consignment – Season pass and daily admission offers sold through consignment partners (Costco, HEB, Tom Thumb, Albertsons)
- Horizon expects total attendance of 1+ million in 2015; YTD attendance through July is up over 8% (additionally, the Company's 2015 per cap will increase by over \$1.00 compared to 2014)

### Historical Sources of Revenue



Overview

## Full Year 2015 Projected Performance

- 2015(p) performance is based upon YTD-July results combined with an estimate of performance through year-end

	Park-Level					Total Park-Level				
	Garland	Colony	Mansfield	Roanoke	Waco	PFL	WS	5-Parks (a)	6-Parks (b)	7-Parks
Attendance	164,854	185,531	176,470	129,582	131,342	149,994	103,406	787,779	937,773	1,041,179
Park Income	\$3,436,534	\$4,330,891	\$3,634,948	\$2,581,200	\$2,081,966	\$4,024,914	\$1,790,796	\$16,065,538	\$20,090,452	\$21,881,248
per cap	\$20.8	\$23.3	\$20.6	\$19.9	\$15.9	\$26.8	\$17.3	\$20.4	\$21.4	\$21.0
Cost of Goods Sold	231,261	318,293	277,475	163,404	164,383	368,254	240,830	1,154,817	1,523,071	1,763,901
Park Operating Expenses	1,541,200	1,931,998	1,728,818	1,628,177	1,360,526	2,818,821	1,868,634	8,190,719	11,009,540	12,878,174
<b>Operating Profit</b>	<b>1,664,072</b>	<b>2,080,599</b>	<b>1,628,656</b>	<b>789,619</b>	<b>557,057</b>	<b>837,839</b>	<b>(318,668)</b>	<b>6,720,003</b>	<b>7,557,841</b>	<b>7,239,173</b>
Capital / Lease Obligations										
Ground Lease (Municipality)	171,336	229,458	318,745	377,000	0	0	800,000	1,096,539	1,096,539	1,896,539
CNL Capital Lease (c)	887,184	889,271	0	0	0	0	0	1,776,455	1,776,455	1,776,455
Capital Lease (Debt Service) (d)	0	0	0	0	0	1,376,194	0	0	1,376,194	1,376,194
Total Capital / Lease Obligations	1,058,520	1,118,729	318,745	377,000	0	1,376,194	800,000	2,872,994	4,249,188	5,049,188
Park-Level "EBITDA" (unadjusted)	605,552	961,870	1,309,911	412,619	557,057	(538,356)	(1,118,668)	3,847,009	3,308,653	2,189,985
EBITDA Adjustments										
Insurance Savings (e)	68,000	80,000	72,000	48,000	36,000	64,000	32,000	304,000	368,000	400,000
Normalized May Performance (f)	45,988	51,719	43,206	29,418	21,971	32,164	(3,011)	192,303	224,467	221,456
FTE Reductions (g)	44,000	44,000	39,600	0	0	162,800	128,480	127,600	290,400	418,880
<b>Park-Level "EBITDA" (adjusted)</b>	<b>\$763,541</b>	<b>\$1,137,590</b>	<b>\$1,464,716</b>	<b>\$490,037</b>	<b>\$615,028</b>	<b>(\$279,392)</b>	<b>(\$961,199)</b>	<b>\$4,470,912</b>	<b>\$4,191,520</b>	<b>\$3,230,321</b>

(a) 5-Parks excludes PFL and WS.

(b) 6-Parks excludes WS.

(c) CNL Capital Lease relates to sale-leaseback transaction at Garland & Colony closed in 2006.

(d) Pflugerville funded development through debt issuance. Company's obligation tied to monthly debt service. Upon retirement of debt, Company will own outright property & equipment.

(e) Company bound new insurance policies in August 2015 with comparable coverage to prior policies; new policies resulted in annual savings of \$400 thousand.

(f) Estimate of lost income due to May weather (May 2015 was rainiest month on record in Texas history). Parks were unable to operate causing lost attendance of approximately 28,000.

(g) Park-level full time staff to be reduced following 2015 season - park-level operations to be shared across DF-W parks and duplicitious roles in business development consolidated.

Horizon

Numerous improvements implemented in 2015

A number of challenges primarily caused by the company's financial distress

Overview

## Notes on 2015 Performance

- Source Capital purchased Horizon in May 2015; at that time, the Company was in financial distress due to overspending on the construction of the two parks opened in 2014 (Pflugerville, White Settlement)
- Source and management were able to implement a number of improvements during the 2015 season, but, due to the timing of the transaction, was unable to address certain issues that were created by the financial distress
- 2015 improvements:
  - Developed operational dashboard (KPIs) for daily performance monitoring
  - Engaged North Star Food & Beverage Associates to revamp F&B program
  - Engaged BlackBriar Advisors to manage accounting / finance / cash control
  - Revised marketing program to focus on digital advertising / social media
- 2015 challenges:
  - 8 of the 14 (57%) full-time sales team members were hired in 2015 – PFL, WS, and Garland did not have sales staff through most of the offseason
  - Preparation for the 2015 operating season was delayed until 2-4 weeks prior to park openings (due to cash issues) - marketing, sales, hiring, training, and POS implementation were areas impacted
  - Vendor issues resulted in attraction downtime (inability to get timely repair caused outages of Garland wave pool, WS slide tower, PFL slide tower)
  - Significant rain throughout May and early June hurt early season performance



Horizon

Numerous opportunities for further improvements in financial performance

Overview

## Opportunities

- Sponsorship – Company has not emphasized opportunity historically
- \$200k to \$300k revenue annually – given 1 million+ visitors and attractive markets opportunity to increase this revenue stream dramatically
- Trade sponsors – opportunity to partner with key vendors (telecom, food & beverage) and trade sponsorship opportunity for vendor cost reductions
- Food & Beverage – Company’s program was dated entering 2015 season; Source engaged North Star which led to positive results but opportunity for further enhancements
  - Focus on higher quality food at increased average price point
  - Increased options including healthier options
  - Beer sales – successfully introduced in Pflugerville in 2015
- Marketing & Promotion - Company has historically focused marketing spend on high-cost local TV, radio and print advertising
  - Opportunity to strengthen social media & online presence
  - Targeted promotions (Fireworks at the Park, “Dive-In” Movie Nights, live music) implemented starting in late-July 2015 with immediate results



Horizon

Numerous opportunities for further improvements in company financial performance



Overview

## Opportunities

- Expansion – Company has been approached by several municipalities seeking a similar public/private partnership concept to develop new water parks (opportunities in TX, OK, MO)
- Adventure Park / Event Center – Company’s newest parks can utilize adventure park and event center attractions year-round
- Adventure park concept is unique to both local markets (Pflugerville and White Settlement) and is ideal for birthday parties, group events and corporate outings
- Event centers are the only option of its size and type in both Pflugerville and White Settlement
  - Both centers include 4,000 sq ft of flexible space
  - Centers include fully-equipped professional kitchens that allow for hosting of wide range of events
  - Centers have already successfully hosted corporate outings, family reunions, weddings and quinceaneras
- The 2015(p) and 2016(p) financial performance includes minimal (less than 3% in each year at PFL and WS) projected offseason revenue – this represents significant upside to projected results

Overview

## 2016 Full Year Projected Performance

- 2016(p) performance assumes:
  - Modest 2016 attendance growth comparable to growth shown by park in 2015 over 2014
  - \$1 increase in per cap by park over 2015 results – conservative given opportunities identified
  - Full year impact of cost reductions implemented in 2015

	Park-Level					Total Park-Level				
	Garland	Colony	Mansfield	Roanoke	Waco	PFL	WS	5-Parks (a)	6-Parks (b)	7-Parks
Attendance	169,800	191,097	181,764	138,653	140,536	172,493	118,917	821,849	994,342	1,113,259
Park Income	\$3,709,429	\$4,651,915	\$3,925,761	\$2,900,537	\$2,368,239	\$4,801,144	\$2,178,332	\$17,555,880	\$22,357,024	\$24,535,357
per cap	\$21.8	\$24.3	\$21.6	\$20.9	\$16.9	\$27.8	\$18.3	\$21.4	\$22.5	\$22.0
Cost of Goods Sold	259,660	325,634	274,803	203,038	165,777	336,080	152,483	1,228,912	1,564,992	1,717,475
Park Operating Expenses	1,650,000	1,950,000	1,750,000	1,550,000	1,400,000	2,600,000	1,750,000	8,300,000	10,900,000	12,650,000
Operating Profit	1,799,769	2,376,281	1,900,958	1,147,499	802,463	1,865,064	275,849	8,026,969	9,892,033	10,167,882
Capital / Lease Obligations										
Ground Lease (Municipality)	185,471	279,115	294,432	377,000	0	0	900,000	1,136,018	1,136,018	2,036,018
CNL Capital Lease (c)	916,943	970,191	0	0	0	0	0	1,887,134	1,887,134	1,887,134
Capital Lease (Debt Service) (d)	0	0	0	0	0	1,482,000	0	0	1,482,000	1,482,000
Total Capital / Lease Obligations	1,102,414	1,249,306	294,432	377,000	0	1,482,000	900,000	3,023,153	4,505,153	5,405,153
<b>Park-Level "EBITDA"</b>	<b>\$697,355</b>	<b>\$1,126,974</b>	<b>\$1,606,526</b>	<b>\$770,499</b>	<b>\$802,463</b>	<b>\$383,064</b>	<b>(\$624,151)</b>	<b>\$5,003,816</b>	<b>\$5,386,880</b>	<b>\$4,762,729</b>

(a) 5-Parks excludes PFL and WS.

(b) 6-Parks excludes WS.

(c) CNL Capital Lease relates to sale-leaseback transaction at Garland & Colony closed in 2006.

(d) Pflugerville funded development through debt issuance. Company's obligation tied to monthly debt service. Upon retirement of debt, Company will own outright property & equipment.

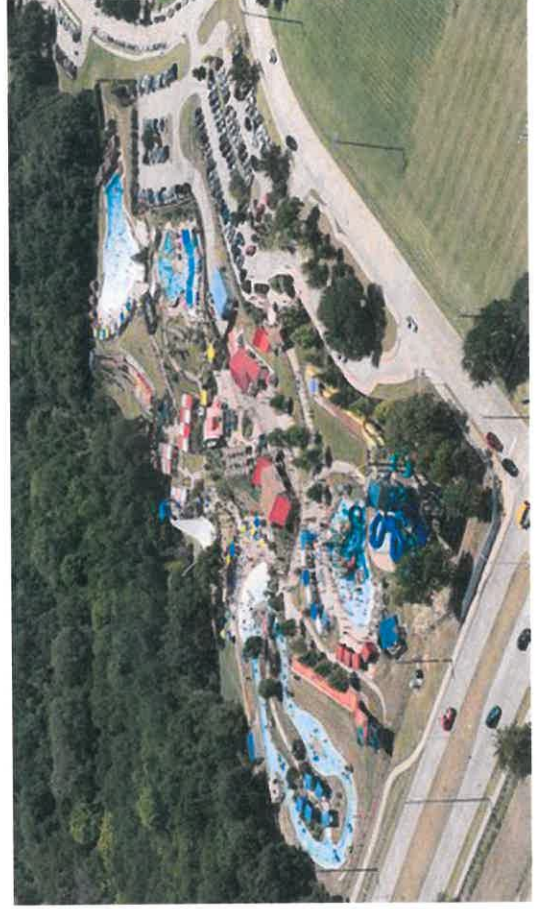
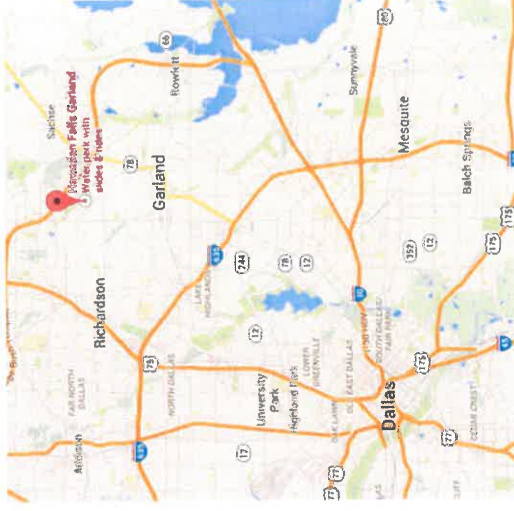
## Parks Overview



Parks Overview

# Garland

- Built in 2003 on 12 acres in the northeast part of DFW at a cost of \$10.5 million
- 12 major attractions including 5 slide towers, wave pool, action/lazy river
- 497,000 families within 15 miles
- 600 parking spots
- 163k visitors in 2014; projected 165k visitors in 2015
- Leased from city of Garland under a 40 year ground lease for a lease rate of 5% of gross revenues
- CNL Income Partners has a leasehold interest in this property (purchased in 2006) which guarantees \$846,743 in rent each year plus 10% of the gross revenues above \$3.0mm

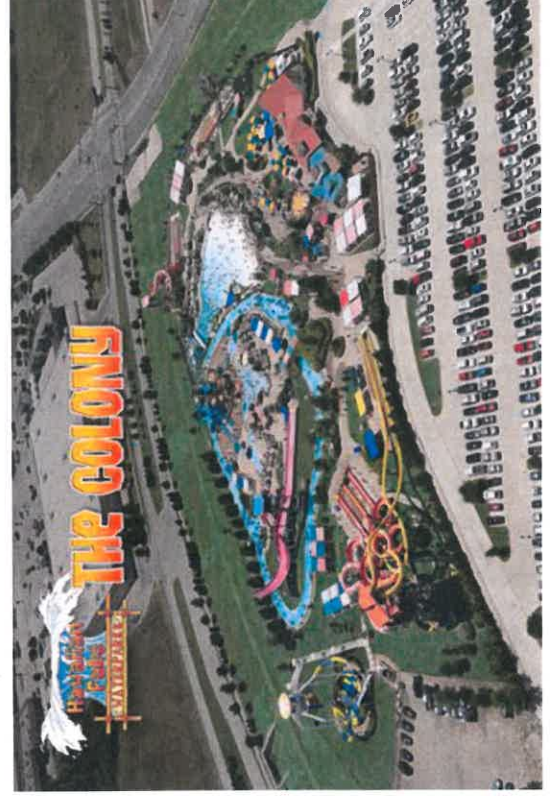
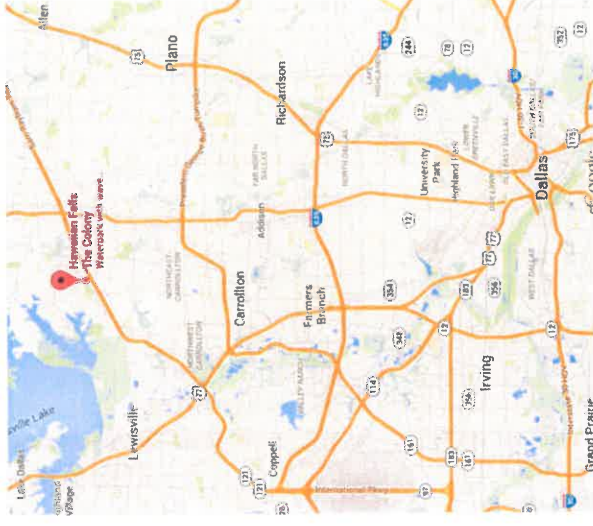




Parks Overview

# The Colony

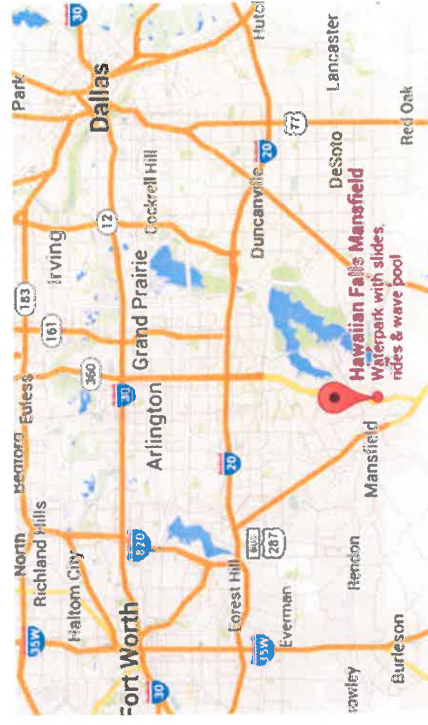
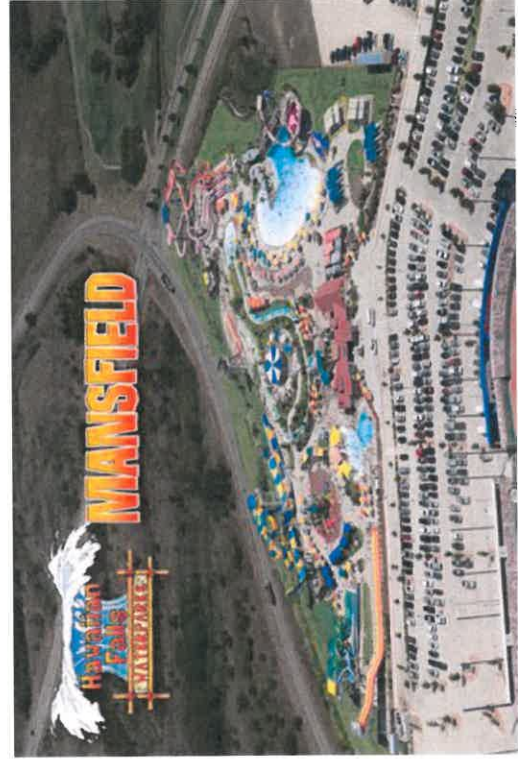
- Built in 2004 on 12 acres in the north central part of the Dallas metroplex at a cost of \$11.1 million
- 10 major attractions including 5 slide towers, wave pool, lazy river, and aqua play system
- 419,000 families within 15 miles
- 410 parking spots
- 181k visitors in 2014; projected 185k visitors in 2015
- Leased from city of The Colony under a 40 year ground lease for a lease rate of 6% of gross revenues
- CNL Income Partners has a leasehold interest in this property (purchased in 2006) which guarantees them \$784,603 in rent each year plus 10% of the gross revenues above \$2.8mm



Parks Overview

# Mansfield

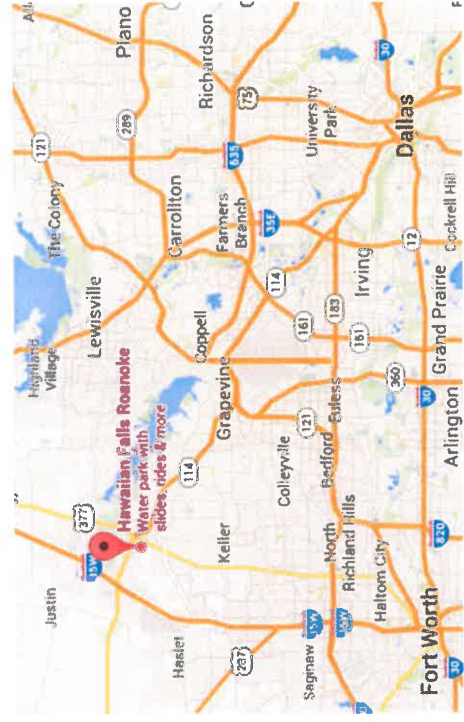
- Built in 2009 on 13.5 acres in the southwestern part of the Dallas metroplex at a cost of \$12.5 million
- 10 major attractions including 5 slide towers, wave pool, lazy river, and aqua play system
- 246,000 families within 15 miles, with an additional 3,800 homes built in 2014 including 1,700 directly across the street
- 460 parking spots
- 180k visitors in 2014; projected 177k visitors in 2015
- Leased from city of Mansfield under a 40 year ground lease for a lease rate of 7.5% of gross revenues plus \$51,583



