

## **RESOLUTION NO. 2012-362**

Adopted by the Sacramento City Council

October 30, 2012

### **ESTABLISHING CANNERY PLAZA CAPITAL IMPROVEMENT PROGRAM AND APPROVING A PARK DEVELOPMENT IMPACT FEE CREDIT AGREEMENT**

#### **BACKGROUND:**

- A. Cannery Plaza is an 0.22 acre park located in the 400 Block of North 7<sup>th</sup> Street in the Township 9 Planned Unit Development in the River District in the Central City Community Plan Area. The plaza will be built by T9 Affordable Housing Partners, LP as a turnkey park in conjunction with the adjacent affordable housing project.
- B. On September 3, 2002, Council approved Resolution No. 2002-591 authorizing the City Manager to issue park development fee credits upon the provision of Unconditional Irrevocable Standby Letter of Credit or Cash Deposit.
- C. Pursuant to City Agreement 2007-1081-3, Cannery Plaza is eligible for Park Development Impact Fee credits valued at \$157,907, of which associated staff costs, Art in Public Places and fund administration costs total \$63,166.
- D. T9 Affordable Housing Partners, LP wishes to receive fee credits for construction of Cannery Plaza, and will provide the City with an Unconditional Irrevocable Standby Letter of Credit or Cash Deposit for \$94,741 prior to issuance of a Building Permit for the housing project.
- E. In addition, T9 Affordable Housing Partners, LP wishes to utilize 131 multi-family residential fee credits from the 7<sup>th</sup> Street Promenade, valued at \$416,842 and will pay the fund administration costs of \$10,421 and provide Security (in the form of an Unconditional Irrevocable Standby Letter of Credit or Cash Deposit) for an additional \$406,421.
- F. City Council Resolution No. 2012-185, Section 10.2, requires City Council approval to establish Capital Improvement Program projects.

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

- Section 1. The Credit/Reimbursement Agreement, attached as Exhibit A, is approved for developing the 0.22 acre Cannery Plaza (L19017000).

- Section 2. A new Capital Improvement Program project (CIP), project for City staff costs associated with the development of Cannery Plaza is established as L19017000.
- Section 3. T9 Affordable Housing Partners, LP shall provide Security in the form of an Unconditional Irrevocable Standby Letter of Credit or Cash Deposit in the amount of \$501,162 for Cannery Plaza and 7<sup>th</sup> Street Promenade in favor of the City in lieu of prepaid Park Development Impact Fees.
- Section 4. Payment of \$73,587 from T9 Affordable Housing Partners, LP pursuant to the Park Development Impact Fee Credit Agreement is accepted into Park Development Impact Fee (PIF) Fund 3204.
- Section 5. That \$56,060 from Park Development Impact Fees (PIF), Fund 3204, is appropriated to L19017000 for staff costs associated with development of Cannery Plaza.
- Section 6. That \$3,158 from Park Development Impact Fees (PIF), Fund 3204, is appropriated to L19920100 for Community Plan Area 1 Art in Public Places.

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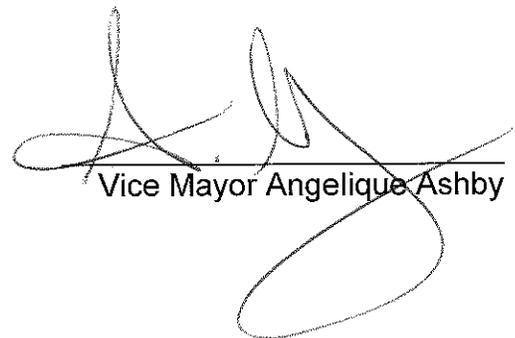
Exhibit A: Park Development Impact Fee Credit Agreement Relating to Design and Construction of Park Improvements for Cannery Plaza

Adopted by the City of Sacramento City Council on October 30, 2012 by the following vote:

- Ayes: Councilmembers Ashby, Cohn, D Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.
- Noes: None.
- Abstain: None.
- Absent: Councilmember R. Fong

Attest:

  
Shirley Concolino, City Clerk

  
Vice Mayor Angelique Ashby

**PARK DEVELOPMENT IMPACT FEE CREDIT AGREEMENT**  
**RELATING TO DESIGN AND CONSTRUCTION**  
**OF PARK IMPROVEMENTS**  
**FOR**  
**CANNERY PLAZA**

This Park Development Impact Fee Credit Agreement Relating to Design and Construction of Park Improvements for Cannery Plaza (this "Agreement") is entered into on \_\_\_\_\_, 2012 by and between the **CITY OF SACRAMENTO**, a charter city and municipal corporation ("City"), and **T9 AFFORDABLE HOUSING PARTNERS, LP**, a Limited Partnership ("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 or has been dedicated for use as a community or 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 constructed 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 any improvements Developer is required to install under any 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 subject to reimbursements and/or credits as provided herein shall not exceed the budget amount specified in **Exhibit E**, attached hereto and incorporated herein by this reference, ("**Park Development Budget**").
- G. Subject to the credits against and reimbursements from the Park Development Fee as provided herein, in addition to reimbursement from other funding sources identified herein, if any, Developer is willing to perform the design services assigned to Developer in **Exhibit D**, if any, and construct the Project, and to fund the costs of Project design and construction activities allocated to Developer ("**Project Costs**," as 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 Habitat Conservation Fees.
- H. The Project is eligible for and the City agrees to provide credits against and reimbursement from the Park Development Fee for Developer's actual Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

