



APPROVED

OCT 2 2001

2.8

DEPARTMENT OF  
PARKS AND RECREATION

DONALD W. MURPHY  
DIRECTOR

CITY OF SACRAMENTO  
CALIFORNIA

APPROVED

OCT 2 2001

OFFICE OF THE

September 20, 2001

1231 I STREET, #400  
SACRAMENTO, CA  
95814-2997

(916) 264-5200  
FAX 264-7346

City Council  
Sacramento, California

Honorable Members in Session:

AG 2001-168  
As Amended

**SUBJECT: PARK 9-C (BANFIELD PARK) (PN: LS96)**

**LOCATION AND COUNCIL DISTRICT:** North of Clubhouse Drive and West of Natomas Boulevard, Council District 1.

**RECOMMENDATION:**

**This report recommends that City Council, by resolution:**

- Approve the turn-key park development agreement for Park 9-C;
- Approve the construction bid by Ad Land Landscape Development in the amount of \$496,850.00;
- Approve the park master plan for Park 9-C (Exhibit A);
- Approve the name assignment for Park 9-C to "Banfield Park;" and
- Approve the Negative Declaration and the adoption of the Mitigation Reporting Plan (Exhibit A);

**CONTACT PERSON:** Christie Benavides, Administrative Analyst II, 264-1955

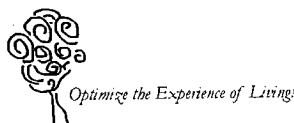
**FOR COUNCIL MEETING OF:** October 2, 2001

**SUMMARY:**

Park 9-C is a 5-acre neighborhood park in North Natomas. Phase One of the park master plan includes a tot lot, picnic area, tennis courts, landscaping and walkways.

**COMMITTEE/COMMISSION ACTION:**

The Park and Recreation Citizen's Advisory Committee approved the name assignment of "Banfield Park" for Park 9-C at their August 2, 2001 meeting. CAC also approved the park master plan for



City Council  
Park 9-C (PN: LS96)  
October 2, 2001

Park 9-C at their April 6, 2000 meeting. The Natomas Park and Recreation Advisory Committee also approved the park name of "Banfield Park" for Park 9-C on June 29, 2001.

### **BACKGROUND INFORMATION:**

Park 9-C is a turn-key park project. The developer will fund the development of the park and will turn the park over to the City after park construction is completed. The anticipated completion date is December 2001. The bidding process for construction of Park 9-C is described below:

- This project was authorized in the 1998/1999 Capital Improvement Program.
- This project was advertised and bids were received on July 25, 2001 and are summarized below:

<b>Bidder</b>	<b>Base Bid</b>	<b>SBE \$</b>	<b>SBE %</b>	<b>EBE \$</b>	<b>EBE %</b>	<b>TOTAL %</b>
Ad Land Landscape Development	\$ 496,850.00	\$ 332,270	66.86 %	\$ 0	0.00 %	66.86 %
Procida Landscape	\$ 554,682.19	\$ 0	0.00 %	\$ 0	0.00 %	0.00 %

- The engineer's estimated construction cost was \$497,631.00.
- Approval of the plans and specifications and award to Ad Land Landscape Development is recommended.

### **FINANCIAL CONSIDERATIONS:**

There are no financial considerations with this report. However, at the point when the City of Sacramento is responsible for maintaining this park (approximately December 2001), there will be ongoing annual costs for staffing, maintenance, equipment, fleet rental, chemicals and supplies totaling approximately \$27,500 per year.

### **ENVIRONMENTAL CONSIDERATIONS:**

The Environmental Services Manager has determined that Park 9-C, as proposed, will not have a significant impact to the environment; therefore, a Negative Declaration has been prepared. In compliance with Section 15070(B)1 of the California Environmental Quality Act (CEQA) guidelines, the City has incorporated mandatory mitigation measures into the project plans to avoid identified impacts or to mitigate such impacts to a point where clearly no significant impacts will occur. These

City Council  
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October 2, 2001

mitigation measures are included in Exhibit A (Mitigation Reporting Plan) and address impacts to Air, Biological, Hazards, and Cultural Resources.

The Negative Declaration was distributed through the State Clearinghouse (SCH# 2001042128) and available for Public Review during the period of April 27, 2001 to May 28, 2001. Staff received a written comment from the State Reclamation Board. This comment related to required permitting and is not considered to substantially revise the document per CEQA Section 15074.1 and 15073.5; therefore, re-circulation of the document is not necessary. Therefore, Staff recommends that the City Council ratify the Negative Declaration and approve and adopt the Mitigation Reporting Plan.

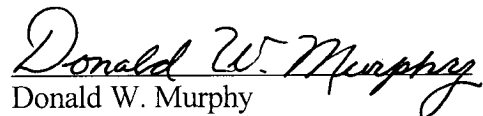
**POLICY CONSIDERATIONS:**

Award of this contract is consistent with Title 3 of the Sacramento City Code. Additionally, it meets City Council's goal to expand park and recreation opportunities.

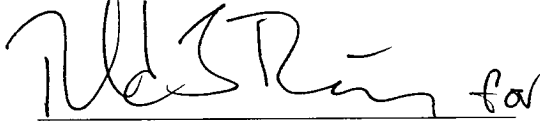
**ESBD CONSIDERATIONS:**

The selection of landscape architecture consultants and contractors by the developer for this project will follow City established guidelines for inclusion of ESBD firms.

Approved:

  
Donald W. Murphy  
Director

RECOMMENDATION APPROVED:

  
ROBERT P. THOMAS  
City Manager

- Exhibit A: Park Master Plan
- Exhibit B: Site Map
- Exhibit C: Turn-Key Park Development Agreement
- Exhibit D: Negative Declaration and Mitigation Reporting Plan

**AMENDED  
RESOLUTION NO.**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF: \_\_\_\_\_

**PARK 9-C PARK (BANFIELD PARK) (PN: LS96)**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:**

**The City Council hereby:**

- 1. Approves the turn-key park development agreement for Park 9-C;
- 2. Approves the construction bid by Ad Land Landscape Development in the amount of \$496,850.00; and
- 3. Approves the park master plan for Park 9-C.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

*Amended*  
**RESOLUTION NO.**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF: \_\_\_\_\_

**PARK 9-C PARK (BANFIELD PARK) (PN: LS96)**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:**

**The City Council hereby:**

1. Approves the turn-key park development agreement for Park 9-C;
2. Approves the construction bid by Ad Land Landscape Development in the amount of \$496,850.00;
3. Approves the park master plan for Park 9-C; and
4. Approves the name assignment for Park 9-C to "Banfield Park."

\_\_\_\_\_  
MAYOR

ATTEST:

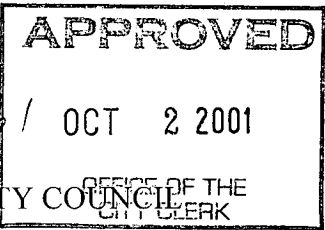
\_\_\_\_\_  
CITY CLERK

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

E



**RESOLUTION NO.** 2001-661 OCT 2 2001

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF: \_\_\_\_\_

**A RESOLUTION RATIFYING THE NEGATIVE DECLARATION AND ADOPTING THE MITIGATION REPORTING PLAN FOR PARK 9-C (CIP PN:LS96)**

**WHEREAS**, the City of Sacramento has conducted an Initial Study to determine if the Project may have a significant effect on the environment; and

**WHEREAS**, the Initial Study concluded that there is no substantial evidence that the Project, or any of its aspects, may cause a significant effect on the environment and, therefore, a Negative Declaration is appropriate; and

**WHEREAS**, A Mitigation Reporting Plan has been prepared which is designed to ensure compliance with the mitigation measures incorporated into the project Negative Declaration; and

**WHEREAS**, the City of Sacramento has circulated the Negative Declaration for public review in accordance with CEQA.

**NOW, THEREFORE BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:**

1. The City Council hereby ratifies the Park 9-C Negative Declaration finding on the basis of the Initial Study that there is no substantial evidence that the project may have a significant effect on the environment.
2. The City Council hereby approves and adopts the Mitigation Reporting Plan.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

