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ORDINANCE NO.

Adopted by the Sacramento City Council

APPROVING CITY AGREEMENT NO. 14-___, A DEVELOPMENT AGREEMENT (MCKINLEY VILLAGE)

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

Section 1. Incorporation of Agreement.

This ordinance incorporates the establishment of the development agreement between the City and McKinley Village Investors, LLC and Encore McKinley Village, LLC (hereinafter, collectively the "Landowner"), a copy of which is attached to this ordinance as Exhibit A.

Section 2. Hearing before the Planning and Design Commission.

On March 27, 2014, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning and Design Commission conducted a noticed public hearing on an application to establish a development agreement. During the hearing, the Planning and Design Commission received and considered evidence and testimony. After the hearing concluded, the Planning and Design Commission forwarded to the City Council a recommendation to approve the proposed agreement.

Section 3. Hearing before the City Council; Findings.

On April 29, 2014, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the City Council conducted a noticed public hearing on the application to establish a development agreement. During the hearing, the City Council received and considered evidence and testimony concerning the proposed amendment. Based on the information in the application and the evidence and testimony received at the hearing, the City Council finds as follows:

a) The development agreement is consistent with the City's general plan and the goals, policies, standards, and objectives of any applicable specific or community plan.

b) The proposed development agreement will facilitate Landowner's development of the property subject to the development agreement, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the specific or community plan.

c) Without the development agreement, Landowner would be unlikely to proceed with development of the property subject to the development agreement in the manner proposed.

d) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.

e) Landowner will participate in all programs established or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation-monitoring plan) which will benefit the public.

f) Landowner has made commitments to a high standard of quality and has agreed to all applicable land-use and development regulations.

Section 4. Approval and Authorization.

The City Council hereby approves the establishment of the development agreement. The City Council hereby authorizes the Mayor to sign on the City's behalf, on or after the effective date of this ordinance, the development agreement for McKinley Village.

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Recording Requested by and Benefiting
the City of Sacramento, a Government Entity –
No Fee Required per Government Code § 6103

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street (Historic City Hall)
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

FOR

McKinley Village

Between

CITY OF SACRAMENTO

and

McKinley Investors, LLC and Encore McKinley Village, LLC

Approved by
Ordinance No. ____-___

[Date]

DEVELOPMENT AGREEMENT FOR MCKINLEY VILLAGE

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO

AND

MCKINLEY VILLAGE INVESTORS, LLC and ENCORE MCKINLEY VILLAGE, LLC

FOR THE

MCKINLEY VILLAGE PROJECT

This DEVELOPMENT AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2014, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and McKinley Village Investors, LLC, a California limited liability company and Encore McKinley Village, LLC, a Delaware limited liability company (hereinafter, collectively the ”LANDOWNER”). The CITY and LANDOWNER hereinafter may be referred to collectively as the “Parties” or in the singular as “Party,” as the context requires.

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intention of the Parties. These Recitals are intended to paraphrase and summarize this Agreement; however, the Agreement is expressed below with particularity and the Parties intend that their specific rights and obligations be determined by those provisions and not by the Recitals. In the event of an ambiguity, these Recitals may be used as an aid in interpretation of the intentions of the Parties.

A. **Definitions.** These Recitals use certain capitalized terms that are defined in Section 1.0 of this Agreement. The Parties intend to refer to those definitions when a capitalized term is used but is not defined in these Recitals.

B. **Authority.** To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risks of development, in 1979 the Legislature of the State of California adopted Article 2.5 of Chapter 4 of Division 1 of the Government Code, commencing at section 65864 (the “Statute”), which authorizes the CITY to enter into this binding Agreement with LANDOWNER in order to establish certain rights and obligations of the Parties relative to Development of the Property for the Project. The authority for the CITY’s approval of this Agreement is contained in the Statute, the City Charter, the Procedural Ordinance, other applicable City ordinances, resolutions and procedures. CITY and LANDOWNER desire to enter into this Agreement pursuant to the provisions of the Statute in order to provide for the orderly Development of the Project on the Property.

C. **Property Subject to Agreement.** LANDOWNER owns certain legal or equitable interests in the Property which is located within the City. LANDOWNER seeks to develop the Property for the Project consistent with the General Plan, as the General Plan may have been amended as part of the process for approval of the Project.

D. **Procedural Requirements.** The City Planning and Design Commission and the City Council held duly noticed public hearings on the approval of the Project Entitlements, and approval of this Agreement.

E. **Environmental Compliance.** The Final Environmental Impact Report prepared for the Project was certified as adequate and complete and specific findings, Mitigation Measures, and a Mitigation Monitoring Program were approved by the City Council to allow for the Development of the Project.

F. **General Plan Compliance.** LANDOWNER desires to facilitate implementation of the General Plan, and LANDOWNER therefore agrees to develop the Property for the Project in a manner consistent with the policies, terms and conditions of the General Plan, provided that LANDOWNER is assured that, unless otherwise provided in this Agreement, no subsequent changes in the General Plan after the Effective Date which would affect LANDOWNER's Vested Rights shall apply to the Property or the Project during the term of this Agreement, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

G. **Project Entitlements.** Development of the Property for the Project in accordance with the terms and conditions of this Agreement will provide for the orderly growth and Development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan, Community Plan, Planning and Development Code, Subdivision Ordinance, and other applicable provisions of the City Code. This Agreement limits the CITY's rights to revoke, terminate, change or amend the Project Entitlements, or to require the LANDOWNER to comply with any ordinances or resolutions enacted after the Effective Date that conflict with or impede Development of the Property for the Project, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

H. **Procedural Ordinance.** The City Council adopted the Procedural Ordinance by which CITY will consider, adopt, amend and subsequently review development agreements by and between CITY and a given landowner. The Procedural Ordinance, and as it may be amended in the future after the Effective Date in accordance with the Statute, shall apply to the approval, review, amendment and enforcement of this Agreement. CITY and LANDOWNER have taken all actions mandated by, and have fulfilled all requirements set forth in, the Procedural Ordinance for the adoption of this Agreement by the City Council.

I. **Agreement Voluntary.** This Agreement is voluntarily entered into by LANDOWNER in order to secure a Vested Right to develop the Property for the Project and to limit the CITY's right to subject the Property and Development of the Project to ordinances, policies, rules and regulations that may be enacted in the future which conflict, supplant, or are

contrary to the express terms and conditions set out herein. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan and Community Plan, and in consideration of the agreements and undertakings of LANDOWNER as specified in the Project Entitlements, Special Conditions, and Mitigation Measures. The Parties are entering into this Agreement voluntarily in consideration of the rights conferred and the obligations incurred as specified herein.

J. **Consideration.** Development of the Property in accordance with the terms of this Agreement requires major investment by LANDOWNER in Public Facilities, as well as Dedications and Reservations of land for public benefit and purposes, and a substantial commitment of the resources of LANDOWNER to achieve the public purposes and benefits of the Project for the CITY. By entering into this Agreement, CITY will receive such benefits, the assurances of implementation of the General Plan and Community Plan as applied to the Property, and the Development of the Property, which is currently vacant and/or underutilized, that will generate new tax revenues for the CITY. By entering into this Agreement, LANDOWNER will obtain a Vested Right to proceed with Development of the Property for the Project in accordance with the Agreement's terms and conditions, and CITY's approval of the Project Entitlements may increase the value of LANDOWNER's Property.

K. **Consistency Findings.** The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, Community Plan, and Land Use and Development Regulations. The implementation of this Agreement is in the best interest of CITY because it promotes the health, safety and general welfare of its existing and future residents. The potential environmental impacts of Development of the Project on the Property were adequately considered in the environmental documentation prepared by CITY, and adoption of the Adopting Ordinance complies in all respects with the CEQA. This Agreement provides assurances that the Project will not proceed without the timely provision of Public Facilities and Public Services required to serve the Project. This Agreement is just, reasonable, and fair and equitable under the circumstances facing the CITY, and it provides sufficient benefits to the community to justify entering into this Agreement.

L. **Closed 28th Street Landfill.** CITY is the owner and operator of the Closed 28th Street Landfill ("Landfill"), which is located across the Capital City Freeway to the north of the Property. CITY is solely responsible for the operation and maintenance of the Landfill.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 DEFINITIONS AND EXHIBITS

For purposes of this Agreement and all Exhibits, the capitalized terms shall have the meanings set forth below or in the Recitals, unless the context otherwise requires or if the capitalized term is defined in a particular section. Words not defined in this Agreement shall be given their common and ordinary meaning. The word "shall" is always mandatory.

The documents that are attached to this Agreement and labeled as exhibits (Exhibits) and that are referred to in this Agreement are incorporated into this Agreement by such reference. The documents which are referenced in this Agreement or in the Exhibits which may not be physically attached to this Agreement are also incorporated into this Agreement by such reference.

1.1 **Adopting Ordinance**. The ordinance pursuant to which the City Council approves this Agreement.

1.2 **Allocation Procedures**. Those procedures set forth in Section 5.2 of this Agreement, whereunder the various land uses and densities of the Project are distributed to and among the various parcels, or portions of them, comprising the Property.

1.3 **Annual Review**. The process and procedures whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance by LANDOWNER and Assignee(s) with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in Section 5.6 of this Agreement.

1.4 **Assessment**. A special assessment (or special tax in the case of a Community Facilities District) levied on real property within all or part of the Project area for the purpose of financing Public Facilities and Public Services in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.

1.5 **Assessment District Policy Manual**. The document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.

1.6 **Assignee**. A third Person executing an Assignment and Assumption Agreement.

1.7 **Assignment**. The sale, assignment or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement and the Assignment and Assumption Agreement.

1.8 **Assignment and Assumption Agreement**. The agreement in the form set out in Exhibit I, or such other form as shall be proposed by LANDOWNER or Assignee and approved by the City Attorney.

1.9 **Building Permit**. A permit issued pursuant to Title 15 of the City Code that allows for construction of improvements on the Property as specified in the permit.

1.10 **CEQA**. The California Environmental Quality Act (CEQA), as set forth at California Public Resources Code, Division 13, commencing at section 21000 (CEQA Act), and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at section 15000 (CEQA Guidelines), and as the CEQA Act and CEQA Guidelines are amended from time to time.

1.11 **City**. The City of Sacramento.

1.12 **City Agency**. The Redevelopment Agency of the City of Sacramento, the Housing Authority of the City of Sacramento, and the Sacramento Housing and Redevelopment Agency when the City Council acts as the governing board of that agency.

1.13 **City Code**. The Sacramento Municipal Code as adopted by the City Council, as said Code may be amended from time to time, and the provisions of the Sacramento City Charter as it may apply to the provisions of the Sacramento Municipal Code and this Agreement, as said Charter may be amended by a vote of the electorate from time to time.

1.14 **City Council**. The Council of the City of Sacramento.

1.15 **Community Plan**. The East Sacramento Community Plan as contained in the General Plan adopted by the City Council on March 3, 2009, as said plan may be amended from time to time.

1.16 **Days**. As used in this Agreement, "days" shall mean calendar days.

1.17 **Dedication**. The transfer of real property, or a defined interest therein, under an Irrevocable Offer of Dedication to CITY, City Agency or Public Agency free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency, at no cost as specifically set forth in the Project Entitlements, Special Conditions, or Mitigation Measures. Exhibit F summarizes for the Parties' convenience the contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY or Public Agency,

together with a categorical listing of the types of Public Facilities to be developed on said lands, as of the Effective Date.

1.18 **Deed of Trust**. A real property security device whereby the LANDOWNER as debtor (trustor) conveys title to real property consisting of all or a portion of the Property to a trustee as security for a debt owed to the creditor (beneficiary).

1.19 **Design Guidelines**. The architectural and site design standards that are applicable to Development of the Property for the Project as approved by the City Council as the McKinley Village Planned Unit Development Guidelines and as referenced in the Project Entitlements, which Design Guidelines are set forth in Exhibit C, and as said Design Guidelines may be amended from time to time as provided herein.

1.20 **Development (or Develop)**. The use(s) to which the Property will be put, the buildings and improvements to be constructed on the Property, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements in accordance with the Land Use and Development Regulations, Building Permits, and all other Project Entitlements.

1.21 **Development Fee**. All fees now or in the future to be imposed on and/or collected by the CITY from LANDOWNER or Assignees as a condition of Development of the Property, for the funding of construction or rehabilitation of Public Facilities, including those lawfully imposed by another Public Agency having jurisdiction and which CITY is required or authorized to collect pursuant to federal or State law, local ordinance, or agreement.

1.22 **Development Plan**. The LANDOWNER's plan for Development of the Property for the Project as set forth or referenced in Exhibit B.

1.23 [This section intentionally omitted]

1.24 **Discretionary Action**. An approval or disapproval that requires exercise of judgment, deliberation, or a decision, and that contemplates and authorizes the imposition of revisions or conditions by CITY, including any board, commission or department and any officer or employee CITY, in the process of approving or disapproving a particular activity.

1.25 **Effective Date**. The date on which the Adopting Ordinance becomes effective (not the date the Adopting Ordinance was approved by the City Council). CITY will enter into this Agreement on or after the Effective date by the Mayor signing this Agreement on behalf of CITY. No Vested Right is conferred until CITY enters into this agreement.

1.26 **Extension Period.** A specified period of time, in five (5)-year increments, by which LANDOWNER may extend the Term of this Agreement consistent with the requirements set forth in Section 2.1.1.

1.27 **Final Environmental Impact Report**. The report prepared for the Project in accordance with CEQA that was certified by the Planning Commission by its record of decision and/or by the City Council by its resolution, as described in Exhibit D.

1.28 General Plan. The General Plan of the City of Sacramento, as adopted by the City Council on March 3, 2009, and as said plan may be amended from time to time.

1.29 Inclusionary Housing Ordinance. Title 17, Chapter 17.190 of the City Code, entitled the "Mixed Income Housing Ordinance," and as said ordinance may be amended from time to time.

1.30 Irrevocable Offer of Dedication. In accordance with the provision of Government Code section 66475 et seq., an unconditional and irrevocable offer by LANDOWNER to transfer real property, or an interest therein, to CITY or Public Agency pursuant to the provisions of the Development Plan, Project Entitlements, or Special Conditions. Exhibit G provides the form of the Dedication agreement if the Irrevocable Offer of Dedication is not set out on the tentative and final subdivision map or if the Parties desire to specify the terms of the Dedication and the acceptance of the property or interest therein.

1.31 Land Use and Development Regulations. The Planning and Development Code, Subdivision Ordinance, and the other provisions of the City Code (including the Sign Code) applicable to Development of the Property, together with the General Plan and any other City ordinances, resolutions, master plans, rules, regulations and official policies of the City as they exist on the Effective Date, which govern or regulate land use and/or development of the Property.

1.32 Lender. A Person (or a successor in interest to such person) who has advanced funds to, or who is otherwise owed money by, LANDOWNER as a debtor, where the obligation is embodied in a promissory note or other evidence of indebtedness, and where such note or other evidence of indebtedness is secured by a Mortgage or Deed of Trust on all or a portion of the Property.

1.33 Ministerial Action. An approval or disapproval that merely requires a determination whether there has been compliance with applicable statues, ordinances, resolutions, regulations, or conditions of approval including, without limitation, the Development Plan, Project Entitlements, Special Conditions, and Mitigation Measures.

1.34 Mitigation Measures. The measures adopted by the Planning Commission and/or by the City Council as part of the certification of the Final Environmental Impact Report as of the Effective Date which apply to Development of the Property for the Project and as may be referenced in the Project Entitlements and as described in Exhibit D, as well as those which may be added or amended and incorporated into this Agreement pursuant to this Agreement.

1.35 Mitigation Monitoring Program. The plan for implementation of the Mitigation Measures as of the Effective Date and as may be referenced in the Project Entitlements and as described in Exhibit D, and as may be amended and incorporated into this Agreement pursuant to this Agreement.

1.36 Mortgage. A contract by which the LANDOWNER as mortgagor (debtor) hypothecates or pledges real property consisting of all or a portion of the Property, or otherwise grants a

security interest therein to a Lender (mortgagee), to secure performance under a promissory note or other evidence of indebtedness, and where the holder of the mortgage is granted a power of sale.

1.37 **NEPA**. The National Environmental Policy Act as set forth at 42 U.S.C. commencing at section 4300, the Council on Environmental Quality regulations set out in 40 CFR § 1500 et seq., applicable NEPA regulations of federal agencies, Executive Orders related to NEPA compliance, and as said Act and regulations may be amended from time to time.

1.38 **Parties**. The City of Sacramento and LANDOWNER.

1.39 **Person**. A person, firm, association, organization, partnership, business trust, corporation or company.

1.40 [this section intentionally omitted]

1.41 **Planning and Development Code**. The Planning and Development Code of the City of Sacramento, which is set out in Title 17 of the City Code, and as may be amended in the future from time to time.

1.42 **Procedural Ordinance**. Chapter 18.16 of the City Code, which sets forth procedures for application, review, approval, implementation, amendment, recordation, compliance review, and related matters with respect to development agreements for lands outside of the North Natomas Community Plan area (which is governed by Ordinance No. 95-012).

1.43 **Project**. The permitted uses, location, density or intensity of use, height or size of buildings and including, without limitation, the provisions for Dedication and Reservation of land for public purposes, as set forth in the Development Plan, Project Entitlements, and Special Conditions.

1.44 **Project Entitlements**. The plans, ordinances, resolutions, maps, plan review, special permits, design review, preservation review, inclusionary housing plan, and permits and approvals, including certification of the Final Environmental Impact Report, Mitigation Measures, and Mitigation Monitoring Program, that have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which are set out in Exhibits C and D, as well as all Subsequent Approvals. The Project Entitlements also include minor changes to the Development Plan approved pursuant to Section 2.3.4 and substantive changes to the Development Plan for which an amendment to this Agreement has been approved pursuant to Section 2.3.3.

1.45 **Property**. The real property owned or controlled by LANDOWNER as described in Exhibit A.

1.46 **Protest Waiver**. The agreement set forth in Exhibit E and executed by LANDOWNER pursuant to this Agreement or in connection with the condition of any Project Entitlements.

1.47 Public Agency(ies). A city (other than CITY), county, special district, public utility, school district, regional agency formed pursuant to federal or state law, joint powers agency, municipal corporation, or a non-profit corporation formed by a public entity to provide services to or charitable benefits for the public, for which the City Council does not act as the governing board.

1.48 Public Facilities. All public infrastructure, facilities, improvements and amenities needed to serve the Project as identified in the General Plan the Development Plan, Project Entitlements, or Special Conditions; or as otherwise may be constructed or owned by, or conveyed to, CITY, City Agency or Public Agency, and may include, without limitation: **[**(i) streets, alleys, bridges, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) heavy and light rail and trolley lines, stations, and passenger facilities; (iii) bus rapid transit lanes and bus transfer facilities, turnouts and stops; (iv) surface and storm drainage improvements; (v) sanitary sewer improvements; (vi) water storage and transmission facilities; (vii) flood control improvements; (viii) solid waste facilities; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire stations; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins; (xv) schools and educational facilities; (xvi) community centers, performing arts centers, and museums; and (xvii) publicly owned artwork]. The Public Facilities to be constructed by LANDOWNER pursuant to the Project Entitlements, Mitigation Measures and Special Conditions are summarized for the convenience of the Parties in Exhibit F.

1.49 Public Financing Mechanism. An assessment district, a community facilities district, a fee district, area of benefit district, or any similar financing mechanism imposed on real property or as a condition of development approval, excluding Development Fees.

1.50 Public Services. All services provided by CITY, City Agency and Public Agency to serve the residents and the businesses to be located on the Property, as may be identified in the General Plan, Development Plan, Project Entitlements, or Special Conditions; and may include, without limitation, the maintenance, operation or the provision of, as the context implies: **[**(i) streets, alleys, bridges, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) heavy and light rail and trolley transit services; (iii) bus transit services; (iv) surface and storm drainage improvements and pollution control services; (v) sanitary sewer improvements and pollution control services; (vi) water storage and transmission facilities and water services; (vii) flood control improvements; (viii) solid waste services; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire services; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins; (xv) educational services; (xvi) community centers, performing arts centers, and museums; and (xvii) publicly owned artwork].

1.51 Reconfiguration. The adjustment of lot lines, re-subdivision, re-parcelization, reversion to acreage, creation or elimination of air rights, or other alteration of property lines through parcel or subdivision mapping, lot line adjustment, or lot merger, which may affect the description of LANDOWNER's Property as set out in Exhibit A.

1.52 **Reservation**. In accordance with the provision of Government Code section 66479 et seq., the transfer of real property, or a defined interest therein, to CITY, City Agency or Public Agency, free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency at a purchase price set out in the Reservation Agreement, the form of which is provided as Exhibit H.

1.53 **Sign Code**. Chapter 15.148 of the City Code (signs) and Chapter 12.36 of the City Code (awnings and canopies), and as said chapters may be amended from time to time.

1.54 **Special Conditions**. Those conditions, terms and requirements specified in Exhibit J.

1.55 **Subdivision Ordinance**. The Subdivision Ordinance of the City of Sacramento which is set out in Title 16 of the City Code, and as said ordinance may be amended from time to time.

1.56 **Subsequent Approvals**. Any Ministerial or Discretionary approval or other action by CITY to implement the Development Plan after the Effective Date that is necessary or desirable to implement LANDOWNER's Vested Rights under this Agreement, including Discretionary and Ministerial Actions, that is not set out as a Project Entitlement as described in Exhibits C and D.

1.57 **Subsequent Rule**. All City ordinances, resolutions, rules, regulations and official policies that are adopted after the Effective Date.

1.58 **Tentative Map**. The tentative subdivision map that subdivides LANDOWNER's Property into legal parcels pursuant to the Subdivision Map Act (commencing at section 66410 of the Government Code) as approved by the City Council as part of the Project Entitlements, as more particularly described in Exhibit C.

1.59 **Term**. The length of this Agreement in terms of time as specified in Section 2.1, or as that time may be extended pursuant to this Agreement.

1.60 **Vested Right**. A property right conferred by this Agreement, pursuant to Government Code section 65865.4, to develop the Property for the Project in accordance with the Development Plan and consistent with the General Plan, Project Entitlements, and Special Conditions that may not be cancelled or revoked by CITY after the Effective Date, except as expressly provided in this Agreement.

1.61 **Zoning**. The division of the City into districts, and the application of zoning regulations thereto, which include (without limitation) regulation of the type of land use, density, height or bulk of buildings (structural design), setbacks, and parking as set out in the Planning and Development Code.

2.0 GENERAL TERMS AND CONDITIONS

2.1 Term. Except as otherwise provided below, the Term of this Agreement shall mean and include the Initial Term plus any Extension Period, unless it is sooner cancelled by a Party for default as provided in Sections 7.6 and 7.7, or terminated for convenience or for other reasons as provided in Section 7.8.

2.1.1 Initial Term and Extensions. The Term of this Agreement shall commence on the Effective Date and may extend for specified periods thereafter based on the length of the Initial Term and each Extension Period.

2.1.1.1 Initial Term. fifteen (15) years after the Effective Date.

2.1.1.2 Extension Options. LANDOWNER shall have the right to renew this Agreement on its same terms and conditions, subject to any amendments, if any, as follows:

(a) As of the Exercise Date, LANDOWNER shall not be in material default of this Agreement. The term "Exercise Date" shall mean the date that LANDOWNER gives written notice of its intention to extend the term of this Agreement, in accordance with the provisions of section 9.2.

(b) To exercise the option to extend the term of this Agreement, LANDOWNER shall give CITY written notice of LANDOWNER's intention to exercise its option and the notice must be given no more than 180 days prior to the expiration of the initial term or any extension term, nor later than 15 days prior to the expiration of the initial term or any extension term.

(c) LANDOWNER shall be limited to two (2) extension periods consisting of five (5) years each.

2.1.2 [This section intentionally omitted]

2.1.3 Maximum Term. Except as provided in Sections 2.1.4, 2.1.5, 2.1.6 and 9.7 with respect to moratoriums, litigation, cancellation or modification for default, and referendum, the Parties specifically intend that under no circumstances shall the Term of this Agreement extend beyond twenty five (25) years, unless this Agreement is amended in accordance with Section 2.3.

2.1.4 Effect of Moratoriums on Term of Agreement. If a Subsequent Rule is enacted prior to the expiration of the Term of this Agreement that limits the rate of Development over time or governs the sequence of Development of the Project, and that Subsequent Rule applies to the Property as provided in Section 4.9, the Term of this Agreement shall be extended by the amount of time that the Subsequent Rule is in effect on the Property.

2.1.5 Effect of Litigation on Term of Agreement. Pursuant to Section 4.3.3, if litigation is filed under Section 4.3.3, the Term of this Agreement shall be extended by the amount of time between the date the litigation was filed and the date of the final judgment if the law, regulation or action that was the subject of the litigation had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this

Agreement to remain in full force and effect. In addition, in the event that this Agreement or any of the Entitlements are subjected to legal challenge by a third party and LANDOWNER is unable or elects not to proceed with the Project due to such litigation and notifies CITY in writing of the inability or election not to proceed, then the term of and timing for obligations imposed pursuant to this Agreement will be automatically tolled during such litigation.

2.1.6 Effect of Litigation Over Cancellation or Modification for Default. Pursuant to Section 7.7.2, if LANDOWNER institutes legal proceedings to obtain judicial relief from CITY modifying or canceling this Agreement for LANDOWNER's default, the expiration of the Term of this Agreement shall be tolled during the period of the legal proceedings if there be a judicial determination invalidating or reversing the CITY's cancellation or modification of this Agreement.

2.2 Development Timing.

2.2.1 Project Schedule. This Agreement contains no requirement that LANDOWNER must initiate or complete Development of the Project or any phase thereof, or Development of the Property or any portion thereof, within the Term of this Agreement or within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to Develop the Property for the Project in accordance with LANDOWNER's own schedule; provided, however, that Development of the Property is substantially consistent with the Development Plan, as evaluated in the Final Environmental Impact Report and subject to the conditions set out in the Project Entitlements and Special Conditions. Any act which is required to be completed within a specific time period under the terms and conditions of the Project Entitlements or Special Conditions shall be timely completed as provided therein, and any phasing provisions that are set out in a Subsequent Approval shall be applicable to the Project.

2.2.2 Application of Subsequent Rule Affecting Rate of Development. Except for moratoriums as addressed in Section 4.9, no Subsequent Rule which limits the rate of development over time shall be applicable to the Property or the Project. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions, phasing provisions, or schedule compliance as set out herein, or to excuse the timely completion of any act which is required to be completed within a specified time period, as set out in the Project Entitlements, Special Conditions, any other provision of this Agreement, any applicable provision in the City Code or the Land Use and Development Regulations, or any applicable Subsequent Rule.

2.3 Amendments, Suspension or Termination of Agreement.

2.3.1 Amendments. Except as otherwise expressly provided herein, this Agreement may be amended from time to time by the mutual written consent of the Parties in accordance with the express terms of this Agreement, the provisions of Government Code section 65868, and the Procedural Ordinance. No waiver, alteration, or modification of this Agreement shall be valid unless it is made in writing and signed by the Parties.

2.3.2 Requests for Development Plan and Project Changes. The Parties acknowledge that nothing contained herein is intended to limit LANDOWNER's right to apply

to CITY for changes in the Development Plan and Project Entitlements, and amendments to the Land Use and Development Regulations, to allow for additional or different Development, or for a reduction in the level of Development, from that set out in and contemplated by this Agreement, subject to compliance with CEQA, Subsequent Rules, applicable state and City laws and regulations, and the applicable provisions of this Agreement. Nothing herein shall be construed as limiting the exercise of the discretion by CITY in reviewing and approving or denying any such application.

2.3.3 Substantive Changes Related to the Project and Project Entitlements. Substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions by LANDOWNER will necessitate an amendment to this Agreement to incorporate the revised Development Plan and the applicable changes to the terms and conditions of the Project Entitlements, Special Conditions, and related documents and agreements. A "substantive change" to this Agreement, the Development Plan, Project Entitlements, or Special Conditions is one that changes the Term of this Agreement or for which an application is made to modify any of the following: the permitted uses; density or intensity of use; height or size of buildings; provisions for reservation and dedication of land; conditions, terms, restrictions and requirements relating to subsequent discretionary actions; monetary contributions by a landowner; or any other material term or condition of this Agreement. If either Party notifies the other Party that an amendment is needed due to the proposed substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions, the Parties shall meet and negotiate in good faith the terms of an amendment to this Agreement. The scope of the good faith negotiation is limited to such amendment(s) necessary to effectuate the substantive changes to the Development Plan contemplated in this Section 2.3.3, and shall not reopen other provisions of this Agreement not affected by the proposed amendment(s). The CITY may suspend or withhold a Subsequent Approval if reasonably required by the circumstances then existing at the time of the proposed change in the Development Plan, Project Entitlements, or Special Conditions until the Parties can come to an agreement on the terms of such an amendment or mutually agree to the termination of this Agreement.

2.3.4 Minor Changes. This Agreement need not be amended to allow for changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions that are not substantive, as described in section 2.3.3 and the Procedural Ordinance, but rather are minor in character. The Parties acknowledge that refinement and further implementation of the Development Plan may demonstrate that certain minor changes may be appropriate with respect to Project details and performance of the Parties under this Agreement, and the Parties desire to retain a certain degree of flexibility with respect to such details and performances. If and when the Parties find and mutually agree that clarifications, minor changes, or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, changes or adjustments through an operating written memorandum approved by the Parties, with the City Manager acting on behalf of CITY. After execution, the operating memorandum shall be attached to this Agreement. Further minor changes as necessary from time to time may be agreed upon by the Parties by subsequent written approval of the Parties. Unless required by the Statute or the Procedural Ordinance, no operating memorandum shall require prior notice or public hearing, nor shall it constitute an amendment to or termination for convenience in whole or in part of this

Agreement. Minor changes subject to this subsection 2.3.4 shall include planning director plan review amendments and special permit minor modifications.

2.3.5 Termination. This Agreement will terminate at the earlier of the date when (i) the Term expires, (ii) it is terminated for convenience as provided in this Agreement, or (iii) it is cancelled for default as provided in Sections 7.6 and 7.7.

2.4 Interests of LANDOWNER. LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, including the Lender, if any, have executed and are bound by this Agreement.

2.5 Binding Covenants. The burdens of this Agreement shall be covenants that run with the land and shall be binding upon the owners of the Property including, without limitation, LANDOWNER, affiliates of LANDOWNER, Lenders, if any, and Assignees. The benefits of this Agreement shall inure to the Parties and to their Assignees subject to compliance with Section 2.6.

2.6 Assignment.

2.6.1 Right to Assign. LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all or any portion of the Property and improvements thereon as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code § 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice thereof to CITY in the manner provided in Section 9.2 not later than thirty (30) days before the effective date of such sale, transfer, or assignment. LANDOWNER's failure to provide such notice to CITY shall not invalidate such sale, transfer, or assignment; however, any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without executing and delivering to CITY an Assignment and Assumption Agreement.

2.6.2 Release. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement unless the purchaser, transferee or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume all of the obligations of LANDOWNER under this Agreement and to comply with all of the terms and conditions of this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project. Upon such execution and delivery of the Assignment and Assumption Agreement, LANDOWNER shall be deemed released from all duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

2.6.3 Assignees. The Assignee shall be obligated and bound by the terms and conditions of this Agreement if it executes the Assignment and Assumption Agreement, and shall be the beneficiary hereof and a party hereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to Assignee by LANDOWNER. The Assignee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred. CITY shall release Assignee from all duties, liabilities and obligations under this Development Agreement of LANDOWNER with respect to the interest(s) that are not sold, assigned or transferred to Assignee. Any such assumption agreement shall be deemed to be to the satisfaction of the City Attorney if executed substantially in form of the Assignment and Assumption Agreement attached hereto as Exhibit I and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment.

2.7 Plan or Project Entitlement Amendments Involving Assignees.

2.7.1 By Assignee. If an Assignee files an application with CITY that proposes to amend the Development Plan, Project Entitlements, Special Conditions, or the Land Use and Development Regulations and such amendment could affect the Vested Rights of LANDOWNER or of another Assignee(s), CITY shall provide reasonable notice to LANDOWNER before acting on such application. CITY shall not be required to obtain the prior approval of LANDOWNER or of the other Assignee(s) to approve such application notwithstanding the terms of this Agreement or an Assumption and Assignment Agreement.

