

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Tuesday, February 21, 2023

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

Join the Meeting Via Zoom Link:

<https://cityofranhocordova.zoom.us/j/89411468440?pwd=ZnVCT0RMS014R3VlaW1VRDZ3YzhHUT09>

Join the Meeting via the Zoom Phone Number

Zoom Phone Number: +1 669 900 6833, +1 253 215 8782, or +1 646 931 3860

Webinar ID: 894 1146 8440

Password: 578969

Instructions to Make Public Comment

Submitting Public Comment via Email

Members of the public who wish to provide public comment via email will need to submit written comments to CityClerk@cityofranhocordova.org no later than 3:00 p.m. on Tuesday, February 21, 2023. Written comments received no later than 3:00 p.m. will be distributed to the Council, filed in the record, and will not be read aloud. All comments submitted later than 3:00 p.m. will be distributed to the Council.

Listening to a Zoom Meeting by Zoom Video Conference

To make a public comment using the Zoom platform, please use the “raise hand” feature at the bottom center of the screen. Please make sure to enable audio controls once access has been given by the City Clerk’s office to speak. Please wait to be called upon by the City Clerk.

Listening to a Zoom Meeting by Phone Only

You can join a Zoom meeting via teleconferencing/audio conferencing using a cell phone or traditional landline phone. To request to make a public comment by phone press *9 to raise your hand. Please wait to be called upon by the City Clerk.

All public comments will be limited to three-minutes.

If you have questions related to the City Council Meeting or the use of Zoom, please contact the City Clerk's Office at (916) 851-8720 before Tuesday, February 21, 2023, at 3:00 p.m.

AGENDA

1. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

2. METRO CABLE TV TELEVISION ANNOUNCEMENT

The Clerk will announce the meetings video recording and playback schedules.

3. PLEDGE OF ALLEGIANCE

The Mayor will call on someone in attendance to lead the Pledge.

4. INVOCATION

Julie Steinbach of the United Methodist Church of Rancho Cordova, will give the invocation.

5. PRESENTATIONS

- 5.1. New Employee Introductions: Katrina Colvig, Administrative Assistant I by Karin Hayden, Administrative Assistant II and Haley Arata, Deputy City Clerk by Stacy Leitner, City Clerk.

6. PUBLIC COMMENT

Citizens wishing to address the Council for any matter not on the agenda may do so at this time via teleconference or by completing and submitting a Speaker Card to the City Clerk.

If you want to make a public comment via teleconference, please use the "raise hand" feature at the bottom center of the screen. If you are participating by telephone and you want to make a public comment, please press *9 to raise your hand. For those participating by Zoom or telephone, please wait to be called upon by the City Clerk.

For items on the agenda, speakers will be called by the Mayor at the point on the agenda when the item will be heard. Speakers are encouraged to keep comments to three minutes or less and to state name and community of residence.

Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any item not on the agenda unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

7. COUNCIL REPORTS

8. CITY MANAGER'S REPORT

- 8.1. Update on Assembly Bill 2449 Implementation.

9. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

- 9.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of February 6, 2023.
Recommendation: Adopt the Minutes.
- 9.2. **Subject:** A Resolution Authorizing an Application to and Participation in the Prohousing Designation Program.
Recommendation: Adopt the Resolution.
- 9.3. **Subject:** A Resolution Authorizing Application for the Prohousing Incentive Pilot Program.
Recommendation: Adopt the Resolution.
- 9.4. **Subject:** A Resolution of the City Council of the City of Rancho Cordova Approving the Final Map of Rio Del Oro Lot 66, Subdivision No. FM-2019-004-06 and Authorizing the City Manager to Execute Subdivision Improvement Agreement Contract No. 2023-04 With Alta Vista, LLC.
Recommendation: Adopt the Resolution.
- 9.5. **Subject:** A Resolution Authorizing the City Manager to Approve a Five-Year Contract for Janitorial Services and Maintenance for all Buildings Operated by the City with the Easter Seals Superior California for an Amount not to Exceed \$1,275,000.
Recommendation: Adopt the Resolution.
- 9.6. **Subject:** A Resolution Authorizing the City Manager to Execute Construction Contract Amendment 2022-01-02 with FBD Vanguard Construction to Increase the Contract Amount from \$884,964.56 to an Amount not to Exceed \$1,023,340.16 for the Construction of the Cordova School Zones Project.
Recommendation: Adopt the Resolution.
- 9.7. **Subject:** A Resolution Authorizing the Public Works Director to Issue a Reimbursement to Lennar Homes of California, LLC in the Amount of \$1,290,497 from the Storm Drainage Impact Fee Program.
Recommendation: Adopt the Resolution.
- 9.8. **Subject:** A Resolution Authorizing the City Manager to Execute Contract No. 2023-18 with Wood Rodgers, Inc. in an Amount not to Exceed \$687,484 for Civil Engineering Design and Environmental Services for the Monier Circle Flood Control Basin Project.
Recommendation: Adopt the Resolution.
- 9.9. **Subject:** A Resolution Authorizing the City Manager to Approve the Third Amendment to a Contract with Shums Coda to Modify Exhibit B to Update the Billing Rates.
Recommendation: Adopt the Resolution.
- 9.10. **Subject:** A Resolution Authorizing the City Manager to Execute a Third Amendment to the Contract with Sytech Solutions to increase the amount from \$95,000 to \$345,000, extend the Term of Services, and update Billing Rates.

Recommendation: Adopt the Resolution.

10. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

- 10.1. **Subject:** A Resolution Vacating a Public Utility Easement Pursuant to the Provisions of Chapter 3, Part 3 of Public Streets, Highways, and Service Easements Vacation Law Commencing at Section 8320 of the California Streets and Highways Code (Easton Research Park West).

Recommendation: Adopt the Resolution.

11. PUBLIC HEARING ITEMS

- 11.1. **Subject:** Logisticenter at Rancho Cordova Major Design Review - Project No. PLND-1021-0015.

Recommendation: Continue to the March 6, 2023, City Council Meeting.

12. REGULAR CALENDAR ITEMS

- 12.1. **Subject:** Mills Crossing Project Update.

Recommendation: Receive presentation, provide feedback.

- 12.2. **Subject:** Proposed Neighborhood Traffic Management Program, Phase VI.

Recommendation: Receive staff presentation and provide comments on the proposed Phase VI Neighborhood Traffic Management Program (NTMP).

13. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

14. ADJOURN TO CLOSED SESSION

Mayor Budge will adjourn the meeting to closed session.

15. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

16. CLOSED SESSION

Council will meet in closed session to discuss the following item:

- 16.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Case, relating to Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023).

17. OPEN SESSION - REPORT FROM CLOSED SESSION

The City Attorney will report on action taken in closed session.

18. ADJOURNMENT

ADDITIONAL INFORMATION

Special Meetings listed below are subject to change/cancellation without further notice.

Unless the Council adopts a motion to extend the meeting, any item that is not initiated before 11:00 p.m. will be continued to the next day at 5:30 p.m. or scheduled on the next regular meeting agenda of the Council.

Public documents related to items on the open session portion of this agenda, which are distributed to the City Council less than 72 hours prior to the meeting, shall be available for public inspection at the time the documents are distributed to the Council. Documents are available for inspection at the City Clerk's office located in Rancho Cordova City Hall.

The agenda items are accessible on the City's website at www.cityofranhocordova.org on Thursdays or Fridays prior to the Regular City Council Meeting.

UPCOMING MEETINGS

Febraury 28, 2023	5:30 PM Special Meeting/Work Session
March 6, 2023	4:00 PM Special Meeting/Regular Meeting
March 20, 2023	5:30 PM Regular Meeting
April 3, 2023	4:00 PM Special Meeting/Regular Meeting
April 11, 2023	5:30 PM Special Meeting/Work Session
April 17, 2023	5:30 PM Regular Meeting
May 1, 2023	4:00 PM Special Meeting/Regular Meeting
May 15, 2023	5:30 PM Regular Meeting

If you have any technical questions related to the agenda items, please contact City Hall at (916) 851-8700.

The Rancho Cordova City Council meeting will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast, Consolidated Communications and AT&T U-Verse Systems. Closed Captioning will be available on the playback cablecast. A DVD copy is available from the City Clerk's Department and a webcast of this meeting will be available for viewing via video streaming from the City's website within 48 hours of adjournment of this meeting.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Stacy Leitner, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the February 21, 2023 Regular Meeting of the Rancho Cordova City Council was posted and available for review on February 17, 2023 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at

www.cityofranchocordova.org.

Signed February 17, 2023 at Rancho Cordova, California.

A handwritten signature in blue ink that reads "Stacy Leitner". The signature is written in a cursive style with a horizontal line underneath the name.

Stacy Leitner, CMC
City Clerk

ITEM 9.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Monday, February 6, 2023

3:00 PM – Special Meeting/Work Session

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the David B. Roberts Council Chambers at 3:08 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, Donald Terry, and Mayor Linda Budge

Council Members Absent: David Sander

Staff Members Present: Adam Lindgren, Stacy Leitner, Persephonie Riley, and Micah Runner

2. PUBLIC COMMENT

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

3. SPECIAL MEETING

- 3.1. **Subject:** Update on Ethics, Transparency, and Governance: Semi-Annual AB1234 Ethics Training.

Recommendation: Receive information and training.

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

ACTION: Training on Ethics, Transparency, and Governance: Semi-Annual AB1234 Ethics Training was received by Council and members of City staff.

ITEM 9.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Monday, February 6, 2023

4. ADJOURNMENT OF SPECIAL MEETING

Mayor Budge adjourned to the regular meeting at 4:44 p.m.

5. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Regular meeting to order in the David B. Roberts Council Chambers at 5:33 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren, Stacy Leitner, Persephonie Riley. and Micah Runner

6. METRO CABLE TV TELEVISION ANNOUNCEMENT

The Clerk will announce the meetings video recording and playback schedules.

7. PLEDGE OF ALLEGIANCE

Stacy Delaney led the pledge.

8. INVOCATION

Dan DeShong with River City Christian Church will give the invocation.

9. PRESENTATIONS

9.1. Soil Born Farms Presentation

9.2. Employee Milestone Anniversary Presentation

9.3. Celebration of Council Member Terry's Birthday on February 8, 2023

10. PUBLIC COMMENT

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Chris Martinez
2. James Garcia
3. Helen Whelan-Bashaw
4. Fayzah Mughal

Mayor Budge closed the public comment period.

11. COUNCIL REPORTS

Council reported on events since the last meeting.

12. CITY MANAGER'S REPORT

City Manager Micah Runner gave his report.

13. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

ACTION: Motion to approve items 13.1. through 13.3. by Sander second by Gatewood;

ITEM 9.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Monday, February 6, 2023

Motion passed with a 5:0 vote.

- 13.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of January 17, 2023 and the Special Meetings of January 24 & 25, 2023.
Recommendation: Adopt the Minutes.
- 13.2. **Subject:** A Resolution of the City Council of the City of Rancho Cordova and on Behalf of Commissions and Committees Created by the City Council Pursuant to Government Code Section 54952(b) Confirming the State of Emergency Under Government Code Section 8625, Recognizing Continued Measures to Promote Social Distancing, and Re-authorizing Remote Teleconference Meetings of the City Starting February 6, 2023.
Recommendation: Adopt the Resolution.
- 13.3. **Subject:** A Resolution Authorizing the City Manager to Execute Contract No. 2023-06 Between the County of Sacramento and the City of Rancho Cordova for Maintenance of Shared Transportation Facilities and Undeveloped Lot Adjacent to Citrus Road.
Recommendation: Adopt the Resolution.

14. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

ACTION: Motion to approve item 14.1. by Sander second by Gatewood;
Motion passed with a 5:0 vote.

- 14.1. **Subject:** A Resolution Declaring a Protest Hearing and Authorizing the Mailing of Property Owner Ballot Relating to the Imposition of the Annual Stormwater Utility Fee for the Rancho Cordova Storage Project.
Recommendation: Approve the Resolution.

15. PUBLIC HEARING ITEMS

- 15.1. **Subject:** Logisticcenter at Rancho Cordova Major Design Review - Project No. PLND-1021-0015.
Recommendation: Continue to the February 21, 2023, City Council Meeting.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. James Garcia
2. Paul Carroll
3. Eric Winegar
4. Holles Ahlstorm
5. Charlotte Coleman
6. Jim Zazzera
7. Salina Wong
8. Tera Kolvenbach
9. Kate Carroll
10. James Garcia
11. Sandra Brown
12. Sherry Benton
13. Alina Skye
14. Lynn Keay
15. Paul Carroll
16. Carmen McIntire

ITEM 9.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Monday, February 6, 2023

17. Jonathan Lacoss
18. Kristi Talbert
19. Patricia Stewart
20. John Piatt
21. Pio Enriquez
22. Arthur Boganovich
23. Jilian Morinaga
24. Lysa Davis
25. Lori Ann Ball
26. Joe Bulloch
27. Kathryn Kurianowicz
28. Stanly A. Sedilko
29. Valerie Knippschild
30. Pamela Fuller
31. Jennifer Garcia
32. Angel Ball
33. Paul Carroll
35. Kate Carroll

Mayor Budge closed the public comment period.

ACTION: Motion to continue item 15.1. to the February 21, 2023 City Council meeting by Gatewood second by Sander;
Motion passed with a 5:0 vote.

16. REGULAR CALENDAR ITEMS

- 16.1. **Subject:** Proposed Municipal Code Amendments Permitting Short-Term Rental Property.

Recommendation: Receive presentation by staff, discussion and direction regarding regulating short-term rental property.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Fayzah Mughal
2. Angel Ball

Mayor Budge closed the public comment period.

ACTION: Input was received regarding the Proposed Municipal Code Amendments Permitting Short-Term Rental Property.

17. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

None.

18. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 7:23 p.m.

19. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Mayor Budge called closed session to order at 7:23 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge.

ITEM 9.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Monday, February 6, 2023

Council Members Absent: None.

Staff Members Present: Adam Lindgren, Stacy Leitner, Persephonie Riley. and Micah Runner

20. CLOSED SESSION

Council met in closed session to discuss the following item:

- 20.1. **Subject:** CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Case, relating to Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023).

21. OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported that staff was given direction and no reportable action was taken in closed session.

22. ADJOURNMENT

Mayor Budge adjourned the meeting in memory of Mary Virginia "Gena" Foote, Tom Hobday, Donald Clark, Paul Thompson at 9:20 p.m.

Stacy Leitner, CMC
City Clerk

MEMORANDUM



ITEM 9.2.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Ka Vang, Management Technician
Stefan Heisler, Housing Manager
SUBJECT: **A RESOLUTION AUTHORIZING AN APPLICATION TO AND PARTICIPATION IN THE PROHOUSING DESIGNATION PROGRAM**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize staff to submit an application to the Prohousing Designation Program, and if the application is approved by HCD, execute all documents deemed necessary or appropriate to participate in the Prohousing Designation Program.

BACKGROUND

Rancho Cordova has an opportunity to gain a competitive advantage for critical grant funding by applying for a Prohousing Designation from the California Department of Housing and Community Development (HCD). The award of this designation would identify the City of Rancho Cordova as being committed to removing regulatory barriers to the creation of housing at all affordability levels.

In 2019, AB 101 established the Prohousing Designation Program (PDP) administered by the California Department of Housing and Community Development (HCD). The PDP creates incentives for jurisdictions that are compliant with housing laws, housing element requirements, and have enacted Prohousing local policies that go beyond existing law. On June 7, 2021, HCD released the PDP Emergency Regulations. Jurisdictions were able to apply for the Prohousing Designation starting July 1, 2021.

Jurisdictions awarded a Prohousing Designation will receive a competitive advantage in state affordable housing and infrastructure grant programs, including the Affordable Housing and Sustainable Communities Program, Transformative Climate Communities, and the Infill Infrastructure Grant Program. The Program is designed to encourage jurisdictions to take actions that facilitate the creation of a variety of housing types consistent with state planning priorities, including fostering inclusion and equitable communities and collaborating with other entities to ensure policies and programs align. Jurisdictions must also comply with established housing law and the Housing Crisis Act of 2019.

The Prohousing application, reviewed by HCD, assigns points using four scoring categories that are considered "Prohousing" and requires a total score of 30 points or more across four categories: Favorable Zoning and Land Use, Acceleration of Housing Production Time frames, Reduction of Construction and Development Costs, and Providing Financial Subsidies.

City staff has prepared a preliminary application based on the city's adopted programs, ordinances, and policies, and submitted it for HCD's review and feedback in January 2023. This resolution is required to complete the application submittal. HCD has 60 days from the time the application is submitted to provide initial feedback to the City. The City has 15 days to provide a written response to HCD. HCD then has 60 days to issue a final determination of the designation as a Prohousing Jurisdiction.

Once the application is approved, the City will be eligible for an award from the HCD Prohousing Incentive Pilot Program (PIP), which can provide the City with up to \$500,000 for future affordable housing projects. The PIP Program is a state investment from the Building Homes and Jobs Trust Fund, established by Chapter 364, Statutes of 20147 (SB2, Atkins) to create and conserve affordable housing. PIP funds are only awarded to eligible jurisdictions who have received the Prohousing Designation.

Staff recommends City Council adopt the Resolution authorizing staff to submit a Prohousing Designation Program application to the California Department of Housing and Community Development (HCD); and if the application is approved by HCD execute all documents deemed necessary or appropriate to participate in the Prohousing Designation Program.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact.

ATTACHMENT(S)

1. Resolution

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA,
STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO SUBMIT AN
APPLICATION TO AND PARTICIPATION IN THE PROHOUSING DESIGNATION PROGRAM**

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program ("PDP" or "Program"), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, such jurisdictions will be designated Prohousing, and, as such, will receive additional points or other preference during the scoring of their competitive applications for specified housing and infrastructure funding; and

WHEREAS, the Department of Housing and Community Development ("Department") has adopted emergency regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the Program ("Program Regulations"), as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, The City of Rancho Cordova desires to submit an application for a Prohousing Designation ("Applicant"); and

WHEREAS, The City of Rancho Cordova ("Applicant") desires to submit an application for a Prohousing Designation.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA as follows:

1. Applicant is hereby authorized and directed to submit an application to the Department.
2. Applicant acknowledges and confirms that it is currently in compliance with applicable state housing law.
3. Applicant acknowledges and confirms that it will continue to comply with applicable housing laws and to refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production. Examples of such local laws, policies, and action included moratoriums on development; local voter approval requirements related to housing production; downzoning; and unduly restrictive or onerous zoning regulations, development standards, or permit procedures. Applicant further acknowledges and confirms that it commits itself to affirmatively furthering fair housing pursuant to Government Code section 8899.50.
4. If the Application is approved, Applicant is hereby authorized and directed to enter into, execute, and deliver all documents required or deemed necessary or appropriate to participate in the Program, and all amendments thereto (the "Program Documents").
5. Applicant acknowledges and agrees that it shall be subject to the Application; the terms and conditions specified in the Program Documents; the Program Regulations; and any and all other

ITEM 9.2.

ATTACHMENT 1

applicable law.

6. The City Manager is authorized to execute and deliver the application and the Program Documents on behalf of the Application for participation in the Program.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

MEMORANDUM



ITEM 9.3.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Ka Vang, Management Technician
Stefan Heisler, Housing Manager
SUBJECT: **A RESOLUTION AUTHORIZING APPLICATION FOR THE PROHOUSING INCENTIVE PILOT PROGRAM**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize staff to submit an application for the Prohousing Incentive Pilot Program.

BACKGROUND

The Prohousing Designation Program was established by the state of California Housing and Community Development (HCD) in 2019 to help meet California's housing goals. The Prohousing Designation makes affordable housing projects more competitive for state and federal funding and may help accelerate the timeline for future projects.

The Prohousing Incentive Pilot Program (PIP) is designed to encourage cities and counties to obtain the Prohousing Designation. Only those who have received the designation, by March 30, 2023, from HCD are eligible for PIP grant funding. HCD will award PIP funding based on each jurisdiction's population size and Prohousing Program score. Based on the city's population, Rancho Cordova is eligible to apply for a maximum of \$500,000.

The City submitted its formal application for the Prohousing Designation Program on January 17, 2023. HCD is in the process of reviewing the application. Adoption of this resolution is required in order to complete the application for the PIP.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact.

ATTACHMENT(S)

1. Resolution

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA,
STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO SUBMIT AN
APPLICATION FOR THE PROHOUSING INCENTIVE PILOT PROGRAM**

WHEREAS, pursuant to Health and Safety Code 50470 et. Seq, the Department of Housing and Community Development (Department) is authorized to issue guidelines as part of an incentive program (hereinafter referred to by the Department as the Prohousing Incentive Pilot Program or "PIP"); and

WHEREAS, the City Council of the City of Rancho Cordova desires to submit a PIP grant application package ("Application"), on the forms provided by the Department, for approval of grant funding for eligible activities towards planning and implementation activities related to housing and community development as a result of meeting eligibility criteria including but not limited to Prohousing Designation; and

WHEREAS, the Department has issued guidelines and application on December 15, 2022 in the amount of \$25,705,545.65 for PIP.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
("Applicant") resolves as follows:

SECTION 1. The City Manager is hereby authorized and directed to submit an Application to the Department in response to the NOFA, and to apply for the PIP grant funds in a total amount not to exceed \$500,000; and

SECTION 2. In connection with the PIP grant, if the application is approved by the Department, the City Manager of the City of Rancho Cordova is authorized and directed to enter into, execute, and deliver on behalf of the Applicant, a State of California Agreement (Standard Agreement) for the amount of \$500,000, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PIP grant, the Applicant's obligations related thereto, and all amendments thereto; and

SECTION 3. The Applicant shall be subject to the terms and conditions as specified in the Guidelines, and the Standard Agreement provided by the Department after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement. Pursuant to the Guidelines and in conjunction with the terms of the Standard Agreement, the Applicant hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

ITEM 9.3.

ATTACHMENT 1

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

MEMORANDUM



ITEM 9.4.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Quoc Nham, Senior Civil Engineer
SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA APPROVING THE FINAL MAP OF RIO DEL ORO LOT 66, SUBDIVISION NO. FM-2019-004-06 AND AUTHORIZING THE CITY MANAGER TO EXECUTE SUBDIVISION IMPROVEMENT AGREEMENT CONTRACT NO. 2023-04 WITH ALTA VISTA, LLC**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would approve the Final Map of Rio Del Oro Lot 66 Subdivision No. FM-2019-004-06 and authorize the City Manager to execute Subdivision Improvement Agreement Contract No. 2023-04 with Alta Vista, LLC.

BACKGROUND

The map has been examined and checked for compliance with Title 22 of the City of Rancho Cordova Municipal code and the California Subdivision Map Act. The City Council approved the Large Lot Map on May 17, 2021. A Development Agreement was entered into on December 6, 2010. The City and Elliott Homes executed an Amended and Restated Development Agreement on January 15, 2020. A copy of the final map, Attachment 3, and the vicinity map, Attachment 4, are included with this letter.

Roads are offered for dedication with this subdivision. The developer has chosen the theme of Central American Rivers and Streams for the street names. Alta Vista, LLC has provided a performance, labor and material bond guaranteeing the construction of the public improvements. Wood Rodgers has waived the requirement for a bond to guarantee payment for setting the survey monuments with the subdivision. The soil report requirement has been satisfied by Youngdahl Consulting Group, Inc., dated December 2019.

There are no delinquent taxes against the property and the Tax Collector has so certified. The 2022/2023 estimated taxes have been secured with the Sacramento County Tax Collector.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact to the City.

ATTACHMENT(S)

1. Resolution
2. Contract No. 2023-04
3. Rio Del Oro Final Map
4. Vicinity Map

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, APPROVING THE FINAL MAP OF RIO DEL ORO LOT 66, SUBDIVISION NO. FM-2019-004-06, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SUBDIVISION IMPROVEMENT AGREEMENT CONTRACT NO. 2023-04 WITH ALTA VISTA, LLC

WHEREAS, the City Council approved the Large Lot Map on May 17, 2021, per Resolution No. 2021-71; and

WHEREAS, the map is in substantial compliance with the approved tentative map; and

WHEREAS, the conditions of approval have been complied with; and

WHEREAS, the map complies with Title 22 of the City of Rancho Cordova municipal code and the California Subdivision Map Act; and

WHEREAS, the approval of final maps is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Regulation Section 15268(b)(3) as a ministerial approval; and

WHEREAS, the City desires to enter into a subdivision improvement agreement with the developer to ensure necessary public improvements are completed and secured with a bond.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does approve the Final Map of Rio Del Oro Lot 66 Subdivision No. FM-2019-004-06 and does authorize the City Manager to execute Subdivision Improvement Agreement 2023-04 with Alta Vista, LLC, in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

SUBDIVISION IMPROVEMENT AGREEMENT**RIO DEL ORO LOT 66 SUBDIVISION NO. FM 2019-004-06**

THIS SUBDIVISION IMPROVEMENT AGREEMENT (hereinafter, "Agreement") entered into this _____ day of _____, 20__, by and between the City of Rancho Cordova, (hereinafter "City"), a California municipal corporation, and **Alta Vista, LLC**, an Arizona limited liability company (hereinafter "Principal").

RECITALS

WHEREAS, Section 66462 of the Government Code provides that if the work of improvement required therein is not completed prior to the acceptance of a final subdivision map, the owner of the subdivision may enter into an agreement with the City to perform the work of improvement as required by said sections in consideration of the acceptance of said final subdivision map by the City; and

WHEREAS, Section 66499 of the Government Code requires that said agreement be secured by a surety bond or by an instrument of credit issued by a financial institution subject to regulation by the State or federal governments or by a cash deposit; and

WHEREAS, Section 66499.3 establishes the types and amount of security to guarantee the performance of any such improvement agreement; and

WHEREAS, City and Principal desire to enter into an improvement agreement as authorized by the Subdivision Map Act under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, City and Principal agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.
2. **Findings and Conditions of Subdivision Map.** Principal recognizes that approval of its subdivision was subject to the findings and conditions attached to such approval and hereby acknowledges and agrees to be bound by such findings and conditions.
3. **City Approval of Subdivision Map.** City agrees to approve the final map of the subdivision presented to it by Principal and designated **Rio Del Oro Lot 66** and to accept on behalf of the public all lands, rights of way and easements therein offered in dedication, in accordance with the conditions hereinafter set forth.

4. **Completion of Improvements.** In consideration of such approval, Principal agrees to complete the work of improvement required for said subdivision in accordance with the requirements of the Rancho Cordova Municipal Code and such standard specifications created by applicable City ordinances or resolutions which are in effect at the time of the installation of said improvements. The work required may lie within or outside the subdivision and must be completed within **24** months of the date of this Agreement.

5. **Payment For Services.** Principal further agrees to promptly pay, when due, all costs for plan checking, inspection services and material testing performed by City pursuant to the requirements of Sections 12.03.210 et. seq. of the Rancho Cordova Municipal Code.

6. **Acceptance of Improvements.** Upon satisfactory completion of all public improvements in accordance with standard specifications created by City ordinances or resolutions which are in effect at the time of the installation of said improvements, City agrees to accept for maintenance the work of improvement within the dedicated parcels shown on said final subdivision map, and any off site easements granted, subject to the provisions of paragraph 9 hereof. Acceptance will be postponed until such time the City determines a public purpose exists. Public Purpose is defined as existence of habitable structures within the subdivision.

7. **Notice of Commencement of Work.** Principal shall notify the City Engineer in writing of the commencement of the work of improvements.

8. **Correction of Defects.** Principal agrees to remedy any defects in the improvement arising from faulty or defective construction of said improvements occurring within twelve months after acceptance thereof by City.

9. **Indemnity.** Principal shall indemnify and hold harmless City from any and all loss, damage or liability arising out of or resulting from Principal's performance or non-performance of his duties and obligations under this Agreement, or from the negligent act or omission of himself, his agents, servants and employees. Principal shall, at his own cost and expense, defend any and all actions, suits, or legal proceedings arising out of or resulting from the performance or nonperformance of this Agreement, that may be brought or instituted against the City, its officers and employees, on any such claim or demand, and pay or satisfy any judgment that may be rendered against the City in any such action, suit or legal proceedings, or result thereof, regardless whether caused in part by a party indemnified hereunder.

10. **Extension of Completion Date.** If the construction of the work or improvement

should be delayed without fault of Principal, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

11. Improvement Security. (a) Principal shall obtain and furnish to City an improvement security consisting of a surety bond in favor of City, issued by a corporate surety authorized to do business in the State of California, and in form approved by City, securing the faithful performance by Principal of the work of improvement required, and also securing the payment of the costs and interest, if any, due under Sections 12.030.210 et seq. of the Rancho Cordova Municipal Code, as provided in Paragraph 5 herein and an additional bond issued by a corporate surety authorized to do business in the State of California, in the amount of not less than 50 percent of the total estimated cost of the improvement, securing payment to contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement.

(b) In lieu of said corporate surety bonds, Principal may furnish an improvement security consisting of a letter of credit, certificate of deposit, or similar instrument of credit, in form satisfactory to City, issued by a financial institution subject to regulation by the State or Federal government, pledging that the funds necessary to meet the performance required herein are on deposit, and guaranteed for payment on demand. Said letter of credit, certificate of deposit, or similar instrument of credit shall provide that the funds designated therein shall become trust funds for the purposes set forth in said instrument.

(c) The failure of Principal to commence the required work of improvements, or to complete the same within the time required after commencement thereof, shall entitle City to the full payment of the security, or so much thereof as may be necessary to complete the required work of improvement. The amount of the surety bond for faithful performance shall be in the sum of **\$5,936,000**. The amount of the surety bond for the payment of the claims of the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials for the improvement shall be at least 50 percent of the above amount. The letter of credit, certificate of deposit or similar instrument of credit, or cash deposit for faithful performance, shall be in the above amount plus an additional 50 percent for the purposes set forth herein.

12. Improvement Security As Condition Precedent. The furnishing of the improvement security by Principal as required by paragraph 11 hereof shall be a condition precedent to acceptance by City of the above-described real property and the performance by the City of the covenants herein on its part to be performed.

13. Inspection of Work In Progress. (a) Principal may request The City Engineer to inspect the work as it progresses. If the work performed is found to be in accordance with the requirements of City, it may be accepted as it progresses and a partial refund of the cash deposit, or a release pro tanto of the faithful performance bond, letter of credit, certificate of deposit or similar instrument of credit shall be made in a sum in the same ratio to the total deposit as the work accepted bears to the total work to be done. No refund in excess of 85 percent of the total amount of the improvement security for faithful performance shall be made until all the work has been completed and accepted.

(b) The determination of the Administrator of Public Works of City as to the amount of work done, and the amount of refund or partial release pro tanto, shall be final and conclusive. When the work of improvement is accepted, 10 percent of the improvement security shall be retained to guarantee faithful performance of the provisions of paragraph 9 of this Agreement.

(c) Improvement security given to secure payment to contractor, his subcontractors and to persons renting equipment or furnishing labor or materials for the work of improvement may, six months after completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed, and notice thereof given in writing to City, and if there are no actions filed, such improvement security may be released in full.

14. Execution By Real Party In Interest. Where title to the subdivision property is held by the record owner thereof under a holding Agreement, this Agreement and the bond given pursuant thereto must be executed by the real party or parties in interest.

15. Waiver of Civil Code Section 2819. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

16. City Construction of Improvements. In the event that all or any portion of the works of improvement contemplated herein are proposed to be constructed by street improvement proceedings under the control of City, the undertaking of such proceedings shall in no way relieve Principal of any duties under this Agreement, except where all of the works of improvement that are required under this Agreement have in fact been constructed and accepted by City.

17. Interest. Interest shall accrue at the highest rate permitted by law on all sums from the date payment is due under the terms of this Agreement and the sum due is certain or

reasonably capable of being made certain.

18. Attorneys' Fees. In the event that it is necessary for the City to enforce the obligations secured by the improvement security furnished pursuant to Paragraph 12 hereof, the City shall be entitled to recover its costs and reasonable expenses and fees, including reasonable attorneys' fees, as provided for in Government Code Section 66499.4.

19. Amendments. This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by the parties hereto.

20. Entire Agreement. This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supercedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

21. Construction and Interpretation. It is agreed and acknowledged by the Principal that the provisions of this Agreement have been arrived at through negotiation, and that the Principal has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

22. Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

23. Time. Time is of the essence in the performance of each and every term of this Agreement.

SIGNATURE PAGE FOLLOWING

ITEM 9.4.

**ATTACHMENT 2
CONTRACT 2023-04**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF RANCHO CORDOVA,
California Municipal Corporation

ALTA VISTA, LLC
Arizona Limited Liability Company

Micah Runner, City Manager

Price Walker, Vice President – Project
Development

Date: _____

Date: _____

ATTEST:

Stacy Leitner, CMC, City Clerk

OWNER'S STATEMENT

THE UNDERSIGNED HEREBY CONSENT TO THE PREPARATION AND RECORDING OF THIS FINAL MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

THE UNDERSIGNED HEREBY OFFERS FOR DEDICATION AND DOES HEREBY DEDICATE TO ANY AND ALL PUBLIC USES, WHITE ROCK ROAD, RANCHO CORDOVA PARKWAY, LA FORTUNA DRIVE, CRUTA DRIVE, SUMPUL WAY, DANTO WAY, NOSARA WAY, OTORO WAY, SIRAMA WAY AND NANKUTA COURT AS SHOWN HEREON, AND DOES HEREBY DEDICATE TO SPECIFIC PURPOSES THE FOLLOWING:

1. EASEMENT FOR PLANTING AND MAINTAINING TREES, ELECTROLIERS, TRAFFIC CONTROL DEVICES, WATER AND GAS PIPES, AND UNDERGROUND WIRES AND CONDUITS FOR ELECTRIC, TELEVISION AND TELEPHONE SERVICES, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO, ON, OVER, UNDER AND ACROSS LOTS A, B, C, D & E AND THOSE STRIPS OF LAND 12.50 FEET IN WIDTH LYING CONTIGUOUS TO THE PUBLIC COURT, DRIVES, PARKWAY, ROAD AND WAYS SHOWN HEREON AND DESIGNATED "PUBLIC UTILITY EASEMENT" (PUE).
2. EASEMENTS FOR LANDSCAPING AND ALL APPURTENANCES PERTAINING THERETO LYING ON, OVER AND ACROSS LOTS A, B, C, D, E & F AND THOSE STRIPS OF LAND SHOWN HEREON AND DESIGNATED "LANDSCAPING EASEMENT" (LE). SAID STRIPS TO BE KEPT OPEN AND FREE FROM BUILDINGS. THE MAINTENANCE AND REPLANTING OF THE LANDSCAPE STRIP SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
3. RIGHT OF WAYS AND EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF A PEDESTRIAN WALKWAY, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO ON, OVER, UNDER AND ACROSS LOTS A, B, C, D, E & F SHOWN HEREON AND DESIGNATED "PEDESTRIAN EASEMENT" (PE). THE MAINTENANCE AND REPAIR OF THE WALKWAY SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
4. AN EASEMENT FOR CONSTRUCTING AND MAINTAINING CENTRALIZED MAIL DELIVERY BOXES, PEDESTALS AND SLABS, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO INCLUDING PEDESTRIAN ACCESS FOR DELIVERY AND RECEIPT OF MAIL ON, OVER, UNDER AND ACROSS STRIPS OF LAND 5.00 FEET IN WIDTH LYING CONTIGUOUS TO THE PUBLIC COURT, DRIVE, PARKWAY, ROAD AND WAYS SHOWN HEREON.

ALTA VISTA, LLC
AN ARIZONA LIMITED LIABILITY COMPANY

BY: _____

NAME: _____

TITLE: _____

SURVEYOR'S STATEMENT

THIS FINAL MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF AEROJET–GENERAL CORPORATION, IN NOVEMBER, 2019. I HEREBY STATE THAT ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE FEBRUARY 28, 2025 AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

WOOD RODGERS, INC.

DENNIS L. BARBER
P.L.S. 8067

DATE



NOTARY'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF _____) SS

ON _____ DAY OF _____, 2023 BEFORE ME, _____
_____, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE,
PERSONALLY APPEARED _____

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND: _____

PRINTED NAME: _____

MY PRINCIPAL PLACE OF BUSINESS IS IN THE
COUNTY OF: _____

MY COMMISSION EXPIRES: _____

MY COMMISSION No.: _____

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF RIO DEL ORO LOT 66 AND FIND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP APPROVED BY THE CITY OF RANCHO CORDOVA, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND ALL APPLICABLE CITY ORDINANCES HAVE BEEN COMPLIED WITH.

CITY ENGINEER, ALBERT STRICKER, R.C.E. 64057

DATED: _____



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP – SUBDIVISION NO. 2019–004–06, RIO DEL ORO LOT 66 – AND FIND IT TO BE TECHNICALLY CORRECT.



JOCELYN L. LIMAS
PLS 9596
EXPIRATION: 3/31/2023

DATE

CITY CLERK'S STATEMENT

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA HAS APPROVED THIS FINAL MAP OF RIO DEL ORO LOT 66 AND HAS ACCEPTED ON BEHALF OF THE PUBLIC ALL EASEMENTS AND RIGHTS–OF–WAY DESIGNATED WHITE ROCK ROAD, RANCHO CORDOVA PARKWAY, LA FORTUNA DRIVE, CRUTA DRIVE, SUMPUL WAY, DANTO WAY, NOSARA WAY, OTORO WAY, SIRAMA WAY AND NANKUTA COURT AS SHOWN HEREON, TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO, SUBJECT TO THE IMPROVEMENT THEREOF, AND DO HEREBY CERTIFY THE ABANDONMENTS LISTED HEREON.

BY: _____
CITY CLERK
CITY OF RANCHO CORDOVA

DATED: _____

RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2023, AT _____ __M. IN BOOK _____ OF MAPS, AT PAGE _____ AT THE REQUEST OF WOOD RODGERS, INC. TITLE TO THE LAND INCLUDED IN THIS FINAL MAP BEING VESTED AS PER CERTIFICATE NO. _____ ON FILE IN THIS OFFICE.

DONNA ALLRED, COUNTY RECORDER DOCUMENT NO.: _____
COUNTY OF SACRAMENTO

BY: _____ FEE: \$ _____
DEPUTY RECORDER

FINAL MAP
RIO DEL ORO
LOT 66
SUBDIVISION NO. FM-2019-004-06
BEING ALL OF LOT 65 AND 66 OF FINAL MAP OF RIO DEL ORO PHASE 1
LARGE LOT MAP, FILED FOR RECORD IN BOOK 428 OF MAPS, AT PAGE 5
SACRAMENTO COUNTY RECORDS
CITY OF RANCHO CORDOVA, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



FEBRUARY 2023

Sheet 1 of 5

NOTES

1. ALL CURVES DIMENSIONED WITH RADIUS, DELTA, AND ARC LENGTH.
2. ALL DISTANCES SHOWN HEREON ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
3. DUE TO ROUNDING THE SUM OF THE INDIVIDUAL DIMENSIONS MAY NOT EQUAL THE OVERALL DIMENSION.
4. TOTAL AREA FOR THIS "RIO DEL ORO – LOT 66" SUBDIVISION IS 38.76± ACRES, CONSISTING OF 132 RESIDENTIAL LOTS, 3 LANDSCAPE LOTS, 2 PASEO LOTS, 1 FUTURE DEVELOPMENT LOT AND 1 GREENBELT LOT.
5. A SOILS REPORT FOR THIS SUBDIVISION WAS PREPARED BY YOUNGDAHL CONSULTING GROUP, INC. ON DECEMBER 2019. A COPY OF THIS REPORT IS AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE CITY OF RANCHO CORDOVA BUILDING INSPECTOR.
6. 5/8" REBAR CAPPED "LS 8067" WILL BE SET AT ALL REAR LOT CORNERS, ALONG WITH ALL LOT LINE ANGLE POINTS OR AT A 2.00 FOOT PROJECTION ALONG LOT LINES ADJACENT TO WALLS (2.00 FOOT BY 2.00 FOOT OFFSETS FOR ANGLE POINTS ADJACENT TO WALLS). FRONT CORNERS WILL BE SET WITH A 1" BRASS DISK STAMPED "LS 8067" AT A 1.00 FOOT PROJECTION OF THE PROPERTY LINE ONTO THE SIDEWALK.
7. ALL LOTS BEING CREATED BY THIS MAP INCLUDE FEE TITLE TO THE CENTERLINE OF THE COURT, DRIVES, PARKWAY, ROAD AND WAYS SHOWN HEREON, EXCEPT WHERE THE PUBLIC ROAD EASEMENT LINE IS ALSO THE COMMON LINE OF THE SUBDIVISION BOUNDARY, THEN THE FEE TITLE IS TO THE SUBDIVISION BOUNDARY.
8. PURSUANT TO SECTION 66434(g) OF THE GOVERNMENT CODE, THE FOLLOWING EASEMENTS, NOT SHOWN HEREON, ARE HEREBY ABANDONED:

8.1. THOSE PORTIONS OF IRREVOCABLE OFFER OF DEDICATION (IOD) AS DEPICTED ON THE MAP ENTITLED "RIO DEL ORO PHASE 1 LARGE LOT MAP" FILED IN BOOK 428 OF FINAL MAPS, AT PAGE 5, SACRAMENTO COUNTY RECORDS.

8.2. THOSE PORTIONS OF PUBLIC UTILITY EASEMENT (PUE) AS DEPICTED ON THE MAP ENTITLED "RIO DEL ORO PHASE 1 LARGE LOT MAP" FILED IN BOOK 428 OF FINAL MAPS, AT PAGE 5, SACRAMENTO COUNTY RECORDS.

8.3. THOSE PORTIONS OF PUBLIC RIGHT–OF–WAY AND PUBLIC UTILITY EASEMENT DESCRIBED IN THAT DOCUMENT RECORDED AS DOC# 202010091664, OFFICIAL RECORDS OF SACRAMENTO COUNTY.

8.4. THOSE PORTIONS OF PUBLIC RIGHT–OF–WAY AND PUBLIC UTILITY EASEMENT DESCRIBED IN THAT DOCUMENT RECORDED AS DOC# 202010091665, OFFICIAL RECORDS OF SACRAMENTO COUNTY.

8.5. THOSE PORTIONS OF RIGHT–OF–WAY EASEMENT AS DEPICTED ON THE RECORD OF SURVEY ENTITLED "PORTION OF RANCHO RIO DE LOS AMERICANOS" FILED IN BOOK 18 OF SURVEYS, AT PAGE 4, SACRAMENTO COUNTY RECORDS.

8.6. THOSE PORTIONS OF RIGHT–OF–WAY EASEMENT AS DESCRIBED IN THAT DOCUMENT RECORDED IN BOOK 3689, AT PAGE 555, OFFICIAL RECORDS OF SACRAMENTO COUNTY.
9. LOTS A, B C, D & E ARE FOR LANDSCAPING, PEDESTRIAN AND PUBLIC UTILITY EASEMENT PURPOSES AND SHALL BE GRANTED TO THE CITY OF RANCHO CORDOVA.
10. LOT F IS FOR LANDSCAPING, DRAINAGE, PEDESTRIAN AND GREENBELT PURPOSES AND SHALL BE GRANTED TO THE CITY OF RANCHO CORDOVA.

LEGEND

- DIMENSION POINT
- FOUND MONUMENT AS NOTED
- ⊙ FOUND 3/4" IRON PIPE WITH CAP STAMPED "LS 8067"
- ⦿ FOUND 1 1/4" GALVANIZED IRON PIPE WITH PLUG STAMPED "LS 8067"
- ⦶ FOUND 1–1/8" O.D. IRON PIPE WITH PLASTIC PLUG STAMPED "LS 5760 PLANK"
- ⊙ SET 3/4" IRON PIPE WITH CAP STAMPED "LS 8067"
- ⌒ CENTERLINE
- IOD IRREVOCABLE OFFER OF DEDICATION
- L= ARC LENGTH
- LE LANDSCAPE EASEMENT
- PE PEDESTRIAN EASEMENT
- PUE PUBLIC UTILITY EASEMENT
- (OA) OVERALL
- (R) RADIAL BEARING
- SF SQUARE FEET
- ⓧ SHEET NUMBER REFERENCE

REFERENCES:

- (1) 428 MAPS 5 FINAL MAP OF RIO DEL ORO PHASE 1 LARGE LOT MAP
- (2) 428 MAPS 9 FINAL MAP OF RIO DEL ORO LOT 67B

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS IDENTICAL TO THE FINAL MAP OF "RIO DEL ORO PHASE 1 LARGE LOT MAP" FILED FOR RECORD IN BOOK 428 OF MAPS, AT PAGE 5, SACRAMENTO COUNTY RECORDS AND IS THE SOUTH LINE OF LOT F AS SHOWN ON SAID FINAL MAP. SAID SOUTH LINE IS TAKEN TO BEAR NORTH 52°47'18" EAST.

FINAL MAP
RIO DEL ORO
LOT 66
SUBDIVISION NO. FM-2019-004-06
BEING ALL OF LOT 65 AND 66 OF FINAL MAP OF RIO DEL ORO PHASE 1
LARGE LOT MAP, FILED FOR RECORD IN BOOK 428 OF MAPS, AT PAGE 5
SACRAMENTO COUNTY RECORDS
CITY OF RANCHO CORDOVA, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

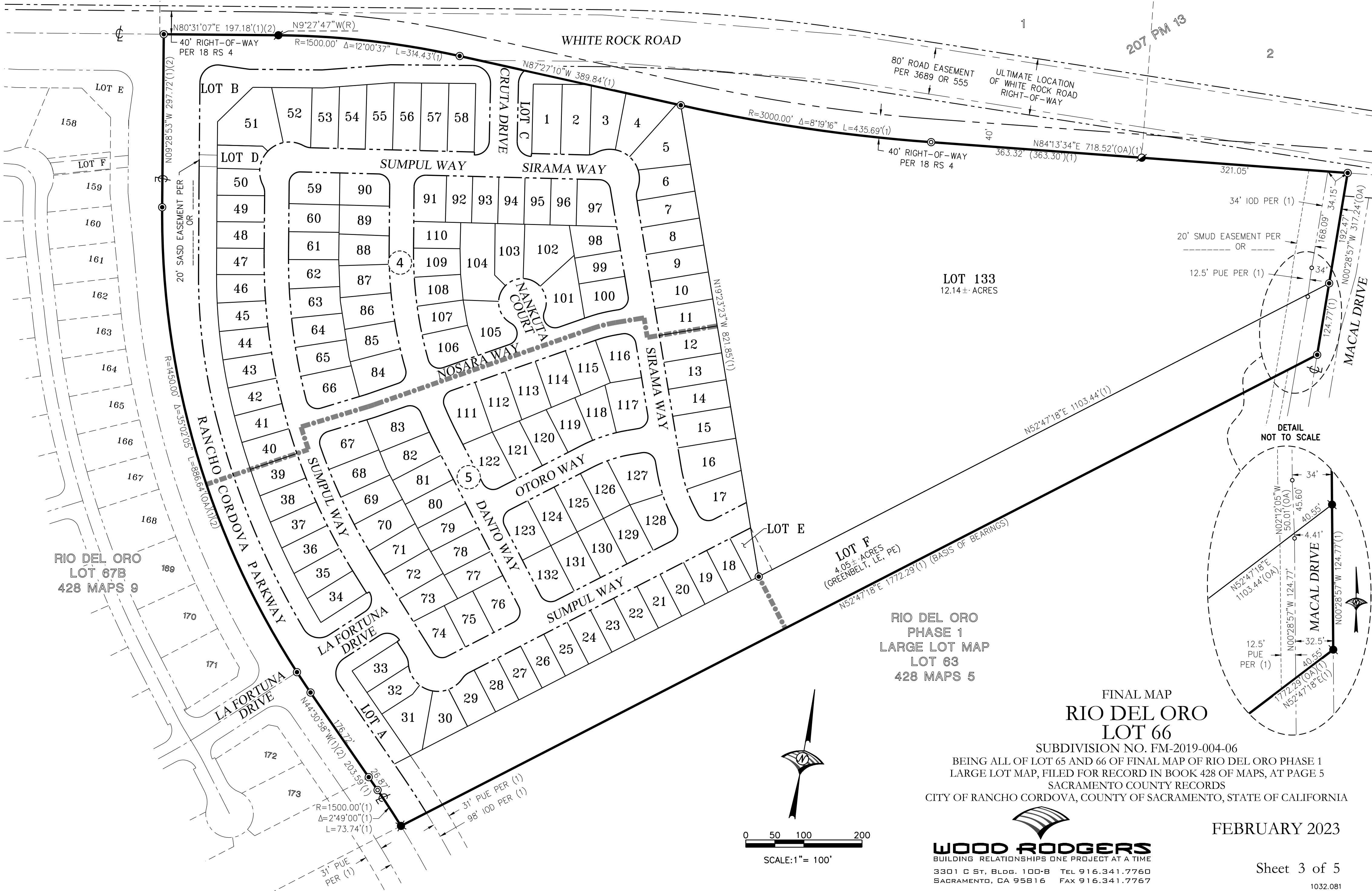

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
3301 O ST, BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

FEBRUARY 2023

Sheet 2 of 5

1032.081

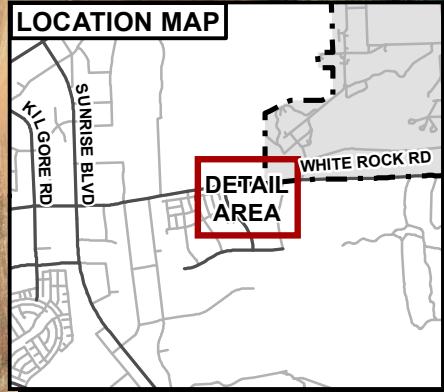
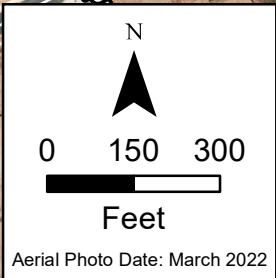
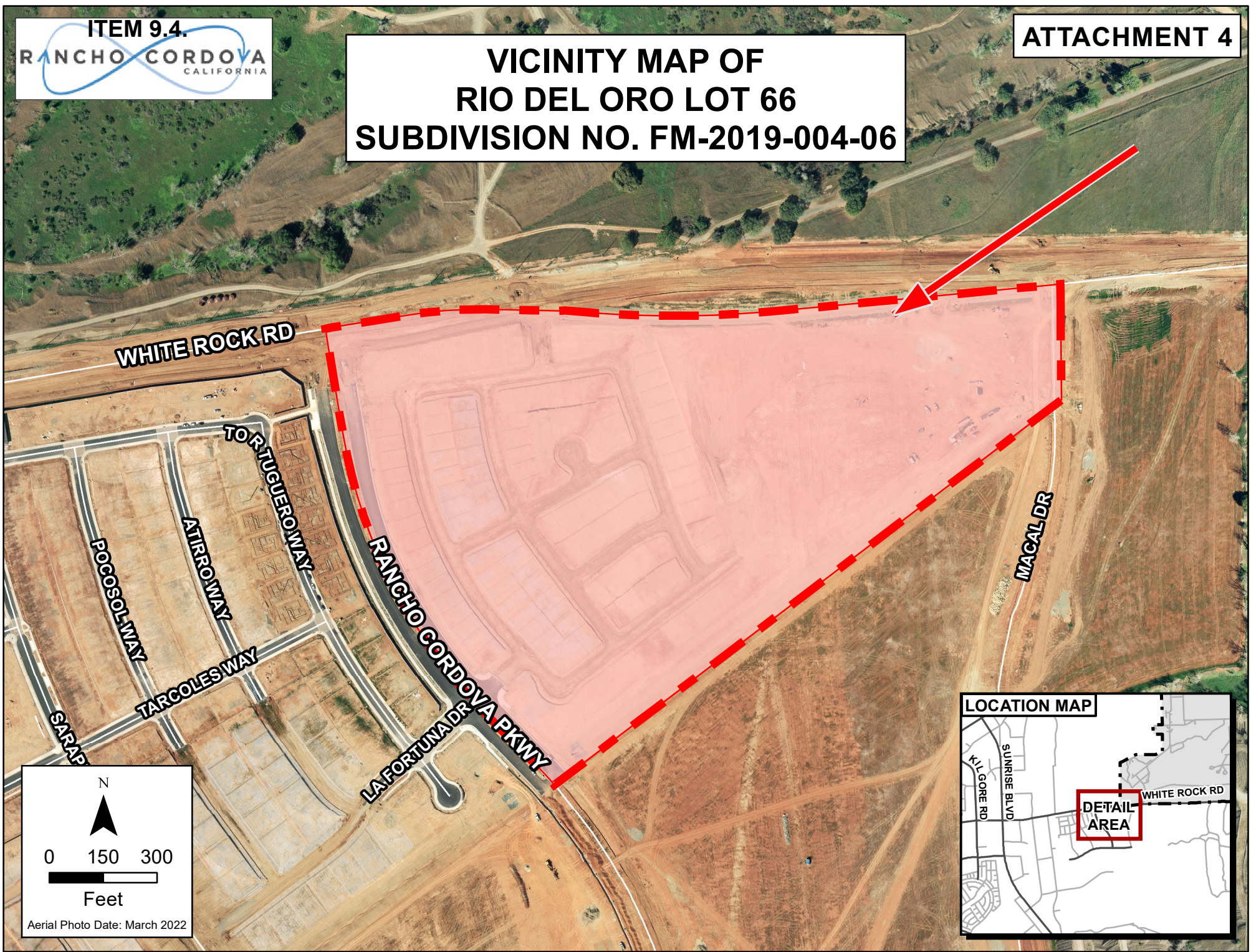
BOUNDARY SHEET







VICINITY MAP OF
RIO DEL ORO LOT 66
SUBDIVISION NO. FM-2019-004-06



MEMORANDUM



ITEM 9.5.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Laurel Bane, Facilities Management Analyst
Matt Thomas, Facilities Services Manager
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE
A FIVE-YEAR CONTRACT FOR JANITORIAL SERVICES AND
MAINTENANCE FOR ALL BUILDINGS OPERATED BY THE CITY
WITH THE EASTER SEALS SUPERIOR CALIFORNIA FOR AN
AMOUNT NOT TO EXCEED \$1,275,000**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute Contract No. 2023-07 with Easter Seals Superior California to provide Janitorial Services for City buildings.

BACKGROUND

The City is responsible for janitorial maintenance of city-owned or leased buildings, including City Hall, Corporation Yard, Neighborhood Services, Rancho Cordova Police Department, MACC and the Youth Center. The City had multiple janitorial contracts for a cluster of buildings and has added additional sites over the years. To be more efficient and effective, the City will now have one janitorial service provider for all city-owned and leased buildings. Well-maintained buildings provide a clean and healthy environment for all building occupants and visitors. The work scope for this contract includes vacuuming, dusting, moping, sanitizing, and stocking restrooms using green cleaning methods to reduce our environmental footprint while preserving our facilities.

Staff released an RFP on April 8, 2022, for the term beginning March 1, 2023. Five proposals were received in response to the RFP. Staff recommends awarding the contract to Easter Seals Superior California based on a combination of the lowest qualified price, government experience, and a high degree of understanding of the City's desired level of service. Easter Seals Superior California is a qualified non-profit organization committed to the health, wellness and success of persons living with disabilities.

FISCAL IMPACT AND FUNDING SOURCE

Janitorial services will be funded from the Internal Services Fund (7300).

ATTACHMENT(S)

1. Resolution
2. GSA -2023-07 Easter Seals
3. Grapevine Advertisement
4. Notice of Apparent Low Bid - Janitorial RFP 2023
5. Bid Opening Results Janitorial RFP 2023

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO APPROVE A FIVE-YEAR CONTRACT FOR JANITORIAL SERVICES AND MAINTENANCE FOR ALL BUILDINGS OPERATED BY THE CITY WITH THE EASTER SEALS SUPERIOR CALIFORNIA FOR AN AMOUNT NOT TO EXCEED \$1,275,000

WHEREAS, the City solicited bids for the Janitorial RFP 2023 under the requirements of state and local law and publicly opened bids on January 17, 2023; and

WHEREAS, the lowest responsible bidder was Easter Seals Superior California; and

WHEREAS, adoption of this Resolution will award the general services agreement Contract No. 2023-07 to Easters Seals Superior California in an amount not to exceed \$1,275,000 for Janitorial Services; and

WHEREAS, funding for this contract consists of Internal Services Funds (7300); and

WHEREAS, this contract will combine all janitorial services currently provided under one contract.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize the City manager to execute Contract 2023-07 in an amount not to exceed \$1,275,000 with Easters Seals Superior California.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

**GENERAL SERVICES AGREEMENT BETWEEN
THE CITY OF RANCHO CORDOVA AND EASTER SEALS SUPERIOR CALIFORNIA (Contractor)**

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the City of Rancho Cordova, a California municipal corporation, (herein "City") and Easter Seals Superior California, (herein "Contractor"), as of March 1, 2023.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A ("Services") at the time and place and in the manner as specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

Section 2. TERM. The term of this Agreement shall begin on the date first noted above and shall end on February 28, 2026 with the option to renew for an additional two years, unless the term of this Agreement is otherwise terminated as provided for in Section 10. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 10.

Section 3. CONTRACT ADMINISTRATOR. This Agreement shall be administered by Laurel Bane ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

Section 4. COMPENSATION OF CONTRACTOR. The Contractor shall be paid an amount not to exceed One million two-hundred and seventy-five thousand dollars (\$1,275,000) for performance of the Services pursuant to this Agreement. The Contractor shall submit invoices to the City Finance Director on a monthly basis detailing the Services performed. In the event of a conflict between this Agreement and Contractor's Exhibit A regarding the amount of compensation, the Agreement shall prevail. Upon receipt and approval of the Contractor's invoices, the City shall remit payment to the Contractor for Services provided within thirty (30) days. Payment to Contractor shall be considered as full compensation for performing the Services.

City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Contractor to correct such work or billings or seek any other legal remedy.

Section 5. PERFORMANCE STANDARDS.

A. Contractor shall comply with all applicable laws now in force or which may hereafter be in force with regard to the provision of Services and this Agreement.

B. Contractor represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Contractor shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged and in accordance with applicable industry standards. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation throughout the term of this Agreement.

