

**Meeting Date:** 3/24/2015

**Report Type:** Consent

**Report ID:** 2015-00228

**Title:** Resolution of Intention to Establish McKinley Village Community Facilities District No. 2014-03

**Location:** District 3

**Recommendation:** Pass 1) a Resolution of Intention to establish the McKinley Village Community Facilities District No. 2014-03 (Services) and set a time and place for a public hearing on April 28, 2015; and 2) a Motion authorizing the City Manager to execute an agreement with Encore McKinley Village, LLC for maintenance of public amenities.

**Contact:** Sheri Smith, Program Specialist, (916) 808-7204; Mark Griffin, Program Manager, (916) 808-8788, Department of Finance

**Presenter:** None

**Department:** Finance

**Division:** Public Improvement Finance

**Dept ID:** 06001321

**Attachments:**

- 1-Description/Analysis
- 2-Background
- 3-Schedule of Proceedings
- 4-Resolution of Intention
- 5-RMA
- 6-Maintenance Agreement

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**City Attorney Review**

Approved as to Form  
Michael W. Voss  
3/16/2015 2:41:28 PM

**Approvals/Acknowledgements**

Department Director or Designee: Leyne Milstein - 3/10/2015 2:56:42 PM

## Description/Analysis

**Issue:** Under the conditions of approval for the McKinley Village Development Project (Project), the property owners are required, before recordation of the final subdivision map, to annex the project area to an existing landscape maintenance district or other financing mechanism acceptable to the City. Establishing the McKinley Village Community Facilities District No. 2014-03 (District) will satisfy this requirement by authorizing the City to levy special taxes in an amount sufficient to provide funding for maintenance and operation of parks, drainage basin landscaping, open space landscaping and sound wall repair and maintenance should the Project developer and homeowners' association (HOA) fall short of their required responsibilities

As outlined in the maintenance agreement, the Project developer and HOA will provide maintenance of the public improvements at or above City standards. If maintenance of the public improvements falls below the levels outlined in the agreement, the City will levy the special tax and provide maintenance of the public facilities.

**Policy Considerations:** The recommended action will provide funding for maintenance and repair of public amenities, facilities, and improvements in the event the City is required to maintain the public improvements.

**Environmental Considerations:** Under the California Environmental Quality Act Guidelines, formation of a district and continuing administrative activities do not constitute a project and are therefore exempt from review.

**Rationale for Recommendation:** The actions in the Resolution are required by the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311-53368.3) for formation of a new district.

**Financial Considerations:** The property owners will pay all costs associated with the District. The maximum special tax for each Assessor's Parcel shall be the amounts shown below for Fiscal Year (FY) 2015-16.

Single-Family Residential Units	\$427/Unit
Condominium Residential Units	\$427/Unit
Final and Undeveloped Parcels	\$427/Unit

The maximum special tax may increase by the Consumer Price Index, but by no more than four percent annually. A detailed explanation of the proposed special tax is in the Rate and Method of Apportionment, which is attached to the Resolution as Exhibit C.

**Local Business Enterprise (LBE):** Not applicable.

## Background

The Project site was in agricultural use and under cultivation until at least the late 1980s as part of Mize's Farm. The eastern portion of the site was planted with a peach orchard and the remainder of the site was regularly plowed and planted with an assortment of vegetables. The orchard was removed from the site in late 2006.

The site has had multiple development proposals since the 1990s including a discount shopping mall and two other residential developments with higher densities than the McKinley Village project. The Project as approved by council on April 29, 2014 will result in a 336 unit residential subdivision with a 4,200 square foot recreation center, multiple neighborhood parks and approximately 48.8 acres of open space. The Project is comprised of several types of housing including single family detached units, condominiums and optional second units.

### Purpose of the District

The proposed District will provide backstop funding for maintenance and operation of parks, drainage basin landscaping, open space landscaping and sound wall repair and maintenance in the event maintenance by the homeowner's association and developer falls below City standards. The List of Authorized Services is shown in Exhibit B to the Resolution of Intention.

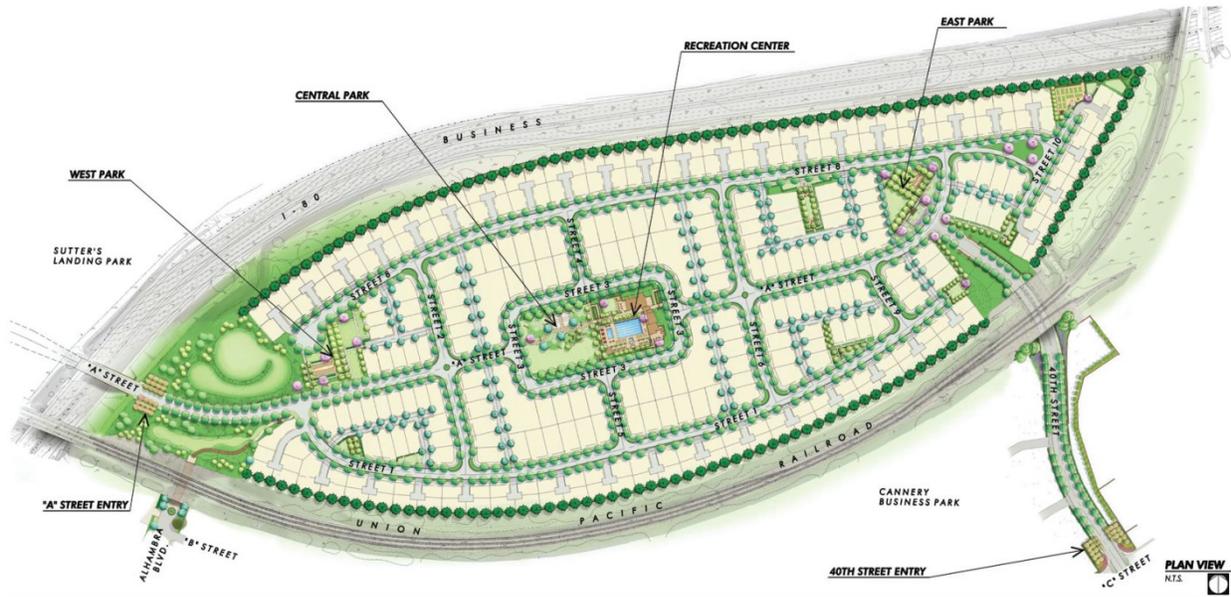
### Community Facilities District (CFD) Special Election Proceedings

The proposed district will be formed in compliance with the Mello-Roos Community Facilities District Act of 1982. As part of the formation proceedings a special election on the special tax is required. In this case, where there are fewer than 12 registered voters, the vote is by landowners with each landowner having one vote for each acre or portion of an acre owned within the proposed CFD. There is one landowner within this proposed CFD. The City is prohibited from levying the tax unless at least two-thirds of the votes cast are in favor of formation. A schedule for the CFD proceedings is provided on the following pages.

### Special Tax Formula

The rate and method of apportionment (RMA) of the special tax is attached as Exhibit C to the Resolution of Intention to establish the District. The special tax is applied to both developed and undeveloped properties. The maximum special tax rates for developed properties are shown in Exhibit C, Attachment 1 to the Resolution of Intention. The initial maximum annual special tax for single-family parcels in Fiscal Year (FY) 2015/16 is \$427 per residential unit.

# Site Plan



## SCHEDULE OF PROCEEDINGS

### MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT (CFD) NO. 2014-03 (SERVICES)

March 4, 2015	City Clerk certification of registered voters Staff Report loaded to ADRS for City Clerk process 100% Consent waivers due to City Rate and Method of Apportionment in final form Maintenance Agreement, executed by developer for staff report
<b>March 24, 2015</b>	<b>City Council</b> <ul style="list-style-type: none"><li>○ Approve Maintenance Agreement</li><li>○ Pass Resolution of Intention (ROI) and set hearing date</li></ul>
March 25, 2015	Mail Notice of Hearing and Record Boundary Map
April 17, 2015	City Clerk publish Notice of Public Hearing
April 28, 2015	City Council <ul style="list-style-type: none"><li>○ Conduct Public Hearing (&gt; 30 days from ROI)</li><li>○ Pass Resolution of Formation</li><li>○ Pass Resolution Calling Special Election</li></ul>
April 29, 2015	Mail Ballots
May 12, 2015	Ballots Due
May 19, 2015	City Council <ul style="list-style-type: none"><li>○ Pass Resolution Declaring Results of Special Election</li><li>○ Pass for Publication Ordinance to Levy Tax</li></ul>
May 20, 2015	Record Notice of Special Tax
May 26, 2015	City Council <ul style="list-style-type: none"><li>○ Adopt Ordinance to Levy Special Tax</li></ul>

## RESOLUTION NO.

Adopted by the Sacramento City Council

### RESOLUTION OF INTENTION TO ESTABLISH MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2014-03 (SERVICES), AND TO LEVY A SPECIAL TAX THEREIN TO FINANCE MAINTENANCE SERVICES

#### BACKGROUND

- A. The City Council has duly considered the advisability and necessity of establishing a community facilities district and levying a special tax therein to pay for maintenance and related services to be provided within the district, under the Mello-Roos Community Facilities Act of 1982 (Act) and Chapter 3.124 of the Sacramento City Code (Chapter 3.124), shown on the Boundary Map in Exhibit A, attached hereto and incorporated herein.
- B. The City Council has determined that the establishment of the district is consistent with Chapter 3.124 and follows the local goals and policies concerning the use of the Act that have been adopted by the City Council and are now in effect.

