

ORDINANCE NO. 95-050

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF OCT 10 1995

**AN ORDINANCE ADOPTING A DEVELOPMENT
AGREEMENT BETWEEN LANDOWNERS
MARVIN L. OATES, WILLIAM C.
CUMMINGS, FREDERICK E. ANDERSON
AND PATRICIA D. ANDERSON
AND THE CITY OF SACRAMENTO**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Recitals.

1. On August 9, 1994, the City Council adopted Resolution No. 94-494, approving the form of a development agreement to be used for all landowners in the North Natomas Community Plan Area, who desire to enter into a development agreement with the City of Sacramento.

2. On March 7, 1995, the City Council adopted Ordinance No. 95-012, establishing procedures and requirements for consideration of development agreements within the North Natomas Community Plan Area.

3. MARVIN L. OATES, an unmarried man; WILLIAM C. CUMMINGS, a married man as his sole and separate property; and FREDERICK E. ANDERSON and PATRICIA D. ANDERSON, husband and wife, as community property, are landowners (hereafter "Landowner") in the North Natomas Community Plan Area, who have made application to the City for various land use entitlements, including a development agreement.

Section 2. Findings.

1. As required by Ordinance No. 95-012, Landowner:
 - a. Has made application to the Planning Director for a development agreement;

FOR CITY CLERK USE ONLY

95-050

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DATE ADOPTED: OCT 10 1995

b. Has paid to the City of Sacramento all required processing fees in connection with the application for a development agreement;

c. Is a qualified applicant within the meaning of section 1.6 of Exhibit A to Ordinance No. 95-012; and

d. Is the owner of qualified property within the meaning of section 1.7 of Exhibit A to Ordinance No. 95-012.

2. On September 28, 1995, the City Planning Commission conducted a duly noticed public hearing on Landowner's application for a development agreement and, at the conclusion of said hearing, recommended approval of the agreement by the City Council.

3. Notice of hearing for this City Council public hearing on Landowner's application for a development agreement has been given in accordance with the requirements of section 2.1 of Exhibit A to Ordinance No. 95-012, and Government Code Section 65867.

4. Pursuant to section 2.4 of Exhibit A to Ordinance No. 95-012, and based upon the record of the proceedings before the City Planning Commission and the City Council, and upon all documents and other materials referenced in said record of proceedings, and after conducting a public hearing on Landowner's application, the City Council makes the following findings:

a. The development agreement attached hereto as Exhibit A, and incorporated herein by this reference, having been executed by Landowner, is consistent with the City General Plan and the goals, policies, standards and objectives of the North Natomas Community Plan ("NNCP");

b. Landowner's project as proposed should be encouraged in order to meet important economic, social, environmental or planning goals of the NNCP;

c. Landowner's project would be unlikely to proceed in the manner proposed in the absence of a development agreement;

d. Landowner, in the course of developing the project as proposed, will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;

e. Landowner has agreed to participate in all programs established or required under the NNCP and all of its approving resolutions (including the mitigation monitoring plan), and has agreed to financial participation required under the North Natomas Financing Plan and its implementation measures, all of which will accrue to the benefit of the public;

f. The form of the development agreement attached hereto as Exhibit A is in substantial conformity with the form of agreement approved by Resolution No. 94-494 and Ordinance No. 95-012;

g. Landowner has agreed to a high standard of quality in the development of the project, and has agreed to all applicable land use and development regulations;

h. Approval of a development agreement between Landowner and the City of Sacramento is in the best interests of the public; and

i. Landowner, at the time of the public hearing, has agreed to all of the provisions of the development agreement, to unconditionally implement all of its obligations, and to all of the provisions of this ordinance.

Section 3. Approval of Development Agreement and Authorization for Signature.

1. The development agreement attached hereto as Exhibit A, between the City of Sacramento and Landowner is approved, and the Mayor of the City of Sacramento is authorized to execute the said agreement.

2. The development agreement between Landowner and the City of Sacramento shall become effective thirty (30) days from the date of adoption of this ordinance.

3. All provisions of Exhibit A to Ordinance No. 95-012, including but not limited to sections 2.6 (Amendment or Cancellation); 2.7 (Default); 2.8 (Recordation); and 3.1 (Compliance Review), shall apply to the development agreement between Landowner and the City of Sacramento, in addition to all rights and remedies available to the City under or by virtue of Government Code Sections 65864, et seq.

4. In addition to the provisions of subsection 3 above, in the event that Landowner fails or refuses to participate in any financial mechanism which is required by

the North Natomas Finance Plan, or fails to execute any agreement required in order to implement said Plan, including but not limited to unconditional agreements to pay development fees at a future date, the City shall have the unilateral right to cancel the development agreement approved by this ordinance, and shall have no further obligations under said agreement and no liability whatsoever as a result of the cancellation of the agreement.

5. Any development agreement entered into by Landowner, or Landowner's predecessors in interest, with respect to the Property covered by the development agreement attached hereto as Exhibit A, shall as of the effective date of this ordinance, be fully and finally cancelled and terminated, and no party thereto shall have any further obligations or rights thereunder.

6. No special permit for the Property, or any portion thereof, shall be approved or issued unless and until Landowner has executed an easement agreement in recordable form, and in a form satisfactory to the City Attorney. Said agreement shall include provisions for an unconditional grant to the City, without cost to the City, of a non-exclusive easement across parcel 1 and, if necessary in City's sole judgment, also across parcel 11. The purpose of the easement will be for access for pedestrian and vehicular traffic to and from the light rail station adjacent to parcel 11 along Truxel Road, and the proposed stadium on parcel 1. The exact easement location shall be fixed by the City in its sole discretion, but shall be located so as to not unduly hinder development of parcels 1 and 11. The easement shall be 40 feet in width.

7. As a owner of the Property and as successor to a participating landowner in Assessment District 88-03, Landowner is entitled to credit as against North Natomas Finance Plan Public Facilities Fees payable at building permit issuance for all or any portion of the Property. The credit amount available as against the Public Facilities Fees is a total of \$4,037,256. The maximum allowable cumulative credit that can be taken in any year prior to the year 2000 is as follows:

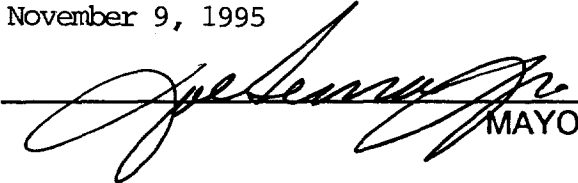
1995	\$1,500,000
1996	\$2,175,670
1997	\$2,846,331
1998	\$3,346,638
1999	\$3,846,945
2000	\$4,047,252

In the event that parcel 1 is transferred to the City, the portion of the total credit attributable to parcel 1 shall be transferred to parcels 2 through 11.

DATE PASSED FOR PUBLICATION: October 10, 1995

DATE ENACTED: October 10, 1995

DATE EFFECTIVE: November 9, 1995


MAYOR

ATTEST:


CITY CLERK

**NORTH NATOMAS
DEVELOPMENT AGREEMENT**

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Exhibit "F"	Protest Waiver Provisions Agreed to by Landowner
Exhibit "G"	Irrevocable Offer of Dedication Form
Exhibit "H"	Map and Categorical Listing of Land and Infrastructure

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street
Sacramento CA 95814

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND MARVIN L. OATES, WILLIAM
C. CUMMINGS, FREDERICK E. ANDERSON
AND PATRICIA D. ANDERSON**

This Development Agreement (hereinafter "Agreement") is made and entered into this _____ day of _____, 19____, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and MARVIN L. OATES, an unmarried man; WILLIAM C. CUMMINGS, a married man as his sole and separate property; and FREDERICK E. ANDERSON and PATRICIA D. ANDERSON, husband and wife, as community property (hereinafter the "LANDOWNER").

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted Sections 65864, et seq., of the Government Code which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project, in order to establish certain rights and obligations of the parties relative to the Property.

B. LANDOWNER owns a legal or equitable interest in those certain parcels of real property (hereinafter the "Property"), described in Exhibit "A" attached hereto and incorporated

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herein by this reference, which are located within the CITY. LANDOWNER seeks to develop the Property consistent with CITY's General Plan, the 1994 North Natomas Community Plan and the Zoning Ordinance as they exist on the Effective Date.

C. The City Council has held duly noticed public hearings on the CITY's General Plan, the 1994 North Natomas Community Plan and the Environmental Impact Reports prepared therefor. At the conclusion of these hearings, the City Council, on January 19 1988, certified the Environmental Impact Report on the City General Plan Update as adequate and complete, and on May 3, 1994, certified the Environmental Impact Report on the 1994 North Natomas Community Plan Update as being adequate and complete.

The City Council on January 19, 1988, after making specific findings and adopting a Statement of Overriding Considerations, approved a revised General Plan by Resolution No. 88-058 (hereinafter the "General Plan"). The City Council on May 3, 1994, after making specific findings and adopting a Statement of Overriding Considerations, approved the 1994 North Natomas Community Plan by Resolution No. 94-259. (hereinafter the "NNCP"). The uses allowed under the General Plan, NNCP, and the applicable zoning ordinances provide for a balanced mix of residential housing and employment opportunities as well as provide for the protection of major open space and recreational resources.

The City Council on August 9, 1994, after a duly noticed public hearing, approved the North Natomas Finance Plan to provide a plan for the financing of the Infrastructure and public improvements needed to successfully implement the NNCP over time.

D. CITY and LANDOWNER desire to enter into a development agreement pursuant to the provisions of Government Code Sections 65865, et seq., in order to provide for the orderly

development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan and the NNCP.

E. The coordinated and orderly development of the Property, and LANDOWNER's commitment to the implementation of the North Natomas Finance Plan in order to assure the timely and properly-phased construction of all required Infrastructure and facilities, are essential to the proper implementation of the General Plan and the NNCP.

F. LANDOWNER desires to facilitate implementation of the General Plan, the NNCP and the North Natomas Finance Plan, and LANDOWNER therefore agrees to develop the Property in a manner consistent with the policies of the General Plan, the NNCP, the North Natomas Finance Plan and the Special Conditions, provided that LANDOWNER is assured that no subsequent changes in the General Plan, the NNCP, the North Natomas Finance Plan, the Zoning Ordinance or the Special Conditions shall apply to the Property during the term of this Agreement.

G. The City Council, on March 7, 1995, adopted the Procedural Ordinance, by which CITY will, inter alia, consider, adopt, amend and subsequently review the development agreements by and between CITY and a given landowner.

H. Development of the Property, in accordance with the conditions of this Development Agreement, will provide orderly growth and development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan and the NNCP. At the same time, it will assure that LANDOWNER is committed to funding its appropriate share of the cost of Infrastructure and other facilities which are the subject of the North Natomas Finance Plan, and that the funding for acquisition and construction of those facilities will be available to CITY as and when required under the Infrastructure phasing program.

I. An integral part of the North Natomas Finance Plan is the North Natomas Land Acquisition Program ("NNLAP"), with the associated Land Acquisition Fee ("LAF"). The NNLAP is designed to provide a means for transfer to or acquisition by CITY, or such other public agency as is appropriate, of certain lands within the NNCP area (as those lands are specified in the NNLAP) which are designated to be held publicly. Such lands are identified under the North Natomas Finance Plan. The purpose of the NNLAP is to provide a method whereby all of such lands will be transferred or acquired with funds from the private development community without cost to the CITY general fund, or any of its other funds, and at the time when needed. The purpose of the LAF is to provide a means, through the fee program, of equalizing the cost of the NNLAP among the various landowners within the NNCP area, inasmuch as certain landowners will be required to relinquish land to public ownership in amounts in excess of their fair share as defined by the North Natomas Financing Plan. The LAF also provides a means for reimbursing landowners who have advanced funds to CITY for the purpose of acquiring land required for Infrastructure, where eminent domain or other procedures are needed, or where it is otherwise required to enable a particular landowner to develop its property. One of the purposes of this Agreement is to provide LANDOWNER's commitment to the provisions of the NNLAP and the LAF.

J. This Agreement is voluntarily entered into by LANDOWNER in order to assure the implementation of the General Plan, the NNCP and the North Natomas Finance Plan, and is made in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan, the NNCP, and the North Natomas Finance Plan and in consideration of the agreements and undertakings of LANDOWNER

hereunder. But for LANDOWNER's contribution to and participation in programs to mitigate the impacts of the development of the Property and the cumulative impacts of development in the NNCP area, and to the implementation of the North Natomas Financing Plan, the CITY would not approve development of the Property.

K. The authority for this Agreement is contained in the City Charter of CITY, the Procedural Ordinance, other applicable CITY ordinances, resolutions and procedures and Government Code Sections 65864, et seq.

L. CITY and LANDOWNER have taken all actions mandated by and have fulfilled all requirements set forth in the Procedural Ordinance for the adoption of this Agreement by the City Council.

M. The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, the NNCP, the North Natomas Finance Plan, and all other applicable CITY ordinances, rules and regulations. The implementation of this Agreement is in the best interest of CITY and the health, safety and welfare of its residents. The environmental impacts of the development contemplated herein were adequately considered in the environmental documentation prepared by CITY and adoption of the ordinance and approval of this Agreement complies in all respects with the California Environmental Quality Act.

AGREEMENT

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants of the parties

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contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I

DEFINITIONS

The terms set forth below, unless the context otherwise requires, shall have the meanings prescribed, for purposes of this Agreement.

Adopting Ordinance: the ordinance pursuant to which the City Council approves this Agreement.

Allocation Procedures: those procedures set forth in Section 5.H. of this Agreement, whereunder the various uses and densities are distributed to and among the various parcels, or portions of them, comprising the Property.

Annual Review: the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code Section 65865.1, the nature and extent of compliance by LANDOWNER with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in section 17 of this Agreement.

Assessment: a special assessment levied on real property within the North Natomas Community Plan area, for the purpose of financing Infrastructure and/or public facilities, or maintenance thereof, in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.

Assessment District Policy Manual: the document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing

Any purchaser, assignee, or transferee shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred.

5. **Development of the Property.**

A. **Permitted Uses and Development Standards.** Subject to the Special Conditions set forth in Exhibit C, attached hereto and incorporated herein by this reference (herein the "Special Conditions"), any reserved discretionary approvals specified in this Agreement, and all other terms and conditions of this Agreement, LANDOWNER may develop the Property in accordance with and subject to the terms and conditions specified in the Land Use and Development Regulations in effect on the Effective Date, or, where applicable, the Development Plan, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Specifically, the permitted uses, density or intensity of use, height or size of buildings and provisions for reservation and dedication of land for public purposes shall be as set forth in the Development Plan.