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

### **ARTICLE 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 the completed Park

along with all interest in real property necessary for the operation, maintenance, repair, and ownership thereof by City. The interest in real property to be conveyed shall be a fee interest in the land and 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 "**Cannery Plaza**" (**approx. 0.22 acres**) no later than September 30, 2014; 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 that may be performed either by Developer or City as specified in **Exhibit D** include Design Development, Construction Document Preparation, Bid Document Preparation and environmental review. The Developer's selection of a landscape architect(s) to perform design services that are assigned to Developer in **Exhibit D**, shall be subject to approval by the Landscape Architecture Section, ("**LAS**") of the City, Department of Parks and Recreation ("**Department**"). If assigned to Developer in **Exhibit D**, 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, a development plan 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 and estimated construction time lines for the development. Developer shall provide copies of the conceptual plans to the LAS for its review and approval. The City agrees to use its best efforts and due diligence to review and approve such conceptual plans, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld 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 development, including updated construction cost estimates and construction time lines. At a minimum, Developer shall submit such plans and specifications to the LAS at the **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 environmental impact report has been certified for the Township 9 Project, which included the Cannery Plaza park. 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 Supervising Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review and approval of various documents by the LAS and/or the City, as described above, also may include public noticing, review, comment, and/or approval of such documents, as deemed necessary or appropriate by City. If any or all of the Project design services are assigned to City in **Exhibit D**, the references herein to LAS approval of the conceptual plans, construction plans and specifications and bid documents shall refer, as applicable, to the conceptual plans, construction plans and specifications and/or bid documents prepared for Developer's use by City.

**1.2.6 Final Budget.** Before approval of the bid documents by City, City and Developer shall review the Project budget set forth in **Exhibit E** and shall establish a final budget for design and construction ("**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, and shall not, in the aggregate, exceed the sum of: (i) the park development amount allocable to the Park Site on a per-acre basis under the City of Sacramento Park Development Impact Fee program (the "**Fee Program**"); and (ii) such additional funds, if any, as the City or Developer, in their discretion, may be willing to contribute toward development of the Park Site.

**1.3 Contract Award.** Developer shall provide LAS with copies of all bids received and the construction contract. Regardless of the actual cost to construct the Project, Developer shall not receive more than **\$94,741** in value for its Park Development Impact Fee obligation for Cannery Plaza.

**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 8.5 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. If the Developer fails to commence and/or work to complete the Project as required herein, and fails to remedy such delay within thirty (30) days after a written notice thereof from City to Developer (subject to the provisions of Section 8.5 below), City in its discretion may (i) direct Developer to take action necessary to accelerate the Project to remedy the delay, and the Developer's acceleration costs, if any, shall not be subject to reimbursement or credit hereunder, or (ii) direct Developer to stop working on the Project so that the City may seek other means to complete construction of the Project, in which case any costs incurred by Developer, its contractors or subcontractors after receiving such direction from City shall not be subject to reimbursement or credit hereunder. If Developer is directed to stop working on the Project, Developer shall take any and all actions necessary to convey to and vest in City full, complete, and clear title in the Project, and all of the underlying real property interests (easement and/or fee) including those necessary for maintenance and access.

**1.4.3 Inspection.** Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project will be conveyed, will be permitted to inspect the Project and shall have access to the Project for this purpose at all times. City agrees to make inspectors available for inspection of the Project during such construction within not more than forty-eight (48) hours after request 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.** 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/or City performance and payment bonding requirements with respect to the construction of the Project. If permitted by State law, Developer may satisfy the obligation to post bonds with an assignment to the City of the contractor's bond or bonds or through the posting of bonds, letters of credit or other security instruments acceptable to City, in accordance with applicable City requirements; provided, however, that all such bonds, letters of credit, or other security instruments must meet all requirements that would apply for security to be posted by a contractor, quantitatively and qualitatively, if City and not Developer was contracting to construct the Project. On Final Completion (defined below in Section 2.1.2), the amount of the bond or letter of credit may be reduced, as authorized by Section 4.5.5 to reflect the remaining value of the maintenance work to be performed by Developer during the one (1)-year warranty period.

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

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

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

**1.7 Contracts and Change Orders.** Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Project, 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 Fee and Park Development Budget shall be amended to reflect the increase in such costs, and the Final Budget shall be increased by such amount and all such increased costs shall be eligible for credit and reimbursement hereunder.

**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 City agrees to pay Developer for such discretionary change from sources described in section 3.1 below (if the change would not increase the cost of the Project beyond the Final Budget) or other identified funding sources. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of the Project 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 a 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 8.5 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 8.5 herein, or other applicable provisions of this Agreement or law) will be \$1000.00 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 8.4. In addition to the

foregoing, pursuant to the terms of the Development Agreement recorded against the Property, City may withhold issuance of the certificate of occupancy for the residential project for which the Park is intended to serve until Park construction has been substantially completed.

