

Meeting Date: 8/6/2015

Report Type: Consent

Report ID: 2015-00652

Title: Agreement: Naming Park Site ES1 and ES2, Revising Park Development Impact Fee Credit Agreement Form, and Approving the Park Development Impact Fee Credit Agreement with Encore McKinley Village for the Alan and Helen Post Park

Location: Between I-80 and the Union Pacific Railroad Lines, south of Sutter's Landing Regional Park, District 3

Recommendation: Pass a Resolution: 1) naming Park Site ES1 as R. Burnett Miller Park; 2) naming Park Site ES2 as Alan and Helen Post Park; 3) approving the revised Park Development Impact Fee Credit Agreement Form; 4) approving the plans and specifications for the Alan and Helen Post Park; 5) approving the Park Development Impact Fee Credit Agreement with Encore McKinley Village for the Alan and Helen Post Park and authorizing the City Manager or his designee to execute the agreement; 6) accepting payment of \$26,313 pursuant to the Park Development Impact Fee Credit Agreement from Encore McKinley Village, LLC to be deposited into Park Development Impact Fee (PIF), Fund 3204; 7) appropriating \$5,274 from Park Development Impact Fee (PIF), Fund 3204 to McKinley Village Parks CIP L19019000; 8) appropriating \$6,011 from Park Development Impact Fee (PIF), Fund 3204 to L19920600 for Community Plan Area 6 Art in Public Places.

Contact: Mary de Beauvieres, Principal Planner, (916) 808-8722, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Park Development Services

Dept ID: 19001121

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Background on Park Names
- 4-Map
- 5-Resolution
- 6-Exhibit A Agreement Template
- 7-Exhibit B Agreement

City Attorney Review

Approved as to Form
Gerald Hicks
7/22/2015 9:29:40 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 7/9/2015 12:18:31 PM

Description/Analysis

Issue: Encore McKinley Village, LLC is the Master Developer of the McKinley Village project that is currently under construction in East Sacramento. The Developer has opted to develop the subdivision's parks as turnkey parks in lieu of paying the Park Development Impact Fee and is ready to begin construction of the first park. The Developer has also proposed names for two of the project parks. Park Site ES2 is the first park to be developed as a turnkey park in the subdivision. Turnkey parks are developer-funded and constructed under the terms of a Park Development Impact Fee Credit Agreement, which provides the developer with early issuance of Park Development Impact Fee Credits to be applied towards building permits within the subdivision, in exchange for security to insure that the developer completes park construction. The names for the remaining parks in the subdivision will be approved later and separate Park Development Impact Fee Credit Agreements will be needed for the developer to construct the other parks.

Park Site ES1 is 1.0 acre in size and is centrally located within the subdivision. The park is proposed to be named R. Burnett Miller Park in honor of Mr. Miller's lifetime achievements as a World War II veteran, leader of the family lumber company (Burnett and Sons Planing Mill and Lumber Company, started in 1869) and as a community leader (serving as City Councilmember and Mayor). A brief biography of Mr. Miller is attached. Park construction of R. Burnett Miller Park is anticipated to begin in spring 2016.

Park Site ES2 is 0.69 acre in size; it is proposed to be named Alan and Helen Post Park in honor of their contributions to the local art community and public service. A brief biography of Mr. and Mrs. Post is attached. The park is located in the northeast quadrant of the McKinley Village project and construction is anticipated to begin in late summer or early fall. Park improvements will include two bocce courts, arbor shaded social spaces with benches and game tables, public art, and landscaping. A Park Development Impact Fee Credit Agreement is to be approved for construction of this park.

Modifications to the City's Park Development Impact Fee Credit Agreement form are proposed to include the addition of a developer performance bond as security for the issuance of park development impact fees before completion of the park construction. The developer performance bond will be another security option in addition to an Unconditional Standby Letter of Credit or cash deposit. A summary of the McKinley Village project and its parks and a location map are included as attachments to this report.

Policy Considerations: The McKinley Village project was approved on April 29, 2014 and found to be consistent with the City's General Plan. Providing parks and recreation facilities is also consistent with the City's strategic plan to enhance livability in Sacramento's neighborhoods by expanding park, recreation, and trail facilities throughout the City.

Naming the parks after R. Burnett Miller and Alan and Helen Post is consistent with the City's Policy for Naming City Facilities (Resolution 2008-112, dated February 26, 2008). The naming policy says that a facility may be named after an individual or family who has contributed

significantly to the community or facility. Mr. Miller and Mr. and Mrs. Post have contributed significantly to the Sacramento community.

Environmental Considerations:

California Environmental Quality Act (CEQA): On April 29, 2014, the City Council certified an Environmental Impact Report (EIR) for the McKinley Village Development Project and adopted a Mitigation Monitoring and Reporting Program (Resolution 2014-0102).

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

Sustainability: The McKinley Village Parks Master Plan is consistent with the goals, policies, and targets of the Parks and Recreation Sustainability Plan by reducing greenhouse gas emissions and air pollution through the addition of landscape plantings, and by improving the health of residents through access to a diverse mix of wellness activities. Individual products and manufacturers have not been chosen, but the design will incorporate play equipment and site furniture manufactured from recycled materials, and low water use planting.

Commission/Committee Action: The Parks and Recreation Commission (PRC) reviewed and recommended approval of the McKinley Village Parks Master Plan at its June 12, 2014 meeting. The City Council adopted the Parks Master Plan at its August 12, 2014 meeting with approval of Motion 2014-0201.

Naming Park Site ES1 as R. Burnett Miller Park and Park Site ES2 as Alan and Helen Post Park was reviewed at the PRC's March 5, 2015 meeting. The Commission recommended approval of the suggested names.

Rationale for Recommendation: Staff recommends the City Council authorize the City Manager or his designee to execute the Park Development Impact Fee Credit Agreement with Encore McKinley Village, LLC to construct Alan and Helen Post Park. Naming Park Site ES1 after R. Burnett Miller and Park Site ES2 after Alan and Helen Post is consistent with the City's Policy for Naming City Facilities.

Modifications to the Park Development Impact Fee Credit Agreement form include the addition of a third security option for developers to receive use of Park Development Impact Fee credits in advance of completion of the park. In addition to an Unconditional Standby Letter of Credit or Cash Deposit, the developer may provide a Performance Bond for 100% of the construction contract amount which shall be issued to the developer by a surety insurer with an A/VIII rating by A.M. Best. The bond must name the City as an obligee and be in a form that has been approved

by the City Attorney. A performance bond is more easily obtained by a developer and at a lower cost, yet still provides the City with the necessary security it needs to insure the project is completed.

Financial Considerations: The Development Agreement for the McKinley Village project (C2014-0494) specifies that the project's Park Development Impact Fees be allocated to on-site park improvements at a rate that is proportionately equal to the percentage of parkland dedication met by on-site dedication. The project will dedicate 58% of its parkland dedication requirement on-site; therefore, the budget for the five parks to be developed is \$1,134,701 using the current Park Development Impact Fee rates for FY2015/16. The park budget eligible for PIF credits for the 0.69 acre Alan and Helen Post Park is \$400,554 (of which \$100,000 is earmarked for additional public art in accordance with the Development Agreement). The developer has a separate agreement with the Sacramento Metropolitan Arts Commission (C2014-0494) for the \$100,000 additional public art component. Costs in excess of \$400,554 will be the responsibility of the developer.

Total construction costs for Alan and Helen Post Park are expected to be \$485,960, of which an estimated \$85,406 will be the developer's responsibility. The total costs include City costs of \$51,874; which include staff (\$30,835) and fund administration (\$15,028) costs and funds for art in public places (\$6,011). The developer has already paid City staff costs incurred during the master planning process and for review of construction documents via two service agreements. Those costs were prorated at \$8,898 for Alan and Helen Post Park and are accounted for in the total estimated cost of \$485,960. A remaining credit of \$25,561 from the two service agreements has been applied to the City costs due for Alan and Helen Post Park. Therefore, the developer will provide \$26,313 in cash to cover the difference in City costs due.

Development of parks creates an ongoing cost for park maintenance and utilities based on the size of the park. The Project's Conditions of Approval required that a Community Facilities District or other assessment district be formed and funded before the City will accept a park. On April 28, 2015, the City Council established the McKinley Village Community Facilities District No. 2014-03, which will fully fund the maintenance costs of the development's park system. Maintenance of each park will be fully funded by the District and thus will not impact the Department of Parks and Recreation's Operating Budget.

Local Business Enterprise (LBE): The Developer is required to construct the park improvements using the City's standard contracting practices, which includes the LBE requirements.

Background

McKinley Village is an approved 49-acre residential subdivision located in the East Sacramento Community Plan Area. It is located south of Sutter's Landing Regional Park and I-80 and north of the Union Pacific Railroad (UPRR) Lines. Access is currently via 28th Street through the park and will be available via 40th Street upon completion of an access bridge under the UPRR lines at 40th Street in East Sacramento. The project's infrastructure is currently under construction. When complete, the project will include 312 single family residential units and 24 multi-family units, five neighborhood parks and a central private recreation center and pool facility to serve the residents.

Project entitlements approved on April 29, 2014 included a Development Agreement (C2014-0494) which contained several special conditions relating to parks. The Agreement outlined the private recreation facilities that would be eligible for partial Quimby (parkland dedication) credit. The private pool, recreation center and a community garden were eligible for 15% of the project's parkland dedication credit. On February 10, 2015, City Council approved City Agreement 2014-0167 to construct and maintain the private recreational facilities.

The Development Agreement also contained a provision to allow the placement of 'additional' public art in the two parks for which agreements are currently being processed. The additional public art is intended to be above and beyond the art in public places that is required per City Code at a rate of 2% of capital contracts. The Development Agreement states that if the City's service level goal for parkland dedication is five acres per 1,000 people (which it is) at the time the Agreements are executed, then an additional \$100,000 in Park Development Impact Fees which is committed to public art may be added to the budget for the two parks. On February 9, 2015, the Sacramento Metropolitan Arts Commission approved a design proposal for McKinley Village, a metal sculpture titled "Le Feuille" by Marc Foster. The sculpture will be placed at one of the entries to the subdivision in Alan and Helen Post Park.

On February 26, 2008, City Council adopted Resolution 2008-112, establishing a Facility Naming Policy. The policy contains guidance when naming facilities or portions of facilities. One of the guiding policies encourages facilities to be named for individuals or families that have contributed significantly to the community or facility.

On August 12, 2014 the City Council approved the master plans for all five parks in the McKinley Village project. At this time, two of the approved park master plans are slated for construction. The Developer wishes to name the two parks as follows: Park Site ES-1 to be named as R. Burnett Miller Park; Park Site ES2 to be named Alan and Helen Post Park.

PROPOSED PARK NAMES FOR PARK ES-1 AND ES-2 IN MCKINLEY VILLAGE

1) Park ES 1 – R. Burnett Miller

R. Burnett Miller has served our nation and the Sacramento community with distinction. Born in Sacramento in 1923, he graduated from C.K. McClatchy High School. He served with distinction in the armed services during World War II, fought in the Battle of the Bulge and, as part of the U.S. 11th Armored Division, liberated the Mauthausen concentration camp in Austria. He was awarded a Purple Heart and the Silver Star for his distinguished service. He appeared in the award winning PBS documentary *The War* directed by Ken Burns.

Following his graduation from Georgetown University, Burnett returned to Sacramento and joined his family's lumber company, Burnett and Sons Planing Mill and Lumber Company, which was founded in 1869. For 145 years and during the decades under Burnett's leadership, this local company has been known for its excellence in craftsmanship and service and for the high quality jobs provided to workers in our community.

Throughout his life, Burnett has been an exemplary community leader. He served on the Sacramento City Council from 1971-1977, representing the 3rd District, in which McKinley Village is located and which, during his tenure, included East Sacramento, McKinley Park, River Park, Elmhurst and parts of Midtown. In 1982, Burnett was selected by the City Council to serve as Mayor of the City of Sacramento through the end of 1983, filling out the term of Phil Isenberg who was elected to the State Assembly. In both of those positions, Burnett served with great distinction and accomplishment, earning the respect and admiration of both his colleagues and the community.

In addition to his service in government, Burnett has championed many worthy local causes and organizations in our community. Among other things, he has been a strong supporter of the arts and cultural activities and has led efforts to raise funds for the Crocker Art Museum, the Sacramento History Center, and many other worthy endeavors. Through his public and community service, Burnett has set an unparalleled example of leadership, engagement, and generosity.

Please see the attached letter (Attachment A) from Mayor Johnson and the living former Mayors of the City of Sacramento supporting the naming of Park ES 1 in honor of R. Burnett Miller.

2) Park ES -2 – Alan and Helen Post

Alan and Helen Post were a remarkable couple who contributed significantly to the Sacramento community in the realms of art and public and community service. Residents of the Sacramento community since 1946, Helen passed away in 2010 and Alan in 2011.

Alan Post is perhaps best known for his exemplary public service as California's Legislative Analyst for nearly three decades, a period during which California's government, and particularly the Legislative Analyst' office, was seen a model for the rest of the nation. In 1949, he became the Legislative Auditor (the name was subsequently changed to Legislative Analyst) and served during the tenure of five governors (Warren, Knight, Brown, Reagan, and Brown) until his retirement in 1977. As the head of the non-partisan budget office, he won plaudits throughout the nation for the quality and integrity of his work and for the way in which he used his powerful position for the financial well-being of the state.

While Alan was well known for his extraordinary public service, Alan and Helen were both accomplished artists, well respected and well regarded for their work in the Sacramento community and beyond. Their works were exhibited in galleries and museums throughout the region and state, including, among many others, the Crocker Art Museum.

Helen was an accomplished sculptor whose works, including the ferrous cement and bronze sculpture at the entrance to the Teichert headquarters and the bronze figures at the Aesclepius Medical Building, have graced the Sacramento community for decades. Alan was a prolific and distinguished painter whose artistic career spanned more than 70 years. His early works were mostly landscapes consistent with the California Watercolor style, but his subject matter and technique dramatically evolved. Under the influences of Edward Hopper; the works of Matisse, Picasso, Degas, and Beckman, among others; the German expressionism movement; and his extensive travels in Spain, Alan developed a personal and emotional artistic response not only to Mediterranean landscape (reminiscent of early California) but also the modest life of the common Spaniard.

Throughout their lives, Alan and Helen Post were active in the civic life of Sacramento and California. Helen was a founder of the Family Service Agency and was active in many organizations, including the Creative Artists League and the Kingsley Art Club. In 1972, Helen was selected as Sacramento Woman of the Year by *The Sacramento Union*. Alan served on the Board of Directors of the Crocker Art Museum (including as President), the University of California Art Museum, the College of Arts and Crafts in Oakland, the Sacramento Regional Foundation Board of Directors, and the Public Policy Institute of California. Among his many awards were the Lifetime Achievement Award of the League of California Cities and the National Public Service Award of the American Society of Public Administration.

Please find attached (Attachment B) additional information about the lives, art, and accomplishments of Alan and Helen Post.

OFFICE OF THE MAYOR

KEVIN JOHNSON
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January 21, 2015

Mr. Jim Combs
Director, Department of Parks and Recreation
915 I Street, 3rd Floor
New City Hall
Sacramento, CA 915814

Dear Mr. Combs:

We are writing this letter to express our strong support for the proposal to name the central park within the McKinley Village neighborhood in honor of R. Burnett Miller. Burnett has led an extraordinary life of dedication to our community and we are pleased to weigh in on behalf of this worthy effort to recognize his lifetime of service.

Burnett Miller has served our nation and our community with distinction. Born in Sacramento in 1923, he graduated from C.K. McClatchy High School and began his life of service when he joined the ROTC as a student at Santa Clara University. He served with distinction in the armed services during World War II, fighting in the Battle of the Bulge and, as part of the U.S. 11th Armored Division, liberating the Mauthausen concentration camp in Austria. He was awarded a Purple Heart and the Silver Star for his distinguished service.

Following his years in Europe during and after the war and his graduation from Georgetown University, Burnett returned to Sacramento and joined his family's lumber company, Burnett and Sons Planing Mill and Lumber Company, which was founded in 1869. For 145 years and during the decades under Burnett's leadership, this local company has been known for its excellence in craftsmanship and service and for the high quality jobs provided to workers in our community.

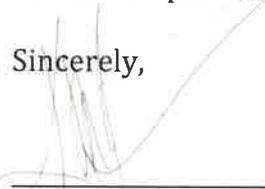
Throughout his life, Burnett has been an exemplary community leader. He served on the Sacramento City Council from 1971-1977, representing the 3rd District, in which McKinley Village is located and which, during his tenure, included East Sacramento, McKinley Park, River Park, Elmhurst and parts of Midtown. In 1982, Burnett was selected by the City Council to serve as Mayor of the City of Sacramento through the end of 1983, filling out the term of Phil Isenberg who was elected to the State Assembly. In both of those positions, Burnett served with great distinction and accomplishment, earning the respect and admiration of both his colleagues and the community.

In addition to his service in government, Burnett has championed many worthy local causes and organizations in our community. Among other things, he has been a strong supporter of the arts and cultural activities and has led efforts to raise funds for the

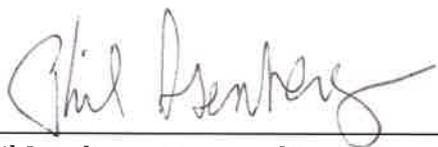
Crocker Art Museum, the Sacramento History Center, and many other worthy endeavors. Through his public and community service, Burnett has set an unparalleled example of leadership, engagement, and generosity.

For the above reasons, we are proud to join together in supporting the proposal to name the central park in McKinley Village in R. Burnett Miller's honor.

Sincerely,



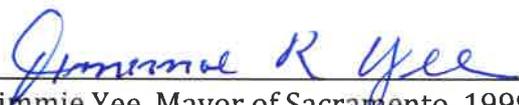
Kevin Johnson, Mayor of Sacramento



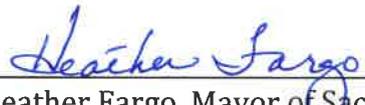
Phil Isenberg, Mayor of Sacramento, 1975-1982



Anne Rudin, Mayor of Sacramento, 1983-1992



Jimmie Yee, Mayor of Sacramento, 1999-2000



Heather Fargo, Mayor of Sacramento, 2000-2008



Alan Post, Age 1, Father, Edwin Rudd Post, Edwin Rudd Post, Jr, Age 3



Helen at age 3 with her mother, Letty Wills

CHRONOLOGY

1914 Alan Post was born on September 17, 1914 in Alhambra, California, the second of four children. His father, who attended the University of Chicago and Stanford University, was a successful farmland developer who was active throughout the West. His mother, who attended Denver University, was a former teacher and an accomplished pianist who fostered and guided musical education for the three older children, participating with them in a family quartet for a number of years.



