



# RESOLUTION No. 16-197

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### RESOLUTION AUTHORIZING THE TRANSFER OF WESTERN GATEWAY PARK (APN 51-220-16), APPROVING THE WESTERN GATEWAY PARK TRANSFER AGREEMENT BETWEEN THE COUNTY OF NEVADA AND THE WESTERN GATEWAY PARK AND RECREATION DISTRICT AND AUTHORIZING THE CHAIR OF THE BOARD OF SUPERVISORS TO EXECUTE THE AGREEMENT(4/5 AFFIRMATIVE VOTE REQUIRED)

WHEREAS, County of Nevada ("County") owns approximately 80.97 acres of real property and its appurtenant facilities located at 18560 Penn Valley Drive, Penn Valley, CA, APN 51-220-16 commonly known as the Western Gateway Park ("Park Property"); and,

WHEREAS, County acquired Park property from Boise Cascade Recreation Communities, a Division of Boise Cascade Home and Land Corporation, on March 6, 1972, when it was deeded to the County for use as a County park and open space; and,

WHEREAS, the purpose of the Western Gateway Park and Recreation District ("Park District") is to provide parks and recreational facilities, services, and opportunities to the citizens of the area, and to develop, manage and maintain the Western Gateway Park; and,

WHEREAS, Park District has continually developed, managed and maintained the Park Property on behalf of the County for over thirty years; in exchange, County agreed to waive all County building permit fees related to the construction and installation of park facilities; and,

WHEREAS, the Nevada Cemetery District ("Cemetery District") owns property adjacent to the Park Property, and has an easement for ingress, egress and public utility purposes across a portion (0.89 acres) of the Park Property; and

WHEREAS, Wesley Lahr ("Lahr") owns property adjacent to the Park Property, and has a legal easement for ingress, egress and utility purposes across a portion (0.89 acres) of the Park Property; and

WHEREAS, County desires to transfer the Park Property to the Park District, except for any land necessary to operate and maintain an existing Bike Path (0.94 acres) adjacent to the Park Property; and

WHEREAS, County and the Park District now desire to transfer 80.03 acres of the Park Property from the County to the Park District, subject to the Cemetery District easement and the Lahr easement, and on the terms and conditions set forth in the attached transfer agreement, including the condition that the property is used for open space, public recreation and park purposes; and,

WHEREAS, Government Code section 25365 provides that the Board of Supervisors may, by a four-fifths vote, quitclaim or otherwise transfer to a special district any real property belonging to the County if the property to be quitclaimed is not required for county use; and,

WHEREAS, pursuant to Government Code section 25365(c), notice of the proposed Park Property transfer was duly published in a newspaper of general circulation in the County on May 2, 2016.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors, of the County of Nevada, State of California, that:

1. The Board of Supervisors hereby finds and determines that the Park Property is not required for County use.
2. The Western Gateway Park Transfer Agreement ("Agreement") by and between the County of Nevada and the Western Gateway Park and Recreation District for property located at 18560 Penn Valley Drive, Penn Valley, CA, APN 51-220-16, is hereby approved in the form attached hereto as Exhibit A, and the Chair of the Board of Supervisors is hereby authorized to execute the Agreement, on behalf of the County of Nevada.
3. The Chair of the Board of Supervisors is hereby authorized to execute, on behalf of the County of Nevada, a Quitclaim Deed conditionally transferring all County right, title and interest in the Park Property, and subject to the existing legal Easements and subject to the reversionary condition that the property is used for open space, public recreation and park purposes, to the Western Gateway Park and Recreation District.
4. Mr. Stephen T. Monaghan, Chief Information Officer, is hereby authorized to execute and record, on behalf of the County of Nevada, all such instruments and documents as may be required in order to consummate this real property transaction.
5. The County shall continue to waive fees required by the Nevada County Building Inspection, Environmental Health, Planning and Public Works Departments related to the approval or construction of any park improvements installed and funded by the Western Gateway Park District until April 1, 2024.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 10th day of May, 2016, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

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



\_\_\_\_\_  
Dan Miller, Chair

5/17/2016 cc: Facilities\*  
AC\*(hold)

8/26/2016 cc: Facilitie\*  
AC\*(release)

## WESTERN GATEWAY RECREATION AND PARK DISTRICT TRANSFER AGREEMENT

This Western Gateway Park Transfer Agreement ("Agreement") is made and entered into this 10<sup>th</sup> day of May, 2016, by and between the County of Nevada, a political subdivision of the State ("County") and the Western Gateway Recreation and Park District, a special district ("Park District"). This Agreement is made with reference to the following facts:

- A. County owns approximately 80.97 acres (APN 51-220-16) and its appurtenant facilities located at 18560 Penn Valley Drive, Penn Valley, CA, commonly known as the Western Gateway Park ("Park Property.")
- B. County acquired Park Property from Boise Cascade Recreation Communities, a Division of Boise Cascade Home and Land Corporation, on March 6, 1972 when it was deeded to the County for use as a County Park.
- C. Park District was formed for the express purpose of developing, managing and maintaining Park Property on behalf of the County, and has continually honored this commitment for over thirty years.
- D. County desires to transfer the majority of the Park Property to the Park District. County is retaining sufficient ownership and control of the Park Property to maintain an existing bike path on the southern border of the Park Property. County transfers the balance of the remaining **80.03 acres** of Park Property as detailed in Quitclaim Deed Exhibits A and B.
- E. Nevada Cemetery District ("Cemetery District,") owns property adjacent to the Park Property, and more particularly described as APN 51-120-13 and APN 51-120-09.
- F. Concurrently herewith, County has approved an easement to Cemetery District for ingress and egress and utility purposes across 0.89 acres of Park Property as referenced and recorded in Document #20160011160.
- G. Wesley Lahr ("Lahr,") owner of APN 51-210-05, owns, as successor property owner, a legal non-exclusive easement for ingress and egress and utility purposes in the same portion (**0.89 acres**) of the Park Property. A non-exclusive easement in favor of the owner of APN 51-210-05 was recorded in the conveyance from Manufacturers Hanover Mortgage Corporation to Lahr, recorded August 30, 1985, at the Nevada County Recorder's Office in Deed 85-20221.
- H. County now desires to conditionally transfer all of its right, title and interest in **80.03 acres** of the Park Property, **subject to** the Cemetery District (APN 51-120-13 and APN 51-120-09) Easement and **subject to** the Lahr (APN 51-210-05) Easement, and District agrees to accept the Park Property subject to said conditions.