## **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**"). The City's acceptance of the Park and the Project Improvements shall not be unreasonably withheld, delayed, or conditioned. Upon Final Completion, the Park and all Project Improvements shall automatically become the property of City. Developer shall take any and all actions necessary to convey and vest full, complete, and clear title in the Park, and all of the underlying real property interests (easement and/or fee) including those necessary for maintenance and access, to City on or before Final Completion. City will not formally accept the Park unless and until such title has been conveyed to City.

**2.1.3 Park Maintenance.** Developer shall maintain the Project Improvements, including trash pickup, 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.

**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 G**, 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 Developer 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 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 Developer Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined above, by any person or entity (except persons or entities acting on Developer's behalf or under Developer's control), occurring on or at any time after the date the Project, and the said easements are conveyed to City as provided in this Agreement; (ii) arising from any act (including but not limited to those covered by subsection (i) immediately above) on the part of City or its agents or employees in the use and operation of the Project; or (iii) occurring on or at any time arising from any entry upon the Developer Property by City, its agents, employees or contractors, pursuant to the provisions of Article 1 of this Agreement.

**2.4 Warranty.** Developer hereby warrants the Project Improvements as to the materials and workmanship 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 damage or defect 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, and City may deduct the outstanding amount from the Park Development Fee Reimbursement Amount (defined below) or reduce allowable credits after providing Developer with documentation reasonably substantiating the costs incurred by City pursuant to this Section.

### **ARTICLE 3. PAYMENT OF CITY COSTS**

**3.0** Intentionally Omitted.

**3.1** **City Costs.** Developer shall pay City for the following costs related to construction of the Park and the Park Development Fee program for **Cannery Plaza** are shown on **Exhibit E-1**, attached hereto and incorporated herein by this reference.

**3.1.1** **City Administrative Costs.** A portion of Park Development Fees paid to the City or the obligation to undertake Park construction in-lieu of fee payment pursuant to the Fee Ordinance, provides that up to, but not in excess of **two and one half percent (2.5%)**, of the Park Development Impact Fee obligation will be paid to the City to defer the City's cost to administer the Fee Program, so that such portion of the Park Development Fees will not be available for credit. The amount owed to the City for its administrative costs for the Park is **\$60,008**. This fee shall be paid at the time of issuance of a building permit for the residential project to be served by the Park.

**3.1.2 Art in Public Places.** A portion of Park Development Fees paid to the City or the obligation to undertake Park construction in-lieu of fee payment pursuant to the Fee Ordinance, requires compliance with the City's Art in Public Places program. This program provides that two percent (2%) of the costs of construction of a park to be owned by City must be set-aside for use in designing and fabricating artwork to be placed in City parks for public viewing and enjoyment. The amount owed to the City for Art in Public Places for the Park is **\$3,158**. This fee shall be paid at the time of issuance of a building permit for the residential project to be served by the Park.

#### **ARTICLE 4. PARK DEVELOPMENT FEE CREDITS**

**4.0 PIF Credits and Security.** For purposes of this Article 4, "Developer" shall mean **T9 Affordable Housing Partners, LP** so long as **T9 Affordable Housing Partners, LP** is the party incurring the costs of developing the Park. **Cannery Plaza** are shown on **Exhibit E-1**, attached hereto and incorporated herein by this reference. The total amount of Park Development Impact Fee Credits that Developer is entitled to receive for the Park pursuant to the Fee Ordinance is **\$157,907**, which allows for credits for 49 multi-family housing units. Of that amount, **\$63,166** is to be paid to City at the time of issuance of the building permit for the Development Project as defined below served by the Park as set forth in Article 3. Security for the net amount of **\$94,741** in Park Impact Fee credits is required under the Fee Ordinance because the credits will be issued prior to completion of Park construction. Within 30 days following the delivery to Developer of a fully executed original of this Agreement, Developer shall comply with the requirements set forth in either section 4.1 or section 4.2.

Developer acknowledges that the Park Development Impact Fee credits for Cannery Plaza will be insufficient to meet Developer's obligation under the Fee Ordinance for Developer's 180 unit residential and retail mixed use project (the "Development Project"). Developer intends to apply 131 units of credits from the 7<sup>th</sup> Street Promenade Park, which Developer is to secure from Capitol Station 65, LLC, which are valued at **\$416,842**. For this amount of credits, Developer must pay City the same 2.5% for City administration costs as described in Section 3.1.1, which equals **\$10,421**, which amount shall be paid at the time of issuance of a building permit for the Development Project. Developer or Capitol Station 65, LLC must provide security for these additional credits in the net amount of **\$406,060** because construction of the 7<sup>th</sup> Street Promenade has not been completed. Such security may be in the same form as set forth in either Section 4.1 or 4.2, and must be paid or submitted prior to issuance of a building permit for the Development Project. In addition, Developer is required to pay City **\$2,395.44** for the remaining Park Impact Fee obligation for the Development Project at the time of issuance of the building permit for that project.

**4.1 Cash Deposit For Park Project.** Developer shall deposit with City the sum of **\$94,741** less any park development impact fees (PIF) already paid, as prepaid Park Development Fees. Developer may immediately use these Prepaid Park Development Fees as credits ("Park Development Fee Credits") against the Park

Development Fee that would otherwise be payable by Developer with the issuance of a building permit for any residential or commercial development project located in the same City Planning Area as the Park Site until such Prepaid Park Development Fee amount is exhausted through the use of such credits and any reimbursement hereunder. The cash deposit made pursuant to this section 4.1 will satisfy the bonding requirements under Section 1.5.