2.7.2 By LANDOWNER. If LANDOWNER files an application with CITY that proposes to amend the Development Plan, Project Entitlements, or the Land Use and Development Regulations and such amendment could affect the Vested Rights of an Assignee(s), CITY shall not be required to provide notice or obtain the prior approval of the Assignee(s), notwithstanding the terms of this Agreement or an Assumption and Assignment Agreement. CITY shall only be required to provide notice to adjacent landowners of the application pursuant to then applicable provisions of the Planning and Development Code and City Code.

2.7.3 Approval Rights. LANDOWNER shall be solely responsible for obtaining any prior approval rights over applications to amend the Development Plan, Project Entitlements, or the Land Use and Development Regulations by an Assignee(s), and for obtaining any waivers of LANDOWNER's applications by an Assignee(s), at the time LANDOWNER sells, transfers or assigns a portion of the Property to a third party which may become an Assignee to this Agreement. The provisions in this Section 2.7 shall apply to LANDOWNER's successors in interest, to each initial Assignee(s) and its successors in interest, and to all property owners and affiliates of all or a portion of the Property during the Term of this Agreement.

2.7.4 CITY Processing. In processing an application as described in this Section 2.7, CITY shall retain its discretion to approve or deny a Discretionary Action or a Ministerial Action after the Effective Date, subject to Section 3.2, and consistent with the terms of this Agreement.

2.7.5 Indemnity. LANDOWNER and/or any Assignee(s) that files an application as described in this Section 2.7 shall defend and indemnify CITY in any third-party action claiming that CITY has violated LANDOWNER's and/or an Assignee(s)'s Vested Right under this Agreement in approving such application, in accordance with the provisions of Section 7.1; provided, however, that the indemnity provided in this Section 2.7.5 shall not extend to claims that are caused by the gross negligence or willful misconduct of CITY.

2.8 Closed 28th Street Landfill.

2.8.1 Landfill. Notwithstanding anything contained herein to the contrary, this Agreement does not apply to or modify the Parties' rights or obligations toward each other or any third party concerning the Landfill or any substance that may emanate from the Landfill, as further evidenced in Exhibits G and H.

3.0 VESTED DEVELOPMENT RIGHTS

3.1 Entitlement to Develop Project. Subject to the express terms, conditions, reservations, and exclusions as set out in this Agreement, CITY hereby grants to LANDOWNER a Vested Right to develop the Property for the Project in accordance with the terms and conditions set out in the Development Plan, Project Entitlements, and Special Conditions, and in accordance with the Land Use and Development Regulations. The General Plan shall control in regards to any conflicts between LANDOWNER's Vested Right and the Land Use and Development Regulations. In Development of the Property for the Project, LANDOWNER shall not be subject to compliance with any Subsequent Rule except as expressly set forth in this Agreement. The Development Plan, Project Entitlements, Special Conditions, and Vested Rights, which authorize and limit Development of the Property for the Project in accordance with their respective terms, are intended to be construed in harmony with each other.

3.1.1 Compliance with Project Entitlements. The Parties acknowledge that the Subsequent Approvals will be consistent with and apply the terms and conditions of the Development Plan, Project Entitlements (including the Design Guidelines, Mitigation Measures, and Tentative Map conditions), and Special Conditions. In addition, the location, size and type of land uses in the Development Plan may be conditioned or restricted as permitted under the Land Use and Development Regulations and as otherwise provided herein. Nothing contained in this Agreement is intended or may be construed as an assurance or representation by CITY to LANDOWNER that the Development Plan can be fully implemented within the Term of this Agreement or that LANDOWNER will be able to fully exercise its Vested Rights.

3.1.2 Development Inconsistent with Development Plan. If LANDOWNER submits an application to CITY for Development that differs from the Development Plan, Project Entitlements (including the Design Guidelines, Mitigation Measures, and Tentative Map conditions), and Special Conditions, but that does not require an amendment to this Agreement as provided in Section 2.3.4, then LANDOWNER's Vested Rights under this Agreement will be adjusted to include the modifications upon approval of the application by CITY. Such adjustment in the Vested Rights shall be considered and implemented as a minor change under Section 2.3.4 of this Agreement. If an application proposes or requires a substantive change to the Development Plan, Project Entitlements (including the Design Guidelines, Mitigation Measures, and Tentative Map conditions), Special Conditions, or Land Use and Development Regulations under Section 2.3.3, then the right to develop the Property in accordance with the terms and conditions of that application, if approved, will not be vested under this Agreement unless and until this Agreement is amended to incorporate the approval pursuant to Section 2.3.3.

3.2 Subsequent Approvals.

3.2.1 Scope. Development of the Property for the Project is subject to all required Discretionary Actions and Ministerial Actions that have not otherwise been approved by CITY or City Agency prior to the Effective Date. Subsequent Approval would include, without limitation, approval of tentative and final parcel and subdivision maps, additional tentative subdivision maps to further subdivide a parcel, special permits, variances, plan review, design review, and grading permits and Building Permits required for Development of the Project and

consistent with the Development Plan. Upon approval by CITY, LANDOWNER's Vested Rights under this Agreement shall be deemed to include the Subsequent Approval.

3.2.2 Processing. Nothing contained in this Agreement shall preclude CITY from its right and responsibility to review applications for entitlements submitted by LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law. CITY shall not unreasonably deny, delay or condition any Subsequent Approval required for Development of the Project that is necessary or desirable to the exercise of LANDOWNER's Vested Rights under this Agreement as long as the application is in compliance with the Development Plan, Project Entitlements, Special Conditions, and the Land Use and Development Regulations.

3.2.3 Conditions. In reviewing and approving applications for Subsequent Approvals that are Discretionary Actions, CITY may exercise its independent judgment and may impose terms, conditions, restrictions, and requirements (collectively "Conditions") as follows:

3.2.3.1 CITY may impose Conditions that are consistent with this Agreement and the policies, goals, standards and objectives of the Development Plan, Project Entitlements, Special Conditions, and Land Use and Development Regulations as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such Discretionary Actions.

3.2.3.2 CITY may impose Conditions that are inconsistent with the provisions of this Agreement, if: (i) CITY and LANDOWNER mutually agree to the inconsistent Conditions, or (ii) the Subsequent Approval is subject to compliance with a Subsequent Rule as provided in this Agreement, or (iii) the Conditions are imposed as a mitigation measure for compliance with CEQA, NEPA or a related environmental statute as described in Section 4.1, or (iv) additional Public Facilities are necessary to serve the Development of the Property as proposed in LANDOWNER's entitlement application or changes in the location or size of Public Facilities is required as described in Section 4.8.

3.2.4 Additional Discretionary Actions. CITY shall not apply any Subsequent Rule that creates a requirement for any new or additional Subsequent Approvals for the Project, other than additional Ministerial Actions, except as provided in Sections 3.3. and 4.0.

3.3 <u>Subsequent Rules</u>.

3.3.1 Limitation on Application of Subsequent Rules.

3.3.1.1 Subject to Section 4.0 and except as otherwise set forth in this Agreement, during the Term of this Agreement, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if it would conflict with or impede the Vested Rights of LANDOWNER as set out in this Agreement without LANDOWNER's express written consent. The terms "conflict" and "impede" would include, without limitation, Subsequent Rules that would directly or indirectly modify the Project

Entitlements or would substantially increase the cost of Development in order to comply with the Subsequent Rule. Application of a Subsequent Rule relating to new or increases in Development Fees and Assessments are addressed in Section 4.0.

3.3.1.2 To the extent that any Subsequent Rule which is applicable to the Property or the Project is not in conflict with or does not impede the Vested Rights of LANDOWNER as set out in this Agreement, or is otherwise made applicable by other provisions of this Agreement, such Subsequent Rule shall be applicable to Development of the Property.

3.3.2 No General Limitation on Future Exercise of Police Power. The CITY retains its right to exercise its broad and general police powers and to apply such powers within the Property, except when such exercise would expressly conflict with or impair a Vested Right granted to LANDOWNER under this Agreement, as provided in Section 3.3.1.

3.3.3 No Limit on Power of CITY to Adopt Subsequent Rule. Notwithstanding anything contained herein to the contrary, this Agreement does not limit the power and right of the CITY to amend, repeal, suspend, or otherwise modify the Land Use and Development Regulations, or to adopt and amend from time to time other ordinances, resolutions, rules, and procedures governing development within the City, provision and financing of Public Facilities or Public Services, and any other matters that may be related to or affect Development of the Project on the Property or the subject matter of this Agreement; however, such Subsequent Rule shall only apply to the Property or the Project as provided in Sections 3.3 and 4.0 or as otherwise provided in this Agreement.

3.3.4 Beneficial Changes. To the extent that any Subsequent Rules would benefit LANDOWNER and LANDOWNER desires that the Land Use and Development Regulations as amended by the Subsequent Rule should be applicable to Subsequent Approvals, LANDOWNER shall notify CITY in writing of its desire to be subject to the amended Land Use and Development Regulations, and the Parties shall mutually agree to amend this Agreement in accordance with Section 2.3 if needed.

4.0 EXCLUSIONS FROM VESTED RIGHTS

4.1 Environmental Compliance.

4.1.1 CEQA Compliance. The CITY prepared and certified the Final Environmental Impact Report for the Project and imposed certain Mitigation Measures in compliance with CEQA for approval of the Development Plan and Project Entitlements. CITY and LANDOWNER shall comply with and perform the Mitigation Measures when and where applicable to each Party as specified in the Mitigation Monitoring Program. Because this Agreement and the Mitigation Measures are intended to mitigate all significant environmental impacts of the Project which can feasibly be mitigated, CITY shall not impose any additional mitigation measures as a condition of any Subsequent Approval, except mitigation measures that CITY determines it is required to impose under CEQA for the approval or certification of any mitigated negative declarations or subsequent or supplemental environmental impact reports that are required to be approved or certified under CEQA prior to taking action on such Subsequent Approval. Nothing contained in this Agreement limits the CITY's ability to comply with CEQA,

the CEQA Guidelines, and the CITY's CEQA procedures, and as they may be amended from time to time.

4.1.2 NEPA Compliance. If the scope of the Project includes Public Facilities that are to be funded in part with federal funds or requires approval of a federal agency, the CITY shall comply with the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations, and other related federal environmental statutes and regulations. If the environmental reports required for compliance with NEPA have not been completed prior to the Effective Date, the CITY may impose additional mitigation measures as a condition of any Subsequent Approval as CITY is required to impose for compliance with NEPA and other related federal environmental statutes and regulations that are set out as conditions of, or the basis for, approval of a categorical exclusion, environmental assessment, environmental impact statement, or permit by the applicable federal agency for construction of Public Facilities undertaken by CITY or LANDOWNER located within the Property or required for Development of the Project

4.2 Retained Right to Discretionary Design Review. Notwithstanding anything contained herein to the contrary, specifically excluding, however, the Site Plan and Design Review approvals that are part of the Project Entitlements, as set forth in Exhibit C, this Agreement does not limit CITY's Discretionary Actions regarding design review of all buildings and structures proposed to be developed on the Property in accordance with the Land Use and Development Regulations. However, in conducting its design review, CITY will apply the Design Guidelines and CITY shall exercise its review in such a manner that does not reduce the square footage or the floor area ratio for the subject site as otherwise allowed under the Design Guidelines and other Project Entitlements and the Land Use and Development Regulations. CITY retains the right to reasonably modify or amend the Design Guidelines as long as such amendments are consistent with the Project Entitlements, Development Plan, and Land Use and Development Regulations and do not conflict with or impede LANDOWNER's Vested Rights.

4.3 Changes Mandated by Other Agencies.

4.3.1 Amendment or Suspension of Agreement. Nothing in this Agreement shall preclude the application to the Property of a Subsequent Rule if the terms and conditions set out in a Subsequent Rule are specifically mandated by changes in state or federal laws or regulations or by action of a Public Agency after the Effective Date. If state or federal laws or regulations or an action by a Public Agency either (i) prevents or precludes LANDOWNER's or CITY's compliance with one or more provisions of this Agreement, or (ii) requires changes in the Development Plan, Project Entitlements, Special Conditions, or Subsequent Approvals, the Parties shall meet and confer in good faith to determine whether the laws, regulations, or actions apply to the Property and/or the Project and whether suitable amendments to this Agreement can be made to maintain LANDOWNER's Vested Rights and the CITY and LANDOWNER obligations as set out in this Agreement. If the Parties are unable to agree on the terms of an amendment to this Agreement to comply with such laws, regulations, and actions, the Parties shall consider whether suspension of the applicable provision(s) of this Agreement is appropriate, and if so, the terms and conditions of such suspension. If the Parties are unable to agree on the terms of an amendment or suspension with respect to the applicable provision(s) of this Agreement, either Party shall have the right to terminate this Agreement for its convenience

in whole or in part by complying with the noticing procedures set out in Section 9.2.

4.3.2 No Liability of CITY. To the extent that any actions of federal or state agencies, actions of Public Agencies, or actions of CITY required by federal or state agencies or Public Agencies, and taken in good faith to prevent adverse impacts upon CITY by state or federal agencies or Public Agencies, have the effect of preventing, delaying, or modifying Development of the Property for the Project, CITY shall not in any manner be liable to LANDOWNER for such prevention, delay or modification. Such actions may include, without limitation: (i) flood plain or wetlands designations, (ii) the imposition of air quality measures or sanctions, (iii) the imposition of traffic congestion or travel restriction measures, and (iv) the imposition of new or additional restrictions related to environmental contamination of the Property, regardless as to whether such conditions were known or unknown as of the Effective Date. CITY's actions to comply with such federal or state laws and regulations or actions of Public Agencies shall not be arbitrary or capricious. Nothing contained herein shall be construed as precluding CITY's contractual defenses of impossibility of performance or frustration of purpose to the extent recognized by California law.

4.3.3 Reserved Right to Contest Laws, Regulations and Actions. CITY and/or LANDOWNER shall have the right to institute litigation challenging the validity of the laws, regulations or actions of federal and state agencies and Public Agencies as described in Section 4.3.1. If such litigation is filed, this Agreement shall remain in full force and effect until a final judgment affecting this Agreement's force and effect is issued; provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the contested law, regulation, or action, CITY shall not be required to undertake such action until the litigation is resolved or the law, regulation, or action is otherwise determined invalid, inapplicable, or is repealed. If the final judgment invalidates the law, regulation, or action, or determines that it does not affect the validity of this Agreement or the obligations of the Parties as set out in this Agreement, this Agreement shall remain in full force and effect. The Term of this Agreement shall be extended by the amount of time between the date when the litigation was filed and the date of the final judgment if the law, regulation, or action had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this Agreement to remain in full force and effect.

4.4 <u>Building Codes</u>.

4.4.1 No Limit on Right of CITY Regarding Uniform Codes or Standards and Local Amendments. Notwithstanding anything in this Agreement to the contrary, this Agreement does not limit the right of CITY to adopt building, plumbing, electrical, fire, and similar uniform codes, and Public Facilities standards and specifications, or to adopt modifications of and local amendments to those uniform codes and standards and specifications, from time to time, and to require development of the Property and the Project to comply with those uniform codes and standards and specifications in effect at the time of plan review or Building Permit issuance for the Project, regardless as to whether the plans and Building Permits are requested for the Project Entitlements or for Subsequent Approvals.

4.5 <u>No Effect on Right to Tax, Assess, or Levy Fees or Charges</u>. Notwithstanding anything in this Agreement to the contrary, this Agreement does not limit the power and right of

the CITY to impose new or increases in existing taxes or assessments on, or to require payment of application, processing, inspection, or building permit fees and related charges by, LANDOWNER or any other entity or owner of property in the City. All applications by LANDOWNER for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, inspection fees and other similar fees within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

4.6 Development Fees. Except as provided in Exhibit J, LANDOWNER shall be subject to the imposition of any new or increased development impact fees (Government Code § 66000 et seq.) or other fee, as defined in Section 1.21 as Development Fees, pursuant to the nexus study that is prepared to implement the new or increased development impact fee or program, as such nexus study may be amended from time to time.

4.7 Health and Safety and Supervening Laws. Notwithstanding the provisions in Section 3.3.1, during the Term of this Agreement the CITY may adopt and apply a Subsequent Rule to Subsequent Approvals if: (i) CITY upon notice and hearing, in the reasonable exercise of its discretion and based upon findings of fact and determinations of law, certifies to LANDOWNER that application of a Subsequent Rule is necessary to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property; or (ii) such Subsequent Rule is mandated or required by supervening federal, state, or Public Agency law, regulation or action enacted prior to or after the Effective Date. The foregoing two options include, without limitation, any flood control restrictions or requirements that may be adopted on a city-wide or lesser basis that encompasses the Property.

4.8 Changes in Location or Size of Public Facilities. If at the time of the required Dedication or Reservation of land to CITY, City Agency, or Public Agency for Public Facilities as specified in this Agreement, the location or the quantity of land required for the Public Facilities has changed from that depicted or specified in this Agreement, the Development Plan, the Project Entitlements, or the Special Conditions to such a significant degree or extent that could not reasonably have been anticipated as of the Effective Date such that the location or quantity is inconsistent with this Agreement, the Development Plan, the Project Entitlements, or the Special Conditions, the Parties shall meet and negotiate and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow Development of the Property for the Project in a reasonable manner, taking into account the changes in Public Facilities needed to serve the Project that arose after the Effective Date. If agreement is reached between the Parties, the procedures specified in Section 2.3 shall apply to amend this Agreement. If agreement is not reached, either Party shall have the right to terminate this Agreement for its convenience in whole or in part by providing notice as specified in Section 9.2.

4.9 Suspension of Development. No Subsequent Rule enacted prior to the expiration of the Term of this Agreement which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall apply to the Property, except when the CITY enacts a moratorium pursuant to a declaration of a local emergency or a state of emergency

which suspends development rights, the moratorium encompasses the Property or the Project, and the basis for enactment of the moratorium complies with the provisions of Section 4.7.

5.0 CITY'S OBLIGATIONS AND COMMITMENTS

5.1 CITY's Good Faith in Processing. Subject to the provisions of this Agreement and LANDOWNER's compliance with each and every term and condition herein, CITY agrees that it will accept in good faith for processing, review, and Discretionary or Ministerial Action, all complete applications for tentative parcel maps, zoning, planned unit development designation, planned unit development guidelines, schematic plans, parcel maps, subdivision maps, special permits, variances, design review, Building Permits, or other entitlements for Development of the Property for the Project in accordance with the Development Plan, Project Entitlements, Special Conditions, Land Use and Development Regulations, and the terms of this Agreement. CITY shall inform the LANDOWNER, upon request, of the necessary submission requirements for each application for a permit or other entitlement for Development and shall review said application and shall schedule the application for review and Discretionary Action by the appropriate CITY board, commission or City Council or for Ministerial Action by CITY staff.

5.2 Allocation Procedures for Uses, Units, and Building Sizes. CITY procedures and approvals for allocating the land uses, housing unit numbers and types, and densities and building square footages approved for the Project among the various parcels of land and portions thereof comprising the Property shall be in conformance with the Development Plan, Project Entitlements, and Special Conditions. Unless otherwise specified in the Development Plan, Project Entitlements, and Special Conditions, the allocation of nonresidential square footages and housing units shall be as identified in Subsequent Approvals for the Project. The appropriate entitlement to address the allocation of building square footage and housing units shall be determined by CITY. Allocations for residential development by type of housing unit and density shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.

5.3 Extension of Entitlements. All subdivision tentative maps, special permits, or any other land use entitlements of potentially limited duration previously, contemporaneously, or subsequently approved for the Property subject to this Agreement, as set out in the Development Plan, Project Entitlements, and Subsequent Approvals, shall be valid for a minimum term equal to the then remaining Term of this Agreement (including the Initial Term and any Extension Period) , or for the period stated in the Planning and Development Code as it reads on the date of approval of the entitlement, whichever is longer, but in no event for a longer period than the maximum period of time permitted by the Subdivision Map Act (Government Code § 66410 et seq.) or Government Code for such land use entitlements. The provisions of Section 8.5 relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this Section 5.3. Nothing in this Section 5.3 shall be construed, or operate, to extend the Term of this Agreement.

5.4 Reconfiguration of Parcels. LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, lot mergers, or for master parcelization of all or part of the Property, for the purpose of Reconfiguration of the Property. Such applications shall be

processed and Discretionary Action taken in accordance with the provisions of this Agreement. Where Reconfiguration requires a special permit, variance, planned unit development designation, or other entitlement applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such entitlements as a condition of approving the application. CITY shall process such Subsequent Approvals in a manner consistent with the Development Plan and Project Entitlements as provided in Section 3.2.

5.5 Public Facilities Financing Proceedings.

5.5.1 Proceedings Initiated by LANDOWNER. If LANDOWNER desires to initiate proceedings for the formation of a Public Financing Mechanism to fund the construction of Public Facilities required to be funded or constructed by LANDOWNER pursuant to the conditions of approval of the Project Entitlements or Special Conditions, LANDOWNER shall file an application with CITY for that purpose in accordance with the Assessment District Policy Manual, as same may be amended from time to time, or such other policy document as may after the Effective Date be adopted by the City Council as a substitute therefor. CITY agrees to diligently process any such application, provided that such application: (i) is complete and is accompanied by payment of City fees applicable on the date of filing of the application; (ii) otherwise complies with the City Code as it exists on the date of the application, including but not limited to the Assessment District Policy Manual; (iii) is consistent with City policies and procedures; (iv) provides for a property value to lien ratio and other financial terms that are reasonably acceptable to CITY; (v) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion, to establish the Public Financing Mechanism; and (vi) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

5.5.2 Alternative Financing Methods. Notwithstanding any other provision of this Agreement to the contrary, CITY agrees that upon request made by LANDOWNER, CITY will consider making exceptions to the Assessment District Policy Manual to allow for alternative methods of financing Public Facilities; provided, however, that CITY reserves its discretion to condition use of any such alternatives on satisfaction of performance preconditions and to consider underwriting considerations and criteria. Further, CITY may in its reasonable discretion deny any such request upon grounds, including, without limitation, consistency of application of its policies and the potential for establishing negative precedent.

5.5.3 Maintenance Districts. LANDOWNER may, following the procedures specified in Section 5.5.1, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping, lighting, or other Public Facilities, whereunder lands benefiting from the Public Facilities and their maintenance are assessed for a proportionate share of the maintenance cost.

5.6 Annual Review. In accordance with Government Code § 65865.1 and the Procedural Ordinance, CITY shall annually during the Term review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct the Annual Review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future Annual Review or to otherwise enforce the provisions of this Agreement, nor shall a Party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this Agreement or excuse any party hereto from performing its obligations under this Agreement. The Annual Review shall be limited in scope to compliance with the terms and conditions of this Agreement.

5.6.1 Proceedings. The procedures specified in the Procedural Ordinance for conduct of the Annual Review by the City Manager and City Council shall apply to each Annual Review of this Agreement. At least ten (10) days prior to the commencement of any Annual Review by the City Council, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects. At the conclusion of the Annual Review, CITY shall make written findings and determinations on the basis of substantial evidence, as to whether or not LANDOWNER or its successors and any Assignees have complied in good faith with the terms and conditions of this Agreement.

5.6.2 Failure of Compliance. Any determination by the City Council of LANDOWNER's failure to comply with the terms and conditions of this Agreement shall be a default subject to the notice requirements and cure periods set forth in Section 7.6.

6.0 LANDOWNER'S OBLIGATIONS AND COMMITMENTS

6.1 Project Entitlements and Special Conditions. LANDOWNER shall be obligated to comply with the terms and conditions set out in the Project Entitlements and Special Conditions for Development of the Property for the Project, and with the terms and conditions of this Agreement. When required to obtain a Subsequent Approval, LANDOWNER shall execute a mitigation monitoring agreement and such other agreements as may be necessary in CITY's judgment to implement any Mitigation Measure and the Mitigation Monitoring Program or to comply with other terms of this Agreement, and shall fully cooperate with CITY in implementing the Mitigation Measures and Mitigation Monitoring Program and the terms of such other agreements.

6.2 LANDOWNER's Waivers. LANDOWNER hereby agrees to the provisions of the Protest Waiver, which is a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of Public Financing Mechanisms and Development Fees, and in levying assessments and taxes pursuant thereto, and CITY's actions in implementing the Project Entitlements and Special Conditions. As set forth in the Protest Waiver, LANDOWNER reserves the right to protest the actual amount of any fee, assessment, or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Project Entitlements, Special Conditions, or this Agreement. The Protest Waiver shall be binding on LANDOWNER by LANDOWNER's execution of this Agreement if LANDOWNER fails to separately execute the Protest Waiver provided as Exhibit E.

6.3 Public Facilities Construction by LANDOWNER. When required by the conditions of approval of the Development Plan, Project Entitlements, Special Conditions, and/or Subsequent Approvals, or by any applicable reimbursement agreements, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall diligently construct the specified Public Facilities required for Development of the Property for the Project substantially consistent with the Development Plan.

6.4 Park and Open Space Development. At the time of filing final subdivision map(s), CITY may require LANDOWNER to develop some or all of the parks and open spaces located within that final map, as provided in the Special Conditions (Exhibit J) or as may be specified in the Tentative Map conditions, under the terms of CITY's standard form Park Credit/Reimbursement Agreement. LANDOWNER shall receive credit for the cost of developing those parks and open spaces as provided in City Code Chapter 18.44.

6.5 Levies Imposed by Public Agencies. LANDOWNER shall be responsible for: (i) all fees (including Development Fees), charges, assessments, special taxes, and levies of any sort imposed by any federal, state or Public Agency in the future as a charge for financing of Public Facilities and Public Services for the Project and for Mitigation Measures imposed for the purpose of mitigation of environmental impacts associated with the provision of the Public Facilities or Public Services; (ii) all special benefit assessments, special taxes, and levies of any sort associated with construction of or maintenance of Public Facilities, where the Property is located within a district formed for that purpose by any federal, state, or Public Agency; and (iii) ad valorem real estate taxes and utility fees and taxes. If any of the fees, charges, assessments, special taxes, or levies covered by this Section 6.5 are imposed and/or collected by or with the assistance of CITY, LANDOWNER shall nevertheless be responsible therefor. Failure to pay such fees, charges, assessments, taxes, or levies when due shall be a default under this Agreement. However, nothing in this Agreement shall be construed to limit LANDOWNER's right to protest, in accordance with applicable provisions of law, the formation of any assessment district, the amount of any assessment levied by or on behalf of such district on the Property or any portion thereof, or the nature and amount of any tax, fee, assessment, or charge imposed, except as provided in Section 6.2.

6.6 Local, State and Federal Laws. LANDOWNER shall assure that the construction of the Project is carried out in conformity with all applicable federal and state laws and regulations, and the laws and regulations of Public Agencies which have jurisdiction over Development of the Property. Before commencement of Development of the Property, including, without limitation, grading of land or construction of any buildings, structures, or other works of improvement upon the Property, LANDOWNER shall at its own expense secure any and all certifications and permits which may be required by any federal or state agency or a Public Agency having jurisdiction over such development. LANDOWNER shall permit only persons or entities that are duly licensed in the State of California, County of Sacramento, and City of Sacramento, as applicable, to perform grading, development, or construction work on the Property for Development of the Project.

6.7 Transfer of Land. As set forth in the Development Plan, Project Entitlements, and Special Conditions, LANDOWNER has agreed to transfer lands by Dedication or Reservation that are needed for Public Facilities to CITY, City Agency, or Public Agency as specified or appropriate. LANDOWNER shall transfer the land required to be transferred by Dedication to CITY, City Agency, or Public Agency utilizing the Irrevocable Offer of Dedication agreement form provided as Exhibit G or by placing a Dedication or an Irrevocable Offer of Dedication, as directed by CITY, on a final subdivision or parcel map in accordance with Government Code §s 66439 and 66447. LANDOWNER shall transfer the land required to be transferred by Reservation to CITY or to a Public Agency utilizing the Reservation form provided as Exhibit H and in accordance with Government Code section 66480. LANDOWNER shall transfer the land required to transferred by Dedication or by Reservation at such time as is either: (i) required pursuant to a condition or term of any entitlement for use or Development of the Property; or (ii) requested by CITY, City Agency or Public Agency where LANDOWNER has not applied for an entitlement for use or Development of the Property, but the land is needed, in CITY's, City Agency's and/or Public Agency's sole discretion, for purposes of construction and improvement of Public Facilities. CITY shall accept such transfers of land by Dedication or Reservation, as provided therein.

6.8 Allocation Dispute Resolution. Where a dispute exists between LANDOWNER, Assignee, and/or any successor or successors in interest with respect to any matter involving the CITY's allocation of the land uses, housing units, densities and building square footages for or on the Property in compliance with the Development Plan and Project Entitlements as set out in Section 5.2, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of the American Arbitration Association, or some other alternative dispute resolution procedure mutually agreed upon by the parties involved in the dispute. In no case shall CITY, City Agency, Public Agency, and their respective elective and appointive members of boards, commissions, officers, agents and employees be a party to such dispute or to the dispute resolution procedures. All of the provisions of this Agreement relating to LANDOWNER's obligation to defend and indemnify CITY and payment of CITY costs shall apply to all disputes relating directly or indirectly to such allocation.

6.9 Annual Report. Upon written notice from CITY, LANDOWNER shall, within thirty (30) days, submit to the City Manager a brief written report on the progress of Development of the Property for the Project as authorized under this Agreement during the prior twelve (12) month period. The annual report shall include, at a minimum, (i) the additional square footage of commercial and office development and the number of housing units constructed or under construction, (ii) the Public Facilities constructed or under construction by LANDOWNER, and (iii) the land Dedications and Reservations conveyed to CITY, City Agency, or Public Agency. The CITY will review the annual report in accordance with Section 5.6. LANDOWNER shall pay a processing fee for each annual review in the amount established by resolution of the City Council.

6.10 Indemnification. LANDOWNER agrees to defend and indemnify CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to Develop the Property, whether undertaken by LANDOWNER or LANDOWNER's affiliates, contractors, subcontractors, agents or employees. Said indemnification pursuant to this Section 6.10 shall not extend to claims that are based on an indemnified Party's gross negligence or willful misconduct.

6.11 Reimbursement for Agreement Costs. LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY's review, consideration, and execution of this Agreement. Such expenses include, without limitation, recording fees, ordinance publishing fees, any special meeting and notice costs, and staff time, including preparation or staff reports relating to approval of this Agreement and the Adopting Ordinance, and preparation and review of this Agreement and any changes requested by LANDOWNER or by the City Attorney's Office. The cost for the preparation, processing and review of this Agreement by the City Attorney's Office is $140.00 per hour. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

6.12 [This section intentionally omitted]

6.13 [This section intentionally omitted]

7.0 LITIGATION, DEFAULT, AND TERMINATION

7.1 Litigation by Others.

7.1.1 Third Party Challenge to Agreement or Entitlements. The Parties agree to cooperate in good faith in the defense of any litigation (which shall include any and all claims, actions, or other proceedings of any kind) instituted by a third party challenging the validity of any portion of this Agreement, or its application or effectiveness, at any time during its Term, including without limitation (i) any litigation by a third party challenging the proceedings taken for its approval (including the CEQA requirements), (ii) any litigation by a third party

challenging the validity of any of the Project Entitlements (including CEQA challenges), (iii) any litigation by a third party to enforce the application of a voter approved initiative to Development of the Property for the Project, or (iv) any litigation by a third party challenging any other act undertaken by the Parties in furtherance of this Agreement or its terms, including without limitation Subsequent Approvals.

7.1.2 Defense, Indemnity, and Release. In all such litigation covered by paragraph 7.1.1 of this Agreement, the following shall apply:

7.1.2.1 CITY will promptly notify LANDOWNER of any litigation filed and served on CITY arising out of, concerning, or in any way connected to this Agreement or the Project, or any portion of either. The CITY may, in its sole discretion, either defend such litigation or tender its defense to LANDOWNER.

7.1.2.2 If CITY determines to defend the litigation itself, LANDOWNER shall be entitled, subject to court approval if required, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each Party shall bear its own attorney fees and costs.