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

- Section 1      Background statements A and B are accurate.
- Section 2      The City Council hereby proposes to establish a community facilities district under Chapter 3.124 and the Act (District). The boundaries of the territory proposed for inclusion in the District are shown on the map entitled "McKinley Village Community Facilities District No. 2014-03 (Services)" attached to this resolution as Exhibit A. A formal, recordable map showing the proposed territory to be included in the District ("**Boundary Map**") is on file in the office of the City Clerk, is in the form required by section 3110 of the Streets and Highways Code, and is hereby approved. The City Clerk is directed to file a copy of the Boundary Map with the Sacramento County Clerk/Recorder within fifteen days hereafter, and in no event later than fifteen days before the hearing, for placement in the Book of Maps of Assessment and Community Facilities Districts, in accordance with section 3111 of the Streets and Highways Code.

- Section 3 The name of the District is “McKinley Village Community Facilities District No. 2014-03 (Services).”
- Section 4 The District is being formed solely to fund maintenance and operation of parks, drainage basin landscaping, open space landscaping, and sound wall repair and maintenance. The District will not finance capital improvements or issue bonds. The services provided by the District are set forth in Exhibit B to this resolution, all of which are as authorized by the Act and by Chapter 3.124. The District will also finance all costs and expenses normally incidental to the provision of maintenance services, including but not limited to those for elections, engineering, contract supervision, planning, legal services, and City administration.
- Section 5 Except where funds are otherwise available, a special tax sufficient to pay for the maintenance and related services, secured by recordation of a continuing lien against all nonexempt real property in the District, will be levied annually within the District. The tax is to be collected as a separately stated item on the county property-tax bill, but the City Council reserves the right to change the method of collection at any time. The special tax is to be apportioned according to land-use classes at the annual tax rate specified in Exhibit C to this resolution, the Rate and Method of Apportionment of Special Tax (RMA). The rate shown in Exhibit C is the maximum rate. The rate may be increased for inflation under Chapter 3.124, as specified in Exhibit C. If tax collections at the stated rate exceed the amount required to pay the Special Tax Requirement (as defined in Exhibit C), then the rate may be reduced in accordance with the formula set forth in Exhibit C. The special tax will be levied and collected until the City Council determines that the need for the maintenance and related services no longer exists.
- Section 6 In accordance with section 53325.7 of the Act, the City Council intends to establish an appropriations limit for the District, as defined by subdivision (h) of section 8 of article XIII B of the California Constitution.
- Section 7 At 6:00 p.m. on April 28, 2015, in the Council Chambers at New City Hall, 915 I Street, First Floor, Sacramento, California, the Council will hold a public hearing on the proposed establishment of the District, the territorial extent of the District, the types of services to be provided, the proposed levy of a special tax, and all other matters as set forth in this resolution. At the public hearing, any persons interested, including taxpayers, owners of property within the District, and any registered voters residing within the District, may appear and be heard, and the testimony of all interested persons for or against establishment of the proposed District, the territorial extent of the District, the types of services to be provided, the levy of the special tax within the District, or any other matters set forth herein will be heard and considered. Such

protests may be made orally or in writing by any interested persons, except that protests pertaining to the regularity or sufficiency of the proceedings must be in writing and must clearly set forth the irregularities and defects to which the objection is made. The City Council may waive any irregularities in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. All written protests must be filed with the City Clerk on or before the time fixed for the public hearing, and any written protest may be withdrawn in writing at any time before the conclusion of the public hearing. If, at the conclusion of the hearing, the City Council determines to proceed with establishing the District, then the question of levying the special tax will be submitted to the qualified electors in an election conducted under section 53326 of the Act not less than 90 days nor more than 180 days thereafter, unless appropriate waivers pursuant to section 53326 have been filed with the City Clerk. The special tax may be levied if at least two-thirds of the votes cast upon the question of levying the tax are in favor of levying the tax.

Section 8      The City Council directs the Public Improvement Finance Manager of the Finance Department to prepare the report required by Section 53321.5 of the Act and to file the report with the City Council at or before the time of the hearing.

Section 9      The City Clerk is directed to give notice of the hearing in accordance with Sections 53322 and 53322.4 of the Act, as follows:

- (a) By publishing in the *Sacramento Bulletin*, a newspaper of general circulation published in the area of the District, a notice of public hearing in the form required by the Act. The City Clerk shall do this in accordance with section 6061 of the Government Code, and the publication must be completed at least seven days before the date set for the public hearing.
- (b) By mailing to each owner of property within the District and to each registered voter residing within the District, using prepaid first-class postage, a notice of public hearing in the form required by the Act. The mailing to property owners is to be to their addresses as shown on the records of the Sacramento County Treasurer-Tax Collector or as otherwise known to the City Clerk. The mailing to registered voters is to be made to the registered voters at their addresses as shown on the records of the Sacramento County Registrar of Voters or as otherwise known to the City Clerk. The City Clerk shall complete all mailings at least fifteen days before the date set for the public hearing. The notice of hearing must include a description of the voting procedures.

Section 10 Exhibits A, B, and C are a part of this resolution

**Table of Contents:**

Exhibit A: Boundary Map of Proposed Boundary

Exhibit B: List of Authorized Services

Exhibit C: Rate and Method of Apportionment of Special Tax

# Exhibit A Boundary Map

**PROPOSED BOUNDARIES OF  
MCKINLEY VILLAGE COMMUNITY  
FACILITIES DISTRICT NO. 2014-03  
CITY OF SACRAMENTO, COUNTY OF SACRAMENTO,  
STATE OF CALIFORNIA**

**SHEET 1 OF 1**

**CLERK'S MAP FILING STATEMENT:**  
FILED IN THE OFFICE OF THE CLERK OF CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014

**CITY CLERK:** \_\_\_\_\_  
CITY OF SACRAMENTO, CALIFORNIA

**CLERK'S CERTIFICATE:**  
I HEREBY CERTIFY THAT THE MAP SHOWING THE PROPOSED BOUNDARIES OF MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2014-03, CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO AT A REGULAR MEETING THEREOF, HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014, BY ITS RESOLUTION NO. \_\_\_\_\_

**CITY CLERK:** \_\_\_\_\_  
CITY OF SACRAMENTO, CALIFORNIA

**COUNTY RECORDER'S FILING STATEMENT:**  
FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014 AT THE HOUR OF \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., IN BOOK \_\_\_\_\_ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE \_\_\_\_\_ IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

**COUNTY RECORDER** \_\_\_\_\_  
OF THE COUNTY OF SACRAMENTO, CALIFORNIA

**BY:** \_\_\_\_\_ DEPUTY \_\_\_\_\_ DOCUMENT NO. \_\_\_\_\_

## **Exhibit B**

### **McKinley Village Community Facilities District (CFD) No. 2014-03 (Services) List of Authorized Services**

The authorized services to be funded from the levy and collection of annual special taxes include those set forth below in addition to the costs associated with collecting and administering the special taxes and annually administering the CFD. The authorized services to be funded include:

1. Maintenance and operation of drainage basin landscaping, water pump and aeration features.
2. Maintenance and operation of public parks: Lots A, B, C, F and I
3. Maintenance and operation of public soundwalls and open space: Lot M
4. Miscellaneous costs related to any of the items described above including planning, engineering, and legal and administration costs.
5. The levy of Special Taxes to accumulate funds for anticipated future repair or replacement costs of facilities maintained by the CFD, as determined by the Administrator.

## Exhibit C

*CITY OF SACRAMENTO, CALIFORNIA*  
*McKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2014-03*  
*(SERVICES)*

*RATE AND METHOD OF APPORTIONMENT AND MANNER OF*  
*COLLECTION OF SPECIAL TAXES*

### **1. Basis of Special Tax Levy**

A Special Tax authorized under the Mello-Roos Community Facilities Act of 1982 (Act) applicable to the land in McKinley Village Community Facilities District No. 2014-03 (CFD) of the City of Sacramento (City) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate Special Tax amount or rate, as described below.

The initial responsibility for providing the Authorized Services Activation of the CFD is governed is set forth in by City Agreement Number 2015-\_\_\_\_\_, approved by City Council on \_\_\_\_\_ 2015 ("Public Improvement Maintenance Agreement"). If the Public Improvement Maintenance Agreement terminates, or if the City determines pursuant to the procedures set forth in the Public Improvement Maintenance Agreement that it is responsible for providing some or all of the Authorized Services, City may levy and collect the Special Taxes as described below.

### **2. Definitions**

**"Accessory Unit"** means a second residential unit of limited size, e.g. granny flat or second unit that shares a Parcel with a single family detached unit.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311 and following of the California Government Code.

