



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
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Meeting Date: 5/15/2012

Report Type: Consent

Title: Agreement: Design and Construction of Park Improvements for Township 9 North 7th Street Park

Report ID: 2012-00435

Location: 819 North 7th Street, District 1

Recommendation: Pass a Motion authorizing the City Manager or City Manager's designee to execute an Agreement with Capitol Station 65, LLC for the Design and Construction of Park Improvements for Township 9 North 7th Street Park with Capital Station 65, LLC.

Contact: Mary de Beauvieres, Principal Planner, (916) 808-8722; Tim Hopper, Administrative Officer, (916) 808-8173, J.P. Tindell, Park Planning and Development Manager, (916) 808-1955; Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Park Development Services

Dept ID: 19001121

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Vicinity Map (Township 9)
- 4-Agreement for Design and Construction

City Attorney Review

Approved as to Form
 Sheryl Patterson
 5/9/2012 12:45:53 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
 Russell Fehr
 5/3/2012 11:39:39 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 5/8/2012 2:36:53 PM

Description/Analysis

Issue: Capitol Station 65, LLC, the master Developer of the Township 9 project, wishes to begin development of the one-acre North 7th Street Park. The park development cost is estimated to be \$2.137 million for which the Developer will receive Park Development Impact Fee (PIF) credits for 261 multi-family residential units. The cost to develop the North 7th Street Park is being funded with a grant from the state under the Proposition 1C program. The agreement for assignment of the grant funds requires that the Developer to enter into a standard “turnkey” or credit/reimbursement agreement with the City prior to the park development.

On January 24, 2012, the City Council approved a Third Amendment to the Township 9 Development Agreement (City Agreement 2007-1081). The Third Amendment: (i) requires the Developer construct the North 7th Street Park and Riverfront Park for the Project in accordance with the Parks Master Plan and PUD Guidelines; (ii) establishes that such park development will meet the Park Development Impact Fee (PIF) requirements for a set amount of housing units, and (iii) provides for modifications to the City’s standard PIF ‘turnkey’ or credit/reimbursement agreement for park development.

Modifications to the City’s standard “turnkey” or credit/reimbursement agreement include the elimination of the requirement to post a letter of credit or other performance guarantee because the park is being constructed with grant funds controlled by the City. In addition, the modified agreement waives the liquidated damages penalty for delays in completion of the park construction in consideration of the City’s authority to withhold issuance of occupancy permits for residential units. Since this park is being constructed before the first housing project, and is expected to be completed about one year prior to completion of that housing project, any delay in completion of the park would be inconsequential.

The Developer also requested a modification to the standard agreement to allow payment of the 2.5% administration fee, covering the City’s administration costs of the PIF fund to and to manage the PIF credits, at the time of City’s acceptance of the park, rather than as an upfront payment. Provisions have been added to the agreement to address this issue.

As outlined in the Third Amendment to the Development Agreement, in exchange for the development of the North 7th Street Park the Developer will receive PIF credits for 261 multi-family residential units. This is the equivalent to \$831,091, or the cost to develop one-acre of parkland in the project as assigned in the Third Amendment. These PIF credits will not be reduced if the City increases the PIF fee in the future because the parks will have already been developed so an inflation adjustment is not applicable.

A summary of the Township 9 project and its parks and a location map are included as attachments to this report.

Policy Considerations: The Township 9 project was approved on August 28, 2007 and found to be consistent with the City's General Plan and the goals, policies, standards, and objectives of the Richards Boulevard Area Plan and the Central City Community Plan. The Township 9 project continues to be consistent with the City's 2030 General Plan and serves as an example of desired development for the recently approved River District Specific Plan. Providing parks and recreation facilities is also consistent with the City's strategic plan to enhance livability in Sacramento's neighborhoods by expanding park, recreation, and trail facilities throughout the City.

Environmental Considerations:

California Environmental Quality Act (CEQA): On August 28, 2007, the City Council certified an Environmental Impact Report (EIR) for the Township 9 Development Project and adopted a Mitigation Monitoring Plan, and made Findings of Fact and approved a Statement of Overriding Considerations (Resolution 2007-641).

Sections 15162 and 15163 of the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.) provide that an additional EIR or Supplement to an EIR need not be prepared unless subsequent changes are proposed in the project, substantial changes occur with respect to the project circumstances, or new information of substantial importance to the project becomes known or available. The North 7th Street Park was part of the approved development plan and the environmental impact of the park's development was evaluated as part of the larger project. Since none of the conditions listed above relating to Sections 15162 or 15163 exist; additional environmental review is not required.

Sustainability: The City has adopted a Sustainability Master Plan to complement the City's General Plan. This was done to ensure that the City set the standard for the practices of sustainability within its own organization as well as becoming a model for any construction projects within the City. The Township 9 Project was recently recognized under the California Sustainable Strategies Pilot Program as one of five statewide Gold Catalyst Projects. Catalyst projects are ones that demonstrate a commitment to sustainable communities and innovative strategies designed to (i) increase housing supply and affordability; (ii) improve jobs and housing relationships; (iii) stimulate job creation and retention; (iv) enhance transportation modal choices; (v) preserve open space and agricultural resources; (vi) promote public health; (vii) eliminate toxic threats; (viii) address blighted properties; (ix) reduce greenhouse gas emissions; and (x) increase energy conservation and independence.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Staff recommends the City Council authorize the City Manager or the City Manager's designee to execute the Agreement with Capitol Station 65, LLC to Design and Construct the North 7th Street Park in the Township 9 development project. The Agreement is consistent with the Third Amendment to the Development Agreement for the project. The Agreement will allow the construction of the first park in the Township 9 project, which will be completed before any housing in the development is occupied. Because this park is located in a median between lanes of proposed vehicle traffic, it will be constructed in conjunction with the widening of North 7th Street and must be completed before the City can accept the street improvements. Construction of the North 7th Street widening project is currently underway.

Financial Considerations: The North 7th Street Park is one acre in size. The actual park construction cost is estimated at \$2.137 million. Full funding for the park development will be provided through a grant from the state under the Proposition 1C program. The assignment of grant funds requires that the Developer construct the parks under an agreement with the City. The City controls the disbursement of grant funds to pay for the park improvements.