Alan Post, Age 4

1915 Helen Post was born Helen Wills on December 6, 1915 in Greenville, Texas en route to Oklahoma, where her father owned oil wells. After several years in Oklahoma the family moved to Fort Worth where Helen grew up with four older sisters and a younger brother all of whom were extremely talented and highly educated. As a child, Helen evidenced strong interest in dancing, music and acting. Her talents and aspirations were greatly influenced by a number of her sisters' musical and actress friends, including Mary Martin and Ginger Rogers. Her own youthful friends included "Tex" Beneke, the musical composer, arranger and singer for Artie Shaw, taking over his band when Shaw was killed by enemy fire on a flight to Europe during World War II. Her cousin, "Chill" Wills, who lived with the family for a number of years as a young man, sang with Bing Crosby and subsequently acted in many Hollywood movies.



Helen, age 1, with her sister

1916 Alan's family moved to Tucson, Arizona where his father had purchased a large tract of barren land on which he developed a major irrigation system and began selling farm acreage to farmers from all the western states. This became highly successful due largely to the American food exports to Europe during the war years. In 1920, however, the situation changed as Europe recovered its pre-war agricultural capacity. Farmland values fell drastically, causing his father's enterprise to be taken over by creditors. The family returned to Southern California, settling in South Pasadena, where Alan attended elementary and high schools.

- 1931 Alan entered Occidental College in Los Angeles.
- 1932 Helen enrolled in Texas University at Austin at the same time that her father encountered failures in his substantial investments in oil production and lost his fortune. With the family's reversal of fortune, Helen was required to live frugally, an experience that became part of her lifelong resourcefulness.
- 1933 Alan left Occidental to take a job as a messenger in a Los Angeles bank to assist in supporting his family. He spent three years at the bank progressing to a position of bookkeeper before the family's improved fortunes permitted him to reenter college.



Helen, Age 17

- 1934 Helen took a leave from the University prior to the end of her second school year to go to Washington, D.C. and help an older sister with a failing marriage. She returned to Austin in the fall of that year.

- 1936 Alan returned to Occidental College, working at numerous jobs to pay his tuition and living expenses. He majored in economics and art, studying watercolor painting with Tom Craig and oil painting with Onestus Uzzell while attending life drawing classes at the Chouinard Art Institute in Los Angeles at night. Because Occidental College permitted only clothed models, he accompanied Tom Craig to numerous adult education nude life drawing classes. At the suggestion of Tom Craig he joined the California Watercolor Society and began showing in its exhibitions.



Helen, Age 19

- 1937 Helen dropped out of Texas University, traveling to Princeton, New Jersey to help another sister fend off the hostility of a widowed mother-in-law by providing a distraction. To support herself she took a job in the bursar's office of Princeton University. Despite the limitations of the situation she was placed in, she hungered to express herself in some art form. On weekends she rode her bike to the towns near Princeton and painted numerous landscapes.

- 1938 Alan graduated from Occidental College and in the summer following graduation completed his first self-portrait. He entered Princeton University Graduate School to obtain an advanced degree in economics where on occasion he painted in the countryside around Princeton and frequented the art scene in New York City, accepting free rides from faculty. With his family's fortunes still depressed, he lived a solitary life with little to eat in an upstairs room off-campus studying his economic books and playing classical music records borrowed from Princeton. In the following year, however, he received a fellowship



Helen, Age 22

- 1938 and lived in the Graduate School where he was served three meals a day, joining all graduate students attired in their black robes to eat supper collegially in a large Gothic style dining room. He made his first sale of a painting, a watercolor, to another graduate student who, like his dormitory room-mate, was an architectural student.
- In California during the summer recess he painted watercolors on trips along the California coast with his older brother, also a painter. Returning to Princeton in the fall he met Helen on a blind date and fell in love with her. The rest of that academic year up to the time he took and passed his general examinations for the doctoral degree Helen and he saw each other almost every day, sharing their common interests, including a passion for the arts.
- 1940 In June, his academic studies completed, Alan departed for California and Helen resigned some months later from her job. On November 21 they were married in Arizona and drove to California where Alan was employed in the securities business. Later that year they painted a number of landscapes near their apartment in Los Angeles and in Antelope Valley north of Los Angeles, where Alan's family was engaged in farming. They took a number of painting trips with Alan's brother along the coast north of San Francisco.
- 1941 For seven months they worked on the family farm, leaving in the fall of the year for Los Angeles where Alan was employed half-time in the securities business and half-time teaching economics at Occidental College. As his former economics department chairman moved progressively to the U.S. State Department, Alan took over his courses. When the chairman's move was completed, Alan became a full-time Instructor at the college.
- 1942 With America's involvement in the war progressing rapidly, Alan resigned from Occidental at the close of his first year in June to apply for an officer candidate position in the army, but the application was rejected due to impaired eyesight. Deciding to await the draft rather than commit to a three-year enlistment, they moved to Sacramento, California to take temporary positions with the newly established State Legislative Auditor. When Alan was offered the opportunity to teach at American University in Washington D.C. with an increase in rank to Assistant Professor, they left Sacramento after three months. Helen at this point decided that she would change her primary art interest from painting to sculpture and enrolled in a class with Heinz Warneke at the Corcoran Museum School of Art.
- 1943 In March Alan enlisted in the Navy and was sent to Boulder, Colorado to the Japanese Language School, a unit of Naval Intelligence.
- 1944 Following his Navy service, Alan accepted a position as an economist in the U.S. State Department. Meanwhile, their son, David, was born in New York City at Helen's sister's home while Alan lived in a boarding room in Washington awaiting the availability of housing. After eight months in Washington, however, they longed to return to California. They welcomed an unexpected call from the California Legislative Auditor, acting informally as a personnel recruiter for the Utah Foundation in Salt Lake City, offering Alan the position of Research Director, with the option of coming to Sacramento as his deputy if that position failed to meet Alan's expectations. Accepting the offer, he resigned from the State Department and went to Salt Lake City. Helen and David followed soon afterwards.

Alan exhibited at the Laguna Beach Art Gallery, Laguna Beach, CA.

1945 In Utah Alan found his concept of accurate reporting and intellectual integrity at odds with the Managing Director's desire to amend Alan's reports to comply with the anti-government stance he had characteristically taken as former Director of the Utah Manufacturers Association. It soon became a hostile impasse with Alan refusing to release the doctored reports.

1946 In March, accordingly, Alan returned to the Legislative Auditor's Office as Chief Economist-Administrative Analyst.

Helen resumed her studies in sculpture and humanities at Sacramento State College and took sculpture classes at the University of California, Davis.

1947 In September they bought a lot in Sacramento and after personally preparing the architectural designs and building plans, began building a house with studios, doing much of the construction themselves. In that year they held their first joint show in Sacramento at the Lanai Gallery.

1949 Helen became President of the Arden School P.T.A.

Upon the death of the Legislative Auditor (later changed by statute to Legislative Analyst), Alan was appointed to the position, in which he remained until 1977, resigning to spend more time painting, teaching part-time and consulting.

1950 Joint shows followed in the Benny Barrios Gallery and other local galleries.

1951 Both participated in group shows with the Artists Cooperative Gallery.

1952 As a member of the California Watercolor Society Alan participated in numerous shows nationally and in principal California cities. These included group shows at: Scripps College, Claremont, CA; Los Angeles County Art Museum; San Francisco Museum of Modern Art; Santa Barbara Museum of Art; Riverside Museum, New York, NY, and museums in Long Beach and San Diego.



Alan in the Navy, Age 29



1947, Show at the Lanai Gallery, Photo Credit: Dr. Geoffrey Fricker

1956 They made their first trip to Europe with David, buying a car for delivery in Germany and driving throughout the continent, including Spain. Alan photographed extensively. Helen and David remained in a small hotel on the coast of Italy at Sestri Levante where Helen made a series of watercolor paintings.

1960 For the Alcan Pacific Building in Sacramento, Helen created her first large outdoor sculpture, a two-story woodcarving of a totem pole in front and the design for a curtain wall on the face of the building.

1964 Helen sculpted two bronze figures for the Aesclepius Medical Building in Sacramento. Alan was elected President of the Crocker Art Gallery Association and had a one-man show in Crocker Art Museum.

1965 They purchased a house on the Mediterranean coast of Spain and added painting and sculpture studios.

1967 They were given a two-person show at Fresno State University.

1970 Helen designed and built a water-powered ferrous cement and bronze fountain at the Teichert Building in Sacramento that she named "Hydro-Kinetic III"

1972 Helen was selected Sacramento Woman of the Year by the Sacramento Union newspaper, and Alan received the Distinguished Alumnus Award from Occidental College.

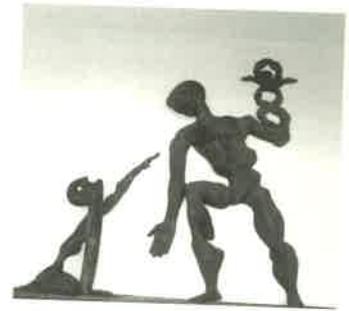
1974 Alan was elected to the National Academy of Public Administration.

1976 They went to Iran during Alan's vacation on an assignment for the Resources and Development Corporation to see whether Alan could stand retirement. Helen made sketches of Iranian women to be used for sculpture while Alan worked at the Ministry of Finance.

Alan became President of the Crocker Art Museum Board of Directors.

1977 They made the second of three trips to Iran on assignment for the Prime Minister and Alan completed a number of paintings of Iranian women.

Alan resigned as Legislative Analyst and became affiliated with the management services staff of the accounting firm of Touche Ross and Company. Alan became an adjunct Professor at the Graduate School of Public Administration of the University of Southern California.



Aesclepius, 1964



Helen working on Hydro-Kinetic III



Helen and Alan at Occidental College, 1972

- 1978 Both were given a retrospective show at Fresno State University. Alan was appointed by the Governor to the chairmanship of the Commission on Government Reform.
- 1980 Alan and Helen were given a two-person show at Whittier College. The college acquired one of Alan's paintings for its permanent collection.
- 1982 Helen was featured with Jorjana Holden in a two-person show at the Crocker Art Museum. Helen was included in the juried Crocker-Kingsley Annual Exhibition. (Also 1954 and 1980).
- Alan was included in the Crocker-Kingsley as well as in 1955, 1963 and 1980. Alan was appointed Chairman of the State Task-force on California's Water Future.
- 1983 Alan was included in a show at the Davis Art Center. He was elected to the Board of Trustees of the College of Arts and Crafts in Oakland and became a charter member of the Sacramento Regional Foundation Board of Directors.
- 1984 Alan was elected to the Board of Trustees of the University of California Art Museum, Berkeley.
- 1985 Helen was featured in a show at Gumps Gallery, San Francisco. Both artists began showing regularly at Gumps.
- Alan received the National Public Service Award of the American Society for Public Administration and the National Public Service Award of Common Cause.
- 1989 Works of Pablo Picasso and Alan were the subject of a show titled *Two Gentlemen from Spain* in the newly established City Gallery in Sacramento, CA.
- 1991 Judith Weintraub Gallery, Sacramento held joint shows including 1992 and 1993.
- 1994 *The Posts, Alan, Helen and David Post* were shown at Robert Hunter Gallery, Sacramento. Alan was elected to the Board of Directors of the Public Policy Institute of California.
- The family, including David and his wife Susan, acquired a home in Carmel, CA where two studios were designed to continue working in their respective art fields, affording a view of Carmel Valley and the Pacific Ocean.
- 1995 Helen and Alan were featured in a two-person show at Solomon Dubnick Gallery, Sacramento CA.
- Helen showed in a group exhibition at Artist Contemporary Gallery, Sacramento, CA. Both also had exhibitions at the Susan Street Fine Art Gallery in Solana Beach, CA
- Crocker Art Museum, Sacramento, CA (Helen Post - Group)
- 1996 Alan exhibited at Occidental College, Los Angeles, CA (1938, 1946 also) and David Bruce Art Gallery, Carlsbad, CA (1995 also)
- 1997 *California Landscapes: Four Views* (Post, Smith, Welden, & Welty) Solomon Dubnick Gallery, Sacramento, CA
- Self Expression 1997: Invitational All Media Self Portrait Show*, Solomon Dubnick Gallery, Sacramento, CA

- 1997 *Alan and Helen Post: Painting and Sculpture*, Solomon Dubnick Gallery, Sacramento CA. Published Catalogue, April 1998 ISBN 0-9652720-1-X
- 1998 *Self Expression 1998: Invitational All Media Self Portrait Show*, Solomon Dubnick Gallery, Sacramento, CA
- Three Masters of Paint (Post, Welden and Else)* Solomon Dubnick Gallery, Sacramento, CA
- 1999 *Alan Post, Paintings and Helen Post, Sculpture*, Solomon Dubnick Gallery, Sacramento, CA.
- 2000 *Drawn to the Figure*, Solomon Dubnick Gallery, Sacramento, CA. (Drawings from life model by Helen and Alan, Group Show)
- 2001 *Looking Beyond, 10th Anniversary Celebration*, Solomon Dubnick Gallery, Sacramento, CA – Group Show
- A Horse is a Horse*, Solomon Dubnick Gallery, Sacramento, CA. (painting and sculpture, Group Show)
- 2002 *The Art of Helen and Alan Post: New Works*, Solomon Dubnick Gallery, Sacramento, CA. A Retrospective Catalogue from 1938-2002 ISBN 0-9652720-7-9



Helen working on clay commission for Mexico's Consulate



Sutter's Landing Regional Park



R. Burnett Miller Park

Alan and Helen Post Park

Park ES 3

Park ES 4

Park ES 5

-  McKinley Village tentative plan
-  Railroads
-  Parks



RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

NAMING R. BURNETT MILLER PARK AND ALAN AND HELEN POST PARK, APPROVING REVISED PARK DEVELOPMENT IMPACT FEE CREDIT AGREEMENT FORM, AND APPROVING PARK DEVELOPMENT IMPACT FEE CREDIT AGREEMENT WITH ENCORE MCKINLEY VILLAGE, LLC FOR ALAN AND HELEN POST PARK

BACKGROUND:

- A. Park Site ES1 (R. Burnett Miller Park) is a 1.015 acre park, centrally located within the McKinley Village development project in the East Sacramento Community Plan Area. Park Site ES2 (Alan and Helen Post Park) is a 0.69 acre park, located at the northeast entry to the project site from 40th Street. Both parks will be built by Encore McKinley Village, LLC as turnkey parks in conjunction with the development of residential homes in the subdivision.
- B. On February 26, 2008, Resolution 2008-112 was adopted to provide guidance for the naming of City facilities. Park Site ES1 and ES2 are working names used by staff and are not the official names of the parks. On March 15, 2015, the Parks and Recreation Commission (PRC) recommended approval of renaming Park Site ES1 as 'R. Burnett Miller Park' in honor of his military service as part of the U.S. 11th Armored Division, as leader of Burnett and Sons Planing Mill and Lumber Company, a long standing local company known for its excellence in craftsmanship and service, and as an exemplary community leader. Mr. Miller served on the Sacramento City Council from 1971 to 1977 and was selected by the City Council in 1983 to serve as Mayor when then-Mayor Phil Isenberg was elected to the State Assembly.
- C. The PRC also recommended approval of renaming Park Site ES2 as 'Alan and Helen Post Park' in honor of the couple's contribution to the art community and public and community service. Alan Post served as California's Legislative Analyst for nearly 30 years. Alan and Helen Post were both accomplished artists.
- D. On September 3, 2002, the City Council approved Resolution No. 2002-591 approving the form of the Park Development Impact Fee Credit Agreement and authorizing the City Manager to issue Park Development Impact Fee Credits upon the provision of either an Unconditional Irrevocable Standby Letter of Credit or Cash Deposit. The Park Development Impact Fee Credit Agreement form has been revised and additional security in the form of a Developer performance bond in the amount of the cost of park construction has been added as security for early issuance of Park Development Impact Fee Credits.

- E. Pursuant to the McKinley Village Development Agreement (City Agreement No. 2014-0494), the Alan and Helen Post Park is eligible for Park Development Impact Fee Credits valued at \$400,554, of which associated staff costs, Art in Public Places, and fund administration costs total \$51,874. The \$400,554 budget includes an additional public art component of \$100,000 as specified in the Development Agreement. Any park development costs in excess of the \$400,554 budget are the responsibility of Encore McKinley Village, LLC.
- F. Encore McKinley Village, LLC wishes to receive fee credits in advance of completion of construction of Alan and Helen Post Park and will provide the City with a Performance Bond in the amount of \$339,782 to cover park construction costs.

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

- Section 1. Park Site ES1 is named R. Burnett Miller Park.
- Section 2. Park Site ES2 is named Alan and Helen Post Park.
- Section 3. The Park Development Impact Fee Credit Agreement Form attached as Exhibit A is approved.
- Section 4. The plans and specifications for the Alan and Helen Post Park are hereby approved.
- Section 5. The Park Development Impact Fee Credit Agreement for Park Site ES2 (Alan and Helen Post Park) with Encore McKinley Village, LLC attached as Exhibit B is hereby approved and the City Manager or his designee is authorized to execute the agreement.
- Section 6. Payment of \$26,313 from Encore McKinley Village, LLC pursuant to the Park Development Impact Fee Credit Agreement for Alan and Helen Post Park is accepted into Park Development Impact Fee (PIF) Fund 3204.
- Section 7. Of the \$26,313 payment, \$5,274 is appropriated from PIF Fund 3204 to the McKinley Village Parks CIP L19019000 for staff costs associated with development of Alan and Helen Post Park.
- Section 8. Of the \$26,313 payment, \$6,011 is appropriated from PIF Fund 3204 to CIP L19920600 for East Sacramento Community Plan Area Art in Public Places.

Table of Contents:

Exhibit A - Park Development Impact Fee Credit Agreement Form

Exhibit B - Park Development Impact Fee Credit Agreement for Park Site ES2 - Alan and Helen Post Park

PARK DEVELOPMENT IMPACT FEE CREDIT AGREEMENT

**RELATING TO DESIGN AND CONSTRUCTION
OF PARK IMPROVEMENTS**

**FOR
XXXXXX PARK**

This Park Development Impact Fee Credit Agreement for **XXXX Park** (“Agreement”) is entered into on _____, 20__ by and between the **CITY OF SACRAMENTO**, a charter city and municipal corporation (“City”), and _____, a California _____ (“Developer”), who are collectively referred to as “Parties” and individually as “Party.”