7.1.2.3 If CITY determines to tender the defense of the litigation to LANDOWNER, CITY shall promptly notify LANDOWNER of its determination. LANDOWNER shall, upon such notice from CITY, at LANDOWNER's expense, defend, indemnify, and hold harmless CITY, its officers, employees, and agents, and each and every one of them, from and against the litigation, including the issuance of or the refusal to issue any permits prior to or during the pendency of the action. LANDOWNER's obligation to indemnify and hold harmless shall include all damages, costs of suit, fees (including attorney's fees awarded under Code of Civil Procedure section 1021.5 or otherwise), and expenses of every type and description, including the cost of preparing the administrative record, fees, and/or costs reasonably incurred by CITY for its staff attorneys or outside attorneys, and any fees and expenses incurred in enforcing this provision, where such damages, costs of suit, fees, and expenses are claimed by or awarded to any party against CITY or otherwise incurred by the CITY. CITY shall have the right to approve the legal counsel providing the CITY's defense under this Section 7.1.2, which approval shall not be unreasonably withheld. If a conflict of interest arises between CITY and LANDOWNER in the joint defense of the action, then, in CITY's sole discretion, LANDOWNER shall provide CITY separate legal counsel acceptable to CITY at LANDOWNER's reasonable expense, or CITY shall retain its own counsel at CITY's expense. LANDOWNER shall have the right to settle such litigation without CITY's consent thereto, provided LANDOWNER accepts the defense and obligation without reservation, and that such settlement does not obligate CITY to make any payment or perform any obligation, or otherwise prejudice CITY, as determined by CITY in its sole discretion. LANDOWNER shall bear all attorney fees and costs associated with such defense from and after the date of the tender. However, CITY may at any time after the tender elect to assume representation of itself; in that event, from and after the date CITY gives notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.

7.1.2.4 With respect to approvals and entitlements governed by the Subdivision Map Act, California Government Code section 66410 et seq., the obligations under

this Agreement shall be construed to be consistent with and shall apply to the extent permitted under California Government Code section 66474.9. In these cases, if CITY should fail to promptly notify LANDOWNER of the litigation or cooperate fully in the defense, LANDOWNER shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees to the extent California Government Code section 66474.9 applies. LANDOWNER shall not be required to pay or perform any settlement of such claim, action, or proceeding unless the settlement is approved in writing by LANDOWNER.

7.1.2.5 LANDOWNER unconditionally and forever releases and discharges CITY, its officers, employees, and agents, and each and every one of them, from all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that in any way arise from, or are connected with, the issuance of or the refusal to issue any building or other permit for the Project while any litigation concerning the Application, the Project, or any portion of either, is pending. This release and discharge covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind, past, present, and future, whatever the theory of recovery, and whether known or unknown, patent or latent, suspected or unsuspected, fixed or contingent, or matured or unmatured. LANDOWNER hereby waives all rights it has or may have in the future under section 1542 of the California Civil Code, which provides as follows:

> 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 is known by him or her must have materially affected his or her settlement with the debtor.

_____ _____

City Initials Landowner Initials

7.1.3 Effect of Judgment. If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any Project Entitlement or Subsequent Approval, the following shall apply:

7.1.3.1 If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution, or indemnity from CITY, irrespective of anything to the contrary in the judgment or order.

7.1.3.2 CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow Development of the Property for the Project to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified in Section 2.3 shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement for its convenience by giving the other party notice as provided in Section 9.2.

7.1.3.3 If amendment is not required, and the court's judgment or order requires CITY to engage in other or further proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously, subject to LANDOWNER's payment of CITY's costs to comply with the terms of the judgment or order.

7.1.4 No CITY Liability for Damages. Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall CITY, City Agency, Public Agency, or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable to LANDOWNER in damages in any litigation instituted by a third party as described in this Section 7.1.

7.2 Force Majeure and Enforced Delay. In addition to other specific provisions of this Agreement, performance by either Party hereunder shall not be deemed in default where delay or inability to perform is due to: (i) war, insurrection, terrorist acts, riots or other civil commotions; (ii) vandalism or other criminal acts; (iii) strikes, walkouts, or other labor disputes; (vi) acts of God, including floods, earthquakes, fires, casualties, or other natural calamities; (v) enactment of conflicting or supervening federal or state laws or regulations; (vi) shortages of materials and supplies or delivery interruptions; or (vii) litigation instituted by third parties challenging the validity of this Agreement or Subsequent Approvals. A Party's financial inability to perform shall not be a ground for claiming an enforced delay. The Party claiming force majeure or enforced delay shall notify the other Party of its intent to claim a permitted delay and the specific ground for such delay as soon as is reasonable based on the circumstances. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay, and the Term of this Agreement shall be extended by amendment in accordance with Section 2.3.

7.3 Waiver. Except as otherwise expressly provided herein to the contrary, by entering into this Agreement LANDOWNER waives its right to challenge the fairness or appropriateness, as applied to the Property and/or the Project, of: (i) the Development Plan, Project Entitlements, Special Conditions; (ii) Public Financing Mechanisms and Development Fees; (iii) the Dedications and Reservations for Public Facilities and Public Services; (iv) the Land Use and Development Regulations; and (v) all actions implemented in furtherance of the foregoing as specified herein.

7.4 Legal Actions by Parties. In addition to the provisions set out in Sections 7.6 and 7.7, and any other rights or remedies as set out in this Agreement, either Party may institute legal action to cure, correct, or remedy any default by any other Party to this Agreement, to enforce any covenant or obligation herein, or to enjoin any threatened or attempted violation hereunder. Subject to any mutual extensions, notice, and opportunity to cure, the term "default" shall mean a material failure of performance or a substantial and unreasonable delay in performance by either Party of any of term, condition, obligation, or covenant of this Agreement. Default by either Party may include, without limitation, a material failure to: (i) transfer land for Public Facilities as required by Dedication or Reservation, (ii) undertake construction of Public Facilities, and/or (iii) implement or comply with the terms and conditions of the Project Entitlements, including the Mitigation Measures, and the Special Conditions.

7.4.1 No CITY Liability for Damages. Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents, and employees be liable in damages for any breach, default, or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default, or violation of this Agreement shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement.

7.4.2 Limitation of Legal Actions. No initiation of legal proceedings shall be filed by a Party unless such action is filed within one hundred and eighty (180) days from the date of discovery by the aggrieved Party of the facts underlying the claim of default, and the date of discovery being that the date that the facts became known or should have become known to the aggrieved Party based on the circumstances of the default.

7.4.3 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, the state in which the Agreement is signed. The Parties agree to submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento, California. Nothing in this Agreement shall be construed to prohibit the Parties from engaging in alternative dispute resolution processes prior to initiating legal proceedings, including, without limitation, mediation and arbitration, upon the discretion and mutual consent of the Parties.

7.4.4 Standard of Review. LANDOWNER agrees and acknowledges that CITY has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of CITY. To the extent CITY acts in an adjudicatory manner for any Subsequent Approval by conducting hearings, receiving evidence, and making findings of fact, such actions shall be reviewed under principles of administrative mandamus in accordance with applicable law.

7.5 Attorney Fees. In any arbitration, quasi-judicial, administrative, or judicial proceeding (including appeals), brought by either Party to enforce or interpret any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses, and disbursements in connection with such action, including the costs of reasonable investigation, preparation, and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this Section 7.5 and any other portion of this Agreement relating to attorney fees, reasonable attorneys' fees of the City Attorney's Office shall be $140 per hour inclusive of direct, indirect, and overhead costs, and applicable CITY staff costs, such as costs for record preparation, shall be calculated at maximum of $140 per hour inclusive of direct, indirect, and overhead costs.

7.6 Default. Subject to any extensions of time by mutual consent of the Parties, and subject to the cure provisions set forth herein, any default (as that term is defined in Section 7.4) of this

Agreement shall constitute a breach, and the non-defaulting Party may cancel this Agreement for default.

7.6.1 LANDOWNER Default. In addition to any other remedy specified in this Agreement, if notice of default has been given by CITY to LANDOWNER, CITY shall not be obligated to issue any Building Permit or grant any Subsequent Approval for the Project until such time as the default is cured. If notice of default is given by CITY with respect to only a portion of the Property or the Project that is affected by LANDOWNER's default as specified in the CITY's notice of default, only those Building Permits and Subsequent Approvals applicable to that portion of the Property and/or the Project shall be affected by the suspension of Building Permits and Subsequent Approvals until the such time as the default is cured. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default of LANDOWNER prevent an Assignee from receiving Building Permits and Subsequent Approvals for Assignee's portion of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein.

7.6.2 CITY Default. In addition to any other remedy specified in this Agreement, if notice of default has been given by LANDOWNER to CITY, any resulting delays in LANDOWNER's performance caused by CITY's default shall not constitute a LANDOWNER default, or be grounds for termination or cancellation of this Agreement.

7.6.3 Nonwaiver. Waiver of any default under this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent default either of the same or of another provision of this Agreement.

7.6.4 No Cross Default. Where a portion of the Property has been transferred in accordance with the Assignment provisions of this Agreement and notice of default has been given by CITY to an Assignee: (i) neither LANDOWNER nor any non-defaulting Assignee shall be liable for the default of that Assignee; (ii) the rights of LANDOWNER and non-defaulting Assignees under this Agreement shall not be affected by the default of that Assignee; and (ii) CITY shall not be in default or otherwise liable to LANDOWNER or a non-defaulting Assignee for the CITY's action to declare a default. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER or non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default of LANDOWNER prevent non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. Notwithstanding the foregoing, CITY, in its sole discretion, shall have the right, following notice and hearing, to terminate this Agreement, as to some or all non-defaulting Parties and Assignees, for CITY's convenience, if CITY certifies to the non-defaulting Parties and Assignees that the default of the defaulting Party or Assignee would prevent or impede CITY's performance of its obligations to the non-defaulting Parties and Assignees under this Agreement.

7.6.5 Cure Period. In the event of an alleged default of any term or condition of this Agreement, the Party alleging such default shall give the other Party notice in writing as provided in Section 9.2 specifying the nature of the alleged default, the manner in which said default may be satisfactorily cured, and a reasonable period of time in which to cure the default, which shall not be less than thirty (30) days. If requested by either Party, the Parties shall meet and confer in an attempt to resolve the matter raised by the notice of default. During any such cure period, the Party charged shall not be considered in default for purposes of cancellation or termination of this Agreement and neither Party may institute legal proceedings related to the alleged default.

7.7 Remedies After Expiration of Cure Period. After expiration of the cure period, if the alleged default has not been cured in the manner set forth in the notice and to the satisfaction of the Party issuing the default notice, the non-defaulting Party may at its option: (i) institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, injunctive relief, or cancellation of this Agreement; or (ii) give the other Party notice of intent to cancel this Agreement.

7.7.1 Public Hearing. If notice of intent to cancel this Agreement is given by the non-defaulting Party, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default pursuant to Government Code section 65868 and the Procedural Ordinance. Where LANDOWNER is the Party alleged to be in default, CITY shall provide LANDOWNER: (i) a reasonable opportunity to respond to all allegations of default at such public hearing; (ii) at least thirty (30) days prior written notice of the date, time, and place of the public hearing; and (iii) copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing. LANDOWNER shall be given an opportunity to be heard at the public hearing. The burden of proof whether the LANDOWNER is in default shall be on CITY, the burden of proof whether the CITY is in default shall be on the LANDOWNER, and the burden on whether default has been properly cured shall be on the Party alleged to be in default.

7.7.2 Cancellation or Modification of Agreement—LANDOWNER Default. At the conclusion of the public hearing, if the City Council finds, based on substantial evidence, that the LANDOWNER was in default and the default has not been cured to the satisfaction of CITY, or if the City Council determines that because of the default a serious risk to the public health or safety exists, this Agreement shall be either cancelled for breach as of the date of the City Council's determination, or the City Council may modify this Agreement and impose such conditions as are reasonably necessary to address the default and/or protect the interests of the CITY and the public. LANDOWNER may thereafter institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, or injunctive relief. Expiration of the Term of this Agreement shall be tolled during the period of legal proceedings if there be a judicial determination invalidating or reversing the CITY's cancellation or modification of this Agreement.

7.8 Termination for Convenience.

7.8.1 Termination Upon Completion of Development. This Agreement shall terminate as to each parcel of land contained within the Property when that parcel of land: (i) has been fully developed; (ii) all occupancy permits for the buildings constructed thereon have been issued by CITY; (iii) CITY has accepted the Public Facilities constructed by LANDOWNER thereon or required to serve that parcel; (iv) CITY, City Agency and/or Public Agency has accepted the Dedications or Reservations thereon; and (v) all of LANDOWNER'S obligations in connection therewith as set out in this Agreement are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY's Community Development Department, determine if the Agreement has terminated with respect to any parcel of land contained within the Property, and shall not unreasonably withhold termination as to that parcel if LANDOWNER's obligations therewith are satisfied. LANDOWNER shall pay to CITY a fee commensurate with the cost of processing the request and making such a determination, including, without limitation, CITY's reasonable administrative and legal expenses. Such fee shall be determined in accordance with CITY's established fees and charges then in effect.

7.8.2 Multi Family and Single Family Residential Projects. This Agreement shall automatically terminate and be of no further force and effect as to any single family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when CITY has issued an occupancy permit for that residence or building.

7.8.3 Termination Upon Mutual Consent of the Parties. This Agreement may be terminated prior to the expiration of the Term by mutual written agreement of the LANDOWNER and CITY and/or between CITY and Assignee, and any such termination shall not be binding on Assignee or LANDOWNER, as applicable, if it has not executed the written agreement with CITY.

7.8.4 Termination by Expiration of Term. This Agreement shall expire as of the date of the expiration of the Term, without notice or any further action of either Party, unless at least fifteen (15) days prior to said expiration, the Term is extended by mutual agreement of the Parties as set out in an amendment.

7.8.5 Termination for Convenience. Whenever this Agreement expressly provides for the termination of this Agreement for convenience, the terminating Party shall exercise such right to terminate the Agreement for its convenience by providing the other Party with written notice of termination as provided in Section 9.2 at least thirty (30) days prior to the effective date of termination as set out in the notice.

7.9 <u>Recorded Notice of Termination or Cancellation</u>. Upon termination or cancellation of this Agreement, CITY shall, on its own initiative and/or upon LANDOWNER's request, record a notice of such termination or cancellation against the Property or specific parcels of land in a form satisfactory to the City Attorney that the Agreement has been terminated or cancelled. The notice shall be recorded by CITY within thirty (30) days after CITY's determination that this Agreement is terminated or cancelled. The aforesaid notice may specify, and LANDOWNER agrees, that termination or cancellation shall not affect in any manner any continuing obligations under this Agreement which survive its termination or cancellation as set out herein or in a recorded covenant.

7.10 Effect of Cancellation/Termination on LANDOWNER's Obligations. Cancellation or termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with the Development Plan, Project Entitlements, Special Conditions, Public Financing Mechanisms, Development Fees, Land Use and Development Regulations, and Subsequent Approvals. The foregoing includes, without limitation, tentative maps, special permits, plan reviews, variances, Building Permits, and all other entitlements, permits, and approvals issued for the Property and/or the Project prior to the effective date of cancellation or termination which are required: (i) for LANDOWNER to complete construction of any improvements on the Property for which a final map had been recorded or Building Permit had been issued; (ii) for CITY to provide any Public Facilities and/or Public Services to serve improvements on the Property either completed prior to the effective date of cancellation or termination or to be completed under the Building Permits issued and final maps recorded prior to the effective date, or to serve residents and businesses that are then occupying the Property or will occupy the Property under the Building Permits issued and final maps recorded prior to the effective date; and (iii) for LANDOWNER's performance of obligations under the Land Use and Development Regulations, Project Entitlements, or Special Conditions which had otherwise been deferred under the terms of this Agreement. Notwithstanding the cancellation or termination of this Agreement or anything contained herein to the contrary, LANDOWNER shall also be obligated to comply with any covenants of this Agreement that are to survive after cancellation or termination of this Agreement, whether express or implied, or which have been recorded against the Property under the terms of a separate agreement.

8.0 LENDER PROVISIONS

8.1 Lender Rights and Obligations.

8.1.1 No Impairment. Neither LANDOWNER's entering into this Agreement nor its default under this Agreement shall alter, defeat, render invalid, diminish, or impair the lien of any Mortgage or Deed of Trust on the Property made in good faith by the Lender and for value. This Agreement shall not prevent or limit LANDOWNER in any manner, at LANDOWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any Mortgage, Deed of Trust, or other security instrument securing financing with respect to development of the Property or adjacent properties for the Project.

8.1.2 Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which it holds an interest. Nothing in this Section 8.1 shall be construed to grant to a Lender rights beyond those of LANDOWNER hereunder, or to limit any remedy CITY has hereunder in the event of default by LANDOWNER, including, without limitation, suspension, cancellation for breach, and/or refusal to grant entitlements with respect to the Property.

8.1.3 Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a Mortgage or Deed of Trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. However, a Lender shall not be eligible to apply for or receive entitlements with respect to Development of the Property for the Project, or otherwise be entitled to Develop the Property or devote the Property to any uses or to construct any improvements thereon, other than the Development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees and charges (delinquent, current, and accruing in the future), and entering into an Assignment and Assumption Agreement to assume of all obligations of LANDOWNER hereunder. No Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions of this Agreement against CITY unless and until such Lender or successor thereof qualifies as a recognized Assignee under the provisions of Section 2.6 of this Agreement and Lender cures LANDOWNER's default to the CITY's satisfaction as provided in Section 8.3.

8.2 Notice of LANDOWNER's Default. If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender within thirty (30) days of sending the notice of default to LANDOWNER a copy of the default notice.

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

8.4 Other CITY Notices. If CITY receives notice from a Lender requesting a copy of any notice, including a notice of default, issued by CITY to LANDOWNER pursuant to the terms of this Agreement, a copy of said notices shall be sent to Lender at the address provided herein within thirty (30) days of sending the notice to LANDOWNER.

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

portion thereof shall be in recordable form and may be recorded at the expense of the Party requesting the certificate.

9.0 MISCELLANEOUS PROVISIONS

9.1 No Joint Venture, Partnership, or Other Relationship. Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between CITY and LANDOWNER. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between CITY and LANDOWNER other than that of a governmental entity regulating the development of private property, and the owner of such private property.

9.2 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and LANDOWNER, or LANDOWNER's successors in interest, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or on the third day after it is deposited in the United States Mail, addressed as set forth below, with postage prepaid:

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

Notice to the LANDOWNER:
McKinley Village Investors, LLC
Attn: Ron Bertolina
7700 College Town Drive, Suite 101
Sacramento, CA 95826

Encore McKinley Village, LLC
Attn: Phil Angelides
3001 I Street, Suite 200
Sacramento, CA 95816

with copies to:

Thomas Law Group
Attn: Tina Thomas
455 Capitol Mall, Suite 801
Sacramento, CA 95814

The New Home Company Northern California, LLC
Attn: Kevin Carson
2220 Douglas Blvd., Ste 240
Roseville, CA 95661

Encore Housing Opportunity Fund II, LP
Attn: Hector Calderon
2001 Union St, Ste 490
San Francisco, CA 94123

Notice to Lender: _____
_____
_____
_____

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

9.3 Integrated Documents/Entire Agreement. This Agreement, the Exhibits, and the documents incorporated by reference in this Agreement or in the Exhibits are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. This Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

9.4 Severability. If any provision of this Agreement is held invalid, void, or unenforceable, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected, and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties as provided in Section 2.3. If any provision of this Agreement is held invalid, void, or unenforceable, and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. If either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by CITY with respect to the Property, or any portion thereof, prior to the termination date, except as specified in Section 7.10.

9.5 Precedence. If any direct conflict or inconsistency arises between this Agreement and the Land Use and Development Regulations, or between this Agreement and a Subsequent Rule, the provision of this Agreement shall have precedence and shall control over the conflicting or inconsistent provisions of the Land Use and Development Regulations or the Subsequent Rule, except as provided in Sections 3.3 and 4.0.

9.6 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days following the CITY's entry into this Agreement. If the Sacramento County Recorder refuses to record any Exhibit, the City Clerk may replace it with a single sheet bearing the Exhibit identification letter, title of the Exhibit, the reason it is not being recorded, and that the original Exhibit, certified by the City Clerk, is in the possession of the City

Clerk and will be reattached to the original when it is returned by the Sacramento County Recorder to the City Clerk.

9.7 Referendum. CITY shall not submit the Adopting Ordinance to a referendum by action of the City Council on its own motion without LANDOWNER's written consent. This Agreement shall not become effective if a referendum petition is filed challenging the validity of the Adopting Ordinance. If the Adopting Ordinance is the subject of a referendum, LANDOWNER shall have the right to terminate this Agreement for its convenience by providing written notice to CITY as provided in Section 9.2 not later than thirty (30) days after the referendum petition is certified as valid by the County elections officer, or such later time as allowed in writing by the City Manager. The Parties' obligation to perform under this Agreement shall be suspended pending the outcome of any such referendum election. The Term of this Agreement shall be extended by the amount of time between the date the petition for referendum is certified as valid by the County elections officer and the date on which the results of the special election are certified as valid by the County elections officer.

9.8 Construction. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. All Parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Agreement, and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend, or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this Agreement.

9.9 Time. Time is of the essence of each and every provision hereof.

9.10 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

9.11 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of Parties and their successors and Assignees, including Lenders. No Person who is not a qualified successor of a Party or an Assignee pursuant to Sections 2.6 and 8.1.3 of this Agreement, or who has not become a party by duly adopted amendment to this Agreement, may claim the benefit of any provision of this Agreement.

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

9.13 Survivorship. The LANDOWNER's obligations arising under this Agreement pertaining to indemnity and attorneys' fees as set out in Sections 2.7.5, 6.8, 6.10, 7.1 and 7.5, and LANDOWNER's rights and obligations regarding approved entitlements as set out in Section 7.10, shall survive the expiration, termination, or cancellation of this Agreement.

9.14 Covenant of Good Faith and Cooperation. CITY and LANDOWNER agree that each of them shall at all times act in good faith and cooperate with one another in order to carry out the terms of this Agreement. Any information which is readily available and required by one Party from the other Party in order to carry out that Party's obligations under this Agreement shall be provided to that Party within a reasonable period of time and at no cost.

9.15 Prior Agreements. There are no oral or written representations, understandings, undertakings or agreements between the Parties related to Development of the Property that are not contained in or expressly referred to in this Agreement, and any such representations, understandings, undertakings, or agreements are superseded by this Agreement. No evidence of any such representations, understandings, undertakings, and agreements shall be admissible in any proceeding of any kind or nature related to the terms and conditions of this Agreement, or its interpretation or default. This Agreement is specifically intended by the Parties to supersede all prior written agreements, if any, for the Development of the Property which may exist between CITY and LANDOWNER, except as may be specified in the Special Conditions. The provisions of Sections 2.7.5, 6.8, 6.10, and 7.1 of this Agreement relating to indemnification and defense of CITY by LANDOWNER shall be applicable to any claim whatsoever against CITY by an Assignee or a third party arising out of or in any way relating to any existing or future agreement between the Parties, or between LANDOWNER and City Agency, relating to the Development of the Property.

9.16 Power of Eminent Domain. It is understood that LANDOWNER may be required by CITY to utilize its best good faith efforts to acquire certain parcels and land and rights-of-way which are not currently owned by LANDOWNER and necessary to construct the Public Facilities as required by CITY to serve the Project. Should it become necessary due to LANDOWNER's failure to acquire such lands and rights-of-way, the CITY shall negotiate the purchase of the needed land and rights of way to allow LANDOWNER or CITY to construct the Public Facilities that are required to be constructed by LANDOWNER or CITY to serve the Project under this Agreement. If necessary, in accordance with the procedures established by State law, CITY may use its power of eminent domain to condemn such lands and rights-of-way. LANDOWNER shall pay for CITY's costs associated with CITY's acquisition and condemnation proceedings unless such costs are paid through a Public Financing Mechanism or Development Fee. If CITY is unable or prevented from acquiring or condemning the necessary land and rights-of-way to enable LANDOWNER or CITY to construct the Public Facilities required under this Agreement, then the Parties will meet to negotiate the terms of an amendment to this Agreement, including, without limitation, changes to the Project Entitlements and LANDOWNER's Vested Rights. Nothing in this Section 9.16 is intended or shall be deemed to constitute a determination or resolution of necessity by CITY to initiate condemnation proceedings and nothing in this Section 9.16 or in this Agreement is intended or shall be

construed to constitute a prohibition against CITY or City Agency to exercise its power of eminent domain to condemn LANDOWNER's Property.

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

9.18 Authority. Each of the signatories to this Agreement represent that he or she is authorized to sign the Agreement on behalf of such Party, all approvals, acts, ordinances, and consents which must be obtained to bind such Party have been obtained, no further approvals, acts, ordinances, or consents are required to bind such Party to this Agreement, and he or she is signing to guarantee the performance of such Party's obligations under this Agreement.

9.19 Final Form of Exhibits. It is the intention of the Parties, and the Parties expressly agree, that the Exhibits to this Agreement may be modified by CITY, in cooperation with LANDOWNER, after City Council approval of the Adopting Ordinance and execution of this Agreement by the Parties, and prior to recordation, in order to conform the contents of the Exhibits to the final City Council approval of the Project.

[REMAINING PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Agreement as of the dates set forth below.

CITY:

CITY OF SACRAMENTO,
a municipal corporation

By: _____
City Manager

Date:_____

LANDOWNER:

McKinley Village Investors, LLC, a California limited liability company

By: AKT Investments, Inc. a California corporation

Its: Manager

By: _____
Angelo K. Tsakopoulos
Its: Chairman

Date: _____

Encore McKinley Village, LLC, a Delaware limited liability company

By: McKinley Village, LLC, a Delaware limited liability company
Its: Managing member

By: The New Home Company, LLC, a Delaware limited liability company
Its: Member

By: _____
Kevin S. Carson
Its: President

Date: _____

By: RCI-McKinley Village, LLC, a
Delaware limited liability company
Its: Member
By: Riverview Capital Investments,
Inc., a California corporation
Its: Managing Member

By: _____
Phil Angelides
Its: President

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

(ATTACH NOTARY ACKNOWLEDGMENTS)

EXECUTION PAGE FOR LENDER

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

LENDER hereby executes this Agreement and agrees to be bound by the terms and condition hereof, subject to the limitations set forth in Section 8.1.

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

_____
_____
_____
Attn:_____

LENDER:

_____

By:_____

Name:_____

Title:_____

Dated:_____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

EXHIBIT A

DESCRIPTION OF LANDOWNER'S PROPERTY

THE PROPERTY CONSISTS OF PARCELS OF LAND IDENTIFIED BY THE ASSESSOR PARCEL NUMBERS LISTED, AND AS MORE PARTICULARLY SHOWN AND DESCRIBED, IN EXHIBIT A-1, ATTACHED AND INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

Exhibit "A"
Legal Description

Parcel A:

Beginning at a point on the East line of that certain tract of land described as "Parcel No. 5", in the deed dated May 15, 1953, recorded in the office of the Recorder on July 16, 1953, in Book 2446 of Official Records, at Page 129, from which the Southeast corner thereof bears South 52 deg. 14'45" West 67.64 feet; thence along the boundary of said "Parcel No. 5", the following three (3) courses and distances: (1) North 52 deg. 14'45" East 312.36 feet to a 6 inch by 6 inch concrete monument (2) North 37 deg. 45'15" West 140.00 feet and (3) South 64 deg. 35'20" West 217.82 feet to the point of intersection of the North line of "A" Street with the East line of Thirty-First Street, as shown on the official map or plan of the City of Sacramento; thence along the North line of said "A" Street, North 72 deg. 58'41" West 3.35 feet to the Southeast corner of that certain 6.55 acre tract of land described as "Parcel No. 3", in the deed dated April 25, 1969, recorded in the office of said Recorder August 4, 1969, in Book 6908-04 of Official Records, at Page 136; thence along the Southerly line of said 6.55 acre tract of land, the following five (5) courses and distances: (1) North 40 deg. 27'23" East 24.58 feet, (2) curving to the right on an arc of 1350.00 feet radius, said arc being subtended by a chord bearing North 59 deg. 10'30" East 866.48 feet, (3) North 77 deg. 53'36" East 724.85 feet, (4) North 30 deg. 57'24" East 140.94 feet and (5) North 76 deg. 33'27" East 879.91 feet to a point in the Southerly line of existing State Highway 03-Sac-80, said point being distant 80.00 feet Southerly, measured at right angles, from the "B1" line at Engineer's Station "B1" 75+01.86; thence along said Southerly line North 80 deg. 19'05" East 286.78 feet to a point on the Westerly right-of-way line of the Southern Pacific Company's right-of-way; thence along the Westerly and Northerly line of the Southern Pacific Company's right-of-way, the following fourteen (14) courses and distances; (1) South 27 deg. 45'33" West 734.96 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185", (2) South 35 deg. 30'27" East 28.20 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185" (3) South 53 deg. 50'36" West 294.65 feet, (4) curving to the right on an arc of 7540.95 feet radius, said arc being subtended by a chord bearing South 52 deg. 37'37" West 29.61 feet, (5) curving to the right on an arc of 3730.25 feet radius, said arc being subtended by a chord bearing South 52 deg. 57'52" West 29.22 feet, (6) curving to the right on an arc of 2448.02 feet radius, said arc being subtended by a chord bearing South 53 deg. 31'37" West 28.84 feet, (7) curving to the right on an arc of 1810.41 feet radius, said arc being subtended by a chord bearing South 54 deg. 18'52" West 28.44 feet, (8) curving to the right on an arc of 1430.05 feet radius, said arc being subtended by a chord bearing South 55 deg. 19'37" West 28.08 feet, (9) curving to the right on an arc of 1174.82 feet radius said arc being subtended by a chord bearing South 56 deg. 53'52 West 41.35 feet, (10) curving to the right on an arc of 1430.05 feet radius, said arc being subtended by a chord bearing South 58 deg. 28'07" West 28.08 feet, (11) curving to the right on an arc of 1810.41 feet radius, said arc being subtended by a chord bearing South 59 deg. 28'52" West 28.44 feet, (12) curving to the right on an arc of 2448.02 feet radius, said arc being subtended by a chord bearing South 60 deg. 16'07" West 28.84 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185", (13) curving to the right on an arc of 3720.25 feet radius, said arc being subtended by a chord bearing South 63 deg. 59'52" West 440.19 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185" and (14) curving to the right on an arc of 2363.14 feet radius, said arc being subtended by a chord bearing South 70 deg. 28'08" West 253.90 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185" marking the most Easterly corner of that certain 0.81 acre tract of land described as "Parcel No. 4", in said deed, recorded in Book 6908-04 of Official Records, at Page 136; thence along the Northerly line of said 0.81 acre tract of land, the following two (2) courses and distances: (1) curving to the right on an arc of 1800.00 feet radius, said arc being subtended by a chord bearing North 87 deg. 51'23" West 1119.54 feet and (2) North 69 deg. 44'15" West 105.71 feet to the point of beginning.

Exhibit "A"
Legal Description

Parcel B:

Beginning at a point in the North line of said "A" Street, said point being distant along said North line South 71 deg. 29'46" East 842.85 feet from the centerline of 29th Street; thence from said point of beginning North 41 deg. 56'18" East 24.58 feet; thence along a tangent curve to the right with a radius of 1350.00 feet, through an angle of 37 deg. 26'13", an arc length of 882.09 feet; thence North 79 deg. 22'31" East 724.85 feet; thence North 32 deg. 26'19" East 140.94 feet; thence North 78 deg. 02'22" East 879.91 feet to a point in the Southerly line of said existing State Highway 03-SAC-80, said point being distant 80.00 feet Southerly, measured at right angles from said "B1" line at Engineer's Station "B1" 75+01.86; thence along said Southerly and the Southeasterly lines of said existing State Highway the following 3 courses: South 81 deg. 48'00" West 1400.75 feet; South 76 deg. 26'50" West 157.37 feet; and along a tangent curve to the left with a radius of 1970.00 feet, through an angle of 34 deg. 33'25", an arc length of 1188.17 feet to a point in said North line of "A" Street; thence leaving said Southeasterly line of said existing State Highway, along said North line South 71 deg. 29'46" East 130.46 feet to the point of beginning.

Parcel C:

A portion of that certain tract of land as shown on the "Plat of Tract of Land Owned by G.A. Meister", filed in Book "A" of Surveys at Page 101, records of Sacramento County.