In this case, the Developer will receive park credits for 261 multi-family residential units for the construction of the park, valued at \$831,091. The Park Development Impact Fee credit was determined by taking the total of all Park Development Impact Fees to be collected project-wide (\$7.97 million) and dividing by the total park acres to be developed (9.59 acres) to arrive at an \$831,091 per acre cost.

Development of parks creates an ongoing cost for park maintenance and utilities based on the size of the park. The Project's Development Agreement requires that a Community Facilities District or other assessment district be formed and funded before the City will accept each park. The ongoing maintenance of each park will be fully funded by the District to offset any new impact to the Department of Parks and Recreation's Operating Budget. The Developer is working with the City's Special Districts staff on creation of a District.

Emerging Small Business Development (ESBD): The Developer is required to design and construct the park improvements with the Proposition 1C grant funds using the City's standard contracting practices, which includes the ESBD requirements.

Background

Township 9 is an approved 65-acre mixed used development located in the River District in the Central City Community Plan Area. When complete, the project is anticipated to include 2,350 dwelling units, 840,000± square feet of office space, 146,000± square feet of commercial retail, parks and open space. The proposed parks are smaller than would typically be found in a suburban residential development and will be developed with a more urban feel, reflective of the higher density development in which they are to be found. The project includes the following parks: a riverfront park along the south shore of the American River, a small neighborhood park centrally located within the development, widened street medians along North 7th Street and Park Boulevard, a mew extending from the Park Boulevard median towards the American River, a Transit Plaza, five mid-block paseos and a small corner plaza.

During the entitlement process, the developer advocated a unique urban park system containing high end finishes, landscaping, and amenities that were above the City's park development standards. In order to accommodate this urban design approach, the developer was required through the project's Development Agreement to construct the parks funded under Proposition 1C using the City's standard Credit / Reimbursement Agreement. Building "turnkey" parks enables the developer to provide parks at an accelerated schedule to help market the development project. This gives the developer more control over the end product and timing and does not compete with other City priorities for funding and development schedules.

Funding from the State's Proposition 1C grant program is being used to develop the project's infrastructure, including the first two parks. The Proposition 1C funding source and the development of the parks at the onset of the project development required some modifications to the City's standard Credit / Reimbursement Agreement. The Third Amendment to the Development Agreement outlined the park costs, Park Development Impact Fee (PIF) credits the developer would receive for the park development, and timing of the park improvements. Because Proposition 1C funds would be used to develop some of the project parks and open spaces, some performance security requirements in the City's standard Credit / Reimbursement Agreement were not needed, since the City would control the disbursement of the grant funds. A template for the Agreement for the Design and Development of Parks in the Township 9 Project was approved by City Council on January 24, 2012, as part of the Third Amendment to the Development Agreement.

Maintenance: The developer is obligated to create an assessment district to fully fund the ongoing maintenance costs associated with the parks, and the assessment rate will

be higher than for a standard park because of the hardscape, water features and high end finishes and amenities which will be more costly to maintain. Creation of the assessment district to fund the parks' maintenance will be required before the final map for the project may be recorded. The assessment district must be also be in place before the City will accept the parks.

Next Steps: Park names for all parks within the Township 9 development will be coming to City Council in the near future.



**AGREEMENT FOR DESIGN AND CONSTRUCTION
OF PARK IMPROVEMENTS
FOR TOWNSHIP 9 PROJECT NORTH 7TH STREET PARK
AND PARK DEVELOPMENT IMPACT FEE CREDITS**

This Agreement Relating to Design and Construction of Park Improvements for Township 9 Project North 7th Street Park and Park Development Impact Fee Credits (this "Agreement") is entered into on _____, 2012 ("Effective Date") by and between the **CITY OF SACRAMENTO**, a charter municipal corporation ("City"), and **CAPITOL STATION 65 LLC**, a California limited liability company ("Developer"), with respect to the following facts:

RECITALS

- A. Developer owns the real property described in **Exhibit A**, attached hereto, and incorporated herein by this reference ("**Property**").
- B. The portion of the Property described in **Exhibit B**, attached hereto and incorporated herein by this reference, ("**Park Site**"), is intended for dedication and has been dedicated for use as a neighborhood park serving the Property (the "**Park**").
- C. Development of the Property is subject to the payment of a Park Development Impact Fee ("**Park Development Fee**") in accordance with the City of Sacramento Code, Title 18, Chapter 18.44 ("Fee Ordinance"). The Park Development Fee Nexus Study (approved by Resolution No. 99-474 on August 17, 1999) as amended or supplemented, identifies the park facilities and improvements needed. The purpose is to provide funds necessary to design, construct, and install park facilities required to meet the needs of and address the impacts caused by new development.
- D. The Fee Ordinance authorizes credits and reimbursements applicable to Park Development Fees owed (1) by landowners who have advanced funds for the construction of park facilities that otherwise would be paid from the revenue of the Park Development Fee, and (2) by landowners who construct park facilities that otherwise would be paid for from the revenue of the Park Development Fee.
- E. Developer desires to develop the Park Site by constructing park improvements, including, at a minimum, the park improvements specified in **Exhibit C**, attached hereto and incorporated herein by this reference ("**Project**" or "**Project Improvements**"). The Project Improvements specified in **Exhibit C** do not include utility and access improvements Developer is required to install under the tentative map for the Property pursuant to the provisions of the City's Subdivision Ordinance (Sacramento City Code, Title 16).

- F. Development of the Park Site will require various design services, which will be performed by either Developer or City as shown on the Park Development Task Allocation in **Exhibit D**, attached hereto and incorporated herein by this reference. 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 is based on the budget amount specified in **Exhibit E**, attached hereto and incorporated herein by this reference, ("**Park Development Budget**"), which budget may be amended by agreement of the parties based on the actual design costs and the construction bid amount, and any approved change orders. However, the amount of credits may be less than the Project Development Budget for the reasons set out herein.
- G. Subject to the credits against the Park Development Fee as provided herein, Developer is willing to perform the design services assigned to Developer in **Exhibit D**, and construct the Project, and to fund the City's costs to oversee the Project design and construction activities (collectively the "**Project Costs**," as further defined herein). Project Costs shall mean and include costs related to all contracts for the construction of the Project, including change orders, 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 mitigation measures, and costs for approvals and fees imposed by any other public agency.
- H. The Project is eligible for, and the City agrees to provide credits against, the Park Development Fee for a portion of the Developer's Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement. Under the Third Amendment to the Development Agreement for Township 9 Project, Developer will receive Park Development Fee credits for a specified amount of Project Costs, which may be less than the Project Costs, in consideration that the Project Improvements include design features that are more costly than City's park standards and to insure that the remaining amount of Park Development Fees that will be owed for subsequent development of the Property will be sufficient to cover the costs for construction of the remaining parks for the Township 9 Project.