BACKGROUND

- A. Developer owns the real property described in **Exhibit A (“Property”)**, which is the site of a development project known as _____. City has completed environmental review and issued entitlements to allow for development of this project.
- B. The portion of the Property described in **Exhibit B (“Park Site”)**, is subject to an irrevocable offer of dedication to City at the time the final subdivision map for the project is recorded to meet the parkland dedication obligation under City Code Chapter 16.64 and the dedication is to be accepted by City after completion of the park improvements under this Agreement. The Park Site (**approx. X.XX acres**) is to be known as “_____ Park” (the **“Park”**) for use as a neighborhood park to serve the residents and occupants of the development project.
- C. Prior to issuance of building permits to develop the Property, the Developer is required to pay Park Development Impact Fees (**“Park Impact Fees”** or **“PIF”**) in accordance with the Sacramento City, Title 18, Chapter 18.44 (the **“Fee Ordinance”**). The purpose of imposing the Park Impact Fee is to provide funds necessary to design, construct, and install park facilities to meet the needs of, and address the impacts caused by, the residents and employees within the development project.
- D. The Fee Ordinance authorizes credits (and reimbursements if applicable) against the Park Impact Fees owed by a developer who undertakes the design and construction of park facilities that otherwise be would be built by the City with the Park Impact Fee revenues.
- E. Developer desires to advance the timing for development of the Park by designing and constructing the park improvements in accordance with City Council approved (or to be approved) Master Plan for this Park (the **“Project”**).

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The required park improvements, at a minimum, are specified in **Exhibit C** (the “**Project Improvements**”). The Project Improvements specified in **Exhibit C** do not include any off-site or on-site utility and street improvements that Developer is required to install as conditions of the tentative subdivisions map(s) for the development project pursuant to the provisions of the City’s Subdivision Ordinance (Sacramento City Code, Title 16).

- F. Development of the Park Site will require various design and other services, which will be performed by either Developer or City as shown on the “**Park Development Task Allocation**” set forth in **Exhibit D**. The Project will be constructed pursuant to plans and specifications approved by the City. The actual costs of construction of the Park will be based on the result of a bidding process approved by City. However, the total cost of the Project subject to Park Impact Fee credits shall not exceed the budget amount specified in **Exhibit E** (“**Park Development Budget**”) without the City’s prior approval.
- G. Subject to the credits against the Park Impact Fees as provided in this Agreement, Developer is willing to perform the design and other services assigned to Developer in **Exhibit D**, pay City costs and the Art in Public Places Fee as set forth in **Exhibit E-1**, and construct the Project (collectively “**Project Costs**”). The “Project Costs” shall mean and include costs based on all City approved contracts for the design and construction of the Project, including change orders, the costs to prepare or pay for engineering estimates, plan check fees, construction inspection fees, building permit fees, and environmental studies and mitigation costs if required, and City consultant and staff costs for services and oversight necessary to implement the Project and complete construction, the Art in Public Places Fee, together with any right of way or other property acquisition costs, if any, required for the Project.
- H. City is willing to provide credits against the Park Impact Fee for Developer's actual Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement.

AGREEMENT

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

ARTICLE I
DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS

1.0 Background Incorporated. The foregoing information contained in the Background is true and correct, and is part of this Agreement.

1.1 Design and Construction. Developer will design and construct the Project Improvements at the Park Site in accordance with the terms of this Agreement

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and convey the completed Park, along with all interests in real property necessary for the operation, maintenance, repair, and ownership thereof, to the City. The interest in real property to be conveyed shall be a fee interest in the land, unless special circumstances allow for City's acceptance of a recreational easement, title to the Project Improvements, and title to any and all access easements necessary for the operation, maintenance, and repair of the Park. Developer shall complete the construction of the Project Improvements at the Park Site no later than _____; or within twelve (12) months of the date the City approves the contract award as set forth in Section 1.3, whichever is later ("Completion Date").

1.2 Project Design and Final Budget. The design-related services that may be performed either by Developer or City as specified in **Exhibit D** include preparation of a Master Plan for the Park, design development, and construction bid document preparation, as well as environmental review if additional studies are required before the Project can be constructed. The Developer's selection of a landscape architect(s) to perform design services that are assigned to Developer in **Exhibit D**, shall be subject to approval by a Landscape Architect in the Landscape Architecture Section ("**LAS**") of the City's Parks and Recreation Department. If assigned to Developer in **Exhibit D**, Developer shall perform the various Project-related services in accordance with the following requirements.

1.2.1 Park Master Plan. If prior to execution of this Agreement the Master Plan for the Park has not yet been prepared and approved by the City, then the Developer shall prepare a conceptual design plan(s) for the Project. Once the conceptual design plan is approved by LAS, Developer shall then prepare a preliminary design plan which shall include a survey of the Park Site, a park master plan illustrating all of the Park Improvements at build-out, a Project description detailing the scope of the Park Improvements, construction cost estimates detailing the costs for each item of work, and estimated construction time lines for the Project (collectively the "Master Plan"). The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve all of the foregoing plans and documents in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned. The Master Plan for the Park is subject to review by the City's Parks and Recreation Commission and approval by the City Council.

1.2.2 Project Plans. After the Park Master Plan is approved, Developer shall arrange for the preparation of the design plans and technical specifications (the "Project Plans" or "Plans") for construction of the Project. At a minimum, Developer shall submit the Project Plans to the LAS at the **35, 75, and 100-percent** design phases of completion. The Project Plans shall include all of the Project Improvements described in the approved Master Plan and as listed in **Exhibit C**. Developer covenants that the Project Plans will be designed and prepared in compliance with the City's Standard Specifications. The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve the Project Plans in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned.

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Developer must obtain written approval of the Project Plans by SMUD, PG&E and all other appropriate public entities or utility companies which will own, operate and/or maintain any portion of the utility improvements that are to be installed as part of construction of the Project. Developer covenants that the Project Plans will be designed and prepared in accordance with the applicable utility company requirements.

Developer shall cause all contracts relating to preparation of the Project Plans to require the design and engineering consultants to fully and without limitation indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all Claims (as defined in Section 2.6) arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions of such professional in connection with the design of the Park by said consultant, or any other person or entity employed by or acting as the authorized agent for said consultant. The aforesaid indemnity and hold harmless agreement shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Park.

1.2.3 Bid Document Preparation. After LAS has given its written approval of the Project Plans, Developer shall prepare and submit to the LAS the bid document that includes the construction plans and specifications for the Project, and shall provide updated construction cost estimates and construction time lines. The bid document must be based on the City approved Project Plans. The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve the bid document in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned. Once LAS has approved the bid document, the Developer may issue a request for bids, but subject to prior approval of the Final Budget as set forth in Section 1.2.6.

1.2.4 Environmental Review. If the Project was not subject to prior environmental review as part of the development project, if additional studies are required to comply with adopted mitigation measures, or if there is new information regarding the scope of the Project or the Park Site conditions triggering the need for additional environmental review; in that event a consultant retained by City and/or City staff shall prepare the environmental documentation required for development of the Park Site to comply with CEQA. If authorized by City, the Developer may arrange for preparation of such environmental documentation, which shall be subject to review and approval by the City in its sole discretion. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and limited to the consultants listed in the City's Environmental Services Department's prequalified list if the applicable discipline is included on that list. The Completion Date set forth in this Agreement is based on the assumption that no further environmental documentation will be needed before construction of the Project can commence. If additional environmental documentation is determined by the City to be needed, then the Completion Date shall

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be extended to account for the time required to complete the necessary environmental documentation and associated approvals.

1.2.5 LAS Approval. LAS approval shall be evidenced by the signature of the Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review of various documents by LAS and/or other City departments also may include issuing public noticing and seeking public review and comments on the proposed Master Plan and the final Project Plans as deemed necessary or appropriate by City.

1.2.6 Final Budget. Before City's approval of the bid document, City and Developer shall review and revise the Park Development Budget set forth in **Exhibit E** and shall establish a final budget for design costs incurred, permits and fees, City staff costs, and the engineer's estimate of the construction costs (collectively the "**Final Budget**"). The Final Budget shall include all actual and estimated Project Costs and include a reasonable contingency amount. The Developer shall not be obligated to construct all of the Project Improvements and incur all of the Project Costs if the total Project Cost will exceed the amount of the Developer's Park Impact Fee obligation that has been allocated to development of this Park.

The initial Park Development Budget set forth in **Exhibit E** was based on an allocation of the Developer's total Park Impact Fee obligation for its approved development project using a percentage derived by comparing the size of the Park Site to be dedicated to the City versus the total park land dedication required under City Code Chapter 16.64 based on Developer's subdivision map and land use entitlements. If the Final Budget amount exceeds the Developer's Park Impact Fee obligation for this Park, then the Parties may mutually agree to proceed as follows: (i) Developer may nonetheless incur all of the Project Costs without any reimbursement by City, (ii) the scope of the Project Improvements may be reduced, (iii) City may allocate all or a portion of the Park Impact Fees paid for the issuance of building permits for development of the Property prior to execution of this Agreement which have not already been committed for park improvements to serve the subdivision, (iv) City may agree to fund the cost difference, and/or (v) City may agree to assume the obligation to complete the remaining Project Improvements by phasing the work.

The Final Budget shall be subject to mutual agreement of the Parties and attached to this Agreement as a replacement for **Exhibit E**, and if applicable **Exhibit E-1** shall also be modified accordingly and the revised exhibit attached to this Agreement. If the scope of the Project Improvements are to be modified based on mutual agreement of the Parties, a revised **Exhibit C** shall be attached to this Agreement. If City agrees to fund a portion of the Project Costs after execution of this Agreement, that obligation and the timing for payment shall be set forth in amendment to this Agreement executed by both Parties before the construction contract is awarded, or thereafter if the Project Costs increase due to change orders per Section 1.7.

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1.3 Contract Award. After LAS has given its written approval of the bid documents and Final Budget, Developer shall solicit competitive bids for construction of the Project. Developer shall send the request for bids to all landscape contractors included on the current master list used by LAS to solicit bids for similar park projects, in addition to any other contractors identified by Developer. Developer shall request bids from at least three (3) contractors. Bids shall be sealed, Developer shall provide LAS with all bids received and the bids shall be opened in the presence of an LAS representative. After the bids are opened, LAS shall have ten (10) working days to review the bids and the Developer's determination of the responsive and responsible bidder for contract award.

If fewer than three (3) bids are received or the LAS determines that the low bid is too high in comparison with the engineer's estimate, LAS may instruct Developer to reject all bids and re-bid the Project and/or modify the Project Improvements before rebidding in accordance with the foregoing procedures. If the LAS notifies Developer of the need to modify the Project Improvements, LAS shall provide Developer with an opportunity to review and comment on that direction and City shall give such comments fair consideration. Developer, at its option, may agree to proceed with the Project even if the bid exceeds the Final Budget and the extra cost will not be compensated by City. When satisfied with the bidding process, the determination of the selected bidder, and the scope of work, LAS shall give written notice to Developer authorizing the award of the contract.

If it is necessary to re-bid the Project, then the Completion Date shall be extended by the number of days required to re-bid the Project. In addition, if it is necessary to modify the Project Improvements, then the Completion Date shall be further extended by the number of days needed to modify the plans and specifications to incorporate the approved changes to the Project Improvements before rebidding.

1.4 Construction. Developer covenants that the Project will be constructed in compliance with the approved Project Plans, bid document, and any modifications thereto required by City in accordance with this Agreement, and applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the bid document as provided herein, subject to change orders issued in accordance with the provisions of Section 1.7 below. Prior to commencement of grading or any related construction work, Developer will pay the applicable fees and obtain all permits and approvals required for such work from the City and from all applicable federal, state or local agencies.

1.4.1 Representatives. Developer shall provide a site construction superintendent ("**Site Superintendent**") and the City shall provide a project manager ("**Project Manager**") who will serve as their respective points of contact with respect to construction of the Project. The designated Site Superintendent and Project Manager are identified on **Exhibit F**, and the designations may be changed by written notice from either Party.

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The Site Superintendent will be on-site as necessary and will generally be available by telephone or otherwise at all reasonable times. The Site Superintendent shall have complete authority over Developer's construction contractors and subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans.

The Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The Project Manager shall also have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.4.5 below.

1.4.2 Commencement and Completion of Project. Developer shall require its contractor to commence construction of the Project no later than three (3) months after contract award, unless an extension is approved by LAS, and thereafter shall insure that the contractor diligently works to complete the Project construction in a timely and efficient manner on or before the Completion Date. If the Developer's contractor fails to commence work and/or complete the Project as required herein, and fails to remedy such delay within thirty (30) days after a written notice thereof from City to Developer (subject to the provisions of Section 5.3 below), City in its discretion may: (i) direct Developer to take action necessary to accelerate the Project to remedy the delay, and the Developer's acceleration costs, if any, shall not be subject to reimbursement or credit hereunder; or (ii) direct Developer to stop working on the Project so that the City may seek other means to complete construction of the Project. If City directs the work to be stopped, any costs incurred by Developer, its contractors or subcontractors after receiving such direction from City shall not be eligible for reimbursement or credit for the construction costs incurred unless the City can complete the work within the remaining amount of the Final Budget with the contractor's or Developer's performance bond proceeds (per Section 3.8 below), and/or the cash deposit or letter of credit funds (per Section 3.6 below). If Developer is directed to stop working on the Project, Developer shall take any and all actions necessary to convey to and vest in City full, complete, and clear title in the Project Improvements, and all of the underlying real property interests (easement and/or fee), including those necessary for maintenance and access.

1.4.3 Inspection. Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project Improvements will be conveyed, will be permitted to inspect the Project during construction and shall have access to the Park Site for this purpose at all times. City agrees to make City inspectors available for inspection of the Project work during construction within forty-eight (48) hours after receipt of the request from Developer or its contractor (Saturdays, Sundays and Holidays excepted). Should a City inspector find any nonconformance or noncompliance with the Project Plans or the bid document, the Project Manager shall notify the Site Superintendent of such nonconformance or noncompliance. Thereafter, the Project Manager and the Site Superintendent, in consultation with the City building inspector, shall jointly determine the corrective action

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required. If the Project Manager and the Site Superintendent are unable to agree upon the corrective action, the Project Manager shall have authority to make such determination, with Developer having a right of appeal to the Director of the Parks and Recreation Department or to City Manager who may delegate his or her authority over such matter.

1.4.4 Prevailing Wages. Developer shall require all of its contractors and subcontractors to pay their construction workers not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of Industrial Relations at the time that Developer issues the solicitation for bids for the Project (pursuant to Labor Code Section 1773). Copies of certified payroll records shall be provided to City on a monthly basis, and final payroll records must be submitted before the City's acceptance of the Project and issuance of the Final Completion certificate (defined in Section 2.1 below).

1.4.5 Unforeseen Cost Increase. If Developer encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project Costs in excess of the Final Budget, and neither Party voluntarily agrees to bear such cost increase, then a change order shall be issued to modify the Project Improvements not yet constructed in order to bring the Project Costs back within the Final Budget. In this latter event, Developer and LAS shall meet and confer in an attempt to agree upon the modifications. If the Parties are unable to agree, LAS shall have the final authority to make such determination and identify Project Improvements to be deleted or changed by issuance of a field order to Developer to bring the Project Costs within the Final Budget. The Completion Date shall be extended by the number of days required to implement the modifications to the Project Improvements by the contractor, if any.

1.5 Performance and Payment Bonds. Developer is required to obtain performance and payment bonds from its prime contractor in the full amount of construction contract and name City as an additional obligee. The payment bond may be released upon expiration of the stop payment notice claim period after recording of the Notice of Completion. On Final Completion (defined in Section 2.1 below), the amount of the performance bond may be reduced to reflect the value of the maintenance work to be performed by Developer during the one (1)-year warranty period.

1.6 Insurance. Prior to the commencement of construction of the Project, Developer shall furnish to City a certificate(s) of insurance as set forth below for the Project construction period until Final Completion, as well as through the end of the warranty maintenance period, with an insurance carrier acceptable to City. The Commercial General Liability and Automobile policy certificates shall include an endorsement naming the City as an additional insured and preclude the cancellation or reduction in coverage before City receives at least 10 days prior notice. The policy holder may be the Developer and/or its construction contractor for the construction

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period and Developer and/or its landscape maintenance contractor for the warranty maintenance period.

The minimum insurance coverage shall be as follows: (i) Commercial General Liability insurance in the amount of not less than a one million dollars per occurrence, (ii) Automobile Liability insurance in the amount of not less than a one million dollars for owned and non-owned vehicles, and (iii) workers compensation insurance with a waiver of subrogation.

If Developer fails to maintain, or require its contractor to maintain, such insurance coverages, City may take out insurance and recover the amount of the premiums from Developer or retain such amount from credits due Developer under this Agreement. Failure of City to obtain such insurance shall in no way relieve Developer from any of its responsibilities under this Agreement.

1.7 Contracts and Change Orders. Developer shall be responsible for entering into all contracts and issuing any change orders required for the construction of the Project; provided, however, Developer shall not be required to enter into any change orders that would increase the Project Costs in excess of the Final Budget unless an increase in the Final Budget is approved by the City as provided in Sections 1.2.6 and 1.4.5. All change orders require approval of the LAS, which approval shall not be unreasonably delayed, conditioned, or withheld, except as follows. If a change order would increase the Project Costs in excess of the Final Budget, the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget as provided in Section 1.4.5. If the City finds in its sole discretion that the Project Improvements cannot be modified so that the Project Costs do not exceed the Final Budget, then City, at City's sole discretion, may either disapprove of the change order or may approve the change order along with approval of an increase in the Project Costs and the Final Budget, with such increased costs being eligible for additional credits or reimbursement, at the City's sole discretion. The procedures set forth in Section 1.2.6 shall apply to document that the changes in the Project Improvements and/or Final Budget are part of this Agreement.

1.7.1 Discretionary Change Orders. Developer shall issue a change order, even if it is not required by the Project Plans and Project Improvements, if requested by City to augment or modify the Project for the purpose of improving the Park. When a discretionary change order is requested, Developer shall provide City a written cost estimate for the change within ten (10) days following Developer's receipt of City's written request. Within ten (10) days after receiving the estimate, City shall direct Developer whether or not to issue the change order. If the City directs the Developer to issue the change order, City shall award to Developer additional credits or reimbursement of the change order costs which exceed the Final Budget. The procedures set forth in Section 1.2.6 shall apply to document that the changes in the Project Improvements and/or Final Budget are part of this Agreement. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of

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the Project, which is defined as a significant period of time past the Completion Date and such delay would impact the planned construction schedule for Developer's development project.

1.8 Liquidated Damages. The actual occurrence of damages and the actual amount of damages that City would suffer if the Park is not completed by the Completion Date are dependent upon many circumstances and conditions, such that it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Park by the public and additional staff costs. Accordingly, the Parties agree that the amount set forth below as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Developer to complete the Park by the Completion Date. The amount of the liquidated damages to be paid by Developer for failure to complete the Park by the Completion Date will be \$1,000.00 per calendar day, continuing until the Park is substantially completed as determined by City in its sole discretion. The amount of liquidated damages assessed by City shall be deducted from the value of the credits to be awarded to Developer under this Agreement or payment shall be owed if all of the credits have been issued as set forth in Section 3.4.