NOW, THEREFORE, in consideration of the promises, conditions, and mutual covenants set forth herein, the parties hereto do agree as follows:

1. Transfer of Park Property. County agrees to effectuate the transfer of the Park Property by executing the Quitclaim Deed attached hereto as **Attachment A**. County hereby represents to District

that said Quitclaim Deed is sufficient to release all of County's right, title and interest in the Park Property.

3. Use. The District agrees to develop, operate and maintain the Park Property as a public park at its sole cost. Specifically, District agrees to use the Park Property only for public park, open space and recreation purposes, and shall make no other use or sale or other disposition of the Park Property. Further, District agrees to operate, maintain, and provide public access to the Park Property. In the event the property is not used for such public park, open space, and recreation purposes, all right, title, and interest in the property reverts to the Grantor.

4. Consideration. Both Park District and County mutually agree that the consideration provided for the conveyance of the Park Property shall be the Park District's agreement to develop, operate, and maintain the Park Property for public park, open space, and recreation purposes for the benefit of the residents of the Park District and unincorporated Nevada County.

5. Condition of Title to Park Property. Except as otherwise expressly provided in this Agreement, the Park District is acquiring the Park Property "AS IS" and "WITH ALL FAULTS" in its present state and condition and "SUBJECT TO" existing easements as of completion of this real property transfer. Except for the express representations and warranties set forth herein, each party agrees that the other has not made, does not make and specifically negates and disclaims any representations or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the property being conveyed by it hereunder (including, without limitation, any warranty of merchantability, habitability, or fitness for a particular purpose).

6. Warranties of County. County warrants that:

A. County has no actual present knowledge of any pending litigation involving the Park Property.

B. County has no actual present knowledge of any violation of, or notices concerning defects or noncompliance with, any applicable building codes or other code, statute, regulation, ordinance, judicial order, or judicial holding pertaining to the Park Property.

7. Closing Date and Recordation. The closing date ("Closing") shall occur on or before June 30, 2016, unless the parties mutually agree to extend such Closing date. The parties agree that the County will timely arrange for the recordation of the documents necessary to complete the conveyance contemplated hereby. The Park District agrees to timely provide the County its resolution or certificate of acceptance pursuant to Government Code Section 27281, prior to recordation of the transfer of title.

8. Indemnification. The Park District waives any and all claims, and agrees to indemnify, defend, save and hold harmless County and its elected and appointed officers, employees, and agents (collectively "County Indemnified Parties"), from and against any and all liability, expense (including without limitation defense costs and legal fees), and claims for damages of any nature whatsoever, related to site conditions of the Park Property that accrue, or incidents that occur, after this real property transfer is complete.

9. Notices. Any written notices required by this Agreement shall be made by personal delivery, or by first class United States mail, postage prepaid, to the addresses indicated below:

For District: Western Gateway Recreation and Park District Board of Directors  
P.O. Box 597  
Penn Valley, CA 95946

For County: County of Nevada  
Information and General Services Department  
950 Maidu Avenue  
Nevada City, CA 95959  
Attn: Steven T. Monaghan, CIO

*with a copy to:* Facilities Management  
County of Nevada  
10014 N. Bloomfield  
Nevada City, CA 95959  
Attn: Tom Coburn, Facilities Manager

*and a copy to:* County Counsel  
County of Nevada  
950 Maidu Avenue, Suite 240  
Nevada City, CA 95959

10. Authorization, Approvals, Binding Nature. This Agreement has no force or effect and is not binding on the Park District until and unless it is authorized by the Park District's Board of Directors, or on the County until and unless authorized by the Board of Supervisors at a duly noticed public meeting.

11. Time is of the Essence. Time is of the essence for each and every term, condition, covenant, obligation and provision of this Agreement.

12. Severability. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be severed from the Agreement, and the remaining parts hereof shall remain in full force and effect as fully as though such invalid, illegal or unenforceable portion had never been part of the Agreement, provided the remaining Agreement can be reasonably and equitably enforced.

13. Binding on Successors. Subject to the limitations set forth herein, the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

14. Third Party Beneficiaries. This Agreement creates rights and duties only between the County and the District, and no other party, or third party, is intended to have or be deemed to have any rights under the Agreement as an intended third party beneficiary.

14. California Law. This Agreement shall be construed in accordance with the laws of the State of California.

15. Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.

16. Captions.The captions and the section and subsection numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement nor in any way affect this Agreement.

17. No Presumption Regarding Drafter. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity, or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

18. Required Actions of the Parties. County and Park District agree to execute all such instruments and documents and to take all actions as may be required in order to consummate the real property transfer herein contemplated.

19. Survival of Covenants. The covenants, agreements, representations and warranties made herein are intended to survive the consummation of the transfer of the Park Property and recordation of the Quitclaim Deed.

20. Interpretation. Unless the context of this Agreement clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.

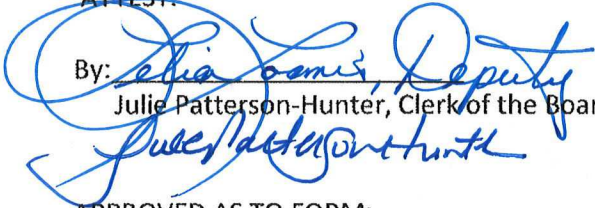
21. Final Agreement. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the real property transfer contemplated by this Agreement and supersedes any prior agreement, oral or written, between Park District and County, about the subject matter hereof. No contemporaneous or subsequent agreement, amendment, representation or promise made by either party hereto, or by or to any employee, officer, agent, or representative of either party, shall be of any effect unless it is in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials, effective as of the day and year first written above.