Said portion is all that part thereof described as follows:

Beginning at the most Southerly corner of that certain parcel of land designated "Parcel No. 5" in the deed dated May 15, 1953, recorded July 16, 1953, in Book 2446, Page 129, Official Records of Sacramento County, said point being distant 98.5 feet Northerly, measured radially from the centerline of the Central Pacific Railway Company's survey between Sacramento and Elvas, as said centerline is shown on the "Plat of Tract of Land Owned by G.A. Meister", filed February 27, 1914 in Book "A" of Surveys at Page 101, records of Sacramento County; thence along a line distant 98.5 feet Northerly from, radially to and concentric with said railway centerline the following 5 courses: (1) from a tangent that bears South 67 deg. 36'52" East along a curve to the left with a radius of 3721.25 feet, through an angle of 00 deg. 24'51", an arc length of 26.90 feet; (2) from a tangent that bears South 68 deg 01'43" East along a curve to the left with a radius of 2766.33 feet; through an angle of 00 deg. 36'00", an arc length of 28.97 feet; (3) from a tangent that bears South 68 deg. 27'43" East along a curve to the left with a radius of 2193.38 feet, through an angle of 00 deg. 45'00", an arc length of 28.71 feet to a point distant 98.5 feet Northerly, measured radially from Engineer's Station 146+05 of said railway company's centerline as said stationing is shown on said plat; (4) from a tangent that bears South 69 deg. 22'43" East along a curve to the left with a radius of 1811.41 feet, through an angle of 26 deg. 33'00", an arc length of 839.38 feet, and (5) from a tangent that bears North 84 deg. 03'09" East along a curve to the left with a radius of 2363.14 feet, through an angle of 09 deg. 02'27" an arc length of 372.89 feet; thence leaving said line described as 98.5 feet Northerly of said railway centerline, from a tangent that bears South 75 deg. 30'09" West along a curve to the right with a radius of 1800.00 feet, through an angle of 36 deg. 14'31", an arc length of 1138.57 feet to a point distant 80.00 feet

Exhibit "A"
Legal Description

Northerly, measured radially from Engineer's Station "RR2" 146+76.42 S.C. of said Department of Public Works' 1966 Survey on Road 03-SAC-80 from Post Mile 4.1 to Post Mile 9.0; thence North 68 deg. 15'20" West 105.52 feet to a point in the Southeasterly line of said parcel of land designated as "Parcel No. 5" described in said deed cited hereinabove, thence along said Southeasterly line South 53 deg. 43'40" West 67.64 feet to the point of beginning.

Excepting therefrom all oil, gas and other hydrocarbon substances, inert gases, minerals, and metals, lying below a depth of 500 feet from the surface of said land and real property, whether now known to exist or hereafter discovered, including but not limited to the rights to explore for, develop, and remove such oil, gas and other hydrocarbon substances, inert gases, minerals, and metals without, however any right to use the surface of such land and real property for any purpose whatsoever. As reserved by Angelo K. Tsakopoulos, a married man as his sole and separate property, by deed recorded December 13, 2002 in Book 20021213, Page 1542, Official Records, as to a 90% interest.

Apn: 001-0170-028

EXHIBIT B

PROJECT DEVELOPMENT PLAN

THE PROJECT EXHIBITS COMPRISING THE DEVELOPMENT PLAN INCLUDE THE EXHIBITS SHOWING THE GENERAL PLAN LAND USE DESIGNATION, ZONING, PUD SCHEMATIC PLAN, TENTATIVE SUBDIVISION MAP, AND TENTATIVE MASTER PARCEL MAP, WHICH EXHIBITS ARE ATTACHED AND INCORPORATED HEREIN, AND LABELED AS EXHIBITS B-1 through B-5.

NOTE: SUBSTANTIVE CHANGES TO THE ATTACHED EXHIBITS OR THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED UNDER SECTION 2.3.3 OF THE AGREEMENT.

EXHIBIT B-1
GENERAL PLAN LAND USE DESIGNATION

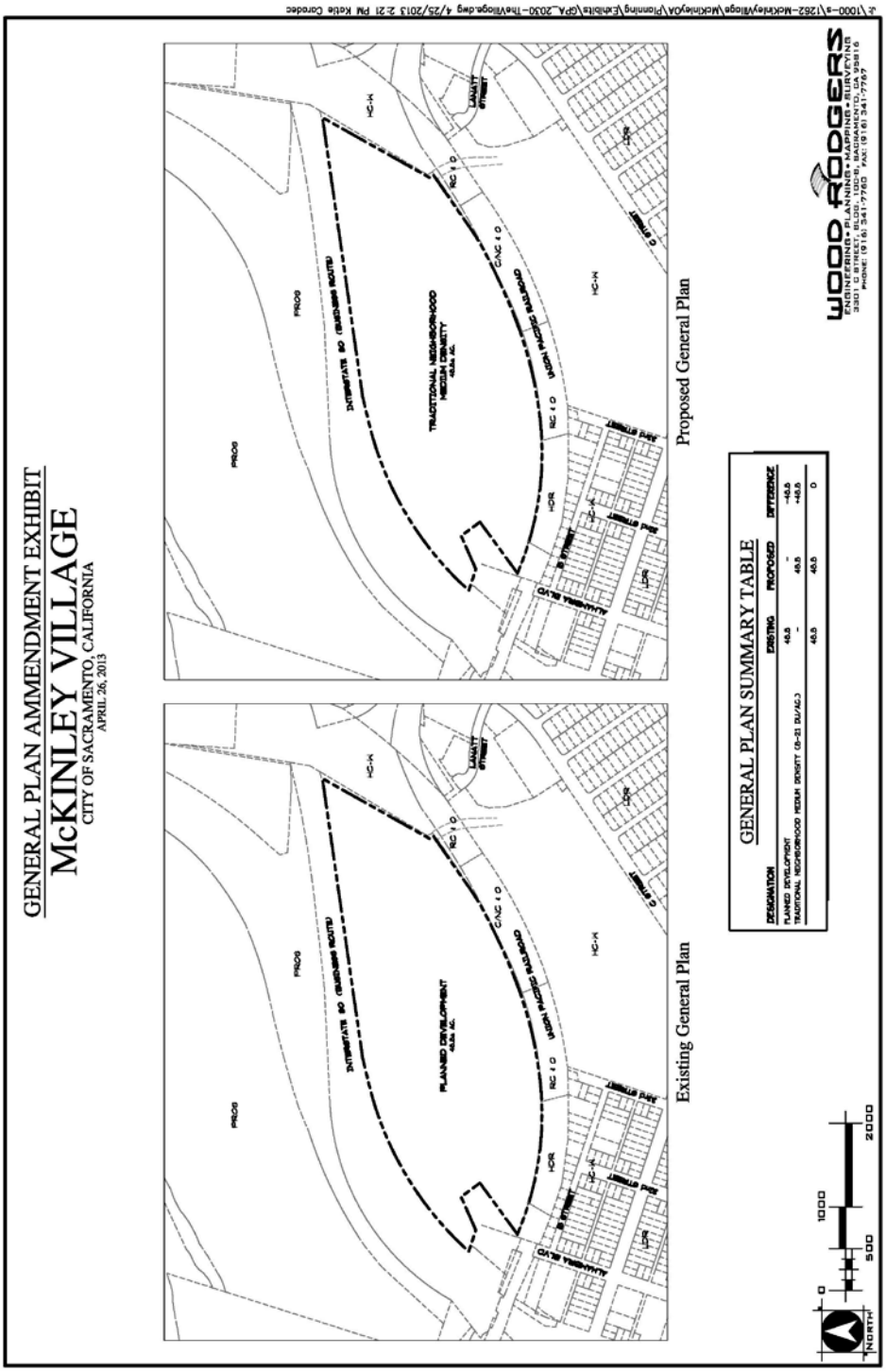

EXHIBIT B-2
ZONING

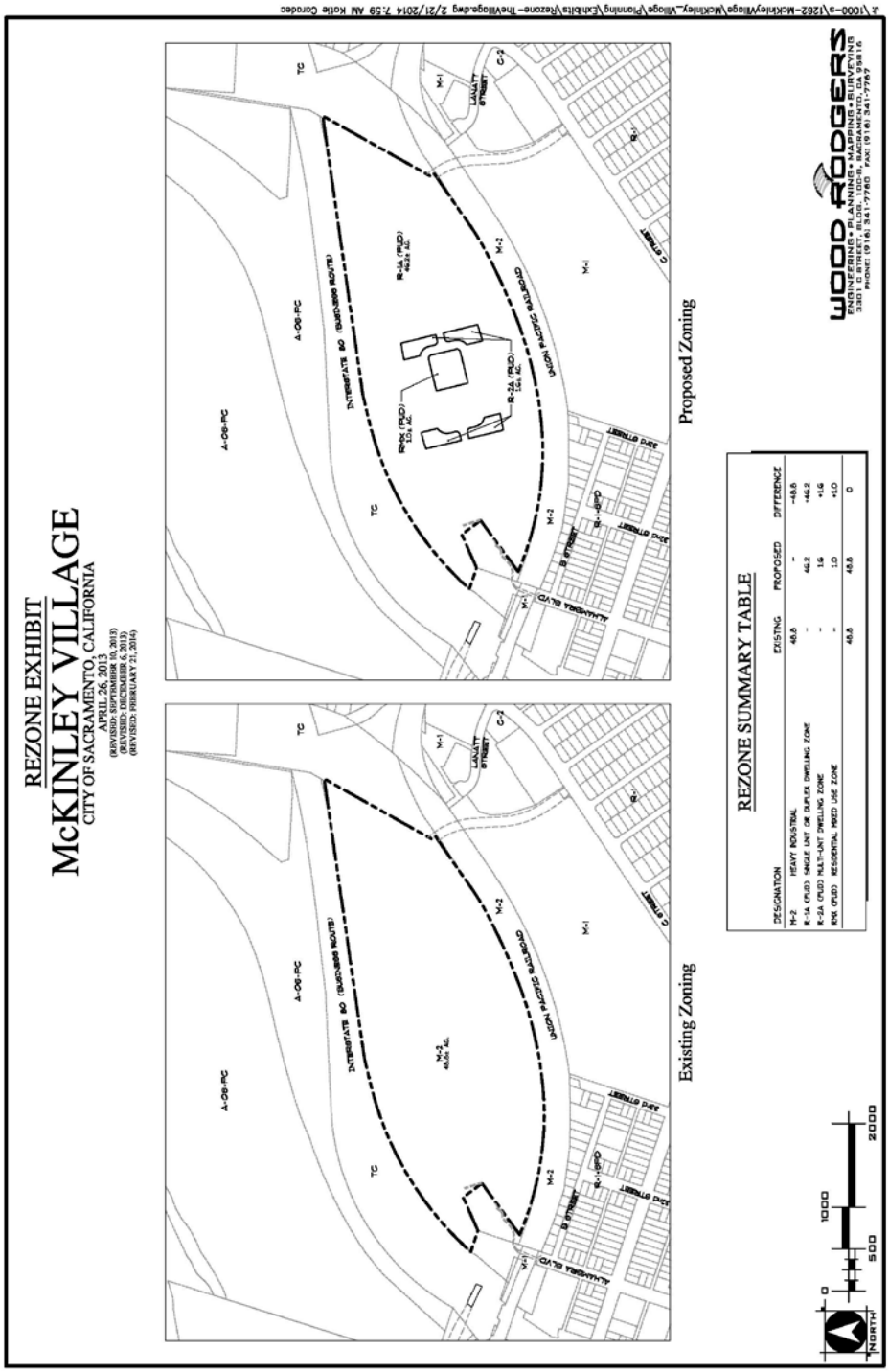

EXHIBIT B-3
PUD SCHEMATIC PLAN

Figure 2
PUD Schematic Plan

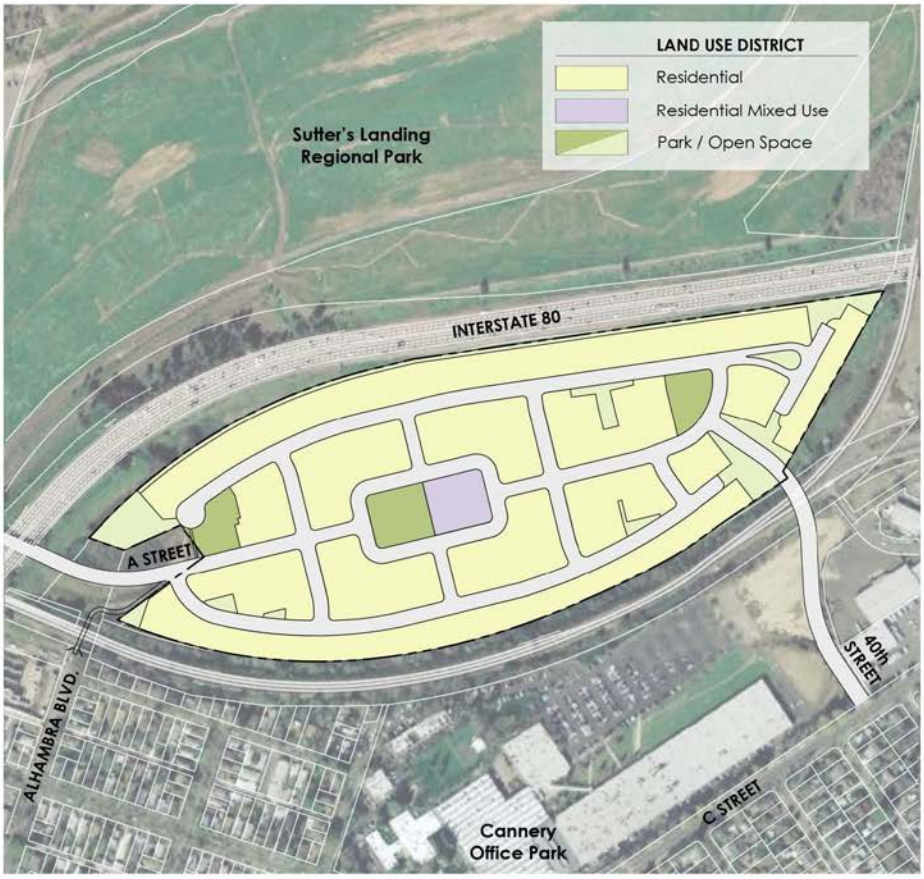

Table 1
Land Use Summary

Land Use District		General Plan / Zoning Designations	Use	Acres (N)	Units	Density (du/ac)
Residential	RD	MDR / R-1A / R-2A (PUD)	Medium Density Residential	29.9	336	11.2
Residential Mixed Use	RMX	MDR / RMX (PUD)	Recreation Center	1.0	-	-
Park/OS	P/OS	MDR / R-1A (PUD)	Parks and Open Space	5.9	-	-
Public Rights-of-Way				12.0	-	-
			Total	**48.8**	**336**	**11.2**

EXHIBIT B-4
TENTATIVE SUBDIVISION MAP

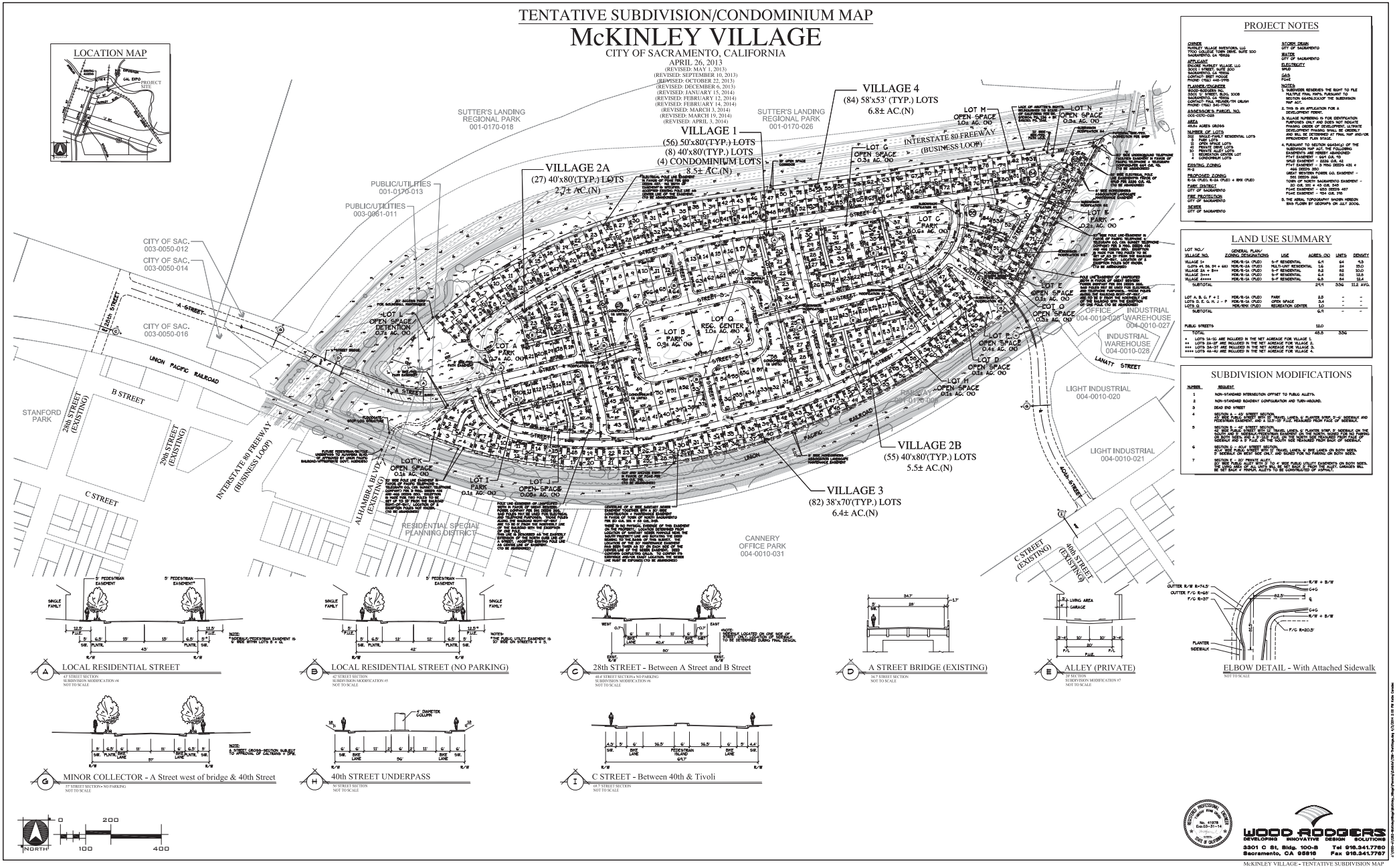

EXHIBIT B-5
TENTATIVE MASTER PARCEL MAP

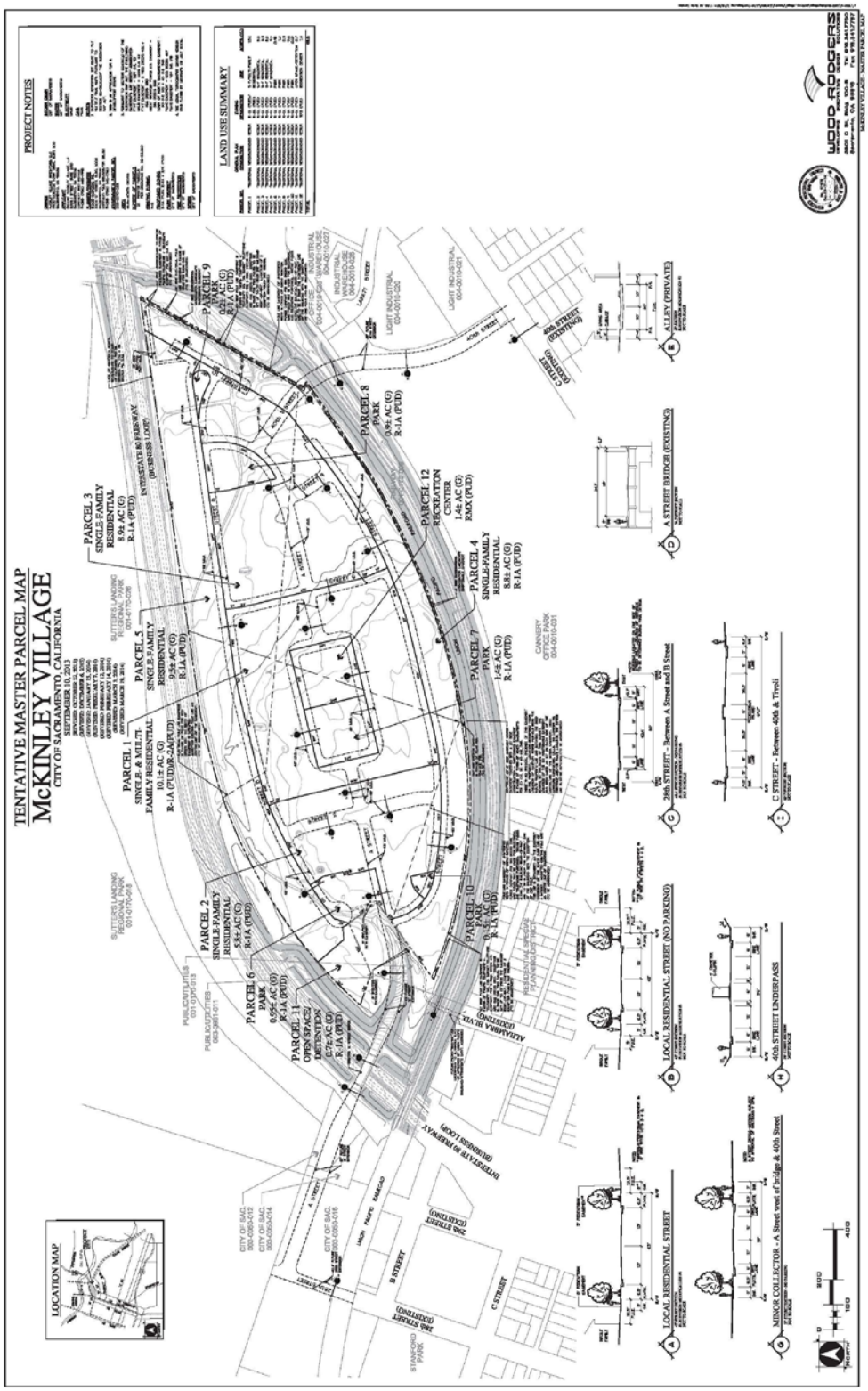

EXHIBIT C

PROJECT ENTITLEMENTS

THE FOLLOWING PROJECT ENTITLEMENTS, INCLUDING THE ORDINANCES, RESOLUTIONS, PERMITS, AND FINDINGS AND CONDITIONS ATTACHED TO SUCH ENTITLEMENTS, **AS OF THE EFFECTIVE DATE OF THIS AGREEMENT,** ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

NOTE: SUBSTANTIVE CHANGES TO THE FOLLOWING ENTITLEMENTS OR THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED UNDER SECTION 2.3.3 OF THE AGREEMENT. CHANGES (INCLUDING ADDITIONS) TO THE MITIGATION MEASURES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT WILL BE INCORPORATED INTO THIS AGREEMENT WITHOUT THE NEED FOR AN AMENDMENT TO THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

Commission or City Council	Date of Hearing	Description of Approved Entitlements	Ordinance, Resolution or Record of Decision
CITY COUNCIL		**Certification of the EIR and adoption of the Mitigation Monitoring Plan**.	
CITY COUNCIL		**General Plan Amendment**	
CITY COUNCIL		**Rezone**	
CITY COUNCIL		**PUD Establishment**	
CITY COUNCIL		**Bikeway Master Plan Amendment**	

CITY COUNCIL		**Tentative Master Parcel Map**	
CITY COUNCIL		**Tentative Subdivision Map**	
CITY COUNCIL		**Subdivision Modifications**	
CITY COUNCIL		**Driveway Variances**	
CITY COUNCIL		**Site Plan and Design Review**	
CITY COUNCIL		**Development Agreement**	

EXHIBIT D

PROJECT ENVIRONMENTAL CERTIFICATION

FINAL ENVIRONMENTAL IMPACT REPORT AND MITIGATION MEASURES

RESOLUTION NO. _____ CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT, ADOPTING FINDINGS OF FACT, MITIGATION MEASURES, AND STATEMENT OF OVERRIDING CONSIDERATION, AND APPROVING THE MITIGATION MONITORING PROGRAM WAS APPROVED BY THE CITY COUNCIL ON _____ AND IS INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

NOTE: IF THE CITY APPROVES ANY CHANGES TO THE MITIGATION MEASURES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, THOSE CHANGES WILL BE INCORPORATED INTO THIS AGREEMENT WITHOUT THE NEED FOR AN AMENDMENT TO THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

EXHIBIT E

PROTEST WAIVER PROVISIONS

LANDOWNER understands and agrees that financing and maintenance of the Public Facilities required under the Development Plan, Project Entitlements, and Special Conditions may be accomplished through a variety of Public Financing Mechanisms, including, without limitation, a combination of special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), and Development Fees, all of which mechanisms are designed to spread the cost of the Public Facilities in accordance with benefit to the properties included in such Public Financing Mechanisms and other fee programs and methodologies. LANDOWNER further understands and agrees that an important component of this Agreement is LANDOWNER's advance consent to the formation of, or implementation of, any such Public Financing Mechanisms, and LANDOWNER's agreement not to protest or contest such formation, implementation or fee imposition.

Accordingly, LANDOWNER agrees for itself, its constituents, successors and assigns that it fully, finally, and forever waives and relinquishes any right it may have to protest or contest the formation or implementation of any Public Financing Mechanism to fund and maintain Public Facilities, together with any rights it may have to contest the imposition of any related fees, assessments, taxes, or other charges. Nothing in this Agreement, however, shall prevent LANDOWNER from presenting CITY any information or opinions regarding any Public Financing Mechanism that CITY may from time to time consider establishing or imposing, which information or opinions relate to the dollar amount of any fees, assessments, taxes or other charges imposed by CITY.

If a Public Financing Mechanism or Development Fee is proposed for adoption by CITY, which Public Financing Mechanism or Development Fee directly and significantly conflicts with the Nexus Study adopted by the City Council in connection with establishment of the financing mechanism or fee, LANDOWNER shall have the right to protest only the actual amount of the directly and significantly conflicting proposed fee, charge, special tax, or assessment proposed to be levied, charged, assessed or taxed against the Property by virtue of the proposed Public Financing Mechanism or Development Fee . However, LANDOWNER's right to protest, or object shall be waived unless LANDOWNER's protest or objection is made at or before the time of the public hearing wherein the proposed Public Financing Mechanism or Development Fee is established by the City Council.

LANDOWNER shall not have the right, in connection with any land use entitlement proceeding with respect to the Property, to judicially challenge the Public Financing Mechanism or Development Fee, or the fees, charges, assessments or special taxes as applied to the Property or the Project for Public Facilities, and waives any statutory or common law right to withhold

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

Without limiting the generality of the foregoing, LANDOWNER for itself, its constituents, successors and assignees specifically, as to the Property, agrees to the following:

(1) Waives, and hereby grants advance consent to the formation and implementation of any and all special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), fee districts or other Public Financing Mechanisms of a similar nature recommended or established by CITY for the purpose of financing and maintaining Public Facilities .

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

(2) Waives, and hereby grants advance consent to the establishment or imposition of any and all Development Fees and special fees, exactions, development fees, assessments, taxes or other charges established by CITY for the purpose of financing and maintenance of Public Facilities. Without limiting the generality of the foregoing, LANDOWNER specifically waives: (i) to the extent applicable, those statutory and constitutional provisions specified in paragraph (1) above; and (ii) the provisions of Government Code sections 66000, et seq., or any other provision of law providing a procedure for contest or protest of establishment or imposition of Development Fees, and special fees, exactions, development fees, assessments, taxes or other charges of a similar nature.

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

LANDOWNER agrees and specifically represents to CITY that it is fully aware of all of its legal rights relative to the waivers, advance consents and other agreements set forth herein, having been fully advised by its own independent attorneys. Having such knowledge and

understanding of its rights, LANDOWNER has nevertheless voluntarily entered into the Agreement, of which this Exhibit is a material part. LANDOWNER is aware that CITY is relying on the representations contained in this Exhibit in entering into the Agreement.

EXHIBIT F

SUMMARY LISTING AND MAP OF LAND DEDICATIONS AND RESERVATIONS AND PUBLIC FACILITIES TO BE CONSTRUCTED BY LANDOWNER

A SUMMARY LISTING AND MAP OF THE APPROXIMATE LOCATION AND PURPOSES OF THE LAND DEDICATIONS AND RESERVATIONS ARE ATTACHED AS EXHIBITS F-1 AND EXHIBIT F-2.

EXHIBIT F-1

SUMMARY OF LAND DEDICATIONS, RESERVATIONS
AND CONSTRUCTION OF PUBLIC FACILITIES BY LANDOWNER

The location of all land dedications, reservations and construction of public facilities by Landowner are as depicted on the Tentative Subdivision Map for McKinley Village, dated April 3, 2014.
.

A. Streets (dedicated easements):

- Dedication of public streets
- PUE adjacent to public streets, private alleys, and as otherwise specifically set forth in the Project Entitlements.

B. Parks, Greenbelts, Trails, Plazas and other Public Open Space (dedications in fee or easement):

- Park Lots A, B, C (dedication in fee)
- Park Lots F & I (dedication of exclusive recreational easement)
- Open Space Lots J, M, N, O & P (maintenance easement)

C. Land for CITY and Public Agencies (by dedication or reservation):

- Open Space / Drainage / Sewer / Water Facilities - Lot K (dedication)
- Open Space / Drainage / Sewer / Water Facilities - Lot L (dedication)
- 12' wide Bicycle Overcrossing along west and north sides of Lot N (easement dedication)

D. Public Facilities to be Constructed by LANDOWNER (dedicated in fee or easement as determined by CITY):

- Drainage / Sewer / Water Facilities on Lot K
- Drainage / Sewer / Water Facilities on Lot L

EXHIBIT F-2

MAP OF THE APPROXIMATE LOCATION AND PURPOSES OF THE LAND DEDICATIONS AND RESERVATIONS

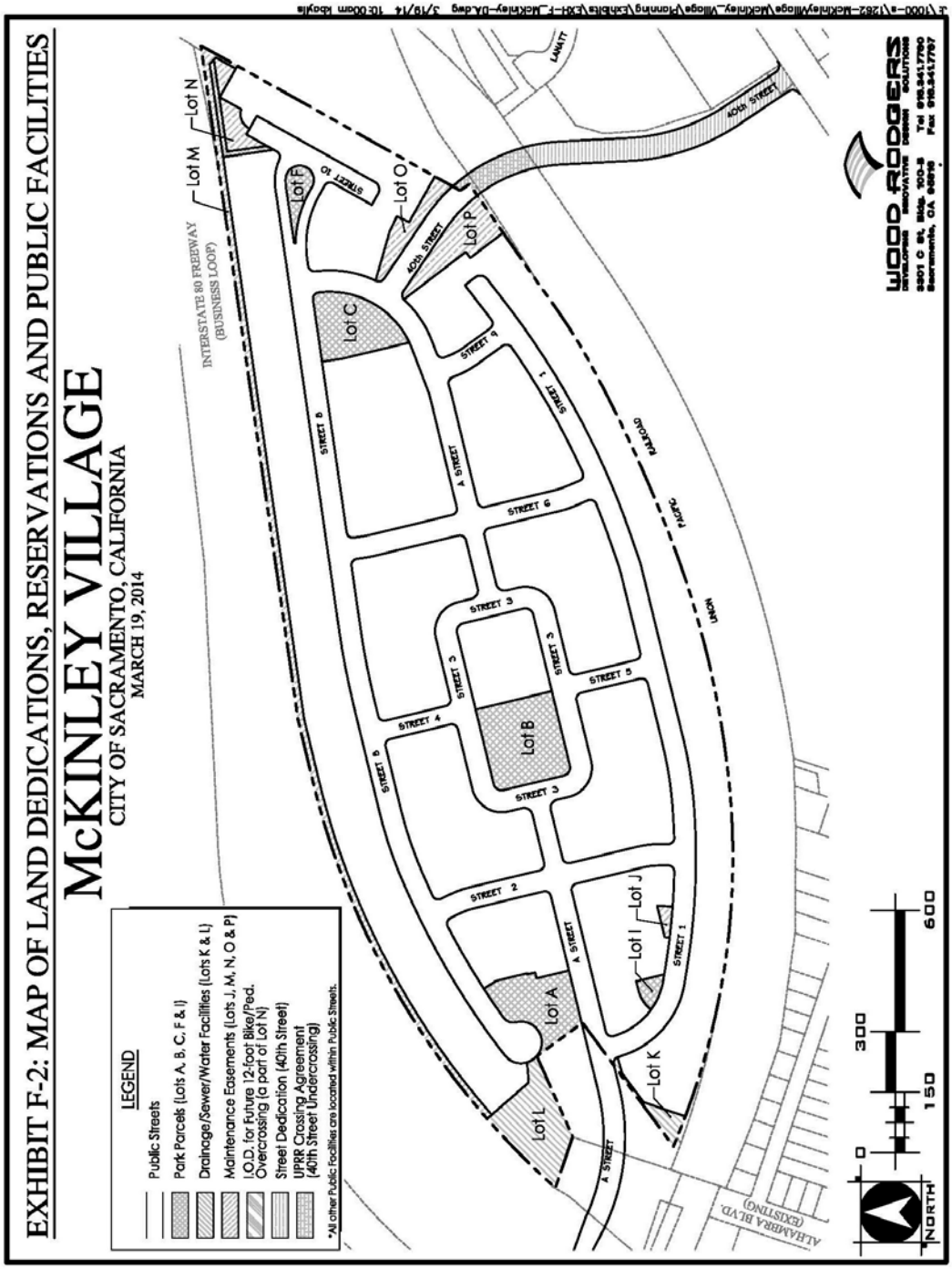

EXHIBIT G

IRREVOCABLE OFFER OF DEDICATION FORM

SEE ATTACHED

Recording Requested by and Benefiting
the City of Sacramento, a Government Entity –
No Fee Required per Government Code § 6103

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street (Historic City Hall)
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

IRREVOCABLE OFFER TO DEDICATE
(IN FEE OR EASEMENT)

_____, a _____, ("GRANTOR") hereby irrevocably offers to dedicate in (fee or easement) to the CITY OF SACRAMENTO, a municipal corporation ("CITY"), that certain real property ("Property") in the City of Sacramento, County of Sacramento, State of California, described as follows:

See Exhibit A, legal description, and Exhibit B, exhibit map, attached hereto and made a part hereof.