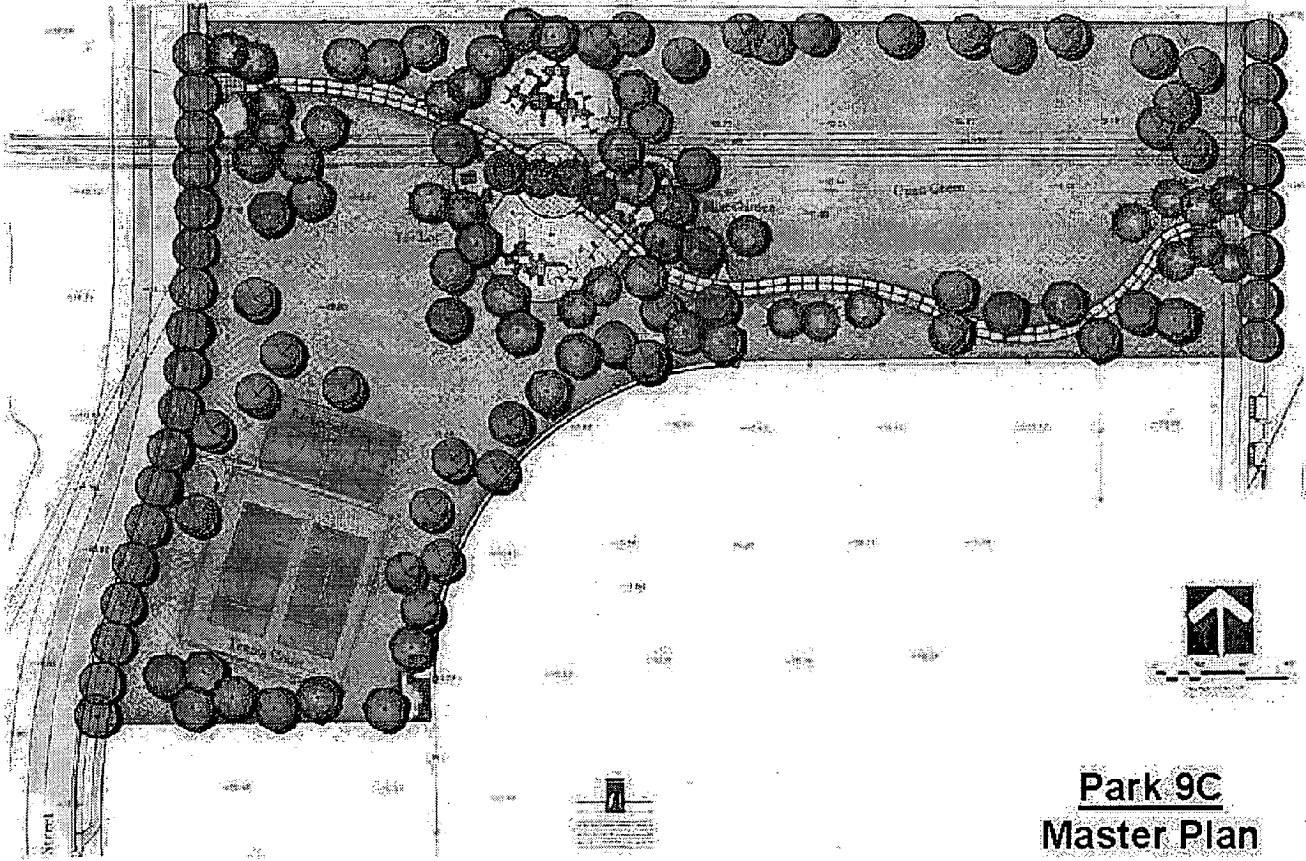
**FOR CITY CLERK USE ONLY**

RESOLUTION NO: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

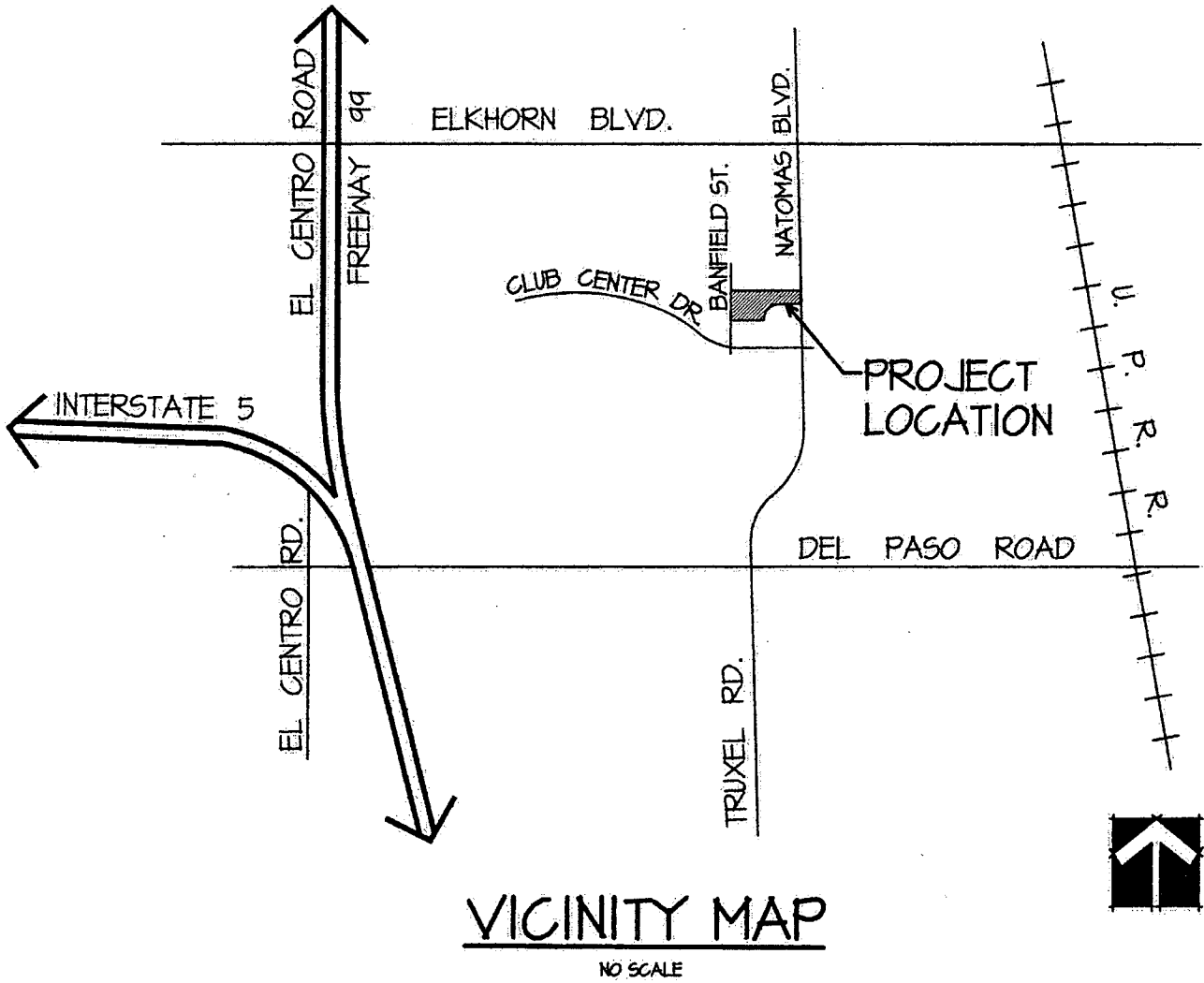
City Council  
Park 9-C (PN: LS96)  
September 11, 2001

**EXHIBIT A – Park 9C Master Plan**



**Park 9C  
Master Plan**

**EXHIBIT B – Site Map**



**REIMBURSEMENT/CREDIT AGREEMENT  
RELATING TO DESIGN AND CONSTRUCTION  
OF PARK IMPROVEMENTS IN NORTH NATOMAS**

**PARK 9-C**

This Agreement is entered into on \_\_\_\_\_, 2001, by and between the **CITY OF SACRAMENTO**, a charter municipal corporation (hereafter "City"), and **LENNAR WINNCREST, LLC** (hereafter "Developer"), with respect to the following facts:

**RECITALS**

WHEREAS:

- A. Developer owns the land described in **Exhibit "A"** (the "Property").
- B. That portion of the Property described in **Exhibit "B"** (the "Parksite") is intended for dedication or has been dedicated for use as a community or neighborhood park serving the Property.
- C. The City of Sacramento Park Development Fee Nexus Study approved by the Sacramento City Council on August 17, 1999, including any subsequent amendments or supplements thereto approved by the City Council (the "Nexus Study"), designates development of the Parksite as a community or neighborhood park for funding by the City of Sacramento Park Development Impact Fee (the "Park Fee"), in accordance with the provisions of the Sacramento City Code, Title 18, Chapter 18.44 (the "Fee Ordinance").
- D. Developer desires to develop Phase 1 of the Parksite for this purpose by constructing park improvements, including, at a minimum, the park improvements specified in **Exhibit C** (the "Project"). Such development of the Parksite also will require the performance of various design services, which will be performed either by Developer or City as indicated on the Park Development Task Allocation specified in **Exhibit "D"**. The Project will be constructed pursuant to plans and specifications approved by the City and the actual costs of construction of the Project are to be the result of a bidding process approved by City as provided herein. The total cost of the Project design and construction subject to reimbursements and/or credits as provided herein shall not exceed the budget amount specified in **Exhibit "E"** (Park Development Budget). The Parksite improvements specified in Exhibit C (the "Project Improvements") do not include any improvements Developer is required to install under any provisions of the City's Subdivision Ordinance (Sacramento City Code, Title 16).

E. Subject to the credits against and reimbursements from the Park Fee as provided herein, in addition to reimbursement from other funding sources identified herein, if any, Developer is willing to perform the design services assigned to Developer in Exhibit D, if any, and construct the Project, and to fund the costs of Project design and construction activities (the "Project Costs") allocated to Developer herein. For purposes of this Agreement, "Project Costs" shall mean and include costs related to all contracts for the construction of the Project, including change orders thereto, and costs associated with all other contracts for professional and other services necessary, in the City's judgment, to implement and complete construction, together with all planning and design costs and right of way or other acquisition costs, if any, associated with the Project. Project Costs also shall include, but not be limited to, the engineering estimates and the Project elements included therein, construction inspection fees, and whichever of the following costs or fees, if any, may be applicable: environmental documentation (whether prepared by outside consultants or City staff), City project administration, plan check and inspection fees, biological studies and Habitat Conservation Fees.

F. Because the Project is designated for funding by the Park Fee, the Project is eligible for and the City agrees to provide credits against and reimbursement from the Park Fee for Developer's actual Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

Now, therefore, in consideration of the foregoing and the mutual promises contained herein, City and Developer hereby agree as follows:

### **ARTICLE 1. DESIGN AND CONSTRUCTION OF PROJECT**

1.0 **Recitals Incorporated.** The parties agree that the foregoing recitals are true and correct, and are part of this Agreement for all purposes.

1.1 **Design and Construction.** Developer agrees to design and construct, or construct, as provided herein, the Project, and to convey the Project, along with all interests in real property necessary for the operation, maintenance, repair and ownership thereof, to City. The interests in real property to be conveyed shall be a fee interest in the land and improvements within the Project, and any and all access easements necessary for operation, maintenance and repair of the Project.

1.2 **Design; Final Budget.** The design-related services that may be performed either by Developer or City as specified in Exhibit D include Design Development, Construction Document Preparation, Bid Document Preparation and environmental review. The Developer's selection of a landscape architect(s) to perform design services that are

assigned to Developer in Exhibit D, shall be subject to approval by the Landscape Architecture Section ("LAS") of the City of Sacramento, Department of Parks and Recreation ("Department"). If assigned to Developer in Exhibit D, the various Project design-related services shall be performed in accordance with the following:

1.2.1 Design Development. Developer shall prepare conceptual plans for the Project, which shall include a Parksite survey, a proposed park master plan and Project description illustrating the park development and all improvements at full build-out, a proposed first phase development plan and Project description illustrating the Project Improvements to be constructed within the budget amounts specified in Exhibit E, construction cost estimates for both the park master plan and the first phase development and estimated construction time lines for the first phase development. Copies of the conceptual plans shall be provided by Developer to the LAS for its review and approval. The City agrees to use its best efforts and due diligence to review and approve such conceptual plans, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld.