AGREEMENT

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

ARTICLE I DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS

1.0 Recitals Incorporated. The foregoing recitals are true and correct, and are part of this Agreement for all purposes.

1.1 Design and Construction. Developer will design and construct the Project in accordance with the terms of this Agreement and convey to City the completed Park, along with all interest in real property necessary for the operation, maintenance, repair, and ownership thereof by City. The interest(s) in real property for the Park are to be conveyed to City as a fee interest or as an exclusive recreational easement in the land, as provided for in the Township 9 tentative map conditions. Developer shall also convey to City the improvements and any and all access easements necessary for the operation, maintenance, and repair of the Park. Developer shall complete the construction of the Project Improvements to the Park Site commonly known as "North 7th Street Park" (approximately 1.0 acre) no later than March 1, 2013; or within twelve (12) months of the date the City approves the construction documents, whichever is later ("Completion Date").

1.2 Design; Final Budget. The design related services are to be performed by Developer as specified in **Exhibit D** include Design Development, Construction Document Preparation, and Bid Document Preparation. Developer has selected Jacobs as the landscape architect to perform the design services and City has approved said selection. Developer shall perform the various Project design-related services in accordance with the following:

1.2.1 Design Development. Developer shall prepare conceptual plans for the Project, which shall include a Park site survey, a proposed park master plan and Project description illustrating the park development and all improvements at full build-out, and Project description illustrating the Project Improvements to be constructed within the budget amounts specified in **Exhibit E**, construction cost estimates for the park master plan. Developer shall provide copies of the conceptual plans to the Landscape Architecture Section, ("**LAS**") of the City, Department of Parks and Recreation ("**Department**") 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 or conditioned.

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 Project

Improvements, including updated construction cost estimates and construction time lines. At a minimum, Developer shall submit such plans and specifications to the LAS at the **35, 75, and 100-percent** phases 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 or conditioned.

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 or conditioned.

1.2.4 Environmental Review. An EIR has been prepared and certified for the Township 9 Project, and the EIR included the potential impacts and mitigation measures for development of the Project Improvements. If new information or changed circumstances warrant additional environmental review as determined by the City's Environmental Services Department, in that event a consultant retained by City and/or by City staff shall prepare the environmental documentation required for development of the Park site as provided herein. If directed by City, and in accordance with all applicable legal requirements, Developer shall prepare such environmental documentation, subject to review and approval by the City in its sole discretion. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and the City's Environmental Planning Services Division. The Completion Date set forth in this Agreement is based upon an assumption that no further environmental documentation will be needed for the Project. If additional environmental documentation is determined by the City to be needed, then the Completion Date shall be extended to account for the time needed to complete the necessary environmental documentation and associated environmental approvals.

1.2.5 LAS Approval. 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.

1.2.6 Final Budget. Before approval of the bid documents by City, City and Developer shall review the Project Development Budget set forth in **Exhibit E** and shall establish a final budget for design and construction ("**Final Budget**"). City and Developer anticipate that the construction plans and specifications will include all of the Project Improvements described in **Exhibit C**, but Developer shall not be obligated to

construct improvements or incur Project Costs that, in the aggregate, exceed the amount of the Final Budget. The Final Budget shall include all Project Costs, including a reasonable contingency amount, shall identify the source of funding. .

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. Developer shall issue an invitation to bid 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. Developer shall not request bids from fewer than three (3) contractors. Bids shall be sealed, and shall be opened in the presence of an LAS representative. Developer shall provide LAS with copies of all bids received, after which LAS 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, LAS may instruct Developer to modify the Project Improvements and/or re-bid 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. If it is necessary to re-bid the Project, then the Completion Date shall be extended in an amount equal to the number of days consumed by having to modify the design of the Project Improvements, LAS approve of such modifications, and to re-bid the Project.

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 (collectively, "**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 who will serve as their respective points of contact with respect to such construction. The designated Site Superintendent and City Project Manager are identified on **Exhibit F**, attached hereto and incorporated herein by this reference. The designations may be changed by written notice from either party.

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.

b. The City Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The 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 Sections 1.2.4, 1.2.5, 1.3, 1.4.5 and 4.5 of this Agreement, 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 by or before the Completion Date.

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 therefore from Developer (Sundays excepted). 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 authority to make such determination, with Developer having a right of appeal to the City Manager or his designee.

1.4.4 Prevailing Wages. To the extent required by the California Labor Code, Developer's contractors and subcontractors shall pay all 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). Copies of certified payroll shall be provided to City, on a monthly basis, as a prerequisite of Final Completion (defined below in Section 2.1.2).

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 and identify Project modifications that shall bring the Project Costs within the Final Budget. The Completion Date shall be extended for a period of time equal to the number of days consumed in making modifications to the Project Improvements in order to bring the Project Costs back within the Final Budget.

1.5 Performance, Labor and Material Bonds. Developer covenants to comply with any and all applicable State and City performance and payment bonding requirements with respect to the construction of the Project. Developer shall require its contractors to provide performance and payment bonds in the amount of 100% of the contract amount with City as an additional obligee of the contractor's bonds in accordance with applicable City requirements; provided, however, that all such bonds 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. On Final Completion (defined below in Section 2.1.2), the amount of the bonds may be reduced to reflect the remaining value of the maintenance work to be performed by Developer's contractor during the one (1)-year warranty period.

1.6 Insurance. Prior to the commencement of construction work on the Project Improvements, Developer shall furnish to City a certificate or certificates substantiating the fact that Developer or its construction contractor 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 by Developer or its subcontractors. The insurance policy shall expressly state that the above terms are in effect.

