



**CITY OF LOS ALTOS  
CITY COUNCIL MEETING  
October 27, 2015**

**CONSENT CALENDAR**

**Agenda Item # 4**

**SUBJECT:** Authorize the City Manager to execute a Purchase and Sale Agreement with Los Altos Community Foundation for the Community House

---

**BACKGROUND**

In June 1997, the City accepted the conveyance of the DeMartini House, now known as the Community House. In September 1997, the City and California Water Service Company (CalWater) entered into a lease to place the Community House at 183 Hillview Avenue, which was then owned by CalWater. At the same time, the City entered into an agreement to lease the Community House to the Los Altos Community Foundation (LACF).

In 2008, CalWater sold the land at 183 Hillview Avenue to LACF.

**EXISTING POLICY**

None

**PREVIOUS COUNCIL CONSIDERATION**

Not applicable

**DISCUSSION**

Under the terms of the lease agreement, the LACF has used the Community House as its Foundation office.

The attached Purchase and Sale Agreement transfers ownership of the Community House to the Los Altos Community Foundation. As part of the agreement, LACF or its successors must maintain the Community House solely for community-related purposes which benefit the residents of Los Altos. In addition, the City is granted right of first refusal should LACF or its successors choose to sell the Community House.

The leadership of LACF has indicated its satisfaction with the terms of the Purchase and Sale Agreement.

**PUBLIC CONTACT**

Posting of the meeting agenda serves as notice to the general public.

**FISCAL/RESOURCE IMPACT**

The sale of the Community House is for a nominal amount and will result in a decrease in liability for the City related to owning the Community House.

**ENVIRONMENTAL REVIEW**

Not applicable

**RECOMMENDATION**

Authorize the City Manager to execute a Purchase and Sale Agreement with Los Altos Community Foundation for the Community House.

**ALTERNATIVES**

1. Do not authorize the transfer of ownership of the Community House

Prepared by: Marcia Somers, City Manager

**ATTACHMENT:**

1. Purchase and sale agreement for Community House

---

*Authorize the City Manager to execute a Purchase and Sale Agreement with Los Altos Community Foundation for the Community House*

## PURCHASE AND SALE AGREEMENT FOR PERSONAL PROPERTY

This PURCHASE AND SALE AGREEMENT FOR PERSONAL PROPERTY (“**Agreement**”) is dated as of September \_\_, 2015 (“**Effective Date**”), and is entered into by and between the City of Los Altos, California, a California municipal corporation (“**Seller**”) and the Los Altos Community Foundation, a California non-profit public benefit corporation (“**Buyer**”).

### RECITALS

A. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, that certain personal property (“**Personal Property**”) described in the Bill of Sale attached hereto as Exhibit A (“**Bill of Sale**”).

B. The Personal Property consists of that certain house (“**House**”), sometimes referred to as the “DeMartini House” or the “Community House,” which, as of the Effective Date, is situated at 183 Hillview Avenue, in the City of Los Altos, County of Santa Clara, State of California (APN 170-42-003), together with all improvements attached thereto and the personal property, if any, owned by Seller and located in the House as of the Effective Date.

NOW, THEREFORE, in consideration of the terms and covenants of this Agreement, and other consideration, the sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Purchase Price. The purchase price for the Personal Property (“**Purchase Price**”) shall be One Dollar (\$1.00). In addition to the Purchase Price, Buyer shall pay to Seller a sum equal to all sales taxes payable as the result of the sale of the Personal Property to Buyer. The Purchase Price shall be due and payable upon Buyer’s execution of this Agreement.

2. Use. Buyer hereby agrees and acknowledges that Buyer, and its successors and assigns, shall use the House solely for community-related purposes, which purposes shall be for the benefit of the residents of the City of Los Altos.

3. AS IS Sale; Release of Claims.

(a) AS IS Sale. Seller makes no representations or warranties, express or implied, with respect to the Personal Property or any portion thereof, and Seller hereby expressly disclaims all warranties, including, without limitation, any warranty of merchantability and any warranty of fitness for a particular purpose. Without limiting the foregoing, Buyer hereby acknowledges that the Personal Property is being sold to Buyer in its current “AS-IS” condition, and that Buyer has thoroughly inspected the Personal Property and is familiar with its condition. Buyer shall be relying entirely upon its own independent investigations of the Personal Property and on the advice of its counsel, advisers and consultants concerning the transaction contemplated by this Agreement.

(b) Release of Claims.

