

Meeting Date: 5/12/2015

Report Type: Consent

Report ID: 2015-00231

Title: Ordinance to Levy a Special Tax and Amendment to Agreement No. 2015-0358 for McKinley Village Community Facilities District No. 2014-03 (Services) [Passed for Publication 05/05/2015; Published 05/08/2015]

Location: District 3

Recommendation: Pass 1) an Ordinance levying a special tax solely within and relating to the McKinley Village Community Facilities District No. 2014-03 (Services); and 2) a Motion authorizing the City Manager to execute the amended and restated Agreement No. 2015-0358-1 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 Performances
- 4-Ordinance
- 5-Agreement

City Attorney Review

Approved as to Form
Michael W. Voss
4/29/2015 1:24:29 PM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 4/23/2015 4:24:37 PM

Description/Analysis

Issue Detail: 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.

On March 24, 2015, the Council approved Agreement No. 2015-0358 (Maintenance Agreement) requiring the Project developer and HOA to provide maintenance of the public improvements at or above City standards. The amended agreement clarifies the maintenance responsibilities for the sewer pump detention facility and caps the annual HOA financial responsibility for maintenance of the detention facility. If maintenance of the public improvements falls below the levels outlined in the Maintenance Agreement, the City will levy the special tax and provide maintenance of the public facilities.

On April 28, 2015, the Council passed a resolution of formation to form the District and to conduct a special mailed-ballot election with regard to formation of the District. On May 5, 2015, the property owner voted in favor of forming the District.

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.

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 the 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.

District 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 District. There is one landowner within this proposed District. The City is prohibited from levying the tax unless at least two-thirds of the votes cast are in favor of formation.

The ballot question had two parts:

- Should the City be authorized to levy a special tax to pay for maintenance services; and
- Should the appropriation limit of the District be set at \$285,000?

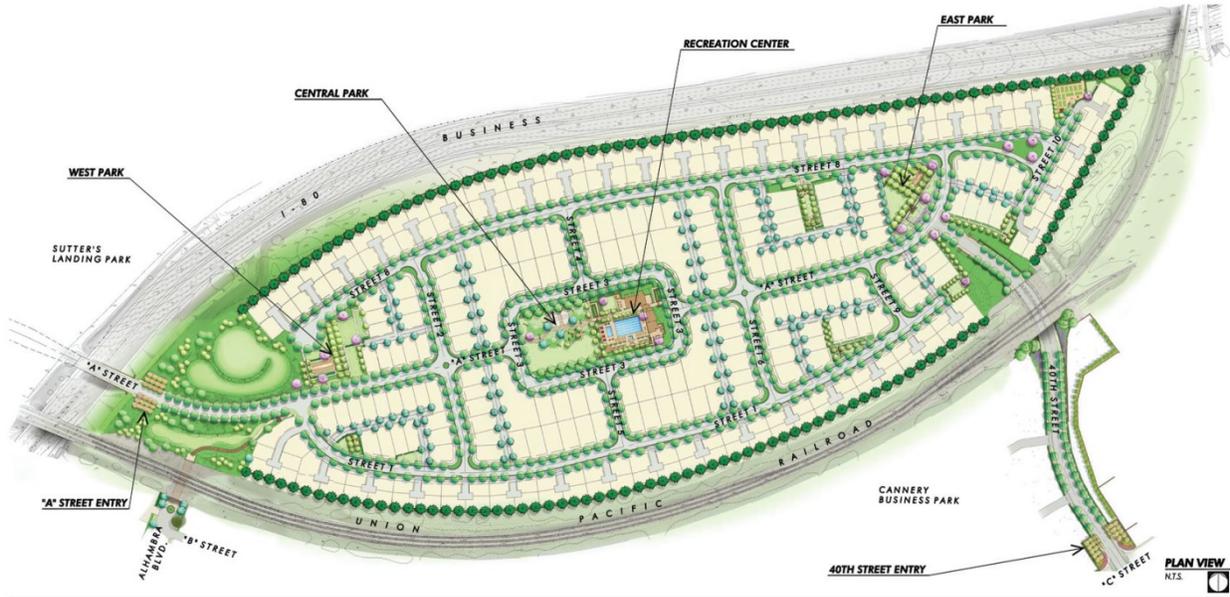
The appropriation limit is the amount that can be appropriated in any one year.

The ballots were due on May 5, 2015 and the property owner voted in favor of forming the District. An entire schedule for the CFD proceedings is provided on the following pages.

Special Tax

The special tax is applied to both developed and undeveloped properties. 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
March 24, 2015	City Council <ul style="list-style-type: none">○ Approve Maintenance Agreement○ Pass Resolution of Intention (ROI) and set hearing date
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">○ Conduct Public Hearing (> 30 days from ROI)○ Pass Resolution of Formation○ Pass Resolution Calling Special Election
May 5, 2015	Ballots Due
May 5, 2015	City Council <ul style="list-style-type: none">○ Pass Resolution Declaring Results of Special Election○ Pass for Publication Ordinance to Levy Tax
May 6, 2015	Record Notice of Special Tax
May 12, 2015	City Council <ul style="list-style-type: none">○ Adopt Ordinance to Levy Special Tax

ORDINANCE NO.