Section 6. STATUS OF CONTRACTOR

- 6.1 **INDEPENDENT CONTRACTOR.** At all times during the term of this Agreement, Contractor shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel; however, otherwise City shall not have the right to control the means and methods by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Contractor are employees and agents of Contractor and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Contractor shall not allow any employee, agent or subcontractor to become eligible for a claim for PERS benefits.

- 6.2 **Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. INSURANCE REQUIREMENTS. Prior to beginning any Service under this Agreement, Contractor, at its own cost and expense, shall procure insurance coverage at such levels of coverage, scope, limits, and/or forms as set forth in Exhibit B ("Insurance Requirements") hereto. Contractor shall provide proof satisfactory to City of such insurance and maintain the insurance throughout the term of this Agreement.

Section 8. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 8.1 **General Requirement.** Contractor shall indemnify, defend with counsel selected by the City, and hold harmless City, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorney's fees, arising out of or resulting from Services performed pursuant to this Agreement caused in whole or in part by any negligent or willful act or omission of Contractor, its officers, agents, employees, or anyone directly or indirectly acting on behalf of Contractor. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers

and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 8.2 PERS Indemnification.** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing Services under this Agreement is determined by a court of competent jurisdiction of the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any and all employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and any attorneys' fees and costs incurred by the City to enforce this Section.

Section 9. NONDISCRIMINATION AND EQUAL OPPORTUNITY. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby. Contractor shall include the provisions of this section in any subcontract approved by the City.

Section 10. AMENDMENTS. No modification or amendment of this Agreement is effective unless made in writing and signed by both the City and Contractor.

Section 11. ASSIGNMENT AND SUBCONTRACTING. Contractor shall not assign or transfer any interest in this Agreement without the prior written consent of the City.

Section 12. TERMINATION. Either party may terminate this Agreement without cause, upon Thirty (30) days written notice to the other party. In the event of termination, Contractor shall be entitled to payment for Services then satisfactorily completed. Contractor shall not be entitled to any claim against City for any additional compensation or damages in the event of such termination.

Section 13. NOTICES. All notices that are regarding this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
ATTN: Finance Director

Contractor: Easter Seals
Attn: Anthony Kumar
PO Box 255187
Sacramento, CA 95865
anthonyk@myeasterseals.org

Section 14. GOVERNING LAW AND VENUE. The laws of the State of California shall govern this Agreement. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Sacramento or in the United States District Court for the Eastern District of California.

Section 15. ATTORNEYS' FEES. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

Section 16. SEVERABILITY. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 17. NO IMPLIED WAIVER OF BREACH. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

Section 18. SURVIVAL. The obligations of this Agreement, which by their nature would continue beyond the term or expiration of the Agreement, including without limitation obligations regarding indemnification shall survive the term or expiration of this Agreement.

Section 19. IRS Form W-9. Contractor shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

Section 20. ENTIRE AGREEMENT. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the insurance requirements attached hereto and incorporated herein as Exhibit B, represents the entire and integrated Agreement between City and Contractor and supersedes all prior negotiations, representations, and Agreements regarding the subject matter of this Agreement, either written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above, which date shall be considered the effective date of this Agreement.

CITY OF RANCHO CORDVA

CONTRACTOR

By: _____
Micah Runner, City Manager

By: _____
Malcom Russell, Vice President

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Adam U. Lindgren, City Attorney

ATTEST:

By: _____
Stacy Leitner, CMC, City Clerk

Last Revised January 4, 2022

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
INSURANCE REQUIREMENTS

Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

1. **Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance insurance may be waived by the City upon written verification that Contractor does not have any employees.

2. **Commercial General and Automobile Liability Insurance.**

- 2.1 **General requirements.** Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general

aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

2.2 Minimum scope of coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

3. All Policies Requirements.

- 3.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 3.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- 3.3 **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 3.4 **Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.
- During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- 3.5 **Waiver of Subrogation.** Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.
- 3.6 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five (5) days after Contractor is notified of the change in coverage.

4. **Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Print or type See Specific instructions on page 2.	Form W-9 (Rev. September 2007) Department of the Treasury Internal Revenue Service		Request for Taxpayer Identification Number and Certification		Give form to the requester. Do not send to the IRS.
	Name (as shown on your income tax return)				
	Business name, if different from above				
	Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership ☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ----- ☐ Exempt payee ☐ Other (see instructions) ▶				
	Address (number, street, and apt. or suite no.)		Requester's name and address (optional)		
City, state, and ZIP code					
List account number(s) here (optional)					

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
or
Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7

¹See Form 1099-MISC, Miscellaneous Income, and its instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ¹
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ²
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

YEAR	Withholding Exemption Certificate	CALIFORNIA FORM
2010	(This form can only be used to certify exemption from nonresident withholding under California R&TC Section 18662. Do not use this form for exemption from wage withholding.)	590

File this form with your withholding agent. (Please type or print)

Withholding agent's name _____

Vendor/Payee's name _____	Vendor/Payee's ☐ SSN or ITIN ☐ SOS file no. ☐ CA corp. no. ☐ FEIN
Address (number and street, PO Box, or PMB no.) _____	
City _____	State _____ ZIP Code _____ Apt. no./ Ste. no. _____

Read the following carefully and check the box that applies to the vendor/payee.

I certify that for the reasons checked below, the entity or individual named on this form is exempt from the California income tax withholding requirement on payment(s) made to the entity or individual.

☐ **Individuals — Certification of Residency:**

I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Who is a Resident, for the definition of a resident.

☐ **Corporations:**

The above-named corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return and withhold on payments of California source income to nonresidents when required. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information F, What is a Permanent Place of Business, for the definition of permanent place of business.

☐ **Partnerships or Limited Liability Companies (LLC):**

The above-named partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return and will withhold on foreign and domestic nonresident partners or members when required. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a Limited Liability Partnership (LLP) is treated like any other partnership.

☐ **Tax-Exempt Entities:**

The above-named entity is exempt from tax under California R&TC Section 23701 _____ (insert letter) or Internal Revenue Code Section 501(c) _____ (insert number). The tax-exempt entity will withhold on payments of California source income to nonresidents when required. If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities.

☐ **Insurance Companies, IRAs, or Qualified Pension/Profit Sharing Plans:**

The above-named entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

☐ **California Trusts:**

At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required. If the trustee becomes a nonresident at any time, I will promptly notify the withholding agent.

☐ **Estates — Certification of Residency of Deceased Person:**

I am the executor of the above-named person's estate. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required.

☐ **Nonmilitary Spouse of a Military Servicemember:**

I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.

CERTIFICATE: Please complete and sign below.

Under penalties of perjury, I hereby certify that the information provided in this document is, to the best of my knowledge, true and correct. If conditions change, I will promptly notify the withholding agent.

Vendor/Payee's name and title (type or print) _____ Daytime telephone no. _____

Vendor/Payee's signature ► _____ Date _____

- A spouse shall not be deemed to have acquired a residence or domicile in any other state solely by reason of being there to be with the servicemember serving in compliance with military orders

Domicile is defined as the one place:

- Where you maintain a true, fixed and permanent home
- To which you intend to return whenever you are absent

A military servicemember's nonmilitary spouse is considered a nonresident for tax purposes if the servicemember and spouse have the same domicile outside of California and the spouse is in California solely to be with the servicemember who is serving in compliance with Permanent Change of Station orders (Note: California may require nonmilitary spouses of military servicemembers to provide proof that they meet the criteria for California personal income tax exemption as set forth in the MSRRRA).

For assistance in determining whether the applicant meets the MSRRRA requirements, get FTB Pub. 1032, Tax Information for Military Personnel.

F What Is a Permanent Place of Business

A corporation has a permanent place of business in California if it is organized and existing under the laws of California or if it is a foreign corporation qualified to transact intrastate business by the California SOS. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains a permanent office in California that is permanently staffed by its employees.

G Withholding Agent

Keep Form 590 for your records. Do not send this form to the FTB unless it has been specifically requested.

For more information, contact Withholding Services and Compliance, see General Information H.

The vendor/payee must notify the withholding agent if any of the following situations occur:

- The individual vendor/payee becomes a nonresident.
- The corporation ceases to have a permanent place of business in California or ceases to be qualified to do business in California.
- The partnership ceases to have a permanent place of business in California.
- The LLC ceases to have a permanent place of business in California.
- The tax-exempt entity loses its tax-exempt status.

The withholding agent must then withhold and report the withholding using Form 592, Resident and Nonresident Withholding Statement, and remit the withholding using Form 592-A, Payment Voucher for Foreign Partner or Member Withholding. Form 592-B, Resident and Nonresident Withholding Tax Statement, is retained by the withholding agent and a copy is given to the payee.

H Publications, Forms, and Additional Information

You can download, view, and print California tax forms and publications at ftb.ca.gov.

To have publications or forms mailed to you or to get additional nonresident withholding information, contact the Withholding Services and Compliance.

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Telephone: 888.792.4900

916.845.4900

Fax: 916.845.9512

For all other questions unrelated to withholding or to access the TTY/TDD numbers, see the information below.

Internet and Telephone Assistance

Website: ftb.ca.gov

Telephone: 800.852.5711 from within the United States
916.845.6500 from outside the United States

TTY/TDD: 800.822.6268 for persons with hearing or speech impairments

Asistencia Por Internet y Teléfono

Sitio web: ftb.ca.gov

Teléfono: 800.852.5711 dentro de los Estados Unidos
916.845.6500 fuera de los Estados Unidos

TTY/TDD: 800.822.6268 personas con discapacidades auditivas y del habla

ITEM 9.5.

ATTACHMENT 2
CONTRACT NO.: XX-2022

5039641.1

ITEM 9.5.

PROOF OF PUBLICATION
STATE OF CALIFORNIA
 County of Sacramento

I am a citizen of the United States and a resident of the County afore-said, I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the Grapevine Independent, a newspaper of general circulation printed and published in the County of Sacramento, State of California, under the date of September 18, 1969, by Superior Court Order Adjudication Number 195380, that the notice, of which the annexed is printed copy (set in type not smaller than nonpareil) has been published in each regular and entire issue of said newspaper and not in any supplement therefore on the following dates, to wit:

December 23, 30, 2022
January 6, 2023

I certify (or declare) under penalty of perjury that the foregoing is true and correct.


 Debi Shank

DATED: January 6, 2023

GRAPEVINE INDEPENDENT
 7144 FAIR OAKS BLVD., SUITE 5
 CARMICHAEL, CA 95608

ATTACHMENT 3

PROOF OF PUBLICATION/AFFIDAVIT OF:
INVITATION TO BID

By: CITY OF RANCHO CORDOVA

INVITATION TO BID
CITY OF RANCHO CORDOVA
JANITORIAL SERVICES

Sealed Proposal will be received at the office of the City Clerk, City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova CA 95670, up to the hour of **11:00 A.M. on January 17, 2023** and will be publicly opened and read for Janitorial Services:

General Description – The City of Rancho Cordova is requesting proposals for Janitorial Services with expertise in Green Cleaning practices to maintain Rancho Cordova's City Hall, Police Station, Neighborhood Services Center, Corporation Yard, Mather Arts and Culture Center and the Rancho Cordova Youth Center.

A mandatory Pre-Submittal conference is scheduled for **January 10, 2023 at 11:00 A.M.** in the American River Room at Rancho Cordova City Hall located at 2729 Prospect Park Drive Rancho Cordova, CA 95670.

Copies of the contract documents and specifications, including bid proposal forms are available on our City's website at www.cityofranhocordova.org.

For more information please contact: Laurel Bane at (916) 851-8953 or lbane@cityofranhocordova.org.

Grapevine Independent Voice 12-23, 12-30-22 and 1-6-2023

**NOTICE OF APPARENT LOW
RESPONSIBLE AND RESPONSIVE BIDDER
FOR THE
REQUEST FOR PROPOSALS FOR JANITORIAL SERVICES
CITY OF RANCHO CORDOVA**

January 26, 2023

On January 17, 2023, Sealed Bids were submitted for the above reference RFP. Upon review of the sealed bids, the City of Rancho Cordova has identified **Easter Seals**, as the apparent low responsible and responsive bidder with a total bid amount of **\$10,599 per month (Ten Thousand Five Hundred and Ninety-Nine Dollars)**.

The Award of Contract will be tentatively set for the City Council's agenda on its meeting on February 21, 2023.

The City of Rancho Cordova appreciates the effort put forth by all Janitorial companies that bid on this contract. Thank you.

Respectfully Submitted,
City of Rancho Cordova

A handwritten signature in cursive script, appearing to read "Laurel Bane", written in black ink.

Laurel Bane
Facilities Management Analyst
Facilities Department



City of Rancho Cordova-Janitorial Bid Opening

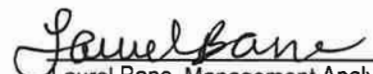
Rancho Cordova City Hall
2729 Prospect Park Drive
January 17, 2023
11:00am

Letter Designation	Contractor	Total Monthly Cost Bid Amount	Envelope Sealed & marked Janitorial Services RFP	Proposal Signed	Contractor's License	Start Up Plan Included	Experience Qualification
A	RBC Enterprises	\$31,865. ⁸⁰	NOT MARKED	✓	✓	NIC	✓
B	Easter Seals	\$10,599. ⁰⁰	✓	✓	✓	✓	✓
C	Bissel Brothers	\$22,597. ¹⁴	✓	✓	✓	✓	✓
D	City Wide	\$11,975. ⁰⁰	✓	✓	✓	✓	✓
E	Quality Cleaning	\$47,600. ⁰⁰	✓	✓	✓	✓	✓
F							
G							
H							

Attendees:

Stacy Leitner, City Clerk
Laurel Bane, Management Analyst


Stacy Leitner, City Clerk

 1/17/23
Laurel Bane, Management Analyst

MEMORANDUM



ITEM 9.6.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Edgar Medina, Principal Engineer
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONSTRUCTION CONTRACT AMENDMENT 2022-01-02 WITH FBD VANGUARD CONSTRUCTION TO INCREASE THE CONTRACT AMOUNT FROM \$884,964.56 TO AN AMOUNT NOT TO EXCEED \$1,023,340.16 FOR THE CONSTRUCTION OF THE CORDOVA SCHOOL ZONES PROJECT**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute Construction Contract Amendment No. 2022-01-02 with FBD Vanguard Construction increasing the contract amount from \$884,964.56 to an amount not to exceed \$1,023,340.16 for the construction of the Cordova School Zones Project. The City will be reimbursed through the State Active Transportation Grant for this contract increase.

BACKGROUND

The City of Rancho Cordova has been awarded a State Active Transportation Program (ATP) grant for the construction phase of safety improvements for the Cordova School Zones Project. The Cordova School Zones project consists of the following six elementary schools in the Folsom-Cordova Unified School District: White Rock Elementary, Cordova Villa Elementary, Abraham Lincoln Elementary, Cordova-Meadows Elementary, Rancho Cordova Elementary and Cordova-Gardens Elementary (Refer to Attachment 3). Improvements include high visibility school crosswalks, curb ramps, solar-powered pedestrian-actuated rectangular rapid flashing beacons and solar-powered speed feedback signs, signage and minor drainage improvements. The project will increase safety for students and all users, encourage walking and a healthy lifestyle, and promote the positive image of Rancho Cordova.

The City Council awarded the construction contract on January 18, 2022 to FBD Vanguard Construction in the amount of \$839,995.00 with construction beginning in March 2022. Per Rancho Cordova Municipal Code, Section 3.60.110 C, the City Manager is given the authority to approve change orders up to 10% of the contract value. Since approval of the contract in May 2021, there has been one administrative change order having a value of \$44,969.56,

increasing the total contract amount to \$884,964.56.

Change Order No 2 is valued at an amount of \$138,375.60, which exceeds the City Manager's signing authority, thus requiring Council Approval. This change order represents reimbursable grant construction items including but not limited to: 1) Additional sidewalk panels to maintain ADA compliance, 2) Pole base relocations due to utility conflict, 3) Additional pavement at various locations and 4) Light pole relocation to accommodate the flashing beacon.

FISCAL IMPACT AND FUNDING SOURCE

Funding for this project consists of \$190,932 in Measure A Construction Funds, \$219,456 in Gas Tax, \$167,611 in Measure A Traffic Control Program and \$1,122,000 in State ATP Grant Funds.

This project is included in the City's current approved Capital Improvement Plan and in the 2022/23 budget.

ATTACHMENT(S)

1. Resolution
2. Project Location Map
3. CSZ - Change Order 2

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA,
STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT
AMENDMENT NO. 2022-01-02 INCREASING THE CONTRACT AMOUNT FROM
\$884,964.56 TO AN AMOUNT NOT TO EXCEED \$1,023,340.16 WITH FBD VANGUARD
CONSTRUCTION FOR THE CORDOVA SCHOOL ZONES PROJECT**

WHEREAS, the City solicited bids for the Cordova Schools Zones Project under the requirements of state law and publicly opened bids on December 2, 2021; and

WHEREAS, the lowest responsive and responsible bidder is FBD Vanguard Construction Inc.; and

WHEREAS, on January 18, 2022 the City Council awarded construction contract no. 2022-01 with FBD Vanguard Construction, Inc. in an amount not to exceed \$839,995.00 for the Cordova School Zones Project; and

WHEREAS, the Project will make improvements at six elementary schools to include high-visibility school crosswalks, curb ramps, solar-powered pedestrian-actuated rectangular rapid flashing beacons and solar-powered speed feedback signs, signage and minor drainage improvements; and

WHEREAS, under Rancho Cordova Municipal Code, Section 3.60.110 C, the City has processed change order 1, increasing the contract by \$44,969.56; and

WHEREAS, This change order represents State Grant reimbursable construction items including but not limited to: 1) Additional sidewalk panels to maintain ADA compliance, 2) Pole base relocations due to utility conflict, 3) Additional pavement at various locations and 4) Light pole relocation to accommodate the flashing beacon; and

WHEREAS, Change Order No 2 in the amount of \$138,375.60 exceeds the City Manager's signing authority to approve; and

WHEREAS, the project funding consists of \$1,122,000 in State ATP Grant Funds, Measure A Construction, Gas Tax and Measure A Traffic Control Program. The contract does not impact the General Fund; and

WHEREAS, the project was reviewed under the requirements of the California Environmental Quality Act and a Notice of Exemption was filed on March 10, 2021 with the County of Sacramento.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager to execute Contract Amendment No. 2022-01-02 in an amount of \$138,375.60 with FBD Vanguard Construction, increasing the contract amount from \$884,964.56 to an amount not to exceed \$1,023,340.16 for the construction of the Cordova School Zones Project.

ITEM 9.6.

ATTACHMENT 1

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

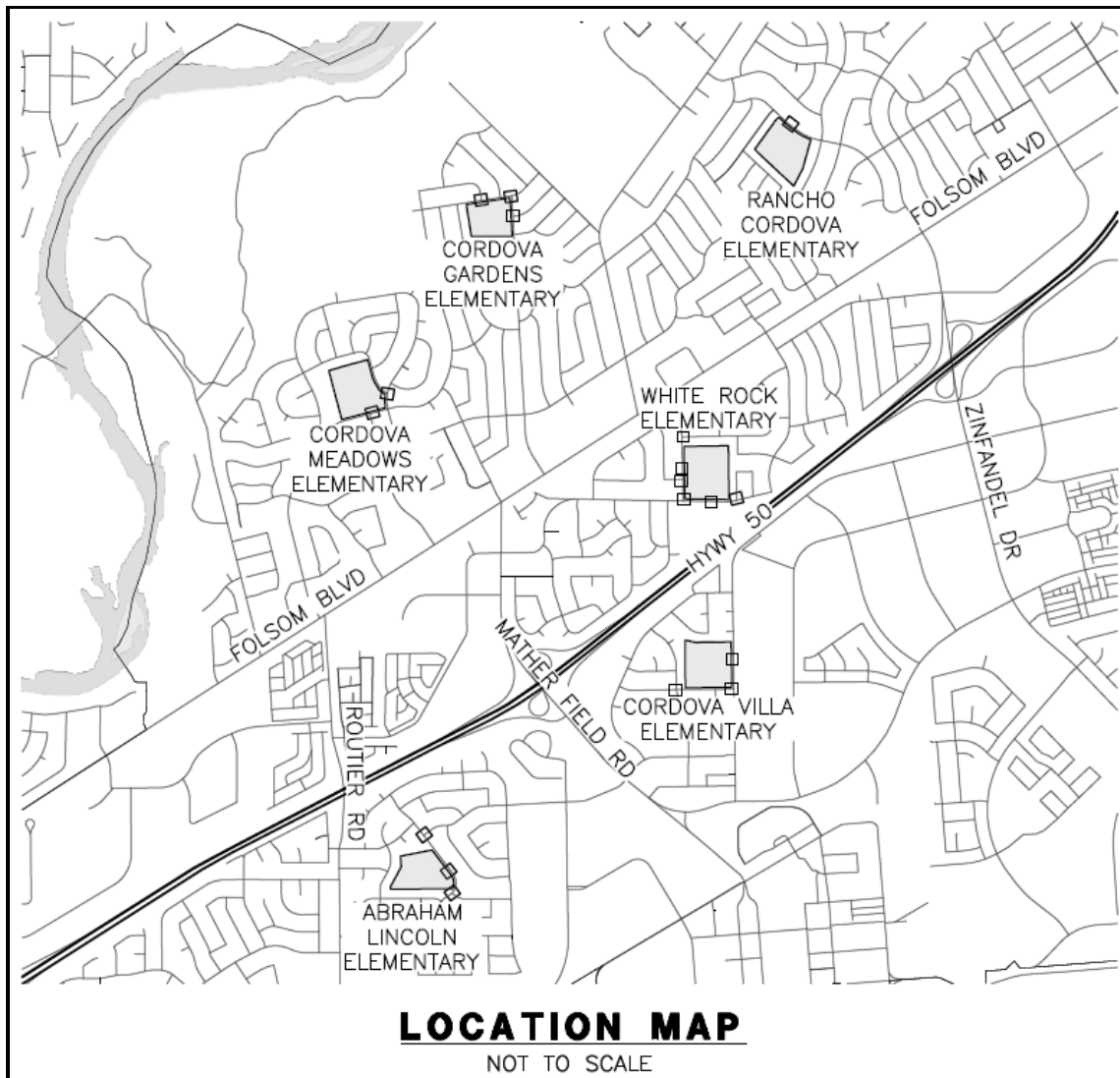
ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

CORDOVA SCHOOL ZONES PROJECT
FEDERAL/STATE ID ATPSB1L 5482(044)
CITY PROJECT NO. CP20-2200

ABRAHAM LINCOLN ELEMENTARY
CORDOVA GARDENS ELEMENTARY
CORDOVA MEADOWS ELEMENTARY
CORDOVA VILLA ELEMENTARY
RANCHO CORDOVA ELEMENTARY
WHITE ROCK ELEMENTARY



ITEM 9.6.**ATTACHMENT 3**Project Name:
CORDOVA SCHOOL ZONE

CITY OF RANCHO CORDOVA

Sheet 1 of 3

City Contract No. CP20-2022

Contract Change Order No. 2

To: **Vanguard Construction**. You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications on this contract.

Description of work to be done, quantities and prices to be paid. Unless otherwise stated, rates for rental of equipment cover only such time as equipment is actually used and no allowance will be made for idle time.

Change requested by: **Engineer****EXTRA WORK AT AGREED UNIT PRICE**

1. Balancing Quantity Change Order – In accordance with State Standard Specification 4-1.05, "Changes and Extra Work", this change is to revise contract quantities to reflect the final installed quantities based on actual field conditions and deductions from the contract for items not performed and/or required to complete the work. See Attachment No. 1 of this change order for a list of final bid item quantities. **Increase: \$138,375.60**
2. PCO#2 – Cordova Meadows Las Casas Way – Compensate the contractor to delete 1 EA Bid Item #30 Flashing Beacon Assembly on Existing Pole, delete 1 EA Bid Item #31 Rectangular Rapid Flashing Beacon System, Add 2 EA Item #29 Rectangular Rapid Flashing Beacon on New Pole. – Rectangular Rapid Flashing Beacon System on New Pole. Payment for this work is at Contract Unit Prices. Total Quantity Shown in final balancing change order. **Increase: \$0.00**
3. PCO#4 – Abraham Lincoln Glennmoor Drive – Delete 1EA Bid Item #30 Flashing Beacon Assembly on Existing Pole, Add 1EA Bid Item #29 Rectangular Rapid Flashing Beacon On New Pole. Payment for this work shall be at Contract Unit Price. Total Quantity shown in final balancing change order. **Increase: \$0.00**

Authority: 8-2022
Contract Summation:

Total Cost of Change: \$138,375.60

Original Contract:	\$839,995.00	Total Change Orders:	\$183,345.16	New Contract Cost Total:	\$1,023,340.16
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By reason of this order the time of completion will be adjusted as follows: **0 working days**

Submitted By:	<u>Chris Fallbeck</u>	Construction Manager/ Resident Engineer City of Rancho Cordova	Date:	<u>1/23/2023</u>
Recommend Approval by:	_____	Project Manager City of Rancho Cordova	Date:	_____
Approved by:	_____	Public Works Director City of Rancho Cordova	Date:	_____

We, the undersigned Contractor, have given careful consideration to the change proposed and all of its impacts, both direct and indirect, and hereby agree, if this proposal is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefor the prices and time extensions shown above.

Acceptance Date: 1/23/23
By: Burhan W. [Signature]

Contractor: FBD Vanguard Construction Inc.
Title: CFO

ITEM 9.6.**ATTACHMENT 3**

Project Name:
CORDOVA SCHOOL ZONE

CITY OF RANCHO CORDOVA

Sheet 2 of 3

City Contract No. CP20-2022

Contract Change Order No. 2

To: **Vanguard Construction**. You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications on this contract.

Description of work to be done, quantities and prices to be paid. Unless otherwise stated, rates for rental of equipment cover only such time as equipment is actually used and no allowance will be made for idle time.

Change requested by: **Engineer**

If the Contractor does not sign acceptance of this order, his attention is directed to the requirements of the specifications as to proceeding with the ordered work and filing a written protest within the time therein specified.

Original to: *Contractor City Clerk*

Copies to: *Resident Engineer City Project
Manager*

City Manager or Designee
City of Rancho Cordova

Date

CITY OF RANCHO CORDOVA
CORDOVA SCHOOL ZONES PROJECT

Sheet 3 of 3

FINAL BALANCING CHANGE ORDER
Federal Aid Project No. ATPSB1L 5482(044)
City Project Number CP20-2200

ITEM NUMBER	ACTIVITY DESCRIPTION	BID QUANTITY	UNIT	UNIT PRICE	CONTRACT VALUE	FINAL QUANTITY PLACED	QUANTITY OVER/UNDER BID QUANTITY	AMOUNT OVER/UNDER CONTRACT
07	Remove Concrete (Curb & Gutter)	889	LF	\$20.00	\$17,780.00	1,139.00	250.00	\$5,000.00
08	Remove Concrete (Sidewalk)	4,467	SF	\$8.00	\$35,736.00	5,224.40	757.40	\$6,059.20
10	Storm Drain Pipe (12" RCP)	78	LF	\$352.00	\$27,456.00	72.00	(6.00)	-\$2,112.00
11	Roadway Excavation & Grading	242	CY	\$160.00	\$38,720.00	405.10	163.10	\$26,096.00
12	Class 2 Aggregate Base	146	CY	\$80.00	\$11,680.00	272.00	126.00	\$10,080.00
13	Hot Mix Asphalt (Type A)	134	TON	\$525.00	\$70,350.00	249.00	115.00	\$60,375.00
14	Minor Concrete (Median Curb)	272	LF	\$64.00	\$17,408.00	277.00	5.00	\$320.00
15	Minor Concrete (Curb & Gutter)	890	LF	\$42.00	\$37,380.00	1,139.00	249.00	\$10,458.00
16	Minor Concrete (Sidewalk Ramp)	4,467	SF	\$21.00	\$93,807.00	5,244.40	777.40	\$16,325.40
17	Detectable Warning Surface	384	SF	\$20.00	\$7,680.00	372.00	(12.00)	-\$240.00
18	Minor Concrete (Stamped & Colored)	440	SF	\$30.00	\$13,200.00	432.50	(7.50)	-\$225.00
19	Remove Thermoplastic Traffic Stripe	1,077	LF	\$5.00	\$5,385.00	0.00	(1,077.00)	-\$5,385.00
20	Remove Thermo Pavement Marking	1,601	LF	\$6.50	\$10,406.50	1,674.00	73.00	\$474.50
21	6" Thermo Traffic Stripe	1,514	LF	\$1.00	\$1,514.00	846.00	(668.00)	-\$668.00
22	12" Thermo Traffic Stripe (Enhanced)	203	LF	\$7.80	\$1,583.40	326.00	123.00	\$959.40
23	Thermoplastic Pavement Marking	1,616	SF	\$5.50	\$8,888.00	1,792.00	176.00	\$968.00
24	Thermoplastic Crosswalk Pavement Marking (Enhanced)	4,204	SF	\$8.30	\$34,893.20	3,964.00	(240.00)	-\$1,992.00
25	Methyl Methacrylate Pavement Marking	2,121	SF	\$8.30	\$17,604.30	2,330.00	209.00	\$1,734.70
26	Pavement Marker (Retroreflective)	1,062	EA	\$4.40	\$4,672.80	503.00	(559.00)	-\$2,459.60
27	Remove Roadside Sign	21	EA	\$55.00	\$1,155.00	10.00	(11.00)	-\$605.00
28	Install Roadside Sign	72	EA	\$338.00	\$24,336.00	71.00	(1.00)	-\$338.00
29	RRF Beacon Assembly (New Pole)	10	EA	\$12,490.00	\$124,900.00	13.00	3.00	\$37,470.00
30	RRF Beacon Assembly (Existing Pole)	5	EA	\$7,660.00	\$38,300.00	3.00	(2.00)	-\$15,320.00
31	RRF Beacon System	1	EA	\$8,600.00	\$8,600.00	0.00	(1.00)	-\$8,600.00
								\$138,375.60

MEMORANDUM



ITEM 9.7.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Dalia Fadl, Principal Engineer
SUBJECT: **A RESOLUTION AUTHORIZING THE PUBLIC WORKS DIRECTOR TO
ISSUE A REIMBURSEMENT TO LENNAR HOMES OF CALIFORNIA,
LLC IN THE AMOUNT OF \$1,290,497 FROM THE STORM DRAINAGE
IMPACT FEE PROGRAM**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the Public Works Director to issue a drainage impact fee reimbursement in the amount of \$1,290,497, to Lennar Homes of California, LLC for a portion of the fees paid for the Grantline 220 Project.

BACKGROUND

The City adopted the City of Rancho Cordova Storm Drainage Impact Fee Program in 2021, which establishes a schedule of fees and credits to be collected upon the construction of new buildings and improvements within the City. Under the Storm Drainage Development Impact Fee Program, developers are allowed to pay the impact fees required by the City for all phases of the project upfront or pay the fee over multiple phases.

Lennar Homes of California, LLC mistakenly paid the drainage impact fees for some future phases, including the commercial center of the Grantline 220 project that does not yet have a detailed design. Lennar Homes of California, LLC is requesting reimbursement for a portion of the drainage impact fees paid as part of the Grantline 220 Project Phase I. The drainage impact fees for these parcels will be paid in the future as these parcels develop and submit improvement plans.

FISCAL IMPACT AND FUNDING SOURCE

Reimbursement will be issued from the City's drainage impact fee program fund. There will be no impact to the City's general fund.

ATTACHMENT(S)

1. Resolution

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE PUBLIC WORKS DIRECTOR TO ISSUE A REIMBURSEMENT TO LENNAR HOMES OF CALIFORNIA, LLC IN THE AMOUNT OF \$1,290,497 FROM THE STORM DRAINAGE IMPACT FEE PROGRAM

WHEREAS, the City has adopted the City of Rancho Cordova Storm Drainage Impact Fee Program (Rancho Cordova Municipal PROGRAM Chapter 16.95) as amended, ("PROGRAM"); and

WHEREAS, the PROGRAM establishes a schedule of fees and credits to be collected upon the construction of new buildings and improvements within the CITY ("FEES"); and

WHEREAS, FEES are to be used for construction of Trunk Drainage Facilities ("MAJOR FACILITIES") as said facilities are defined in the PROGRAM; and

WHEREAS, the PROGRAM provides that whenever the CITY's Public Works Director requires the construction of MAJOR FACILITIES in connection with the construction of new buildings and improvements within the CITY, the cost of the MAJOR FACILITIES may become a credit and may be deducted from the fee required by the PROGRAM upon the satisfaction of certain conditions; and

WHEREAS, the PROGRAM sets forth a schedule and method for calculating and apportioning credits; and

WHEREAS, CITY and Lennar Homes of California, LLC ("OWNER") entered into an agreement to provide for the construction by OWNER of the MAJOR FACILITIES and for the deduction by CITY of credits from the drainage impact fees to be paid by OWNER in connection with the development; and

WHEREAS, the City anticipates that entering into additional Drainage Impact Fee Credit Agreements may be desirable in the future.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the Public Works Director to issue a reimbursement to Lennar Homes of California, LLC in the amount of \$1,290,497 for a portion of the Grantline 220 Project.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ITEM 9.7.

ATTACHMENT 1

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

MEMORANDUM



ITEM 9.8.

DATE: February 21, 2023

TO: Honorable Mayor and Council Members

FROM: Albert Stricker, Public Works Director
Dalia Fadl, Principal Engineer
Kristine Courdy, Senior Civil Engineer

SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT NO. 2023-18 WITH WOOD RODGERS, INC. IN AN AMOUNT NOT TO EXCEED \$687,484 FOR CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES FOR THE MONIER CIRCLE FLOOD CONTROL BASIN PROJECT**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to award Contract No. 2023-18 with Wood Rodgers, Inc. in an amount not to exceed \$687,484 to provide civil engineering design and environmental services for the Monier Circle Flood Control Basin Project.

BACKGROUND

On March 31, 2021 the City of Rancho Cordova completed the Stormwater Capital Improvement Program Master Plan (Plan). The Plan assessed the condition of the existing stormwater facilities, identified system deficiencies and opportunities to enhance stormwater quality, and developed a capital improvement plan with a prioritized list of flood control and repair projects.

The highest priority project identified in the Plan is to reduce the potential for flooding on Sunrise Boulevard near Monier Circle. The proposed project scope includes constructing a detention basin at a vacant City-owned parcel at 3355 Monier Circle (APN 072-1010-029) (see [Attachment 3 - Project Site Plan](#)). This parcel was acquired through City Council approval under Resolution 165-2021 on November 1, 2021. During large storm events, runoff in the drainage channel that leads to the Folsom South Canal will be diverted to the proposed detention basin on Monier Circle, where it will be stored until the water surface elevations recede in the channel.

On June 18, 2021, the City submitted a Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program application for the City of Rancho Cordova Stormwater Detention Basin Project. On October 7, 2022, the City was awarded Hazard Mitigation Project

DR4558-PJ0632 (City of Rancho Cordova Stormwater Detention Basin) grant in the amount of \$2,250,000.

The City followed an open competitive qualifications-based selection process in accordance with FEMA procurement requirements to select a qualified consultant to provide civil engineering design and environmental services for the Project. On December 8, 2022, the City issued a Request for Proposals (RFP) for civil engineering design and environmental services for the Project. The City received four proposals with statements of qualifications before the solicitation closed on January 12, 2023. Wood Rodgers, Inc. was selected as the firm with the most responsive and responsible proposal.

The Project design and permitting will continue through 2024, with construction immediately following. The Project shall be completed by the FEMA grant deadline in 2025.

FISCAL IMPACT AND FUNDING SOURCE

The Monier Circle Flood Control Basin Project is funded from the Stormwater Enterprise Fund and the FEMA Hazard Mitigation Grant Program. This Project has no impact on the General Fund.

ATTACHMENT(S)

1. Resolution
2. Wood Rodgers Agreement
3. Project Site Plan

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT NO. 2023-18 IN AN AMOUNT NOT TO EXCEED \$687,484 WITH WOOD RODGERS, INC. FOR CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES FOR THE MONIER CIRCLE FLOOD CONTROL BASIN PROJECT

WHEREAS, the City of Rancho Cordova completed the Stormwater Capital Improvement Program Master Plan (the “Plan”) to prioritize flood control projects and repair projects within the City; and

WHEREAS, the highest priority project identified in the Plan is to reduce flooding on Sunrise Boulevard near Monier Circle; and

WHEREAS, the City of Rancho Cordova applied for a FEMA Hazard Mitigation Grant Program grant to fund the Project; and

WHEREAS, the Hazard Mitigation Project DR4558-PKJ0632 (City of Rancho Cordova Stormwater Detention Basin) for the Project was awarded to the City in October 2022 in the amount of \$2,250,000; and

WHEREAS, the City of Rancho Cordova desires to enter into Contract No. 2023-18 with Wood Rodgers, Inc. in an amount not to exceed \$687,484 for civil engineering design and environmental services for the Monier Circle Flood Control Basin Project to increase safety and promote livability; and

WHEREAS, funding for this Project will consist of FEMA Hazard Mitigation Grant Program funds; and

WHEREAS, the services will exceed the maximum amount the City Manager has the authorization to approve.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize the City Manager to execute Contract No. 2023-18 with Wood Rodgers, Inc. in an amount not to exceed \$687,484 in a form approved by the City Attorney for the Monier Circle Flood Control Basin Project.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ITEM 9.8.

ATTACHMENT 1

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF RANCHO CORDOVA AND
WOOD RODGERS, INC. FOR CIVIL ENGINEERING DESIGN
AND ENVIRONMENTAL SERVICES FOR THE
MONIER CIRCLE FLOOD CONTROL BASIN PROJECT**

THIS AGREEMENT for professional services is made by and between the City of Rancho Cordova, a California municipal corporation ("City"), and Wood Rodgers, Inc. ("Professional"), (collectively, City and Professional may be referred to as "Party" or "Parties") as of February 21, 2023. City and Professional are the only parties to this Agreement, therefore the United States Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to any Party related to the scope of this Agreement.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2026, the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.
- 1.3 **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Professional a sum not to exceed six hundred eighty-seven thousand four hundred eighty-four dollars and zero cents (\$687,484.00), notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between

this Agreement and Professional's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Professional for services rendered pursuant to this Agreement. Professional shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Professional shall not bill City for duplicate services performed by more than one person.

Professional and City acknowledge and agree that compensation paid by City to Professional under this Agreement is based upon Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder, as well as a separate notice when the total number of hours of work by Professional and any individual employee, agent, or subcontractor of Professional reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Professional's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Professional.

2.3 Final Payment. City shall make the final payment within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

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- 2.4 **Total Payment.** City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Hourly Fees.** Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses, if any, are set forth in Exhibit B, and shall not exceed four thousand four hundred twenty-six dollars and zero cents (\$4,426.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

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Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Professional, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Professional shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 Workers' Compensation.** Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Professional does not have any employees.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile

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liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance. Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Professional's sole cost and expense, any extended reporting provisions of the policy, if the Professional cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.5 Waiver of Subrogation. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Professional shall provide written notice to City at Professional's earliest possible opportunity and in no case later than five (5) days after Professional is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Professional's breach:

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- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment, until Professional demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

5.1 General Requirement. Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 PERS Indemnification. In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any and all employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and any attorneys' fees and costs incurred by the City to enforce this Section.

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- 5.3 **Design Professionals.** To the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify under Sections 5.1 and 5.2 shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

Section 6. STATUS OF PROFESSIONAL.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means and methods by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee, agent or subcontractor to become eligible for a claim for PERS benefits.

- 6.2 **Professional Not an Agent.** Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Professional and any subcontractors shall comply with all laws, regulations, executive orders, and FEMA policies applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark

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law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program including 31 U.S.C. Chapter 38 relating to False Claims and Statements.
- 7.4 Licenses and Permits.** Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.
- 7.5 Nondiscrimination and Equal Opportunity.** Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby.
- 7.5** During the performance of this contract, the contractor agrees as follows:
- 7.5.1** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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- 7.5.2** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 7.5.3** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 7.5.4** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 7.5.5** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 7.5.6** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7.5.7** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7.5.8** The contractor will include the portion of the sentence immediately preceding paragraph (7.5.1) and the provisions of paragraphs (7.5.1) through (7.5.8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Professional shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Professional.

Professional may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.4 Assignment and Subcontracting.** City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.

- 8.6 Options upon Breach by Professional.** If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

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- 8.6.1 Immediately terminate the Agreement;
- 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;
- 8.6.3 Retain a different Professional to complete the work described in Exhibit A not finished by Professional; or
- 8.6.4 Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Professional pursuant to Section 2 if Professional had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Professional's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Professional's Books and Records.** Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional pursuant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

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Section 10. CLEAN AIR ACT.

- 10.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 10.2 The contractor agrees to report each violation to the City of Rancho Cordova and understands and agrees that the City of Rancho Cordova will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 10.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Section 11. FEDERAL WATER POLLUTION CONTROL ACT.

- 11.1 The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 11.2 The contractor agrees to report each violation to the City of Rancho Cordova and understands and agrees that the City of Rancho Cordova will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 11.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Section 12. DEBARMENT AND SUSPENSION.

- 12.1 This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 12.2 The contractor must comply with 2. C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 12.3 This certification is a material representation of fact relied upon by the City of Rancho Cordova. If it is later determined that the contractor did not comply with 2. C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Rancho Cordova, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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- 12.4 The bidder or proposer agrees to comply with the requirements of 2. C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Section 13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352.

- 13.1 Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of a Member of Congress in connection with obtaining any Federal contract, grant, or other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- 13.2 If applicable, contractor must sign and submit to the City of Rancho Cordova the certification attached herein as Exhibit C.

Section 14. PROCUREMENT OF RECOVERED MATERIALS.

- 14.1 In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (2) at a reasonable price.
- 14.2 Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- 14.3 The contractor also agrees to comply with also other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Section 15. MISCELLANEOUS PROVISIONS.

- 15.1 **Attorneys' Fees.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

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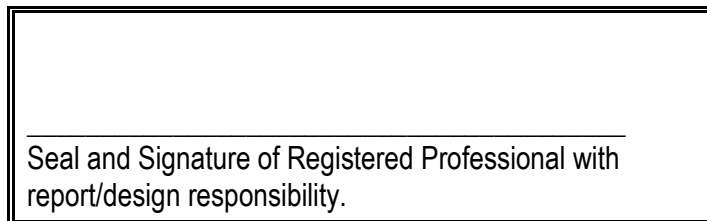
- 15.2 **Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Sacramento or in the United States District Court for the Eastern District of California.
- 15.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 15.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 15.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 15.6 **Use of Recycled Products.** Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 15.7 **Conflict of Interest.** Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Professional shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

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- 15.8 **Solicitation.** Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 15.9 **Contract Administration.** This Agreement shall be administered by Kristine Courdy ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 15.10 **Notices.** Any written notice to Professional shall be sent to:
Jonathan Kors, Vice President
3301 C Street, Building 100-B
Sacramento, CA 95816
Email Address (for Insurance Update Requests)
jkors@WoodRodgers.com
- Any written notice to City shall be sent to:
Kristine Courdy
Public Works Department
2729 Prospect Park Drive
Rancho Cordova, CA 95670
- 15.11 **Professional Seal.** Where applicable in the determination of the Contract Administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 15.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the compensation schedule attached hereto and incorporated herein as Exhibit B, represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 15.13 **IRS Form W-9.** Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF RANCHO CORDOVA

PROFESSIONAL

Micah Runner, City Manager

Jonathan Kors, Vice President

Date: _____

Date: _____

Attest:

Stacy Leitner, CMC, City Clerk

Date: _____

Approved as to Form:

Adam U. Lindgren, City Attorney

EXHIBIT A
SCOPE OF SERVICES

Refer to the Attached Proposal



February 6, 2023

Mrs. Kristine Courdy, PE, Senior Civil Engineer
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, California 95670

Dear Mrs. Courdy,

Subject: City of Rancho Cordova, Monier Circle Detention Basin, Proposal for Professional Engineering Services

The proposed Monier Circle Stormwater Detention Basin (Basin) is located within the greater Morrison Creek 3 watershed as well as within the Cordova Industrial Park. Runoff from this portion of the Cordova Industrial Park is collected by a drainage canal located directly adjacent to the Basin and it flows through existing dual 4-foot by 6-foot arch culverts that cross under Sunrise Boulevard. These existing culverts tie into a detention basin upstream of the Folsom South Canal (FSC). The outlet from this detention basin is the North Siphon, which consists of three 42-inch-diameter inverted siphons crossing under the FSC. The culverts under Sunrise Boulevard and the North Siphon lack adequate capacity to convey the runoff directed to them and, as a result, Sunrise Boulevard floods during larger storm events. This flooding can prevent emergency vehicle access through this corridor.

The City of Rancho Cordova (City) and the County of Sacramento have been aware of the flooding problem at Sunrise Boulevard dating back to the late 1990s, and they have been interested in identifying potential solutions to eliminate or mitigate this flooding hazard. Between 2004 and 2006, Wood Rodgers, Inc. (Wood Rodgers) developed and analyzed a suite of eight different alternatives for eliminating or mitigating the flooding at Sunrise Boulevard. Due to a variety of factors and the high cost associated with these alternatives, a preferred solution was never selected.

In 2019, the City and Wood Rodgers began a collaborative effort to further investigate solutions that would eliminate flooding at Sunrise Boulevard. These efforts culminated in Wood Rodgers developing robust hydrology and hydraulics modeling as well as a technical memorandum in 2020 that identified the vacant parcel adjacent to Monier Circle as a preferred site for the Basin. The use of the vacant parcel with an approximately 330-foot-long inlet weir, 18-inch outlet pipe, and pump station was also identified.

Funding for the project is through the Federal Emergency Management Agency (FEMA) Hazard Management Grant Program (HMGP). The project is split into two phases for the purposes of identifying and analyzing costs and benefits for the full project including Final Design and Construction (Phase 2). Phase 1 of the work extends through the 60-percent design submittal. Wood Rodgers' proposal for both Phase 1 and Phase 2 are included herein; however, we understand that Phase 2 authorization is subject to the City obtaining a future FEMA HMGP grant for this purpose.

Wood Rodgers' in-house environmental team has confirmed that an Initial Study with Mitigated Negative Declaration (IS/MND) would be the appropriate level of documentation to satisfy the California Environmental Quality Act (CEQA) guidelines for the project. This determination was made because the detention basin would include both temporary and permanent effects to jurisdictional waters of the United States, waters of the State of California, and California Department of Fish and Wildlife (CDFW) jurisdictional habitats. Though these effects could cause potentially significant effects to aquatic resources, Wood Rodgers is confident that project effects can be reduced to a less-than-significant level through the incorporation of suitable and cost-effective mitigation measures within the IS/MND.

The project's effects to aquatic resources will require regulatory permitting through the U.S. Army Corps of Engineers (USACE), the Central Valley Regional Water Quality Control Board (CVRWQCB), and the CDFW. These permitting requirements can be time consuming; however, Wood Rodgers is confident that project effects to Section 404 waters of the U.S would qualify for a USACE Nationwide Permit (NWP) 43 for "Stormwater Management Facilities". The NWP process will help to expedite the permitting process with the USACE, rather than conducting a letter of permission individual permit.

A review of historic aerial photographs show that the vacant parcel adjacent to Monier Circle was subject to gold dredging operations between 1947 and 1952; by 1984, the parcel had been graded. Available aerial images for the site today show evidence that the dredging field was not mitigated by the grading and the slickens/tailings lines are likely still present below grade. The introduction of water to the subsurface at the property via infiltration may introduce a risk of future settlement, both at the property and at adjacent properties. Due to this potential, the Scope of Work will target accepting the flow from the 36-inch storm drain by deepening the detention basin and/or increasing pumping to account for the flow from this existing pipeline. The proposal includes a geotechnical site investigation task that will help to identify where in the southwest corner of the property is the best location to construct the pump station, given subsurface conditions. Infiltration testing is included as an optional task should it need to be investigated further.

Wood Rodgers' proposed Scope of Work follows below. The tasks follow the existing work breakdown structure of the City's FEMA grant. Therefore, all items are identified, including those for the City's administration of the contract. Those tasks are labelled "Non-Consultant Task Line Item" and no budget is allocated for Wood Rodgers within these items.

SCOPE OF WORK

TASK 1.0 – Project Administration (Phase 1)

Non-Consultant Task Line Item.

TASK 2.0 – Environmental Planning and Historic Preservation

Subtask 2.1 – Environmental Technical Studies

Subtask 2.1.1 – Cultural Resources Inventory Report and Native American Consultation

Wood Rodgers' Subconsultant, PAR Environmental Services, Inc. (PAR), will prepare a Cultural Resources Inventory Report to identify cultural, historical, and/or paleontological resources in the area and to evaluate the potential impact the project might have on these

resources. This report will be prepared in compliance with Public Resources Code 15064.5 to: 1) determine the significance of impacts to archaeological and historical resources; and 2) to satisfy CEQA requirements. Additionally, the report will include the federal requirements under Section 106 so it can be easily utilized by FEMA and USACE during project clearance of the National Historic Preservation Act under the National Environmental Policy Act (NEPA).

PAR will conduct literature and archival research for known paleontological and archaeological resources within the project vicinity, including a cultural records search conducted through the Northeast Information Center, under the California Historical Resources Information System. As part of this effort, a list of Native American groups in the area will be requested from the Native American Heritage Commission and from the City for tribes that have formally requested consultation under Assembly Bill 52 (AB 52). In addition, a pedestrian survey of the site for archaeological resources will be conducted. If any cultural resources are identified, they will be evaluated to determine if they meet any qualified criteria for eligibility on the National Register of Historic Places or California Register of Historical Resources. All Native American consultation efforts will be documented pursuant to AB 52 requirements, consistent with CEQA requirements.

Deliverable: Cultural Resources Inventory Report

Subtask 2.1.2 – Biological Technical Memorandum and Aquatic Resources Delineation Report

Wood Rodgers' qualified biologist will conduct literature research to determine the potential for sensitive plant and animal species in the project area and surrounding habitats. The presence/absence of potential sensitive resources will be confirmed by conducting a biological reconnaissance survey (e.g., species or habitats). In addition, Wood Rodgers' certified Professional Wetland Scientist will complete a preliminary jurisdictional delineation to determine the extent of jurisdiction of aquatic resources within the project area.

The results of the literature search and biological survey will be summarized in a Biological Technical Memorandum, and the delineation results will be summarized in an Aquatic Resources Delineation Report.

Deliverable: Biological Technical Memorandum and Aquatic Resources Delineation Report

Subtask 2.2 – CEQA Initial Study; Mitigated Negative Declaration

Subtask 2.2.1 – Prepare Draft Initial Study with Proposed Mitigated Negative Declaration (IS/MND)

Wood Rodgers has determined that there will be no significant impacts as a result of the proposed project that cannot be mitigated to a less than significant level; therefore, a draft Initial Study with proposed IS/MND under CEQA would be appropriate for this project. Wood Rodgers will incorporate the project description and all technical analyses into the draft environmental document in support of a Mitigated Negative Declaration. The environmental document will address any potential impacts to sensitive resources within the project area. The IS/MND will be submitted to the City for comment, review, and approval prior to public circulation.

Deliverable: Draft IS/MND

Subtask 2.2.2 – Notice of Availability and Circulation of the Draft IS/MND

Once the draft IS/MND has been approved by the City, it will be circulated for public review for a period of 30 days. The IS/MND has the critical objective of providing a means by which the general public and responsible agencies can participate in the environmental process by providing written comments on issues addressed in the IS/MND. Wood Rodgers will coordinate the preparation of the distribution list with the City. Pursuant to CEQA requirements, Wood Rodgers will also prepare a Notice of Availability/Notice of Intent for the Draft IS/MND. This notice, along with the draft environmental document, will be made available to the appropriate City office, to the office of the County Clerk, and to a local newspaper or via a distribution list of local property owners during the 30-day public circulation and review period. In addition, the document will be distributed to other reviewing government agencies through the California State Clearinghouse, and it will be mailed directly to owners of properties that are adjacent to the project area. All comments received during this period will be recorded for inclusion in the final environmental document.

Wood Rodgers assumes that the City will want to hold a public information meeting during the 30-day review period, providing an opportunity for residents and other stakeholders to learn more about the project and to submit comments. Wood Rodgers will prepare all public meeting materials, and participate in the public meeting event (to be held at a location arranged by the City).

Deliverable: Notice of Availability and Circulation of Draft IS/MND

Subtask 2.2.3 – Response to Public Comments and Final IS/MND

Following public circulation of the Draft IS/MND and community workshops, Wood Rodgers will coordinate with the City to review each comment and prepare written responses. All comments and written responses will be included within the Final IS/MND as an Appendix. Wood Rodgers will further coordinate with the City to incorporate any substantive changes to the IS/MND prompted by public comment, and Wood Rodgers will prepare a Final IS/MND for submittal to the City for final review and approval.

Deliverable: Response to Public Comments and Final IS/MND

Subtask 2.2.4 – Mitigation Monitoring and Reporting Program and Notice of Determination

Wood Rodgers will prepare a Mitigation Monitoring and Reporting Program (MMRP) based upon any mitigation requirements, as outlined within the Final IS/MND. The MMRP will be included with the Final IS/MND for City Council approval.

To complete the CEQA process, Wood Rodgers will prepare and file a Notice of Determination (NOD) with the Sacramento County Recorder's Office and the Office of Planning and Research State Clearinghouse within 5 days of the City's approval of the Final IS/MND and MMRP (pursuant to CEQA guidelines). This scope of work assumes the City will provide payment for the CEQA filing fee at the time the NOD is filed.

Deliverable: MMRP and NOD

Subtask 2.3 – NEPA Documentation/EHP Document Update

Subtask 2.3.1 – FEMA NEPA and EHP Support

Wood Rodgers will complete a thorough review of the project's Environmental and Historic Preservation (EHP) Checklist in order to confirm that it is satisfactory and will not need to be updated prior to FEMA coordination. FEMA will update the EHP after completion of all interagency coordination as part of their NEPA approval process. During the NEPA approval process, Wood Rodgers will provide necessary environmental support, as requested by FEMA or interagency coordination requirements.

Deliverable: FEMA, NEPA and EHP Support.

TASK 3.0 – ENGINEERING DESIGN PROCUREMENT

Non-Consultant Task Line Item

TASK 4.0 – ENGINEERING DESIGN (Phase 1)

Subtask 4.1 – Project Kickoff Meeting

Wood Rodgers will facilitate a kickoff meeting with the City and other Stakeholders who may be identified by the City. An agenda for this meeting will be prepared and distributed by Wood Rodgers. A request for information will be issued by Wood Rodgers for City information available to support the design (hydraulics modeling, topographic mapping, utilities information, boundary mapping, etc.). Project objectives and initial design criteria will be discussed. The project schedule and regular coordination meetings will also be discussed. Wood Rodgers will prepare and distribute meeting notes following the meeting.

Deliverable: Kickoff Meeting Agenda and Notes

Subtask 4.2 – Consultant Coordination

This subtask encompasses the Project Management aspects of the work, including routine coordination between Wood Rodgers and the City, as well as between Wood Rodgers and its subconsultants. The budget for this line item has been established as a percentage of the total design fee to account for regular Project Management. Routine meetings, project schedule maintenance, invoicing and state reporting, and quality management are all components of Subtask 4.2.

Deliverables: Meeting Agendas and Notes; Project Invoicing and Status Reporting; Project Management and QA Plans

Subtask 4.3 – 30% Design Plans

The 30% design will establish the overall site layout and functional approach for the project, including the detention basin configuration, pump station location, need for water quality components, potential for infiltration, configuration of inlet weir, outlet pipe, passive recreation facilities and other appurtenances. Construction plans will be prepared using AutoCAD Civil 3D and custom tools that have been developed by Wood Rodgers to efficiently design earthwork and civil engineering projects. Existing topographic and boundary surveys prepared by UNICO Engineering, Inc. in 2021 will be the base for the construction plans.

The best approach for handling drainage from the existing 36-inch storm drain that runs through the site will also be determined. This storm drain conveys flow from an area of approximately 66 acres and has a 100-year 24-hour peak flow of approximately 150 cubic feet per second (cfs). The viability and risks associated with using infiltration to address this flow will be evaluated. The existing subsurface mining materials at the property (and at adjacent properties) could present a risk of future settlement if infiltration is significant. Depth to groundwater in the area is at least 50 feet below ground surface. Therefore, as the site incorporates a pumping station, it may be best to increase storage in order to accommodate this flow without infiltration. The infiltration study is an optional task that can be authorized if appropriate once the contract is underway. Piping the flow around the site is a viable (but expensive) option as well.

The pump station would be designed as a submersible system focused on reliability and ease of maintenance. It is anticipated (based on the work previously prepared by Wood Rodgers) that two 6-cfs pumps would be included in a wet well (one duty pump, one back-up pump). The size of these pumps will need to be confirmed during the 30% design. Control schema will be developed that automatically energizes the duty pump as soon as the storm peak has passed. A third low flow pump may also be beneficial to address nuisance flows in the basin. A gravity outlet with a backflow prevention device will also be included to allow for efficient flow return down to the elevation of the Morrison Creek 3 channel invert.

At the 30% design level, a list of Project Specifications will be developed and included as part of the submittal. Specifications will be developed in the subsequent design phases using Construction Specification Institute (CSI) standards.

Construction cost estimates will be prepared and presented using Microsoft excel spreadsheets. Construction quantities will be determined using AutoCAD Civil 3D applications for cut and fill volumes and other relevant construction bid items. Unit prices will be developed using recent, relative construction bid tabulations from other projects constructed in the Central Valley. Appropriate contingencies and escalation factors will be incorporated to assist the City in planning for construction.

It is assumed that only the City will review and comment on Project submittals.

Deliverables: 30% Design Plans; Specifications List; Preliminary Construction Cost Estimate

Subtask 4.4 – Preliminary Landscape Design

Wood Rodgers will prepare preliminary landscape plans. At this time, our work will include all landscape areas adjacent to the proposed Stormwater Detention Basin, pedestrian trail/access road, and entrance/parking lot as indicated on the Project Map that was included within the original Request for Proposal. Landscaping for the Morrison Creek 3 Drainage Channel is excluded. The preliminary landscape plan will include a proposed seed mix and species selection for the basin. Additionally, the plans will include a parking lot shade calculation for newly-designed parking areas. The Plan will define the character and approach of the project, including the selection of materials. These plans will also facilitate landscape pricing for the purpose of developing the project cost/benefit ratio.