If Developer or its construction contractor 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 or Development Fee Credits which may be 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, provided however Developer shall not be required to enter into any change orders that would increase the Project Costs beyond the Final Budget, unless an increase in the Final Budget is approved by the City as provided in this Section 1.7. All change orders shall require approval of the LAS, which shall not be unreasonably delayed, conditioned, or withheld, except as provided as follows. In the event a change order alters the Project Improvements and would increase the Project Costs beyond the Final Budget, the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget as provided in Section 1.4.5 herein. In the event the City finds in its sole discretion that the Project Improvements cannot be modified such that the Project Costs fall within the Final Budget, then City, at City's sole discretion, may disapprove of the change order or may approve an increase in the Project Costs, the Park Development Budget shall be amended to reflect the increase in such costs, and the Final Budget shall be increased by such amount.

1.7.1 Required Change Orders. Developer shall make changes that 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.

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 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 or would extend the time for completion beyond the Completion Date.

1.8 Liquidated Damages. The actual fact of the occurrence of damages and the actual amount of damages that City would suffer if the Park is not completed by the Completion Date, are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case, it is impracticable and

extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Park and, in addition, staff and supervision costs; and the loss suffered by the public within the City by reasons of the delay in the completion of the Park to serve the public by the Completion Date, subject to Sections 1.4.2 and 4.5 herein. Accordingly, the parties hereto agree, and by execution of this Agreement, Developer understands, has ascertained, and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Developer to complete the Park within the times specified in this Agreement. The amount of the liquidated damages to be paid by Developer to City for failure to complete the Park by the date specified herein (as extended under Sections 1.4.2 or 4.5 herein, or other applicable provisions of this Agreement or law) will be \$200.00 for each calendar day, continuing to the time at which the Park is physically completed. Such amount is the actual cash value agreed upon as the loss to City resulting from Developer's default. In the event Developer shall become liable for liquidated damages, City shall have the right to demand and receive from Developer liquidated damages as provided herein once liability of Developer under this section is finally determined under the provisions of Section 4.4. Notwithstanding the foregoing, no liquidated damages shall apply until the Developer or other entities undertaking development of the Township 9 project are issued a certificate of occupancy for a residential, commercial or office project for which the Park is intended to serve.

1.9 City Administrative Costs. Developer shall pay City for its costs to administer this Agreement including, without limitation, staff costs to process approval of the Park master plan and this Agreement, review design plans, review bid specifications and support the bidding and contract award process, coordinate and inspect construction of the Project Improvements, accept the Park and related property interests and enforce the warranty during the maintenance period, in the amounts and according to the payment schedule set out in **Exhibit G**. These City Administrative Costs average 17.9% of the Park Development Budget. However, with respect to the Project, the City's administration costs shall be based on the cost for the actual services provided for the City tasks as set out in **Exhibit D** in accordance with the amount set out in **Exhibit E**. A 10% annual interest charge on the amount owed shall be imposed if payment is not made within ten (10) days from the due date set out in **Exhibit G**.

1.10 PIF Administrative Costs. In addition to City's costs to oversee the Park development under this Agreement, City allocates 2.5 % of the amount of the total Park Development Impact Fee (the "PIF Administration Fee") for the City's costs to administer the Park Development Impact Fee program as allowed under the Mitigation Fee Act. The PIF Administration Fee includes the costs to track the amount of credits issued under this Agreement at the time of issuance of building permits over the term of the Township 9 Development Agreement. Prior to City's acceptance of the Park construction, Developer shall pay the PIF Administration Fee based on the total dollar amount of PIF credits to be issued to the Developer for the Park, less any PIF Administration Fees previously paid with respect to the Park. If an applicant for a building permit within the boundaries of the Township 9 project redeems Park Development Impact Fee credits prior to completion of the Park, that applicant shall pay

the PIF Administration Fee based on the dollar amount of the PIF credits issued to that applicant with respect to the Park and that amount shall be paid at the time of issuance of the building permit.

ARTICLE 2. CITY ACCEPTANCE, CONVEYANCE AND MAINTENANCE

2.0 Completion. When Developer believes the Project is complete, Developer shall provide written notice of completion to the City, requesting a walk-through inspection. Developer may not submit a notice of completion unless and until the turf specified in the construction specifications has been established. It shall be the responsibility of the Developer to provide the written notice of completion within such time prior to the Completion Date as reasonably estimated by the Developer, upon consultation with City, to allow for the Final Inspection (defined below) and any corrective punch list work to be completed by or before the Completion Date. Within ten (10) business days following the date of receipt of Developer's written notice of completion, the City shall conduct a final inspection of the Project ("**Final Inspection**"). The Project shall be inspected by representatives of the City. At the Final Inspection, Developer shall demonstrate to City the operation of any system included as part of the Project, and instruct City personnel in the operation, adjustment, and maintenance of any equipment or systems included in the Project.

2.1 Final Inspection. If, during the Final Inspection, City determines that the Project has not been completed in accordance with the Project Plans, the City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer within ten (10) business days following the Final Inspection. If the City delivers such punch list to Developer within said ten (10) business day period, then Developer shall undertake to repair such punch list items in a diligent manner. Upon completion of the punch list work, Developer shall request another Final Inspection from the City and within ten (10) business days following such written notice from Developer, the City shall conduct another Final Inspection. If the City determines that the punch list work is complete, the City shall immediately deliver a certificate of final completion to Developer. If the City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section 2.1 until the successful completion of the punch list work. If the City fails to conduct such Final Inspection within ten (10) business days after receiving the Developer's written request for a Final Inspection, or if the City fails to deliver a punch list to Developer within ten (10) business days after conducting such Final Inspection, then the Developer will be deemed to have successfully completed the Final Inspection. Notwithstanding the foregoing, there shall not be a successful Final Inspection unless and until the City reasonably determines that the turf specified in the construction specifications has been established as evaluated under customary trade standards.

2.1.1 Punch List Items. Within ten (10) business days after the successful completion of the punch list work, if any, or upon a successful Final

Inspection, Developer shall provide City with a Mylar copy of "as-built" record drawings with certification by a licensed civil engineer in the State of California as to accuracy and completeness. Developer's submission of complete, updated as-builts shall be a prerequisite to Final Completion.