Adopted by the Sacramento City Council

LEVYING A SPECIAL TAX FOR THE PROPERTY-TAX YEAR 2015-2016 AND FOLLOWING TAX YEARS SOLELY WITHIN AND RELATING TO THE MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2014-03 (SERVICES) FOR THE MAINTENANCE OF AREAS IN AND AROUND THE MCKINLEY VILLAGE DEVELOPMENT PROJECT

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

1. On April 28, 2015, the City Council adopted Resolution No. 2015-0111 (the "**Resolution**"), thereby establishing the McKinley Village Community Facilities District No. 2014-03 (Services) (the "District").
2. In accordance with section 53328 and 53340 of the California Government Code (the "**Code**") and the Rate and Method of Apportionment of Special Tax attached as Exhibit B to the Resolution (the "**RMA**"), a special tax is hereby levied on all taxable parcels within the District for the 2015-2016 tax year and for all subsequent years in the amount of the maximum authorized tax. This amount may be adjusted annually by resolution of the City Council, subject to the maximum authorized special tax limit.
3. The Manager of the Public Improvement Finance Division of the Finance Department or his or her designee (the "**Manager**"), with the aid of the appropriate officers and agents of the City and without further action by the City Council is authorized and directed (a) to calculate the Special Tax Requirement (as required in section 5 of the RMA) each year; (b) to prepare the annual special-tax roll in the amount of the Special Tax Requirement in accordance with the RMA; and (c) to provide to the Sacramento County Auditor-Controller all information in proper form, and in proper time, that is necessary and appropriate to effect the correct and timely billing and collection of the special tax on the secured property-tax roll of Sacramento County (the "**County**"). As provided in section 53340 of the Code and in the RMA, the special tax is to be collected in the same manner and at the same time as ad valorem taxes.
4. The appropriate officers and agents of the City are authorized to make adjustments to the special-tax roll before the final posting of the special taxes to the County tax roll each year, as may be necessary to achieve a correct match of the special tax levy with the assessor's parcel numbers used by the County in sending out property-tax bills. The County may deduct its reasonable and agreed charges for collecting the special tax from the amounts collected, before remitting the special tax collections to the City.
5. Any taxpayer may contest the levy of the special tax by filing a written notice of appeal in accordance with section 7 of the RMA, which is supplemented as follows:
 - a. The Manager shall serve as the CFD Administrator for purposes of section 7 of the RMA.
 - b. A taxpayer may file a notice of appeal with the Manager not more than two years after the end of the tax year for which the taxpayer is contesting the levy, and the taxpayer's failure to do so within that time constitutes a bar to appeal. The notice of appeal must specify in detail the grounds of the appeal, which are limited to (1) clerical errors in assigning an amount of tax to a parcel and (2) an error in defining the use of a parcel or its classification. No other appeals are allowed.

c. Not more than 30 days after an appeal is filed, the Manager shall review the appeal, meet with the taxpayer (if necessary), and mail the taxpayer a written decision on the appeal. If the Manager finds that the special tax should be modified, then the Manager shall correct the special-tax levy or grant the taxpayer a credit against the next year's special-tax levy, as appropriate under the circumstances. The Manager's failure to timely mail a written decision will constitute a decision denying the appeal.

d. If the taxpayer disagrees with the Manager's decision, and if the taxpayer is current on payments of the special tax, then the taxpayer may appeal to the City Council by filing a written notice of appeal with the City Clerk not more than 30 days after the Manager mails the notice of decision or has failed to timely mail a written decision, and the taxpayer's failure to do so constitutes a bar to further appeal. The notice of appeal must specify in detail the grounds of appeal. The City Council shall, in accordance with chapter 1.24 of the City Code, either hear the appeal itself or refer the appeal to a hearing officer. The hearing on the appeal from the Manager's decision is to be conducted not more than 30 days after the taxpayer files the appeal with the City Council, and the City Council or the hearing officer, as appropriate, shall mail a written decision to the taxpayer not more than 30 days after the hearing concludes. The decision of the City Council or the hearing officer will be final for all purposes. The failure of the City Council or the hearing officer to hear the appeal or to render a decision within the specified time will constitute a denial of the appeal.

6. The filing of an appeal under section 7 will not relieve the taxpayer of the obligation to pay the special tax when due.

7. If for any reason a court with jurisdiction finds any portion of this ordinance to be invalid or finds the special tax to be inapplicable to any particular parcel, then the balance of this ordinance and the application of the special tax to the remaining parcels will not be affected.

8. In accordance with section 32(c) of the City Charter, after the City Council has passed this ordinance for publication the City Clerk shall have the title of this ordinance, and only the title, published at least once in a newspaper of general circulation that is published in the City and designated by the City Council as the official newspaper of the City, with the publication to occur at least three days before the City Council adopts this ordinance.

