

## **RESOLUTION 2023-0128**

Adopted by the Sacramento City Council

May 16, 2023

### **Approving Park Impact Fee Credit Agreement and Assumption of Existing Park Impact Fee Credits Relating to Design and Construction of Park Improvements for Vine Park**

#### **BACKGROUND**

- A. Vine Park (1.164 acres) will be built by 29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC as a turnkey park in conjunction with the development of residential homes in the subdivision.
- B. Vine Park is eligible for Park Development Impact Fee Credits valued at \$436,500. Any park development costs in excess of the \$436,500 budget are the responsibility of 29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC.
- C. 29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC is also responsible for associated staff costs, Art in Public Places, and fund administration costs which total \$109,055.
- D. 29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC has opted to receive fee credits in advance of completion of construction of Vine Park and will provide the City with a Performance Bond in the amount of \$436,500 to cover park construction costs.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

##### **SECTION 1.**

The Vine Park Impact Fee Credit Agreement and Assumption of Existing Park Impact Fee Credits, attached as Exhibit A, with 29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC is hereby approved in substantially the same form as attached.

##### **SECTION 2.**

The City Manager or his designee is authorized to execute the agreement.

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Exhibit A – Park Development Impact Fee Credit Agreement with 29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC, to be known as “Vine Park.”

Adopted by the City of Sacramento City Council on May 16, 2023, by the following vote:

Ayes: Members Guerra, Jennings, Kaplan, Maple, Loloee, Talamantes, Valenzuela, Vang, and Mayor Steinberg

Noes: None

Abstain: None

Absent: None

Attest:



05/23/2023

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Mindy Cuppy, City Clerk

*The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.*

**PARK IMPACT FEE CREDIT “TURNKEY” AGREEMENT AND  
ASSUMPTION OF EXISTING PARK IMPACT FEE CREDITS**

**RELATING TO DESIGN AND CONSTRUCTION  
OF PARK IMPROVEMENTS FOR  
VINE PARK**

This Park Impact Fee Credit “Turnkey” Agreement (“Agreement”) is entered into on \_\_\_\_\_, 2023 by and between the **CITY OF SACRAMENTO**, a municipal corporation (“City”), and **29SC T9 Phase A Property Owner, LLC & 29SC BC Holding Company, LLC** (“Developer”), who are collectively referred to as “Parties” and individually as “Party.”

**BACKGROUND**

- A. Developer owns the real property described in **Exhibit A (“Property”)**, which is the site of a development project known as Township 9 Planned Unit Development (P20-030). City has completed environmental review and issued entitlements to allow for development of this project.
- B. The portion of the Property described in **Exhibit B (“Park Site”)** which is approximately 1.164 acres, is subject to an irrevocable offer of dedication to City at the time the final subdivision map for the project is recorded to meet the parkland dedication obligation under City Code Chapter 17.512. The dedication is to be accepted by City after completion of the park improvements under this Agreement.
- C. Developer has entered into a Park Services Agreement to develop a park master plan for the Park Site, a copy of which is attached as **Exhibit C (the “Park Master Plan”)**. The park is to be known as “Vine Park.” The Park Site is to be developed as a neighborhood park to serve the residents and employees of the development project. The City Council has approved the Park Master Plan and the park name.
- D. Prior to issuance of building permits to develop the Property, the Developer is required to pay Park Impact Fees (“**Park Impact Fees**” or “**PIF**”) in accordance with the Sacramento City, Title 18, Chapter 18.56 (the “Fee Ordinance”). The purpose of imposing the Park Impact Fee is to provide funds necessary to design, construct, and install park facilities to meet the needs of, and address the impacts caused by, the residents and employees within the development project.
- E. The Fee Ordinance authorizes credits (and reimbursements if applicable) against the Park Impact Fees owed by a developer who undertakes the planning, design and construction of park facilities that otherwise would be built by the City with the Park Impact Fee revenues.

- F. Developer desires to advance the timing for development of the Park by designing, and constructing the park improvements in accordance with the Master Plan (the “**Project**” or “**Park**”). The required park improvements, at a minimum, are specified in **Exhibit D** (the “**Project Improvements**”). The Project Improvements specified in **Exhibit D** do not include any improvements the Developer is required to install as conditions of the tentative subdivisions map(s) for the development project pursuant to the provisions of the City’s Subdivision Ordinance (City Code, Title 16), as well as what site improvements Developer is required to provide for the Park Site for the parkland dedication under Chapter 17.512 of the City Code (Section 17.512.020). In addition, if Developer used the Park Site for construction staging for the development project or placed excess soil on the Park Site, the Project Costs as defined below do not include any costs for remediating unsuitable soil or removing excess soil on the Park Site caused by the construction staging operations.
- G. Development of the Park Site will require various design and other services, which will be performed by either Developer or City as shown on the “**Park Development Task Allocation**” attached as **Exhibit E**. Some of these tasks may have already been performed under the Parks Master Plan Services Agreement. The Project Improvements will be constructed pursuant to plans and specifications approved by the City. The Developer has prepared a cost estimate for the design and construction of the Project Improvements, which is included in **Exhibit D** (the “**Project Budget**”). The actual costs of construction of the Project Improvements will be based on the final plans and the result of a bidding process approved by City. However, the total cost of the Project Improvements subject to issuance of Park Impact Fee credits shall not exceed the amount specified in **Exhibit F** (“**City Costs and PIF Credits**”) without the City’s prior approval.
- H. Subject to the credits against the Park Impact Fees as provided in this Agreement, Developer is willing to perform the design and other services assigned to Developer in **Exhibit E**, pay City Costs as set forth in **Exhibit F**, and construct the Project Improvements (collectively “**Project Costs**”). The “Project Costs” shall mean and include the Park Master Plan costs and the costs based on all City approved contracts for the design and construction of the Project Improvements, including change orders, the costs to prepare or pay for engineering estimates, plan check fees, construction inspection fees, building permit fees, and environmental studies and mitigation costs if required, and City Costs for services and oversight necessary to implement the Project and complete construction.
- I. City is willing to provide credits against the Park Impact Fee for Developer's actual Project Costs, but subject to the PIF Credits limitation set forth in **Exhibit F**, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement.
- J. Developer is assuming the available Park Impact Fee Credits from the prior property owner of Township 9, Capitol Station 65, LLC (“prior owner”). Capitol Station 65, LLC,

released its interest in the fee credits it held for infrastructure work completed prior to its dissolution through bankruptcy. Currently, \$445,380 is the amount of the remaining available park impact fee credits for the 7<sup>th</sup> Street Median Park (C2012-0394). The available credits can be used for any development project within the Township 9 project boundaries. There are additional park impact fee credits for the Township 9 Riverfront Park in the amount of \$3,000,000 (C2014-0382) which would become available upon the city's acceptance of the dedication of the Park.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and obligations contained herein, City and Developer hereby agree as follows:

### **ARTICLE I DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS**

**1.0     Background Incorporated.** The foregoing information contained in the Background is true and correct, and is part of this Agreement.

**1.1     Design and Construction.** Developer will design and construct the Project Improvements at the Park Site in accordance with the terms of this Agreement, the development project entitlements, and convey the completed Project, along with all interests in real property necessary for the operation, maintenance, repair, and ownership thereof, to the City as provided for in the irrevocable offer of dedication and this Agreement. The interest in real property to be conveyed shall be a fee interest in the land, unless special circumstances allow for City's acceptance of a recreational easement, title to the Project Improvements, and title to any and all access easements necessary for the operation, maintenance, and repair of the Park. Developer shall complete the construction of the Project Improvements at the Park Site no later than August 2024; or within twelve (12) months of the date the City approves the contract award as set forth in Section 1.3, subject to Section 5.3 and Force Majeure, whichever is later ("Completion Date").

**1.2     Project Design and Final Budget.** The design-related services that may be performed either by Developer or City as specified in **Exhibit E** include the prior preparation of the Park Master Plan, design development, and construction bid document preparation, as well as environmental review if additional studies are required before the Project can be constructed. The Developer's selection of a landscape architect(s) to perform design services that are assigned to Developer in **Exhibit E**, shall be subject to approval by a Landscape Architect in the Landscape Architecture Section ("**LAS**") of the City's Youth, Parks & Community Enrichment Department. If assigned to Developer in **Exhibit E**, Developer shall perform the various Project-related services in accordance with the following requirements.

**1.2.1     Park Master Plan.** *If prior to execution of this Agreement the Master Plan for the Park has not yet been prepared and approved by the City Council*, then the Developer shall prepare a conceptual design plan(s) for the Park. Once the conceptual design plan is

approved by LAS, Developer shall then prepare a preliminary design plan which shall include a survey of the Park Site, a park master plan illustrating all of the Project Improvements at build-out, a Project description detailing the scope of the Park Improvements, construction cost estimates detailing the costs for each item of work, and estimated construction time lines for the Project (collectively the "Master Plan"). The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve all of the foregoing plans and documents in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned. The Master Plan for the Park is subject to review by the City's Parks and Community Enrichment Commission and approval by the City Council.

**1.2.2 Project Plans.** After the Park Master Plan is approved, Developer shall arrange for the preparation of the design plans and technical specifications (the "Project Plans" or "Plans") for construction of the Project Improvements. At a minimum, Developer shall submit the Project Plans to the LAS at the **35, 75, and 100-percent** design phases of completion. The Project Plans shall include all of the Project Improvements described in the approved Park Master Plan (which if completed is listed in **Exhibit C**). Developer covenants that the Project Plans will be designed and prepared in compliance with the City's Standard Specifications. The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve the Project Plans in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned.

Developer must obtain written approval of the Project Plans by SMUD, PG&E and all other appropriate public entities or utility companies which will own, operate and/or maintain any portion of the utility improvements that are to be installed as part of construction of the Project. Developer covenants that the Project Plans will be designed and prepared in accordance with the applicable utility company requirements.

Developer shall cause all contracts relating to preparation of the Project Plans to require the design and engineering consultants to fully and without limitation indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all Claims (as defined in Section 2.6) arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions of such professional in connection with the design of the Park Improvements by said consultant, or any other person or entity employed by or acting as the authorized agent for said consultant. The aforesaid indemnity and hold harmless agreement shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Park Improvements.

**1.2.3 Bid Document Preparation.** After LAS has given its written approval of the Project Plans, Developer shall prepare and submit to the LAS the bid document that includes the construction plans and specifications for the Project, and shall provide updated construction cost estimates and construction time lines. The bid document must be based on the City approved Project Plans. The City agrees to use its best efforts and due diligence to

review, provide comments regarding any necessary corrections, and approve the bid document in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned. Once LAS has approved the bid document, the Developer may issue a request for bids, but subject to prior approval of the Final Budget as set forth in Section 1.2.6.

**1.2.4 Environmental Review.** If the Project was not subject to prior environmental review as part of the development project, if additional studies are required to comply with adopted mitigation measures, or if there is new information regarding the scope of the Project or the Park Site conditions triggering the need for additional environmental review; in that event a consultant retained by City and/or City staff shall prepare the environmental documentation required for development of the Park Site to comply with CEQA. If authorized by City, the Developer may arrange for preparation of such environmental documentation, which shall be subject to review and approval by the City in its sole discretion. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and limited to the consultants listed in the City's Environmental Services Department's prequalified list if the applicable discipline is included on that list. The Completion Date set forth in this Agreement is based on the assumption that no further environmental documentation will be needed before construction of the Project Improvements can commence. If additional environmental documentation is determined by the City to be needed, then the Completion Date shall be extended to account for the time required to complete the necessary environmental documentation and associated approvals.

**1.2.5 LAS Approval.** LAS approval shall be evidenced by the signature of the Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review of various documents by LAS and/or other City departments also may include issuing public noticing and seeking public review and comments on the Park Master Plan and the final Project Plans as deemed necessary or appropriate by City.

**1.2.6 Final Budget.** Before City's approval of the bid document, City and Developer shall review and revise the Project Budget set forth in **Exhibit D** and shall establish a final budget for design costs incurred, permits and fees, City staff costs, and the engineer's estimate of the construction costs (collectively the "**Final Budget**"). The Final Budget shall include all actual and estimated Project Costs and include a reasonable contingency amount. The Developer shall not be obligated to construct all of the Project Improvements and incur all of the Project Costs if the total Project Cost will exceed the amount of the Developer's Park Impact Fee credits that has been allocated to development of this Park in **Exhibit F**.

The initial Project Budget set forth in **Exhibit D** is based on (i) City's most recent average per acre costs to construct a similar Park, and (ii) may have also been based on an allocation of the Developer's total Park Impact Fee obligation for its approved development project using a percentage derived by comparing the size of the Park Site to be dedicated to the City versus the total park land dedication required under City Code Chapter 17.512 based on Developer's subdivision map and land use entitlements. If the Final Budget amount will cause Project Costs to exceed the PIF Credit amount in **Exhibit F**, then the Parties may mutually agree

to proceed as follows: (i) Developer may nonetheless incur all of the Project Costs without any reimbursement by City, (ii) the scope of the Project Improvements may be reduced, (iii) City may allocate all or a portion of the Park Impact Fees paid for the issuance of building permits for development of the Property prior to execution of this Agreement which have not already been committed for other park projects to serve the subdivision as a reimbursements under an amendment to this Agreement approved prior to commencement of construction of the Project Improvements, (iv) City may agree to fund the cost difference with PIF fees paid by other developments within a two mile service radius of the Park Site, and/or (v) City may agree to assume the obligation to complete the remaining Project Improvements by phasing the work.

The Final Budget shall be subject to mutual agreement of the Parties and attached to this Agreement as a replacement for **Exhibit D**, and if applicable **Exhibit F** shall also be modified accordingly and the revised exhibits attached to this Agreement. If the scope of the Project Improvements are to be modified based on mutual agreement of the Parties, the revised **Exhibit D** shall include a revised list of Project Improvements. If City agrees to fund a portion of the Project Costs after execution of this Agreement, that obligation and the timing for payment shall be set forth in amendment to this Agreement executed by both Parties before the construction contract is awarded, or thereafter if the Project Costs increase due to change orders per Section 1.7.

**1.3 Contract Award.** After LAS has given its written approval of the bid documents and Final Budget, Developer shall solicit competitive bids for construction of the Project Improvements. Developer shall send the request for bids to all landscape contractors included on the current master list used by LAS to solicit bids for similar park projects, in addition to any other contractors identified by Developer. Developer shall request bids from at least three (3) contractors. Bids shall be sealed, Developer shall provide LAS with all bids received and the bids shall be opened in the presence of an LAS representative. After the bids are opened, LAS shall have ten (10) working days to review the bids and the Developer's determination of the responsive and responsible bidder for contract award.

If fewer than three (3) bids are received or the LAS determines that the low bid is too high in comparison with the engineer's estimate, LAS may instruct Developer to reject all bids and re-bid the Project and/or modify the Project Improvements before rebidding in accordance with the foregoing procedures. If the LAS notifies Developer of the need to modify the Project Improvements, LAS shall provide Developer with an opportunity to review and comment on that direction and City shall give such comments fair consideration. Developer, at its option, may agree to proceed with construction of the Project Improvements even if the bid exceeds the Final Budget and the extra cost will not be compensated by City. When satisfied with the bidding process, the determination of the selected bidder, and the scope of work, LAS shall give written notice to Developer authorizing the award of the contract.