Parks Overview

# Roanoke

- Built in 2011 on 9 acres in the north west suburbs of Dallas at a cost of \$12.7 million
- 7 major attractions including 6 slide towers, wave pool, lazy river, and company's largest aqua play system
- Top 10 fastest growing Community for the last 3 years which borders the Alliance Gateway project, a 26,000 acre master-planned mixed use community owned by the Perot family
- 380 parking spots
- 123k visitors in 2014; projected 130k visitors in 2015
- Leased from city of Roanoke under a 40 year ground lease for a lease rate of \$377,000 annually



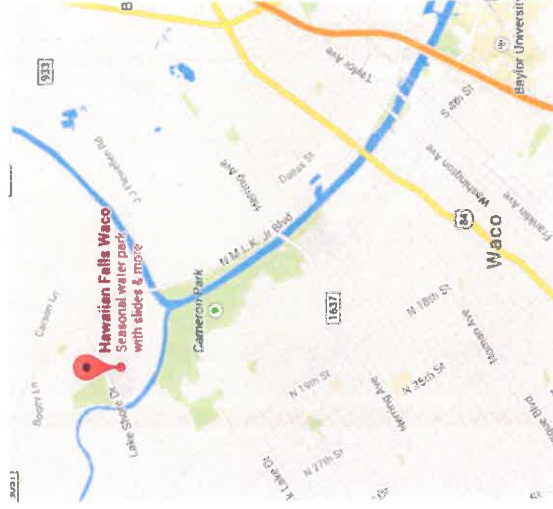
**Parks Overview**

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## Waco

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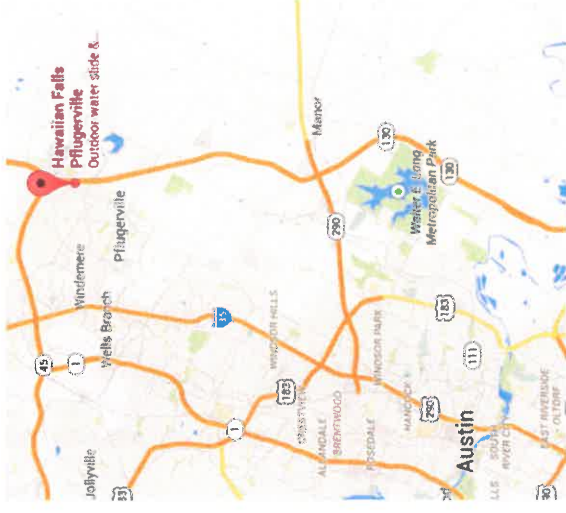
- Built in 2012 on 9.5 acres within 20 acres of Waco city park land, along the Brazos river at a cost of \$10.5 million
- 9 major attractions including 3 slide towers, wave pool, lazy river, activity pool, and splash zone
- 247,000 families within 60 miles
- 375 parking spots
- 114k visitors in 2014; projected 132k visitors in 2015
- Leased from city of Waco under a 40 year ground lease for a lease rate through 2016 of \$0 (this was a rebuild of a previously city-owned park), and greater of 5% of gross revenues or \$100k thereafter
- No other water park in Waco



Parks Overview

## Pflugerville

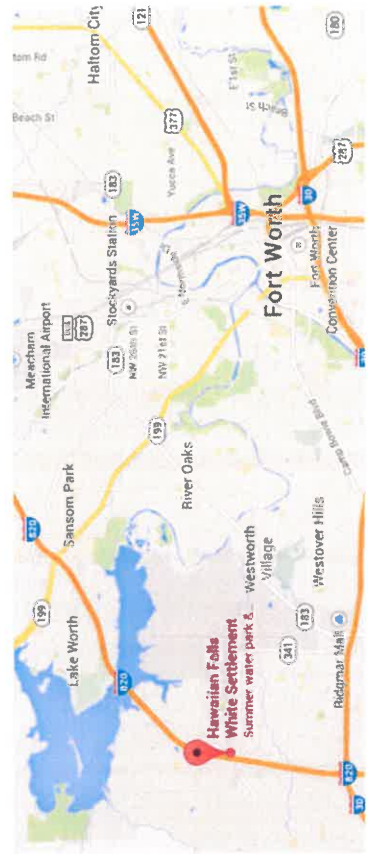
- Built in 2014 on 23 acres on the north side of Austin at a cost of \$28.3 million including land
- 15 major attractions including 3 slide towers, wave pool, kid zone, lazy river, zip lines, cargo climb nets, ropes courses, arcade, restaurant and banquet center
- Austin is the third fastest growing MSA in Texas
- 131k visitors in 2014; projected 150k visitors in 2015
- Leased from Pflugerville Community Development Corporation (PCDC) tied to debt service on the loan of \$1.5 million annually
- PCDC funded \$25 million to finance construction
- Only waterpark within 90 miles of Austin
- Upon retirement of PCDC debt facility, Company has option to purchase equipment and land for \$1.00
- A mixed-use development (residential/retail/office/hotel) led by investor Star Stream Capital slated to cost \$2 billion is being developed on the land bordering the park



Parks Overview

# White Settlement

- Built in 2014 on the western edge of the DFW metroplex on 16 acres at a cost of \$14.9 million
- 14 major attractions including 2 slide towers, wave pool, kid zone, lazy river, zip lines, cargo climb nets, ropes courses, arcade, restaurant and banquet center
- 232,000 families within 15 miles
- 77k visitors in 2014; projected 105k visitors in 2015
- Leased from the city of White Settlement on a 40 year term; annual lease expense tied to debt service (ranges between \$800k and \$1.1 million)
- City funded \$12.5 million to finance construction
- Just north of I-30, a major east-west highway in DFW



Parks Overview

Parks Summary

Park	Year Built	Cost of Construction	Park Type	Lease Obligations
Garland	2003	\$10.5mm	WP	<ul style="list-style-type: none"> <li>• City Lease – 5% of annual revenue (due Dec 31)</li> <li>• CNL Lease - \$846k plus 10% of annual revenue over \$3.0mm (due Jun-Sept)</li> </ul>
The Colony	2004	\$11.1mm	WP	<ul style="list-style-type: none"> <li>• City Lease – 6% of annual revenue (due Sept 30)</li> <li>• CNL Lease - \$785k plus 10% of annual revenue over \$2.8mm (due Jun-Sept)</li> </ul>
Mansfield	2009	\$12.5mm	WP	<ul style="list-style-type: none"> <li>• City Lease – 7.5% of annual revenue plus \$52k (due Dec 31)</li> </ul>
Roanoke	2011	\$12.7mm	WP	<ul style="list-style-type: none"> <li>• City Lease – annual payment of \$377k (due Dec 31)</li> </ul>
Waco	2012	\$10.5mm	WP	<ul style="list-style-type: none"> <li>• City Lease – \$0 annually (through 2016)</li> </ul>
Pflugerville	2014	\$28.3mm	WP/AP/EC	<ul style="list-style-type: none"> <li>• City Lease – tied to bond debt service or \$123k per month</li> </ul>
White Settlement	2014	\$14.9mm	WP/AP/EC	<ul style="list-style-type: none"> <li>• City Lease – \$200k (due 4/1) &amp; \$600k (due 10/1)</li> </ul>



Parks Overview

## Summary of Lease Obligations

- The parks have been constructed and financed in a public/private partnership with local municipalities contributing a portion or all of the up-front capital and Horizon executing long-term ground leases (40+ years)
- In 2006, Horizon completed a sale-leaseback transaction with CNL Income Partners at two parks (Garland, Colony) – the Company maintains a ground lease with each municipality but leases the park assets (FF&E) from CNL
- For the other five parks (Mansfield, Roanoke, Waco, Pflugerville, White Settlement), the Company maintains one lease obligation for each park with the local municipality for both the land and park assets
- Upon the expiration of each lease agreement (in all cases 2040+ prior to any lease renewals) the lessor will retain the ground and park assets except at Pflugerville, where upon expiration of the agreement & retirement of the bond financing, the Company has the option to purchase the land and assets for \$1.00





RESOLUTION NO. 2017-

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF ROCKLIN  
AUTHORIZING THE CITY MANAGER TO EXECUTE A  
ROCKLIN QUARRY ADVENTURE PARK MASTER - AGREEMENT

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin hereby authorizes the City Manager to execute a Rocklin Quarry Adventure Park Master Agreement in the substantially the form attached hereto as Exhibit A and by this reference incorporated herein.

PASSED AND ADOPTED this 24<sup>th</sup> day of January, 2017, by the following vote:

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

\_\_\_\_\_  
Scott Yuill, Mayor

ATTEST:

\_\_\_\_\_  
Barbara Ivanusich, City Clerk

EXHIBIT A

ROCKLIN QUARRY ADVENTURE PARK MASTER AGREEMENT

## Rocklin Quarry Adventure Park Master Agreement

THIS MASTER AGREEMENT ("Agreement") is made this \_\_\_\_ day of January, 2017 ("Effective Date"), by and between the City of Rocklin, a California municipal corporation (the "City"), and Legacy Family Adventures-Rocklin, LLC, a California limited liability company ("LFA"). City and LFA sometimes individually are referred to hereinafter as a "Party" and, together as the "Parties."

### RECITALS

WHEREAS, the City owns property commonly known as the Big Gun Quarry in Quarry Park in the City of Rocklin;

WHEREAS, the City prepared a Parks Master Plan for Quarry Park to plan for recreational amenities and to fully utilize park and quarry area for the benefit of the residents and visitors to Rocklin;

WHEREAS, on or about November 26, 2014 the City obtained final closure authorization from the State Mining and Geology Board and since that time the City has continued to examine viable potential uses of the former Big Gun Quarry;

WHEREAS, the Big Gun Quarry is a unique geological site and one of the many historical features in the City that can be featured for the education and enjoyment of residents and visitors to the City of Rocklin;

WHEREAS, the City has considered various options for the Big Gun Quarry consistent the Parks Master Plan and to enhance the site while recognizing its historical contributions to the City;

WHEREAS, the City has determined that the use of the Big Gun Quarry and adjacent areas for use as a family adventure park is appropriate;

WHEREAS, such use will help to re-energize, re-purpose and re-new the downtown increasing its functional value; help to further establish Quarry Park as destination and to promote the City; compliment and capitalize on existing historical and natural resources and existing infrastructure; support economic development by fostering job growth, increase tourism, and attract businesses;

WHEREAS, the City has an interest in working with LFA as a consultant to develop a preliminary design, assist the City during the design build process and ultimately have LFA operate a family adventure park and associated amenities to be known as the Rocklin Adventures at Quarry Park, (the "Adventure Park" or the "Project");

WHEREAS, the principals of LFA have significant experience in all aspects of the design, construction and operation of amusements parks having built and operated over 40 water parks, adventure parks, theme parks and family entertainment centers parks in the United

States and overseas;

WHEREAS, City and LFA desire to enter into this Agreement to outline the shared vision and steps required to implement the Project, and for City to contract with LFA to perform various services in furtherance of the Project;

WHEREAS, the City has certain debt or will incur expenses associated with the property on which the Project sits and wishes to expend significant financial resources to create an amenity that will benefit the community, and for which it will be reimbursed, and the City lacks the expertise to develop a Project of the type proposed by LFA;

WHEREAS, the City performed a Mitigated Negative Declaration associated with the Quinn Quarry Park approved by the City Council in Resolution No. 2015-121 which addressed some proposed uses in the Big Gun Quarry and the City intends to prepare additional environmental review associated with the proposed Project;

WHEREAS, the City desires LFA to participate in each phase of this Agreement and thus enters into one agreement at the outset covering each phase with the expectation that all phases will be complete;

WHEREAS, nothing in this Agreement requires the City and LFA to proceed through all Phases of the project depending on financing, environmental review, the entitlement process and the ability of the City and LFA to terminate this Agreement at any time during the design and construction of the Project as outlined herein;

WHEREAS, certain entitlements may be required as part of the Project and the Master Agreement identifies the party(ies) responsibility for any entitlements; and

WHEREAS, the Parties desire that the Project will open to the public in a reasonable time frame and commit to work to achieve an opening in late summer 2017 or earlier if feasible.

**NOW THEREFORE**, in consideration of the foregoing recitals, which are incorporated herein, and the mutual covenants listed herein, the Parties agree as follows:

1. Recitals: The Recitals set out above are true and correct.
2. Project Site: The Project will consist of approximately five (5) acres of land in the area generally known as Quarry Park, Rocklin, California (the "Project Site") as is generally depicted on Exhibit A attached hereto.

3. Master Agreement between City and LFA: The Parties intend to enter into one Master Agreement with LFA to facilitate the Project. The Parties agree as part of this Agreement that LFA and the City will perform certain duties and have obligations, duties and responsibilities for the three phases of the Project identified as the following:

- i. Thirty Percent Design Phase;
- ii. Design Build Assistance Phase; and
- iii. Operation Phase of the Project after construction.

The terms of each individual Phase (or collectively “Phases”) described and attached hereto shall control that Phase of the anticipated work. Where provisions conflict with other agreements, the terms specific to the Phase of work shall control. Each Phase and the Scope of Work for each phase are set forth as described below.

a. Thirty Percent Design Phase. LFA will produce a Design/Development Package to the thirty percent design level and which will include schematic drawings and information required for a request for proposals for a design build construction of an adventure park similar to the proposed site plan referenced in Exhibit B. The Thirty Percent Design Package will provide the necessary drawings and information so that construction costs of the Adventure Park can be determined by qualified general contractors. LFA services to be provided for the Thirty Percent Design are set forth in Exhibit C (the “Thirty Percent Design Phase).

b. Design Build Assistance Phase. Should the City Council authorize City staff to proceed with a Design Bid Proposal or other construction contract, the City desires to have the design build assistance of LFA to provide advice and assistance in the final design and construction phase (Design Build Phase) of the Project. The Scope of LFA Services to be provided, compensation and the timing for such services under the Design Build Phase is set forth in Exhibit D.

c. Operating Phase. Upon authorization by the City to proceed, LFA will operate the Project and its related activities on the Project Site in the manner and as set forth the Operating Terms including the Scope, duties, rights, obligations, compensation, responsibilities of LFA and the City. The Operating Terms are attached hereto as Exhibit E (the “Operating Terms”). The Parties recognize that all the details of the Project are not known at the time of execution of this Master Agreement and refining details associated with the elements of the Project may be added to the Operating Terms as permitted in the Operating terms. Notwithstanding the above, nothing herein shall or is intended to modify the financial terms, the Term of the contract or substantive operating terms.

4. City Obligations: In furtherance of the Project, the City shall timely move forward with the following steps:

a. City Financing. City shall arrange for the financing needed for the Project.

b. Environmental Review. City shall conduct the appropriate environmental review for approval by the City Council.

c. Design-Build Procurement and Contract. City shall in a timely manner procure and select a design-build contractor to complete the design of the Project and then to construct the Project.

d. Perform other responsibilities as outlined in the Exhibits related to each Phase of the Adventure Park Project.

5. Notice. All notices given or required to be given hereunder shall be in writing and addressed to the Parties set out below, or to such other address as may be noticed under and pursuant to this paragraph. Any such notice shall be considered served when actually received by the Party intended, whether personally served or sent postage prepaid by registered or certified mail, return receipt requested.

To LFA at:

David J. Busch, President  
4670 Gresham Drive  
El Dorado Hills, CA 95762  
[Davidb@lfe.company](mailto:Davidb@lfe.company)

With a copy to:

Seth Merewitz  
Best, Best & Krieger  
300 S. Grand Ave, Suite 2500  
Los Angeles, CA 90071  
[Seth.Merewitz@bbklaw.com](mailto:Seth.Merewitz@bbklaw.com)

To CITY at:

City Manager  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677  
[Rick.Horst@Rocklin.ca.us](mailto:Rick.Horst@Rocklin.ca.us) or Current City Manager

With a copy to:

City Attorney  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677  
[DeeAnne.Gillick@Rocklin.ca.us](mailto:DeeAnne.Gillick@Rocklin.ca.us) or Current City Attorney

6. Miscellaneous:

- a. General Terms governing this Agreement are attached as Exhibit F and incorporated herein by reference.
- b. The terms of each Phase may differ as set forth in the Terms governing each Phase in Exhibits D, E and F. Where provisions in the Phase documents conflict or supplement with provisions in this Master Agreement, then the Phase terms will control.
- c. All exhibits referred to herein are attached hereto and by this reference incorporated herein.
- d. Notwithstanding the Notice provision above, except where Notice is required for a Default, electronic communication is an acceptable form of communication and authorization to act by either party or their authorized representative(s).

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized officers, have caused this Agreement to be executed as of the Effective Date.

**LEGACY FAMILY ADVENTURES-ROCKLIN, LLC,**  
a California limited liability company

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

Date Executed: \_\_\_\_\_

**CITY OF ROCKLIN, CALIFORNIA**

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

Date Executed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVAL AS TO FORM:

By: \_\_\_\_\_  
City Attorney



Exhibit A  
“Project Site”



PREMISES EXHIBIT

ROCKLIN QUARRY ADVENTURES

Legacy Family Entertainment - Rocklin, CA

January 17, 2017

**Exhibit B**  
**Project Schematic Drawings**



not to scale



# Rocklin Quarry Adventures

Legacy Family Entertainment

## SCHEMATIC SITE PLAN

January 17, 2017

### LEGEND

- A BIG GUN QUARRY PIT - ROCKLIN QUARRY ADVENTURES
- B ROCKLIN QUARRY ADVENTURES - TICKETING, CAFE, SUPPORT SERVICES FACILITY - 6,000 S.F.
- C QUARRY PIT ADVENTURES
  - c1 Jump Wall
  - c2 Gully
  - c3 Main Wall
  - c4 City Wall
  - c5 Sunny Side Wall
  - c6 Pond in Quarry
  - c7 Hanging Garden & Waterfall
  - c8 Main Zip Line
  - c9 Zip Line Tower
  - c10 Nature Trail
  - c11 "Kids Kingdom" with water stream play
- c12 "Amazing Maze"
- c13 Overlook viewing deck
- c14 Entry Gathering Plaza
- c15 Birthday pavilion and Restroom
- c16 Quinn Boathouse
- c17 Access Trail to bottom
- c18 Zip Line Deck in bottom of quarry
- c19 Ground school deck - 1,000 s.f.
- c20 Deck - 4,000 s.f.
- c21 Rockery Retaining Walls
- c22 Drop Off
- c23 Water Tank
- D PARKING - ROCKLIN QUARRY ADVENTURES +/- 200 CARS
- E EXISTING BIG GUN QUARRY STRUCTURES ON PARCEL A
- F QUARRY CAR RAIL TRACKS EXTENDED
- G (2) 40'X60' SHADE STRUCTURES FOR PICNICKING
- H PEDESTRIAN CONNECTION TO MEMORIAL PARK
- I END OF MINING CAR RAIL
- J PUBLIC ACCESS THROUGH TO PARKING LOT
- K TEMPORARY GRAVEL PARKING IF NEEDED
- L QUARRY PARK PICNICKING
- M PUBLIC ACCESS TO AMPHITHEATER

**Exhibit C**  
**Thirty Percent Design LFA Services**

**LFA SERVICES**  
**FOR THE THIRTY PERCENT DESIGN PHASE**

This Thirty Percent Design Phase describes the consulting services to be performed during the initial design of the Adventure Park.