B. **Discretionary Approvals.**

(1) **Project Review.** Development of the Property is subject to all required discretionary approvals. In reviewing and approving applications for special permits and other discretionary approvals, CITY may exercise Project Review and may attach such conditions and requirements as are consistent with the policies, goals, standards and objectives of the General Plan, the NNCP and the North Natomas Finance Plan, and as may be necessary to comply with all

of CITY pertaining to such reserved discretionary

property. Upon proper and complete application by
property in accordance with the provisions of the NNCP

This Agreement contains no requirement that
development of any phase of the development of the
period of time set by CITY. It is the intention of this
p the Property in accordance with LANDOWNER's
tent that phasing is required by the NNCP, or by the
ern. No future modification of the Sacramento City
limits the rate of development over time shall be
herein shall be construed to relieve LANDOWNER
subdivision map approval or to excuse the timely
ompleted within a time period set by any applicable

development of the Property shall be subject to the

ment Regulations.

cial Conditions specified in Exhibit C, development
se and Development Regulations applicable to such

applicable legal requirements and policies c
approvals.

(2) Rezoning of the P

LANDOWNER, CITY agrees to rezone the Pro
in effect on the Effective Date.

C. Development Timing.

LANDOWNER must initiate or complete de
Property or any portion thereof within any pe
provision that LANDOWNER be able to develo
own schedule; provided, however, that to the ex
Special Conditions, such provisions shall gove
Code or any ordinance or regulation which
applicable to the Property. However, nothing
from any time conditions in any permit or
completion of any act which is required to be c
code or permit provisions.

D. Special Conditions. D

Special Conditions, as specified in Exhibit C.

E. Land Use and Develop

(1) Subject to the Spe

of the Property shall be subject to the Land U
development on the Effective Date.

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(2) Except as otherwise provided in this Agreement, to the extent any future changes in Land Use and Development Regulations adopted by CITY purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, including subsection E.(1) above, the terms and conditions of this Agreement shall prevail, unless the parties or their successors in interest mutually agree to amend or modify this Agreement in accordance with the provisions for modification hereinafter set forth.

(3) To the extent that any future changes in the Land Use and Development Regulations adopted by CITY are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Agreement, such future changes shall be applicable to the Property.

(4) Nothing in this Agreement shall preclude the application to development of the Property of changes in the Land Use and Development Regulations, the terms of which are specifically mandated by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the effective date of this Agreement or action by any governmental jurisdiction other than CITY prevent or preclude compliance with one or more provisions of this Agreement or require changes in permits, maps or plans approved hereunder by CITY, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.

(5) To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including CITY, required by federal or state agencies or actions of CITY taken in good faith in order to prevent adverse impacts upon CITY by state or federal actions) have the effect of preventing, delaying or modifying development of the NNCP area or any area therein,

applicable legal requirements and policies of CITY pertaining to such reserved discretionary approvals.

(2) **Rezoning of the Property.** Upon proper and complete application by LANDOWNER, CITY agrees to rezone the Property in accordance with the provisions of the NNCP in effect on the Effective Date.

C. **Development Timing.** This Agreement contains no requirement that LANDOWNER must initiate or complete development of any phase of the development of the Property or any portion thereof within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to develop the Property in accordance with LANDOWNER's own schedule; provided, however, that to the extent that phasing is required by the NNCP, or by the Special Conditions, such provisions shall govern. No future modification of the Sacramento City Code or any ordinance or regulation which limits the rate of development over time shall be applicable to the Property. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions in any permit or subdivision map approval or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions.

D. **Special Conditions.** Development of the Property shall be subject to the Special Conditions, as specified in Exhibit C.

E. **Land Use and Development Regulations.**

(1) Subject to the Special Conditions specified in Exhibit C, development of the Property shall be subject to the Land Use and Development Regulations applicable to such development on the Effective Date.

CITY shall not in any manner be liable for such prevention, delay or modification of said development. Such actions may include, but are not limited to, flood plain or wetlands designations and actions of CITY or regional agencies as a result thereof and the imposition of air quality measures or sanctions and actions of CITY or regional and local agencies as a result thereof. In such a situation, CITY's actions shall not be arbitrary or capricious, and the parties shall meet and endeavor to achieve solutions which preserve the integrity of the NNCP, while to the extent feasible allow development of the Property in the manner contemplated by this Agreement.

(6) Nothing herein shall be construed to limit the authority of CITY to enact amendments to the Land Use and Development Regulations, or enact other ordinances or resolutions, which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.

(7) Building codes, ordinances and regulations relating to construction standards or permits shall apply as of the time of grant of each applicable construction permit.

(8) No modification of CITY's ordinances, resolutions, policies, rules or regulations adopted after the Effective Date, which purport to limit the rate of development over time or to govern the sequence of development of land within the NNCP area, shall apply to the Property. The provisions of this subparagraph apply to modifications adopted or imposed by the City Council, or through the initiative or referendum process; provided, however, nothing in this subparagraph shall limit the ability of CITY to act in accordance with the provisions of subparagraphs 5.E.(4), (5) and (6) of this Agreement.

F. CITY Review of Applications. Consistent with the standards set forth in section 15 of this Agreement, nothing contained in this Agreement shall preclude CITY from its right

and responsibility to review applications for entitlements submitted by LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law.

G. **Extension of Entitlements.** Pursuant to Government Code Section 66452.6 all vesting tentative subdivision maps, master parcel tentative maps, parcel maps, subdivision tentative maps, planned unit development permits, special permits, or any other maps, rezonings or land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Development Agreement, shall be valid for a minimum term equal to the full term of this Agreement (including the initial term, and any renewal period resulting from exercise by LANDOWNER of the options provided for in Section 3 hereof), or for a period of thirty-six (36) months, whichever is longer, but in no event for a shorter period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of section 25 of this Agreement relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this subparagraph. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.

H. **Allocation Procedures for Building Square Footage.** Procedures for allocating the uses or densities approved for the Property among the various parcels and/or portions thereof, and for resolution of any disputes regarding such allocations, shall be as follows:

(1) **Allocation.** Unless otherwise identified in the Development Plan, which is attached as Exhibit B to this Agreement, the allocation of building square footage shall be as identified in subsequent entitlements for the Property, including but not limited to parcel maps,

subdivision maps, PUD schematic plans and development guidelines. The appropriate entitlement to address the allocation of building square footage shall be determined by City. Allocations for residential development shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.

(2) **Dispute Resolution.** Where a dispute exists between LANDOWNER, and/or any successor or successors in interest, with respect to any matter involving allocation of building square footage for or on the Property, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of the American Arbitration Association, or some other alternative dispute resolution procedure mutually agreed upon by the parties involved in the dispute. In no case shall CITY be a party to such dispute, or to the dispute resolution procedures. All of the provisions of this Agreement relating to indemnification and defense of CITY, and payment of CITY costs, shall apply to all disputes relating directly or indirectly to allocation.

6. **Fees, Charges, Assessments and Taxes.**

A. **City Fees.** All applications for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, mitigation fees and other development fees within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

B. **Levies Imposed by Other Jurisdictions.** LANDOWNER shall be responsible for: (i) all fees, charges, assessments, special taxes or levies of any sort imposed by any other state or local agency, including but not limited to the Sacramento Area Flood Control Agency, in the future as a charge for mitigation measures imposed for the purpose of mitigation of environmental impacts associated with the provision of flood control improvements and measures for the NNCP

area; (ii) all fees, charges, assessments, special taxes or levies of any sort associated with the financing of the construction and implementation of said flood control improvements and measures; (iii) all special benefit assessments, special taxes or levies of any sort associated with construction of or maintenance of public improvements, where the Property is located within a district formed for that purpose by any agency other than CITY; (iv) any fees or other charges required by RD-1000 to be paid to it in implementation of the RD-1000 Agreement; and (v) ad valorem real estate taxes, and utility fees. In the event that any of the fees, charges, assessments, special taxes or levies covered by this subsection B. are imposed by or with the assistance of CITY, LANDOWNER shall nevertheless be responsible therefor. Nothing in this Agreement shall be construed to limit LANDOWNER's right to protest, in accordance with applicable provisions of law: (i) the formation of any district included within the provisions of this subparagraph or to protest the amount of any assessment levied by or on behalf of such district on the Property or any portion thereof; or (ii) to protest the nature and amount of any tax, fee, assessment or charge imposed pursuant to this subparagraph.

C. Implementation of the North Natomas Finance Plan. The North Natomas Finance Plan establishes a method for financing of required Infrastructure and public facilities through a combination of land transfers, dedications and contributions, fees, assessment districts, community facilities districts and other sources, so that the land within the North Natomas Finance Plan Area pays for its share of the cost of such Infrastructure and facilities. The plan also recognizes that there is a regional cost associated with certain portions of Infrastructure and facilities, and that that share will ultimately have to be paid from other sources, even though developers within the area, including LANDOWNER, acknowledge that they may have to participate in funding regional costs

on a fair share basis. LANDOWNER shall participate in the North Natomas Finance Plan, as made applicable to the development of the Property, and shall faithfully and timely comply with each and every provision thereof, including but not limited to the>NNLAP, the Land Acquisition Fee, assessments, special taxes, and other development fees and exactions set forth therein. Without limiting the foregoing, applications for special permits, subdivision maps or other land use entitlements and building permits may be made subject to LANDOWNER's participation in and compliance with the plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and the Procedural Ordinance shall apply. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the North Natomas Finance Plan, and performance of all obligations imposed thereby.

D. **LANDOWNER's Waivers.** LANDOWNER hereby agrees to the provisions of Exhibit F, which (without limitation) contains a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of development and impact fees; CITY's actions in forming assessment districts and community facilities districts, and in levying assessments and taxes pursuant thereto; and CITY's actions in implementing any provision of the North Natomas Finance Plan. As set forth in Exhibit F, LANDOWNER reserves the right to protest the actual amount of the fee, assessment or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Finance Plan.

7. **Reconfiguration of Parcels.** LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, or for master parcelization of all or part of the Property, for the purpose of reconfiguration of the Property. Such applications shall be processed and determined in accordance with the provisions of section 5, and all other applicable provisions

of this Agreement. Where reconfiguration requires a Special Permit, or a P.U.D. designation, or other entitlement applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such entitlements as a condition of granting the application.

8. **Infrastructure.**

A. **Construction by CITY.** To the extent that funds are available to CITY pursuant to the North Natomas Finance Plan, and to the extent that any required real property has been transferred to CITY pursuant to the NNLAP, or has been obtained by CITY through its power of eminent domain, which CITY agrees to utilize, where required, and subject to LANDOWNER's compliance with the terms of this Agreement and all of the terms and conditions of any entitlement applicable to the Property, CITY agrees to use its best efforts to bring about the construction of the Infrastructure required to implement the Development Plan (Exhibit B). Provided, however, that CITY's obligations hereunder shall be limited to those items of Infrastructure which, under the North Natomas Finance Plan, are to be constructed by CITY or under CITY's direction and control; where Infrastructure is to be constructed by LANDOWNER, either pursuant to conditions of approval or otherwise, the provisions of this subparagraph shall not apply.

B. **Construction by LANDOWNER.** When required by conditions of approval, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall diligently construct Infrastructure required for implementation of the Development Plan (Exhibit B). LANDOWNER shall further comply with all required funding requirements specified in the North Natomas Finance Plan, and the real property transfer provisions of the NNLAP.

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C. **Drainage Infrastructure.** As of the Effective Date, it is contemplated that permanent drainage for the Property, and the entire North Natomas Finance Plan Area, will be provided by the Drainage System. It is further contemplated that Interim Drainage for the Property and the NNCP area will be provided pursuant to the RD-1000 Agreement or some other arrangement which has been implemented by CITY. Construction of the Drainage System will require land transfers to CITY pursuant to the NNLAP, or acquisition of required land by CITY through the use of eminent domain procedures, and funding for the required improvements, all on a timely basis and in accordance with the North Natomas Finance Plan, and subject to the provisions of the RD-1000 Agreement (or such other arrangement which has been implemented by CITY), together with the Drainage Sub-basin agreement, or substitute therefore, as specified in the Special Conditions. In recognition of the need for retention of flexibility and CITY discretion with respect to decisions relating to the ultimate solution to drainage for the NNCP area, and the need for unconditional provision of financing by LANDOWNER and other owners of land in the North Natomas Finance Plan Area through the mechanisms specified in the North Natomas Finance Plan, the parties agree as follows:

(1) **Establishment of Financing Mechanisms.** CITY shall, as soon as feasible following the adoption of the North Natomas Finance Plan by the City Council, establish public financing mechanisms as identified in the North Natomas Finance Plan, applicable to lands within the NNCP area which will benefit from the Drainage System.

(2) **Issuance of Bonds.** Decisions as to whether to issue bonds pursuant to such financing mechanisms, and the timing and manner of issuance thereof, shall be within the sole and exclusive discretion of CITY; provided, however, that CITY shall exercise its discretion in

a good faith manner, so as to provide for timely construction of Infrastructure in order not to stop or slow development.

(3) **Linkage of Development to Completion of Drainage System.** CITY has established a performance standard that requires (inter alia) that the Drainage System be completed and in operation no later than the point in time when building permits have been issued for fifty percent (50%) buildout of the North Natomas Finance Plan Area, as measured by developable acreage as defined in the North Natomas Finance Plan. In the event that a different phasing plan is adopted and implemented by CITY, LANDOWNER shall comply with all provisions of such a plan, and shall execute any agreement or other document, or participate in any mechanism as is required by CITY to implement such a plan.

D. **Infrastructure Financing Proceedings.**

(1) **LANDOWNER-Initiated Proceedings.** In the event that LANDOWNER desires to initiate proceedings for the formation of an assessment district, community facilities district, or other similar form of improvement financing mechanism to fund the construction of Infrastructure required by conditions of approval or otherwise, LANDOWNER shall file an application with CITY for that purpose in accordance with CITY's Assessment District Policy Manual, as same may be amended from time to time, or such other policy document as may after the Effective Date be adopted by the City Council as a substitute therefor. CITY agrees to diligently process any such application, provided that such application: (i) is complete and is accompanied by payment of CITY fees applicable on the date of filing of the application; (ii) otherwise complies with the Land Use and Development Regulations and applicable law, as it exists on the date of the application, including but not limited to the Assessment District Policy Manual; (iii) is consistent

with CITY's policies and procedures; (iv) provides for a value to lien ratio and other financial terms that are reasonably acceptable to CITY; (v) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion; and (vi) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

Notwithstanding any other provision of this Agreement, CITY agrees that upon request made by LANDOWNER, CITY will consider making exceptions to the Assessment District Policy Manual, to allow for alternative methods of financing in-tract improvements, including but not limited to formation of assessment districts or similar financing mechanisms, where such alternatives are contemplated by the North Natomas Finance Plan, including any amendments thereto. Provided, however, that CITY reserves its discretion to condition use of any such alternatives on satisfaction of performance preconditions (including but not limited to drainage capacity), and to consider underwriting considerations and criteria, together with the manner in which such alternatives further the overall implementation of the North Natomas Finance Plan. Further, CITY may in its reasonable discretion deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent.