GRANTOR, for itself, its successors and assigns hereby waives any claims for any and all damages which: (i) will accrue to the remaining property of the undersigned by reason of its severance from that portion the Property subject to this offer to dedicate, (ii) taking compensation, if any, or (iii) damages on account of the location, establishment, construction or operation of the public facilities to be located on the Property, except as specifically provided herein. The foregoing waivers shall include any and all rights or claims that GRANTOR may have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation. GRANTOR acknowledges for itself, its successors and assigns that it has been advised to seek the advice of counsel on the issue of waiver of severance and other damages, and has either done so or has chosen not to do so despite being given such advice.

GRANTOR acknowledges and agrees as follows:

1. This offer is given pursuant to Government Code section 7050, and is irrevocable upon its recordation in the office of the County Recorder, County of Sacramento.

2. This offer may be accepted at any time by the City Council of CITY. This offer may be terminated only in the manner specified in the Streets and Highways Code, commencing at section 8300, for summary vacation of streets or highways.

3. CITY assumes no responsibility or liability whatsoever with respect to the Property or occurrences thereon, as a consequence of the offer set forth herein.

4. GRANTOR shall not create, nor permit to be created, any lien, encumbrance or other title impediment of any sort or nature on or affecting the Property.

5. At the time CITY accepts this offer, GRANTOR shall insure that the Property is free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except (a) easements or rights-of-way for public utilities, if any, and (b) item which CITY has expressly consented in writing, if any.

6. If there are improvements upon the Property placed thereon either before or after this offer is recorded, GRANTOR shall have full legal responsibility, without cost to CITY, to remove such improvements, if this offer is accepted by CITY.

7. To the best of GRANTOR's knowledge, there are no notices or other information giving GRANTOR reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the Property to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use, except as disclosed in the Draft Environmental Impact Report, Final Environmental Impact Report and appendices thereto or information or documents referenced therein. As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the provisions of section 8 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by CITY prior to acceptance of the offer.

8. GRANTOR agrees and covenants to indemnify and defend CITY and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any acts or omissions related to the presence, use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property as long as the Property is used by CITY for the purpose for which it was dedicated.

GRANTOR further agrees and understands that CITY does not, and shall not be deemed to, waive any rights against GRANTOR which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available to CITY. This Section 8 does not apply to or modify, nor shall any other provision of this Irrevocable Offer to Dedicate apply to or modify, the GRANTOR's or CITY's rights or obligations toward each other or third parties concerning the closed 28th Street Landfill or any substance that may emanate from the Landfill. This Section 8 shall survive the acceptance of the Property by CITY hereunder.

9. This offer is made by GRANTOR for itself, its heirs, successors and assigns, and shall be fully binding on such heirs, successors and assigns.

GRANTOR represents and warrants that the GRANTOR owns the entire fee interest in the Property and therefore has the legal right to execute this offer. The individual executing this offer on behalf of GRANTOR represents and warrants that he or she has been authorized to do so by GRANTOR and that GRANTOR shall thereby be obligated to perform the terms of this offer.

IN WITNESS WHEREOF, GRANTOR has executed this offer on the date set forth below.

GRANTOR(s):

_____

By: _____
Title:
Print Name:

Date: _____

EXHIBIT H

RESERVATION AGREEMENT FORM

SEE ATTACHED

Recording Requested by and Benefiting
The City of Sacramento, a Government Entity –
No Fee Required per Government Code § 6103

Documentary Transfer Tax Not Required:
Revenue and Taxation Code • 11922

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street (Historic City Hall)
Sacramento, CA 95814

RESERVATION OF REAL PROPERTY AGREEMENT

THIS RESERVATION AGREEMENT (herein "this Agreement") is entered into this _____ day of _____, 20___, (the "Effective Date") by and between _____ (herein "LANDOWNER") and _____ (herein "PUBLIC AGENCY").

RECITALS

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

B. Pursuant to the Development Agreement, LANDOWNER is required to reserve a portion of the Property (herein "the Reservation Parcel") for the future development by PUBLIC AGENCY of specified public facilities.

C. The purpose of this Reservation Agreement is to specify the purchase price and schedule for acquisition of the Reservation Parcel.

AGREEMENT

NOW, THEREFORE, LANDOWNER AND PUBLIC AGENCY HEREBY AGREE AS FOLLOWS:

1. Property Ownership

LANDOWNER hereby certifies that it is the owner in fee title of the real property situated in the City of Sacramento as depicted in Exhibit A, which is attached hereto and incorporated herein by this reference ("Property").

2. Consideration for Reservation

LANDOWNER's offer to reserve a portion of the Development Property for future sale to PUBLIC AGENCY as described herein is made in furtherance of a condition of approval by the City of Sacramento for LANDOWNER to develop the Property.

3. Reservation Parcel

Subject to the conditions set forth herein, LANDOWNER shall designate, set aside, and irrevocably offer to sell to PUBLIC AGENCY for _____ purposes a portion of the Property consisting of _____ as the Reservation Parcel, which is depicted on Exhibit A and described in Exhibit B, which is attached hereto and incorporated herein by this reference. If a conflict between Exhibits A and B, Exhibit B shall prevail.

4. Purchase Price

In accordance with Government Code section 66480, the purchase price for the Reservation Parcel shall be based on the fair market value of the property at the time of the filing of the tentative map that encompasses the Reservation Parcel, plus the taxes paid and any other costs incurred by LANDOWNER for the maintenance of the Reservation Parcel, including interest costs incurred on any loan covering the Reservation Parcel, from the date of filing of the referenced tentative map to the date of acquisition.

5. Documents and Agreements

At the time of filing the tentative map that encompasses the Reservation Parcel, the LANDOWNER shall provide PUBLIC AGENCY the following documents that were prepared within the prior six months: (i) an appraisal of the fair market value of the Reservation Parcel prepared by a licensed MAI appraiser, (ii) a phase I environmental site assessment of the Reservation Parcel, (iii) a preliminary title report for the Reservation Parcel, and a (iv) a form purchase and sale agreement for transfer of title to the Reservation Parcel.

6. Acquisition Schedule

In accordance with Government Code section 66480, PUBLIC AGENCY shall have two years from the date of the filing of the final subdivision or parcel map that encompasses the Reservation Parcel, and such longer period if LANDOWNER is obligated to complete improvements to the Reservation Parcel and such improvements are not completed within the referenced two year period, to close escrow to acquire the Reservation Parcel. This period of time may be extended by mutual agreement of the parties.

7. Acquisition of Reservation Parcel

LANDOWNER shall negotiate with PUBLIC AGENCY in good faith to determine the fair market value of the Reservation Parcel, the purchase price, and reasonable terms and conditions of the purchase and sale agreement. PUBLIC AGENCY shall have the sole and absolute discretion to determine whether to purchase the Reservation Parcel at the price and based on the terms and condition in this Agreement and the documents referenced in Section 5, above. Nothing contained in this Agreement shall be construed as binding the PUBLIC AGENCY to purchase the Reservation Parcel.

8. Encumbrances and Improvements

From the date of this Agreement and until PUBLIC AGENCY acquires the Reservation Parcel, or provides written notice to LANDOWNER of PUBLIC AGENCY's determination to terminate this Agreement and release LANDOWNER from its obligation to set aside the Reservation Parcel for acquisition by PUBLIC AGENCY, LANDOWNER shall not construct or cause to be constructed on the Reservation Parcel: (i) any structures, including, without limitation, buildings, driveways, or signs; (ii) any utilities not existing on the Reservation Parcel as of the Effective Date of this Agreement; or (iii) the planting of any trees, although Reservation Parcel may be landscaped.

9. Hazardous Substances

To the best of LANDOWNER's knowledge, there are no notices or other information giving LANDOWNER reason to believe that any conditions existing on the Reservation Parcel or in the vicinity thereof subject or could subject an owner of the Reservation Parcel to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use, except as disclosed in the Draft Environmental Impact Report, Final Environmental Impact Report and appendices thereto or information or documents referenced therein. As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that

is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Reservation Parcel shall be governed by the provisions of Section 10 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by PUBLIC AGENCY prior to close of escrow.

10. Hazardous Substances Indemnity

LANDOWNER agrees and covenants to indemnify and defend PUBLIC AGENCY and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any acts or omissions related to the presence, use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Reservation Parcel. LANDOWNER further agrees and understands that PUBLIC AGENCY does not, and shall not be deemed to, waive any rights against LANDOWNER which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available to PUBLIC AGENCY. The provisions of this Section 10 shall survive the transfer to title of the Reservation Parcel to PUBLIC AGENCY hereunder. This Section 10 does not apply to or modify, nor shall any other provision of this Agreement apply to or modify, the LANDOWNER's or City of Sacramento's rights or obligations toward each other or toward third parties including PUBLIC AGENCY concerning the closed 28th Street Landfill or any substance that may emanate from the Landfill.

11. Notices

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

Notice to the PUBLIC AGENCY: _____
_____
_____
_____

Notice to the LANDOWNER: _____
_____
_____
_____

Notice to Lender: _____
_____
_____
_____

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

12. Successors and Assigns

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

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

LANDOWNER:

By: _____

PUBLIC AGENCY:

By: _____

EXHIBIT I

ASSIGNMENT AND ASSUMPTION AGREEMENT FORM

SEE ATTACHED

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "this Assignment") is entered into this _____ day of _____, 20___, by and between _____, a _____ (hereinafter the "LANDOWNER"), and _____, a _____ (hereinafter "ASSIGNEE. The LANDOWNER and ASSIGNEE hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

A. LANDOWNER has entered into a Development Agreement with the City of Sacramento dated _____ (herein "the Development Agreement"), pursuant to which LANDOWNER obtained vested right to develop certain property as more particularly described in the Development Agreement (herein "the Property") for the project referred to as _____ (herein "the Project"), subject to LANDOWNER's compliance with certain conditions and obligations set forth in the Development Agreement.

B. LANDOWNER intends to transfer a portion of the Property to ASSIGNEE (herein the "Assigned Parcel(s)") under the terms of a written agreement between LANDOWNER and ASSIGNEE dated _____ (the "Exchange Agreement").

C. LANDOWNER has agreed to assign to ASSIGNEE, and ASSIGNEE has agreed to assume from LANDOWNER, all of the rights and obligations under the Development Agreement as they relate to the Assigned Parcel (s).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date; Termination. This Assignment shall be effective as of the "Closing Date," as defined in the Exchange Agreement (the "Effective Date"). If the Exchange Agreement terminates prior to the closing thereunder, this Assignment shall automatically terminate and the Parties shall have no further obligations hereunder.

2. Assignment and Assumption. As of the Effective Date, LANDOWNER hereby assigns and transfers to ASSIGNEE any and all of LANDOWNER's rights under the Development Agreement as they relate to the Assigned Parcel(s), and ASSIGNEE hereby accepts and assumes all of the duties and obligations of LANDOWNER under the Development Agreement as they relate to the Assigned Parcels(s). ASSIGNEE hereby agrees to observe and fully perform all of the duties and obligations of LANDOWNER under the Development Agreement, and to be subject to all of the terms and conditions thereof, with respect to the Assigned Parcel(s).

3. <u>Assumption Terms and Conditions</u>. LANDOWNER and ASSIGNEE understand and agree that this Assignment is subject in particular to Section 2.6 of the Development Agreement, which reads as follows:

"2.6 **<u>Assignment</u>.**

2.6.1 **Right to Assign.** LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all or any portion of the Property and improvements thereon as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code § 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice thereof to CITY in the manner provided in Section 9.2 not later than thirty (30) days before the effective date of such sale, transfer or assignment. LANDOWNER's failure to provide such notice to CITY shall not invalidate such sale, transfer or assignment; however, any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without executing and delivering to CITY an Assignment and Assumption Agreement.

2.6.2 **Release.** LANDOWNER shall remain obligated to perform all of terms and conditions of this Agreement unless the purchaser, transferee or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume all of the obligations of LANDOWNER under this Agreement and to comply with all of the terms and conditions of this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project. Upon such execution and delivery of the Assignment and Assumption Agreement, CITY shall release LANDOWNER from all duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

2.6.3 **Assignees.** The Assignee shall be obligated and bound by the terms and conditions of this Agreement if it executes the Assignment and Assumption Agreement, and shall be the beneficiary hereof and a party hereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to Assignee by LANDOWNER. The Assignee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred. CITY shall release Assignee from all duties, liabilities and obligations under this Development Agreement of LANDOWNER with respect to the interest(s) that are not sold, assigned or transferred to Assignee. Any such assumption agreement shall be deemed to be to the satisfaction of the City Attorney if executed substantially in form of the Assignment and Assumption

Agreement attached hereto as Exhibit I and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment."

4. Assignee Development Agreement. At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s) in accordance with the same terms and conditions as set out in the Development Agreement, subject only to those changes in the Development Agreement that are mutually agreed to by both City and ASSIGNEE, and subject to processing of the approval of that development agreement in accordance with City's Procedural Ordinance.

5. No Cross-Default. The Parties acknowledge and agree that the respective obligations of LANDOWNER and ASSIGNEE under the Development Agreement shall be separate and independent from one another, such that a default by LANDOWNER of any of the LANDOWNER's duties and obligations will not constitute a default under the Development Agreement by ASSIGNEE, and a default by ASSIGNEE of any of the ASSIGNEE's duties and obligations will not constitute a default under the Development Agreement by LANDOWNER, and the City's rights and remedies under the Development Agreement shall apply only to the Party, and the Property or Assigned Parcel(s), that is the subject of the default. Any duties and obligations under the Development Agreement that apply to both the Property and the Assigned Parcel(s) must be complied with by both LANDOWNER and ASSIGNEE, but as separate obligations.

6. Successors and Assigns. All of the covenants, terms and conditions set forth in this Assignment shall be binding upon and shall inure to the benefit of the Parties and to their respective heirs, successors and assigns.

7. Legal Advice. ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the duties and obligations set out in the Development Agreement to which ASSIGNEE is herby bound, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i) LANDOWNER has furnished ASSIGNEE with a copy of all documents and materials containing or relating to terms and conditions of development of the Assigned Parcel(s); (ii) ASSIGNEE has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other public financing mechanisms and obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials, in addition to the express terms and conditions of the Development Agreement.

8. Representations; Entire Agreement. ASSIGNEE hereby affirms and acknowledges that City has not made any representations, commitments or promises to ASSIGNEE that are contrary to or different from the express terms and conditions of the Development Agreement, unless such terms and conditions have been set forth in writing and approved by ASSIGNEE and the City Council prior to the execution of this Assignment. This

Assignment contains the entire agreement of the Parties, no other understanding whether verbal, written or otherwise exists between the Parties, and no prior verbal or written communications regarding this Assignment shall be binding on any Party.

9. **Further Assurances**. The Parties agree to execute all such additional instruments and documents and to take all such additional actions, as may be reasonable and necessary to carry out the provisions of this Assignment.

10. **Notices.** All notices required or provided for under this Assignment shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the other Parties and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other Party(ies) as indicated below:

Notice to the LANDOWNER: _____
_____
_____
_____

Notice to the ASSIGNEE: _____
_____
_____
_____

Notice to Lender: _____
_____
_____
_____

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

11. **Governing Law.** The Assignment shall be governed by and construed in accordance with the laws of the State of California.

12. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by facsimile transmission) as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

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

By:_____
LANDOWNER

By:_____
ASSIGNEE

EXHIBIT J

SPECIAL CONDITIONS

I. PURPOSE AND INTENT

The definitions applicable to the body of the Agreement shall apply to this Exhibit J. Under no circumstances can Development of the Property proceed without satisfaction of the conditions specified in this Exhibit J. These Special Conditions shall constitute binding and legally enforceable obligations of LANDOWNER and its successors and assigns, and binding and legally enforceable requirements and conditions for the Development of the Property for the Project, in addition to other obligations, requirements and conditions imposed as set out in the Agreement.

II. PARTIES' OBLIGATIONS

A. Parks

1. **Park Land Dedication; Payment of In-Lieu Fees.** The City Code Chapter 16.64 sets out the Quimby park dedication requirement, including payment of in-lieu fees, for the Project which CITY and LANDOWNER agree shall be satisfied at the time of filing of the final subdivision map (the "final map"), or in the event of the filing of multiple final maps, at the time of the filing of each final map, except as provided in the following sentence. For purposes of clarification, LANDOWNER and CITY acknowledge and agree, that in the event a final map creates both final use residential lots, as well as additional parcels that are not final use residential lots, Quimby park dedication requirements shall only be calculated and collected for the final use residential lots.

2. **Private Recreational Facilities Credits**. Pursuant to City Code Chapter 16.64, CITY agrees that the Project shall be eligible for private recreational facilities credits as follows:

a. For the private recreation building and pool located on Lot Q, the Project shall be eligible for private recreational facilities credits equivalent to ten percent (10%) of the total project parkland dedication obligation (5% for the pool and 5% for the recreation building); and,

b. For the community garden located on Lot N, the Project shall be eligible for private recreational facilities credits equivalent to five percent (5%) of the total parkland dedication obligation. A community garden to be provided for use by the residents, may be considered eligible for private recreational facilities credit due to its neighborhood park qualities, pursuant to section 16.64.100(B)(1).

3. **Use of Park Development Impact Fees**. LANDOWNER shall pay Park Development Impact Fees ("PIF") consistent with the City Code. CITY agrees that a portion of the PIF paid by the LANDOWNER shall be allocated directly to park improvements within the Project. This amount shall consist of a Base component plus an Additional Art component, as those terms are defined herein, and shall collectively be referred to as the **"Project's PIF Allocation".**

a. The "**Base"** component of the **Project's PIF Allocation** shall be defined as the percentage of the total PIF generated by the Project, which shall be proportionately equal to the Project's Quimby parkland dedication requirement that is met by on-site dedication, (rather than by payment of Quimby in-lieu fees and/or provision of private recreational facilities), divided by the Project's Quimby dedication requirement. However, if the Additional Art component is triggered as set out below, the total amount of the Project's PIF Allocation for on-site parks shall not exceed eighty percent (80%) of the PIF generated by the Project.

b. The **"Additional Art"** component of the **Project's PIF Allocation** shall be $100,000 if at the time of execution of a Credit/Reimbursement Agreement for parks on Lots B and C, the City's service level goal for parkland dedication (as set forth in Chapter 16.64.030 of the City Code) is 5 acres per one thousand population, and the scope of the park improvements in the Credit/Reimbursement Agreement includes the LANDOWNER's funding of public art to be owned by the City and located within the Lot B and Lot C park sites, as shown on the Tentative Subdivision Map. The artwork selection must comply with the Sacramento Metropolitan Arts Commission procedures and the value shall be established by invoices of the artist or other acceptable documentation. The LANDOWNER or the Homeowners Association shall be responsible for the costs of maintaining this artwork in the city parks.

B. **Off-site Tunnel**.

(1) The LANDOWNER shall undertake good faith efforts to obtain the necessary approvals and permits from the Union Pacific Railroad ("UPRR"), the California Public Utilities Commission ("CPUC"), and any other governmental agency as may be required to allow for construction of a tunnel through the UPRR embankment for a bicycle and pedestrian trail connecting the Project to Alhambra Boulevard (the "Bicycle Tunnel"). LANDOWNER shall consult with the CITY on the design of the Bicycle Tunnel and the design of the Bicycle Tunnel shall be subject to the approval of the CITY. Thereafter, LANDOWNER shall commence and diligently pursue construction of the Bicycle Tunnel, which work shall start by no later than the issuance of the 140th residential building permit. However, notwithstanding LANDOWNER's good faith efforts, in the event that LANDOWNER cannot acquire the necessary approvals and permits from UPRR, CPUC, and any other governmental agency as may be required to commence construction of the Bicycle Tunnel on terms reasonably acceptable to LANDOWNER and CITY and at a cost not to exceed $1.9 million, prior to the issuance of the 140th residential building permit, then LANDOWNER shall instead provide the CITY with a lump sum payment, a letter of credit or other security in a form approved by the City Attorney, in an amount equal to $1,900,000, less the actual amount expended by LANDOWNER on the design of and pre-construction work for the Bicycle Tunnel not to exceed $230,000 (the "Tunnel Construction Fund), to be utilized as follows:

(a) If CITY determines to pursue construction of a Vehicular Tunnel pursuant to paragraph B (3) of this Exhibit J prior to the commencement of construction on the Bicycle Tunnel, then CITY may retain the Tunnel Construction Fund monies for that project.

(b) If CITY elects not to pursue construction of a Vehicular Underpass prior to the commencement of construction on the Bicycle Tunnel or subsequently determines not to proceed with construction of a Vehicular Underpass pursuant to paragraph B (3) of this Exhibit J, then CITY will either:

(i) remit the Tunnel Construction Fund monies to LANDOWNER to be utilized to construct the Bicycle Tunnel if LANDOWNER is able to obtain approvals and permits for construction of the Bicycle Tunnel from UPRR, CPUC, and any other governmental agency as may be required within 18 months after the issuance of the 140th residential building permit and at a cost not to exceed $1.9 million; or

(ii) if LANDOWNER is unable to construct the Bicycle Tunnel as set forth in subparagraph (i) above, then CITY will commit the Tunnel Construction Fund monies for Alternative Transportation Improvements and Services pursuant to paragraph B (2) of this Exhibit J.

(2) In the event that LANDOWNER is unable to obtain approvals and permits for construction of the Bicycle Tunnel from UPRR, CPUC, and any other governmental agency as may be required within 18 months after the issuance of the 140th residential building permit ("City Reallocation Date"), and CITY does not pursue construction of a Vehicular Underpass pursuant to paragraph B (3) of this Exhibit J, CITY, after good faith consultation with LANDOWNER, shall have the right to utilize the Tunnel Construction Fund monies to fund improvements or services that are intended to improve vehicular, bicycle, and pedestrian access to and from the Project and connections between the Project and existing neighborhoods, with priority given to improvements and services that benefit bicyclists, pedestrians, and transit ("Alternative Transportation Improvements and Services"). City shall make a good faith effort to commit such funds to Alternative Transportation Improvements and Services within two years after the City Reallocation Date.

(3) In addition to establishing the Tunnel Construction Fund pursuant to paragraph B (1) of this Exhibit J, LANDOWNER shall provide $100,000 to the CITY by the earlier of August 1, 2014 or the issuance of a grading permit for the Project, which CITY shall use to study the feasibility of a vehicular, pedestrian, and bicycle access under the UPPR tracks at Alhambra Boulevard ("Vehicular Underpass"). If the CITY determines, based on such study, to pursue the funding, design and construction of the Vehicular Underpass, then CITY shall inform LANDOWNER of such determination prior to the commencement of construction on the Bicycle Tunnel pursuant to paragraph B (1) of this Exhibit J. If CITY so informs LANDOWNER of its determination to pursue the Vehicular Underpass pursuant to this paragraph and paragraph B(1)(a), in that event LANDOWNER shall be relieved of its obligation to undertake good faith efforts to obtain approvals and permits and to construct the Bicycle Tunnel. If CITY subsequently determines to not utilize the Tunnel Construction Fund monies for the design or construction of the Vehicular

Underpass, CITY shall transfer the funds or remaining amounts of such funds to be used either by LANDOWNER to construct the Bicycle Tunnel or by CITY for Alternative Transportation Improvements and Services in accordance with the provisions of paragraph B (1)(b) of this Exhibit J.

C. **Public Facilities Improvements on Land Currently Owned by City**. In order to construct certain drainage and sewer facilities, including a drainage pump station, sewer lift station, sewer surge tank, drainage basins, and related facilities necessary to serve the Project, as required by the Project Entitlements, LANDOWNER shall first acquire fee title to certain parcels of real property, the legal descriptions of which are attached in Exhibit J-1, which are currently owned by CITY ("City Owned Parcels"). CITY agrees to negotiate in good faith with LANDOWNER to sell the City Owned Parcels to LANDOWNER.

If LANDOWNER acquires the City Owned Parcels, upon recordation of the first final map, an IOD containing all or a portion of the City Owned Parcels needed for the drainage and sewer facilities shall be provided to the CITY by LANDOWNER and the City Owned Parcels shall be used for the purposes consistent with the intent of this paragraph and the possible future sewer surge tank contemplated by paragraph F, below.

In the event that the sale of the City Owned Parcels does not occur (i.e., recordation of a grant deed) prior to the issuance of the grading permit for the remainder of the Project site, CITY shall provide any necessary licenses or permits to allow grading of the City Owned Parcels by LANDOWNER concurrently with the grading of the remainder of the Project site pursuant to the appropriate CITY approvals.

D. **Neighborhood Traffic Management Program**. Prior to recordation of the first final subdivision map for the Project, LANDOWNER shall make a lump sum payment of one hundred fifty thousand dollars ($150,000.00) to CITY to fund a Neighborhood Traffic Management Program (the "NTMP Funds"). Upon receipt of the NTMP Funds, CITY shall establish two separate accounts, which shall share the NTMP Funds equally. The NTMP Funds shall be utilized for CITY neighborhood traffic management efforts as follows: (1) in an area east of the Capital City Freeway and, (2) in an area west of the Capital City Freeway (which shall include funding for a partial street closure at 28th Street and C Street).

E. **Future Bikeway Connection Reservation**. LANDOWNER shall dedicate in a form of Irrevocable Offer of Dedication (I.O.D) a twelve foot (12') wide easement on and across the western and northernmost edge of Lot N for a future bikeway connection over the Capital City Freeway in accordance with the Bikeway Master Plan and the provisions of Government Code section 66475.1. The CITY agrees that, to the greatest extent practicable, it will design the bikeway improvements on the Project in such a manner so as to screen views from the bikeway into the private yards and homes of adjacent residential lots (i.e., Lots 81, 82, 83 and 84). CITY acknowledges and agrees that the area reserved with this I.O.D will be improved as a part of community garden which is designated to comprise the entirety of Lot N. CITY shall repair the damage to the community garden improvements (other than the vegetation) located on the remaining portion of Lot N that results from CITY's construction of the bikeway connection so

that the remainder of the lot remains usable as a community garden.

F. **Future Sewer Surge Tank IOD Property**. LANDOWNER shall offer for dedication to CITY an easement on and across Lot L and the City Owned Parcels north of A Street, if acquired by LANDOWNER (collectively, the "Surge Tank IOD Property"). The purpose of the Surge Tank IOD Property is to provide a location upon which the CITY may construct a sewer surge tank facility for the overall benefit of the combined sewer system. In exchange for making the Surge Tank IOD Property available to the CITY in the aforementioned manner and at no cost to the CITY, CITY agrees that, if the drainage, sewer, and other facilities required for the Project Entitlements that are located on Lot L and the City Owned Parcels are constructed prior to the CITY's construction of such surge tank facility, such sewer surge tank facility shall be designed, built and operated in such a manner that does not impair or otherwise impede the use and function of the area of the Surge Tank IOD Property for the drainage, sewer, and other facilities required by the Project Entitlements. To effectuate the transfer of the Surge Tank IOD Property, CITY and LANDOWNER shall enter into an appropriate agreement in a form consistent with the intent of this paragraph.

G. **Combined Sewer System Development Fee**. LANDOWNER shall construct a sewer surge/detention facility as set forth in Condition No. 69 of the Conditions of Approval for the Tentative Subdivision Map. If LANDOWNER constructs such facility as required, then the Project shall be exempt from the Combined Sewer Development Fee.

H. **Update to City's Mixed Income Housing Ordinance**. In the event that the City's Mixed Income Housing Ordinance (Title 17, Chapter 17.190 of the City Code) ("Ordinance") is amended and the Ordinance as amended would otherwise apply to the Project, then the LANDOWNER shall be subject only to those provision of the Ordinance that require any fees for the Project or provide for available credits. The fees, if any, shall be imposed on building permits after the effective date of such fees pursuant to the amended Ordinance.

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RESOLUTION NO. 2014-

Adopted by the Sacramento City Council

AMENDING THE GENERAL PLAN LAND USE MAP TO REDESIGATE 48.80 ACRES FOR THE PARCEL GENERALLY BOUNDED BY INTERSTATE 80 AND THE UNION PACIFIC RAILROAD (APN: 001-0170-028) FROM PLANNED DEVELOPMENT TO TRADITIONAL NEIGHBORHOOD MEDIUM DENSITY (P08-086); COUNCIL DISTRICT 3

BACKGROUND

1. On March 27, 2014, after conducting a public hearing, the City Planning and Design Commission forwarded to the City Council a recommendation to approve the McKinley Village Project (P08-086), concerning the construction of a residential subdivision and recreation center on a vacant parcel (the "Project"). The Project calls for amending the City's General Plan by redesignating 48.80 acres from Planned Development to Traditional Neighborhood Medium Density.

2. On April 29, 2014, after giving notice as required by Sacramento City Code section 17.812.010 (2)(b), the City Council conducted a public hearing on the Project, receiving and considering evidence concerning it.

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

Section 1. The statements in paragraphs A and B of the Background are true.

Section 2. Based on the oral and documentary evidence received at the hearing on the McKinley Village Project, the City Council approves the General Plan Amendment for the McKinley Village Project as set forth in Exhibit A to this Resolution, as follows: the 48.80± acre area as shown on the attached Exhibit A is hereby designated on the City of Sacramento General Plan land use map as 48.80± acres of Traditional Neighborhood Medium Density.

Section 3. The amendment described in Section 2 is internally consistent with the goals, policies, and other provisions of the General Plan, and it promotes the public health, safety, convenience, and welfare of the City.

Section 4. Exhibit A is a part of this Resolution.