1. **Services.** The City and LFA have entered into a Master Agreement relating to three phases of development and operation of a project known as Rocklin Adventures at Quarry Park (Adventure Park). Each phase has specific terms controlling that phase of the work and each phase is controlled by the Master Agreement. This consulting phase shall be referred to as the Thirty Percent Design Phase (“Phase”). The provisions of the Master Agreement are incorporated herein by reference and shall control unless a different provision is contained herein and in which case the provision in this Thirty Percent Design agreement shall control. Subject to the terms and conditions set forth in this Agreement, LFA shall provide the services described in Exhibit C1.

2. **Payment.** City shall pay LFA for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit C2. The payment specified in Exhibit C2 shall be the only payment made to LFA for services rendered pursuant to this Phase. LFA shall submit all billings for said services to City in the manner specified in Exhibit C2. Billings shall be submitted to the City on or before the 10<sup>th</sup> day of the month or billings will be carried over to the next month’s billing cycle. Payment shall be due by the City within five (5) business days of receipt of billing. The City shall not be obligated to pay for any services or additional services unless expressly agreed to in writing. As provided in Exhibit C2, the cost for services under this shall not exceed sixty five thousand dollars (\$65,000.00) unless agreed to in writing and signed by the City Manager or approved by the City Council as necessary. Payment of the \$65,000.00 sum shall be in two phases, the first \$45,000.00 in this Thirty Percent Design Phase and the balance (\$20,000.00) upon commencement of the Design Build contract.

3. **Facilities, Equipment and Other Materials, and Obligations of City.** LFA shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Phase.

4. **General Provisions.** The general provisions are set forth in the Master Agreement. Any inconsistency between Master Agreement provisions and any other terms or conditions of this Phase of work shall be controlled by the terms of this Phase of work, including but not limited to insurance and indemnity requirements.

5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.

## EXHIBIT “C1”

### SCOPE OF WORK

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#### 1. SCOPE OF WORK

LFA shall provide design, programming and consulting services as hereinafter described which will result in Schematic Development Plans (“Schematic Plans”) and Design Development Plans (“Design Plans”) to be used as a Design Criteria Package for the possible 100% design and construction of the Adventure Park adjacent to and potentially within the boundaries or a portion of Quarry Park in Rocklin, California. The Schematic Plans shall include a guest services building (ticketing, restrooms, merchandising, small café, storage, outdoor seating and covered deck), all Adventure Park elements and amenities, and sufficient paved and overflow parking, designated parking and pedestrian pathways. LFA shall provide preliminary design information to an approximately thirty percent design level regarding requirements for the Project, including a City-approved program which shall set forth design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems and initial site requirements. As more particularly described below the thirty percent design shall be used by the City for purposes of further evaluation of the Adventure Park by staff and the City Council, any required land use and CEQA review and for the further work by a design build or other contractor.

#### 2. SCOPE OF SERVICES

LFA shall request in writing from City a list of pertinent Project information needed to complete its Scope of Work.

##### A. Schematic Design Plans:

LFA shall prepare, for approval by City, Schematic Plans consisting of drawings and other documents illustrating the scale and relationship of all the proposed Project components to the satisfaction of the City Manager or designee. Schematic Plan deliverables shall include the following:

- Overall plan view site layout and/or aerial including Quarry Park, adjacent existing and planned improvements and location of the Project improvements, elements and associated amenities
- Plan view site layout and/or aerial of the Project area with improvements, elements and associated amenities located and defined
- Defined Project parcel boundaries
- Assistance and review of any required permit or land use applications or environmental documents.
- Preliminary pedestrian and vehicular access and circulation plan
- Materials suitable for public and media presentation

- Preliminary estimate of construction cost based upon City preliminarily-approved programmed items, areas, volumes, or other unit costs
- Building Floor Plans

B. Design Development Plans:

Based upon the City-approved Schematic Plans, LFA shall prepare, for approval by City, 30% Design Development Plans consisting of drawings and other documents to further fix and describe the size and character of the Project as to the site improvements and adventure park elements and amenities. Design Development Plan deliverables shall include the following:

- Refinement of Schematic Plans based on City input
- Preliminary grading and drainage plans (30%)
- Cross-sections and elevations to determine adventure park element interaction and capacity within the Big Gun Quarry
- Enlarged view area renderings/vignettes for guest services building or other amenities
- Preliminary guest services building concepts/elevations and floor plans
- Location of sewer, water/fire hydrant, storm drain, power and other utility points of connection
- Define site, utility and/or improvement grade elevations
- Preliminary ADA evaluation
- A detailed estimate of construction costs based on the plans and specifications (30%) which shall include any adjustments to previous construction cost estimates indicated by changes made by the City

C. Meetings with Staff and the City Council

LFA shall consult with the City staff in person or by phone up to thirty (30) hours. LFA shall attend up to two City Council meetings and up to two community meetings as requested by the City to address the Project. Should the City commence any proceedings for a Conditional Use Permit, LFA shall attend any Planning Commission meetings as requested by the City. Should any work be required by LFA for other required permits or licenses to be issued to LFA for the Adventure Park, then any such work shall be performed by LFA at no further cost or expense to the City.

**3. PROJECT SCHEDULE**

Assuming timely submittal by City of pertinent Project information as required herein, LFA shall provide its design and programming services in conformance with the following schedule which commences upon execution of this Agreement:

- Schematic Plans.....14 Days from contract approval
- Design Plans .....30 Days from contract approval

EXHIBIT "C2"

COMPENSATION FOR CONSULTING SERVICES ON THE THIRTY PERCENT DESIGN PHASE

City shall compensate LFA for services on the Thirty Percent Design Phase as follows:

Basic Services Fee: The Scope of Services described in Exhibit "A" shall be compensated by a fixed fee Basic Service Fee of SIXTY-FIVE THOUSAND DOLLARS AND 00/100 (\$65,000.00) payable as follows:

For the first \$45,000.00 –

Per the payment schedule in Section 2 of Exhibit C:	40% of Basic Service Fee
Upon Delivery of Schematic Plans:	20% of Basic Service Fee
Upon Delivery of Design Plans :	40% of Basic Service Fee

For the balance of \$20,000.00:

Upon commencement of the Design Build Contract.

Additional Services: If requested, additional services will be billed for on an hourly basis, Compensation for additional services (when requested and authorized in writing in advance by City) shall be provided in conformance with the following hourly rates:

Principal.....	\$ 195.00 per hour
Architect /Engineer.....	\$ 165.00 per hour
Project Manager.....	\$ 135.00 per hour
Cad Technician.....	\$ 100.00 per hour
Graphics Technician.....	\$ 85.00 per hour
Clerical.....	\$ 50.00 per hour

Reimbursable Expenses: In addition to basic service fee, an allowance of Not to Exceed THIRTY-FIVE HUNDRED DOLLARS AND 00/100 (\$3,500.00) shall be provided for reimbursable expenses. Reimbursable expenses will be billed at LFA's direct cost, and shall include the following: Plotting and reproduction expense of Drawings, Specifications and other electronic files, exhibits, air travel and hotel (if any) and/or documents. Detailed receipts shall be required to verify reimbursable expenses.



**Exhibit D**  
**Design Build LFA Services**

This Design Build Assistance Phase describes the consulting services to be performed during the Design Build of the Adventure Park.

1. **Services.** The City and LFA have entered into a Master Agreement relating to three phases of development and operation of a project known as Rocklin Adventures at Quarry Park (“Adventure Park” or “Project”). Each phase has specific terms controlling that phase of the work and each phase is controlled by the Master Agreement. This consulting phase shall be referred to as the Design Build Assistance Phase. LFA shall provide the services in this phase as described in Exhibit D1. The provisions of the Master Agreement are incorporated herein by reference and shall control unless a different provision is contained herein and in which case the provision in this Design Build Assistance Phase shall control. The parties are aware of limitations regarding a party performing design build construction work and later operating work and specifically limit LFA in this agreement to providing technical advice to a separate design build or other contractor as requested by the City. LFA will not be involved in the construction of the Project nor as a member of the design-build entity selected, and shall only be involved as a consultant to the City as set forth herein.

2. **Payment.** City shall pay LFA for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit D2. The payment specified in Exhibit D2 shall be the only payment made to LFA for services rendered pursuant to this phase of the Agreement. LFA shall submit all billings for said services to City in the manner specified in Exhibit D2. Billings shall be submitted to the City on or before the 10th day of the month or billings will be carried over to the next month’s billing cycle. Payment shall be due by the City within five (5) business days of receipt of billing. The City shall not be obligated to pay for any services or additional services unless expressly requested by the City in writing. As provided in Exhibit D2, the cost for services under this phase shall not exceed five thousand dollars (\$5,000.00) per month, unless agreed to in writing and signed by the City Manager.

3. **Facilities, Equipment and Other Materials, and Obligations of City.** Except as set forth in Exhibit D1, LFA shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

4. **General Provisions.** Any inconsistency between the Master Services Agreement and any other terms or conditions of this Phase shall be controlled by the terms relating to this Phase of the consulting work, including but not limited to insurance and indemnity requirements.

5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.

**EXHIBIT “D1”**

**SCOPE OF WORK**

**1. SCOPE OF WORK**

During the design and construction phase of the project LFA shall perform the following consulting services as requested by the City Manager:

Provide advice, recommendations and suggestions to the selected design and construction firm and to the City of Rocklin to:

1. insure the best possible selection of attractions and guest amenities.
2. review and comment on Building Floor Plans
3. insure the best possible pricing from vendors and suppliers
4. review of budgets and job costing
5. attend all weekly design and construction meetings
6. meet weekly with the project manager from the design and construction company
7. monitor design and construction schedule against agreed upon timelines
8. be available as requested to present findings to City staff

**2. SCOPE OF SERVICES**

Upon commencement of this Design Assistance phase, LFA shall request in writing from City a list of pertinent Project information needed to complete its Scope of Work in this Phase. LFA shall perform only the services requested by the City Manager during this design assistance phase, in writing or communicated electronically.

**a. Weekly Written Report:**

LFA shall prepare, for City, a written report which shall consist of the following:

- Progress report on key milestones
- Line-by-line budget review and projections
- Provide narrative on discrepancies from original plans
- Provide notes of weekly construction meeting

EXHIBIT "D2"

COMPENSATION FOR CONSULTING SERVICES  
IN THE DESIGN ASSISTANCE PHASE

COMPENSATION FOR CONSULTING SERVICES AND TIME FRAME

City shall compensate LFA for services rendered in this Design Assistance Phase as follows:

Basic Services Fee: The Scope of Services described in Exhibit "D1" shall be compensated according to the following schedule:

David Busch.....	\$ 195.00 per hour
Daron Anderson.....	\$ 165.00 per hour
Mark Wagner.....	\$ 165.00 per hour
Lynda Kelly.....	\$ 150.00 per hour
David Mathews.....	\$ 85.00 per hour
Others.....	\$ 50.00 per hour

Reimbursable Expenses: In addition to basic service fee, an allowance of Not to Exceed THIRTY-FIVE HUNDRED DOLLARS AND 00/100 (\$3,500.00) shall be provided for reimbursable expenses. Reimbursable expenses will be billed at LFA's direct cost, and shall include the following: Plotting and reproduction expense of Drawings, Specifications and other electronic files, exhibits, and/or documents. Detailed receipts shall be required to verify reimbursable expenses.

Compensation for the Scope of Services will not exceed \$5,000.00 (five thousand dollars) per month, unless otherwise approved in writing by City Manager.

**Exhibit E**  
**Adventure Park Operating Phase**

**EXHIBIT E**  
**ADVENTURE PARK OPERATING PHASE TERMS**

This Operating Phase (“Operating Phase”) for the Rocklin Adventures at Quarry Park (“Adventure Park”) is one of the three phases referenced in the Master Consulting Agreement and defines the terms, responsibilities, liabilities and obligations of the parties for this Operating Phase of the project.

The Parties to the Master Agreement agree to the following terms governing the Operating Phase as follows:

1. GRANT, DEFINITIONS, AND WARRANTIES:

1.1 Definition of Terms:

1.1.1 Affiliate: LFA or any person or entity controlling LFA, or any person or entity other than LFA in which LFA, or any person or entity controlling LFA, individually or collectively with LFA, owns or has the right to vote at least a fifty percent (50%) capital or voting interest of the common stock, partnership units or limited liability company interests and retains management and control of the assignee entity or entities, as applicable.

1.1.2 Adventure Park: The area known as the Adventure Park consisting of various park venues, elements, rides, activities, amenities and facilities as generally described in *Exhibit D*, to be constructed on the Premises and operated and maintained pursuant to the Master Agreement.

1.1.3 Adventure Park Improvements: The buildings, structures, advertising displays, landscaping, infrastructure, utilities, parking lots, driveways and walkways, and other improvements or facilities constructed or installed or to be constructed or installed on the Premises, except for the Capital Improvement(s).

1.1.4 Capital Improvement: Subsequent to the completion of the Adventure Park by others under a separate design/build or other construction agreement, any new construction, improvement or addition (as opposed to Repair and Maintenance to existing Adventure Park Improvements) costing more than \$1,000 in any one instance and having a projected useful life of at least two years.

1.1.5.1 Capital Reserve: An annual contribution of \$60,000 from Net Operating Revenue, not to exceed a balance of \$500,000 for the uses referenced in Section 9.2.

1.1.6 CITY: The City of Rocklin, a California municipal corporation.

1.1.6.1 Cost of Goods Sold: The cost of inventory specifically purchased for resale and sold during a given fiscal period.

1.1.6 Conditional Use Permit (also “CUP”): Refers to the Conditional Use Permit (CUP) issued by the CITY following the process provided in the Rocklin Municipal Code.

1.1.7 Design-Build Agreement: The design-build or other construction agreement (“Design-Build Agreement”) between the CITY and the design-build contractor (not affiliated with LFA) for the final design, permitting and construction of the Adventure Park.

1.1.8 Effective Date: The date parties enter into the Master Consulting Agreement and the date on which the terms of the three Phases described in the Master Agreement are effective.

1.1.9 Exclusive Parking Area: The parking area(s) constructed or designated for Parking and as referenced in Section 4.4.

1.1.10 Environmental Regulation: any law, statute, regulation, order or rule now or hereafter promulgated by any Governmental Authority, whether local, state or federal, relating to air pollution, water pollution, noise control and/or transporting, storing, handling, discharge, disposal or recovery of on-site or off-site hazardous substances or materials, as same may be amended from time to time, including without limitation the following: (i) the Clean Air Act (42 U.S.C. § 7401 et seq.); (ii) Marine Protection, Research and Sanctuaries Act (33 U.S.C. § 1401-1445); (iii) the Clean Water Act (33 U.S.C. § 1251 et seq.); (iv) Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6901 et seq.); (v) Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.); (vi) Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); (vii) the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C § 135 et seq.); (viii) the Safe Drinking Water Act (42 U.S.C. § 300 (f) et seq.); (ix) Occupational Health and Safety Act (29 U.S.C. § 651 et seq.); (x) the Hazardous Liquid Pipeline Safety Act (49 U.S.C. § 2001 et seq.); (xi) the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); (xii) the Noise Control Act of 1972 (42 U.S.C § 4901 et seq.); (xiii) Emergency Planning and Community Right to Know Act (42 U.S.C §§ 11001-11050); and (xiv) the National Environmental Policy Act (42 U.S.C §§ 4321–4347).

1.1.11 Force Majeure Event: Declared or undeclared war, sabotage, revolutions, riot or acts of terrorism or civil disobedience; acts or omissions of governmental agencies; accidents, fires or explosions; floods, earthquakes or other acts of God; strikes or labor disputes; shortages of materials; or any other event not within the control of LFA or the CITY and not caused by the negligent act or omission or intentional wrongful conduct of LFA or CITY.

1.1.12 Fiscal Year: Refers to the period of July 1 – June 30

1.1.13 FF&E: Furniture, fixtures and equipment are movable furniture, fixtures or other equipment that have no permanent connection to the structure of a building or utilities of the Adventure Park, including but not limited to goods, Operating Inventory, merchandise, computers, software, vehicles, and machinery owned in connection with the operation of the Adventure Park .

1.1.14 Gross Revenues: All monies or non-cash payments (credit cards, electronic transfers etc) received by LFA or any Affiliate or any party having an ownership interest in LFA or an Affiliate or any concessionaire, or licensee relating to or derived in any manner and however derived from the operation of the Adventure Park or any component of the Adventure Park whether by LFA, sponsorships, compensation from naming rights, concessionaires, parking, valet, vendors, consultants or others whether in person, via the internet, promotions (Groupon etc.), mail or other means during any fiscal year from the Revenue Sharing Commencement Date and continuing through the Term of the Operating Phase of the Master Agreement or any renewal term, without any deductions except for the following which are not included in Gross Revenues, all of which will be summarized in the annual Financial Report:

- a. any sales taxes or other admissions and/or amusement taxes imposed by any governmental entities and collected by LFA, or
- b. "trade-outs" or other arrangements whereby LFA engages in advertising, promotion or other trade of the Adventure Park in exchange for non-cash benefits unless the arrangement is with an Affiliate and as limited herein; or

- c. the amount of any sales initially included in Gross Revenues that are subsequently subject to refund or credit.

1.1.15 Hazardous Material: Any material, substance, waste or matter which is flammable, explosive, corrosive, radioactive or toxic, or which contains asbestos, or is a pesticide, or is a chemical known to cause cancer or reproductive toxicity or which is defined as a hazardous substance, material or waste, or as a toxic substance, material or waste, in any Environmental Regulation.

1.1.16 Legacy Family Adventures-Rocklin, LLC or "LFA": a California limited liability company. Any references to expenditures or other obligation by LFA shall not be obligations of the entity, but rather refer to LFA in its capacity as the operator of the Adventure Park.

1.1.17 Legal Requirements: All laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to LFA, the Adventure Park or the operation of the Adventure Park.

1.1.18 Repair and Maintenance: All routine and ordinary repair and maintenance to the Adventure Park required to preserve the Adventure Park Improvements in good working repair during their projected useful life which do not constitute Capital Improvements.