If it is necessary to re-bid the Project, then the Completion Date shall be extended by the number of days required to re-bid the Project. In addition, if it is necessary to modify the Project Improvements, then the Completion Date shall be further extended by the number of

days needed to modify the plans and specifications to incorporate the approved changes to the Project Improvements before rebidding.

**1.4 Construction.** Developer covenants that the Project Improvements will be constructed in compliance with the approved Project Plans, bid document, and any modifications thereto required by City in accordance with this Agreement, and applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the bid document as provided herein, subject to change orders issued in accordance with the provisions of Section 1.7 below. Prior to commencement of grading or any related construction work, Developer will pay the applicable fees and obtain all permits and approvals required for such work from the City and from all applicable federal, state or local agencies.

**1.4.1 Representatives.** Developer shall provide a site construction superintendent ("**Site Superintendent**") and the City shall provide a project manager ("**Project Manager**") who will serve as their respective points of contact with respect to construction of the Project. The designated Site Superintendent and Project Manager are identified on **Exhibit G**, and the designations may be changed by written notice from either Party.

The Site Superintendent will be on-site as necessary and will generally be available by telephone or otherwise at all reasonable times. The Site Superintendent shall have complete authority over Developer's construction contractors and subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans.

The Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The Project Manager shall also have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.4.5 below.

**1.4.2 Commencement and Completion of Project.** Developer shall require its contractor to commence construction of the Project Improvements no later than three (3) months after contract award, unless an extension is approved by LAS, and thereafter shall insure that the contractor diligently works to complete construction of the Project Improvements in a timely and efficient manner on or before the Completion Date. If the Developer's contractor fails to commence work and/or complete the Project as required herein, and fails to remedy such delay within thirty (30) days after a written notice thereof from City to Developer (subject to the provisions of Section 5.3 below), City in its discretion may: (i) direct Developer to take action necessary to accelerate the Project construction to remedy the delay, and the Developer's acceleration costs, if any, shall not be subject to credit of reimbursement hereunder; or (ii) direct Developer to stop working on the Project so that the City may seek other means to complete construction of the Project Improvements. If City directs the work to be stopped, any costs incurred by Developer, its contractors or subcontractors after receiving such direction from City shall not be eligible for credit or reimbursement for the construction

costs incurred unless the City can complete the work within the remaining amount of the Final Budget with the contractor's or Developer's performance bond proceeds (per Section 3.8 below), and/or the cash deposit or letter of credit funds (per Section 3.5 below). If Developer is directed to stop working on the Project, Developer shall take any and all actions necessary to convey to and vest in City full, complete, and clear title in the Project Improvements, and all of the underlying real property interests (easement and/or fee), including those necessary for maintenance and access.

**1.4.3 Inspection.** Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project Improvements will be conveyed, will be permitted to inspect the Project during construction and shall have access to the Park Site for this purpose at all times. City agrees to make City inspectors available for inspection of the Project work during construction within forty-eight (48) hours after receipt of the request from Developer or its contractor (Saturdays, Sundays and Holidays excepted). Should a City inspector find any nonconformance or noncompliance with the Project Plans or the bid document, the Project Manager shall notify the Site Superintendent of such nonconformance or noncompliance. Thereafter, the Project Manager and the Site Superintendent, in consultation with the City building inspector, shall jointly determine the corrective action required. If the Project Manager and the Site Superintendent are unable to agree upon the corrective action, the Project Manager shall have authority to make such determination, with Developer having a right of appeal to the Director of the Youth, Parks & Community Enrichment Department or to City Manager who may delegate his or her authority over such matter.

**1.4.4 Prevailing Wages.** Developer shall require its contractor and subcontractors to pay their construction workers not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of Industrial Relations (DIR) at the time that Developer issues the solicitation for bids for the Project (pursuant to Labor Code Section 1773). In accordance with state law and DIR's regulations, at a minimum these requirements include that the contractor and all of its subcontractors must be certified with the DIR, the project registered with DIR (PWC 100 form), daily reports describe the work performed, workers have been interviewed to insure proper classification, verification of fringe benefit and if applicable overtime payments, apprentices were requested, and training fund payment was made. Attached as **Exhibit J** is the City's Labor Compliance Manual which outlines all of the DIR requirements. Developer, at its election, shall either hire a consultant to perform labor compliance oversight and verification or pay City's labor compliance consultant costs as set forth in **Exhibit F**. Copies of certified payroll records shall be provided to City on a monthly basis using the City's LCP Tracker software. Final payroll records must be submitted before the City's acceptance of the Project and issuance of the Final Completion certificate (defined in Section 2.1 below).

**1.4.5 Unforeseen Cost Increase.** If Developer encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project Costs in excess of the Final Budget, and neither Party voluntarily agrees to bear such cost increase, then a change order shall be issued to modify the Project Improvements not yet constructed in order to bring the Project Costs back within the Final Budget. In this latter event,

Developer and LAS shall meet and confer in an attempt to agree upon the modifications. If the Parties are unable to agree, LAS shall have the final authority to make such determination and identify Project Improvements to be deleted or changed by issuance of a field order to Developer to bring the Project Costs within the Final Budget. The Completion Date shall be extended by the number of days required to implement the modifications to the Project Improvements by the contractor, if any.

**1.5 Performance and Payment Bonds.** Developer is required to obtain performance and payment bonds from its prime contractor in the full amount of construction contract and name City as an additional obligee. The payment bond may be released upon expiration of the stop payment notice claim period after recording of the Notice of Completion. On Final Completion (defined in Section 2.1 below), the amount of the performance bond may be reduced to reflect the value of the landscape planting maintenance work to be performed by Developer during the period set forth in Section 2.5.

**1.6 Insurance.** Prior to the commencement of construction of the Project, Developer shall furnish to City a certificate(s) of insurance as set forth below for the Project construction period until Final Completion, as well as through the end of the warranty maintenance period, with an insurance carrier acceptable to City. The Commercial General Liability and Automobile policy certificates shall include an endorsement naming the City as an additional insured and preclude the cancellation or reduction in coverage before City receives at least 10 days prior notice. The policy holder may be the Developer and/or its construction contractor for the construction period and Developer and/or its landscape maintenance contractor for the warranty maintenance period.

The minimum insurance coverage shall be as follows: (i) Commercial General Liability insurance in the amount of not less than a one million dollars per occurrence, (ii) Automobile Liability insurance in the amount of not less than a one million dollars for owned and non-owned vehicles, and (iii) workers compensation insurance with a waiver of subrogation.

If Developer fails to maintain, or require its contractor to maintain, such insurance coverages, City may take out insurance and recover the amount of the premiums from Developer or retain such amount from credits due Developer under this Agreement. Failure of City to obtain such insurance shall in no way relieve Developer from any of its responsibilities under this Agreement.

**1.7 Contracts and Change Orders.** Developer shall be responsible for entering into all contracts and issuing any change orders required for the construction of the Project; provided, however, Developer shall not be required to enter into any change orders that would increase the Project Costs in excess of the Final Budget unless an increase in the Final Budget is approved by the City as provided in Sections 1.2.6 and 1.4.5. All change orders require approval of the LAS, which approval shall not be unreasonably delayed, conditioned, or withheld, except as follows. If a change order would increase the Project Costs in excess of the Final Budget, the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget as provided in Section 1.4.5. If the City finds in its sole discretion that the Project

Improvements cannot be modified so that the Project Costs do not exceed the Final Budget, then City, at City's sole discretion, may either disapprove of the change order or may approve the change order along with approval of an increase in the Project Costs and the Final Budget, with such increased costs being eligible for additional credits or reimbursement, at the City's sole discretion. The procedures set forth in Section 1.2.6 shall apply to document that the changes in the Project Improvements and/or Final Budget are part of this Agreement.

**1.7.1 Discretionary Change Orders.** Developer shall issue a change order, even if it is not required by the Project Plans and Project Improvements, if requested by City to augment or modify the Project Improvements for the purpose of improving the Park. When a discretionary change order is requested, Developer shall provide City a written cost estimate for the change within ten (10) days following Developer's receipt of City's written request. Within ten (10) days after receiving the estimate, City shall direct Developer whether or not to issue the change order. If the City directs the Developer to issue the change order, City shall award to Developer additional credits or reimbursement of the change order costs which exceed the Final Budget. The procedures set forth in Section 1.2.6 shall apply to document that the changes in the Project Improvements and/or Final Budget are part of this Agreement. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of the Project, which is defined as a significant period of time past the Completion Date and such delay would impact the planned construction schedule for Developer's development project.

**1.8 Liquidated Damages.** The actual occurrence of damages and the actual amount of damages that City would suffer if the Park Improvements are not completed by the Completion Date are dependent upon many circumstances and conditions, such that it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Park by the public and additional staff costs. Accordingly, the Parties agree that the amount set forth below as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Developer to complete the Park by the Completion Date. The amount of the liquidated damages to be paid by Developer for failure to complete the Park by the Completion Date will be \$100.00 per calendar day for the first 30 days after the Completion Date, \$500.00 per calendar day for the next 30 days after the Completion Date, and \$1,000.00 per calendar day thereafter, continuing until the Park is substantially completed as determined by City in its sole discretion. The amount of liquidated damages assessed by City shall be deducted from the value of the credits to be awarded to Developer under this Agreement or payment shall be owed if all of the credits have been issued as set forth in Section 3.4.

**1.9 Construction Submittals.** Developer shall provide the Project Manager, and any construction inspector upon demand, copies of all submittals furnished by the contractor including, without limitation, all construction schedules, certified payroll records, material testing reports, requests for substitution of materials or equipment, soil and Hazardous Substances (defined in **Exhibit H**) testing and monitoring reports, material testing reports, and all change order requests and all other required contractor submittals within (10) days from the date of Developer's receipt of such documents.

**ARTICLE II**  
**PARK ACCEPTANCE, CONVEYANCE AND MAINTENANCE**

**2.0     Completion.** When construction of the Project Improvements is substantially complete, Developer shall provide written notice to the City requesting final inspection. The notice shall not be issued until the turf has been established, which is generally 30 days for sod and 90 days for hydro seeding. Within ten (10) business days following the date of receipt of Developer's written notice, the City shall conduct a final inspection of the construction of the Project ("**Final Inspection**"). At the Final Inspection, Developer, or its contractor, shall demonstrate and instruct City personnel in the operation, adjustment, and maintenance of all equipment or systems included in the Project.

**2.1     Final Inspection.** If during the Final Inspection City determines that the Project has not been fully completed in accordance with the Project Plans, City shall prepare a punch list of all items to be completed and send the list to Developer within ten (10) business days following the date of the Final Inspection. Developer shall arrange for the completion and repair of the punch list items to occur in a prompt and diligent manner. Upon completion of the punch list work, Developer shall send City a request for another Final Inspection and within ten (10) business days following the date of receipt of Developer's written notice, City shall conduct another Final Inspection. If City determines that the punch list work is complete, City shall promptly deliver a certificate of "**Final Completion**" to Developer and record a Notice of Completion. If the City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section 2.1 until the successful completion of the punch list work.

**2.2     As-Built Drawings.** Within ten (10) business days after the Final Completion is issued, Developer shall provide City with a Mylar copy of "as-built" record drawings for the Project with certification by a licensed landscape architect or civil engineer in the State of California as to accuracy and completeness. Developer's submission of complete, updated as-builts shall be a prerequisite to Final Acceptance.

**2.3     Release of Liens.** Prior to issuance of the Final Acceptance certificate, Developer shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid. Upon request of the City, Developer shall make a good faith effort to obtain lien releases under California Civil Code Section 8138 to assure that payment of any outstanding claims of the Developer's contractors, subcontractors, and suppliers have been paid.

**2.4     Final Acceptance.** The "**Final Acceptance**" of the Park Improvements shall occur after a successful Final Inspection, issuance of the Final Completion certificate, submittal of all certified payroll records, the period to file a stop payment notice has expired, and the as-built drawings have been submitted. City's acceptance of the Park Site dedication and the Project Improvements shall not be unreasonably withheld, delayed, or conditioned. After City issues notice to the Developer of Final Acceptance, the Park Site as improved shall be transferred as the property of City by the Developer, in accordance with the subdivision map or other entitlement conditions, by either recording of a certificate of acceptance of the Irrevocable

Offer of Dedication set forth on the final subdivision or parcel map, or execution of a grant deed (or easement if applicable). Developer shall promptly take any and all actions necessary to prepare legal descriptions, obtain title reports, and convey and vest full, complete, and clear title in the Park Site and all of the underlying real property interests (subject to utility easements) to City, including those necessary for maintenance and access. The date on the certificate of acceptance or date of the grant deed (or easement if applicable) shall be the date that title to the Park Site and the Park Improvements has been transferred from Developer to City.

**2.5     Park Maintenance.** Developer shall maintain the plants and turf at Developer's expense for a ninety (90) day period following substantial completion of the Park Improvements (the "Plant Establishment Period") notwithstanding that City has accepted ownership of the Park Site. During the Plant Establishment Period, the Park Site will not be open to the public. Developer shall maintain the perimeter construction fencing of the Park Site to prevent public access during this Plant Establishment Period. Maintenance shall include, without limitation, watering, pruning and mowing in accordance with industry standards for the type of plant material, as well as pickup of any trash and debris. Maintenance shall meet the Park Landscape Maintenance Services General Plans and Specifications which are available from the Project Manager. City agrees that this Agreement will serve as a right of entry license for Developer, or its agents, to enter the Park Site for maintenance and warranty work. Thereafter, City shall be responsible for maintenance of the Park. For purposes of this Section 2.5, "park maintenance" does not include capital repairs or restoration necessitated by vandalism or acts of God.

**2.6     Indemnification.** Developer shall indemnify, defend and hold harmless City and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "**Claims**") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by Developer and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by Developer; but excluding Claims alleging sole active negligence or willful misconduct of City and its officers, employees and agents.

Nothing in this Agreement shall be construed as a waiver by City of any immunity or defense it may have relating to any such Claim, including, without limitation, immunity or defenses relating to design review and construction inspection. With respect to the acts or omissions of the Developer's agents, Developer's indemnity obligation shall be limited to the acts or omissions of Developer's authorized agents acting within the course and scope of such agency.

Developer agrees to fully and completely indemnify and defend the City from any liability relating to its assumption of the prior owner's Park Impact Fee Credits and any disputes between the prior owner and Developer.

**2.6.1. Indemnification Regarding Hazardous Substances.** Developer further agrees and covenants to, and shall fully indemnify, defend and hold harmless, City and its officers, employees and agents from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Park Site, or the easements which are required to be or which are transferred to City are located, of any Hazardous Substances as defined in **Exhibit H** occurring prior to the date the Park Site and the associated real property interests are accepted by City. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project Improvements, provided such incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws (defined in **Exhibit H**) in effect at the time of construction.

**2.6.2. Duration of Indemnification Obligations.** Except for the indemnification for Hazardous Substances as set forth above, the indemnification obligations in this Section 2.6 shall terminate two years after the expiration of the warranty period defined in Section 2.7.

**2.6.3. Additional Provisions Regarding Indemnification Obligations.** City does not, and shall not be deemed to, waive any rights against Developer which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.6. The scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms, but only to the extent allowed pursuant to Civil Code section 2782. No specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the Parties unless specifically so provided.