**"Administrative Expenses"** means the actual or estimated costs incurred by the City to form the CFD and to determine, levy, and collect the Special Taxes, including compensation of City employees for administrative work performed in

McKinley Village Rate and Method of Apportionment and  
Manner of Collection of Special Taxes

relation to the CFD, the fees of consultants and legal counsel, the costs of collecting installments of the Special Taxes on the general tax rolls or by other means, preparation of required reports, and any other costs required to establish or administer the CFD as determined by the City.

**Administrator**” means the official of the City, or designee thereof, responsible for determining the Special Tax requirement and providing for the levy and collection of the Special Tax.

**Annual Costs**” means for each Fiscal Year, the total of (1) Authorized Services, (2) Administrative Expenses, and (3) any amounts needed to offset actual or estimated delinquencies in Special Taxes for the current or previous Fiscal Year.

**Assessor**” means the County assessor.

**Assessor’s Parcel Map**” means an official map of the County Assessor designating parcels by Assessor’s Parcel Number.

**Authorized Services**” mean those services authorized to be funded by the CFD as set forth in the documents adopted by Council when the CFD was formed, as identified in **Attachment 2**.

**Base Year**” means the Fiscal Year 2015-16.

**Building Permit**” means a single permit or set of permits, issued by the City, required to construct an entire residential or nonresidential structure.

**CFD**” means the McKinley Village Community Facilities District No. 2014-03(Services) of the City of Sacramento, Sacramento County, California.

**City**” means the City of Sacramento in Sacramento County, California.

**Condominium Residential Use(s)**” means a multifamily Residential Use for ownership in a condominium structure.

**Council**” means the City Council of the City of Sacramento acting for the CFD under the Act.

**County**” means the County of Sacramento, California.

**“County Assessor’s Parcel”** means a lot or Parcel with an assigned Assessor’s Parcel Number in the maps used by the County Assessor in the preparation of the tax roll.

**“County Recorder”** means the County of Sacramento’s Office of the Recorder.

**“Developed Parcel”** means a Parcel for which a Building Permit has been issued, on or prior to June 30, for a Residential Building within the CFD. A Developed Parcel will be reclassified as a Final Use Parcel if a Building Permit on a Parcel is revoked, abandoned, or expired.

**“Final Use Parcel”** means a Residential Parcel for which no further development approval is required for the issuance of a Building Permit.

**“Fiscal Year”** means the period starting July 1 and ending the following June 30.

**“Homeowners Association” or “HOA”** means the homeowners association that provides services to and collects assessments, fees, taxes, or charges from property within the CFD.

**“Homeowners Association Parcel” or “HOA Parcel”** means a Parcel within the boundaries of the CFD that is owned by, or irrevocably dedicated as indicated in an instrument recorded with the County Recorder to, a property owner association, including any master or sub-association.

**“Maximum Annual Special Tax”** means the greatest amount of Special Tax that can be levied against a Taxable Parcel.

**“Maximum Annual Special Tax Revenue”** means the greatest amount of Special Tax revenue that can be collected by levying the Maximum Annual Special Tax against a group of Taxable Parcels (Developed Parcels, Undeveloped Parcels, or Final Use Parcels).

**“Multifamily Residential Use(s)”** means a Parcel designated for attached multifamily residential uses, including Condominium Residential Use.

**“Nonresidential Parcel”** means a Parcel with a use designated for commercial, retail, office, community center, recreational center, community

garden, church, institutional (such as hospital), or other similar land uses. Nonresidential Parcels are exempt from the Special Tax.

“**Parcel**” means any County Assessor’s Parcel in the CFD based on the equalized tax rolls of the County as of July 1 of each year.

“**Parcel Number**” means the Assessor’s Parcel Number for any Parcel based on the equalized tax rolls of the County as of July 1 of each year.

“**Planned Residential Units**” means the total number of Residential Units expected to be developed within the CFD as shown on the Tentative Map, as identified in Attachment 3.

“**Public Parcel**” means any Parcel, in its entirety, that is publicly owned that is normally exempt from the levy of general ad valorem property taxes under California law, including public streets, schools, parks, public drainage ways & basins, public landscaping, wetlands, greenbelts, and public open space. These parcels are exempt from the levy of Special Taxes. Any such Parcel will be a Tax-Exempt Parcel.

“**RMA**” means this Rate and Method of Apportionment of Special Tax.

“**Residential Building**” means a residential structure on a Residential Parcel with land uses designated for Residential Use.

“**Residential Parcel**” means a Parcel with land uses designated for residential uses such as Single-Family Residential Use, Multifamily Residential Use, or Condominium Residential Use.

“**Residential Unit**” or “**Unit(s)**” means the number of single family detached units or an individual residential unit within a multifamily structure or condominium structure, for which Building Permits have been issued, or which have been planned as Planned Residential Units, as shown on **Attachment 3**. An Accessory Unit that shares a Parcel with a Residential Building shall not be considered a Unit for purposes of this RMA.

“**Residential Use**” means use as Single-Family Residential Use, Multifamily Residential Use, or Condominium Residential Use.

“**Single Family Residential Use(s)**” means a Parcel designated for detached single family residential uses.

**“Special Tax(es)”** mean(s) any tax levy under the Act in the CFD that may be levied on a Taxable Parcel in any Fiscal Year.

**“Tax Collection Schedule”** means the document prepared by the Administrator for the County Auditor-Controller to use in levying and collecting the Special Taxes each Fiscal Year.

**“Tax Escalation Factor”** means an annual percentage increase in the Maximum Annual Special Tax based upon the Consumer Price Index (CPI) (prior calendar year annual average, San Francisco, All Urban Consumers (CPI-U) Index); however, the annual percentage increase shall not exceed 4 percent.

**“Taxable Parcel”** means any Parcel that is a Developed Parcel, Final Use Parcel, or Undeveloped Parcel.

**“Tax-Exempt Parcel”** means a Parcel not subject to the Special Tax. Tax-Exempt Parcels are:

- Public Parcels
- Nonresidential Parcels
- HOA Parcels

**“Tentative Map”** means the small lot tentative subdivision map for the McKinley Village Project that was approved on April 29, 2014, including any adjustments or amendments that were approved prior to CFD formation.

**“Undeveloped Parcel”** means a Parcel that is not a Developed Parcel, Final Use Parcel, or Tax-Exempt Parcel.

### **3. Duration of the Special Tax**

Parcels in the CFD will remain subject to the Special Tax in perpetuity.

If the Special Tax ceases to be levied, the City will direct the County Recorder to record a Notice of Cessation of Special Tax. Such notice will state that the

obligation to pay the Special Tax has ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished. The Notice of Cessation of Special Tax, in addition, will identify the book and page of the Book of Maps of Assessment and Community Facilities Districts where the map of the boundaries of the CFD is recorded.

#### **4. Assignment of Maximum Annual Special Tax**

- A. Classification of Parcels. On or about July 1 of each Year, using the definitions in **Section 2** above, the Parcel records of the Assessor's Secured Tax Roll as of July 1, and other City development approval records, the Administrator shall complete the following steps:
1. Classify each Parcel as a Developed Parcel, Final Use Parcel, Undeveloped Parcel, or Tax-Exempt Parcel
  2. Assign to each Parcel the total number of Units
- B. Determination of Maximum Annual Special Tax. **Attachment 1** shows the Maximum Annual Special Tax for the Base Year. In each Fiscal Year following the Base Year, the Maximum Annual Special Tax shall be adjusted by the Tax Escalation Factor.
- C. Assignment of Maximum Annual Special Tax. Using **Attachment 1**, the Administrator shall assign the Maximum Annual Special Tax to each Developed Parcel, Final Use Parcel, and Undeveloped Parcel using the steps below:
1. Developed Parcels
    - i. Residential Parcels: Assign the Maximum Annual Special Tax to each Unit on a Residential Parcel as shown on **Attachment 1**, as increased by the Tax Escalation Factor. To the extent that more than one Unit is assigned to the Residential Parcel, sum the Maximum Annual Special Tax assigned to each Unit to determine the Maximum Annual Special Tax for the Residential Parcel.

2. Final Use Parcels: Assign the Maximum Annual Special Tax per Unit as shown in **Attachment 1**, as increased by the Tax Escalation Factor.
  3. Undeveloped Parcels: Assign the Maximum Annual Special Tax per Unit as shown in **Attachment 1**, as increased by the Tax Escalation Factor.
- D. Conversion of a Tax-Exempt Parcel to a Taxable Parcel. If a Tax-Exempt Parcel ceases to be classified as a Public Parcel, Nonresidential Parcel, or HOA Parcel and is converted to a taxable use, it shall become subject to the Special Tax if it meets the definitions of a Taxable Parcel. The Maximum Annual Special Tax for such a Parcel will be assigned according to **Section 4.A** and **Section 4.C** above. If a Taxable Parcel is converted to a Tax-Exempt Parcel, the Parcel shall be subject to the Special Tax as if it consisted of the same number of Residential Units as shown on **Attachment 3**.