COUNTY OF NEVADA

By:   
Honorable Dan Miller  
Chair, Board of Supervisors


ATTEST:

By:   
Julie Patterson-Hunter, Clerk of the Board

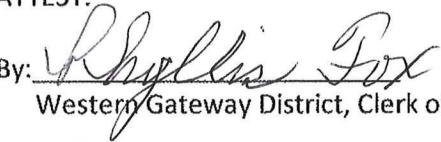
APPROVED AS TO FORM:

By:   
Alison A. Barratt-Green, County Counsel

WESTERN GATEWAY RECREATION AND PARK DISTRICT

By:   
Nancy Peirce  
Chair, Board of Directors

ATTEST:

By:   
Rhyllis Fox  
Western Gateway District, Clerk of the Board

Attachments.

- i. Attachment A: Quitclaim Deed
- ii. Attachment B: Park Property Legal Description (Quitclaim Deed Exhibit A)
- iii. Attachment C: Park Property Legal Description Plat (Quitclaim Deed Exhibit B)

15  
NF

Nevada County Recorder  
Gregory J. Diaz  
Document#: 20160019405  
Friday August 26 2016, at 03:42:48 PM

RECORDING REQUESTED BY  
County of Nevada

Paid:  
Recorded By:AB

AND MAIL TO  
Western Gateway Park & Rec. District  
P.O. Box 597  
Penn Valley, CA 95946

\_\_\_\_\_ [Space Above This Line For Recording Data] \_\_\_\_\_

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE GOVERNMENT CODE

THIS DOCUMENT IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE REVENUE AND TAXATION CODE

TAX STATEMENTS TO BE MAILED TO ADDRESS ABOVE

ASSESSOR'S PARCEL No.: 51-220-16

**QUITCLAIM DEED**

The COUNTY OF NEVADA, ("Grantor"), a political subdivision of the State of California, does hereby remise, surrender, quitclaim and release to Western Gateway Park and Recreation District ("Grantee"), all of the County's right, title and interest in and to the real property located in the County of Nevada, State of California and described in Exhibit A, except for a reservation of a narrow stretch of land on the southern border of the parcel as Described in Exhibit B and subject to the existing legal Easements incorporated herein by reference as though set forth in full.

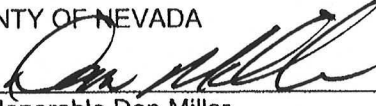
THIS QUITCLAIM DEED IS SUBJECT TO AND GRANTEE TO ASSUME:

- a. All taxes, interest, penalties and assessments of record, if any.
- b. Covenants, conditions, restrictions, reservations, easements, rights, and rights-of-way of record, if any, and specifically:
  - i. the reservation of a narrow stretch of land on the southern border of the parcel as described in Exhibits A and B.
  - ii. and subject to the easement for APN 51-120-13 and APN 51-120-09 as recorded in Document #20160011160.
  - iii. and subject to the easement for APN 51-210-05 as recorded in the Nevada County Recorder's Office in Deed 85-20221.
  - iv. The condition that the Property is to be used for open space, public recreation and park purposes and in the event the property is not used for such open space, public recreation and park purposes, all right, title, and interest in the property reverts to the Grantor.



Dated: Aug 18, 2016

COUNTY OF NEVADA

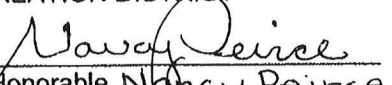
By:   
Honorable Dan Miller  
Chair, Board of Supervisors

ACCEPTANCE

This is to certify that the interest in real property conveyed by this document to the Western Gateway Park and Recreation District, a special district, is hereby accepted by the undersigned on behalf of the Board of Directors of the Western Gateway Park and Recreation District pursuant to authority conferred by Resolution No. 16197 of said Board adopted on May 10, 2016.

Dated: June 24 <sup>(13)</sup>  
~~May 10~~, 2016

WESTERN GATEWAY PARK AND  
RECREATION DISTRICT

By:   
Honorable Nancy Peirce  
Chair, Board of Directors

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

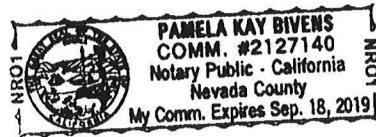
State of California  
County of Nevada

On June 24, 16 before me, Pamela Kay Bivens, Notary Public, personally appeared Nancy Peirce, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Pamela Kay Bivens  
Notary Signature



Seal

**EXHIBIT "A"**

All that real property situated within Section 33, Township 16 North, Range 7 East, M.D.B.&M., within the unincorporated territory of the County of Nevada and being a portion of that certain property to the County of Nevada as described in deed document recorded March 6, 1972 in Volume 591 at Page 689, Official Records of Nevada County and as shown on that certain Record of Survey Map recorded in 1972 (no month or day noted on map) in Book 4 of Surveys at Page 199, Nevada County Recorder's Office, and being more particularly described as follows:

Beginning at the East Quarter section corner of said Section 33, said point being in the easterly line of a 60 foot right-of-way; thence South  $0^{\circ} 50'00''$  East, 1061.43 feet along the easterly line of the Southeast Quarter of Section 33, said line also being the easterly line of said 60 foot right-of-way, to a point in the northerly line of State Highway Number 20; thence North  $76^{\circ} 14'00''$  West, 62.00 feet along said northerly line to a point in the westerly line of said 60 foot right-of-way; thence North  $0^{\circ} 50'00''$  West, 631.81 feet along said westerly line to a point in the centerline of Squirrel Creek; thence along said centerline the following four courses: South  $77^{\circ} 10'00''$  West, 85.01 feet; North  $64^{\circ} 46'00''$  West, 114.74 feet; North  $46^{\circ} 02'00''$  West, 245.02 feet; North  $56^{\circ} 22'00''$  East, 122.87 feet; thence leaving said centerline, South  $16^{\circ} 15'52''$  West, 609.62 feet to a point in the northerly line of State Highway Number 20; thence along said Northerly line the following twelve courses: North  $83^{\circ} 31'52''$  West, 304.72 feet; North  $83^{\circ} 16'08''$  West, 420.00 feet; North  $87^{\circ} 43'03''$  West, 259.06 feet; North  $78^{\circ} 54'05''$  West, 186.31 feet; South  $84^{\circ} 32'21''$  West, 62.81 feet; North  $86^{\circ} 15'56''$  West, 162.48 feet; North  $83^{\circ} 04'33''$  West, 259.85 feet; North  $86^{\circ} 51'33''$  West, 160.88 feet; North  $70^{\circ} 54'19''$  West, 144.71 feet; North  $71^{\circ} 08'35''$  West, 402.36 feet; North  $64^{\circ} 41'31''$  West, 287.50 feet; North  $62^{\circ} 34'46''$  West, 206.27 feet; thence leaving said State Highway 20, North  $10^{\circ} 21'10''$  West, 971.78 feet; thence South  $76^{\circ} 37'30''$  East, 1661.21 feet; thence North  $13^{\circ} 22'30''$  East, 191.75 feet to a point in the southerly line of proposed State Highway III Nev. Route 15A; thence South  $76^{\circ} 40'30''$  East, 2016.49 feet along said Southerly line to a point in the easterly line of the Northeast Quarter of Section 33; thence South  $0^{\circ} 56'27''$  East, 161.91 feet along said easterly line to the point of beginning.

EXCEPTING THEREFROM the following portions:

**Parcel #1:**

Beginning at the southwest corner of said County of Nevada Property and Parcel as shown on said Record of Survey Map and being the southeast corner of Lot 10 as shown on that certain Subdivision Map recorded August 9, 2005 in Book 8 of Subdivisions at Page 136, and being a point on the northerly right-of-way line of Penn Valley Drive; thence from said Point of Beginning southeasterly the following four (4) consecutive courses; 1) South  $73^{\circ} 00'00''$  East, 110.00 feet, 2) South  $60^{\circ} 30' 00''$  East, 250.00 Feet, 3) South  $70^{\circ} 15' 00''$  East, 230.00 Feet, 4) South  $67^{\circ} 00' 00''$  East, 232.97 feet to a point on the southerly property line of said County of Nevada property and the northerly right-of-way line of Penn Valley Drive; thence northwesterly along the northerly right-of-way of Penn Valley Drive the following three (3) consecutive

courses: 1) North 71° 08' 35" West, 328.33 feet, 2) North 64° 41' 31" West, 287.50 feet, 3) North 62° 34' 46" West, 206.27 feet to the Point of Beginning.

Said area of Parcel #1 containing 0.22± acres.

**Parcel #2:**

Beginning at the southeast corner of said County of Nevada property and Parcel as shown on said Record of Survey Map, and being the southwest corner of Parcel 1 of that certain parcel map recorded December 5, 1973 in Book 6 of Parcel Maps at Page 157, and being a point on the Northerly right-of-way line of Penn Valley Drive; thence from said Point of Beginning northwesterly and along the northerly right-of-way line of Penn Valley drive, the following eight (8) consecutive courses; 1) North 83° 31' 52" West, 304.72 feet, 2) North 83° 16' 08" West, 420.00 Feet, 3) North 87° 43' 03" West, 259.06 Feet, 4) North 78° 54' 05" West, 186.31 feet, 5) South 84° 32' 21" West, 62.81 feet, 6) North 86° 15' 56" West, 162.48 feet, 7) North 83° 04' 33" West, 259.85 feet, 8) North 75° 51' 33" West, 160.88 feet; thence leaving the northerly right-of-way line of Penn Valley Drive and southeasterly the following ten (10) consecutive courses: 1) South 83° 10' 00" East, 226.00 feet, 2) South 86° 00' 00" East, 185.00 feet, 3) South 80° 10' 00" East, 110.00 feet, 4) South 83° 30' 00" East, 350.00 feet, 5) South 87° 50' 00" East, 140.00 feet, 6) South 85° 30' 00" East, 200.00 feet, 7) South 83° 00' 00" East, 285.00 feet, 8) North 86° 00' 00" East, 97.00 feet, 9) South 81° 00' 00" East, 72.00 feet, 10) South 74° 05' 13" East, 152.31 feet to a point along the easterly property line of said County of Nevada property and west line of said Parcel 1; thence along the easterly property line of said County of Nevada property and west line of said Parcel 1, South 16° 15' 52" West, 5.00 feet to the Point of Beginning.

Said area of Parcel #2 containing 0.72± acres.

The total area being conveyed is 80.03 acres more or less.

The herein described land is shown on Exhibit "B" attached hereto and made a part hereof.