Wood Rodgers' landscape team will attend one (1) project team design meeting as requested during this phase of the work.

Subtask 4.5 – Geotechnical Investigation

Considering the potential for dredge field tailings and slickens materials to be present at the site, a geotechnical investigation is proposed in order to determine the foundation conditions at the pump station. Under this task, Youngdahl will advance two (2) borings, including one to a depth of up to 10 feet into native soils (or refusal) that is anticipated to be at a depth of 60 feet. The borings will be grouted following completion of the logging and sampling operations.

Samples collected during the subsurface investigation will be returned to Youngdahl's laboratory for testing. The field and laboratory data will be reviewed by a Professional Engineer and evaluated with respect to geotechnical properties. Information gathered during the geotechnical engineering investigation will be compiled into a geotechnical engineering report. The report will be intended to fulfill the requirements of Section 1803 of the 2022 California Building Code and of common geotechnical engineering practice in this area under similar conditions at this time.

Deliverables: Geotechnical Engineering Report

Subtask 4.6 – Geotechnical Infiltration Testing (Optional Task) THESE SERVICES ARE NOT INCLUDED IN THIS AGREEMENT

~~Under Subtask 4.6, as an optional task, Youngdahl will perform Geotechnical Infiltration Testing. This task may not be required if design-level hydraulic modeling determines that the outflow from the 36-inch drainpipe can be readily included in the volume attenuation of the basin. This determination will be made early in the design process.~~

~~To evaluate the infiltration potential, Youngdahl will perform Low Impact Development infiltration testing in accordance with the intent of the Los Angeles County's boring percolation test procedure. This testing procedure will include the advancement of two borings to approximately one (1) foot below the planned invert elevation of the detention facility. Infiltration testing equipment will be temporarily installed at this elevation. An experienced geologist or engineer will perform the testing procedures and collect testing data. The results of the field testing will be provided under separate cover for use in the design of the facility.~~

~~The results of the infiltration testing and the subsurface exploration may indicate that additional evaluation is recommended.~~

~~*Deliverables: Technical Memorandum on infiltration analysis and results.*~~

Subtask 4.7 – Hydrology and Hydraulics Analysis

Under Subtask 4.7, Wood Rodgers will develop a hydrologic and hydraulic analysis to assess the proposed basin design. XPSWMM modeling of the storm drain trunk lines within the Morrison Creek 3 watershed that was previously prepared for the City will serve as the basis for the analysis. This XPSWMM model will be supplemented as needed by XPSWMM modeling previously prepared by Wood Rodgers as part of the 2020 technical memorandum that investigated the feasibility of the site. The final XPSWMM model will confirm that the proposed basin, weir, and pump design, as well as control schema, will eliminate flooding at Sunrise Boulevard and the adjacent Morrison Creek 3 channel. In addition, the XPSWMM modeling will also determine

whether the active 36-inch storm drain running through the site can be accommodated in the proposed basin.

XPSWMM modeling will be updated as necessary at the 60%, 90%, and 100% design phases. A brief Technical Memorandum documenting data sources, assumptions, and results of the analysis will be prepared for the City's review and approval.

Deliverables: Draft and Final Hydrology and Hydraulics Technical Memorandum

Subtask 4.8 – 60% Design Plans and Specifications

Under Subtask 4.8, Wood Rodgers will prepare 60% design plans and specifications. Comments on the 30% submittal are anticipated to be received from the City and will be incorporated into the 60% design. Comments will be formally responded to with a tracking spreadsheet. At the 60% design level, the detail within the design will be sufficient for preparing CEQA documentation and permitting applications.

An updated Construction Cost Estimate will be prepared to accompany the 60% design submittal.

Deliverables: 60% Design Plans; Specifications; Construction Cost Estimate

Subtask 4.9 – Cost Estimate and Benefit Cost Analysis

Wood Rodgers will use the design and cost estimate information that was developed as part of the 60% design package to assist the City in preparing the grant funding application for Phase 2.

TASK 5.0 – PERMITTING

Subtask 5.1 – Section 1600 Streambed Alteration Agreement

Wood Rodgers will prepare and process a Section 1602 Notification of Streambed Alteration application with the CDFW. The notification package will describe the project's effects to CDFW jurisdictional habitats, avoidance, and minimization measures to protect habitats and wildlife, and a proposed compensatory mitigation approach for any associated project impacts. Wood Rodgers will coordinate with CDFW to obtain authorization for the project effects and to secure the Streambed Alteration Agreement for the project. This Scope of Work assumes that the City will be responsible for the Section 1602 application fee, and any mitigation costs assigned to the project.

Deliverable: CDFW Streambed Alteration Agreement

Subtask 5.2 – Section 404 Nationwide Permit 43

Wood Rodgers will prepare and process a Pre-Construction Notification (PCN) package for compliance with the Clean Water Act Section 404 authorization by the USACE. The project is expected to qualify for a USACE Nationwide Permit using the current USACE guidelines under NWP 43 "Stormwater Management Facilities". Wood Rodgers will prepare the PCN required for compliance with Section 404 and will submit it to the USACE with City approval. This Scope of Work assumes that the City will be responsible for any mitigation costs associated with the project. Wood Rodgers will coordinate with the USACE to obtain the Section 404 authorization on behalf of the City.

Deliverable: Section 404 Nationwide Permit 43 Authorization

Subtask 5.3 – Section 401 Water Quality Certification

Wood Rodgers will prepare and process a Clean Water Act Section 401 Water Quality Certification application with the Central Valley Regional Water Quality Control Board in accordance with Sections 3830 through 3869 of Title 23 of the California Code of Regulations. The application will include details on the project location, project design, avoidance and minimization measures to protect water quality, and a proposed compensatory mitigation proposal for project effects to waters of the state. This Scope of Work assumes that the City will be responsible for the application fee and any mitigation costs assigned to the project. Wood Rodgers will coordinate with the RWQCB to obtain the Water Quality Certification on behalf of the City.

Deliverable: Section 401 Water Quality Certification

TASK 6.0 – SUBMISSION OF PHASE 1 DELIVERABLES

Non-Consultant Task Line Item

TASK 7.0 – PROJECT ADMINISTRATION (PHASE 2)

Non-Consultant Task Line Item

TASK 8.0 | FINAL ENGINEERING DESIGN

Subtask 8.1 – Final Landscape Design

Using the preliminary landscape plans of Task 4.4 (above) as a basis for design, Wood Rodgers will prepare the final landscape drawings, details, and specifications to construct the proposed work. The work will include both planting and irrigation design for the areas to be landscaped (as described under Task 4.4). Landscape planting and irrigation design will adhere to City site development standards as well as the water efficient landscape ordinance requirements. Landscape plans will be submitted and processed with the civil improvement plans. We anticipate plan submittals at 90% and 100% design milestones.

The following landscape construction documents are anticipated:

- Cover Sheet and Plan Notes
- Planting Plan
- Irrigation Plan with water use calculations
- Landscape Construction Details

Estimated costs for landscaping will be included in the cost estimates of Subtask 8.2 and Subtask 8.3.

Subtask 8.2 – 90% Design Plans, Specifications, and Cost Estimate

Under Subtask 8.2, Wood Rodgers will prepare 90% design plans and specifications. Comments on the 60% submittal are anticipated to be received from the City and will be incorporated into the 90% design. Comments will be formally responded to within a comment and response tracking spreadsheet. Electrical control drawings for the pump station will be included at the 90% submittal

level. Public passive recreation opportunities will occur at the 90% submittal. A parking lot, signage, and a walking trail are anticipated.

Deliverables: 90% Design Plans; Specifications; Opinion of Probable Cost in Bid Schedule Format.

Subtask 8.3 – 100% Design Plans, Specifications, and Cost Estimate

Under Subtask 8.3, Wood Rodgers will prepare 100% (Final) design plans and specifications. Comments on the 90% submittal are anticipated to be received from the City and will be incorporated into the 100% design. Comments will be formally responded to within a comment and response tracking spreadsheet. The 100% design plans and specifications will be suitable for construction bidding.

Pump station electrical design and passive recreation amenities will be advanced to the 100% design level. An Engineer's Opinion of Probable Cost will be prepared for use in evaluating the construction bids that are received.

Deliverables: 100% Design Plans; Specifications; Opinion of Probable Cost in Bid Schedule Format.

TASK 9.0 – CONSTRUCTION PROCUREMENT

Subtask 9.1 – Responding to Bidders' Questions

Wood Rodgers will assist the City in construction procurement by receiving and responding to bidders' questions during the bid period. If necessary, an Addendum will be issued to the bidders to formally respond to questions and to provide design clarifications. One (1) bid addenda is assumed in the Scope of Work.

Deliverables: Response to Bidder Questions; Bid Addenda if necessary; Design Clarifications if necessary

TASK 10 | CONSTRUCTION

Subtask 10.1 – RFI Responses

During construction, Wood Rodgers will review RFIs from the Contractor (as submitted to Wood Rodgers by the Construction Manager) and respond as appropriate. It is anticipated that the City or a City consultant will perform construction management for the project. Wood Rodgers has this service capability and can propose on Construction Manager services if the City so desires.

Deliverable: RFI responses as necessary

Subtask 10.2 – Submittal Review and Response

Construction submittals for construction materials, pump station components, hauling and staging, and other aspects of construction are anticipated. Wood Rodgers recommends that the City include a line item for construction submittal review and response in the contract. Under this Subtask, Wood Rodgers will review construction submittals, provide comments, and approve submittals as appropriate during construction.

Deliverables: Submittal Responses

Subtask 10.3 – Record Drawings

Using the red-line markup drawings that will be prepared by the Contractor during construction, Wood Rodgers will prepare the record drawings. The intent of the record drawings will be to capture the final configuration and design features of the project. Wood Rodgers anticipates that the City's Construction Manager will ensure that Contractor's as-built markups are accurate and complete.

Deliverable: Draft and Final Record Drawings and Specifications

Subtask 10.4 – Electrical Startup and Testing

Construction startup and testing for the pump station will be economical if the electrical designer is included during construction closeout for system startup and testing. Under this subtask, Frisch Engineering will review the pump station electrical installation, check and confirm operation and operational setpoints for equipment. 1 day of factory witness testing and 4 days of testing in the field area included in the contract Scope of Work.

SCHEDULE

Wood Rodgers' proposed schedule is attached as **Figure 1**.

BUDGET

The Scope of Work outlined above is proposed to be performed on a Time-and-Materials (T&M) basis. Wood Rodgers' proposed budget for this work is shown in **Table 1** (attached). **Table 2**, **Table 3**, and **Table 4** (attached), and the Youngdahl proposal (included as **Attachment 1**) provide additional information on the costs summarized in Table 1. Wood Rodgers' Invoice and Liability Policies are attached as **Exhibit A** and Wood Rodgers' 2023 Fee Schedule is attached as **Exhibit B**.

If you have any questions regarding this proposal, please contact me at 916-916-3073.

Sincerely,



Jonathan Kors
Vice President

Attachments

CITY OF RANCHO CORDOVA

MONIER CIRCLE STORMWATER DETENTION BASIN CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES

PROJECT SCHEDULE

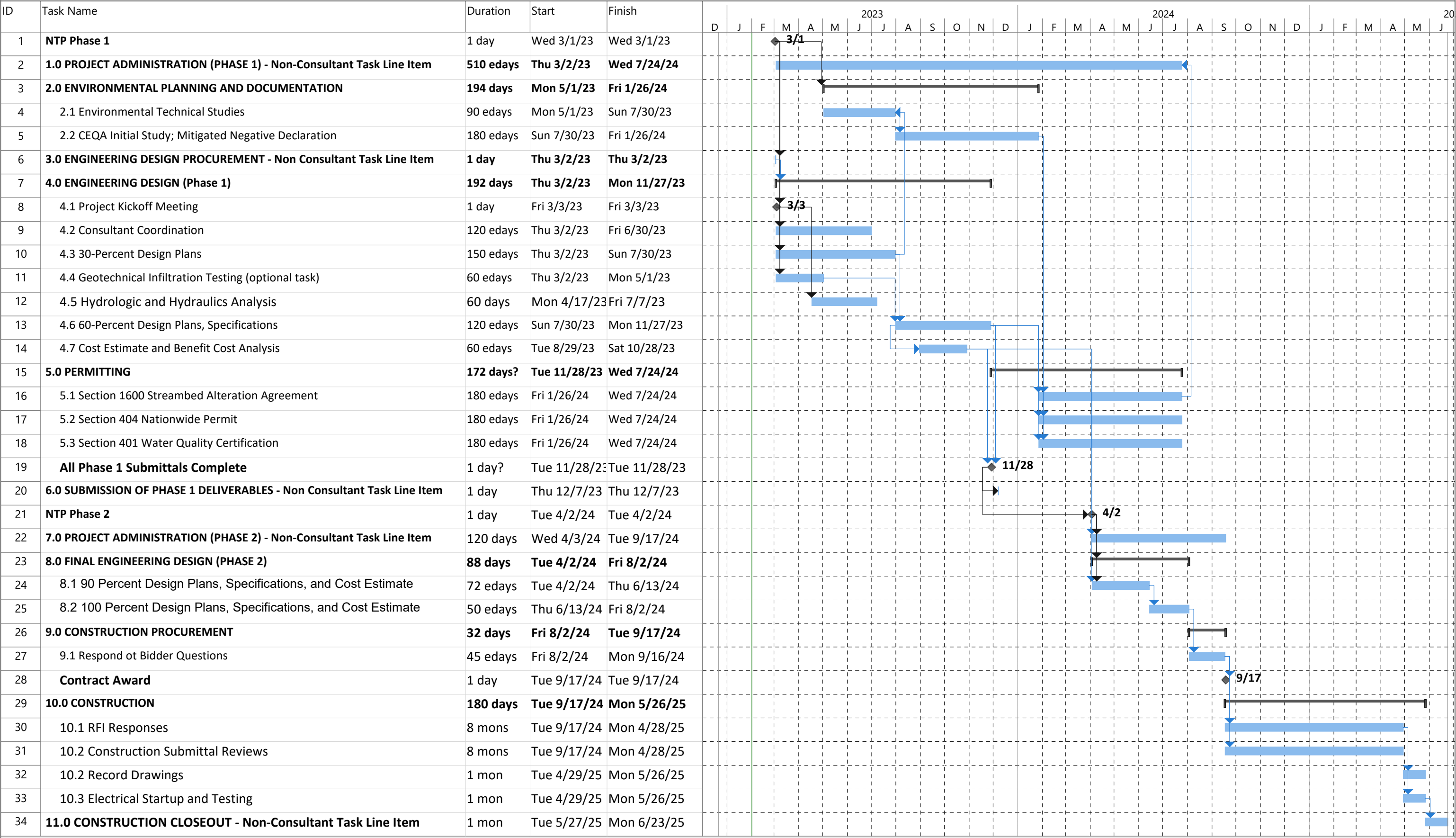


EXHIBIT B
COMPENSATION SCHEDULE

Refer to the Attached Compensation Schedule

ITEM 9.8.

TABLE 1

Exhibit B

CITY OF RANCHO CORDOVA DEPARTMENT OF PUBLIC WORKS

ATTACHMENT 2

MONIER CIRCLE STORMWATER DETENTION BASIN CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES
PROPOSED BUDGET - SUMMARY

TASK NO.	TASK DESCRIPTION	Wood Rodgers	Youngdahl	Frisch	PAR	Subconsultant Markup (8%)	TOTAL COSTS
1	PROJECT ADMINISTRATION (PHASE 1) - Non-Consultant Task Line Item						
2	ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION						
2.1	Environmental Technical Studies	\$22,120	\$0	\$0	\$7,160	\$573	\$29,853
2.2	CEQA Initial Study/Mitigated Negative Declaration	\$34,000	\$0	\$0	\$0	\$0	\$34,000
2.3	NEPA Documentation/EHP Document Update	\$7,780	\$0	\$0	\$0	\$0	\$7,780
	Task 2 Subtotal	\$63,900	\$0	\$0	\$7,160	\$573	\$71,633
3	ENGINEERING DESIGN PROCUREMENT - Non Consultant Task Line Item						
4	ENGINEERING DESIGN (PHASE 1)						
4.1	Project Kickoff Meeting	\$3,080	\$0	\$0	\$0	\$0	\$3,080
4.2	Consultant Coordination	\$45,900	\$0	\$0	\$0	\$0	\$45,900
4.3	30-Percent Design Plans	\$90,000	\$0	\$0	\$0	\$0	\$90,000
4.4	Preliminary Landscape Design	\$9,560	\$0	\$0	\$0	\$0	\$9,560
4.5	Geotechnical Investigation	\$1,560	\$27,000	\$0	\$0	\$2,160	\$30,720
4.6	Geotechnical Infiltration Testing (Optional Task)	\$1,560	\$10,700	\$0	\$0	\$656	\$13,116
4.7	Hydrology and Hydraulics Analysis	\$44,810	\$0	\$0	\$0	\$0	\$44,810
4.8	60-Percent Design Plans, Specifications	\$90,000	\$0	\$0	\$0	\$0	\$90,000
4.9	Cost Estimate and Benefit Cost Analysis	\$15,560	\$0	\$0	\$0	\$0	\$15,560
	Task 4 Subtotal	\$302,030	\$37,700	\$0	\$0	\$3,016	\$342,746
5	PERMITTING						
5.1	Section 1600 Streambed Alteration Agreement	\$14,430	\$0	\$0	\$0	\$0	\$14,430
5.2	Section 404 Nationwide Permit	\$14,430	\$0	\$0	\$0	\$0	\$14,430
5.3	Section 401 Permit and Water Right Exemption	\$14,430	\$0	\$0	\$0	\$0	\$14,430
	Task 5 Subtotal	\$43,290	\$0	\$0	\$0	\$0	\$43,290
6	SUBMISSION OF PHASE 1 DELIVERABLES - Non Consultant Task Line Item						
7	PROJECT ADMINISTRATION (PHASE 2) - Non-Consultant Task Line Item						
8	FINAL ENGINEERING DESIGN (PHASE 2)						
8.1	Final Landscape Design	\$24,000	\$0	\$0	\$0	\$0	\$24,000
8.2	90 Percent Design Plans, Specifications, and Cost Estimate	\$39,500	\$0	\$39,275	\$0	\$3,142	\$81,917
8.3	100 Percent Design Plans, Specifications, and Cost Estimate	\$21,440	\$0	\$9,995	\$0	\$800	\$32,235
	Task 8 Subtotal	\$84,940	\$0	\$49,270	\$0	\$3,942	\$138,152
9	CONSTRUCTION PROCUREMENT						
9.1	Respond to Bidder Questions	\$13,760	\$0	\$2,320	\$0	\$186	\$16,266
	Task 9 Subtotal	\$13,760	\$0	\$2,320		\$186	\$16,266
10	CONSTRUCTION						
10.1	RFI Responses	\$11,700	\$0	\$7,800	\$0	\$624	\$20,124
10.2	Construction Submittal Reviews	\$16,740	\$0	\$11,010	\$0	\$881	\$28,631
10.3	Record Drawings	\$17,460	\$0	\$2,985	\$0	\$239	\$20,684
10.4	Electrical Startup and Testing	\$960	\$0	\$12,675	\$0	\$1,014	\$14,649
	Task 10 Subtotal	\$46,860	\$0	\$34,470	\$0	\$2,758	\$84,088
11	GRANT CLOSEOUT - Non Consultant Task Line Item						
	REIMBURSABLES	\$4,426	\$0	\$0	\$0	\$0	\$4,426
	TOTAL COSTS	\$559,206	\$37,700	\$86,060	\$7,160	\$10,474	\$700,600
	TOTAL COSTS (EXCLUDING OPTIONAL TASK 4.6 - Infiltration testing)	\$557,646	\$27,000	\$86,060	\$7,160	\$9,618	\$687,484

TOTAL AGREEMENT AMOUNT

TABLE 2
CITY OF RANCHO CORDOVA DEPARTMENT OF PUBLIC WORKS
MONIER CIRCLE STORMWATER DETENTION BASIN CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES
PROPOSED BUDGET - WOOD RODGERS INC.

TASK NO.	TASK DESCRIPTION	DIRECT LABOR CLASSIFICATIONS										TOTAL MAN-HOURS	Direct Labor	TOTAL COSTS
		Principal Engineer II	Senior Engineer II	Senior Engineer I	Project Engineer II	Project GIS I	Senior Planner I	Project Planner I	Senior Landscape Architect	Landscape Architect I	Project Coordinator			
		\$300.00	\$240.00	\$230.00	\$215.00	\$205.00	\$230.00	\$205.00	\$230.00	\$180.00	\$155.00			
Phase 1 - Initial Design														
1	PROJECT ADMINISTRATION (PHASE 1) - Non-Consultant Task Line Item													
2	ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION													
2.1	Environmental Technical Studies					8	32	64				104	\$22,120	\$22,120
2.2	CEQA Initial Study/Mitigated Negative Declaration					16	48	96				160	\$34,000	\$34,000
2.3	NEPA Documentation/EHP Document Update						16	20				36	\$7,780	\$7,780
	Task 2 Subtotal												\$63,900	\$63,900
3	ENGINEERING DESIGN PROCUREMENT - Non Consultant Task Line Item													
4	ENGINEERING DESIGN (PHASE 1)												\$0	
4.1	Project Kickoff Meeting	4	4				4					12	\$3,080	\$3,080
4.2	Consultant Coordination	54	116								12	182	\$45,900	\$45,900
4.3	30-Percent Design Plans	8	120		140	140						408	\$90,000	\$90,000
4.4	Preliminary Landscape Design	2	4						16	24		46	\$9,560	\$9,560
4.5	Geotechnical Investigation	2	4									6	\$1,560	\$1,560
4.6	Geotechnical Infiltration Testing (Optional Task)	2	4									6	\$1,560	\$1,560
4.7	Hydrology and Hydraulics Analysis	1		80	120						2	203	\$44,810	\$44,810
4.8	60-Percent Design Plans, Specifications	8	120		140	140						408	\$90,000	\$90,000
4.9	Cost Estimate and Benefit Cost Analysis	4	24		40							68	\$15,560	\$15,560
	Task 4 Subtotal												\$302,030	\$302,030
5	PERMITTING													
5.1	Section 1600 Streambed Alteration Agreement		2		2		16	48				68	\$14,430	\$14,430
5.2	Section 404 Nationwide Permit		2		2		16	48				68	\$14,430	\$14,430
5.3	Section 401 Permit and Water Right Exemption		2		2		16	48				68	\$14,430	\$14,430
	Task 5 Subtotal												\$43,290	\$43,290
6	SUBMISSION OF PHASE 1 DELIVERABLES - Non Consultant Task Line Item													
Phase 2 - Final Design + Construction														
7	PROJECT ADMINISTRATION (PHASE 2) - Non-Consultant Task Line Item													
8	FINAL ENGINEERING DESIGN (PHASE 2)													
8.1	Final Landscape Design	4	12						24	80		120	\$24,000	\$24,000
8.2	90 Percent Design Plans, Specifications, and Cost Estimate	2	40		60	80						182	\$39,500	\$39,500
8.3	100 Percent Design Plans, Specifications, and Cost Estimate	2	24		32	40						98	\$21,440	\$21,440
	Task 8 Subtotal												\$84,940	\$84,940
9	CONSTRUCTION PROCUREMENT													
9.1	Respond to Bidder Questions	4	16		32				8			60	\$13,760	\$13,760
	Task 9 Subtotal												\$13,760	\$13,760
10	CONSTRUCTION													
10.1	RFI Responses	4	24		12				4		8	52	\$11,700	\$11,700
10.2	Construction Submittal Reviews	4	24		40				2	4		74	\$16,740	\$16,740
10.3	Record Drawings	4	24		40				2	8		78	\$17,460	\$17,460
10.4	Electrical Startup and Testing		4									4	\$960	\$960
	Task 10 Subtotal												\$46,860	\$46,860
11	GRANT CLOSEOUT - Non Consultant Task Line Item													
	Reimbursables												\$4,426	\$4,426
	TOTAL COST - W/O OPTIONAL LINE ITEMS												\$557,646	\$557,646
	TOTAL COSTS												\$559,206	\$559,206

TABLE 4
CITY OF RANCHO CORDOVA DEPARTMENT OF PUBLIC WORKS
MONIER CIRCLE STORMWATER DETENTION BASIN CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES
PROPOSED BUDGET - PAR ENVIRONMENTAL

TASK NO.	TASK DESCRIPTION	DIRECT LABOR CLASSIFICATIONS			TOTAL MAN- HOURS	Direct Labor	Reimbur- sables	TOTAL COSTS
		Director, Cutlural Resources	Senior Archaeologist	Associate Archaeologist				
		\$180.00	\$100.00	\$75.00				
Phase 1 - Initial Design								
1	PROJECT ADMINISTRATION (PHASE 1) - Non-Consultant Task Line Item							
2	ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION							
2.1	Environmental Technical Studies	2	16	60	78	\$6,460	\$700	\$7,160
2.2	CEQA Initial Study/Mitigated Negative Declaration					\$0	\$0	\$0
2.3	NEPA Documentation/EHP Document Update					\$0	\$0	\$0
	Task 2 Subtotal					\$0	\$700	\$7,160
3	ENGINEERING DESIGN PROCUREMENT - Non Consultant Task Line Item							
4	ENGINEERING DESIGN (PHASE 1)							
4.1	Project Kickoff Meeting					\$0	\$0	\$0
4.2	Consultant Coordination					\$0	\$0	\$0
4.3	30-Percent Design Plans					\$0	\$0	\$0
4.4	Geotechnical Infiltration Testing					\$0	\$0	\$0
4.5	60-Percent Design Plans, Specifications					\$0	\$0	\$0
4.6	Cost Estimate and Benefit Cost Analysis					\$0	\$0	\$0
	Task 4 Subtotal					\$0	\$0	\$0
5	PERMITTING							
5.1	Section 1600 Streambed Alteration Agreement					\$0	\$0	\$0
5.2	Section 404 Nationwide Permit					\$0	\$0	\$0
5.3	Section 401 Permit and Water Right Exemption					\$0	\$0	\$0
5.4	Construction General Permit Coverage					\$0	\$0	\$0
	Task 5 Subtotal					\$0	\$0	\$0
6	SUBMISSION OF PHASE 1 DELIVERABLES - Non Consultant Task Line Item							
Phase 2 - Final Design + Construction								
7	PROJECT ADMINISTRATION (PHASE 2) - Non-Consultant Task Line Item							
8	FINAL ENGINEERING DESIGN (PHASE 2)							
8.1	90 Percent Design Plans, Specifications, and Cost Estimate					\$0	\$0	\$0
8.2	100 Percent Design Plans, Specifications, and Cost Estimate					\$0	\$0	\$0
	Task 8 Subtotal					\$0	\$0	\$0
9	CONSTRUCTION PROCUREMENT							
9.1	Respond to Bidder Questions					\$0	\$0	\$0
	Task 9 Subtotal					\$0	\$0	\$0
10	CONSTRUCTION							
10.1	RFI Responses					\$0	\$0	\$0
10.2	Construction Submittal Reviews					\$0	\$0	\$0
10.3	Record Drawings					\$0	\$0	\$0
10.4	Electrical Startup and Testing					\$0	\$0	\$0
	Task 10 Subtotal					\$0	\$0	\$0
11	GRANT CLOSEOUT - Non Consultant Task Line Item							
	TOTAL COST - W/O OPTIONAL LINE ITEMS					\$0		
	TOTAL COSTS					\$0		\$7,160

TABLE 4

CITY OF RANCHO CORDOVA DEPARTMENT OF PUBLIC WORKS

MONIER CIRCLE STORMWATER DETENTION BASIN CIVIL ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES

PROPOSED BUDGET - PAR ENVIRONMENTAL

TASK NO.	TASK DESCRIPTION	DIRECT LABOR CLASSIFICATIONS			TOTAL MAN- HOURS	Direct Labor	Reimbur- sables	TOTAL COSTS
		Director, Cutlural Resources	Senior Archaeologist	Associate Archaeologist				
		\$180.00	\$100.00	\$75.00				
Phase 1 - Design								
1	PROJECT ADMINISTRATION (PHASE 1) - Non-Consultant Task Line Item							
2	ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION							
2.1	Environmental Technical Studies	2	16	60	78	\$6,460	\$700	\$7,160
2.2	CEQA Initial Study/Mitigated Negative Declaration					\$0	\$0	\$0
2.3	NEPA Documentation/EHP Document Update					\$0	\$0	\$0
	Task 2 Subtotal					\$0	\$700	\$7,160
3	ENGINEERING DESIGN PROCUREMENT - Non Consultant Task Line Item							
4	ENGINEERING DESIGN (PHASE 1)							
4.1	Project Kickoff Meeting					\$0	\$0	\$0
4.2	Consultant Coordination					\$0	\$0	\$0
4.3	30-Percent Design Plans					\$0	\$0	\$0
4.4	Geotechnical Infiltration Testing					\$0	\$0	\$0
4.5	60-Percent Design Plans, Specifications					\$0	\$0	\$0
4.6	Cost Estimate and Benefit Cost Analysis					\$0	\$0	\$0
	Task 4 Subtotal					\$0	\$0	\$0
5	PERMITTING							
5.1	Section 1600 Streambed Alteration Agreement					\$0	\$0	\$0
5.2	Section 404 Nationwide Permit					\$0	\$0	\$0
5.3	Section 401 Permit and Water Right Exemption					\$0	\$0	\$0
5.4	Construction General Permit Coverage					\$0	\$0	\$0
	Task 5 Subtotal					\$0	\$0	\$0
6	SUBMISSION OF PHASE 1 DELIVERABLES - Non Consultant Task Line Item							
Phase 2 - Construction								
7	PROJECT ADMINISTRATION (PHASE 2) - Non-Consultant Task Line Item							
8	FINAL ENGINEERING DESIGN (PHASE 2)							
8.1	90 Percent Design Plans, Specifications, and Cost Estimate					\$0	\$0	\$0
8.2	100 Percent Design Plans, Specifications, and Cost Estimate					\$0	\$0	\$0
	Task 8 Subtotal					\$0	\$0	\$0
9	CONSTRUCTION PROCUREMENT							
9.1	Respond to Bidder Questions					\$0	\$0	\$0
	Task 9 Subtotal					\$0	\$0	\$0
10	CONSTRUCTION							
10.1	RFI Responses					\$0	\$0	\$0
10.2	Construction Submittal Reviews					\$0	\$0	\$0
10.3	Record Drawings					\$0	\$0	\$0
10.4	Electrical Startup and Testing					\$0	\$0	\$0
	Task 10 Subtotal					\$0	\$0	\$0
11	GRANT CLOSEOUT - Non Consultant Task Line Item							
	TOTAL COST - W/O OPTIONAL LINE ITEMS					\$0		
	TOTAL COSTS					\$0		\$7,160



Monier Circle Stormwater Basin Detention Facility
Page 5

Proposal No. PE22-630
30 January 2022

SCOPE 2A: GEOTECHNICAL ENGINEERING STUDY, PUMP STATION SITE ONLY TASKS AND SCOPE OF WORK		ESTIMATED COST
TASK 2A.0: USA NORTH NOTIFICATION As required by law, we will notify Underground Service Alert (USA) North to locate all public underground utilities on the site. The procedures require a site reconnaissance prior to performing the fieldwork to mark the site and test location and a minimum of 2 working days' notice to the USA North services.		\$ 1,000.00
TASK 2A.1: UNDERGROUND UTILITY LOCATING We anticipate that private utilities may be present at the project site that would not be addressed by USA North. We propose to subcontract additional locating services to clear the selected location in order avoid utility conflict and subsequent damage. Although this is an added service, this service is not a guarantee that all utilities will be found and additional review by the property owner may be necessary or appropriate.		\$ 1,000.00
TASK 2A.2: SUBSURFACE EXPLORATION We propose to explore subsurface conditions by advancing 2 exploratory borings at the proposed pump station site. We tentatively estimate that one of the borings will be advanced to depths of 10 feet into native soils which is expected to result in borings extending about 70 feet below the ground surface. Shallower borings may result if refusal is met by the drilling equipment. An experienced geologist or engineer from our office will continuously observe the test pits and borings, log the subsurface conditions, collect representative soil samples, and transport all samples to our laboratory for further visual examination and testing. We will exercise due care while working at the site, but it should be realized that some surface disturbance is unavoidable and that complete restoration of any disturbed areas is not included in our scope of work.		Youngdahl \$ 3,000.00 Outside Contractors \$ 8,000.00 Permit \$ 2,000.00
TASK 2A.3: LABORATORY TESTING We propose to conduct a series of geotechnical laboratory tests on selected soil samples obtained from our exploration in order to evaluate the engineering and index properties of the site subsurface materials. These tests will likely include the following tests, as deemed necessary and appropriate: • Direct Shear • Unconfined Compression • Triaxial Shear – CU • Consolidation • Expansion Index • Resistance Value (R-Value) • Sieve Analysis with No. 200 Wash • Atterberg Limits (LL, PL, PI) • Specific Gravity • Soil Corrosion Suite • Moisture-Density of Tube Samples • Modified Proctor		\$ 6,500.00
TASK 2A.4: REPORT PREPARATION We will subsequently analyze all field exploration data, laboratory testing data, and research findings in order to develop conclusions and recommendations concerning the geotechnical aspects of the project. Our report is anticipated to include the following: • Site plan showing approximate exploration locations; • Descriptive logs of subsurface explorations; • Description of surface, soil, groundwater, and seismic conditions; • Conclusions regarding expansive soils; • Conclusions regarding on-site liquefaction potential; • Recommended seismic design parameters per ASCE 7-16; • Recommendations for earthwork construction; • Design criteria for shallow foundation and structural slab design; • Section design of asphalt and portland cement concrete pavements; • Estimated total and differential settlements; • Recommendations concerning construction of concrete slabs; • Recommendations concerning structural fill; • Recommendations for construction monitoring; • Explanation of report limitations; • Recommendations for further geotechnical study, if necessary.		\$ 5,500.00
ESTIMATED COST ADDED TO SCOPE 1:		\$ 27,000.00



SACRAMENTO & ROSEVILLE FEE SCHEDULE

CLASSIFICATION	STANDARD RATE
Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$300
Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$265
Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$240
Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$230
Project Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$215
Project Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$205
Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$195
Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$180
Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*	\$150
Designer	\$95
Senior CAD Technician/Graphics Designer II	\$180
Senior CAD Technician/Graphics Designer I	\$160
CAD Technician/Graphics Designer	\$140
Project Coordinator	\$155
Administrative Assistant	\$120
1 Person Survey Crew	\$235
2 Person Survey Crew	\$340
3 Person Survey Crew	\$435
Consultants, Outside Services, Materials & Direct Charges	Cost Plus 10%
Overtime Work, Expert Witness Testimony and Preparation	Rate Plus 50%

*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 62.5 cents per mile.

Fee Schedule subject to change January 1, 2024.

EXHIBIT C
CERTIFICATION REGARDING LOBBYING

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

If applicable, contractors must sign and submit the following certification to the NFE with each bid or offer exceeding \$100,000:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Wood Rodgers, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date

Name and Title of Contractor's Authorized Official

APN 072-1010-029
3355 MONIER CIR

Entrance shall include
interpretive sign, bench,
& trash receptacle

Weir shall be
300 feet long
minimum

North Siphon
Drainage Channel

NORTH

VICINITY MAP

PROPOSED MONIER CIRCLE FLOOD CONTROL BASIN PROJECT SITE PLAN

- | | |
|--|---|
| --- Project boundary | Low Flow Drainage Channels |
| Existing Culvert | Sediment Forebay |
| Concrete Access Ramp | Pump Station |
| Proposed Outlet Piping | Entrance - used as STAGING AREA during construction |
| Relandscaped channel | Pedestrian Trail/Access Road |
| Weir | Landscaping |
| Proposed Monier Circle Detection Basin | |

Notes:

1. Size and location of detention basin details are approximate and meant to be illustrative rather than dimensional.

MEMORANDUM



ITEM 9.9.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Elizabeth Sparkman, Community Development Director
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE THIRD AMENDMENT TO A CONTRACT WITH SHUMS CODA TO MODIFY EXHIBIT B TO UPDATE THE BILLING RATES**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute a Third Amendment to the Contract to update Exhibit B to reflect current billing rates.

BACKGROUND

The City entered into an On-Call Professional Services Agreement dated March 1, 2017 for the purpose of providing on-call plan review, permitting, and field inspection services through March 1, 2019. A First Amendment to the Agreement extended the end date from March 1, 2019 to March 1, 2022. A Second Amendment to the Agreement further extended the end date to December 31, 2025. None of the previous amendments adjusted the billing rates. This Third Amendment to the Agreement updates the Exhibit B to reflect current billing rates.

FISCAL IMPACT AND FUNDING SOURCE

The services covered by this contract are funded by building permit fees collected.

ATTACHMENT(S)

1. Resolution
2. Third Amendment to Contract

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SHUMS CODE ASSOCIATES TO UPDATE THE BILLING RATES

WHEREAS, the City entered into an On-Call Professional Services Agreement (Agreement) dated March 1, 2017 with Shums Code Associates for the purpose of providing on-call professional plan review, permitting, and field inspection services through March 1, 2019; and

WHEREAS, a First Amendment to the Agreement extended the end date of the term from March 1, 2019 to March 1, 2022; and

WHEREAS, a Second Amendment to the Agreement further extended the end date of the term from March 1, 2022 to December 31, 2025; and

WHEREAS, this Third Amendment to the Agreement updates the Exhibit B to the Agreement to reflect current rates for services; and

WHEREAS, the parties agree that changes to the rates are necessary in order for the City to continue receiving certain professional services from Professional.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager to execute the Third Amendment to the contract with Shums Coda Associates to update Exhibit B of the contract.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

**THIRD AMENDMENT TO THE ON-CALL PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND SHUMS CODA ASSOCIATES**

This Third Amendment to the On-Call Agreement for Professional Services ("Amendment") is made by and between the City of Rancho Cordova ("City") and Shums Coda ("Professional") as of January 27, 2023. City and Professional are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into an On-Call Professional Services Agreement ("PSA") dated March 1, 2017 for the purpose of providing on-call professional plan review, permitting, and field inspection services through March 1, 2019; and

WHEREAS, the First Amendment extended the end date of the term from March 1, 2019 to March 1, 2022; and

WHEREAS, the Second Amendment extended the end date of the term from March 1, 2022 to December 31, 2025; and

WHEREAS, this Third Amendment will update Exhibit B to reflect current rates; and

WHEREAS, the Parties agree that changes to the term and services provided for in the PSA are necessary in order for the City to continue receiving services by Professional.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. The document entitled "Cost Information" attached hereto as **Exhibit B** shall replace and supersede the PSA's **Exhibit B**.
2. All other terms and conditions in the PSA shall remain in full force and effect to the extent they are not in conflict with this Amendment.
3. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.

4. **Contract Administration.** This Agreement shall be administered by Jeremiah Zillig ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

Notices. Any written notice to Professional shall be sent to:

David Basinger
5776 Stoneridge Mall Road, Suite 150
Pleasanton, CA 94588
Email Address (for Insurance Update Requests):
david.basinger@shumscoda.com

Any written notice to City shall be sent to:

Jeremiah Zillig
2729 Prospect Park Drive
Rancho Cordova, CA 95670

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA

SHUMS CODA ASSOCIATES

Micah Runner, City Manager

David Bassinger, Principal

Date: _____

Date: _____

Attest:

Stacy Leitner, CMC, City Clerk

Date: _____

Approved as to Form:

Adam U. Lindgren, City Attorney

Date: _____

Cost Information

On-Call Plan Review, Permitting and Field Inspection Services

Exhibit B**6. Plan Review Package "F" Building**

Hourly fee for complete nonstructural building plan review services will be based on consultant's qualifications. Hourly fee will range from \$75 to \$125 per hour.

7. Plan Review Package "G" Building

Hourly fee for complete structural building plan review services will be based on consultant's qualifications. Hourly fee will range from \$75 to \$125 per hour.

8. Inspection Package "H"

Hourly fee for commercial building inspection services will be based on consultant's qualifications. Hourly fee will range from \$70 to \$90 per hour.

9. Inspection Package "I"

Hourly fee for residential building inspection services will be based on consultant's qualifications. Hourly fee will range from \$50 to \$90 per hour.

10. Permit Processing Package "J"

Hourly fee for in-house permit processing services will be based on consultant's qualifications. Hourly fee will range from \$45 to \$55 per hour.

Personnel Description**Hourly Billing Rate**

Interim Building Official	\$150
In-House Plan Review	\$125
In-House Code Training	\$150
Principal	\$150
Senior Plan Review Engineer/Architect (comm., industrial & multi-fam.)	\$125
Plan Review Engineer/Architect (small comm./residential)	\$115
Senior Fire Protection Engineer/Fire Inspector (FPE Complex Systems)	\$200 - \$300
Fire Protection Engineer/Fire Inspector (Non-FPE Life-Safety, Sprinklers, Alarms)	\$150 - \$200
Permit Technician	\$65 - \$85
Clerical Support	\$55 - \$65
CASp Specialist – Plan Review	\$200
CASp Specialist – Inspection	\$250
CASp Specialist – Report	TBD
Acting Supervisor of Inspectors (I.O.R.)**	\$125-\$140
Senior Inspector**	\$115 - \$125
Inspector II**	\$100 - \$115
Inspector I**	\$90 - \$100
Inspector in Training	\$60-\$90

Overtime will not be charged for any plan review services, but SCA does reserve the right to negotiate additional fees for major re-designs or consistently incomplete responses to initial plan review comments (as agreed upon mutually with the jurisdiction). Inspection and other services will be charged at 150% of the standard hourly rates (when agreed upon mutually with the jurisdiction and per the statement below).



Cost Information

On-Call Plan Review, Permitting and Field Inspection Services

Exhibit B**Plan Review and Inspection "Packages"**

We will always strive to match the Jurisdiction's needs with the right consultant for the job.

1. Plan Review Package "A" Building

Fees for complete structural and nonstructural commercial building plan reviews, performed at SCA offices, will be equal to Sixty-five percent (65%) of the plan review fees as calculated per the jurisdiction.

2. Plan Review Package "B" Building

Fees for complete nonstructural commercial building plan reviews, performed at SCA offices, will be equal to Forty percent (40%) of the plan review fees as calculated per the jurisdiction.

3. Plan Review Package "C" Building

Fees for complete structural commercial building plan reviews, performed at SCA offices, will be equal to Forty percent (40%) of the plan review fees as calculated per the jurisdiction.

4. Plan Review Package "D" Building

Fees for complete structural and nonstructural residential building plan reviews, performed at SCA offices, will be equal to Sixty-Five percent (65%) of the plan review fees as calculated per the jurisdiction.

5. Plan Review Package "E" Building

Fees for complete structural residential building plan reviews, performed at SCA offices, will be equal to Forty percent (40%) of the plan review fees as calculated per the jurisdiction.

The above fees cover all services associated with the typical plan review, including:

- Pick – up and delivery of design documents to the jurisdiction.
- First, second and quick third reviews to approve projects.

Extensive plan reviews (longer third reviews or more) that may be required to be charged on an hourly rate shown below. Further, smaller projects that take one or more reviews may also be charged at an hourly rate when agreed upon with the Chief Building Official. Pre-application, pre-construction, or additional meeting attendance that is necessary for unusual or complex projects shall also be charged at the same hourly rate schedule.

When expedited plan reviews are requested, the turn-around time could be as quickly as a single day, but these types of review schedules are typically determined based on the complexity of the project and the availability of SCA staff to complete the review.



MEMORANDUM



ITEM 9.10.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Elizabeth Sparkman, Community Development Director
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO THE CONTRACT WITH SYTECH SOLUTIONS TO INCREASE THE AMOUNT FROM \$95,000 TO \$345,000, EXTEND THE TERM OF SERVICES, AND UPDATE BILLING RATES**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute a Third Amendment to the Contract to extend the end date of the term to December 31, 2025, increase the contract amount to \$345,000 and update Exhibit B.

BACKGROUND

The City entered into a Professional Services Agreement dated July 1, 2020 for the purpose of providing scanning and storage of building drawings; scanning of City documents in general through June 30, 2021. A First Amendment to the Agreement extended the end date from June 30, 2021 to June 30, 2023 and increased the contract amount from \$30,000 to \$60,000. A Second Amendment increased the contract amount from \$60,000 to \$95,000. None of the previous amendments adjusted the billing rates. This Third Amendment to the Agreement will extend the end date from June 30, 2023 to December 31, 2025, increase the contract amount from \$95,000 to \$345,000, and update Exhibit B to reflect current billing rates.

FISCAL IMPACT AND FUNDING SOURCE

The services covered by this contract are funded by building permit fees collected.

ATTACHMENT(S)

1. Resolution
2. Third Amendment to Contract with Sytech

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SYTECH SOLUTIONS, INC. TO EXTEND THE END DATE OF THE TERM, INCREASE THE CONTRACT AMOUNT AND UPDATE THE BILLING RATES

WHEREAS, the City entered into a Professional Services Agreement ("PSA") dated July 1, 2020 with Sytech Solutions, Inc. for the purpose of providing scanning and storage of building drawings and scanning of City documents in general; and

WHEREAS, a First Amendment to the Agreement extended the end date of the term from June 30, 2021 to June 30, 2023 and increased the contract amount from \$30,000 to \$60,000; and

WHEREAS, a Second Amendment to the Agreement increased the contract amount from \$60,000 to \$95,000; and

WHEREAS, this Third Amendment to the Agreement will extend the end date of the term from June 30, 2023 to December 31, 2025, increase the contract amount from \$95,000 to \$345,000, allowing the City to continue to receive services under the contract, and update Exhibit B to reflect current rates; and

WHEREAS, the Parties agree that changes to the terms and services provided for in the PSA are necessary in order for the City to continue receiving services from Sytech Solutions, Inc.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager to execute a Third Amendment to the contract with Sytech Solutions to increase the amount from \$95,000 to \$345,000, extend the term of services, and update billing rates.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

**THIRD AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND SYTECH SOLUTIONS, INC.**

This Third Amendment to the Agreement for Professional Services ("Amendment") is made by and between the City of Rancho Cordova ("City") and Sytech Solutions, Inc. ("Professional") as of January 6, 2023. City and Professional are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Professional Services Agreement ("PSA") dated July 1, 2020, for the purpose of providing scanning and storage of Building drawings; scanning of City documents in general; and

WHEREAS, the First Amendment extended the end date of the term from June 30, 2021, to June 30, 2023 and increased the contract amount from \$30,000 to \$60,000; and

WHEREAS, the Second Amendment increased the contract amount from \$60,000 to \$95,000; and

WHEREAS, this Third Amendment will extend the end date of the term from June 30, 2023, to December 31, 2025, and increase the contract amount from \$95,000 to \$345,000, allowing us to continue to receive services from contract and update Exhibit B to reflect current rates; and

WHEREAS, the Parties agree that changes to the term and services provided for in the PSA are necessary in order for the City to continue receiving services by Professional.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. The document entitled "Schedule of Costs Rate Sheet" attached hereto as **Exhibit B** shall replace and supersede the PSA's **Exhibit B**.
2. The Parties agree to modify the end date of the PSA from June 30, 2023, to December 31, 2025. The first sentence of Section 1.1 of the PSA, "Term of Service," is amended to read as follows:

"The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2025, and Professional shall complete the work described in **Exhibit A** prior to that date; unless the term of the Agreement is otherwise terminated or extended, as provided in Section 8."

3. Section 2 of the PSA, "Compensation," provides for the City to pay Professional a sum not to exceed Three Hundred Forty-Five Thousand Dollars (\$345,000.00). The Parties agree to amend

Section 2 of the PSA in order to increase the compensation amount to pay Professional for additional services. The first sentence of Section 2 of the PSA is amended to read as follows:

"City hereby agrees to pay Professional a sum not to exceed Three Hundred Forty-Five Thousand Dollars (\$345,000.00), notwithstanding any contrary indication that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

4. All other terms and conditions in the PSA shall remain in full force and effect to the extent they are not in conflict with this Amendment.
5. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.
6. **Contract Administration.** This Agreement shall be administered by Jeremiah Zillig ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

Notices. Any written notice to Professional shall be sent to:

Jonathan Pritt, Vice President
Sytech Solutions, Inc.
8930 Big Horn Blvd.
Elk Grove, CA 95758
Email Address (for Insurance Update Requests):
jpritt@sytechsolutions.com

Any written notice to City shall be sent to:

Jeremiah Zillig, Building Official
2729 Prospect Park Drive
Rancho Cordova, CA 95670

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA

SYTECH SOLUTIONS, INC.

Micah Runner, City Manager

Jonathan Pritt, Vice President

Date: _____

Date: _____

Attest:

Stacy Leitner, CMC, City Clerk

Date: _____

Approved as to Form:

Adam U. Lindgren, City Attorney

Date: _____

Time and Materials

<i>Client Name</i>	City of Rancho Cordova
<i>Client's Administrator</i>	Jeremiah Zillig, Building Official
<i>Project Name</i>	Document Management Services
<i>Begin Date</i>	January 6, 2023

Schedule of Costs Rate Sheet**Scanning Services**

<i>Item description</i>	<i>Units</i>	<i>Cost</i>
Courier Service	Instance	\$75.00
Document Preparation / Restoration / QC	Hours	\$19.50
Document Scanning	Images	\$0.065
Scanning - Large Format Drawings	Images	\$1.25
Indexing	Keystroke	\$0.007
IT Services	Hour	\$77.00

Please note that the City of Rancho Cordova can also utilize any of the services listed on any of SyTech's CMAS contracts. Furthermore, this contract may be renewed by mutual agreement of both parties on an annual bases. (The hourly prep rate will increase \$1.00/hour each year to coincide with California minimum wage increases).

1DocStop Records Management Solution

<i>Item description</i>	<i>Units</i>	<i>Cost</i>
1DocStop – Document Management System	Month (billed annually)	\$350.00
	Annual Cost	\$4,200.00

MEMORANDUM



ITEM 10.1.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Quoc Nham, Senior Civil Engineer
SUBJECT: **A RESOLUTION VACATING A PUBLIC UTILITY EASEMENT
PURSUANT TO THE PROVISIONS OF CHAPTER 3, PART 3 OF
PUBLIC STREETS, HIGHWAYS, AND SERVICE EASEMENTS
VACATION LAW COMMENCING AT SECTION 8320 OF THE
CALIFORNIA STREETS AND HIGHWAYS CODE (EASTON
RESEARCH PARK WEST)**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would vacate all those portions of land designated "Public Utility Easement (P.U.E.)" within Lot 3, Lot 4, Lot 6, Lot 7, and Lot 8 as shown on that certain Final Map entitled "Subdivision No. FM 2021-001-00 Easton Research Park West Large Lot Map", filed for record on December 13, 2021, in Book 434 of Maps, at Page 5, Sacramento County Records.

BACKGROUND

A lot line adjustment has been approved by the Planning Department that reconfigures the lots in the Easton Research Park West Large Lot Map. The private road and public utility easement shown on the map within the above-mentioned will be relocated. The Rancho Cordova Public Works Department and local public utilities have found no objection to the vacation of the P.U.E. as described and shown in Attachment 2.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact to the City's general fund.

ATTACHMENT(S)

1. Resolution
2. Exhibits A and B to the Resolution - Land Description

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, VACATING A PUBLIC UTILITY EASEMENT PURSUANT TO THE PROVISIONS OF CHAPTER 3, PART 3 OF PUBLIC STREETS, HIGHWAYS, AND SERVICE EASEMENTS VACATION LAW COMMENCING AT SECTION 8320 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE

WHEREAS, a hearing date was scheduled for a proposed resolution to vacate all those portions of land designated "Public Utility Easement (P.U.E.)" within Lot 3, Lot 4, Lot 6, Lot 7, and Lot 8 as shown on that certain Final Map entitled "Subdivision No. FM 2021-001-00 Easton Research Park West Large Lot Map", filed for record on December 13, 2021, in Book 434 of Maps, at Page 5, Sacramento County Records; and

WHEREAS, a notice of the hearing has been posted at City Hall at least two weeks in advance of the hearing; and

WHEREAS, notice of the date, time and place of hearing of the proposed vacation was published for at least two successive weeks prior to the hearing; and

WHEREAS, at least two weeks before the day set for the hearing, at least three notices of vacation were conspicuously posted along the easements to be vacated, not more than 300 feet apart; and

WHEREAS, the hearing described above has been conducted, and this Council, having heard and considered all oral, documentary and other evidence presented, hereby finds, determines and orders as follows:

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF RANCHO CORDOVA that the Council hereby finds as follows:

Pursuant to the provisions of Chapter 4, Part 4 of Public Streets, Highways, and Service Easements Vacation Law commencing at Section 8355 of the California Streets and Highways Code, the private road access and the public utility easement has been relocated, therefore, the easement as dedicated on the final map is no longer needed. The City of Rancho Cordova Department of Public Works has no objection to this vacation.

BE IT FURTHER RESOLVED AND ORDERED THAT

1. The public utility easement as described in Exhibit A and Exhibit B is hereby vacated.
2. The City Clerk of the City of Rancho Cordova shall cause a certified copy of this Resolution of Vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the office of the Recorder of the County of Sacramento.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of February 2023 by the following vote:

ITEM 10.1.

ATTACHMENT 1

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor

EXHIBIT 'A'
LAND DESCRIPTION

All those portions of land designated "Public Utility Easement (P.U.E.)" within Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, and Lot 8, as shown on that certain Final Map entitled "Subdivision No. FM 2021-001-00 Easton Research Park West Large Lot Map", filed for record on December 13, 2021, in Book 434 of Maps, at Page 5, Sacramento County Records, in the City of Rancho Cordova, County of Sacramento, State of California.

Containing 1.581 acres, more or less.

See Exhibit 'B', plat to accompany description, attached hereto and made a part hereof.

END OF DESCRIPTION

January 10, 2023

David J. Brent, PLS 9602



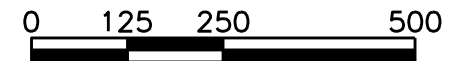
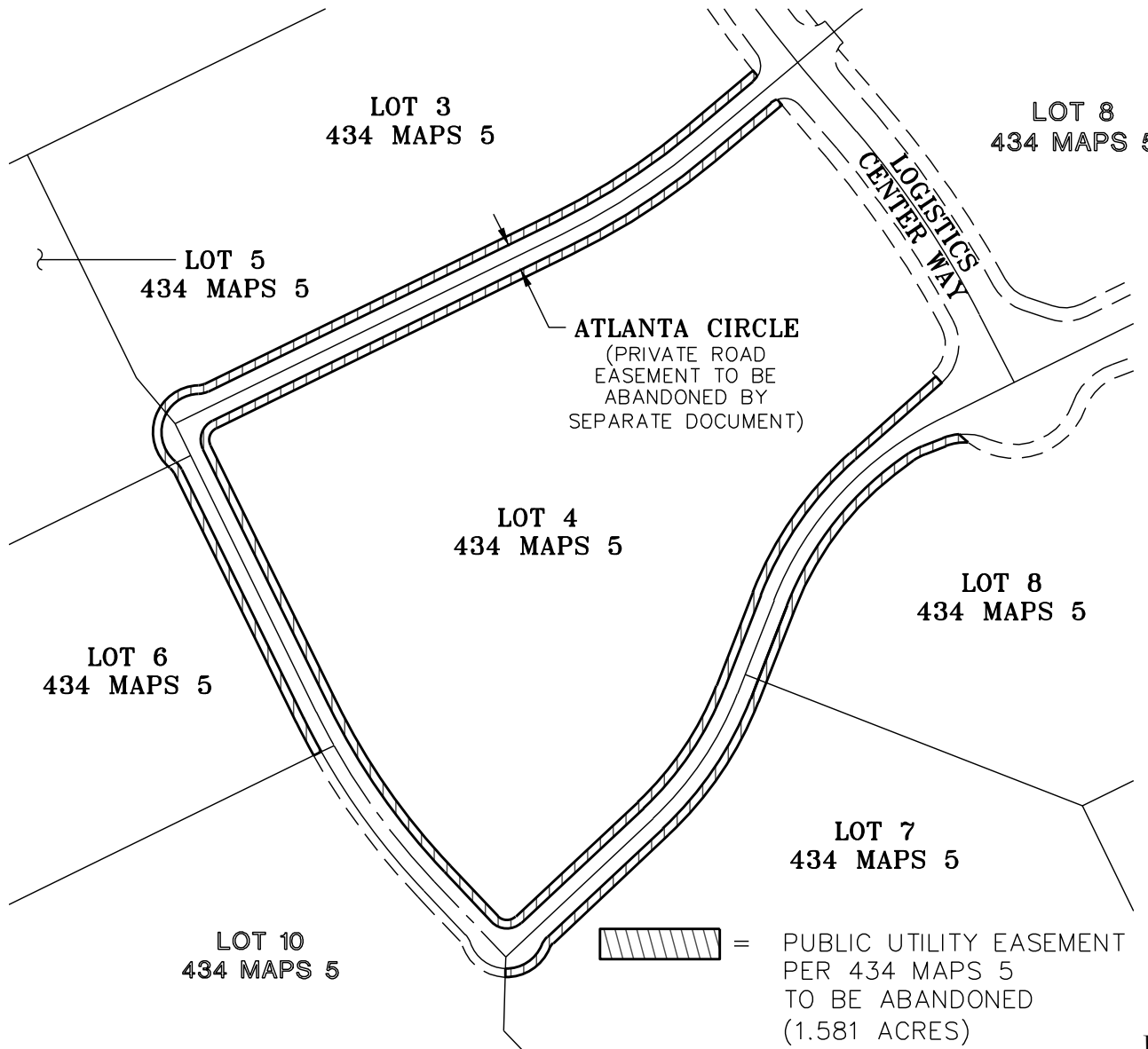
PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

EXHIBIT 'B'

PLAT TO ACCOMPANY
DESCRIPTION

RANCHO CORDOVA LOGISTICS CENTER
PUBLIC UTILITY EASEMENT
ABANDONEMENT

CITY OF RANCHO CORDOVA
COUNTY OF SACRAMENTO STATE OF CALIFORNIA



SCALE: 1" = 250'



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME

3301 C ST, BLDG. 100-B TEL 916.341.7760
SACRAMENTO, CA 95816 FAX 916.341.7767

JANUARY 10, 2023 4049.002 SHEET 1 OF 1

MEMORANDUM



ITEM 11.1.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Nicholas Sosa, Associate Planner
SUBJECT: **LOGISTICENTER AT RANCHO CORDOVA MAJOR DESIGN REVIEW -
PROJECT NO. PLND-1021-0015**

RECOMMENDATION

Continue to the March 6, 2023, City Council Meeting.