(2) **Proceedings Initiated by CITY.** In the event that pursuant to the North Natomas Finance Plan, CITY in its discretion determines that a particular financing mechanism, including but not limited to an assessment district, a community facilities district, a fee district, a development fees procedure, or any similar mechanism, is required in order to implement the North Natomas Finance Plan, LANDOWNER's participation obligations set forth hereunder

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(including but not limited to Exhibit C), in the North Natomas Finance Plan, or in any condition of approval, shall apply.

(3) **Maintenance Districts.** LANDOWNER may, following the procedures specified in subparagraph (1) above, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping or other public improvements, whereunder lands benefitting from the improvements and their maintenance are assessed for a proportionate share of the maintenance cost.

E. **Reimbursement to LANDOWNER.**

(1) **From Financing Proceeds.** Subject to Chapter X of the North Natomas Finance Plan, where LANDOWNER has provided advance funding for public Infrastructure required by the North Natomas Finance Plan or has constructed such Infrastructure under the direction and control of CITY, LANDOWNER shall be reimbursed for Reimbursable Infrastructure Costs at such time as CITY has established a permanent financing mechanism in the form of an assessment district, community facilities district, or other similar mechanism through which permanent public financing for such improvements is established. Those items qualifying as Reimbursable Infrastructure Costs shall be determined pursuant to CITY policies in existence at the time of establishment of the permanent financing mechanism. CITY agrees to entertain reasonable requests from LANDOWNER for exceptions to such policies; provided, however, that CITY may, in its reasonable discretion, deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent. Nothing in this Agreement shall authorize reimbursement of any cost which, in the opinion of CITY's bond counsel, is not permissible for

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purposes of establishing or retaining tax free status of any bonds issued, or contemplated to be issued by CITY.

(2) **Reimbursement From Others Benefitted.** In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of improvements required for development by the North Natomas Finance Plan, in excess of or beyond those required for development of the Property, or, where required by the North Natomas Finance Plan, to make dedications, provide mitigation or incur costs in connection with public improvements or the planning of the North Natomas area in excess of or beyond those required for development of the Property, and the provisions of the preceding subparagraph do not apply, CITY shall utilize its best efforts to require that all other Persons benefitted by the improvements shall reimburse (through fee districts, agreements, conditions of approval, or otherwise) LANDOWNER for such Person's proportionate share of such costs as determined in accordance with the North Natomas Finance Plan, or by CITY. For purposes of this Agreement, the term "in excess of or beyond those required for development of the Property" shall mean requirements which exceed LANDOWNER's fair proportionate share, as determined in accordance with the provisions of the North Natomas Finance Plan and any associated documents or studies.

Such reimbursement shall be subject to the limitations specified in the preceding paragraph (including those provisions relating to consideration by CITY of exceptions to its policies), relating to CITY policy and Reimbursable Infrastructure Costs. Reimbursement shall be limited to that amount which exceeds LANDOWNER's appropriate share of the cost, determined in accordance with principles established in the North Natomas Finance Plan, and any associated documents or studies.

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(3) **Reimbursement of Planning, Engineering and Staff Costs.** In accordance with the provisions of the North Natomas Finance Plan, and as soon as feasible following City Council adoption of the said Plan, CITY shall enact a fee ordinance which imposes a fee upon NNCP area landowners, including LANDOWNER, to pay the planning, engineering, staff and related costs (including but not limited to CITY staff and related costs), as specified in the North Natomas Finance Plan, and which relate to development of the NNCP, the Finance Plan, the general form of the Development Agreement, the Comprehensive Drainage Plan, and all related documents. The fee shall be spread across lands within the NNCP area in the same fashion as the public facilities fees. Credits shall be given to those landowners who have paid some or all of their share of the said costs, for the amounts so paid. The fee shall be payable prior to issuance of the first discretionary entitlement for the land as to which an application has been filed with CITY.

9. **LANDOWNER Obligations.**

A. **Transfer of Land to CITY.** As set forth elsewhere in this Agreement, LANDOWNER has agreed to transfer lands needed for Infrastructure or public facilities to CITY, or to such other public agency as is appropriate, pursuant to the provisions of the NNLAP. Set forth in Exhibit H, attached hereto and incorporated herein by this reference, is a map depicting the currently contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY, together with a categorical listing of the types of Infrastructure and public facilities which are covered by the terms of this subparagraph. LANDOWNER shall transfer the said required lands to CITY, utilizing the Irrevocable Offer of Dedication form set forth in Exhibit G, attached hereto and incorporated herein by this reference, at such time as is:

(1) required pursuant to a condition or term of any entitlement for use or development of the Property; or

(2) requested by CITY, where LANDOWNER has not applied for an entitlement for use or development of the Property, but the land is needed, in CITY's sole discretion, for purposes of construction of Infrastructure or public facilities.

In the event that, at the time of the required transfer to CITY, the location of, or the quantity of land required for the Infrastructure or public facilities has changed from that depicted on Exhibit H, to such a significant degree or extent that the location or quantity is inconsistent with both the NNCP as it exists on the effective date of this Agreement, and the North Natomas Finance Plan, the parties shall meet and negotiate, and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow development of the Property in a reasonable manner, taking into account the changes in Infrastructure and public facilities. If agreement is reached between the parties, the procedures specified herein and in the Procedural Ordinance shall apply to amendments to this Agreement. If agreement is not reached, either party shall have the right to terminate this Agreement by providing the other party sixty (60) days notice.

B. **Development Timing.** LANDOWNER shall have no obligation to initiate or commence development of any particular phase of the Property within any period of time.

10. **Litigation/Indemnification.**

A. **Challenge to Agreement or Entitlements.**

(1) In the event of any action instituted by a third party challenging the validity of any portion of this Agreement, including but not limited to, the proceedings taken for its approval (including the requirements of the California Environmental Quality Act -- "CEQA") or any

other act undertaken by the parties hereto in furtherance of this Agreement or its terms, or any action instituted by a third party challenging the validity of any of the entitlements specified herein (including CEQA challenges), the parties agree to cooperate in the defense of the action.

In all such litigation brought to contest the validity of this Agreement or such entitlements, the following shall apply:

(a) City may, in its sole discretion, either defend such litigation or tender its defense to LANDOWNER.

(b) In the event that CITY determines to defend the action itself, LANDOWNER shall be entitled, subject to court approval, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each party shall bear its own attorney fees and costs.

(c) In the event that CITY determines to tender the defense of the action to LANDOWNER, LANDOWNER shall defend the action on its behalf and on behalf of CITY, and shall bear all attorney fees and costs associated with such defense from and after the date of the tender. Provided, however, that CITY may at any time after the tender elect to assume representation of itself; in that event, from and after the date CITY gives notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.

(2) If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any entitlement issued during the term of this Agreement and pursuant to its terms, the following shall apply:

(a) if the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order. Provided, however, that if the litigation relates entirely, solely and exclusively to a challenge to the NNCP in general, or to the North Natomas Finance Plan in general, separate and apart from this Agreement or any entitlement relating to the Property, and if LANDOWNER is named or becomes a party in such litigation, LANDOWNER and CITY shall bear the cost of the successful party's attorney fees and/or costs in the manner specified in the court's judgment.

(b) CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow development of the Property to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified herein, and in the Procedural Ordinance, shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement by giving the other party sixty days' notice of termination.

(c) In the event that amendment is not required, and the court's judgment or order requires CITY to engage in other or further proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously.

B. Indemnification. LANDOWNER agrees to defend and indemnify CITY, its elective and appointive boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out

of or relating in any way to actions or activities to develop the Property, undertaken by LANDOWNER or LANDOWNER's contractors, subcontractors, agents or employees.

11. Effect of Subsequent Laws.

A. Laws of Other Agencies.

(1) If any public agency, other than CITY, adopts any new law, regulation, ordinance or imposes any new condition (herein referred to collectively as "the New Law") after the date of this Agreement, which prevents or precludes either the CITY or LANDOWNER, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law the parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain LANDOWNER's right to develop the Property in a reasonable manner pursuant to Exhibit B.

(2) In the event that the parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either party shall have the right to terminate this Agreement by giving the other party sixty (60) days' written notice of termination.

(3) LANDOWNER or CITY shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid,

facially or otherwise, by the New Law, CITY shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the provisions of subparagraphs (1) and (2) above shall apply.

B. Laws Passed by CITY. Subject to the provisions of section 5 of this Agreement, neither the CITY nor any CITY Agency shall enact any initiative, ordinance, policy, resolution, general plan amendment or other measure that relates to the density or intensity of development on the Property, or the rate, timing or sequencing of the development or the construction on the Property on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

12. Enforced Delay; Extension of Times of Performance. In addition to other specific provisions of this Agreement, performance by either party hereunder shall not be deemed in default where delay or inability to perform is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, enactment of conflicting state or federal laws or regulations, new or supplementary environmental laws or regulations, litigation instituted by third parties challenging the validity of this Agreement or any of the vested entitlements described in Section 5 of this Agreement. Upon request of either party to the other, a written extension of time

for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon.

13. **Legal Actions; Applicable Law; Attorney's Fees.**

A. **Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default by any other party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder. Notwithstanding any other provision of law, or of this Agreement, in no event shall LANDOWNER or CITY, its officers, agents or employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

B. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. LANDOWNER agrees and acknowledges that CITY has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of CITY.

C. **Attorney Fees.** In any arbitration, quasi-judicial, administrative or judicial proceeding (including appeals), brought by either party hereto to enforce or interpret any covenant or any of such party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable

investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this section, and any other portion of this agreement relating to attorney fees, reasonable attorneys fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in Sacramento County.

14. **Amendment of Agreement.** This Agreement may be amended from time to time only by the mutual written consent of the parties, in accordance with the provisions of Government Code Sections 65867 and 65868. In addition, all of the provisions of the Procedural Ordinance relating to the need for amendment, and the manner thereof, shall apply. Upon request of a party, this Agreement shall be amended to include the terms and conditions of any discretionary entitlement granted with respect to the Property after the Effective Date.

15. **CITY's Good Faith in Processing.** Subject to the provisions of section 5.B. hereof, and LANDOWNER's compliance with each and every term and condition of this Agreement and all of its exhibits, CITY agrees that it will accept in good faith for processing, review, and action, all complete applications for master parcel maps, zoning, planned unit development designation, planned unit development guidelines, schematic plans, special permits, building permits, parcel maps, subdivision maps, or other entitlements for use of the Property in accordance with the General Plan, the NNCP and this Agreement.

CITY shall inform the LANDOWNER, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use in advance, and shall review said application and shall schedule the application for expeditious review by the appropriate authority.

16. **Default, Remedies, Termination.**

A. **General Provisions.** Subject to any extensions of time by mutual consent of the parties, and subject to the cure provisions set forth herein, any failure or unreasonable delay by either party to perform any material term or provision of this Agreement shall constitute a default.

(1) **LANDOWNER Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by LANDOWNER is alleged, CITY shall not be obligated to issue any building permit, or grant any entitlement as to which an application has been filed.

(2) **CITY Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by CITY is alleged, any resulting delays in LANDOWNER's performance caused by CITY's default shall not constitute a LANDOWNER default, or be grounds for termination or cancellation of this Agreement.

(3) **Successors in Interest.** Where the Property, following the Effective Date, has been lawfully conveyed in whole or in part to one or more successors in interest, in such a manner as to invoke the provisions of section 4 of this Agreement, and one or more of such successors in interest is in default with respect to the portion of the Property owned by it, neither LANDOWNER nor any other non-defaulting successor in interest shall be liable for the default, if the provisions of section 4 have been complied with, and in accordance with the terms and conditions of that section.

B. **Cure of Default.** In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party

notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

C. Remedies After Expiration of Cure Period. After notice and expiration of the thirty (30) day period, if the alleged default has not been cured in the manner set forth in the notice, the other party may at its option:

(1) institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or

(2) give the other party notice of intent to terminate this Agreement pursuant to Government Code Section 65868 and the Procedural Ordinance. In the event that such notice is given, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where LANDOWNER is the party alleged to be in default, LANDOWNER shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNER at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNER copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing.

17. Annual Review.

A. General Provisions. In accordance with Government Code Section 65865.1, and the Procedural Ordinance, CITY shall, at least every twelve (12) months during the Term of this

Agreement, review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct an annual review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future annual review or to otherwise enforce the provisions of this Agreement, nor shall a party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this Agreement or excuse any party hereto from performing its obligations under this Agreement.

B. Scope of Review. The annual review shall be limited in scope to compliance with the terms and conditions of this Agreement.

C. Proceedings. The procedures specified in the Procedural Ordinance for conduct of the annual review by the City Manager, and by the City Council, shall apply to each annual review of this Agreement. At least ten (10) days prior to the commencement of any annual review, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects.

At the conclusion of the annual review, CITY shall make written findings and determinations on the basis of substantial evidence, as to whether or not LANDOWNER or its successors have complied in good faith with the terms and conditions of this Agreement.

D. Failure of Compliance. Any determination of failure of compliance shall be subject to the notice requirements and cure periods set forth in section 16 of this Agreement. If termination is proposed, it shall apply solely with respect to that portion of the Property (if less than all) affected by the failure to show good faith compliance. If modification of the Development

Agreement is proposed, the modification shall pertain solely to the provisions hereof as applicable to that portion of the Property (if less than all) affected by the condition that has prompted the proposed modification.

18. **Termination Upon Completion of Development.**

A. **General Provisions.** This Agreement shall terminate as to each parcel of property contained within the Property when that parcel of property has been fully developed and all of LANDOWNER'S obligations in connection therewith are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY's Department of Planning and Development, determine if the Agreement has terminated, with respect to any parcel, and shall not unreasonably withhold termination as to that parcel if LANDOWNER'S obligations therewith are satisfied. CITY shall be entitled to receive payment of a fee commensurate with the cost of processing the request and making such a determination, including but not limited to CITY's administrative and legal expenses. Upon termination of this Agreement, CITY shall upon LANDOWNER's request record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. The aforesaid notice may specify, and LANDOWNER agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement, by the North Natomas Financing Plan or any of the measures implementing said plan, and shall have the effect as set forth in section 18.C.