1.9 Construction Submittals. Developer shall provide the Project Manager, and any construction inspector upon demand, copies of all submittals furnished by the contractor including, without limitation, all construction schedules, certified payroll records, material testing reports, requests for substitution of materials or equipment, soil and Hazardous Substances (defined in **Exhibit G**) testing and monitoring reports, material testing reports, and all change order requests and all other required contractor submittals within (10) days from the date of Developer's receipt of such documents.

ARTICLE II PARK ACCEPTANCE, CONVEYANCE AND MAINTENANCE

2.0 Completion. When construction of the Project is substantially complete, Developer shall provide written notice to the City requesting final inspection. The notice shall not be issued until the turf has been established, which is generally 30 days for sod and 90 days for hydro seeding. Within ten (10) business days following the date of receipt of Developer's written notice, the City shall conduct a final inspection of the construction of the Project ("**Final Inspection**"). At the Final Inspection, Developer, or its contractor, shall demonstrate and instruct City personnel in the operation, adjustment, and maintenance of all equipment or systems included in the Project.

2.1 Final Inspection. If during the Final Inspection City determines that the Project has not been fully completed in accordance with the Project Plans, City shall prepare a punch list of all items to be completed and send the list to Developer within ten (10) business days following the date of the Final Inspection. Developer shall arrange for the completion and repair of the punch list items to occur in a prompt and diligent manner. Upon completion of the punch list work, Developer shall send City a request for another Final Inspection and within ten (10) business days following the date

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of receipt of Developer's written notice, City shall conduct another Final Inspection. If City determines that the punch list work is complete, City shall promptly deliver a certificate of "**Final Completion**" to Developer and record a Notice of Completion. If the City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section 2.1 until the successful completion of the punch list work.

2.2 As-Built Drawings. Within ten (10) business days after the Final Completion is issued, Developer shall provide City with a Mylar copy of "as-built" record drawings for the Project with certification by a licensed landscape architect or civil engineer in the State of California as to accuracy and completeness. Developer's submission of complete, updated as-builts shall be a prerequisite to Final Acceptance.

2.3 Release of Liens. Prior to issuance of the Final Acceptance certificate, Developer shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid. Upon request of the City, Developer shall make a good faith effort to obtain lien releases under California Civil Code Section 8138 to assure that payment of any outstanding claims of the Developer's contractors, subcontractors, and suppliers have been paid.

2.4 Final Acceptance. The "**Final Acceptance**" of the Park Improvements shall occur after a successful Final Inspection, issuance of the Final Completion certificate, submittal of all certified payroll records, the period to file a stop payment notice has expired, and the as-built drawings have been submitted. City's acceptance of the Park Site dedication and the Project Improvements shall not be unreasonably withheld, delayed, or conditioned. After City issues notice to the Developer of Final Acceptance, the Park Site as improved shall be transferred as the property of City by the Developer, in accordance with the subdivision map or other entitlement conditions, by either recording of a certificate of acceptance of the Irrevocable Offer of Dedication set forth on the final subdivision or parcel map, or execution of a grant deed (or easement if applicable). Developer shall promptly take any and all actions necessary to prepare legal descriptions, obtain title reports, and convey and vest full, complete, and clear title in the Park Site and all of the underlying real property interests (subject to utility easements) to City, including those necessary for maintenance and access. The date on the certificate of acceptance or date of the grant deed (or easement if applicable) shall be the date that title to the Park Site and the Park Improvements has been transferred from Developer to City.

2.5 Park Maintenance. Developer shall maintain the Park, including all of the Project Improvements, landscape maintenance, and trash pickup, at Developer's expense during the one (1)-year warranty period specified in Section 2.7, and City agrees that this Agreement will serve as a right of entry license for Developer, or its agents, to enter the Park for maintenance and warranty work. Thereafter, City shall be responsible for maintenance of the Park. For purposes of this Section 2.5, "park maintenance" does not include capital repairs or restoration necessitated by vandalism

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or acts of God. Maintenance shall meet the Park Landscape Maintenance Services General Plans and Specifications which are available from the Project Manager.

2.6 Indemnification. Developer shall indemnify, defend and hold harmless City and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "**Claims**") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by Developer and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by Developer; but excluding Claims alleging sole active negligence or willful misconduct of City and its officers, employees and agents.

Nothing in this Agreement shall be construed as a waiver by City of any immunity or defense it may have relating to any such Claim, including, without limitation, immunity or defenses relating to design review and construction inspection. With respect to the acts or omissions of the Developer's agents, Developer's indemnity obligation shall be limited to the acts or omissions of Developer's authorized agents acting within the course and scope of such agency.

2.6.1. Indemnification Regarding Hazardous Substances. Developer further agrees and covenants to, and shall fully indemnify, defend and hold harmless, City and its officers, employees and agents from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Park Site, or the easements which are required to be or which are transferred to City are located, of any Hazardous Substances as defined in **Exhibit G** occurring prior to the date the Park Site and the associated real property interests are accepted by City. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project Improvements, provided such incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws (defined in **Exhibit G**) in effect at the time of construction.

2.6.2. Duration of Indemnification Obligations. Except for the indemnification for Hazardous Substances as set forth above, the indemnification obligations in this Section 2.6 shall terminate two years after the expiration of the warranty period defined in Section 2.7.

2.6.3. Additional Provisions Regarding Indemnification Obligations. City does not, and shall not be deemed to, waive any rights against Developer which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.6. The scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to

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provide the maximum coverage for City in accordance with their terms, but only to the extent allowed pursuant to Civil Code section 2782. No specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the Parties unless specifically so provided.

Except as may otherwise be specifically and expressly provided in this Section 2.6 relating to Claims based upon allegations of the sole active negligence or willful misconduct on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Project Improvements.

Developer shall include or cause to be included the following language in all contracts or agreements issued by Developer relating to the design, construction, operation, repair, and maintenance of the Project, provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782 as follows:

“Contractor agrees and covenants to, and shall, fully indemnify, defend, and hold harmless the City of Sacramento and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by Contractor and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by Contractor.”

2.6.4 Waiver by Developer. In addition to Developer's obligations to indemnify, hold harmless, and defend City as set forth above, Developer, and on behalf of its assigns, transferees, and successors, hereby waives and releases any and all claims of whatever sort or nature that may arise against City or its officers, employees and agents in connection with Developer's design, construction, operation, repair and/or maintenance of the Park. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the Parties expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all Claims as

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described in this Section 2.6 which the Parties do not know or suspect to exist. The provisions of this Section 2.6.4 shall survive expiration of this Agreement.

2.7 Warranty. Developer hereby warrants that the Project Improvements will be free from any defects in materials and workmanship for a period of one (1) year following the date of Final Acceptance. Notwithstanding the foregoing, Developer's warranty excludes damages or defects caused by: (i) ordinary wear and tear of the Project Improvements under normal usage, (ii) abuse or neglect by other persons, (iii) vandalism and acts of God, and (iv) City employees and agents. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project Improvements, but the warranty contained in this Section 2.7 shall be the exclusive warranty of Developer, and all other express or implied warranties are expressly disclaimed.

Should any failure of any of the Project Improvements, or any portion thereof, occur within the one (1)-year warranty period, Developer shall promptly cause the needed repairs to be made without any expense or cost to City. Warranty work is distinguished from the twelve months of landscape maintenance that Developer will be performing during the maintenance period per Section 2.5. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer with an opportunity to meet and confer regarding such warranty work and Developer shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the warranty period. In case of an emergency when delay in undertaking the repairs could cause a safety hazard to the public, City may make the necessary repairs without prior notice to Developer at Developer's cost.

In all cases where City has had to take action to undertake the repairs, Developer shall reimburse City for its actual and reasonable costs and expenses, including direct and indirect costs, within thirty (30) days from the date of the invoice which includes all supporting documentation. If Developer fails to make payment, City, at its election, may deduct the outstanding amount owed by reducing the amount of credits pursuant to Section 3.4.

**ARTICLE III
PARK IMPACT FEE CREDITS**

3.0 City's Costs. In addition to Developer's costs to plan, design and construct the Park Improvements as set forth in this Agreement, Developer shall also fund City staff Project costs to review and approve conceptual plans, the Master Plan, Project Plans, bid documents, contract award, and inspect the work, as well as administer the Park Impact Fee (PIF) program. The City imposes a five percent (5%) PIF Program Administration Fee to fund the costs incurred by the City in the administration of the PIF Program, including accounting for the Credits (defined in

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Section 3.1 below) and preparing nexus and annual reports in compliance with the Mitigation Fee Act. Developer shall also pay City two percent (2%) of the Park construction cost for compliance with the Art in Public Places (APP) Fee requirement. The APP Fee program is managed by the Sacramento Metropolitan Arts Commission and the APP Fee funds the costs for design, fabrication and installation of public artwork in City parks. The artwork may be placed at the Park Site or in other parks within the same community planning area as the development project.

The estimated City staff Project costs and APP Fee are listed in **Exhibit E-1**. Within thirty (30) days following the delivery to Developer of a fully executed original of this Agreement, Developer shall pay City as a deposit the amount of City's estimated staff Project costs and the APP Fee as set forth in **Exhibit E-1**.

The Parties acknowledge and agree that the amount of the City staff Project costs is only a good faith estimate and that City does not guarantee that this amount will be sufficient to cover City's staff costs to perform the tasks set forth in **Exhibit D**. If during the term of this Agreement City determines that additional funds will be required to complete the City tasks, City will notify Developer and the Parties shall meet to determine whether to amend the Final Budget and increase the amount of credits to be issued once Developer pays the additional costs. Within thirty (30) days after Final Acceptance, City shall return to Developer whatever balance remains, if any, of the funds paid by Developer for City's staff costs under this Agreement and the amount of credits shall be adjusted accordingly.

3.1 Issuance of Credits. Based on the initial Park Development Budget set forth in **Exhibit E**, if Developer completes all of its obligations under this Agreement, under the Fee Ordinance Developer will be eligible for a total value of \$_____ in Park Impact Fee Credits. The Credits will be applied to the Park Impact Fee due at the time each building permit is issued for development of the Property. After execution of this Agreement, Developer may request use of a portion of the Credits already earned based on the amount actually incurred by Developer for the Master Plan preparation, and the amount paid by Developer for City staff Project costs and APP Fee per Section 3.0, which equals \$_____.

3.2 Advancement of Credits. Developer may request an advancement of additional Credits prior to Final Acceptance of the Park; however, Developer must post security and the amount of the Credits requested shall not exceed the total estimated amount of remaining expenditures for the Project as set forth in the Final Budget. Developer has determined that it needs advancement of an additional \$_____ in Credits prior to the estimated date of Final Acceptance. Therefore, Developer shall provide either (i) cash to be deposited in the "Developer's Prepaid Park Impact Fee Account," (ii) an Irrevocable Standby Letter of Credit in favor of the City, or (iii) a Performance Bond issued to Developer by an acceptable surety with the City named as the obligee in the forgoing amount as security for the advancement of issuance of Credits.

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The Irrevocable Standby Letter of Credit must comply with the conditions set forth in Section 3.5. The Performance Bond must comply with the conditions set forth in Section 3.8. Developer may only terminate the Irrevocable Standby Letter of Credit or Performance Bond with the consent of the City. The contractor's performance bond securing completion of the Park construction required under Section 1.5 will not satisfy the requirement of the Developer to provide financial security for the advancement of additional Credits prior to Final Acceptance of the Park.

As authorized by City Council Motion No. 2015-____, after receipt of the cash or acceptance of the Irrevocable Standby Letter of Credit or Performance Bond, City shall immediately issue Credits equal to the full amount of the cash deposit, the Irrevocable Standby Letter of Credit, or Performance Bond, as applicable. With the issuance of each building permit, the Developer will be entitled to apply the Credits as payment of the Park Impact Fee in effect at the time the permit is issued. As Credits are applied, the amount of the remaining Credits will be reduced. Because the timing of completion of development of the Property is controlled by Developer, the amount or value of the Credits remaining after Final Acceptance of the Park is not increased by interest or inflation, even though the Park Impact Fee is adjusted annually by a construction cost inflation index.

3.3 Allocation of Prepaid Park Impact Fees and Reimbursement. Park Impact Fees may have been paid for building permits to develop the Property by Developer and/or third party builders in advance of the execution of this Agreement. If the fees collected by City are to be applied to development of this Park as provided in Section 1.2.6, Developer shall be entitled to reimbursement for the Park construction costs in an amount equal to an allocation of the Park Impact Fees previously paid, less City's five percent (5%) Park Impact Program Administration Fee and the two percent (2%) Art in Public Places Fee as set forth in Section 3.0. City will pay Developer the amount of funds, if any, as specified in the Final Budget within thirty (30) days from receipt of Developer's written request for reimbursement of the construction costs of the Park after Final Acceptance of the Park, if Developer has complied with the requirements set forth in Section 3.4 below.

3.4 Project Cost Verification. The City has the right to verify whether the costs of the services, materials and work performed for the Project have been actually incurred and paid for by the Developer. Within thirty (30) days after Final Acceptance of the Park, Developer shall provide City with copies of all contracts, change orders, and invoices for the costs of the work, and such other documentation as may be requested by City, to verify the Project Costs incurred by Developer. City's approval and verification of Project Costs shall not be unreasonably withheld, delayed or conditioned. After City verifies and approves the actual Project Costs, City will pay Developer the amount of reimbursement per Section 3.3 if applicable, and reimburse Developer the amount remaining in the Developer's Prepaid Park Impact Fee Account if applicable, within thirty (30) days from the date of receipt of the Developer's invoice.

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If Developer fails to provide copies of all contracts, change orders, and invoices for the costs of the work, and such other documentation as may reasonably be requested by City, to verify the Project Costs incurred by Developer no later than ninety (90) days after Final Acceptance, City may revoke and withhold any remaining Credits until such documentation is submitted.

If City has advanced or issued Park Impact Fee Credits to Developer that, in the aggregate, exceed the total amount that may be issued in accordance with this Agreement, the Fee Ordinance, and City's policies and procedures for issuance of the Credits, and Developer has already applied all of the Credits; then Developer agrees to repay City the full amount of the value of the excess Credits within thirty (30) days after receiving City's written demand.

3.5 Letter of Credit Requirements. If Developer requests advancement of Credits before Final Acceptance of the Park, the Irrevocable Standby Letter of Credit ("letter of credit") must meet all of the following conditions:

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

The [title] of the City of Sacramento, demand payment of the sum of _____ U.S. Dollars (\$_____) representing a partial/full draw upon the amount of your Irrevocable Letter of Credit No. _____. This sum represents payment due to the City under the credit agreement between [Developer's name] and City that is dated _____, 20__, and designated by the City as Agreement No. _____.

- (c) Until the date of Final Acceptance, Developer must replace the letter of credit (and any replacement of letter of credit) at least **five (5) working days** before its expiration date. The replacement letter of credit must be identical to the letter of credit being replaced, except that it must have an expiration date that is no sooner than **12 months** following the expiration date of the letter of credit being replaced.

3.6 Drawing Upon Cash or the Letter of Credit. City may draw on the cash in the Developer's Prepaid Park Impact Fee Account or the letter of credit as follows:

- (a) If Developer fails to complete construction of the Project as required by this Agreement, then the City will have the absolute right to draw upon the cash or letter of credit in an amount City determines, in its sole discretion, to be necessary to complete the Project.
- (b) If repayment is due under Section 3.4 and Developer does not repay City within the time specified, then City will be entitled to draw against the cash or letter of credit in an amount equal to the repayment amount then due. A draw under this Section 3.6 will be a partial draw under the letter of credit and will leave the balance of the letter of credit intact.
- (c) If Developer fails to provide City with a replacement letter of credit within the time specified in Section 3.5, then City will be entitled to draw against the letter of credit in an amount equal to the total amount of Credits that Developer has received under this Agreement as of the time of the draw. If City makes a draw under this Section 3.6(c), then—
 - (1) City will hold the amount drawn, with no obligation to pay Developer interest, until (i) City determines that Developer cannot or will not complete the Project as required by this Agreement (in which event City may use the amount drawn to complete the Project), or (ii) Developer completes the Project in full and City formally accepts the Project (in which event City will return the amount drawn to Developer); and
 - (2) City will not be obligated to issue additional Park Impact Fee Credits under this Agreement unless and until (i) Developer completes the Project in full and City issues Final Acceptance, or (ii) Developer furnishes City with a replacement letter of credit that complies with Section 3.5, above.

3.7 Release of Letter of Credit. The letter of credit shall not be released or reduced until the Developer completes the Project in full and the City issues Final Acceptance. To the extent that a portion of the letter of credit is to secure the provision of park maintenance during the warranty period in lieu of a warranty/maintenance bond, the letter of credit shall not be released until a new letter of credit, acceptable in all respects by the City at its sole discretion, is provided to City by Developer in the dollar amount specified for maintenance in the Final Budget or as determined by City. The maintenance letter of credit shall not be released until such time as the warranty obligation has been fully satisfied, as determined by the City in its sole discretion.

3.8 Performance Bond Requirements. If Developer requests advancement of Credits before Final Acceptance of the Park, in lieu of cash or a letter of credit Developer may obtain a Performance Bond as security for completion of the Park construction by insuring sufficient funds will be available to pay the construction contractor if Developer defaults in its obligation to fund the Park construction in lieu of paying the Park Impact Fees. The Performance Bond amount shall be not less than one hundred percent (100%) of the construction contract amount. The bond must be issued to the Developer by a surety insurer admitted and duly authorized to transact business in the State of California with not less than an A/VIII rating by A.M. Best. The performance bond must name City as an obligee and be in the form provided as **Exhibit H**, which is attached and incorporated herein by this reference.

ARTICLE IV ASSIGNMENTS OF CREDITS

4.0 Assignment Permitted. Developer may assign all or a portion of the Credits issued under this Agreement to third parties, which may then use the Credits against the Park Impact Fee to be assessed at the time of building permit issuance, if the third party's development project is located within the Property or within the designated service area for the Park Site, subject to and in accordance with the terms of this Article. All Credit assignments require City's prior written consent, which consent shall not be unreasonably withheld or delayed. Developer acknowledges and agrees that City shall have the discretion to deny an assignment of Credits under this Agreement on the basis of excessive fractionalization of the available Credits, provided City shall not deny an otherwise qualified assignment that represents at least ten percent (10%) of Developer's Credit rights. In addition, City shall be entitled to calculate and assess as a condition of its consent of any such assignment, a reasonable fee for the review, approval, and administration thereof.

4.1 Required Assumption by Assignee. In addition to the approval of the City, any assignment of Credits shall be subject to an express written assumption by the assignee, whereby said assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the Fee Ordinance and the Park Impact Fee Credit provisions. The assignment agreement shall contain a provision that Developer and the assignee agree to fully and completely indemnify and defend City from any liability relating to the assignment of rights and any disputes between the Developer and its assignee.