## **5. Calculating Annual Special Taxes**

The Administrator will compute the Annual Costs and determine the Maximum Annual Special Tax for each Taxable Parcel based on the assignment of the Special Tax in **Section 4**. The Administrator then will determine the tax levy for each Taxable Parcel using the following process:

- A. Compute the Annual Costs using the definition of Annual Costs in Section 2.
- B. Calculate the Special Tax levy for each Taxable Parcel by the following steps:
  - Step 1: Compute 100 percent of the Maximum Annual Special Tax Revenue for Developed Parcels.
  - Step 2: Compare the Annual Costs with the Maximum Annual Special Tax Revenue calculated in Step 1.
  - Step 3: If the Annual Costs are lower than the Maximum Annual Special Tax Revenue for Developed Parcels, decrease proportionately the Special Tax levy for each Developed

Parcel until the revenue from the Special Tax levy equals the Annual Costs.

Step 4: If the Annual Costs are greater than the Maximum Annual Special Tax Revenue for Developed Parcels, increase proportionately the Special Tax levy for each Final Use Parcel until the revenue from the Special Tax levy equals the Annual Costs.

Step 5: If the Annual Costs are greater than the sum of the Maximum Annual Special Tax Revenue collected for (i) Developed Parcels and (ii) Final Use Parcels, increase proportionately the Special Tax levy for each Undeveloped Parcel until the revenue from the Special Tax levy equals the Annual Costs, or until the Maximum Annual Special Tax has been reached.

C. Levy on each Taxable Parcel the amount calculated above.

D. Prepare the Tax Collection Schedule and, unless an alternative method of collection has been selected pursuant to **Section 9**, send it to the County Auditor requesting that it be placed on the general, secured property tax roll for the Fiscal Year. The Tax Collection Schedule will not be sent later than the date required by the Auditor for such inclusion.

## **6. Records Maintained for the CFD**

As development occurs in the CFD, the Administrator will maintain a file containing records of the following information for each Parcel:

- The current County Assessor's Parcel Number
- The designated and existing uses for each parcel
- The total number of Units assigned to each Parcel
- The total number of Planned Residential Units of Final Use Parcels
- The total number of Planned Residential Units of Undeveloped Parcels
- The Maximum Annual Special Tax assigned to each Parcel

The file containing the information listed above will be available for public inspection.

## **7. Interpretation, Application, and Appeal of Special Tax Formula and Procedures**

The Administrator will make every effort to correctly calculate the Special Tax for each Parcel. It will be the burden of the taxpayer to correct any errors in the determination of the Parcels subject to the tax and their Special Tax assignments. Any taxpayer who feels that the amount of the Special Tax assigned to a Parcel is in error may file a notice with the Administrator appealing the levy of the Special Tax. The Administrator then will promptly review the appeal and, if necessary, meet with the applicant. If the Administrator verifies that the tax should be modified or changed, the Special Tax levy will be corrected, and if applicable in any case, a refund will be granted.

Interpretations may be made by resolution of the Council for purposes of clarifying any vagueness or ambiguity as it relates to the Special Tax rate, the method of apportionment, or any definition applicable to the CFD.

Without Council approval, the Administrator may make minor, non-substantive administrative and technical changes to the provisions of this Exhibit that do not materially affect the rate, method of apportionment, and manner of collection of the Special Tax for purposes of the administrative efficiency or convenience or to comply with new applicable federal, state, or local law.

## **8. Prepayment of the Special Tax Obligation**

The Maximum Annual Special Tax for a Taxable Parcel may not be prepaid. The Special Tax is collected to fund Authorized Services in perpetuity, or until the Council determines that the Special Tax should no longer be collected.

## **9. Manner of Collection**

The Special Tax will be collected in the same manner and at the same time as ad valorem property taxes, provided, however, that the Administrator or its designee may directly bill the Special Tax and may collect the Special Tax at a different time, such as on a monthly or other periodic basis, or in a different manner, if necessary, to meet the City's financial obligations.

McKinley Village Rate and Method of Apportionment and  
Manner of Collection of Special Taxes

**Attachment 1**  
**McKinley Village Community Facilities**  
**District No. 2014-03**  
**Maximum Annual Special Tax by Category (Base Year**  
**2015-16)**

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<b>Land Use Category</b>	<b>Maximum Annual Special Tax [1]</b>
<b>Developed Parcels</b>	
<b>Residential Parcels</b>	\$427 per Unit
<b>Final Use Parcels</b>	\$427 per Unit
<b>Undeveloped Parcels</b>	\$427 per Unit

[1] The Maximum Annual Special Tax is increased by the Tax Escalation Factor in each Fiscal Year after the Base Year.

## **Attachment 2**

### McKinley Village Community Facilities District (CFD) No. 2014-03 List of Authorized Services

#### McKinley Village Community Facilities District (CFD) No. 2014-03 (Services) List of Authorized Services

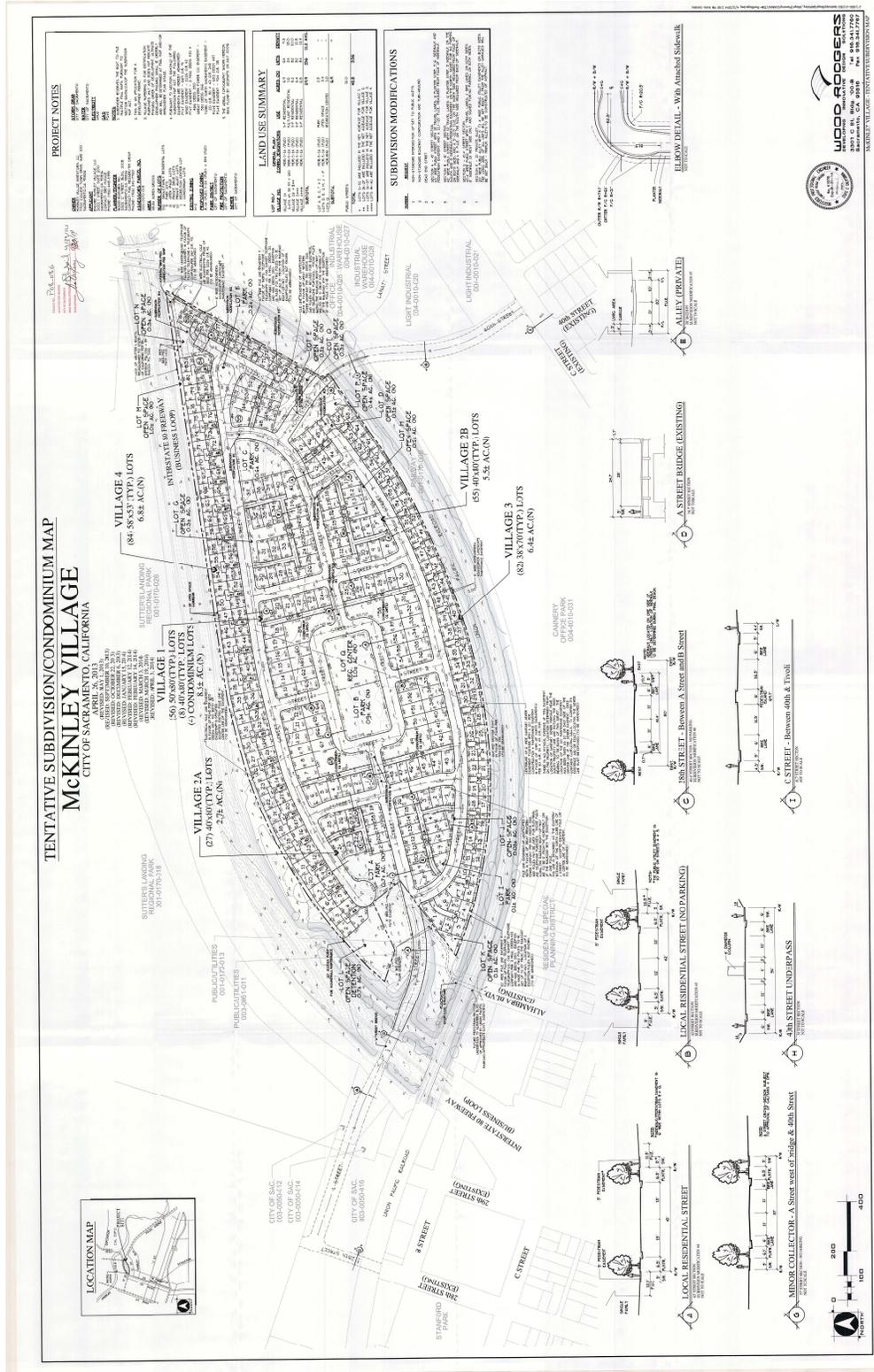
The authorized services to be funded from the levy and collection of annual special taxes include those set forth below in addition to the costs associated with collecting and administering the special taxes and annually administering the CFD. The authorized services to be funded include:

1. Maintenance and operation of drainage basin landscaping, water pump and aeration features.
2. Maintenance and operation of public parks: Lots A, B, C, F and I
3. Maintenance and operation of public soundwalls and open space: Lot M
4. Miscellaneous costs related to any of the items described above including planning, engineering, and legal and administration costs.
5. The levy of Special Taxes to accumulate funds for anticipated future repair or replacement costs of facilities maintained by the CFD, as determined by the Administrator.