2.1.2. Final Completion. Final Completion shall be deemed to occur after a successful Final Inspection, the delivery of the documents and information required under Sections 1.4.4 and 2.1.1, and upon the City's acceptance of the Project (as evidenced by a written statement or letter to that effect signed by or on behalf of City), which shall occur within thirty (30) days after Developer successfully completes a Final Inspection ("**Final Completion**"). Developer shall provide City with copies of all contracts, change orders and invoices for the costs of the work and such other documentation as may be requested by City to verify the Project Costs incurred by Developer. The City's acceptance of the Park property and the Project Improvements shall be evidenced by City's filing of a Certificate of Acceptance of the dedication of the Park ("**Final Acceptance**") and City's acceptance shall not be unreasonably withheld, delayed, or conditioned. Upon Final Acceptance, the Park and all Project Improvements shall become the property of City and thereafter Developer's obligations to City shall be only for warranty and indemnification as set out in sections 2.1.3 and 2.3. Developer shall (i) take any and all actions necessary to convey and vest full, complete, and clear title in the Park and all of the underlying real property interests (easement and/or fee) to City at no cost, (ii) pay the costs for escrow, title insurance and recording, and (iii) convey to City at no cost those additional property rights as may be necessary for City maintenance and access to the Park, on or before Final Acceptance. City will not formally accept the Park unless and until such title and all related property rights have been conveyed to City after Final Completion. City will not formally accept the Park unless and until such title and all related property rights have been conveyed to City after Final Completion, and Developer has paid the PIF Administration Fee.

2.1.3 Park Maintenance. Developer shall maintain the Project Improvements at Developer's expense during the one (1)-year warranty period specified in Section 2.4, and City agrees to grant Developer, or its agents, any necessary right of entry permits or licenses for such maintenance work. Thereafter, City shall be responsible for all Park maintenance. For purposes of this Section 2.1.3, "park maintenance" does not include capital repairs or restoration necessitated by vandalism or acts of God. Maintenance shall meet the Park Landscape Maintenance Services General Plans and Specifications which are available from the project manager.

2.2 Release of Liens. Upon Final 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 prior to Final Acceptance.

2.3 Indemnification.

2.3.1 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 negligence, active negligence or willful misconduct of City in its functions of design review, approval, construction inspection or other acts or omissions of City 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 2.3.1 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.

2.3.2. 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.

2.3.3 Duration of Indemnification Obligations. The indemnification and hold harmless agreement made by Developer in Section 2.3.1, above, with respect to the Project, and/or each part thereof constructed by Developer, shall expire on the date which is one year after Final Completion ("**Expiration Date**"), provided that Section 2.3.1 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 2.3.2 shall survive the termination of this Agreement until the date which is two years after the Final Completion of the Project. Section 2.3.2 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 2.3.3 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 Property. The provisions of this section 2.3.3 shall not apply to Claims relating to acts or omissions occurring during the performance of Developer's maintenance obligations, pursuant to Section 2.1.3 above.

2.3.4. Additional Provisions Regarding Indemnification Obligations.

(a) 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; and

(b) except as may otherwise be specifically and expressly provided in subsection 2.3.1 relating to Claims based upon allegations of sole or 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; and

(c) the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms but only to the extent allowed pursuant to Civil Code section 2782; and

(d) 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

(e) 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), provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782:

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.

2.3.5 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 that may arise against City or its officers, employees and agents, in connection with Developer's design and/or construction of the Project.

2.3.6 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 the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the parties 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.

2.3.7 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 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**, 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 Improvements as to the materials and workmanship to be free from any defects for one (1) year following Final Completion. The provisions contained herein shall not be deemed to limit any rights Developer has or may have to seek damages or other relief based upon any act or omission of any contractor involved in the construction or design of the Project Improvements. Notwithstanding the foregoing, Developer's warranty excludes remedy for damages or defects caused by ordinary wear and tear under normal usage, abuse, neglect, modifications not performed by Developer or its agents, vandalism, or acts of God. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project Improvements, but the warranty contained in this Section 2.4 shall be the exclusive warranty of Developer, and all other express or implied warranties are expressly disclaimed. Should any failure of the Project Improvements 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. Warranty work is distinguished from the twelve months of maintenance that Developer will be performing during the warranty period. 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, City may make the necessary repairs without prior notice to Developer. In all cases of failure of a Project Improvement or portion thereof within the warranty period where City has taken action in accordance with this Section, Developer shall reimburse City for any and all costs or expenses, direct and indirect, incurred by City after providing Developer with documentation reasonably substantiating the costs incurred by City pursuant to this Section, and City may deduct the outstanding amount from the Park Development Fee Credits (defined below) after providing Developer with documentation reasonably substantiating the costs incurred by City pursuant to this Section.

ARTICLE 3. PARK DEVELOPMENT FEE CREDITS

3.0 Park Costs and Fee Credits. For purposes of this Article 3, "Developer" shall mean **CAPITOL STATION 65 LLC** because it is the party incurring the costs of developing the Park and/or its assignee as set out in Section 3.3. Developer shall receive "Park Development Fee Credits" in the amount of \$831,091, which credits equal the amount of the Park Development Fee for 261 multi-family residential units in effect at the time this Agreement was executed and based on a portion of the Park

Development Budget for which Developer will receive Park Development Fee Credits pursuant to the terms of the Third Amendment to the Development Agreement.

As set out in the Third Amendment to the Development Agreement, this amount of Park Development Fee Credit, which equates to the foregoing total residential units, shall not be reduced to lower the number of residential units for which the Fee credit is to be applied due to any increases in the amount of the Park Development Fee as may be imposed under the Fee Ordinance based on the inflation factor permitted under City Code section 18.44.120 or adjustments based on an updated nexus study for the term of the Development Agreement.

The Park Development Fee Credit may be applied toward the Park Development Fee that would otherwise be payable by Developer (or its assignee) with the issuance of a building permit for a residential development project located within the Township 9 PUD as further described in Section 3.3.

3.1 Issuance of Fee Credits. After completion of the Park construction and acceptance by City, Developer may make a written request for issuance of Park Development Fee Credits in accordance with Section 3.0 and this Section 3.1. City will determine the total amount of Park Development Fee Credits that may be issued in response to the written request in accordance with the terms of the Third Amendment to the Development Agreement. City will issue Park Development Fee Credits to Developer in an amount equal to the Park Development Fee Credits allowable under this Agreement and the Third Amendment to the Development Agreement and City's policies and procedures for issuance of the credits.