**4.2 Letter of Credit For Entire Project.** As an alternative to paying a cash deposit pursuant to section 4.1, Developer may provide a letter of credit in favor of the City in the sum of **\$94,741**, less any park development impact fees (PIF) already paid, in lieu of prepaid Park Development Fees. This may be done with the delivery to City of an Irrevocable Standby Letter of Credit issued by a banking institution approved by the City Treasurer's Office and on a form approved by the City Attorney's Office, in accordance with the conditions in Section 4.5. As authorized by City Council Resolution No. 2002-591, the City shall immediately credit the Developers Prepaid Park Development Fee account for the full amount of the face value of the letter of credit, but not in any event in an amount in excess of the amount of the total construction funds available for the park improvements shown in **Exhibit E**. Pursuant to Section 4.5, Developer may immediately use these Prepaid Park Development Fees as credits against the Park Development Fee that would otherwise be payable by Developer with the issuance of a building permit for any residential or commercial development project located in the until such Prepaid Park Development Fee amount is exhausted through the use of such credits. With the issuance of each building permit, the Developer will be entitled to a credit in the full amount identified on **Exhibit E-1** as the "Calculation of Fee Credit Amount", to be applied toward payment of the Park Development Fee required for each dwelling unit in such development project. The two and one-half percent (2.5%) City Administration Fee will be paid to the City prior to the issuance of each building permit to fund the costs incurred by the City in the administration of the Park Development Fee Program. The letter of credit made pursuant to this section 4.2 will satisfy the bonding requirements under Section 1.5. Developer may only terminate the letter of credit with the consent of the City.

**4.3** Intentionally Omitted.

**4.4** Intentionally Omitted.

**4.5 Advance Issuance of Park Development Fee Credits.** As an alternative to the advance issuance of Park Development Fee Credits under Section 4.1, Developer shall be entitled to Park Development Fee Credits before full completion of the Project and actual formal City acceptance of the Project if all of the following conditions are satisfied:

**4.5.1 Letter of Credit.** Developer provides City with an irrevocable letter of credit in an amount that is no less than **\$94,741** as security for Developer's performance under this Agreement ("Letter of Credit").

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

The [title] of the City of Sacramento, demand payment of the sum of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) representing a partial/full draw upon the amount of your Irrevocable Letter of Credit No. \_\_\_\_\_. This sum represents payment due to the City under the reimbursement-and-credit agreement between [Developer's name] and the city that is dated \_\_\_\_\_, 20\_\_, and designated by the City as Agreement No. \_\_\_\_\_.
  
- (c) While this Agreement is in effect, Developer must replace the Letter of Credit (and any replacement of Letter of Credit) at least **five (5) working days** before its expiration date. The replacement Letter of Credit must be identical to the Letter of Credit being replaced, except that it must have an expiration date that is no sooner than **12 months** following the expiration date of the Letter of Credit being replaced.

**4.5.2 Issuance of Fee Credits.** Developer must make a written request for issuance of Park Development Fee Credits in accordance with this Section 4.5. City will determine, in its sole discretion, the amount of Park Development Fee Credits that may be issued in response to the written request. City will issue Park Development Fee Credits to Developers in an amount equal to the Park Development Fee Credits allowable under this Agreement and City's policies and procedures for issuance of the credits. Total Park Development Fee Credits issued under this Section 4.5 may not exceed the amount of the Letter of Credit delivered by Developer.

**4.5.3 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. Similarly, if the final calculation of Park Development Fee Credit amounts under this Agreement results in City having issued Park Development Fee Credit to Developer in excess of those provided for this Agreement, then Developer agrees to repay City the full amount of the excess within **15 days** after receiving City's written demand.

**4.5.4 Drawing Upon the Letter of Credit.** City may draw on the Letter of Credit as follows:

- (a) If Developer fails to complete construction of the Project as required by this Agreement, then the City will have the absolute right to draw upon the Letter of Credit in an amount City determines, in its sole discretion, to be necessary to complete the Project.
- (b) If repayment is due under Section 4.5.3 and Developer does not repay City within the time specified in Section 4.5.3, then City will be entitled to draw against the Letter of Credit in an amount equal to the repayment amount then due. A draw under this Section 4.5.4(b) will be a partial draw under the Letter of Credit and will leave the balance of the Letter of Credit intact.
- (c) If Developer fails to provide City with a replacement Letter of Credit within the time specified in Section 4.5.1(c), then City will be entitled to draw against the Letter of Credit in an amount equal to the total amount of Park Development Fee Credits that Developer has received under this Agreement as of the time of the draw. If City makes a draw under this Section 4.5.4(c), then—
  - (1) City will hold the amount drawn, with no obligation to pay Developer interest, until (A) City determines that Developer cannot or will not complete the Project as required by this Agreement (in which event City may use the amount drawn to complete the Project) or (B) Developer completes the Project in full and City formally accepts the Project (in which event City will return the amount drawn to Landowner); and

- (2) City will not be obligated to issue additional Park Development Fee Credits under this Agreement unless and until (A) Developer completes the Project in full and City formally accepts the Project or (B) Developer furnishes City with a replacement Letter of Credit that complies with Section 4.5.1, above.