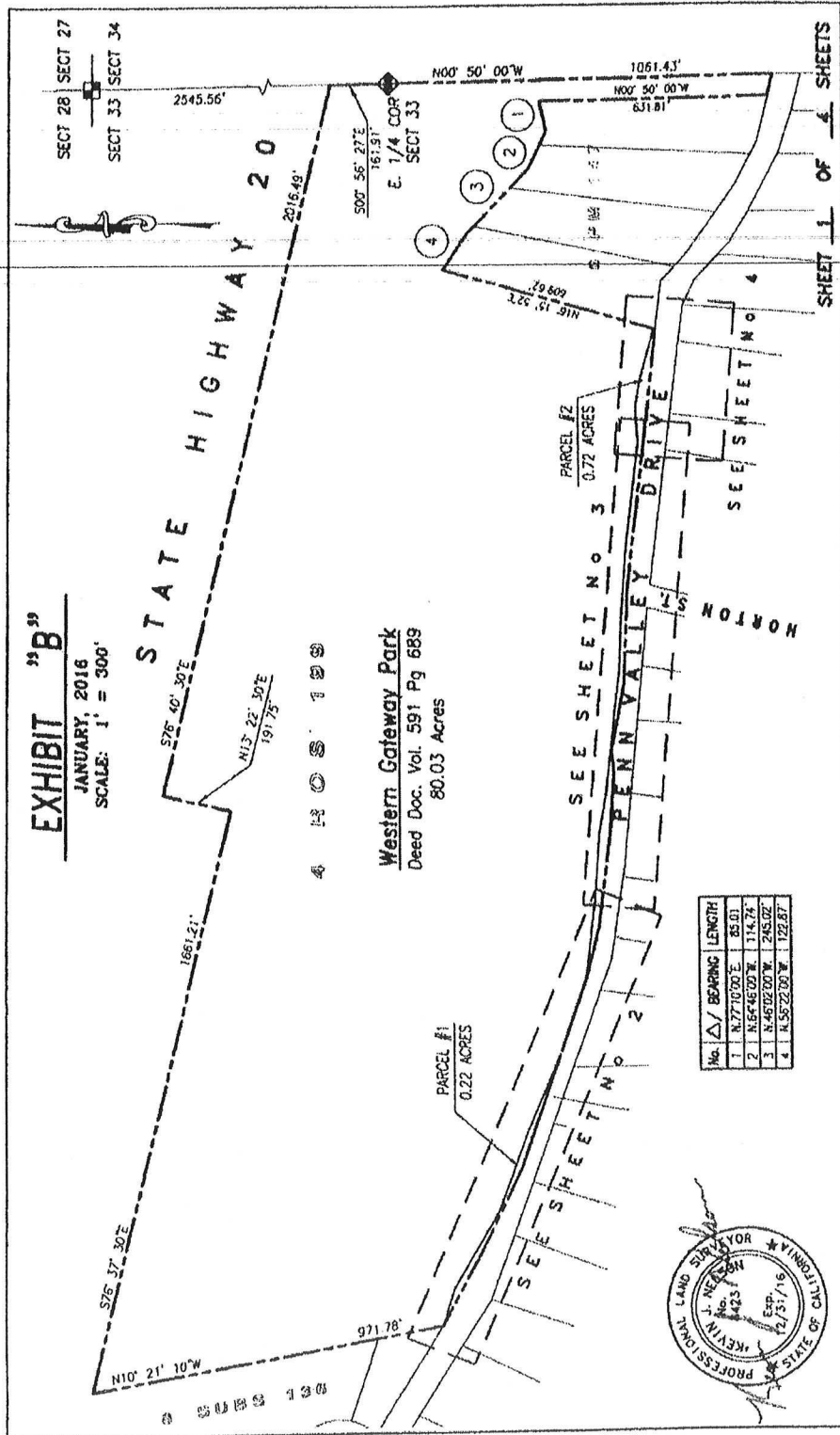
The herein described land affects a portion of APN 51-220-16.

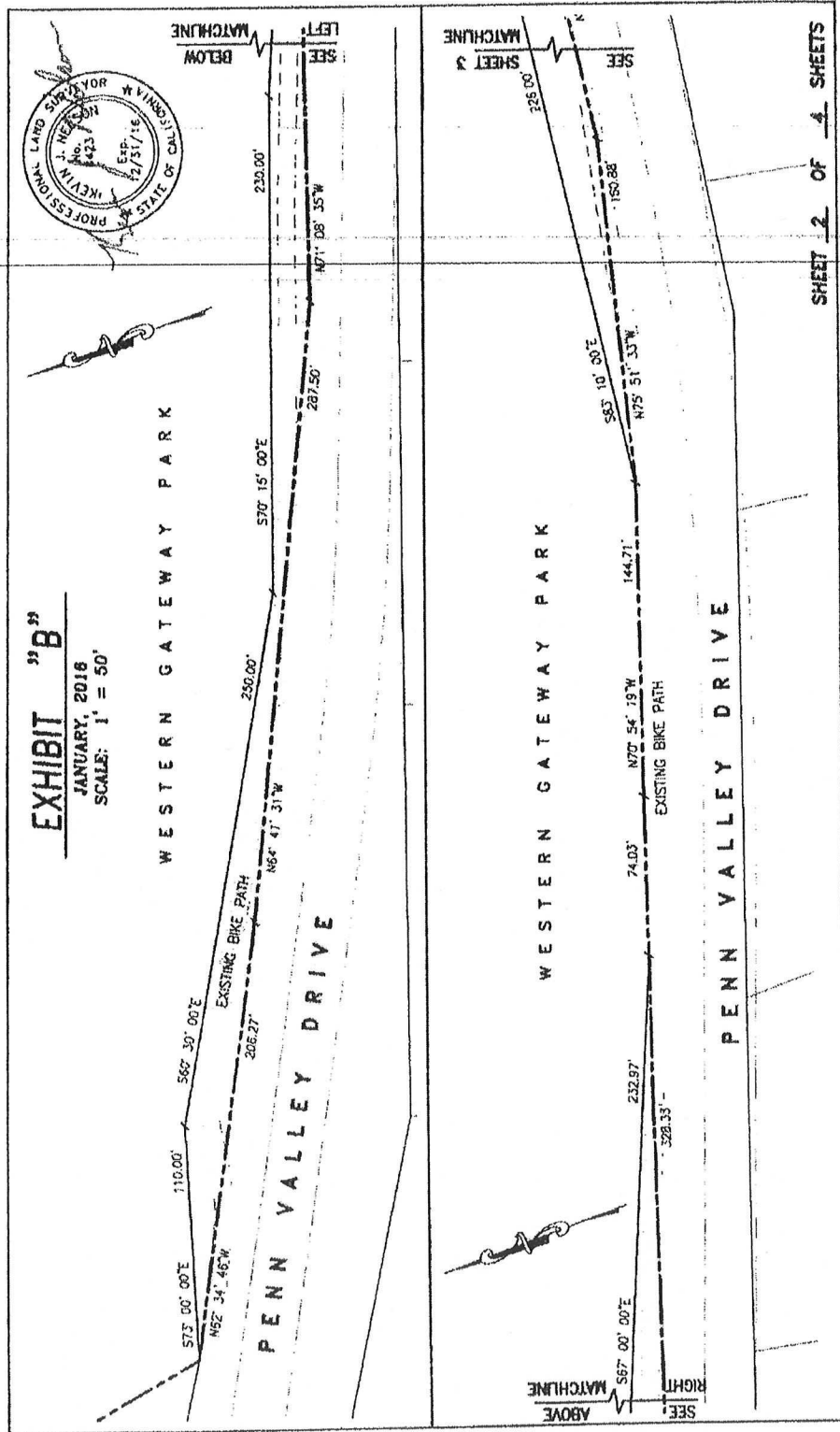
This description has been prepared by me, or under my direct supervision, in conformance with the Professional Land Surveyors Act, on January 18, 2016.