3.2 Repayment. If City issues Park Development Fee Credits to Developer that, in the aggregate, exceed the total amount that may be issued in accordance with this Agreement and City's policies and procedures for issuance of the credits, then Developer agrees to repay City the full amount of the excess within **15 days** after receiving City's written demand.

3.3 Assignment Permitted. Developer may assign the rights under this Agreement to take Park Development Fee Credits against the Park Development Fee to be assessed against any residential development project located within in the Township 9 Planned Unit Development (PUD) as approved on August 27, 2007 (City Resolution No. 2007-643) to any person or entity with an ownership interest in property located within the Township 9 PUD, subject to and in accordance with the terms of this Article. All assignments of the right to Park Development Fee Credits pursuant to this Article shall be subject to City's prior written consent, which consent shall not be unreasonably withheld or delayed. 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 to be paid for by the person or entity requesting recognition of Developer's fee credit assignment.

3.4 Required Assumption by Assignee. In addition to the approval of the

City, any 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 Park Development Fee Credit and fee reimbursement provisions, including without limitation, the obligation to pay the portion of the Park Development Fee required to cover the City's cost of administration of the Fee Program, notwithstanding the existence of any such right to Park Development Fee Credits. The assignment agreement shall contain a provision where under Developer and the assignee agree to fully and completely release and indemnify and defend City from any liability relating to the assignment of rights.

3.5 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 Park Development Fee Credits hereunder, City may disallow the use of any Park Development Fee 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.

3.6 City Policy and Procedure. Developer, for itself and its successors in interest to the Property, acknowledges that the credit rights hereunder do not run with the Property and that generally applicable City policies and procedures relating to assignment of Park Development Fee Credits, 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, provided however in the event any subsequently adopted policy or procedure is inconsistent with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. City agrees that it shall not give any Park Development Fee 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 those 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 3.

ARTICLE 4. MISCELLANEOUS

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

4.1 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.

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

If to City: City Manager
New City Hall, 5th floor
915 I Street
Sacramento, CA 95814

If to Developer: Capitol Station 65 LLC
Attention: Al Esquivel, Project Manager
640 Bercut Drive, Suite C
Sacramento, CA 95811

4.3 Effective Date. This Agreement shall become effective on the date all the parties have executed it.

4.4 Mediation and Arbitration.

4.4.1 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 serving a Notice of Dispute ("**Notice**") on the parties pursuant to Section 4.3. 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.

4.4.2 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.

4.4.3 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.

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

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

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

c. The 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

NOTICE: BY INITIALING IN THE SPACE BELOW, EXCEPT AS PROVIDED ABOVE, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

City's Initials: _____

Developer's Initials: 

4.5 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, acts of terrorism, insurrection, strikes, walkouts, riots, energy shortages, energy rationing, floods, drought,

rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted for the period of the enforced delay, or for such longer period as may be mutually agreed upon.

4.6 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, except as the Developer's rights may be modified under the terms of this Agreement pursuant to the Third Amendment to the Development Agreement, which was adopted by ordinance.

4.7 City Attorney 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.

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

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

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

4.11 Governing Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

4.12 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

4.13 Satisfaction of Conditions. City agrees that upon the execution of this Agreement and upon Developer's compliance with the terms and conditions herein, any general or specific tentative map conditions for the Property requiring construction of the Project covered by this Agreement shall be deemed satisfied.

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

4.15 Authority to Bind. Each person signing this Agreement warrants that it is authorized to bind its respective Party on whose behalf they sign.

4.16 Construction: Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine, feminine and neuter shall include the others. Without limitation, any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the relevant class. Unless otherwise indicated, all references to sections and subsections are to this Agreement. If the day on which any party is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on, or the time for performance shall be extended to, the next succeeding business day.

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

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

CITY OF SACRAMENTO

By: _____
John F. Shirey
City Manager

Dated: _____

DEVELOPER

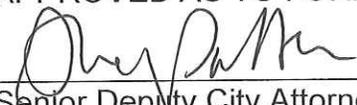
By:  _____
Scott Syphax
Chief Executive Officer

Dated: 4/30/12

ATTEST:

City Clerk

APPROVED AS TO FORM:



Senior Deputy City Attorney

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Real property in the City of SACRAMENTO, County of SACRAMENTO, State of California, described as follows:

PARCEL A:

PARCEL NO. 11, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M. CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, PAGE 28.

EXCEPTING THEREFROM THE EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM; INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USES OF THE LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING, OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON, AS RESERVED IN THE DEED EXECUTED BY SOUTHERN PACIFIC COMPANY, A DELAWARE CORPORATION, RECORDED JANUARY 6, 1959, IN BOOK 3972, PAGE 893, OFFICIAL RECORDS.

APN: 001-0200-013 PARCEL

B:

PARCEL NO. 13, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

APN: 001-0020-045 AND 001-0020-003

PARCEL C:

ALL OF PARCEL NO. 10, AND A PORTION OF THOSE LANDS DESIGNATED "SOUTHERN PACIFIC COMPANY" AS BOTH ARE SHOWN ON THAT RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY IN BOOK 26 OF SURVEYS, AT PAGE 28, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL NO. 10; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE BOUNDARY OF SAID PARCEL NO. 10, NORTH 71°44'05" WEST 300.00 FEET, AND NORTH 18°29'45" EAST 1686.64 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL NO. 10; THENCE, LEAVING THE BOUNDARY OF SAID PARCEL NO. 10, NORTH 18°29'45" EAST 18.66 FEET; THENCE, SOUTH 83°27'58" EAST 173.72 FEET TO A POINT IN THE WESTERLY BOUNDARY OF PARCEL NO. 13 AS SHOWN ON SAID RECORD OF SURVEY AND IN THE EASTERLY LINE OF SAID LANDS; THENCE, ALONG THE WESTERLY BOUNDARY OF SAID PARCEL NO. 13, AND THE EASTERLY LINE OF SAID LANDS, THE FOLLOWING SEVEN COURSES.