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Exhibit A: General Plan Amendment Exhibit

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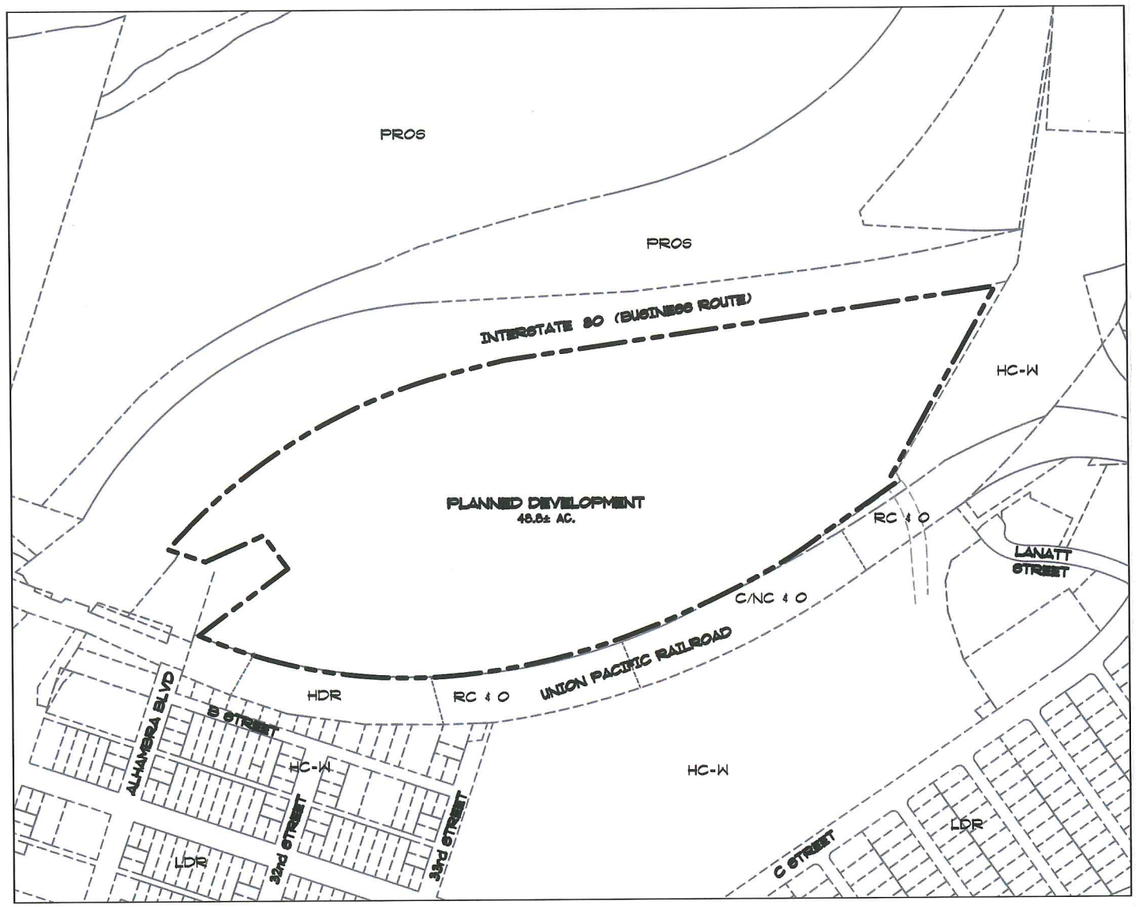
GENERAL PLAN AMMENDMENT EXHIBIT

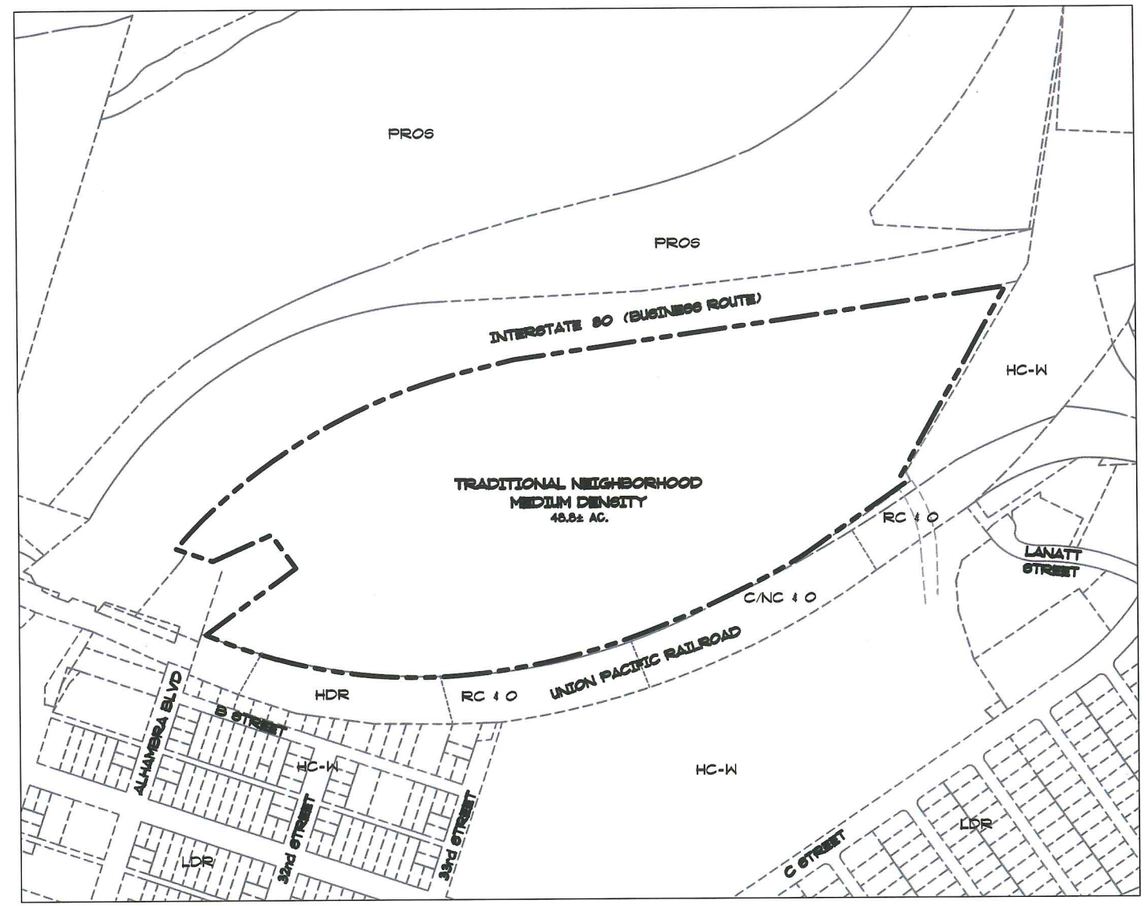
McKINLEY VILLAGE

CITY OF SACRAMENTO, CALIFORNIA

APRIL 26, 2013



Existing General Plan



Proposed General Plan

GENERAL PLAN SUMMARY TABLE

DESIGNATION	EXISTING	PROPOSED	DIFFERENCE
PLANNED DEVELOPMENT	48.8	-	-48.8
TRADITIONAL NEIGHBORHOOD MEDIUM DENSITY (8-21 DU/AC.)	-	48.8	+48.8
	48.8	48.8	0

NORTH

0 500 1000 2000

WOOD RODGERS
ENGINEERING • PLANNING • MAPPING • SURVEYING
3301 C STREET, BLDG. 100-B, SACRAMENTO, CA 95816
PHONE: (916) 341-7760 FAX: (916) 341-7767

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ORDINANCE NO.

Adopted by the Sacramento City
Council

AMENDING TITLE 17 OF THE SACRAMENTO CITY CODE BY REZONING 48.80± ACRES BOUNDED BY INTERSTATE 80 AND THE UNION PACIFIC RAILROAD (APN: 001-0170-028) FROM HEAVY INDUSTRIAL (M-2) TO 46.20± ACRES OF SINGLE-UNIT OR DUPLEX DWELLING (R-1A PUD), 1.60± ACRES OF MULTI-UNIT DWELLING (R-2A PUD), AND 1.00± ACRES OF RESIDENTIAL MIXED USE (RMX PUD) AND LOCATED IN THE MCKINLEY VILLAGE PLANNED UNIT DEVELOPMENT (P08-086); COUNCIL DISTRICT 3

BE IT ENACTED BY THE COUNCIL OF THE CITY OF

SACRAMENTO: SECTION1

As used in this ordinance, "**Property**" means the real property depicted in attached Exhibit A and generally bound by Interstate 80 and the Union Pacific Railroad (APN 001-0170-028), consisting of approximately 48.80 acres.

SECTION2

Title 17 of the Sacramento City Code ("the Planning and Development Code") is hereby amended by rezoning the Property from Heavy Industrial (M-2) to 46.20± acres of Single Unit or Duplex Dwelling (R-1A PUD), 1.60± acres of Multi-Unit Dwelling (R-2A PUD), and 1.00± acres of Residential Mixed Use (RMX PUD) and located in the McKinley Village Planned Unit Development.

SECTION3

The rezoning of the Property by this ordinance is consistent with the applicable land-use designation, use, and development standards in the City's General Plan; with the goals, policies, and other provisions of the General Plan; and with any applicable specific plan. The amendment promotes the public health, safety, convenience, and welfare of the City.

SECTION4

The City Clerk is hereby directed to amend the City's official zoning maps to conform to this ordinance.

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Exhibit A: McKinley Village Rezone Map – 1 Page

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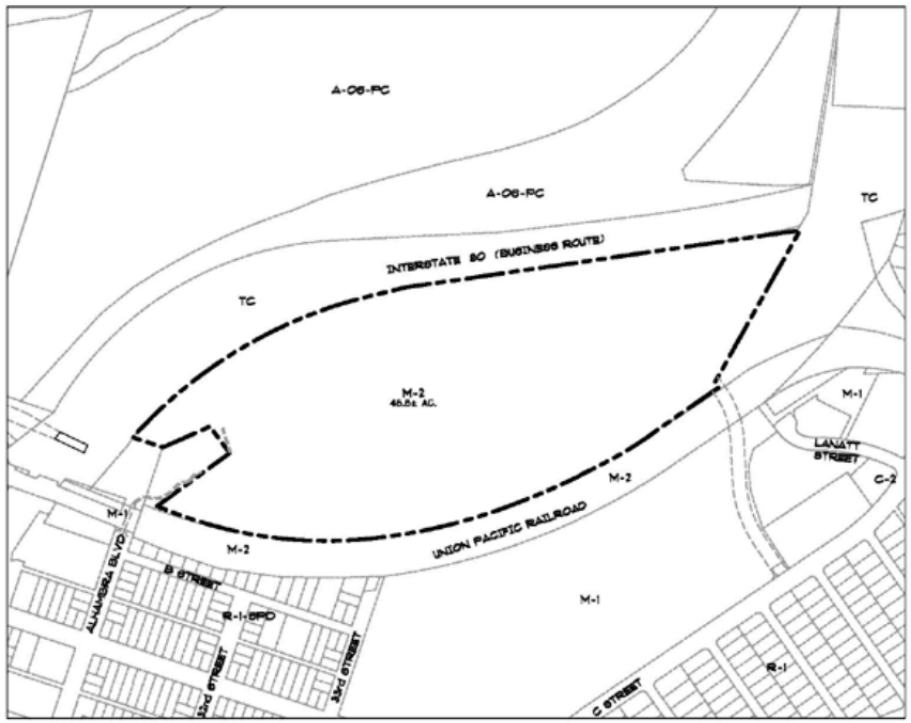
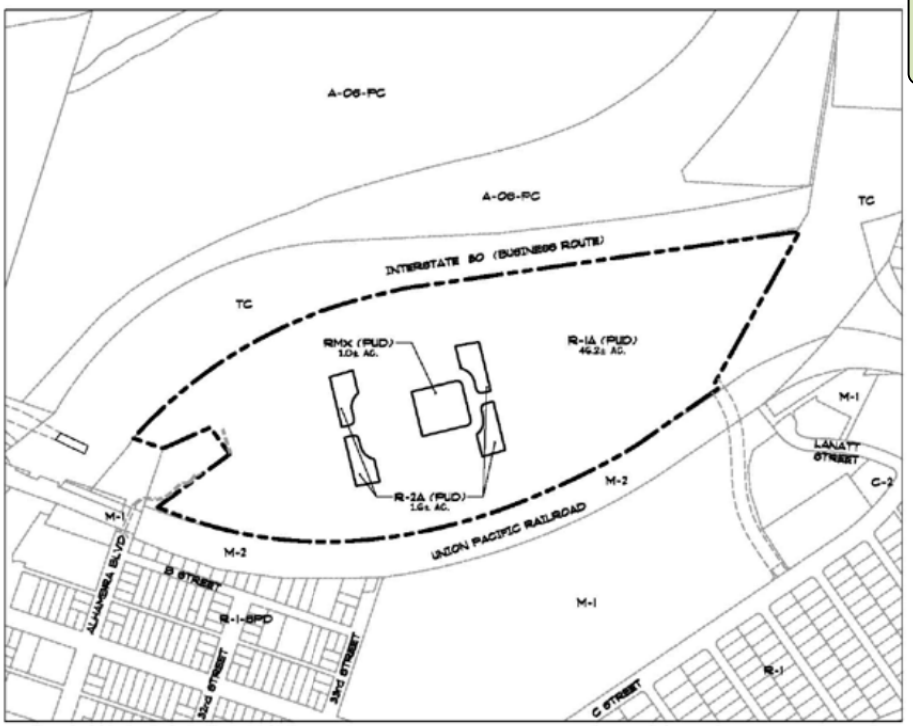
REZONE EXHIBIT
McKINLEY VILLAGE
CITY OF SACRAMENTO, CALIFORNIA
APRIL 26, 2013
(REVISED: SEPTEMBER 10, 2013)
(REVISED: DECEMBER 6, 2013)
(REVISED: FEBRUARY 21, 2014)



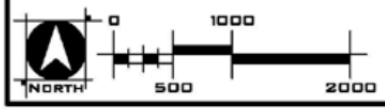
Existing Zoning



Proposed Zoning

REZONE SUMMARY TABLE

DESIGNATION		EXISTING	PROPOSED	DIFFERENCE
M-2	HEAVY INDUSTRIAL	48.8	-	-48.8
R-1A (PUD)	SINGLE UNIT OR DUPLEX DWELLING ZONE	-	46.2	+46.2
R-2A (PUD)	MULTI-UNIT DWELLING ZONE	-	1.6	+1.6
RMX (PUD)	RESIDENTIAL MIXED USE ZONE	-	1.0	+1.0
		48.8	48.8	0



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RESOLUTION NO. 2014-

Adopted by the Sacramento City Council

APPROVING THE MCKINLEY VILLAGE NEIGHBORHOOD PLANNED UNIT DEVELOPMENT (PUD) GUIDELINES AND SCHEMATIC PLAN (P08-086)

BACKGROUND

A. On March 27, 2014, the Planning and Design Commission conducted a public hearing on, and forwarded to the City Council the McKinley Village PUD Project a recommendation of approval; and

B. On April 29, 2014, the City Council conducted a public hearing, for which notice was given pursuant to Sacramento City Code section 17.812.010 (2)(b) and received and considered evidence concerning the McKinley Village PUD Project.

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

Section 1. Based on the verbal and documentary evidence received at the hearing on the McKinley Village Project, the City Council approves the McKinley Village Planned Unit Development Guidelines and Schematic Plan for the McKinley Village Project.

Section 2. The City Council approves the McKinley Village PUD Development Guidelines and Schematic Plan based on the following Findings of Fact:

1. The designation, adoption, or amendment is consistent with the applicable general plan land use designation, use, and development standards; the goals, policies, and other provisions of the general plan; and any applicable specific plan or transit village plan; and

2. The designation, adoption, or amendment promotes the public health, safety, convenience, and welfare of the city; and

3. The zoning classification of the subject parcel is consistent with the proposed designation of a planned unit development, or adoption of or amendment to the planned unit development schematic plan and development guidelines.

Section 3. The Planned Unit Development Guidelines and Schematic Plan for the McKinley Village PUD are adopted as attached hereto as Exhibit A and Exhibit B.

Section 4. Exhibits A and B are a part of this Resolution.

Table of Contents:

Exhibit A: McKinley Village PUD Guidelines
Exhibit B: McKinley Village PUD Schematic Plan

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Land Use Summary

Land Use District		General Plan / Zoning Designations	Use	Acres (N)	Units	Density (du/ac)
Residential	RD	MDR / R-1A / R-2A (PUD)	Medium Density Residential	29.9	336	11.2
Residential Mixed Use	RMX	MDR / RMX (PUD)	Recreation Center	1.0	-	-
Park/OS	P/OS	MDR / R-1A (PUD)	Parks and Open Space	5.9	-	-
Public Rights-of-Way				12.0	-	-
			Total	**48.8**	**336**	**11.2**

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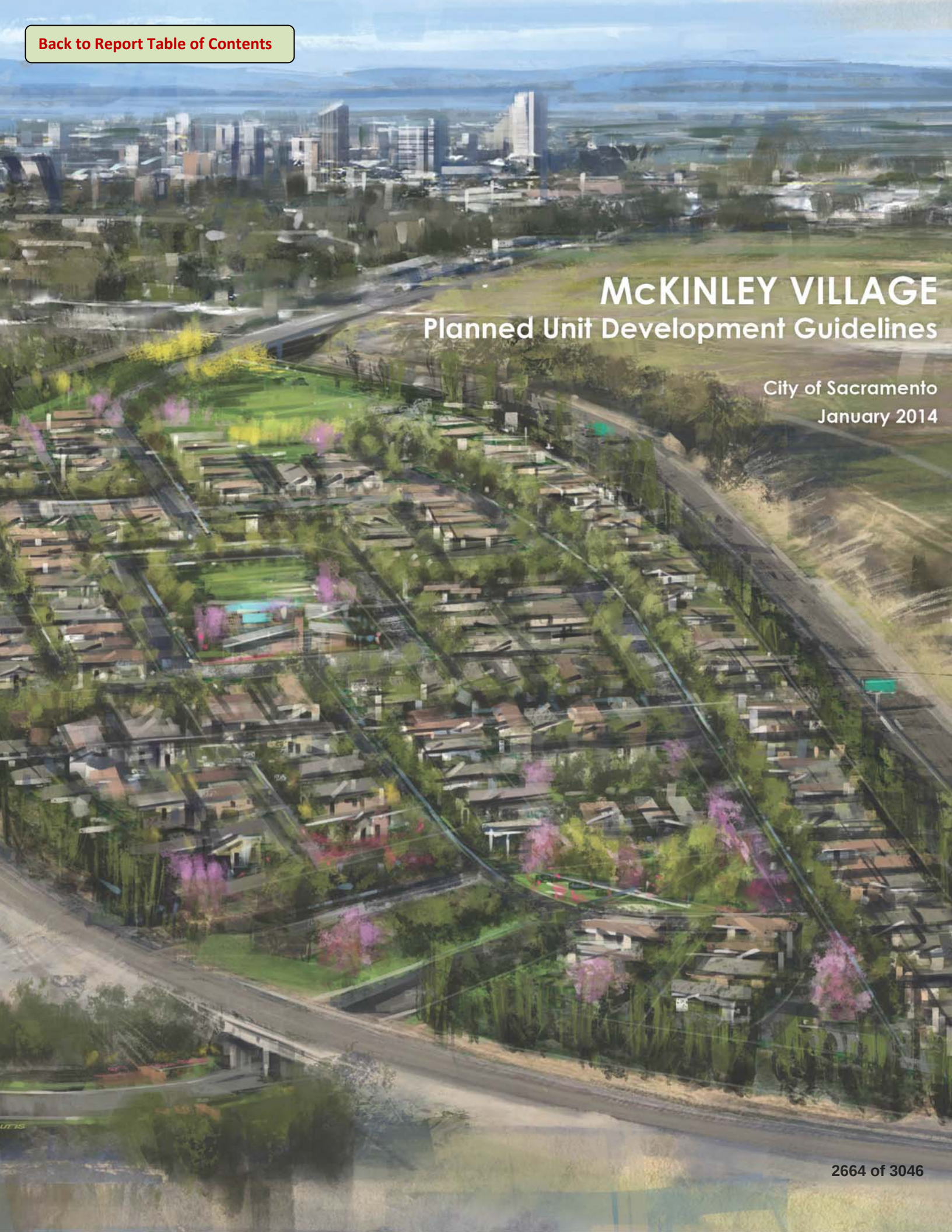

McKINLEY VILLAGE
Planned Unit Development Guidelines

City of Sacramento
January 2014

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Chapter 1 **INTRODUCTION**

1.1 Overview

The McKinley Village Project is a 21st century urban village located in the City of Sacramento and in the heart of the metropolitan region. Inspired by the adjoining East Sacramento and McKinley Park neighborhoods, the McKinley Village community includes tree-line, pedestrian- and bicycle-friendly streets and homes with attractive architecture drawn from a variety of style vernaculars.

The following document constitutes the McKinley Village Planned Unit Development (PUD). The purpose of the document is to establish development and design standards, including conditions and restrictions related to size, timing and sequence of development; ultimately providing a quality project in accordance with the City of Sacramento's 2030 General Plan. These guidelines shall be applied to all development within the project to ensure that McKinley Village develops as a cohesive community. The Guidelines, once approved, are binding on the project, and shall be implemented consistent with the provisions set forth in the City's Municipal Code.

1.1.1 PUD Organization

As a guiding document for McKinley Village, the organization of these guidelines is presented as a series of community design components that when combined create a comprehensive neighborhood design. The following chapters highlight and articulate the various community design components, establishing specific development guidelines and standards for each component. These components include:

Chapter 1 **Introduction** – Provides an overview of the neighborhood, establishes the regulatory framework, and gives a summary of the PUD organization.

Chapter 2 **Residential Uses** – Elaborates on residential uses by providing development standards and architectural guidelines. Site design standards and permitted uses are also included in this chapter.

Chapter 3 **Parks, Open Space & Recreation** – Discusses distribution, location and standards for both parks and open space features, and the Recreation Center. This includes landscaping standards, lighting and street furniture guidelines.

Chapter 4 **Transportation** – Identifies the proposed roadway network in the community and establishes guidelines for vehicular, bicycle and pedestrian circulation.

Chapter 5 **Implementation & Phasing** – Discusses project phasing, future development applications, and amendment procedures.

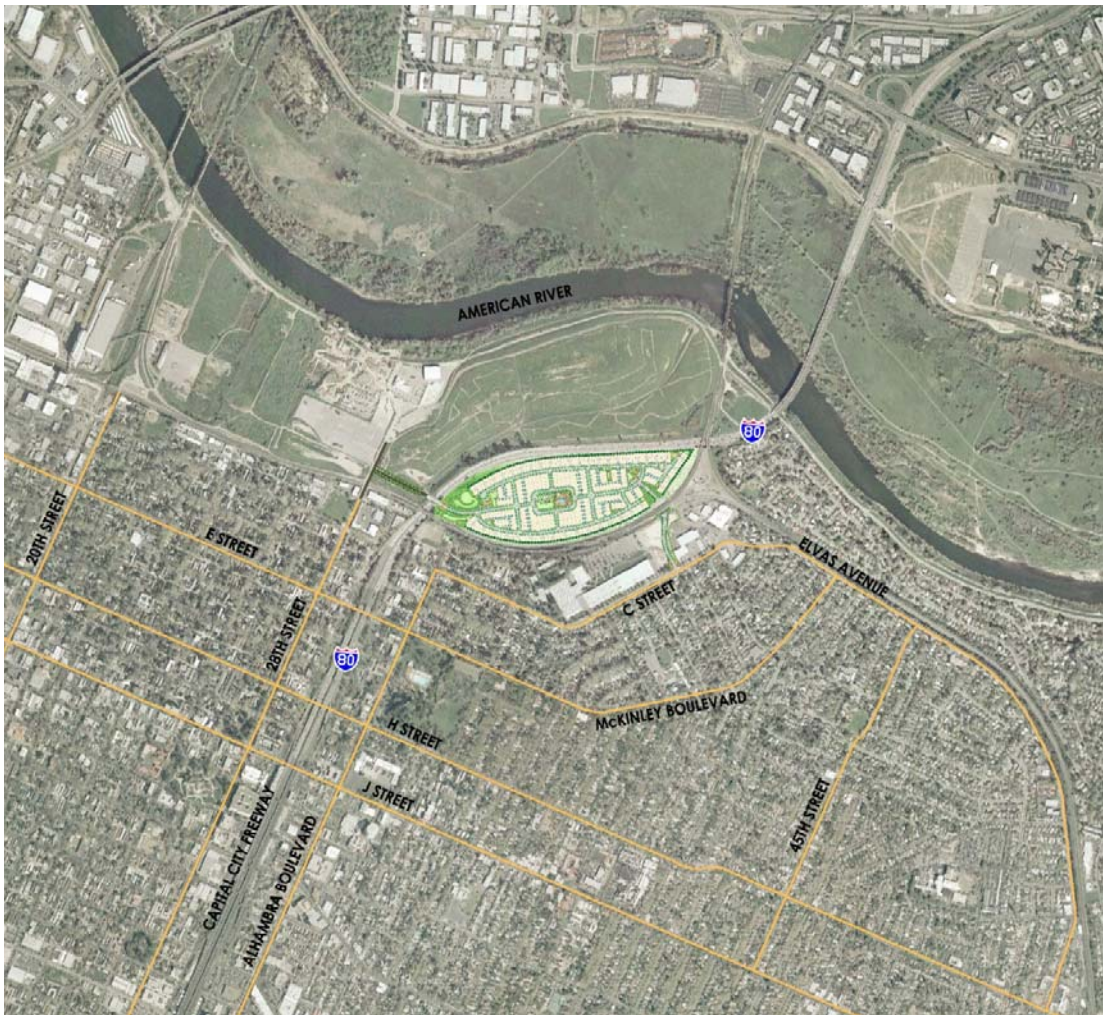
1.1.2 Context & Setting

McKinley Village (the "project") is located on a 49-acre infill site in the City of Sacramento. The project is bounded by Interstate 80 Business (Capital City Freeway) to the north and west, and by the elevated Union Pacific Railroad tracks on the south and east. The project site currently has vehicle access via a 2-lane bridge across the Capital City Freeway at the western edge of the site that connects to the downtown grid system at 28th and 'A' Streets. Additional access will be provided from the southeast at 40th Street and 'C' Street through the future construction of a railroad undercrossing, and from the southwest via a bicycle and pedestrian underpass at Alhambra Boulevard.

Surrounding land uses consist of Sutter's Landing Regional Park and the American River to the north and west across the Capital City Freeway, as well as the East Sacramento and McKinley Park neighborhoods to the south and east.

The project site currently consists of one parcel of vacant, undeveloped land. The site is currently covered in seasonal grasses and is devoid of trees. The only current structures on site are four billboard signs, which will be removed as part of the proposed project.

Figure 1
Location Map



1.1.3 Relationship to Existing Plans

The McKinley Village Planned Unit Development (PUD) is a guiding document to ensure a quality community by providing coordinated implementation and phasing for the project. The intent of these guidelines is to implement the policies of the City of Sacramento 2030 General Plan and create community-specific goals and development standards unique to McKinley Village.

The standards provided in this document are intended to supplement the City of Sacramento Zoning Ordinance. As a Planned Unit Development, the McKinley Village PUD can establish unique or more specific standards to create design flexibility in achieving project goals. Where these Guidelines are silent or unspecified, the Sacramento Zoning Code shall apply.

1.2 Community Master Plan

The McKinley Village Master Plan is a medium density infill neighborhood (Traditional Neighborhood Medium Density). Designed to be consistent with the design and character of the historic East Sacramento and McKinley Park neighborhoods, the community features tree-lined streets and a variety of architectural vernaculars that relate to the character and context of the surrounding neighborhood. The diversity of housing types and sophisticated palette of high quality architectural finishes provide a dynamic streetscape. The mix of single-family and multi-family housing types encourages a diverse community, allowing for a range of housing opportunities and lifestyle options within the neighborhood. In order to establish McKinley Village with a unique sense of place, a centrally located park with an adjoining recreation center will unify the community, becoming the focal point of the neighborhood. The design of the neighborhood will provide a variety of architecture, grid of walkable streets, pedestrian and bicycle connections, and a network of parks and open spaces.

As a 21st century neighborhood within the City of Sacramento, walkability, connectivity, and sustainability are paramount to McKinley Village. Located near Downtown Sacramento and Midtown—within the East Sacramento neighborhood—McKinley Village is in close proximity to local retail establishments, schools, and employment centers. Bicycle and pedestrian connections are provided between the site and 'A' Street over the Capital City Freeway, through a tunnel under the Union Pacific Railroad tracks to Alhambra Boulevard, and an underpass linking 40th Street to C Street. Pedestrian sidewalks and on-street bikeways are provided throughout the community, providing alternative transportation options.

1.2.1 Vision & Objectives

The Project will be based on proven Smart Growth principles adopted by the City of Sacramento and embodied in the Sacramento Area Council of Government's (SACOG) Sustainable Communities Strategy and Blueprint Plan. These principles promote a balanced development to serve the economy, the community, and the environment. Smart Growth calls for redevelopment of existing parts of the City, including infill development to better utilize available land. Other Smart Growth principles relevant to the project include creating a distinctive, attractive community with a strong sense of place; creating walkable, close-knit neighborhoods with excellent bicycle access; and fostering citizen and stakeholder participation in development decisions.

The overarching goal of the McKinley Village project is the orderly and systematic development of an integrated, sustainable residential community that is consistent with the goals and policies of the City of Sacramento 2030 General Plan and the SACOG Blueprint Plan. To that end, the following objectives are proposed for the project:

- Create a residential development that incorporates the aesthetic qualities of the surrounding East Sacramento and McKinley Park neighborhoods;
- Promote aesthetically pleasing structures, while enhancing the City's supply of high quality housing that provides a range of opportunities to the City's diverse population;
- Place residential uses near existing jobs and services to reduce vehicle miles travelled;
- Stimulate alternative transportation use;
- Make efficient use of an opportunity for infill development, with a density between those of McKinley Park and Midtown;
- Utilize sustainable design and low impact development concepts;
- Create a pedestrian-friendly development that promotes bicycle use and provides excellent bicycle access to downtown and other surrounding neighborhoods;
- Provide convenient access to surrounding amenities like the Sutter's Landing Park and McKinley Park, the American River Parkway, and downtown Sacramento;
- Incorporate parks and open space into the project design in a manner that provides community connectivity; and
- Provide adequate access points for vehicular traffic.

1.2.2 The Plan

The McKinley Village project proposes a variety of housing choices in close proximity to employment and services, near Sacramento's urban core. The development includes approximately 336 residential units, including rear-loaded units, side-loaded courtyard units, recessed garage and garage back homes, with accessory dwelling units or "granny flats" offered as an option on rear-loaded, and recessed garage and garage back product types. The development also includes multi-family condominium units. A Recreation Center is provided central to the project. Three parks, multiple common open spaces, and a network of sidewalks create a walkable neighborhood with a strong sense of place. The PUD Schematic Plan depicts the arrangement of uses (Figure 2), and Table 1 summarizes the land uses and calculates the proposed densities.

Figure 2
PUD Schematic Plan

Table 1
Land Use Summary

Land Use District		General Plan / Zoning Designations	Use	Acres (N)	Units	Density (du/ac)
Residential	RD	MDR / R-1A / R-2A (PUD)	Medium Density Residential	29.9	336	11.2
Residential Mixed Use	RMX	MDR / RMX (PUD)	Recreation Center	1.0	-	-
Park/OS	P/OS	MDR / R-1A (PUD)	Parks and Open Space	5.9	-	-
Public Rights-of-Way				12.0	-	-
			Total	**48.8**	**336**	**11.2**

1.3 Design Review

These Guidelines implement the goals and policies of the City of Sacramento General Plan while creating specific community goals and development standards unique to this project. The City of Sacramento will use the standards established in these guidelines to review subsequent development proposals within the McKinley Village community. Following approval of these guidelines, all development, including tentative and final maps, land use activity and maintenance plans must comply with the McKinley Village PUD Guidelines.

Chapter 2 **RESIDENTIAL USES**

2.1 Residential District (RD)

The McKinley Village neighborhood promotes a variety of medium density residential housing options. The Residential District is comprised of multiple single-family dwelling unit types, including rear-loaded units, side-loaded courtyard units, and recessed garage and garage back configurations. The district also includes multi-family condominium units. The City of Sacramento General Plan allows for a density range of 8 to 21 dwelling units per acre in "Traditional Neighborhood Medium Density" areas. Consistent with the General Plan, the RD District established herein has a density range of 8 to 21 dwelling units per acre.

The Residential District will be developed in accordance with the R-1A (PUD) and R-2A (PUD) Zoning Standards, and these PUD Guidelines. The Residential District allows for some non-residential uses, namely park and open space uses, consistent with the City of Sacramento Zoning Code.

The purpose of the guidelines and standards for the Residential District is to ensure a complete, cohesive, and high quality community by establishing consistent design principles amongst a variety of housing types. The guidelines that follow provide clear standards for the development of a well-designed project: housing type compatibility with adjacent uses, contribution to the character of the streetscape, and an energetic community that encourages alternative modes of transportation. This section provides design standards and criteria intended to encourage innovative neighborhood solutions that enhance connectivity, creating a unified community that is an asset to the surrounding historical neighborhood. (Figure 3)

Figure 3
Residential Perspective Street Scene

These guidelines and standards address the following issues:

- Development Standards
- Architectural Guidelines
- Site Design
- Permitted Uses

2.2 Development Standards

The McKinley Village community proposes three single-family housing types and multi-family condominiums. The diversity of housing types located within the neighborhood emulates the surrounding historic neighborhood and will attract a diverse community of future residents.

The location and juxtaposition of homes is paramount to attaining the vision for the community. Development and dimensional standards are a significant part of creating an aesthetically pleasing streetscape, determining the proper functioning of the home on the lot and the relationship between homes and the surrounding environment. To follow are standards for single-family and multi-family residential housing types.

2.2.1 Rear-Loaded Homes

The Rear-Loaded housing type is envisioned to be located on the east and west ends of the community, at both project entries. Given the garage located on the alley and a front entry that faces the street, this building type is designed to create an inviting streetscape at the project entries. Private usable open space is provided by interior patio courtyards.

Figure 4 depicts the streetscape view of the Rear-Loaded Homes. Figure 7 depicts a typical Rear-Loaded lot layout. Dimensional and density standards are provided in Table 2.