Except as may otherwise be specifically and expressly provided in this Section 2.6 relating to Claims based upon allegations of the sole active negligence or willful misconduct on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Project Improvements.

Developer shall include or cause to be included the following language in all contracts or agreements issued by Developer relating to the design, construction, operation, repair, and maintenance of the Project, provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782 as follows:

“Contractor agrees and covenants to, and shall, fully indemnify, defend, and hold harmless the City of Sacramento and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or

regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by Contractor and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by Contractor."

**2.6.4 Waiver by Developer.** In addition to Developer's obligations to indemnify, hold harmless, and defend City as set forth above, Developer, and on behalf of its assigns, transferees, and successors, hereby waives and releases any and all claims of whatever sort or nature that may arise against City or its officers, employees and agents in connection with Developer's design, construction, operation, repair and/or maintenance of the Park. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

"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."

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the Parties expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all Claims as described in this Section 2.6 which the Parties do not know or suspect to exist. The provisions of this Section 2.6.4 shall survive expiration of this Agreement.

**2.7 Warranty.** Developer hereby warrants that the Project Improvements will be free from any defects in materials and workmanship for a period of one (1) year following the date of Final Acceptance. Notwithstanding the foregoing, Developer's warranty excludes damages or defects caused by: (i) ordinary wear and tear of the Project Improvements under normal usage, (ii) abuse or neglect by other persons, (iii) vandalism and acts of God, and (iv) City employees and agents. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project Improvements, but the warranty contained in this Section 2.7 shall be the exclusive warranty of Developer, and all other express or implied warranties are expressly disclaimed.

Should any failure of any of the Project Improvements, or any portion thereof, occur within the one (1)-year warranty period, Developer shall promptly cause the needed repairs to be made without any expense or cost to City. Warranty work is distinguished from the twelve months of landscape maintenance that Developer will be performing during the maintenance period per Section 2.5. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer with an opportunity to meet and confer regarding such warranty work and Developer shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the warranty period. In case of an emergency when delay in undertaking the repairs

could cause a safety hazard to the public, City may make the necessary repairs without prior notice to Developer at Developer's cost.

In all cases where City has had to take action to undertake the repairs, Developer shall reimburse City for its actual and reasonable costs and expenses, including direct and indirect costs, within thirty (30) days from the date of the invoice which includes all supporting documentation. If Developer fails to make payment, City, at its election, may deduct the outstanding amount owed by reducing the amount of credits pursuant to Section 3.4.

### **ARTICLE III PARK IMPACT FEE CREDITS**

**3.0 City's Costs.** In addition to Developer's costs to plan, design and construct the Project Improvements as set forth in this Agreement, Developer shall also fund City's staff costs to review and approve the Project Plans, bid documents, contract award, and inspect the work, as well as administer the Park Impact Fee (PIF) program. The City imposes a five percent (5%) PIF Program Administration Fee to fund the costs incurred by the City in the administration of the PIF Program, including accounting for the Credits (defined in Section 3.1 below) and preparing nexus and annual reports in compliance with the Mitigation Fee Act. Developer shall also pay City two percent (2%) of the Park construction cost for compliance with the Art in Public Places (APP) Fee requirement. The APP Fee program funds the costs for design, fabrication and installation of public artwork in City parks. The artwork may be placed at the Park Site or in other parks within the same community planning area as the development project.

The estimated City staff costs, the APP Fee, and the PIF Program Administration Fee (collectively "**City Costs**") are listed in **Exhibit F**. Within thirty (30) days following the delivery to Developer of a fully executed original of this Agreement, Developer shall pay City as a deposit the amount of City's Costs as set forth in **Exhibit F**.

The Parties acknowledge and agree that the amount of the City staff costs is only a good faith estimate and that City does not guarantee that this amount will be sufficient to cover City's staff costs to perform the tasks set forth in **Exhibit E**. If during the term of this Agreement City determines that additional funds will be required to complete the City tasks, City will notify Developer and the Parties shall meet to determine whether to amend the Final Budget in **Exhibit D** and increase the amount of Credits to be issued once Developer pays the additional costs. Within thirty (30) days after Final Acceptance, City shall return to Developer whatever balance remains, if any, of the funds paid by Developer for City's staff costs under this Agreement and the amount of Credits shall be adjusted accordingly. In addition, if the Project construction actual cost is less than the Project construction eligible for PIF credits set forth in **Exhibit F**, the amount of credits shall be adjusted accordingly.

**3.1 Issuance of Credits.** Based on the Project Budget set forth in **Exhibit D** and City Project Costs set forth in **Exhibit F**, if Developer completes all of its obligations under this Agreement, under the Fee Ordinance Developer will be eligible for a total value of **\$436,500** in

Neighborhood/Community Park Impact Fee Credits (the “Credits”) after completion of construction of the Project. The Credits will be applied to the Neighborhood/Community Park Impact Fee due at the time each building permit is issued for development of the Property. After execution of this Agreement, Developer may request use of a portion of the Credits already earned based on the amount actually incurred by Developer for the Master Plan preparation, and the amount paid by Developer for City Costs per Section 3.0, which equals **\$109,055**.

Per City Code Section 18.56.125, claims for the use of Credits must be made at the time of imposition of the fee, which at the issuance of a building permit. With the issuance of each building permit, the Developer will be entitled to apply the Credits as payment of the Neighborhood/Community Park Impact Fee in effect at the time the permit is issued. As Credits are applied, the amount of the remaining Credits will be reduced. City Code Section 18.56.240 regarding Park Impact Fee credits provides that credits cannot be exchanged for cash reimbursement if the Developer elects to pay this fee or defers this fee under an impact fee deferral agreement because such agreements require fee payment at the time the occupancy permit is issued due to bonding of the fees deferred. If Developer fails to apply these Credits at the time the building permit is issued for development of the Property, then the Credits may be used for subsequent building permits for the development project or assigned to other entities as set forth in Section 4.0.

While the amount of the Park Impact Fee may be adjusted annually due by a construction cost inflation index, the value of the Credits are not increased accordingly because the timing of completion of development of the Property is controlled by Developer. Also, because the Park Impact Fee was established under the Mitigation Fee Act, and for accounting purposes, the Credits need to be used within a five-year period after issuance or else they are forfeited.

**3.2 Advancement of Credits.** Developer may request an advancement of additional Credits prior to Final Acceptance of the Project Improvements; however, Developer must post security and the amount of the Credits requested shall not exceed the total estimated amount of remaining expenditures for the Project as set forth in the Final Budget. Developer has determined that it needs advancement of an additional \$436,500 in Credits prior to the estimated date of Final Acceptance. Therefore, Developer shall provide either (i) cash to be deposited in the “Developer’s Prepaid Park Impact Fee Account,” (ii) an Irrevocable Standby Letter of Credit in favor of the City, or (iii) a Performance Bond issued to Developer by an acceptable surety with the City named as the obligee in the form provided as **Exhibit I** as security for the advancement of issuance of Credits.

The Irrevocable Standby Letter of Credit must comply with the conditions set forth in Section 3.4. The Performance Bond must comply with the conditions set forth in Section 3.7. Developer may only terminate the Irrevocable Standby Letter of Credit or Performance Bond with the consent of the City. The contractor’s performance bond securing completion of the Park construction required under Section 1.5 will not satisfy the requirement of the Developer

to provide financial security for the advancement of additional Credits prior to Final Acceptance of the Project Improvements.

As authorized by City Council, after receipt of the cash or acceptance of the Irrevocable Standby Letter of Credit or Performance Bond, City shall immediately issue Credits equal to the full amount of the cash deposit, the Irrevocable Standby Letter of Credit, or Performance Bond, as applicable.

**3.3 Project Cost Verification.** The City has the right to verify whether the costs of the services, materials and work performed for the Project have been actually incurred and paid for by the Developer. Within thirty (30) days after Final Acceptance of the Project Improvements, Developer shall provide City with copies of all contracts, change orders, and invoices for the costs of the work, and such other documentation as may be requested by City, to verify the Project Costs incurred by Developer. City's approval and verification of Project Costs shall not be unreasonably withheld, delayed or conditioned.

If Developer fails to provide copies of all contracts, change orders, and invoices for the costs of the work, and such other documentation as may reasonably be requested by City, to verify the Project Costs incurred by Developer no later than ninety (90) days after Final Acceptance, City may revoke and withhold any remaining Credits until such documentation is submitted.

If City has advanced or issued Park Impact Fee Credits to Developer that, in the aggregate, exceed the total amount that may be issued in accordance with this Agreement, the Fee Ordinance, and City's policies and procedures for issuance of the Credits, and Developer has already applied all of the Credits; then Developer agrees to repay City the full amount of the value of the excess Credits within thirty (30) days after receiving City's written demand.

**3.4 Letter of Credit Requirements.** If Developer requests advancement of Credits before Final Acceptance of the Project Improvements, the Irrevocable Standby Letter of Credit ("letter of credit") must meet all of the following conditions:

- (a) The letter of credit must be in a form acceptable to the City Attorney's Office, in that office's sole discretion, and, by its express terms, must be unconditional and absolutely free of defenses on the part of Developer and the financial institution that issues it. The financial institution that issues the letter of credit must be a commercial bank lawfully operating within the United States and acceptable to the City Treasurer's Office, in that office's sole discretion.
- (b) The letter of credit shall not be subject to expiration, or shall by its express terms not be subject to expiration without written notice to the City given not less than thirty (30) days prior to the date of expiration. The letter of credit must provide that City may draw upon it by presenting one or more site drafts, each accompanied by a signed-and-dated demand letter worded substantially as follows:

The [title] of the City of Sacramento, demand payment of the sum of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) representing a partial/full draw upon the amount of your Irrevocable Letter of Credit No. \_\_\_\_\_. This sum represents payment due to the City under the credit agreement between [Developer's name] and City that is dated \_\_\_\_\_, 20\_\_, and designated by the City as Agreement No. \_\_\_\_\_.

- (c) Until the date of Final Acceptance, Developer must replace the letter of credit (and any replacement of letter of credit) at least five (5) working days before its expiration date. The replacement letter of credit must be identical to the letter of credit being replaced, except that it must have an expiration date that is no sooner than 12 months following the expiration date of the letter of credit being replaced.

**3.5 Drawing Upon Cash or the Letter of Credit.** City may draw on the cash in the Developer's Prepaid Park Impact Fee Account or the letter of credit as follows:

- (a) If Developer fails to complete construction of the Project as required by this Agreement, then the City will have the absolute right to draw upon the cash or letter of credit in an amount City determines, in its sole discretion, to be necessary to complete the Project.
- (b) If repayment is due under Section 3.3 and Developer does not repay City within the time specified, then City will be entitled to draw against the cash or letter of credit in an amount equal to the repayment amount then due. A draw under this Section 3.5 will be a partial draw under the letter of credit and will leave the balance of the letter of credit intact.
- (c) If Developer fails to provide City with a replacement letter of credit within the time specified in Section 3.4, then City will be entitled to draw against the letter of credit in an amount equal to the total amount of Credits that Developer has received under this Agreement as of the time of the draw. If City makes a draw under this Section 3.5(c), then—
  - (1) City will hold the amount drawn, with no obligation to pay Developer interest, until (i) City determines that Developer cannot or will not complete the Project as required by this Agreement (in which event City may use the amount drawn to complete the Project), or (ii) Developer completes the Project in full and City formally accepts the Project (in which event City will return the amount drawn to Developer); and
  - (2) City will not be obligated to issue additional Park Impact Fee Credits under this Agreement unless and until (i) Developer completes

the Project in full and City issues Final Acceptance, or (ii) Developer furnishes City with a replacement letter of credit that complies with Section 3.4, above.

**3.6 Release of Letter of Credit.** The letter of credit shall not be released or reduced until the Developer completes the Project in full and the City issues Final Acceptance. To the extent that a portion of the letter of credit is to secure the provision of park maintenance during the warranty period in lieu of a warranty/maintenance bond, the letter of credit shall not be released until a new letter of credit, acceptable in all respects by the City at its sole discretion, is provided to City by Developer in the dollar amount specified for maintenance in the Final Budget or as determined by City. The maintenance letter of credit shall not be released until such time as the warranty obligation has been fully satisfied, as determined by the City in its sole discretion.

**3.7 Performance Bond Requirements.** If Developer requests advancement of Credits before Final Acceptance of the Project Improvements, in lieu of cash or a letter of credit Developer may obtain a Performance Bond as security for completion of the Project by insuring sufficient funds will be available to pay the construction contractor if Developer defaults in its obligation to fund the Project construction in lieu of paying the Park Impact Fees. The Performance Bond amount shall be not less than one hundred percent (100%) of the construction contract amount. The bond must be issued to the Developer by a surety insurer admitted and duly authorized to transact business in the State of California with not less than an A/VIII rating by A.M. Best. The performance bond must name City as an obligee and be in the form provided as **Exhibit I**, which is attached and incorporated herein by this reference.

#### **ARTICLE IV ASSIGNMENTS OF CREDITS**

**4.0 Assignment Permitted.** Developer may assign all or a portion of the Credits issued under this Agreement to third parties, which may then use the Credits against the Neighborhood/Community Park Impact Fee to be assessed at the time of building permit issuance, if the third party's development project is located within two miles from the Property, subject to and in accordance with the terms of this Article. All Credit assignments require City's prior written consent, which consent shall not be unreasonably withheld or delayed. Developer acknowledges and agrees that City shall have the discretion to deny an assignment of Credits under this Agreement on the basis of excessive fractionalization of the available Credits, provided City shall not deny an otherwise qualified assignment that represents at least ten percent (10%) of Developer's Credit rights. In addition, City shall be entitled to calculate and assess as a condition of its consent of any such assignment, a reasonable fee for the review, approval, and administration thereof.

**4.1 Required Assumption by Assignee.** In addition to the approval of the City, any assignment of Credits shall be subject to an express written assumption by the assignee, whereby said assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the Fee Ordinance and the Park Impact Fee Credit

provisions. The assignment agreement shall contain a provision that Developer and the assignee agree to fully and completely indemnify and defend City from any liability relating to the assignment of rights and any disputes between the Developer and its assignee.

**4.2 Disputes Between Developer and Assignee.** Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer, an assignee, and/or the City regarding the legal ownership of the rights to the Credits, City may withhold any cash reimbursement and may disallow the use of any Credits unless and until either: (i) all Parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing party(ies) the legal ownership of such rights and the manner in which such rights will be exercised.

**4.3 Credit Policies and Procedures.** Developer, for itself and its successors in interest to the Property, acknowledges that the Credit rights are held by the Developer and such rights do not run with the Property ownership. The Credits must be assigned in accordance with this Article 4, even between affiliated entities of Developer. In addition, City policies and procedures relating to assignment and application of Credits, as they may be amended, shall apply to the use of the Credits by Developer and its assigns in the future. However, the terms and conditions of this Agreement shall prevail in the event of any conflict with the City policies and procedures.