1.2.2 Construction Document Preparation. After LAS has given its written approval of the conceptual plans under subsection 1.2.1, Developer shall prepare and submit to the LAS construction plans and specifications for the first phase development, including updated construction cost estimates and construction time lines. At a minimum, Developer shall submit such plans and specifications to the LAS at the 50%, 90% and 100% phase of completion. The City agrees to use its best efforts and due diligence to review and approve such construction plans and specifications, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld.

1.2.3 Bid Document Preparation. After LAS has given its written approval of the construction plans and specifications under subsection 1.2.2, Developer shall prepare and submit to the LAS bid documents for the Project, based upon the City-approved construction plans and specifications. The City agrees to use its best efforts and due diligence to review and approve such bid documents, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld.

1.2.4 Environmental Review. The environmental documentation required for development of the Parksite as provided herein shall be prepared by a consultant(s) retained by City and/or by City staff; provided that, if directed by City, and in accordance with all applicable legal requirements, Developer shall prepare such environmental documentation. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and the City's Environmental Affairs Division.

1.2.5 LAS Approval. For purposes of this Agreement, LAS approval shall be evidenced by signed approval by the Senior Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review and approval of various documents by the LAS and/or the City, as described above, also may include public noticing, review, comment and/or approval of such documents, as deemed necessary or appropriate by City. If any or all of the Project design services are assigned to City in Exhibit D, the references herein to LAS approval of the conceptual plans, construction plans and specifications and bid documents shall refer, as applicable, to the conceptual plans, construction plans and specifications and/or bid documents prepared for Developer's use by City.

1.2.6 Final Budget. Prior to approval of the bid documents by City, City and Developer shall review the Project budget set forth in Exhibit E and shall establish a final budget for design and construction of the Project (the "Final Budget"). City and Developer anticipate that the construction plans and specifications will include all of the Project Improvements described in Exhibit C, but in no event shall Developer be obligated to construct improvements or incur Project Costs which, in the aggregate, exceed the amount of the Final Budget, except as otherwise provided herein. The Final Budget shall include all Project Costs, including a reasonable contingency amount, shall identify the source of funding, and shall not, in the aggregate, exceed the sum of: (i) the park development amount allocable to Phase 1 of the Parksite on a per-acre basis under the City of Sacramento Park Development Impact Fee program (the "Fee Program"); and (ii) such additional funds, if any, as the City or Developer, in their discretion, may be willing to contribute toward development of the Parksite.

1.3 Contract Award. After LAS has given its written approval of the bid documents, Developer shall solicit competitive bids for construction of the Project in accordance with the City-approved bid documents, by issuing a request for competitive bids to all landscape contractors included on the current master list used by LAS for similar projects, in addition to any other contractors identified by Developer, provided that in no event shall Developer request bids from fewer than three (3) contractors. Bids shall be sealed, and shall be opened in the presence of a LAS representative. Copies of all bids received shall be provided to the LAS, which shall have ten (10) working days to review the bids and the Developer's proposed selection of the successful bidder, and to either approve or disapprove the Developer's proposed selection. LAS' approval shall not be unreasonably withheld. If fewer than three (3) bids are received, or the LAS determines that the bid(s) are too high, LAS may instruct Developer to modify the Project Improvements and/or rebid the Project in accordance with the foregoing procedures or as otherwise directed by City. If the LAS notifies Developer of the need to modify the Project Improvements, the LAS shall provide Developer with an opportunity to review and comment on any direction by the City to modify the Project Improvements and City shall give such comments fair consideration. When satisfied with the bid, LAS shall give written

notice to Developer to proceed with award of the contract, incorporating modifications required by the LAS hereunder, if any.

1.4 **Construction.** Developer covenants that the Project will be constructed in compliance with all approved plans and specifications, bid documents, modifications thereto required by City in accordance with this Agreement, and applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the bid documents as provided herein (hereafter collectively referred to as the "Project Plans"), subject to change orders issued in accordance with the provisions of Section 1.7 below.

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

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

1.4.1.b The City Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether or not the work complies with the Project Plans. The City Project Manager also shall have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.4.5 below.

1.4.2 **Commencement and Completion of Project.** Subject to the provisions of Section 7.6 below, including without limitation, the effect of inclement weather on Developer's ability to commence or proceed with construction, Developer shall commence the construction of the Project within three (3) months, or such longer time period as may be specified by the LAS, after the final approval of the bid documents by the LAS and thereafter shall diligently work to complete such construction in a timely and efficient manner within the time frame set forth in the construction schedule most recently approved by City. If the Developer fails to commence and/or work to complete the Project as required herein, and fails to remedy such delay within thirty (30) days after a written notice thereof from City to Developer (subject to the provisions of Section 7.6 below), City in its discretion may (i) direct Developer to take action necessary to accelerate the Project to remedy the delay, and the Developer's acceleration costs, if any, shall not be subject to reimbursement or credit hereunder, or (ii) direct Developer to stop working on the Project

so that the City may seek other means to complete construction of the Project, in which case any costs incurred by Developer, its contractors or subcontractors after receiving such direction from City shall not be subject to reimbursement or credit hereunder. If Developer is directed to stop working on the Project, Developer shall take any and all actions necessary to convey to and vest in City full, complete and clear title in the Project, and all of the underlying real property interests (easement and/or fee) including those necessary for maintenance and access.

1.4.3 Inspection. Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project will be conveyed, will be permitted to inspect the Project and shall have access to the Project for this purpose at all times. City agrees to make inspectors available for inspection of the Project during such construction within not more than forty-eight (48) hours after request therefor from Developer (Sundays excepted).

1.4.3.a Should a City inspector find any nonconformance or noncompliance with the Project Plans, the Inspector shall notify the City Project Manager and the Site Superintendent of such nonconformance or noncompliance, and the City Project Manager and the Site Superintendent shall jointly determine the nature of the corrective action to be taken. If the City Project Manager and the Site Superintendent are unable to agree upon the corrective action to be taken, the City Project Manager shall have final authority to make such determination.

1.4.4 Prevailing Wages. Developer's contractors and subcontractors shall pay all construction workers on the Project not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of Industrial Relations at the time that Developer requests bids for the Project (pursuant to Labor Code Section 1773).

1.4.5 Unforeseen Cost Increase. If Developer encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project Costs beyond the Final Budget, and neither party voluntarily agrees to bear such cost increase, then the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget. In this latter event, Developer and the LAS shall meet and confer in an attempt to agree upon the requisite modifications. If the parties are unable to agree, the LAS shall have the final authority to make such determination.

1.5 Performance and Payment Bonds. Developer covenants to comply with any and all applicable State and/or City performance and payment bonding requirements with respect to the construction of the Project. If permitted by State law, Developer may satisfy the obligation to post bonds with an assignment to the City of the contractor's bond or through the posting of bonds, letters of credit or other security instruments acceptable to City, in accordance with applicable City requirements; provided, however, that all such

bonds, letters of credit, or other security instruments must meet all requirements that would apply for security to be posted by a contractor, quantitatively and qualitatively, if City and not Developer was contracting to construct the Project.

1.6 **Insurance.** Developer shall furnish to City a certificate or certificates substantiating the fact that it has taken out the insurance hereinafter set forth for the period covered by this Agreement with an insurance carrier acceptable to City in a form satisfactory to City. Each certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after City shall have received notification of such cancellation or reduction by registered mail.

The minimum insurance coverage shall be as follows: Public liability and property damage insurance which includes, but is not limited to, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, and underground hazards shall be in the amount of not less than a combined single limit one million dollars for one or more persons injured and property damage in each occurrence. The public liability and property damage insurance shall also name City as an additional insured. This insurance shall directly protect City as well as Developer and its agents. The insurer shall assume the defense of City, its officers, employees and agents from suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of said Project. The insurance policy shall expressly state that the above terms are in effect.

If Developer fails to maintain such insurance, City may take out insurance to cover damages of the above mentioned classes for which City might be held liable on account of Developer failing to pay such damages, and recover the amount of the premiums for such insurance from Developer or retain such amount from any monies due Developer under this Agreement. Failure of City to obtain such insurance shall in no way relieve Developer from any of its responsibilities under this Agreement.

1.7 **Contracts and Change Orders.** Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Project. All change orders shall require approval of the LAS.

1.7.1 **Required Change Orders.** Developer shall make changes which are necessary after the construction contract is awarded in order to comply with the Project Plans. Developer shall pay for all such changes, and the cost thereof shall be included in the Project Costs provided that the cost of the Project is not increased beyond the Final Budget.

1.7.2 **Requested Change Orders.** Developer shall make discretionary changes in the construction of the Project in accordance with the provisions of this section.

As used herein, "discretionary change" means a change that is not required by the Project Plans but is requested by City after the construction contract is awarded to augment or modify the Project Improvements identified in the Project Plans.

1.7.2.a When a discretionary change is requested by City, Developer shall provide City a written cost estimate for the change within ten (10) days following Developer's receipt of City's written request for such estimate. Upon receiving such estimate, City shall direct Developer whether to proceed with the change, and Developer shall make such change as directed by City, so long as City agrees to pay Developer for such discretionary change from sources described in section 3.2 below (if the change would not increase the cost of the Project beyond the Final Budget) or other identified funding sources. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of the Project.

## **ARTICLE 2. CITY ACCEPTANCE; CONVEYANCE OF PROJECT**

2.1 **Acceptance and Conveyance.** When Developer completes construction of the Project and the Project has been formally accepted by City, the Project shall automatically become the property of City. Developer shall take any and all actions necessary to convey and vest full, complete and clear title in the Project, and all of the underlying real property interests (easement and/or fee) including those necessary for maintenance and access, to City upon such completion. City will not formally accept the Project unless and until such title has been conveyed to City. For purposes of this Agreement, formal City acceptance means final completion in accordance with the Project Plans, which includes completion of the "punch list," a final "walk-through" and inspection, and final approval by the City for acceptance of the Project by City, as evidenced by a written statement or letter to that effect signed by or on behalf of City.