(1) SOUTH 66°05'14" WEST 39.03 FEET, (2) ALONG THE ARC OF A 291.00 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 49°27'53" EAST 52.02 FEET TO A POINT OF COMPOUND CURVATURE, (3) ALONG THE ARC OF A 749.44 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 41°15'58" EAST 80.28 FEET TO A POINT OF COMPOUND CURVE, (4) ALONG THE CHORD WHICH BEARS SOUTH 20°49'47" EAST 155.02 FEET, (5) ALONG A NON-TANGENT LINE, SOUTH 18°29'45" WEST 1471.54 FEET, (6) SOUTH 71°30'15" EAST 15.00 FEET, AND (7) SOUTH 18°29'45" WEST 62.08 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 13 AND TO THE NORTHERLY LINE OF RICHARDS BOULEVARD, AN 80.00 FOOT PUBLIC ROAD GRANTED TO THE COUNTY OF SACRAMENTO BY DEED RECORDED IN BOOK 1178 OFFICIAL RECORDS AT PAGE 312; THENCE, ALONG THE NORTHERLY LINE OF SAID RICHARDS BOULEVARD, NORTH 71°44'05" WEST 66.95 FEET TO THE MOST SOUTHERLY CORNER OF PARCEL NO. 11 AS SHOWN ON SAID RECORD OF SURVEY; THENCE, LEAVING THE NORTHERLY LINE OF SAID RICHARDS BOULEVARD, AND ALONG THE BOUNDARY OF SAID PARCEL NO. 11, NORTH 18°29'45" EAST 475.00 FEET, AND NORTH 71°44'05" WEST 5.00 FEET TO A POINT IN THE EASTERLY LINE OF SAID PARCEL NO. 10; THENCE, ALONG THE BOUNDARY COMMON TO SAID PARCEL NO. 10 AND SAID PARCEL NO. 11, SOUTH 18°29'45" WEST 475.00 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 1989 IN BOOK 890215 PAGE 916, OFFICIAL RECORDS.

EXCEPTING FROM THAT PORTION DESIGNATED "SOUTHERN PACIFIC COMPANY", ALL MINERALS AND MINERAL RIGHTS, INTERESTS, AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER GRANTOR OR ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH, AS RESERVED IN THE DEED EXECUTED BY SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION, RECORDED JUNE 30, 1989 IN BOOK 890630 PAGE 5102, OFFICIAL RECORDS.

APN: 001-0200-012 AND 001-0200-034

PARCEL D:

ALL THAT PORTION OF PARCEL NO. 15 AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 26 OF SURVEYS, PAGE 28, OFFICIAL RECORDS OF SACRAMENTO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 15; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE WESTERLY, NORTHERLY AND EASTERLY LINE OF SAID PARCEL NO. 15, THE FOLLOWING FIVE COURSES:

(1) NORTH 18°29'45" EAST 554.06 FEET; (2) SOUTH 77°26'30" EAST 264.77 FEET; (3) ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 276.84 FEET, SUBTENDED BY A CHORD BEARING SOUTH 29°28'30" EAST 411.25 FEET; (4) NORTH 71°30'15" WEST 3.50 FEET; AND (5) SOUTH 18°29'45" WEST 304.96 FEET; THENCE, LEAVING SAID EASTERLY LINE OF SAID PARCEL NO. 15, NORTH 71°37'15" WEST 565.33 FEET TO THE POINT OF BEGINNING.

ALSO BEING DESCRIBED IN PROPOSED PARCEL NO. 1 IN CERTIFICATE OF COMPLIANCE RECORDED AUGUST 26, 1988 IN BOOK 880826 PAGE 1522, OFFICIAL RECORDS.

APN: 001-0020-046 PARCEL

E:

ALL THAT PORTION OF SWAMP LAND SURVEY NO. 949, SACRAMENTO COUNTY SURVEYS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY EXTENSION OF THE CENTERLINE OF 7TH STREET OF THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL MAP OF SAID CITY, LOCATED NORTH 19°07' EAST 2351.48 FEET FROM THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF NORTH "B" STREET OF SAID CITY OF SACRAMENTO; THENCE FROM SAID POINT OF BEGINNING, NORTH 70°53' WEST 40.00 FEET TO THE WEST LINE OF SAID 7TH STREET; THENCE CONTINUING ALONG SAME COURSE NORTH 70°53' WEST 30.00 FEET; THENCE NORTH 19°07' EAST ALONG A LINE PARALLEL WITH SAID NORTHERLY EXTENSION OF THE CENTERLINE OF SAID 7TH STREET; THENCE CONTINUING ALONG SAME COURSE SOUTH 70°53' EAST 40.00 FEET TO SAID CENTERLINE OF SAID 7TH STREET; THENCE SOUTH 19°07' WEST 40.00 FEET ALONG SAID NORTHERLY EXTENSION OF THE CENTERLINE OF SAID 7TH STREET TO THE POINT OF BEGINNING.

APN: 001-0020-019 PARCEL

F:

PARCEL NO. 9, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA,

OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THE DEED EXECUTED BY J.M. HENDERSON, JR., AS TRUSTEE OF THE TRUST CREATED BY THE WILL OF ELIZABETH C.A. ENGLISH, DECEASED, RECORDED SEPTEMBER 25, 1917, IN BOOK 462 OF DEEDS, PAGE 263.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED FEBRUARY 11, 1880, IN BOOK 3 OF PATENTS, PAGE 445.

ALSO EXCEPTING THEREFROM ALL THAT MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OF THAT MAY BE PRODUCED THEREFROM INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS, DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSOR AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF THE SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY SAID RIGHTS, AS CONTAINED IN INDENTURE, EXECUTED BY AND BETWEEN SOUTHERN PACIFIC COMPANY, A CORPORATION OF THE STATE OF DELAWARE, GRANTOR AND BERECUT-RICHARDS PARKING COMPANY, A CORPORATION, GRANTEE, RECORDED SEPTEMBER 14, 1959, IN BOOK 3879, PAGE 344, OFFICIAL RECORDS.

APN: 001-0020-034; 001-0020-041, AND 001-0020-044

PARCEL G:

PARCEL NO. 12, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THE DEED EXECUTED BY J.M. HENDERSON, JR., AS TRUSTEE OF THE TRUST CREATED BY THE WILL OF ELIZABETH C.A. ENGLISH, DECEASED, RECORDED SEPTEMBER 25, 1917, IN BOOK 462 OF DEEDS, PAGE 263.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO

ELIZABETH C.A. ENGLISH, RECORDED FEBRUARY 11, 1880, IN BOOK 3 OF PATENTS, PAGE 445.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED IN BOOK 5 OF PATENTS, PAGE 609.