1.1.19 Master Consulting Agreement (also referred to as the Master Agreement): The agreement entered into between the parties and approved by the City Council by Resolution No. 2017- \_\_\_\_\_ that identifies the terms of each of the three Phases of consulting and the general terms, responsibilities, obligations and liabilities in each phase of the project.

1.1.20 Net Operating Revenue: Gross Revenue less Cost of Goods Sold less Standard Operating Expenses.

1.1.21 Notice to Proceed: The date on which the City authorizes LFA to proceed with its work for or in preparation of opening the Adventure Park. City shall issue to LFA a notice to proceed as described in Section 6.6

1.1.22 Operating Inventory: Consumable items used or held in storage for use in the operation of the Adventure Park, which may include retail shop merchandise, food and beverage inventory, kitchen supplies, paper and plastic ware, bathroom supplies, paper towels, fuel, cleaning materials, fertilizers, pesticides, chemicals, cables, fasteners, climbing equipment, inner tubes and life safety vests, maintenance parts and supplies, office supplies and other similar items and operational supplies for venues, rides and/or attractions.

1.1.23 Operating Phase Terms or Operating Terms: The terms contained in this document referencing the Operating Phase of the Adventure Park and incorporated as part of the Master Agreement.

1.1.24 Operating Season: The period during which the Adventure Park is open for business each year.

1.1.25 Operational Losses: In any given Fiscal Year, the amount that the Standard Operating Expenses are in excess of Gross Revenue less Cost of Goods Sold.

1.1.26 Original Investment: The original investment by the City, towards the construction of the Adventure Park, anticipated to be Three Million Two Hundred and Fifty Thousand dollars (\$3,250,000.00) and as further described in Section 1.3.

1.1.27 Phase: This refers to the three phases of the consulting agreement as provided for in Sections 3 (a), (b) and (c) of the Master Agreement.

1.1.28 Premises: The tract or tracts of land with the dimensions, boundaries, and location depicted in *Exhibit A*, attached hereto and incorporated herein.

1.1.29 Profit and Loss Statement: A statement that sets forth gross revenues, Cost of Goods Sold and Standard Operating expenses quarterly or for the Fiscal period just concluded; the statement shall be in the form attached as *Exhibit C* or as later modified by agreement of the parties.

1.1.30 Net Revenue Sharing Commencement Date: The first day the Adventure Park is open for public business.

1.1.31 Standard Operating Expenses: The expenses to operate the Amusement Park as outlined in the Profit and Loss Statement, Exhibit C, including all amounts paid to LFA and third parties.

1.2 Grant of Rights: The CITY, in consideration of the provisions of the Master Agreement and the terms of this Operating Phase, and subject to the terms hereof, grants access to the Premises to LFA for the purposes stated herein, including the exclusive right to operate and maintain an Adventure Park at the Premises. It is expressly agreed that the CITY retains the ownership of the Adventure Park and the Premises and that the rights granted to LFA do not extend to any ownership right whatsoever, other than LFA's right to its share of the ownership of Net Revenue Sharing interest and any FF&E paid for solely with LFA's funds and which have not been included in Standard Operating Expenses. Any FF&E paid solely with LFA funds shall be identified no less frequently than the first of July annually and included in a written statement provided to the City. If the FF&E is not identified as provided in Section 7.6.1 below, LFA shall have no rights to such property upon events described herein. FF&E obtained and identified by LFA shall not be included in any Standard Operating Expenses as provided herein.

1.3 City's Original Investment: The parties have examined the anticipated cost to construct and other related expenses necessary to prepare the Adventure Park for operation to be approximately Three Million Two Hundred Fifty Thousand dollars (\$3,250,000.00). The parties agree that best efforts will be made to achieve the necessary work at or below this sum, but this sum does not represent a cap on the total cost. Upon completion of the Adventure Park the actual cost of the work, the City's Original Investment will be determined and provided to LFA with a detailed breakdown of the costs.

## 2. TERM:

2.1 Initial Term: The initial Term of the Operating Phase commences on first day the Adventure Park is open for business and continues until the expiration of fifteen (15) years. (the "Initial Term").

2.2 Renewal Term: The CITY grants to LFA options to extend the term of the Operating Phase for two (2) additional ten (10) year periods (the Initial Term and any renewal periods shall be referred to herein as the "Term"). Each renewal option may be exercised only if at the time of commencement of that option, LFA is not in default or breach of any terms contained herein or in violation of the CUP or any other permits issued for the Adventure Park (beyond any applicable notice and cure period). As an express condition



of extending the Term LFA shall deliver written notice to the CITY giving notice of renewal at least eighteen (18) months prior to the expiration of the then current term. If no notice is provided by LFA, this Agreement shall be deemed to expire at the end of the then current term, unless otherwise approved in writing by the parties. If the renewal option is exercised, the extended term shall be subject to all the terms and conditions contained herein and in the Master Agreement. CITY shall provide LFA with written confirmation of the renewal or non-renewal.

3. MEET AND CONFER:

3.1 In the event of any issue that arises that is not covered by this Agreement, the party that has an issue shall provide to the other party a written notice of any issue. The Parties shall meet and confer within thirty (30) days after the date of such written notice to seek to attempt to cooperatively resolve any disagreement. If no mutually acceptable solution can be reached, either Party may take such action as may be permitted herein.

3.2 Mediation and Arbitration. Except as otherwise provided in the Master Agreement and the terms of this Operating Phase or as otherwise agreed, any controversy or claim arising out of or relating to the Master Agreement and the terms of this Operating Phase or the breach thereof shall be settled by mediation or by arbitration before a single arbitrator or a panel of three (3) arbitrators, referred herein collectively as the "arbitrator," in Placer, California.

(a) Mediation. The parties shall, before the commencement of arbitration proceedings, attempt in good faith to settle their dispute by mediation. The cost of the mediator shall be equally divided and each side bearing their own attorney's fees and other costs.

(b) American Arbitration Association. The arbitration shall be administered by and held in accordance with the Commercial Mediation or Commercial Arbitration Rules of the American Arbitration Association.

(c) Provisional Remedy. Each of the parties reserves the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order and/or appointment of a receiver on the grounds that the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief.

(d) Enforcement of Judgment. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(e) Discovery. The parties may obtain discovery in aid of the arbitration to the fullest extent permitted under law, including California Code of Civil Procedure, section 1283.05. All discovery disputes shall be resolved by the arbitrator.

(f) Consolidation. Any arbitration hereunder may be consolidated by the American Arbitration Association with the arbitration of any other dispute arising out of or relating to the same subject matter when the arbitrator determines that there is a common issue of law or fact creating the possibility of conflicting rulings by more than one (1) arbitrator. Any disputes over which arbitrator shall hear any consolidated matter shall be resolved by the American Arbitration Association.

(g) Power and Authority of Arbitrator. The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement or to grant any remedy which is prohibited by the terms of this Agreement.

(h) Costs. The costs of the arbitration, including any American Arbitration Association administration fee, the arbitrator's fee and costs for the use of facilities during the hearings,; shall be borne by the least prevailing party to the arbitration as determined by the arbitrator.

(i) Attorney's Fees. Attorney's fees in the event of an arbitration shall be governed by Section 17 of the Master Agreement.

#### 4. PARKING AND ACCESS TO PREMISES:

4.1 LFA Parking Access and Use: In accordance with a proposed site plan attached hereto as *Exhibit B*, and subject to further review, environmental analysis and approval by the City Council, the CITY agrees to: (i) provide access to and the exclusive use of the Exclusive Parking Area for customers, vendors and employees of LFA during normal business hours during park Operations; (ii) to provide access to and non-exclusive use of the Non-Exclusive Parking Area for customers, vendors and employees of LFA during normal business hours during Adventure Park Operations; and, (iii) repair of parking area suitable for commercial use including the Exclusive Parking Areas. The CITY acknowledges and agrees that LFA may charge a fee in the Exclusive Parking Areas only for VIP parking and valet parking as outlined in the final approved project design plan. The parties acknowledge that an Exclusive Parking area will be designated either on the project site or in close proximity to the Adventure Park as approved by the parties following further analysis and environmental review.

4.2 Pedestrian Access: The CITY shall provide designated pedestrian access to the Adventure Park for customers, employees and service personnel related to LFA's activities pursuant to this Operating Phase in accordance with the plans attached hereto as *Exhibit B*.

4.3 Special Events and Park Activities: The parties acknowledge that Quarry Park is used for community events, concerts and other recreational activity and nothing in the Master Agreement or the terms of the Operating Phase shall interfere with the ability of the CITY to sponsor events or rent its park facilities to others for events in the CITY's sole discretion. Should the CITY or its assignee permit or conduct a special event, park activity or other attraction during normal business hours of the Adventure Park during the Operating Season that may result in the use of a significant number of the parking places, CITY shall give LFA reasonable notice and permit LFA to place appropriate signage and direct traffic away from the Exclusive Parking Area so as not to interfere with the use of the Exclusive Parking Area by Adventure Park Patrons. Parties shall work together to coordinate special events that do not interfere with the normal operations of the Adventure Park, but nothing herein is intended to interfere with the City's full rights to use its parks and other property.

4.4 Exclusive Parking Areas: The CITY and LFA may agree upon certain areas to be designated as Exclusive Parking Areas when the Adventure Park is operating. When the Adventure Park is not operating, there shall be reciprocal use of such areas. Valet and paid parking are only permitted in areas designated as Exclusive Parking Areas. If an Exclusive Parking Area is created by the CITY, it must be paid for out of the CITY's Original Investment or an additional sum to be re-paid to the City as provided below.

4.4.1 Additional Funds for the Exclusive Parking Area: The City agrees to pay the cost of additional parking in the Exclusive Parking Area to a total cost of five hundred thousand dollars (\$500,000.00)

if the parking area cannot be constructed with the Original Investment. If the CITY is required to expend sums above the Original Investment then the expenditure shall be repaid as provided in Section 9.1(a) Debt Service below.

4.5 City Right of Access:

a. Inspection; Emergency: CITY shall have the right to inspect the Premises at any time with 48 hours written notice to LFA, unless CITY has concerns over an emergency condition which is a threat to safety or human health in which case CITY shall not need to provide advance written notice, but shall inform LFA of its concerns. Authorized representatives of the City shall have access to all locations on the Adventure Park Premises upon reasonable notice or no notice in the case of an emergency. LFA shall provide keys for access by emergency personnel to all areas in the Adventure Park.

b. Tickets and Passes Provided to the CITY: LFA shall annually provide no less than one hundred (100) daily passes or admission tickets for all park activities to be used by the CITY for goodwill and CITY promotional activities.

c. Discounted Rates for Park Programs: LFA shall provide discounted passes or tickets to the CITY at a rate to be negotiated at not more than twenty five (25%) percent of the regular ticket prices for use in the CITY's youth summer camp programs and for City employees.

d. Annual CITY Employee Event: LFA will permit the CITY's use of the Adventure Park once on an annual basis for a City employee activity event if requested by the CITY. CITY and LFA shall work in good faith to agree on cost, shared use, and a date/time for such an event.

5. RESTRICTIONS ON COMMERCIAL ACTIVITIES IN CERTAIN AREAS:

5.1 Pedestrian Access and Use Areas: The CITY may permit or conduct sales, concessions, promotions or other public or commercial use in the adjacent park or publicly owned areas. Any such activities undertaken shall not interfere with access to LFA's operations or customer usage of the Adventure Park and shall be of such a nature and character as not to discourage or deter from the patronage of the Adventure Park, detract from the family atmosphere of the Adventure Park and its surrounds, or divert sales or sales opportunity that would otherwise accrue to the Adventure Park and its operations.

5.2 No Interference with Activities of Quarry Park: LFA shall not interfere with City park or event activities or interfere with park/event access and usage of Quarry Park or public facilities and Adventure Park activities shall be of such a nature and character as not to discourage or deter from the park or public space uses. The parties shall coordinate activities on park and Adventure Park property to the greatest extent possible in order to avoid activities that will interfere with the other's lawful use of the public park/public space and the Adventure Park. Where the City has identified concerts or other special events, music or other amplification from the Adventure Park and its operations shall not be used if it interferes with the City special event. Where LFA has identified specific dates for special music or entertainment, the City shall schedule its events with the understanding and agreement of the users that music and sound from the Adventure Park could interfere with those activities.

5.3 Outside of Premises: Nothing in this Agreement shall prevent CITY or its assignee from conducting any business or other activities outside of the Adventure Park; nor shall anything in this Agreement confer upon LFA any rights to use any City-owned assets other than the Premises and other areas specifically outlined in the terms contained herein.

6. RIGHTS OF LFA:

6.1 Permitted Activities: LFA may use the Adventure Park Premises for commercial purposes as follows provided such uses are consistent with any Conditional Use Permit (CUP) issued for the Adventure Park. Activities envisioned include: all activities normally associated with Adventure Park entertainment facilities, including, without limitation, various adventure and water-oriented entertainments, rides, slides, pools, and attractions, zip lines, climbing walls, ropes courses, sky rides, games, competitions, promotions, activity based entertainment, special occasions and group gatherings, concessions, and musical performances not in conflict with CITY activities, dramatic or other stage shows or similar presentations (Permitted Activities). Any subsequently issued CUP shall control with respect to Permitted Activities, times of operation for those activities and other conditions of the CUP. LFA is the private provider and operator of the Adventure Park and has the exclusive right to determine group Permitted Activities that will occur in the Adventure Park and the City shall not review or approve such activities. Certain activity areas may be exclusive and certain areas may be joint use with reciprocal rights as determined in the final design and the CUP. Where an activity requires a Special Event permit under the CITY's code, existing now or hereinafter adopted, LFA shall comply with such code requirements.

6.2 Exclusive Commercial Rights on Designated Premises:

6.2.1 Uses: The rights conveyed under these Operating Terms include the exclusive right to commercial use of the Premises for the purposes set forth herein, except as limited by the Master Agreement or the terms of the Operating Phase.

6.2.2 Entry into Other Agreements:

- a. LFA shall have the sole and exclusive right to enter into any concession, promotion or sponsorship agreements or exclusive use arrangements or subcontracts relating to elements of the Adventure Park, , so long as the agreements do not extend beyond the Term contained herein without City approval.
- b. The City enters into the terms of this Operating Phase with LFA based on its expertise and history of operating similar facilities. Nothing in this Operating Phase permits LFA to subcontract or enter into any agreements with others to provide for the overall/day to day operation of the Adventure Park without involvement by LFA or its affiliates, without the City's express written consent. Any attempt to subcontract or enter into any agreements with others to provide for the overall/day to day operation of the Adventure Park without involvement by LFA or its affiliates without the City's express written consent is void and shall be grounds to terminate the Master Agreement and this Operating Phase as provided in Section 26.3.4. Assignment of these terms shall be controlled by the Master Agreement.
- c. LFA shall identify all concession, promotion or sponsorship agreements or exclusive use arrangements or subcontracts relating to elements of the Adventure Park to the City prior to entering into the agreements. LFA agrees that any concession, promotion or sponsorship agreements shall expressly provide that the City, its officers, employees or insurers shall not be liable for any of the concessionaire, promoter or sponsor's activities or their employees' actions and the agreements shall provide that the contracting party shall indemnify, defend and hold the City, its officers, employees or insurers harmless

from any actions, claims or suits arising out of their activities. The City shall have the right to review and approve of the indemnification language.

- d. LFA shall not enter into any agreements with any concessionaire, promoter or sponsors, exclusive use arrangements or subcontracts relating to elements of the Adventure Park or others whose name is used in connection with the Adventure Park that relate to promote the use of drugs (including marijuana), drug paraphernalia, smoking, sexual activities or other activities inconsistent with a family oriented Adventure Park.

#### 6.2.3 Alcoholic Beverages:

- a. Alcoholic beverages may be sold on the Premises subject to compliance with all applicable governmental laws and regulations.
- b. LFA or its concessionaire are solely responsible for obtaining any license to sell alcoholic beverages and the CITY will review, consider and respond to any application in its regular review procedure.
- c. LFA will establish reasonable rules for alcoholic beverage consumption where consumption will interfere with the family oriented activities or present safety issues.

6.2.4 Noise: The CITY recognizes that LFA does not have complete control over ambient noise or incidental visibility. Public address announcements shall be modulated to the level necessary to be audible only to Adventure Park patrons. While the parties recognize that it is possible that these announcements or noise may be audible outside the Adventure Park LFA shall use its best efforts and all reasonable means to confine the sound to the Adventure Park so as not to disturb the surrounding community. The noise levels shall conform to the requirements of any municipal noise regulation then applicable to the Premises. Noise and noise levels may be addressed as conditions in the CUP.

### 6.3 LFA's Right to Levy Charges; Approval by CITY

#### 6.3.1 Fees: LFA may charge fees, rates or prices as follows:

- a. For the initial admission to the Adventure Park (except as limited by the terms contained herein);
- b. For amusement facilities within the Adventure Park;
- c. for use of all other facilities operated by LFA upon the Adventure Park;
- d. For sales of food and other concession items at the Park;
- e. For use of the Premises by concessionaires, licensees, and other third parties otherwise authorized by the Master Agreement or the terms of this Operating Phase;
- f. For parking in the Exclusive Parking Area for VIP or valet parking.
- g. Any fees related to items (a) through (f) including, but not limited to, fees related to ticket purchases via the internet and other fees that are usual and customary to the entertainment industry.

6.3.2 Revision of Fees: LFA shall provide to CITY a complete list of its fees, rates and prices at the Adventure Park for its approval which shall not be unreasonably withheld as part of the annual

Financial Report. LFA reserves the right to add additional concession items or tickets during the season that may not be on the list initially provided to the CITY. LFA shall post schedules of prices and charges at ticket boxes, concession outlets, and other conspicuous places.

#### 6.4 Identifying Signs:

6.4.1 Adventure Park Signs: CITY will cause to be erected a monument sign identifying the Adventure Park with associated logo. This cost will be included in the Design/Build Agreement.

6.4.2 Other Signs, Flags and Banners: LFA, subject to the reasonable approval of the CITY and consistent with the City's sign ordinance and provisions of the Conditional Use Permit, may locate other identifying or directional signs, flags or banners at other points on the Adventure Park Premises. LFA shall have the right to maintain entry signs at the pedestrian entrance of the Adventure Park.

6.4.3 Directional Signs: The CITY agrees to include the Adventure Park in the City's Wayfinding program, including signage or authorize signs in CUP whichever is first.

6.4.4 City Approval of Signs: The CITY has the right to review and approve all aspects of the signs, flags, and banners referenced in this Section including, but not limited to location, size, color, look and total number.

6.5 Promotion and Advertising: LFA shall have control over advertising and promotion of its facilities and attractions. LFA shall have no right to use the CITY or officials' names or the CITY logo in any promotions without the CITY's consent except the Adventure Park shall reference the name Rocklin in promotional materials (Example – Adventure Park at Rocklin or similar acknowledgement to its location). The parties will discuss and agree on names used in the park and promotional materials promotional materials.