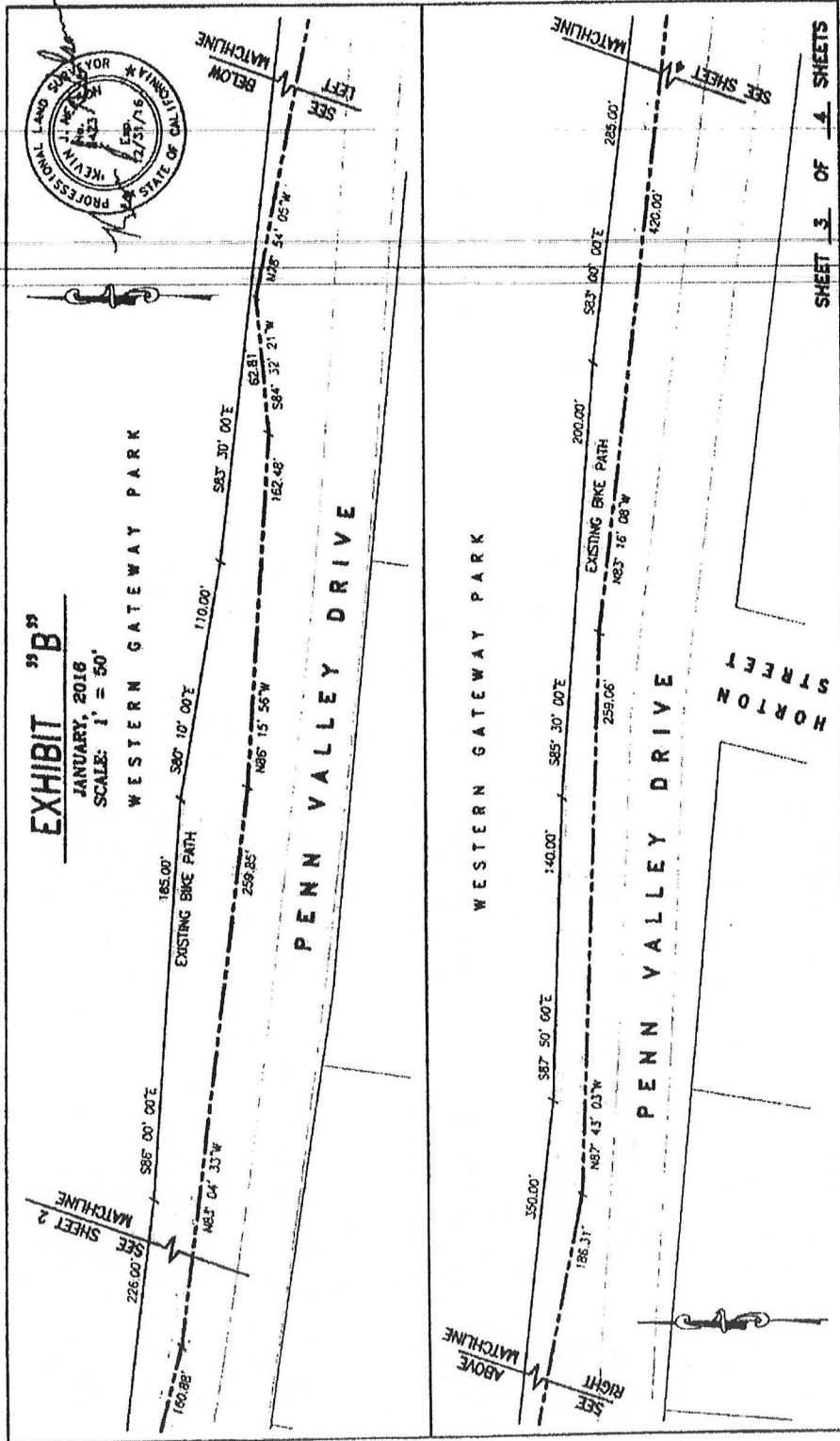


*Kevin J. Nelson*

Kevin J. Nelson, P.L.S. 8423  
Expires 12-31-16









## RESOLUTION No. 16-197

### OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**RESOLUTION AUTHORIZING THE TRANSFER OF WESTERN GATEWAY PARK (APN 51-220-16), APPROVING THE WESTERN GATEWAY PARK TRANSFER AGREEMENT BETWEEN THE COUNTY OF NEVADA AND THE WESTERN GATEWAY PARK AND RECREATION DISTRICT AND AUTHORIZING THE CHAIR OF THE BOARD OF SUPERVISORS TO EXECUTE THE AGREEMENT (4/5 AFFIRMATIVE VOTE REQUIRED)**

WHEREAS, County of Nevada ("County") owns approximately 80.97 acres of real property and its appurtenant facilities located at 18560 Penn Valley Drive, Penn Valley, CA, APN 51-220-16 commonly known as the Western Gateway Park ("Park Property"); and,

WHEREAS, County acquired Park property from Boise Cascade Recreation Communities, a Division of Boise Cascade Home and Land Corporation, on March 6, 1972, when it was deeded to the County for use as a County park and open space; and,

WHEREAS, the purpose of the Western Gateway Park and Recreation District ("Park District") is to provide parks and recreational facilities, services, and opportunities to the citizens of the area, and to develop, manage and maintain the Western Gateway Park; and,

WHEREAS, Park District has continually developed, managed and maintained the Park Property on behalf of the County for over thirty years; in exchange, County agreed to waive all County building permit fees related to the construction and installation of park facilities; and,