B. **Multi-family and Single Family Residential Projects.** This Agreement shall automatically terminate and be of no further force and effect as to any single family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when it has been approved by CITY for occupancy.

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C. **Effect Of Termination On Landowner Obligations.** Termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with CITY's General Plan, the NNCP, and all entitlements issued for the Property, nor shall it affect any other covenants of this Agreement specified in this Agreement to continue after the termination of this Agreement, including but not limited to those specified in sections 6, 10 and 13.C.

19. **No Joint Venture, Partnership, or Other Relationship.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between CITY and LANDOWNER. No relationship exists as between LANDOWNER and CITY other than that of a governmental entity regulating the development of private property, and the owners of such private property.

20. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and LANDOWNER or LANDOWNER's assigns and successors, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

Notice to the CITY: City of Sacramento
915 I Street
Sacramento, California, 95814
ATTN: City Manager

95-050

ORDINANCE NO. _____
Development Agreement

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(54)

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Notice to the LANDOWNER:

c/o Buzz Oates Enterprises
8615 Eldercreek Road
Sacramento, CA 95828

with copies to:

_____ (NONE) _____

Notice to Lender:

_____ (NONE) _____

Any party may change the address to which notices are to be mailed by giving written notice of such changed address to each other party in the manner provided herein.

21. **Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties, utilizing the procedures specified herein and the Procedural Ordinance. Provided, however, that if such holding affects a material provision of this Agreement, LANDOWNER shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to CITY; provided further, however, that in the event LANDOWNER so elects to terminate, such election shall not affect in any manner the terms and conditions of any entitlement theretofore granted by CITY with respect to the Property, or any portion thereof.

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22. **Recording.** The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days following execution of this Agreement by CITY, which execution will take place no sooner than the effective date of the ordinance approving this Agreement.

23. **Reimbursement to CITY.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY'S review, consideration and execution of this Agreement. Such expenses include but are not limited to recording fees, publishing fees and any special meeting costs, staff time (including review by the City Attorney), and notice costs. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

24. **Provisions Relating to Lenders.**

A. **Lender Rights and Obligations.**

(1) **Prior to Lender Possession.** No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement, which pertains to the Property or such portion thereof in which it holds an interest. Nothing in this section shall be construed to grant to a Lender rights beyond those of LANDOWNER hereunder, or to limit any remedy CITY has hereunder in the event of default by LANDOWNER, including but not limited to termination and/or refusal to grant entitlements with respect to the Property.

(2) **Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of LANDOWNER hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions of this Agreement against CITY unless and until such Lender or successor thereof qualifies as a recognized assignee under the provisions of section 4 of this Agreement.

B. **Notice of LANDOWNER's Default Hereunder.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender, concurrently with service thereon to LANDOWNER, any notice given to LANDOWNER with respect to any claim by CITY that LANDOWNER has committed a default, and if CITY makes a determination of non-compliance, CITY shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on LANDOWNER.

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C. Lender's Right to Cure. Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed or the areas of non-compliance set forth in CITY's notice. Such action shall not entitle a Lender to develop the property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder.

D. Other Notices Given By City. A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided in Section 20 hereof.

25. Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such other party to certify in writing that, to the knowledge of the certifying party, (i) this Development Agreement is in full force and effect and a binding obligation of the parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, describing therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such estoppel certificate, or give a written detailed response explaining why it will not do so, within thirty (30) days following the receipt of each such request. Each party acknowledges that such an estoppel certificate may be relied upon by third parties acting in good faith. A certificate provided by CITY establishing the status of this Agreement with respect to the Property or any portion thereof shall be in recordable form and may be recorded at the expense of the recording party.

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26. **Construction.** All parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Development Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

27. **Counterparts.** This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the parties has executed such a counterpart.

28. **Time.** Time is of the essence of each and every provision hereof.

29. **Limitation of Actions.** No court action shall be filed by a party to this Agreement on the ground of default or breach of its terms unless such action is filed within one hundred eighty (180) days from the date of discovery by the aggrieved party of the facts underlying the claim of breach or default.

30. **No Third Parties Benefitted.** No Person who is not a qualified successor or assign of a party hereto pursuant to section 4 of this Agreement, or who has not become a party by duly adopted amendment hereof may claim the benefit of any provision of this Agreement.

31. **Effect of Agreement Upon Title to Property.** In accordance with the provisions of Government Code Section 65868.5, from and after the time of recordation of this Agreement, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of California. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

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32. **Covenant of Good Faith.** CITY and LANDOWNER agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement.

33. **Exhibits:** The following are the exhibits to this Agreement:

- A Legal Description of the Property
- B Landowner's Development Plan
- C Special Conditions
- D Assignment and Assumption Agreement
- E North Natomas Land Acquisition Program
- F Protest Waiver Form
- G Irrevocable Offer of Dedication Form
- H Map and Categorical Listing of Land and Infrastructure

34. **Entire Agreement.** This Agreement, together with its Exhibits A to H, inclusive, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties hereto to supersede all prior development agreements, if any, for the Property which may exist between CITY and LANDOWNER. The provisions of section 10.B. of this Agreement, relating to indemnification and defense of CITY, its officers, employees and agents, shall be applicable to any claim whatsoever against CITY, its officers, employees and agents, arising out of or in any way relating to any prior development agreement relating to the Property.

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IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this
Development Agreement as of the date first set forth above.

CITY: CITY OF SACRAMENTO,
A Municipal Corporation

Attest: By: _____
JOE SERNA, Jr., MAYOR

City Clerk

APPROVED AS TO FORM:

City Attorney

LANDOWNER:

Name: _____

Title: _____

(ATTACH APPROPRIATE ACKNOWLEDGEMENT)

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EXECUTION PAGE FOR LENDER

_____, a _____ (herein "LENDER") owns an equitable interest in the Property described in Exhibit "A" of this Agreement as the beneficiary of that certain deed of trust and assignment of rents dated _____ and recorded on _____, as Instrument _____, in Book _____, Page _____, Official Records, Sacramento County, California.

LENDER hereby executes this Agreement and agrees to be bound by the terms and condition hereof, subject to the limitations set forth in Section 24 hereof.

LENDER requests that it be provided with copies of all notices mailed to LANDOWNER pursuant to the terms of this Agreement and that said copies be addressed as follows:

Attn: _____

Dated: _____

LENDER: _____ (NONE) _____

By: _____

Its: _____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

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EXHIBIT A DESCRIPTION OF LANDOWNER'S PROPERTY

SEE ATTACHED

NOTE: UPON RECORDATION OF FINAL MASTER PARCEL MAP,
THIS EXHIBIT A WILL BE REPLACED BY THE SAID MAP,
WITHOUT NEED FOR AMENDMENT OF THIS AGREEMENT.

Development Agreement

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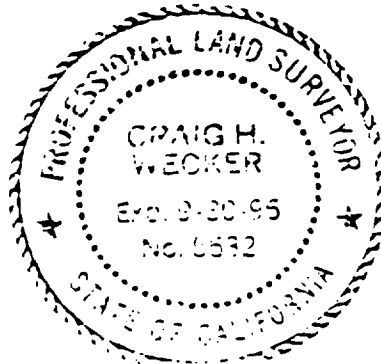
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DEL PASO ROAD PROPERTY

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All that portion of Parcels 1, 6 & 7, as described in that certain Certificate of Compliance recorded in the Office of the Recorder of Sacramento County in Book 890307 of Official Records, at Page 1400 described as follows:

Beginning at the Northeast corner of said Parcel 7; thence from said point of beginning South 01°06'44" East 915.13 feet; thence curving to the left on an arc of 1600.00 feet radius, said arc being subtended by a chord bearing South 14°10'44" East 723.48 feet; thence South 89°45'28" West 88.13 feet; thence curving to the right on an arc of 1679.00 feet radius, from a radial bearing of South 64°07'11" West, said arc being subtended by a chord bearing North 25°36'03" West 16.37 feet; thence curving to the left on an arc of reverse curvature with a radius of 25.00 feet, said arc being subtended by a chord bearing North 68°53'31" West 34.46 feet; thence North 23°39'27" West 120.03 feet; thence South 67°32'15" West 50.62 feet; thence curving to the left on an arc of 560.00 feet radius, said arc being subtended by a chord bearing South 63°19'54" West 82.14 feet; thence South 59°07'32" West 366.61 feet; thence North 30°32'30" West 29.36 feet; thence curving to the right on an arc of 1400.00 feet radius, from a radial bearing of South 69°10'32" West, said arc being subtended by a chord bearing North 15°03'04" West 281.66 feet; thence North 09°16'40" West 114.04 feet; thence curving to the left on an arc of 600.00 feet radius, said arc being subtended by a chord bearing North 50°07'42" West 784.90 feet; thence South 89°01'17" West 1582.57 feet; thence curving to the right on an arc of 50.00 feet radius, said arc being subtended by a chord bearing North 46°02'43" West 70.63 feet; thence North 01°06'44" West 626.52 feet; thence South 88°49'16" West 120.00 feet; thence South 01°06'44" East 625.87 feet; thence curving to the right on an arc of 50.00 feet radius, said arc being subtended by a chord bearing South 43°57'17" West 70.79 feet; thence South 89°01'17" West 73.23 feet; thence curving to the left on an arc of 400.00 feet radius, said arc being subtended by a chord bearing South 47°20'20" West 532.00 feet; thence South 05°39'22" West 395.23 feet; thence curving to the left on an arc of 1200.00 feet radius, said arc being subtended by a chord bearing South 01°48'00" East 311.44 feet; thence curving to the right on an arc of reverse curvature with a radius of 25.00 feet, said arc being subtended by a chord bearing South 32°52'39" West 33.54 feet; thence South 75°00'40" West 466.84 feet; thence South 16°11'03" East 60.01 feet; thence South 75°00'40" West 95.56 feet; thence curving to the right on an arc of 1660.00 feet radius, from a radial bearing of South 75°00'40" West, said arc being subtended by a chord bearing North 01°43'43" East 955.00 feet; thence North 18°26'45" East 101.01 feet; thence curving to the left on an arc of 1600.00 feet radius, said arc being subtended by a chord bearing North 08°40'00" East 543.52 feet; thence North 01°06'44" West 473.08 feet; thence North 88°49'24" East 3832.21 feet to the point of beginning.



Craig Wecker

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EXHIBIT B

LANDOWNER'S DEVELOPMENT PLAN

SEE ATTACHED

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DEL PASO ROAD PROPERTY
P.U.D. EXHIBIT
 CITY OF SACRAMENTO, CALIFORNIA
 MAY 9, 1995

DEL PASO ROAD

ARCO

ARENA

BLVD.

EC 40
10.033 AC
(NET)

EC 40
9.078 AC
(NET)

EC 40
8.939 AC
(NET)

EC 65
8.981 AC
(NET)

EC 65
8.832 AC
(NET)

EC 65
6.897 AC
(NET)

EC 65
6.010 AC
(NET)

EC 80
8.466 AC
(NET)

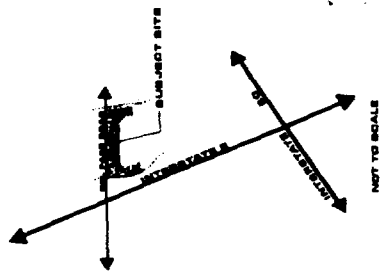
SPORTS COMPLEX

(THIS PARCEL IS SUBJECT TO THE CAPITOL GATEWAY
 SPORTS COMPLEX P.U.D. AND US AND IS NOT INCLUDED
 WITHIN THE DEL PASO ROAD PROPERTY P.U.D.)

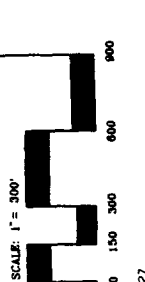
EC 40
6.623 AC
(NET)

EC 40
6.182 AC
(NET)

TOTAL ACRES: 95.267 ACRES (GROSS) +
 82.021 ACRES (NET) +



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The Spink Corporation
 2590 VENTURE OAKS WAY SACRAMENTO, CA 95833
 PHONE: (916)925-5550 FAX: (916)921-9274
 JOB #6601-006

(69)

EXHIBIT C
SPECIAL CONDITIONS

SEE ATTACHED

ORDINANCE No. 95-050

OCT 10 1995

(67)

EXHIBIT C

SPECIAL CONDITIONS

I. PURPOSE AND INTENT

The definitions applicable to the body of the Agreement shall apply to this Exhibit C.

In order to achieve its objectives, and in order to obtain from each LANDOWNER and developer, all required contributions, fees, land transfers, agreements, and other mechanisms required to implement its terms, the NNCP provides that all rezoning and development shall occur through the planned unit development process. Development agreements should be entered into with LANDOWNERS whenever feasible under the circumstances.

Under no circumstances can development of the Property proceed without satisfaction of the conditions specified in this exhibit. These Special Conditions shall constitute binding and legally enforceable obligations of LANDOWNER and its successors and assigns, and binding and legally enforceable requirements and conditions for the development of the Property, in addition to other obligations, requirements and conditions imposed during the rezoning, special permit, subdivision map and other land use entitlement processes.

II. LANDOWNERS' OBLIGATIONS

A. Mitigation Monitoring; Habitat Conservation Plan.

1. **Mitigation Monitoring.** When required in order to obtain entitlements, LANDOWNER shall execute a mitigation monitoring agreement, and such other agreements as may be necessary in CITY's judgment in order to implement any mitigation measure relating to the NNCP and any mitigation monitoring plans applicable to the Property, and shall fully cooperate with CITY in implementing any mitigation monitoring plan adopted as part of the approval process for development of the Property.