6.6 Notice to Proceed: The CITY shall issue a Notice to Proceed to LFA upon providing a Notice to Commence work to the Design-Build Contractor for the design and construction of the Adventure Park, or upon a mutually agreed upon date prior to the anticipated opening day of the Adventure Park whichever is earlier. Upon receiving the Notice to Proceed, LFA may commence preparation activities necessary for the park operations, as well as reasonable access to the Premises. LFA must provide evidence of insurance and comply with all the applicable terms as required herein prior to commencing any preparation activities.

### 7. DUTIES OF LFA:

#### 7.1 Quality of Operation:

7.1.1 Operating Season: LFA shall operate the Adventure Park for a commercially reasonable period during its Operating Season. The operations shall be of good quality. LFA shall pursue a promotional program to increase the use of its services and facilities to operate the facility on a year-round basis.

7.1.2 Operating Hours: LFA shall establish its Operating Season and Schedule of Operating Hours pursuant to operating plans that will maximize economic return from operations, in LFA's reasonable business judgment. Prior to each Operating Season, LFA shall prepare and submit to CITY the Schedule of Operating Hours, if changed from the prior year.

7.1.2.1 Throughout the Term, and any renewals thereof during each Operating Season LFA shall keep the Adventure Park open for business during ordinary business hours for comparable facilities; provided, however, that this provision shall not apply if the Adventure Park is closed due to inclement weather or the Adventure Park's business is temporarily shut down due to incidents, condemnation, fire or other causes beyond the reasonable control of LFA. Operating hours shall be consistent with the CUP issued for the Adventure Park.

7.1.2.2 LFA shall not deviate from the Schedule of Operating Hours except based on weather conditions, equipment issues, safety concerns or other circumstances beyond LFA's control. Any reduction in hours shall be kept to the minimum necessary to address the cause necessitating closure or partial closure of the Adventure Park.

7.1.3 Non-Operation of the Adventure Park: Should LFA cease operations in the Adventure Park for thirty (30) or more consecutive calendar days or thirty (30) total calendar days between April and September, except for closure as outlined in Section 7.1.2.1, such closure shall constitute a default of this the Master Agreement and the terms of the Operating Phase as addressed in Section 26 herein, unless otherwise agreed by the parties.

7.1.4 Suspension for Lack of Insurance or Notice by An Agency: LFA shall immediately cease all operations associated with the Adventure Park in the event of a cancellation or alteration in insurance coverage that is inferior to the requirements of the Master Agreement and the terms of this Operating Phase. LFA shall cease all operations associated with the Adventure Park immediately upon lawful order of a public agency responsible for licensing, review, oversight or enforcement of such parks.

7.1.5 Record of Attendees/Waivers: LFA shall keep an accurate record of attendees for purposes of marketing studies and the annual Financial Report, including categories of users (example, child, adult and senior). LFA shall utilize a waiver form for all uses of the Adventure Park and such waiver shall include language acceptable to the City which waive all claims against the City, its officers, employees, volunteers and insurers and which the user agrees to indemnify, defend and hold the City and others listed above harmless.

7.1.6 Training: LFA agrees that at all times its employees shall be neat and clean in appearance, wear appropriate Adventure Park apparel and be courteous in manner and shall be trained so that the public and patrons at the site shall be treated and served with every reasonable consideration and courtesy. LFA agrees that it shall maintain trained and competent staff in accordance with ACCT (Association for Challenge Course Technology) training standards as exists at the time of this Agreement and is subsequently amended or other generally applicable industry standards for staffing. LFA shall make good faith efforts to obtain Park Accreditation through ACCT or other similar accreditation within the first (3) three years of operation and maintain it thereafter.

7.1.7 Food Service: Employees of LFA or its concessionaires or vendors who work where food and beverage is sold shall comply with federal, state, CITY and county sanitary regulations. LFA shall make good faith efforts to provide notice to Rocklin based businesses and consider qualified businesses in the selection of concessionaires in order to provide an opportunity to compete for services in the Adventure Park.

7.1.8 Employee Selection: LFA shall make good faith efforts to provide advanced notice to Rocklin residents for its positions.

7.2 Capital Improvements: After the design/build contractor's warranty period, LFA shall make repairs and new Capital Improvements on the Premises as follows:

7.2.1 Repairs due to Initial Construction. At no cost to LFA, CITY shall cause the design/build contractor/contractor to make all repairs and replacements to the Adventure Park required by warranty or because of latent defects or latent faulty installation or faulty construction undertaken pursuant to the Design-Build Agreement or by a contractor or subcontractor. Should there be any delay in addressing repairs or replacement in this Section, then CITY, in its discretion pay for such repairs and such repairs will be reimbursable to the CITY as an additional sum to be repaid as Debt Service on the Original Investment as provided in Section 9(a). LFA may pay for or effect the repairs and it shall be a reimbursable expense as provided in Section 9.

7.2.2 Capital Improvements Plan: LFA shall annually prepare and update annually and submit to the CITY a current Capital Improvements Plan to be submitted with the annual report that identifies contemplated Capital Improvements to the Premises, including any substantial changes or alterations in any existing improvements, projected to occur during the next 24 months. The Capital Improvements Plan shall be reviewed and approved by the City Manager or designee prior to the final approval by LFA, which approval shall not be unreasonably withheld. For purposes of this Section substantial changes or alterations are any with a cost in excess of one thousand dollars (\$1,000.00). The CITY understands and acknowledges that, because of the rapidly changing nature of the technologies and improvements available in the Adventure Park industry, that the Capital Improvements Plan will contain general descriptions of anticipated improvements and may need to have substantial flexibility with regard to the exact specifications for the improvements and capital items and the vendors for same.

7.2.3 Capital Improvements. Subject to the terms Capital Improvements Plan, LFA shall secure or provide Capital Improvements throughout their useful life and in accordance with all applicable laws. All costs of the required Capital Improvements shall be paid by the Capital Reserve, if sufficient funds are available.

7.2.4 Elements of the Adventure Park: CITY and LFA envision, subject to environmental review and issuance of a CUP, to the inclusion in the proposed initial Adventure Park development of similar amenities and elements as identified in *Exhibit D*. The parties acknowledge that the attractions, facilities and improvements will not be static and will change from time to time over the Term of the Master Agreement and this Operating Phase.

### 7.3 Miscellaneous Expenses:

7.3.1 Annual Minimum Expenditures by LFA: During the Term, LFA will expend annually from the Standard Operating Expenses for the Adventure Park no less than Fifty Thousand dollars (i) \$50,000 in Repair and Maintenance Services to the Premises and Seventy Five Thousand dollars and (ii) \$75,000 annually in advertising/ marketing; and (iii) an annual management fee to LFA of 3.5% of Gross Revenue for the Term of this Agreement. The annual management fee shall be 3.5% until the year following the first year that the CITY has receives a full Debt Service payment (principle and interest) as provided in Section 9.1 at which time the management fee shall increase to 4% of Gross Revenues Expenditures provided in this section shall be documented and included as part of the annual financial report required by Section 10.

7.3.2 Repair and Maintenance Services. Subject to the terms of this Operating Phase, LFA shall secure or provide Repair and Maintenance of the Adventure Park Improvements to keep them in



good operating condition and in good repair (damage by casualty or condemnation excepted) throughout their useful life and in accordance with all applicable laws. All costs of the required Repair and Maintenance Services shall be a part of the Standard Operating Expenses

7.3.3 Standard Operating Expenses. The parties have agreed to the Standard Operating Expense categories as reflected in *Exhibit C*. The Standard Operating Expenses shall be submitted to the City as part of the quarterly Financial Reports. Starting in Year 3 of operation, the Standard Operating Expenses shall not increase or decrease each year, except for a consumer price index adjustment (up or down) based on the Bureau of Labor Statistics CPI West for cities of a comparable size to the City of Rocklin (Currently Class B/C) (“CPI”). LFA shall submit its proposed Standard Operating Expenses for the next fiscal year no later than thirty (30) days prior to implementation. The City Manager or designee shall review and approve or comment. After Year 2 of operation, any proposed increase in Standard Operating Expenses shall be of no force and effect until approved by the City Manager only in the event that the Standard Operating Expenses is more than the CPI. In the case of extraordinary expenses in a given year, LFA may request approval of an increase in Standard Operating Expenses in excess of a CPI adjustment, and the City Manager or designee shall review and approve or comment. Any amount of operational capital lent to the operation of the Adventure Park by LFA, or other entity, shall be identified in quarterly and annual Financial Reports and repaid as part of the Standard Operating Expenses and shall receive an interest rate of 2% per annum.

7.3.4 Pre-Opening Expenses. The parties have agreed that expenses to be incurred by LFA relating to pre-opening shall not exceed one hundred fifty thousand dollars (\$150,000.00). The sum of \$150,000 is included in the City’s Original Investment and shall be held by the City and disbursed to LFA on a monthly basis supported by a written request and itemization of anticipated expenses. Each month’s expenses incurred shall be supported by documentation of sums expended and additional sums shall not be released monthly without actual documentation submitted and approved by the City. Pre-Opening expenses shall substantially conform to the items set forth on *Exhibit F*.

7.3.5 Permits and Other Fees: The CITY will use its best efforts to see that the Adventure Park and LFA are not subject to any other permitting fees, license fees, surcharges, special taxes or assessments, or other fees or charges, in connection with the operation of the Adventure Park, within the CITY’s control that would not be assessed if the Adventure Park were a CITY operated park facility; the CITY and LFA agree to work together to jointly prepare and submit any necessary paperwork to inform any applicable governmental authorities and/or taxing or licensing authorities that the Adventure Park and all improvements associated with Adventure Park are and will remain city-owned property. Notwithstanding the above, LFA shall maintain the required business license to operate in the City and pay required fees and to obtain any permits required from any agency to operate any portions of the Adventure Park. License or other permit fees shall be included as part of Standard Operating Expenses. LFA acknowledges that CITY’s ability to assist in seeking fee and tax exemption from other state and local taxing authorities is limited to providing documentation, confirmation, support, and corroboration regarding the contractual obligations and the related real and personal property titles, and valuation of the land, improvements and operations under this Agreement. Any possessory interest tax or other taxes assessed as a result of the Adventure Park shall become part of the Standard Operating Expenses.

7.4 Restrictions on Subcontracting and Concessions: The City enters into this agreement with LFA based on its expertise and history of operating similar facilities. LFA shall not sublet or allow occupancy of any portion of the Premises to or by concessionaires or other third parties, except in compliance these Terms, including the following conditions:

- a. LFA may grant the operation of specialized shops and/or facilities, restaurants and other food providers, to concessionaires; and,
- b. Each concession granted shall be subject to the applicable terms and conditions of the Master Agreement and these Operating Terms. LFA shall annually provide, with its Financial Report required in Section 10, or sooner if requested by the City, copies of all concessionaire agreements.

7.5 Non-discrimination: Neither LFA nor its employees or concessionaires shall discriminate because of race, religion, color, ancestry, age, national origin, sexual orientation or disability against any person by refusing to furnish any such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Nor shall LFA or its employees publicize the accommodations, facilities, services or privileges in any manner that would directly or indirectly reflect upon or question the acceptability of the patronage of any person because of race, religion, color, ancestry, age, national origin, sexual orientation or physical handicap.

7.5.1 Access: LFA shall provide disabled persons' access to its rides or other entertainments as required by law.

7.5.2 Limited Access: Except as limited by this paragraph and by applicable law, LFA may limit access to the Premises as necessary to promote the safety of its customers or employees. LFA shall notify the CITY in the event access to the Premises has been denied or restricted to any person.

7.6. Title: Except as otherwise permitted pursuant to Sections 7.6.1, 7.6.5, and 7.6.6 LFA hereby acknowledges the title of the CITY in and to the land constituting the Premises and the real property improvements, attractions, rides, and facilities and fixtures and appurtenances constructed by either party on the Premises during the Term as provided herein and hereby covenants and agrees never to contest said title.

7.6.1 Ownership On Termination: At the termination of this Agreement for any reason (i) title to any FF&E purchased in connection with, and integral to, the operation of the Adventure Park and paid for in whole by the LFA and not included in any Standard Expenses shall vest (or remain vested) in the LFA, and (ii) the CITY shall retain full title and ownership of any and all Capital Improvements, Adventure Park Improvements, and all other buildings, equipment and facilities paid for in whole or in part by the CITY or included in whole or in part as Standard Expenses provided, however, LFA shall take title and ownership of any FF&E which has been paid for entirely by LFA, not paid with Standard Expenses and which was identified as provided in Section 1.2 and for which no reimbursement has been sought as part of the Standard Operating Expenses. LFA may remove FF&E property referred to above at any time prior to the expiration of thirty (30) days after such termination. In removing LFA's property, LFA shall not damage or render inoperable any of the other Adventure Park Improvements or Capital Improvements, attractions, rides and facilities at the Adventure Park paid for in whole or in part by the CITY or LFA.

7.6.2 Condition of Adventure Park at Termination: At the expiration or earlier termination of the Term, LFA shall terminate its service and vacate the Adventure Park, leaving all remaining improvements, equipment, fixtures and trade fixtures in good and reasonably clean condition, subject to ordinary wear and tear.

7.6.3 Waste: LFA shall commit no waste of the Premises and shall be responsible for any damages to the Premises caused by the activities of LFA, its agents, employees, guests, and invitees.

7.6.4 Hazardous Materials: LFA shall at no time discharge any waste or Hazardous Materials on the Premises. LFA shall at no time during the Term of the Master Agreement and these Operating Terms, use or permit the Premises to be used in violation of any Environmental Regulation. LFA shall not exercise any control over environmental conditions or any activities, under this Agreement, at or near the Premises that involve the generation, storage, treatment, or disposal of any Hazardous Material.

7.6.4.1 Any use of the fertilizers, herbicides, pesticides or other Hazardous Materials or regulated chemicals by LFA or its employees, contractors or subcontractors shall be done in strict accordance with all applicable Environmental Regulations and only with the prior approval of the CITY. LFA shall provide the CITY upon request with copies of all chemicals constituents and Material Safety Data Sheets (MSDS) sheets prior to the application of any fertilizer, herbicide, pesticide or other chemicals to the Premises. LFA shall be strictly liable for any spoilage or spills in handling such materials and chemicals.

7.6.4.2 LFA shall be responsible for all costs and expenses associated with the remediation of, and liability arising from or related to, damages to the Premises arising from the storage, use or disposal of Hazardous Materials by LFA, its employees, agents and contractors, their subcontractors, or invitees after LFA enters the Premises to commence operations subsequent to the Adventure Park's Certificate of Occupancy. LFA shall indemnify, defend and hold the CITY harmless with respect to use of materials described in this Section and related subsections.

7.6.4.3. Notwithstanding anything to the contrary in this Agreement, the CITY acknowledges and agrees that the CITY shall have the sole responsibility and obligation with regard to all environmental regulations and compliance, environmental abatement, environmental remediation, claims, causes of action, demands, liability, damages, costs, expense, assessments, penalties, fines, losses, attorney's fees and judgments resulting from or arising out of the existence of any Hazardous Material on the Premises or any other violation or alleged violation of Environmental Regulations on the Premises before the date that LFA assumes possession and control of the Premises (the "Pre-existing Environmental Compliance Obligations"). The CITY further acknowledges and agrees that it will not seek or require any contribution by LFA, or impose on LFA any such obligations or costs with regard to all Pre-existing Environmental Obligations, except in the event of LFA's active negligence or willful misconduct. This provision shall survive the termination of this Agreement.

7.6.5 Encumbrances Prohibited: During the Term provided for in herein, LFA (including any of its contractors, licensees, and concessionaires) will not in any way encumber or cloud the title to all or any portion of the land constituting the Premises.

7.6.6 Mechanic's Liens Prohibited: Neither LFA nor the CITY shall suffer or permit any mechanic's liens or other liens to be filed against the fee of the Premises nor any improvements on the Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied to CITY, LFA or to anyone holding the Premises or any part thereof. If any such mechanic's lien or materialmen's liens shall be recorded against the Premises, or any improvements thereon, the party contracting for the work shall within sixty (60) days cause the same to be removed or, in the alternative, if the contracting party in good faith desires to contest the same, it shall be privileged to do so, but in such case it hereby agrees to provide security acceptable to the other party and to indemnify and save the other party harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanic's or materialman's liens, cause the same to be discharged and removed prior to the execution of such judgment.

8. OPERATION OF CAPITAL IMPROVEMENTS; OPERATIONAL LOSSES:

8.1 Compliance: LFA will comply with all applicable codes and regulations in connection with the operation of the Capital Improvements.

8.2 LFA Obligation: LFA shall be responsible for all Operational Losses that occur in any given Fiscal Year.

8.3 City Obligation: City shall not have any liability for any Operational Losses in the operation of the Adventure Park over the Term of the Master Agreement and these Operating Terms.

8.3.1 No Loss To The City – It is expressly agreed by the parties that terms contained herein are designed to limit the potential for financial losses and that remedies exist in the event that revenues are not sufficient to meet the repayment of the City’s Initial Investment and that the City shall not be responsible for any financial loss associated with Adventure Park operations.

9. NET OPERATING REVENUE SHARING:

9.1 As set forth in *Exhibit E*, attached hereto and incorporated herein, the Parties agree to the following order of priority for the sharing of Net Operating Revenue :

a. Debt Service Payment: LFA shall be obligated to pay to the City on a quarterly basis a sum equal to 25% of the City’s annual debt service on the City’s Original Investment in the Adventure Park construction.

i. The City’s annual debt service shall be up to \$542,000.00 (“City’s Debt Service”). The Debt Service shall include interest at four (4%) percent and shall be interest only for the first three years of operation. This sum has been amortized over ten (10) years and shall continue to be paid annually until paid in full.

ii. The quarterly payments made on City’s Debt Service payments shall be applied to accrued interest with balance applied to principal. Any shortfall in any quarterly payments shall be added to the next quarterly payment with no default, interest or penalty. Any shortfall in annual payments subject to terms and conditions of these Operating Terms.

iii. After all of the City’s Original Investment has been paid off, then the City shall be entitled to repayment of the amounts expended for the Additional Funds for the Exclusive Parking Area. City shall be reimbursed 70% of any parking lot constructed, up to \$350,000 and this amount shall be paid as additional City’s Debt Service, but shall not include any interest payment.

iv. After the payments for the Additional Funds for the Exclusive Parking Area have been paid off, then City shall be entitled to repayment of any amounts expended on Repairs Due to Initial Construction as additional Debt Service payment and shall not include any interest payment.

b. Capital Reserve: Sixty Thousand dollars (\$60,000) annually for continual Capital Improvements of the Adventure Park as referenced in Section 7.2.

- c. To LFA: The first \$150,000.00 to LFA
- d. To City: Up to \$150,000.00 to City
- e. Additional Net Operating Revenue: Any net operating revenue after items a-d above and after the allocation of the \$150,000 to both Parties referenced above, will be allocated with 70% to LFA and 30% to City.
- f. After City Debt Retirement: Upon retirement of the City's Debt Service for the Adventure Park, LFA and the City will split Net Operating Revenue less Capital Reserve on a 50/50 basis.