WHEREAS, the Nevada Cemetery District ("Cemetery District") owns property adjacent to the Park Property, and has an easement for ingress, egress and public utility purposes across a portion (0.89 acres) of the Park Property; and

WHEREAS, Wesley Lahr ("Lahr") owns property adjacent to the Park Property, and has a legal easement for ingress, egress and utility purposes across a portion (0.89 acres) of the Park Property; and

WHEREAS, County desires to transfer the Park Property to the Park District, except for any land necessary to operate and maintain an existing Bike Path (0.94 acres) adjacent to the Park Property; and

WHEREAS, County and the Park District now desire to transfer 80.03 acres of the Park Property from the County to the Park District, subject to the Cemetery District easement and the Lahr easement, and on the terms and conditions set forth in the attached transfer agreement, including the condition that the property is used for open space, public recreation and park purposes; and,

WHEREAS, Government Code section 25365 provides that the Board of Supervisors may, by a four-fifths vote, quitclaim or otherwise transfer to a special district any real property belonging to the County if the property to be quitclaimed is not required for county use; and,



WHEREAS, pursuant to Government Code section 25365(c), notice of the proposed Park Property transfer was duly published in a newspaper of general circulation in the County on May 2, 2016.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors, of the County of Nevada, State of California, that:

1. The Board of Supervisors hereby finds and determines that the Park Property is not required for County use.
2. The Western Gateway Park Transfer Agreement ("Agreement") by and between the County of Nevada and the Western Gateway Park and Recreation District for property located at 18560 Penn Valley Drive, Penn Valley, CA, APN 51-220-16, is hereby approved in the form attached hereto as Exhibit A, and the Chair of the Board of Supervisors is hereby authorized to execute the Agreement, on behalf of the County of Nevada.
3. The Chair of the Board of Supervisors is hereby authorized to execute, on behalf of the County of Nevada, a Quitclaim Deed conditionally transferring all County right, title and interest in the Park Property, and subject to the existing legal Easements and subject to the reversionary condition that the property is used for open space, public recreation and park purposes, to the Western Gateway Park and Recreation District.
4. Mr. Stephen T. Monaghan, Chief Information Officer, is hereby authorized to execute and record, on behalf of the County of Nevada, all such instruments and documents as may be required in order to consummate this real property transaction.
5. The County shall continue to waive fees required by the Nevada County Building Inspection, Environmental Health, Planning and Public Works Departments related to the approval or construction of any park improvements installed and funded by the Western Gateway Park District until April 1, 2024.

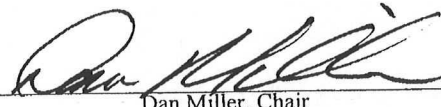
PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 10th day of May, 2016, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Dan Miller,  
Hank Weston and Richard Anderson.  
Noes: None.  
Absent: None.  
Abstain: None.

ATTEST:

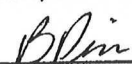
JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 

  
Dan Miller, Chair

5/17/2016 cc: Facilities\*  
AC\*(hold)

The foregoing instrument is a correct copy of the original on file in this office.

Resolution 16-197  
ATTEST: August 23, 2016  
Julie Patterson Hunter, Clerk of the Board  
County of Nevada  
BY: 

WESTERN GATEWAY RECREATION AND PARK DISTRICT TRANSFER AGREEMENT

This Western Gateway Park Transfer Agreement ("Agreement") is made and entered into this 10<sup>th</sup> day of May, 2016, by and between the County of Nevada, a political subdivision of the State ("County") and the Western Gateway Recreation and Park District, a special district ("Park District"). This Agreement is made with reference to the following facts:

- A. County owns approximately 80.97 acres (APN 51-220-16) and its appurtenant facilities located at 18560 Penn Valley Drive, Penn Valley, CA, commonly known as the Western Gateway Park ("Park Property.")
- B. County acquired Park Property from Boise Cascade Recreation Communities, a Division of Boise Cascade Home and Land Corporation, on March 6, 1972 when it was deeded to the County for use as a County Park.
- C. Park District was formed for the express purpose of developing, managing and maintaining Park Property on behalf of the County, and has continually honored this commitment for over thirty years.
- D. County desires to transfer the majority of the Park Property to the Park District. County is retaining sufficient ownership and control of the Park Property to maintain an existing bike path on the southern border of the Park Property. County transfers the balance of the remaining **80.03** acres of Park Property as detailed in Quitclaim Deed Exhibits A and B.
- E. Nevada Cemetery District ("Cemetery District,") owns property adjacent to the Park Property, and more particularly described as APN 51-120-13 and APN 51-120-09.
- F. Concurrently herewith, County has approved an easement to Cemetery District for ingress and egress and utility purposes across 0.89 acres of Park Property as referenced and recorded in Document #20160011160.
- G. Wesley Lahr ("Lahr,") owner of APN 51-210-05, owns, as successor property owner, a legal non-exclusive easement for ingress and egress and utility purposes in the same portion (**0.89 acres**) of the Park Property. A non-exclusive easement in favor of the owner of APN 51-210-05 was recorded in the conveyance from Manufacturers Hanover Mortgage Corporation to Lahr, recorded August 30, 1985, at the Nevada County Recorder's Office in Deed 85-20221.
- H. County now desires to conditionally transfer all of its right, title and interest in **80.03** acres of the Park Property, **subject to** the Cemetery District (APN 51-120-13 and APN 51-120-09) Easement and **subject to** the Lahr (APN 51-210-05) Easement, and District agrees to accept the Park Property subject to said conditions.

NOW, THEREFORE, in consideration of the promises, conditions, and mutual covenants set forth herein, the parties hereto do agree as follows:

1. Transfer of Park Property. County agrees to effectuate the transfer of the Park Property by executing the Quitclaim Deed attached hereto as **Attachment A**. County hereby represents to District

that said Quitclaim Deed is sufficient to release all of County's right, title and interest in the Park Property.