2.1.1 **Parksite Maintenance.** Notwithstanding the City's formal acceptance of the completed Project as provided in the foregoing section, the City shall not assume any responsibility for maintaining the Project Improvements, until sixty (60) days have elapsed after the City formally accepts the Project, unless the LAS determines that the homes included in the area identified as the Benefitting Service Area in **Exhibit "G"** have not yet achieved an occupancy level of 50 % or more; in the latter case, the City shall not assume any responsibility for maintaining the Project Improvements until (i) such sixty (60) day period has elapsed, (ii) the Developer notifies the LAS that an occupancy level of 50 % or more has been achieved, and (iii) the LAS determines, in accordance with the provisions of Exhibit G, and notifies Developer, in writing, that such occupancy level has been achieved. Until the foregoing conditions for City assumption of maintenance responsibility have been satisfied, Developer shall at its own expense maintain or cause to be maintained the completed Project Improvements in accordance with the City's standard park maintenance requirements, as directed by the LAS, and the costs incurred by Developer therefor shall not be subject to reimbursement or credit under this

Agreement; alternatively, Developer and City may agree that the Project Improvements shall be maintained by City forces, at the Developer's expense. Notwithstanding the foregoing, at any time after the City formally accepts the completed Project, the City may, by written notice to Developer, assume responsibility for maintaining the Project Improvements even though the actions described in the foregoing subsections (ii) and (iii) have not occurred.

2.1.2 Other Costs Associated With Early Construction of Parksite. In addition to the maintenance costs described in section 2.1.1, above, Developer shall be responsible for any other costs, such as the cost of Parksite security or other services, necessitated by the Developer's completion of the Project Improvements before the homes included in the area identified as the Benefitting Service Area in Exhibit G have achieved an occupancy level of 50 % or more. The intent of section 2.1.1 and this section is to hold the Developer, and not the City, responsible for costs associated with the Developer's decision to develop the Parksite and construct the Project Improvements prior to the time when the City would have done so using Park Fee funds.

2.2 Release of Liens. Upon completion, Developer shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid, including any and all lien claims. Upon request of the City, Developer shall provide lien releases under California Civil Code Section 3262(d) to assure that payment of any outstanding claims of the Developer's contractors, subcontractors and suppliers have been paid.

### 2.3 Indemnification.

a. Indemnification by Developer. Subject to the provisions of this Section 2.3, Developer agrees and covenants to, and shall fully indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of the Project by any of the following: Developer, any of Developer's engineers, architects, contractors or subcontractors, or any other person or entity employed by or acting on behalf of or as the authorized agent for Developer, or any of Developer's engineers, architects, contractors or subcontractors. Provided, however, that Developer shall not be liable hereunder to indemnify, defend or hold harmless City and its elective and appointive boards, commissions, officers, employees and agents against Claims alleging sole and active negligence of City in its functions of design review, approval or construction inspection in connection with the Project; provided further, that nothing in this Agreement shall be construed as a waiver by City of any immunity or defense it may have relating to any such Claim, including without

limitation immunity or defenses relating to design review and/or approval and/or construction inspection. With respect to the acts or omissions of the authorized agents of Developer's engineers, architects, contractors or subcontractors, Developer's obligations under this subsection a. shall be limited to the acts or omissions of such agents who, under applicable principles of agency: (i) also constituted authorized agent(s) of Developer with respect to the Project; and (ii) were acting within the course and scope of such agency.

b. Indemnification Regarding Hazardous Substances. Developer further agrees and covenants to, and shall fully indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined in **Exhibit "H"**, attached hereto and incorporated herein by this reference, by any person or entity (except persons or entities acting on City's behalf or under City's control), occurring on or at any time prior to the date the Project and the associated real property interests are conveyed to City as provided in this Agreement. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project, provided such incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws in effect at the time of such incorporation.

c. Duration of Indemnification Obligations. The indemnification and hold harmless agreement made by Developer in Section 2.3.a. above, with respect to the Project, and/or each part thereof constructed by Developer, shall expire on the date which is one year after the completion of the Project and formal acceptance thereof by City (hereafter the "Expiration Date"), provided that Section 2.3.a. above shall not expire and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time prior to the Expiration Date, or which relate to (directly or indirectly) any such Claims. The indemnification and hold harmless agreement made by Developer in Section 2.3.b. above shall survive the termination of this Agreement until the date which is two years after the completion of the Project and formal acceptance thereof by City. Section 2.3.b. above shall not expire, however, and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time prior to such date, or which relate to (directly or indirectly) any such Claims. The provisions of this Section 2.3.c. shall apply only with respect to the indemnification and hold harmless provisions of this Agreement, and shall not affect the liability, if any, which Developer might have under applicable law to the extent Developer is a contaminator of the Developer Property. The provisions of this section 2.3.c. shall not apply to Claims relating to acts or omissions occurring during the performance of Developer's maintenance obligations, pursuant to section 2.1.1 above, after formal City acceptance of the Project.

d. Additional Provisions Regarding Indemnification Obligations. The parties further agree and understand as follows: (1) City does not, and shall not be deemed to, waive any rights against Developer which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.6; (2) except as may otherwise be specifically and expressly provided in subsection 2.3.a. relating to Claims based upon allegations of sole and active negligence on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has or shall have prepared, supplied, or approved of plans and/or specifications for the Project, or has or shall have inspected or failed to inspect construction of the Project; (3) the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms; (4) no specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided; and (5) Developer shall include or cause to be included the following language, or other language approved in writing by the City, in all contracts or agreements relating to the Project with any architect, engineer or contractor (who all are identified as the "Contractor" in the following language):

Contractor agrees and covenants to, and shall, fully indemnify, defend and hold harmless the City of Sacramento and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of that portion of the Project designed or constructed by Contractor or any of Contractor's architects, engineers, subcontractors, or any other person or entity employed by or acting on behalf of or as an authorized agent for Contractor, or any of Contractor's architects, engineers or subcontractors.

e. Waiver by Developer. In addition to Developer's obligations to indemnify, hold harmless and defend City as set forth above, Developer, its assigns, transferees and successors, hereby waives and releases any and all claims of whatever sort or nature which may arise against City or its officers, employees and agents, in connection with the Developer's design and/or construction of the Project.

f. Unknown Claims. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

"A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of

executing the release, which if known by him must have materially affected his settlement with the debtor."

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the parties hereto expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all claims as described in this Section 2.3 which the parties do not know or suspect to exist. The provisions of this Section 2.3 shall survive termination of this Agreement.

g. **Indemnification by City.** City further agrees and covenants to, and shall fully indemnify, defend and hold harmless Developer, and its officers, employees and agents, from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment (i) to the extent arising from any City use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined above, by any person or entity (except persons or entities acting on Developer's behalf or under Developer's control), occurring on or at any time after the date the Project, and the said easements are conveyed to City as provided in this Agreement; (ii) arising from any act (including but not limited to those covered by subsection (i) immediately above) on the part of City or its agents or employees in the use and operation of the Project; or (iii) occurring on or at any time arising from any entry upon the Developer Property by City, its agents, employees or contractors, pursuant to the provisions of Article 1 of this Agreement.

2.4 **Warranty.** Developer hereby warrants the Project as to materials and workmanship for one (1) year following formal acceptance of the Project by City as set forth in section 2.1 above, and should any failure of the Project or any portion thereof occur within such one (1) year period, Developer shall promptly cause the needed repairs to be made without any expense or cost to City. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer with an opportunity to meet and confer regarding such warranty work and the Developer shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the warranty period. In case of emergency when delay would cause serious hazard to the public, the necessary repairs may be made by City without prior notice to Developer. In all cases of failure of the Project within the warranty period where City has taken action in accordance with this paragraph, Developer shall reimburse City for any and all costs or expenses, direct and indirect, incurred by City, and City may deduct the outstanding amount thereof from any reimbursement or credit due to Developer hereunder.

### ARTICLE 3. REIMBURSEMENT FROM PARK FACILITIES ACCOUNT

3.1 **Park Fee Reimbursement Amount.** As provided in this Article 3, Developer shall be entitled to reimbursement for the entire portion of the Project Costs actually incurred by Developer for improvements that are designated for funding by the Park Fee in **Exhibit E** (identified as the "PIF" funding source in **Exhibit E**), not-to-exceed the budget amounts specified for the tasks performed by Developer in **Exhibit E**, as modified by the Final Budget, if applicable (the "Park Fee Reimbursement Amount"). The amount of such reimbursement shall be subject to City's review and written approval of the Project Costs incurred by Developer. After construction is completed, Developer shall provide copies of all contracts, change orders and invoices for the costs of the work and such other documentation as may be requested by City to verify the Project Costs incurred by Developer. In accordance with Section 18.44.110 of the Fee Ordinance, the Park Fee Reimbursement Amount, as reduced from time to time by reimbursements paid and credits taken against the Park Fee pursuant to this Agreement, shall be subject to adjustments for inflation calculated consistent with the provisions of Section 18.44.120 of the Fee Ordinance, but shall not otherwise accrue interest.

3.2 **Sources for Reimbursement.** Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, City's general or special funds, or any other funds in the hands of City or its accounts now and in the future, except as otherwise expressly provided herein. Except as otherwise expressly provided herein, City's obligation hereunder to provide reimbursement is limited to the following source of funds, to the extent funds are available therefrom and not otherwise committed for reimbursement by the City to others, and subject to all applicable provisions of the Fee Ordinance:

a. Park Fees that are paid to the City pursuant to the Fee Ordinance for Development Projects located in the same City Planning Area as the Parksites, which fees shall be maintained by the City in a separate special fund (the "Park Facilities Account") pursuant to Section 18.44.150 of the Fee Ordinance. The various City Planning Areas are shown in the Nexus Study. As used herein, the term "Development Project" has the meaning that is provided in Section 18.44.010 of the Sacramento City Code.

3.2.1 **City Administrative Costs.** Developer acknowledges that a portion of such Park Fees, up to, but not in excess of **Three Percent (3%)** of the Park Fees, will be retained by the City to defer the City's cost to administer the Fee Program, so that such portion of the Park Fees will not be "available" for reimbursement. Developer further acknowledges that the Park Fees to be paid by other developers for their Development Projects may be offset or reduced by credits in consideration of the construction of other Park Fee-related improvements, which may result in no Park Fees being paid by such other developers until such credits are exhausted.

**3.3 Timing of Reimbursement.** Upon Developer's request, (i) after full completion of the Project and acceptance thereof by the City and City approval of the Park Fee Reimbursement Amount, and (ii) after the LAS determines, in accordance with the provisions of Exhibit G, that the homes included in the area identified as the Benefitting Service Area in Exhibit G have achieved an occupancy level of 50 % or more, and (iii) subject to the reimbursement priority described in Section 3.4 below, the City will pay Developer the amount then available in the Park Facilities Account for reimbursement up to, but not in excess of, the approved Park Fee Reimbursement Amount for the Project (as reduced by credits previously taken pursuant to this Agreement, if any). Thereafter, on a quarterly basis and continuing until the Park Fee Reimbursement Amount is reduced to zero, the City (subject to the reimbursement priority described in Section 3.4 below) will pay Developer the amount then available for reimbursement in the Park Facilities Account, up to the then outstanding Park Fee Reimbursement Amount.