RESULT OF RECOMMENDED ACTION

This item will be continued to the March 6, 2023 City Council Meeting to allow Staff and the City's legal team to continue to address legal letters received for the proposed project as well as additional comments received at the February 6, 2023 City Council Meeting.

ATTACHMENT(S)

1. Law Offices of Gloria D. Smith Letter Dated 2.13.23
2. Miller Starr Regalia Letter Dated 2.17.23

The Law Offices of Gloria D. Smith
48 Rosemont Place
San Francisco, CA 94103
(415) 308-9124
gloria@gsmithlaw.com

February 13, 2023

By E-mail

CityClerk@cityofranchocordova.org.

Mayor Linda Budge
Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015)

Dear Mayor Budge, Honorable Council Members:

This letter clarifies Stone Creek Residents for Smart Growth's January 27, 2023 letter concerning the validity of the development agreement under which Dermody asserts the proposed warehouse project would be covered. To recap, the Government Code specifies that newly incorporated cities generally inherit development agreements negotiated by counties where the county entered into the agreement *before* the election for incorporation of the new city.¹ That was not the order of events here; instead, Sacramento County and Elliott Homes entered into the agreement on May 28, 2003 *after* the election for incorporation occurred on November 5, 2002. Because the chain of events conflicts with the statute, the inheritance provisions under the statute never applied. The Institute of Local Self Government, a nonprofit research arm of the League of California Cities, explains the threshold legal requirements:

"The development agreement law provides that cities generally inherit development agreements negotiated by counties for newly incorporated or newly annexed areas. See Cal. Gov't Code § 65865.3(a) (for incorporations, the effective date of the incorporation must be after January 1, 1987). The development agreement must meet the following requirements, however:

¹ Gov't Code § 65865.3(a) and (c).

- The application for the agreement must have been submitted before the first signature was placed on the petition for annexation or incorporation (or resolution initiating such proceedings);
- The agreement must have been entered into prior to the incorporation/annexation election (or prior to the date on which the conducting authority ordered the annexation); and
- The annexation is initiated by the city (or, if initiated by someone else, the city does not adopt written findings that the development agreement is injurious to the health, safety or welfare of city residents. See Cal. Gov't Code § 65865.3(c) and (d). The duration of such inherited development agreements is the duration of the agreement or eight years, whichever is shorter. See Cal. Gov't Code § 65865.3(a)."²

The Elliott Homes development agreement did not meet all of the above requirements, so Rancho Cordova did not inherit the County's agreement (If a development agreement was finalized after the incorporation of a new city, then the new city itself would be the proper governmental signatory in the first instance.).

Ignoring that the statute disallowed inheritance of the development agreement, in 2004, the City amended the agreement's duration to 15 years (presumably in accordance § 65865.3(a)). However, that amendment cannot save the agreement either because the longest statutorily allowed extension is limited to 15 years.³ The City's 2016 attempt to revert the duration of the development agreement to the original term of 20 years was inconsistent with the statute.⁴ So, even under the most expansive reading of the law, the agreement expired in 2018. Dermody must submit to the City an application for a conditional use permit if it intends to pursue its project.

THE LAW OFFICES OF GLORIA D. SMITH



Gloria D. Smith

² https://www.ca-ilg.org/sites/main/files/file-attachments/resources_FinalDevAgreement4-5-02.pdf

³ See Govt Code Section 65865.3(a). ("Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation.")

⁴ See Ordinance No. 6-2016.

DEVELOPMENT AGREEMENT MANUAL:

Collaboration in Pursuit of Community Interests



INSTITUTE *for* LOCAL
SELF GOVERNMENT

ABOUT THE INSTITUTE FOR LOCAL SELF GOVERNMENT

This publication is a special project of the Institute for Local Self Government, which is the nonprofit research arm of the League of California Cities. The Institute was founded in 1955 as an educational organization to promote and strengthen the processes of local self government. The Institute's mission is to serve as a source of independent research and information that supports and improves the development of public policy on behalf of California's communities and cities.

The Institute's work is concentrated in three areas:

- Land Use
- Fiscal Issues
- Public Confidence in Local Government

For more information about the Institute and its programs, please visit the Institute's website at www.ilsg.org.

ABOUT THE COMMUNITY LAND USE PROJECT

The Institute's work in the land use area is known as the Community Land Use Project. The goal of this effort is to assist local agencies in finding solutions to land and resource issues that appropriately balance private and public interests in community and property. The project focuses primarily on an area of the law known as "regulatory takings," but the project also addresses other issues that pose significant challenges for public agencies.

The Community Land Use Project is developing a number of resources—such as this publication—that are designed to help local officials implement their land use programs. The project is grateful for the generous support of the David and Lucile Packard Foundation and the League of California Cities.



INSTITUTE *for* LOCAL
SELF GOVERNMENT

DEVELOPMENT AGREEMENT MANUAL:

COLLABORATION IN PURSUIT OF COMMUNITY INTERESTS

Prepared by David J. Larsen, City Attorney, Loomis; Berding & Weil, LLP

*With Special Thanks to the Following Individuals
Who Contributed Their Time and Expertise to
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*All final decisions about the content and formatting of this report were
made by the Institute for Local Self Government.*

DEVELOPMENT AGREEMENT MANUAL: COLLABORATION IN PURSUIT OF COMMUNITY INTERESTS
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www.ilsg.org

THIS PUBLICATION IS NO SUBSTITUTE FOR LEGAL ADVICE

This publication provides an overview of development agreement practices and at times provides summaries of the law. Readers should note that attorneys can, and do, disagree about many of the issues addressed in this *Development Agreement Manual*. Moreover, proposals to change the land use regulatory process are frequently introduced in the state Legislature and new court decisions can alter the practices a public agency should follow. Accordingly:

- **Public officials** should always consult with agency counsel when confronted with specific situations related to land use laws;
- **Agency counsel** using this publication as a resource should always read and update the authorities cited to ensure that their advice reflects a full examination of the current and relevant authorities; and
- **Members of the public and project proponents** reading this publication should consult with an attorney knowledgeable in the fields of land use and real property development law.

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INSTITUTE *for* LOCAL
SELF GOVERNMENT

Spring, 2002

Dear Reader:

On behalf of the Institute's board of directors, we are pleased to be able to offer this resource to assist you in understanding issues relating to development agreements.

A key Institute goal is to make a difference for local agencies and the communities they serve. Your feedback and input is a vital part of our efforts to assess the Institute's value and impact:

- Did this publication help you? How? Did it make a difference in how you approached a local issue or policy relating to development agreements?
- How can the publication be improved? Did we leave anything out? Do you disagree with something we said?
- Do you have examples of the kinds of issues we discuss that we might be able to include in future updates of this publication? Are you interested in contributing to the Institute's programs in general?

To assist you in providing feedback, we have provided a feedback form at the back of this publication. Your feedback is also welcome through our website at www.ilsg.org.

Thank you in advance for your assistance.

Very truly yours,

JoAnne Speers
Executive Director

Jerry Patterson
President, Board of Directors

INTRODUCTION

WHAT ARE DEVELOPMENT AGREEMENTS?

Development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project.¹ Although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body through its general plan, and consistent with any applicable specific plan.²

Neither the applicant nor the public agency is required to enter into a development agreement. When they do, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the public agencies' ultimate approval. While a development agreement must advance the agencies' local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements.

The development agreement is essentially a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways. While a development agreement may be viewed as an alternative to the traditional development approval process, in practice it is commonly used in conjunction with it. It is not uncommon, for example, to see a project proponent apply for approval of a conditional use permit, zone change and development agreement for the same project.

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IN THIS MANUAL

As discussed in Chapter 2, both parties to the agreement receive benefits. In addition to the greater latitude afforded by the development agreement to advance local planning policies, the public agency has greater flexibility in imposing conditions and requirements on proposed projects,³ while the applicant is afforded greater assurance that once the project is

¹ See Cal. Gov't Code § 65864 and following.

² See Cal. Gov't Code § 65867.5.

³ See Cal. Gov't Code § 66000(b).

approved, it can be built.⁴ There may be disadvantages associated with development agreements as well (see Chapter 2).

Because development agreements afford greater latitude, local agencies may want to take steps to ensure that local land use objectives are not diminished through the use of development agreements (see Chapter 3). Giving adequate thought to how the parties conduct negotiations can improve an agency's chances of accomplishing its objectives, as well as ensuring that reasonable expectations of both parties are achieved (see Chapter 4). Finally, understanding the "nuts and bolts" of processing development agreements, and the terms and provisions that are typically included, will ensure that procedural requirements are met and legal interests protected (Chapter 5).

In short, this manual provides a practical overview of the development agreement process, including:

- The advantages and disadvantages of using development agreements;
- The role development agreements can play in achieving local agency land use planning objectives;
- Procedural issues related to development agreements;
- Substantive provisions in development agreements; and
- The art of negotiating development agreements.

This manual reflects the variety of experiences that California public agencies and project proponents have had with development agreements, and builds upon the groundbreaking work of the original *Development Agreement Manual* written by Daniel Curtin and published in 1980 (supplemented in 1985) by the League of California Cities.

⁴ See Cal. Gov't Code § 65865.4.

2

CHAPTER

THE ADVANTAGES AND DISADVANTAGES OF DEVELOPMENT AGREEMENTS

Development agreements have three defining characteristics:

- They allow greater latitude than other methods of approval to advance local land use policies in sometimes new and creative ways;
- They allow public agencies greater flexibility in imposing conditions and requirements on proposed projects; and
- They afford project proponents greater assurance that once approved, their projects can be built.

Although these characteristics can be advantageous, they can also present challenges. The purpose of this chapter is to discuss potential advantages and disadvantages of development agreements, from the perspective of both the public agency and project proponent.

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ADVANCING LAND USE POLICIES

Because development agreements are themselves ordinances, they may supersede existing land use regulations as long as they are consistent with the general plan and any applicable specific plan.⁵ As a result, they can afford the public agency and project proponent greater latitude concerning allowable land uses in a particular instance. However, there are potential advantages and disadvantages associated with having this flexibility.

⁵ See Cal. Gov't Code § 65867.5.

POTENTIAL ADVANTAGES: THE ABILITY TO BETTER IMPLEMENT PLANNING POLICIES

From a planning perspective, development agreements have been instrumental in allowing creative and award-winning land use projects because the agreements can facilitate projects that would not have been allowed under otherwise applicable zoning regulations. The approval of creative land use concepts — and the construction of resulting projects — have advanced the state of urban planning, and allowed public agencies to better combat the visual and aesthetic impacts of “cookie-cutter” development.

In a similar vein, there are instances in which literal compliance with zoning ordinance provisions can thwart promotion of general plan policies. For example, the general plan may encourage the existence of open space, whereas the applicable zoning district does not allow sufficient density to accommodate the clustering of residential units necessary to accommodate an open space component.

There may also be instances in which the legislative body wishes to promote unwritten policies, such as those involving growth management. As long as the project is consistent with the local planning policies formulated by the legislative body through its general plan, the development agreement can provide greater latitude to incorporate land use concepts and components that are tailored specifically to address particular community concerns.

In each of these cases, the ability to vary from strict adherence to otherwise applicable zoning provisions can help ensure that the public agency’s land use policies are being advanced, in sometimes new and innovative ways. These advantages are shared by the public agency and project proponent alike.

The following example shows how using a development agreement allows the parties to develop a unique land use project to advance the public agency’s land use policies creatively and responsibly through the give-and-take of negotiations, as both parties address their respective needs and desires.

ILLUSTRATION — SPORTS WORLD

Mr. Dee, a developer, wishes to construct a project that will attract people traveling through Grassland on the way to Yosemite. Mr. Dee's "Sports World" will have a combination of attractive components, including a virtual sports center with a simulated ski slope, fairway and rock climb; a gas station; restaurant; hotel; and air strip. If the project succeeds, it will generate substantial profits. Mr. Dee wishes to have his project approved in a manner that will allow him flexibility with respect to both land use and design, so that he can select from a variety of tenants and react to changing market conditions without having to obtain further city approvals. Although the general plan recites the need to attract tourists destined for Yosemite, the zoning ordinance does not allow the particular combination of uses Mr. Dee is proposing.

Cautiously optimistic, the Grassland city council understands that Grassland will benefit from the added sales tax. But the council's concerns are numerous, and include the concern that Mr. Dee may not have the experience to complete the project; that the project may not "pencil out" financially; and that it may not attract the anticipated number of tourists. Finally, the council doesn't know what the project is — what it will look like, what uses will be allowed, and what design standards and architectural controls will govern it. The city council is also concerned about the potential impact of additional traffic on the adjacent freeway overpass.

Given that the zoning ordinance does not allow the proposed project, and the fact that there are a number of council concerns, the parties decide to negotiate a development agreement. As negotiations begin, Mr. Dee initially advocates conceptual development and design standards, while Grassland insists on elevations showing the exact location and type of use for every project component. As the negotiations proceed, the parties approve four alternative plans, each of which will allow Mr. Dee to react to a different market, while also allowing city council to understand what the project is.

In addition, the parties agree that some of the allowable uses for portions of the project will be more generically defined (for example, office/commercial), so that Mr. Dee can select from a number of tenants without first having to obtain additional city approvals. Once a tenant is selected, however, plans and elevations for the site must be submitted to Grassland for architectural review.

In the end, the parties reach agreement on all of the outstanding issues. Planning staff confirms that the final agreement is consistent with and advances the aims of the general plan and associated land use policies, and the project is approved and constructed.

While few things in life go as smoothly as the hypothetical approval of Sports World (above), the process of negotiating development agreements can allow the development of new and creative concepts, address associated issues and concerns unique to a particular project, and ensure adherence to local land use policies in conformance with the general plan.

POTENTIAL DISADVANTAGES: MAY PROMOTE BAD PLANNING

The latitude afforded the parties through use of a development agreement may also have potential disadvantages. For example, the agency's staff and legislative body may become convinced that, in exchange for the significant sales tax revenue the agency is likely to receive from a particular project, or in consideration of the fact that the project proponent is willing to construct a new city park or other significant public amenity, the agency should agree to compromise its planning standards in a manner that could reduce the quality of life in the community. The pressure to compromise may be especially great in the case of a "friendly developer" who has a popular presence in the community.

From the project proponent's perspective, it is possible that the legislative body may decide to disallow uses that would otherwise be allowed, and which are appropriate from a conventional planning perspective.

The suggestions that appear in this manual are intended to help avoid misusing development agreements. They are based on the premise that from the outset, the planning policies and objectives that have been embraced by the community through adoption of the general plan, and those included in any applicable specific plan, should be an integral part of the discussions and negotiations between the parties to a development agreement.

By identifying applicable planning policies early on, and continuing to use them as yardsticks in determining what land uses are appropriate, the parties should be able to avoid unacceptable compromises when negotiating development agreements.

IMPOSING CONDITIONS

Development agreements provide public agencies greater flexibility in imposing requirements on proposed development, such as development conditions, exactions and fees, because constraints and uncertainties that affect a local agency's ability to unilaterally impose such requirements do not apply to mutually agreed upon development agreement provisions.⁶

⁶ See Cal. Gov't Code § 66000(b) (excluding "fees collected under development agreements" from the type of fee covered under the Mitigation Fee Act).

POTENTIAL ADVANTAGES: MORE ENCOMPASSING DEVELOPER REQUIREMENTS MAY BE ENFORCED

Public agencies face the following types of legal constraints and uncertainties that directly affect their ability to regulate development. Such constraints and uncertainties may be overcome, however, through the use of development agreements.

Voter Initiatives. During the past several decades, public agencies have been subjected to a number of fiscal setbacks that have impeded their ability to meet the service and infrastructure needs of their communities. A number of voter initiatives have limited public agencies' revenue raising authority, and questions associated with these initiatives have created legal uncertainties.

ERAF Shift. In 1992, in reaction to a serious deficit, the state enacted legislation that annually shifts some of the financial responsibility for funding education, pursuant to Proposition 98, to local public agencies. Through the intervening the years, the Educational Revenue Augmentation Fund (ERAF) has deprived local agencies of more than \$30 billion.

Since the ERAF shift and passage of initiative measures limiting public agencies' general revenue sources, agencies have increasingly required project proponents to bear the costs to the community associated with development of their projects. Many agencies have adopted development impact fees, for example, that are designed to require project proponents to pay the costs of infrastructure, facilities and public services required to service their projects.

STATUTORY AND CONSTITUTIONAL RESTRICTIONS

Mitigation Fee Act. Commonly referred to as Assembly Bill (AB) 1600, the Mitigation Fee Act was enacted in 1987.⁷ It closely regulates the adoption, levy and collection of development fees, including project-specific fees, imposed by local agencies. The act requires the agency to identify the purpose and use of the fee, and to explain why there is a reasonable relationship between the fee and the development.⁸ Fees may not exceed the estimated reasonable cost of providing the service for which the fee is collected.⁹ These requirements, among other things, have restricted the reach of development impact fees.

⁷ See Cal. Gov't Code § 66000 and following.

⁸ See Cal. Gov't Code § 66001.

⁹ See Cal. Gov't Code § 66005.

School Facility Fees. Local public agencies historically have been responsible for financing schools. In 1998, however, Senate Bill (SB) 50 significantly changed the extent to which agencies can require developers to contribute to the cost of building new schools.¹⁰ SB 50 sets maximum amounts on such fees.¹¹ It also prohibits agencies from imposing other conditions on development to ensure the existence of adequate school facilities.¹²

Each of these constraints and uncertainties limits a local agency's ability to adequately condition new development in a manner that will cover the cost of associated infrastructure, facilities and public services.¹³

Regulatory Takings. The term "regulatory takings" derives from the Takings Clause of the Fifth Amendment to the United States Constitution, which states: "... nor shall private property be taken for public use, without just compensation."¹⁴

A "taking" is any confiscation of private property by a public agency. A "regulatory taking" is an indirect confiscation of private property through government regulation. If a court finds that a challenged regulation constitutes a taking, the public agency must compensate the owner of the property.

In recent years, takings litigation (and the threat of such litigation) has become a significant factor in land use decision-making. Increasingly, project proponents have invoked the Takings Clause in an effort to persuade public agencies to reduce their efforts to require developers to pay various costs associated with infrastructure and public services. Moreover, the courts have displayed a greater inclination to second-guess public officials' decisions—a departure from the traditional deference the courts have afforded decisions of local officials in the past.

The expanding scope of what constitutes a compensable taking is of concern to local agencies because of the potential for being assessed large monetary judgments in connection with the imposition of development requirements.

¹⁰ See Cal. Gov't Code § 65995(a).

¹¹ See Cal. Gov't Code § 65995(b).

¹² See Cal. Gov't Code § 65996(b).

¹³ An overview of SB 50 is available from the League of California Cities. To obtain a copy, League members may contact the League and request "Strauss Opinion on SB 50, January 1999."

¹⁴ To the same effect is article 1, section 19 of the California Constitution: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid"

AVOIDING CONSTRAINTS AND UNCERTAINTIES

A public agency can avoid the types of constraints and uncertainties described above by entering into development agreements, since the project proponents agree to fees and requirements. Once the agreement is executed, the project proponent has generally waived his or her right to challenge the fairness or appropriateness of a particular requirement.

For example, the local agency can ask that the project proponent agree to finance public facilities and improvements without the specter of a regulatory takings claim. Similarly, the local agency may ask the project proponent to construct a new school without fear that school facility-fee limitations will be invoked. The project proponent must agree to such requirements, of course, before they may become enforceable.

The local agency may also bargain for completion of facilities and improvements at an earlier stage in the development process. This can result in needed infrastructure and facilities being put in place prior to or concurrently with the development, reducing the development’s impact on existing facilities or services. Similarly, the project proponent may agree to pay additional fees to protect the agency and existing residents from any budgetary impacts associated with the development.

For facilities and infrastructure that are funded by multiple projects, the development agreement process can provide a mechanism to ensure that each project proponent pays its fair share in a timely manner.

The project-specificity of the development agreement process offers the public agency the opportunity to design more tailored implementation programs for its planning policies and objectives as they relate to the proposed project. The process of negotiating the agreement can help the agency identify and address issues relating to the project before the agency provides final approval. The agency may also require that the agreement include provisions dealing with identifiable contingencies related to the proposed project.

Finally, the fact that the development agreement is recorded provides a convenient mechanism for binding future owners to the requirements and obligations created by the agreement.¹⁵

¹⁵ See Cal. Gov’t Code § 65868.5 (“... the burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement”).

LEGISLATIVE HISTORY OF DEVELOPMENT AGREEMENT LAW

The Development Agreement Law was enacted in 1979, in response to the *Avco Community Developers, Inc. v. South Coast Regional Commission* decision. See 17 Cal. 3d 785 (1976).

The *Avco* case involved a large development in Orange County, some of which was in the coastal zone. Under the newly enacted Coastal Act, the developer had to obtain a permit from the Coastal Commission unless it had obtained a building permit. The developer had secured a final subdivision map and a grading permit, but did not have a building permit. The developer had already spent a great deal of money on the site.

The court ruled that the developer’s project was indeed subject to the Coastal Act’s additional requirements and restrictions, reaffirming the rule that property owners acquire a vested right to complete construction only after they have performed substantial work and incurred substantial liabilities in good faith reliance on a permit issued by regulatory authorities. Only at that point can a project be completed free of new restrictions.

The result in *Avco* created great consternation in the development community, which lobbied the Legislature to create a mechanism that would allow developers to know earlier on in the process what requirements would apply to their projects. The development agreement law is a result of this effort.

FINANCIAL INCENTIVES MAY TRIGGER PREVAILING WAGE REQUIREMENT

Effective January 1, 2002, many development projects that involve loans, grants or other forms of assistance from local agencies are classified as “public works” projects.¹⁶ As such, they fall under state requirements for payment of “prevailing wages.”¹⁷ These requirements establish minimum wage levels for public works projects that vary by location.¹⁸ Application of prevailing wage requirements may lead to higher labor costs for development projects that receive certain forms of financial support or incentives from local agencies. Prevailing wages now may apply to otherwise private projects, where a public agency:

- Pays money or its equivalent to or on behalf of a developer¹⁹;
- Performs construction work in execution of the project;²⁰
- Transfers assets at less than fair market value;²¹
- Waives or forgives fees, costs, rents, insurance or bond premiums, loans, or interest rates;²²
- Makes available money to be repaid on a contingent basis;²³ or
- Grants credits applied against repayment obligations.²⁴

Reimbursing a developer for costs that would normally be borne by the public does not trigger the prevailing wage requirement, nor does a subsidy that is de minimis in the context of the project.²⁵

**POTENTIAL DISADVANTAGES: UNREALISTIC
EXPECTATIONS MAY MAKE PROJECT INFEASIBLE**

From the project proponent’s viewpoint, local agencies may expect more encompassing project requirements than are financially feasible. The myriad of issues developers face, including land availability, financing, market considerations and federal, state and local regulatory requirements can make it difficult to propose financially feasible development projects.

Against this back drop, some developers have abandoned development agreements altogether. This avoids the risk of discovering after months of negotiations that the local agency expects the developer to construct an

¹⁶ Cal. Lab. Code § 1720(b).

¹⁷ Cal. Lab. Code §§ 1770; 1771.

¹⁸ Cal. Lab. Code § 1771.

¹⁹ Cal. Lab. Code § 1720(b).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Cal. Lab. Code § 1720(c).

expensive public amenity, such as a school or park, in consideration of the benefits the developer will receive from a development agreement.

As further discussed in Chapter 4, one way of avoiding this type of problem is to discuss the parties' expectations at the outset, as a prelude to beginning negotiations. That allows each party to assess early on whether a development agreement will meet each party's needs.

ASSURING PROJECT CAN BE BUILT

One of the challenges project proponents face in the usual regulatory process is that the project must meet the regulatory standards in effect at each stage of the development process. This can result in a proposed project being subject to new regulations even after it has received final approval, and even if the new regulations preclude or prohibit construction of some or all of the project.

As a result, it can be difficult for a project proponent to know at the outset what criteria the project must meet. It is not until the proponent's right to complete the project has "vested," that he or she has the right to build the project without concern that new regulations may apply.

Unforeseen regulatory changes (including those adopted by the voters through the initiative process) can add time and expense to a proposed project. Moreover, a proponent of a large project must typically invest

WHEN DOES ONE ACQUIRE A "VESTED" RIGHT TO PROCEED WITH DEVELOPMENT, FREE FROM ADDITIONAL REGULATORY REQUIREMENTS?

Ordinarily, a project proponent acquires a vested right to complete construction when the proponent has:

- Obtained all permits necessary for the proposed structure;
- Performed substantial work in good faith reliance upon those approvals; and
- Incurred substantial liabilities in good faith reliance upon those approvals. The proponent must, of course, complete the work in accordance with the terms of the permit.²⁶

A project proponent cannot acquire a vested right under an invalid building permit, even if substantial expenditures have been made in good faith.²⁶ The rights that vest through reliance on the building or other permit cannot be greater than those specifically granted by the permit itself.²⁶ For example, perfection of a vested right for one phase of a multiphase project does not create a vested right to build subsequent phases.

substantial amounts of time and money in the project before he or she receives "vested rights" to complete the project as approved.

²⁶ *City of San Jose v. State of California*, 45 Cal. App. 4th 1802, 53 Cal. Rptr. 2d 521 (6th Dist. 1996) *rev. denied* (1996).

On the other hand, a project proponent who is a party to a development agreement receives “vested rights” to complete the project as approved. This occurs immediately upon execution of the agreement, by virtue of the fact that a development agreement “freezes” applicable local land use regulations with respect to the proposed project.²⁷

POTENTIAL ADVANTAGES: FEWER SURPRISES AFTER PROJECT APPROVAL

From a project proponent’s perspective, the added certainty associated with receiving “vested rights” to construct a proposed project without concern that new regulations may apply can be invaluable. It may be especially important to a project proponent worried about a potential ballot measure or a change in the governing body majority that could adversely affect the project. While development agreements are subject to voter referenda,²⁸ an opponent would have to file his or her submittal within 30 days after final approval of the development agreement in order to preserve the right to put the approval of the agreement on the ballot.²⁹ Once the 30-day period is over, the project proponent can safely assume that the project will not be affected by future ballot measures.

There are limits to the degree of assurance that a public agency can offer. For example, additional conditions may be imposed on the project if further environmental analysis is needed under the California Environmental Quality Act (CEQA). Also, a development agreement cannot prevent the application of state or federal regulations, as further discussed below.³⁰

Another advantage from the project proponent’s perspective is limiting the potential for regulatory change. This can be helpful when the proponent seeks financing. It can also be reassuring with respect to large projects that have significant upfront costs.

POTENTIAL DISADVANTAGES: RULES OF ENGAGEMENT ARE LOCKED IN

A development agreement can limit the public agency’s ability to respond to a changing regulatory environment, precisely because it locks in the

²⁷ See Cal. Gov’t Code § 65865.4.

²⁸ See Cal. Gov’t Code § 65867.5.

²⁹ See Cal. Elect Code § 9237.

³⁰ See Cal. Gov’t Code § 65869.5.

regulatory requirements in effect at the time the agreement is approved. If the agency's planning regulations are in need of review or updating, the agency may be subject to criticism if the conditions imposed by the agreement do not sufficiently protect the community's interests. In the absence of a development agreement, and should the need arise, the agency retains the prerogative to change the rules relating to the project, even if that change makes the intended use unlawful.

A development agreement also places a premium on an agency being able at the outset to identify all of the issues presented by a project. Since changes to the agreement require mutual assent, it may be difficult to add conditions or requirements later, should the agency identify the need to do so after the agreement is entered into.

From the proponent's perspective, the project's obligations are also locked in by the agreement. Some elements of market changes—including changes in the project's economics—may not be reflected in the agreement. This can put a premium on a project proponent's ability to anticipate areas of potential change and then negotiate the flexibility to respond to those changes (for example, by negotiating a range of future uses, based on what the market will bear at the time of build out).

Another possible disadvantage is the degree of protection from regulatory change, which is limited to local regulations. The development agreement law specifically provides that a development agreement must be modified if necessary to comply with subsequently enacted state or federal law.³¹ The new state or federal law may prevent or preclude compliance with the provisions of the development agreement. The issue for the project proponent is whether some protection from regulatory change is better than none at all.

³¹ See Cal. Gov't Code § 65869.5.

COMPARISON OF TENTATIVE MAPS, VESTING TENTATIVE MAPS AND DEVELOPMENT AGREEMENTS			
Development agreements are one planning tool. This chart provides a side-by-side comparison of how development agreements compare with tentative subdivision maps and vesting tentative maps.			
	Tentative Maps	Vesting Tentative Maps	Development Agreements
Description	Tentative Subdivision Map (or Tentative Map) – The project proponent’s initial proposal for subdividing land, which is the local agency’s main opportunity to set conditions on the proposed subdivision.	The point in time when a project proponent has the right to proceed without being subject to changes in land use regulations, typically when the last permit necessary for construction of a project (usually a building permit) has been issued and substantial expenditures have been incurred in reliance on the permit. The concept of vested rights is one of the reasons it is important that concerned citizens make their views known as early as possible in the land use decision making process.	A legislatively-approved contract between a jurisdiction and a person having legal or equitable interest in real property within the jurisdiction (California Government Code Section 65865 and following) that typically "freezes" certain rules, regulations, and policies applicable to a project for a specified period of time, usually in exchange for certain concessions by the project proponent.
Application of Conflicting Local Rules in Future	Yes	Only if necessary to prevent situation dangerous to health and safety	Depends on language in agreement
When Requirements Are Locked In/Not Subject to Change	No vested right even at the final map stage Police power requirements can be changed at each stage of the permitting process Vested right conferred when building permits issued and substantial work completed in reliance on those permits	When application is "complete"	At execution of agreement, unless agreement provides otherwise
Fees and Dedications	Subject to statutory and constitutional restrictions	Subject to statutory and constitutional restrictions	Subject to mutual agreement
Phasing	Allowed	Allowed	Allowed
Effect on Other Agencies’ Regulatory Prerogatives	Does not limit	Does not limit	Does not limit
Local Agency Procedures	Agency must adopt	Local agencies may adopt procedures; otherwise, Map Act governs	Local agencies must adopt procedures upon request of applicant
Processing	Mandatory — Local agencies must accept application and process it within statutory time frames	Mandatory — Local agencies must accept application and process it within statutory time frames	Discretionary — Local agencies may chose to use or not
Duration	Specified by statute, which includes both automatic and discretionary extensions	Specified by statute, which includes both automatic and discretionary extensions	Annual review required. County development agreements are time-limited if land is annexed or incorporated (Government Code section 65865.3)
Voter Review	No — approval is an adjudicatory act not subject to referenda	No — approval is an adjudicatory act not subject to referenda	Yes — approval is a legislative act subject to referenda
Time Limit for Challenging	90 day statute of limitations	90 day statute of limitations	90 day statute of limitations
Governing Statutes	Government Code sections 66410 to 66499.37	Government Code sections 66498.1 to 66498.9	Government Code sections 65864 to 65869.5

SUMMARY

This chapter has examined the advantages of the three defining characteristics of development agreements—greater regulatory latitude, flexibility and assurance for project proponents. But these characteristics can also present obstacles for the parties negotiating a development agreement.

Some developers may continue avoiding the use of development agreements because of the potential for expensive project requirements. Some local agency staff may avoid development agreements because of the limitations that development agreements impose on an agency's ability to respond to a changing regulatory environment. Nevertheless, the latitude afforded by development agreements to advance local agencies' planning objectives--in sometimes new and innovative ways--makes the development agreement a useful and viable tool in service to the community in a number of different applications.

For both parties, a development agreement can involve a great deal of time and energy to negotiate and implement. Accordingly, it is important at the outset to carefully evaluate the advantages and disadvantages of using a development agreement in each specific instance.

ACHIEVING LAND USE PLANNING OBJECTIVES THROUGH DEVELOPMENT AGREEMENTS

3 CHAPTER

Development agreements can be used for a wide range of projects, from large mixed-use developments to smaller projects. Moreover, the scope of a development agreement can vary according to the needs of the project in question. Although a development agreement can be comprehensive, detailing every aspect of the project, it can also focus on particular aspects of a project.

This chapter discusses the role that development agreements can play in a local agency's overall planning process. Fundamentally, development agreements are one tool in the local agency's toolbox for achieving the community's long-term planning and development goals.

THE IMPORTANCE OF COMPREHENSIVE PLANNING

In authorizing the use of development agreements, the Legislature emphasized that development agreements are intended to serve as a tool to *strengthen* a community's commitment to comprehensive land use planning.³² The concept behind the use of development agreements is to encourage communities to think ahead, in a comprehensive manner, about the impacts of development within their jurisdiction and the steps necessary to make that development a win-win proposition for both the project proponents and the community.

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³² See Cal. Gov't Code § 65864(a) ("The Legislature finds and declares that: (a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and *discourage investment in and commitment to comprehensive planning* which would make maximum efficient utilization of resources at the least economic cost to the public.") (emphasis added).

**WHAT DOES A
DEVELOPMENT
AGREEMENT
COVER?**

- Permitted uses of the property;
- Density or intensity of use;
- Maximum height and size of proposed buildings;
- Provisions for reservation or dedication of land for public purposes;
- Terms and conditions relating to financing of necessary public improvements, as well as provisions for subsequent reimbursement for that financing, as appropriate;
- Timeframes for commencement and completion of construction, or any phases of construction;
- Subsequent discretionary approval provisions, as long as those approvals do not prevent development of the project as described in the agreement; and
- The duration of the agreement.

A development agreement generally allows a project proponent to proceed with a project that meets the “policies, rules and regulations” in effect at the time the development agreement is approved.³³ A development agreement may also supercede an agency’s existing policies, rules and regulations, as long as the project is consistent with the general plan and any applicable specific plan.³⁴

**THE ROLE OF PLANNING POLICIES IN THE
NEGOTIATION PROCESS**

A helpful starting point is having well-understood planning regulations that reflect the community’s current and anticipated needs. Such policies, when adhered to, facilitate the negotiation process, ensuring that a proposed development agreement reflects the local governing body’s policies. This approach can also address a source of decisionmaker discomfort with the development agreement process, because even though the governing body ultimately approves a development agreement, it also needs a mechanism to provide direction to the negotiation process. Planning policies meet this need.

Typically in a negotiation process, decisionmakers provide their negotiators with parameters on key bargaining issues. It is important that the parameters remain confidential, so the other side does not know how much leeway the negotiators have.

Confidentiality is difficult in the context of development agreement negotiations because the state’s open meeting laws³⁵ do not generally allow an exception for public agency negotiators on development agreements to receive direction from the governing body. There may be aspects of a development agreement—for example, the price and terms of payment for acquisition of property—that can be discussed in closed session. However, only those issues may be discussed in closed session—not the development agreement in general.

The agency’s planning policies, therefore, may serve as the negotiators’ key source of direction in this circumstance. In addition, a local agency may want to consider directing its staff to adopt a different type of negotiating style, where identification of “interests” replaces the need to establish outer

³³ See Cal. Gov’t Code § 65864(b) (“The Legislature finds and declares that: ... (b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”) (emphasis added). See also Cal. Gov’t Code § 65866.

³⁴ See Cal. Gov’t Code § 65867.5.

³⁵ See generally Cal. Gov’t Code § 54950 and following (The Ralph M. Brown Act).

“positions” or parameters (see discussion in Chapter 4). If an agency uses an interest-based negotiating strategy, there are fewer strategic disadvantages associated with a governing body’s trying to provide direction in open session.

Well-conceived and up-to-date planning policies can also assist local agencies to avoid having to ask the staff to negotiate in a vacuum, with little or no immediate direction or feedback from decisionmakers. When the agreement is before the legislative body for final approval, it may be difficult for the body to modify aspects of the agreement without, in effect, renegotiating the agreement from the dais to change the terms that the staff negotiated.

DEVELOPMENT AGREEMENTS AND ANNEXATIONS/INCORPORATIONS

The development agreement law provides that cities generally inherit development agreements negotiated by counties for newly incorporated or newly annexed areas. *See* Cal. Gov’t Code § 65865.3(a) (for incorporations, the effective date of the incorporation must be after January 1, 1987). The development agreement must meet the following requirements, however:

- The application for the agreement must have been submitted before the first signature was placed on the petition for annexation or incorporation (or resolution initiating such proceedings);
- The agreement must have been entered into prior to the incorporation/annexation election (or prior to the date on which the conducting authority ordered the annexation); and
- The annexation is initiated by the city (or, if initiated by someone else, the city does not adopt written findings that the development agreement is injurious to the health, safety or welfare of city residents. *See* Cal. Gov’t Code § 65865.3(c) and (d).

The duration of such inherited development agreements is the duration of the agreement or eight years, whichever is shorter. *See* Cal. Gov’t Code § 65865.3(a).

The city may modify or suspend the development agreement’s provisions if the city determines that failure to do so would place the residents of the territory subject to the development agreement (or the residents of the city in general — or both) in a condition dangerous to their health or safety (or both). *See* Cal. Gov’t Code § 65865.3(a).

However, the development agreement law also authorizes cities to enter into development agreements for unincorporated territory within their sphere of influence. *See* Cal. Gov’t Code § 65865(b). The agreement does not become operative until the annexation occurs. *See* Cal. Gov’t Code § 65865(b). The timeframe for the annexation must be specified in the agreement and the annexation must occur within that timeframe. *See* Cal. Gov’t Code § 65865(b). Extensions are possible, however. *See* Cal. Gov’t Code § 65865(b).

**DEVELOPMENT
AGREEMENTS AND
TRANSIT**

Development agreements may be used to implement demonstration programs that test the effectiveness of increasing the density of residential development in close proximity to mass transit stations.³⁶ Local agencies may also require developers to enter into development agreements to implement density-bonus programs in transit village plans³⁷ or within a half-mile radius of mass transit stations.³⁸

**PLANNING POLICIES AS A MECHANISM FOR DEFINING
PROJECT PROPONENT EXPECTATIONS**

An agency's planning documents, including its local development agreement procedures, can provide an important source of guidance for project proponents going into negotiations. By stating in the procedures that the local agency is committed to using development agreements as a tool to promote the community's needs, the agency makes clear that it expects to receive greater community benefits than it could otherwise achieve through the land use regulatory process. This level of understanding can be helpful in setting the proper tone, so both parties have realistic expectations going into the negotiations.

Such an approach also may be helpful in responding to community concerns that the community has not received adequate benefits in the past from development agreements. These concerns may arise, especially when the project proponent has an ongoing relationship with the public agency.

USES OF DEVELOPMENT AGREEMENTS

Local government agencies have successfully used development agreements to facilitate:

- School, park and other facility funding;
- Affordable housing projects;
- Large-scale mixed use projects; and
- Multi-phase commercial projects.

Development agreements can also be a vehicle for addressing concerns among developers about perceived adverse impacts of neighboring projects.

SUMMARY

Used judiciously, development agreements are a useful tool for achieving an agency's land use planning objectives. Well-articulated planning policies

³⁶ Cal. Gov't Code § 14045.

³⁷ Cal. Gov't Code §§ 65460.10, 65460.2.

³⁸ Cal. Gov't Code § 65913.5

may also provide important policy direction to staff in negotiating such agreements.

THE NUTS AND BOLTS OF PROCESSING DEVELOPMENT AGREEMENTS

From a local agency standpoint, the development agreement process begins with the local agency's procedures for development agreements. The development agreement law contemplates the adoption of such procedures by local government agencies.³⁹ If there are none, some must be adopted upon the request of an applicant.⁴⁰ Sample procedures are available online at www.ilsg.org/devtagmt and typically include the following:

- [illegible]

³⁹ See Cal. Gov't Code § 65865(b) ("Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements ...").

⁴⁰ See Cal. Gov't Code § 65865(b).

WHO MAY INITIATE THE DEVELOPMENT AGREEMENT PROCESS?

An owner (with legal or equitable title) must apply in accordance with the local agency's procedures. See Cal. Gov't Code § 65865(b).

See also National Parks and Conservation Assn v. County of Riverside, 42 Cal. App. 4th 1505 (1996).

Such procedures may be adopted by ordinance or resolution.⁴¹ The development agreement law allows local agencies to recover the direct costs associated with adopting procedures for the agencies' consideration of development agreements.⁴²

This chapter discusses procedures and issues an agency may include in its development agreement procedures resolution or ordinance, as well as the general steps in the process of approving a development agreement.

PURPOSE/FINDINGS

The agency's development agreement procedures provide an opportunity for the local agency to state its goal for considering development agreement requests, which is "...to promote the community's needs and receive greater community benefits than otherwise can be achieved through the land use regulatory process." A goal statement similar to this example can be helpful in setting the tone for negotiations, so that both parties have realistic expectations going into the negotiations.

It is also helpful to refer to the development agreement statute, California Government Code section 65864 and following.

APPLICATION PROCESS

ORDINANCE OR RESOLUTION?

Development agreements are authorized both ways: by ordinance and resolution. Some public agency attorneys recommend resolutions as the more flexible form of authorization.

An application form specifying the type of information an agency needs to process the development agreement request is an efficient way of ensuring that the agency receives all of the information it needs in a timely manner. Some development procedures authorize the agency's planning director to develop a form application for development agreements. A sample form is also available online at www.ilsg.org/devtagmt.

It can also be helpful for an agency's development agreement procedures to authorize the local agency's attorney to develop a form agreement. Having a readily available form agreement saves staff time in reviewing development agreements; it also provides

⁴¹ See Cal. Gov't Code § 65865(b).

⁴² See Cal. Gov't Code § 65865(d).

greater assurance that the agreement will cover all of the agency's needs. Chapter 6 discusses the content of development agreements. Sample forms are available online at www.ilsg.org/devtagmt.

Some public agencies charge fees to process applications. A local agency's development agreement procedures can specify those fees or cross reference a fee schedule that includes this particular type of fee.⁴³

The local agency will also need to ensure that the environmental analysis requirements under the California Environmental Quality Act (CEQA) have been satisfied.⁴⁴

PUBLIC HEARINGS AND NOTICE

Another important aspect of development agreements is the role of public input. The development agreement law requires a noticed public hearing by both the planning agency and by the local agency's governing body before a development agreement is approved.⁴⁵

DEVELOPMENT AGREEMENTS AND PUBLIC INPUT

Both the project proponent and the local agency have an interest in satisfying community concerns with respect to a development agreement, insofar as development agreements are subject to repeal by voter referendum.⁴⁶ In fact, a development agreement cannot legally take effect until after the 30-day period for such a referendum expires.⁴⁷

There is also a 90-day statute of limitations to challenge the adoption or amendments of any development agreement approved after January 1, 1996.⁴⁸

PROCESSING DEVELOPMENT AGREEMENTS WITH OTHER APPROVALS

Development agreements may be processed with other land use approvals for the same project, such as a conditional use permit or subdivision map, in which case the parties should consider whether it is advantageous to seek simultaneous approvals, or have one approval follow another.

⁴³ See generally Cal. Gov't Code § 66000(b) (excluding "fees collected under development agreements" from the type of fee covered under the Mitigation Fee Act) and following.

⁴⁴ See generally Cal. Pub. Res. Code § 21000 and following.

⁴⁵ See Cal. Gov't Code § 65867.

⁴⁶ See Cal. Gov't Code § 65867.5.

⁴⁷ See Cal. Elect. Code § 9141; *Referendum Committee v. City of Hermosa Beach*, 184 Cal. App. 3d 152 (1986); *Midway Orchards v. County of Butte*, 220 Cal. App. 3d 765 (1990).

⁴⁸ See Cal. Gov't Code § 65009.

As a practical matter, though, it may be advisable to include stakeholders (interested parties such as community groups, business leaders and others interested in the community's development) in the development agreement process. While it may not be practical to allow stakeholders to attend negotiations, it may be possible to consult with them ahead of time, or perhaps

on a
“meet
and
confer”
basis as
negotiations
proceed.

As the
following
example
illustrates,
the
process
of
negotiating
a
development
agreement
is
susceptible
to
“community

backlash” in instances when community members find out after the fact, that public agency staff has agreed to recommend what they perceive as controversial concessions.

ILLUSTRATION — TAXCO

Destination City is looking for a way to increase its general fund. Taxco is a large retail outlet that generates more than \$500,000 worth of sales tax revenue each year for other cities in which it is located. Taxco plans to build a store in the vicinity.

Public agency senior staff meet with Taxco senior staff to discuss the benefits of locating in Destination City. Aware that a neighboring city would also like a Taxco retail outlet, these meetings are kept confidential. Senior staff suggest ways that Destination City may be able to write down land costs, waive development fees and otherwise provide incentives for Taxco to locate in their city. Eighteen months later, a deal is struck and the terms are commemorated in a development agreement, which is to be reviewed by the planning commission and approved by city council.

At this point, Bill Chamber, president of the Downtown Merchants Association, sees the public hearing notice and learns for the first time that the city is considering agreeing to a variety of incentives to entice Taxco to locate in Destination City. Mr. Chamber calls a meeting of the merchants.

During the meeting, merchants express their concerns that the city should not entice Taxco to locate in the city; it is not fair for the city to agree to monetary incentives not offered to other businesses; the city ought to be concerned about the very real threat that Taxco will run other merchants out of town; and the city should focus on business retention rather than attracting new businesses. The group decides to formally oppose approval of the development agreement. They also discuss initiating a recall of the entire city council, for secretly acting against the business community's interests. Unlike the Sports World illustration, these parties do not live happily ever after.

Meeting with stakeholders ahead of time to discuss possible actions, such as attracting a large retail outlet, allows legitimate issues to be aired before serious negotiations begin. After some evaluation, stakeholders may decide their issues can be resolved, or the agency may decide it should re-evaluate its priorities. In the case of the merchants in this illustration, had they been given the opportunity to meet with the agency to learn about the experiences of other cities, they might have concluded that attracting Taxco would actually help business retention.

Meeting and conferring with stakeholders during the negotiation process allows them to provide input on the specific terms and conditions that are being negotiated. Many times, the same underlying goal can be accomplished in a slightly different manner to accommodate stakeholders' needs.

In the Taxco example, city staff needed to keep the negotiations confidential, so that a neighboring city would not undermine their efforts. While the need for confidentiality makes it more difficult to include stakeholders, including them in the process without sharing every detail enables the local agency to be on a firmer community relations footing when it comes to approving the development agreement.

PUBLIC INPUT ON CONSIDERATION OF THE PROPOSED AGREEMENT

The development agreement law specifies what kind of public hearings and notice must be given when an agency gets to the point of considering whether to approve development agreements.⁴⁹ Hearings must be held by the local planning agency and its governing body.⁵⁰ Such hearings are subject to the state's open meetings laws,⁵¹ which require that all interested persons be allowed to attend these meetings⁵² and provide public comment before the planning commission's or governing body's consideration of the development agreement.⁵³ Members of the public are also entitled to request copies of all documents included in the agenda packet.⁵⁴ The state's Public Records Act also may entitle members of the public to request other documents relating to the proposed agreement.⁵⁵

ON CENTRAL RECOVERY OF COSTS

Depending on the nature of the project, negotiating a development agreement can involve significant costs for the public agency in the form of staff time and legal fees. An agency may want to provide for the recovery of some or all of those costs either in its local procedures, as part of the cost of processing a development agreement or as a term of the agreement itself.

The agency will want to ensure that it does not assess the project proponent more than the agency's actual costs. One way is to establish an hourly rate and regularly record staff time.

⁴⁹ See Cal. Gov't Code § 65867.

⁵⁰ See Cal. Gov't Code § 65867.

⁵¹ See Cal. Gov't Code § 54950 and following.

⁵² See Cal. Gov't Code § 54953(a).

⁵³ See Cal. Gov't Code § 54954.3.

⁵⁴ See Cal. Gov't Code § 54954.1.

⁵⁵ See Cal. Gov't Code § 6250 and following. An exception may be preliminary drafts of development agreements if they are not kept in the ordinary course of business. See Cal. Gov't Code § 6254(a).

NOTICE ISSUES

The development agreement law provides notice requirements for hearings related to the potential adoption of a development agreement.⁵⁶ The notice is the same as that required under the planning and zoning law for:

- Plans (publication in at least one newspaper of general circulation or posting in three public places within the jurisdiction if there is no newspaper of general circulation, with special consideration given to drive-through facilities);⁵⁷
- Projects (10-day mailed notice to the property owner, the project proponent, affected local agency service/facility providers; and⁵⁸
- Neighboring property owners within 300 feet, as well as published and posted notice, again with special consideration given to drive-through facilities).⁵⁹ The agency must also give notice to anyone who has requested it.⁶⁰

A NOTE ON DEVELOPMENT AGREEMENTS IN THE COASTAL ZONE

Local agencies in the coastal zone may approve development agreements only if they have a certified local coastal program or if the California Coastal Commission formally approves the development agreement. *See* Cal. Gov't Code § 65869.

The notice must contain:

- The date, time, and place of the hearing;
- The identity of the hearing body;
- A general explanation of the matter to be considered (in other words, the development agreement); and

⁵⁶ *See* Cal. Gov't Code § 65867.

⁵⁷ *See* Cal. Gov't Code § 65090.

⁵⁸ This includes each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected. *See* Cal. Gov't Code § 65091(a)(2).

⁵⁹ *See* Cal. Gov't Code § 65091.

⁶⁰ *See* Cal. Gov't Code § 65092: "When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed."

- A general description, in text or by diagram, of the location of the property that is the subject of the development agreement, and hence the hearing.⁶¹

To facilitate informed public discussion of the matter, it may be helpful to include a brief explanation of what development agreements are. A sample of such a description is available online at www.ilsg.org/devtagmt.

DECISIONMAKER INPUT ON DEVELOPMENT AGREEMENTS AND FINDINGS

A local agency's development agreement procedures present an opportunity for the governing body to ask the planning commission to make a recommendation on whether to approve the agreement and weigh in on proposed findings.

INVOLVING THE PLANNING COMMISSION EARLY ON

When development agreements are negotiated by staff, subject to planning commission review before final approval by the legislative body, planning commissioners may feel they have been "left out of the loop." This may be especially true if the legislative body is the only one receiving updates as negotiations proceed.

The consequences of the planning commission feeling insufficiently involved may include:

- Bad feelings on the part of individual planning commissioners;
- A lack of planning commission input during negotiations; and

CAN A DEVELOPMENT AGREEMENT BE APPROVED BY INITIATIVE?

Yes. See: *Citizens for Responsible Government v. City of Albany*, 56 Cal. App. 4th 1199 (1997).

WHAT CONSTITUTES ENTRY INTO THE DEVELOPMENT AGREEMENT?

The development agreement law is not entirely clear. A good practice is to secure on the agreement the signature of the person authorized to execute agreements on behalf of the local agency shortly after the adoption of the development agreement ordinance by the governing body.

⁶¹ See Cal. Gov't Code § 65094.

- Less protection of elected officials' interests by appointed commissioners.

One approach to informing the planning commission early on is to schedule the project for discussion at a regular planning commission meeting at the start of negotiations. This provides the planning commission with an opportunity to provide its input to the negotiating team on key policies and objectives to be achieved on behalf of the community through the development agreement.

Another approach is to convene a subcommittee of the planning commission as an adjunct to the negotiation process. If the subcommittee is less than a quorum of the commission, the discussion may occur without the

PRACTICE POINTER

Some practitioners ask the project proponent to sign the proposed agreement before the agreement is introduced for approval.

overlay of open meetings requirements.⁶² While the subcommittee could be made part of the negotiating team, it may be more practical, given the competing demands on planning commissioners' time, for staff to confer with the subcommittee outside of negotiations. This approach allows the negotiating team to benefit from at least some planning commissioners' perspective, while the negotiating team remains

reasonably sized.

PLANNING COMMISSION RECOMMENDATION AND INPUT ON FINDINGS

An agency's development agreement procedures can solicit the planning commission's input both on whether the development agreement should be approved, and on the findings accompanying any approval. Such findings may include whether the agreement:

- Is consistent with the objectives, policies, general land uses and programs specified in the agency's general plan and any applicable specific plan;
- Is consistent with the provisions of the agency's zoning regulations;

⁶² See Cal. Gov't Code §§ 54952.2(a) ("As used in this chapter, 'meeting' includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.") 54952 ("As used in this chapter, 'legislative body' means: ... (b) A ... committee ... of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, any advisory committee, composed solely of members of the legislative body which are less than a quorum of the legislative body are not legislative bodies ...").

- Promotes the public health, safety, and general welfare;
- Is just, reasonable, fair and equitable under the circumstances facing the agency;⁶³
- Has a positive effect on the orderly development of property or the preservation of neighboring property values; and
- Provides sufficient benefit to the community to justify entering into the agreement.

GOVERNING BODY HEARING AND DECISION ON THE DEVELOPMENT AGREEMENT

As discussed in Chapter 3, well-articulated planning policies and objectives should increase the likelihood that the staff's and planning commission's input to the development agreement negotiation process

produces a satisfactory agreement for the governing body. Adoption of an interest-based negotiation approach may also allow the governing body to provide direction to negotiators early on in the process in open session, consistent with the state's open meeting laws.⁶⁴

Well-conceived and up-to-date planning policies also avoid the prospect of asking staff to negotiate in a vacuum, with little or no immediate direction or feedback from decisionmakers. This maximizes the likelihood that the agreement presented for decision-maker approval reflects their concerns and policy direction. It minimizes the likelihood of having to renegotiate the agreement from the dias. (The downside of which, is inclusion of language in the agreement which may have unintended consequences or not fully protect the agency's interests.)

PRACTICE POINTER

A development agreement typically freezes regulatory requirements in effect at the time the agreement is executed. For that reason, it is helpful to collect all of those regulatory documents and file them with the approved development agreement. This avoids confusion several years afterwards as to what regulatory requirements apply.

Copies should also be provided to the project proponent.

⁶³ See generally *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal. App. 3d 724 (1976) (analyzing the "contracting away the police power" issue in the context of an annexation agreement). See also *Denio v. City of Huntington Beach*, 22 Cal. 2d 589 (1943); *Carruth v. City of Madera*, 233 Cal. App. 2d 688 (1965).

⁶⁴ See generally Cal. Gov't Code § 54950 and following (The Ralph M. Brown Act).

ACTION ON THE AGREEMENT

The governing body must approve a development agreement by resolution or ordinance.⁶⁵ Ordinances must go through a two-reading process, with at least a five-day intervening period.⁶⁶ Changes require an additional five-day waiting period.⁶⁷

RECORDATION AND OTHER POST-APPROVAL STEPS

After a development agreement is approved, the clerk of the governing body must:

- Record a copy of the development agreement within 10 days of the entity's entry into the agreement, along with a description of the land subject to the development agreement,⁶⁸ and
- Publish the ordinance approving the development agreement.⁶⁹

⁶⁵ See Cal. Gov't Code § 65867.5.

⁶⁶ See Cal. Gov't Code §§ 36934 (city requirements), 25131 (county requirements).

⁶⁷ See Cal. Gov't Code §§ 36934 (city requirements), 25131 (county requirements).

⁶⁸ See Cal. Gov't Code § 65868.5.

⁶⁹ A clerk must publish each ordinance (or a summary of it) within 15 days after passage as follows: 1) In a newspaper of general circulation published within the jurisdiction, or 2) If there is none, by posting as required by state law. Cal. Gov't Code §§ 36933 (cities), 25124 (counties) (note that state codes are available online at <http://www.leginfo.ca.gov> by clicking on "California Law"). The publication must include the names of the governing body members voting for and against the ordinance. Cal. Gov't Code §§ 36933(c) (cities), 25124 (counties).

PRACTICE POINTER

Some agencies specify the agencies' annual review procedures in the agency's ordinances and resolutions relating to development agreements. Others specify the annual review procedures in the development agreement itself. The latter approach makes the annual review process part of the negotiations process as it is the subject of negotiation and the resolution of that negotiation memorialized as a term of the development agreement itself.

Other implementation strategies include:

1. Assigning one person to monitor agreement performance.
2. Creating an implementation matrix (cross-referencing the section of the development agreement, the obligation, the trigger/timing, which local agency department has lead responsibility, and the status).

Having a well-thought out implementation strategy helps ensure the agency gets the benefit of its bargain.

In cities and counties, failure to satisfy the publication requirement in a timely manner prevents the ordinance from taking effect or being valid.⁷⁰

AMENDING THE DEVELOPMENT AGREEMENT

After a development agreement has been signed, it may be amended only by mutual agreement of parties.⁷¹ Most development agreement procedures require amendments that are initiated by the project proponent to go through the same process as the initial application for the development agreement. For local agency-initiated amendments, the procedures usually require notice to the project proponent and provision of information about the process that the agency will employ.

DEVELOPMENT AGREEMENTS AND ACCOUNTABILITY

Fundamental to the concept of an enforceable agreement is the notion that each party will do what it promises to do in the agreement. To underscore that notion, the development agreement law requires local agencies to include at least an annual review of the project proponent's compliance with the delineated responsibilities.⁷² The review must require the proponent to demonstrate good faith compliance with the terms of the agreement.⁷³ If a local agency finds, based on substantial evidence, that such compliance has not occurred, the agency may modify or terminate the agreement.⁷⁴

In addition, the development agreement law provides that the development agreement is "enforceable by any party."⁷⁵ A development agreement typically contains provisions specifying procedures for notice and termination in the event of a default by either party.

⁷⁰ Cal. Gov't Code § 36933(b) (cities). *Cf.* Cal. Gov't Code § 25124(c) (providing failure of county clerk to publish means the ordinance does not take effect for 30 days).

⁷¹ See Cal. Gov't Code § 65868.

⁷² See Cal. Gov't Code § 65865.1.

⁷³ See Cal. Gov't Code § 65865.1.