APN: 001-0020-036

APN: 001-0200-012 and 001-0020-045

EXHIBIT B

PARK SITE DESCRIPTION

The property consists of the North 7th Street Median as shown on construction plans for the 7th Street Linear Park (P.N.: 19694; WDID: 5S34C353064) prepared by Jacobs.

EXHIBIT C

PROJECT IMPROVEMENTS

Improvements as shown on construction plans for the 7th Street Linear Park (P.N.: 19694; WDID: 5S34C353064) prepared by Jacobs.

Improvements shall include:

1. Bollard Lights (20)
2. Acorn Lights (10)
3. Landscape Uplights (4)
4. Benches (8)
5. Dog Waste Receptacles (2)
6. Drinking Fountains (2)
7. Trash Receptacles (6)
8. Concrete Seat Walls (16)
9. Linear Water Feature (1)
10. South Entry Water Feature (1)
11. Pedestrian Plaza (2)
12. 10' Wide Concrete Walkway
13. Decomposed Granite Path
14. Planting and Irrigation
15. Park Signage (Identification and Regulatory)

EXHIBIT D

TASKS ALLOCATION

GENERAL:

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

City
Developer

SITE SPECIFIC:

A. DESIGN DEVELOPMENT PHASE

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Survey of Park site (inc. topo mapping and property line verification) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. Determination of park amenities (always by the City) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Preparation of master plan illustrating entire park site at buildout |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Preparation of cost estimate for construction of park per master plan |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. Public review & approval process for master plan |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Environmental review and documentation |

B. CONSTRUCTION DOCUMENT PHASE

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Design development |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. Preparation of construction documents (plans & specifications) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Preparation of construction cost estimate & project timeline |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 4. Public review and approval for construction documents and specifications |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. Submittal and approval to Building permit (review only); inspections by City staff |

C. BID DOCUMENT PHASE

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Preparation of bid documents for construction |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. Administer bidding process |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 3. City approval of bids and bid award |

D. CONSTRUCTION (Field Work)

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Project staking |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. Inspection (always by the City) |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Construction administration (City's project manager, and Developer's site superintendent) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Final cleanup & walkthrough (City Park staff must be in attendance) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. Public opening (always by the City) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Warranty administration |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 7. Title insurance and transfer to City of Sacramento |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 8. Submit labor compliance to City on a monthly basis |

EXHIBIT E

PROJECT DEVELOPMENT BUDGET

SOFT COSTS

Consultants

• Landscape Architect	56,250
Total Consultants	\$56,250

Agency / Utility Fees

• City of Sacramento	85,716
• SMUD	10,000
Total Agency/Utility Fees	\$95,716

HARD COSTS

Site Preparation

• Construction Staking	20,000
• Testing & Inspections	10,000
• Construction Management	1,800
• Site Preparation Contingency	29,163
Total Site Preparation	\$60,963

Utilities

• Sewer	16,791
• Storm Drain	3,800
• Water	16,650
• Construction Management	1,007
• Utilities Contingency	5,000
Total Utilities	\$43,248

Surface Improvements

• Streetlights and Electrical	120,232
• Construction Management	7,214
• Surface Improvements Contingency	14,639
Total Surface Improvements	\$142,084

Landscape & Amenities

• Planting & Irrigation	184,086
• Landscape Concrete	194,953

• Site Furniture	330,200
• Water Features	859,835
• Construction Management	94,144
• Landscape & Amenities Contingency	75,604

Total Landscape & Amenities	<u>\$1,738,822</u>
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TOTAL DEVELOPMENT COSTS	\$2,137,082
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EXHIBIT F
REPRESENTATIVES

City:

City of Sacramento
Parks and Recreation Department
Park Planning and Development Services (Landscape Architecture)
915 "I" Street, 5th Floor
Sacramento, CA 95814

Project Manager: Gary Hyden
Office Phone: (916) 808-1949
Office Fax: (916) 808-8266

Developer:

Capitol Station 65, LLC
940 Bercut Drive, Suite C
Sacramento, CA 95811

Site Superintendent: Brett Post
Office Phone: (916) 441-6870
Office Fax: (916) 441-6138

Valley Crest Construction Manager: Cruz Diaz
Office Phone: (916) 386-4875
Office Fax: (916) 386-4681

EXHIBIT G

CITY STAFF COSTS AND PAYMENT SCHEDULE

Size of Proposed Park: **1.0 acres**

Available funding @ \$831,091 per acre

Project Budget Eligible for PIF Credits: \$831,091

Number of Multi-family Housing Credits 261

City Staff Costs (including overhead rates)

	Incurred this FY	Projected	Total
001 Administration	\$3,006	\$14,809	\$17,815
100 Planning	\$3,760		\$3,760
201 Design	\$0	\$0	\$0
501 Construction Inspection		\$20,144	\$20,144
505 Labor Compliance		\$12,276	\$12,276
508 Construction Management		\$10,944	\$10,944
City Staff Costs to be Paid by Developer (see notes)	\$6,766	\$58,173	\$64,939

Notes:

- 1 Staff costs incurred to date during FY11/12 include overhead rates by position; for FY12/13 overhead rates to be 188% for all positions
- 2 Projected costs may result in lower charges if actual hours spent on this project are lower than estimate
- 3 Labor compliance is a City responsibility; Otto Construction can prepare monthly report but City staff must verify results (conduct interviews, etc.)
- 4 All staff costs to be invoiced to Township 9 Developer and submitted for reimbursement to HCD under Project's Prop. 1C Grant. Payment of all staff costs is developer responsibility should HCD determines it is an ineligible expense.
- 5 All payments shall be due within 60 days from date of invoice.

PIF Administration Fee (2.5% of \$831,091)

If a Building Permit for Lot 4 on the Final Map is issued prior to City's acceptance of park, that Applicant shall be responsible for payment of the PIF Admin. Fee.

The PIF Admin. Fee for the remaining units/credits shall be due prior to City's acceptance of the park.

Total Project Budget

Total Project Budget (from Exhibit E)	\$2,137,082
Project Budget Eligible for PIF Credits	\$831,091
Developer Obligation	\$1,305,991

EXHIBIT H HAZARDOUS SUBSTANCES

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

B. Definitions.

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

(a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 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

EXHIBIT H (continued)
HAZARDOUS SUBSTANCES

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