McKinley Village Rate and Method of Apportionment and Manner of Collection of Special Taxes

Attachment 3

McKinley Village Tentative Subdivision Map



**PUBLIC IMPROVEMENT  
MAINTENANCE AGREEMENT**

**FOR**

**McKINLEY VILLAGE PROJECT**

**Between**

**CITY OF SACRAMENTO**

**and**

**ENCORE McKINLEY VILLAGE, LLC**

**Approved on:**

\_\_\_\_\_

**By Motion No. 2015 - \_\_\_\_**

**PUBLIC IMPROVEMENT  
MAINTENANCE AGREEMENT  
MCKINLEY VILLAGE PROJECT**

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**PUBLIC IMPROVEMENT  
MAINTENANCE AGREEMENT  
MCKINLEY VILLAGE PROJECT**

This PUBLIC IMPROVEMENT MAINTENANCE AGREEMENT (hereinafter "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY") and Encore McKinley Village, LLC, a Delaware limited liability company (hereinafter "DEVELOPER"). The CITY and DEVELOPER may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires. DEVELOPER and any successor to DEVELOPER's rights and obligations shall be referred to collectively as the "LANDOWNER."

**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. **Project Site.** The McKinley Village project is located on approximately 48.8 acres of land which lies north of C Street between Alhambra and 40<sup>th</sup> Street in the East Sacramento area of the City of Sacramento (the "Project Site"). The land encompassing the Project Site is depicted in **Exhibit A**, attached hereto and incorporated herein by this reference, (the "Property"), and referred to as Assessor Parcel Numbers 001-0170-028, 003-0061-011, 003-0061-006 and 001-0170-013.

B. **Development Project.** On April 29, 2014, the City Council approved certain entitlements for development of 336 housing units, 800 square feet of retail, and 6.9 acres of parks and open space at the Project Site (the "Development Project"). The entitlements included a Tentative Map to subdivide the 48.8 acre Project Site into 384 parcels, and included conditions requiring the construction of various public improvements by the DEVELOPER to serve the Development Project which were to be dedicated to the CITY.

C. **Public Improvements.** DEVELOPER has undertaken the design and construction of public improvements for the Development Project in accordance with the Tentative Map requirements and the Design Guidelines]. DEVELOPER intends to construct all of the public improvements required for the Development Project. The park, sewer, and drainage public improvements that are subjects of this Agreement are to be owned by CITY, after completion of construction by DEVELOPER and acceptance by CITY. The open space lots and sound wall public improvements that are subject to this

Agreement are to be owned by the McKinley Village Homeowners Association formed to maintain common areas on the Project Site ("MKV HOA") with a maintenance easement granted to CITY.

D. **Maintenance Special Tax District.** In accordance with the requirements of the Tentative Map and the Development Agreement, DEVELOPER initiated the formation of a Community Facilities District under the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311-53368.3; "Act") to encompass all of the Property as depicted in Exhibit A (the "Special Tax District Boundary"). The Special Tax District allows for collecting a Special Tax from property owners to be used for specified purposes, in an amount determined by the City Council in accordance with the method of apportionment set forth in the Rate and Method of Apportionment of Special Tax in the Hearing Report required by the Act, to fund the maintenance of specified public improvements as set forth in the Hearing Report, RMA, and formation documents.

E. **Citywide Landscaping and Lighting District.** The Property is also included in the citywide lighting and landscaping district, which funds the maintenance of certain parks. The amounts set forth in the Hearing Report and the RMA were adjusted to credit the costs to be paid by owners of the Property to avoid duplicate charges for the same purpose.

F. **MKV HOA Maintenance.** Within the Project Site, there will be common open space areas owned and maintained by the MKV HOA, which will be formed by DEVELOPER. The purpose of this Agreement, in furtherance of the terms in the Development Agreement between CITY and DEVELOPER, is to allow for CITY to contract with the LANDOWNER to assume that responsibility for maintenance of the Special Public Improvements (as defined below) included in the Hearing Report at its own expense in exchange for the CITY's agreement not to levy the Special Tax unless this Agreement is terminated, which is described in more detail below.]

G. **Ownership Transition Period.** The Parties recognize that there will be a transition period where the DEVELOPER owns the Special Public Improvements prior to forming the MKV HOA. The Parties contemplate that the City has accepted the Special Public Improvements, DEVELOPER may assign its rights and obligations in this Agreement and its ownership interests in the Special Public Improvements to the MKV HOA.

## **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:

### **ARTICLE I** **DEFINITIONS AND EXHIBITS**

1.1 **Recitals.** 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.

1.2 **Exhibits.** The documents which are attached to this Agreement and labeled as exhibits (the "Exhibits") and which 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.

1.3 **Interpretation.** Words not defined in this Agreement shall be given their common and ordinary meaning. The word "shall" is always mandatory.

1.4 **Special Tax District.** The McKinley Village Community Facilities District No. 2014-03 (Services) formed in accordance with the Mello-Roos Community Facilities Act of 1982 and the Mello-Roos District Policy Manual.

1.5 **Mello-Roos 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 **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 City Code may be amended herein and from time to time and as said Charter may be amended by a vote of the electorate from time to time.

1.7 **Contractor.** As used in this Agreement, the term "contractor" means a company licensed to do business in California as a contractor and possessing sufficient experience, financial resources and bonding capacity to undertake maintenance of the Special Public Improvements as specified herein.

1.8 **Design Guidelines.** The architectural and site design standards that are applicable to the Development Project, as approved by the City Council by Resolution No. 2014-0106, and as said Design Guidelines may be amended from time to time.

1.9 **Development Agreement.** The agreement dated June 3, 2014, between CITY and DEVELOPER for the Development Project (Agreement No. 2014-0494), which was approved by the City Council by Ordinance No. 2014-0011 as said Development Agreement may be amended from time to time.

1.10 **Hazardous Substances.** 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.

1.11 **Hearing Report.** The report for the McKinley Village Maintenance Community Facilities District No. 2014-03 required by the Act which identifies the public improvements and the Special Tax amount required for maintenance thereof.

1.12 **Landscaping.** As used in this Agreement, the term “landscaping” means all turf, flowers, shrubs, trees and any other type of living plant material.

1.13 **Maintenance.** As used in this Agreement, the term “maintenance” means inspecting, cleaning, trash and graffiti removal, painting, cutting, mowing, edging, pruning, repair, replacement, and reconstruction, as the condition of the Public Improvement so warrants.

1.14 **Maximum Special Tax.** The maximum Special Tax that can be levied against the Property in accordance with the RMA.

1.15 **RMA.** The rate and method of apportionment and manner of collection of special taxes approved in the resolution of intention adopted by the city Council on \_\_\_\_\_ (Resolution No. \_\_\_\_\_).

1.16 **Special Public Improvements.** The specific improvements described in section 2.1 of this Agreement, including: (1) Open Space Improvements; (2) Sound-wall Improvements; (3) Drainage Improvements; (4) Sewer Improvements; and (5) Parks.

1.17 **Special Tax.** The special tax authorized to be levied in the McKinley Village Community Facilities District No. 2014-03 (Services).

1.18 **Tentative Map.** The “tentative map” as defined in City Code section 16.32.160 that subdivides the Property into legal parcels pursuant to the Subdivision Map Act (commencing at Section 66410 of the Government Code), as approved by the City Council by Resolution No. 2014-0106, and as said Tentative Map may be amended from time to time.

## **ARTICLE II** **MAINTENANCE WORK**

2.1 **Special Public Improvements.** Effective as of the date of acceptance of each Special Public Improvement by the CITY, LANDOWNER shall maintain the Open Space Improvements, Sound-wall Improvements; Drainage Improvements, Sewer Improvements, and Parks described in this section 2.1 in accordance with the maintenance standards set forth in section 2.3.

2.1.1 **“Open Space Improvements”** are Lot M identified on the Tentative Map and include approximately one acre of open space running along the Capital City Freeway to the north of the Development Project.

2.1.2 “Sound-wall Improvements” are the 7-foot high and approximately 2,900-foot long sound-wall constructed on Lot M identified on the Tentative Map and running along the Capital City Freeway to the north of the Development Project.

2.1.3 “Drainage Improvements” are Lot K, Lot L, and the lands adjacent to A Street as shown on the Tentative Map as a detention basin.

2.1.4 “Sewer Improvements” are a sewer pump station as required in condition 169 in the conditions of approval and approved by City in Resolution 2014-0106.

2.1.5 “Parks” are all improvements within the Project Site to be transferred to CITY by fee or easement for recreational purposes as identified in the Hearing Report, shown as follows on the Tentative Map:

- Lot A - 0.7 Acre Park
- Lot B - 0.9 Acre Park
- Lot C - 0.6 Acre Park
- Lot F - 0.2 Acre Park
- Lot I - 0.1 Acre Park

2.2 **Utilities.** LANDOWNER shall be responsible for the cost of all utilities provided by CITY, SMUD, PG&E and the Sacramento Regional County Sanitation District (SRCSD) for the Special Public Improvements. These utility costs shall be part of the cost of maintaining the Special Public Improvements.