⁷⁴ See Cal. Gov't Code § 65865.1.

⁷⁵ See Cal. Gov't Code § 65865.4.

SAN DIEGO DATABASE KEEPS DEVELOPMENT AGREEMENTS ON TRACK

The City of San Diego's Development Agreement Monitoring System tracks the status of payments owed by developers to cover the cost of project-related infrastructure, facilities and public services.⁷⁶ In addition to helping city staff monitor compliance with the terms and conditions of development agreements, the system also generates reminders of annual report deadlines and due dates for administrative costs owed to the city.

Before the city developed the system in 1997, several departments shared responsibility for monitoring the status of development agreements. The lack of effective coordination made oversight of the agreements uncertain. If, for example, the city's issuance of a building permit for the 250th unit of a residential project obligated the developer to pay the city \$250,000 for completion of a library, the city had no means to ensure that it requested the funds in a timely manner.

To address this problem, city staff formed an inter-departmental task force called the Development Monitoring Team. The Monitoring Team worked with city Management Information Systems personnel to create the Development Agreement Monitoring System. The system comprises a database containing files for each development agreement. The files list developer obligations and due dates under each agreement.

The monitoring team updates the status of developer obligations and shares this information with appropriate departments on a regular basis. As a result, the city has improved the timeliness of developer invoicing and collection. By February 2000, the Development Agreement Monitoring System helped the city to collect \$17 million in developer obligations, and to track another \$28 million that the city is due to receive by 2005.

SUMMARY

A well-crafted set of development agreement procedures will provide a useful road map to staff and others in shepharding an agreement through the approval process. Such procedures are also useful for considering any amendments to and termination of an agreement.

Important parts of the process include the notice and hearing process, as well as mechanisms for providing decision-maker input.

⁷⁶ City of San Diego, Development Agreement Monitoring System, February 2000 (Submission for League of California Cities Helen Putnam Award for Excellence).

THE ART OF NEGOTIATING DEVELOPMENT AGREEMENTS

5 CHAPTER

The art of negotiation comprises several facets. Fundamentally, it is important to decide *who* is going to negotiate and *how* the parties will reach consensus. This chapter addresses the issues associated with each facet of negotiation.

WHO IS GOING TO NEGOTIATE?

Within the public agency, senior staff or their representatives typically negotiate development agreements. The manager (or representative) should be involved because he or she presumably knows the community, understands the desires of the legislative body and can gauge the agreement's value to the community.

The agency's planning director (or representative) is typically on the negotiating team because of his or her planning background. While the manager may focus on financial benefits to the community, the planning director will be concerned with the impact of the project on land use issues, including its compatibility with surrounding land uses. Engineering or public works staff should be included if infrastructure issues are involved.

The public agency also may want to include the attorney on the negotiating team, rather than just at the agreement's drafting stage, especially if the project proponent is represented by legal counsel. Legal issues will undoubtedly arise during negotiations, and drafting issues may overlap with substantive deal points. Whether or not legal counsel participates in the negotiations, he or she should be fully apprised as the negotiations proceed.

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PRACTICE POINTERS

Legislative Body Member Participation. Veterans of the development agreement negotiation process typically advise against including a governing body representative on the negotiating team.

Such involvement can put the elected official in a constrained position when the final agreement goes before the council or board.

Conflicts of Interest Issues. In selecting negotiating team members, keep in mind conflicts of interest issues. For example, the Attorney General opined in 2002 that a senior local agency staff member may not participate in the negotiations and drafting of a development agreement if her spouse is employed by a firm that will provide outreach services for the developer with respect to the project pursuant to a yearly retainer agreement. The Attorney General found that the staff member's participation would violate conflicts of interest laws relating to contracts,⁷⁷ even though the spouse had no ownership interest in the firm, he will not work on the city's project, and his income will not be affected by the outcome of the development agreement or project.

For more information about ethics laws, please *See The Local Official's Guide to Ethics Laws* published by the Institute for Local Self Government.

As for the project proponent, he or she (or a representative with full legal authority to bind the project proponent) should participate in the negotiations. On larger projects, the project proponent may want to assemble a team that includes the project proponent, an architect, planner and land use attorney. Depending on what aspect of the agreement is being negotiated, the project proponent may want to include one or more of the team members in the negotiations.

REACHING CONSENSUS

How parties conduct negotiations may be the best indicator of whether they will achieve consensus. Participants should be trained in the process of negotiations, and have a framework in mind to guide the negotiation process.

KNOWING WHO IS ACROSS THE TABLE

Before negotiations begin, each party should become familiar with the other's background. In addition, the project proponent should become familiar with the local political climate, while local agency staff should learn about the project proponent's reputation in the community, or in other communities where the proponent's developments have been approved. The parties should also determine in advance what they expect to gain through the negotiations, what the other party may need, and what they are willing to give.

SETTING EXPECTATIONS

Once the parties meet, they should frankly discuss their respective expectations. The local agency should emphasize that it expects to gain greater exactions than it could require under its regulatory authority. The project proponent should explain why the particular project requires a development agreement. The parties should agree upon an initial timeframe in which to complete negotiations.

The agency negotiators should explain that they do not have authority to bind the agency—that is the province of the legislative body during final public hearings. The parties may benefit from adopting a “check-off” system so that once they reach a conceptual agreement on deal points, they

⁷⁷ See Cal. Gov't Code § 1090. the Attorney General reached this conclusion even though the spouse had no ownership interests in the firm, he would not work on the agency's project, and his income would not be affected by the outcome of the development agreement or project. The Attorney General's opinion will be published at 85 Cal. Op. Att'y Gen. ____ (2002), and is available online at <http://caag.state.ca.us/opinions/index.htm>.

do not need to continually renegotiate those points, unless circumstances change.

THE UTILITY OF GROUND RULES

Ground rules for negotiations are very important. Typical ground rules include:

- Who is the spokesperson for each side? To what extent does that person have authority to bind their respective principals?
- Who will take notes and document the points of agreement?
- Where, when and for how long will the negotiators meet? Will telephone negotiations be allowed?
- Are these meetings open to the media and public?
- When and how will issues related to the development be presented to decisionmakers, including individual members of the governing body?
- How will media inquiries be handled?
- What strategies, if any, will be employed if bargaining reaches an impasse?

SAMPLE GROUND RULES FOR NEGOTIATIONS

The following types of ground rules may be adopted prior to negotiating a development agreement, in order to improve the parties’ chances of negotiating mutually acceptable terms and provisions.

The parties agree during negotiations to:

1. Listen to the other party’s needs and desires
2. Discuss mutual “interests” rather than individual “positions”
3. Encourage creative ideas by agreeing there are no stupid suggestions
4. Take into account each other’s needs and desires
5. Use objective standards and criteria to assess interests
6. Use a check-off system to conceptually approve deal points along the way
7. Avoid returning to approved points absent changed circumstances
8. Use a deal point outline rather than iterations of the agreement itself
9. Avoid drafting the agreement itself until all deal points are agreed upon
10. Develop a common understanding of the agency’s land use policies

PRACTICE POINTERS

It can be useful to have a list of what the agency must receive as a condition of agreeing to the development agreement and what the agency is willing to trade for other concessions.

The list should include the various options available to satisfy the agency's objectives (for example, building versus funding an improvement). The list should also include any limits on what the agency can do (for example, waiving a fee that others must pay).

Making such determinations in the heat of negotiations can sometimes be a risky strategy.

Such ground rules should be memorialized in writing.

SETTING PRIORITIES

Each party should be clear on their organization's priority issues going into the negotiations, so each priority can be addressed early on. Reaching agreement on these priority issues is, of course, the key to successful negotiations.

Typical priority issues for local agencies include:

- **Land Use Issues.** What regulations relating to density, design, uses, and construction standards is the agency willing to freeze in place at the time the agreement is executed? On what issues does the agency wish to retain the flexibility to adapt its regulations to changing circumstances and new information?
- **Exaction Issues.** Which public improvements and facilities will be constructed, dedicated or financed by the project proponent? On what schedule? Will there be a reimbursement provision if the project proponent fronts the financing for a facility?
- **Special Issues Relating to State Requirements.** What role will school facilities and affordable housing issues play?

Thinking through these issues and what the local agency will need to make the development agreement a net gain in terms of the public's interest is a key to successful negotiations.

HAVE A STRATEGY

Fundamentally, each party comes to the negotiations with certain priorities and objectives—some of which may be unrealistic. Finding compromise solutions can require a sense of the other party's true objectives (and presenting one's proposals in terms of those objectives) and patience while the other party works through what they had hoped to receive as the result of the negotiations and what they actually can receive. Moreover, negotiations can be stressful; less skilled negotiators may react to such stress with displays of anger and attempts to badger their way into prevailing.

In most instances, it is important for both sides to keep in mind that there is a long-term relationship to be fostered. This relationship is frequently more important than short-term gains or “gotchas” on elements of the deal.

INTEREST-BASED BARGAINING TECHNIQUES

The parties may also agree in advance to use a particular negotiating approach. Historically, the negotiating model has involved a static process of developing positions in advance, based on confidential parameters set by the principals. More recently, professionals have advocated a more dynamic or synergistic approach that involves both parties working together to transcend competing interests.

Advocates of synergistic negotiations suggest that parties should:

- Share interests during negotiations (for example, what they fundamentally wish to accomplish or avoid) rather than pre-determine, then haggle over positions;
- Acquire a real (in other words, empathetic) understanding of what the other party needs;
- Use brainstorming techniques to develop lists of options from which “outside-the-box” solutions can flow; and
- Agree to rely on objective standards or third-party authority to settle differences and overcome obstacles.

Although conducting successful negotiations is a much larger topic than can be adequately addressed here, there are a number of resources that explain the benefits of negotiating in a more dynamic or synergistic fashion.⁷⁸

For the local agency, an interest-based approach works better in light of the constraints of the state’s open meeting law. As a general matter there is no exception to the open meeting laws for local agencies to instruct their negotiating team on the provisions of a development agreement.

⁷⁸ See, for example, *Getting to Yes* by William Ury and Roger Fischer, and *The Seven Habits of Highly Effective People* by Stephen R. Covey.

The following illustrates this approach toward negotiations.

ILLUSTRATION—THE URBAN LIMIT LINE AND BEYOND

Serene Valley is a large unincorporated area with an agricultural past. Much of the area is now built out, and the outlying farmland is seriously threatened by ever-expanding suburban development. As a result, the board of supervisors has established an urban limit line to prevent further sprawl.

Henry House is a project proponent who wishes to construct homes in Serene Valley. He is accustomed to building typical subdivisions projects with little open space, noting the continually increasing need for additional housing.

Mr. House applies for a development agreement to allow him to construct high-density housing beyond the urban limit line. Planning staff advises him that his application is likely to be denied (some would say dead on arrival). Some of his equity partners have owned property beyond the urban limit line for decades, and resent the influence of no-growth advocates who have only recently moved to the area.

As negotiations begin, the (somewhat skeptical) parties adopt a dynamic approach to negotiations, in which they agree to discuss respective interests rather than relative positions. Planning staff explain, for example, that they are interested in preserving the scenic nature of Serene Valley for future generations, rather than taking the position that they will never recommend construction beyond the urban limit line.

In turn, Mr. House explains that he is interested in constructing a project that will pencil out financially, rather than taking the position that the project must be constructed in a certain manner.

The parties eventually reach the conclusion that it is impossible to construct a conventional residential project that will make business sense while also respecting the urban limit line.

Nonetheless, they begin the next step in the process, which is brainstorming to identify mutually acceptable solutions. The parties are careful not to criticize ideas during the process or to dismiss any ideas as unrealistic. Slowly, suggestions emerge, ranging from creative suggestions that homes should not be visible from public streets to building underground homes.

It occurs to planning staff that the county has infill property that could fill out a town center concept envisioned by the specific plan for this part of the county's unincorporated area. Moreover, the county has access to state park bond funds to potentially purchase conservation easements over Mr. House's existing parcel, thereby helping the project pencil out for Mr. House and his partners. The mixed-use development contemplated by the specific plan is also consistent with Mr. House's familiarity with higher density projects. Helping Mr. House acquire the land may even help the county meet its affordable housing goals.

Planning staff also are aware, from a number of workshops the county has held on smart growth issues, that the supervisors are interested in more sustainable forms of development. The negotiators go forward with this concept successfully, creating a win-win situation.

SUMMARY

By preparing in advance, developing a negotiating framework in which to proceed, and adopting ground rules, including how negotiations should be conducted, the parties should be able to create a negotiating environment that will increase the likelihood of reaching consensus.

THE SUBSTANCE OF A DEVELOPMENT AGREEMENT

6 CHAPTER

A number of considerations should be taken into account when drafting a development agreement. For efficiency, many jurisdictions start with a standard form agreement that has already been reviewed and approved by the agency's attorney. It is also helpful for negotiators to have reviewed:

- Current version of the development agreement law;⁷⁹
- Planning policies for the area in question, including fee and dedications requirements and environmental analyses; and
- Agency procedures for processing development agreements.⁸⁰

These steps help those involved in the negotiations identify the issues that will need to be negotiated to protect the public's interests when drafting the agreement. It is also important to think ahead about implementation issues.

This chapter discusses some of the drafting and drafting-process issues that typically arise with development agreements.

WHO WILL DO THE DRAFTING?

A threshold issue is: From whose draft will the parties work? As indicated above, for local agencies expecting to be involved in a number of development agreements, it can be helpful for the agency to begin with a standard development agreement form that covers key and standard issues of concern to the agency. Sample development agreements are available online at www.ilsg.org/devtagmt.

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⁷⁹ See Cal. Gov't Code § 65864 and following (also available online at <http://www.leginfo.ca.gov> by clicking on "California Law").

⁸⁰ See Chapter IV and the sample procedures available online at www.ilsg.org/devtagmt.

**A NOTE ABOUT
CLARITY**

Sometimes it is tempting to use ambiguous language to describe issues on which the parties are having difficulties agreeing. This temptation should be avoided, inasmuch as it only postpones problems.

Moreover, given that the agency will be able to terminate the agreement only upon substantial evidence of noncompliance, *see* Cal. Gov't Code § 65865.1 (there must be substantial evidence the project proponent has not complied in good faith with the agreement), there is a high degree of risk that ambiguities will ultimately be resolved against the public agency.

Of course, the standard form agreement can take negotiators only so far. The next question is which party's attorney will take the first crack at filling in the project-specific elements of the form. Development agreement negotiation veterans typically advise that the public agency's counsel retain this role. In either event, it is not desirable to have both attorneys generating drafts of their own.

WHEN SHOULD THE DRAFTING BEGIN?

It may be tempting to prepare drafts of the development agreement as negotiations proceed. Some participants may derive comfort from having concrete proof that they are actually making progress.

However, the practice of preparing a draft as each of the deal points emerges can be expensive and result in unnecessary rewrites of the agreement. This practice may also afford the opportunity for drafting gamesmanship, in which slight but important changes are attempted beyond the scope of what the negotiators agreed to. The attorneys for each negotiating team must thoroughly review every draft, elevating otherwise avoidable tension in the remaining negotiations. It is preferable to list agreed-upon deal points for the entire agreement, including dates of each proposal and the name of the person who made it. Then, the development agreement can be drafted in close-to-finished form and subjected to final editing and review by all parties. Use of the redline/strikeout computer function simplifies the process.

COMMON PROVISIONS IN DEVELOPMENT AGREEMENTS

THE PARTIES TO THE AGREEMENT

Local agencies may enter into development agreements only with persons who have a "legal or equitable interest" in the real property in question.⁸¹

There may be others who should be parties to the agreement (for example, lenders). The goal is to identify whether there is anyone whose participation is necessary for the local agency to receive the benefit of its bargain, who would not automatically be bound by the agreement by its provisions as a successor-in-interest when the agreement is recorded.⁸²

⁸¹ *See* Cal. Gov't Code § 65865(a). *See also* *National Parks and Conservation Association v. County of Riverside*, 42 Cal. App. 4th 1505 (1996).

⁸² *See* Cal. Gov't Code § 65868.5.

USE OF RECITALS

It is common to include recitals, typically following the first paragraph of the agreement, that identify the parties to the agreement. Many development agreements begin with a recital explaining the advantages offered by this development agreement, and stating that the agreement is entered into pursuant to state development agreement law, Government Code section 65864 and following.

Recitals typically explain:

- Who the parties are;
- What the project is;
- That the project is consistent with the general plan and any applicable specific plan; and
- That the parties have complied with the California Environmental Quality Act.

Recitals may also identify other discretionary land use approvals that are required for the project (for example, approval of a subdivision map or discretionary land use permit), and whether those approvals have previously occurred, will occur simultaneously, or will occur only after the development agreement has been approved.⁸³

On occasion, a recital may address contingencies that will delay the effective date of the agreement, such as the need for property annexation.⁸⁴

TERM

The term must be stated in the body of the agreement.⁸⁵ Larger projects, especially those constructed in phases, may require longer terms. In other instances, planning staff may argue for a shorter term, perhaps five to ten years, to enable the local entity to revisit the property’s zoning and general plan designations sooner rather than later

There is some indication that the term of the agreement — or at least the time during which the agency agrees not to apply changes in land use

⁸³ See Cal. Gov’t Code § 65865.2.

⁸⁴ See generally Cal. Gov’t Code § 65865.3 (development agreements and newly incorporated or annexed areas).

⁸⁵ See Cal.Gov’t Code § 65865.2

PRACTICE POINTER

A good rule of thumb for the term of a development agreement is five to ten years. Any longer may constrain a local agency's ability to impose new regulatory requirements to respond to changing needs and issues in the community.

regulations to the development—is one factor that the courts will evaluate if the development agreement is challenged.⁸⁶

It is generally a good idea to allow the parties to terminate the agreement early in the event of a material breach. (See further discussion concerning default, remedies, and termination, below.)

Note that development agreements for unincorporated territory within cities' sphere of influence must specify a timeframe within which the annexation must occur.⁸⁷ The agreement does not become operative until the annexation occurs.⁸⁸

REQUIRED CONTENTS

A development agreement must specify the:

- Permitted uses of the property;
- Density or intensity of use; and
- Maximum height and size of proposed buildings.⁸⁹

These are also known as the development plan. Because development agreements can and are being used in a variety of applications, the required content outlined above can be addressed more generically or more specifically, depending on the goals of the parties and the degree to which the absence of such specification in the agreement means that the agency's regulations apply.⁹⁰ As a matter of draftsmanship and avoiding a basis for challenge, however, it is useful to address each of the required content elements.⁹¹

For example, the permitted uses can be generically established by reference to a zoning category, such as retail commercial, or specifically established

⁸⁶ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (suggesting such freezes cannot be of unlimited duration and upholding a zoning freeze for five years)

⁸⁷ See Cal. Gov't Code § 65865(b).

⁸⁸ See Cal. Gov't Code § 65865(b).

⁸⁹ Cal. Gov't Code § 65865.2 (contents of development agreements).

⁹⁰ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (finding the fact that the agreement did not mention maximum height and size of proposed buildings was not fatal because the agreement was subject to the county regulations of these variables).

⁹¹ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (adopting a "substantial compliance" approach to these required content elements).

by reference to a site plan detailing every aspect of a proposed project. Likewise, the density and intensity can be generically designated by using a range of possibilities, (six to ten units per acre, for example), or specifically designated (two units per acre). Similarly, the requirement that the maximum size and height of proposed buildings be included does not mean that every development agreement must propose buildings.

PUBLIC BENEFITS

Another required element of a development agreement is the provision for reservation or dedication of land for a public purpose.⁹² A “permissive element” refers to the terms and conditions relating to the project proponent’s financing of necessary public facilities and the subsequent reimbursement of the project proponent for its non-pro rata share over time.

⁹³

In fact, it is a good idea to specify all of the public benefits that will result from the agreement, following a recital explaining that the project proponent recognizes that he or she is being afforded greater latitude in exchange for agreeing to contribute greater public benefits than could otherwise be required, and that the project proponent does so freely and with full knowledge and consent.

ADDRESSING A POTENTIAL POLICE POWER CHALLENGE

Early on, commentators speculated whether adopting a development agreement might constitute an illegal “contracting away” of an agency’s police powers, which, in this context, refers to a local agency’s governing powers. “Police” derives from the Greek word polis, which means city. Cities and counties typically obtain their police powers through the state Constitution.⁹⁴

The California Constitution says, for example: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”⁹⁵ These powers afford the local agency latitude in dealing with issues that are local in nature and have not been addressed by the state legislature.

⁹² Cal. Gov’t Code § 65865.2.

⁹³ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (finding the fact that the agreement did not mention maximum height and size of proposed buildings was not fatal because the agreement was subject to county regulations of these variables).

⁹⁴ See Cal. Const. Art. XI, §7.

⁹⁵ Cal. Const. art. XI, § 7.

One thing a public agency *cannot* do is to contract away its police powers by enabling a private body or individual to control the exercise of its governing powers.⁹⁶ In the case of development agreements, the question is whether the “freezing” of applicable land use regulations, so that the public agency cannot change the rules in a way that will prevent the project proponent from constructing or operating the project as approved, constitutes an illegal contracting away of police powers.

There are two ways that freezing of rules and regulations could conceivably constitute an illegal contracting away of police powers.

First, development agreements lock in the right to construct the project as approved once the agreement is in effect. Without a development agreement, the law allows the agency to impose additional requirements on a project up to the point at which the project proponent acquires vested rights by obtaining a building permit and doing substantial construction work in reliance on that permit.⁹⁷

Second, development agreements do not allow the imposition of new rules that conflict with those in existence when the agreement was approved.⁹⁸ Without a development agreement, the agency may change the applicable zoning in a manner that is inconsistent with the project proponent’s vested rights, in which case, the property may acquire what is known as a “nonconforming use status” because the development on the property no longer conforms with the applicable zoning. While vested rights allow the owner to continue building and operating the project as originally approved, there may nonetheless be limitations on how the property can be used, including a prohibition against expanding nonconforming uses.

Whether either of these two aspects of development agreements constitutes an illegal contracting away of police powers may turn on the *extent* to which an agency surrenders all of its control over land use functions, rather than *reserving* most of its police powers except to the limited extent otherwise provided by the agreement.⁹⁹

⁹⁶ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (finding government entity does not contract away its police power unless the contract amounts to a surrender or abnegation of a proper governmental function).

⁹⁷ See *Avco Community Project Proponents, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785 (1976).

⁹⁸ Cal. Gov’t Code § 65865.4.

⁹⁹ See *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal. App. 3d 724 (1976) (holding that an annexation agreement did not constitute an illegal “contracting away” of its legislative authority because it did not contract away all of the agency’s authority).

Accordingly, it is a good idea for the drafters to include a provision in the development agreement explaining the extent to which the property will continue to be subject to the entity’s zoning rules, regulations and policies, as well as a provision explicitly reserving the entity’s police powers unto itself, except as otherwise provided in the agreement.

RECOVERY OF COSTS

Depending on the nature of the project, negotiating a development agreement can involve significant costs for the public agency in the form of staff time and legal fees. The agency may want to provide for the recovery of some or all of those costs, either in its local procedures (as part of the cost of processing a development agreement) or as a term of the agreement itself. If provided for in the agency’s local procedures, the agency will want to ensure that it does not assess the project proponent more than its actual costs. One way is to establish an hourly rate and record the staff’s time spent working on the project.

WHICH REGULATIONS ARE FROZEN?

Three drafting considerations affect which local land use rules and regulations will apply under the terms and conditions of the development agreement.

First, state law says that unless the agreement provides otherwise (see sidebar at right), the rules and land use policies in effect when the development agreement is adopted will apply to the project. The project proponent will be inclined to want language to the effect that the local agency is not allowed to apply rules or land use policies that would effectively nullify its prior approval of the project. In turn, the agency’s attorney will want language that confirms the statute allows the agency to apply new rules in the future, as long as they are not in conflict with the rules and regulations that were in place when the agreement was adopted.

Second, the attorneys need to decide what language to use in the event the parties agree to allow land uses that are inconsistent with the otherwise applicable zoning requirements in existence at the time the development agreement was negotiated. One approach is to include language saying the then-existing zoning ordinance governs, but only to the extent it is not inconsistent with any provisions of the agreement. Depending on the circumstances, the agency attorney may prefer to actually amend the zoning ordinance so that it is consistent with the development agreement, in order to allow other projects to request that zoning in the future.

POSSIBLE EXCLUSIONS FROM THE FREEZE

Local agencies may wish to discuss retaining their discretion to apply changes to the following components of a development agreement:

- Impact fees;
- Uniform codes;
- Processing fees; and
- Procedural regulations.

Third, the development agreement should state that the agency's compliance is subject to later-enacted state and federal regulations.¹⁰⁰

“MILESTONE” REQUIREMENTS

On larger, phased-in projects, it may be useful to include “milestone” requirements so the agency can terminate the agreement if phases of construction have not been completed within a specified timeframe.

The project proponent may resist agreeing to absolute deadlines. In this case, the public agency may want to consider allowing the timeframe to begin with a specified event, such as issuance of building permits. Before doing so, however, the public agency should make sure there are adequate incentives for the project proponent to stay on schedule, and that the decision to begin the next phase is not left entirely to the project proponent's discretion.

DEFAULT, REMEDIES AND TERMINATION

Drafters typically recite that upon the commission of a material breach, the other party may terminate the agreement and exercise other legal remedies that it may have.

Especially with respect to larger projects, parties may be motivated to enter into elaborate provisions concerning default, available remedies and termination, so that in the event of a material breach, the breaching party has a specified time to “cure” the breach, before the other party can terminate the agreement. These provisions may contain what are known as “force majeure” recitals that preclude terminating the agreement, or that extend the term of the agreement when performance is not possible due to war, insurrection, terrorism, strikes and other events that are beyond the control of the parties. Such provisions are generally advantageous to the project proponent, and create potentially lengthy periods in which the agency is unable to apply new land use rules and regulations that may affect the agency's ability to do responsive land use planning.

NON-PERFORMANCE ISSUES

It is important to remember that a development agreement is indeed a contract, the breach of which may be subject to monetary damages. Some local agency attorneys include clauses limiting remedies against the agency to specific performance. Under some circumstances, liquidated damages

¹⁰⁰ Cal. Gov't Code § 65869.5.

clauses may protect the agency from the upside risks associated with damages awards.

The local agency will also find it helpful to consider what kinds of assurances it wants to have available in the event the project proponent defaults on certain obligations. Some of the options local agencies may want to consider include:

- Letters of credit;
- Performance bonds; and
- Withholding certain approvals (for example building permits, until satisfactory performance occurs).

The agency may also want to think through timing issues associated with the project proponent's performance. In some instances, it may be advisable to specify timeframes for performing aspects of the development agreements and the consequences of not meeting those timeframes.

STATE OR FEDERAL LAWS

The parties may want to include a provision addressing the fact that state and federal regulations are not suspended by a development agreement. If a state or federal regulation is amended in a way that would preclude further performance under the agreement, the affected provisions of the development agreement will be modified or suspended.¹⁰¹

ANNUAL REVIEW

The parties may want to recite their awareness of the requirement for an annual review of the development agreement by the local entity. Recognize, however, that to the extent the parties make it the agency's contractual obligation to conduct such a review, they may be setting the agency up for a failure to perform.¹⁰² It is preferable to specify the agency's procedures for conducting its annual review in the agency's procedures ordinance or by resolution.

¹⁰¹ See Cal. Gov't Code § 65869.5.

¹⁰² A number of agencies admit to having neglected annual reviews, which is inadvisable. A "tickler" system developed in collaboration with the clerk's office can be a helpful reminder to hold these hearings once a year.

ENFORCEMENT

The parties may want to include an enforcement provision reciting that the agreement is enforceable notwithstanding any changes to the general plan, specific plan (if any), or the zoning, which alters or amends an ordinance, rule, regulation or policy governing the zoning of the property during the term of the agreement.

RECORDATION

The parties may want to recite their awareness of the requirement that the agreement be recorded within 10 days following execution. Recognize, however, that to the extent the parties make it a contractual obligation of the local agency to timely record the agreement, they may be setting the agency up for a failure to perform.

CERTIFICATE OF SATISFACTION

The project proponent may wish to obtain “certificates of satisfaction” from the agency as phases of construction are completed, reciting that each phase is in full compliance with its obligations under the development agreement. This certificate may be important to potential lenders. To the extent there are ongoing obligations, or obligations that transcend the physical boundaries of a particular phase, it may be difficult for the local agency to make such attestations until the term of the development agreement has fully expired.

INDEMNIFICATION AND HOLD HARMLESS PROVISION

It is not uncommon to have the project proponent hold the local agency harmless from any liability the agency may incur as a result of entering into the agreement. Also helpful is a provision requiring the project proponent to indemnify and defend the agency at the proponent’s cost against any legal action instituted by a third party to challenge the validity of the agreement, including a challenge based on an assertion that the California Environmental Quality Act has not been complied with.¹⁰³

¹⁰³ Such arrangements have received the blessing of the California Attorney General’s Office. See 85 Cal. Op. Att’y Gen. ____ (2002), available online at <http://caag.state.ca.us/opinions/index.htm>.

AMENDMENT OR CANCELLATION

State law provides that a development agreement can be amended or canceled, in whole or in part, by the mutual consent of the parties upon notice of intention to amend or cancel in the form required by Government Code sections 65090 and 65091, and adoption of an ordinance amending the agreement. The ordinance must also be found to be consistent with the general plan and any applicable specific plan, and is subject to referendum, just as the original ordinance adopting the development agreement was. Drafters typically recite these statutory requirements in the agreement for the convenience of the parties.

ASSIGNMENT

Drafters typically include a provision that neither party shall assign or transfer any of its rights, interests or obligations under the agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

The project proponent may want to seek additional language, which states that subsequent purchasers automatically become parties to the agreement upon transfer of ownership.

SUCCESSORS

It is common to include a provision indicating that the obligations imposed by the agreement constitute “covenants running with the land” and that the burdens and benefits bind and inure to all estates and interests created in the subject property and to all “successors-in-interest” of the original parties.

Public agencies have faced difficulties once a number of people become successors-in-interest by virtue of acquiring property governed by the agreement. In some cases, project proponents have gone bankrupt, making it difficult to justify enforcing the agreement against individual owners.

Depending on the circumstances, public agencies may want to require as a condition of approval that project proponents have homeowners (or property owners) associations governed by covenants, conditions, and restrictions (CC&Rs). The CC&Rs should include the development agreement obligations so that the association, as well as individual property owners, is responsible for ensuring performance of the development agreement.

To the extent the provisions of the CC&Rs supersede the development agreement, the association may have the flexibility to amend development

agreement obligations by a vote of less than 100 percent of the association membership. Also, the public agency may be granted enforcement rights under the CC&Rs.

VALIDITY OF PORTIONS OF THE AGREEMENT SEVERABILITY

It is common to include a provision stating that if one aspect of the agreement is held by a court to be illegal, the validity of the remaining provisions are not affected.

ATTORNEYS FEES

In lawsuits involving contracts, the law does not allow a party to recoup its attorneys fees as part of its damages unless the agreement so provides. As a result, many written agreements contain a provision stating that if a lawsuit or other legal action is brought with respect to the agreement, the prevailing party is entitled to recoup reasonable attorneys fees and costs.

GOOD FAITH AND FAIR DEALING

Many agreements recite that the parties expressly acknowledge that any actions they take pursuant to the development agreement will be measured by the “implied covenant of good faith and fair dealing.”

SIGNATURES AND SUBORDINATION

The drafter will want to decide who should sign the development agreement. In addition to the property owner and public agency, some practitioners require lenders, lessees and others with an interest in the property to sign the development agreement. Other attorneys require lenders, lessees and other interested parties to sign subordination agreements, which make their interests in the property subject to the terms and conditions of the development agreement. In the event subordination agreements are balked at, local agencies may want to consider requiring other interested parties to at least sign a written acknowledgment and consent, stating they are aware of the existence of the development agreement and that they understand its terms.

SUMMARY

A number of issues warrant consideration when drafting a development agreement. In the final analysis, a well-drafted development agreement should accurately capture the deal points negotiated by the parties, and anticipate and address potential problems that may arise during implementation of its terms.

The Institute offers a variety of sample development agreements online through its database. The database is accessible through www.ilsg.org/devtagmt. The Institute also welcomes submittals from public agencies of additional samples for this database.

GLOSSARY OF KEY TERMS

Actions By Third Parties Necessary To Implement The Agreement: describes permits or fees required by other agencies such as school mitigation fees, environmental mitigation measures, etc.

Agency Default: describes the instances in which the agency would be in default such as:

- If a material warranty, representation or statement made or furnished by agency to the developer is false or proves to have been false in any material respect
- The agency fails to comply in good faith with a material requirement
- An express repudiation, refusal, or renunciation of the agreement

Agency Default; Developer Remedies: describes the options the developer would have in the event the agency is in default such as:

- To waive the default as not material
- To pursue legal remedies provided for elsewhere in agreement
- To terminate the agreement
- To delay or suspend developer performance which is delayed or precluded by the default of the agency

Agency Obligations: heart of development agreement; describes what the agency is obligated to do such as diligently process further discretionary approvals, provide capacity, construct some improvements, reimburse certain funds advanced by developer, etc.

Amendment Of Agreement: describes how agreement will be amended; standard is that it is amended in same manner in which it was initially adopted (public hearing process through agency) (but see “Operating Memorandum”)

Annual Review: a reminder that there is a state law requirement that there be an annual review of the agreement by the agency

Assignment: sets forth that neither party shall assign or transfer any of its rights, interests or obligations, without the prior written consent of the other, which consent shall not be unreasonably withheld

Attorneys’ Fees And Applicable Law: states that if a lawsuit or other legal action is brought with respect to the agreement, the prevailing party is entitled to reasonable attorney’s fees and costs and identifies that California law will be used to interpret agreement

Bankruptcy: describes what happens in the case of a bankruptcy

Certificate Of Satisfaction: a writing from the agency, as phases of construction are completed, stating that each phase is in compliance with its obligations under the agreement, often important to potential lenders

Consistency With General Plan: required provision which states that the agreement is consistent with agency’s general plan

Cost Recovery: describes the method by which the agency will recover costs of staff time including legal fees for negotiation of the agreement

Covenants Run With The Land: states that the agreement is specific to the property, binds future owners and is not transferable to another property

Default And Remedies: describes what constitutes a default, what notice is required if one party thinks there is a default (generally a material breach), what remedies can be pursued (for ex. damages, injunction, termination)

Delay, Extension Of Times Of Performance: identifies that performance by a party may not be a default if the delays are due to war, strikes, riots, acts of God, or governmental entities other than agency (“see Force Majeur”)

GLOSSARY OF KEY TERMS (CONTINUED),

Developer Default: describes the instances in which the developer would be in default such as:

- If a material warranty, representation, or statement made by the developer to the agency is false or has been false in any material respect
- A finding by the agency that the developer fails to comply in good faith with any other material requirement of the agreement
- An express repudiation, refusal, or renunciation of the agreement

Developer Default; Agency Remedies: describes the options the agency would have in the event developer is in default such as:

- To waive the default as not material
- Refuse processing of a permit, approval, or other entitlement for the project
- To terminate the agreement
- To delay or suspend agency performance which is delayed or precluded by the default of developer
- To cure and charge back costs to the developer in emergency situations posing an immediate danger to public health or safety

Developers' Interest: describes what legal interest the developer has in the property

Developer Obligations: heart of development agreement; describes what property owner/developer is obligated to do, such as what improvements to be constructed and when, property to be dedicated and when, money to be paid and when, etc.

Development Plan: a development agreement must specify the permitted uses of the property, the intensity of use, and the maximum height and size of proposed buildings; because development agreements are being used in a variety of applications, the required content can be addressed more generically or more specifically depending on the goals of the parties and the degree to which the absence of such specification in the agreement would be addressed by the agency's regulations apply. For example, the permitted uses can be generically established by reference to a zoning category such as "retail commercial" or specifically established by reference to a site plan detailing the proposed project. Likewise, the "density and intensity" can be generically designated by using broad possibilities, ("6 to 10 units per acre," for example), or specifically designated at "2 units per acre". Such a requirement that the maximum size and height of proposed buildings be included does not mean that every project must propose buildings

Encumbrances On The Subject Property: identifies subordination and mortgage information regarding the property and obligations including notice of default and right to cure

Entire Agreement: provides that the agreement embodies all the terms of the agreement and no "outside" agreements or amendments are valid

Estoppel Certificate: a written notice that the agreement is in full force and effect, a binding obligation on the parties, and there is not a default

Exhibits: outlines what exhibits are attached and made a part of the agreement

Force Majeure: describes that performance may be excused due to war, terrorism, strikes, and other events beyond the control of the parties

Good Faith And Fair Dealing: sets forth that the parties expressly acknowledge that any actions they take will be measured by the "covenant of good faith and fair dealing"

Hold Harmless And Indemnification: requires the developer to hold the local agency harmless from any claims the agency may incur as a result of entering into the agreement; states that the developer will to indemnify and hold the agency at the developer's cost against any legal action instituted by a third party to challenge the validity of the agreement, including a challenge based on CEQA compliance

GLOSSARY OF KEY TERMS (CONTINUED),

Incorporation Of Recitals: generally states that the recitals which precede the “now therefore” clause are incorporated into the agreement itself.

Insurance: sets forth types and amounts of insurance that the developer is to provide as security for the hold harmless and indemnity requirements

Jurisdiction And Venue: identifies the county in which any litigation should be filed and that the interpretation, validity, and enforcement of the agreement shall be governed by California law

Liquidated Damages: identifies circumstances which would limit remedies against the agency to specific performance (no ability to receive money damages); under some circumstances, liquidated damages clauses may protect the agency from upside risks associated with damages awards. There may be instances in which the agency desires liquidated damages if developer fails to perform (such as failure to dedicate property

Milestones: see Phasing

Notices: describes where and how notices required in the agreement are to be sent

Operating Memorandum: describes instances in which formal amendment to agreement is not needed to implement the agreement such as minor refinements and/or clarifications; should be up to agency’s sole discretion to determine whether amendment or “Operating Memorandum” is appropriate

Parties To The Agreement: identifies the persons having “legal or equitable interest” in the property

Phasing Of Development: describes the “triggers” or “milestones” of the project; may also be known as the “development plan”; on larger, phased projects, it may be useful to include “milestone” requirements so the agency can terminate the agreement if phases have not been completed within a specified time frame

Private Undertaking: identifies that the project is a private development and there is no partnership, joint venture, or other association of any kind between the developer and the agency

Project And Property Subject To This Agreement: describes the project name, street address and references a legal description of the property (generally an exhibit)

Protest Rights: provides for the developer to waive protest rights, and releases the agency from any claims arising out of the calculation, allocation, and use of development mitigation fees (AB 1600 fees)

Public Benefits: this provision is a required element of a development agreement related to the reservation or dedication of land for a public purpose; a permissive element is the terms and conditions relating to the project financing of necessary public facilities and the subsequent reimbursement for the developer’s non-pro rata share over time, and generally includes a description of the public benefits that will result from the agreement, following a recital explaining that the developer recognizes that greater latitude is provided in exchange for agreeing to contribute greater public benefits than could otherwise be required.

Recitals: describes the parties to the agreement; also describes applications and hearing process as well as CEQA review (for example: development agreement application number, general plan amendment application number, type of CEQA review done (if EIR gives state clearinghouse number), also identifies dates of public hearings before planning commission and agency; many development agreements begin with a recital explaining the positive effects of entering into a development agreement, and that the agreement is entered into pursuant to the state development agreement law; a recital may address contingencies that will delay the effective date of the agreement, such as the need for annexation of the property

Recordation: implements state law requirement which requires the agreement to be recorded

GLOSSARY OF KEY TERMS (CONTINUED)

Reserved Discretionary Approvals: describes, generally in some detail, the approvals which are subject to discretion even after the agreement locks in or freezes other regulations; some regulations which may be important to “reserve” are impact fees, uniform codes, processing fees, certain procedural regulations (method of submitting final map – number of copies, Mylar, GIS format, etc.)

Security: describes what the agency will require to assure performance such as letters of credit, performance bonds, or the ability to withhold certain approvals (for example building permits), until performance occurs

Severability; also called Validity: sets forth that if one aspect of the agreement is held by a court to be illegal, the validity of the remaining provisions are not affected

Signatures: identifies who should sign the development agreement; in addition to the property owner and agency, some agencies require lenders, lessees and others with an interest in the property, to sign the development agreement or to sign subordination agreements (see “subordination”).

Subordination: an action by which another entity makes their interests in the property subject to the terms and conditions of the agreement and acknowledges the existence of the agreement

Successors: identifies that the obligations imposed by the agreement constitute “covenants running with the land” and that the burdens and benefits bind all future purchasers

Term: identifies the length of time the agreement (which must be stated in the agreement); larger projects, especially those constructed in phases, may require 10, 15 or 20 year terms

Termination (upon completion of development): provides that upon sale of individual lots all obligations of developer are discharged with respect to lots upon final inspection and issuance of certificates of occupancy

Vested Components: describes, generally in some detail, the existing development regulations, etc. that are “frozen” or “locked in” by the agreement

Waivers: states that a waiver of one breach is not a waiver of any other breach

CONCLUSION

7 CHAPTER

Development agreements can be a useful tool in land use planning, creating win-win opportunities for both project proponents and local agencies when dealing with uncertainties associated with the regulatory environment.

The goal of this manual is to help local agencies in understanding development agreements and to provide them with practical tools to assist them in using development agreements within their jurisdiction.

Did the manual succeed in achieving this goal? The Institute and its financial supporters are very interested in local agency feedback. Please fill out the form at the end of this publication to let the Institute know whether this material was useful and how it could be improved.

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WAS THE INFORMATION IN THE *DEVELOPMENT AGREEMENT MANUAL* USEFUL TO YOU?

☐ Yes ☐ No

WHAT ASPECTS WERE MOST USEFUL? LEAST USEFUL?

DID INFORMATION IN THIS MANUAL INFLUENCE HOW YOUR AGENCY APPROACHED THE DEVELOPMENT AGREEMENT PROCESS?

☐ Yes ☐ No

How?

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I USED THE MATERIAL IN THE *DEVELOPMENT AGREEMENT MANUAL* TO:

- ☐ Update/create our agency's development agreement procedures
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- ☐ Other (please specify)

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5 Key Aspects of the Development Agreement Process

1. Evaluating the **advantages and disadvantages** of using development agreements;
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3. Knowing the **procedural issues** related to development agreements;
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February 17, 2023

VIA EMAIL

Honorable Mayor Budge, Vice Mayor
Sander, and City Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Email: CityClerk@cityofranchocordova.org

Re: Further Response to January 27, 2023 Second Letter to City Council and
Initial Response to Third (February 13, 2023) Letter to City Council from
Attorney Gloria D. Smith Concerning Development Agreement, CEQA
Review, and Land Use Compliance Issues/LogistiCenter Project at Corner of
N. Mather Blvd./Bear Hollow Drive (APN 072-2360-041-000), File No. PLND-
1021-0015.

Dear Mayor Budge, Vice Mayor Sander, and Honorable Members of the City
Council:

We submit this letter on behalf of Dermody Properties ("Dermody"), the successor-in-interest to Elliott Homes, Inc., the original developer party to the "Villages of Zinfandel Development Agreement" ("Development Agreement" or "Agreement"). As previously indicated, we write again primarily to respond in more detail to the meritless contentions raised in the above-referenced January 27 letter from Gloria D. Smith (the "second Smith letter"). As noted in my February 6, 2023 letter to the Council, the second Smith letter is fundamentally and fatally flawed because it relies on material mischaracterizations of the law and ignores or refuses to acknowledge the relevant underlying facts; it is simply another last-ditch effort by Project opponents to prevent the Council from fulfilling its legal obligations under the Agreement and applicable law to reach a final decision and approve the Project, as it was presented fully to the Council on January 17, 2023. As we have repeatedly communicated to the City, if the Council were to ignore its obligations under the Development Agreement, as Ms. Smith urges the City to do, the City would be exposing itself to significant monetary damages and other remedies including attorneys' fees as expressly provided for in the Agreement.

We also address herein a subsequent, two-page, February 13, 2023 letter to the Council from Ms. Smith, purporting to "clarify" the second Smith letter.

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 February 17, 2023
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We address the issues in further detail below.

I. The City is a successor in interest to the Development Agreement and is bound by it until June of 2023.

Contrary to Ms. Smith's claims, nothing in state law or the factual record indicates that the Development Agreement was somehow invalidated, whether automatically as a matter of law or by some action of the parties, when the City incorporated in 2003, or that it subsequently expired prior to the end of its negotiated term, which will end in June of 2023. When the City incorporated, it became the successor in interest to the County of Sacramento, and thereby succeeded to the legal benefits and burdens negotiated by the County as a signatory to the Development Agreement. Ms. Smith ignores these key underlying principles and argues that a pre-incorporation development agreement can only continue into effect after an affected territory is incorporated if Government Code¹ section 65865.3 applies to that agreement. The plain language of Section 65865.3, however, makes clear that that statute only operates to initially limit the ***duration of validity*** (i.e., the term that an agreement is in effect) of a specified *subset* of pre-incorporation development agreements. *Nothing* in Section 65865.3 states that *unless* it applies a development agreement between a county and a developer automatically becomes *null and void* when a subject property becomes part of newly incorporated territory or is annexed into a city. Moreover, repeated actions by public agencies with jurisdiction over the ZSPA—including the County, the City, and LAFCO—clearly recognize and evidence that the Development Agreement was never terminated by any action of the parties and that it continues in full effect.

A. Section 65868.5 binds successors in interest, including the City, to the benefits and burdens negotiated by the original parties to the Development Agreement.

The second Smith letter ignores fundamental provisions of state law that bind all successors in interest of all original parties to a duly recorded development agreement to the respective rights and obligations of those parties under that agreement. As the County's successor in interest, the City as a matter of law assumed the benefits and burdens that the County agreed to as an original party to the Development Agreement.

Section 65868.5 provides:

[n]o later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. ***The burdens of the agreement shall be binding upon,***

¹ Unless otherwise indicated, all references herein are to the Government Code.

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and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(§ 65868.5, emph. added.)

The Government Code does not define “successors in interest” in the context of development agreements. However, both the common meaning of that term and the fact that the statute mentions “parties” (in plural form) indicates that it contemplates that the government agency party, with land use authority over the property at issue, can have a successor in interest, just as the developer party can have such a successor or successors. By its very nature, one of the parties to a development agreement will always be a government agency with general land use authority. (See § 65865 [authorizing cities and counties to enter into statutory development agreements with persons having interest in real property subject to such an agreement].)

In this instance, the plain language of Section 65868.5 indicates that the Development Agreement, which was duly executed by Elliott Homes and the County in 2003, and subsequently recorded by the County, was binding on Elliott Homes’ successors in interest and on the County’s successor in interest. Elliott Homes’ successors in interest included the developers and landowners that purchased portions of the Zinfandel Special Plan Area (ZSPA) within the land subject to the Development Agreement – including Dermody. The County’s successor in interest is the City, which is the agency that succeeded to the County’s general land use authority over the ZSPA within the territory covered by the Development Agreement.

B. Section 65865.3 and its limits on validity of an agreement’s duration do not apply to the Development Agreement, and the Development Agreement continued in effect after the City’s incorporation.

Section 65865.3 places limitations on the effective term of the limited set of development agreements to which it applies. Nothing in Section 65865.3 states that a development agreement between a county and a developer on property that subsequently becomes incorporated into a newly incorporated city is ineffective to bind successor cities or is rendered automatically null and void if Section 65865.3 does not apply at all to that agreement. If that was the Legislature’s intent in enacting Section 65865.3, it could have easily expressed that intent in clear and plain language, but it did not.² Moreover, a close reading of each of Section 65865.3’s subdivision’s further indicates that was clearly not the Legislature’s intent.

² For example, Section 65865(b) provides that any city may enter into a development agreement with a person having a legal or equitable interest in real property in unincorporated territory within that city’s sphere of influence. However, if annexation proceedings for that territory are not completed within the time specified by the agreement or any extension of the agreement “*the agreement is null and*

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1. Section 65865.3 subdivision (a) places time limits on the duration of validity of some pre-incorporation/annexation development agreements affecting territory in newly incorporated cities or newly annexed areas. It also pre-supposes that application of Section 65865.3 is not necessary for pre-incorporation/annexation development agreements to remain in effect in such cities or areas after incorporation.

The operative provision of Section 65865.3 is found in its subdivision (a), which limits the duration of validity of certain development agreements to which it applies:

Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(§ 65865.3 (a), emph. added.)

The above-referenced subdivision (a) contains several express exceptions and limitations, including, as discussed below, but not limited to, the proviso that its provisions (where they do apply) apply only to territory of a “newly incorporated city” or a “newly annexed area.” Beginning first with the statute’s exceptions, Section 65865.3(a) states that it applies “[e]xcept as provided in subdivisions (b) and (c), Section 65868 or 65869.5....” A review of Sections 65868 and 65869.5 demonstrates that the application of Section 65865.3 *is not necessary* for a development agreement to continue in effect after territory subject to a development agreement is newly incorporated.

In relevant part, Section 65868 states that a development agreement “may be amended or canceled in whole or in part by mutual consent of the parties to the agreement or their successors in interest” and then sets out procedural requirements to do so. However, if a development agreement were rendered *automatically* invalid or ineffective upon a new city’s incorporation of the subject

void.” (§65865(b), emph. added.) Section 65865.3 contains no similar language providing that development agreements, not meeting the requirements in subdivisions (c) or (d) of that section, and hence to which the statute’s limitations on duration do not apply, are “null and void”.

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territory, as the second and third Smith letters argue, *unless* Section 65865.3 applied, it would make no sense to cite Section 65868 as an exception to Section 65865.3 since a putative successor (like the City) could never amend or cancel an agreement that was never valid and binding on it in the first place, nor would it need to. By excepting Section 65868, Section 65865.3 recognizes that an incorporating city that succeeds to a development agreement entered into by a county can, *inter alia*, agree with an applicant to cancel it, in which case Section 65865.3 would not apply. This logically compels the conclusion that a pre-incorporation or annexation development agreement entered into between a county and a developer for land subsequently incorporated or annexed into a city has legal validity *independent* of the applicability of Section 65865.3 to that agreement.

Section 65869.5 provides in relevant part that if subsequent changes in state or federal laws or regulations prevent or preclude compliance with one or more development agreement provisions, those provisions shall be modified or suspended as needed to comply with new state or federal law. (§ 65869.5 (a).) Here again, it would be unnecessary and an idle act for the Legislature to have expressly set forth Section 65869.5 as constituting an *exception* to 65865.3's applicability if there were no valid and binding development agreement with provisions that needed to be amended or suspended at all absent application of Section 65865.3.

2. Section 65865.3 subdivision (b) presupposes that a pre-incorporation/annexation development agreement continues in effect regardless of whether Section 65865.3 applies.

Subdivision (b) of Section 65865.3, also expressly carved out as an *exception* in that statute's subdivision (a), allows a city to modify or suspend the provisions of a development agreement if it determines a failure to do so would place its residents "in a condition dangerous to their health and safety." Again, by its nature subdivision (b) presupposes that a development agreement can be valid for a territory that is later incorporated or annexed into a city, such that the agreement can be modified without application of Section 65865.3. This would not be possible if Section 65865.3 provided the *sole* conditions under which a county and developer-executed development agreement could bind a successor city, as the Smith letters argue.

3. Section 65865.3 subdivision (c) does not provide that a pre-incorporation/annexation development agreement not meeting the requirements that render it applicable is automatically rendered ineffective or null and void.

Subdivision (c), the last of Section 65865.3(a)'s express statutory exceptions, lists three conditions that must be met for Section 65865.3's time-limiting provisions to apply to a development agreement. However, like the statutory provisions discussed above, it also does not purport to void or nullify agreements that do not meet these requirements. Subdivision (c) states that, except as provided in subdivision (d),

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Section 65865.3 applies to development agreements that meet *all* three of the following requirements:

- (1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.
- (2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.
- (3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(§ 65865.3 (c).)

As noted in my November 29, 2022 letter to the Council, and as conceded in the third Smith letter, the election on incorporation of the City of Rancho Cordova occurred in November of 2002, which was before May 28, 2003, when the County and Dermody's predecessor in interest entered into the Development Agreement. This means that the Development Agreement does not meet the condition in subdivision (c)(2) that the county "enter[] into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation..." Thus, Section 65865.3 and the term duration limits set forth in its subdivision (a) *did not apply* to the Development Agreement. Again, however, nothing in Section 65865.3 says that pre-incorporation/annexation development agreements that do not meet subdivision (c)'s requirements, and thus to which the statute does not apply, are automatically null and void, as Ms. Smith erroneously argues.

4. Section 65865.3 subdivision (d) does not invalidate pre-incorporation/annexation development agreements where incorporation/annexation was complete before January 1, 1987, as Ms. Smith's logic would dictate.

Subdivision (d) of Section 65865.3 excludes application of the section to pre-incorporation/annexation development agreements for newly incorporated or annexed territory where incorporation or annexation of the territory occurred prior to January 1, 1987, which was presumptively the effective date of Section 65865.3.³

³ As a general rule, for obvious concerns related to constitutionally required due process, legislation is prospective only in operation unless the Legislature clearly

Mayor Budge, Vice Mayor Sander, and City Councilmembers
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But Subdivision (d)'s exclusion of older pre-incorporation/annexation development agreements from the statute's application in no way indicates that development agreements preceding Section 65865.3's effective date are null and void, which would be the result of Smith's reading of the statute, i.e., if application of Section 65865.3 was the sole method by which a pre-incorporation development agreement could continue in effect and bind a subsequently (newly) incorporated city.⁴

II. Sacramento County LAFCO Resolution 1243 conditionally approving the incorporation of Rancho Cordova required the Development Agreement to remain valid and effective after the City's incorporation.

Moving beyond the plain language of the state Development Agreement law to the relevant facts, in May of 2002, when the Sacramento Local Agency Formation Commission ("LAFCO") adopted its resolution conditionally approving the petition to incorporate the City of Rancho Cordova, it adopted a condition that expressly required development agreements for the territory to be newly incorporated as part of the new City to remain valid and enforceable between the developer and the City. Condition 9(j) of that Resolution 1243 reads as follows:

Any and all development agreements entered into between the County of Sacramento and any development project applicant, and any conditions of approval (including mitigation measures adopted pursuant to the California Environmental

expresses a contrary intent. The legislature adopted Section 65865.3 in 1986 and the vast majority of non-urgency statutes go into effect on January 1 of the year following a bill's enactment.

⁴ To the contrary, as noted in the preceding footnote, it is likely that the Legislature adopted subdivision (d) to avoid constitutional due process concerns – heightened in this context – that would arise if Section 65865.3 retroactively shortened the effective term of previously executed development agreements that conferred vested rights on developer parties for a negotiated term. For example, if a development agreement were entered into between a county and a developer in 1983 with a term of twenty years, and the territory subject to that development agreement were incorporated or annexed into a city in 1984, retroactive application of Section 65865.3's (enacted in 1986) shorter validity of duration limitations (8 or 15 years) would cut short the developer's originally negotiated 20 years of vested property rights. (See *In re Marriage of Buol* (1985) 39 Cal.3d 751, 758 [while the Legislature is generally free to apply changes in rules of procedure retroactively when no vested rights are involved, it is constrained from doing so when vested rights are involved].) Ms. Smith's incorrect interpretation of the statute, however, would have the opposite effect—because Section 65853.3 does not apply to agreements impacting land incorporated or annexed prior to its enactment, but that were entered into prior to incorporation or annexation, the section would retroactively invalidate such agreements, thus nullifying, without any meaningful notice or amortization period, valuable vested rights negotiated for and acquired by the developer. Such an absurd result was obviously not intended by the Legislature.

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Quality Act) imposed by the County Board of Supervisors on any and all discretionary projects adopted and approved ***prior to the effective date of incorporation shall remain valid and enforceable between the applicant and the new City of Rancho Cordova, subject to Government Code Section 65865.3, subdivisions (a) and (b).***

(Sacramento LAFCO Resolution No. 1243 Making Determinations for the Approval of the Incorporation of Rancho Cordova, California, May 22, 2002, ¶ 9(j), emph. added. A true and correct copy of Resolution 1243 is attached hereto as **Exhibit A.**)

Resolution No. 1243 makes clear that as a condition of the City's incorporation, any existing development agreements for newly incorporated territory previously entered into between the County and developers remained valid and binding after the new City's incorporation, subject only to the provisions of ***subdivisions (a) and (b) of Section 65865.3***. This LAFCO condition governed regardless of whether a pre-incorporation developer/county development agreement otherwise met the requirements of Section 65865.3 subdivision (c), which is conspicuously omitted from LAFCO's resolution. Accordingly, even though the statute itself didn't apply on its face, LAFCO's resolution by its own terms made the substantive provisions of Section 65865.3(a) and (b) applicable. Thus, the Development Agreement was clearly valid subject only to the referenced statute's limitations on the duration of its validity, which on their face applied to *newly* incorporated or annexed territory.

III. The City executed three amendments to the Development Agreement, repeatedly acknowledging that the Development Agreement remains in effect.

As evidenced by later events, the City also clearly recognized that the Development Agreement continued in effect after the City's incorporation when it subsequently negotiated and executed *three separate amendments* to the Development Agreement. As explained in more detail below, each of these amendments expressly acknowledged that, except as amended, the terms and conditions of the Agreement remained in full force and effect. The most recent of these amendments, from August of 2016, makes clear that the Agreement continues in effect until June of 2023. Further, the statutory deadlines under the applicable statute of limitations for opponents to challenge the validity of the Development Agreement, or any of its amendments, have long since expired.

1. The 2004 Amendment acknowledged that the Development Agreement remained in full force and effect and temporarily shortened its term by 5 years.

On August 2, 2004, when the City was still newly incorporated, the City and Elliott Homes, Inc. executed the first amendment to the Development Agreement ("2004 Amendment", a true and correct copy of which is attached hereto as **Exhibit B**). Among other things, this amendment altered the land use regulations applicable to

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the Alexander Collection Subdivision within the ZSPA, established a special police tax and park renovation fees for the Alexander Collection Subdivision, and (pursuant to the duration limits of Section 65865.3(a) applicable to *newly* incorporated cities) duly shortened the term of the Development Agreement from 20 years to 15 years from the original effective date.⁵ The 2004 Amendment also expressly provided that “[e]xcept as expressly amended by this Amendment, all of the terms, conditions, and provisions of the Development Agreement remain in full force and effect.” (See 2004 Amendment, at ¶ G.)