4.2 Disputes Between Developer and Assignee. Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer, an assignee, and/or the City regarding the legal ownership of the rights to the Credits, City may withhold any cash reimbursement and may disallow the use of any Credits unless and until either: (i) all Parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain

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acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing party(ies) the legal ownership of such rights and the manner in which such rights will be exercised.

4.3 Credit Policies and Procedures. Developer, for itself and its successors in interest to the Property, acknowledges that the Credit rights are held by the Developer and such rights do not run with the Property ownership. The Credits must be assigned in accordance with this Article 4, even between affiliated entities of Developer. In addition, City policies and procedures relating to assignment and application of Credits, as they may be amended, shall apply to the use of the Credits by Developer and its assigns in the future. However, the terms and conditions of this Agreement shall prevail in the event of any conflict with the City policies and procedures.

**ARTICLE V
MISCELLANEOUS**

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

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

If to City:

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

If to Developer:

DEVELOPER
Attention: _____, Project Manager
ADDRESS
CITY, STATE ZIP CODE

5.2 Alternative Dispute Resolution. Any dispute or controversy between the Parties to this Agreement relating to the interpretation and enforcement of their rights and obligations may be resolved by mediation or arbitration by a Party serving a Notice of Dispute ("Notice") on the other Party. The Notice shall describe the nature of the dispute and specify whether mediation or non-binding arbitration procedure is preferred.

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The Parties shall first attempt in good faith and use their best efforts to reach agreement on the matters in dispute.

If mediation is requested in the Notice, within fifteen (15) days of the mailing of the Notice, the Party serving the Notice shall attempt to employ the services of a third person ("Mediator") mutually acceptable to the Parties to conduct such mediation. The cost of the Mediator shall be borne equally by the Parties. The mediation shall take place within thirty (30) days after the appointment of the Mediator. If the Parties are unable to agree on a Mediator, then the dispute may be referred to arbitration.

The Party serving the Notice may request that the dispute be resolved by arbitration, which shall be conducted by Judicial Arbitration and Mediation Services (JAMS). The arbitration shall be held and conducted in Sacramento, California before an arbitrator selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after referral to arbitration, then such arbitrator shall be appointed by the Presiding Judge of the Superior Court of Sacramento County as soon as practicable. The arbitration shall comply with the following requirements:

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

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

(c) The arbitrator shall prepare in writing and provide to the Parties factual findings and the reasons on which the decision of the arbitrator is based.

(d) The matter shall be heard by the arbitrator and the final decision by the arbitrator must be made within ninety (90) days from the date of the appointment of the arbitrator. The arbitration hearing date shall be established by the arbitrator, which date must be within such period of time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.

(e) Costs and fees of the arbitrator and court reporter, if any, shall be borne equally by the Parties. The cost of preparing any transcript of the proceedings shall be the responsibility of the Party or Parties requesting such preparation.

(f) The award or decision of the arbitrator shall be non-binding.

(g) The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, commencing with Section 1282 and including Section 1283.05, and successor statutes, permitting, among other things, expanded discovery proceedings shall be applicable to all disputes that are arbitrated under this Section 5.2.

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

5.4 Fee Ordinance. The Parties rights and obligations hereunder shall at all times be governed by and subordinate to the provisions of the City Code Chapter 18.44 in effect on the date that this Agreement is approved and executed by both Parties.

5.5 City Attorney Preparation Fees. Developer shall pay to City the sum of one thousand five hundred dollars (\$1,500.00), representing the costs associated with the City Attorney's services in negotiating and drafting this Agreement.

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

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

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

5.9 Governing Law and Venue. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

5.10 Counterparts and Digital Signatures. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as

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though all Parties had executed the same page. A facsimile or other electronic signature shall be deemed an original signature.

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

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

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

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

CITY OF SACRAMENTO,

DEVELOPER

By: _____
Jim Combs
Director, Parks and Recreation Department
For John F. Shirey, City Manager

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

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**EXHIBIT A
PROPERTY DESCRIPTION**
(legal description or other description of development project property)

TO BE PROVIDED BY DEVELOPER

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EXHIBIT B
PARK SITE DESCRIPTION
(legal description or tentative map lot reference)

TO BE PROVIDED BY DEVELOPER

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**EXHIBIT C
PROJECT IMPROVEMENTS**

(based on adopted Master Plan, if applicable)

TO BE PROVIDED BY DEVELOPER

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**EXHIBIT D
TASKS ALLOCATION**

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

City	Developer	
A. CONCEPTUAL DESIGN PHASE		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Survey of Park Site (inc. topo mapping and property line verification).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Determination of park amenities (always by the City).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Preparation of Master Plan illustrating Park Improvements.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Preparation of initial cost estimate for construction of park per Master Plan.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. Public review and City approval process for Master Plan.
B. PARK DESIGN PLAN PREPARATION PHASE		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Development of design plans.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Preparation of specifications.
C. CONSTRUCTION DOCUMENT PHASE		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Environmental review and documentation, if required.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Preparation of bid documents .
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Preparation of construction cost estimate and project timeline.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	4. Public review of construction documents and specifications.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. Submittal for Building Permit (to City Community Development Department, Building Division).
D. BID DOCUMENT PHASE		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Administer bidding process.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. City approval of bidder and contract award.
E. CONSTRUCTION PHASE (Field Work)		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Project staking.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Construction inspection (always by City Park Planning and Development Services).
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	3. Construction administration (City's Project Manager and Developer's Site Superintendent).
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	4. Final Inspection.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	5. Site cleanup and walkthrough (with City in attendance).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. Public opening (always by the City).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	7. Warranty administration.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	8. Title insurance and Park transfer to City of Sacramento.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Submit labor compliance to City on a monthly basis.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Submit Project Cost verification documents.

**EXHIBIT E
XX PARK
PARK DEVELOPMENT BUDGET SUMMARY**

Size of Proposed Park: 4.3 acres

Available funding @ \$336,500 per acre

TOTAL PROJECT BUDGET: **\$1,446,950**

Design, Overhead, and other "soft costs"

Review Construction Docs	5.0%	of budget	\$72,348
Admin & Project Management	2.9%	of budget	\$41,962
Advanced Planning	2.0%	of budget	\$28,939
Inspection work	3.5%	of budget	\$50,643
Art in Public Places	2.0%	of budget	\$28,939

City's Direct Costs To Be Paid in Cash to City: **\$222,830**

Park Master Plan & Construction Documents

\$50,000

Estimated

Subtotal of Design/Administration Costs:

\$272,830

Total Construction Funds Available:

\$1,174,120

TEMPLATE

Phase 1 Construction Estimate

<u>Proposed Improvements:</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total cost</u>
Turf, Trees, & Irrigation (inc. RP)	4.3 acres	\$30,000	\$129,000
Electrical (inc. booster pump)	1 unit	\$16,650	\$16,650
Excavation & Rough grading	1 unit	\$24,000	\$24,000
Storm drainage	1 unit	\$40,000	\$40,000
Concrete	5,000 sq ft.	\$5.25	\$26,250
Decomposed granite	30 cy	\$100	\$3,000
Play area containment curb	500 lf	\$35	\$17,500
Play area wood fibar	250 cy	\$35	\$8,750
Play area sand	18 cy	\$50	\$900
Adventure play equipment	1 unit	\$40,000	\$40,000
Tot lot play equipment	1 unit	\$25,000	\$25,000
Swings	1 unit	\$2,500	\$2,500
Spring rider	3 unit	\$1,000	\$3,000
Group picnic structure	Allowance	\$20,000	\$25,000
Picnic tables	5 unit	\$1,200	\$6,000
Benches	4 unit	\$1,000	\$4,000
Drinking fountain	2 unit	\$3,500	\$7,000
Bike racks	1 unit	\$600	\$600
Trash receptacles	5 unit	\$400	\$2,000
Park Sign	Allowance	\$3,500	\$3,500
Village entry monument sign	Allowance	\$5,000	\$5,000
Basketball court	1 unit	\$20,000	\$20,000
Soccer Posts - 2 fields	Allowance	\$12,000	\$12,000
Construction fencing	Allowance	\$15,000	\$15,000
Contingency 5%			\$58,706
Bonding Fees - 3%			\$35,224
Estimated construction costs:			\$530,580

EXHIBIT E-1

CITY STAFF COSTS AND PAYMENT SCHEDULE

Park: (Park Name)
Size of Proposed Park: (in acres)
Available funding @ \$ _____ per acre
Project Budget Eligible for PIF Credits: \$ XXXXXX

City Costs

Staff Costs (includes overhead*)		
001	Administration	\$ 6,820
100	Planning	\$ 9,920
201	Design	\$ 7,456
501	Construction Inspection	\$ 20,000
505	Labor Compliance	\$ 4,800
508	Construction Management	\$ 7,064
	<i>Subtotal</i>	\$ 56,060

Other Costs		
	Art in Public Places (2% of \$ XXXXXX)	\$ 3,158
	PIF Administration Fee (5% of \$ XXXXXX)	\$ 7,895
	<i>Subtotal</i>	\$ 17,527

Total City Costs to be Paid in Cash by Developer	\$ 73,587
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Notes:
*Estimated staff costs including overhead rate; at end of project any funds remaining in this account will be refunded to Developer.

Park Project Budget

Total Project Budget (from Exhibit E)	\$ 305,283
Art in Public Places (2% of \$ XXXXXX)	\$ 3,158
City Staff Costs	\$ 56,060
PIF Administration Fee	\$ 3,948
<i>Subtotal</i>	\$ 368,449

Master Plan Preparation Cost (if paid by Developer) \$ _____

Project Budget Eligible for PIF Credits	\$ XXXXXX
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Additional Park Costs – Paid by Developer or City (tbd)	\$ 210,542
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TEMPLATE

EXHIBIT F

REPRESENTATIVES

City:

City of Sacramento
Park Planning & Development Services
915 "I" Street, 3rd Floor
Sacramento, CA 95814
e-mail:

Project Manager:
Office Phone:
e-mail:

Developer:

DEVELOPER NAME
ADDRESS
CITY/STATE

Site Superintendent:
Office Phone:
e-mail:

**EXHIBIT G
HAZARDOUS SUBSTANCES**

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

B. Definitions.

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

- (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;
- (b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR, Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and
- (d) Any material, waste, or substance that is
 - i) a petroleum or refined petroleum product,
 - ii) asbestos,
 - iii) polychlorinated biphenyl,
 - iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS §1317,
 - v) a flammable explosive, or
 - vi) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the detention basin site or any of the easement areas which Developer is required to and does convey to City pursuant to this Agreement, as now or may at any later time be in effect, including, without limitation,

**EXHIBIT G (continued)
HAZARDOUS SUBSTANCES**

the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RC RA) [42 USCS §§ 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 USCS §§ 1251 *et seq.*]; the Toxic Substances Control Act (TSCA) (15 USCS §§ 2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act (7 USCS §§ 136 *et seq.*]; the Superfund Amendments and Reauthorization Act (42 USCS §§ 6901 *et seq.*]; the Clean Air Act [42 USCS §§ 7401 *et seq.*]; the Safe Drinking Water Act (42 USCS §§ 300f *et seq.*]; the Solid Waste Disposal Act [42 USCS §§ 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§ 25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code §§ 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§ 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

**EXHIBIT H
PERFORMANCE BOND FORM**

**CITY OF SACRAMENTO
PERFORMANCE BOND**
Department of Parks and Recreation

Bond No.: _____
Premium: _____
Page 1 of 1

WHEREAS, the City of Sacramento, State of California, hereinafter called City, has entered into the Park Development Impact Fee Credit Agreement ("Contract") with _____

(full name and address of Developer);

as principal, hereinafter called Contractor, which is a contract for construction of the _____
Park, which Contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the Contract; and

WHEREAS, under the terms of the Contract, Contractor is required to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, we the Contractor and (here insert full name and address of Surety):

a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, as obligee, in the sum of:

DOLLARS (\$ _____),

for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless the City, its officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect.

As part of the obligations secured hereby and in addition to the sum specified above, there shall be included all costs, expenses and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on _____, 20____.

(Contractor) (Seal)
By: _____
Title: _____

(Surety)(Seal)
By: _____
Title: _____

ORIGINAL APPROVED AS TO FORM:

City Attorney

PARK DEVELOPMENT IMPACT FEE CREDIT AGREEMENT

RELATING TO CONSTRUCTION OF PARK IMPROVEMENTS FOR ALAN and HELEN POST PARK

This Park Development Impact Fee Credit Agreement for Alan and Helen Post Park ("Agreement") is entered into on _____, 2015 by and between the **CITY OF SACRAMENTO**, a charter city and municipal corporation ("City"), and **ENCORE MCKINLEY VILLAGE, LLC**, a Delaware limited liability company ("Developer"), who are collectively referred to as "Parties" and individually as "Party."

BACKGROUND

- A. Developer owns the real property described in **Exhibit A ("Property")**, which is the site of a development project known as McKinley Village. City has completed environmental review and issued entitlements to allow for development of this project.
- B. The portion of the Property described in **Exhibit B ("Park Site")**, is subject to an irrevocable offer of dedication to City at the time the final subdivision map for the project is recorded to meet the parkland dedication obligation under City Code Chapter 16.64 and the dedication is to be accepted by City after completion of the park improvements under this Agreement. The Park Site (**approx. 0.69 acres**) is to be known as "Alan and Helen Post Park" (the "**Park**") for use as a neighborhood park to serve the residents and occupants of the development project.
- C. Prior to issuance of building permits to develop the Property, the Developer is required to pay Park Development Impact Fees ("**Park Impact Fees**" or "**PIF**") in accordance with the Sacramento City, Title 18, Chapter 18.44 (the "Fee Ordinance"). The purpose of imposing the Park Impact Fee is to provide funds necessary to design, construct, and install park facilities to meet the needs of, and address the impacts caused by, the residents and employees within the development project.
- D. The Fee Ordinance authorizes credits (and reimbursements if applicable) against the Park Impact Fees owed by a developer who undertakes the design and construction of park facilities that otherwise be would be built by the City with the Park Impact Fee revenues.
- E. Developer desires to advance the timing for development of the Park by designing and constructing the park improvements in accordance with City Council approved (or to be approved) Master Plan for this Park (the "**Project**"). The required park improvements, at a minimum, are specified in **Exhibit C** (the

“Project Improvements”). The Project Improvements specified in **Exhibit C** do not include any off-site or on-site utility and street improvements that Developer is required to install as conditions of the tentative subdivisions map(s) for the development project pursuant to the provisions of the City’s Subdivision Ordinance (Sacramento City Code, Title 16).

- F. Development of the Park Site will require various design and other services, which will be performed by either Developer or City as shown on the **“Park Development Task Allocation”** set forth in **Exhibit D**. The Project will be constructed pursuant to plans and specifications approved by the City. The actual costs of construction of the Park will be based on the result of a bidding process approved by City. However, the total cost of the Project subject to Park Impact Fee credits shall not exceed the budget amount specified in **Exhibit E** (**“Park Development Budget”**) without the City’s prior approval.
- G. Subject to the credits against the Park Impact Fees as provided in this Agreement, Developer is willing to perform the design and other services assigned to Developer in **Exhibit D**, pay City costs and the Art in Public Places Fee as set forth in **Exhibit E-1**, and construct the Project (collectively **“Project Costs”**). The **“Project Costs”** shall mean and include costs based on all City approved contracts for the design and construction of the Project, including change orders, the costs to prepare or pay for engineering estimates, plan check fees, construction inspection fees, building permit fees, and environmental studies and mitigation costs if required, and City consultant and staff costs for services and oversight necessary to implement the Project and complete construction, the Art in Public Places Fee, together with any right of way or other property acquisition costs, if any, required for the Project.
- H. City is willing to provide credits against the Park Impact Fee for Developer's actual Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement.

AGREEMENT

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

ARTICLE I DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS

1.0 Background Incorporated. The foregoing information contained in the Background is true and correct, and is part of this Agreement.

1.1 Design and Construction. Developer will design and construct the Project Improvements at the Park Site in accordance with the terms of this Agreement and convey the completed Park, along with all interests in real property necessary for

the operation, maintenance, repair, and ownership thereof, to the City. The interest in real property to be conveyed shall be a fee interest in the land, unless special circumstances allow for City's acceptance of a recreational easement, title to the Project Improvements, and title to any and all access easements necessary for the operation, maintenance, and repair of the Park. Developer shall complete the construction of the Project Improvements at the Park Site no later than February 26, 2016; or within twelve (12) months of the date the City approves the contract award as set forth in Section 1.3, whichever is later ("Completion Date").

1.2 Project Design and Final Budget. The design-related services that may be performed either by Developer or City as specified in **Exhibit D** include preparation of a Master Plan for the Park, design development, and construction bid document preparation, as well as environmental review if additional studies are required before the Project can be constructed. The Developer's selection of a landscape architect(s) to perform design services that are assigned to Developer in **Exhibit D**, shall be subject to approval by a Landscape Architect in the Landscape Architecture Section ("**LAS**") of the City's Parks and Recreation Department. If assigned to Developer in **Exhibit D**, Developer shall perform the various Project-related services in accordance with the following requirements.

1.2.1 Park Master Plan. If prior to execution of this Agreement the Master Plan for the Park has not yet been prepared and approved by the City, then the Developer shall prepare a conceptual design plan(s) for the Project. Once the conceptual design plan is approved by LAS, Developer shall then prepare a preliminary design plan which shall include a survey of the Park Site, a park master plan illustrating all of the Park Improvements at build-out, a Project description detailing the scope of the Park Improvements, construction cost estimates detailing the costs for each item of work, and estimated construction time lines for the Project (collectively the "Master Plan"). The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve all of the foregoing plans and documents in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned. The Master Plan for the Park is subject to review by the City's Parks and Recreation Commission and approval by the City Council.

1.2.2 Project Plans. After the Park Master Plan is approved, Developer shall arrange for the preparation of the design plans and technical specifications (the "Project Plans" or "Plans") for construction of the Project. At a minimum, Developer shall submit the Project Plans to the LAS at the **35, 75, and 100-percent** design phases of completion. The Project Plans shall include all of the Project Improvements described in the approved Master Plan and as listed in **Exhibit C**. Developer covenants that the Project Plans will be designed and prepared in compliance with the City's Standard Specifications. The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve the Project Plans in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned.

Developer must obtain written approval of the Project Plans by SMUD, PG&E and all other appropriate public entities or utility companies which will own, operate and/or maintain any portion of the utility improvements that are to be installed as part of construction of the Project. Developer covenants that the Project Plans will be designed and prepared in accordance with the applicable utility company requirements.

Developer shall cause all contracts relating to preparation of the Project Plans to require the design and engineering consultants to fully and without limitation indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all Claims (as defined in Section 2.6) arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions of such professional in connection with the design of the Park by said consultant, or any other person or entity employed by or acting as the authorized agent for said consultant. The aforesaid indemnity and hold harmless agreement shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Park.