9.2 Capital Reserve: LFA shall reserve Sixty Thousand dollars (\$60,000) annually for a Capital Reserve fund of any funds it receives for Capital purposes as described in Section 7.2.2. and said \$60,000 will be a deduction from Net Operating Revenue. The Capital Reserve will be retained in a separate bank account and the City shall be provided with evidence of the fund on or before July 1 of each year. The account shall be established to provide the City access to the funds in the event of a shortfall in Gross Revenue to cover the City's Debt Service Payment as outlined in Section 9.1. In the event the Gross Revenues are insufficient in any year to pay such year's Debt Service Payment, the City may withdraw funds from the Capital Reserve sufficient to cover the Debt Service Payment as referenced in Section 9.1. Withdrawal of the funds from the Capital shall not limit any remedies with respect to any other revenue shortfall.

## 10. RECORDS AND REPORTS:

### 10.1 Financial Reports:

a. LFA shall provide Financial Reports on a quarterly basis and an annual Financial Report within ninety (90) days of the end of each Fiscal Year. The annual Financial Reports shall be prepared and signed by a California licensed Certified Public Accountant. The first quarterly Financial Report shall be due commencing at the end of the first full quarter after the first Operating Season. The Financial Reports shall contain, at a minimum the following: Detailed Profit and Loss Statements (including income earned from all sources including concessionaires with each source of income detailed in the report, all expenses, and payroll reports, advertising expenses and any trade outs provided), general ledger and balance sheet. LFA shall furnish the required quarterly Financial Reports to the CITY within forty-five (45) days of the end of each quarter.

b. The annual Financial Report shall include a Section related to ticket prices, proposed additions or deletions of attractions, plans for Capital Improvements, a summary narrative section regarding any unanticipated expenses, anticipated expenses, anticipated extraordinary expenditures and revenue projections for the next year.

c. The CITY, in its sole discretion may request any annual Financial Report to be audited by providing one year's notice for budgeting purposes. . The CITY may contract for the audit and the cost of the audit up to thirty thousand dollars (\$30,000.00) and such cost shall be included as a Standard Operating Expense. The \$30,000.00 sum shall be adjusted by the CPI referenced in Section 7.3.3 on an annual basis over the term of the Master Agreement. The CITY agrees to bear the cost of an audit in excess of \$30,000.00 (or as adjusted by the CPI).

d. The parties anticipate that the CITY may require additional or different information in the Financial Reports over time and the CITY may request additional information or alternate formatting of the Financial Reports at any time. Any other financial information shall be made available to CITY upon request.

10.2 Maintenance and Disclosure of Records: LFA shall keep true and accurate books and records showing all of its business transactions concerning its operations on the Premises in a format and a manner acceptable to CITY. City shall have the right and at all reasonable times, to inspect such books and records including sales tax returns. LFA hereby agrees that all such records and instruments are available to the CITY.

10.3 At Termination of Agreement: LFA shall transfer all financial records to the CITY.

11. INDEMNITY AGREEMENT:

11.1 Intent: It is the parties' intent that the CITY shall not be liable or legally responsible in any manner, including defense of claims associated in any way with the operation of the Adventure Park, concessionaires or the use of the Adventure Park property identified in Exhibits A and B. This indemnification extends to the premises of any Exclusive Parking Area, but shall not apply to claims solely related to the condition of the premises (premises liability claims) on joint use parking areas. If a claim is made or action filed in any forum against the CITY, its officials, employees or insureds arising out of or associated with the Adventure Park, including claims or suits by LFA or concessionaire employees, third parties or others then the following indemnification provisions shall apply:

(a) To the fullest extent permitted by law, LFA agrees to immediately indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, and volunteers from and against any and all claims, losses, liability, or damages ("Claims") that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of LFA, its subcontractors, concessionaires, sub consultants, agents, and employees (Hereinafter in this section collectively "Consultant"). Consultant assumes no responsibility to indemnify City for the negligent acts or omissions or willful misconduct of CITY, its officers, officials, employees, agents, and volunteers or other parties who are not a Consultant as defined above ("Third Parties(y)"). The Consultant's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the negligence or willful misconduct of an indemnified party or Third Party. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party or Third Party, then Consultant's indemnification obligation shall be in proportion to the established comparative fault of Consultant.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend allegations of Consultant negligence, recklessness or willful misconduct, whether Consultant is specifically identified or not in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its council members, officers, and employees, immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are partially responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this Section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts in a cross-claim, counter claim, third party complaint or defense (affirmative defense or by reference in the action) that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense

costs in proportion to the established comparative liability of the indemnified party.

11.2 The Indemnitee shall give CITY prompt notice of any event triggering the foregoing indemnity and shall cooperate with the Indemnifying Party in the defense of any cause of action to which the foregoing indemnity relates.

11.3 LFA, as a material part of the consideration to the CITY, hereby assumes, except as otherwise provided in the Master Agreement or these Operating Terms, all risk of damage to property or injury to person on the Adventure Park Premises. These provisions are in addition to, and not in lieu of, the insurance required under Section 12.

11.4 The obligations in this Section shall survive the termination of the Master Agreement and these Operating Terms.

12. INSURANCE: Without limiting any of the other obligations or liabilities of the CITY, LFA agrees to purchase and maintain during the Term and any renewal, as a Standard Operating Expense, the types and minimum amounts of insurance coverages listed below, together with the coverage provisions and endorsements as indicated in this Section as a stand-alone set of policies solely for the Adventure Park.

12.1 General Provisions

- a. Should the Master Agreement and these Operating Terms be terminated for any reason by either party, the requirements for insurance in this Section shall remain in full force and effect for no less than twenty four (24) months after termination.
- b. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
- c. For any claims related to the project, the LFA’s insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, or volunteers and any City insurance shall be excess of the Consultant’s insurance and shall not contribute to it.
- d. Any failure to comply with reporting or other provisions of the policies on the part of the LFA, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
- e. Companies: All policies of insurance referenced in this Section shall be written with a company or companies approved and licensed by the California Department of Insurance to transact business in the State of California with a Best Rating of A:VII or better, except required CITY Insurance which may obtain comparable coverage through a risk pool.
- f. Certificates: LFA agrees to provide the CITY with certificates of insurance, endorsements, exclusions, and relevant extracts from the insurance policy, or copies of policies to the CITY’s City Manager evidencing the required insurance coverages and shall provide CITY with certificates or other proof of coverage as requested by CITY of current coverage upon the expiration or renewal of any insurance coverage.

- g. Additional Insureds: With respect to LFA and any concessionaires operating on the Adventure Park premises, the CITY, its officials, officers, employees and volunteers shall be shown as additional insureds on the policies by using endorsement CG 20 26 or broader. The coverage shall contain no special limitations on the scope of protection afforded the CITY .

12.2 Required Insurance Policies

a. Workers' Compensation Insurance: Workers' Compensation Insurance is subject to the following requirements:

- i. Workers' compensation coverage shall be maintained for not less than the California Statutory limits.
- ii. Employer's Liability Insurance shall be maintained with minimum limits of not less than \$250,000 per occurrence and \$500,000 aggregate.
- iii. Consultant's Workers' Compensation shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.

b. Commercial General (Public) Liability Insurance: Commercial General (Public) Liability Insurance to cover all LFA's activities in or associated with the Adventure Park including coverage for Premises/ Operations, Products/ Completed Operations, Independent Contractor's liability, Personal Injury, Explosion/ Collapse/ Underground, and Contractual Liability insuring the indemnity provision contained in this Agreement and fully insuring LFA or its subcontractor's liability for bodily injury or death or property damage unless otherwise agreed to by the parties:

- i. Combined limit of \$5,000,000 per occurrence for bodily injury and property damage.
- ii. Annual aggregate limit of \$10,000,000.
- iii. Products-Components/Operations Aggregate of \$1,000,000.
- iv. Personal and Advertising Injury (with employment exclusion deleted) of \$1,000,000.
- v. Contractual Liability:  
  - Bodily Injury of \$1,000,000 each occurrence
  - Property Damage of \$1,000,000 each occurrence
- vi. Explosion, Collapse, Underground.
- vii. Claims made policies are not acceptable.
- viii. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).



c. Business Commercial Automobile Liability Insurance: Business commercial automobile liability insurance shall include coverage for owned/leased vehicles, non-owned vehicles, and hired vehicles, as follows:

- i. Bodily injury limit of \$1,000,000 per occurrence.
- ii. Property damage limit of \$100,000 per occurrence

d. Commercial Crime Insurance: Commercial crime insurance shall include coverage for employee dishonesty, forgery or alteration, and theft, disappearance and destruction and meet the following:

- i. Coverage shall be on a blanket basis.
- ii. Limits shall be equal to \$100,000 per occurrence.
- iii. Such insurance on the improvements, fixtures, furnishings, and equipment of LFA on the Premises, shall be in an amount adequate to insure the replacement and/or removal of said property in the event of loss.

e. Property Insurance:

i. All Risk Coverage. CITY shall obtain and keep in force a policy of insurance covering loss or damage to the Adventure Park, the Adventure Park Improvements, the Capital Improvements and all FF&E in the amount of the full replacement value thereof, as the same may exist from time to time, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils ("all risk," as that term is known in the insurance industry), but excluding damage due to flood, earthquake or terrorist activities. To the extent insurance proceeds are not used to rebuild the Adventure Park Capital Improvements following an insured casualty they shall be divided pro rata by the parties based upon contribution to capital. To the extent insurance proceeds are not sufficient to rebuild the Adventure Park Capital Improvements following an insured casualty and the parties elect to rebuild then the parties shall be responsible for the costs to rebuild on an equal basis. Neither party is obligated to rebuild the Adventure Park following a casualty loss.

ii. Replacement Value. The "full replacement value" of the property to be insured under this Section shall be determined by the CITY, LFA and the Company issuing the insurance policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either party shall have the right to notify the other that it elects to have the replacement value re-determined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the insurance company. Each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination.

### 13. MAINTENANCE:

13.1 LFA's Responsibilities: LFA agrees to maintain any and all facilities at the Adventure Park in good operating and safe condition and clean, good order and repair at its own cost and expense during the entire Term. This shall include keeping the landscaping and groundcover in a healthy and well maintained condition. LFA agrees to maintain and operate the Adventure Park in accordance with the January 2014 Cal OSHA Guidance Letter and any other applicable State of California statutes and regulations for operation of the

Adventure Park. LFA shall be responsible for the removal and disposal of all rubbish, refuse and garbage resulting from the park operations from the Premises, including exclusive and reciprocal parking areas as Standard Operating Expenses.

13.2 Other Maintenance Services: LFA further agrees to assume and pay when due all operating expenses for pest control, garbage and waste (hazardous and/or otherwise) removal, janitorial services, and any other operating services accruing or payable in connection with its occupancy of the Premises and, any part thereof, including deposits, fees, or other charges required by the supplier of any such service as Standard Operating Expenses.

14. UTILITIES AND SERVICES:

14.1 General Responsibilities for Utilities: The CITY shall be responsible for the installation and provision of all utilities within the Premises and the CITY shall be responsible for maintaining such utilities, including sewage, water, drain and power lines necessary to and used in connection with LFA's occupancy of the Adventure Park Premises as described in *Exhibit B*.

14.2 Payment of Utility Charges: LFA shall assume and pay when due all charges for water, gas, power, telephone, light, television/cable and any other utility services accruing or payable in connection with its occupancy of the Premises and any part thereof, including deposits, connection fees or charges and equipment rental required by the supplier of any such utility service as a Standard Operating Expenses.

15. NOTICES: All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered, or on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

Notwithstanding the Notice provision above, except where Notice is required for a Default, electronic communication is an acceptable form of communication and authorization to act by either party or their authorized representative(s).

To Legacy Family Adventures-Rocklin, LLC at:

David J. Busch, President  
4670 Gresham Drive  
El Dorado Hills, CA 95762  
[Davidb@lfe.com](mailto:Davidb@lfe.com)

With a copy to Seth Merewitz at:

Best, Best & Krieger  
300 S. Grand Ave, Suite 2500  
Los Angeles, CA 90071  
[Seth.Merewitz@bbklaw.com](mailto:Seth.Merewitz@bbklaw.com)

To CITY at:

City Manager  
 City of Rocklin  
 3970 Rocklin Road  
 Rocklin, CA 95677  
[Rick.Horst@rocklin.ca.us](mailto:Rick.Horst@rocklin.ca.us) or City Manager

With a copy to:

City Attorney  
 City of Rocklin  
 3970 Rocklin Road  
 Rocklin, CA 95677  
[DeeAnne.Gillick@rocklin.ca.us](mailto:DeeAnne.Gillick@rocklin.ca.us) or City Attorney

16. WAIVER OF AGREEMENT TERMS: No waiver by either party at any time of any of the terms, conditions or covenants of Master Agreement or the terms of the Operating Phase shall be deemed as a waiver at any time thereafter of the same or of any other term, condition or covenant of herein contained, nor of the strict and prompt performance thereof.

17. NO THIRD PARTY BENEFICIARIES: Except for the provisions of Master Agreement or the terms of the Operating Phase relating to the indemnification of employees, agents and representatives of either party, there are no third-party beneficiaries to the Master Agreement or these Operating Terms and no third-party beneficiaries are intended by implication or otherwise.

18. TIME OF ESSENCE: Time shall be of the essence in the performance of the Master Agreement or the terms of the Operating Phase.

19. PARAGRAPH TITLES: The paragraph titles in the Master Agreement and these Operating Terms are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of the Master Agreement and the terms of the Operating Phase or in any way affect this Agreement.

20. ENTIRE UNDERSTANDING: The Master Agreement or the terms of the Operating Phase contains and embraces the entire Agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited or extended orally except by written amendment thereto signed by the CITY and LFA, or their successors in interest.

21. RELATIONSHIP OF THE PARTIES: While engaged in carrying out and complying with the terms and conditions of the Master Agreement and these Operating Terms, LFA is and shall be an independent contractor and shall not, with respect to its acts and omissions, be deemed an officer, employee, agent or representative of LFA. LFA shall not in any manner, whether directly or by implication, represent that LFA or its employees are officers, employees, agents or representatives of the CITY. The fact that CITY has the right to observe LFA's work or to exercise other prerogatives under the Master Agreement or the terms of the Operating Phase or by its regulatory authority is not intended to and shall not affect the status of LFA as an independent contractor.

22. REGULATORY AUTHORITY: LFA acknowledges that it is extremely important to the CITY that all activities conducted by LFA under the Master Agreement and these Operating Terms strictly comply with all CITY, State or Federal ordinances, regulations, permit requirements, and laws. Nothing contained in the Master Agreement or the terms of the Operating Phase shall limit the regulatory authority of the CITY to terminate some or all of the activities of LFA for a violation of any CITY ordinance, regulation, permit requirement, or other law.

23. INDEPENDENT CONTRACTOR: Nothing contained in the Master Agreement or the terms of the Operating Phase shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership, joint venture, or employment, it being expressly understood and agreed that no provision contained in this the Master Agreement or the terms of the Operating Phase nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of the Master Agreement or the terms of the Operating Phase. Neither party has the authority to enter into contracts or to assume any obligation of the other nor to make warranties or representations on behalf of the other except in accordance with the express terms of the Master Agreement, these Operating Terms or as otherwise authorized in writing by the other.

24. MISCELLANEOUS PROVISIONS: The Master Agreement and the terms of the Operating Phase supersede all agreements, whether written or oral, previously made between the parties relating to the subject matter hereof. There are no other understandings or agreements between the parties hereto with respect to the subject matter. Any consent or approval requested by either party shall not be unreasonably withheld or delayed by the other party, unless otherwise identified in the Master Agreement, the terms of the Operating Phase and specifically approval by the City Manager of the Standard Operating Expenses. The Master Agreement and the terms of the Operating Phase may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same agreement. Except as otherwise provided herein, the terms and conditions of the Master Agreement and the terms of the Operating Phase shall be binding upon, and inure to the benefit of, the parties hereto and the respective successors and permitted assigns. Any failure of any party hereto to comply with any obligation, covenant, agreement or condition herein may be waived by the other party, but any such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver or estoppel with respect to any subsequent or future failure.

25. FORCE MAJEURE; DAMAGE; CONDEMNATION:

25.1 Procedure: In the event of a Force Majeure Event, the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of Force Majeure Event shall deliver written notice of the commencement of any such delay resulting from such Force Majeure Event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a Force Majeure Event causing such delay and the other party shall not otherwise be aware of the Force Majeure Event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this paragraph.

26. DEFAULT; TERMINATION:

26.1 LFA's Default: The occurrence of the following shall constitute a default by LFA: LFA's failure to perform any covenant or provision of the Master Agreement or the terms of the Operating Phase, if the failure to perform is not cured within thirty (30) days after delivery by the CITY to LFA of written notice of

default specifying with particularity the nature of the default. If the failure to perform does not involve a financial obligation and cannot reasonably be cured within thirty (30) days, LFA shall not be in default of the Master Agreement and the Operating Terms if LFA commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion. LFA shall also inform the CITY of the steps required to cure and the expected timeline. At any time after ninety (90) days of a Notice to Cure, the CITY may provide LFA with a date certain, but no less than thirty (30) days, or as otherwise agreed to by the parties, on which to cure and failure to cure by such date shall be grounds to terminate the Master Agreement.

26.2 CITY's Default: The occurrence of the following shall constitute a default by the CITY the CITY's failure to perform any covenant or provision of this Agreement, if the failure to perform is not cured within thirty (30) days after delivery by LFA to the CITY of written notice of default specifying with particularity the nature of the default. If the failure to perform does not involve a financial obligation and cannot reasonably be cured within thirty (30) days, CITY shall not be in default of the Master Agreement and the Operating Terms if CITY commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion. The CITY shall also inform LFA of the steps required to cure and the expected timeline. At any time after ninety (90) days of a Notice to Cure, LFA may provide the CITY with a date certain, but no less than thirty (30) days, or as otherwise agreed to by the parties, on which to cure and failure to cure by such date shall be grounds to terminate the Master Agreement.

26.3. Remedies and Early Termination:

26.3.1 CITY'S Remedies: If any default by LFA under Section 26.1 shall continue uncured, following notice of default as required by these Operating Phase Terms, for the period applicable to the default under the applicable provision of these terms, the CITY may, at its election, terminate the Master Agreement by giving LFA written notice of termination and re-enter the Adventure Park Premises and the Master Agreement and these Operating Phase terms shall terminate immediately upon receipt of such written notice. The foregoing remedies are in addition to all other rights and remedies provided in Section 26.3.4 related to Termination and by law or equity, to which the CITY may resort cumulatively. In the event of a termination of the Master Agreement and the Operating Terms, City shall be entitled to receive any unspent portion of Capital Reserves.

26.3.2 LFA's Remedies: If any default by the CITY under Section 26.2 shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, LFA may at its election terminate this Agreement by giving the CITY written notice of termination and this Agreement shall terminate thirty (30) days after the date such written notice is received by the CITY. The foregoing remedies are in addition to and not in lieu of all other rights and remedies provided in Section 26.3.4 related to Termination provided by law or equity, including an action for damages or for injunctive relief, to which LFA may resort cumulatively or in the alternative, whether the Master Agreement and the Operating Terms has been terminated or not.