2. The 2010 Amendment acknowledged that the Development Agreement remained in full force and effect.

On January 19, 2010, nearly seven years after the City’s incorporation, the City and Elliott Homes, Inc. executed the second amendment to the Development Agreement (“2010 Amendment”, a true and correct copy of which is attached hereto as **Exhibit C**). The 2010 Amendment removed 30 acres from the Zinfandel Special Plan Area and from the territory governed by the Development Agreement. Like the 2004 Amendment, the 2010 Amendment noted that “[e]xcept as expressly amended by this amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect.” (2010 Amendment, at ¶ D.)

3. The 2016 Amendment further extended the term of the Development Agreement to June of 2023 and again acknowledged that the Development Agreement remained in full force and effect.

Finally, on or about August 1, 2016, *over 13 years after the City’s incorporation*, the City and Elliott Homes, Inc. executed the third amendment to the Development Agreement (“2016 Amendment”, a true and correct copy of which is attached hereto as **Exhibit D**). The 2016 Amendment changed the land use and zoning designations and standards that applied to the Veranda at Stone Creek subdivision within the ZSPA. The 2016 Amendment, plainly negotiated and made at a time when the City was no longer “newly incorporated”, also extended the term of the Agreement from 15 to 20 years, which was the original effective term of the Agreement when made with the County. (2016 Amendment, at ¶ C.) Again, the 2016 Amendment acknowledged that “[e]xcept as expressly amended by this amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect.” (2016 Amendment, at ¶ E.)

The City Council’s repeated approval of amendments to the Development Agreement, while recognizing that its unamended terms, conditions, and provisions continued in full force and effect, obviously further underscores that the

⁵ While that was, pursuant to LAFCO’s resolution, apparently the maximum term that the newly incorporated City could at that time agree to, as discussed below, a subsequent amendment made in 2016, well over a decade after the City’s incorporation, further extended the Development Agreement’s term until June of 2023.

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Development Agreement remained valid and effective after the City's incorporation. Per the terms of the 2016 Amendment, which was freely negotiated between Elliott Homes and the City, at a time when the City had been incorporated for well over a decade, the Development Agreement will continue in effect until June of 2023, twenty years after the original effective date.

Nothing submitted in the two-page "clarifying" third Smith letter has any impact on any of the foregoing legal or factual analysis or conclusions. Smith's citation and quotation of a secondary source's cursory "pop-out" characterization of portions of Section 65865.3 does not avail her, and changes none of this letter's (or our prior letters') analysis and conclusions; in short, Smith's argument is merely rephrased, but amounts to the same meritless contention: development agreements not "inherited" under Section 65865.3, i.e., to which the statute does not apply, are automatically null and void.

The only claim in the third letter perhaps warranting a further response is that "the longest statutorily allowed extension is limited to 15 years" and thus "even under the most expansive reading of the law, the agreement expired in 2018." In addition to all the reasons set forth above why Smith's reading of the statute is incorrect, she also ignores that subdivision (a)'s term duration limitations are clearly intended, on the face of the statute, to apply *only* in the context of a "newly incorporated city" or "newly annexed area". Here, by contrast, the 2016 Amendment that she argues was inconsistent with the statute, and therefore ineffective, was made *nearly one-and-one-half decades after* the City's incorporation, and thus at a time when it was no longer "newly incorporated" but, rather, a fully mature, long-incorporated City well into its second decade of existence.

Moreover, for reasons explained in more detail in this letter's next section, and even assuming—contrary to the law and facts as accurately analyzed above, and solely for the sake of argument—that Ms. Smith's analysis was correct, the Development Agreement and all of its amendments (including the 2016 Amendment) would nevertheless remain legally valid and beyond any challenge because the 90-day statute of limitations on any challenge expired in late 2016, over 7 years ago. (See Section IV, below.) Any possible way in which the Smith letters' arguments challenging the validity of the Development Agreement arguments are viewed, they—like her other CEQA and land use arguments—lack merit.

IV. The statutory deadlines to challenge the Development Agreement and its amendments expired many years ago.

If Ms. Smith or the Project opponents wished to challenge the Development Agreement, or any of the three amendments to it (all of which were duly approved by the City upon the advice and counsel of its City Attorney), the time for them to have done so was when the Agreement and/or its amendments were approved many years ago.

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The statute of limitations applicable to such challenges is clearly set forth in Government Code section 65009(c)(1)(D), which provides in relevant part:

...no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. An action or proceeding to attack, review, set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. ***This paragraph applies to development agreements, amendments, and modifications adopted on or after January 1, 1996.***

(Gov. Code, § 65009(c)(1)(D), *emph. added.*)⁶

The County of Sacramento adopted the Development Agreement nearly twenty years ago. More than six-and-one-half years ago, on August 1, 2016, the City Council approved the third and most recent amendment of the Development Agreement, which extended the term of the Development Agreement to twenty years after its effective date – June of 2023. The 2016 Amendment was then duly recorded with the Sacramento County Clerk. At no point in 2016 or even 2017 did Project opponents or anyone else object to or challenge the Council's noncontroversial consent calendar approval of the 2016 Amendment. Ms. Smith's current claims challenging the validity and/or continuing effect of the Development Agreement are not only unexhausted and wholly without any substantive merit, but they are also several years too late and ***absolutely time-barred in any event.***

V. The second Smith letter's claims regarding the City's General Plan are baseless.

The second Smith letter also argues that the City's General Plan somehow does not "adequately address current state laws and standards". As I wrote in our February 6

⁶ Upon the expiration of the time limits provided for in the statute, "all persons are barred from any further action or proceeding". (Gov. Code, § 65009(e).) The paramount need for certainty and finality in land use actions is at the core of the statute. The purpose of Section 65009's 90-day time limit is to bar untimely legal actions or proceedings challenging development approvals and amendments because such actions or proceedings have a "chilling effect on the confidence with which property owners and local governments can proceed with projects." As the Legislature acknowledged, such legal actions or proceedings "can prevent the completion of needed developments even though the projects have received required governmental approvals." Section 65009's statutory deadlines therefore "provide certainty for property owners and local governments" regarding local government decisions to adopt or amend development agreements. (See Gov. Code, § 65009(a)(2)-(3).)

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letter, this argument fails for the fundamental reason – among others – that the Development Agreement remains in full force and effect. Therefore, by the Development Agreement’s terms, the Project is only subject to those applicable development standards in the County’s General Plan, ZSPA, and incorporated zoning standards that were in effect in 2003.

Even apart from this, with the exclusion of certain obligations related to a city’s housing element, cities in California are not required to update their general plans at any given interval or in connection with any given event, including (but not limited to) a change in state laws or regulations. (See, e.g., *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259 [rejecting argument that city’s 18-year old general plan was out of date because not based on modern environmental, safety, and other data], disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725; see also Gov. Code, § 65358(b) [generally providing that mandatory elements of a general plan shall not be amended more than four times in a calendar year].) State law certainly does not require a city to revise or update its general plan every time the Legislature adopts a new law or every time a state agency adopts a new regulation. The overwhelming burdens this would place on cities throughout the state are obvious and such a requirement would fundamentally upend the governing practices of cities and counties throughout the state. Further, if Project opponents wish to challenge the City’s General Plan as inadequate, the proper time for them to have done so was at the time the General Plan language in question was adopted or when such language was amended. Any challenges not timely brought after such trigger dates are also absolutely time-barred by the applicable 90-day statute of limitations. (See Gov. Code, § 65009(c)(1)(A).)

VI. The Second Smith letter’s Repeated CEQA Claims Continue to Lack Merit.

Again, the second Smith letter repeats arguments from the first letter that the Supplemental EIR for the ZSPA is somehow “unlawfully stale”. As set out in detail in my January 25, 2023 letter to the Council, and reiterated in my February 6 letter, the claim that CEQA contains some uncodified requirement that an allegedly stale EIR be updated whenever some allegedly new information becomes available is simply wrong as a matter of law and fundamentally misunderstands CEQA’s subsequent review rules. CEQA establishes a strong presumption *against* further environmental review after an EIR is certified, and no such further environmental review is warranted here, as the City’s staff has consistently and correctly recognized.

VII. Conclusion

In conclusion, and as we have previously and repeatedly advised, the Development Agreement remains in full force and effect and it continues to bind the City, as the successor in interest to the County, to the benefits and burdens of the Agreement. Unfortunately, the second Smith letter – like the first – fails to properly analyze the applicable law and fails address the material facts discussed above, apparently based on a failure to investigate the relevant facts or the public record that would

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readily disclose such facts. The third Smith letter contains nothing of substance that is new, and does nothing that changes the fundamental failings of the second letter. If the City were to deny the continuing existence of the Development Agreement and its amendments, duly approved by this Council upon the advice of the City Attorney, it would be recklessly exposing itself to litigation with the risk of incurring significant monetary damages and attorneys' fees. The second Smith letter's remaining arguments, regarding the City's General Plan and CEQA review, are also meritless, for reasons explained above and previously.

As Dermody has consistently and correctly asserted throughout this too-lengthy Project design review approval process, the Development Agreement requires the City to reach a final decision and approve the Project, as presented fully to the Council on January 17, 2023, without further delay.

Thank you for your anticipated attention to these important matters.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:/klw

encls: Exhibits A-D

cc: Micah Runner, City Manager (w/encls; mrunner@cityofranchocordova.org)
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EXHIBIT A

RESOLUTION NO. LAFC 1243**RESOLUTION OF THE
SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
MAKING DETERMINATIONS FOR THE APPROVAL OF THE
INCORPORATION OF RANCHO CORDOVA, CALIFORNIA (12-97)**

WHEREAS, as used in this Resolution, the following terms shall mean:

"City of Rancho Cordova" or "City" is the general law city proposed in the Proposal with a proposed effective date of July 1, 2003;

"Commission" is the Sacramento County Local Agency Formation Commission;

"County" is the County of Sacramento;

"Executive Officer" is the Executive Officer of the Commission;

"Petition" is the original petition certified as a Sufficient Petition on October 27, 1999;

"Proposal" is the incorporation of the subject territory into a general law city as set forth in the Petition; and

"Subject Territory" is the area described in Exhibit A (legal description) and shown on Exhibit B (map), which are attached hereto and by this reference incorporated herein. [This territory is a modification of the originally proposed boundaries. In the event of any conflict between Exhibit A and Exhibit B, Exhibit A shall control];

WHEREAS, the Petition was submitted to the Commission pursuant to the Cortese-Knox-Local Government Reorganization Act, and all amendments thereto;

WHEREAS, on October 1, 1999, the Executive Officer submitted the Petition to the Registrar of Voters of the County for verification that sufficient registered voters within the applicable area signed the Petition, and the Registrar of Voters of the County found that the requisite number of valid signatures were affixed to the Petition, as required by law;

WHEREAS, the Executive Officer has examined the Petition and executed his Certificate of Sufficiency in accordance with law;

WHEREAS, at the times and in the substantial form and manner provided by law, the Executive Officer has given notice of public hearing(s) by this Commission upon the Proposal;

WHEREAS, numerous public hearings on the Petition and the Proposal were held by the Commission commencing in May 2001;

WHEREAS, the Executive Officer has reviewed all available information and prepared reports, including recommendations, and presented the findings, reports and related information to the Commission, which were then considered by the Commission; and

WHEREAS, at the public hearing(s) the Commission heard and received all oral and written protests, objections, all oral and written evidence, which was made, presented, or filed, and persons present were given an opportunity to hear and be heard with respect to any matter relating to these hearings.

NOW, THEREFORE, the SACRAMENTO LOCAL AGENCY FORMATION COMMISSION does hereby find, determine, resolve and order as follows:

1. The Commission has considered all relevant factors set forth in Government Code Section 56841 and all other relevant factors in reaching its conclusions regarding the Proposal including its findings set forth in Exhibit C attached hereto and incorporated herein.

2. Notice as required by law has been given.

3. The Subject Territory is inhabited.

4. In approving this proposal the Commission has considered the policies set forth in Government Code Section 56377. The incorporation of the City of Rancho Cordova does promote the planned, orderly, efficient development of the Subject Territory. Pursuant to Section 56720 (formerly Section 56375.1) of the Government Code, and based upon the entire record, the Commission finds that:

- a. Incorporation of the City of Rancho Cordova is consistent with the intent of the Cortese-Knox Local Government Reorganization Act; the policies of former Sections 56001, 56300, 56301, and 56377 of the Government Code; and the policies of this Commission.
- b. The spheres of influence of the local agencies affected by the Proposal have been reviewed by this Commission. This incorporation is consistent with those spheres of influence.
- c. The Commission has reviewed the Comprehensive Fiscal Analysis and all supplements prepared pursuant to former Section 56833.1 of the Government Code.
- d. The Commission has reviewed the Executive Officer's Report and Supplemental Information provided by the Executive Officer, and Recommendations prepared pursuant to Section 56665 (formerly Section 56833) of the Government Code, and the testimony presented at its public hearings.

- e. The proposed City is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

5. In accordance with Section 56852.3 of the Government Code, the Commission hereby accepts the findings and recommendations of the Executive Officer's Report, the Supplemental Information, Recommendations, the Comprehensive Fiscal Analysis, and all supplements.

6. The Commission, through its Executive Officer, conducted an Initial Study of the Petition and the Proposal and has caused an Environmental Impact Report (EIR) on the proposed Rancho Cordova incorporation to be prepared. The Commission adopted Resolution No. 1240 on May 1, 2002, certifying the EIR on the Project. All identified mitigation measures are adopted herewith and included as conditions of project approval as set forth in this Resolution Making Determinations.

7. The Commission finds that revenues currently received by the County for services that, but for the operation of former Section 56845 of the Government Code, would accrue to the proposed city are not substantially equal to the direct and indirect expenditures currently made by the County for those services that will be assumed by the proposed city. The Commission has proposed Condition 9.p. to adequately mitigate the negative fiscal impact on the County General Fund through the sharing of tax revenues, including property tax revenues over a fixed period of time. The sharing of property tax revenues will be implemented in part by Condition 9.n.iv., imposed under Section 56842 of the Government Code. The Commission finds pursuant to former Section 56845(a) that the incorporation is not occurring for primarily financial reasons.

8. Pursuant to Government Code Section 57376, the City Council of the City of Rancho Cordova shall be subject to and shall adopt all County ordinances, including the resolution adopting the Sacramento County General Plan for the incorporated area, to remain in effect in accordance with law and subject to Government Code Section 65360.

9. Subject to the conditions set forth herein, the incorporation proposed by the Petition submitted, is hereby approved as follows:

- a. The Subject Territory is incorporated into a new general law city.
- b. The name of the proposed new city shall be "The City of Rancho Cordova."
- c. The boundaries of the City of Rancho Cordova shall be the Subject Territory as set forth in Exhibits A and B attached hereto and incorporated herein.
- d. The City of Rancho Cordova, in addition to providing those services required by law, shall insure provision of the following services: Animal Control and Regulation Services; Building and Building Inspection; Code

Enforcement; Police/Law Enforcement Services; Planning; Public Works; Site Development Services; Traffic and Safety Lighting Maintenance; Street, Road, and Landscape Maintenance; and Solid Waste Collection and Disposal. The City of Rancho Cordova should consider contracting with the County of Sacramento for all or some of the above services. The City of Rancho Cordova shall consider contracting with the Sacramento County Sheriff's Department for Police/Law Enforcement Services and, at a minimum, shall maintain such services at existing levels. The Sacramento Public Library Authority will continue to provide Library Services.

- e. Pursuant to Government Code Section 56426.5, the Commission hereby adopts a Sphere of Influence for the City of Rancho Cordova which boundaries are set forth in Exhibit D attached hereto and incorporated herein. It is anticipated that the Mather Air Force Base Redevelopment Project Area shall be considered for inclusion in the Rancho Cordova Sphere of Influence at such time as the Sphere of Influence is revised.

Prior to filing an application to amend the Sphere of Influence boundaries, the City of Rancho Cordova shall form and participate in a committee process with Sacramento County and any affected city or district, to discuss terms of the proposal. Results of the committee process including terms shall be submitted to the Commission with the proposal.

- f. The Commission finds that the application of Government Code Section 25210.90 to automatically detach Sacramento County Service Area No. 1 and an additional Sacramento County Service Area, formed prior to the effective date of incorporation of the City of Rancho Cordova for the provision of transportation services, from the City would deprive the City of services needed to ensure the health, safety or welfare of its residents. The Commission further finds that the continuation of the County Service Areas within the City would not affect the ability of the City of Rancho Cordova to provide any service. (Govt. Code Sections 25210.4; 25210.4(a); 56375(n), 56844(o).) The City of Rancho Cordova may continue participation within these county service areas after the first full year of incorporation only upon payment of charges and following execution of maintenance and operations agreements by and between the City of Rancho Cordova and the County of Sacramento.
- g. The Sacramento County Water Agency will continue to supply water and drainage planning, design, and maintenance for the City of Rancho Cordova through the Sacramento Water Agency SCWA Zones 11(a)(b), 12, 13, 40 and 41, and the City shall continue to receive other drainage service from the County's Stormwater Utility. The City shall continue to levy the Stormwater Utility Fee that is currently levied by the County. The County shall continue to collect the Stormwater Utility Fee levied

within the City as part of its consolidated utility billing service and retain the fees so collected to fund the cost of drainage services within the City.

- h. Pursuant to Government Code Section 57384, the County shall continue to provide to the incorporated area all services furnished to the area prior to incorporation, at the same level and in accordance with the budget for the County adopted prior to the effective date of incorporation, for the remainder of the fiscal year during which the incorporation becomes effective, or for a shorter period if the City of Rancho Cordova, acting through its City Council, requests discontinuation of a service or services. In accordance with Section 57384 of the Government Code, the Board of Supervisors has requested that the City reimburse the County for the costs of such services. During the initial year of incorporation (Fiscal Year 2003-04), the County shall invoice the City for a pre-payment of \$3.5 million towards the costs of these services, and the City shall pay such amount to the County no later than March 31, 2004. Furthermore, the cost of such services shall be reduced by the amount of the City's secured and unsecured ad valorem property taxes for fiscal year 2003/2004 if retained by the County and the amount of the City's first quarter (July 1, 2003 through September 30, 2003) sales tax revenue retained by the County in Fiscal Year 2003/2004. After such revenue offset, the City shall owe the County the net cost of such services. Accordingly, the new City shall repay the County, over a five-year period, the net cost of all services provided by the County, with the obligation commencing on July 1, 2004 and payments beginning on October 1, 2004 and ending October 1, 2009. Such reimbursement of costs are to be paid in equal quarterly installments of 1/20th of the principal amount owed plus simple interest calculated from July 1, 2004, using the interest rate equivalent to the rate of interest earned by the Sacramento County Treasury Pool.
- i. The City of Rancho Cordova shall petition the Sacramento Area Council of Governments ("SACOG") for inclusion in its Joint Powers Agreement as a member city and shall participate in SACOG's regional planning activities as a nonmember prior to membership.
- j. Any and all development agreements entered into between the County of Sacramento and any development project applicant, and any conditions of approval (including mitigation measures adopted pursuant to the California Environmental Quality Act) imposed by the County Board of Supervisors on any and all discretionary projects adopted and approved prior to the effective date of incorporation shall remain valid and enforceable between the applicant and the new City of Rancho Cordova, subject to Government Code Section 65865.3, subdivisions (a) and (b).
- k. With the exception of fees collected by the County of Sacramento prior to and after the incorporation under the Mather Field Public Facilities

Financing Plan Development Fee Program (Chapter 16.84 of the Sacramento County Code), the County of Sacramento shall transfer to the new City of Rancho Cordova impact fees collected prior to the incorporation solely within and intended for use in the territory of the new City, for facilities or services not yet rendered for underground utilities, roads, parks, housing and any other allowed use. The City shall be required to collect and expend these impact fees for the original purposes for which the County collected the impact fees. Existing transportation fee impact programs shall be continued at levels necessary to adequately fund approved road construction projects.

1. The portion of the area west of the Sacramento County Landfill outside the Urban Services Boundary shall remain an undeveloped buffer area for the benefit of the landfill unless a change in use is agreed to by Sacramento County.
- m. The provisional appropriations limit, as required by Article XIII B of the California Constitution, shall be \$34,250,000. A permanent appropriations limit will be set by the voters of the new City at the first municipal election, which will be held following the first full fiscal year of operation by the new City. (Government Code Section 56812(c) (formerly Section 56842.6).)
- n. Pursuant to Government Code Section 56842, the Commission makes the following findings:
 - i. The Commission has considered the total amount of revenue from all sources available to the proposed City of Rancho Cordova;
 - ii. The Commission has considered the fiscal impact of the transfer of property tax revenue on the County;
 - iii. In accordance with Government Code Section 56842, the amount of the base year property tax revenue subject to transfer is \$ 3,842,828. The amount of base year property taxes transferred shall be adjusted to the year in which it is made.
 - iv. The property tax revenue subject to transfer shall be allocated directly by the County as a means of implementing the tax sharing condition set forth in Condition 9.p. of this Resolution Making Determinations. The Commission further finds that there is no current separate fund for the purposes of Government Code Section 56842(c)(4).
- o. The City of Rancho Cordova shall be authorized and may continue to levy as general taxes of the City those general taxes presently levied by the

County of Sacramento as of November 1, 2002, including, but not limited to, the Utility User Tax and the Transient Occupancy Tax. The types, rates and method of collection of the general taxes to be so continued and imposed are as follows:

- i. A sales and use tax at the maximum rate of one percent (1%) of the retail sale or use of tangible personal property within the City of Rancho Cordova to be collected under contract with the State Board of Equalization and returned to the City of Rancho Cordova pursuant to local ordinance.
- ii. A real property transfer tax at the rate imposed by the County of Sacramento upon the sale of real property within the City of Rancho Cordova to be collected by the County of Sacramento and the pro-rata share returned to the City of Rancho Cordova pursuant to local ordinance.
- iii. The City shall impose a utility user tax identical to the tax imposed by the County of Sacramento as of November 1, 2002 at the rate of 2½% of the utility charge. The new City may modify, alter, or rescind this tax in its discretion so long as its financial obligations to the County under Condition 9.p. of this Resolution Making Determinations are satisfied.
- iv. The City shall impose a transient occupancy tax identical to the tax imposed by the County of Sacramento as of November 1, 2002 at the rate of 12% per room rate.
- v. The City shall impose all other general taxes similar to the general taxes presently imposed by the County of Sacramento at the same rate and in the same manner.
- vi. All other taxes generally authorized for incorporated cities, including, but not limited to:
 - a) Property Taxes
 - b) Sales Taxes
 - c) Real Property Transfer Taxes
 - d) Franchise Fees
- p. Pursuant to former Government Code Section 56845 as a means of mitigating the financial impacts of the incorporation upon the County of Sacramento's general fund, the City shall be required to share its property tax revenue in accordance with the terms hereinafter set forth:

- i. If a majority of the electorate votes in the November 5, 2002, general election to continue in effect the County's 2.5% utility user tax and the increase in the County's transient occupancy tax from 10% to 12%, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2033-2034, the City property tax revenue according to the percentages set forth in Option 1 of Exhibit E.
- ii. If a majority of the electorate votes in the November 5, 2002, general election to continue in effect the increase in the County's transient occupancy tax from 10% to 12% and fails to vote to continue in effect the County's 2.5% utility user tax, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2027-28, the City property tax revenue according to the percentages set forth in Option 2 of Exhibit E.
- iii. If a majority of the electorate votes in the November 5, 2002, general election to continue in effect the County's 2.5% utility user tax and fails to vote to continue in effect the increase in the County's transient occupancy tax from 10% to 12%, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2032-33, the City property tax revenue according to the percentages set forth in Option 3 of Exhibit E.
- iv. If a majority of the electorate in the November 5, 2002, general election fails to vote to continue in effect the County's 2.5% utility user tax and the increase in the County's transient occupancy tax from 10% to 12%, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2027-28, the City property tax revenue according to the percentages set forth in Option 4 of Exhibit E.
- v. All costs and expenses associated with the collection, administration and interest-earning capabilities of the City property tax revenue shall be shared by the City and the County in accordance with the same percentages as the underlying property taxes. The County's share of the City property tax revenue shall be allocated by the County's Director of Finance directly to the County.
- vi. The City's property tax revenue shall not include any proportion of the percentage share of tax increment revenue from the project area which the City may be entitled to receive pursuant to Health and Safety Code Sections 33607.5(a)(2) or (b) nor any amount the City

may receive pursuant to Health and Safety Code Section 33670(a) nor any amount received pursuant to Condition 9.w.

- q. The tax sharing provisions set forth in Condition 9.p. above are premised on the statewide structure that governs local government finances and the obligation of newly incorporated cities to mitigate the negative fiscal impacts of their incorporation on counties that existed as of the date of adoption of this Resolution. The tax sharing obligations set forth in that condition shall be subject to modification upon any of the following occurrences:
 - i. A statewide structural change in the services, which are required by the State to be provided by the County or the City;
 - ii. A statewide structural change in the manner in which the above mandated services are funded;
 - iii. The occurrence of any other event that significantly modifies how cities and/or counties generally receive, or the County specifically receives, funding;
 - iv. Any significant modification by the State of the manner in which newly incorporated cities are funded; or
 - v. If the revenue neutrality structure in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code 56815) as it existed on July 1, 2002, is modified in a substantive, non-technical manner.
- r. If either party believes that one of the triggering factors set forth in Condition 9.q. above has occurred, it may serve a written "Notice of Reopener" on the other party requesting that the City's tax sharing obligation be modified. A copy of this written request shall be provided to the Commission, but the Commission shall not have any role with respect to the request. The Notice of Reopener shall specify the precise manner in which the requesting party is proposing that the City's tax sharing obligation be modified and must be submitted within one (1) year of the effective date of the relevant triggering factor. If the Notice of Reopener is not served within this one (1) year period, the parties waive any right to request a modification of the City's tax sharing obligation based on that particular triggering factor.
 - i. The parties shall have sixty (60) days after service of the Notice of Reopener as a negotiation period in which to attempt to reach mutual agreement on an appropriate modification to the City's tax sharing obligation ("Negotiation Period"). If the parties are unable

to reach such a mutual agreement within this sixty (60) day Negotiation Period, the City and County shall comply with the dispute resolution procedures set forth below. In doing so, the parties shall conform to the timeline prescribed therein measured from the date of service of the Notice of Reopener.

- ii. If, upon the completion of the Negotiation Period, no modification to the City's tax sharing obligation is agreed upon by the City and the County, the City and the County shall mutually select a mediator, funded in equal portions by each party, to perform mediation for a period of not to exceed thirty (30) days ("Mediation Period"). If the City and the County cannot mutually select a mediator, each shall select a mediator of it's choosing. Those two mediators shall then select a neutral mediator, who shall be the mediator.
- iii. If, upon the completion of the Mediation Period, no mutually acceptable agreement has been reached by the City and the County, the parties shall mutually commence an action in the California Superior Court for the exclusive purpose of implementing the process of resolution of the dispute by general reference under Code of Civil Procedure section 638. This agreement by the parties shall constitute and be construed to be an agreement to reference under Code of Civil Procedure section 638. The parties shall select a referee under Code of Civil Procedure sections 638 and 640, funded in equal portions by the parties, to conduct a judicial reference with the City and the County for a period of not to exceed thirty (30) days. If the City and the County cannot mutually select a referee, each shall select a mediator of it's choosing. Those two mediators shall then select a referee, who shall be the referee.
- iv. The provisions of Code of Civil Procedure section 1283.05 are made expressly inapplicable to the Negotiation and Mediation periods and/or the reference proceedings conducted pursuant to this section. However, discovery shall be permitted for the reference proceeding only, but, pursuant to Code of Civil Procedure section 2021, discovery during the reference proceeding shall be subject to the following limitations:
 - a) Discovery shall be limited in time to the forty-five (45) days before the date of the commencement of the reference hearing;
 - b) Discovery shall be limited in scope to disclosure of information to be presented at the reference hearing; and

- c) Discovery shall be accomplished by the disclosure duties as contemplated by Federal Rule of Civil Procedure, Rule 26, which initial disclosure shall occur on the forty-fifth (45th) day before the date of commencement of the reference hearing, or on some other date mutually agreed upon by the parties.
- v. On the day that the reference proceeding commences and as a part of each party's case in chief, the City and the County shall each present to the referee its last and best offer with respect to the City's tax sharing obligation. The referee must make his or her decision within the confines of the two offers presented by the parties. The reference proceeding contemplated herein shall be conducted pursuant to Code of Civil Procedure section 638 et. seq. and the decision by the referee must be reported as set forth in Code of Civil Procedure section 643 and it must stand as the decision of the court as set forth in Code of Civil Procedure section 644. The only review of the referee's decision shall be to determine if the referee's decision is within the confines of the two offers presented by the parties. The referee is free to fashion his or her decision within the confines of the two offers presented by the parties. However, if the referee's decision does not stay within the confines of the two offers presented by the parties, the referee's decision shall be null and void and subject to judicial review. The parties expressly agree to preserve their appellate rights pursuant to Code of Civil Procedure section 645, as limited herein.
- vi. Proceedings under these dispute resolution procedures shall be concluded no more than one hundred and fifty (150) days after the service of the Notice of Reopener, unless one or more of the periods specified herein is extended by the mutual written agreement of the City and the County, but in no event may the proceedings under these dispute procedures be extended for a cumulative period of more than one (1) year after the service of the Notice of Reopener.
- s. The City's tax sharing obligation has been memorialized in the form of a Tax Sharing Agreement between the City and the County that is attached hereto and incorporated herein as Exhibit F. The Tax Sharing Agreement has been approved by the County Board of Supervisors and shall be submitted to the voters of the City for approval as part of the incorporation ballot measure. The Tax Sharing Agreement will become effective upon the effective date of the City's incorporation. The City's Mayor shall execute the Tax Sharing Agreement on behalf of the City immediately upon the City's incorporation becoming effective. The Tax Sharing

Agreement shall constitute a separate and distinct mechanism for the County to enforce the City's tax sharing obligation to the County. If for any reason the Tax Sharing Agreement is determined to be invalid or otherwise unenforceable in whole or in part, the City's tax sharing obligation set forth in Condition 9.p. above shall remain in full force and effect.

- t. Subject to the City of Rancho Cordova satisfying all prerequisites necessary to become a member entity of the Sacramento Transportation Authority, the Commission recommends that the City of Rancho Cordova petition to become a member of the Sacramento Transportation Authority and submit a proposal to the Sacramento Transportation Authority requesting that the County, the City of Sacramento, and other members of the Sacramento Transportation Authority act to allocate funds equitably and in a manner similar to other municipalities in Sacramento County.
- u. The City of Rancho Cordova and the County of Sacramento should consider joint maintenance agreements for roads, including lighting maintenance, which have common boundaries.
- v. The City of Rancho Cordova shall maintain existing public transit service, including applicable paratransit service required under the Americans with Disabilities Act. This shall be accomplished by the activation of the City of Rancho Cordova into the Sacramento Regional Transit District and activation of transit service within the City in accordance with the procedures set forth in section 102062.5 and section 102055 of the District's enabling legislation (Part 14 of Division 10 of the California Utilities Code). The City shall, within one hundred and eighty (180) days of incorporation, submit a request for annexation and activation to the Sacramento Regional Transit District.
- w. A portion of the Mather Air Force Base Redevelopment Project Area is within the City boundaries and the Commission finds that the redevelopment project is of regional significance and that the County of Sacramento is the regional governmental entity that will retain jurisdiction for the redevelopment project at this time.
 - i. A portion of the Mather Field Public Facilities Financing Plan Area is within the City boundaries. The Commission finds that the Mather Field Public Facilities Financing Plan is of regional significance and that the County of Sacramento is the regional governmental entity that should retain jurisdiction of existing fees collected under the Mather Field Public Facilities Financing Plan Development Fee Program (Chapter 16.84 of the Sacramento County Code). The County of Sacramento shall retain all existing fees collected under the Mather Field Public Facilities Financing Plan Development Fee Program prior to and after the incorporation. These fees are transportation mitigation financing

fees adopted pursuant to Government Code Section 66000 et. seq. The County shall retain sole control to levy and collect said fees and shall administer the fee program within the City of Rancho Cordova. The City shall not issue building permits or occupancy permits in that portion of the City located within the Mather Field Public Facilities Financing Plan Area without written notice from the County showing that the applicable fees have been paid to the County. The City of Rancho Cordova shall adopt an ordinance consistent with this condition within 180 days of incorporation.

- ii. The City of Rancho Cordova shall ensure that City actions are consistent with the Mather Air Force Base Redevelopment Project Area Plan adopted pursuant to state law (Health and Safety Code section 33492). In furtherance of said Plan, the County has executed certain purchases and sale agreements with the Redevelopment Agency of the County of Sacramento and the Redevelopment Agency of the County of Sacramento has executed certain Disposition and Development Agreements with property owners and the City shall be subject to said terms.
- iii. The City of Rancho Cordova shall impose aviation easements where necessary consistent with the Mather Field Redevelopment Plan, Airport Master Plan and Development Plan.
- iv. The City of Rancho Cordova shall ensure that the City actions are consistent with covenants, restrictions, conditions and other land use limitations and requirements that properties located within the former Mather Air Force Base are subject to under and associated with real property transactions (land use covenants, purchase agreements, deeds, leases, easements and other conveyance mechanisms) between the County of Sacramento and the United States Department of Air Force or other federal departments.
- x. It is the intent of Sacramento County and the Commission to the fullest extent permitted by law that the low and moderate income housing set aside funds (20% of total tax increments) accruing on account of tax increment funds allocated from real property located within the Mather Air Force Base Redevelopment Project Area shall be utilized within the boundaries of (1) the Mather Air Force Base Redevelopment Project Area; (2) the City of Rancho Cordova; or (3) the Cordova Community Plan boundaries adopted on or about December 1, 1975, as amended by the Board of Supervisors, provided the findings required by Health and Safety Code Section 33334.2 are made.
 - i. Funds will be spent in conformance with adopted housing element plans of the County and City when approved.

- ii. Expenditure of funds will be subject to any pre-existing debt or agreements entered into by the Sacramento County Redevelopment Agency prior to incorporation.
- y. The City of Rancho Cordova shall enter into discussions with the County of Sacramento to determine if it is mutually beneficial to consider the transfer of authority and jurisdiction for the Sunrise Cordova Consolidated Reassessment District and the Bradshaw Road/US 50 Corridor Integrated Financing District pursuant to state law and established conditions of debt services. Unless and until a transfer is affected, the County shall continue to administer the Sunrise Cordova Consolidated Reassessment District and the Bradshaw Road/US 50 Corridor Integrated Financing District levies and their annual assessment on District properties within the incorporated territory consistent with the County's bond covenants.
- z. The City of Rancho Cordova shall enter into discussions with the County of Sacramento to determine the future administration of the Sunridge Public Facilities Financing Plan, the Villages of Zinfandel Public Facilities Financing Plan including the consideration of reestablishing these programs for ongoing development within the City of Rancho Cordova. These discussions may also include the disposition of development fee funds collected and unspent prior to the incorporation of the City of Rancho Cordova. If available, the County shall provide to the City of Rancho Cordova copies of the analysis, planning, environmental, and engineering studies prepared as part of the adoption of these development fee programs. In addition, all work related to the implementation of the improvements identified in the development impact fee programs will be made available to the City of Rancho Cordova. The County and City shall work together to determine the most effective way to implement these development impact fee programs. In addition, the discussions may establish the terms and conditions under which the County agrees to administer these programs and construct these infrastructure improvements located within the City of Rancho Cordova. Following incorporation, the City shall adopt and implement the development impact fee programs consistent with the previous practices of the County. Within two years from the date of incorporation, the County and City shall determine which funds, if any, shall be transferred to the City.

10. The City of Rancho Cordova shall become a co-permittee under the terms of the existing Countywide National Pollution Discharge Elimination System Permit as soon as practicable after incorporation.

11. The Mather Roadway Transit & Development Fee shall be continued and shall be administered by the County of Sacramento. The County of Sacramento shall retain sole control of the demolition credits contained in the Base Conversion Demolition Account established for the former Mather Air Force Base under the Roadway and Transit Development Fees Program (Chapter 16.87 of the Sacramento County Code). County shall manage the credits and have the

sole discretion to allocate the credits to new construction with the City or County portions of the former Mather Air Force Base. The City of Rancho Cordova shall adopt the necessary ordinances to effectuate this condition within 180 days of incorporation.

12. Subject to the limitations of Government Code Section 57202, the effective date of incorporation is to be July 1, 2003.

13. The new City shall have a Council-City Manager form of government.

14. The governing body of the proposed new city shall be a five-member City Council. The first City Council shall be elected at-large from throughout the area to be incorporated. Terms of office for the members of the City Council shall be in accordance with law. Future city council members shall be elected at large or as determined by the City Council consistent with state law.

15. Subject to the limitations of Government Code Section 56724 (formerly Section 56852.5), the election of the first City Council and the incorporation election will be held at the next regularly scheduled election date which is November 5, 2002. Costs for the election of the first City Council election shall be borne by the City.

16. Upon and after the effective date of this incorporation, the City Manager, City Clerk, and City Treasurer shall be appointed by the City Council in accordance with Government Code Section 56723 (formerly Section 56702).

17. The boundaries of the proposed City shall be as set forth in Exhibits A and B attached hereto and incorporated herein.

18. The question of incorporation, including all terms and conditions, shall be one question on the ballot.

19. The election on the incorporation of the City of Rancho Cordova (hereinafter "election") shall be held within the Subject Territory and shall be called and held on the next regular election date occurring at least eighty-eight (88) days after the date upon which the Board of Supervisors of the County, as the Conducting Authority, adopts a resolution calling the election. The next regular election date is November 5, 2002.

20. Pursuant to Government Code Section 57385, all roads and highways or portions of road(s) and highway(s), which had been accepted into the County-road system pursuant to Section 941 of the Streets & Highways Code, shall become City streets on the effective date of the incorporation.

21. The County Board of Supervisors shall be the Conducting Authority and shall initiate proceedings for the incorporation of the City of Rancho Cordova in compliance with Government Code Section 57000 *et seq.*

22. Pursuant to Government Code Section 56375(f), the Commission finds that there are 23,966 registered voters residing within the Subject Territory.

23. The Commission has reviewed the boundaries of the Subject Territory for definiteness and certainty and has determined that the same are definite and certain.

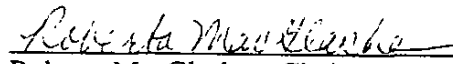
24. The Commission makes the additional findings and imposes the additional conditions set forth in Exhibit C attached hereto and incorporated herein.

BE IT FURTHER RESOLVED by the Sacramento Local Agency Formation Commission that the Sacramento County Board of Supervisors is directed to initiate appropriate proceedings in compliance with this resolution and state law and that the Executive Officer of this Commission is authorized and directed to:

- a. Mail a certified copy of this Resolution to the chief petitioners;
- b. Mail a certified copy of this Resolution to the affected governmental agencies whose boundaries are affected by the Resolution;
- c. File a certified copy of this Resolution with the Clerk of the Board of Supervisors of the County; and
- d. Request the County Surveyor to prepare the official legal description of the Subject Territory to be filed with the Clerk of the Commission.

On a motion by Commissioner Porter, seconded by Commissioner Tooker, the foregoing Resolution was passed and adopted by the SACRAMENTO LOCAL AGENCY FORMATION COMMISSION, State of California, this 22 day of May, 2002, by the following vote to-wit:

AYES: E. Mulberg, W. Porter, C. Tooker, R. Dickinson, L. Hammond, R. MacGlashan.
 NOES: None
 ABSTAIN: None
 ABSENT: I. Collin, M. Johnson.


 Roberta MacGlashan, Chair
 SACRAMENTO LOCAL AGENCY FORMATION
 COMMISSION

ATTEST:

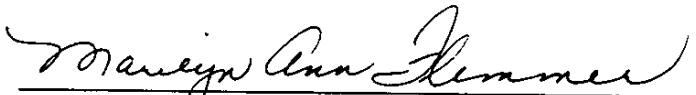

Marilyn Ann Flemmer
Commission Clerk

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT TERRITORY

To Be Included

EXHIBIT 'A'
LEGAL DESCRIPTION FOR PROPOSED INCORPORATION
OF THE CITY OF RANCHO CORDOVA, CALIFORNIA

All those portions of T. 8N., R. 6E. and R. 7E., M.D.B. & M., and all those portions of T. 9N., R. 6E. and R. 7E., M.D.B. & M. and a portion of Rancho Rio De Los Americanos situate in the County of Sacramento, State of California more particularly described as follows:

Beginning at the northwest corner of that certain Parcel Map entitled 'BEING A PORTION OF TRACT 3 AS SHOWN ON "PARTITION OF MAP OF LANDS OF ESTATE OF GEO N. KEY DECEASED" 2 B.M. 28' filed in the office of the Recorder of said County and State in Book 132 of Parcel Maps at Page 20; thence from said Point of beginning along the westerly line of said Parcel Map South $00^{\circ}57'21''$ East 3,869.85 feet to the southwest corner of said Parcel Map; thence along the South line of said Parcel Map North $89^{\circ}05'40''$ East 466.94 feet; thence South $00^{\circ}24'30''$ East 1,520.00 feet to an angle point on the westerly line of Parcel 4 as shown on that certain Parcel Map entitled "PORTION OF RECORD OF SURVEY RECORDED IN 12 R.S. 27" filed in the office of the Recorder of said County and State in Book 29 of Parcel Maps at Page 28; thence along the westerly and northerly boundary line of said Parcel Map the following three (3) courses: 1) North $89^{\circ}36'00''$ East 451.50 feet; 2) North $18^{\circ}48'30''$ East 1,609.61 feet; and 3) North $89^{\circ}36'00''$ East 1,277.31 feet to the northeast corner of said Parcel Map and being the northeast corner of that certain 'AEROJET-GENERAL CORP. 319.5 ACRES' parcel as shown on that certain Record of Survey entitled 'PROPERTY OF AEROJET GENERAL CORPORATION' filed in the office of the Recorder of said County and State in Book 12 of Surveys, Page 27; thence along the northerly and easterly line of said Record of Survey the following two (2) courses: 1) North $89^{\circ}36'00''$ East 2,353.15 feet; and 2) South $29^{\circ}08'30''$ West 638.25 feet to a point on the East line of Section 3, T. 8N., R. 7E., M.D.M.; thence along said East line of Section 3 South $00^{\circ}17'30''$ East 4,458.00 feet to the southeast corner of said Section 3; thence along the East line of Section 10, T. 8N., R. 7E., M.D.M., as shown on that certain Record of Survey entitled "BEING A PORTION OF THE S.E. $\frac{1}{4}$ SECTION 10, T. 8N., R. 7E., M.D.M." filed in the office of the Recorder of said County and State in Book 37 of Surveys at Page 27, South $00^{\circ}16'38''$ East 5,258.48 feet to the southeast corner of said Section 10; thence along the East line of Section 15, T. 8N., R. 7E., M.D.M., South $00^{\circ}08'45''$ East 5,258.48 feet to the southeast corner of said Section 15 as shown on that certain Record of Survey entitled 'PORTIONS OF SECTIONS 15 & 22, T. 8N., R. 7E., M.D.B.&M.' filed in the office of the Recorder, County of Sacramento, State of California in Book 19 of Surveys at Page 11; thence along the easterly and southeasterly line of said Record of Survey the following two (2) courses: 1) South $00^{\circ}08'45''$ East 2,010.34 feet; and 2) South $41^{\circ}01'00''$ West 3,744.15 feet; thence along the centerline of Grant Line Road, a County Road as shown on said Record of Survey, South $41^{\circ}01'00''$ West 2,725.12 feet to the intersection of said Centerline with the centerline of Middle Jackson Road (a.k.a. Kiefer Road) as shown on said Record of Survey; thence continuing along said Centerline of Grant Line Road, South $41^{\circ}01'00''$ West 9,272 feet, more or less, to the intersection of said Centerline of Grant Line Road with the intersection of the centerline of Jackson Highway, a State Highway; thence along the centerline of said Jackson Highway North $77^{\circ}03'31''$ West 5,644 feet more or less to a point on the West line of Section 32 T. 8N., R. 7E., M.D.M.; thence along the West line of Sections 32 and 29 as

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shown on that certain Parcel Map entitled "SOUTH ½ OF SECTION 29, T. 8N., R. 7E., M.D.M." filed in the office of the Recorder of said County and State Book 146 of Parcel Maps, Page 15, North 01°01'38" West 7,195.30 feet to the northwest corner of said Section 29; thence along the West line of Section 20, T. 8N., R. 7E., M.D.M. as shown on that certain Record of Survey entitled 'SECTION 20, PORTION OF SECTION 17 & PORTION OF FRACTIONAL SECTION 8, T 8N., R. 7E., M.D.M. filed in the office of the Recorder of said County and State in Book 40 of Surveys, at Page 44, North 00°37'15" West 5,292.24 feet to the northwest corner of said Section 20; thence along the West line of Section 17, T. 8N. R. 7E., M.D.M. the following two (2) courses: 1) North 00°33'05" West 2,631.92 feet; and 2) North 00°56'25" West 2,329.17 feet to the southeast corner of that certain Parcel of land described in that certain Grant Deed recorded in the office of the Recorder, County of Sacramento, State of California in Book 921118 Official Records, Page 343; thence along the South line of said Parcel the following two (2) courses: 1) South 89°03'34" West 100.00 feet; and 2) North 89°52'31" West 84.15 feet; thence westerly to an angle point on the westerly line of the Tract 3 of U.S.B.R. Folsom South Canal; thence along said Westerly line the following five (5) courses: 1) North 46°35'00" West 1,713.00 feet; 2) along the arc of a curve to the left having a radius of 780.00 feet, said Arc being subtended by a chord bearing North 62°29'00" West 427.56 feet; 3) North 78°24'00" West 603.00 feet; 4) along the arc of a curve to the right having a radius of 520.00 feet, said Arc being subtended by a chord bearing North 39°02'31" 639.53 feet; and 5) North 00°19'00" East 96.50 feet; thence along the southerly boundary of Rancho Rio De Los Americanos North 89°43'00" West 117.1 feet; thence North 07°19'00" West 565.99 feet to the most southerly corner of Tract 1 of U.S.B.R. Folsom South Canal (Book 700126 Official Records, Page 240); thence along the westerly line of said Tract 1 North 30°09'00" West 2,923.4 feet to the southeast corner of Parcel 7 as said Parcel is shown and so designated on that certain Parcel Map of the "COOK CAPITAL CENTER (BEING THAT RECORD OF SURVEY 39 R.S. 8 AND PARCEL 'A', 33 P.M. 49" filed in the office of the Recorder, County of Sacramento, State of California in Book 84 of Parcel Maps, Page 16; thence along the southerly boundary of said Parcel 7 the following eight (8) courses: 1) South 87°53'21" West 2,817.68 feet; 2) North 36°52'02" West 620.82 feet; 3) South 53°16'20" West 877.55 feet; 4) South 88°06'18" West 1,353.50 feet; 5) South 85°31'31" West 1,645.19 feet; 6) North 37°11'05" West 133.50; 7) South 46°22'21" West 173.82 feet; and 8) South 85°29'23" West 77.98 feet; thence South 10°08'21" East 92.24 feet to a point on the centerline of Mather Boulevard, a County Road; thence along said Centerline the following five (5) courses: 1) South 71°55'56" West 57.40 feet; 2) along the arc of a curve to the right having a radius of 400.00 feet, said Arc being subtended by a chord bearing North 85°55'53" West 301.45 feet; 3) North 63°47'44" West 219.68 feet; 4) along the arc of a curve to the left having a radius of 300.00 feet said Arc being subtended by a chord bearing North 79°01'23" West 157.59 feet; and 5) South 85°44'59" West 617.02 feet to the intersection of said Centerline of Mather Boulevard, a County Road, with the centerline of Feymoyer Street, a County Road, as shown on that certain Record of Survey entitled, "A PORTION OF TRACT WM. E. BRYAN 2,129.33 AC. OF RANCHO RIO DE LOS AMERICANOS, 1 B.M. 2, A PORTION OF THE GEORGE HANLON NO. 1 TRACT, 17 B.M. 28, AND A PORTION OF SECTION 19, T. 8N., R. 7E., M.D.M." filed in said Recorder's office in Book 58 of Surveys, Page 15; thence along said Centerline of Feymoyer Street as shown on said Survey, South 04°31'31" East 489.28 feet; thence along the centerline of Macready Avenue, a County Road, as shown on said Survey, South 85°29'57" West 1,112.31 feet; thence along the centerline of Bullard Street, as shown

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on said Survey North 04°23'13" West 226.87 feet to a point on the centerline of Norden Avenue, a County Road, as shown on said Survey; thence along said Centerline, the following four (4) courses: 1) South 85°30'33" West 339.45 feet; 2) South 85°30'46" West 338.12 feet; 3) South 85°30'02" West 275.97 and 4) 85°30'17" West 678.14 feet to a point on the centerline of Debellevue Street, a County Road, as shown on said Survey; thence along said Centerline of Debellevue Street, North 04°27'21" West 276.09 feet to a point on the centerline of Mather Boulevard, a County Road, as shown on said Survey; thence westerly along said Centerline of Mather Boulevard the following four (4) courses: 1) along the arc of a curve to the right having a radius of 2,000.00 feet, said Arc being subtended by a chord bearing North 87°57'17" West 455.50 feet; 2) along the arc of a curve to the left having a radius of 2,000.00 feet, said Arc being subtended by a chord bearing North 87°56'51" West 455.92 feet; 3) South 85°29'42" West 308.85 feet; and 4) along the arc of a curve to the left having a radius of 1,500.00 feet, said Arc being subtended by a chord bearing South 81°59'06" West 183.89 feet to the intersection with the centerline of Lemay Street, a County Road; thence along said Centerline the following two (2) courses: 1) North 04°27'17" West 197.25 feet; and 2) along the arc of a curve to the right having a radius of 280.00 feet, said Arc being subtended by a chord bearing North 27°27'46" East 296.29 feet to a point on the centerline of Peter A. McCuen Boulevard, a County Road; thence southwesterly along the southwesterly prolongation of said Centerline of Peter A. McCuen Boulevard to the intersection with the centerline of Old Placerville Road, a County Road, as shown on that certain Parcel Map of "MATHER BUSINESS PARK" filed in the office of the Recorder, County of Sacramento, State of California in Book 70 of Parcel Maps, Page 28; thence southwesterly along said Centerline of Old Placerville Road the following three (3) courses: 1) South 56°25'09" West 1,931.42 feet; 2) along the arc of a curve to the left having a radius of 2,000.00 feet, said Arc being subtended by a chord bearing South 52°01'29" West 313.50 feet; and 3) South 47°31'46" West 795.58 feet to the intersection of said Centerline of Old Placerville Road with the intersection of Routier Road, a County Road, thence continuing along said Centerline of Old Placerville Road the following two (2) courses: 1) South 47°31'46" West 73.39 feet; and 2) along the arc of a curve to the right having a radius of 2,000.00 feet, said Arc being subtended by a chord bearing South 57°38'23" West 702.17 feet; thence continuing along said Centerline of Old Placerville Road, South 67°45'00" West 463.80 feet to the intersection of said Centerline with the centerline of Astral Drive, a County Road; thence continuing along said Centerline of Old Placerville Road, along the southerly line of that certain Plat of Cordova Palms filed in the office of the Recorder of said County and State in Book 105 of Maps, Map No. 10, South 67°45'00" West 1,438.50 feet to the southwest corner of said Map; thence continuing along said Centerline of Old Placerville Road, South 67°45'00" West 573.32 feet; thence continuing along said Centerline of Old Placerville Road South 84°23'55" West 2,517.22 feet to the intersection with the Centerline of Bradshaw Road, a County Road; thence along said Centerline the following three (3) courses: 1) North 00°35'01" West 496.34 feet; 2) along the arc of a curve to the right having a radius of 2,000.00 feet, said Arc being subtended by a chord bearing North 02°26'11" East 210.73 feet; and 3) along the arc of a curve to the left having a radius of 2,000.00 feet said Arc being subtended by a chord bearing North 03°33'09" East 132.87 feet; thence continuing northerly along said Centerline of Bradshaw Road to the intersection of said Centerline with the centerline of Folsom Boulevard, a County Road; thence

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northeasterly along Road; thence northeasterly along said Centerline of Folsom Boulevard to a point which bears South 32°35'40" East 40.00 feet from the southeast corner Parcel One as said Parcel is shown on that certain Parcel Map entitled "PORTION OF ROUTIER 82-46/100A AND OF BOYD 157-85/100A – RANCHO RIO DE LOS AMERICANOS" filed in the office of the Recorder, County of Sacramento, State of California in Book 16 of Parcel Maps, Page 5; thence North 32°35'40" West 40.00 feet to the southeast corner of said Parcel One; thence along the easterly line of said Parcel One the following eight (8) courses: 1) North 22°20'25" West 83.35 feet; 2) North 00°28'00" 68.00 feet; 3) along the arc of a curve to the right having a radius of 103.00 feet, said Arc being subtended by a chord bearing North 20°47'29" East 71.56 feet to a point of reverse curvature; 4) along the arc of a curve to the left having a radius of 60.67 feet, said Arc being subtended by a chord bearing North 20°47'39" East 42.15 feet; 5) North 00°28'00" East 397.98 feet; 6) South 89°09'30" West 140.00 feet; 7) North 60°51'46" West 47.00 feet; and 8) North 22°47'47" West 62.00 feet to a point on the North line of said Parcel One; thence North 39°22'08" West 115.63 feet to a point on the westerly line of Parcel Two as shown on said Parcel Map filed in the office of the Recorder, County of Sacramento, State of California in Book 16 of Parcel Maps at Page 5; thence along the westerly of said Parcel Two the following seven (7) courses: 1) North 50°00'00" East 164.75 feet; 2) North 42°30'00" East 252.00 feet; 3) North 05°45'00" East 482.00 feet; 4) North 19°27'00" West 217.00 feet; 5) North 22°27'00" East 267.00 feet; 6) North 12°58'00" East 413.00 feet; and 7) North 13°06'00" East 542.80 feet to the most northerly corner of Parcel 2 as said Parcel is shown on said Parcel Map; thence South 54°52'42" West to a point on the centerline of the American River; thence upstream along the meanders of said Centerline of the American River to the southwest corner of Parcel 1 as said Parcel is shown on that certain Record of Survey entitled "SOUTHSIDE AMERICAN RIVER PARKWAY" filed in the office of the Recorder, County of Sacramento, State of California in Book 23 of Surveys at Page 1; thence along the westerly line of said Record of Survey the following thirty six (36) courses: 1) North 15°20'53" West 55.47 feet; 2) North 08°20'43" West 523.00 feet; 3) North 19°59'43" West 231.00 feet; 4) North 36°18'53" West 228.00 feet; 5) North 44°59'43" West 574.42 feet; 6) North 58°35'43" West 378.33 feet; 7) North 31°49'38" West 511.38 feet; 8) North 07°48'23" East 438.06 feet; 9) North 13°14'14" East 504.40 feet; 10) North 28°57'44" East 653.71 feet; 11) North 29°49'24" East 371.41 feet; 12) North 36°41'24" East 349.33 feet; 13) North 46°51'26" East 421.59 feet; 14) North 56°59'29" East 200.16 feet; 15) North 34°23'49" East 318.21 feet; 16) North 50°49'45" East 612.38 feet; 17) North 58°40'07" East 801.94 feet; 18) South 73°21'43" East 503.63 feet; 19) South 63°17'47" East 926.57 feet; 20) North 64°55'57" East 721.52 feet; 21) North 36°16'50" East 842.10 feet; 22) North 43°04'11" East 399.70 feet; 23) North 49°01'50" East 520.00 feet; 24) North 79°57'00" East 324.92 feet; 25) North 88°18'32" East 301.08 feet; 26) North 61°10'02" East 107.97 feet; 27) North 52°42'20" East 840.78 feet; 28) North 30°31'50 East 750.00 feet; 29) North 38°17'26" East 386.86 feet; 30) North 23°22'48" East 1,118.87 feet; 31) North 22°30'52" East 417.85 feet; 32) North 37°57'16" West 697.53 feet; 33) North 32°02'39" West 627.63 feet; 34) North 00°51'06 East 493.12 feet; 35) North 16°18'50" East 652.30 feet; and 36) North 22°29'51" East 826.77 feet; thence North 22°29'51" East 664.04 feet; thence North 47°24'51" East 965.25 feet; thence North 54°17'51" East 407.22 feet; thence South 44°30'00" East 155.40 feet to an angle point on the westerly line of Parcel No. 6 as said Parcel is shown on said Record of Survey (Book 23 of Surveys, Page 1); thence along the westerly line of