2.3 **Maintenance Standards.** In performing maintenance work under this Agreement, the LANDOWNER shall maintain the Special Public Improvements in good repair and condition and in compliance with the manufacturer’s specifications, all applicable laws, regulations and the City Code, and all of the following requirements:

2.3.1 Open Space Landscaping and Sound-wall Maintenance. Open Space improvements shall be kept free of trash and debris and maintained by the LANDOWNER at or above the standards specified in that certain document entitled City of Sacramento Landscape Maintenance Services General Specifications and Provisions (LS10-1) dated February 24, 2010 (the “Landscape Maintenance Standards”), which is attached as Exhibit B.

The sound-wall shall be repaired when damaged by vehicles, objects from Highway 50, or from the adjacent houses. The sound-wall shall be kept free of graffiti.

2.3.2 Drainage Improvements Maintenance. Drainage Landscape Improvements shall be maintained by the LANDOWNER at or above the standards set

forth in Exhibit C.

2.3.3 Sewer Improvements Maintenance. The Department of Utilities will maintain the Sewer Improvements and will invoice the LANDOWNER for work completed.

2.3.4 Parks Maintenance. All improvements within Parks shall be maintained by the LANDOWNER at or above the standards specified in that certain document entitled Exhibit A of the City of Sacramento Park Maintenance Services General Specifications and Provisions (PLS06-1) dated September 15, 2006 (the "Park Maintenance Standards"), which is incorporated herein by reference as though fully set forth. The LANDOWNER acknowledges that it has had an opportunity to fully review the Park Maintenance Standards prior to execution of this Agreement and consents to be subject to such standards. If CITY amends and/or restates such standards, the LANDOWNER shall comply with the revised standards after receipt of a copy thereof. Because some of the Parks may include improvements which are not addressed in the Park Maintenance Standards, CITY may notify the LANDOWNER in writing of such additional maintenance specifications for those improvements. The Parties shall strive to identify such additional maintenance obligations at the time the Park design is subject to review and approval by CITY and prior to CITY's acceptance of the Park and assignment of its maintenance to the LANDOWNER.

2.3.4.1 Special Park Amenities and Features. The costs for maintenance of park special amenities so that they remain operational and in an attractive condition can be significant. The Parties acknowledge and understand that if the CITY levies the Special Tax and performs maintenance of the Special Public Improvements as set forth in the Hearing Report; CITY has the right to discontinue operation of the special amenities, courts, and other features not addressed in the City's Park Maintenance Standards and may remove all or part of such improvements and equipment.

2.4 CITY's Reserved Rights. Notwithstanding the CITY's assignment of the maintenance responsibilities for the Special Public Improvements to the LANDOWNER under this Agreement, CITY retains the right to undertake maintenance of the Special Public Improvements without providing prior notice to the LANDOWNER if, in CITY's sole and absolute discretion, CITY determines that immediate repairs or replacements are needed to protect the public health or safety. CITY may also at any time and without prior notice to the LANDOWNER prevent public access and use of the Special Public Improvements until repairs can be made by CITY or by the LANDOWNER. CITY may, but is not required to, routinely inspect the Special Public Improvements to verify if the LANDOWNER is properly discharging its duties and obligations under this Agreement. CITY will notify the LANDOWNER if any omissions or violations are discovered and may issue directives to correct the deficiencies without the need for an amendment to this Agreement.

2.4.1 Payment of CITY'S Costs. CITY may offset its costs to undertake its reserved rights described in section 2.4 and perform the Sewer Improvements

maintenance described in section 2.3.3 and will invoice the LANDOWNER. The CITY shall provide its invoices to LANDOWNER in writing, in accordance with section 3.13 below. Each invoice shall describe in reasonable detail the costs associated with the CITY's reserved rights. LANDOWNER shall pay each invoice within 30 calendar days of receipt of the invoice.

2.5 **Representatives.** Each Party shall notify the other Parties of the name and contact information of their respective "Project Manager," who shall have the authority to direct the work and grant the approvals as set out in this Agreement on behalf of that Party.

2.6 **Maintenance Schedule.** The LANDOWNER shall submit to CITY's Project Manager for approval a maintenance performance schedule ("Maintenance Schedule") for each existing Special Improvement, the dedication of or maintenance easement for which has been accepted by CITY, within 30 days from the Effective Date. A new or revised Maintenance Schedule shall be submitted within 30 days after each Special Improvement has been accepted by CITY, or after receiving the CITY's written request for a new or revised schedule. Each Maintenance Schedule shall identify all of the maintenance tasks and the frequency per week when each task will be undertaken by the LANDOWNER. The Maintenance Schedule shall identify all of the LANDOWNER contractors which are under contract to undertake maintenance of each of the Special Public Improvements. CITY will not unreasonably withhold, condition of delay approval of each Maintenance Schedule. LANDOWNER's failure to timely submit a new or revised Maintenance Schedule when requested shall constitute a breach of this Agreement.

2.7 **Site Access.** The LANDOWNER covenants that the CITY Project Manager, CITY inspectors and any other CITY officers, employees, agents and contractors and consultants will be permitted access into the Project Site to inspect the work site and the progression of the maintenance of the Special Public Improvements at all times. The LANDOWNER shall also permit site inspections by any other public entities or public utilities which have issued permits for the work.

2.8 **Rights of Entry.** The LANDOWNER and its contractors shall have rights of entry across property owned or controlled by CITY to undertake the maintenance work as permitted under this Agreement if CITY has approved the Maintenance Schedule and the maintenance contract. However, CITY, in its sole and absolute discretion, may deny such access at any time if it determines that such access may unreasonably interfere or impede with CITY operations, traffic controls, construction of CITY projects, or threaten the public health, safety or welfare. CITY may also deny LANDOWNER contractors access to property owned or controlled by CITY if CITY has issued to the LANDOWNER a stop work order as set forth in section 2.9.1, or the immediate denial of access is required to prevent damage to the Special Public Improvements.

2.9 **Inspection of Work.** Should the CITY Project Manager or a CITY inspector find noncompliance by a LANDOWNER contractor with the maintenance requirements set out in this Agreement, applicable state and local laws and regulations,

or the work threatens the public health, safety or welfare; the CITY Project Manager will notify the LANDOWNER's Project Manager of such noncompliance and they shall jointly determine the nature of the corrective action to be taken in accordance with the terms of this Agreement.

**2.9.1 Stop Work Order.** If the CITY Project Manager and the LANDOWNER's Project Manager are unable to agree upon the corrective action to be taken, the CITY Project Manager may order that work on certain items or areas of the Special Public Improvements be stopped immediately. The LANDOWNER shall comply with all of the requirements set forth in the stop work order and must obtain the CITY Project Manager's written approval before work by the LANDOWNER contractor can resume.

**2.10 Changes to Scope of Maintenance Work; Termination of Agreement.** CITY reserves the right, at any time to terminate and remove from the scope of this Agreement any and all of the Special Public Improvements if required by governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases by providing written notice thereof to the LANDOWNER and specifying the effective date that CITY will assume responsibility for maintenance thereof. If CITY removes all of the Special Public Improvements from the scope of this Agreement pursuant to this section, then this Agreement shall terminate as of the effective date of CITY's assumption of all of the maintenance responsibilities for the Special Public Improvements.

**2.11 Indemnification for Claims.** The LANDOWNER agrees and covenants to, and shall fully indemnify, defend and hold harmless, CITY and its elective and appointive boards, commissions, officers, employees, agents, contractors and subcontractors from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively "Claims") arising by reason of any death, bodily injury, personal injury, property damage, and losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any actions or omissions in connection with the maintenance of the Special Public Improvements by the LANDOWNER, which includes the LANDOWNER's officers, employees, agents, contractors and subcontractors.

Notwithstanding the foregoing paragraph, the LANDOWNER shall not be liable hereunder to indemnify, defend or hold harmless CITY or its elective and appointive boards, commissions, officers, employees, agents, contractors or subcontractors against any Claims alleging the sole and active negligence of CITY arising from CITY's inspection and maintenance of the Special Public Improvements; provided that nothing in this Agreement shall be construed as a waiver by CITY of any immunity or defense it may have under applicable laws relating to any such Claim, including without limitation, immunity or defenses relating to the design of the Special Public Improvements and construction and maintenance thereof.

2.12 **Indemnification for Hazardous Substances.** The Parties acknowledge and understand that CITY has not conducted any review, examination or assessment to assess, identify or detect the presence of any Hazardous Substances on, under or around the Property or the Special Public Improvements. The LANDOWNER agrees and covenants to, and shall fully indemnify, defend and hold harmless CITY, and its elective and appointive boards, commissions, officers, employees, agents, contractors and subcontractors from and against any and all Claims (as defined in section 2.11) arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal by the LANDOWNER and/or its contractors of any Hazardous Substances on, about, or around the portion of the Property on which the Special Public Improvements are located.

2.13 **Insurance Requirements.** During the entire term of this Agreement, LANDOWNER shall maintain the insurance coverage described in this section 2.13. It is understood and agreed by LANDOWNER that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by LANDOWNER in connection with this Agreement.

2.13.1 **Minimum Scope & Limits of Insurance Coverage: Liability.**

Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

2.13.2 **Minimum Scope & Limits of Insurance Coverage: Automobile.**

Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the LANDOWNER.

2.13.3 **Minimum Scope & Limits of Insurance Coverage: Workers' Compensation.** Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

\_\_\_\_\_ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the LANDOWNER.