2. **Habitat Conservation Plan.**

a. In the event that a Habitat Conservation Plan has been adopted by CITY, LANDOWNER shall be obligated to undertake and exercise one of the following options:

(i) participate in that Plan by payment of the fees applicable to LANDOWNER and/or the Property or provide required proportionate land dedications, at the time specified in the Plan for payment of fees or dedication of required proportionate lands; or

(ii) obtain and present to CITY a duly issued, executed and effective incidental take permit issued by federal and state agencies charged with implementation of the provisions of federal and state Endangered Species Acts, which would allow development of the Property; or

(iii) obtain and present to CITY a duly issued, executed, and effective form of document from said federal and state agencies that development of the Property may proceed without the need for an incidental take permit; or

(iv) participate in such other plan or program which has been approved by said federal and state agencies; or

(v) take any other action required by CITY in its sole discretion, relating to satisfaction of all applicable laws, including but not limited to CEQA and the federal and state Endangered Species Acts, where none of the provisions of subsections (i), (ii), (iii) or (iv) are applicable.

b. In the event that at the time of issuance of a building permit for the Property, CITY has not adopted a Habitat Conservation Plan, and subject to the provisions of subsection "a" above, LANDOWNER shall as a condition to issuance of such building permit pay the sum of \$* _____ per acre of the Property subject to the building permit; the requirement specified in this subsection b. shall be included in each entitlement issued with respect to the Property where, at the time of issuance, CITY has not adopted a Habitat Conservation Plan. In the event that CITY determines, in its sole and exclusive discretion, that such a Plan is not required and the fees required by this subsection b. have been paid, CITY shall within a reasonable time of making such determination refund any fees paid by LANDOWNER pursuant to this subsection b. The provisions of Government Code Section 66000 through 66025, as those sections are amended, renumbered or reconstituted, shall not apply to the fees covered by this subsection b.

B. Agreements With Other Agencies. As required by CITY, LANDOWNER shall enter into agreements with other affected agencies, including but not limited to:

1. Appropriate sanitation districts, including but not limited to Sacramento County Regional Sanitation District, for provision of facilities, payment of fees and charges, and payment (if applicable) of any proportionate share of penalties imposed by the Environmental Protection Agency;

* To be determined by the City Council. No building permit shall issue until such amount is determined and the City Council has implemented the fees required by this subsection b., and such fees have been paid.

2. Reclamation District 1000, if in CITY's sole and exclusive discretion and judgment such an agreement is in fact required, or any other agreement which is required in CITY's sole and exclusive discretion and judgment for the implementation of Interim Drainage or the Drainage Plan;

3. Affected school districts, prior to any zoning or rezoning, special permit, subdivision map or other land use entitlements impacting upon the service or facilities of such other affected agencies. The agreement with affected school districts shall be subject to CITY approval, and shall contain express provisions for defense and indemnification of CITY by the affected school districts.

C. **Drainage Sub-basin Agreement.** LANDOWNER shall enter into an agreement with each of the other landowners within the Drainage Sub-basin within which the Property lies, which provides the manner in which the Infrastructure required for development of all of the lands within said Drainage Sub-basin shall be constructed and financed. As an alternative form of compliance with this provision, LANDOWNER may enter into an agreement with CITY, satisfactory to the City Attorney, which provides that LANDOWNER shall finance all costs associated with the Infrastructure required for development of all of the undeveloped lands within said Drainage Sub-basin. Any such agreement shall additionally provide for reimbursement in accordance with the terms of this Agreement, and the North Natomas Finance Plan, for LANDOWNER's payment of Infrastructure costs in excess of or beyond those required for development of the Property, as that term is defined in Section 8 of this Agreement. As a further alternative, CITY may impose a Drainage Sub-basin assessment district for purposes of financing the required Infrastructure. The provisions of section 6.D. of this Agreement shall apply in such a case.

III. CONDITIONS OF DEVELOPMENT; SPECIAL FINDINGS REQUIRED

A. In addition to other findings and conditions as may be deemed applicable, no special permit, subdivision map or other land use entitlement for the Property shall be approved unless the approving body either: (1) makes the following findings; or (2) expressly waives such findings, in whole or in part, as not applicable to the Property and stating the reasons therefor with such waiver and the reasons therefor appear in the record or document of approval. These findings are:

1. The approval of the proposed project is consistent with the policies, goals, standards and objectives of the NNCP and other relevant factors and circumstances, including but not limited to:

a. The adequacy of the required interim and permanent Infrastructure needed to support the project planned for the Property;

b. The extent of participation required of LANDOWNER under the North Natomas Finance Plan has been secured;

c. The extent to which LANDOWNER has complied with the provisions of the NNLAP.

2. The North Natomas Finance Plan has been adopted by the City Council.

3. All transfers of land, owned by or under the control of LANDOWNER, which are specified in the NNLAP as being necessary for public purposes, have been transferred to CITY or to the appropriate public agency. For this purpose, a transfer will be deemed to occur upon delivery to CITY of an Irrevocable Offer of Dedication in form and manner approved by the City Department of Public Works and the City Attorney. These dedications include, but are not limited to streets, utilities, drainage facilities and public transit.

4. LANDOWNER has, where applicable, demonstrated that the proposed project as designed meets or exceeds the jobs to housing ratio of the NNCP, either actually or through the medium of the Housing Trust Fund, or through assisting housing starts in North Sacramento, or a combination thereof.

5. LANDOWNER has entered into all agreements required pursuant to sections II.A., II.B. and II.C. above.

6. Appropriate environmental review of the proposed project has been completed, and any suggested mitigation measures resulting therefrom have been included in the approval of the project to the extent feasible.

B. In the event that any of the special findings required herein cannot be made and are not waived, approval may nevertheless be given to the proposed project if all of the following conditions can be satisfied with respect to each such special finding not made:

1. Practicable and feasible requirements or mitigation measures can be imposed upon the project, the implementation of which would allow such special finding to be made;

2. The applicant has agreed to be bound (through written agreement satisfactory to the City Attorney) by and to implement such requirements or mitigation measures, and has posted such security for compliance therewith as may be required by the City Manager; and

3. It is in the public interest and consistent with the policies, goals, standards and objectives of the Community Plan for the project to be approved with such requirements and mitigation measures.

EXHIBIT D
ASSIGNMENT AND ASSUMPTION
AGREEMENT

SEE ATTACHED

ORDINANCE No. 95-050

OCT 10 1995

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "this Agreement") is entered into this _____ day of _____, 19____, by and between _____ (herein "LANDOWNER") and _____ (herein "ASSIGNEE").

RECITALS

A. LANDOWNER has entered into a Development Agreement (herein "the Development Agreement") dated _____, with the City of Sacramento, pursuant to which LANDOWNER agreed to develop certain property more particularly described in the Development Agreement (herein "the Property") in the North Natomas Community Plan Area subject to certain conditions and obligations set forth in the Development Agreement.

B. LANDOWNER has assigned its interests under the Development Agreement to ASSIGNEE under a written agreement dated _____, as to that portion of the Property identified and incorporated herein by this reference (herein the "Assigned Parcel(s)").

C. ASSIGNEE desires to assume all of LANDOWNER's rights and obligations and other terms and conditions under the Development Agreement with respect to the Assigned Parcel(s).

AGREEMENTS

NOW, THEREFORE, LANDOWNER AND ASSIGNEE HEREBY AGREE AS FOLLOWS:

1. ASSIGNEE hereby assumes all of the burdens and obligations of LANDOWNER under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of LANDOWNER under the Development Agreement, and to be subject to all of the

Development Agreement

09/08/95
D1775.AGR

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terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both LANDOWNER and ASSIGNEE that, upon the execution of this Agreement, ASSIGNEE shall become substituted for LANDOWNER as the "LANDOWNER" under the Development Agreement with respect to the Assigned Parcel(s).

2. ASSIGNEE understands and agrees that this Agreement is subject to Section 4 of the Development Agreement. Section 4 reads as follows:

4. **Assignment.** LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided, however, that LANDOWNER shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, assignee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to CITY an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve LANDOWNER of the obligations expressly assumed only if: (a) LANDOWNER is not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNER has provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNER's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "D" and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment.

Any purchaser, assignee, or transferee shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred.

3. At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s).

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4. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

5. ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the Development Agreement, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i) LANDOWNER has furnished ASSIGNEE with a copy of the North Natomas Community Plan, the Comprehensive Drainage Plan, the North Natomas Finance Plan, the RD-1000 Agreement (where applicable), the Habitat Conservation Plan, and all other documents and materials containing or relating to terms and conditions of development in the NNCP area; (ii) ASSIGNEE has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other financial mechanisms and obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

By: _____
"ASSIGNEE"

EXHIBIT E

NORTH NATOMAS LAND ACQUISITION PROGRAM (NNLAP)

SEE ATTACHED

**NOTE: CHANGES ARE CONTEMPLATED IN THE NNLAP;
NOTHING IN THIS AGREEMENT SHOULD BE CONSTRUED
TO VEST ANY RIGHT IN LANDOWNER TO THE PROVISIONS
OF THE NNLAP AS THEY EXIST ON THE EFFECTIVE DATE; CITY HAS
RESERVED THE RIGHT TO AMEND THE NNLAP AND SAID PLAN,
AS AMENDED, SHALL APPLY TO THE PROPERTY**

ORDINANCE No. 95-050

OCT 10 1995

V. LAND ACQUISITION PROGRAM

INTRODUCTION

Development of the North Natomas area will require a significant amount of land for public uses including: open space, drainage system, roadways, interchanges, transit, parks, civic facilities, and buffers to other uses. Much of this land is provided through normal land dedication in the land development process. However, the quantity of land in North Natomas for public use is unusual due to the large area being planned for development and the amount of land required for mitigation of various development impacts.

The purpose of the Land Acquisition Program discussed in this section is twofold: 1) to insure that public use lands are available to the City to construct infrastructure and facilities on a timely basis as established by the City and 2) to maintain equity among landowners for land provided above and beyond standard dedications. The discussion that follows recognizes the difference between each purpose and describes how each purpose is satisfied by the North Natomas Land Acquisition Program (NNLAP).

The City requires that land for all critical facilities be dedicated or acquired as early in the process as possible to avoid land assembly problems at the time of construction and increased costs due to condemnation proceedings. Of critical importance is land included in the Master Storm Drainage Plan. The drainage master plan includes land needed for the Truxel Drain, El Centro Drain, San Juan Drain (within and outside of the North Natomas Community Plan Area), San Juan Pumping Plant (outside of the Community Plan Area), detention ponds, a drainage swale and transmission mains.

Property owners are concerned that they not be required to provide more than their fair share of land for public use and that they receive reasonable payment for the value of land provided in excess of their fair share. The fair-share is defined as the average amount of public land required per acre of developable land for the entire North Natomas area. Property owners providing in excess of this average would be exceeding their fair share. Those property owners without any developable land may receive special consideration in return for dedication.

To insure that all participating landowners are treated equitably in the amount of land that is provided for public use, the NNLAP will acquire land above the average amount of public land using revenue from the net land acquisition fee. The types of land included are described below. A landowner providing more land than the average allocation of public land would be given a credit (reimbursement) to be paid from fee revenue when available. Landowners providing less than the average amount of land will pay a net fee at building permit. The net fee per unit or acre for each development project will be based on the amount of acreage provided below the average.

The per unit or per acre fee will be self adjusting over time based on the increase in the three-year average of estimated land values. In addition, the fee will contain an

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administration factor of approximately 5% to pay for the City's time and expense in acquiring the land and monitoring the program plus a 5% contingency for the cost of acquiring land through condemnation proceedings.

PARTICIPANTS VERSUS NON-PARTICIPANTS

Property owners may elect to participate in the program through the development agreement, tentative map and master parcelization map process. Participation would be a condition of every development agreement or as a condition on a tentative map if a development agreement is not utilized. Property owners not developing their property would not be required to participate.

Those electing not to participate in the NNLAP would have land acquired by standard City procedures. Land would be acquired from non-participants through condemnation proceedings or purchase agreements whereby the non-participant would receive payment for the acquired land. To the extent that this value is above the estimated land value per acre, the Land Acquisition Fee contains a 5% contingency to cover this potential expense. If sufficient fee revenues are not available, the property owner whose development triggers the acquisition would advance the funds and be reimbursed from future fee revenues. The reimbursement would include interest earned at the prime rate.

Special consideration is necessary for property owners submitting development applications who previously had property acquired through condemnation or purchase agreements. The difference between the purchase price and the Public Land Acquisition Value (defined in the Land Acquisition Fee section) established for the current year would be determined and any credit for land acquisition would be reduced by the excess amount. Issues regarding land dedication and participation in the Land Acquisition Program would be resolved as part of the approval process.

PUBLIC LAND INCLUDED IN NNLAP

Lands included in the NNLAP are considered to be of general benefit to all developable land uses within North Natomas. As such, the cost of acquiring these lands is allocated to all developable land uses. Figure 22 shows the land uses, acres, and values for each of the land uses discussed below. This program excludes "normal" dedications such as neighborhood/community parks dedicated under Quimby or schools, local road right-of-way and landscaping setbacks dedicated under the Subdivision Map Act.

NNLAP also excludes public land of benefit to only specific projects such as the detention basins, pump stations and trunk line within a sub basin. This land will be purchased from the drainage fees applicable to each sub basin.

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OPEN SPACE AND BUFFERS

Open space and land buffers are required throughout the area along the I-5 and I-80 freeways, as habitat buffers along Fisherman's Lake, as a buffer to agricultural land north of Elkhorn Boulevard and west of the City limits north of Del Paso Road. The nature of these buffers and open space are considered beyond "normal" dedications of development setbacks.

DRAINAGE CANAL RIGHT-OF-WAY

Development of new drainage canals will require major dedications of land. This land dedication will serve the entire North Natomas area and is therefore included in this program. In addition to drainage canals within the Plan Area, a major swale and acreage for the San Juan drain and pumping station site outside of the Plan Area have been included in the program. No acreage for existing drainage canals owned by RD 1000 is included.

STREET OVERSIZING RIGHT-OF-WAY

The portion of streets oversized for regional traffic is included in the land dedication fee as a community-wide expense. To the extent that water and sewer trunks cannot be located under roadways, additional right-of-way for utility easements will be required. No estimate has been made for this acreage although it is anticipated to be insignificant.

LIGHT RAIL RIGHT-OF-WAY

Approximately 22.3 acres of right-of-way are required for the light rail alignment that is not included as part of the road right-of-way. An additional 20.5 acres is required for LRT stations and park and ride lots under the civic transit land use designation.

CIVIC LANDS

Civic uses include two fire stations, a library, a police substation, community centers, and other cultural and entertainment uses. Civic uses also includes civic utilities such as pump station sites, but does not include private utilities such as SMUD, PG&E, or Sacramento Cable which will be purchased by the private user via a negotiated purchase price.

NEIGHBORHOOD/COMMUNITY PARKS

Neighborhood/community park land is dedicated under the City's Quimby Act Ordinance of 5 acres per 1,000 population. Quimby Act dedication will continue to apply to

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neighborhood and community park land. Neighborhood and community park land has not been included in the Land Acquisition Program.