**3.4 Priority for Reimbursement.** Developer acknowledges and agrees that the timing of reimbursement from the Park Facilities Account will be subject to the priorities and principles set forth below:

a. **Use of Funds by City.** The expenditure of funds within the Park Facilities Account by City as authorized by section 18.44.160 of the Sacramento City Code, other than reimbursements, will have superior priority to Developer's right to reimbursement under this Agreement.

b. **Other Reimbursement Agreements.** Other agreements entered into by the City to provide reimbursements for the design and construction of park improvements designated in the Nexus Study for funding by the Park Fee and located in the same City Planning Area as the Parksite, will have superior priority to reimbursement over Developer's right to reimbursement under this Agreement, if the homes included in the benefiting service area that is identified in such other agreement achieve an occupancy level of 50 % prior to the achievement of such occupancy level by the homes included in the Benefitting Service Area identified in Exhibit G hereto, subject to adjustment in such priority pursuant to the terms of such other agreements.

c. **Adjustment of Priority.** If the Developer fails to commence and/or work to complete the Project as required by this Agreement, and fails to remedy such delay within thirty (30) days after receiving written notice of such delay from City, section 1.4.2, above, authorizes the City to direct Developer either to accelerate the Project to remedy the delay or to stop working on the Project. In addition to these actions, if the Developer fails to remedy such delay within thirty (30) days after receiving such written notice from City, City may elect to adjust the priority for reimbursement to occur after full reimbursement to any other developers who have then entered into similar reimbursement/credit agreements subsequent to this Agreement for the design and construction of park improvements that are

designated in the Nexus Study for funding by the Park Fee and that are located in the same City Planning Area as the Parksite. The intent of this paragraph is to encourage the timely commencement and completion of the Project. City acknowledges that any such adjustment shall not affect Developer's right to take credits against Park Fees as provided herein.

3.5 **Agreements with Other Developers.** To protect such reimbursement to Developer, City agrees that any and all subsequent credit/reimbursement agreements involving reimbursements from the Park Fees paid to the City for Development Projects located in the same City Planning Area as the Parksite will include the following terms:

a. The credit/reimbursement amount under the other agreements shall be based on the actual costs incurred by the developer for the improvements, as reviewed and approved by the City, and the contract(s) for such work shall be awarded based on a competitive bid process analogous to the process specified herein; and

b. Such agreements shall require payment of the developer's fair share of the City's costs to administer the Fee Program, up to, but not in excess of, three percent (3%) of the Park Fee then in effect.

c. Reimbursements under such agreements from the Park Facilities Account shall be subject to the priorities and principles set forth in section 3.4, above.

3.6 **Allocation of Reimbursements.** If and to the extent Developer assigns its right to reimbursements and credits under this Agreement in accordance with the provisions of Article 5 below, City's reimbursements to Developer and such approved assignees shall be made in proportion to the outstanding portions of the Park Fee Reimbursement Amount then held by Developer and such assignees thereof approved by the City pursuant to Article 5.

## ARTICLE 4. CREDITS

4.1 **Credit Against Park Fees.** The fee credit principles expressed in this Section shall be interpreted and applied to achieve fairness and equity to all parties, including City, while not allowing a party to obtain economic or other advantage through arbitrage or otherwise. Developer may credit its outstanding Park Fee Reimbursement Amount against a portion of the Park Fee that would otherwise be payable by Developer with respect to the issuance of a building permit for any residential Development Project located in the same City Planning Area as the Parksite, as described below, until such Park Fee Reimbursement Amount is exhausted through such credits and any reimbursement hereunder. With the issuance of each building permit for such Development Project, the Developer will be entitled to a credit in the amount identified on **Exhibit E-1** (as modified

by the Final Budget, if applicable) as the "Fee Credit Amount", to be applied toward payment of the Park Fee required for each dwelling unit in such Development Project. The balance of the Park Fee due for each dwelling unit will be paid to the City prior to issuance of the building permit to fund the Project costs incurred by the City, as shown on Exhibit E-1 (as modified by the Final Budget, if applicable).

4.2 **Fee Deferral.** In the event the City adopts a Fee Deferral Plan which provides for deferral of the Park Fee and in the event that Developer elects to participate in such Fee Deferral Plan, Developer's fee credit shall be applied against the Park Fee then in effect in accordance with the foregoing provisions to determine the net outstanding fee. The fee deferral shall then be applied against the net outstanding fee to determine the annual installments of principal and interest to be paid pursuant to such Fee Deferral Plan.

## **ARTICLE 5. ASSIGNMENTS OF REIMBURSEMENTS AND CREDITS**

5.1 **Assignment Permitted.** Developer may assign the rights under this Agreement to receive reimbursements from the Park Facilities Account, and take credits against the Park Fee to be assessed against any Development Projects in the same City Planning Area as the Parksites, to any person or entity, subject to and in accordance with the terms of this Article. All assignments of the right to credits and reimbursements pursuant to this Article shall be subject to City's prior written consent, which consent shall not be unreasonably withheld or delayed. Developer acknowledges and agrees that City shall have the discretion to deny an assignment of rights to credits and reimbursements under this Agreement on the basis of excessive fractionalization of the available credits and reimbursements, provided City shall not deny an otherwise qualified assignment that represents at least ten percent (10%) of Developer's reimbursement and credit rights. In addition, City shall be entitled to calculate and assess as a condition of its consent of any such assignment, a reasonable fee for the review, approval and administration thereof.

5.2 **Required Assumption by Assignee.** In addition to the approval of the City, any such assignment shall be subject to an express written assumption by the Assignee, whereby said Assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the fee credit and fee reimbursement provisions, including without limitation, the obligation to pay the portion of the Park Fee required to cover the City's cost of administration thereof, notwithstanding the existence of any such right to credits and reimbursements. The assignment agreement shall contain a provision whereunder Developer and the Assignee agree to fully and completely indemnify and defend City from any liability relating to the assignment of rights.

5.3 **Disputes Between Developer and Assignee.** Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer and/or any assignee and/or the City regarding the legal ownership of the rights to credits and reimbursements hereunder, City may withhold any cash reimbursement and may disallow

the use of any credits unless and until either (i) all parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing parties the legal ownership of such rights and the manner in which such rights will be exercised.

5.4 **City Policy and Procedure.** Developer, for itself and its successors in interest to the Property, acknowledges that the reimbursement and credit rights hereunder do not run with the Property and that generally applicable City policies and procedures relating to assignment of Park Fee credits and reimbursements, as such policies and procedures may be adopted or amended from time to time, shall apply to Developer and its successors in interest to the Property. City agrees that it shall not give any reimbursements or credits to any subsequent purchaser or encumbrancer of any portion of the Property unless such subsequent purchaser or encumbrancer has a separate, written assignment of these reimbursements or credits from Developer (or a previously approved assignee thereof), which written assignment has been approved by the City in accordance with the provisions of this Article 5.

## **ARTICLE 6. REIMBURSEMENT FROM OTHER FUNDING SOURCES**

6.1 **Additional Reimbursement.** If **Exhibit E** identifies improvements to be funded by a funding source or sources other than the Park Facilities Account, Developer shall be entitled to reimbursement, without interest, for the entire portion of the Project Costs actually incurred by Developer for such improvements, not-to-exceed the budget amounts specified for the tasks performed by Developer in **Exhibit E**, as modified by the Final Budget, if applicable. The amount of such reimbursement shall be subject to City's review and written approval of the Project Costs incurred by Developer. After construction is completed, Developer shall provide copies of all contracts, change orders and invoices for the costs of the work and such other documentation as may be requested by City to verify the Project Costs incurred by Developer. The calculation of the current estimated amount(s) for such reimbursement, if applicable, is shown on **Exhibit "E"**.

6.2 **Total Reimbursement/Credit Amount.** In no event shall the total amount of reimbursement(s) and/or credits provided from any funding sources identified in this Agreement or any other public financing mechanism exceed the total amount of the Project Costs actually incurred by Developer and approved in writing by City.

## **ARTICLE 7. UNFUNDED IMPROVEMENTS**

7.1 **Additional Reimbursement for Unfunded Add Alternates.** If Developer elects in its discretion to construct park improvements that are neither designated for funding by the Park Fee, nor subject to reimbursement from other funding sources

pursuant to the provisions of Article 6, above, and that are identified as "Unfunded Add Alternates" in Exhibit E, the costs incurred by Developer for the construction of installation of the Unfunded Add Alternates shall not be included in the Park Fee Reimbursement Amount and shall not be subject to reimbursement or credit under this Agreement. However, if, in the future, the Sacramento City Council approves an increase in the Park Fee to add a specified incremental amount to provide additional funding for all or any portion of specified Unfunded Add Alternates constructed or installed by Developer, then the Developer shall be entitled to an additional cash reimbursement for costs actually incurred to construct or install such Unfunded Add Alternates from future Park Fees collected from Development Projects located in such area as may be specified by the City Council, up to the maximum amount specifically authorized in the Park Fee increase approved by the Sacramento City Council. Developer shall only be entitled to such additional reimbursement to the extent that said incremental amount actually has been collected by City. Any such additional reimbursement shall be subject to Developer's receipt of written approval from the LAS to proceed with construction of the Unfunded Add Alternates as specified in **Exhibit E**, and City's review and written approval of the costs actually incurred by Developer for such Unfunded Add Alternates. Developer shall provide copies of all contracts, change orders, and invoices for such costs and such other documentation as may be requested by City. Developer shall not be entitled to any additional reimbursement under this Section 7.1 for any costs for which Developer obtains reimbursement and/or credit from any public financing mechanism or other funding source not identified in this Agreement. Developer's right to additional reimbursement hereunder shall expire sixty (60) months after the date that this Agreement has been executed by both parties.

## **ARTICLE 8. MISCELLANEOUS**

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

8.2 **Attorneys' Fees.** The prevailing party in any proceedings, judicial or otherwise, brought to enforce the terms of this Agreement, shall be entitled to reasonable attorney fees and costs in prosecuting or defending such proceedings.