#### **4.5.5 Release of Letter of Credit.**

- (a) The Letter of Credit shall not be released or reduced until the Developer completes the Project in full and the City formally accepts the Project. To the extent that a portion of the Letter of Credit secures the provision of future park maintenance, the Letter of Credit shall not be released until a new Letter of Credit, acceptable in all respects by the City at its sole discretion, is provided to City by Developer in the dollar amount specified for maintenance in the park construction budget. The maintenance Letter of Credit shall not be released until such time as the maintenance obligation has been fully satisfied, as determined by the City in its sole discretion.
- (b) If a Letter of Credit is provided to cover an obligation to construct multiple parks, as each park is formally accepted by the City, a replacement Letter of Credit may be provided in an amount that reflects the still-pending obligations for construction and maintenance. Upon the acceptance of the replacement Letter of Credit by the City, with such acceptance being at the City's sole discretion, the original Letter of Credit shall be returned to the Developer.

#### **ARTICLE 5. Intentionally Omitted**

#### **ARTICLE 6. Intentionally Omitted**

#### **ARTICLE 7. UNFUNDED IMPROVEMENTS**

**7.0 Additional Reimbursement for Unfunded Add Alternates.** If Developer elects in its discretion to construct park improvements that are neither designated for funding by the Park Development Fee, nor subject to reimbursement from other funding sources pursuant to the provisions of Article 6, above, and that are identified as "**Unfunded Add Alternates**" in **Exhibit E**, the costs incurred by Developer for the construction or installation of the Unfunded Add Alternates shall not be included in the

Park Development Fee Credit Amount and shall not be subject to credit under this Agreement.

**ARTICLE 8.  
MISCELLANEOUS**

**8.0 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.

**8.1 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.

**8.2 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:              T9 Affordable Housing Partners, LP  
Attention: Faye Paulson, Project Manager  
457 10<sup>th</sup> Street  
San Francisco, CA 94103

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

**8.4 Mediation and Arbitration.**

8.4.1 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 8.3. 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.

**8.4.2** 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.

**8.4.3** 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.

**8.4.4** 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: \_\_\_\_\_

**8.5 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.

**8.6 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.

**8.7 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.

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

**8.9 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.

**8.10 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.

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

**8.12 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.

**8.13 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.

**8.14 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.

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

**8.16 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.

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

**CITY OF SACRAMENTO**

By: \_\_\_\_\_  
James L. Combs,  
Director, Parks and Recreation

For: John F. Shirey  
City Manager

Dated: \_\_\_\_\_

**T9 AFFORDABLE HOUSING PARTNERS, LP,**  
a California limited partnership

By: **PacH SAC-MIDTOWN HOLDINGS, LLC,**  
a California limited liability company,  
its managing general partner

By: **Pacific Housing, Inc.,**  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Mark A. Wiese, President

By: **T9 Affordable Housing GP, LLC,** a California limited  
liability company, its administrative general partner

By: **JSCo T9, LLC,** a California limited liability company,  
its member

By: **John Stewart Company,** its manager

By: \_\_\_\_\_  
Jack D. Gardner, President

By: **UrbanCore-Integral T9, LLC,** a California limited  
liability company, its member

By: **UrbanCore Development, LLC,** a California  
limited liability company, its member

By: \_\_\_\_\_  
Michael E. Johnson, President

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Senior Deputy City Attorney

**EXHIBIT A  
PROPERTY DESCRIPTION**

**LOT C**

All that portion of Parcel 13 as said Parcel is shown on that certain Record of Survey filed October 30, 1968 in Book 26 of Surveys, Page 28, Official Records of the County of Sacramento, State of California, and described as follows:

**Commencing** at the intersection of the centerline of Richards Boulevard and North 7<sup>th</sup> Street as said intersection is shown on said Record of Survey;

Thence along said centerline of said North 7<sup>th</sup> Street, North 18°28'55" East, 719.41 feet to the **Point of Beginning**;

Thence from said **Point of Beginning** North 71°31'05" West, 163.17 feet;

Thence North 18°28'59" East, 77.93 feet;

Thence South 71°31'01" East, 3.50 feet;

Thence North 18°28'59" East, 10.75 feet;

Thence North 71°31'01" West, 10.00 feet;

Thence North 18°28'59" East, 29.34 feet;