3. Use. The District agrees to develop, operate and maintain the Park Property as a public park at its sole cost. Specifically, District agrees to use the Park Property only for public park, open space and recreation purposes, and shall make no other use or sale or other disposition of the Park Property. Further, District agrees to operate, maintain, and provide public access to the Park Property. In the event the property is not used for such public park, open space, and recreation purposes, all right, title, and interest in the property reverts to the Grantor.

4. Consideration. Both Park District and County mutually agree that the consideration provided for the conveyance of the Park Property shall be the Park District's agreement to develop, operate, and maintain the Park Property for public park, open space, and recreation purposes for the benefit of the residents of the Park District and unincorporated Nevada County.

5. Condition of Title to Park Property. Except as otherwise expressly provided in this Agreement, the Park District is acquiring the Park Property "AS IS" and "WITH ALL FAULTS" in its present state and condition and "SUBJECT TO" existing easements as of completion of this real property transfer. Except for the express representations and warranties set forth herein, each party agrees that the other has not made, does not make and specifically negates and disclaims any representations or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the property being conveyed by it hereunder (including, without limitation, any warranty of merchantability, habitability, or fitness for a particular purpose).

6. Warranties of County. County warrants that:

A. County has no actual present knowledge of any pending litigation involving the Park Property.

B. County has no actual present knowledge of any violation of, or notices concerning defects or noncompliance with, any applicable building codes or other code, statute, regulation, ordinance, judicial order, or judicial holding pertaining to the Park Property.

7. Closing Date and Recordation. The closing date ("Closing") shall occur on or before June 30, 2016, unless the parties mutually agree to extend such Closing date. The parties agree that the County will timely arrange for the recordation of the documents necessary to complete the conveyance contemplated hereby. The Park District agrees to timely provide the County its resolution or certificate of acceptance pursuant to Government Code Section 27281, prior to recordation of the transfer of title.

8. Indemnification. The Park District waives any and all claims, and agrees to indemnify, defend, save and hold harmless County and its elected and appointed officers, employees, and agents (collectively "County Indemnified Parties"), from and against any and all liability, expense (including without limitation defense costs and legal fees), and claims for damages of any nature whatsoever, related to site conditions of the Park Property that accrue, or incidents that occur, after this real property transfer is complete.

9. Notices. Any written notices required by this Agreement shall be made by personal delivery, or by first class United States mail, postage prepaid, to the addresses indicated below:

For District: Western Gateway Recreation and Park District Board of Directors  
P.O. Box 597  
Penn Valley, CA 95946

For County: County of Nevada  
Information and General Services Department  
950 Maidu Avenue  
Nevada City, CA 95959  
Attn: Steven T. Monaghan, CIO

*with a copy to:* Facilities Management  
County of Nevada  
10014 N. Bloomfield  
Nevada City, CA 95959  
Attn: Tom Coburn, Facilities Manager

*and a copy to:* County Counsel  
County of Nevada  
950 Maidu Avenue, Suite 240  
Nevada City, CA 95959

10. Authorization, Approvals, Binding Nature. This Agreement has no force or effect and is not binding on the Park District until and unless it is authorized by the Park District's Board of Directors, or on the County until and unless authorized by the Board of Supervisors at a duly noticed public meeting.

11. Time is of the Essence. Time is of the essence for each and every term, condition, covenant, obligation and provision of this Agreement.

12. Severability. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be severed from the Agreement, and the remaining parts hereof shall remain in full force and effect as fully as though such invalid, illegal or unenforceable portion had never been part of the Agreement, provided the remaining Agreement can be reasonably and equitably enforced.

13. Binding on Successors. Subject to the limitations set forth herein, the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

14. Third Party Beneficiaries. This Agreement creates rights and duties only between the County and the District, and no other party, or third party, is intended to have or be deemed to have any rights under the Agreement as an intended third party beneficiary.

14. California Law. This Agreement shall be construed in accordance with the laws of the State of California.

15. Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.

16. Captions. The captions and the section and subsection numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement nor in any way affect this Agreement.

17. No Presumption Regarding Drafter. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity, or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

18. Required Actions of the Parties. County and Park District agree to execute all such instruments and documents and to take all actions as may be required in order to consummate the real property transfer herein contemplated.

19. Survival of Covenants. The covenants, agreements, representations and warranties made herein are intended to survive the consummation of the transfer of the Park Property and recordation of the Quitclaim Deed.

20. Interpretation. Unless the context of this Agreement clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.

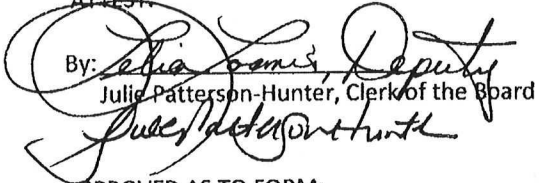
21. Final Agreement. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the real property transfer contemplated by this Agreement and supersedes any prior agreement, oral or written, between Park District and County, about the subject matter hereof. No contemporaneous or subsequent agreement, amendment, representation or promise made by either party hereto, or by or to any employee, officer, agent, or representative of either party, shall be of any effect unless it is in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials, effective as of the day and year first written above.

COUNTY OF NEVADA

By:   
Honorable Dan Miller  
Chair, Board of Supervisors

ATTEST:

By:   
Julie Patterson-Hunter, Clerk of the Board

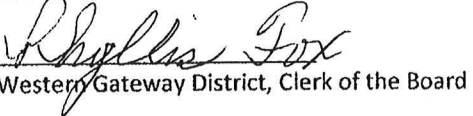
APPROVED AS TO FORM:

By:   
Alison A. Barratt-Green, County Counsel

WESTERN GATEWAY RECREATION AND PARK DISTRICT

By:   
Nancy Peirce  
Chair, Board of Directors

ATTEST:

By:   
Rhyllis Fox  
Western Gateway District, Clerk of the Board

Attachments.

- i. Attachment A: Quitclaim Deed
- ii. Attachment B: Park Property Legal Description (Quitclaim Deed Exhibit A)
- iii. Attachment C: Park Property Legal Description Plat (Quitclaim Deed Exhibit B)