No Workers' Compensation insurance shall be required if LANDOWNER

completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." \_\_\_\_\_ (LANDOWNER initials)

2.13.4 **Additional Insured Coverage.** The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of LANDOWNER, products and completed operations of LANDOWNER, and premises owned, leased or maintained by LANDOWNER. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

\_\_\_\_\_ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

2.13.5 **Verification of Coverage.** LANDOWNER shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to

City of Sacramento  
c/o Ebix RCS  
Reference #: (To be provided by EBIX after Agreement approval.)  
PO Box 257  
Portland, MI 48875-0257

Insurance certificates also may be faxed to (770) 325-3340, or e-mailed to: CertsOnly-Portland@ebix.com. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

The CITY may cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may terminate the Agreement pursuant to section 3.3 below if the insurance is canceled or LANDOWNER otherwise ceases to be insured as required herein.

**ARTICLE III**  
**MISCELLANEOUS PROVISIONS**

3.1 **Dispute Resolution.** With respect to any breach or dispute arising under this Agreement, the Parties shall meet and attempt, in good faith and in using their best and reasonable efforts, to resolve the same prior to initiating legal action. If such breach or dispute is not resolved by the Parties, then any Party may request that the dispute be submitted to an independent mutually-agreed upon arbitrator. If arbitration and the selection of an arbitrator is approved by the Parties, the arbitrator shall attempt to resolve the dispute based upon a reasonable interpretation of this Agreement, the documentation provided by the Parties, and such other information deemed by the arbitrator to be relevant to the dispute. The decision of the arbitrator shall be advisory, and not binding, on the Parties. Nothing in this Agreement shall prohibit the Parties from agreeing to allow the arbitrator to attempt to mediate the dispute prior to hearing the matter and issuing a decision.

3.2 **Legal Actions by Parties.** In addition to any other rights or remedies as set out in this Agreement, either Party may institute legal action to enforce or require performance of the terms of this Agreement, to cure, correct, or remedy any default (as defined in section 3.3) by any other Party to this Agreement, or to enjoin any threatened or attempted violation hereunder. The prevailing party in such suit or proceeding shall be entitled to recover from the other Party reasonable costs and expenses, including attorneys' fees, including outside counsel (and, in the case of CITY, the City Attorney).

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.

3.3 **Cancellation for Breach.** In the event of a default by either CITY or LANDOWNER, the other Party may cancel this Agreement for breach by providing written notice to the other Party of the basis of the default and the effective date of cancellation. 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 any Party of any of term, condition, obligation or covenant of this Agreement, including, without limitation, the abandonment or failure to properly maintain the Special Public Improvements. However, the LANDOWNER shall not be in default under this Agreement if the sole cause of its abandonment or failure to properly maintain the Special Public Improvements was due to the fault of the CITY's failure to properly maintain the Streets and Parks for which CITY has or may retain such responsibility, which prevented or impeded the LANDOWNER from discharging its obligations under this Agreement.

Unless the following actions have been terminated or released within 60 days thereafter, the term "default" shall also mean: (i) the transfer or assignment of the LANDOWNER's obligations under this Agreement without the CITY's prior written consent except for a transfer or assignment from DEVELOPER to MKV HOA, (ii) a voluntary filing by the LANDOWNER for reorganization or other relief under any Federal or State bankruptcy or insolvency law, (iii) an involuntary bankruptcy or insolvency action filed against the LANDOWNER by a trustee, or (iv) an appointment of a receiver to take possession of the assets of the LANDOWNER.

3.3.1 Limitation on Cancellation for Breach. In the event of a default by LANDOWNER related to a failure to properly maintain a category of Special Public Improvements, CITY may cancel this Agreement for breach as to that category of Special Public Improvement only pursuant to section 3.3 above.

3.3.2 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(ies) notice in writing as provided in section 3.13 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 30 days following receipt of notice of default. If requested by any 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(ies) charged shall not be considered in default for purposes of cancellation or termination of this Agreement and the Parties may not institute legal proceedings related to the alleged default.

3.3.3 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, or injunctive relief; and/or (ii) give the other Party(ies) notice of intent to cancel this Agreement, which shall have the effect of terminating this Agreement.

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

3.5 **Representations.** Each individual executing this Agreement on behalf of its corporation represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement. Each of the covenants, conditions and statements contained in this Agreement was and is a material inducement to CITY to enter into this Agreement and CITY materially relied upon each such covenant, condition, and statement in making this Agreement. The LANDOWNER also represents that to the extent approval of this Agreement is required by any lender, its members, or by any third party, such consent has been obtained prior to LANDOWNER's execution of this Agreement.

3.6 **Term of Agreement.** This Agreement shall become effective as of the Effective Date. This Agreement shall continue from year to year until it is terminated or cancelled by any Party as provided herein.

3.7 **Assignment.** DEVELOPER shall have the right to freely sell, transfer, or otherwise convey all or any portion of the Property and the Special Public Improvements to the MKV HOA without the consent of CITY. DEVELOPER shall notify CITY of any sale, transfer or assignment of DEVELOPER's interests in all or any portion of the Property and Special Public Improvements by providing written notice thereof to CITY in the manner provided in Section 3.13 not later than 15 days before the effective date of such sale, transfer or assignment. This Agreement may not be assigned to any party other than the MKV HOA without the mutual written consent of all Parties and any such attempt to assign this Agreement without such consent shall be void.

3.8 **Successors.** All of the covenants, terms and conditions set forth in this Agreement shall be binding upon the Parties and to their respective heirs, successors and assigns. All of the covenants, terms and conditions set forth in this Agreement shall inure to the benefit of the respective heirs, successors and assigns of the Parties subject to compliance with the provisions of section 3.7.

3.9 **Amendment.** No waiver, alteration, or modification of this Agreement shall be valid unless made in writing and signed by each Party. In the event of a conflict between this Agreement and any other agreement or understanding executed by the Parties subsequent to the commencement of this Agreement, the terms of this Agreement shall prevail and be controlling unless such other agreement expressly provides to the contrary.

3.10 **Survivorship.** The LANDOWNER's obligations and covenants arising under this Agreement pertaining to indemnity and attorneys' fees, and in particular as those obligations are set out in sections 2.11, 2.12, and 3.2, shall survive the



Attn: Hector Calderon

3.14 **Covenant of Good Faith and Cooperation.** The Parties agree that each of them shall at all times act in good faith and to 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 Parties 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.

3.15 **Nonwaiver.** A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party's or Parties' breach of this Agreement will not constitute a waiver of the performance, right, or remedy. Waiver of any default or any right or remedy under this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent default or any right or remedy either of the same occurrence or event or of another provision of this Agreement. 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.

3.16 **Construction.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve its objectives and purposes of the Parties. The 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.

3.17 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, 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 3.9. 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, any 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 Parties and specifying the effective date thereof.

3.18 **Other Agreements.** This Agreement is not intended to, and shall not, cancel, supersede, modify or otherwise affect any other agreements which have been or may be made or any approvals or permits which have been issued between or by any Party regarding the subject matter hereof unless expressly set out herein.

3.19 **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. No oral or written statement, representation, or agreement - written, oral, express, or implied - concerning the subject matters contained herein shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

[signature page follows]

**IN WITNESS WHEREOF**, the CITY and the DEVELOPER have executed this Agreement as of the Effective Date.

CITY:  
**CITY OF SACRAMENTO**,  
a Municipal Corporation

By: \_\_\_\_\_  
Leyne Milstein, Finance Director  
For John F. Shirey, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Senior Deputy City Attorney

ATTEST:

By: \_\_\_\_\_  
Assistant City Clerk

DEVELOPER:  
**ENCORE McKINLEY VILLAGE, LLC**  
a Delaware limited liability company