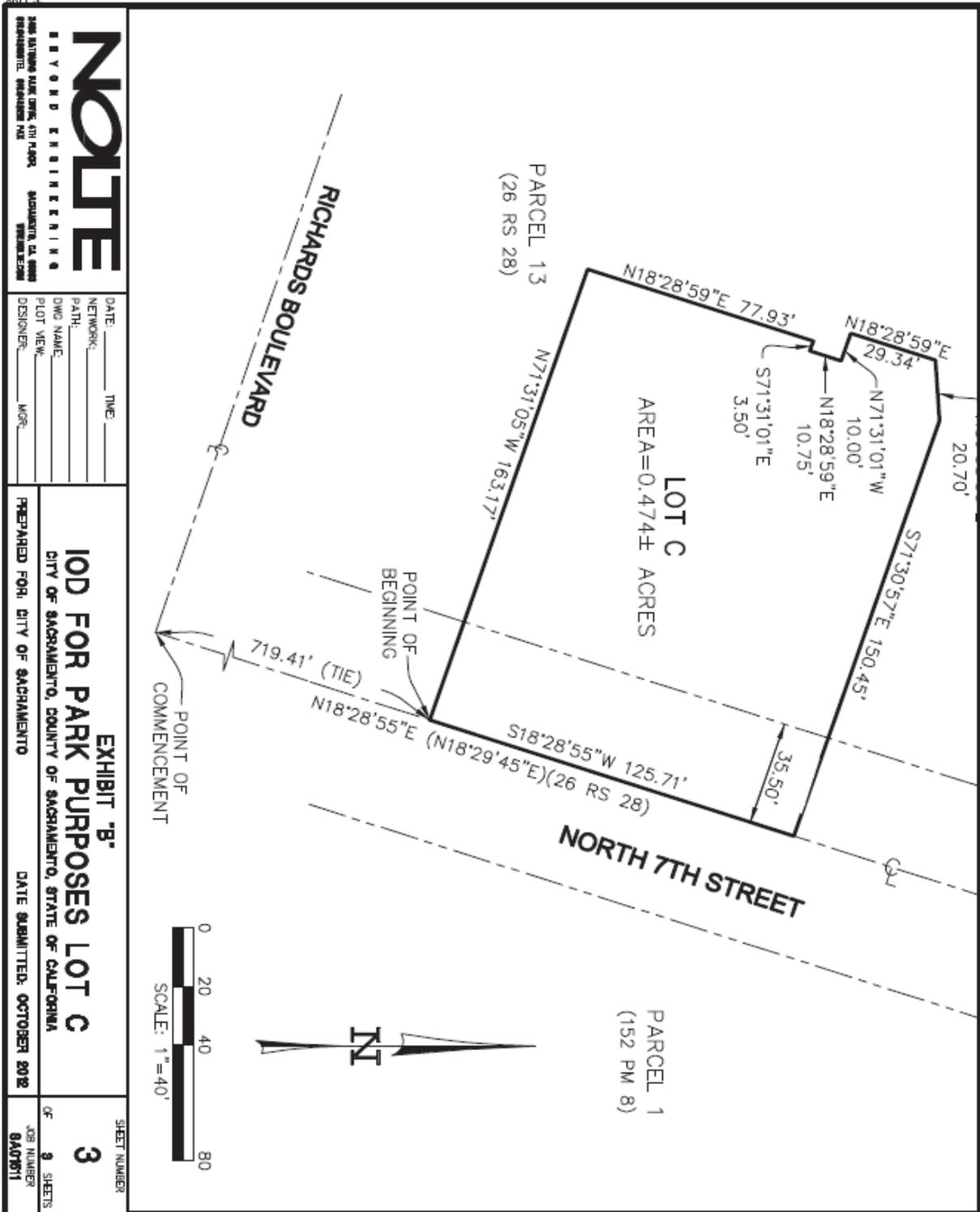
Thence North 86°38'53" East, 20.70 feet;

Thence South 71°30'57" East, 150.45 feet to a point on the centerline of said North 7<sup>th</sup> Street;

Thence along said centerline of North 7<sup>th</sup> Street, South 18°28'55" West, 125.71 feet to the **Point of Beginning**.

Said Parcel contains 0.474± Acres, more or less.

**EXHIBIT B  
PARK SITE DESCRIPTION**



**EXHIBIT C**  
**PROJECT IMPROVEMENTS**

DESCRIPTION OF WORK:

1. General Site Work
  - A. Temporary Construction Fencing
  - B. Site Layout and Engineering
  - C. Earthwork / Rough Grading
  - D. SWPPP Measures / Staging Area
  
2. Site Utilities
  - A. Drinking Fountain Sewer
  - B. Sewer Connection
  - C. Storm Drain System
  - D. Storm Drain Connection to Drain Inlet
  - E. ¾" Domestic Backflow Preventer & Enclosure
  - F. Drinking Fountain Domestic Water Supply
  - G. 1-1/2" Irrigation Backflow Preventer & Enclosure
  
3. Site Electrical System
  - A. Electrical Service Meter/Main Panel
  - B. Park Site Lighting, Trenching, Conduits
  
4. Site Paving and Hardscape
  - A. Park Monument
  - B. Pilaster w/ Final
  - C. Colored Concrete Paving
  - D. Concrete Seat Wall (18" wide)
  - E. Concrete Retaining Wall (12" wide)
  - F. Concrete Stairs
  - G. 6" Wide Concrete Curb (Type III)
  - H. Concrete Mowband
  - I. Stair Handrails
  - J. Decomposed Granite Paving
  
5. Site Furnishings
  - A. Drinking Fountain
  - B. Wall Mounted Benches
  - C. Trash Receptacles
  - D. Skate Deterrents for Walls
  
6. Irrigation System
  - A. Irrigation Controller with Rain Sensor
  - B. Flow Sensor / Master Valve
  - C. Irrigation System: Turf (MP Rotators)
  - D. Irrigation System: Shrubs (Drip/Bubblers)