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said Record of Survey the following nineteen (19) courses: 1) North 54°46'52" East 965.70 feet; 2) North 47°26'32" East 597.34 feet; 3) North 57°57'31" East 348.09 feet; 4) North 85°16'51" East 1,044.28 feet; 5) South 63°19'09" East 609.40 feet; 6) South 31°46'37" East 282.33 feet; 7) South 05°18'09" West 335.44 feet; 8) South 37°11'36" West 531.01 feet; 9) South 19°51'18" West 612.41 feet; 10) South 06°16'21" East 832.92 feet; 11) South 33°11'44" East 642.92 feet; 12) South 52°24'52" East 624.66 feet; 13) South 81°35'00" East 395.30 feet; 14) North 59°10'45" East 456.44 feet; 15) North 36°55'58" East 1,017.09 feet; 16) North 34°29'30" East 500.00 feet; 17) North 36°07'42" East 275.96 feet; 18) North 45°17'47" East 1,502.62 feet; and 19) North 43°27'38" East 2,970.33 feet; to the most northerly corner of Parcel No. 8 as said Parcel is shown on said Record of Survey; thence along the easterly line of Parcel No. 8 and Parcel No. 9 of said Record of Survey, South 25°03'40" East 1,053.67 feet; thence North 64°56'20" East 50.00 feet to a point on the centerline of Sunrise Boulevard, a County Road as shown on that certain Plat of 'GOLD RIVER UNIT NO. 16 A' filed in the office of Recorder, County of Sacramento, State of California in Book 186 of Maps, Map No. 6; thence southeasterly along said Centerline to the beginning of an arc of a curve to the right having a radius of 1,999.01 feet as shown on said Map, said Arc being subtended by a chord bearing South 04°00'00" East 1,206.50 feet; thence continuing along said Centerline South 13°33'51" East 1,787.86 feet to the intersection with the centerline of Coloma Road, a County Road; thence along said Centerline of Coloma Road as shown on that certain Record of Survey entitled 'A PORTION OF SUBDIVISIONS "THOMAS COX 615 43/100 A. AND HENRY S. MELLER, 176A.", RANCHO RIO DE LOS AMERICANOS BEING ALSO A PORTION OF PARCEL 'L', BOOK 22 ROS PAGE 16' filed in the office of the Recorder of said County and State in Book 39 of Surveys at Page 32, North 79°45'44" East 446.87 feet to the centerline of Citrus Road, a County Road; thence along said Centerline of Citrus Road South 11°49'10" West 2,733 feet more or less to a point on the centerline of California State Highway 50; thence along said Centerline South 63°00'00" West 1,960 feet more or less to a point on the centerline of Sunrise Boulevard, a County Road; thence southeasterly along said Centerline of Sunrise Boulevard to the intersection of said Centerline with the centerline of Trade Center Drive, a County Road as shown on that certain Parcel Map entitled "PARCEL 7 OF 47 P.M. 28, AND A PORTION OF LOTS 3 & 4 BLOCK 3 OF NATOMAS CONSOLIDATED OF CALIFORNIA SUBDIVISIONS NO. 2, 14 B.M. 20" filed in the office of the Recorder of said County and State in Book 138 of Parcel Maps, Page 15; thence continuing along said Centerline of Sunrise Boulevard the following two (2) courses: 1) South 32°08'30" East 168.54 feet; and 2) along the arc of a curve to the right having a radius of 3,000.00 feet, said Arc being subtended by a chord bearing South 19°58'18" East 1,257.12 feet; thence continuing along said Centerline of Sunrise Boulevard as shown on that certain Parcel Map entitled "LOT 5 AND PORTION OF LOT 4 OF BLOCK 3, LOTS 1 AND 3 AND PORTION LOTS 2, 4 AND 5 OF BLOCK 7, NATOMAS CONSOLIDATED OF CALIFORNIA SUBDIVISION NO. 2 RECORDED IN 14 B.M. 20 AND A PORTION OF PROJ. SEC. 36, T. 9N., R. 6E., M.D.M." filed in the office of the Recorder of said County and State in Book 50 of Parcel Maps at Page 26 the following two (2) courses: 1) along the arc of a curve to the right having a radius of 3,000.00 feet, said Arc being subtended by a chord bearing South 04°38'59" East 342.75 feet; and 2) South 01°22'30" East 3,285.21 feet to the intersection of said Centerline with the centerline of White Rock Road, a County Road; thence continuing along said Centerline of Sunrise Boulevard as shown on that certain Parcel Map of "SUNRISE PARK" filed in the office of the Recorder of said County and

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State in Book 80 of Parcel Maps at Page 6 South $01^{\circ}56'36''$ East 1,174.76 feet to the intersection of Sanders Drive, A County Road as shown on said Parcel Map; thence along said Centerline the following five (5) courses: 1) North $88^{\circ}03'24''$ East 135.00 feet; 2) along the arc of a curve to the right, said Arc being subtended by a chord bearing South $86^{\circ}46'47''$ East 180.00 feet to a point of reverse curvature; 3) thence along the arc of a curve to the left having a radius of 1,500.00 feet, said Arc being subtended by a chord bearing South $85^{\circ}26'29''$ East 200.14 feet; 4) South $89^{\circ}16'00''$ East 341.41 feet; and 5) along the arc of a curve to the right having a radius of 1,500.00 feet said Arc being subtended by a chord bearing South $86^{\circ}33'57''$ East 141.37 feet; thence along the centerline of Gold Valley Drive, a County Road as shown on said Parcel Map the following four (4) courses: 1) along the arc of a curve to the left having a radius of 1,500.00 feet, said Arc being subtended by a chord bearing North $00^{\circ}30'59''$ West 347.51 feet; 2) North $07^{\circ}10'06''$ West 723.51 feet; 3) along the arc of a curve to the right having a radius of 520.00 feet, said Arc being subtended by a chord bearing North $03^{\circ}15'05''$ West 71.04 feet; and 4) North $00^{\circ}39'55''$ East 61.18 feet to a point on the centerline of White Rock Road, a County Road; thence along said Centerline as shown on said Parcel Map the following three (3) courses: 1) South $89^{\circ}20'05''$ East 113.80 feet; 2) North $76^{\circ}21'25''$ East 639.51 feet; and 3) North $80^{\circ}14'25''$ East 782.13 feet to the intersection of said Centerline with the southerly prolongation of the west line of Parcel 4 as said Parcel is shown on that certain Parcel Map entitled "PORTIONS OF PROJECTED SECTIONS 15, 16, 21, 22 & 31, T. 9N., R. 7E., M.D.M. IN RANCHO RIO DE LOS AMERICANOS" filed in the office of the Recorder of said County and State in Book 87 of Parcel Maps, Page 8; thence North $07^{\circ}04'40''$ West 447.80 feet to the northwest corner of said Parcel 4 and being an angle point on the westerly line of Area 1 as shown on that certain Record of Survey entitled "BEING PROJECTED SECTIONS 22, 23, 28, 29 AND PORTIONS OF PROJECTED SECTIONS 11, 12, 13, 14, 15, 16, 19, 20, 21, 24, 25, 26, 27, 30, 31, 32, 33 AND 34, T. 9N., R. 7E., M.D.M. IN RANCH RIO DE LOS AMERICANOS TOGETHER WITH PORTIONS OF SECTIONS 13, 24, AND 25 T. 9N., R. 7E., M.D.M." filed in the office the Recorder of said County and State in Book 62 of Surveys, Page 4; thence along the westerly and northerly line of said Area 1 the following seventeen (17) courses: 1) North $07^{\circ}04'23''$ West 171.94 feet; 2) North $07^{\circ}05'02''$ West 627.11 feet; 3) North $07^{\circ}03'44''$ West 1,002.93 feet; 4) North $07^{\circ}01'54''$ West 1,032.09 feet; 5) along the arc of a curve concave easterly and having a radius of 5,040.00 feet; thence northeasterly along said Curve through a central angle of $17^{\circ}50'00''$ an arc distance of 1,568.70 feet; 6) North $10^{\circ}45'17''$ East 800.30 feet; 7) along the arc of a curve concave southeasterly and having a radius of 840.00 feet; thence northeasterly along said Curve through a central angle of $12^{\circ}28'00''$ an arc distance of 182.77 feet; 8) North $23^{\circ}13'17''$ East 508.60 feet; 9) along the arc of a curve concave southerly and having a radius of 140.00 feet; thence northeasterly along said Curve through a central angle of $64^{\circ}47'05''$ an arc distance of 158.30 feet; 10) North $88^{\circ}00'17''$ East 194.60 feet; 11) North $85^{\circ}08'17''$ East 200.20 feet; 12) North $88^{\circ}00'17''$ East 149.30 feet; 13) along the arc of a curve concave northerly and having a radius of 450.00 feet; thence northeasterly along said Curve through a central angle of $63^{\circ}44'00''$, an arc distance of 500.56 feet; 14) North $24^{\circ}16'17''$ East 1,147.90 feet; 15) along the arc of a curve concave southeasterly and having a radius of 2,850.00 feet; thence northeasterly along said Curve through a central angle of $18^{\circ}50'00''$ an arc distance of 907.79 feet; 16) North $42^{\circ}31'17''$ East 665.80 feet; and 17) along the arc of a curve concave southeasterly and having a radius of 3,050.00 feet; thence northeasterly along said Curve through

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central angle of $16^{\circ}42'00''$, an arc length of 888.00 feet; thence along the westerly and northerly line of Area 'B' as shown on said Record of Survey (Book 62 of Surveys, Page 4) the following five (5) courses: 1) North $30^{\circ}46'43''$ West 25.00 feet; 2) along the arc of a curve concave southerly and having a radius of 3,075.00 feet; thence easterly along said Curve through a central angle of $14^{\circ}30'00''$ an arc distance of 778.20 feet; 3) North $73^{\circ}43'17''$ East 669.20 feet; 4) along the arc of a curve concave northwesterly and having a radius of 3,125.00 feet; thence northeasterly along said Curve through a central angle of $16^{\circ}53'00''$ an arc length of 920.84 feet; and 5) North $56^{\circ}50'17''$ East 1,001.80 feet; thence along the westerly line of Area 'T' shown on said Record of Survey (Book 62 of Surveys at Page 10) South $26^{\circ}00'47''$ East 1,126.40 feet; thence South $09^{\circ}18'18''$ East 2,138.66 feet to an angle point on said Westerly line of Area 'T'; thence along said Westerly line of Area 'T' the following eleven (11) courses: 1) South $02^{\circ}16'21''$ East 503.45 feet; 2) South $88^{\circ}02'55''$ West 698.14 feet; 3) South $01^{\circ}52'09''$ West 2,198.89 feet; 4) South $88^{\circ}06'18''$ West 532.84 feet; 5) South $02^{\circ}06'55''$ East 534.84 feet; 6) North $88^{\circ}00'50''$ East 482.80 feet; 7) South $00^{\circ}01'15''$ East 989.85 feet; 8) South $73^{\circ}05'34''$ West 602.37 feet; 9) North $87^{\circ}49'41''$ West 1,094.06 feet; 10) South $62^{\circ}25'28''$ West 1,487.32 feet; and 11) South $06^{\circ}07'27''$ East 2,020.65 feet; thence along the south line of Area 'A' as shown on said Parcel Map South $78^{\circ}34'13''$ West 808.76 feet to the most westerly corner of that certain Parcel Map entitled 'A PORTION OF "RECORD OF SURVEY" PORTION OF RANCHO RIO DE LOS AMERICANOS' filed in the office of the Recorder, County of Sacramento, State of California in Book 57 of Parcel Map, Page 13; thence along the centerline of White Rock Road, a County Road as shown on said Parcel Map the following seven (7) courses: 1) along the arc of a curve to the right having a radius of 1,500.00 feet said Arc being subtended by a chord bearing North $86^{\circ}31'37''$ East 313.85 feet; 2) South $87^{\circ}28'04''$ East 389.84 feet; 3) along the arc of a curve to the left having a radius of 3,000.00 feet, said Arc being subtended by a chord bearing North $88^{\circ}22'18''$ East 435.31 feet; 4) North $84^{\circ}12'40''$ East 1,297.46 feet; 5) along the arc of a curve to the right having a radius of 5,000.00 feet, said Arc being subtended by a chord bearing North $86^{\circ}31'35''$ East 404.01 feet; 6) North $88^{\circ}50'31''$ East 2,409.35 feet; and 7) along the arc of a curve to the left having a radius of 3,000.00 feet said Arc being subtended by a chord bearing North $88^{\circ}15'36''$ East 60.91 feet; thence South $00^{\circ}57'22''$ East 40.54 feet to an angle point on the north line of Parcel 15 as said Parcel is shown on that certain Parcel Map entitled "A PORTION OF RECORD OF SURVEYS 12 R.S. 30 AND 18 R.S. 4 AND ALSO BEING A PORTION OF RANCHO RIO DE LOS AMERICANOS" filed in the office of the Recorder of said County and State in Book 47 of Parcel Maps, Page 13; thence along said North line North $87^{\circ}02'11''$ East 6897.60 feet to the point of beginning.

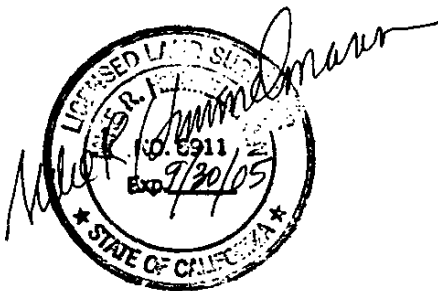
-8-

TOGETHER WITH Areas 2, 3, 4, 5, 7, 'G' and 'F' as said Areas are shown on that certain Record of Survey entitled 'BEING PROJECTED SECTIONS 22, 23, 28, 29 AND PORTIONS OF PROJECTED SECTIONS 11, 12, 13, 14, 15, 16, 19, 20, 21, 24, 25, 26, 27, 30, 31, 32, 33, AND 34, T. 9N., R. 7E., M.D.M. IN RANCHO RIO DE LOS AMERICANOS TOGETHER WITH PORTIONS OF SECTIONS 13, 24, AND 25 T. 9N., R. 7E., M.D.M.' filed in the office of the Recorder of said County and State in Book 62 of Surveys, Page 4.

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Murray Smith & Associates
Engineering, Inc.

May 24, 2002
02-016



APPROVED
SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

MAY 22 2002


Commission Clerk

EXHIBIT B

MAP OF SUBJECT TERRITORY

To Be Included

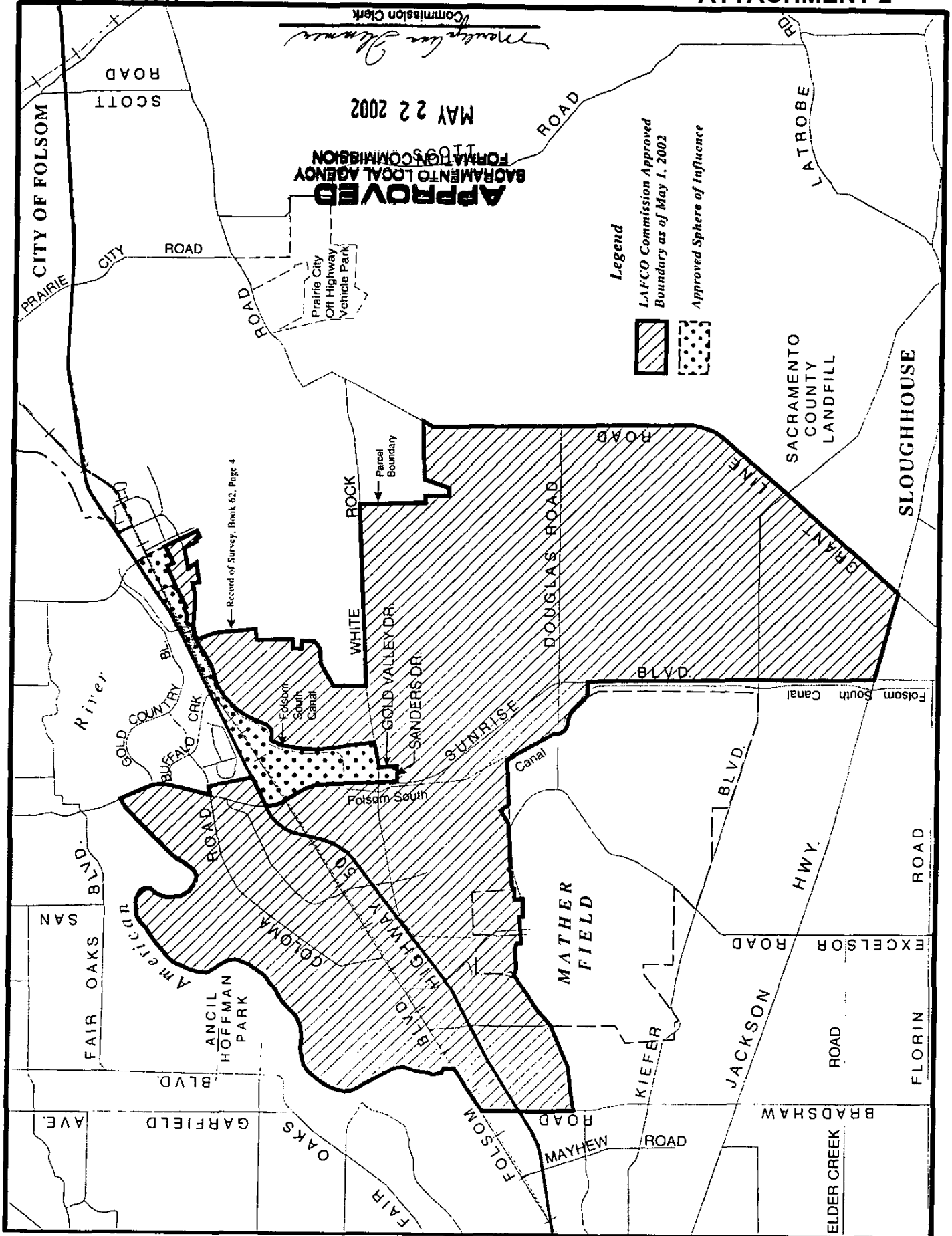


EXHIBIT C**ADDITIONAL FINDINGS AND CONDITIONS REGARDING
INCORPORATION**

Based upon the record of these LAFCo proceedings on the proposed incorporation of Rancho Cordova, the Commission finds and determines as follows:

Findings

1. The Commission finds that the proposal is consistent with the intent of the Cortese-Knox Local Government Reorganization Act.
2. The Commission finds that the proposal is consistent with the Policies, Standards, and Procedures of the Sacramento County Local Agency Formation Commission.
3. The Commission finds that the proposal is revenue neutral pursuant to its Policies, Standards and Procedures.
4. The Commission finds that the incorporation does not result in the conversion of prime agricultural land or open space use to other uses inconsistent with state law and the incorporation leads to the planned, orderly and efficient development of the area. Although some portions of the proposed boundaries are currently undeveloped, this property is within the urban service area of the County and since 1993, the property has been targeted for urban development. Although the urbanization of this property will result in a loss of open space and agricultural land, based upon evidence in the record this loss is meant to reduce demand for urbanization on other more environmentally sensitive prime agricultural land in the County.
5. The Commission finds that the proposal complies with the general policies and standards applicable to all changes of organization or reorganization.
6. The Commission finds that the applicants have demonstrated a significant unmet need for services or a need for improved services within the territory for which the incorporation is proposed. In determining whether an unmet need for services or improved services exists, the Commission has considered:
 - a. Current levels of service in the area to be incorporated;
 - b. Existing and projected growth rate and density patterns in the area to be incorporated; and
 - c. The Sphere of Influence Plans for the jurisdictions currently providing services to the area.

The Commission bases this finding on the Record which includes but is not limited to:

- 1) The incorporation petition which sets forth the following factors of importance to the Rancho Cordova Community:
 - i. The project may enhance the character and identity of Rancho Cordova by establishing the community as a city;
 - ii. The project will increase local control over and accountability for decisions affecting Rancho Cordova by having an elected city council made up of Rancho Cordova residents serve as the community's primary local government representatives;
 - iii. The project will ensure that the comprehensive planning, zoning and other regulatory land use decisions affecting Rancho Cordova and its quality of life are made in Rancho Cordova;
 - iv. The project will capture, for local use, additional revenues generated in Rancho Cordova that are now distributed countywide as demonstrated in the Comprehensive Fiscal Analysis;
 - v. The project will increase the allocation of federal and state revenue to Rancho Cordova to support local services and programs;
 - vi. The project will increase local responsibility for determining services, service levels and capital improvements in Rancho Cordova;
 - vii. The project may improve and enhance where possible the level of services available to Rancho Cordova; and
 - viii. The project may promote more citizen participation in local civic affairs of Rancho Cordova.
- 2) The County General Plan which provides for urbanization of the territory.
- 3) The Cordova Community Plan and the Sphere of Influence for the Rancho Cordova Community adopted by LAFCo.

- 4) The Comprehensive Fiscal Analysis and all supplements which find adequate City revenues including surpluses in later years to provide for discretionary projects and improved services.

7. The Commission finds that the incorporation will result in an entity with the capability to provide the most efficient forms of urban services to the affected population.

8. The Commission finds that the incorporation does not have significant adverse social and economic impacts upon any particular communities or groups in the incorporating area or affected unincorporated area.

9. The Commission finds that the proposed City is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

10. The Commission finds that the proposed City has the required ability to provide the services, which are the subject of the application, and has the sufficiency of revenues for those services following incorporation.

11. The Commission finds that there is a timely availability of water supply adequate for the City's current needs and projected needs. This finding is based upon the following facts and conditions:

Existing development within the proposed incorporation boundaries has an existing and adequate water supply. Existing customers are currently being served. However contamination of wells within the proposed City boundaries has occurred and may or may not continue to occur due to the migration of the contamination plume. Undeveloped areas within the incorporation boundaries overlay a portion of the contaminated aquifer. Most of the undeveloped area is within the service boundaries of Zones 40 and 41 of the Sacramento County Water Agency. Southern California Water Company, Cal Am and the City of Folsom also have water service areas within the new City boundaries. Existing Water purveyors have an obligation, as a matter of state law, to assure that the needs of existing users are met, including, if necessary, the provision of replacement water in the event that existing wells or other water sources are unavailable due to contamination or any other reason before new development is served. The Sacramento County Water Agency has also entered into an agreement with other water purveyors in the region, commonly known as the "Water Forum Agreement", which sets advisory cooperative limitations on the amount of ground and surface water which can be used in the area. Such limitations are designed to assure that the water resources in the area are operated consistent with their safe yield limits as set forth under the Water Forum Agreement.

12. To ensure timely availability of water, the Commission imposes the following conditions:
- a. The needs of existing water users shall be met prior to the provision of water for new development, including, if necessary, the provision of replacement water in the event that existing water sources are unavailable to such existing users due to contamination or any other reason.
 - b. Pursuant to Sacramento County General Plan Policies, and pursuant to provisions of state law, and this Resolution, no development can take place within the proposed boundaries of the City unless a reliable water supply has been secured and financing mechanisms for said reliable water supply are in place. The City of Rancho Cordova shall adopt policies consistent with the following county policies:
 - (“Policy CO-20): In new development areas, as identified in Figure III-1 of the Land Use Element, entitlements for urban development shall not be granted until a Master Plan for water supply has been adopted by the Board of Supervisors and all agreements and financing for supplemental water supplies are in place. The land use planning process may proceed, and specific plans and rezoning may be approved.
 - (Policy CO-22) Development entitlements shall not be granted in areas where no groundwater exists and water purveyors have reached their capacity to deliver treated water unless all necessary agreements and financing to obtain additional water supply are secured.
 - (Policy CO-23) Subdivisions and Parcel Maps shall be required to demonstrate adequate quantity and quality of groundwater prior to approval of residential lots in areas of the County where supply and quality are doubtful.
 - (Policy CO-25) Should the Board of Supervisors determine that there is a significant adverse effect on groundwater, including effects on quality, no building permits for urban commercial and residential uses shall be issued.
 - (Policy CO-39) Development project approvals shall include a finding that all feasible and cost effective options for conservation and water reuse are incorporated into project design. Wastewater reuse options shall be reviewed and agreed upon by the area water purveyor when the reclaimed water is to be used within the water purveyor’s boundaries.”

- c. The Sacramento County Water Agency has adopted a Master Plan for Zone 40, and is in the process of updating said Master Plan. This Master Plan identifies the long-term conjunctive water program designed to serve both ground and surface water to the city and areas beyond the city and the timetable by which said conjunctive use program is expected to be implemented. The City of Rancho Cordova shall adopt policies consistent with said Master Plan.
- d. New development shall not occur until a reliable water supply is secured and all agreements and financing for said water supply are in place.
- e. The City of Rancho Cordova shall become a signatory to the Water Forum Agreement and a participant in all successor efforts to said Agreement.

13. The Commission finds that the proposal will assist the City achieve its fair share of the regional housing needs as determined by SACOG. This finding is based upon the determination that the area contains adequate affordable housing and will be eligible for housing funds pursuant to Condition 9.w. of this Resolution.

14. To ensure that the new City of Rancho Cordova meets its regional fair share-housing obligation the Commission imposes the following conditions:

- a. The new City of Rancho Cordova shall meet with the County of Sacramento within six (6) months of incorporation and consistent with SACOG policies and state law determine the redistribution of the regional fair share housing needs allocation plan and schedule.
- b. The City of Rancho Cordova shall continue to assess and collect the Housing Trust Fund fee consistent with the existing Housing Trust Fund fee imposed by the County of Sacramento on non-residential development. The City of Rancho Cordova shall adopt the necessary ordinances and resolutions to effectuate this condition within 180 days of incorporation.

15. The Commission has reviewed information and comments from landowners and business owners as well as the general public in making these findings.

16. The Commission also finds the incorporation consistent with the regional growth goals and policies established by SACOG.

17. Development of the Sunrise-Douglas Area and the Aerojet Area will contribute to air quality degradation and transportation congestion. In order to effectively provide services upon urbanization of the area, the Commission imposes the following conditions:

- a. Pedestrian access shall be provided on all streets.

- b. A portion of traffic impact fees shall be allocated to multi-modal transportation as required by state law.
- c. Consideration shall be given to increased open space.

18. The City of Rancho Cordova shall continue to enforce all transit impact fees and shall adopt the necessary ordinances to accomplish same within one (1) year of incorporation.

EXHIBIT D

SPHERE OF INFLUENCE BOUNDARIES

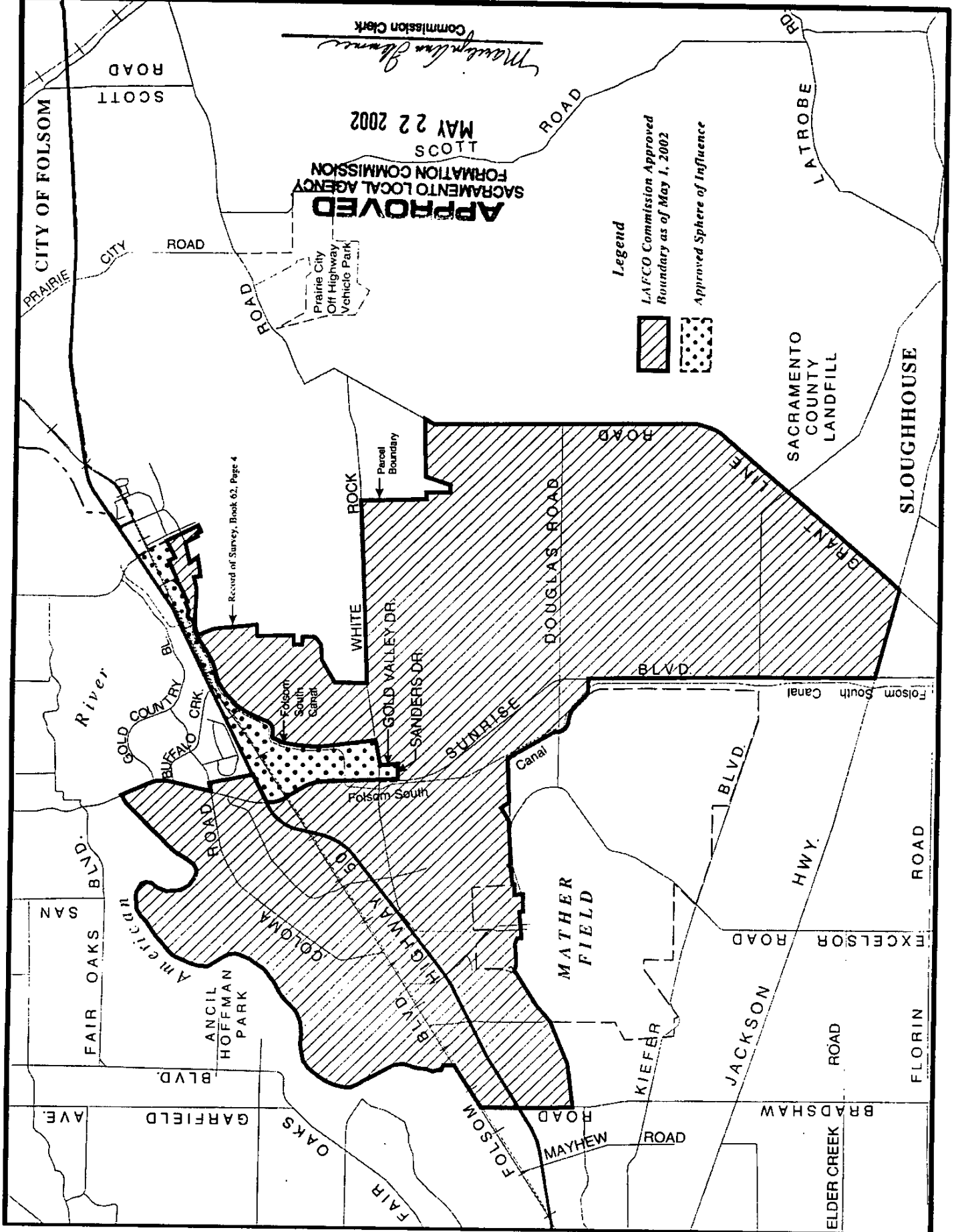


EXHIBIT E

TAX SHARING ALTERNATIVES

Figure 1
Rancho Cordova Incorporation Comprehensive Fiscal Analysis
Fiscal Mitigation Agreement Summary

May 1
LAFCo Approved
Boundary

Number of Years	Fiscal Year Ending	Property Tax Allocation Percentages							
		OPTION 1		OPTION 2		OPTION 3		OPTION 4	
		Retained by County	Retained by City	Retained by County	Retained by City	Retained by County	Retained by City	Retained by County	Retained by City
1	2004	97.50%	2.50%	97.50%	2.50%	97.50%	2.50%	97.50%	2.50%
2	2005	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%
3	2006	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%
4	2007	92.50%	7.50%	92.50%	7.50%	92.50%	7.50%	92.50%	7.50%
5	2008	90.00%	10.00%	90.00%	10.00%	90.00%	10.00%	90.00%	10.00%
6	2009	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%
7	2010	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%
8	2011	85.00%	15.00%	85.00%	15.00%	85.00%	15.00%	85.00%	15.00%
9	2012	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%
10	2013	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%
11	2014	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%
12	2015	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%
13	2016	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%
14	2017	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%
15	2018	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%
16	2019	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%
17	2020	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%
18	2021	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%
19	2022	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%
20	2023	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%
21	2024	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%
22	2025	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%
23	2026	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%
24	2027	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%
25	2028	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%
26	2029	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%
27	2030	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%
28	2031	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%
29	2032	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%
30	2033	57.50%	42.50%	57.50%	42.50%	57.50%	42.50%	57.50%	42.50%
31	2034	38.80%	61.20%	38.80%	61.20%	38.80%	61.20%	38.80%	61.20%
32	2035	-	-	-	-	-	-	-	-
33	2036	-	-	-	-	-	-	-	-
34	2037	-	-	-	-	-	-	-	-
35	2038	-	-	-	-	-	-	-	-
36	2039	-	-	-	-	-	-	-	-
37	2040	-	-	-	-	-	-	-	-

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Source: EPS

Prepared by EPS

9293 summary mitigation.xls5/10/02

EXHIBIT F

TAX SHARING AGREEMENT

(reso 1243 RC Approval)

**TAX SHARING AGREEMENT BETWEEN THE COUNTY OF SACRAMENTO AND THE
CITY OF RANCHO CORDOVA**

This Tax Sharing Agreement ("Agreement") is made and entered into between the County of Sacramento ("County"), a political subdivision of the State of California, acting through its Board of Supervisors, and the City of Rancho Cordova ("City"), a municipal corporation, acting through its electorate.

RECITALS

A. A Petition for the proposed incorporation of the City has been submitted and approved by the Sacramento Local Agency Formation Commission ("LAFCO") pursuant to the Cortese-Knox Local Reorganization Act of 1985. Government Code §56845 prohibits LAFCO from approving a proposed incorporation unless it finds that the revenue currently received by the County which, but for the operation of Government Code §56845, would accrue to the City is substantially equal to the expenditures currently made by the County for the services that will be assumed by the City. Notwithstanding this prohibition, Government Code §56845 authorizes LAFCO to approve a proposed incorporation if it determines that the negative fiscal impacts of the proposed incorporation on the County have been mitigated by tax sharing agreements, lump-sums payments, payments over a fixed period of time, or any other terms and conditions pursuant to Government Code §56844.

B. The County is currently responsible for providing both municipal and County-wide services within the area proposed for incorporation. These County-wide services include, but are not limited to, the operation of County jail facilities, the funding of court facilities and a portion of court operations, probation services, health and welfare services, the District Attorney's office and indigent criminal defense services. The tax revenue

currently received by the County from within the area proposed for incorporation is used to fund both County-wide services and those municipal services furnished by the County within that area. While the incorporation of the City will relieve the County of the responsibility for providing municipal services to City residents, the County will continue to be responsible for County-wide services within the boundaries of the City.

C. LAFCO has determined after analyzing the relevant fiscal information that the revenue currently received by the County which, but for the operation of Government Code §56845, would accrue to the City is not substantially equal to the expenditures currently made by the County for the services that will be assumed by the City. As a means of mitigating the negative financial impact of the proposed incorporation on the County's general fund, LAFCO has conditioned the proposed incorporation on the sharing of City property tax revenue for the periods set forth in Exhibit "A" which is attached hereto and incorporated herein.

D. The City's sharing of its tax revenue as prescribed herein is necessary to insure that the County has the funding available after the effective date of the City's incorporation to maintain County-wide services at current levels without adversely affecting municipal services in the remaining portion of the unincorporated area. In the absence of such tax sharing, the City would receive a revenue windfall by having the benefit of all current County revenue without any concomitant responsibility for the funding of County-wide services. The resulting revenue windfall would allow the City to provide a higher level of municipal services to its residents, while the County would be forced to reduce either County-wide services or municipal services within the remaining unincorporated area, or a combination thereof. In either event, the enhanced services enjoyed by City residents

would occur at the expense of County-wide service recipients or unincorporated area residents who would suffer a reduction in such services.

F. The County has not opposed LAFCO's approval of the proposed incorporation subject to LAFCO's imposition of appropriate conditions to mitigate the adverse fiscal impact that the incorporation would otherwise have on the County. LAFCO has done so in the form of the previously referenced tax sharing condition. In order to provide the County with additional legal assurance that the City will comply with its obligation to share its tax revenue as required by the terms and conditions of the City's incorporation, this requirement has also been separately memorialized in the form of this Agreement which is specifically authorized by Government Code §56845. While the County has negotiated the terms and conditions of this Agreement with the incorporation proponents, the incorporation proponents have no authority to bind the City. In recognition of this absence of authority on the part of the incorporation proponents, this Agreement is being submitted to the electorate for approval as a part of the incorporation ballot measure.

G. This Agreement is entered into by the parties in recognition of the various uncertainties relating to the application of Government Code §56845 in the context of individual incorporation proposals. The proponents of the City's incorporation have objected generally to any revenue neutrality payments, and specifically to any concept of sharing a fixed percentage of the City's revenue or having the any payment obligation extend beyond a period of twenty-five (25) years. The County, on the other hand, has taken the position that the annual revenue payment obligation should continue indefinitely and should reflect the percentage of revenue currently collected from within the boundaries of the proposed City that is used to provide municipal services within the City. This

Agreement represents a compromise between those competing positions and is intended to resolve all issues between the City and the County with respect to the application of the requirements of Government Code §56845 to the incorporation of the City. In specific reliance on this Agreement, the County has elected not to challenge LAFCO's approval of the incorporation proposal, or the sufficiency of the environmental documentation certified by LAFCO in connection with such approval, or to seek to fully mitigate the fiscal impact of the City's incorporation in the form of a larger share of the City's tax revenue for an indefinite period of time.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the City and the County agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.

2. **Sharing of Property Tax Revenue.**

a) The City and the County shall share the City's portion of all secured and unsecured ad valorem property taxes levied and collected pursuant to state law within the City's corporate limits ("City property tax revenue") as follows:

i) If a majority of the electorate votes in the November 5, 2002, general election to continue in effect the County's 2.5% utility user tax and the increase in the County's transient occupancy tax from 10% to 12%, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2033-2034, the City property tax revenue according to the percentages set forth in Option 1 of Exhibit A.

ii) If a majority of the electorate votes in the November 5, 2002, general election to continue in effect the increase in the County's transient occupancy tax from 10% to 12% and fails to vote to continue in effect the County's 2.5% utility user tax, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2027-28, the City property tax revenue according to the percentages set forth in Option 2 of Exhibit A.

iii) If a majority of the electorate votes in the November 5, 2002, general election to continue in effect the County's 2.5% utility user tax and fails to vote to continue in effect the increase in the County's transient occupancy tax from 10% to 12%, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2032-33, the City property tax revenue according to the percentages set forth in Option 3 of Exhibit A.

iv) If a majority of the electorate in the November 5, 2002, general election fails to vote to continue in effect the County's 2.5% utility user tax and the increase in the County's transient occupancy tax from 10% to 12%, the City and the County shall share, beginning fiscal year 2003-04 and continuing through fiscal year 2027-28, the City property tax revenue according to the percentages set forth in Option 4 of Exhibit A.

b) All costs and expenses associated with the collection, administration and interest-earning capabilities of the City property tax revenue shall be shared by the City and the County in accordance with the same percentages as the underlying property taxes. The County's share of the City property tax revenue shall be allocated by the County's Director of Finance directly to the County.

3. **Redevelopment Projects.** The City's property tax revenue shall not include any proportion of the percentage share of tax increment revenue from the project area which the City may be entitled to receive pursuant to Health and Safety Code Section 33607.5(a)(2) or any amount the City may receive pursuant to Health and Safety Code Section 33670(a).

4. **Modification of Tax Sharing Provisions.** The tax sharing provisions set forth in this Agreement are premised on the existing statewide structure that governs local government finances and the obligation of newly incorporated cities to mitigate the negative fiscal impacts of their incorporation on counties. The tax sharing obligations set forth in this Agreement shall be subject to modification upon any of the following occurrences:

- a) A statewide structural change in the services that are required by the State to be provided by the County or the City;
- b) A statewide structural change in the manner in which the above mandated services are funded;
- c) The occurrence of any other event that significantly modifies how cities and/or counties generally receive, or the County specifically receives, funding;
- d) Any significant modification by the State of the manner in which newly incorporated cities are funded; or
- e) If the revenue neutrality structure in the Cortese-Knox Local Government Reorganization Act of 1985 (Health & Safety Code §§56000, *et seq.*) as it existed on May 1, 2002, is modified.

5. Procedure For Modifying Tax Sharing Provisions.

a) If either party believes that one of the triggering factors set forth in Section 4 above has occurred, it may serve a written Notice of Reopener on the other party requesting that the City's tax sharing obligation be modified. A copy of this written request shall be provided to LAFCO, but LAFCO shall not have any role with respect to the request. The Notice of Reopener shall specify the precise manner in which the requesting party is proposing that the City's tax sharing obligation be modified and must be submitted within one (1) year of the effective date of the relevant triggering factor. If the Notice of Reopener is not served within this one (1) year period, the parties waive any right to request a modification of the City's tax sharing obligation based on that particular triggering factor.

b) The parties shall have sixty (60) days after service of the Notice of Reopener as a Negotiation Period in which to attempt to reach mutual agreement on an appropriate modification to the City's tax sharing obligation. If the parties are unable to reach such a mutual agreement within this sixty (60) day Negotiation Period, the City and County shall comply with the dispute resolution procedures set forth below. In doing so, the parties shall conform to the timeline prescribed therein measured from the date of service of the Notice of Reopener.

c) If, upon the completion of the Negotiation Period, no modification to the City's tax sharing obligation is agreed upon by the City and the County, the City and the County shall mutually select a mediator, funded in equal portions by each party, to perform mediation for a period of not to exceed thirty (30) days. If the City and the County cannot

mutually select a mediator, each shall select a mediator of its choosing. Those two mediators shall then select a neutral mediator, who shall be the mediator.

d) If, upon the completion of the Mediation Period, no mutually acceptable agreement has been reached by the City and the County, the parties shall mutually commence an action in the California Superior Court for the exclusive purpose of implementing the process of resolution of the dispute by general reference under Code of Civil Procedure §638. This agreement by the parties shall constitute and be construed to be an agreement to reference under Code of Civil Procedure §638. The parties shall select a referee under Code of Civil Procedure §§638 and 640, funded in equal portions by the parties, to conduct a judicial reference with the City and the County for a period of not to exceed 30 days. If the City and the County cannot mutually select a referee, each shall select a mediator of its choosing. Those two mediators shall then select a referee, who shall be the referee.

e) The provisions of Code of Civil Procedure Section 1283.05 are made expressly inapplicable to the Negotiation and Mediation Periods and/or the reference proceedings conducted pursuant to this section. However, discovery shall be permitted for the reference proceeding only, but, pursuant to Code of Civil Procedure §2021, discovery during the reference proceeding shall be subject to the following limitations:

- i) Discovery shall be limited in time to the 45 days before the date of the commencement of the reference hearing;
- ii) Discovery shall be limited in scope to disclosure of information to be presented at the reference hearing; and

iii) Discovery shall be accomplished by the disclosure duties as contemplated by Federal Rule of Civil Procedure, Rule 26, which initial disclosure shall occur on the 45th day before the date of commencement of the reference hearing, or on some other date mutually agreed upon by the parties.

f) On the day that the reference proceeding hearing commences and as a part of each parties' case in chief, the City and the County shall each present to the referee its last and best offer with respect to the City's tax sharing obligation. The referee must make his or her decision within the confines of the two offers presented by the parties. The reference proceeding contemplated herein shall be conducted pursuant to CCP §§638 *et seq.* and the decision by the referee must be reported as set forth in CCP §643 and it must stand as the decision of the court as set forth in CCP §644. The only review of the referee's decision shall be to determine if the referee's decision is within the confines of the two offers presented by the parties. The referee is free to fashion his or her decision within the confines of the two offers presented by the parties. However, if the referee's decision does not stay within the confines of the two offers presented by the parties, the referee's decision shall be null and void and subject to judicial review. The parties expressly agree to preserve their appellate rights pursuant to CCP §645, as limited herein.

g) Proceedings under these dispute resolution procedures shall be concluded no more than 150 days after the service of the Notice of Reopener, unless one or more of the periods specified herein is extended by the mutual written agreement of the City and the County, but in no event may the proceedings under these dispute resolution procedures be extended for a cumulative period of more than one (1) year after the service of the Notice of Reopener.

6. **Annexations.** Any taxes generated by land or other property added to the City, by virtue of any annexation or other change of organization governed by the procedures set forth in Government Code Section 56000 *et seq.*, or any successor statute, shall not be subject to this Agreement.

7. **Invalidity of Agreement.** The City's tax sharing obligation is set forth both in this Agreement and in the terms and conditions of the City's incorporation adopted by LAFCO. If this Agreement is invalidated or otherwise rendered unenforceable in whole or in part, such invalidity or unenforceability shall not in any manner affect the validity or enforceability of the terms and conditions imposed by LAFCO in connection with its approval of the City's incorporation proposal. The City shall continue to be subject to the tax sharing requirements imposed by LAFCO as part of the terms and conditions of the City's incorporation; however, under no circumstances shall this Tax Sharing Agreement be construed to be a different or separate obligation from that set forth in the LAFCO conditions found in Sacramento LAFCO Resolution ____.

8. **Term.** Subject to the approval of the Board of Supervisors and the approval of electorate of the City as part of the incorporation proposal, this Agreement shall become effective upon the effective date of the City's incorporation and shall remain in effect until all obligations hereunder have been satisfied. This Agreement shall be executed on behalf of the City by its Mayor immediately upon the City's incorporation becoming effective.

9. **Amendments.** This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties hereto. The Board of Supervisors shall have the authority to approve amendments

to this Agreement on behalf of County. The City Council shall have the authority to approve amendments on behalf of the City.

10. Entire Agreement. This Agreement together with the revenue neutrality conditions found in Sacramento LAFCO Resolution _____, constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

11. Notices. Any notice, demand, request, consent, or approval that either party hereto may, or is required to, give the other shall be in writing and shall be deemed to have been received three (3) days after being deposited in the United States mail, first class postage prepaid and addressed to the County Executive, if directed at the County, or to the City Manager, if directed to the City. Either party hereto shall have the right to serve any notice by personal delivery, and change the address at which it will receive such communications by giving fifteen (15) days advance notice to the other party.

Dated: _____

COUNTY OF SACRAMENTO, a political
subdivision of the State of California

By _____
Chairperson, Board of Supervisors

CITY OF RANCHO CORDOVA,
a municipal corporation

Dated: _____

By _____
Mayor, City of Rancho Cordova

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TAX SHARING AGREEMENT BETWEEN THE COUNTY OF SACRAMENTO AND THE CITY OF RANCHO CORDOVA

Figure 1
 Rancho Cordova Incorporation Comprehensive Fiscal Analysis
 Fiscal Mitigation Agreement Summary

		Property Tax Allocation Percentages								May 1 1.AFCo Approved Boundary	
Number of Years	Fiscal Year Ending	OPTION 1		OPTION 2		OPTION 3		OPTION 4		Retained by County	Retained by City
		Retained by County	Retained by City	Retained by County	Retained by City	Retained by County	Retained by City	Retained by County	Retained by City		
1	2004	97.50%	2.50%	97.50%	2.50%	97.50%	2.50%	97.50%	2.50%	97.50%	2.50%
2	2005	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%
3	2006	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%	95.00%	5.00%
4	2007	92.50%	7.50%	92.50%	7.50%	92.50%	7.50%	92.50%	7.50%	92.50%	7.50%
5	2008	90.00%	10.00%	90.00%	10.00%	90.00%	10.00%	90.00%	10.00%	90.00%	10.00%
6	2009	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%
7	2010	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%	87.50%	12.50%
8	2011	85.00%	15.00%	85.00%	15.00%	85.00%	15.00%	85.00%	15.00%	85.00%	15.00%
9	2012	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%
10	2013	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%	82.50%	17.50%
11	2014	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%
12	2015	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%
13	2016	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%
14	2017	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%	77.50%	22.50%
15	2018	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%
16	2019	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%	75.00%	25.00%
17	2020	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%
18	2021	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%	72.50%	27.50%
19	2022	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%
20	2023	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%	70.00%	30.00%
21	2024	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%
22	2025	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%	67.50%	32.50%
23	2026	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%
24	2027	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%	65.00%	35.00%
25	2028	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%
26	2029	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%
27	2030	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%	62.50%	37.50%
28	2031	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%
29	2032	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%	60.00%	40.00%
30	2033	57.50%	42.50%	57.50%	42.50%	57.50%	42.50%	57.50%	42.50%	57.50%	42.50%
31	2034	38.80%	61.20%	38.80%	61.20%	38.80%	61.20%	38.80%	61.20%	38.80%	61.20%
32	2035	-	-	-	-	-	-	-	-	-	-
33	2036	-	-	-	-	-	-	-	-	-	-
34	2037	-	-	-	-	-	-	-	-	-	-
35	2038	-	-	-	-	-	-	-	-	-	-
36	2039	-	-	-	-	-	-	-	-	-	-
37	2040	-	-	-	-	-	-	-	-	-	-
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Source: EPS

Prepared by EPS

9293 summary mitigation.xls/5/10/02

EXHIBIT B

OFFICIAL BUSINESS Document entitled to free recording Government Code Section 6103 RECORDING REQUESTED BY AND WHEN RECORDED, MAIL TO: City of Rancho Cordova 3121 Gold Canal Drive Rancho Cordova, CA 95670 Attn: Lillian Hare, City Clerk	
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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**AMENDMENT TO THE VILLAGES OF ZINFANDEL
DEVELOPER AGREEMENT**

by and between the

CITY OF RANCHO CORDOVA

and

ELLIOTT HOMES, INC.

**RELATIVE TO VILLAGES OF ZINFANDEL
ALEXANDER COLLECTION SUBDIVISION**

AMENDMENT TO THE VILLAGES OF ZINFANDEL DEVELOPMENT AGREEMENT
95-CZB-DGB-ZOB-SDB-TSM-0533

This AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is entered into as of August 2, 2004 by and between ELLIOTT HOMES, INC., a corporation of the State of Arizona ("Developer"), and the CITY OF RANCHO CORDOVA, a municipal corporation ("City"), who hereby agree as follows:

WHEREAS, this Amendment revises "The Villages of Zinfandel Development Agreement" ("Development Agreement"), entered into on May 28, 2003 between Elliott Homes and the County of Sacramento, a subdivision of the State of California, and recorded in Book 20030408, page 2493. The Development Agreement allocates rights and responsibilities of the County and Developer with respect to the mixed-use community development called The Villages of Zinfandel (the "Villages of Zinfandel Project"), on approximately 671.39 acres of property (the "Property") within the Villages at Zinfandel Special Planning Area (the "Zinfandel SPA") in the City, as described in Exhibit A to the Development Agreement.

WHEREAS, pursuant to section 1.7 of the Development Agreement, the parties may mutually agree to amend the Development Agreement as it applies to any portion of the Villages of Zinfandel Project.

WHEREAS, this Amendment concerns that portion of the Villages of Zinfandel development known as the "Alexander Collection Subdivision", consisting of 196 single-family residential units on approximately 29.7 acres of land, as further defined by the legal description, and as highlighted on the map, both of which are attached hereto as Exhibit A.

WHEREAS, on December 15, 2003, the City approved a General Plan Amendment reflecting a change in the land use designation of the Alexander Collection Subdivision from Medium Density Residential to Low Density Residential, by adopting Resolution No. 82-2003.

WHEREAS, on December 15, 2003, the City amended the Zinfandel SPA in the City's Zoning Code, from Medium Density Residential to Low Density Residential, by adopting Ordinance 29-2003.

WHEREAS, the City approved the Vesting Tentative Subdivision Map for the Alexander Collection Subdivision, subject to certain Conditions of Approval, Condition 19 of which requires modification of land use designations described in the Development Agreement in order to reflect the aforementioned changes, and requires Developer to pay an annual special tax for police services for the purpose of mitigating the additional demands on the City's law enforcement services resulting from development of the Alexander Collection Subdivision.

WHEREAS, the City and Developer also wish to amend the term of the Development Agreement and provide for the payment by Developer of a park renovation fee.

NOW, THEREFORE, in further consideration of the above recitals, and pursuant to Section 1.7 of the Development Agreement, Developer and City hereby agree to modify the Development Agreement as follows:

A. "Exhibit B" of the Development Agreement, entitled "Land Use Map", shall be replaced with the revised map, attached hereto as Exhibit B, which depicts the mutually agreed upon change of the General Plan designation of the Alexander Collection Subdivision from "Medium Density Residential" to "Low Density Residential."

B. "Exhibit C" of the Development Agreement, entitled "Zinfandel Special Planning Area", shall be modified as follows: Section 512-215 of the County Zoning Code, entitled "Zinfandel Land Use Plan", shall be replaced with the revised Section 512-215, attached hereto as Exhibit C, which reflects the mutually agreed upon change in land use of the Alexander Collection Subdivision from "Medium Density Residential" to "Low Density Residential."

C. The following provisions shall be added to Section 3 of the Development Agreement, entitled "Developer Obligations":

3.4. Police Services. The Developer agrees to vote in favor of, and to cooperate in, the creation of a special tax zone area within the Rancho Cordova Special Police Tax Area. The boundaries of the special tax zone area shall be contiguous with the boundaries of the Alexander Collection Subdivision. The Developer shall vote in favor of and cooperate in the levy of a special tax for police services on each residential parcel or residential parcel equivalent on the Alexander Collection Subdivision. The special tax shall be in the amount of two hundred fifty dollars (\$250) annually per residential parcel or residential parcel equivalent. The amount of the special tax shall be adjusted annually based upon the percentage change in the United States Department of Labor Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose, California area between April and April of each year. If the Consumer Price Index is discontinued, or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised. The special tax shall be payable annually following issuance of the building permit for each subject parcel. The Developer shall pay all the costs of conducting the election and all costs related to the implementation of this paragraph for development of the Alexander Collection Subdivision.

3.5. Existing Park Renovation Fees. Developer agrees that it shall pay the City the total sum of seven hundred thirty three dollars (\$733) for each residential parcel or residential parcel equivalent shown on the final maps for the Property. Beginning on January 1, 2006, the fee shall be adjusted annually on each January 1 based upon the percentage change in the United States Department of Labor Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose, California area between August and August of each year. This fee shall be paid to the City no later than prior to issuance of the building permit for each residential parcel for the Property. It shall be used by the City, at its sole discretion to renovate, repair, improve or maintain existing parks in the City. This payment is made voluntarily by the Developer. It is in addition to all other existing park fees, and construction and dedication obligations, including without limitation any fees paid pursuant to California Government Code Section 66477 (the "Quimby Act"). Developer agrees that it shall not claim any credit or right to reimbursement of any other existing park fees, and construction and dedication

obligations, including Quimby Act fees as a result of paying the existing park renovation fees required under this Section.

D. Section 1.6 of the Development Agreement shall be amended and restated in its entirety as follows:

Term. The term of this Agreement shall commence on the Effective Date of the ordinance authorizing the approval and execution of this Agreement and shall extend for a period of fifteen (15) years from that date unless it is terminated, modified or extended by the circumstances set forth in this Agreement or by the mutual agreement of the parties.

E. The first and second sentences of Section 7.1(a) of the Development Agreement shall be amended and restated in their entirety as follows:

Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the fifteen (15) year term.

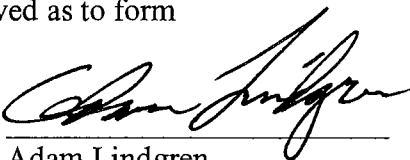
F. This Amendment may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

G. Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly signed this Amendment to the Development Agreement as of the date first written above.

Approved as to form

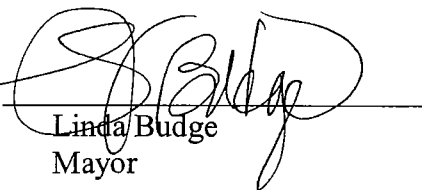
By:



Adam Lindgren
City Attorney

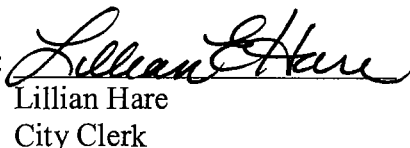
CITY OF RANCHO CORDOVA,
a municipal corporation

By:



Linda Budge
Mayor

Attest:

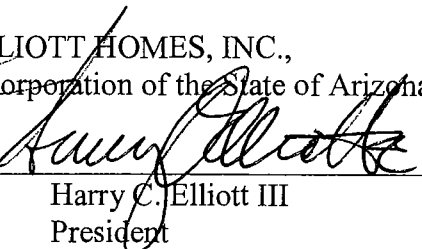


Lillian Hare
City Clerk

686288_2

ELLIOTT HOMES, INC.,
A corporation of the State of Arizona

By:



Harry C. Elliott III
President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of SACRAMENTO } ss.

On NOVEMBER 17, 2004 before me, SHERI HASSELL, NOTARY PUBLIC,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared HARRY C. ELLIOTT, III
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

AMENDMENT TO THE VILLAGES OF ZINFANDEL

Title or Type of Document: DEVELOPMENT AGREEMENT 95-CZB-DGB-ZOB-SDB-TSM-0533

Document Date: AUGUST 2, 2004 Number of Pages: 6 INCL. ACK.

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: HARRY C. ELLIOTT, III

- ☐ Individual
☒ Corporate Officer — Title(s): PRESIDENT
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: ELLIOTT HOMES, INC.

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

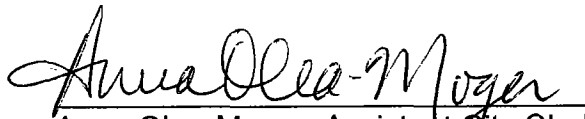


Public Agency Form of Acknowledgement

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

On November 16, 2004, before me, Anna Olea-Moger, Assistant City Clerk for the City of Rancho Cordova, personally appeared Linda Budge, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity of Mayor of the City of Rancho Cordova, and that by her signature on the instrument the person, or the entity upon behalf of which she acted, executed the instrument.

Witness my hand and official seal.


Anna Olea-Moger, Assistant City Clerk

Description of Attached Document

**Development Agreement – Elliott Homes, Inc. Relative to Villages of Zinfandel
Alexander Collection Subdivision**

LIST OF EXHIBITS TO AMENDMENT

Exhibit A - Legal Description of Alexander Collection Subdivision; Map of Villages of Zinfandel Unit No. 8 (Alexander Collection Subdivision)

Exhibit B - General Plan Amendment (Map)

Exhibit C - Land Use Exhibit (Rezone of Zinfandel Special Planning Area--County Zoning Code Section 512-215)

EXHIBIT 'A'

LEGAL DESCRIPTION

All of Lot 3 as shown on the Final Map of Villages of Zinfandel Unit No. 9, recorded in Book 317 of Maps, at Page 7, Sacramento County Records, in the City of Rancho Cordova, County of Sacramento, State of California.