## **ARTICLE V MISCELLANEOUS**

**5.0 Entire Agreement.** This Agreement represents the entire agreement of the Parties relating to the subjects covered by this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

**5.1 Notices.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective (a) on personal delivery, (b) on the second business day after mailing by certified or registered United States Mail, return receipt requested or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the Party at the address shown below:

<u>If to City:</u>	City Manager New City Hall, 5th floor 915 I Street Sacramento, CA 95814
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If to Developer:

Attention: \_Robert Hedrick, P.E.  
Vice President Development, 29<sup>th</sup> Street Capital  
2555 3<sup>rd</sup> Street, Ste. 210  
Sacramento, CA 95818

**5.2 Alternative Dispute Resolution.** Any dispute or controversy between the Parties to this Agreement relating to the interpretation and enforcement of their rights and obligations may be resolved by mediation or arbitration by a Party serving a Notice of Dispute ("Notice") on the other Party. The Notice shall describe the nature of the dispute and specify whether mediation or non-binding arbitration procedure is preferred. The Parties shall first attempt in good faith and use their best efforts to reach agreement on the matters in dispute.

If mediation is requested in the Notice, within fifteen (15) days of the mailing of the Notice, the Party serving the Notice shall attempt to employ the services of a third person ("Mediator") mutually acceptable to the Parties to conduct such mediation. The cost of the Mediator shall be borne equally by the Parties. The mediation shall take place within thirty (30) days after the appointment of the Mediator. If the Parties are unable to agree on a Mediator, then the dispute may be referred to arbitration.

The Party serving the Notice may request that the dispute be resolved by arbitration, which shall be conducted by Judicial Arbitration and Mediation Services (JAMS). The arbitration shall be held and conducted in Sacramento, California before an arbitrator selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after referral to arbitration, then such arbitrator shall be appointed by the Presiding Judge of the Superior Court of Sacramento County as soon as practicable. The arbitration shall comply with the following requirements:

(a) Any referral to arbitration shall be barred after the date that institution of legal or equitable proceedings based on the subject controversy or dispute would be barred by the applicable statute of limitations.

(b) The arbitrator appointed must be a former or retired judge or an attorney with at least ten (10) years' experience in real property, commercial, and municipal law.

(c) The arbitrator shall prepare in writing and provide to the Parties factual findings and the reasons on which the decision of the arbitrator is based.

(d) The matter shall be heard by the arbitrator and the final decision by the arbitrator must be made within ninety (90) days from the date of the appointment of the arbitrator. The arbitration hearing date shall be established by the arbitrator, which date must

be within such period of time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.

(e) Costs and fees of the arbitrator and court reporter, if any, shall be borne equally by the Parties. The cost of preparing any transcript of the proceedings shall be the responsibility of the Party or Parties requesting such preparation.

(f) The award or decision of the arbitrator shall be non-binding.

(g) The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, commencing with Section 1282 and including Section 1283.05, and successor statutes, permitting, among other things, expanded discovery proceedings shall be applicable to all disputes that are arbitrated under this Section 5.2.

**5.3 Enforced Delay, Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or default are due to war, acts of terrorism, insurrection, strikes, walkouts, riots, energy shortages, energy rationing, floods, drought, rain, earthquakes, fires, casualties, acts of God, pandemics resulting in shelter in place orders, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted for the period of the enforced delay, or for such longer period as may be mutually agreed upon.

**5.4 Fee Ordinance.** The Parties rights and obligations hereunder shall at all times be governed by and subordinate to the provisions of the City Code Chapter 18.56 in effect on the date that this Agreement is approved and executed by both Parties.

**5.5 Exhibits.** All exhibits attached hereto are hereby incorporated by reference herein.

**5.6 Relationship Between Parties.** Developer and the City agree that (a) the relationship between them is, is intended to be and shall at all times remain, in connection with the transactions contemplated by this Agreement, that of a private developer as to Developer and a public agency as to the City and (b) no Party is intended to be or shall be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of any other Party or any of its affiliates and no Party intends to ever assume such status.

**5.7 No Third Party Beneficiaries.** This Agreement shall not be deemed to confer any rights upon any individual or entity, which is not a Party hereto, and the Parties hereto expressly disclaim any such third-Party benefit.

**5.8 Assignment and Successors.** This Agreement may not be assigned without the prior written consent of City, which consent may be withheld in the sole discretion. Any attempt to assign this Agreement without such consent shall be void. All of the covenants, terms and conditions set forth in this Agreement shall be binding upon the Parties and to their respective heirs, successors and assigns

**5.9 Governing Law and Venue.** This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**5.10 Counterparts and Digital Signatures.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page. A facsimile, adobe pdf, or other electronic signature shall be deemed an original signature.

**5.11 Severability.** If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

**5.12 Authority to Bind.** Each person signing this Agreement warrants that he/she is authorized to contractually bind its respective Party.

**5.14 Time is of the Essence.** Time is of the essence in the performance of each and every covenant and condition of this Agreement.


[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.


**CITY OF SACRAMENTO,**

**DEVELOPER**

By: \_\_\_\_\_  
Jackie Beecham, Director  
Youth, Parks, & Community Enrichment Dept.

By:  \_\_\_\_\_  
Name: Robert Hedrick  
Title: VP Development, Authorized Person

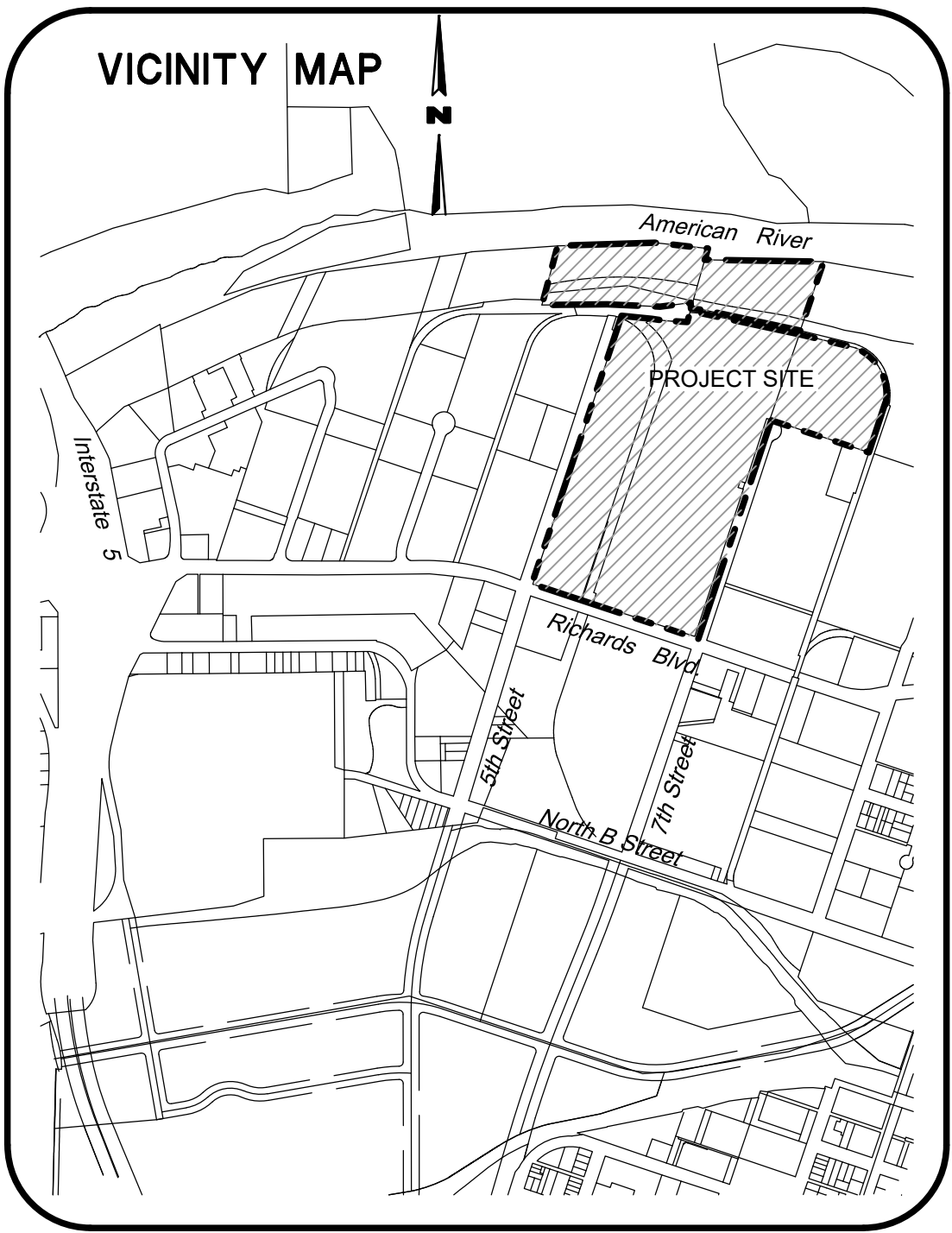
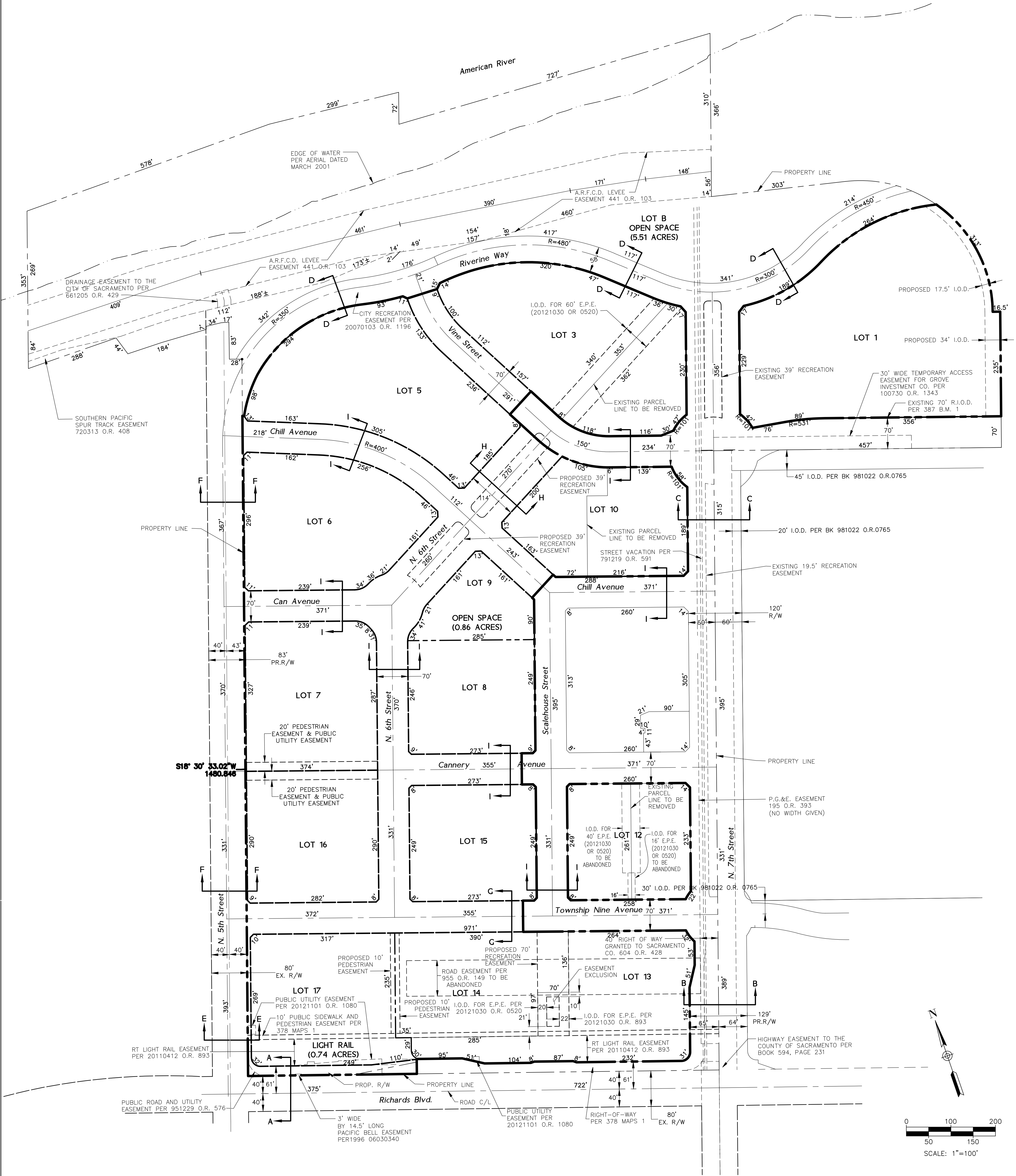
APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Senior Deputy City Attorney

ATTEST:

By: \_\_\_\_\_  
Assistant City Clerk

**EXHIBIT A**  
**PROPERTY DESCRIPTION**  
*(legal description or other description of development project property)*



GENERAL NOTES:

**OWNER**  
Township Nine Avenue, LLC  
c/o TDA Inc.  
2025 Pioneer Court  
San Mateo, CA 94403  
Attn: Robert Perkins  
(650) 581-6609

**SUBDIVIDER**  
29th Street Management III, LLC  
2555 3rd Street, Suite #210  
Sacramento, CA 95818  
Attn: Kevin Smith  
(916) 828-6651

**ENGINEER/PLANNER**  
NV5, Inc.  
2525 Natomas Park Drive, Suite #300  
Sacramento, CA 95833  
Attn: Joy F. Radke  
(916) 641-9100

**ASSESSOR PARCEL NUMBERS:**  
All or portions of parcels:  
001-0200-056, 057, 058, 060, 061, 062, 066,  
and 067, County of Sacramento, CA

**LEGAL DESCRIPTION**  
Designated Remainder 1, Designated Remainder 2, and Lots 1, 2,  
3, 5, 6 & 7 as shown on the map entitled "Township 9, Phase  
1, Subdivision No. PP10\_036," filed for record November 13,  
2012 in Book 378 of final maps, page 1, Sacramento County  
Records.