1.2.3 Bid Document Preparation. After LAS has given its written approval of the Project Plans, Developer shall prepare and submit to the LAS the bid document that includes the construction plans and specifications for the Project, and shall provide updated construction cost estimates and construction time lines. The bid document must be based on the City approved Project Plans. The City agrees to use its best efforts and due diligence to review, provide comments regarding any necessary corrections, and approve the bid document in a prompt and timely manner. The City's staff approval shall not be unreasonably withheld or conditioned. Once LAS has approved the bid document, the Developer may issue a request for bids, but subject to prior approval of the Final Budget as set forth in Section 1.2.6.

1.2.4 Environmental Review. If the Project was not subject to prior environmental review as part of the development project, if additional studies are required to comply with adopted mitigation measures, or if there is new information regarding the scope of the Project or the Park Site conditions triggering the need for additional environmental review; in that event a consultant retained by City and/or City staff shall prepare the environmental documentation required for development of the Park Site to comply with CEQA. If authorized by City, the Developer may arrange for preparation of such environmental documentation, which shall be subject to review and approval by the City in its sole discretion. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and limited to the consultants listed in the City's Environmental Services Department's prequalified list if the applicable discipline is included on that list. The Completion Date set forth in this Agreement is based on the assumption that no further environmental documentation will be needed before construction of the Project can commence. If additional environmental documentation is determined by the City to be needed, then the Completion Date shall

be extended to account for the time required to complete the necessary environmental documentation and associated approvals.

1.2.5 LAS Approval. LAS approval shall be evidenced by the signature of the Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review of various documents by LAS and/or other City departments also may include issuing public noticing and seeking public review and comments on the proposed Master Plan and the final Project Plans as deemed necessary or appropriate by City.

1.2.6 Final Budget. Before City's approval of the bid document, City and Developer shall review and revise the Park Development Budget set forth in **Exhibit E** and shall establish a final budget for design costs incurred, permits and fees, City staff costs, and the engineer's estimate of the construction costs (collectively the "**Final Budget**"). The Final Budget shall include all actual and estimated Project Costs and include a reasonable contingency amount. The Developer shall not be obligated to construct all of the Project Improvements and incur all of the Project Costs if the total Project Cost will exceed the amount of the Developer's Park Impact Fee obligation that has been allocated to development of this Park.

The initial Park Development Budget set forth in **Exhibit E** was based on an allocation of the Developer's total Park Impact Fee obligation for its approved development project using a percentage derived by comparing the size of the Park Site to be dedicated to the City versus the total park land dedication required under City Code Chapter 16.64 based on Developer's subdivision map and land use entitlements. If the Final Budget amount exceeds the Developer's Park Impact Fee obligation for this Park, then the Parties may mutually agree to proceed as follows: (i) Developer may nonetheless incur all of the Project Costs without any reimbursement by City, (ii) the scope of the Project Improvements may be reduced, (iii) City may allocate all or a portion of the Park Impact Fees paid for the issuance of building permits for development of the Property prior to execution of this Agreement which have not already been committed for park improvements to serve the subdivision, (iv) City may agree to fund the cost difference, and/or (v) City may agree to assume the obligation to complete the remaining Project Improvements by phasing the work.

The Final Budget shall be subject to mutual agreement of the Parties and attached to this Agreement as a replacement for **Exhibit E**, and if applicable **Exhibit E-1** shall also be modified accordingly and the revised exhibit attached to this Agreement. If the scope of the Project Improvements are to be modified based on mutual agreement of the Parties, a revised **Exhibit C** shall be attached to this Agreement. If City agrees to fund a portion of the Project Costs after execution of this Agreement, that obligation and the timing for payment shall be set forth in amendment to this Agreement executed by both Parties before the construction contract is awarded, or thereafter if the Project Costs increase due to change orders per Section 1.7.

1.3 Contract Award. After LAS has given its written approval of the bid documents and Final Budget, Developer shall solicit competitive bids for construction of the Project. Developer shall send the request for bids to all landscape contractors included on the current master list used by LAS to solicit bids for similar park projects, in addition to any other contractors identified by Developer. Developer shall request bids from at least three (3) contractors. Bids shall be sealed, Developer shall provide LAS with all bids received and the bids shall be opened in the presence of an LAS representative. After the bids are opened, LAS shall have ten (10) working days to review the bids and the Developer's determination of the responsive and responsible bidder for contract award.

If fewer than three (3) bids are received or the LAS determines that the low bid is too high in comparison with the engineer's estimate, LAS may instruct Developer to reject all bids and re-bid the Project and/or modify the Project Improvements before rebidding in accordance with the foregoing procedures. If the LAS notifies Developer of the need to modify the Project Improvements, LAS shall provide Developer with an opportunity to review and comment on that direction and City shall give such comments fair consideration. Developer, at its option, may agree to proceed with the Project even if the bid exceeds the Final Budget and the extra cost will not be compensated by City. When satisfied with the bidding process, the determination of the selected bidder, and the scope of work, LAS shall give written notice to Developer authorizing the award of the contract.

If it is necessary to re-bid the Project, then the Completion Date shall be extended by the number of days required to re-bid the Project. In addition, if it is necessary to modify the Project Improvements, then the Completion Date shall be further extended by the number of days needed to modify the plans and specifications to incorporate the approved changes to the Project Improvements before rebidding.

1.4 Construction. Developer covenants that the Project will be constructed in compliance with the approved Project Plans, bid document, and any modifications thereto required by City in accordance with this Agreement, and applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the bid document as provided herein, subject to change orders issued in accordance with the provisions of Section 1.7 below. Prior to commencement of grading or any related construction work, Developer will pay the applicable fees and obtain all permits and approvals required for such work from the City and from all applicable federal, state or local agencies.

1.4.1 Representatives. Developer shall provide a site construction superintendent ("**Site Superintendent**") and the City shall provide a project manager ("**Project Manager**") who will serve as their respective points of contact with respect to construction of the Project. The designated Site Superintendent and Project Manager are identified on **Exhibit F**, and the designations may be changed by written notice from either Party.

The Site Superintendent will be on-site as necessary and will generally be available by telephone or otherwise at all reasonable times. The Site Superintendent shall have complete authority over Developer's construction contractors and subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans.

The Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The Project Manager shall also have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.4.5 below.

1.4.2 Commencement and Completion of Project. Developer shall require its contractor to commence construction of the Project no later than three (3) months after contract award, unless an extension is approved by LAS, and thereafter shall insure that the contractor diligently works to complete the Project construction in a timely and efficient manner on or before the Completion Date. If the Developer's contractor fails to commence work and/or complete the Project as required herein, and fails to remedy such delay within thirty (30) days after a written notice thereof from City to Developer (subject to the provisions of Section 5.3 below), City in its discretion may: (i) direct Developer to take action necessary to accelerate the Project to remedy the delay, and the Developer's acceleration costs, if any, shall not be subject to reimbursement or credit hereunder; or (ii) direct Developer to stop working on the Project so that the City may seek other means to complete construction of the Project. If City directs the work to be stopped, any costs incurred by Developer, its contractors or subcontractors after receiving such direction from City shall not be eligible for reimbursement or credit for the construction costs incurred unless the City can complete the work within the remaining amount of the Final Budget with the contractor's or Developer's performance bond proceeds (per Section 3.7 below), and/or the cash deposit or letter of credit funds (per Section 3.5 below). If Developer is directed to stop working on the Project, Developer shall take any and all actions necessary to convey to and vest in City full, complete, and clear title in the Project Improvements, and all of the underlying real property interests (easement and/or fee), including those necessary for maintenance and access.

1.4.3 Inspection. Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project Improvements will be conveyed, will be permitted to inspect the Project during construction and shall have access to the Park Site for this purpose at all times. City agrees to make City inspectors available for inspection of the Project work during construction within forty-eight (48) hours after receipt of the request from Developer or its contractor (Saturdays, Sundays and Holidays excepted). Should a City inspector find any nonconformance or noncompliance with the Project Plans or the bid document, the Project Manager shall notify the Site Superintendent of such nonconformance or noncompliance. Thereafter, the Project Manager and the Site Superintendent, in consultation with the City building inspector, shall jointly determine the corrective action

required. If the Project Manager and the Site Superintendent are unable to agree upon the corrective action, the Project Manager shall have authority to make such determination, with Developer having a right of appeal to the Director of the Parks and Recreation Department or to City Manager who may delegate his or her authority over such matter.

1.4.4 Prevailing Wages. Developer shall require all of its contractors and subcontractors to pay their construction workers not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of Industrial Relations at the time that Developer issues the solicitation for bids for the Project (pursuant to Labor Code Section 1773). Copies of certified payroll records shall be provided to City on a monthly basis, and final payroll records must be submitted before the City's acceptance of the Project and issuance of the Final Completion certificate (defined in Section 2.1 below).

1.4.5 Unforeseen Cost Increase. If Developer encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project Costs in excess of the Final Budget, and neither Party voluntarily agrees to bear such cost increase, then a change order shall be issued to modify the Project Improvements not yet constructed in order to bring the Project Costs back within the Final Budget. In this latter event, Developer and LAS shall meet and confer in an attempt to agree upon the modifications. If the Parties are unable to agree, LAS shall have the final authority to make such determination and identify Project Improvements to be deleted or changed by issuance of a field order to Developer to bring the Project Costs within the Final Budget. The Completion Date shall be extended by the number of days required to implement the modifications to the Project Improvements by the contractor, if any.

1.5 Performance and Payment Bonds. Developer is required to obtain performance and payment bonds from its prime contractor in the full amount of construction contract and name City as an additional obligee. The payment bond may be released upon expiration of the stop payment notice claim period after recording of the Notice of Completion. On Final Completion (defined in Section 2.1 below), the amount of the performance bond may be reduced to reflect the value of the maintenance work to be performed by Developer during the one (1)-year warranty period.

1.6 Insurance. Prior to the commencement of construction of the Project, Developer shall furnish to City a certificate(s) of insurance as set forth below for the Project construction period until Final Completion, as well as through the end of the warranty maintenance period, with an insurance carrier acceptable to City. The Commercial General Liability and Automobile policy certificates shall include an endorsement naming the City as an additional insured and preclude the cancellation or reduction in coverage before City receives at least 10 days prior notice. The policy holder may be the Developer and/or its construction contractor for the construction

period and Developer and/or its landscape maintenance contractor for the warranty maintenance period.

The minimum insurance coverage shall be as follows: (i) Commercial General Liability insurance in the amount of not less than a one million dollars per occurrence, (ii) Automobile Liability insurance in the amount of not less than a one million dollars for owned and non-owned vehicles, and (iii) workers compensation insurance with a waiver of subrogation.

If Developer fails to maintain, or require its contractor to maintain, such insurance coverages, City may take out insurance and recover the amount of the premiums from Developer or retain such amount from credits due Developer under this Agreement. Failure of City to obtain such insurance shall in no way relieve Developer from any of its responsibilities under this Agreement.

1.7 Contracts and Change Orders. Developer shall be responsible for entering into all contracts and issuing any change orders required for the construction of the Project; provided, however, Developer shall not be required to enter into any change orders that would increase the Project Costs in excess of the Final Budget unless an increase in the Final Budget is approved by the City as provided in Sections 1.2.6 and 1.4.5. All change orders require approval of the LAS, which approval shall not be unreasonably delayed, conditioned, or withheld, except as follows. If a change order would increase the Project Costs in excess of the Final Budget, the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget as provided in Section 1.4.5. If the City finds in its sole discretion that the Project Improvements cannot be modified so that the Project Costs do not exceed the Final Budget, then City, at City's sole discretion, may either disapprove of the change order or may approve the change order along with approval of an increase in the Project Costs and the Final Budget, with such increased costs being eligible for additional credits or reimbursement, at the City's sole discretion. The procedures set forth in Section 1.2.6 shall apply to document that the changes in the Project Improvements and/or Final Budget are part of this Agreement.

1.7.1 Discretionary Change Orders. Developer shall issue a change order, even if it is not required by the Project Plans and Project Improvements, if requested by City to augment or modify the Project for the purpose of improving the Park. When a discretionary change order is requested, Developer shall provide City a written cost estimate for the change within ten (10) days following Developer's receipt of City's written request. Within ten (10) days after receiving the estimate, City shall direct Developer whether or not to issue the change order. If the City directs the Developer to issue the change order, City shall award to Developer additional credits or reimbursement of the change order costs which exceed the Final Budget. The procedures set forth in Section 1.2.6 shall apply to document that the changes in the Project Improvements and/or Final Budget are part of this Agreement. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of

the Project, which is defined as a significant period of time past the Completion Date and such delay would impact the planned construction schedule for Developer's development project.

1.8 Liquidated Damages. The actual occurrence of damages and the actual amount of damages that City would suffer if the Park is not completed by the Completion Date are dependent upon many circumstances and conditions, such that it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Park by the public and additional staff costs. Accordingly, the Parties agree that the amount set forth below as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Developer to complete the Park by the Completion Date. The amount of the liquidated damages to be paid by Developer for failure to complete the Park by the Completion Date will be \$1,000.00 per calendar day, continuing until the Park is substantially completed as determined by City in its sole discretion. The amount of liquidated damages assessed by City shall be deducted from the value of the credits to be awarded to Developer under this Agreement or payment shall be owed if all of the credits have been issued as set forth in Section 3.3.

1.9 Construction Submittals. Developer shall provide the Project Manager, and any construction inspector upon demand, copies of all submittals furnished by the contractor including, without limitation, all construction schedules, certified payroll records, material testing reports, requests for substitution of materials or equipment, soil and Hazardous Substances (defined in **Exhibit G**) testing and monitoring reports, material testing reports, and all change order requests and all other required contractor submittals within (10) days from the date of Developer's receipt of such documents.

ARTICLE II PARK ACCEPTANCE, CONVEYANCE AND MAINTENANCE

2.0 Completion. When construction of the Project is substantially complete, Developer shall provide written notice to the City requesting final inspection. The notice shall not be issued until the turf has been established, which is generally 30 days for sod and 90 days for hydroseeding. Within ten (10) business days following the date of receipt of Developer's written notice, the City shall conduct a final inspection of the construction of the Project ("**Final Inspection**"). At the Final Inspection, Developer, or its contractor, shall demonstrate and instruct City personnel in the operation, adjustment, and maintenance of all equipment or systems included in the Project.

2.1 Final Inspection. If during the Final Inspection City determines that the Project has not been fully completed in accordance with the Project Plans, City shall prepare a punch list of all items to be completed and send the list to Developer within ten (10) business days following the date of the Final Inspection. Developer shall arrange for the completion and repair of the punch list items to occur in a prompt and diligent manner. Upon completion of the punch list work, Developer shall send City a request for another Final Inspection and within ten (10) business days following the date

of receipt of Developer's written notice, City shall conduct another Final Inspection. If City determines that the punch list work is complete, City shall promptly deliver a certificate of "**Final Completion**" to Developer and record a Notice of Completion. If the City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section 2.1 until the successful completion of the punch list work.

2.2 As-Built Drawings. Within ten (10) business days after the Final Completion is issued, Developer shall provide City with a Mylar copy of "as-built" record drawings for the Project with certification by a licensed landscape architect or civil engineer in the State of California as to accuracy and completeness. Developer's submission of complete, updated as-builts shall be a prerequisite to Final Acceptance.

2.3 Release of Liens. Prior to issuance of the Final Acceptance certificate, Developer shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid. Upon request of the City, Developer shall make a good faith effort to obtain lien releases under California Civil Code Section 8138 to assure that payment of any outstanding claims of the Developer's contractors, subcontractors, and suppliers have been paid.

2.4 Final Acceptance. The "**Final Acceptance**" of the Park Improvements shall occur after a successful Final Inspection, issuance of the Final Completion certificate, submittal of all certified payroll records, the period to file a stop payment notice has expired, and the as-built drawings have been submitted. City's acceptance of the Park Site dedication and the Project Improvements shall not be unreasonably withheld, delayed, or conditioned. After City issues notice to the Developer of Final Acceptance, the Park Site as improved shall be transferred as the property of City by the Developer, in accordance with the subdivision map or other entitlement conditions, by either recording of a certificate of acceptance of the Irrevocable Offer of Dedication set forth on the final subdivision or parcel map, or execution of a grant deed (or easement if applicable). Developer shall promptly take any and all actions necessary to prepare legal descriptions, obtain title reports, and convey and vest full, complete, and clear title in the Park Site and all of the underlying real property interests (subject to utility easements) to City, including those necessary for maintenance and access. The date on the certificate of acceptance or date of the grant deed (or easement if applicable) shall be the date that title to the Park Site and the Park Improvements has been transferred from Developer to City.

2.5 Park Maintenance. Developer shall maintain the Park, including all of the Project Improvements, landscape maintenance, and trash pickup, at Developer's expense during the one (1)-year warranty period specified in Section 2.7, and City agrees that this Agreement will serve as a right of entry license for Developer, or its agents, to enter the Park for maintenance and warranty work. Thereafter, City shall be responsible for maintenance of the Park. For purposes of this Section 2.5, "park maintenance" does not include capital repairs or restoration necessitated by vandalism

or acts of God. Maintenance shall meet the Park Landscape Maintenance Services General Plans and Specifications which are available from the Project Manager.

2.6 Indemnification. Developer shall indemnify, defend and hold harmless City and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "**Claims**") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by Developer and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by Developer; but excluding Claims alleging sole active negligence or willful misconduct of City and its officers, employees and agents.

Nothing in this Agreement shall be construed as a waiver by City of any immunity or defense it may have relating to any such Claim, including, without limitation, immunity or defenses relating to design review and construction inspection. With respect to the acts or omissions of the Developer's agents, Developer's indemnity obligation shall be limited to the acts or omissions of Developer's authorized agents acting within the course and scope of such agency.

2.6.1. Indemnification Regarding Hazardous Substances. Developer further agrees and covenants to, and shall fully indemnify, defend and hold harmless, City and its officers, employees and agents from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Park Site, or the easements which are required to be or which are transferred to City are located, of any Hazardous Substances as defined in **Exhibit G** occurring prior to the date the Park Site and the associated real property interests are accepted by City. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project Improvements, provided such incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws (defined in **Exhibit G**) in effect at the time of construction. This Section 2.6.1 does not apply to or modify, nor shall any other provision of this Agreement apply to or modify, Developer's or City's rights or obligations toward each other or third parties concerning the closed 28th Street Landfill or any substance that may emanate from the Landfill. This Section 2.6.1 shall survive the acceptance of the dedication of the Property following the completion of the park improvements under this Agreement.

2.6.2. Duration of Indemnification Obligations. Except for the indemnification for Hazardous Substances as set forth above, the indemnification obligations in this Section 2.6 shall terminate two years after the expiration of the warranty period defined in Section 2.7.