REGIONAL PARK

In addition, North Natomas includes approximately 181 acres of dedicated regional park and conjunctive civic uses. The remaining approximate 10 acres of the 200 acre park is defined as joint use with the high school and 7.1 acres of detention basin will be acquired with proceeds from the drainage fees. Acquisition costs of the regional park land will be spread to all of the developable property in North Natomas. The share of the land acquisition fee necessary to acquire the regional park will not be subject to the credit calculation described below, but will be collected in full from every project. The portion of the Land Acquisition Fee attributed to the regional park fee is estimated at \$3,460 per acre as shown in Figure 23.

GROSS LAND ACQUISITION FEE

The gross>NNLAP Fee is a function of the lands included in the>NNLAP, the value assigned to each type of land, and the amount of developable land uses. The types of land included in the Land Acquisition Program were discussed above. The calculation of the gross fee is discussed below.

A. ESTABLISHMENT OF THE PUBLIC LAND ACQUISITION VALUE

Each year, the Public Land Acquisition Value will establish the value of land to be acquired through the North Natomas Land Acquisition Program (>NNLAP). It will be established through the following steps.

Step 1 - Estimate of Land Value

At the beginning of each year an appraiser will provide the City of Sacramento an "estimate of land value" (not a complete narrative appraisal) as of November 1 of the preceding year for each North Natomas Community Plan land use designation with development entitlements. The value of land to be acquired would be based on the value per acre or square foot of the gross usable (developable) land area defined as the average per acre or square foot value of the usable land including street or roadway dedications assuming the North Natomas Community Plan (amended 1994) land use designation and that the land is readily developable with an approved tentative map. The value of the land will be defined as the fee simple value less estimated Mello-Roos bond debt, assessments and fees associated with land development. The land value established by the City for a calendar year would be based on an adjusted three-year average of the "estimate of land value."

The initial "estimate of value" would be based upon an appraiser's estimate of value for each land use designation for the North Natomas Community Plan in 1994 excluding the value of improvements assuming North Natomas property is ready for development and

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all entitlement restrictions have been removed. The value established would be based on each individual parcel likely to develop in the next several years, not a discounted cash flow of all developable property in North Natomas.

Step 2 - Three-Year Weighted Average of Estimated Land Value

Based on the estimate of value for each land use designation and the amount of acreage in each developable land use designation, the weighted average of estimated land value for the current year would be calculated. This value would be averaged with the two prior year's average of estimated land values to arrive at the three-year weighted average land value. This amount shall be named the Public Land Acquisition Value and applied as the credit or reimbursement for land acquisition.

Step 3 - Adjustments to PLAV to Establish Fee

The PLAV would be adjusted for contingencies and administration to establish the land value of acquisitions for a calendar year for purposes of calculating the fee. Adjustment factors are:

- 5% contingency for land acquired through condemnation,
- 5% allowance for administration and the cost of the annual land value estimate update.

B. CALCULATION OF GROSS LAND ACQUISITION FEE

The gross land acquisition fee charged to development projects would be based on the adjusted Public Land Acquisition Value established for the calendar year multiplied by all of the land subject to acquisition by the NNLAP divided by the total developable acres within the North Natomas Community Financing Plan Area. The fee would be adjusted annually using the revised Public Land Acquisition Value. The acres of land acquired by the NNLAP and total developable acres used to calculate the fee would not change from year to year unless new land became subject to acquisition and/or the authorized developable acres changes.

EXAMPLE OF NORTH NATOMAS LAND ACQUISITION PROGRAM

The example below shows how the gross Land Acquisition Fee will be calculated.

Assumptions: 4,121 Developable Acres
687 acres of NNLAP land to be acquired

<u>Land Categories</u>	<u>1994 Estimated Value</u>
2,564 residential acres	\$56,000 per acre
1,207 office/retail acres	\$45,000 per acre
350 industrial acres	\$33,000 per acre

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Calculations

Total Weighted Value = (2,564 X \$56,000) + (1,207 X \$45,000) + (350 X \$33,000) = \$209.4 million
 acres acres acres

Public Land Acquisition Value = \$209,400,000 / 4,121 = \$50,800 per acre
 Per Acre acres

plus 5% contingency
plus 5% administration and annual land value update.
10% total adjustment

Adjusted Public Land Acquisition Value = \$50,800 X 1.10 = \$55,900 per acre.
 Per Acre

1994 Fee Excluding Regional Park

1994 Gross Fee = \$55,900 X 687 acres / 4,121 acres = \$9,320 per developable acre.
 Per Acre (acquired) (developable)

1994 Fee Including Regional Park

1994 Gross Fee = \$9,320 Base + \$3,460 Reg. Park = \$12,780 per developable acre.

If in 1995 the weighted average of estimated land values equal \$60,000 per acre, then:

Adjusted Average Value Per Acre = [\$50,800 + \$60,000] / 2 x 1.10 = \$60,940 per acre
 Per Acre

1995 Fee Excluding Regional Park

1994 Gross Fee = \$60,940 X 687 acres / 4,121 acres = \$10,160 per developable acre.
 Per Acre (acquired) (developable)

1995 Fee Including Regional Park

1995 Gross Fee = \$10,160 Base + \$3,600 Reg. Park = \$13,760 per developable acre.

COST ALLOCATION

Figure 23 shows the preliminary calculations used to arrive at the estimated land acquisition fee. \$50,000 per acre was assumed in most cases for purposes of calculating the potential initial fee although \$50,800 reflects the average value, excluding the estimated

value of acquiring the regional park. Public Lands benefiting all land uses were divided among all developable acres in the Financing Plan Area. This resulted in a total fee of approximately \$12,780 per acre of developable land. Regional park land accounted for \$3,460 of the fee and the remainder of the land acquisitions was \$9,320.

CALCULATION OF NET FEE OR CREDIT FOR A PROJECT

To insure that all participating landowners are treated equitably in the amount of land that is provided for public use, the NNLAP will acquire land above the average amount of public land using revenue from the net land acquisition fee. The types of land included were previously discussed. A landowner providing more land than the average allocation of public land would be given a credit (reimbursement) to be paid from fee revenue when available. Landowners providing less than the average amount of land will pay a net fee at building permit. The net fee per unit or acre for each development project will be based on the amount of acreage provided below the average. The proposed procedures for calculation of the net fee or credit is as follows:

1. When a Master Parcel Map or tentative map is filed, determine amount of land being dedicated by the land owner that is subject to the land acquisition program. In addition, the amount of off-site land to be acquired by the developer and value would be estimated. The value of dedications is obtained by multiplying the total dedicated acreage by the current North Natomas Public Land Acquisition Value.
2. Determine the total gross fees applicable to the proposed development by land use. Deduct the amount of the fee set aside for regional park acquisition as this park of the fee will be collected in full.
3. Calculate the net fee for the project. The net fee or credit (reimbursement) would be based on the difference between the gross fee revenue from the developing land uses in the recorded final map and the total value of the NNLAP acquisitions. Any estimated fee or credit (reimbursement) would be assigned to the land, not the property owner.
4. If a net fee results, this net amount would be allocated to the developable acreage and paid at the issuance of a building permit. This net fee amount would be proportionately assigned to each developable acre and the per acre amount assigned to residential lots based on density. The net fee per acre or unit will be adjusted annually by the increase in the Public Land Acquisition Value.
5. If a net credit results (the dedicated and acquired land has a higher cost than the applicable gross fees based on the established Public Land Acquisition Value), then the property would be credited (or reimbursed) the difference in value. This net amount would be credited to the property with recordation of the final map. Credits against future acquisitions or payment of the credit will be based on the Public Land Acquisition Value for the year in which the credit is estimated and

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adjusted annually for changes in the Public Land Acquisition Value. The City will determine when a reimbursement can be paid based on the availability of fee funds and future land acquisition needs. Reimbursements would be on a first-come, first-served basis.

The example below shows how the net fee would be calculated.

Assumptions: 10 developable acre project - 4 acres of retail and
6 acres of low density residential (7 du/acre) final map
with 1.5 acres of>NNLAP acquisitions

1994 land values equal \$50,800 and the fee equals \$9,320 per acre.

Fee Revenue (excluding Regional Park)	\$93,200 (10 acres x \$9,320)
Less Total Value of All Acquired Lands	\$87,200 (1.5 acres x \$50,800)
Net Fee Amount Excluding Regional Park Fee	\$17,000
Regional Park Portion of the Fee	\$34,600 (10 acres x \$3,460)
Total Fee Revenue Per Developable Acre	\$51,600
<i>Net Fee per Developable Acre</i>	<i>\$5,160</i>
<i>Net Fee per Residential Unit</i>	<i>\$737</i>

If the property owner develops all of the land in the final map in the year of the acquisition, \$51,600 would be due. If the property owner develops the project over time, \$5,160 fee per acre and \$737 fee per unit would be due in the first year and the \$5,160 fee per acre and \$737 fee per unit adjusted annually would be due thereafter.

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Figure 22
North Natomas Financing Plan
Land Acquisition Program
Estimated Land Acquisition Cost

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Land Acquisition Category	Acreage	Acquisition Cost / Acre	Total Acquisition Cost
		(1)	
Lands Required within North Natomas			
Open Space/Buffer	302.5	\$50,000	\$15,125,000
Canal Right-of-Way (2)	139.1	\$50,000	\$6,955,000
RT Right-of-Way (3)	42.8	\$50,000	\$2,140,000
Freeways & Street Oversizing Right-of-Way	90.7	\$50,000	\$4,535,000
Civic Lands (4)	37.5	\$50,000	\$1,875,000
Detention Basins (5)	0.0	\$50,000	\$0
Interchanges (6)	20.0	\$79,000	\$1,580,000
Subtotal On-Site Land	632.6		\$32,210,000
Regional Park (7)	181.0	\$75,000	\$13,575,000
200-Acre Conjunctive Use Site			
Off-Site Land Acquisition			
Storm Drainage Canals & Pump Station	44.0	\$50,000	\$2,200,000
Freeway right-of-way	10.0	\$50,000	\$500,000
Subtotal Off-Site Land	54.0		\$2,700,000
LAND ACQUISITION FEE COST BASIS	867.6		\$48,485,000

'land_value'

- (1) Reflects uniform cost basis for all acquisitions regardless of the use of the site. The estimated per acre cost reflects an agreed to amount across all land uses which does not necessarily reflect each individual parcel's fair market value.
- (2) Includes acreage for new drainage canals, pump stations and the swale on-site and off-site.
Acreage provided by Borcalli & Associates in a memo. from the City dated November 19, 1993.
- (3) LRT right-of-way includes rail line right-of-way plus transit stations and park and rides.
- (4) Civic uses include fire stations, 3 community centers, library, public utilities and other cultural and entertainment uses. The acreage excludes ten acres for the community center and police substation included in the regional park site.
- (5) All of the detention basins are included in the sub basin drainage cost and will be paid with revenues from the storm drainage fee.
- (6) Cost based on estimate provided by Dokken Engineering. Ultimately, all land within the Project Area will be acquired at the Public Land Acquisition Value. Land outside of the Project will be acquired at fair market value.
- (7) The regional park site contains approximately 200 acres with conjunctive uses. The total land dedication acreage includes the regional park, a community center, and a police substation. The 200-acre site also includes 10.0 acres of conjunctive use with the high school, but this acreage will be owned by and dedicated to the School District. Also, 7.1 acres of a detention basin are included within the regional park site, but will be acquired from funds collected from the storm drainage fee.
The acquisition cost per acre shown above is preliminary and subject to change based on discussions between the City and property owners.

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Figure 23
North Natomas Financing Plan
Estimated Land Acquisition Fee

Land Acquisition	Estimated Acq. Cost	Plus Admin. 5%	Plus Land Value Cont'gy 5%	Total Cost Basis for Fee	Allocated Cost (1)		
					Non-Res. per acre	Residential Avg. SF per unit	MF
On-Site Acquisition	\$32,210,000	\$1,610,500	\$1,610,500	\$35,431,000	\$8,597	\$981	\$323
Off-Site Acquisition	\$2,700,000	\$135,000	\$135,000	\$2,970,000	\$721	\$82	\$27
Subtotal	\$34,910,000	\$1,745,500	\$1,745,500	\$38,401,000	\$9,318	\$1,063	\$350
Regional Park Acquisition	\$13,575,000	\$678,750	\$0	\$14,253,750	\$3,459	\$395	\$130
Totals	\$48,485,000	\$2,424,250	\$1,745,500	\$52,654,750	\$12,777	\$1,457	\$480

"land value"

(1) All developable land uses will be subject to this land acquisition fee. Fee for residential is estimated at average per unit, but will be paid per acre.

Assumptions:	
Total Developable Acres	2,144.0
Single Family Acres (Low & Medium Density)	420.3
Multi-Family Acres (High Density)	2,564.3
Total Residential	1,556.8
Non-Residential (commercial, office, & industrial)	4,121.1
Total Developable Acres	
Total Developable Units	
Single Family Units (Low & Medium Density)	18,796
Multi-Family Units (High Density)	11,181
Total Residential	29,977
Average SF Units/Acre	8.77
Average MF Units/Acre	26.60

Prepared by Economic and Planning Systems, Inc.

LANDED 6/19/94

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EXHIBIT F

PROTEST WAIVER PROVISIONS

SEE ATTACHED

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Exhibit F

Protest Waiver Provisions Agreed to by LANDOWNER

LANDOWNER understands and agrees that financing of the Infrastructure, public improvements and facilities (including the land covered by the>NNLAP) and other programs required under the NNCP will be accomplished through a variety of financing mechanisms, including but not limited to a combination of special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts) and developer fees, all of which mechanisms are designed to spread the cost of those items in accordance with benefit and other methodologies. LANDOWNER further understands and agrees that an important component of this Agreement is LANDOWNER's advance consent to the formation of, or implementation of any such district or imposition of any such fee, and LANDOWNER's agreement not to protest or contest such formation, implementation or fee imposition.