**SUBDIVISION NAME**  
Township 9

**AREA**  
43.55± ac. Gross

**TOTAL NUMBER OF LOTS**  
13 LOTS  
12 Residential Mixed Use Lots  
1 Open Space Lot

**EXISTING ZONING**  
08-PUD SPD & RMX-PUD SPD

**PROPOSED ZONING**  
08-PUD SPD & RMX-PUD SPD

**EXISTING LAND USE**  
Vacant

**PROPOSED LAND USE**  
Park/Open Space, Multi Family Residential, Office, Commercial

**FIRE DISTRICT**  
City of Sacramento

**SCHOOL DISTRICT**  
Grant Joint Union High  
North Sacramento Elementary

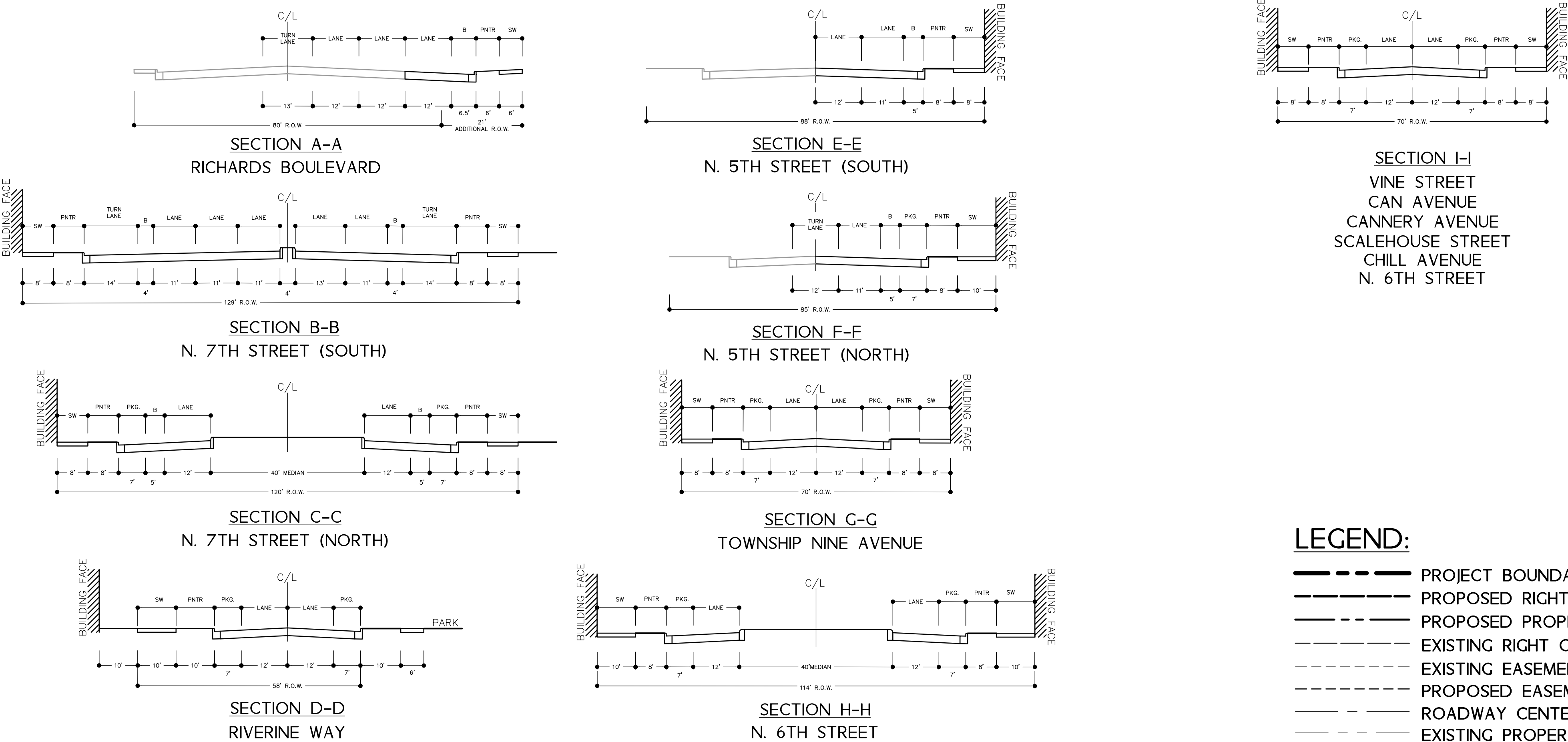
**UTILITIES**  
Storm Drainage: City of Sacramento  
Sewer: City of Sacramento  
Water: City of Sacramento  
Electrical: SMUD  
Gas: Pacific Gas and Electric  
Telephone: AT&T  
Cable: Comcast

**PHASING**  
This project will be phased with multiple final parcel maps.

**NOTES:**  
1. Lots 1, 3, 5, 13, 14 and 17 are proposed for  
condominium uses.  
2. All existing structures within the project boundaries have  
been removed.  
3. All existing trees and shrubs within the project boundaries  
have been removed.

**PARCELS:**

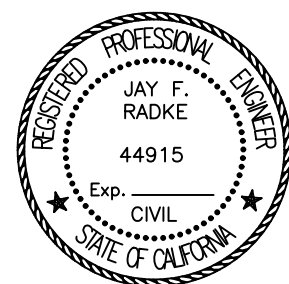
TYPICAL STREET SECTIONS



- LEGEND:**
- PROJECT BOUNDARY
  - PROPOSED RIGHT OF WAY
  - PROPOSED PROPERTY LINE
  - EXISTING RIGHT OF WAY
  - EXISTING EASEMENT
  - PROPOSED EASEMENT
  - ROADWAY CENTERLINE
  - EXISTING PROPERTY LINE

PARK PARCELS AND EASEMENTS:

LOCATION	NET ACREAGE
LOT 9	0.86
LOT 14	0.27
LOT 17	0.05
N. 6TH STREET MEDIAN	0.36
TOTAL	1.54



SHEET NUMBER  
1  
OF 1 SHEETS

SCALE  
VERTICAL: N/A  
HORIZONTAL: 1"=100'

JOB NUMBER  
226219-0000063.01

2525 NATOMAS PARK DRIVE, SUITE 300  
916.6419100 TEL 916.6419222 FAX

NV5  
BEYOND ENGINEERING

SACRAMENTO, CA 95833  
WWW.NV5.COM

TOWNSHIP 9  
TENTATIVE MAP  
SUBDIVISION MODIFICATION

PREPARED FOR: 29TH STREET MANAGEMENT III, LLC

DATE SUBMITTED: 04/21/2021

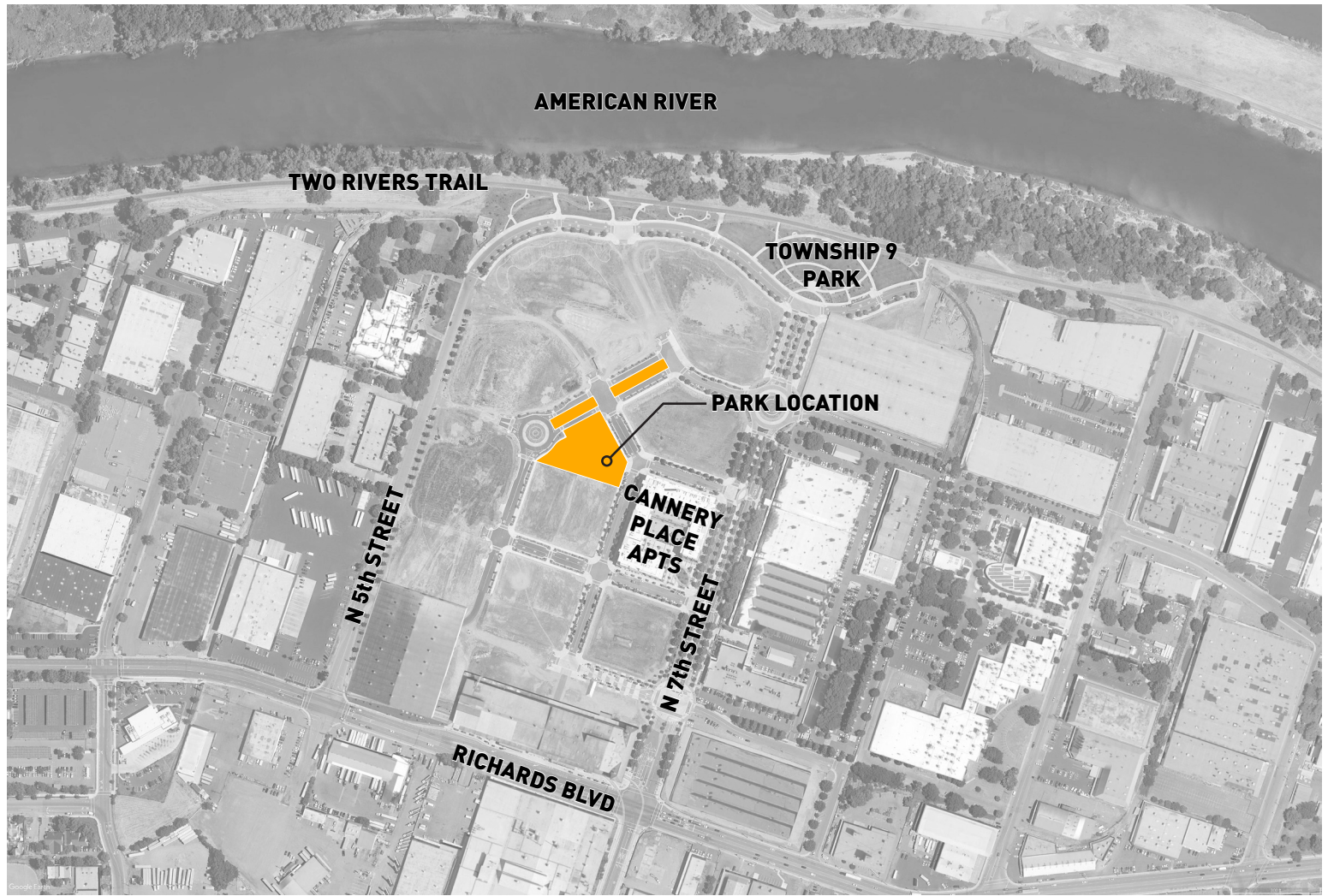
NO. BY DATE REVISIONS:

DATE: 4/21/21 TIME: 11:51:44 AM  
SERVER: LAYOUT: Layout1  
FILE: 226219-0000063.01 - TOWNSHIP 9\CADD\PHOTO  
DRAWING NAME: PR7M-PH1.DWG  
PAGE SETUP: 30x42.PDF  
DESIGNER: KMD PROJ. MGR: JFR

CAUTION: The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.

**EXHIBIT B**  
**PARK SITE DESCRIPTION**  
*(legal description or tentative map lot reference)*

# PARK LOCATION MAP



300 FT



**EXHIBIT C  
PARK PLAN**

# PARK MASTER PLAN GRAPHIC



1" = 60'-0"



## LEGEND

### A. NEIGHBORHOOD PARK

- 1. Playground
- 2. Picnic & BBQ Area
- 3. Lawn Area with Shade Trees
- 4. Native Shrub Plantings

### B. SMALL DOG PARK / C. LARGE DOG PARK

- 5. Gated Entry
- 6. 20' Shade Umbrella, Typical
- 7. Low Mounds, Typical
- 8. Dog Agility Equipment
- 9. Fenced Perimeter

May 16, 2023

**EXHIBIT D**  
**PROJECT IMPROVEMENTS AND INITIAL PROJECT BUDGET**

**VINE PARK - 100% CD/Permit Submittal**  
**Opinion of Probable Construction Cost**

**MAIN PARK & DOG PARKS**

Item and Description	Quantity	Unit	Unit Cost	Total	Cost Comments
<b>Site Prep</b>					
Clear and Grub	48,788	SF	\$ 0.25	\$ 12,197.00	
Temporary Construction Fencing	1	LS	\$ 5,000.00	\$ 5,000.00	
Site Staking	1	LS	\$ 5,000.00	\$ 5,000.00	
<b>Total Site Prep</b>				<b>\$ 22,197.00</b>	
<b>Demolition</b>					
Sawcut existing pavement	452	LF	\$ 2.00	\$ 904.00	
Demo ex curb	46	LF	\$ 5.00	\$ 230.00	
Demo ex concrete, including base rock	162	SF	\$ 2.00	\$ 324.00	
Demo ex asphalt, including base rock	473	SF	\$ 1.00	\$ 473.00	
<b>Total Demolition</b>				<b>\$ 1,931.00</b>	
<b>Grading</b>					
Erosion Control	1	LS	\$ 5,000.00	\$ 5,000.00	
Finish Grading	48,788	SF	\$ 0.40	\$ 19,515.20	
Earthworks	719	CY	\$ 7.50	\$ 5,392.50	
Export of ex. crushed rock/contaminated soil (assuming 3" of removal)	450	CY	\$ 12.00	\$ 5,400.00	
Cut/Fill (Import)	719	CY	\$ 12.00	\$ 8,628.00	
<b>Total Grading</b>				<b>\$ 43,935.70</b>	
<b>Paving Improvements</b>					
Vertical Curb and Gutter	4	LF	\$ 30.00	\$ 120.00	
Vertical Curb	39	LF	\$ 20.00	\$ 780.00	
Asphalt Paving	473	SF	\$ 10.00	\$ 4,730.00	
<b>Total Street Improvements</b>				<b>\$ 5,630.00</b>	
<b>Utilities: Storm Drain</b>					
4" PVC SDR-35 Pipe	151	LF	\$ 65.00	\$ 9,815.00	
6" PVC SDR-35 Pipe	126	LF	\$ 75.00	\$ 9,450.00	
8" PVC SDR-35 Pipe	208	LF	\$ 90.00	\$ 18,720.00	
10" PVC SDR-35 Pipe	140	LF	\$ 100.00	\$ 14,000.00	
12" Drain Inlet	7	EA	\$ 1,700.00	\$ 11,900.00	
18-24" Drain Inlet	4	EA	\$ 3,000.00	\$ 12,000.00	
MH	1	EA	\$ 6,500.00	\$ 6,500.00	
Cleanout	1	EA	\$ 900.00	\$ 900.00	
Connect to Existing Storm Drain Manhole	2	EA	\$ 2,000.00	\$ 4,000.00	

Total Storm Drain					\$	87,285.00
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#### Utilities: Sewer

4" PVC SDR-26 Pipe	271	LF	\$	75.00	\$	20,325.00
12" X 18" box cleanout	2	EA	\$	1,000.00	\$	2,000.00
Cleanout	7	EA	\$	900.00	\$	6,300.00
<b>Total Sewer</b>					<b>\$</b>	<b>28,625.00</b>

#### Utilities: Water

1" meter	3	EA	\$	672.00	\$	2,016.00
1.5" meter	1	EA	\$	923.00	\$	923.00
1" Domestic Service w/RP	2	EA	\$	2,500.00	\$	5,000.00
3/4" Domestic Water Pipe	154	LF	\$	25.00	\$	3,850.00
1" Domestic Water Pipe	182	LF	\$	40.00	\$	7,280.00
1-1/2" Irrigation Service w/RP	1	EA	\$	3,500.00	\$	3,500.00
<b>Total Water Service</b>					<b>\$</b>	<b>22,569.00</b>

#### Concrete Paving

Concrete 01 - Pedestrian Concrete	3,275	SF	\$	13.00	\$	42,575.00
Concrete 02 - Vehicular Concrete	4,580	SF	\$	16.00	\$	73,280.00
Concrete 03 - Pedestrian Exposed Aggregate Concrete	1,070	SF	\$	16.00	\$	17,120.00
<b>Total Concrete Paving</b>					<b>\$</b>	<b>132,975.00</b>

#### Decomposed Granite Paving

4" Decomposed Granite	11,605	SF	\$	4.00	\$	46,420.00
4" Class II Perm Base (4" depth)	142	CY	\$	90.00	\$	12,765.50
Geotextile Fabric (none in Dog Park DG)	973	SF	\$	0.70	\$	681.10
<b>Total Decomposed Granite Paving</b>					<b>\$</b>	<b>59,866.60</b>

#### Concrete Header at DG -6"

Finish Grade, Subgrade Compaction	278	LF	\$	36.00	\$	10,008.00	added at back of ret wall + pole lights per City
<b>Total Concrete Header at DG &amp; AC Paving</b>					<b>\$</b>	<b>10,008.00</b>	

#### Concrete Mow Band - 9"

Finish Grade, Subgrade Compaction, Concrete	110	LF	\$	40.00	\$	4,400.00
<b>Total Concrete Mow Band</b>					<b>\$</b>	<b>4,400.00</b>