8.3 **Notices.** Any notice required or elected to be given hereunder shall be given by placing the notice in the United States mail, postage prepaid, and addressed in accordance with the provisions of this Subsection. Notice shall, unless the text of this Agreement otherwise provides, be deemed to have been given on the date that the notice was placed in the mail in accordance herewith. Notice to Developers, or any individual Developer, shall be given to the single address set forth below.

If to City: City Manager  
915 I Street  
Sacramento, CA 95814

If to Developer: Lennar Winncrest LLC  
2240 Douglas Blvd.  
Roseville, CA 95661

8.4 **Effective Date.** This Agreement shall become effective upon its execution by all parties.

8.5 **Mediation and Arbitration.**

a. Any dispute or controversy between all or a portion of the parties to this Agreement relating to the interpretation and enforcement of their rights and obligations under this Agreement shall be resolved solely by mediation and arbitration in accordance with the provisions of this Section. The mediation and arbitration procedures shall be commenced by any party to this Agreement by serving by a Notice of Dispute ("Notice") on the parties pursuant to Section 7.3. The Notice generally shall describe the nature of the dispute and specify the date of its mailing. The Notice shall require each party to notify the party serving the Notice of its intention to participate in the mediation and arbitration procedures within five (5) days of the date of mailing of the Notice. For purposes of this Section only, the party serving the Notice and all other parties indicating an intention to participate in the mediation and arbitration procedures shall be referred to herein as the "Disputing Parties", and shall be the only parties entitled to participate in said procedures.

b. With respect to any dispute or controversy between Disputing Parties that is to be resolved by mediation and arbitration as provided in the foregoing subsection, the Disputing Parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. Within fifteen (15) days of the mailing of the Notice, the party serving the Notice shall attempt to employ the services of a third person ("Mediator") mutually acceptable to the Disputing Parties to conduct such mediation. The cost of the Mediator shall be borne equally by the Disputing Parties. The mediation shall take place within ten (10) days of the appointment of such Mediator. If the Disputing Parties are unable to agree on such Mediator, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute shall be referred to arbitration in accordance with the following subsections.

c. Any dispute or controversy between Disputing Parties that is to be resolved by arbitration as provided in the foregoing subsections shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held and conducted in Sacramento, California before one (1) arbitrator who shall be selected by mutual agreement of the parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after referral to arbitration, then such arbitrator shall be appointed by the Presiding Judge of the Superior Court of Sacramento County as soon as practicable.

d. The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however, to the following:

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

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

iii The Disputing Parties mutually may elect to have all proceedings involving the Disputing Parties reported by a certified shorthand court reporter and written transcripts of the proceedings prepared and made available to the Disputing Parties. If fewer than all of the Disputing Parties desire the use of a court reporter and preparation of written transcripts, then the issue of whether or not to retain a court reporter shall be submitted to the arbitrator who, in his or her sole discretion, shall determine whether such use and preparation is necessary or beneficial to the proceedings and the interests of all Disputing Parties in resolving the dispute.

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

v The matter shall be heard by the arbitrator and the final decision by the arbitrator must be made within ninety (90) days from the date

of the appointment of the arbitrator. The arbitration hearing date shall be established by the arbitrator, which date must be within such period of time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.

vi The prevailing party shall be awarded reasonable attorney's fees and costs incurred in connection with the arbitration, unless the arbitrator for good cause determines otherwise.

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

viii The award or decision of the arbitrator shall be final and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

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

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

8.7 **Fee Ordinance.** The parties' rights and obligations hereunder shall at all times be governed by and subordinate to the provisions of the Fee Ordinance in effect on the date that this Agreement is approved and executed by both parties.

8.8 **Preparation Fees.** Developer shall pay to City the sum of one thousand five hundred dollars (\$1,500.00), representing the costs associated with the City Attorney's services in negotiating and drafting this Agreement.

**CITY OF SACRAMENTO, a charter municipal corporation:**

By: *Donald W. Murphy*  
Donald W. Murphy,  
Director, Department of Parks  
And Recreation

By: \_\_\_\_\_  
Robert P. Thomas, City Manager

ATTEST:

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

APPROVED AS TO FORM:

*[Signature]*  
City Attorney

**DEVELOPER**

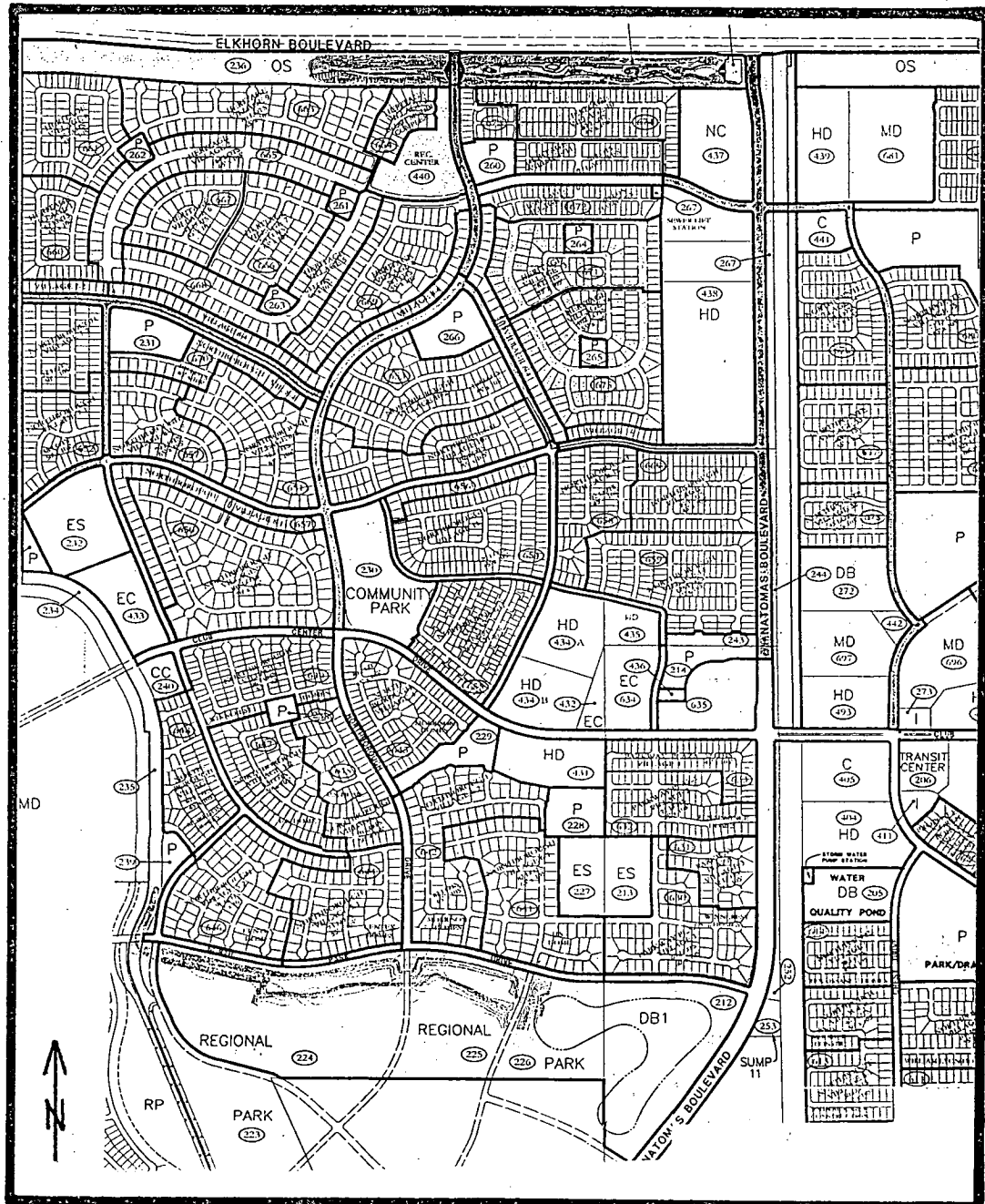
**LENNAR WINNCREST, LLC:**

By: *Michael J. Winn*

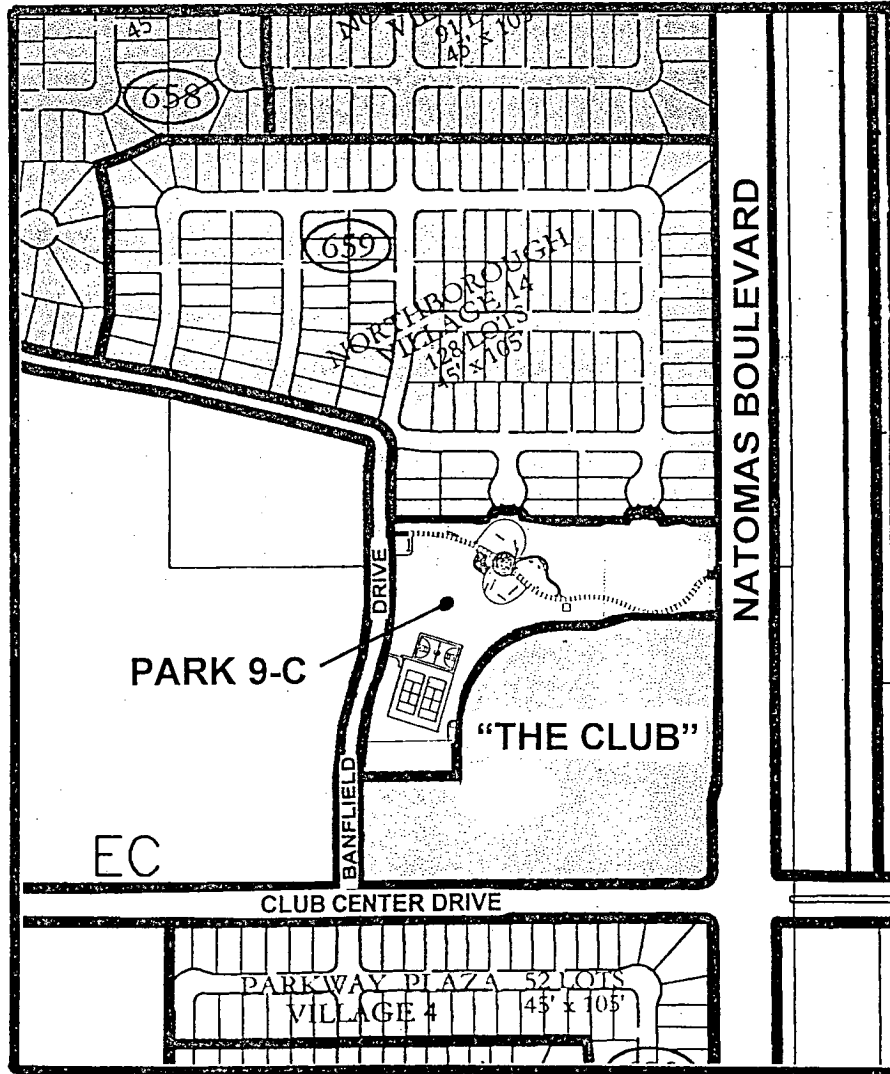
Name: *Michael J. Winn*

Title: *President*

# EXHIBIT A DEVELOPER PROPERTY DESCRIPTION



# EXHIBIT B PARKSITE DESCRIPTION



**EXHIBIT C  
PROJECT IMPROVEMENTS  
Park site 9-C**

**PHASE I IMPROVEMENTS:**

<u>Base Bid Improvements (Minimum):</u>	<u>Estimated Quantity</u>
1. Turf, Trees, Irrigation	5.0 acres
2. Booster pump, control system	1 unit
3. Water Service inc. meter	1 unit
4. Pathways	8440 sq. ft.
5. Decomposed Granite	1030 sq. ft.
6. Tot Lot w/play equipment	1 unit
7. Concrete mowband	610 ln. ft.
8. Drinking fountain	1 unit
9. Picnic Tables w/ concrete pads	3 units
10. Trash Can	1 unit

Unfunded Additive Alternates (as funding permits):

#1 Adventure play area	#5 Boulder Garden package
#2 Lighted tennis Ct. (2 courts)	#6 Bike Racks (2)
#3 Basketball Ct. (1 court)	#7 Benches – 6 ft. (5)
#4 Pathway lighting (11 units)	#8 Trash container (1 additional)

Notes:

The above list of "Base Improvements" is to be the minimum extent of improvements to be included in the Phase 1 Park. Unfunded Add Alternates are desired additional improvements to be included as the funding permits.

The City may revise this list prior to the start of Phase 1 construction.

**PHASE II IMPROVEMENTS:**

Approximately ten feet of the park improvements located south of the northerly boundary of the park site will be completed at a future date when the boundaries of the adjacent residential subdivision has been established by the recordation of a final subdivision map. Concurrent with subdivision improvements and prior to the acceptance of the public improvements in this adjacent residential subdivision, Developer shall complete the improvements to this northerly ten feet of the park site together with all related work, including but not limited to, the installation of the wall/fence between the park site and residential project and the replacement of the temporary pathway. All work is to be completed in accordance with plans and specifications approved by City. Any additional costs incurred over and above the costs designated in the awarded contract for the Phase I work shall be paid by Developer.

The City will accept the work as complete in two phases. Phase I will consist of all the work shown on the approved plans and specifications, authorized for construction by LAS, except the northerly ten feet. Phase II will consist of all the work shown on the approved plans and specifications or specified herein authorized for construction by LAS, related to the completion of the construction of the park improvements to the northerly ten feet of the park site at a later date.

## EXHIBIT D TASKS ALLOCATION

### GENERAL:

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

### SITE SPECIFIC:

*City Developer*

#### A. DESIGN DEVELOPMENT PHASE

- 1. Survey of Parksite (inc. topo mapping and property line verification).
- 2. Determination of park amenities (always by the City)
- 3. Preparation of masterplan illustrating entire parksite at buildout
- 4. Preparation of cost estimate for construction of park per masterplan
- 5. Public review & approval process for masterplan.
- 6. Determination of first phase improvements (always by the city)
- 7. Development of masterplan for first phase of design & construction
- 8. Public review & approval process for first phase design.

#### B. CONSTRUCTION DOCUMENT PHASE

- 1. Environmental review and documentation
- 2. Design development of Phase 1
- 3. Preparation of construction documents (Phase 1 plans & specifications)
- 4. Preparation of construction cost estimate & project timeline for Phase 1

#### C. BID DOCUMENT PHASE

- 1. Preparation of bid documents for construction of first phase development
- 2. Administer bidding process

#### D. CONSTRUCTION (Field Work)

- 1. Project staking
- 2. Inspection (always by the City)
- 3. Construction administration (City's project manager, and Developer's site superintendent)
- 4. Final cleanup & walkthrough (with City in attendance)
- 5. Public opening (always by the City)
- 6. Warranty administration

## EXHIBIT E PARK DEVELOPMENT BUDGET SUMMARY

### Funding Sources for Park 9-C, Phase 1: 5.0 acres

PIF <sup>(1)</sup> General Park Development \$97,433 per acre x 5 acre site = \$487,165

TOTAL PROJECT BUDGET: **\$487,165**

### Design, Overhead, and other "soft costs" estimate (% of construction budget):

Design (masterplan & phase 1)	3%		\$11,107 <sup>(2)</sup>	
Public Review	2%		7,405	
Environmental Docs.	1%		3,702	
Admin & Proj. manag.	5%		18,512	
Construction Docs.	5%		18,512 <sup>(2)</sup>	
Inspection work	3%		11,107	
Contingency	10%		37,024	
Art in Public Places	2% of total budget	+	9,551	
Subtotal of design/admin. fees:			\$116,921	- \$116,921
Additional required environmental work:			\$8,856 (to be paid by developer)	

**Phase 1 Construction Estimate (76% of Total Project Budget): \$370,243**

Proposed Improvements:	Quantity	Unit Cost	Total cost	
Turf, Trees, & Irrigation (inc. RBPB)	5.0 acres	\$31,755.06	\$158,775.31	
Electrical (inc. booster pump)	1 unit	\$35,420.00	\$35,420.00	
Domestic Water Service	1 unit	\$1,985.00	\$1,985.00	
Storm drainage	1 unit	\$47,004.70	\$47,004.70	
Concrete -all flatwork (inc. AB)	8440 sq ft.	\$5.88	\$49,627.20	
Decomposed Granite	1030 sq ft.	\$1.44	\$1,483.20	
Tot Lot w/ play equipment	1 lump sum	\$37,280	\$37,280.00	
Play area containment curb	340 LF	\$20.35	\$6,919.00	
Play area wood fiber	180 cy	\$27.14	\$4,885.20	
Play area ramp and catch basin	1 lump sum	\$2,715.00	\$2,715.00	
9" concrete Mowband	610 LF	\$9.41	\$5,740.10	
Drinking fountain	1 unit	\$2,945	\$2,945.00	
Picnic tables	3 units	\$1,105	\$3,315.00	
Trash Container	1 unit	\$416.67	\$416.67	
Bollards	4 units	\$343.75	\$1,375.00	
Construction fencing	6 mo	\$600.00	\$3,600.00	
Maintenance period	1 lump sum	\$6,605.00	\$6,605.00	
Subtotal of construction costs:			\$370,091.38	- \$370,091
			unallocated w/ this estimate:	\$152

### Unfunded Add Alternate Improvements (as funding permits):

#1 Adventure lot	1 ls		\$71,035.00
#2 Lighted tennis ct.	1 ls		\$97,720.00
#3 Basketball ct.	1 ls		\$24,820.00
#4 Pathlights inc. trenching/conduit	11 units	\$1,800	\$19,800.00
#5 Boulder garden package	1 ls		\$25,322.48
#6 Bike racks	2 units	\$1,175.00	\$2,350.00
#7 Benches - 6ft	5 units	\$944.29	\$4,721.45
#8 Trash Container	1 unit	\$416.67	\$416.67

footnotes:  
 (1) City of Sacramento "Park Impact Fee"  
 (2) Indicates cost credited to Developer

**EXHIBIT E-1  
CALCULATION OF FEE CREDIT AMOUNT  
PARK SITE 9-C**

**Estimated Costs Incurred by City:**

Public Reviews & Process	\$ 7,405
Environmental Documents	3,702
City Admin. & Proj. manag.	18,512
Inspection work	11,107
Contingency	37,024
Art in Public Places (2% of total)	9,551
Unallocated funds	+ 152
Subtotal:	\$ 87,453

**Estimated Costs Incurred by Developer:**

Design (masterplan & phase 1)	\$ 11,107
Construction Documents	18,512
All approved construction	+ 370,092
Subtotal:	\$ 399,711

Subtotal:	\$ 87,453	→	+	87,453
Total available PIF funds for development of Phase 1:			\$	487,164

Percent of Cost Incurred by City:	\$ 87,453 / \$ 487,164	=	18.0%
PIF Admin. fee (section 3.2.1)			+ 3.0%
			21.0%

**FEE PAYMENT AMOUNT:**

Developer will be required to pay the following portion of the residential park impact fee prior to issuance of future building permits (per dwelling unit):

Park Fee (per d.u.) x Percentage of costs incurred by City = Fee Payment Amount

Example:

Fee payment Amount = \$1,312 x 21.0% = <b>\$275.52 / d.u.</b>
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These calculations will be revised as necessary to reflect any modification of the Park Impact Fee.

**FEE CREDIT AMOUNT:**

The "Fee Credit Amount" (specified in section 4.1 of this agreement) shall be determined by subtracting the "Fee Payment Amount" from the residential park impact fee:

Park Fee (per d.u.) x Percentage of costs incurred by City = Fee Payment Amount

Example:

Fee payment Amount = \$1,312 - \$275.52 = <b>\$1,036.48 / d.u.</b>
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**NUMBER OF PERMITS:**

If Developer elects to recover 100% of costs incurred by claiming credits as provided in section 4.1 of this agreement, the number of building permits that must be issued (per dwelling unit) for full cost recovery, can be calculated as follows:

Costs incurred by Developer / Fee Credit Amount per permit = number of permits

Example:

Number of permits = \$399,711 / \$1,036.48 = <b>386 permits</b>
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Note: The calculations set forth above and in Exhibit E will be modified by City to reflect the Developer's actual Reimbursement Amount as approved by City in accordance with this agreement.