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

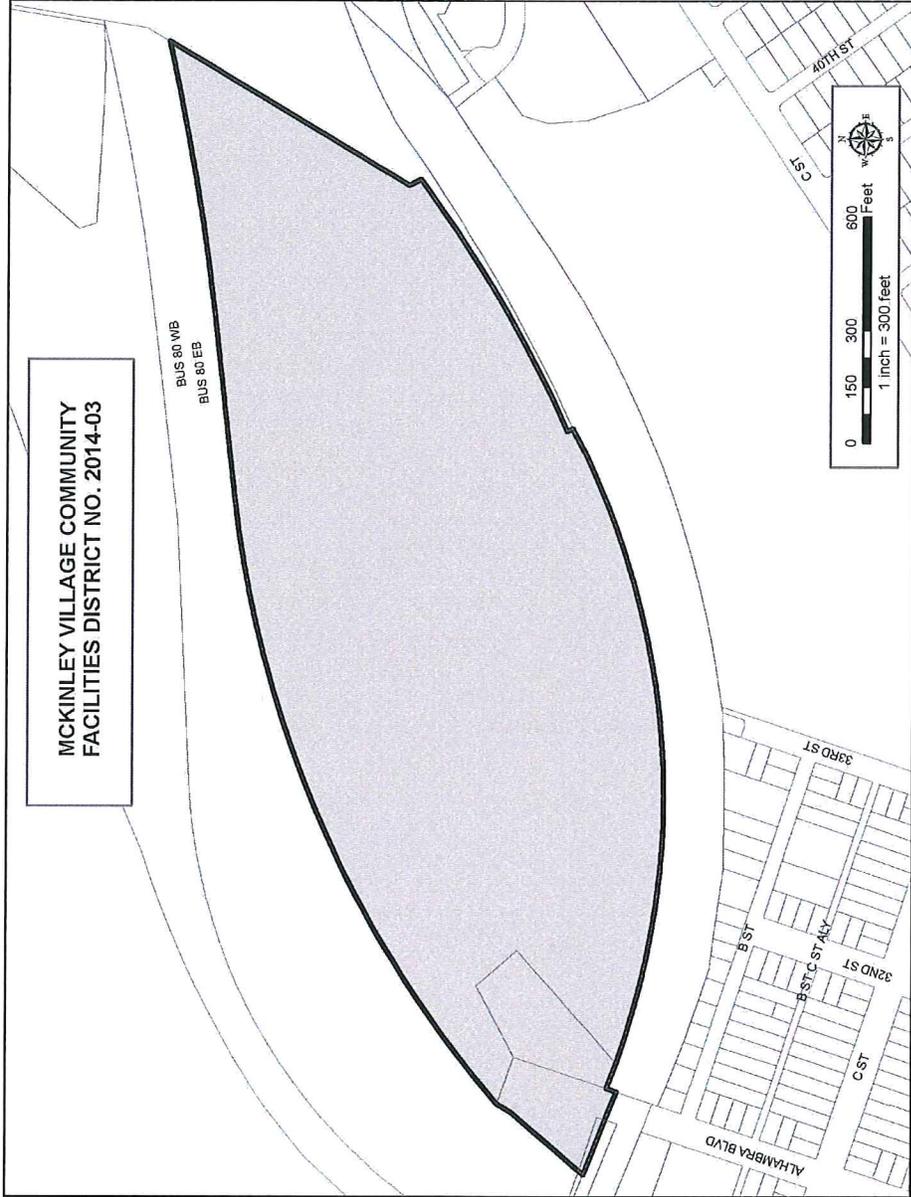
By: The New Home Company, LLC, a Delaware limited liability company  
Its: Member

By:   
Ashley J. Feeney  
Its: Senior Vice President

Date: March 9, 2015



# Exhibit A



# **Exhibit B**

## **City of Sacramento**

### **Landscape Maintenance Services**

### **General Specifications and Provisions**

The Contractor shall maintain the landscape in a clean, healthy and well groomed condition. All of the Contractor's work shall be performed in a professional manner, using equipment in good condition and quality materials.

#### **LANDSCAPE PRACTICES FOR SUSTAINABILITY**

Contractors providing landscape maintenance service for the City are encouraged to employ sustainable landscape management practices, whenever practicable, including but not limited to, integrated pest management, plant material-cycling, low water volume irrigation, composting and use of mulch and compost.

All irrigation shall be in compliance with the City Water Ordinance (Ordinance 2009-026).

Lawn mowing shall be done to a minimum height of two (2) inches.

Whenever possible, debris as a result of plant material clean up, weed removal or pruning shall be taken to a recyclable green waste facility.

The Contractor shall take adequate measures to insure that their operations do not harm any existing underground facilities. The toll-free number for Underground Service Alert (U.S.A.) is (800) 227-2600.

#### **TURF/MOWING OPERATION**

Turf shall have the appearance of being well groomed and broadleaf free during the term of this contract.

Mowing operations shall be performed in a manner that ensures a smooth surface appearance throughout the year, without scalping or allowing excessive cuttings to remain. Precautions shall be taken to prevent rutting, damage to trees, shrubs and sprinklers.

Turf shall be maintained at heights of no less than 2 inches and should not be greater than 4" inches year round.

Hard fescue areas shall be maintained weed free as ornamental turf. Weeds shall not be allowed to exceed four (4) inches in height. Contractor shall use a pre-emergent weed control method. Hard fescue areas will also be mowed two (2) times per year and all clippings will be removed from site and disposed of. Contractor may use chemical controls for weeds, insects, and fungus. Non-irrigated native grass areas will be mowed three (3) times per year or as specified by the City of Sacramento Department of Public Works.

#### **AERATION**

Aeration of all turf areas shall be done by using a device that removes cores to a depth not less than two (2) inches and not more than a six (6) inch spacing and shall be done three(3) days before fertilizer application.

All cores shall be removed from the turf and disposed of off-site or thoroughly pulverized within twenty-four (24) hours after aerating.

#### **USE OF CHEMICALS**

All work involving the use of chemicals shall be in compliance with all Federal, State and County laws.

All chemical applications shall be done with extreme care to avoid any hazard to any person or pet or damage to property in the area. All spraying shall be done when air currents are still to limit drift to six (6) inches.

All dead weeds must be removed within seven (7) days of application.

#### **LITTER CONTROL**

Complete policing and litter pick-up for the removal of paper, glass, trash, limbs, undesirable materials, and other accumulated debris within the landscape areas will be done each time site is serviced including periods of inclement weather.

All litter and debris occurring as a result of Contractor's operations shall be removed from the maintenance sites immediately following such operations and is to be disposed of off-site and taken to an appropriate landfill.

#### **LEAF REMOVAL**

Accumulation of leaves from landscaped areas, such as under plants, and next to fences/walls shall be removed each time site is serviced.

#### **TREE PRUNING AND CARE**

Tree pruning shall be performed with the intent of developing structurally sound trees with appearance typical of the species and proper safety clearance and access. All trees below fourteen (14) feet shall be inspected annually and pruned on a schedule.

#### **GROUND COVER**

Ground cover shall be kept free of weeds, litter, debris and leaves. Ground cover shall not exceed three inches (3") beyond the inside edge of the curb or border.

Prune ground cover up to three (3) times a year to maintain at an even/level and consistent height. Cut long branches down to the main growing height of the plant.

#### **WATERING**

Water shall be regulated to avoid excessively wet or waterlogged areas causing: a decline in plant health, preventing turf mowing, excessive water run off onto streets and/or private property. Hand watering may be necessary on some sites and shall be performed as required.

Per the Water Conservation Ordinance, all controllers shall be scheduled to conform to the odd/even days for watering. North of Hwy 80 Freeway sides shall be considered odd numbered addresses and shall be watered on Tuesday, Thursday and Saturday. South of the Hwy 80 Freeway are considered even numbered addresses and shall be watered on Wednesday, Friday and Sunday. No watering is allowed on Mondays.

# Exhibit C

## City of Sacramento

### Department of Utilities Drainage and Detention Facilities Maintenance Standards

#### Fuel Load Management and Fire Control

The proximity of the detention basin to residential development requires that precautions be taken to manage and prevent fire hazards such as the accumulation of flammable debris and vegetation.

Objective FA: Maintain vegetative fuel load to minimize fire hazard.

Objective FB: Prevent accumulation of flammable debris.

#### Maintenance

The maintenance goal is to establish design and operational parameters for the basin and the surrounding area that will minimize maintenance costs as much as possible while still preserving the basin and water quality objectives. Preferred maintenance practices will emphasize techniques and materials that limit the amount of labor, frequency, material costs and environmental impact. Banks and slopes within the basin will be monitored and re-vegetated or re-contoured where necessary to prevent erosion that might otherwise lead to costly maintenance problems. Maintenance access routes will be kept free of vegetation and other obstacles.

Objective M-A: Maintain native vegetation compatible with site conditions to minimize long-term maintenance needs and support other basin functions.

Objective M-B: Minimize erosion of slopes and banks.

Objective M-C: Utilize the most cost-effective and least environmentally harmful approach to maintenance issues.

Objective M-D: Keep maintenance roads and other access points clear of vegetation, debris, and other obstacles that would impede maintenance activity.

#### Irrigation System

The irrigation system should be kept operational with periodic inspection of system components, such as main lines, laterals, heads, emitters, and control valves. Operation of the irrigation system needs to be adjusted over time to respond to the changing needs of the plants and soil moisture levels. Regular monitoring should occur to detect signs of either drought stress or excessive soil saturation, and irrigation delivery should be adjusted accordingly.

**Standard Maintenance Levels**

<b>Activity</b>	<b>Frequency</b>	<b>Criteria</b>
Monitor condition of trees and shrubs. Remove any that decline or die and replace with species better suited to conditions.	Monthly for 2 years	No dead trees or shrubs present.
Mow grasses in July and October, if conditions will permit, after staking all trees to be protected.	July and October annually	Set mowing level at not less than 3". Remove clippings if in excess of 4" of material. Direct mower throw away from water.
Maintain temporary irrigation to trees and shrubs until established (3 - 5 yrs.) Check heads, emitters, lines and controllers and replace any elements that are malfunctioning. Adjust watering schedule seasonally. Check for over spray and run-off.	Monthly	Irrigation system is supplying appropriate quantities of water to desired locations. No leaks or malfunctions.
Monitor vegetation to achieve cover classes by supplemental and replacement planting or thinning as needed.	Monthly with action as needed	Coverage acceptable to DOU achieved
Monitor and remove debris and trash	Weekly	Debris does not accumulate onsite