#### Retaining Wall

Footing, Subgrade Compaction, Masonry Unit	118	LF	\$	55.00	\$	6,490.00	Keystone - gray split
<b>Total Concrete Retaining Wall</b>					<b>\$</b>	<b>6,490.00</b>	

#### Fencing

Dog Park 5' Chain-link Fence	742	LF	\$	50.00	\$	37,100.00	
Dog Park 5' Chain-link Gates	4	EA	\$	600.00	\$	2,400.00	
Dog Park 10' wide Maintenance Gate	2	EA	\$	3,000.00	\$	6,000.00	
Metalco 4ft Galvanized Fencing On-Grade Pedestrian	111	LF	\$	125.00	\$	13,875.00	
<b>Total Fencing</b>					<b>\$</b>	<b>59,375.00</b>	

<b>Furnishings</b>							
Signage: Standard Park Monument, Park Rules, Dog Park Rules	1	Allowance	\$	15,000.00	\$	15,000.00	
Drinking Fountain	1	EA	\$	10,700.00	\$	10,700.00	
Drinking Fountain at Dog Park	2	EA	\$	10,700.00	\$	21,400.00	
Trash & Recycling Receptacles	5	EA	\$	2,000.00	\$	10,000.00	LF Austin per City request
Dog Waste Bag Station - one each dog park	2	EA	\$	500.00	\$	1,000.00	
Benches, backed	5	EA	\$	2,300.00	\$	11,500.00	reduced to maglin - still keep color
Dining Table	3	EA	\$	4,000.00	\$	12,000.00	reduce to TS - still keep color
Dining Table, ADA	2	EA	\$	3,700.00	\$	7,400.00	reduce to TS - still keep color
Boulders	52	EA	\$	500.00	\$	26,000.00	boulders instead of pebbles and mounds
BBQ Grill and Charcoal Receptacle	1	EA	\$	2,600.00	\$	2,600.00	
Dog Park Agility Equipment	1	Allowance	\$	7,500.00	\$	7,500.00	Additive Alternate 01
Shade Umbrellas - Dog Park	2	EA	\$	13,500.00	\$	27,000.00	including tax, freight, and +33% add for install
Shade Sail - 4-Post Hyper - ~30x30	1	EA	\$	45,000.00	\$	45,000.00	including tax, freight, and +33% add for install
<b>Total Furnishings</b>					<b>\$</b>	<b>197,100.00</b>	

<b>Play Area</b>							
2-12 Playground Equipment: Furnish & Installation	1	LS	\$	135,000.00	\$	135,000.00	
Engineered Wood Fiber	122	CY	\$	60.00	\$	7,312.00	
Drain Rock (8" Depth)	68	CY	\$	90.00	\$	6,123.80	
Sub-drainage	0	LS	\$	-	\$	-	see section E - Storm Drains
Geotextile Fabric	2742	SF	\$	1.00	\$	2,742.00	
Play Area Curb	239	LF	\$	44.00	\$	10,516.00	
<b>Total Play Area</b>					<b>\$</b>	<b>161,693.80</b>	

<b>Irrigation</b>							
Irrigation POC (1-1/2"), Backflow and Meter	1	Allowance	\$	7,000.00	\$	7,000.00	
Control System: Radio, Remote, Flow Sensor, Fan, Pad .(2) total	1	EA	\$	25,000.00	\$	25,000.00	
Pop-up Spray, Shrub Bubbler, Deep Root Watering Tree Bubbler Irrigation	26,562	SF	\$	3.75	\$	99,607.50	

Irrigation Audit	1	Allowance	\$	3,500.00	\$	3,500.00	
Booster Pump	1	LS	\$	30,000.00	\$	30,000.00	
<b>Total Irrigation</b>					\$	<b>165,107.50</b>	

<b>Landscape Planting</b>							
Soil Amendments Prep	26,562	SF	\$	0.50	\$	13,281.00	
Sod	9,945	SF	\$	1.50	\$	14,917.50	
Trees (24" Box)	76	EA	\$	400.00	\$	30,400.00	
Shrubs & Groundcover	14,767	SF	\$	3.00	\$	44,301.00	
3" Wood Mulch	137	CY	\$	65.00	\$	8,887.55	
Landscape Weed Fabric	14,767	SF	\$	0.70	\$	10,336.90	
90 Day Maintenance	1	LS	\$	5,500.00	\$	5,500.00	
<b>Total Planting</b>					\$	<b>127,623.95</b>	

<b>Electrical</b>							
Electrical Service Connection to power source	1	EA	\$	2,250.00	\$	2,250.00	
Electrical Service - Conduit & conductor	155	LF	\$	100.00	\$	15,500.00	
Electrical Service Pedestal	1	LS	\$	5,000.00	\$	5,000.00	
Electrical Service Ground Rod	1	EA	\$	1,500.00	\$	1,500.00	
Electrical Pull Boxes	14	EA	\$	750.00	\$	10,500.00	
10' NLS LT COLUMN Luminaires	4	EA	\$	3,500.00	\$	14,000.00	EST. AVG. 1.5fc - 0.3fc MIN - 3.5fc MAX - 9.0:1 max/min
7' NLS LT COLUMN Luminaires	8	EA	\$	2,875.00	\$	23,000.00	EST. AVG. 1.5fc - 0.4fc MIN - 3.5fc MAX - 9.0:1 max/min
Concrete Anchor Bases	12	EA	\$	1,000.00	\$	12,000.00	
Integrated Luminaries at Shade Structures	-	EA	\$	1,250.00	\$	-	removed
Canopy Mounted Luminaries at Shade Structures at Dog Park	-	EA	\$	1,500.00	\$	-	removed
Pedestal Mounted Receptacles	3	EA	\$	1,000.00	\$	3,000.00	(2) at shade sail (1) near play on light
Branch Circuits - Conduit & conductor	1,430	LF	\$	30.00	\$	42,900.00	
Irrigation Controller - Electrical Connection	1	EA	\$	250.00	\$	250.00	
Irrigation Controller - Conduit & conductor	70	LF	\$	30.00	\$	2,100.00	
<b>Total Electrical &amp; Lighting</b>					\$	<b>132,000.00</b>	

<b>TOTAL</b>							
<b>Sub Total Items A thru R</b>					\$	<b>1,268,812.55</b>	including Add. Alt (dog equipment)
<b>Project Mobilization</b>					\$	<b>38,064.38</b>	3% of Overall Park Cost
<b>Sub Total Including Project Mobilization</b>					\$	<b>1,306,876.92</b>	Goal is \$1.35M
<b>15% Cost Estimating Contingency (100% CD, profit, fees, escalation)</b>					\$	<b>196,031.54</b>	
<b>Park Total</b>					\$	<b>1,502,908.46</b>	Goal is \$1.5M

This opinion of probable costs has been prepared by the Landscape Architect for the convenience of the Owner, and is not intended to be a precise assessment of probable costs, as would be compiled by a professional cost estimator. Unit costs were based on similar projects over recent months, and reflect ongoing discussions regarding site development. It is recognized that neither the Landscape Architect nor the client has any control over the cost of labor, materials or equipment, over the Contractors methods of determining bid prices or other competitive bidding market forces. Negotiating prices will vary from any statement of probable construction cost or other estimate or evaluation as prepared by the Landscape Architect.

## EXHIBIT E

### TASKS ALLOCATION

Filled-in squares designate which Party has agreed to take responsibility for the completion of each specified task.

City	Developer	
		<b>A. CONCEPTUAL DESIGN PHASE</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Survey of Park Site (inc. topo mapping and property line verification).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Determination of park amenities (always by the City).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Preparation of Master Plan illustrating Park Improvements.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Preparation of initial cost estimate for construction of park per Master Plan.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. Public review and City approval process for Master Plan.
		<b>B. PARK DESIGN PLAN PREPARATION PHASE</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Development of design plans.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Preparation of specifications.
		<b>C. CONSTRUCTION DOCUMENT PHASE</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Environmental review and documentation, if required.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Preparation of bid documents .
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Preparation of construction cost estimate and project timeline.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	4. Public review of construction documents and specifications.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. Submittal for Building Permit (to City Community Development Department, Building Division).
		<b>D. BID DOCUMENT PHASE</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Administer bidding process.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. City approval of bidder and contract award.
		<b>E. CONSTRUCTION PHASE (Field Work)</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Project staking.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Construction inspection (always by City Park Planning and Development Services).
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	3. Construction administration (City's Project Manager and Developer's Site Superintendent).
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	4. Final Inspection.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	5. Site cleanup and walkthrough (with City in attendance).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. Public opening (always by the City).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	7. Warranty administration.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	8. Title insurance and Park transfer to City of Sacramento.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Submit labor compliance to City on a monthly basis.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Submit Project Cost verification documents.

## EXHIBIT F

### City Costs and PIF Fee Credits for:

Park Name:		Vine Park
Size of Park:		1.164
Per Acre Funding:	\$	375,000
Project Budget Eligible for PIF Credits:	\$	436,500

#### City Costs

Staff Costs including Over Head		
100 Planning	\$	12,000.00
201 Design	\$	19,000.00
501 Construction Inspection	\$	27,000.00
505 Labor Compliance	\$	2,500.00
508 Construction Management	\$	18,000.00
Subtotal	\$	78,500.00

#### Other Costs

Art in Public Places (2%)	\$	8,730.00
PIF Administration Fee (5%)	\$	21,825.00
Subtotal	\$	30,555.00

<b>TOTAL CITY COSTS to be Paid from DEVELOPER's Prepaid PIF</b>	<b>\$ 109,055.00</b>
---	----------------------

#### Park Project Budget

PIF Credits Remaining for Construction	\$	327,445.00
City Staff Costs	\$	78,500.00
Art in Public Places (2%)	\$	8,730.00
PIF Administration Fee (5%)	\$	21,825.00

<b>Project Budget Eligible for PIF Credits</b>	<b>\$ 436,500</b>
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## **EXHIBIT G**

### **REPRESENTATIVES**

#### **City:**

City of Sacramento  
Park Planning & Development Services  
915 "I" Street, 3rd Floor  
Sacramento, CA 95814

Project Manager: Raymond Costantino, PPDS Division Manager  
Office Phone: 916-808-1941  
e-mail: [rcostantino@cityofsacramento.org](mailto:rcostantino@cityofsacramento.org)

#### **Developer:**

Robert Hedrick, P.E.  
Vice President Development | 29th Street Capital  
(916) 759-8593  
[rhedrick@29sc.com](mailto:rhedrick@29sc.com)  
2555 3rd Street, Suite 210, Sacramento, CA 95818

## EXHIBIT H HAZARDOUS SUBSTANCES

A. No Review, Examination or Assessment. The Parties acknowledge and understand that City has not conducted any review, examination or assessment to assess, identify or detect the presence of any Hazardous Substances, as defined below, on, under or around the Park Site. As between the City and Developer, any liability associated with the presence of any Hazardous Substances on, under or around the Park Site, including any interests in said property dedicated to City as provided herein, shall be governed by the indemnity provisions of this Agreement, regardless of whether any such review, examination or assessment is conducted.

B. Definitions.

(1) As used herein, the term "Hazardous Substances" means:

- (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;
- (b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101 ], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR, Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and
- (d) Any material, waste, or substance that is
  - i) a petroleum or refined petroleum product,
  - ii) asbestos,
  - iii) polychlorinated biphenyl,
  - iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS §1317,
  - v) a flammable explosive, or
  - vi) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the detention basin site or any of the easement areas which Developer is required to and does convey to City pursuant to this Agreement, as now or may at any later time be in effect, including, without limitation,

**EXHIBIT G (continued)**  
**HAZARDOUS SUBSTANCES**

the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RC RA) [42 USCS §§ 6901 *et seq.* ]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 USCS §§ 1251 *et seq.*); the Toxic Substances Control Act (*TSCA*) (15 USCS §§ 2601 *et seq.*); the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 *et seq.*-1; the Insecticide, Fungicide, Rodenticide Act (7 USCS §§ 136 *et seq.*); the Superfund Amendments and Reauthorization Act (42 USCS §§ 6901 *et seq.*); the Clean Air Act [42 USCS §§ 7401 *et seq.*]; the Safe Drinking Water Act (42 USCS §§ 300f *et seq.*); the Solid Waste Disposal Act 42 USCS §§ 6901 *et seq.*; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§ 25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code §§ 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§ 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

**EXHIBIT I  
PERFORMANCE BOND FORM**

**CITY OF SACRAMENTO  
PERFORMANCE BOND**

Department of Youth, Parks & Community Enrichment

**Bond No.:** \_\_\_\_\_

**Premium:** \_\_\_\_\_

Page 1 of 1

**WHEREAS**, the City of Sacramento ("City") has entered into the Park Impact Fee Credit Agreement ("Contract") with \_\_\_\_\_;

*(insert full name and address of Developer)*

as principal, hereinafter called "Contractor," which is a contract for construction of the \_\_\_\_\_ Park, which Contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the Contract; and

**WHEREAS**, under the terms of the Contract, Contractor is required to furnish a bond for the faithful performance of the Contract.

**NOW, THEREFORE**, we the Contractor and *(insert full name and address of Surety):*

\_\_\_\_\_,  
a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, as obligee, in the sum of: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless the City, its officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect.

As part of the obligations secured hereby and in addition to the sum specified above, there shall be included all costs, expenses and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

**IN WITNESS WHEREOF**, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
(Contractor sign) (Seal)

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

Title: \_\_\_\_\_

By: \_\_\_\_\_  
(Surety sign ) (Seal)

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

Title: \_\_\_\_\_

ORIGINAL APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## EXHIBIT J

# LABOR COMPLIANCE HANDBOOK FOR DEVELOPER CONSTRUCTED PUBLIC PARKS PROJECTS

## Labor Compliance Requirements (Prevailing Wage, SB 854, AB219, Etc.)

SB 854, a budget trailer bill that was signed into law on June 20, 2014, and became effective immediately, made several significant changes to laws pertaining to the administration and enforcement of prevailing wage requirements by the Department of Industrial Relations (DIR). Among other things, SB 854 established a new public works contractor registration program to replace prior Compliance Monitoring Unit (CMU) and Labor Compliance Program (LCP) requirements for bond-funded and other specified public works projects. The fees collected through this new program will be used to fund all of DIR's public works activities, including compliance monitoring and enforcement, the determination of prevailing wage rates, public works coverage determinations, and hearing enforcement appeals.

Labor Code Section 1725.5 (enacted by SB 854) requires all contractors bidding on this contract, all subcontractors listed in a bid for this contract, and any contractor or subcontractor performing any work under this contract, to be currently registered with the California Department of Industrial Relations (DIR), as specified in Labor Code Section 1725.5. Labor Code Section 1771.1 (enacted by SB 854) provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work.

Every bidding contractor shall list the contractor's current DIR registration number, and the current DIR registration number of all listed subcontractors, on the Subcontractor Verification Form included in the contractor's bid.

### **SB 854 – Important Information for Contractors**

- **No contractor or subcontractor** may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) **unless registered** with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- The prime contractor must post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU (Compliance Monitoring Unit).)