Accordingly, LANDOWNER agrees for itself, its constituents, successors and assigns that it fully, finally and forever waives and relinquishes any right it may have to protest or contest the formation or implementation of any special assessment or tax district or any similar form of financing mechanism, or any combination thereof, together with any rights it may have to contest the imposition of any developer fee established or imposed pursuant to the North Natomas Finance Plan. Nothing in this Agreement, however, shall prevent LANDOWNER from presenting CITY any information or opinions regarding any financing mechanism CITY may from time to time consider establishing or imposing, which information or opinions relate to the dollar amount of any fees, assessments, taxes or other charges imposed by CITY pursuant to the North Natomas Finance Plan, or which information or opinions relate to the question of consistency of the financing mechanism with the North Natomas Finance Plan. If a financing mechanism is proposed for adoption by CITY, which mechanism both: (i) directly and significantly conflicts with the language and the intent of the North Natomas Finance Plan, as amended on _____, 1995; and (ii) directly and significantly conflicts with the North Natomas Nexus Study adopted by the City Council in connection with establishment of development fees for the North Natomas Finance Plan Area, LANDOWNER shall have the right to protest only the actual amount of the directly and significantly conflicting proposed fee, charge, special tax, or assessment proposed to be levied, charged, assessed or taxed against the Property by virtue of the proposed financing mechanism. Provided, however, that LANDOWNER's said right to protest, together with any right to object, shall be waived unless LANDOWNER's protest of objection is made at or before the time of the public hearing wherein the proposed financing mechanism, together with the fee, charge, special tax or assessment is established by the City Council. LANDOWNER's right to judicial challenge of any such mechanism, and the fees, charges, assessments or special taxes imposed or to be imposed in connection therewith, shall be limited to review of the decision of the City Council establishing the said mechanism and the said fees, charges, assessments or special taxes; LANDOWNER shall not have the right, in connection with any land use entitlement proceeding with respect to the Property, to judicially challenge the financing mechanism or the fees, charges, assessments or special taxes as applied to the Property, and waives any statutory or common law right to pay such fees, charges, assessment or special

taxes under protest. For purposes of this Agreement, "fees, charges, assessments or special taxes" shall include any monetary exaction or payment required to be paid by LANDOWNER by virtue of or relating to development of the Property.

Without limiting the generality of the foregoing, LANDOWNER for itself, its constituents, successors and assignees specifically, as to the Property, agrees to the following which are adopted by the City Council pursuant to the North Natomas Finance Plan:

(1) Waives, and hereby grants advance consent to the formation and implementation of any and all special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), fee districts or other financing mechanisms of a similar nature recommended or established by CITY for the purpose of financing Infrastructure, public improvements and facilities (including land transfers as set forth in the NNLAP).

Without limiting the generality of the foregoing, LANDOWNER specifically waives: (i) the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 of the Streets and Highways Code, beginning at Section 2800), together with associated provisions of the California Constitution; (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism; and (iii) the provisions of any procedure embodied in the Sacramento City Code designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism.

(2) Waives, and hereby grants advance consent to the formation and implementation of any and all special fees, exactions, development fees, assessments, taxes or other charges established by CITY for the purpose of financing Infrastructure, public improvements and facilities (including land transfers as set forth in the NNLAP). Without limiting the generality of the foregoing, LANDOWNER specifically waives: (i) to the extent applicable, those statutory and constitutional provisions specified in paragraph (1) above; and (ii) the provisions of Government Code Sections 66000, et seq., or any other provision of law providing a procedure for contest or protest of establishment or imposition of special fees, exactions, development fees, assessments, taxes or other charges of a similar nature.

(3) Agrees to: (i) affirmatively petition CITY, where applicable, for the formation of all special districts and other financing mechanisms that have been or will be in the future selected or recommended by CITY in order to implement the North Natomas Finance Plan; (ii) execute an irrevocable proxy or proxies when necessary (such as in the formation of, or imposition of taxes relative to, a Mello-Roos Community Facilities District) authorizing a representative designated by CITY, who will vote in favor of establishing the specific financing mechanism in question; and (iii) execute immediately upon presentation any document which is required or convenient for the formation of the district or facilitation of the particular financing mechanism.

(52)

LANDOWNER agrees and specifically represents to CITY that it is fully aware of all of its legal rights relative to the waivers, advance consents and other agreements set forth herein, having been fully advised by its own independent attorneys. Having such knowledge and understanding of its rights, LANDOWNER has nevertheless voluntarily entered into the Agreement, of which this Exhibit is a material part. LANDOWNER is aware that CITY is relying on the representations contained in this Exhibit in entering into the Agreement.

ORDINANCE NO. 95-050
Development Agreement

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EXHIBIT G
IRREVOCABLE OFFER OF DEDICATION
FORM

SEE ATTACHED

ORDINANCE No. 95-050

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EXHIBIT G

IRREVOCABLE OFFER OF DEDICATION

BECAUSE LANDOWNER WILL RECORD A FINAL MASTER PARCEL MAP,
DEDICATIONS WILL OCCUR BY THE RECORDATION OF THE FINAL MAP.

95-050

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EXHIBIT H
LAND AND INFRASTRUCTURE
EXHIBIT

SEE ATTACHED

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EXHIBIT "H" MAP AND CATEGORICAL LISTING OF LAND AND INFRASTRUCTURE

NOTES:

PROPOSED LIGHT RAIL
ACREAGE 1.517

EXISTING PUBLIC ROAD
DEDICATION ACREAGE 13.247

PUBLIC UTILITY EASEMENT
RIGHT OF WAY

P.U.E.
R.O.W.

DEL PASO ROAD

TRUXEL ROAD

ORDINANCE No.

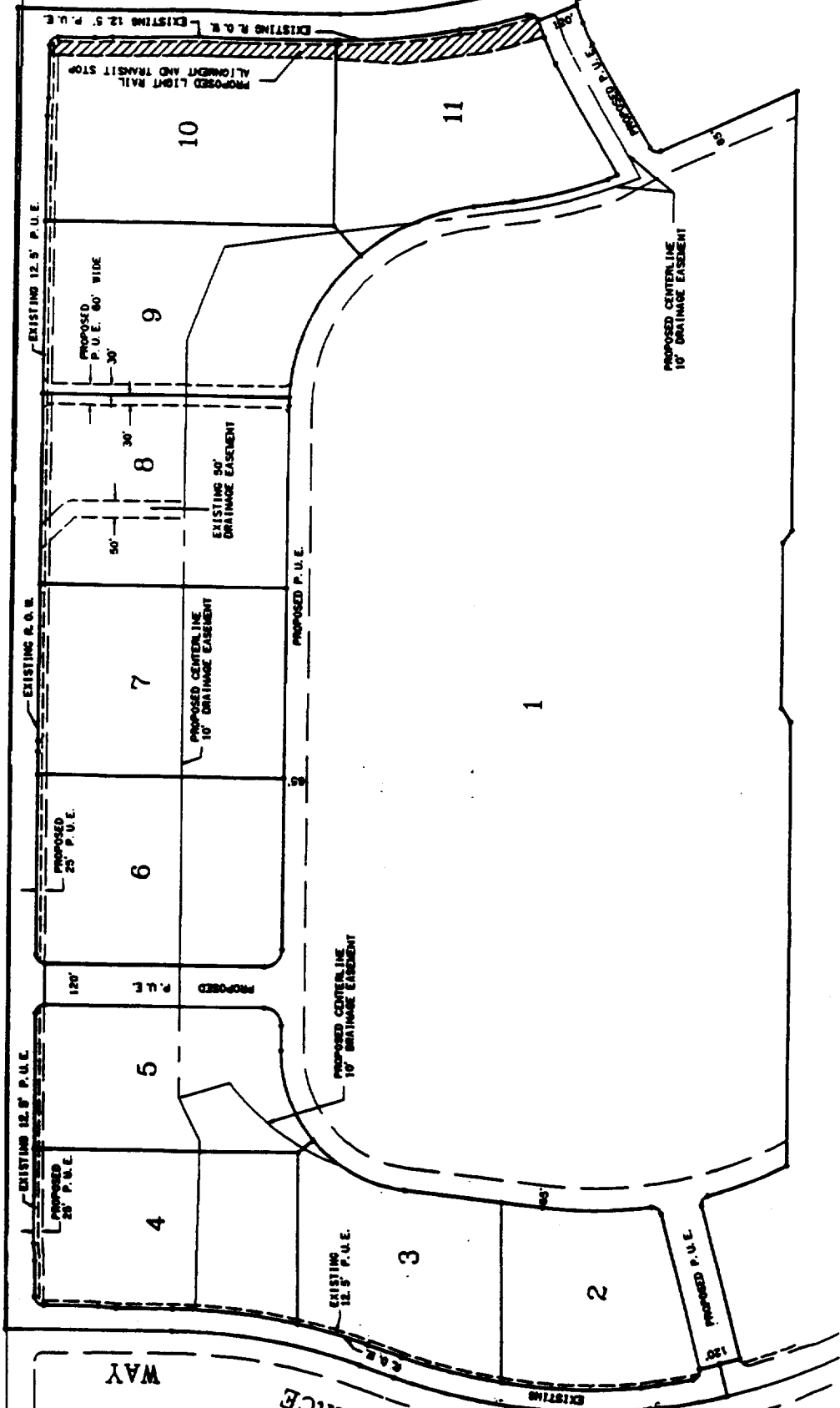
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LIGHT RAIL ALIGNMENT NEAR STADIUM / ARENA

ISSUE

At the August 29th hearing regarding the various Entitlements for the Oates' property (surrounding the north side of the stadium/arena complex), several councilmembers raised three questions regarding transit service to the stadium/arena complex:

- Is the light rail alignment along Truxel Road the best alternative, or should the alignment be closer to the stadium/arena?
- If a Truxel Road alignment is best, how can the pathway between the station and the stadium/arena be made more suitable for pedestrians and/or shuttle service?
- How can bus service to the stadium/arena be facilitated as a interim measure to light rail service?

The following is a response to these questions based upon additional engineering analysis, discussions with staff members at Regional Transit, and discussions with the property owners along the proposed light rail alignment.

HISTORY/BACKGROUND

The established alignment of light rail in the North Natomas Community Plan is immediately west of Truxel Road between Interstate-80 and Del Paso Road. Three stations are proposed along this segment of Truxel, including one adjacent to the stadium/arena complex. The location of the light rail stations and the alignment were established in the NNCP to maximize ridership and operational efficiencies.

In August 1995, City staff met with effected North Natomas property owners and Regional Transit (RT) staff to solidify the alignment of light rail. The consensus was to retain the proposed alignment in the NNCP. On September 25th, the Regional Transit Board conditionally abandoned a light rail right-of-way along Loop Road contingent upon acquiring additional right of way along the Truxel alignment.

ALTERNATIVES

Public works staff evaluated three alignments of light rail between Arena Boulevard and Del Paso Road (Figure 1):

- *Truxel Road (NNCP) Alignment (Figure 2)*
The adopted alignment of light rail in the North Natomas Community Plan is immediately west of Truxel Road between I-80 and Del Paso Road. The stadium/arena station would be about 2000 feet east of the complex.
- *Loop Road Alignment (Figure 3)*
This alignment would jog to the west from the NNCP alignment north of Arena Boulevard, along the west side of the Loop Road that circles the stadium/arena complex, and rejoin the NNCP alignment after crossing Del Paso Road. The station would be about 1500 feet from the complex.
- *Stadium/Arena Alignment (Figure 4)*
This alignment would bring light rail through the sports complex parking lot to a station immediately adjacent to the stadium and arena.

ANALYSIS OF ALTERNATIVES

Ridership

Light rail ridership was estimated for each of the three alignment options based on the land uses within a 1/4 mile radius of the station locations. These land uses include the stadium/arena complex to the west and primary office uses east of Truxel Road.

- *Truxel Road (NNCP) Alignment*
A station is proposed on Truxel Road, south of Del Paso Road near the entrance to the Stadium and Arena. This station would provide excellent access to areas zoned as employment centers and high density residential both west and east of Truxel Road. A signal on Truxel Road immediately south of the station will facilitate pedestrian movements across Truxel Road. About half the area within a 1/4 mile radius of this station is zoned Employment Center (EC) or High Density (HD) residential. The other half is the arena/stadium complex and parking lot. This station is a little less than 2000 feet from the stadium and arena buildings; about a 7 - 8 minute walk. As discussed later in this report, a pedestrian and people mover/shuttle bus corridor could be provided between the stadium/arena and this light rail station. Average daily ridership for a station at this location is estimated at 4300.

- *Loop Road Alignment*

A station along this alignment would be located along the "Ring Road". Under this alignment, only about 1/4 of the area within a 1/4 mile radius is zoned EC or HD residential, while about 3/4 of the area would be dedicated to arena/stadium parking. This location is about 1500 feet from the stadium and arena; about a 6 minute walk. Average daily ridership for a station at this location is estimated at 4050.

- *Stadium/Arena Alignment*

The station along this alignment would be located about 500 feet from the stadium and arena; about a 2 minute walk. Average daily ridership for a station at this location is estimated at 3700.

Difference in Ridership

A 4-car light rail train (which is the maximum size) can carry about 500 riders, and Regional Transit expects to operate trains every 7.5 minutes along the North Natomas alignment. Assuming that stadium/arena patrons arrive up to one hour preceding an event, then light rail can carry a maximum of 4,000 persons (8,000 trips) per event. The above ridership estimates assume this level of usage for all three alternatives because:

- The longest walk under any alternative is 8 minutes.
- The estimated ridership levels equate to about 25% of the arena capacity and less than 10% of the stadium capacity.
- Stadium/arena patrons who will walk up to 6 minutes to their car will probably also walk up to 8 minutes to a light rail station on Truxel Road.
- A pedestrian and/or shuttle bus corridor could be provided between the stadium/arena and the Truxel or Loop Road light rail stations as shown on the attached map.

The Truxel Alignment ridership estimates are highest because the alignment maximizes the accessibility to the employment and residential uses within 1/4 mile of the station.

Light Rail and Traffic Operations

- *Truxel Road (NNCP) Alignment*

This alignment would result in the best traffic operations. Conflicts between light rail and vehicular traffic would be minimized with this alignment since Truxel Road is a major arterial and has a limited number of access points.

- *Loop Road Alignment*
The Loop Road provides local access to land uses surrounding the stadium/arena complex and has less access control than Truxel Road. Because of the greater number of intersections and driveways on Stadium Loop Road, the number of conflicts between light rail and vehicular traffic will be greater with this alignment than the Truxel Road alignment.
- *Stadium/Arena Alignment*
An exclusive right of way through the parking lot would be required to avoid significant conflicts between automobiles and light rail trains. An exclusive right of way would likely result in an elevated structure which is cost prohibitive.

Property Ownership/Costs

- *Truxel Road (NNCP) Alignment*
Disruption to property is minimized with this alignment since the light rail line would run adjacent to Truxel Boulevard from about I-80 to Del Paso Road.
- *Loop Road Alignment*
This alignment would result in more "split" parcels than the Truxel Alignment because it does not follow an existing right of way. The value and useability of the parcel on the northwest corner of Truxel Road/Stadium Boulevard would likely decline under this alternative because light rail would split the parcel without providing a station on that property.
- *Stadium/Arena Alignment*
The construction cost would be highest under this alignment. According to Regional Transit, an alignment through the stadium/arena parking lot would require the light rail tracks be elevated over the parking lot.