Figure 4
Rear-Loaded Home Rendering

2.2.2 Recessed Garage and Garage Back Homes

The Recessed Garage and Garage Back Homes are conventional single-family homes. These housing types encircle the central park, the focal point of the neighborhood. These homes can have a motor court arrangement with garages located at the rear of the lot. They may also have a more traditional garage which faces the street, but is recessed, with the living space and front porch located at the front of the house. A private yard is provided at the rear of each lot.

Figure 5 depicts the streetscape view of the Recessed Garage and Garage Back Homes. Figure 8 depicts a typical Recessed Garage or Garage Back lot layout. Dimensional and density standards are provided in Table 2.

Figure 5
Recessed Garage and Garage Back Home Rendering

2.2.3 Side-Loaded Courtyard Homes

The two Side-Loaded Courtyard housing types are designed as a cluster of four single-family homes accessed by a common driveway. Designed to define the northern and southern boundaries of the development, these housing types offer private usable open space through interior courtyards, rear-facing patios and/or backyards.

Figure 6 depicts the streetscape view of the Side-Loaded Courtyard Homes. Figure 9 depicts a typical Side-Loaded Courtyard Home cluster layout. Dimensional and density standards are provided in Table 2.

Figure 6
Side-Loaded Courtyard Home Rendering

2.2.4 Multi-Family Condominium Units

The Multi-Family Condominiums are an attached housing type consisting of four to twelve dwelling units located within a single building. Located at the corners of the central park, this housing type is envisioned to create a higher density urban living option within close proximity to the public park and recreation center, and a single-floor living arrangement to accommodate seniors and aging-in-place opportunities. To capitalize on the urban lifestyle and the Condominium's location in relation to the park, roof decks on second story units are permitted. Condominium units are designed as a rear-loaded product with garage access from the private alley located at the rear of homes.

Figure 7 depicts the streetscape view of the Multi-Family Condominium Units. Figure 11 depicts a typical Multi-Family Condominium layout. Dimensional and density standards are provided in Table 2.

Figure 7
Multi-Family Condominium Rendering

Figure 8
Rear-Loaded Lot Typical

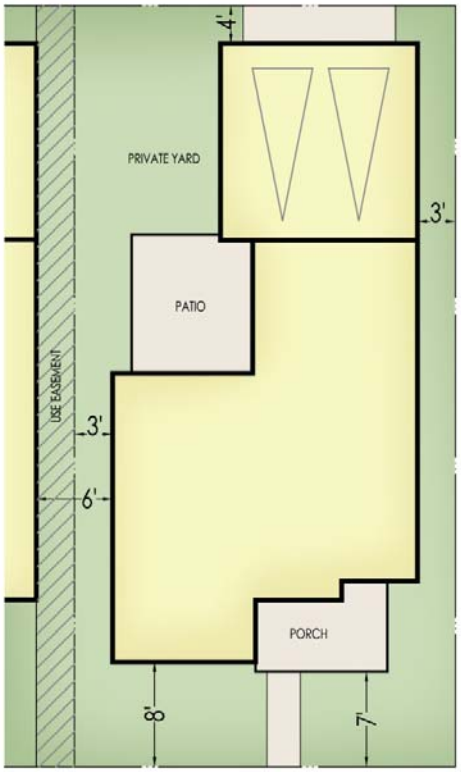


Figure 9
Recessed Garage & Garage Back Lot Typical

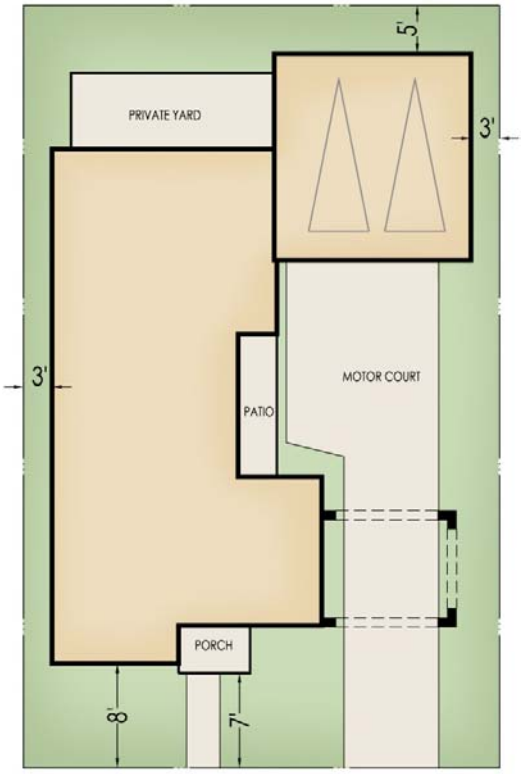


Figure 10
Side-Loaded Courtyard Lot Typical

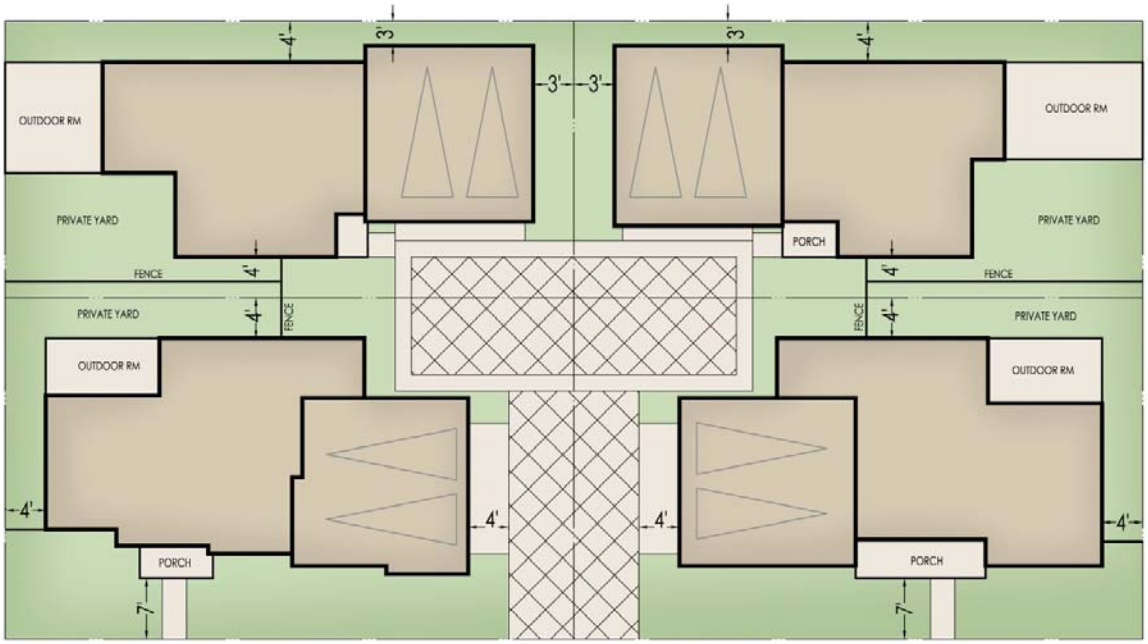


Figure 11
Multi-Family Condominium Lot Typical

Table 2
Residential Dimensional Standards

	Rear-Loaded	Recessed Garage & Garage Back	Side-Loaded Courtyards	Multi-Family Condominium
Density	8 - 21 du/ac.			
Minimum Lot Area (Square Feet)	2,500	3,000	2,000	2,500
Maximum Lot Coverage [1]	70%	70%	70%	70%
Minimum Lot Width (Feet)	NONE	NONE	NONE	NONE
Minimum Lot Depth (Feet)	NONE	NONE	NONE	NONE
Minimum Lot Frontage along Public Streets (Feet)	N/A	20	N/A	N/A
Front Setbacks - From Public Street (Feet) [3]				
To living area	8	8	7	10
To porch or entry	7	7	7	10
To garage	N/A	18	8 [2]	N/A
Front Setbacks - From Private Drive (Feet) [3]				
To living area	N/A	N/A	1	N/A
To covered porch or entry	N/A	N/A	0	N/A
To garage	N/A	N/A	4	N/A
To second story living area	N/A	N/A	1	N/A
Side Setbacks (Feet) [3 4]				
Interior lots	3	3	3	5
To public street	5	5	5	10
To open space	3	3	3	N/A
Zero lot line	5 / 0	5 / 0	5 / 0	5 / 0
Rear Setbacks (Feet) [3]				
To living area	3	5	4	3
To recessed garage	N/A	5	3	N/A
To detached garage	N/A	0	N/A	N/A
To garage from alley	4	N/A	N/A	4
Maximum Building Height	35	35	35	45 [5]
Minimum Distance between Buildings	6	6	6	6
Parking Standards (off-street) Dimensions	AS DEFINED IN THE SACRAMENTO DEVELOPMENT CODE			
Spaces required per unit	1, covered			

[1] Coverage Exceptions:

- An additional 100 square feet of accessory structure(s) may be built on the lot. -

[2] Side-facing garage does not front onto public street.

[3] Projections, including roof overhangs, fire places, bay windows, media nooks, and architectural details, may encroach up to 2.5' into front, side, and rear setbacks, as long as there is consistency with the Building Code.

[4] Reciprocal use easements are permitted within side setbacks. Structures may be placed within reciprocal use easements as long as they meet applicable building and fire code.

[5] Roof decks with railing and low parapet walls are permitted as long as they do not exceed the maximum building height. Roof decks, if proposed, are required to be reviewed and approved through staff level site plan and design review process.

2.2.4 Densities

As detailed plans are prepared and final subdivision maps are submitted, the actual number of units may vary from what is currently shown on the Land Use Plan. In order to maintain housing type diversity and promote dynamic architecture throughout the project, densities and lot sizes may vary within substantial conformance for each village within McKinley Village. Provided the overall McKinley Village PUD unit count is not exceeded, lot densities within the residential village may vary up to ten (10) percent above or below the approved number of units without obtaining a re-zone or amending these PUD Guidelines. A revised tentative map may be required.

2.3 Architectural Guidelines

The architectural vision for the McKinley Village community is inspired by the character and vernacular architecture found in the surrounding East Sacramento and McKinley Park neighborhoods, but also represents the next generation in distinctive design. To achieve that objective, the community proposes a variety of architectural styles and general guidelines that encourage variation in building forms and flexibility of design solutions.

2.3.1 Guidelines

The architectural guidelines are crafted to create an intimate neighborhood with a strong sense of place, and a pedestrian-oriented streetscape. The following guidelines are provided to create a framework within which developers, builders and designers can have flexibility to create unique homes.

a. Form & Orientation
   - Variable building and garage orientations are encouraged along the streets to create visual diversity and interesting streetscapes. The same house plan, or closely similar elevation, may not be placed on two adjacent or consecutive lots.
   - Use of roof overhangs, porches, balconies, trellises, patios, and low walls are encouraged to add interest to the streetscape.

b. Elevations & Projections
   - All visible elevations shall be made interesting by means of articulation of facades, varied roof lines, window placement and shape, and variety in exterior colors, finishes, and detailing.
   - Enhanced side and rear elevations shall be required whenever those elevations face a public or private street, park, or other public space.
   - Roof lines may be made interesting by use of gables, hips, dormers, and roof planes that create variations in planes.
   - Roof pitch, elevation styles, and materials should be consistent with the architectural style of the building.

c. Materials
   - Use of high quality materials such as stucco, brick, stone, and wood is encouraged.
   - Accent materials may include stone veneer, painted wood trim, and shutters.
   - Roofing material shall be consistent with the architectural style of the building.

d. Colors
   - Color selection should match the overall neighborhood design theme palette, and be consistent with the building's architectural style.
   - Buildings should be painted with a variety of color palettes to provide diversity, visual interest and to make each individual building distinct.

e. Garages
   - Variety in garage configuration is encouraged to avoid a garage-dominant streetscape.
   - Garage configurations may include attached, detached, alley-accessed, recessed, and side-loaded.

f. Trash Storage
   - All trash, recycling, and green waste containers shall be screened from view of public streets.

2.3.2 Styles

Inspired by the architecture of the surrounding neighborhoods of McKinley Park and East Sacramento, the homes of McKinley Village represent the next generation of distinctive design. An array of architectural styles, blending historic and current designs will be carefully positioned throughout the site. To further develop a dynamic and active streetscape, an evolutionary architectural process will be implemented. The McKinley Village community proposes four building types and twelve distinct architectural themes. This will result in a diverse neighborhood, comprised of a multitude of unique combinations.

The illustrations, photos, and graphics shown within this section are not meant to be prescriptive. Rather, they are meant to demonstrate typical examples of the variety of footprints, elevations, and design elements possible while indicating minimum architectural design characteristics, ultimately capturing the character envisioned for the neighborhood. Alternative architectural styles are subject to additional review and approval.

a. California Cottage

Drawing from California's rich architectural history, the California Cottage combines components of the historic cottages interlaced within the surrounding neighborhoods. With clean forms and lines, a distinctly modern interpretation of the cottage vernacular will be created for the community. An appropriate mix of the following elements shall apply to California Cottage homes within McKinley Village:

- Flat tile or composition roofing material
- Gable roof forms
- Stucco exterior
- Horizontal siding detail
- Wood railing and posts
- Decorative shutters

Figure 12

California Cottage Representative Photo

b. Colonial

Reflecting the historic character of existing the nearby neighborhoods, McKinley Village's Colonial maintains detailing typically found within the vernacular style. An appropriate mix of the following elements shall apply to Colonial homes within McKinley Village:

- Gable roof
- Flat tile or composition roofing material
- Stucco exterior
- Horizontal siding detail
- Classically-inspired entry portico
- Decorative shutters
- Stone or Brick accents

Figure 13

Colonial Representative Photo

c. Craftsman

Reflecting the character of existing nearby neighborhoods, McKinley Village's Craftsman draws upon the architectural details typically found within the style vernacular. The design will be updated through clean lines and simplified forms, resulting in a distinctly new aesthetic for the community. An appropriate mix of the following elements shall apply to Craftsman homes within McKinley Village:

- Low pitched gable roof
- Flat tile or composition roofing material
- Stucco exterior
- Horizontal siding detail
- Classically-inspired entry portico
- Decorative shutters
- Stone or Brick accents

Figure 14

Craftsman Representative Photo

d. English Revival

Representative of a quintessentially English vernacular, McKinley Village's English Revival draws upon architectural detailing typically characteristic of the style. An appropriate mix of the following elements shall apply to English Revival homes within McKinley Village:

- Flat tile or composition roofing material
- Steep gable roof forms
- Metal roof elements
- Exposed rafter tails
- Stucco exterior
- Arched forms
- Half-timber detail
- Precast elements
- Brick accents

Figure 15

English Revival Representative Photo

e. European Cottage

Inspired by a blend of European architectural styles, and the character of the surrounding neighborhoods, the European Cottage provides an historic sense of charm to the McKinley Village development. An appropriate mix of the following elements shall apply to European Cottage homes within McKinley Village:

- Flat tile or composition roofing material
- Steep roof pitches
- Tight rakes
- Stucco exterior
- Decorative shutters
- Gable end siding detail
- Arched forms
- Brick accents

Figure 16

European Cottage Representative Photo

f. French Country

Influenced by the surrounding neighborhood context, but drawing specifically from the French vernacular and its essential components, McKinley Village's French Country is composed of carefully articulated massing and forms, resulting in a beautifully executed aesthetic for the community. An appropriate mix of the following elements shall apply to French Country homes within McKinley Village:

- Flat tile or composition roofing material
- Metal roof accents
- Tight rakes
- Stucco exterior
- Decorative shutters
- Gable end detail
- Arched forms
- Stone or Brick accents

Figure 17

French Country Representative Photo

g. Italian

Drawing from the richness of Italian architecture, McKinley Village's Italian homes reflect the quintessential aspects characteristic of the style, while relying on the use of simplified forms and an artfully selected material palette. The end result offers a refined Italian aesthetic for the project. An appropriate mix of the following elements shall apply to Italian homes within McKinley Village:

- S-tile roof
- Hip roof forms
- Built up eaves
- Stucco exterior
- Ornamental column detail
- Wrought iron accents and detailing
- Arched forms at entry and windows

Figure 18

Italian Representative Photo

h. Mid Century Modern

Recalling the tradition of Mid Century residential architecture, McKinley Village will incorporate a sampling of this vernacular. Infused with clean lines and a modern feel, the Mid Century elevation combines a variety of materials, offering a different massing and overall aesthetic than European inspired facades. An appropriate mix of the following elements shall apply to the Mid Century Modern homes within McKinley Village:

- Flat tile or composition roofing material
- Low sloped gable roof forms
- A mixture of stucco, siding, and stone or brick materials
- Horizontal dominance with vertical accents
- Minimal ornamentation

Figure 19

Mid Century Modern Representative Photo

i. Modern Prairie

Revitalizing the Prairie architecture found within the surrounding neighborhoods, McKinley Village's Modern Prairie is a composition of well-purposed massing, simplified forms, and a fresh material palette, adding to the historic and progressive array of architectural styles for the community. An appropriate mix of the following elements shall apply to Modern Prairie homes within McKinley Village:

- Flat tile or composition roofing material
- 4:12 roof pitch
- Hip roof
- Stucco exterior
- Horizontal detailing and massing
- Horizontal siding accents
- Stone or Brick accents

Figure 20

Modern Prairie Representative Photo

j. Monterey

Drawing from the historical context of the surrounding architecture, McKinley Village's Monterey offers an artfully composed and updated version of this uniquely Californian style. Comprised of the components typically true of the vernacular, the project's Monterey is made distinct through the juxtaposition of a traditional material palette and simplified, updated forms. An appropriate mix of the following elements shall apply to Monterey homes within McKinley Village:

- Flat tile, s-tile or composition roofing material
- Gable roof forms
- Stucco exterior
- Horizontal siding or Board and Batten accents
- Balcony at upper floor
- Stone or Brick accents
- Decorative shutters

Figure 21

Monterey Representative Photo

k. Spanish

Innately Californian and representative of architecture found within the surrounding neighborhoods, McKinley Village's Spanish is a reflection of the quintessential characteristics of the style. While updated through the use of simplified forms and massing, the style pays homage to its rich architectural heritage and grounds the community within the context of its location. An appropriate mix of the following elements shall apply to Spanish homes within McKinley Village:

- S-tile roof
- Gable roof forms
- Stucco exterior
- Arched forms
- Wrought iron details

Figure 22

Spanish Representative Photo

I. Urban Farmhouse

A modern take on the quintessential farmhouse, the Urban Farmhouse seamlessly blends the new and the old. Drawing from a rich material palette, the style provides all the warmth and character innately found within the vernacular while modifying its rustic roots through precise lines and forms, resulting in a more versatile, fresh aesthetic. An appropriate mix of the following elements shall apply to Urban Farmhouse homes within McKinley Village:

- Flat tile or composition roofing material
- Gable roof forms
- Metal roof element over porch
- Stucco exterior
- Board and Batten accents
- Dormer elements
- Porch element
- Stone or Brick accents

Figure 23

Urban Farmhouse Representative Photo

m. Urban Contemporary (Multi-Family Condominium)

Drawing on modern materials, such as brick, the urban contemporary style links the past with the present. Geometric elements combined with expanses of large glazing provide a strong anchor to the central park. This style is envisioned for the multi-family condominium units around the park. Horizontal canopies and trellises accent the vertical forms that are carefully composed to create this style. An appropriate mix of the following elements shall apply to Urban Contemporary homes within McKinley Village:

- Parapet roof lines
- Brick elements
- Horizontal shading canopies
- Stucco elements
- Vertical emphasis

Figure 24

Urban Contemporary Representative Photo

2.4 Site Design

2.4.1 Parking

Private parking is provided on each residential lot at a minimum of one covered space per unit. The minimum dimensions for a private garage is 10-ft by 20-ft. Driveway lengths vary depending on unit type and shall be consistent with Table 2, Dimensional Standards.

Public and guest parking is provided by on-street, parallel parking consistent with the City of Sacramento standard residential street section.

2.4.2 Landscaping

On individual single-family lots, the builder shall provide front yard landscaping and irrigation. Front yard landscaping should, to the extent consistent with and not in conflict with street trees, consist of at least one deciduous tree a minimum of 15-gallons in size.

Chapter 3 **PARKS, OPEN SPACE & RECREATION**

3.1 Overview

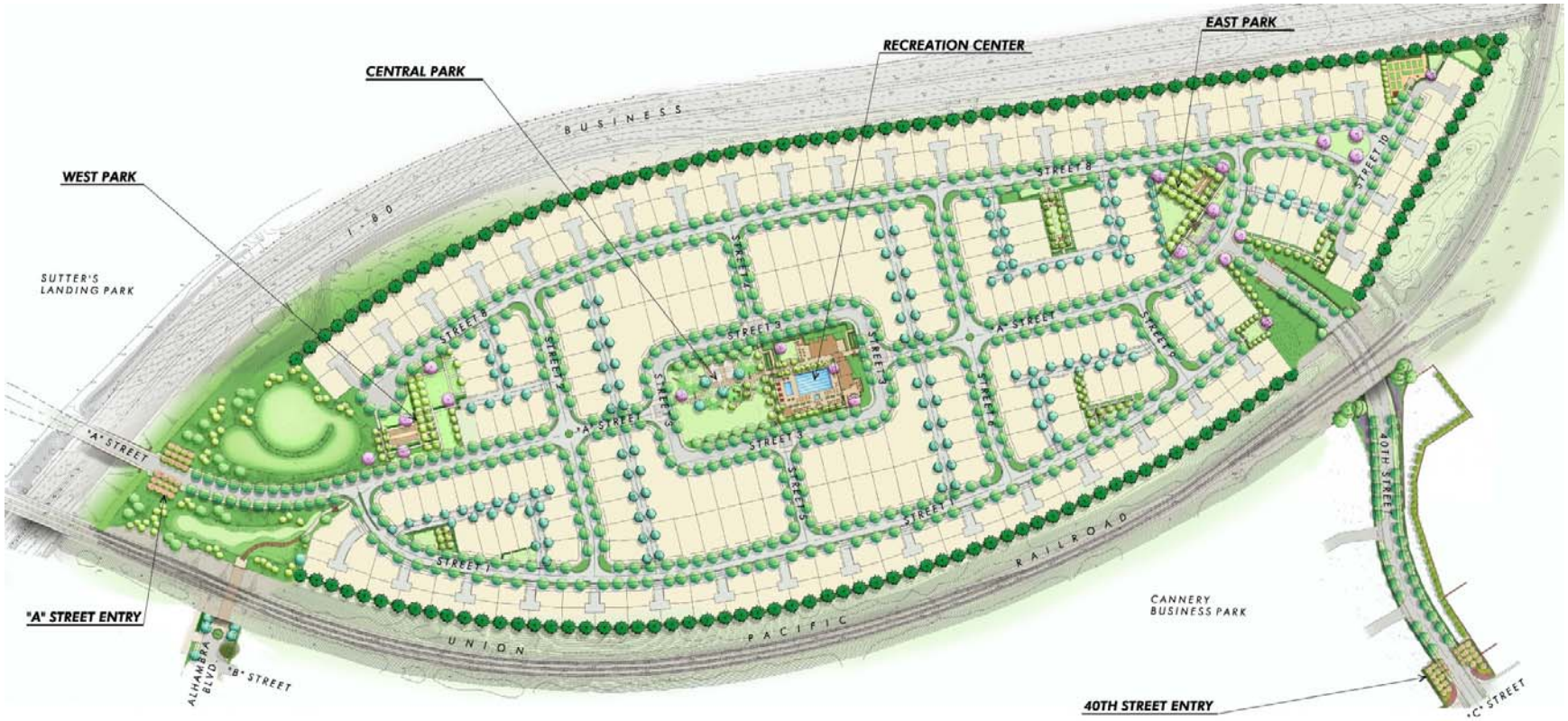
The McKinley Village community provides a diversity of parks and open space areas. The system of parks and open space are intended to create a variety of recreational opportunities, through both active and passive spaces, to cater to a wide range of users. This system will create a cohesive outdoor environment that complements the surrounding neighborhood form, playing an integral role in shaping the community as a whole. The amenities provided in the park, open space and recreation district will enhance the educational, recreational, and cultural life of McKinley Village and promote interaction within the community and the adjacent East Sacramento and McKinley Park neighborhoods.

Envisioned with a diversity of park types, sizes and facilities, the McKinley Village Landscape Illustrative Plan illustrates the location and dispersion of various types of parks and open space which comprise the system. (Figure 25) Five park and open space elements define this system:

- A 1-acre centrally located neighborhood park with an adjoining 1-acre recreation center complex, featuring a variety of indoor and outdoor amenities for the community;
- Two smaller neighborhood parks, at the eastern and western ends of the site, located at the two project entries;
- A system of open space areas, including pocket parks, common greens, and detention basins, to create gathering and respite areas throughout the community;
- A network of sidewalks and on-street, shared bicycle lanes that provide connection throughout the community and to the surrounding neighborhoods; and
- A pedestrian and bicycle undercrossing that provides connection to the McKinley Park neighborhood and which connects the McKinley Park neighborhood with McKinley Village, Sutter's Landing Park, and the American River Parkway.

The parks and open space system will greatly enhance the visual nature, quality of life, housing desirability, and the overall community image. To follow are standards and guidelines for each of the park, open space and recreation features.

Figure 25
Landscape Illustrative Plan



3.2 Parks

There are three neighborhood parks within the McKinley Village community: one located centrally, and two smaller parks located near the two project entries. The parks' designs will be determined through a public master planning process. Parks are intended for use of all residents within the neighborhood and the community at large. The parks system should generally connect to the pedestrian and bicycle circulation network, providing easy access to and from the park from all areas within the neighborhood.

Development within McKinley Village is subject to the City's parkland requirements as identified in the General Plan and the City's Parks and Recreation Master Plan. Although total park acreage at final build-out may vary, the project currently provides 2.2 acres of parkland within the central, east, and west parks.

3.2.1 Central Park

The Central Park provides recreational opportunities for McKinley Village and the surrounding East Sacramento and McKinley Park neighborhoods. Located in the heart of the McKinley Village community, the Central Park is the primary organizing and focal element of the neighborhood. Designed to provide both passive and active recreational activities, the Park will incorporate a children's play area, sitting/picnicking areas, walking paths, and an expansive lawn area. A private recreation center is located at the eastern end of this park facility. More information regarding the recreation center is provided in Section 3.4.

The design of the Central Park shall be consistent with the following standards and guidelines:

- Provide a diversity of active and passive recreation areas dispersed throughout the Central Park. Facilities may include such items as sports courts, sitting areas, plazas and other gathering areas, play areas, garden areas, trails and walkways, or other similar uses, depending on the need and space available within the Central Park;
- To provide focus and strong view corridors, parks should be located centrally and next to public streets for access and visibility;
- Residential neighborhoods should avoid backing onto parks and should instead orient living spaces toward the park;
- Pedestrian and bicycle linkages should connect parks to the surrounding neighborhood and to other parks and open spaces;
- On-street parking should be provided on adjacent streets;
- Refer to the plant palette in Section 3.5 for acceptable trees, shrubs and groundcover; and
- Refer to Section 3.6 for lighting and furniture standards.

3.2.2 East and West Parks

Two additional Neighborhood Parks are located in the McKinley Village community, and are envisioned to provide social gathering and respite areas in close proximity to homes. These smaller parks provide for the relaxation and recreational needs of the community and may also include more active recreational facilities such as bocce ball courts or horseshoe pits. Neighborhood Parks provide for the aesthetic needs at the two project entries, creating inviting and engaging landscape features that welcome residents and visitors to the community.

The design of each Neighborhood Park shall be consistent with the following standards and guidelines:

- Provide a range of facilities, including but not limited to, bocce ball court, horseshoe pit, sitting areas, picnic areas, plazas and other gathering areas, game and event lawn, gazebo and other garden features;
- Landscape structures, such as gazebos, arbors and tree bosques are encouraged to create focus at project entries;
- Residential homes should front onto and orient active living spaces toward the park;
- Pedestrian and bicycle linkages should connect parks to the surrounding neighborhood, the recreation center and other open spaces;
- Refer to the plant palette in Section 3.5 for acceptable trees, shrubs and groundcover; and
- Refer to Section 3.6 for lighting and furniture standards.

3.3 Open Space

The open space network provides continuity and a consistent backdrop to the amenities, features and built environment of the community. Common open space areas are distributed throughout the site and include landscaped buffers, detention facilities, and pocket parks throughout the neighborhood.

The design of these various open space features shall be consistent with the following standards and guidelines:

- All landscape areas should be designed and landscaped consistent with park standards (contained herein) as to create a cohesive outdoor environment throughout the community;
- Provide landscape buffers adjacent to Capital City Freeway and Union Pacific Railroad. Rows of evergreen plant material shall be used to diminish adverse views;
- Detention facilities, located along the western project boundary, should be attractively landscaped and maintained as an amenity to the community. Walking trails should be provided around these facilities, where feasible;
- Where feasible, residential homes should front toward adjacent landscaped lots;
- Pedestrian and bicycle linkages should connect open spaces to surrounding parks and neighborhoods;
- Refer to the plant palette in Section 3.5 for acceptable trees, shrubs and groundcover; and
- Refer to Section 3.6 for lighting and furniture standards.

3.4 Recreation Center

The Recreation Center, located adjacent to the Central Park, is the true heart of the McKinley Village neighborhood, acting as a place to gather, socialize, and play. Establishing the identity for the McKinley Village community, the Recreation Center will act as the primary landmark in the neighborhood and should be designed to express its civic role in scale, form and architectural character. The Recreation Center provides essential lifestyle amenities within walking and biking distance of homes. (Figure 26)

Figure 26
Recreation Center & Pool Perspective

3.4.1 Guidelines

The architectural guidelines are crafted to create a dynamic complex of indoor and outdoor uses that exemplifies the identity of the community and creates a strong sense of place within the McKinley Village neighborhood. The following guidelines are provided to create a framework within which developers, builders and designers can have flexibility to create a landmark Recreation Center.

a. Siting & Orientation
   - Building should be oriented to maintain close proximity to adjacent streets with primary entries oriented toward the public right-of-way;
   - Building should be sited to attract users;
   - Entrances should be designed to accommodate safe pedestrian travel and ADA access;
   - Orient building to relate to the adjacent outdoor uses, including dining, event, and patio spaces, and other amenities such that a campus of interrelated indoor and outdoor uses is created;
   - Between adjacent structures or site features, create spaces with gathering areas, plantings, bicycle parking, or other amenities; and
   - Shade structures are encouraged throughout the complex to create a livable outdoor environment.

b. Form & Massing
   - Building and surrounding complex should be compact to concentrate activities and relate programmatic uses;
   - Building height and massing should consider the surrounding context;
   - Building should consider the human scale, especially at the ground floor and at building entries;
   - Building should take on varying forms to increase visual interest and break up the monotony of large structures; and
   - Loading and delivery areas, as well as HVAC systems, should be located appropriately to minimize their visibility, mitigate any potential circulation, noise, and light conflicts, and should be screened with landscaping, fences or walls.

c. Elevations & Projections
   - All visible elevations shall be made interesting by means of articulation of facades, varied roof lines, window placement and shape, and variety in exterior colors, finishes, and detailing;
   - Enhanced side and rear elevations shall be required whenever those elevations face a public or private street, park, or other public space;
   - Horizontal and vertical wall articulation should be encouraged through the use of wall and, if applicable, second floor offsets, recessed entries and windows, human-scale awnings, overhangs and arcades; and
   - All building elevations should include varied architectural patterns that include at least two of the following elements: color change, texture change, material change, and/or wall offset, reveal or projection.

d. Materials & Colors
   - Use of high quality materials such as stucco, brick, stone, and wood is encouraged;
   - Exterior materials should be durable and high quality to prevent degradation and for the ease of maintenance; and
   - Roofing material should be consistent with the architectural style of the building.

e. Windows, Doors & Details
   - Ground floor, storefront-type glazing should be used as appropriate to enhance the exterior wall area;
   - Folding and sliding doors/ glazing that can open to the outdoors is encouraged to blend the interior and exterior spaces;
   - Windows and/or other appropriate building features should be used on upper levels to break up large wall areas and create visual interest;
   - Window and door openings should be framed with trim, or recessed a minimum of 4 inches from the building face;
   - Operable windows for maximum environmental control and passive heating/cooling is encouraged;

f. Trash Storage
   - Trash and outdoor storage facilities should be placed away from public streets and/or screened from view with materials consistent to adjacent building exteriors or other mature plantings;
   - Trash enclosures should be designed to complement associated building within the complex it serves, using materials, colors, and details; and
   - Trash and outdoor storage facilities are encouraged to include a covered roof and sewer drain.