26.3.3 Damages: Neither the CITY nor LFA shall be liable for special, exemplary, consequential or punitive damages due to default under the Master Agreement or these Operating Terms, except the Adventure Park shall be liable for all the then owed and unpaid debt service payments due to the CITY upon default or termination

26.3.4 Early Termination:

- a. Early Termination by CITY: During the term of the Master Agreement the CITY may terminate the Master Agreement and the Operating Terms as follows:
1. For failure to make all required debt service payments to the CITY for two (2) consecutive years.
  2. On or after the twelfth (12th) anniversary of the opening of Adventure Park by providing LFA three (3) years written notice of the CITY's intent to terminate.
  3. In the event of an accident or accidents resulting from LFA's negligent park operation in the Adventure Park which causes severe injury or death.
  4. Due to cancellation of or reduction in any required insurance coverage as provided herein which remains uncured for thirty (30) days following a notice to cure.
  5. For failure to make required payments to the CITY as provided in this Agreement which remains uncured for thirty (30) days following a notice to cure.
  6. For violating the assignment or subcontractor provisions of this agreement which remains uncured for thirty (30) days following a notice to cure.
  7. For cancellation, termination or adverse action against any required permit or license to operate which results in suspension for thirty (30) or more calendar days and which remains uncured for thirty (30) days following a notice to cure.
  8. In the event LFA ceases operations in the Adventure Park between April and September, except as provided for in Section 7.1.2.1, for thirty (30) or more consecutive calendar days or thirty (30) total calendar days
  9. For violating the terms of the CUP which remains uncured for thirty (30) days following a notice to cure
  10. For destruction or casualty of the Adventure Park as referenced in Section 26 when the parties elect to not rebuild.
  11. The filing of any bankruptcy petition by LFA or any permitted assignee shall result in the immediate termination of the Master Agreement and these Operating Terms.
  12. The revocation terminating the corporate status of LFA or any permitted assignee which remains uncured for thirty (30) days following a notice to cure.
- b. Early Termination by LFA:
1. For failure to have positive Net Operating Revenue in two (2) consecutive years.
  2. On or after the twelfth (12th) anniversary of the opening of Adventure Park by providing CITY three (3) years written notice of the CITY's intent to terminate.

3. In the event of accidents due to LFA's negligence in the Adventure Park operations and which cause severe injury or death
  4. In the event a prior Notice to Cure has been issued and a second occurrence has occurred in any two (2) year period.
- c. In the event of termination of this Agreement:
1. The parties shall fulfill their responsibilities and obligations described herein, unless waived in writing by the other party.
  2. A final accounting and distribution of any net revenues shall occur within ninety (90) days of the termination date.
  3. No expenditures for Capital Improvements shall occur without the written agreement of the parties.
  4. Any funds remaining at termination from Net Operating Revenue shall be split 50/50 and funds in the Capital Reserve 100% to the CITY.
  5. All non-essential Standard Operating Expenses shall be terminated by LFA upon termination. For purposes of this section, non-essential Standard Operating Expenses refers to only those necessary to wind down the operations and close the Adventure Park.

27. AMENDMENTS; MINOR MODIFICATIONS

27.1 Amendment. The Master Agreement and Operating Terms may be amended from time to time only upon the mutual written consent of CITY and LFA.

27.2 Minor Modification. The provisions of these Operating Terms require a close degree of cooperation between the Parties and "Minor Changes" to this Agreement may be required from time to time. "Minor Changes" mean changes to this these Operating Terms which do not result in a change in use, an increase or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Execution Date.

- a. Accordingly, the Parties may mutually agree they will cooperate in good faith to make "Minor Changes" to these Operating Terms to be evidenced by their approval and execution of an "operating memorandum" reflecting such Minor Changes. To the extent permitted by Applicable Law, neither the Minor Changes nor any Operating Memorandum shall require public notice or hearing.
- b. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are "Minor Changes" subject to this Section 27 or more significant changes requiring amendment of these Operating Terms.

28. APPLICABLE LAW AND VENUE: The Master Agreement and Operating Terms shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of California and venue for any judicial action under this agreement shall be in Placer County, California.

29. NO PRESUMPTION REGARDING DRAFTER: The terms and provisions of the Master Agreement and the Operating Terms have been extensively negotiated and discussed between the CITY and LFA. This document reflects their mutual agreement regarding the subject matter of this document. Because of the nature of such negotiations and discussions, neither the CITY nor LFA shall be deemed or construed to be the drafter of the Master Agreement or Operating Terms. Therefore, no presumption for or against the drafter shall be applicable for interpreting or enforcing the terms contained therein.

30. TAXES, ASSESSMENTS, AND FEES:. If any ad valorem real and personal property taxes assessed against the Premises and any FF&E located thereon are assessed as a result of the Adventure Park, then such shall be part of Standard Operating Expenses as provided in Section 7.3.5. CITY shall have the right in good faith to contest any such taxes, charges, and assessments.

31. FINANCIAL STATEMENTS: In addition to the quarterly and annual Financial Reports, upon reasonable request, LFA shall furnish the CITY a copy of LFA’s records, documents, agreements and other instruments to ensure LFA’s compliance with the covenants set forth in the Master Agreement and these Operating Terms. LFA shall maintain such records as are deemed reasonably necessary by the CITY and LFA, or such other persons or entities designated by LFA, to ensure proper accounting for all costs, performances, and number of jobs created or retained related to this Agreement. All records shall be retained for no less than five (5) years or longer if requested by the CITY. Upon no less than fifteen (15) days advance notice and request, LFA shall grant access to all paper and electronic records, books, documents, accounting procedures, practices or any other items relevant to the performance of the Master Agreement and Operating Terms to the CITY, or such other persons or entities designated by the CITY for the purposes of inspecting, auditing, or copying such books and records; provided, however, the CITY may request such access no more than twice in any calendar year unless LFA is then in default under the Master Agreement or the Operating Terms. The CITY shall conduct any such inspection, audit or copying of such books and records in a manner that will not disrupt or interfere with LFA’s ordinary operations and conduct of business.

32. MEMORANDUM OF AGREEMENT; ESTOPPEL CERTIFICATES: LFA and the CITY agree to sign and properly record a Memorandum of Agreement, memorializing the terms and conditions of the Master Agreement and these Operating Terms, for the purpose of placing third parties on notice of the existence and terms and conditions of the terms contained herein. LFA and the CITY shall, at any time and from time to time upon not less than ten (10) days’ prior written request by the other party, execute, acknowledge and deliver to the requesting party, a statement in writing certifying (a) its ownership of the interest of the project hereunder, as the case may be, (b) that the Master Agreement and Operating Terms are unmodified and in full force and effect (or if there has been any modification, that the same is in full force and effect as modified and stating the modifications), (c) that, to the best knowledge of the certifying party, no default hereunder on the part of the requesting party exists (except that if any such default does exist, the certifying party shall specify such default).

33. SAFETY PROVISIONS

- a. LFA shall create and retain all records of certifications required for employees, safety inspections, inspections by agencies, and safety training.
- b. Records shall be provided to the CITY upon request.
- c. Records shall be retained for no less than five (5) years or consistent with the CITY’s records retention policy or longer as requested by the CITY.
- d. LFA shall create and maintain a written Safety program and provide its employees with training designed to reduce the risk of injury to employees and how to respond in the event of an emergency. The training program shall involve the CITY’s emergency responders.



- e. LFA shall conduct inspections of all activity equipment, ropes, rides and program activities in the Adventure Park as required by law, but in no case less than every 24 hours, when the Adventure Park is open.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures acknowledging and agreeing to abide by the Operating Terms contained herein.

**LEGACY FAMILY ADVENTURES-ROCKLIN, LLC,**  
a California limited liability company

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

Date Executed: \_\_\_\_\_

**CITY OF ROCKLIN, CALIFORNIA**

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

Date Executed: \_\_\_\_\_

Exhibit A – Premises



**ROCKLIN QUARRY ADVENTURES**

**PREMISES EXHIBIT**

Legacy Family Entertainment - Rocklin, CA

January 17, 201

Exhibit B – Proposed Site Plan



PREMISES EXHIBIT

ROCKLIN QUARRY ADVENTURES

Legacy Family Entertainment - Rocklin, CA

January 17, 2017

**LEGEND**

- A BIG GUN QUARRY PIT - ROCKLIN QUARRY ADVENTURES
- B ROCKLIN QUARRY ADVENTURES - TICKETING, CAFE, SUPPORT SERVICES FACILITY - 6,000 S.F.
- C QUARRY PIT ADVENTURES
  - c1 Jump Wall
  - Free Fall
  - King Swing
  - Climbing
- c2 Gully
- Via Ferrata High
- Climbing
- Rappelling
- c3 Main Wall
- Via Ferrata Jr.
- Barn Swing
- Wall Cargo Net
- Climbing
- c4 City Wall
- c5 Sunny Side Wall
- Rappelling
- Free Fall
- Aerial adventures
- c6 Pond in Quarry
- c7 Hanging Garden & Waterfall
- c8 Main Zip Line
- c9 Zip Line Tower
- c10 Nature Trail
- c11 "Kids Kingdom" with water stream play
- Boulder Climb
- Kids Zip
- Aqua Talker
- Barn Swing, Jr.
- c12 "Amazing Maze"
- c13 Overlook viewing deck
- c14 Entry Gathering Plaza
- c15 Birthday pavilion and Restroom
- c16 Quinn Boathouse
- Paddle Boats
- c17 Access Trail to bottom
- c18 Zip Line Deck in bottom of quarry
- c19 Ground school deck - 1,000 s.f.
- c20 Deck - 4,000 s.f.
- c21 Rockery Retaining Walls
- c22 Drop Off
- c23 Water Tank
- D PARKING - ROCKLIN QUARRY ADVENTURES +/- 200 CARS
- E EXISTING BIG GUN QUARRY STRUCTURES ON PARCEL A
- F QUARRY CAR RAIL TRACKS EXTENDED
- G (2) 40'X60' SHADE STRUCTURES FOR PICNICKING
- H PEDESTRIAN CONNECTION TO MEMORIAL PARK
- I END OF MINING CAR RAIL
- J PUBLIC ACCESS THROUGH TO PARKING LOT
- K TEMPORARY GRAVEL PARKING IF NEEDED
- L QUARRY PARK PICNICKING
- M PUBLIC ACCESS TO AMPHITHEATER



BIG GUN QUARRY LOOKING NORTH



not to scale

**Rocklin Quarry Adventures**

Legacy Family Entertainment

**SCHEMATIC SITE PLAN**

January 17, 2017

# EXHIBIT C

**PROFIT AND LOSS STATEMENT FORMAT**

	<u>Month to Date</u>	<u>Year to Date</u>
<b>GROSS REVENUES</b>		
Team Training/Groups		
Birthday Parties		
Picnic and Banquet		
Food Service-non catered		
All Park Package		
Quarry Package		
Rentals (lockers)		
Misc. (photos, VIP parking, cabanas)		
Ala Carte Ticketing		
Kids Tree Top Kingdom		
Third Party Revenue Sharing		
Sponsorship		
Gift and Souvenirs		
	_____	_____
<b>TOTAL GROSS REVENUES:</b>		
<b>COST OF GOODS SOLD:</b>		
Retail		
Catering		
Food Service		
	_____	_____
<b>TOTAL COST OF GOODS SOLD:</b>		
<b>GROSS PROFIT</b>		
<b>Standard Operating Expenses</b>		
Permanent Salary		
Seasonal Salary		
Benefits		
Advertising		
Bank Fees		
Birthday Supplies		
Chemicals		
Dues/Subscriptions		
Equipment Rental		
Insurance		
Janitorial/Trash		
Operational Legal Expense		
Medical Supplies		
Merchant Fees		
Management Fee		
Office Expense		
Payroll Expense		
Postage		
Printing		
Property Tax and other taxes		
Repairs & Maintenance		
Special Events		
Telephone		
Wristbands		
Training/Recruitment		
Travel		
Uniforms		
Utilities		
	_____	_____
<b>Total Standard Operating Expenses</b>		
<b>NET OPERATING REVENUE</b>	=====	=====

Exhibit D – Elements of the Adventure Park

EXHIBIT D
<b>ELEMENTS OF THE ADVENTURE PARK</b>
<b>INSIDE QUARRY WALLS</b>
<i>Adventure/ropes course</i>
<i>Grand Zip Line &amp; Landing Zone</i>
<i>Swinging Bridges</i>
<i>King Swing</i>
<b>PERIMETER AND ON QUARRY WALLS</b>
<i>Via-Feratta High</i>
<i>Via Ferrata Jr. low</i>
<i>Wall cargo net combo climb area</i>
<i>Free fall jumps stations</i>
<i>Rappelling stations</i>
<i>Climbing routes</i>
<b>OUTSIDE QUARRY</b>
<i>Kids (age 2-7) Adventure course</i>
<i>Stream Play</i>
<i>Boulder Climb Area</i>
<i>Kids Zips</i>
<i>Aqua Talker</i>
<b>QUINN LAKE ZONE</b>
<i>Paddle boats</i>
<b>Throughout Park</b>
<i>Walkways</i>
<i>Benches</i>
<i>Picnic Tables</i>
<i>Shade Structure/Misting</i>
<i>Lighting</i>
<i>Observation Decks</i>
<i>Verticle-hanging Garden</i>
<i>Waterfall Feature</i>
<i>Stairways from Quarry</i>
<i>History/Nature Trail</i>
<b>Structures</b>
<i>Structures Café &amp; Ticketing</i>
<i>Ground School</i>
<i>Bathrooms up top</i>
<i>Boat house Dock with Shade</i>

Exhibit E – Net Operating Revenue Sharing

**EXHIBIT E**

**OPERATION NET REVENUE SHARING – Annual EXAMPLE**

*Note 1: All numbers used in this example are for illustration purposes only and are of no reflection of financial performance, past, present or future.*

	<b>REVENUE SHARE IF DEBT OUTSTANDING</b>	<b>REVENUE SHARE IF DEBT RETIRED</b>
<b>TOTAL REVENUES</b>	\$ 4,000,000	\$ 4,000,000
<b>COST OF GOODS SOLD</b>	\$ (400,000)	\$ (400,000)
<b>GROSS PROFIT</b>	\$ 3,600,000	\$ 3,600,000
<b>STANDARD OPERATING EXPENSES</b>	\$ (2,600,000)	\$ (2,600,000)
<b>NET REVENUE BEFORE ADJUSTMENTS</b>	\$ 1,000,000	\$ 1,000,000
<b>ADJUSTMENTS:</b>		
MAXIMUM CITY DEBT SERVICING	\$ 542,000)	n/a
CAPITAL RESERVE	\$ (60,000)	\$ (60,000)
FIRST \$150,000 ALLOCATION TO LFA	\$ (150,000)	n/a
UP TO \$150,000 ALLOCATION TO CITY	\$ (150,000)	n/a
<b>REMAINING NET REVENUE TO SHARE</b>	\$ 98,000	\$ 940,000
FLA	\$ 68,600 (70%)	\$ 470,000 (50%)
CITY	\$ 29,400 (30%)	\$ 470,000 (50%)

*Note 2: Adjustments listed above shall be deemed in order of priority and fulfillment of the priorities will be based on actual Net Revenue performance*



Exhibit F – Pre-Opening Expenses

**EXHIBIT F**

**PRE OPENING EXPENSE EXHIBIT**

**Operating Expense**

Permanent Salary	
Seasonal Salary	
Payroll Burden	
Advertising	
Bank Fees	
Birthday Supplies	
Equipment Rental	
Insurance	
Janitorial/Trash	
Legal Expense	
Medical Supplies	
Merchant Fees	
Management Fee	
Office Expense	
Payroll Expense	
Printing	
Property Tax	
Repair and Maintenance	
Special Events	
Telephone	
Wristbands - rfid	
Training/Recruitment	
Travel	
Uniforms	
Utilities	
<b>Total Pre Opening Expense:</b>	<u>\$ 150,000</u>

**EXHIBIT F**  
**GENERAL CONTRACT TERMS**

**GENERAL PROVISIONS**

**1. Independent Contractor.**

While engaged in carrying out and complying with the terms and conditions of the Agreement, LFA is and shall be an independent contractor and shall not, with respect to its acts and omissions, be deemed an officer, employee, agent or representative of City. LFA shall not in any manner, whether directly or by implication, represent that LFA or its employees are officers, employees, agents or representatives of the City. The fact that City has the right to observe LFA's work or to exercise other prerogatives under this Agreement or by its regulatory authority is not intended to and shall not affect the status of LFA as an independent contractor.

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership, joint venture, or employment, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party has the authority to enter into contracts or to assume any obligation of the other nor to make warranties or representations on behalf of the other except in accordance with the express terms of this Agreement or as otherwise authorized in writing by the other.

**2. Licenses, Permits, Etc.** LFA represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for LFA to practice its profession, but is not acting as an engineer or licensed contractor. LFA represents and warrants to City that LFA shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for LFA to practice its profession at the time the services are performed.

**3. Time.** LFA shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of LFA's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**4. Insurance.**

A. LFA shall procure and maintain insurance as required for each Phase of this Agreement against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Agreement and the results of that work by LFA, its agents, representatives, employees, or subcontractors. The coverage limits and other

terms are specified below for each phase, except the Operating Phase and in such case the limits and terms of the Operating Phase shall control.

All coverage available to the LFA as named insured shall be made available to the City, its officers, employees and volunteers as additional insured. LFA shall provide to City the full policy limits of LFA's insurance, with coverage at least as broad as, and limits no less than, the following:

1. General Liability. LFA shall maintain in full force and effect a policy of commercial general liability insurance (ISO occurrence form CG0001) with limits no less than the following: one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this agreement, or the general aggregate limit shall be twice the required occurrence limit. (The occurrence form of policy is required whenever it is available.)

2. Worker's Compensation and Employer's Liability Insurance. LFA shall fully comply with the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability LFA may have for worker's compensation. LFA shall also maintain in full force and effect a policy of employer's liability insurance with limits no less than the following: one million dollars (\$1,000,000) each accident; one million dollars (\$1,000,000) policy limit bodily injury by disease; one million dollars (\$1,000,000) each employee bodily injury by disease.

3. Automobile. LFA shall maintain in full force and effect a policy of commercial automobile liability insurance (ISO Form CA0001 Code 1 (any auto) or Code 8, 9 if no automobiles owned), with limits no less than the following: one million dollars (\$1,000,000) per accident for bodily injury and property damage.

4. Errors and Omissions. LFA shall maintain in full force and effect a policy of errors and omissions insurance covering the services to be provided under this agreement with limits no less than the following: one million dollars (\$1,000,000) each occurrence, two million dollars (\$2,000,000) policy aggregate.

B. The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, employees and volunteers shall be added as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LFA, and with respect to liability arising out of work or operations performed by or on behalf of the LFA including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2782 of the Civil Code.

2. For any claims related to work or operations performed by or on behalf of LFA, the LFA's insurance coverage shall be primary insurance as respects the City, its officers,

employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, employees, or volunteers shall be excess of the LFA's insurance and shall not contribute with it.