2.6.3. Additional Provisions Regarding Indemnification Obligations.

City does not, and shall not be deemed to, waive any rights against Developer which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.6. The scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms, but only to the extent allowed pursuant to Civil Code section 2782. No specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the Parties unless specifically so provided.

Except as may otherwise be specifically and expressly provided in this Section 2.6 relating to Claims based upon allegations of the sole active negligence or willful misconduct on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has prepared, supplied, or approved the Project Plans, or has inspected or failed to inspect construction of the Project Improvements.

Developer shall include or cause to be included the following language in all contracts or agreements issued by Developer relating to the design, construction, operation, repair, and maintenance of the Project, provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782 as follows:

“Contractor agrees and covenants to, and shall, fully indemnify, defend, and hold harmless the City of Sacramento and its officers, employees and agents from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, repair and/or maintenance of any portion of the Park by Contractor and/or its officers, employees, agents, contractors, subcontractors, or any other person or entity employed or hired by Contractor.”

2.6.4 Waiver by Developer. In addition to Developer's obligations to indemnify, hold harmless, and defend City as set forth above, Developer, and on behalf of its assigns, transferees, and successors, hereby waives and releases any and all claims of whatever sort or nature that may arise against City or its officers, employees and agents in connection with Developer's design, construction, operation, repair and/or maintenance of the Park. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of

executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the Parties expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all Claims as described in this Section 2.6 which the Parties do not know or suspect to exist. The provisions of this Section 2.6.4 shall survive expiration of this Agreement.

2.7 Warranty. Developer hereby warrants that the Project Improvements will be free from any defects in materials and workmanship for a period of one (1) year following the date of Final Acceptance. Notwithstanding the foregoing, Developer's warranty excludes damages or defects caused by: (i) ordinary wear and tear of the Project Improvements under normal usage, (ii) abuse or neglect by other persons, (iii) vandalism and acts of God, and (iv) City employees and agents. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project Improvements, but the warranty contained in this Section 2.7 shall be the exclusive warranty of Developer, and all other express or implied warranties are expressly disclaimed.

Should any failure of any of the Project Improvements, or any portion thereof, occur within the one (1)-year warranty period, Developer shall promptly cause the needed repairs to be made without any expense or cost to City. Warranty work is distinguished from the twelve months of landscape maintenance that Developer will be performing during the maintenance period per Section 2.5. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer with an opportunity to meet and confer regarding such warranty work and Developer shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the warranty period. In case of an emergency when delay in undertaking the repairs could cause a safety hazard to the public, City may make the necessary repairs without prior notice to Developer at Developer's cost.

In all cases where City has had to take action to undertake the repairs, Developer shall reimburse City for its actual and reasonable costs and expenses, including direct and indirect costs, within thirty (30) days from the date of the invoice which includes all supporting documentation. If Developer fails to make payment, City, at its election, may deduct the outstanding amount owed by reducing the amount of credits pursuant to Section 3.3.

ARTICLE III PARK IMPACT FEE CREDITS

3.0 City's Costs. In addition to Developer's costs to plan, design and construct the Park Improvements as set forth in this Agreement, Developer shall also fund City staff Project costs to review and approve conceptual plans, the Master Plan, Project Plans, bid documents, contract award, and inspect the work, as well as administer the Park Impact Fee (PIF) program. The City imposes a five percent (5%) PIF Program Administration Fee to fund the costs incurred by the City in the administration of the PIF Program, including accounting for the Credits (defined in Section 3.1 below) and preparing nexus and annual reports in compliance with the Mitigation Fee Act. Developer shall also pay City two percent (2%) of the Park construction cost for compliance with the Art in Public Places (APP) Fee requirement. The APP Fee program is managed by the Sacramento Metropolitan Arts Commission and the APP Fee funds the costs for design, fabrication and installation of public artwork in City parks. The artwork may be placed at the Park Site or in other parks within the same community planning area as the development project.

The estimated City staff Project costs and APP Fee are listed in **Exhibit E-1**. Within thirty (30) days following the delivery to Developer of a fully executed original of this Agreement, Developer shall pay City as a deposit the amount of City's estimated staff Project costs and the APP Fee as set forth in **Exhibit E-1**.

The Parties acknowledge and agree that the amount of the City staff Project costs is only a good faith estimate and that City does not guarantee that this amount will be sufficient to cover City's staff costs to perform the tasks set forth in **Exhibit D**. If during the term of this Agreement City determines that additional funds will be required to complete the City tasks, City will notify Developer and the Parties shall meet to determine whether to amend the Final Budget and increase the amount of credits to be issued once Developer pays the additional costs. Within thirty (30) days after Final Acceptance, City shall return to Developer whatever balance remains, if any, of the funds paid by Developer for City's staff costs under this Agreement and the amount of credits shall be adjusted accordingly.

3.1 Issuance of Credits. Based on the initial Park Development Budget set forth in **Exhibit E**, and the additional art component of \$100,000 identified in the Development Agreement (Exhibit J, Section II.A.3.b.), if Developer completes all of its obligations under this Agreement, under the Fee Ordinance Developer will be eligible for a total value of \$400,554 in Park Impact Fee Credits. The Credits will be applied to the Park Impact Fee due at the time each building permit is issued for development of the Property. After execution of this Agreement, Developer may request use of a portion of the Credits already earned based on the amount actually incurred by Developer for the Master Plan preparation, and the amount paid by Developer for City staff Project costs and APP Fee per Section 3.0, which equals \$60,772.

3.2 Advancement of Credits. Developer may request an advancement of additional Credits prior to Final Acceptance of the Park; however, Developer must post security and the amount of the Credits requested shall not exceed the total estimated amount of remaining expenditures for the Project as set forth in the Final Budget.

Developer has determined that it needs advancement of an additional \$339,782 in Credits prior to the estimated date of Final Acceptance. Therefore, Developer shall provide either (i) cash to be deposited in the "Developer's Prepaid Park Impact Fee Account," (ii) an Irrevocable Standby Letter of Credit in favor of the City, or (iii) a Performance Bond issued to Developer by an acceptable surety with the City named as the obligee in the forgoing amount as security for the advancement of issuance of Credits.

The Irrevocable Standby Letter of Credit must be comply with the conditions set forth in Section 3.5. The Performance Bond must comply with the conditions set forth in Section 3.8. Developer may only terminate the Irrevocable Standby Letter of Credit or Performance Bond with the consent of the City. The contractor's performance bond securing completion of the Park construction required under Section 1.5 will not satisfy the requirement of the Developer to provide financial security for the advancement of additional Credits prior to Final Acceptance of the Park.

As authorized by City Council Resolution No. 2015-____, after receipt of the cash or acceptance of the Irrevocable Standby Letter of Credit or Performance Bond, City shall immediately issue Credits equal to the full amount of the cash deposit, the Irrevocable Standby Letter of Credit, or Performance Bond, as applicable. With the issuance of each building permit, the Developer will be entitled to apply the Credits as payment of the Park Impact Fee in effect at the time the permit is issued. As Credits are applied, the amount of the remaining Credits will be reduced. Because the timing of completion of development of the Property is controlled by Developer, the amount or value of the Credits remaining after Final Acceptance of the Park is not increased by interest or inflation, even though the Park Impact Fee is adjusted annually by a construction cost inflation index.

3.3 Allocation of Prepaid Park Impact Fees and Reimbursement. Park Impact Fees may have been paid for building permits to develop the Property by Developer and/or third party builders in advance of the execution of this Agreement. If the fees collected by City are to be applied to development of this Park as provided in Section 1.2.6, Developer shall be entitled to reimbursement for the Park construction costs in an amount equal to an allocation of the Park Impact Fees previously paid, less City's five percent (5%) Park Impact Program Administration Fee and the two percent (2%) Art in Public Places Fee as set forth in Section 3.0, unless Developer previously advanced such fees to the City. City will pay Developer the amount of funds, if any, as specified in the Final Budget within thirty (30) days from receipt of Developer's written request for reimbursement of the construction costs of the Park after Final Acceptance of the Park, if Developer has complied with the requirements set forth in Section 3.4 below.

3.4 Project Cost Verification. The City has the right to verify whether the costs of the services, materials and work performed for the Project have been actually incurred and paid for by the Developer. Within thirty (30) days after Final Acceptance of the Park, Developer shall provide City with copies of all contracts, change orders, and

invoices for the costs of the work, and such other documentation as may be requested by City, to verify the Project Costs incurred by Developer. City's approval and verification of Project Costs shall not be unreasonably withheld, delayed or conditioned. After City verifies and approves the actual Project Costs, City will pay Developer the amount of reimbursement per Section 3.3 if applicable, and reimburse Developer the amount remaining in the Developer's Prepaid Park Impact Fee Account if applicable, within thirty (30) days from the date of receipt of the Developer's invoice.

If Developer fails to provide copies of all contracts, change orders, and invoices for the costs of the work, and such other documentation as may reasonably be requested by City, to verify the Project Costs incurred by Developer no later than ninety (90) days after Final Acceptance, City may revoke and withhold any remaining Credits until such documentation is submitted.

If City has advanced or issued Park Impact Fee Credits to Developer that, in the aggregate, exceed the total amount that may be issued in accordance with this Agreement, the Fee Ordinance, and City's policies and procedures for issuance of the Credits, and Developer has already applied all of the Credits; then Developer agrees to repay City the full amount of the value of the excess Credits within thirty (30) days after receiving City's written demand.

3.5 Letter of Credit Requirements. If Developer requests advancement of Credits before Final Acceptance of the Park, the Irrevocable Standby Letter of Credit ("letter of credit") must meet all of the following conditions:

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

The [title] of the City of Sacramento, demand payment of the sum of _____ U.S. Dollars (\$_____) representing a partial/full draw upon the amount of your Irrevocable Letter of Credit No. _____. This sum represents payment due to the City under the credit agreement between [Developer's name] and City that is dated

_____, 2015, and designated by the City as Agreement No. _____.

- (c) Until the date of Final Acceptance, Developer must replace the letter of credit (and any replacement of letter of credit) at least **five (5) working days** before its expiration date. The replacement letter of credit must be identical to the letter of credit being replaced, except that it must have an expiration date that is no sooner than **12 months** following the expiration date of the letter of credit being replaced.

3.6 Drawing Upon Cash or the Letter of Credit. City may draw on the cash in the Developer's Prepaid Park Impact Fee Account or the letter of credit as follows:

- (a) If Developer fails to complete construction of the Project as required by this Agreement, then the City will have the absolute right to draw upon the cash or letter of credit in an amount City determines, in its sole discretion, to be necessary to complete the Project.
- (b) If repayment is due under Section 3.4 and Developer does not repay City within the time specified, then City will be entitled to draw against the cash or letter of credit in an amount equal to the repayment amount then due. A draw under this Section 3.6 will be a partial draw under the letter of credit and will leave the balance of the letter of credit intact.
- (c) If Developer fails to provide City with a replacement letter of credit within the time specified in Section 3.5, then City will be entitled to draw against the letter of credit in an amount equal to the total amount of Credits that Developer has received under this Agreement as of the time of the draw. If City makes a draw under this Section 3.6(c), then—
 - (1) City will hold the amount drawn, with no obligation to pay Developer interest, until (i) City determines that Developer cannot or will not complete the Project as required by this Agreement (in which event City may use the amount drawn to complete the Project), or (ii) Developer completes the Project in full and City formally accepts the Project (in which event City will return the amount drawn to Developer); and
 - (2) City will not be obligated to issue additional Park Impact Fee Credits under this Agreement unless and until (i) Developer completes the Project in full and City issues Final Acceptance, or (ii) Developer furnishes City with a replacement letter of credit that complies with Section 3.5, above

3.7 Release of Letter of Credit. The letter of credit shall not be released or reduced until the Developer completes the Project in full and the City issues Final Acceptance. To the extent that a portion of the letter of credit is to secure the provision of park maintenance during the warranty period in lieu of a warranty/maintenance bond, the letter of credit shall not be released until a new letter of credit, acceptable in all respects by the City at its sole discretion, is provided to City by Developer in the dollar amount specified for maintenance in the Final Budget or as determined by City. The maintenance letter of credit shall not be released until such time as the warranty obligation has been fully satisfied, as determined by the City in its sole discretion.

3.8 Performance Bond Requirements. If Developer requests advancement of Credits before Final Acceptance of the Park, in lieu of cash or a letter of credit Developer may obtain a Performance Bond as security for completion of the Park construction by insuring sufficient funds will be available to pay the construction contractor if Developer defaults in its obligation to fund the Park construction in lieu of paying the Park Impact Fees. The Performance Bond amount shall be not less than one hundred percent (100%) of the construction contract amount. The bond must be issued to the Developer by a surety insurer admitted and duly authorized to transact business in the State of California with not less than an A/VIII rating by A.M. Best. The performance bond must name City as obligee and be in the form provided as **Exhibit H**, which is attached and incorporated herein by this reference.

ARTICLE IV ASSIGNMENTS OF CREDITS

4.0 Assignment Permitted. Developer may assign all or a portion of the Credits issued under this Agreement to third parties, which may then use the Credits against the Park Impact Fee to be assessed at the time of building permit issuance, if the third party's development project is located within the Property or within the designated service area for the Park Site, subject to and in accordance with the terms of this Article. All Credit assignments require City's prior written consent, which consent shall not be unreasonably withheld or delayed. Developer acknowledges and agrees that City shall have the discretion to deny an assignment of Credits under this Agreement on the basis of excessive fractionalization of the available Credits, provided City shall not deny an otherwise qualified assignment that represents at least ten percent (10%) of Developer's Credit rights. In addition, City shall be entitled to calculate and assess as a condition of its consent of any such assignment, a reasonable fee for the review, approval, and administration thereof.

4.1 Required Assumption by Assignee. In addition to the approval of the City, any assignment of Credits shall be subject to an express written assumption by the assignee, whereby said assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the Fee Ordinance and the Park Impact Fee Credit provisions. The assignment agreement shall contain a provision that Developer and the assignee agree to fully and completely indemnify and

defend City from any liability relating to the assignment of rights and any disputes between the Developer and its assignee.

4.2 Disputes Between Developer and Assignee. Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer, an assignee, and/or the City regarding the legal ownership of the rights to the Credits, City may withhold any cash reimbursement and may disallow the use of any Credits unless and until either: (i) all Parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing party(ies) the legal ownership of such rights and the manner in which such rights will be exercised.

4.3 Credit Policies and Procedures. Developer, for itself and its successors in interest to the Property, acknowledges that the Credit rights are held by the Developer and such rights do not run with the Property ownership. The Credits must be assigned in accordance with this Article 4, even between affiliated entities of Developer. In addition, City policies and procedures relating to assignment and application of Credits, as they may be amended, shall apply to the use of the Credits by Developer and its assigns in the future. However, the terms and conditions of this Agreement shall prevail in the event of any conflict with the City policies and procedures.

ARTICLE V MISCELLANEOUS

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

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

<u>If to City:</u>	City Manager New City Hall' 5th floor 915 I Street Sacramento, CA 95814
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If to Developer: Encore McKinley Village, LLC
c/o The New Home Company
Attention: Kevin Carson
2220 Douglas Boulevard, Suite 240
Roseville, CA 95661

With a copies to: RCI-McKinley, LLC
c/o Riverview Capital Investments
Attention: Philip N. Angelides
3001 I Street, Suite 200
Sacramento, CA 95816

Encore Housing Opportunity Fund II, L.P.
Attention: Hector Calderon
One Letterman Drive
Building C, Suite 3800
San Francisco, California 94129

5.2 Alternative Dispute Resolution. Any dispute or controversy between the Parties to this Agreement relating to the interpretation and enforcement of their rights and obligations may be resolved by mediation or arbitration by a Party serving a Notice of Dispute ("Notice") on the other Party. The Notice shall describe the nature of the dispute and specify whether mediation or non-binding arbitration procedure is preferred. The Parties shall first attempt in good faith and use their best efforts to reach agreement on the matters in dispute.

If mediation is requested in the Notice, within fifteen (15) days of the mailing of the Notice, the Party serving the Notice shall attempt to employ the services of a third person ("Mediator") mutually acceptable to the Parties to conduct such mediation. The cost of the Mediator shall be borne equally by the Parties. The mediation shall take place within thirty (30) days after the appointment of the Mediator. If the Parties are unable to agree on a Mediator, then the dispute may be referred to arbitration.

The Party serving the Notice may request that the dispute be resolved by arbitration, which shall be conducted by Judicial Arbitration and Mediation Services (JAMS). The arbitration shall be held and conducted in Sacramento, California before an arbitrator selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after referral to arbitration, then such arbitrator shall be appointed by the Presiding Judge of the Superior Court of Sacramento County as soon as practicable. The arbitration shall comply with the following requirements:

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

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

(c) The arbitrator shall prepare in writing and provide to the Parties factual findings and the reasons on which the decision of the arbitrator is based.

(d) The matter shall be heard by the arbitrator and the final decision by the arbitrator must be made within ninety (90) days from the date of the appointment of the arbitrator. The arbitration hearing date shall be established by the arbitrator, which date must be within such period of time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.

(e) Costs and fees of the arbitrator and court reporter, if any, shall be borne equally by the Parties. The cost of preparing any transcript of the proceedings shall be the responsibility of the Party or Parties requesting such preparation.

(f) The award or decision of the arbitrator shall be non-binding.

(g) The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, commencing with Section 1282 and including Section 1283.05, and successor statutes, permitting, among other things, expanded discovery proceedings shall be applicable to all disputes that are arbitrated under this Section 5.2.

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

5.4 Fee Ordinance. The Parties rights and obligations hereunder shall at all times be governed by and subordinate to the provisions of the City Code Chapter 18.44 in effect on the date that this Agreement is approved and executed by both Parties.

5.5 City Attorney Preparation Fees. Developer shall pay to City the sum of one thousand five hundred dollars (\$1,500.00), representing the costs associated with the City Attorney's services in negotiating and drafting this Agreement.

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

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

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

5.9 Governing Law and Venue. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

5.10 Counterparts and Digital Signatures. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page. A facsimile or other electronic signature shall be deemed an original signature.