3.4.2 Permitted Uses

The Recreation Center and surrounding complex, offers a diverse mix of both active and passive uses. Zoned Residential Mixed-Use (RMX), the Recreation Center allows for greater flexibility of uses, including potential retail uses such as a café, restaurant, or shop. The following list gives an idea of the types of uses anticipated within the Recreation Center, consistent with Title 17, Division II, Chapter 17.212 of the City of Sacramento Zoning Code:

- Assembly
- Restaurant, Retail, Athletic Club, Library, or Commercial Service
- Secondary Uses, including kitchen, storage and utility rooms, and restrooms.
- Outdoor dining and event space, including outdoor barbeque.
- Outdoor recreational uses, including lap pool, children's wading pool, and spa.

3.5 Landscaping Standards

The intent of the landscape design within each district is to provide continuity throughout the community. Landscaping guidelines specify standards for streetscapes and public spaces. Through the use of deciduous and evergreen plant material, year round interest will be given to the site with an evenly layered plant design. This layered plant design helps to frame views and highlight special features, and can also screen or diminish adverse views and utilities.

The streetscape within the McKinley Village community is unified through a consistent palette of ground cover, shrubs, and street trees. The street trees create a canopy along all public streets to increase the aesthetics of the neighborhood while providing shade, a walkable environment, and emulating the established East Sacramento and McKinley Park neighborhoods. All street trees should be a minimum of 15 gallons in size at the time of planting, and centered in the parkway strip or behind the sidewalk in a few locations where there is an attached sidewalk. A mix of evergreen and deciduous trees is encouraged as primary and accent tree options. Refer to the plant palette in Section 3.5 for acceptable trees, shrubs and groundcover.

The landscaping of public spaces should be carefully considered to attract visitors. Trees with a consistent canopy should be used in areas where shade is desirable. In general, the landscaping of public spaces should complement the other features and amenities of the area, becoming a backdrop to pedestrian activities.

The following landscape guidelines and standards apply to the McKinley Village community:

- Landscaping should be used to define outdoor spaces, softening and complementing structures;
- Provide landscaping to screen parking, loading, storage and equipment areas;
- Provide landscaping to shade and enhance the streetscape, parking areas, and outdoor gathering places;
- Detention facilities should be planted to create the appearance of natural vegetation, with careful consideration of plant selection to ensure survival and compatibility of a proper functioning drainage system; and
- Where feasible and desirable, landscape strips and median islands should be landscaped and programmed for the treatment and conveyance of storm water run-off.

3.5.1 Plant Palette

The Plant Palette, provided in Table 3, is not meant to be an exhaustive list of acceptable landscape varietals. Landscape plans will be reviewed and approved by the City of Sacramento prior to construction. Amendments to the plant list may occur with administrative review and approval by the Director.

Table 3
Plant Palette

	Botanical Name	Common Name
ENTRY TREES		
'A' Street & 40th Street		
Tree Bosques		
	Lagerstroemia indica	Crape Myrtle
	Prunus sargenti	Sargent Cherry
	Magnolia grandiflora 'St. Mary'	St. Mary Magnolia
	Prunus sp. Flowering Plum	Crimson Pointe/Krauter Vesuvius
Specimen Trees		
	Magnolia grandiflora	Southern Magnolia
	Pinus pinea	Italian Stone Pine
	Platanus racemosa	California Sycamore
	Quercus lobata	Valley Oak
Street Trees		
	Platanus x acerifolia	London Plane Tree
STREET TREES		
'A' Street & Street '3'		
	Platanus x acerifolia	London Plane Tree
Street '1' & Street '8'		
	Ulmus parvifolia	Chinese Elm
	Ulmus parvifolia 'Elmer I'	Athena Classic Elm
Street '2', '4', '5', '6', '9' & '10'		
	Koelreuteria bipinnata	Goldenrain Tree
	Magnolia grandiflora ' Sam Somers'	Magnolia 'Sam Somers'
	Quercus ilex	Holly Oak
	Tilia americana	American Basswood
Alleys		
	Eriobotrya deflexa	Bronze Loquat
	Geijera parviflora	Australian Willow
	Lagerstroemia indica	Crape Myrtle
	Prunus sargenti	Sargent Cherry

Table 3
Plant Palette (cont'd)

	Botanical Name	Common Name
SCREEN TREES		
At Union Pacific		
	Pinus strobus 'Fastigiata'	Fastigiate White Pine
	Sequoia sempervirens 'Aptos Blue'	Aptos Blue Redwood
At Capital City Freeway		
	Sequoia sempervirens 'Aptos Blue'	Aptos Blue Redwood
	Pinus strobus 'Fastigiata'	Fastigiate White Pine
PARK/COMMON GREEN TREES		
	Cedrus deodara	Deodar Cedar
	Fraxinus spp.	Ash
	Koelreuteria paniculata	Goldenrain Tree
	Lagerstroemia indica	Crape Myrtle
	Pinus canariensis	Canary Island Pine
	Platanus x acerifolia	London Plane Tree
	Platanus racemosa	California Sycamore
	*Populus nigra 'Italica'	Lombardy Poplar
	Prunus sargenti	Sargent Cherry
	Quercus ilex	Holly Oak
Vertical Accent Trees		
	Liriodendron tulipifera 'Fastigiata' Columnar	Tulip Tree
	Magnolia grandiflora 'St. Mary'	St. Mary Magnolia
	Pinus strobus 'Fastigiata'	Fastigiate White Pine
	Ginkgo biloba Mainden Tree	Autumn Gold
VINES		
	Solanum jasminoides	Potato Vine
	Campsis radicans	Trumpet Creeper
	Clytostoma callistegioides	Violet Trumpet Vine
	Distictis spp.	Trumpet Vine
	Hardenbergia violacea	Lilac Vine
	Rosa spp.	Rose
	Trachelospermum asiaticum	Asian Star Jasmine
	Wisteria spp.	Wisteria

*Poplars to be used in common green spaces only, not in parkways or parks.

Table 3
Plant Palette (cont'd)

	Botanical Name	Common Name
SHRUBS & GROUNDCOVER		
	Acanthus Mollis	Bear's Breech
	Agapanthus spp.	Lily-Of-The-Nile
	Agave spp.	Agave
	Aloe spp.	Aloe
	Anigozanthos spp.	Kangaroo Paw
	Buxus spp.	Boxwood
	Callistemon spp.	Bottlebrush
	Camellia spp.	Camellia
	Carex spp.	Sedge
	Dicksonia spp.	Tasmanian Tree Fern
	Dietes spp.	Fortnight Lily
	Echium candicans	Pride of Madeira
	Festuca spp.	Fescue
	Grevillea spp.	Grevillea
	Hermerocallis spp.	Daylily
	Ilex spp.	Holly
	Iris spp.	Iris
	Lagerstroemia spp.	Crape Myrtle
	Lantana spp.	Lantana
	Lavandula spp.	Lavender
	Lavatera spp.	Tree Mallow
	Ligustrum j. 'Texanum'	Texas Privet
	Liriope spp.	Lily Turf
	Lonicera j. 'Halliana'	Hall's Honeysuckle
	Loropetalum chinese	Fringe Flower
	Miscanthus spp.	Eulalia
	Myoporum parvifolium	Myoporum
	Nandina spp.	Heavenly Bamboo
	Phormium spp.	Flax
	Pittosporum spp.	Pittosporum
	Podocarpus spp.	Fern Pine
	Punica granatum 'Nana' Dwarf	Pomegranate
	Rhamnus californicus	Coffeeberry
	Rhaphiolepis spp.	Indian Hawthorn
	Rhododendron spp.	Azalea
	Rosa spp.	Rose
	Rosmarinus spp.	Rosemary
	Salvia spp.	Sage
	Stipa spp.	Feather Grass
	Trachelospermum asiaticum	Asian Star Jasmine
	Viburnum japonicum	Viburnum
	Xylosma spp.	Xylosma

3.6 Lighting & Site Furniture

Lighting is an important element in the landscape and should be used to contribute to a safe and attractive environment. Lighting is also used to reinforce the community's overall design theme and create a consistent sense of place by adding a common, thematic element that is repeated along roadways, or within parks and open spaces. To that end, one street light type is specified for the entire neighborhood.

Site furniture is encouraged within the parks and open space system, both within programmed public spaces and within more passive landscaped lots. Site furniture visible from public streets, plazas, and pedestrian linkages should be of compatible style and design. Fixtures and furniture may vary in style, color, and materials from this standard design if they are used in enclosed courtyards, or other locations where land uses require unique appeal.

The following guidelines and standards apply to lighting and site furniture throughout the community:

- Ornamental street lights, similar to those found in East Sacramento and McKinley Park neighborhoods, shall be located along public streets. The paint color of the street lights shall be consistent with the East Sacramento and McKinley Park neighborhoods;
- Exterior lighting, including in parks and open space areas, should be architecturally integrated with the style of the buildings, colors and materials used;
- Architectural lighting may be used to highlight special features in or around the site, or to illuminate key entrances or other areas of access;
- Pedestrian and landscaping lighting should utilize fixtures that minimize light pollution, glare, and visibility from adjacent areas and should be the appropriate size and height given the activities for which they are designed;
- Where feasible and desirable, public landscaped areas should employ pedestrian amenities, such as benches, drinking fountains, lighting, and trash receptacles; and
- The design of lighting and site furniture should be compatible throughout the community.

3.7 Entries & Monumentation

Entry features and monumentation create an identity or "sense of place" for a community. Entries provide a rhythm to the streetscape, acting as a defining element that reinforces the overall architectural and landscape design theme. Located along 'A' Street and the terminus of 40th Street (Figure 25), the entry features for McKinley Village are a combination of plant material, hardscape elements, and signage. Both entries will utilize a similar palette of materials, but may have differing designs or form.

The following guidelines and standards apply to entry features and monumentation:

- Neighborhood identification signage or thematic logos may be incorporated into pilasters or low walls;
- Street corners may incorporate hardscape elements including enhanced paving, pilasters, walls, raised planters and pedestrian gateways;

- Groupings of evergreen or deciduous flowering trees shall be used to highlight each entry;
- Thematic landscaping material consistent with Section 3.6, plant palette, will set the tone for the McKinley Village community; and
- Must not interfere with vehicular sight lines.

3.8 Signage

Signage throughout the McKinley Village community shall be designed with a consistent theme and style. A comprehensive signage design package shall be approved by the Director.

The allowable signage in the McKinley Village community includes project identification signage, neighborhood identification signage, street signage, and directional signage. Signage for community facilities and major destinations, like the recreation center, are also permitted. Project signage is envisioned at A Street near the A Street Bridge, 40th Street near the intersection of 'C' Street, 40th Street near the underpass, and the recreation center. Signage is regulated by Title 15, Chapter 15.148.110 and 15.148.870 of the City of Sacramento Zoning Code, and is subject to the permitting requirements of the City.

All sign elements should be consistent with the guidelines listed below, subject to the provisions of the City of Sacramento Zoning Code and review and approval by the Director:

- Signage should maintain visual consistency throughout the community;
- Color and material options for signs should always compliment the architectural style of the building;
- Signage should be scaled appropriately for the given location;
- Signage text should be kept to a minimum and scaled appropriately for placement and legibility purposes;
- Wall signs, monument signs, and low-profile freestanding signs are encouraged;
- Signage for pedestrian and bicycle way-finding is encouraged;
- Lighting is allowed to illuminate signage at night, but should be designed appropriately to not create hazardous glare for pedestrians, bicyclists, and vehicles;
- Neon signs are not permitted; and
- At the entry areas, features and monument signs are permitted to identify and enhance the community image, and create a sense of arrival.

3.9 Fencing & Walls

Walls and fences are intended to provide screening between adjacent uses, help to define edges of roadways, and provide privacy and security for private property. It is anticipated that there will be limited use of walls, except where needed for sound attenuation and where desired for entry features or for screening unsightly elements, such as trash areas. The material and design for the walls and fencing may vary throughout the community, depending on the need and the location. Masonry, wood, and wrought iron fences are permitted in the McKinley Village neighborhood subject to the height, location, and development standards of Title 17, Chapter 17 of the City of Sacramento Zoning Code.

The following wall and fencing standards apply to the McKinley Village community:

- Walls and fences will not be permitted if they aren't deemed necessary for specific screening, gateway, aesthetic, security, or noise attenuation purposes;
- Tall walls and fences are discouraged along internal roadways, as they diminish the street scene. Permitted walls and fences may not exceed 3 feet in height within front-yard setbacks and 6 feet in height within rear-yard and side-yard setbacks;
- Walls and fences, used at property frontages or for screening, should be designed as an extension of the building's architecture;
- Where long expanses of wall or fence are unavoidable, articulation in the form of wall offsets or landscaping should be implemented; and
- Where security fencing is required, a combination of solid and open grill work is encouraged. Barbed or razor wire fences are prohibited.

Chapter 4 **TRANSPORTATION**

4.1 Transportation Network

The Transportation Network is designed to provide for the efficient movement of goods and people, allowing for several modes of transportation including automobile, bicycle, and pedestrian. Circulation in McKinley Village provides additional roadway, bicycle, and pedestrian linkages between the site and the surrounding neighborhoods, improving connectivity within this portion of the City. The Transportation Network is designed with a well-connected hierarchy of travel modes, allowing for efficient flow of vehicular traffic while encouraging and facilitating walking, biking, and other alternatives to single-occupancy vehicles. Streets are designed as a modified grid to keep with the character of the surrounding urban area, extending the grid of the nearby East Sacramento and McKinley Park neighborhoods. This chapter provides the requirements and guidelines for roadways, bikeways, and walkways. (Figure 27)

4.1.1 Vehicular Circulation

The vehicular circulation network is designed to effectively link the entire community in a modified grid pattern that provides for two points of access to disperse automobile traffic and decrease potential congestion. Connections with existing roads and future extensions of existing roads allow for efficient access to local and regional locations. Points of entry from connector roads have been located to disperse traffic without inhibiting the efficient flow and functioning of major roads.

The proposed facilities include the following:

'A' Street provides access to the project on the western end of the community and connects to 28th Street via the 'A' Street Bridge. As one of the primary entries to the neighborhood, 'A' Street is envisioned to have trees along each side of the road leading to the project. Refer to Section 3.5 for more detailed information regarding landscaping and plant selection.

40th Street provides access to the project from the southeastern end of the community and connects to 'C' Street via an underpass. 40th Street is designed with a parkway strip and detached sidewalk. A transition to an attached sidewalk is necessary while in the 40th Street Underpass. As one of the primary entries to the community, 40th Street should be landscaped with proper signage and monumentation between 'C' Street and the Union Pacific Railroad tracks to create a sense of arrival. Refer to Section 3.5 for more detailed information regarding landscaping and plant selection.

Figure 27
Circulation Network Diagram

Local Residential Streets form a modified grid pattern within the McKinley Village community. In almost all instances these facilities provide a parkway strip and detached sidewalk. Street trees and other landscaping are paramount to the success of the streetscape program. Refer to Section 3.5 for more detailed information regarding landscaping and plant selection.

Alleys are provided to access garages that are located in the rear of homes. These facilities will be designed as private rights-of-way.

4.1.2 Bicycle & Pedestrian Circulation

A comprehensive system of bikeways and pedestrian walkways are provided throughout the McKinley Village community. These facilities allow for convenient access within and to adjacent neighborhoods, thereby encouraging cycling and walking as an alternative mode of transportation.

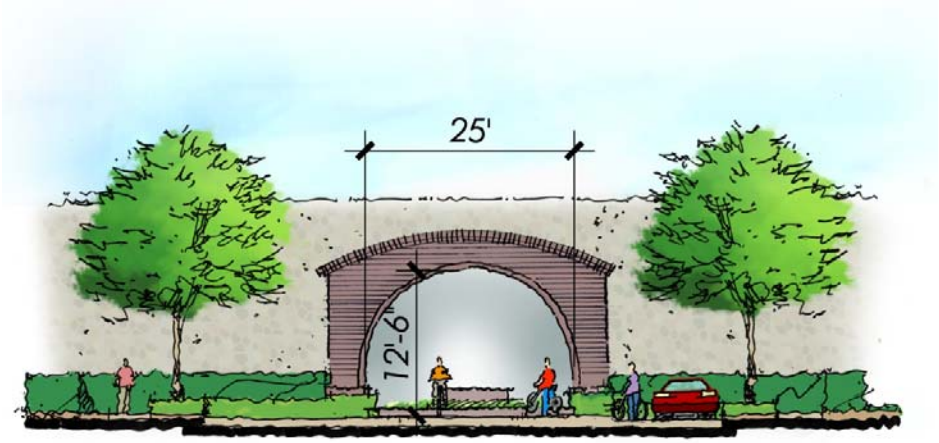
The majority of the Bikeway System for McKinley Village is a Class III on-street facility without a dedicated travel lane for cyclists. This type of facility will be provided on all internal local residential roads in the community.

The pedestrian circulation system is a network of sidewalks along public rights-of-way within the community. A widened 6-foot sidewalk is provided along the park and under the 40th Street Underpass. This comprehensive network of pedestrian walkways will encourage walking to the parks and recreation center within the community, as well as to other nearby destinations in East Sacramento and Midtown.

A network of bicycle and pedestrian paths provide connection through the community and to the surrounding neighborhood. A path connects McKinley Village to Alhambra Boulevard from the western edge of the community. A bicycle and pedestrian tunnel from the open space south of 'A' Street provides a linkage under the Union Pacific Railroad tracks to Alhambra Boulevard. (Figure 28) Security lighting and cameras will be provided within the tunnel as well as the path leading to the structure, for the safety of cyclists and pedestrians. This tunnel and path is envisioned as a key component to providing access to East Sacramento and Midtown, encouraging non-motorized transportation choices.

A location has been identified in the Sacramento Bikeway Master Plan (SBMP) for a potential future overcrossing of the Capital City Freeway that would connect the eastern edge of the site to an extension of the Two Rivers Bike Trail along the American River. The proposed connection has not yet been designed and is not currently funded. Coordination and discussion with the City of Sacramento will be necessary in the future should the City decide to fund the construction of the overcrossing.

Figure 28
Alhambra Boulevard Bicycle & Pedestrian Tunnel Section*



*Final design of the bicycle and pedestrian tunnel has not been completed and the exhibit is for illustrative purposes only.

4.2 Multi-Modal Guidelines

The Multi-Modal Guidelines outline standards which preserve the connectivity and safety of the Transportation Network, while enhancing the quality of the neighborhood and its aesthetic distinctiveness, as well as bicycle and pedestrian friendliness. To follow are guidelines and standards for community streets and trails within the McKinley Village neighborhood:

- Community streets should imbue a strong sense of place and establish a unique and distinctive neighborhood character;
- Community streets should be designed for the safety of all users;
- Encourage a multi-modal community through the design of streets and trails that accommodate safe movement of vehicles, bicycles, and pedestrians;
- Streets should be designed on a modified grid to create maximum internal connection, encouraging an open and accessible network to improve the distribution of traffic throughout the Transportation Network;
- Multiple points of access through the community are encouraged, to maximize the number of streets that carry traffic and the distribution of traffic loads from each development area;
- Sidewalks and other off-street pedestrian linkages should be provided;
- Class III bicycle routes (on-street, no striping) should be provided on all internal roadways to provide connection to the surrounding neighborhoods;
- A pedestrian and bicycle tunnel should be provided from the western end of the site under the Union Pacific Railroad tracks and connecting to Alhambra Boulevard;
- A consistent landscape palette (Section 3.5) should be employed on community streets; and
- Coordinating street lights and street furniture (Section 3.6) should be implemented to create an attractive and inviting streetscape environment;

4.3 Traffic Calming

The Transportation Network emphasizes connectivity and safety for all users: pedestrians, cyclists, and motorists. Within this well-designed multi-modal community, traffic calming devices should be implemented to reduce negative impacts of roadways, decrease motorist speed, increase safety, and encourage non-motorized travel. The following traffic calming devices may be incorporated into the design approach of streets within the neighborhood:

- Narrower street widths and pavement sections that encourage slower design speeds;
- Geometric curves in street configurations designed to keep traffic speeds down;
- Shorter block lengths that deter motorists from building up speed between intersections;
- Traffic circles that slow traffic while providing smooth, continuous movement through intersections;
- Use of "traffic tables," or heavily textured paving at key pedestrian crossings, to identify pedestrian spaces and minimize conflicts between motorists and pedestrians;
- "Bulb-outs," or the expansion of sidewalks/parkway areas to reduce street widths at intersections or mid-block should be considered during street construction design;
- Bulb-outs reduce crossing distance for pedestrians, provide landscaping opportunities, make crossing pedestrians more visible to motorists and bicycles, and reduce turning radii, slowing down turning traffic; and
- "T" intersections at parks and open spaces are encouraged to slow traffic where children and pedestrians are likely to be present.

Chapter 5 **IMPLEMENTATION & PHASING**

5.1 Phasing

Development of the McKinley Village community is expected to occur in phases to enable the developer to respond to market demand and to assure that the infrastructure is adequate to support the project. Construction of off-site and on-site infrastructure shall be phased in accordance with the McKinley Village Conditions of Approval. Provisions for construction of roadways to provide access to the development and the extension of necessary utilities and infrastructure such as water, sanitary sewer and storm drain facilities will be necessary in early phases of development. The Phasing Plan represents a logical estimate of the order in which areas will develop. Actual sequence of phasing may vary, and may be further delineated into sub-phases as determined by economic, market, and physical conditions. (Figure 29)

5.2 Future Development Applications

The Planned Unit Development (PUD) standards and guidelines provided herein applies to all future development applications. Subsequent to the approval of the McKinley Village PUD, individual project applications will be reviewed to determine consistency with this document and other regulatory documents.

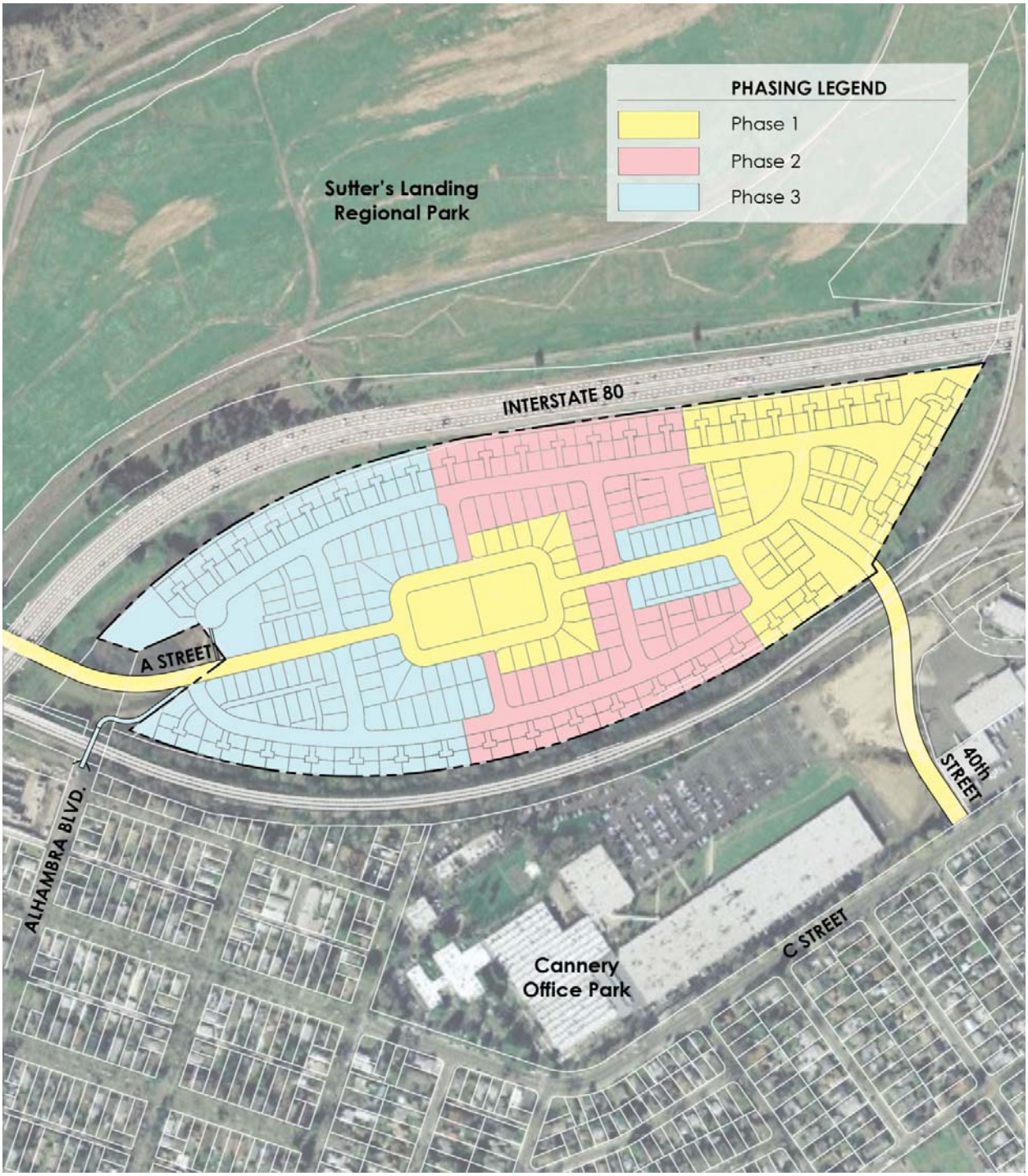
Specific applications for individual residential tracts within the project shall be processed as follows: (1) The Director shall review, and has the ability to approve, each individual application for consistency with the McKinley Village PUD Guidelines contained herein. Zoning, use and design standards shall be applied to each proposal to ensure consistency with the overall character envisioned for the PUD; (2) if an application fails to meet the standards established in the McKinley Village PUD Guidelines, the Director shall review the application to determine the degree of deviation proposed and the level of review necessary for approval.

The protocol is intended to facilitate streamlined application processing for proposals consistent with the McKinley Village PUD Guidelines. It also permits flexibility and Planning Commission oversight for non-traditional proposals, and proposals determined to substantially deviate from the standards prescribed in both documents.

5.3 PUD Guidelines Amendments

The procedures for development under, as well as amendments to, the PUD Guidelines are set forth in the City of Sacramento Municipal Code, Title 17, Chapter 17.452 of the Zoning Code.

Figure 29
Preliminary Phasing Plan



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RESOLUTION NO. 2014-

Adopted by the Sacramento City Council

AMENDING THE CITY'S BIKEWAY MASTER PLAN TO INCORPORATE THE BIKEWAY NETWORK FOR THE MCKINLEY VILLAGE PROJECT. (P08-086)

BACKGROUND

A. On October 24, 2013, the City Planning and Design Commission conducted a public meeting on the McKinley Village project.

B. On March 27, 2014, the City Planning and Design Commission held a public hearing in accordance with Government Code Section 65355 on the McKinley Village project, and received and considered evidence, and forwarded to the City Council a recommendation to approve the McKinley Village project.

C. On April 29, 2014, the City Council conducted a noticed public hearing in accordance with Government Code Section 65355, and received and considered evidence regarding the approval of the McKinley Village project, which includes changes to the City's Bikeway Master Plan.

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

Section 1. Based on the verbal and documentary evidence received at the hearings on the McKinley Village Project, the City Council finds that amending the City Bikeway Master Plan to establish the bikeway network as shown on the attached exhibit is consistent with the City's General Plan goals to:

1. Create and maintain a safe, comprehensive, and integrated bicycle system and support facilities throughout the city that encourages bicycling that is accessible to all.
2. Promote bicycling as a feasible transportation alternative which conserves energy, improves air quality, reduces traffic congestion, and improves public health.

Section 2. The Environmental Impact Report and Mitigation Monitoring Program for the McKinley Village Project, which included the proposed changes to the City's Bikeway Master Plan, have been adopted by resolution as of the same date set out above.

Section 3. City Council hereby amends the City's Bikeway Master Plan to modify the McKinley Village bikeway network as shown in Exhibit A.

Section 4. Exhibit A is a part of this

Resolution. Table of Contents:

Exhibit A –McKinley Village Bikeway Plan

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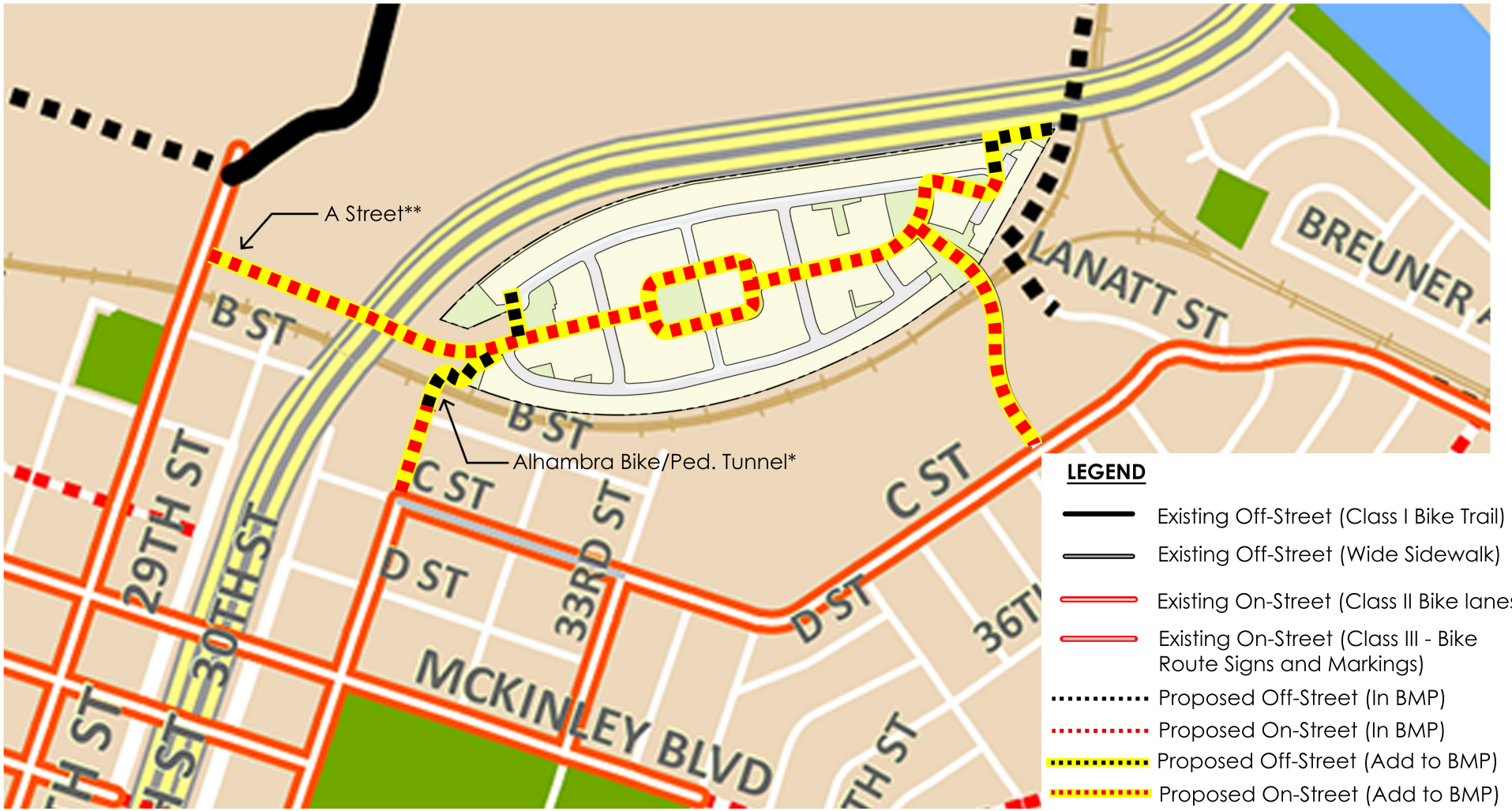
BICYCLE MASTER PLAN AMENDMENT

McKINLEY VILLAGE

SACRAMENTO, CALIFORNIA

APRIL 2014



*If the Alhambra Bicycle and Pedestrian Tunnel is approved by Union Pacific Railroad and appropriate government agencies, and constructed; then the off-street bikeway connecting the Alhambra Tunnel to A Street, and the on-street bikeway connecting the Alhambra Tunnel to C Street will also be constructed.

**The on-street bikeway along A Street between 28th Street and the A Street Bridge may change to an off-street bikeway, subject to final roadway design per the Department of Public Works and Caltrans.

NORTH

NOT TO SCALE

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