## EXHIBIT F REPRESENTATIVES

### City:

City of Sacramento  
Landscape Architecture Section  
1023 "J" Street, Room 200  
Sacramento, CA 95814  
Front desk: (916) 264 - 8529  
Office fax: (916) 264 - 8266

### Project Manager:

Tin-Wah Wong  
Office phone: (916) 264 - 5540  
Supervisor: (916) 264 - 7633

### Developer:

Lennar Communities  
2240 Douglas Blvd. Suite 200  
Roseville, CA 95661  
Office phone: (916) 783 - 3224  
Office Fax: (916) 783 - 3914

### Site Superintendent:

Les Hock  
Site Trailer phone: (916) 928 - 9362  
Site Trailer fax: (916) 928 - 9364  
Cell phone: (916) 810 - 9500



## EXHIBIT H HAZARDOUS SUBSTANCES

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

B. Definitions.

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

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the detention basin site or any of the easement areas which Developer is required to and does convey to City pursuant

to this Agreement, as now or may at any later time be in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 *et seq.*]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act (7 USCS §§ 136 *et seq.*); the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 *et seq.*]; the Clean Air Act [42 USCS §§ 7401 *et seq.*]; the Safe Drinking Water Act [42 USCS §§ 300f *et seq.*]; the Solid Waste Disposal Act [42 USCS §§ 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§ 25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code §§ 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§ 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

## EXHIBIT D

### MITIGATION REPORTING PLAN

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In January 1989, Assembly Bill 3180 went into effect requiring the City to monitor all mitigation measures included in this Negative Declaration. For this project, mitigation reporting will be performed by the Department of Parks and Recreation in accordance with the monitoring and reporting program being developed by the City to implement AB 3180.

This Mitigation Reporting Plan is being prepared by the Department of Planning and Development, Planning Services Division, Office of Environmental Affairs, 1231 I Street, Suite 300, Sacramento, CA 95814, (916) 264-7037, pursuant to California Environmental Quality Guidelines Section 21081.

The Department of Parks and Recreation will submit their completed Reporting Plan to the Planning Services Division for inclusion in the Environmental Services section's annual report to City Council.

Project Number: LS96

Project Name: Neighborhood Park 9-C Project

Project Location/Description: The proposed Neighborhood Park 9C is located in the City of Sacramento, north of the Interstate 5 (I-5) and State Route 99/70 (SR 99/70) interchange in the Natomas Basin (called the American Basin on the Taylor Monument 7.5 minute USGS quad). The neighborhood park that straddles two undeveloped subdivisions (Parkway Plaza and The Meadows) is bordered by Natomas Parkway to the east, Banfield Street to the west, an existing private club (The Club at Natomas Park) to the south, and abandoned agricultural land (site of the proposed "The Meadows" subdivision) to the north (Figure 1). The project is located between Elkhorn Boulevard and Del Paso Road just west of the East Main Drainage Canal in Township 10 North, Range 4 East, Section 35 (northeast ¼ section), Mount Diablo Meridian, at an elevation of 10 feet mean sea level (msl).

The proposed project involves the construction of a neighborhood park consisting of tennis courts, a basketball court, turf volleyball court, group picnic area, adventure play area, tot play area, grassy play area, bicycle rest area, and other amenities including a portable restroom, security lighting, sports lighting, walkway, drinking fountain, picnic tables and benches, and a moss rock garden.

**EXHIBIT D**

**MITIGATION REPORTING PROGRAM CHECKLIST  
FOR THE NEIGHBORHOOD PARK 9C PROJECT (CIP# LS96) NEGATIVE DECLARATION**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance		
			Initials	Date	Remarks
AIR: Construction emission levels would be below the significance thresholds for ROG and NOx, but would exceed significance thresholds for PM <sub>10</sub> . Adherence to the following mitigation measures will minimize air quality impacts and further ensure that air quality levels remain within the thresholds established by SMAQMD. In addition to the requirements of the SMAQMD, Sacramento City Code Section 11017 requires builders to take precautions to prevent and control movement of dust created by their work activities. Implementation of the following mitigation measures would reduce the impact to a less than significant level.	During Construction	Department of Parks and Recreation/ Developer			
<b>MITIGATION MEASURES</b>					
1. Water exposed soils twice daily to control wind borne dust.					
2. Enclose, cover, or water twice daily any exposed piles of dirt, sand, gravel, or other construction debris.					
3. At a minimum of three times per week, remove from all neighborhood streets, all dirt and mud which has been generated from or deposited by construction equipment					

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**EXHIBIT D**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance		
			Initials	Date	Remarks
going to and from the construction site.					
4. Construction activities shall comply with SMAQMD rule 405 on dust and condensed fumes, so that emissions do not exceed hourly levels as regulated per processing weight.					
5. Construction equipment shall be maintained and tuned at the interval recommended by the manufacturers to minimize exhaust emissions and odors and increase fuel efficiency.					
6. Equipment idling shall be kept to a minimum when equipment is not in use. No piece of equipment shall be left to idle in one place for more than 30 minutes.					
7. On-site vehicle speed shall be limited to 15 miles per hour on unpaved surfaces.					
8. Revegetate disturbed areas immediately after the completion of construction to reduce wind erosion.					
9. The loads on all haul/dump trucks shall be covered securely or at least two feet of freeboard shall be maintained on trucks hauling loads.					

**EXHIBIT D**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance			
			Initials	Date	Remarks	
<p><b>Impact/ Mitigation Measure</b></p> <p>BIOLOGICAL: The ditch and abandoned agricultural field is marginal habitat for western pond turtle and giant garter snake. A letter from the water company asserts that Lennar Development, LLC will coordinate dewatering with their wildlife biologist to ensure compliance with project conditions set-forth by the Reclamation District 1000 in their permit to Lennar officials.</p> <p>All vacant land in the Natomas Basin is suitable habitat for western burrowing owl. However, no evidence of these species occurring on the site was apparent.</p> <p>Adherence to the following mitigation measures will ensure that project impacts are less than significant to endangered, threatened, or rare species or their habitats.</p>	<p><b>Reporting Milestone</b></p> <p>During Construction</p>	<p><b>Reporting/ Responsible Party</b></p> <p>Department of Parks and Recreation/ Developer</p>	<p><b>Verification of Compliance</b></p>	<p>Initials</p>	<p>Date</p>	<p>Remarks</p>
<p><b>MITIGATION MEASURES</b></p> <p>1. Pre-construction surveys for western burrowing owl, giant garter snake, and northwest pond turtle shall be conducted</p>						

**EXHIBIT D**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance		
			Initials	Date	Remarks
per HCP requirements.					
2. The Developer will contribute Mitigation fees as agreed on in the HCP.					
3. Prior to filling the drainage ditch, the Developer shall have a certified biologist follow the USFWS protocol for dewatering and monitoring the drainage ditch to allow giant garter snake and other species to migrate to the Main Drainage Channel to include a written monitoring report and photo documentation of the activity to be sent to the City, Reclamation District 1000, and Natomas Water Company.					
BIOLOGICAL cont'd: The park site includes a temporary drainage ditch, subject only to the requirements of Reclamation District 1000 and Natomas Water Company. Although, this ditch is not considered a wetland habitat, the Developer will be required to obtain the following approvals and/or permits and adhere to all conditions of those permits to ensure that project impacts remain less than significant.	During Construction	Department of Parks and Recreation/ Developer			
<b>MITIGATION MEASURES</b>					
1. The Developer shall obtain the appropriate approval and/or permit from the Regional Water Quality Control					

**EXHIBIT D**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance		
			Initials	Date	Remarks
Board prior to construction of the project and filling of the ditch.					
HAZARDS: No toxic substances or contaminated soils have been found on the project site; however, the following mitigation measures shall ensure a less-than-significant hazard impact.	During Construction	Department of Parks and Recreation/ Developer			
<b>MITIGATION MEASURES</b>					
<ol style="list-style-type: none"> <li>1. If contaminated soil and/or groundwater is encountered or it suspected contamination is encountered during project construction, work shall be halted in the area, and the type and extent of the contaminated shall be identified. A qualified professional, in consultation with the appropriate federal, state, and/or local regulatory agencies shall then develop an appropriate method to remediate the contamination.</li> <li>2. Strict on-site handling rules shall be implemented to minimize spills and keep potentially contaminated materials out of the drainage waterways.</li> <li>3. Wastes and petroleum products used during construction shall be collected and removed from the project site in accordance with the Resource Conservation and Recovery Act regulations and Fed/OSHA standards.</li> </ol>					

**EXHIBIT D**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance		
			Initials	Date	Remarks
<p>4. A spill prevention plan shall be implemented to maintain the safety of the drainage waterways.</p> <p>HAZARDS cont'd: The dry nature of grasslands in the Natomas Basin during a typical northern California summer make fire hazards a potential risk. Grass and weeds within the project area are regularly mowed to reduce the likelihood of fire starting, and if started, from spreading to neighboring fields and structures. The following mitigation measure will ensure that construction related activities will be less than significant.</p> <p><b>MITIGATION MEASURES</b></p> <p>1. Machinery used during construction would be maintained to prevent accidental sparks, and fire extinguishers would be kept onsite during all construction activities.</p> <p>CULTURAL RESOURCES: No prehistoric archaeological sites were identified within or adjacent to the project area during the record search conducted at the NCIC. No impacts are anticipated. The project will not result in earthwork that would affect paleontological resources or unique geologic features. No archaeological sites containing human remains or historic cemeteries are known to exist within the project area. However, construction does involve some excavation for trenching and dewatering of the drainage ditch. These</p>	<p>During Construction</p>	<p>Department of Parks and Recreation/ Developer</p>			

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**EXHIBIT D**

Impact/ Mitigation Measure	Reporting Milestone	Reporting/ Responsible Party	Verification of Compliance		
			Initials	Date	Remarks
<p>activities could expose previously unidentified resources. The City has committed to limit potential impacts to a less than significant level by incorporating specific measures.</p> <p>CULTURAL RESOURCES CONT'D:</p> <p><b>MITIGATION MEASURES</b></p> <ol style="list-style-type: none"> <li>1. If subsurface archaeological or historical remains are discovered during construction, work in the area shall stop immediately and a qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further mitigation measures to reduce any archaeological impact to a less than significant level before construction continues.</li> <li>2. If human burials are encountered, all work in the area shall stop immediately and the Sacramento County Coroner's office shall be notified immediately. If the remains are determined to be Native American in origin, both the Native American Heritage Commission and any identified descendants must be notified and recommendations for treatment solicited (CEQA Section 15064.5); Health and Safety Code Section 7050.5; Public Resources Code Section 5097.94 and 5097.98.</li> </ol>					

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