Comparable Examples

- The Oakland Coliseum BART station is about a 1/2 mile walk from the Oakland Coliseum box office, with about 1/4 mile of the walk on a raised pedestrian structure. Ridership during sold out games is about 6,700 (which is about 14% of the paid attendance). BART officials do not think ridership would be higher if the BART station were closer than 1/2 mile. BART, Leo Raschal, 510-464-6169, pers. comm. 9-19-95
- Muni provides bus service to 3COM park (Candlestick). Data from the last NFL football game shows 6,000 fans took the bus to the park. Most of the riders consist of locals who take the bus from residential areas to the park. No special priority bus lanes are provided

in or out of the park. MUNI buses are provided with priority parking close to the park. San Francisco Municipal Railway ("Muni"), Angelo Figone, 415-923-6103, Art Curtis, Chief Inspector, 415-554-9286.

BUS/PEDESTRIAN ENHANCEMENTS

The preferred alignment along Truxel Road can be enhanced with the addition of a pedestrian and bus corridor between the light rail station and the stadium/arena complex. The attached diagram shows an approximate size and alignment for this corridor. The 40 foot wide corridor would include a 16 foot sidewalk and a 24 foot roadway (12 foot lane in each direction) and would be separated from traffic within the parking lots. The roadway could be used to "shuttle" light rail patrons between the stadium/arena and the light rail station.

Prior to the extension of light rail into North Natomas, the pedestrian/bus corridor could be used for express bus service from throughout the region. The corridor would provide a time advantage for buses, when compared to automobiles, by avoiding the congested parking areas.

CONCLUSIONS

City staff and Regional Transit staff recommend the Truxel alignment because it would maximize ridership while minimizing traffic conflicts.

The Stadium Loop Road Alignment is not recommended because it would only move the station 500 feet closer to the stadium/arena, and it would result in more traffic conflicts than the Truxel Road Alignment with less ridership.

The Stadium/Arena Alignment is not recommended because of the substantial cost that would be required to construct a grade separation between light rail tracks and the parking lot. Also, this alternative would have significantly lower ridership because about 95 percent of the land area within the 1/4 mile influence area of this station would be the stadium and arena parking lot.

ORDINANCE No. 95-050

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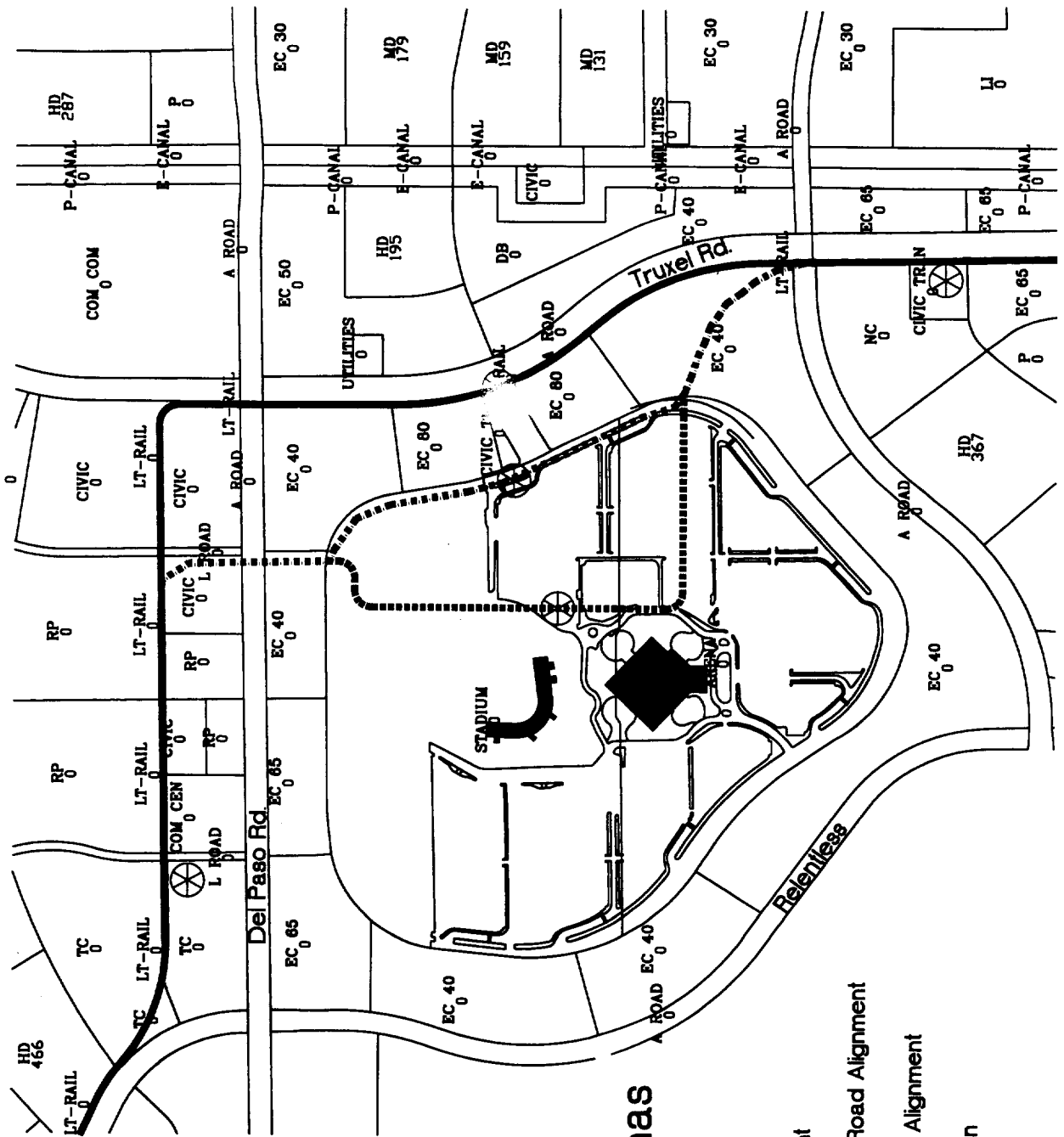


Figure 1
North Natomas

- Legend:
- NNC Alignment
 - Stadium Loop Road Alignment
 - Stadium/Arena Alignment
 - ⊗ Light Rail Station



ORDINANCE No. 95-050

OCT 10 1995

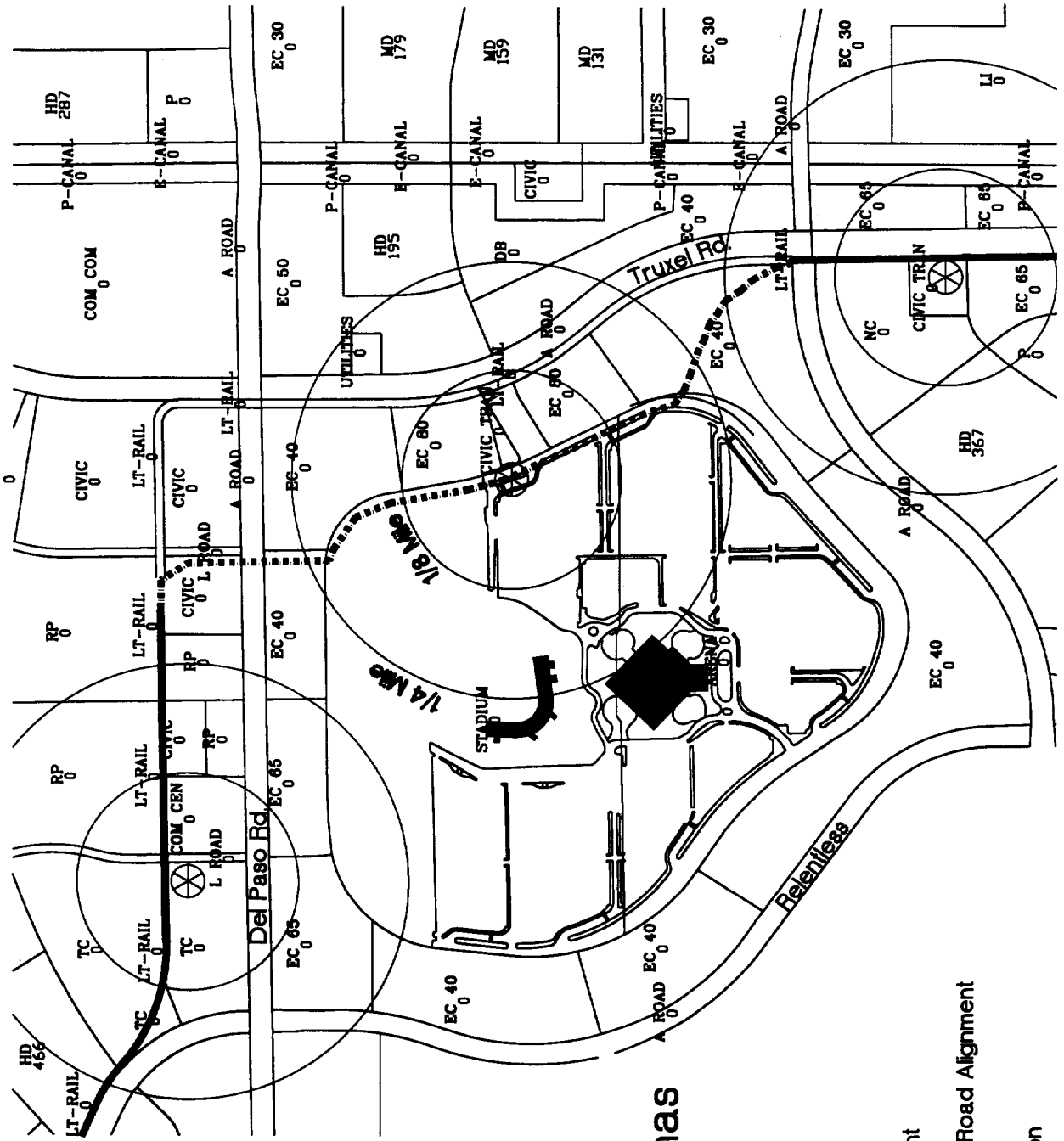


Figure 3
North Natomas
Loop Road
Alignment

Legend:

- NNCP Alignment
- - - Stadium Loop Road Alignment
- ⊗ Light Rail Station

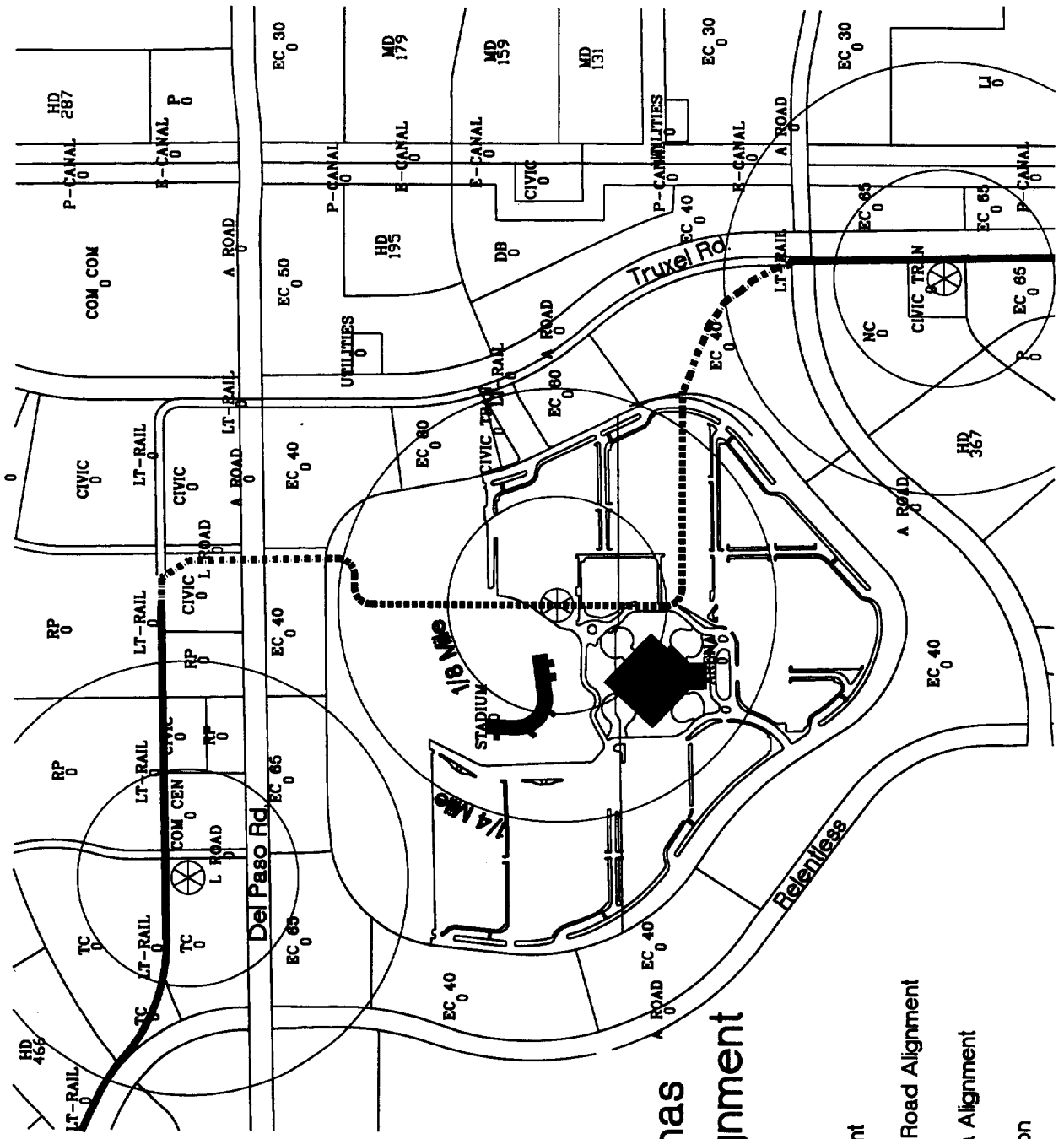


Figure 4
North Natomas
Stadium Alignment

- Legend:
- NNCP Alignment
 - Stadium Loop Road Alignment
 - Stadium/Arena Alignment
 - ⊗ Light Rail Station

POSSIBLE LOCATION OF THE EASEMENT LINKING
THE STATION AND THE STADIUM