7. Landscaping
  - A. Finish Grading/Soil Preparation
  - B. Trees (24" Box)
  - C. Trees (36" Box)
  - D. Shrubs/Groundcover
  - E. Turf: Sod
  - F. 3" Bark Mulch
  - G. Landscape Maintenance Period (90-Day)

## EXHIBIT D

### TASKS ALLOCATION

#### GENERAL:

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

#### SITE SPECIFIC:

City	Developer	
		<b>A. DESIGN DEVELOPMENT PHASE</b>
<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 checked="" type="checkbox"/>	<input type="checkbox"/>	6. Determination of first phase improvements (always by the city)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	7. Development of master plan for first phase of design & construction
<input checked="" type="checkbox"/>	<input type="checkbox"/>	8. Public review & approval process for first phase design.
		<b>B. CONSTRUCTION DOCUMENT PHASE</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Environmental review and documentation
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Design development of Phase 1
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Preparation of construction documents (Phase 1 plans & specifications)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Preparation of construction cost estimate & project timeline for Phase 1
<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. Public review and approval for construction documents and specifications
<input type="checkbox"/>	<input checked="" type="checkbox"/>	6. Submittal and approval to Building permit (review only). Inspection not by Building Department but by Park Planning & Development Services (PPDS).
		<b>C. BID DOCUMENT PHASE</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Preparation of bid documents for construction of first phase development
<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
		<b>D. CONSTRUCTION (Field Work)</b>
<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 (with City 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 IMPROVEMENT BUDGET



The HLA Group Landscape Architects & Planners, Inc.  
Community Design • Parks and Recreation • Urban Design • Land Planning • Environmental Restoration

#### PRELIMINARY STATEMENT OF PROBABLE COST

**JOB TITLE:** Township 9 / Lot 11 - Public Plaza  
**JOB NUMBER:** 94710  
**DATE:** October 2, 2012

DESCRIPTION OF WORK / MATERIALS	UNIT	QUANTITY	PRICE PER UNIT	TOTAL AMOUNT
<b>1. General Site Work</b>				
A. Temporary Construction Fencing	LS	1	1,500.00	1,500.00
B. Site Layout and Engineering	LS	1	7,500.00	7,500.00
C. Earthwork / Rough Grading	LS	1	25,000.00	25,000.00
D. SWPPP Measures / Staging Area	LS	1	5,000.00	5,000.00
<b>General Site Work Subtotal:</b>				<b>39,000.00</b>
<b>2. Site Utilities</b>				
A. Drinking Fountain Sewer	LF	75	18.00	1,350.00
B. Sewer Connection	LS	1	500.00	500.00
C. Storm Drain System	LS	1	20,000.00	20,000.00
D. Storm Drain Connection to Existing Drain Inlet	EA	1	500.00	500.00
E. 3/4" Domestic Backflow Preventer & Enclosure	EA	1	2,000.00	2,000.00
F. Drinking Fountain Domestic Water Supply	LF	75	9.00	675.00
G. 1-1/2" Irrigation Backflow Preventer & Enclosure	EA	1	3,000.00	3,000.00
<b>Site Utilities Subtotal:</b>				<b>28,025.00</b>
<b>3. Site Electrical System</b>				
A. Electrical Service Meter/Main Panel	LS	1	10,000.00	10,000.00
B. Park Site Lighting, Trenching, Conduits	LS	1	26,500.00	26,500.00
<b>Site Electrical Subtotal:</b>				<b>36,500.00</b>
<b>4. Site Paving and Hardscape</b>				
A. Park Monument	LS	1	20,000.00	20,000.00
B. Pilaster w/ Final	EA	2	8,000.00	16,000.00
C. Colored Concrete Paving	SF	4,550	15.00	68,250.00
D. Concrete Seat Wall (18" wide)	LF	61	150.00	9,150.00
E. Concrete Retaining Wall (12" wide)	LF	62	140.00	8,680.00
F. Concrete Stairs	LF	45	25.00	1,125.00
G. 6" Wide Concrete Curb (Type III)	LF	170	18.00	3,060.00
H. Concrete Mowband	LF	226	16.00	3,616.00
I. Stair Handrails	LF	20	85.00	1,700.00
J. Decomposed Granite Paving	SF	1,400	6.00	8,400.00
<b>Site Paving Subtotal:</b>				<b>139,981.00</b>
<b>5. Site Furnishings</b>				
A. Drinking Fountain	EA	1	4,000.00	4,000.00
B. Wall Mounted Benches	EA	12	2,000.00	24,000.00
C. Trash Receptacles	EA	4	800.00	3,200.00
D. Skate Deterrents for Walls	LS	1	1,500.00	1,500.00
<b>Site Furnishings Subtotal:</b>				<b>32,700.00</b>



The HLA Group Landscape Architects & Planners, Inc.  
 Community Design • Parks and Recreation • Urban Design • Land Planning • Environmental Restoration