### **Essentials of public works contractor registration program:**

- Contractors will be subject to a registration and annual renewal fee that has been set at \$400. The fee is non-refundable and applies to all contractors and subcontractors who intend to bid or perform work on public works projects (as defined under the Labor Code).
- Contractors will apply and pay the fee online and must meet minimum qualifications to be registered as eligible to bid and work on public works projects:

- Must have workers' compensation coverage for any employees and only use subcontractors who are registered public works contractors.
  - Must have Contractors State License Board license if applicable to trade.
  - Must have no delinquent unpaid wage or penalty assessments owed to any employee or enforcement agency.
  - Must not be under federal or state debarment.
  - Must not be in prior violation of this registration requirement once it becomes effective. However, for the first violation in a 12-month period, a contractor may still qualify for registration by paying an additional penalty.
- The registration fee is not related to any project. It is more like a license that enables the registrant to bid on and perform public works.
  - Additionally, **all contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner** (aka Division of Labor Standards Enforcement). The phase-in timetable for this requirement can be found on the following link at <http://www.dir.ca.gov/Public-Works/SB854.html> *(also for all SB854 related information)*.

### **Concrete Delivery Legislation (AB 219) Fact Sheet**

Assembly Bill 219 (Daly, Chapter 739, Statutes of 2015) adds Section 1720.9 to the Labor Code. This bill expands the definition of public works under the California Prevailing Wage Law to include:

...the hauling and delivery of ready-mixed concrete to carry out a public works, contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

Section 1720.9 defines the term ready-mixed concrete and specifies that the rate of pay shall be the current prevailing wage "for the geographical area in which the factory or batching plant is located" as determined by the Department of Industrial Relations. The statute also requires a written agreement between the party hauling or delivering ready-mixed concrete and the party that engaged its services. The agreement must specify compliance with the Prevailing Wage Law. Finally, section 1720.0 requires that the hauling or delivery company provide certified payroll records under Labor Code section 1776(a) to the party that engaged its services and to the general contractor within five working days after the employee has been paid, accompanied by a written time record. The time record must be certified by each driver for the performance of job duties.

### **Registration with the Department of Industrial Relations**

Ready-mix haulers and companies that deliver ready-mixed concrete for public works projects are considered subcontractors under Labor Code section 1722.1 and must register with the Department of Industrial Relations as specified in Labor Code section 1725.5. A Contractors State License Board license is not required to register with DIR or to work on a public works project (contractors working in a trade that is subject to licensing by the CSLB will still be subject to CSLB licensing requirements).

Suppliers and other trucking companies will need to provide a Public Utilities Commission license number, U.S. Department of Transportation license number, and any other state or federal license, if one is required for your business. If none of these apply, the supplier can register with DIR by selecting other in the license type menu and entering N/A for not applicable in the license number field.

### **Prevailing Wage Requirements**

Every contract for any construction project, as defined in Section 1782 of the California Labor Code, to be performed within the state at the expense of the city, or paid out of city moneys,

whether such work be done directly under contract award, or indirectly by or under subcontract, sub partnership, day labor, station work, piece work, or by any other arrangement whatsoever, must provide, in addition to other provisions required by law, that any person performing labor in the state in execution of such contracts, subcontract, sub partnership, day labor, station labor, piece work or any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the city; provided, however, that the foregoing provisions as to payment of the general prevailing rate of wages shall not apply to materials for which no (a) manufacturing plant exists in the city; or (b) standard materials or commodities carried in stock by dealers or manufacturers generally.

The general prevailing rate of wages shall be the general prevailing rate of wages for the area in which the city is located as determined by the director of the Department of Industrial Relations pursuant to Labor Code Section 1773. Every contract for which the payment of the general prevailing rate of wages is required shall provide that the determination of the director of the Department of Industrial Relations in force at the time the notice to bidders is published with respect to the general prevailing rate of wages in private employment in the city for similar work shall be binding upon the parties any contract awarded as a result of such notice.

For more details, please refer to the applicable statutes and regulations regarding the payment of prevailing wages and General Prevailing Wage Determination(s) including the footnotes. Such information is available on the Department of Industrial Relations' website at

<http://www.dir.ca.gov/>. Frequently asked questions can be found on the following link at: [http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html).

## California Wage Determinations

### Website

The State Wage Determination can be found on-line by accessing the following web site:

<http://www.dir.ca.gov/OPRL/pwd/>

For additional information you may contact: **Division of Labor Statistics and Research (DLSR) (415) 703- 4774.**

The State Wage Determinations list the basic crafts, (operating engineers, carpenters, laborers, etc.) by location; most sub trades (electricians, plumbers, etc.) are by county.

### Issue Date:

The State Wage Determinations are published twice a year; approximately **February 22** and **August 22**, to reflect updated wage increases incurred. Please be cognizant that increase dates do vary.

### Single Asterisk \* (Good for life of project)

Example: Expiration Date of Determination: June 27, 2008\*

\*Effective until superseded by new determination issued by the Director of Industrial Relations.

Contact Division of Labor Statistics and Research (415) 703-4774 for new rates after 10 days from the expiration date if no subsequent determination is issued.

### Double Asterisks \*\* (Indicates expiration date & a wage or fringe benefit increase)

Example: Expiration Date of Determination: June 30, 2009\*\*

\*\* The rate to be paid for work performed after this date has been determined. **If work will extend past this expiration date, the new rate must be paid** and should be incorporated in contracts entered into now. Contact Division of Labor Statistics and Research (415) 703-4774.

### On-Site Posting Required

All contractors must post a copy of the applicable State Wage Determinations and Labor Compliance Contacts sheet provided at the preconstruction meeting.

# Apprentice Requirements for Public Work Projects

California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. [Submit contract award information \(DAS140\)](#)
2. [Employ registered apprentices \(DAS142\)](#)
3. [Make training fund contributions \(CAC2\)](#)

## **Submit contract award information (DAS140)**

### **If you are a contractor already approved to train apprentices (a member of a DAS recognized Apprenticeship Committee:**

“Contractors who are already approved to train apprentices must provide contract award information to the apprenticeship committee for each applicable apprenticeable craft or trade that has approved the contractor in the area of the site of the public works project.” The Contract Award Information must be in writing and submitted to the applicable committee(s) within 10 days of the date of the prime or subcontract but in no event later than the first day the contractor has workers employed on the public works project. [You may use form DAS 140](#) for this purpose. This is simply a notification of award; it is not automatically a request for dispatch of a registered apprentice. All notice of awards must be in writing and sent by first class mail, fax or email. Proof of submission is required by the City of Sacramento (certified mail receipt, fax receipt or read receipt.)

### **If you are not already approved to train by an Apprenticeship Committee:**

Contractors not already approved to train apprentices must submit Contract Award Information (DAS 140) to **every** apprenticeship program in the geographic area of the public works project, **for each craft you intend to employ on the project.** You can determine which apprenticeship programs are approved in specific geographic locations by clicking on the following link:

<http://www.dir.ca.gov/databases/das/pwaddrstart.asp>

The Contract Award Information must be in writing and submitted to the applicable committee(s) within 10 days of the date of the prime or subcontract but in no event later than the first day the contractor has workers employed on the public works project. This is simply a notification of award; it is not automatically a request for dispatch of a registered apprentice.

## **Request and Employ registered apprentices (DAS142)**

Ratio: A contractor on a public works project must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. [Title 8 California Code of Regulations, Section 230.1](#) for each separate craft at the end of a project. Please check the DAS Important notices to determine if any exemptions exist for your craft or trade.

<http://www.dir.ca.gov/DAS/PublicWorksForms.htm>

### **Can I mix and match crafts to reach the minimum ratio?**

No. The minimum ratio requirement is per each individual craft and only includes straight time hours.

### **Do overtime hours count toward the minimum ratio?**

No, only straight time hours count. Be careful not to confuse premium pay with overtime pay.

**What is the maximum number of apprentices I can use on a Public Works Project?**

It depends on which box you have checked on your DAS 140. If you checked box 1 or 2 and fall under the regulations set forth in a specific program's standards, then you are allowed to use the maximum ratio set forth in those Standards. If you have checked box 3 and agreed to be governed by the regulations set forth by the California Apprenticeship Council, then the minimum and maximum ratio is the same: 1 apprentice hour for every 5 journeyman hours totaled at the end of the project.

**I am a contractor who is approved to train by an approved program and am covered by their Standards, or I am a contractor who has agreed to be covered by a program's Standards for a single project. How do I know what the Standards allow for that program's maximum apprentice ratios?** You can ask the program for a copy of their Standards or a copy of the language in Article XV which covers ratios. Or you can call the DAS office nearest the location for that program and request the same.

All contractors must request dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (excluding Saturdays, Sundays and Holidays) before the date on which apprentices are required. A DAS 142 form is provided for this purpose. All requests for dispatch must be in writing and sent by first class mail, fax or email. Proof of submission is required by the City of Sacramento (certified mail receipt, fax receipt or read receipt.)

Contractors who do not receive a sufficient number of apprentices from their initial request, must request dispatch apprentices from all other apprenticeship committees, if more than one exists in the area of the public works project.

To determine which apprenticeship programs are approved for your craft or trade in a specific geographic location:

1. Contact the DAS District office whose assigned geographic areas of responsibility cover the county/ies in which the public works project is located.
2. Visit [Apprenticeship Programs Information Guide - Public Works Search](http://www.dir.ca.gov/Databases/das/pwaddrstart.asp)  
<http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>

**Definition of a Registered Apprentice**

An apprentice is someone who has signed an agreement with an employer, an approved apprenticeship program or program sponsor, and whose agreement is registered with the Division of Apprenticeship Standards (DAS).

Only an approved apprenticeship program can provide a contractor with a registered apprentice on public works projects.

**Other Questions & Answers:**

**Do programs that provide apprentices for public works projects provide workers compensation benefits for the apprentice they send out to jobs or is the responsibility of the contractor and/or subcontractor?**

This responsibility lies with the contractor and/or subcontractor.

**As a contractor who has been awarded a public works contract, and has my own employees, am I still required hiring registered apprentices?**

Yes. Important Notice: see changes in Code of [Regulations sections 230.1](#), regarding the employment of apprentices on Public Works.

**I am a non-union contractor. Am I required to hire an apprentice?**

Yes, you must request dispatch from all approved programs in the geographic area of the project.

**Can I employ my friend, family, or my own employee who is still beginning to learn a particular trade, as an apprentice?**

No. The law requires that you employ only apprentices who are registered with an approved program. However, if your friend or your employee is a registered apprentice, and has been dispatched to you by an approved apprenticeship program, yes you can.

**What happens if I employed my friend who is not a registered apprentice and I paid him the journeyman rate?**

You may employ your friend and pay him journey wages but this does not affect the apprenticeship requirements.

**What are the benefits and advantages to hiring a registered apprentice?**

The benefits of hiring an apprentice registered in a state approved program are:

1. Lower pay rate than the journeyman pay rate.
2. Elimination of recruitment programs for workers who are already trained.
3. Creates a diversified and flexible workforce and larger pool of employees with specific skills.
4. Increases productivity; employees in a structured training program are motivated to achieve.

## **Make Training Fund Contributions (CAC2)**

Contractors who are awarded public works jobs must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices. This nominal fee contributes to the assurance that new apprentices coming into the craft will be guaranteed the highest level of training and as skilled craftsmen retire, the trade will survive.

Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions. Contractors who do not contribute to an apprenticeship program must submit their contributions to the California Apprenticeship Council, P. O. Box 511283, Los Angeles, California 90051-7838.

Training fund contributions to the Council are due and payable on the 15th day of the month for work performed during the preceding month. The contribution should be paid by check and be accompanied by a completed [CAC2 Form](#) that contains the following information:

1. The name, address and telephone number of the contractor making the contribution.
2. The contractor's license number.
3. The name and address of the public agency that awarded the contract.
4. The jobsite location, including the county where the work was performed.
5. The contract or project number.
6. The time period covered by the enclosed contributions.
7. The contribution rate and total hours worked by apprenticeable occupation.
8. The name of the program(s) that provide apprentices, if any.
9. The number of apprentice hours worked, by apprenticeable occupation and by program.

Payment of Training Fund Contributions **must be sent to the California Apprenticeship Council** (address below) (CAC) if the contractor is **not signatory** to an apprenticeship committee. The CAC will then distribute the funds to the proper apprenticeship committees. However, the **CAC IS NOT AN APPRENTICESHIP COMMITTEE** and will not accept the DAS140 or DAS142 forms.

**California Apprenticeship Council (CAC)**

P.O. Box 511283  
Los Angeles, CA 90051-7838

Questions: email [daspublicworks@dir.ca.gov](mailto:daspublicworks@dir.ca.gov)

**Subject to change for most recent documentation please click on the following link:**  
<http://www.dir.ca.gov/das/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>

## All Current and Apprenticeable Trades/Crafts Within Sacramento County

**This list is subject to change.**

Asbestos Worker, Heat and Frost Insulator	Parking and Highway Improvement (Striper)
Boilermaker-Blacksmith	Painter
Bricklayer, Stonemason	Plasterer
Carpenter – All Related Trades	Plaster Tender
Carpet, Linoleum and Resilient Floor Layer	Roofer
Cement Mason	Landscape/Irrigation Fitter
Drywall Installer/Lather (Carpenter)	Sprinkler Fitter (Fire Protection/Fire Control)
Drywall Finisher (Painter)	Pile Driver Operating Engineer
Electrician, Inside Wireman	Pile Driver (Carpenter)
Electrical Utility Lineman	Parking and Highway Improvements Painter
Elevator Constructor	Plumber/Steamfitter
Field Surveyor Chainman/Rodman	Pipefitter
Chief of Party	Underground/Utility Pipefitter
Glazer	Metal Roofing System Installer
Electrician (Comm & System Installer)	Sheet Metal Worker
Electrician (Comm & System Tech, Cable Splicer)	Stator Re-winder
Iron Worker	Terrazzo Finisher
Laborer	Terrazzo Worker
Marble Finisher/ Marble Mason/ Marble Setter	Tile Setter
Millwright	Tile Finisher
Operating Engineer	Steel Erector & Fabricator
Operating Engineer (Dredger)	Tunnel/Underground (Operating Engineer)
Building Construction Inspector	Tunnel Worker (Laborer)
Operating Engineer (Landscape Construction)	Parking & Highway Improvement (Striper-Bricktender)
Pointer, Caulker and Cleaner	Scaffolding and Shoring Erector (Carpenter)
Acoustical Installer (Carpenter)	Shingler (Carpenter)
Hardwood Floor Layer (Carpenter)	Communications & System Installer
Insulation Installer (Carpenter)	Taper
Field Surveyor Instrument man	Metal Deck and Siding
Roofer	

If using any of the listed crafts, you will be required to request an apprentice and pay into the apprentice-able craft training program that is applicable.

The website to see the latest list of apprenticeable trades is:

<http://www.dir.ca.gov/oprl/pwappwage/PWAppWageStart.asp>

# Start-Up Documents Due Prior to Start of Construction:

## 1. **Certification Statement of Contractor:**

If there is any contractor working as an “Independent Contractor”, “Owner- Operator”, “Sole Proprietor” or “Leased Worker” the certification form must be filled out.

- a. The original is to be submitted prior to, or concurrent with, the first payroll in which the Independent Contractor, Owner-Operator, Sole Proprietor or Leased Worker commences work.

## 2. **Authorization Letter for Signing Certified Payroll:**

- a. To be signed by **company officer** or **owner** and uploaded into LCPtracker prior to the first Certified Payroll Report.
- b. This document lets the Labor Compliance Department know whom is authorized to sign certify payroll reports and other documents on behalf of the Contractor.