(i) Without limiting the above, Buyer waives, on behalf of itself and its agents, employees, affiliates, successors and assigns, any and all right to recover from Seller and its members, managers, trustees, shareholders, directors, officers, partners, employees, successors and assigns (collectively, the “**Seller Related Parties**”), and forever releases and discharges Seller and the Seller Related Parties from any and all damages, claims, losses, liabilities, actions, causes of action, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Personal Property, including, without limitation, title to the Personal Property, the physical, geotechnical and environmental condition of the Personal Property (including, without limitation, any lead-paint related

contamination and/or other issues), and any law or regulation applicable thereto (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601 et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.)).

(ii) In connection with subsection (i) above, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

(iii) Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this 3(b). Buyer hereby specifically acknowledges that Buyer has carefully reviewed this 3(b), and discussed its import (or had the opportunity to discuss its import) with legal counsel, is fully aware of its consequences, and that the provisions of this 3(b) are a material part of this Agreement and are accepted by Buyer; provided, however that failure of Buyer to initial this 3(b) below shall not invalidate this 3(b) nor any other provision of this Agreement. Notwithstanding the foregoing, the release set forth in this 3(b) shall expressly exclude (a) Seller's breach of any express covenants set forth in this Agreement, (b) any fraud committed by Seller, and (c) any and all claims or liability arising from any third party claim for personal injury or property damage arising prior to the Effective Date (other than claims relating to the environmental condition of the Property, including, without limitation, any lead-paint related contamination and/or other issues).

Buyer's Initials: \_\_\_\_\_

4. Right of First Refusal. If Buyer ever receives a bona fide offer from a third party to buy all or any portion of the Personal Property ("**First Offer Personal Property**"), which Buyer is prepared to accept, then Buyer shall first offer to sell the First Offer Personal Property to Seller by delivering to Seller a copy of the purchase agreement which Buyer is willing to execute ("**Purchase Agreement**"). Seller shall have a right of first refusal for sixty (60) days following receipt of the Purchase Agreement to notify Buyer of whether Seller desires to buy the First Offer Personal Property on the same terms and conditions as set forth in the Purchase Agreement. Seller's failure to advise Buyer of its election within such sixty (60) day period shall constitute an election by Seller not to purchase the First Offer Personal Property on the terms and conditions set forth in the Purchase Agreement. If Seller elects not to purchase the First Offer Personal Property, Buyer shall have the right to sell the First Offer Personal Property to a third party on the terms and conditions set forth in the Purchase Agreement, provided such sale is consummated within six (6) months after Seller's election not to purchase the First Offer Personal Property. If Buyer fails to enter into such a purchase agreement with a third party within the six (6) month period required by the prior sentence, Buyer shall not enter into a purchase agreement for the First Offer Personal Property until Buyer has again offered Seller the right to purchase the First Offer Personal Property as required by this Section 4. If the First Offer Personal Property again becomes available for purchase at any time, Seller shall again be afforded the right to purchase the First Offer Personal Property pursuant to the terms of this Section 4. Said right of first refusal is not a waiver of Seller's rights and powers of eminent domain and regulation of land use and development.

5. Attorneys' Fees. If a dispute arises in connection with or under this Agreement or the Bill of Sale, the prevailing party (as determined by the trier of fact) shall be entitled to collect the reasonable attorneys' fees and costs incurred by it in connection with the dispute (and any appeals) from the other party.

6. Provisions Severable. The provisions of this Agreement are severable, and if any provision herein is invalid, the balance of this Agreement shall remain in force and effect to the fullest extent permitted by law.

7. Governing Law. This Agreement shall be governed by the laws of the United States of America and the State of California.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument.

9. Entire Agreement. This Agreement constitutes the entire agreement of Buyer and Seller with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, discussions and agreements with respect to the subject matter hereof.

**[Signatures Appear on Following Page]**

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date and year first set forth above.

**LOS ALTOS COMMUNITY FOUNDATION**

Dated: 10/15/15 By: Joseph M. Syre

**CITY OF LOS ALTOS**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Marcia Somers, City Manager

**REVIEWED AS TO FORM**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Jolie Houston, City Attorney

EXHIBIT A

BILL OF SALE

For the sum of One Dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the City of Los Altos, a California municipal corporation (“**Seller**”) hereby grants, bargains, sells, conveys, assigns, and transfers to the Los Altos Community Foundation, a California nonprofit public benefit corporation (“**Buyer**”), without representation or warranty, express or implied, the entire right title and interest of Seller in and to that certain house (“**House**”), sometimes referred to as the “DeMartini House” or the “Community House,” which, as of the date hereof, is situated at 183 Hillview Avenue in the City of Los Altos, County of Santa Clara, State of California (APN 170-42-003), together with all improvements attached thereto and the personal property, if any, owned by Seller and located in the House as of the date hereof.

This Bill of Sale is executed and made effective on September \_\_, 2015.

SELLER:

CITY OF LOS ALTOS,  
a California municipal corporation

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