**“EXHIBIT E” PRELIMINARY STATEMENT OF PROBABLE COST**

**JOB TITLE:** Township 9 / Lot 11 - Public Plaza  
**JOB NUMBER:** 94710  
**DATE:** October 2, 2012

DESCRIPTION OF WORK / MATERIALS	UNIT	QUANTITY	PRICE PER UNIT	TOTAL AMOUNT
<b>6. Irrigation System</b>				
A. Irrigation Controller with Rain Sensor	LS	1	2,500.00	2,500.00
B. Flow Sensor / Master Valve	LS	1	3,500.00	3,500.00
C. Irrigation System: Turf (MP Rotators)	SF	1,775	1.50	2,662.50
D. Irrigation System: Shrubs (Drip/Bubblers)	SF	1,300	2.50	3,250.00
	<b>Irrigation System Subtotal:</b>			<b>11,912.50</b>
<b>7. Landscaping</b>				
A. Finish Grading/Soil Preparation	SF	3,075	0.30	922.50
B. Trees (24" Box)	EA	11	250.00	2,750.00
C. Trees (36" Box)	EA	6	480.00	2,880.00
D. Shrubs/Groundcover	SF	1,300	3.50	4,550.00
E. Turf: Sod	SF	1,775	0.50	887.50
F. 3" Bark Mulch	CY	15	45.00	675.00
G. Landscape Maintenance Period (90-Day)	LS	1	4,500.00	4,500.00
	<b>Landscaping Subtotal:</b>			<b>17,165.00</b>
<b>Project Construction Subtotal:</b>				<b>305,283.50</b>
<b>Design Contingency @ 15% of Estimated Construction Cost:</b>				<b>45,792.53</b>
<b>Design Fee:</b>				<b>35,500.00</b>
<b>Miscellaneous (printing, etc.):</b>				<b>3,500.00</b>
<b>PROJECT GRAND TOTAL:</b>				<b>390,076.03</b>

**Exclusions:**

1. Utility connection fees
2. Art in Public Places (2%)
3. City Administration and Inspection Costs

Please note: This Statement of Probable Cost is based on the Schematic Plan, dated May 26, 2011, prepared by The HLA Group. It is recognized that neither the Landscape Architect nor the client has any control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices or other competitive bidding market forces. Negotiating prices will vary from any statement of probable construction cost or other estimate or evaluation prepared by the Landscape Architect. For each year until the facility is constructed, the construction costs must be adjusted for inflation based on the Construction Cost Index.

## EXHIBIT E-1

### CITY STAFF COSTS AND PAYMENT SCHEDULE

Park:	Cannery Plaza
Size of Proposed Park:	0.22 acre
Available funding @	\$ 831,091 per acre
Project Budget Eligible for PIF Credits:	\$ 157,907

#### City Costs

<b>Staff Costs (includes overhead*)</b>		
001	Administration	\$ 6,820
100	Planning	\$ 9,920
201	Design	\$ 7,456
501	Construction Inspection	\$ 20,000
505	Labor Compliance	\$ 4,800
508	Construction Management	<u>\$ 7,064</u>
	<i>Subtotal</i>	\$ 56,060
<b>Other Costs</b>		
	Art in Public Places (2% of \$157,907)	\$ 3,158
	PIF Administration Fee (2.5% of \$157,907)	\$ 3,948
	PIF Administration Fee (2.5% of \$416,842)**	<u>\$ 10,421</u>
	<i>Subtotal</i>	\$ 17,527
	<b>Total City Costs to be Paid by Developer</b>	<b>\$ 73,587</b>

*Notes:*

*\*Estimated staff costs including overhead rate not exceeding 188% for all positions; at end of project any funds remaining in this account will be refunded to Developer.*

*\*\*Pursuant to Section 1.10 of City Agreement 2012-0394; 131 MFR units x \$3,182 / MFR = \$416,842*

#### Cannery Plaza Project Budget

Total Project Budget (from Exhibit E)	\$ 305,283
Art in Public Places (2% of \$157,907)	\$ 3,158
City Staff Costs	\$ 56,060
PIF Administration Fee	<u>\$ 3,948</u>
<i>Subtotal</i>	\$ 368,449
Project Budget Eligible for PIF Credits	\$ 157,907
<b>Developer Obligation</b>	<b>\$ 210,542</b>

**Prior to Issuance of Bldg Permit COM-1206362**

*(180 multi-family residential units + 11,538 s.f. retail)*

*PIF due: \$577,144.44*

Payment of City Costs*	\$ 73,587
Security* (Cash Deposit or Letter of Credit)	
Cannery Plaza	\$ 94,741
7 <sup>th</sup> Street Promenade	\$ 406,421
Remainder to be paid to CDD/Building	<u>\$ 2,395.44</u>
<b>TOTAL</b>	<b><u>\$577,144.44</u></b>

**Notes:**

\*Make check payable to 'City of Sacramento' and deliver to Sonja Jarvis, Accountant Auditor for City of Sacramento Parks & Recreation Department, 915 I Street, 5<sup>th</sup> Floor, Sacramento, CA 95814

## EXHIBIT F

### REPRESENTATIVES

#### City:

City of Sacramento  
Park Planning & Development Services  
915 "I" Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814  
Office Fax: (916) 808-8266

Project Manager: Gary Hyden, Supervising Landscape Architect  
Office Phone: (916) 808-1949

#### Developer:

T9 Affordable Housing Partners, LP  
1388 Sutter Street, 11<sup>th</sup> Floor  
San Francisco, CA 94109

Site Superintendent: To be Determined  
Office Phone:  
Office Fax:

**EXHIBIT G**  
**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 G (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.*]; 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.