## 3. **FORM 300 List of all Subcontractors and Suppliers:**

- a. To be filled out and uploaded within 10 days of the preconstruction meeting and prior to the first Certified Payroll Report.
- b. This document lets the Labor Compliance Department know who will be working on this project. This is checked against initial form that was submitted with bid documents. If there are any changes during the life of the construction projected this form is to be updated and the Labor Compliance Officer is to be made aware of changes.
- c. This form is to be filled out by all Subcontractors and their lower level subs and uploaded into LCPtracker.

## 4. **Checklist of Labor Law Requirements:**

- a. To be filled out and signed by the contractor and all sub tier contractors **prior** to start of their work on the construction project. Please check all boxes that apply.

## 5. **Fringe Benefit Statement:**

- a. Asterisk or note any form of benefits that are included in the payroll reports should be listed out as an “hourly” rate of pay for each trade used.
- b. If fringe payments are made directly to the employee in lieu of fringes, please note “paid in cash” under the applicable fringe payment and breakdown the hourly rate that is paid to the employee in cash.
- c. Must be re-submitted when wage rates are updated, with effective dates and/or any changes in fringes are made.

## 6. **DAS-140- Public Works Contract Award Information Form:**

- a. Contract award information must be sent to your Apprenticeship Committee if you are approved to train apprentices. If you are NOT approved to train apprentices, you must send the information to ALL applicable Apprenticeship Committees in your craft or trade in the area of the Public Works Project.
- b. After you have completed the DAS-140 Form mail the original(s) to the appropriate Joint Apprentice Training Committee(s) within (10) days of the date of the execution of the prime contractor’s subcontract, but in no even later than the first day in which the contractor has workers employed upon the public work (CA Labor Code 1777.5 (e)).
- c. Upload a copy of the form or all forms submitted with proof of deliver to the LCPtracker.net program under the e-Documents Tab. The form of proof can be certified mail or fax confirmation.

- d. All Applicable Joint Apprentice Training Committee (s) may be found at:  
<http://www.dir.ca.gov/Databases/das/pwaddrstart.asp/>
  - e. Templates available for download can be found at:  
<http://www.dir.ca.gov/DAS/PublicWorksForms.htm> or on LCPtracker.net under the e-Documents tab.
7. **DAS-7- Agreement to Train Apprentices Form:**
- a. **IF Applicable: (Checked box 1 on the DAS 140)**
    - i. Submit your DAS-7 or equivalent certification and upload into LCPtracker.net under the e-Documents tabs and inform the labor compliance person monitoring your project. This form can be submitted with your DAS-140 form.
8. **DAS-142 Request for Dispatch of an Apprentice Form:**
- a. Send to the Joint Apprentice Training Committees (JATC) in your craft or trade in the geographic area of the Public Works Project to request the dispatch of an apprentice before starting work at the site and as needed throughout the project.
  - b. Employment of Apprentices on Public Works project- (a) Contractor(s) shall employ registered apprentice(s), as defined by Chapter 4 (commencing with Section 3070) of Division 3, during the performance of a Public Work Project in accordance with the required (1) hour of work performed by an apprentice for every (5) hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in the Labor Code Section 1777.5 or this subchapter.
  - c. Provide a copy of your apprenticeship program's standards if they operate under a different ration than the California Labor Codes & Regulations.
  - d. Template available for download can be found at:  
<http://www.dir.ca.gov/DAS/PublicWorksForms.htm>

## Documents Required During the Life of the Construction Project

1. **CAC-2- Training Fund Contribution Form:**
- a) All Contractors must submit a CAC-2 Form monthly for the prior month's hours.
  - b) This form is now available to be filled out on the DIR website. The previous CAC- 2 form is to be disregarded. CAC-2 forms **must** be done electronically. The link is as follow:  
<https://www.dir.ca.gov/das/tf/cac2.asp>. You must enter all requested information in order to ensure successful submission and processing of your payment. You will need to have a working printer currently connected to your computer in order to print the complete paper form in the end of this session that you will upload in to LCPtracker.net and send with your payment when mailed. The address is as follows:  
**State of California**  
**Department of Industrial Relations California Apprenticeship Council**  
**P.O. Box 511283**  
**Los Angeles, CA 90051-7838**
  - c) If applicable and fringes are paid directly to an approved JATC or Union Shop, please state so and fill out on the Training Fund Contribution Union Contractor form that is provided and available to be downloaded on LCPtracker. Filled out forms are uploaded into LCPtracker.net under the e- Documents tab.
2. **Training Fund Contribution Letter Form:**
- a) All Contractors must submit a Training Fund Contribution Letter monthly for the

prior month's hours.

- b) If applicable and fringes are paid directly to an approved Union Shop, please submit the Union Status Letter stating that the Contractor is up to date with all fringe and training fund contributions for the requested month. The letter should specify the month, project name, and project number.
- c) If you can't provide a letter and the DAS has not been updated with your contribution at Contractor may provide a copy of a **cancelled** check submitted to the proper JATC or the DAS with the amount that matches that on the CAC-2. You may check the status of your contributions submitted to DAS online at: <http://www.dir.ca.gov/CAC/trainingfund/Tfsearch.html>. This may also be submitted in lieu of the Training Fund Contribution Letter.

3. **Certified Payroll Reports CPR's and/or Non-Performance Reports:**

- a) To be submitted by all Contractors working on the project to the City of Sacramento and the Department of Industrial Relations Electronic Certified Payroll Records site.
- b) The reports submitted to the City of Sacramento are submitted through the contracted electronic reporting program, LCPtracker.net, which can be found online at [www.lcptracker.net](http://www.lcptracker.net). If you don't already have a user name and password for this website, please contact your labor compliance officer with the City of Sacramento to be set up.
- c) The Electronic Certified Payroll Records for Contractors can be found at the following link: <https://apps.dir.ca.gov/ecpr/DAS/AltLogin>
- d) Submit CPR/NPR weekly; starting (10) calendar days after the close of your pay period. This is when you begin onsite/offsite "craft" labor. This may mean you have weeks in between work on a particular job. NPR's will need to be submitted for that timeframe.

4. **Apprenticeship Certification and/or Apprentice Agreement:**

- a) The first time an apprentice is listed on a certified payroll report an "Apprenticeship Certification" or Apprentice Agreement (DAS-1 form) must be submitted for each apprentice utilized.
- b) Please upload the Apprenticeship Certification or DAS-1 form in the e- Documents section of LCPtracker.net, add the apprentice ID and pertinent information under the employee information and notify the labor compliance officer in your department that approval is need prior to certification of payroll.

5. **Miscellaneous Documents:**

- a) Authorization for Deductions:
  - i. Voluntary deductions require an Authorization for Deductions form; garnishments require a copy of notice (redact personal information). A form has been provided on LCPtracker to address other deductions that are recorded on the Certified Payroll Reports submitted.
  - ii. Receipt for Payment of Back Wages: For use when wage errors require supplemental wage payment (s).

## Checklist of Documents Required for Labor Compliance on LCPtracker.net

- ✓ **PW300** - This is due and needs to be uploaded prior to start of work. If any changes are made or substitution of sub-contractors are approved a new form should be uploaded and Labor Compliance should be notified.
- ✓ **Authorization Letter for Signing Certified Payroll** - This is due prior to the submission of the first Certified Payroll Report and must be signed.
- ✓ **Checklist of Labor Law Requirements** - prime due this on or before starting the start of work on the jobsite, subs need to have this finished prior to starting work on the job. All boxes must be checked and it must be signed.
- ✓ **Fringe Benefit Statement** - due with first CPR and must be submitted for each subcontractor as well. ALL FRINGES TO BE REPORTED WITH HOURLY AMOUNT.
- ✓ **DAS140** - due prior to commencing work on a project (one for each determination)
- ✓ **DAS142** - due 72 hours prior to the report date on a project (one for each determination)
- ✓ **CAC2** - due monthly- one for each determination (due on the 15th day of the month for work performed during the preceding month) If Union Contractor please upload for with amounts paid and where money was paid to even if it is not the CAC.
- ✓ **Training Fund Contribution Confirmation Letter** – this is due monthly for the duration of the project. Both CAC-2 and Training Fund Contribution Letters are to be uploaded to LCPtracker.net.
- ✓ **CPR's**- Certified payroll is due within 10 days of pay period end date

**LCPtracker.net phone support is available via live chat through their website, by phone at (714) 669-0052 Option 4** (if they do not pick up please leave a message and they will get back to you. All calls are logged in with a date and time, but if you don't leave a message you will not get a phone call back) and by **E-mail at [support@lcptracker.com](mailto:support@lcptracker.com)**.

## Public Works Contractor Responsibilities

- [Register as a public works contractor with the State Department of Industrial Relations prior to bidding or working on this project](#)
- Pay [prevailing wages](#)
- Follow [apprenticeship requirements](#)
- Maintain and submit [certified payroll records](#)

### **Prevailing Wage Requirements**

- **State Prevailing Wage Determinations**
- <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>
  - \* **Single asterisk** indicates that this wage determination can be used for the life of the contract.
  - \*\***Double asterisk** indicates that this wage determination includes predetermined increases.
- All workers employed in the execution of a public works project, including sole proprietors, partners, and corporate officers, must be paid not less than the specified prevailing wage rates for the type of work performed. *Reference: Labor Code 1774*
- Overtime must be paid for all hours over 8 in a calendar day and 40 hours in a week. Violations may subject the contractor to a state penalty of \$25 per day per worker. *References: Labor Code 1810-1815*
- Saturday/Sunday premium rates are applicable as indicated on prevailing wage determinations.
- When required, shift differential rates must be paid for classifications which include a shift determination.
- Subsistence/Zone pay must be shown on the fringe benefit statement if not shown on certified payroll.

The contractor must make applicable travel and subsistence payments in accordance with Department of Industrial Relations wage determinations. *Reference: Labor Code 1773.1*
- Prevailing wage determinations and other job site postings are mandatory to be posted at the job site for workers review. *Reference: Labor Code 1773.2*
- <https://www.dir.ca.gov/wpnodb.html>
- Contractors violating prevailing wage requirements are subject to a penalty of up to \$200 per day per worker, paid in addition to any wage underpayments. Liquidated damages in the amount of the wage underpayments may also apply. *Reference: Labor Code 1775*

### **Apprenticeship Requirements**

<https://www.dir.ca.gov/Public-Works/Apprentices.html>

<https://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>

<https://www.dir.ca.gov/DAS/PublicWorksForms.htm>

- **DAS140** - Submit contract award information for each craft required on the project using the [DAS 140 form](#) <https://www.dir.ca.gov/DAS/DASForm140.pdf> The DAS140 must be submitted to the applicable committee(s) **within 10 days of the date of the prime or subcontract but in no event later than the first day the contractor has workers employed on**

the public works project. This form must be uploaded to LCPtracker with proof of service. Proof of service must be certified mail or email receipt only.

- If you are approved to train apprentices, you must send the contract award information to your apprenticeship committee.
- If you are not approved to train apprentices, you must send the DAS 140 to EVERY apprenticeship committee in the geographic area of the public works project that can supply apprentices to the site of the public works project.
- **DAS 142** - Contact the applicable apprenticeship committee to request apprentices for each craft or trade on your project using the DAS 142 form. <https://www.dir.ca.gov/DAS/DASForm142.pdf> The form must be submitted **at least three business days before apprentices are required**. This form must be uploaded to LCPtracker with proof of service. Proof of service must be certified mail or email receipt only.
- **Employ apprentices in the correct ratio**. Be sure to employ one hour of apprentice work for every five hours performed by a journeyman level worker. Complaints or violations regarding apprentice ratios will be referred to the DAS. *Reference CCR 16434 (c)*.
- **Proof of registration in a California approved apprenticeship program** is required for all apprentices and must be uploaded to LCPtracker with the first payroll on which the apprentice appears. Once uploaded, you must request an apprentice approval from the City's Labor Compliance Officer before your payroll can be submitted. <https://www.dir.ca.gov/DAS/appcertpw/AppCertSearch.asp> *Reference: Labor Code 1777.5*
- **CAC2** - Make training fund contributions in the amount established in the prevailing wage rate – either to the applicable apprenticeship committee, or the California Apprenticeship Council (CAC). <https://www.dir.ca.gov/DAS/tf/cac2.asp> Training Fund Contributions are **due on the 15th of each month**. This form must be uploaded to LCPtracker.
- **Proof of Training Fund Contributions** - Proof of training fund payment must be uploaded to LCPtracker and is **due on the 15th of the following month**. Acceptable proof is a Union status letter, copy of cashed check (front and back) or a letter from the CAC. The letter from the CAC can be obtained by visiting <https://www.dir.ca.gov/CAC/trainingfund/Tfsearch.html>

### **Certified Payroll Records**

- **Certified Payroll Reports (CPR's)** Contractors and subcontractors are required to submit CPR's to the City using LCPTracker and to the Labor Commissioner using DIR's electronic certified payroll reporting system. Payroll must be at least bi-weekly, and CPR's are **due within ten (10) days of pay period end date**. CPR's shall contain the same information for compliance with LC § 1776. <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>
- **Non-Performance Payroll Report** If there is five or more consecutive non-workdays within any single pay period you must submit a non-performance CPR. Payroll must be at least bi-weekly and Non- Performance CPR's are **due within ten (10) days of pay period end date**.
- **Fringe Benefit Statement:** A fringe benefit statement breaking down fringes paid in cash or contributions to plans/programs are **due with first certified payroll report and anytime the fringe benefits change**. If paying to a program, list the program information. Documentation that the amount stated on the fringe benefit statement is being paid on the employees' behalf may be requested for validation.

- **Other Deductions** –Any “other deductions” listed on a CPR needs to be explained on the CPR and must be expressly authorized in writing by the employee. Letter of deduction authorization must be uploaded to LCPTracker. If a court order mandates the deductions, upload a copy of the order to LCPTracker.

### **Use and Listing of Subcontractors & Suppliers**

The prime contractor is responsible for work performed and compliance met by all subcontractors. The Subletting and Subcontracting Fair Practices Act requires prime contractors to list, at bid time, all subcontractors (including concrete deliveries) who will perform work in excess of one-half of one percent of the total bid amount or \$10,000, whichever is greater. For building projects, subcontractors who will perform work in excess of one-half of one percent must be listed. *References: Public Contract Code 4100-4114; Standard Specifications 5, Control of Work*

Failure to comply with the requirements of the Subletting and Subcontracting Fair Practices Act may result in a penalty of 0-10 percent of the subcontract involved and a referral to the Contractors State License Board. *Reference: Public Contract Code 4110-4111*

- **PW300** All contractors, subcontractors, sub-tier contractors (including concrete delivery companies) are required to submit a PW300 form **prior to start of work** listing all their subcontractors and suppliers hired to perform work or supply product for the project. Anytime a change is made a new PW300 form must be submitted.

### **Completion of Project**

- **Form 264** The Contractor Notification of Completion must be uploaded into LCPTracker. This form is **due at the end of the project** once all punch list items have been completed and the NOC has been requested to be filed.

The undersigned contractor herein certifies that it will comply with the foregoing prevailing wage requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

\_\_\_\_\_  
**Contractor Signature**

\_\_\_\_\_  
**Contractor Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

*All of the forms discussed in this document can be found in LCPTracker under the eDocuments tab.*