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

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

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

[signature page follows]

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

CITY OF SACRAMENTO,

By: _____
James L. Combs
Director, Parks and Recreation Department
For John F. Shirey, City Manager

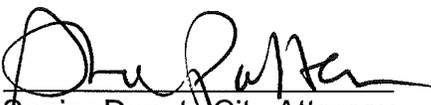
ENCORE MCKINLEY VILLAGE, LLC
a Delaware limited liability company

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

By: The New Home Company
Northern California, LLC
A Delaware limited liability
company
Member


Name: **Ashley J. Feeney**
Title: ~~Senior Vice President~~

APPROVED AS TO FORM:

By: 
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

EXHIBIT A
PROPERTY DESCRIPTION

(legal description or other description of development project property)

Parcel A:

Beginning at a point on the East line of that certain tract of land described as "Parcel No. 5", in the deed dated May 15, 1953, recorded in the office of the Recorder on July 16, 1953, in Book 2446 of Official Records, at Page 129, from which the Southeast corner thereof bears South 52 deg. 14'45" West 67.64 feet; thence along the boundary of said "Parcel No. 5", the following three (3) courses and distances: (1) North 52 deg. 14'45" East 312.36 feet to a 6 inch by 6 inch concrete monument (2) North 37 deg. 45'15" West 140.00 feet and (3) South 64 deg. 35'20" West 217.82 feet to the point of intersection of the North line of "A" Street with the East line of Thirty-First Street, as shown on the official map or plan of the City of Sacramento; thence along the North line of said "A" Street, North 72 deg. 58'41" West 3.35 feet to the Southeast corner of that certain 6.55 acre tract of land described as "Parcel No. 3", in the deed dated April 25, 1969, recorded in the office of said Recorder August 4, 1969, in Book 6908-04 of Official Records, at Page 136; thence along the Southerly line of said 6.55 acre tract of land, the following five (5) courses and distances: (1) North 40 deg. 27'23" East 24.58 feet, (2) curving to the right on an arc of 1350.00 feet radius, said arc being subtended by a chord bearing North 59 deg. 10'30" East 866.48 feet, (3) North 77 deg. 53'36" East 724.85 feet, (4) North 30 deg. 57'24" East 140.94 feet and (5) North 76 deg. 33'27" East 879.91 feet to a point in the Southerly line of existing State Highway 03-Sac-80, said point being distant 80.00 feet Southerly, measured at right angles, from the "B1" line at Engineer's Station "81" 75+01.86; thence along said Southerly line North 80 deg. 19'05" East 286.78 feet to a point on the Westerly right-of-way line of the Southern Pacific Company's right-of-way; thence along the Westerly and Northerly line of the Southern Pacific Company's right-of-way, the following fourteen (14) courses and distances; (1) South 27 deg. 45'33" West 734.96 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185", (2) South 35 deg. 30'27" East 28.20 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185" (3) South 53 deg. 50'36" West 294.65 feet, (4) curving to the right on an arc of 7540.95 feet radius, said arc being subtended by a chord bearing South 52 deg. 37'37" West 29.61 feet, (5) curving to the right on an arc of 3730.25 feet radius, said arc being subtended by a chord bearing South 52 deg. 57'52" West 29.22 feet, (6) curving to the right on an arc of 2448.02 feet radius, said arc being subtended by a chord bearing South 53 deg. 31'37" West 28.84 feet, (7) curving to the right on an arc of 1810.41 feet radius, said arc being subtended by a chord bearing South 54 deg. 18'52" West 28.44 feet, (8) curving to the right on an arc of 1430.05 feet radius, said arc being subtended by a chord bearing South 55 deg. 19'37" West 28.08 feet, (9) curving to the right on an arc of 1174.82 feet radius said arc being subtended by a chord bearing South 56 deg. 53'52" West 41.35 feet, (10) curving to the right on an arc of 1430.05 feet radius, said arc being subtended by a chord bearing South 58 deg. 28'07" West 28.08 feet, (11) curving to the right on an arc of 1810.41 feet radius, said arc being subtended by a chord bearing South 59 deg. 28'52" West 28.44 feet, (12) curving to the right on an arc of 2448.02 feet radius, said arc being subtended by a chord bearing South 60 deg. 16'07" West 28.84 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185", (13) curving to the right on an arc of 3720.25 feet radius, said arc being subtended by a chord bearing South 63 deg. 59'52" West 440.19 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185" and (14) curving to the right on an arc of 2363.14 feet radius, said arc being subtended by a chord bearing South 70 deg. 28'08" West 253.90 feet to a 1-1/4 inch iron pipe monument tagged "L.S. 3185" marking the most Easterly

corner of that certain 0.81 acre tract of land described as "Parcel No. 4", in said deed, recorded in Book 6908-04 of Official Records, at Page 136; thence along the Northerly line of said 0.81 acre tract of land, the following two (2) courses and distances: (1) curving to the right on an arc of 1800.00 feet radius, said arc being subtended by a chord bearing North 87 deg. 51'23" West 1119.54 feet and (2) North 69 deg. 44'15" West 105.71 feet to the point of beginning.

Parcel B:

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

Parcel C:

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

Said portion is all that part thereof described as follows:

Beginning at the most Southerly corner of that certain parcel of land designated "Parcel No. 5" in the deed dated May 15, 1953, recorded July 16, 1953, in Book 2446, Page 129, Official Records of Sacramento County, said point being distant 98.5 feet Northerly, measured radially from the centerline of the Central Pacific Railway Company's survey between Sacramento and Elvas, as said centerline is shown on the "Plat of Tract of Land Owned by G.A. Meister", filed February 27, 1914 in Book "A" of Surveys at Page 101, records of Sacramento County; thence along a line distant 98.5 feet Northerly from, radially to and concentric with said railway centerline the following 5 courses: (1) from a tangent that bears South 67 deg. 36'52" East along a curve to the left with a radius of 3721.25 feet, through an angle of 00 deg. 24'51", an arc length of 26.90 feet; (2) from a tangent that bears South 68 deg 01'43" East along a curve to the left with a radius of 2766.33 feet; through an angle of 00 deg. 36'00", an arc length of 28.97 feet; (3) from a tangent that bears South 68 deg. 27'43" East along a curve to the left with a radius of 2193.38 feet, through an angle of 00 deg. 45'00", an arc length of 28.71 feet to a point distant 98.5 feet Northerly, measured radially from Engineer's Station 146+05 of said railway company's centerline as said stationing is shown on said plat; (4) from a tangent that bears South 69 deg. 22'43" East along a curve to the left with a radius of 1811.41 feet, through an angle of 26 deg. 33'00", an arc length of 839.38 feet, and (5) from a tangent that bears North 84 deg. 03'09" East along a curve to the left with a radius of 2363.14 feet, through an angle of 09 deg. 02'27" an arc length of 372.89 feet; thence leaving said line described as 98.5 feet Northerly of said railway centerline, from a tangent that bears South 75 deg. 30'09" West along a curve to the right with a radius of 1800.00 feet, through an angle of 36 deg. 14'31", an arc length of 1138.57 feet to a point distant 80.00 feet Northerly, measured radially from Engineers Station "RR2" 146+76,42 S.C. of said Department of Public Works' 1966 Survey on Road 03-SAC-80 from Post Mile 4.1 to Post Mile 9.0; thence North 68 deg. 15'20" West 105.52 feet to a point in the Southeasterly line of said parcel of land designated as "Parcel No. 5" described in

said deed cited hereinabove, thence along said Southeasterly line South 53 deg. 43'40" West 67.64 feet to the point of beginning.

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

EXHIBIT B
PARK SITE DESCRIPTION
(legal description or tentative map lot reference)

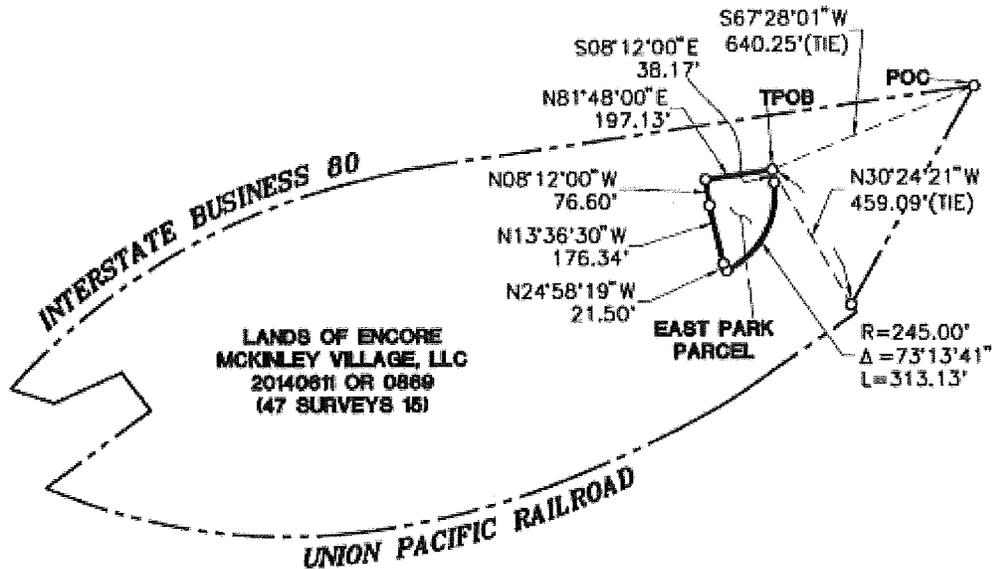
Being a portion of the Lands of Encore McKinley Village, LLC, a Delaware Limited Liability Company, as said Lands are described in the Grant Deed recorded on June 11, 2014 in Book 20140611, Page 0869 of Official Records of Sacramento County and as depicted on that Record of Survey filed in Book 47 of Surveys, at Page 15, Sacramento County Records, and is located in the City and County of Sacramento, State of California, more particularly described as follows:

COMMENCING at the most northeasterly corner of said Lands, said corner being the northerly terminus of the course "South 29° 14' 28" West, a distance of 734.96 feet" as shown on said Record of Survey; thence from said **POINT OF COMMENCEMENT** and entering said Lands, South 67°28'01" West, a distance of 640.25 feet to the **TRUE POINT OF BEGINNING**;

Thence from the **TRUE POINT OF BEGINNING** and continuing within said Lands, the following six (6) arcs, courses and distances:

1. South 08°12'00" East, a distance of 38.17 feet to a point on a 245.00 foot radius tangent curve;
2. Along the arc of said curve, an arc distance of 313.13 feet to the right, through a central angle of 73°13'41";
3. North 24°58'19" West, a distance of 21.50 feet;
4. North 13°36'30" West, a distance of 176.34 feet;
5. North 08°12'00" West, a distance of 76.60 feet;
6. North 81°48'00" East, a distance of 197.13 feet to the **TRUE POINT OF BEGINNING**;

Containing 41,079 square feet or 0.94 acres of land, more or less.



LANDS OF ENCORE
MCKINLEY VILLAGE, LLC
20140611 OR 0889
(47 SURVEYS 15)

LEGEND

POC POINT OF COMMENCEMENT
TPOB TRUE POINT OF BEGINNING



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=400'



WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
3301 O St, Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7767
APRIL 21, 2015 1262.020 SHEET 1 OF 1

**EXHIBIT C
PROJECT IMPROVEMENTS**

(based on adopted Master Plan)

1. Bike Rack
2. Tables (2)
3. Benches (6)
4. Trash Receptacles (2)
5. Dog Waste Bag Dispenser & Receptacle (1)
6. Bocce Ball Court (2)

EXHIBIT D TASKS ALLOCATION

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

- | | | |
|--|--|--|
| <div style="display: flex; flex-direction: column; align-items: center; justify-content: center;"> <div style="display: flex; flex-direction: column; align-items: center; justify-content: center; margin-bottom: 5px;"> City <input type="checkbox"/> </div> <div style="display: flex; flex-direction: column; align-items: center; justify-content: center;"> Developer <input type="checkbox"/> </div> </div> | | <p>A. CONCEPTUAL DESIGN PHASE</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 1. Survey of Park Site (including topo mapping and property line verification).</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 2. Determination of park amenities (always by the City).</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 3. Preparation of Master Plan illustrating Park Improvements.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 4. Preparation of initial cost estimate for construction of park per Master Plan.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 5. Public review and City approval process for Master Plan.</p> <p>B. PARK DESIGN PLAN PREPARATION PHASE</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 1. Development of design plans.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 2. Preparation of specifications.</p> <p>C. CONSTRUCTION DOCUMENT PHASE</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 1. Environmental review and documentation, if required.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 2. Preparation of bid documents .</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 3. Preparation of construction cost estimate and project timeline.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 4. Public review of construction documents and specifications.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 5. Submittal for Building Permit (to City Community Development Department, Building Division).</p> <p>D. BID DOCUMENT PHASE</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 1. Administer bidding process.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 2. City approval of bidder and contract award.</p> <p>E. CONSTRUCTION PHASE (Field Work)</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 1. Project staking.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 2. Construction inspection (always by City Park Planning and Development Services).</p> <p><input checked="" type="checkbox"/> <input checked="" type="checkbox"/> 3. Construction administration (City's Project Manager and Developer's Site Superintendent).</p> <p><input checked="" type="checkbox"/> <input checked="" type="checkbox"/> 4. Final Inspection.</p> <p><input checked="" type="checkbox"/> <input checked="" type="checkbox"/> 5. Site cleanup and walkthrough (with City in attendance).</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> 6. Public opening (always by the City).</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 7. Warranty administration.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 8. Title insurance and Park transfer to City of Sacramento.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 9. Submit labor compliance to City on a monthly basis.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> 10. Submit Project Cost verification documents.</p> |
|--|--|--|

EXHIBIT E

CITY STAFF COSTS AND PAYMENT SCHEDULE

Park: Alan and Helen Post Park
Size of Proposed Park: 0.69 acre
Available funding @ \$435,585 per acre + \$100,000 for public art (per DA)
Project Budget Eligible for PIF Credits: \$ 400,554

City Costs

Staff Costs (includes overhead*)

001	Administration	\$ 3,500
100	Planning	<i>included</i>
201	Design	<i>complete</i>
501	Construction Inspection	\$ 13,500
505	Labor Compliance	\$ 5,835
508	Construction Management	\$ 8,000
	<i>Subtotal</i>	\$ 30,835

Other Costs

Art in Public Places (2% of \$300,554)	\$ 6,011
PIF Administration Fee (5% of \$ 300,554)	\$ 15,028
<i>Subtotal</i>	\$ 21,039

Remaining Credit from Agreements C2014-0293 and C2015-0172 (\$ 25,561)

City Costs to be Paid in Cash by Developer	\$ 26,313
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Note: Estimated staff costs including overhead rate; at end of project any funds remaining in this account will be refunded to Developer.

Park Project Budget

Total Project Budget (from Exhibit E-1)	\$ 325,188
Art in Public Places (2% of \$300,554)	\$ 6,011
Additional Art (per DA, Exhibit J)	\$ 100,000
City Staff Costs	\$ 30,835
PIF Administration Fee	\$ 15,028
<i>Subtotal</i>	\$ 477,062

Master Plan Preparation / Construction Document Cost* \$ 8,898

**prorated; from Service Agreements C2014-0293 and C2015-0172*

Project Budget Eligible for PIF Credits	\$ 400,554
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(includes \$100,000 in Additional Public Art, per Development Agreement)

Additional Construction Costs – Paid by Developer	\$ 85,406
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EXHIBIT E-1

CONSTRUCTION ESTIMATE

<u>Proposed Improvements:</u>	<u>Quantity</u>		<u>Unit Cost</u>	<u>Total cost</u>
Turf, Trees, Shrubs & Irrigation	0.7	acres	\$110,000	\$75,900
Booster Pump	1	unit	\$12,500	\$12,500
Control System	1	unit	\$12,500	\$12,500
Drainage & Erosion Control	1	unit	\$15,000	\$15,000
Walls	1	lump sum	\$60,000.00	\$60,000
Park Signage Wall	1	allowance	\$10,000	\$10,000
Concrete Curb / Steps	1	lump sum	\$10,000	\$10,000
Concrete Paving	2,700	sf	\$7.00	\$18,900
Decomposed Granite	3,600	sf	\$3.25	\$11,700
Bike Rack (4 bike)	1	unit	\$3,000	\$3,000
Table	2	unit	\$4,000	\$8,000
Benches	6	unit	\$2,000	\$12,000
Chairs	4	unit	\$1,000	\$4,000
Concrete Foosball Table	1	unit	\$5,000	\$5,000
Chaise Lounge	4	unit	\$3,000	\$12,000
Trash Receptacles	2	unit	\$1,800	\$3,600
Drinking fountain	1	unit	\$6,000	\$6,000
Dog Waste Bag Dispenser	1	unit	\$1,000	\$1,000
Bocce Ball Court	2	unit	\$10,000	\$20,000
Contingency 5%				\$15,055
Bonding Fees - 3%				\$9,033
			Estimated construction costs:	<u><u>\$325,188</u></u>

EXHIBIT F
REPRESENTATIVES

City:

City of Sacramento
Park Planning & Development Services
915 "I" Street, 3rd Floor
Sacramento, CA 95814

Project Manager: Dennis Day, Associate Landscape Architect
Office Phone: (916) 808-7633
e-mail: dday@cityofsacramento.org

Developer:

Encore McKinley Village, LLC
c/o The New Home Company
2220 Douglas Boulevard, Suite 240
Roseville, CA 95661

Site Superintendent: Aaron Sussman
Office Phone: (916) 757-1189
e-mail: asussman@nwhm.com

**EXHIBIT G
HAZARDOUS SUBSTANCES**

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

B. Definitions.

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

- (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;
- (b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR, Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and
- (d) Any material, waste, or substance that is
 - i) a petroleum or refined petroleum product,
 - ii) asbestos,
 - iii) polychlorinated biphenyl,
 - iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS §1317,
 - v) a flammable explosive, or
 - vi) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the park site or any of the easement areas which Developer is required to and does convey to City pursuant to this Agreement, as now or may at any later time be in effect, including, without limitation,

EXHIBIT G (continued)
HAZARDOUS SUBSTANCES

the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RC RA) [42 USCS §§ 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 USCS §§ 1251 *et seq.*]; the Toxic Substances Control Act (TSCA) (15 USCS §§ 2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act (7 USCS §§ 136 *et seq.*]; the Superfund Amendments and Reauthorization Act (42 USCS §§ 6901 *et seq.*]; the Clean Air Act [42 USCS §§ 7401 *et seq.*]; the Safe Drinking Water Act (42 USCS §§ 300f *et seq.*]; the Solid Waste Disposal Act [42 USCS §§ 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§ 25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code §§ 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§ 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

**EXHIBIT H
PERFORMANCE BOND FORM**

**CITY OF SACRAMENTO
PERFORMANCE BOND**
Department of Parks and Recreation

Bond No.: _____
Premium: _____
Page 1 of 1

WHEREAS, the City of Sacramento, State of California, hereinafter called City, has entered into the Park Development Impact Fee Credit Agreement ("Contract") with _____

(full name and address of *Developer*);

as principal, hereinafter called Contractor, which is a contract for construction of the _____
Park, which Contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the Contract; and

WHEREAS, under the terms of the Contract, Contractor is required to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, we the Contractor and (*here insert full name and address of Surety*):

a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, as obligee, in the sum of: _____
DOLLARS (\$ _____),

for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless the City, its officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect.

As part of the obligations secured hereby and in addition to the sum specified above, there shall be included all costs, expenses and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on _____, 20____.

(Contractor) (Seal)
By: _____
Title: _____

(Surety)(Seal)
By: _____
Title: _____

ORIGINAL APPROVED AS TO FORM:

City Attorney