3. The insurance coverage shall not be assigned, reduced, amended, cancelled, terminated, or not renewed by either party except after thirty (30) days written notice by certified mail, return receipt requested, to City.

C. The insurance company or companies providing LFA the coverages required by this Agreement shall be admitted in the State of California and have a current A.M. Best's rating of no less than A:VIII or equivalent acceptable to City.

D. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees and volunteers; or the LFA shall procure a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. The insurance shall be maintained from the time the work first commences until completion of the work under this Agreement if an occurrence policy form is used. If a claims made policy form is used, the following requirements apply:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the LFA must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

F. If LFA, for any reason, fails to maintain insurance coverage which is required under this Agreement, the failure shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from LFA resulting from the breach. Alternatively, City may purchase the required insurance coverage, and without further notice to LFA, City may deduct from the sums due to LFA any premium costs advanced by City for the insurance.

G. LFA shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. LFA shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Agreement. The certificates and endorsements should be on forms provided by the City, or on other than the City's forms, provided those endorsements or certifications conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time.

LFA shall replace certificates of insurance for policies expiring prior to completion of the work under the Agreement, and shall continue to furnish certificates for five years beyond the Agreement terminate date, when the LFA has a claims made form of insurance.

I. The worker's compensation and employee's liability insurance are to contain, or be endorsed to contain, the following provisions:

1. The insurance company waives any right of subrogation against the City, its officers, employees, and volunteers, which might arise by reason of any payment by the insurance company in connection with work performed by LFA under this Agreement.

2. The insurance coverage shall not be assigned, reduced, amended, cancelled, terminated, or not renewed by either party except after thirty (30) days written notice by certified mail, return receipt requested, to City.

5. **Indemnity.** For the Thirty Percent Design Phase and Design Build Assistance Phase. LFA agrees to and shall defend, indemnify and hold harmless City, its officers, employees, agents and volunteers from and against all claims, damages, losses and expenses, including attorney's fees and litigation costs and expenses, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of LFA, any subcontractor of LFA, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of City. This indemnification and duty to defend and hold harmless the City shall survive completion of the work and term of this Agreement and shall be for the full period of time allowed by law for the Thirty Percent Design Phase and Design Build Assistance Phase. Lack of insurance coverage does not negate LFA's obligation under this paragraph or this Agreement. The Indemnification provisions in the Operating Terms control that phase of LFA's services.

6. **Assignment Prohibited.** LFA is retained for its expertise in this field and as such, LFA may not assign its rights and obligations under this Agreement except to an affiliate as defined in Section 1.1.1 of the Operating Terms, unless otherwise expressly agreed to by the CITY in writing. LFA shall provide notice and the parties shall execute an amendment if required.

**7. Personnel: Qualifications and Conflicts of Interest.**

A. LFA shall assign only competent personnel to perform services under this Agreement. If City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by LFA to this Agreement, LFA shall remove the person immediately upon receiving notice from City. No personnel shall be assigned to this Agreement who, due to a financial conflict of interest, is disqualified from performing services under this Agreement.

B. Prior to commencing work under this Agreement, all personnel assigned to the Agreement shall determine whether, by virtue of the work to be performed, they are "Consultants" as defined by the Political Reform Act (Cal. Gov. Code §81000, et seq.). They shall then notify the City Clerk in writing of their determination and shall complete and file all required disclosure statements.

**8. Standard of Performance.** LFA shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which LFA is engaged in the geographical area in which LFA practices its profession. All products of whatsoever nature which LFA delivers to City pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in LFA's profession.

**9. City Representative.** The City Manager is the representative of the City and will administer this Agreement for the City.

**10. Termination.**

A. Except as referenced in the Operating Phase terms (Exhibit E), the City and LFA shall have the right to terminate this Agreement, including any Phase of the Adventure Park Project, at any time by giving notice in writing of such termination to the other party. In the event that one party shall give notice of termination, the other party shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. The Termination provisions in the Adventure Park Operating Phase terms (Exhibit E) shall control that Phase of the Adventure Park Project.

In the event City shall terminate this Agreement:

1. LFA shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

2. City shall have full ownership and control of all such writings delivered by LFA pursuant to this Agreement.

3. City shall pay LFA the reasonable value of services rendered by LFA to the date of termination based on the compensation for that Phase of work as documented on a time sheet detailing work performed pursuant to this Agreement not to exceed the amount documented by LFA and approved by City as work accomplished to date. City shall not in any manner be liable for lost profits which might have been made by LFA had LFA completed the services required by this Agreement. In this regard, LFA shall furnish to City such financial information as in the judgment of the City Manager is necessary to determine the reasonable value of the services rendered by LFA. The foregoing is cumulative and does not affect any right or remedy which City may have in law or equity.

B. Except as provided in the Operating Phase terms of that phase of the Adventure Park project (Exhibit E), LFA may terminate its services under this Agreement upon written notice to the City, without liability for damages, if it is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by City. The Termination provisions in the Adventure Park Operating Phase terms (Exhibit E) shall control that phase of the Adventure Park project.

**11. Non-Discrimination.** LFA shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.

**12. Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, drawings, schematics, meeting notes, reports, and related data shall become the property of City, and LFA agrees to deliver reproducible copies of such documents to City on completion of the services and required payment hereunder. The City agrees to indemnify and hold LFA harmless from any claim arising out of reuse of the information for other than this project.

**13. Materials and Information Confidential.**

All of the materials or information obtained, prepared, or assembled by LFA pursuant to performance of this Agreement are confidential and LFA agrees that they shall not be made available to any individual or organization without the prior written approval of City or except as required by law or by court order. If LFA or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Agreement, City has the right to reimbursement and indemnity from LFA for any damages caused by LFA releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements. If the parties disagree on the legal obligation to provide any requested information, the party objecting shall articulate the legal basis and shall assume and pay for any legal fees and expenses to defend a claim to provide such information.

15. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

16. **Entirety of Agreement.** This Agreement contains the entire agreement of City and LFA with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party which is not contained in this Agreement shall be binding or valid.

17. **Attorney's Fees.** If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

18. **Counterparts.** Where LFA is a limited liability company and the managing member may execute this Agreement in two or more counterparts which shall, in the aggregate, be signed by all the parties; each counterpart shall be deemed an original instrument as against any party who assigned it.

19. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect.

20. **Venue.** Any dispute arising under this Agreement shall be venued in the Superior Court for the County of Placer.





# CITY MEMORANDUM

**DATE:** January 24, 2017

**TO:** Mayor and Council Members

**FROM:** Marc Mondell, Economic and Community Development Director  
Bret Finning, Planning Services Manager

**SUBJECT:** Project Noticing

**Department:** Economic and Community Development

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On December 13, 2016 the City Council discussed the possibility of changing the City's standard for mailing of public hearing notices from the current requirement of sending notices to all owners of real property located within 300 feet of the boundaries of a project site, consistent with the minimum requirements of State law, to 600 feet. Council indicated conceptual support for the proposal but asked for additional information on the noticing practices of Rocklin and other area jurisdictions prior to making a decision.

Today the City of Rocklin complies with the State requirements by mailing public hearing notices to all owners of real property located within 300 feet of the boundaries of a project site and publishes the notices in the Placer Herald a minimum of 10 days prior to the public hearing. In addition, Rocklin also posts information about new project applications on the City's website once it has been deemed complete for processing, copies of all public hearing notices are posted outside of City Hall and on the City website, and at least one 24"x24" sign is posted on the project site to alert the public that a public hearing has been scheduled (larger signs are used for projects that staff has reason to believe will be of significant interest to the public). Taken as a whole the City of Rocklin's current practice for noticing public hearings exceeds the States minimum requirements and appears to go beyond the practices of many of the other jurisdictions in the area, see Attachment 1 – Comparative Noticing Provisions.

Like most jurisdictions in the Sacramento area, Rocklin's codes related to noticing generally defer to, or are written to be consistent with, minimum state requirements which typically require one of both of the following depending upon the type of entitlement being considered:

- Publish notice in a paper of local circulation 10 days prior to the public hearing; and
- Mail a notice to all real property owners, utilities, and service providers 10 days prior to the public hearing.

Other provisions of State code, such as the California Environmental Quality Act (CEQA) also address the noticing processes, and dictate various issues such as how long in advance of a

hearing the public notices must be sent out, or require that certain interest groups, such as Native American Tribal entities, be given special notice of certain types of projects. These State requirements will always supersede, modify, or be in addition to the minimum standards established by the Government Code sections or by any local jurisdiction. Information regarding specific State Codes related to the public notice requirements are included with this memo, as Attachment 2, for the Council's use and information.

Pursuant to the Council's request for information on the practices of other area jurisdictions staff has conducted a cursory review of noticing requirements listed in the Municipal Codes of ten other jurisdictions in the greater Sacramento area for comparison. Staff only looked at notice requirements related to entitlements typical of the development process and not Special Event Permits and the like. Generally speaking, seven of the ten comparator jurisdictions have chosen, like Rocklin, to comply with the 300 foot requirement set forth in State law for most types of entitlements and publish the notice in the local paper 10 days prior to the public hearing unless a longer publication period is required by CEQA or other provisions of State Code. Elk Grove, Rancho Cordova and the City of Sacramento have all chosen to expand their noticing area and mail public hearing notices to all property owners within 500 feet of a project site.

The exceptions to the general rule noted above are that the cities of Citrus Heights and Lincoln have both chosen to mail public hearing notices for subdivisions only, to all property owners within 500 feet of a project site. Likewise Placer County has chosen to mail public hearing notices for Development Agreements only, to all property owners within 600 feet of a project site. The county also posts copies of public hearing notices on the project site and at two nearby public facilities. The Town of Loomis sends public hearing notices for privately proposed General Plan Amendments only to all property owners in the Town limits. Within 30 days of the receipt of an application the City of Elk Grove posts notice on its website that an application has been received and the nature of the application. Elk Grove also has a standard that a minimum of 30 parcel owners must receive notice of a given project even if that requires expanding the noticing radius. In addition that City requires a noticing radius of 1000 to 2000 feet for projects proposed in certain rurally designated areas, for new specific plans, and for all projects requiring an EIR. Finally the City of West Sacramento mails a request for comment for Design Review projects to all property owners within 500 feet of a project site and posts a 17" x 17" sign on the site in lieu of a public hearing notice. They also have the option of posting public hearing notices at 500 foot intervals along all frontages of sites proposed for zone changes. It is possible that some of these jurisdictions have additional noticing practices that are not clearly reflected in their municipal codes or readily apparent on their websites.

With regard to the various noticing practices the following points should be kept in mind:

1. Having different noticing area requirement for different types of entitlements greatly increases the opportunity for error and / or the likelihood that all projects will be held to the greater standard to prevent an error.
2. Larger noticing areas increase the cost for applicants to generate mailing lists.

- 3. Larger noticing areas increase the costs to the jurisdiction in staff time and postage to prepare and mail out notices.
- 4. Jurisdictions often utilize the minimum State requirements as they are presumed to be well founded and represent easily understood practice to achieve the goals set by the State. Local governments cannot do less than the state requirement but may adopt standards that exceed state requirements
- 5. Uniform practices between jurisdictions make is easier for developers and the public to understand and comply with the requirements.
- 6. Where only one jurisdiction has requirements that are significantly different from the surrounding jurisdictions it may be perceived as a disadvantage to doing business in that jurisdiction thereby discouraging investment.

Staff requests that the City Council provide direction on what revisions, if any, are desired to the City’s current public hearing notification practices so that we may prepare the appropriate documents to bring back for approval at a future hearing.

**Attachments**

Attachment 1 - Comparative Noticing Provisions

Attachment 2 - State Code Sections Related to Public Notification of Development Entitlements



\_\_\_\_\_  
Ricky A. Horst, City Manager  
Reviewed for Content



\_\_\_\_\_  
DeeAnne Gillick, Interim City Attorney  
Reviewed for Legal Sufficiency

COMPARATIVE NOTICING PROVISIONS OF JURISDICTIONS IN THE GREATER SACRAMENTO AREA*		
CITY	MAILING <sup>1</sup>	NEWSPAPER <sup>2</sup>
Rocklin	300 Feet	Yes
Citrus Heights	300 Feet	Yes
Elk Grove	500 Feet	Yes
Folsom	300 Feet	Yes
Lincoln	300 Feet	Yes
Loomis	300 Feet	Yes
Placer County	300 Feet	Yes
Rancho Cordova	500 Feet	Yes
Roseville	300 Feet	Yes
Sacramento	500 Feet	Yes
West Sacramento	300 Feet	Yes

CITY	MAILING <sup>1</sup>	NEWSPAPER <sup>2</sup>	EXCEPTIONS AND SPECIAL REQUIREMENTS
Rocklin	300 Feet	Yes	Post Public hearing notice outside City Hall, Post 24"x 24" sign(s) on project site (larger in some circumstances), Post public hearing notice on City website, Post project information on City website after application deemed complete.
Citrus Heights	300 Feet	Yes	Subdivision notices mailed to 500 foot radius
Elk Grove	500 Feet	Yes	Within 30 days of receipt of application post on website that application received and nature. A minimum of 30 parcels owners must be noticed even if that requires expanding the mailing radius. 1000 foot and 2000 foot mailing radii are required for projects in certain rurally designated areas, new specific plans, and projects with EIR's
Folsom	300 Feet	Yes	None found
Lincoln	300 Feet	Yes	Subdivision notices mailed to 500 foot radius
Loomis	300 Feet	Yes	Public hearing notice for Private General Plan Amendments mailed to all property owners in the Towne
Placer County	300 Feet	Yes	Development Agreement notices mailed to 600 foot radius, Notice posted on project site and at two nearby public facilities.
Rancho Cordova	500 Feet	Yes	None found
Roseville	300 Feet	Yes	None found
Sacramento	500 Feet	Yes	Development Agreement notices mailed to 500 foot radius, Notice posted on project site 10 days prior to hearing
West Sacramento	300 Feet	Yes	Design Review upon receipt request for comment mailed to property owners in 500 foot radius and 17"x17" signs posted on site, Zone Change (optional) post notice at 500 foot intervals along all frontages

1. Mail public hearing notice to owner(s) of project site, utility and service providers, and owners of property located within certain distance of the project site boundaries.
  2. Publish public hearing notice in a newspaper of general circulation circulated within the boundaries of the local agency in which the project is proposed a minimum of 10 days prior to the scheduled public hearing.
- This chart was prepared using information that was readily available on line, primarily each jurisdictions Municipal Code or equivalent, and therefore may not include all of the noticing practices employed by each jurisdiction.

**Excerpt of California Code Sections Regulating Noticing Public Hearings**

This information is compiled with the intent of identifying current noticing requirements required by the State of California.

<b>SUMMARY</b>	
95090	Mail public hearing notice to owner(s) of project site, utility and service providers, and owners of property located within certain distance of the project site boundaries 10 days prior to the scheduled public hearing.
95091	1. Mail public hearing notice to owner(s) of project site, utility and service providers, and owners of property located within certain distance of the project site boundaries 10 days prior to the scheduled public hearing. 2. Publish public hearing notice in a newspaper of general circulation circulated within the boundaries of the local agency in which the project is proposed a minimum of 10 days prior to the scheduled public hearing.
65351	Provides for noticing and involvement of special interest groups as part of General Plan Update process
65854	See 95090 & 95091
65355	See 65090
65856	See 65090
65094	Generally defines what is to be included in notice
6066	Generally defines newspaper publication minimum standards for compliance with requirement.
65867	See 95090 & 95091
66451.3	See 95090 & 95091
50022.3	See 6066

**Section 65090**

- (a)When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be published pursuant to Section 6061 in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing, or if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency.
- (b)The notice shall include the information specified in Section 65094.
- (c)In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

**Section 65091**

- (a)When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:
- (1)Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property as shown on the latest equalized assessment roll. Instead of using the assessment roll, the local agency may use records of the county assessor or tax collector if those records contain more recent information than the information contained on the assessment roll. Notice shall also be mailed to the owner's duly authorized agent, if any, and to the project applicant.
- (2)When the Subdivision Map Act (Div. 2 (commencing with Section 66410)) requires notice of a public hearing to be given pursuant to this section, notice shall also be given to any owner of a mineral right pertaining to the subject real property who has recorded a notice of intent to preserve the mineral right pursuant to Section 883.230 of the Civil Code.
- (3)Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
- (4)Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll **within 300 feet** of the real property that is the subject of the hearing. In lieu of using the assessment roll, the local agency may use records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.
- (5)If the notice is mailed or delivered pursuant to paragraph (3), the notice shall also either be:
  - (A)Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.
  - (B)Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.
- (b)The notice shall include the information specified in Section 65094.
- (c)In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.
- (d)Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of

the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

- *(Amended by Stats. 2006, Ch. 363, Sec. 1. Effective January 1, 2007.)*

#### **Section 65351**

During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the planning agency deems appropriate.

#### **Section 65854**

The planning commission shall hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance. Notice of the hearing shall be given pursuant to Section 65090 and, if the proposed ordinance or amendment to a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to Section 65091.

#### **Section 65355**

Prior to adopting or amending a general plan, the legislative body shall hold at least one public hearing. Notice of the hearing shall be given pursuant to Section 65090.

#### **Section 65856**

(a) Upon receipt of the recommendation of the planning commission, the legislative body shall hold a public hearing. However, if the matter under consideration is an amendment to a zoning ordinance to change property from one zone to another, and the planning commission has recommended against the adoption of such amendment, the legislative body shall not be required to take any further action on the amendment unless otherwise provided by ordinance or unless an interested party requests a hearing by filing a written request with the clerk of the legislative body within five days after the planning commission files its recommendations with the legislative body.

(b) Notice of the hearing shall be given pursuant to Section 65090.

#### **Section 65094**

As used in this title, "notice of a public hearing" means a notice that includes the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

#### **Section 6066**

Publication of notice pursuant to this section shall be once a week for two successive weeks. Two publications in a newspaper published once a week or oftener, with at least

five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the fourteenth day, including therein the first day.

### **Section 65867**

A public hearing on an application for a development agreement shall be held by the planning agency and by the legislative body. Notice of intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

### **Section 66451.3**

- (a) Unless otherwise provided by this division, notice of a hearing held pursuant to this division shall be given pursuant to Sections 65090 and 65091.
- (b) If the proposed subdivision is a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, the notice shall also be given by the local agency by United States mail to each tenant of the subject property, and shall also include notification of the tenant's right to appear and be heard. The requirements of this subdivision may be satisfied by service of the notice in compliance with the requirements for service of legal process by mail.

### **Section 50022.3**

- After the first reading of the title of the adopting ordinance and of the title of the code to be adopted thereby, and of the title of the secondary codes therein adopted by reference, the legislative body shall schedule a public hearing thereon. Notice of the hearing shall be published pursuant to Section 6066 in a newspaper of general circulation in or nearest to the adopting local agency. If there is no such newspaper in the county the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and also copies of the secondary codes, if any, being considered for adoption, are on file with the clerk of the legislative body, and are open to public inspection. The notice shall also contain a description which the legislative body deems sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.