**AMENDED AND RESTATED
PUBLIC IMPROVEMENT
MAINTENANCE AGREEMENT**

FOR

McKINLEY VILLAGE PROJECT

Between

CITY OF SACRAMENTO

and

ENCORE McKINLEY VILLAGE, LLC

Approved on:

May 12, 2015

By Motion No. 2015 - ____

**AMENDED AND RESTATED
PUBLIC IMPROVEMENT
MAINTENANCE AGREEMENT
MCKINLEY VILLAGE PROJECT**

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**AMENDED AND RESTATED
PUBLIC IMPROVEMENT
MAINTENANCE AGREEMENT
MCKINLEY VILLAGE PROJECT**

This amended and restated 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 40th 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 March 24, 2015 (Resolution No. 2015-0077).

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 detention facility as required in condition I69 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. The maximum amount CITY may invoice the LANDOWNER for Sewer Improvements Maintenance in any fiscal year is \$5,000 in Fiscal Year 2015/16, increased each fiscal year by the Consumer Price Index (CPI) (prior calendar year annual average, San Francisco, All Urban Consumers (CPI-U) Index).

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 termination or cancellation of this Agreement.

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, including the Public Improvement Maintenance Agreement entered into by the parties on March 27, 2015, City Agreement No 2015-0358, 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: 
Kevin S. Carson
Its: President

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

By: Riverview Capital Investments, Inc., a California corporation

Its: Managing Member

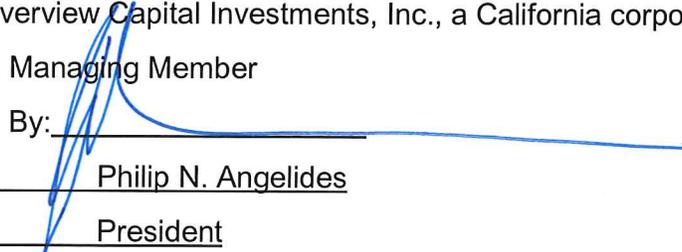
By: 
Philip N. Angelides
President

Exhibit A

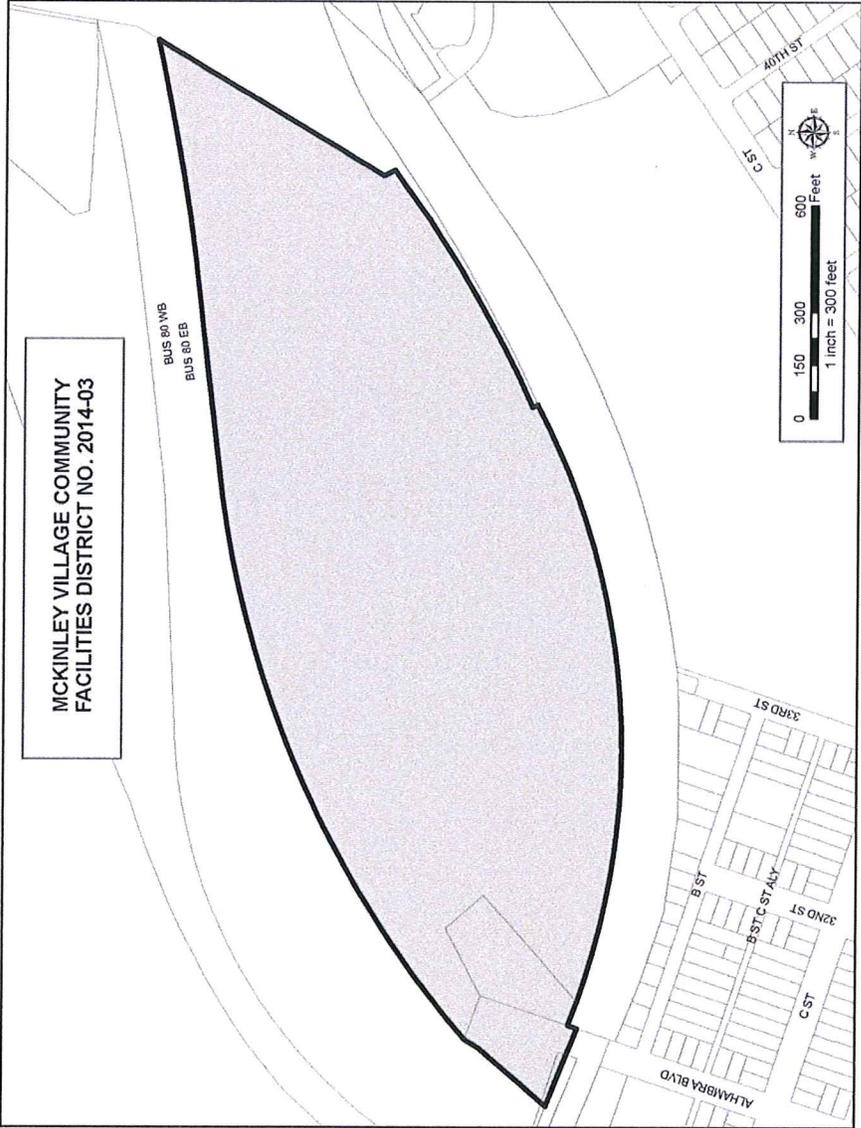


Exhibit B

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 F-B: 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

Activity	Frequency	Criteria
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