April 7, 2004

END OF DESCRIPTION

PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

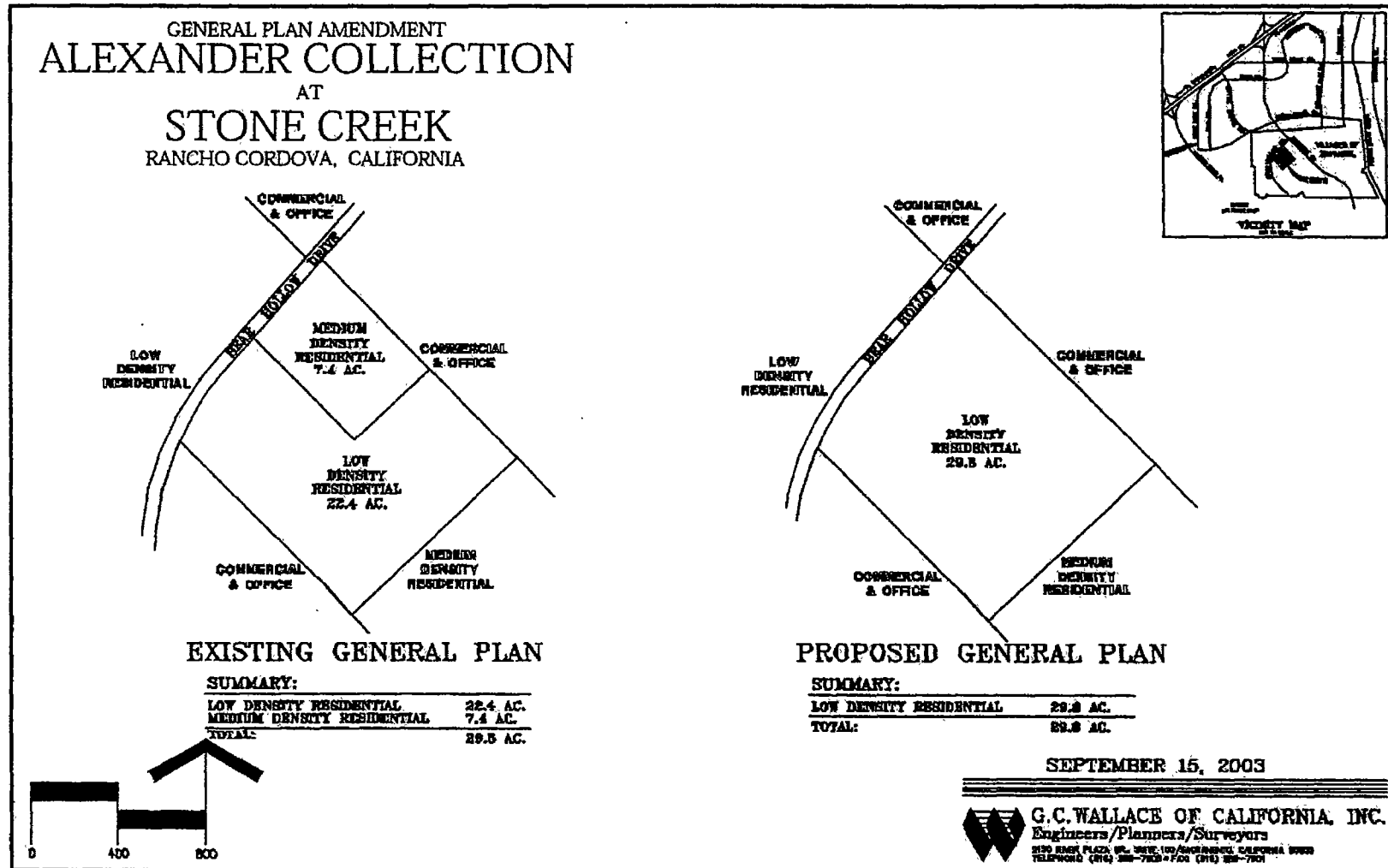
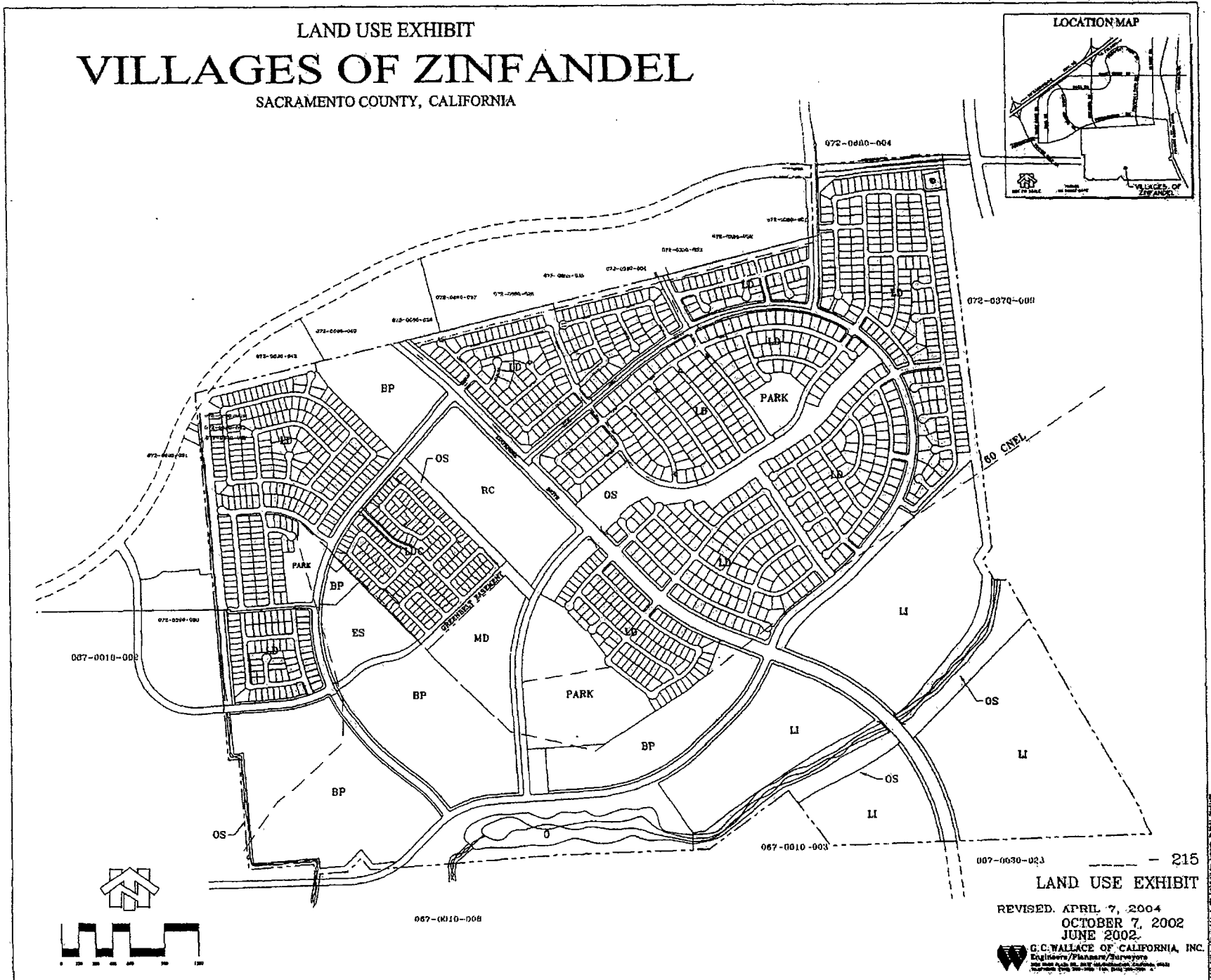


EXHIBIT 'B'



**Map of Villages of Zinfandel Unit No. 8
(Alexander Collection Subdivision)**

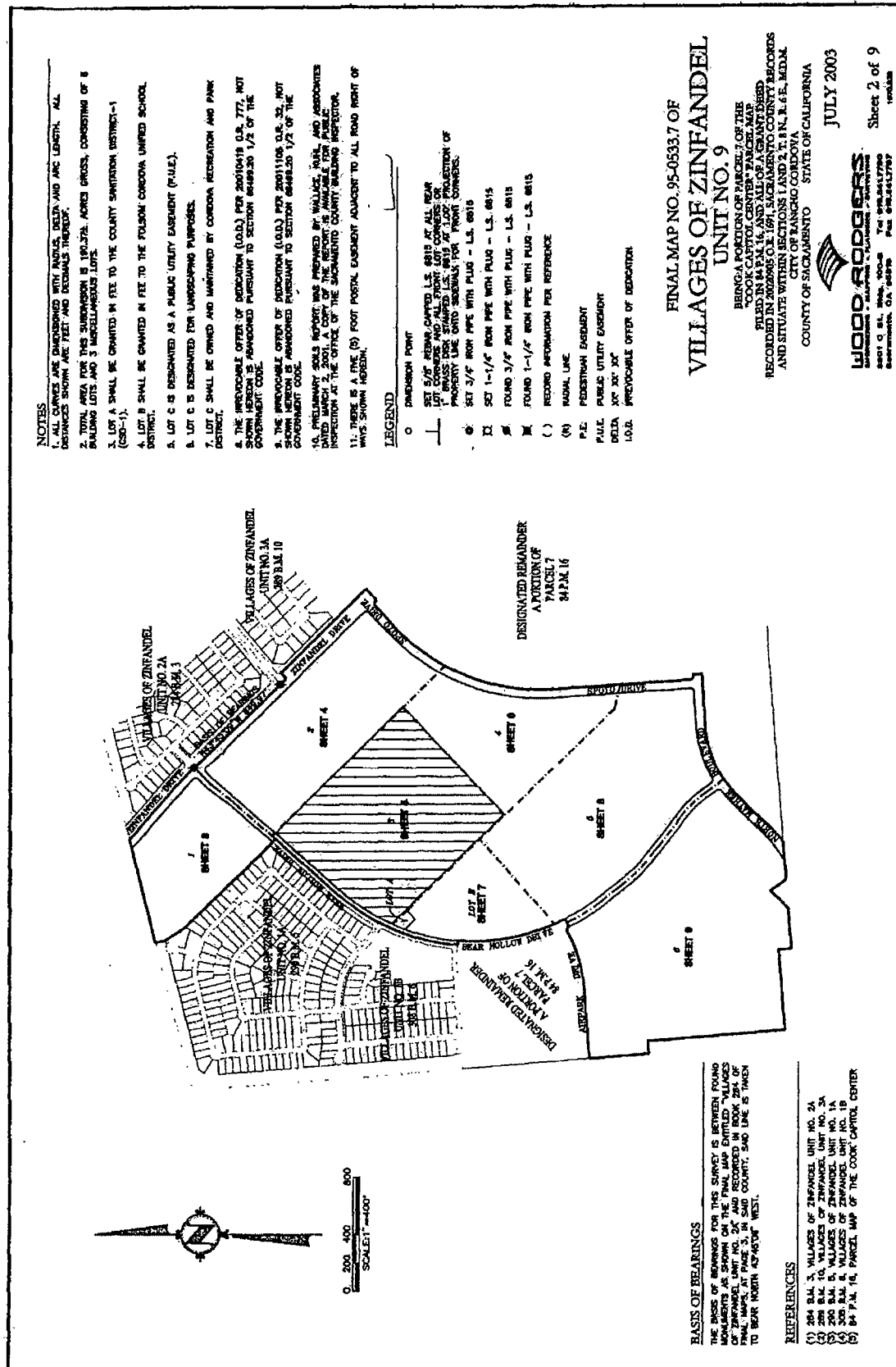


EXHIBIT C

ITEM 11.1.

ATTACHMENT 2

First American Title Company
2555471 - NCS AT
OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Attention: Mindy Cuppy, City Clerk


Sacramento County Recorder
Donna Allred, Clerk/Recorder
BOOK 20160308 PAGE 1060

Check Number 0143
Tuesday, MAR 08, 2016 1:51:10 PM
Ttl Pd \$0.00 Rcpt # 0008989841

MGJ/07/1-10

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

APN 072-2360-027 and portions of 072-2360-023,
072-2360-024, 072-2360-025, and 072-2360-026, Sacramento County

**AMENDMENT TO DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF RANCHO CORDOVA
AND ELLIOT HOMES, INC RELATIVE TO THE
VILLAGES OF ZINFANDEL**

This Amendment to Development Agreement ("**Amendment**") is entered into this 19th day of January 2010, by and between the CITY OF RANCHO CORDOVA, a municipal corporation ("**City**") and ELLIOTT HOMES, INC., a corporation of the State of Arizona ("**Elliott**"), who agree as follows:

RECITALS

WHEREAS, this Amendment revises "The Villages of Zinfandel Development Agreement" ("Development Agreement"), entered into on May 28, 2003 between Elliott and the County of Sacramento, a subdivision of the State of California, prior to incorporation of the City; and

WHEREAS, the Development Agreement was recorded on June 6, 2003, in Sacramento County Book 20030606, page 877 and re-recorded July 17, 2007 in Book 20070717, page 1286 and

WHEREAS, the City, as a result of its incorporation, succeeded to the County of Sacramento's interests in the Development Agreement; and

WHEREAS, the State of California has entered into an Option, Purchase, and Sale Agreement ("Option Agreement") through which it has an option to purchase from Elliott approximately thirty (30) acres of real property located in the City of Rancho Cordova within the Villages of Zinfandel Project, more particularly described in **Exhibit A** and depicted in **Exhibit B**, attached hereto, and incorporated herein by this reference ("Property"); and

WHEREAS, the State and City have entered into an agreement, titled, "Agreement to Allow Removal of Approximately 30 Acres of Land from the Villages of

Zinfandel Development Agreement," to address possible issues with the design and uses for the Property by the State; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), California Code of Regulations section 15061, this Amendment is exempt from CEQA because there is no possibility that the Amendment will have a significant effect on the environment. The Amendment will not cause any additional direct physical change in the environment, or any additional reasonably foreseeable indirect physical change in the environment which has not already been analyzed in the environmental analysis done during the approval of the Development Agreement; and

WHEREAS, this Amendment only removes approximately thirty (30) acres from the proposed project originally presented in the Development Agreement. This Amendment does not change the rest of the original project in any significant way; and

WHEREAS, pursuant to Government Code §65868, City and Elliott wish to amend and remove the Property from the Development Agreement in the event State exercises an option to purchase the Property.

NOW, THEREFORE, in further consideration of the above recitals, City and Elliott hereby agree to amend the Development Agreement as follows:

AGREEMENT

A. The Property identified in the attached **Exhibit A** and depicted in **Exhibit B** is hereby removed in its entirety and no longer subject to the term or conditions of the Villages of Zinfandel Development Agreement recorded June 6, 2003, in Sacramento County Book 20030606, page 877 and re-recorded July 17, 2007 in Book 20070717, page 1286.

B. This Amendment will automatically lapse and the term and conditions of the Development Agreement existing prior to the effective date of this Amendment will remain in full force and effect without alteration if either: (1) the deed transferring title of the Property to the State is not recorded by September 1, 2013, except in the event the State and Elliott extend the option term in which case the new option expiration date shall prevail; or (2) the State terminates their option under the Option Agreement.

C. This Amendment may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

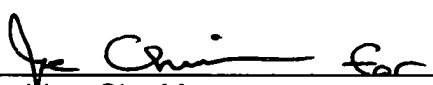
D. Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City of Rancho Cordova, a municipal corporation, has authorized the execution of this Amendment in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. 25-2009, adopted by

the Council of the City on January 19, 2010, and Elliott has caused this Amendment to be executed.

"CITY"

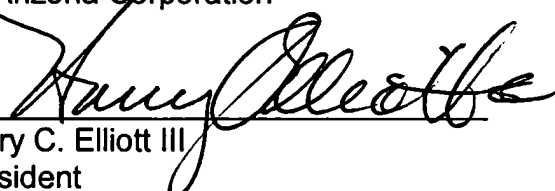
CITY OF RANCHO CORDOVA,
a municipal corporation

By: 

~~Joe Chinn~~, City Manager
Joe Chinn

Date: 1/11/10**"ELLIOTT"**

ELLIOTT HOMES, INC
an Arizona Corporation

By: 

Harry C. Elliott III
President

Date: 1/7/10

ATTEST:


Mindy Cuppy, City Clerk

APPROVED AS TO FORM:


Adam U. Lindgren, City AttorneyDate: 1/20/10

EXHIBIT LIST

Exhibit A	Legal Description of Property
Exhibit B	Depiction of Property

1070.021

EXHIBIT 'A'
LEGAL DESCRIPTION

All of Lot 5 and a portion of Lots 1, 2, 3 and 4, as shown on the Final Map entitled "Stone Creek Phase 1" and recorded in Book 369 of Maps, at Page 8, Sacramento County Records, in the City of Rancho Cordova, County of Sacramento, State of California, and described as follows:

COMMENCING at a point which is the most northerly northwest corner of said Lot 4, also being a point on the southerly right-of-way line of Airpark Drive, as shown on the Final Map entitled "Villages of Zinfandel Unit No. 1C" and recorded in Book 320 of Maps, at Page 1, in said County; THENCE along the northerly boundary line of said Lot 4, also being said southerly right-of-way line, North 85°30'14" East, a distance of 145.31 feet to the TRUE POINT OF BEGINNING; THENCE continuing along said northerly boundary line, North 85°30'14" East, a distance of 346.15 feet; THENCE along a tangent curve concave to the northwest, having a radius of 1031.00 feet, northeasterly 360.40 feet, along said curve through a central angle of 20°01'43" to a point on the northerly boundary line of said Lot 5, also continuing to be said southerly right-of-way line; THENCE continuing along said northerly boundary line, North 65°28'31" East, a distance of 67.09 feet; THENCE along a tangent curve concave to the southwest, having a radius of 25.00 feet, southeasterly 38.37 feet, along said curve through a central angle of 87°56'24" to a point on the northeasterly boundary line of said Lot 5, also being the southwesterly right-of-way line of Bear Hollow Drive, as shown on said Final Map entitled "Stone Creek Phase 1"; THENCE continuing along said northeasterly boundary line, North 63°24'55" East, a distance of 33.00 feet to a point on the centerline of said Bear Hollow Drive; thence continuing along said northeasterly boundary line, also being said centerline, along a non-tangent curve concave to the northeast, having a radius of 1500.00 feet, and to which a radial line bears South 63°24'55" West, southeasterly 285.26 feet, along said curve through a central angle of 10°53'46"; THENCE continuing along said northeasterly boundary line, South 37°28'51" East, a distance of 155.10 feet; THENCE along a tangent curve concave to the northeast, having a radius of 1500.00 feet, southeasterly 254.54 feet, along said curve through a central angle of 09°43'22" to a point on the northeasterly boundary line of said Lot 1, also continuing to be said centerline; THENCE leaving said northeasterly boundary line and into said Lot 1, South 42°47'47" West, a distance of 33.00 feet to a point on the southwesterly right-of-way line of said Bear Hollow Drive; THENCE leaving said southwesterly right-of-way line and through said Lots 1 thru 4 respectively the following nineteen (19) arcs, courses and distances:

1. South 17°48'43" West, a distance of 550.04 feet;
2. South 45°41'36" West, a distance of 519.94 feet;
3. North 40°57'24" West, a distance of 32.04 feet;

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Page 1 of 2

1070.021

4. along a tangent curve concave to the southwest, having a radius of 65.00 feet, northwesterly 59.84 feet, along said curve through a central angle of 52°44'59";
5. South 86°17'37" West, a distance of 85.17 feet;
6. along a tangent curve concave to the southeast, having a radius of 50.00 feet, southwesterly 28.26 feet, along said curve through a central angle of 32°23'21";
7. South 53°54'16" West, a distance of 72.39 feet;
8. along a tangent curve concave to the northwest, having a radius of 25.00 feet, southwesterly 13.72 feet, along said curve through a central angle of 31°26'04";
9. South 85°20'20" West, a distance of 259.72 feet;
10. along a tangent curve concave to the northeast, having a radius of 35.00 feet, northwesterly 50.80 feet, along said curve through a central angle of 83°10'06";
11. North 11°29'34" West, a distance of 48.30 feet;
12. North 04°30'14" West, a distance of 139.89 feet;
13. North 02°41'59" West, a distance of 95.29 feet;
14. North 04°30'14" West, a distance of 109.12 feet;
15. North 06°13'53" West, a distance of 99.52 feet;
16. North 04°30'14" West, a distance of 395.93 feet;
17. North 05°17'36" West, a distance of 108.85 feet;
18. North 05°57'46" West, a distance of 196.39 feet;
19. North 04°30'14" West, a distance of 136.91 feet to the TRUE POINT OF BEGINNING.

Containing 30.53 acres gross and 30.00 acres net, more or less.

Basis of Bearings for this description is the northerly boundary line of said Lot 4.
Said line is taken to bear North 85°30'14" East.

October 17, 2008

END OF DESCRIPTION



PREPARED BY WOOD-RODGERS, INC.
SACRAMENTO, CALIFORNIA

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Page 2 of 2

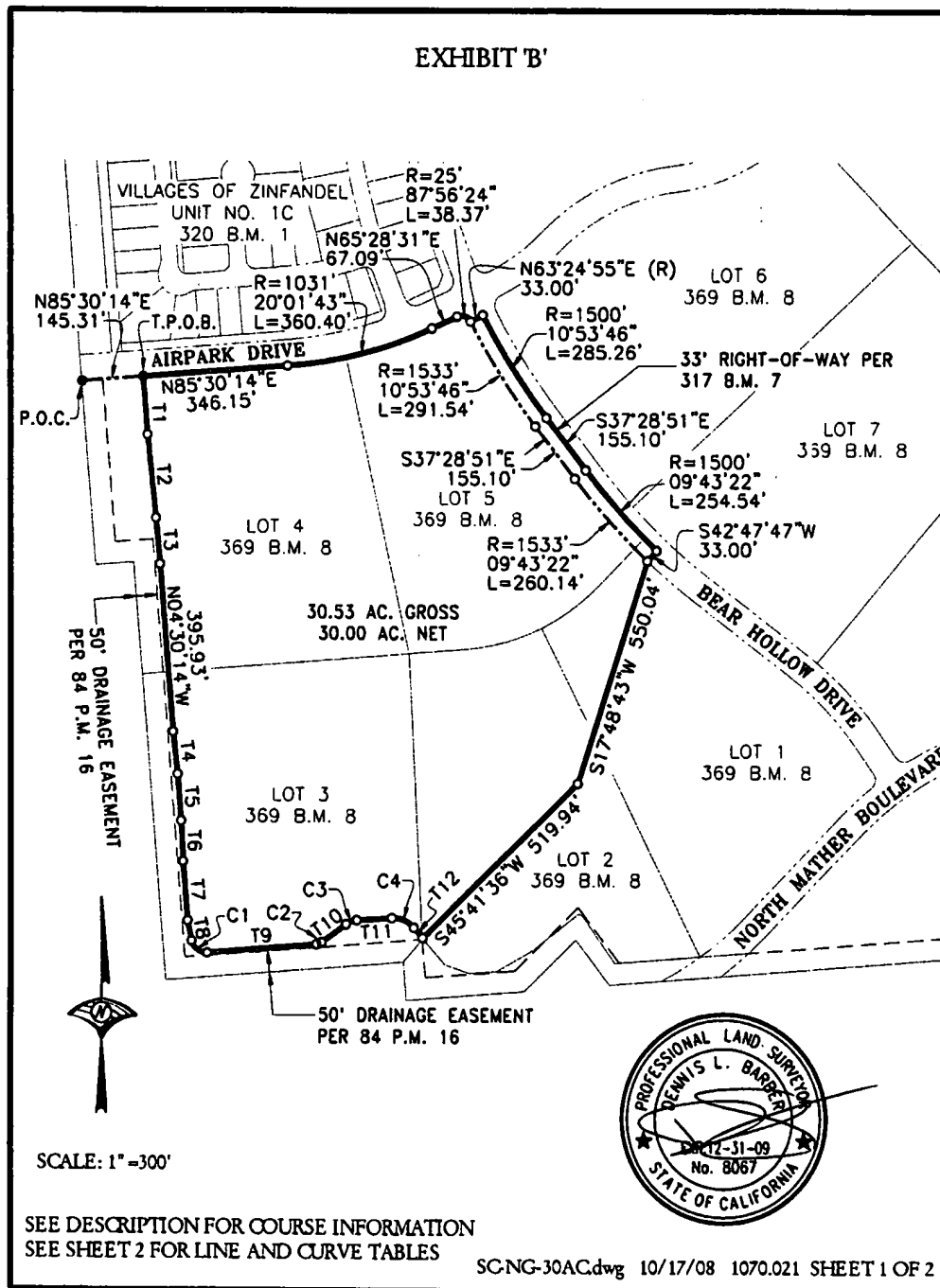


EXHIBIT 'B'

#	RADIUS	DELTA	ARC LENGTH
C1	R=35'	83°10'06"	L=50.80'
C2	R=25'	31°26'04"	L=13.72'
C3	R=50'	32°23'21"	L=28.26'
C4	R=65'	52°44'59"	L=59.84'

#	BEARING	DISTANCE
T1	N04°30'14"W	136.91'
T2	N05°57'46"W	196.39'
T3	N05°17'36"W	108.85'
T4	N06°13'53"W	99.52'
T5	N04°30'14"W	109.12'
T6	N02°41'59"W	95.29'
T7	N04°30'14"W	139.89'
T8	N11°29'34"W	48.30'
T9	S85°20'20"W	259.72'
T10	S53°54'16"W	72.39'
T11	S86°17'37"W	85.17'
T12	N40°57'24"W	32.04'

SEE DESCRIPTION FOR COURSE INFORMATION
SEE SHEET 1 FOR LINES AND CURVES

SG-NG-30AC.dwg 10/17/08 1070.021 SHEET 2 OF 2

1325351.3

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

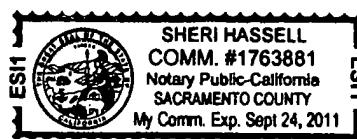
County of **Sacramento**} ss.
}On **January 22, 2010** before me, **Sheri Hassell, Notary Public**personally appeared **Harry C. Elliott, III**

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: **Amendment to Development Agreement (Villages of Zinfandel)**Document Date: **January 19, 2010**Number of Pages: **8**Signer(s) Other Than Named Above: **Ted Gaebler**

Capacity(ies) Claimed by Signers

Signer's Name: **Harry C. Elliott, III**☐ Individual☒ Corporate Officer - Title(s):☐ Partner - ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other:Signer is Representing: **Elliott Homes, Inc., an Arizona corporation**

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

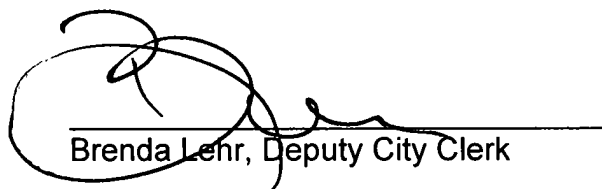
**Public Agency Form of Acknowledgement – CA Civil Code 1189(a)(1)**

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

On *January 11, 2010* before me, Brenda Lehr, Deputy City Clerk for the City of Rancho Cordova, personally appeared Joe Chinn, Assistant City Manager who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.


Brenda Lehr, Deputy City Clerk

**Description of Attached Document:**

Amendment to Development Agreement by and between the City of Rancho Cordova and Elliott Homes, Inc. Relative to the Villages of Zinfandel

EXHIBIT D

CITY OF RANCHO CORDOVA

ORDINANCE NO. 6-2016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
APPROVING A THIRD AMENDMENT TO THE VILLAGES OF ZINFANDEL DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF RANCHO CORDOVA AND ELLIOTT HOMES, INC.
RELATIVE TO THE VERANDA AT STONE CREEK SUBDIVISION**

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1: Recitals

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, et seq., of the Government Code (the "Development Agreement Statute"), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement establishing certain development rights in the property which is the subject of the development project application.

B. On May 28, 2003, the County of Sacramento ("County") and Elliott Homes, Inc. ("Elliott") entered into a development agreement for the Villages of Zinfandel Project ("Project"), which is located south of the intersection of International Drive and Zinfandel Drive, within the Zinfandel Special Planning Area ("Special Planning Area").

C. Having duly examined and considered the Villages of Zinfandel development agreement for the Project and having held properly noticed public hearings, the County found that the Agreement satisfied the Government Code §65867.5 requirement of the general plan.

D. The City, as a result of its incorporation, succeeded to the County of Sacramento's interests in the Villages of Zinfandel development agreement (the development agreement together with any subsequent amendment by the County or City to the agreement shall be referred to as "Development Agreement"). The City Council approved two prior amendments to the Development Agreement, one in 2004 and another in 2009.

E. In 1998 the County certified as adequate and complete the Final Villages of Zinfandel Environmental Impact Report ("Villages of Zinfandel FEIR") for the Project. Mitigation measures were required in the Villages of Zinfandel FEIR and are incorporated into the Project and into the terms and conditions of the approved Tentative Map for the Veranda at Stone Creek subdivision.

F. Pursuant to the California Environmental Quality Act, the City has performed an Initial Study and issued an Addendum to the Villages of Zinfandel FEIR for the Veranda at Stone Creek subdivision project, which concluded that: The proposed Veranda at Stone Creek subdivision within the Project, with 112 fewer dwelling units and an unchanged development footprint than was previously approved for the site, would not create any new, substantially more severe, or additional significant impacts that were not already identified in the previously certified Villages of Zinfandel FEIR; nor would it cause any impacts peculiarly to the project or parcels. Mitigation measures relating to these impact areas included in the Villages of Zinfandel FEIR and General Plan FEIR are

still applicable to the Veranda at Stone Creek subdivision project and would reduce impacts to the furthest extent feasible.

G. The City Council has considered all comments received in writing and all testimony received at the properly noticed public hearing related to this Amendment.

Section 2: Findings and Determinations

Therefore, on the basis of (a) the foregoing Recitals, which are incorporated herein, (b) the City of Rancho Cordova's General Plan, (c) the Zinfandel Special Planning Area document, (d) the County's certified Villages of Zinfandel FEIR, and (e) the approved Tentative Map and corresponding Conditions of Approval for the Veranda at Stone Creek subdivision, the City Council finds and determines that:

A. Finding: The Third Amendment to the Development Agreement ("Amendment"), which amends the land use map to reflect the new Low Density Cluster land use designation for the Veranda at Stone Creek ("Veranda") site and extends the Development Agreement by five years, is consistent with the objectives, policies, goals, general land uses and programs specified and contained in the City's General Plan, and in the Zinfandel Special Planning Area ("ZSPA").

Evidence: The land use designation for the Veranda site under the General Plan is Medium Density Residential and Low Density Cluster under the ZSPA. The proposed Veranda subdivision would create 163 single-family homes in a style and density that is consistent with such land use designations. This is consistent with the fiscal policies of the General Plan and the ZSPA with respect to provision of infrastructure and public services, as the Development Agreement includes provisions relating to financing, construction and maintenance of public facilities, park development fees and similar provisions set forth in the ZSPA. This Amendment does not alter any of these components of the Project. Additionally, the Low Density Cluster land use, consisting of homes on smaller lots with alley access, would provide another type of ownership housing not currently available in the ZSPA and create a neighborhood that promotes pedestrian circulation. These elements of the Veranda subdivision further the goals of the General Plan and the ZSPA to provide a diverse housing stock in the region, to improve the jobs-to-housing ratio in the area, and to create pedestrian-friendly neighborhoods.

B. Finding: The Amendment is in conformity with public convenience, general welfare and good land use policies in that the Project, including the Veranda subdivision, will implement land use guidelines set forth in the ZSPA and the General Plan, which have planned for residential uses at this location.

Evidence: The Amendment does not alter any land uses already approved by the City Council for this site via the General Plan and the ZSPA; it simply replaces the land use map exhibit to the Development Agreement to reflect the Low Density Cluster zoning designation approved by Ordinance 5-2016 on August 1st, 2016.

C. Finding: The Amendment will not be detrimental to the health, safety and general welfare in that the Project, including the Veranda subdivision, will proceed in accordance with all the programs and policies of the ZSPA.

Evidence: The impacts of the development on existing land uses, public services and the environment have been evaluated and mitigated through the CEQA compliance process.

D. Finding: The Amendment will not adversely affect the orderly development of property or the preservation of property values.

Evidence: The Amendment is consistent with the General Plan and ZSPA, as shown above.

E. Finding: The Amendment is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Evidence: The Amendment does not alter the previously approved substantive elements of the Development Agreement and has been processed consistent with all the procedural requirements of Government Code Sections 65864 through 65869.5.

Section 3: Approval

The City Council hereby approves the Third Amendment to the Development Agreement (**Exhibit 3A**) and authorizes the Mayor to execute it.

Section 4: Recordation

Within ten (10) days after the Third Amendment to the Development Agreement is executed by the Mayor and Developer, the City Clerk shall submit the Agreement to the County Recorder for recordation.

Section 5: Effective Date and Publication of Ordinance Summary

This Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk of the City of Rancho Cordova shall cause a summary of the Ordinance to be posted in accordance with Section 36933 of the Government Code of the State of California.

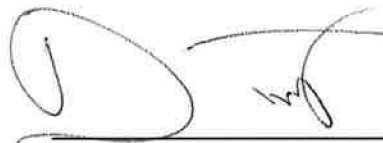
PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 1st day of August, 2016 by the following vote:

AYES: Budge, McGarvey, Skoglund, Terry

NOES: None

ABSENT: Sander

ABSTAIN: None



Donald Terry, Vice Mayor

ATTEST:



Mindy Cuppy, MMC, City Clerk

2662940.1

2662940.2

DRAFT

EXHIBIT 3A

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND
WHEN RECORDED, MAIL TO:

City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Attention: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

**THIRD AMENDMENT TO VILLAGES OF ZINFANDEL
DEVELOPMENT AGREEMENT**

by and between the

CITY OF RANCHO CORDOVA

and

ELLIOTT HOMES, INC.

**RELATIVE TO VILLAGES OF ZINFANDEL
VERANDA AT STONE CREEK SUBDIVISION**

DRAFT**EXHIBIT 3A**

**THIRD AMENDMENT TO THE VILLAGES OF ZINFANDEL DEVELOPMENT
AGREEMENT**

95-CZB-DGB-ZOB-SDB-TSM-0533

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is entered into as of [REDACTED], 2016, by and between ELLIOTT HOMES, INC., a corporation of the State of Arizona ("Developer"), and the CITY OF RANCHO CORDOVA, a California municipal corporation ("City"), who hereby agree as follows:

WHEREAS, this Amendment revises "The Villages of Zinfandel Development Agreement" ("Development Agreement"), entered into on May 28, 2003, between Elliott Homes and the County of Sacramento, a subdivision of the State of California, and recorded in Book 20030408, page 2493. The Development Agreement allocates rights and responsibilities of the County and Developer with respect to the mixed-use community development called The Villages of Zinfandel ("Villages of Zinfandel Project"), on approximately 671.39 acres of property ("Property") within the Zinfandel Special Planning Area ("Zinfandel SPA") in the City, as described in Exhibit A to the Development Agreement; and

WHEREAS, pursuant to section 1.7 of the Development Agreement, the parties may mutually agree to amend the Development Agreement as it applies to any portion of the Villages of Zinfandel Project; and

WHEREAS, the Development Agreement was amended on August 2, 2004 to reflect the rezone of the property related to the Alexander Collection Subdivision within the Villages of Zinfandel Project from "Medium Density Residential" to "Low Density Residential," to reduce the term of the Development Agreement by five (5) years, and to reflect desired changes related to Developer obligations related to fees; and

WHEREAS, the Development Agreement was amended a second time on January 19, 2010 to remove approximately thirty (30) acres of land from the Villages of Zinfandel Project and Development Agreement to reflect the State of California's purchase of the land from the Developer; and

WHEREAS, this Amendment concerns that portion of the Villages of Zinfandel development known as the "Veranda at Stone Creek Subdivision" ("Veranda") consisting of 163 single-family residential units on approximately 17.18 acres of land on Spoto Drive, as further defined by the legal description, and as highlighted on the map, both of which are attached hereto as Exhibit A; and

WHEREAS, this Amendment replaces the Land Use Map exhibit to the Development Agreement and is necessary to reflect the rezone of the 17.18 acres for the Veranda subdivision from "Medium Density" to "Low Density Cluster" accomplished via City Council Ordinance No. 5-2016, adopted on _____, 2016, amending the Zinfandel SPA; and

DRAFT**EXHIBIT 3A**

WHEREAS, this Amendment also extends the term of the Development Agreement by five (5) years, amending the expiration date to the expiration date of the original agreement — 2023.

NOW, THEREFORE, in further consideration of the above recitals, and pursuant to Section 1.7 of the Development Agreement, Developer and City hereby agree to modify the Development Agreement as follows:

A. “Exhibit B” of the Development Agreement, entitled “Land Use Map,” shall be replaced with the revised map, attached hereto as Exhibit B, which depicts the mutually agreed upon change of the Veranda at Stone Creek parcel from “Medium Density” to “Low Density Cluster.”

B. “Exhibit C” of the Development Agreement, entitled “Zinfandel Special Planning Area,” shall be replaced with the amended Zinfandel Special Planning Area Document approved by the City Council via Ordinance No. 5-2016.

C. Section 1.6 of the Development Agreement shall be amended and restated in its entirety as follows:

Term. The term of this Agreement shall commence on the Effective Date of the ordinance authorizing the approval and execution of this Agreement, and shall extend for a period of twenty (20) years from that date unless it is terminated, modified or extended by the circumstances set forth in this Agreement or by the mutual agreement of the parties. D.

This Amendment may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

E. Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly signed this Amendment to the Development Agreement as of the date first written above.

Approved as to form

CITY OF RANCHO CORDOVA,
a municipal corporation

By:

Adam U. Lindgren
City Attorney

By:

David M. Sander
Mayor

Attest:

Mindy Cuppy, CMC
City Clerk

DRAFT

EXHIBIT 3A

ELLIOTT HOMES, INC.,
A corporation of the State of Arizona

By: _____
Harry C. Elliott III
President

DRAFT

EXHIBIT 3A

LIST OF EXHIBITS TO AMENDMENT

Exhibit A - Legal Description of Veranda Subdivision; Map of Villages of Zinfandel Unit

Exhibit B - Land Use Exhibit (Rezone of Zinfandel Special Planning Area--County Zoning Code Sections 512-215)

DRAFT

EXHIBIT 3A

EXHIBIT 'A'

LEGAL DESCRIPTION

All of Lot 4 as shown on the Final Map of Villages of Zinfandel Unit No. 9, recorded in Book 317 of Maps, at Page 7, Sacramento County Records, in the City of Rancho Cordova, County of Sacramento, State of California.

July __, 2016

END OF DESCRIPTION

PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

2661774.1
2661774.2

ITEM 11.1.

ATTACHMENT 2

DRAFT

EXHIBIT 3A

EXHIBIT 'B'

LAND USE EXHIBIT

**Rezone for
Veranda at Stone Creek
Ranch Cordova, CA**

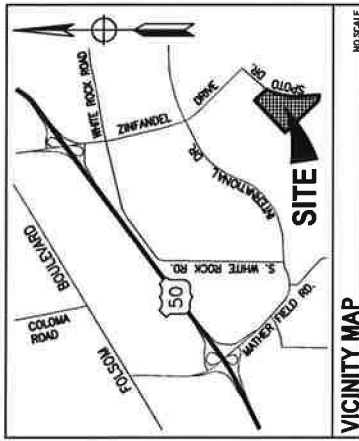
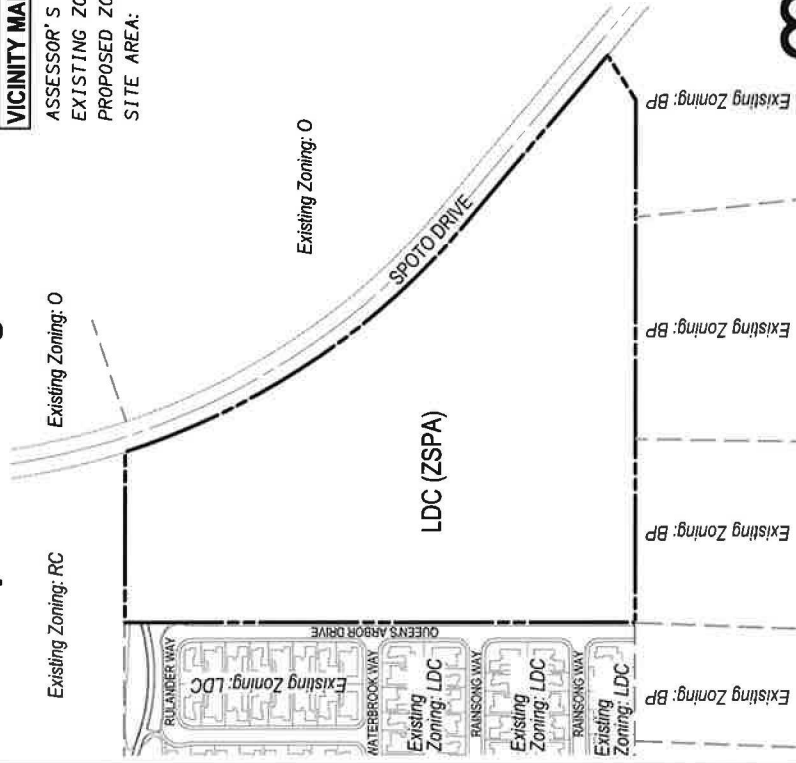
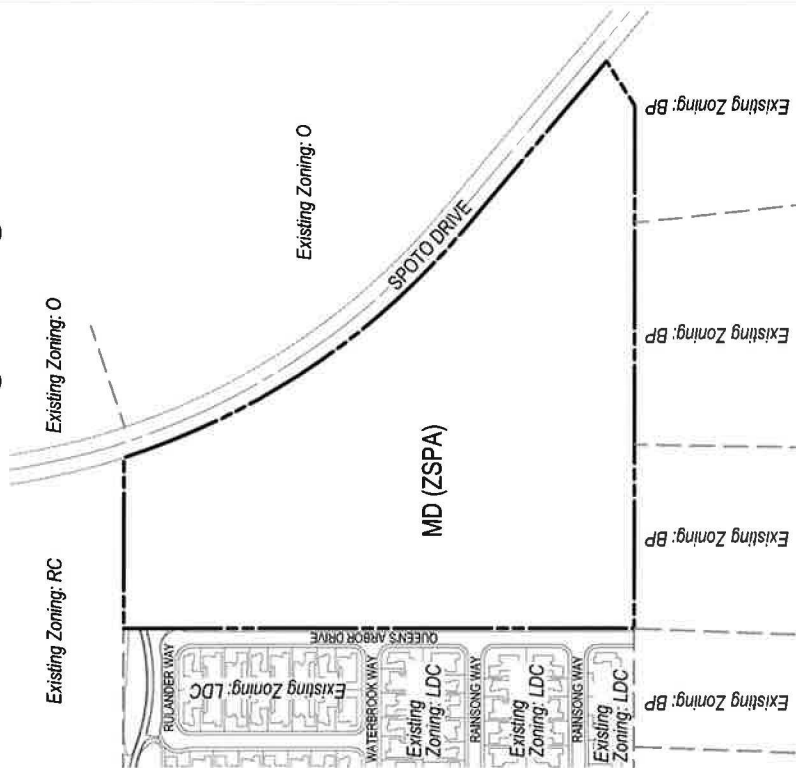
AUGUST, 2015 **Page 1 of 1** **Scale: 1"=250'**

Page 1 of 1

Scale: 1"=250'

Existing Zoning

Proposed Zoning



ASSESSOR'S PARCEL NUMBER: 072-2360-004
EXISTING ZONING: MD (ZSPA)
PROPOSED ZONING: LDC (ZSPA)
SITE AREA: 17.18± ACRES (GROSS)

mortonitalo 

MORTON & PITALO, INC.
CIVIL ENGINEERING • LAND PLANNING • LAND ILLUSTRATING
LANDSCAPE ARCHITECTURE • TRAFFIC ENGINEERING
75101 North Circle, Suite 120 • Palmdale, CA 93508
PHONE: 916/964-7623 • FAX: 916/964-9177 • INTERNET: 916-563-6770

MEMORANDUM



ITEM 12.1.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Stefan Heisler, Housing Manager
Kristine Courdy, Senior Civil Engineer
SUBJECT: **MILLS CROSSING PROJECT UPDATE**

RECOMMENDATION

Receive presentation, provide feedback.

RESULT OF RECOMMENDED ACTION

The City Council will receive a presentation from the City's master developer team, Griffin Swinerton and partners, and city staff regarding the current project status, the 2023 work plan and anticipated community outreach this calendar year.

BACKGROUND

On July 18, 2022, the City Council approved execution of a Predevelopment Agreement with Griffin Swinerton to continue moving the Mills Crossing project forward into the detailed design phase. This phase is intended to scope out the project in sufficient detail to negotiate a Guaranteed Maximum Price and Development Agreement by early 2025.

Several work streams are now in progress to meet this goal. This project update presentation will inform the City Council regarding the upcoming work planned for calendar year 2023 to formally name the project, refine the site plan, define an architectural character, discuss outdoor area programming, and involve residents in these conversations at several planned outreach events. This update will also inform Council on the current California Environmental Quality Act (CEQA) review, ongoing soil remediation, and grant applications submitted, awarded, and anticipated. Finally, Griffin Swinerton will provide an update on the progress attracting potential users who will anchor and fill the future individual spaces within the site plan.

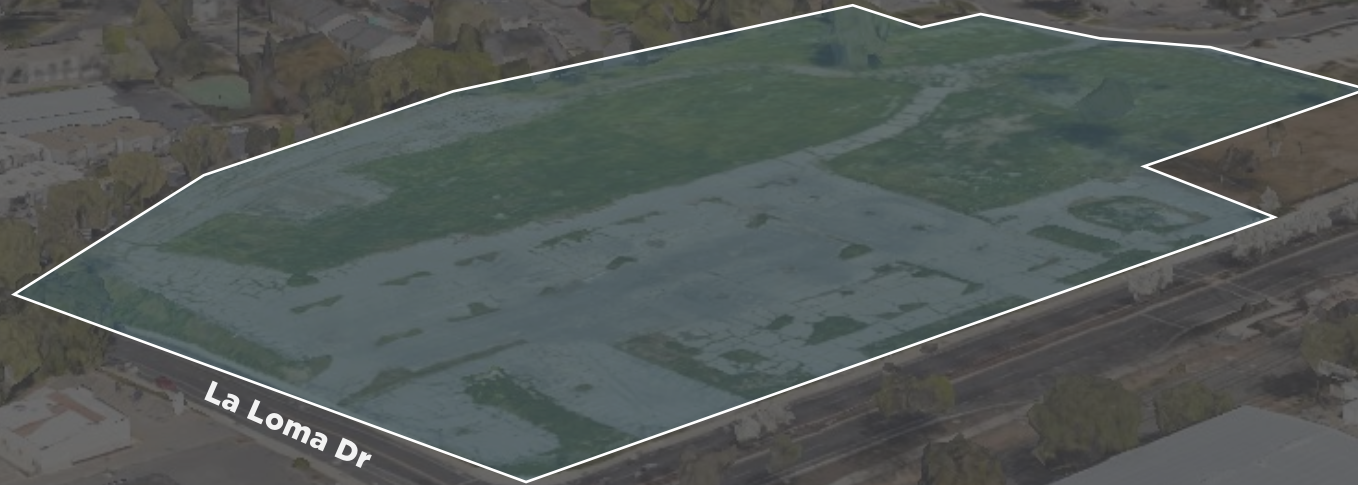
The major features of the approved concept plan include 80,000-100,000 sq ft of community facilities focused on arts, wellness, events, small business incubator and workforce training uses, approximately 2.5 acres of plaza and community green spaces, approximately 120 housing units of attached townhomes and multifamily apartments, and a 3-level, approximately 300 space, parking garage.

FISCAL IMPACT AND FUNDING SOURCE

There is no fiscal impact for this discussion.

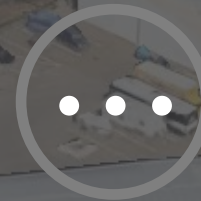
ATTACHMENT(S)

1. Presentation



MILLS CROSSING

City Council Update
February 21, 2023



Pending:
2020-22



In Progress:
2022-25



Completion:
2026-27

ITEM 12.1. AGENDA

1. Introduction

2. Community Engagement

3. In Brief | Project Overview

4. In Focus | Design Progress

5. Next Steps

ATTACHMENT 1



An Innovative Public Private Partnership:



IMPORTANT **NOTE** BEFORE WE DIVE IN . . .

The updated concepts, plans, and images in this presentation are provided to initiate additional dialogue with the **City, Council, & Community**.

**These updates are not
“etched in stone”**

The eventual designs and programming will result from an ongoing dialogue and feedback from these key stakeholders – today’s update is an important step in that direction





1. Introduction



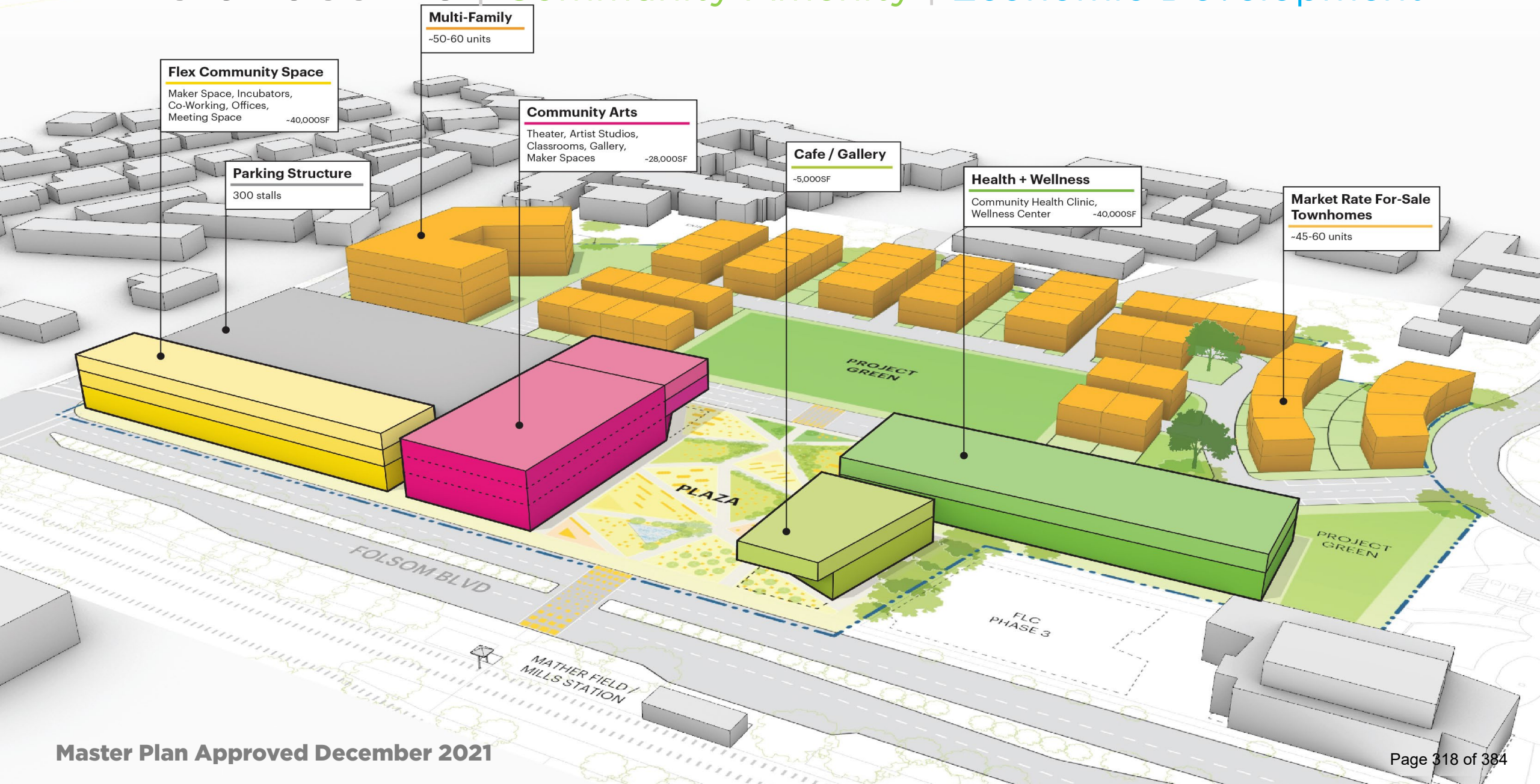
Pending:
2020-22

A circular icon with a blue outline and a blue wedge-shaped segment, representing a 'in progress' or 'ongoing' status.

In Progress:
2022-25



Completion:
2026-27
Page 317 of 384



Flex Community Space
Maker Space, Incubators,
Co-Working, Offices,
Meeting Space
~40,000SF

Parking Structure
300 stalls

Multi-Family
~50-60 units

Community Arts
Theater, Artist Studios,
Classrooms, Gallery,
Maker Spaces
~28,000SF

Cafe / Gallery
~5,000SF

Health + Wellness
Community Health Clinic,
Wellness Center
~40,000SF

**Market Rate For-Sale
Townhomes**
~45-60 units

WHAT WE AIM TO ACCOMPLISH

1

UPDATE:

On the 5 Major Work Streams



2

FEEDBACK:

As We Work Towards a **May 2023** Design Charrette

ITEM 12.1

5 MAJOR WORK STREAMS

- 1

Process / Approvals

>

Overall Schedule, CEQA, Planning/Subdivision, etc.

>
- 2

Design & Engineering

>

Master Plan and Public Spaces, Community-Commercial, Housing, Parking Structure

>
- 3

Project Financing

>

Financing Plan, Grants, NMTCs, City Investment, Bonds, etc.

>
- 4

Community Engagement

>

Community Workshops, Design Charrettes, etc.

>
- 5

Operations & Occupancy

>

Operations “Civic Curator”, Project Occupants / Programming Partners

>



2. Community Engagement



Pending:
2020-22

A circular icon with a blue outline and a small blue wedge, representing an 'In Progress' status.

In Progress:
2022-25



Completion:
2026-27
Page 321 of 384

5 MAJOR WORK STREAMS

1

Process /
Approvals

2

Design &
Engineering

3

Project
Financing

4

Community
Engagement

5

Operations &
Occupancy

May
2023

Design
Charrettes



Surveys,
Social Media
Videos & Photos

Community Workshops



Pop-Up
Workshops



ITEM 12.1.

COMMUNITY OUTREACH CALENDAR

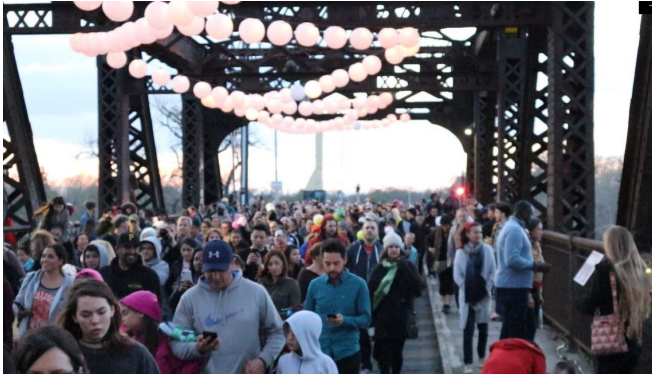
ATTACHMENT 1



Design Charrette



Pop-Up Workshops (4)



Community Celebration

2023

March April May June July August September October November

Community Workshops (3)

Surveys, Social Media Videos & Photos

Throughout entire outreach process





Project Name

Design Character

Outdoor Events, Programming

Housing Opportunities

How to Stay Involved



3. In Brief

Project Overview



Pending:
2020-22

A circular icon with a blue outline and a small blue wedge, representing a project in progress.

In Progress:
2022-25



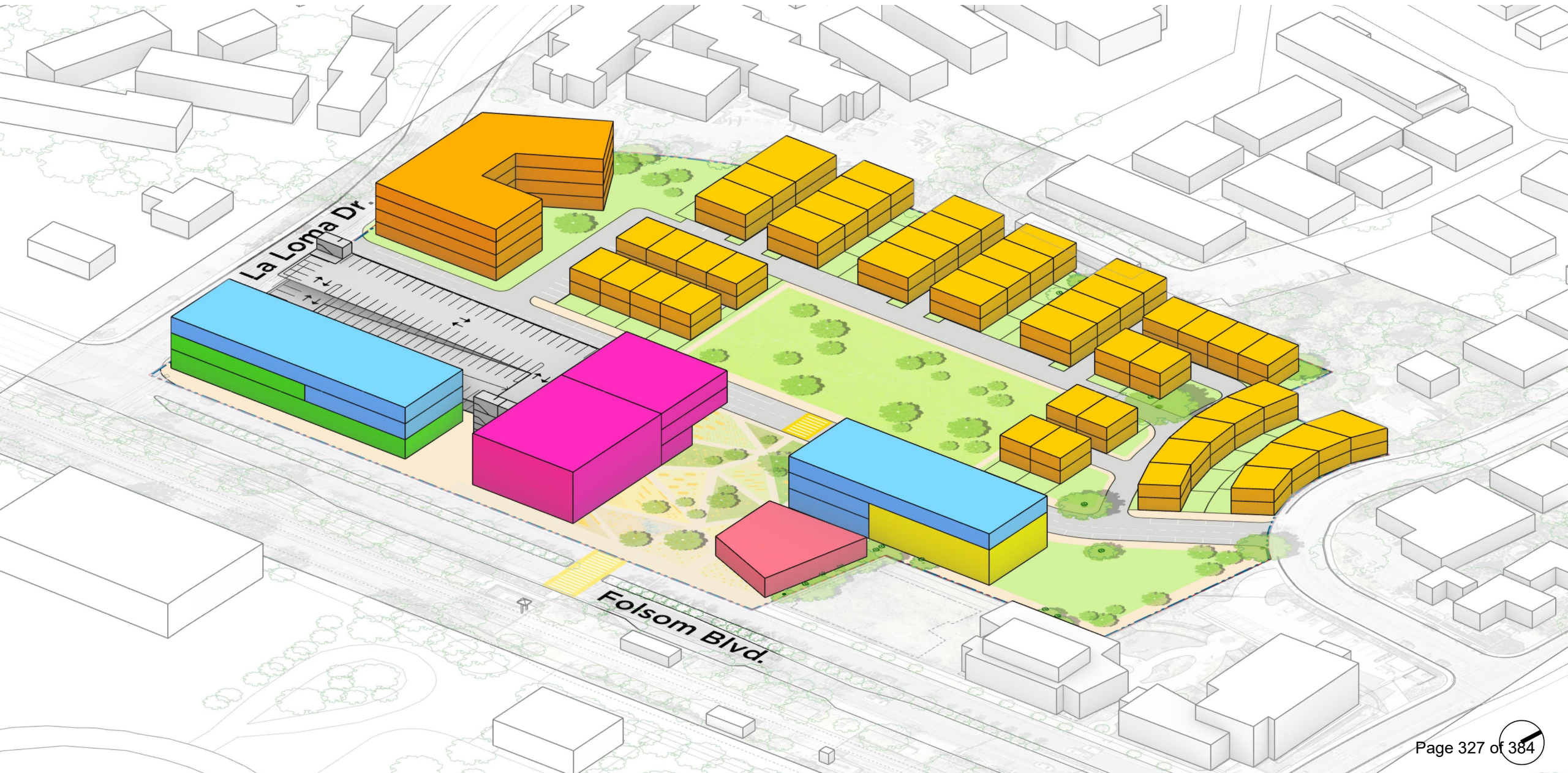
Completion:
2026-27
Page 325 of 384

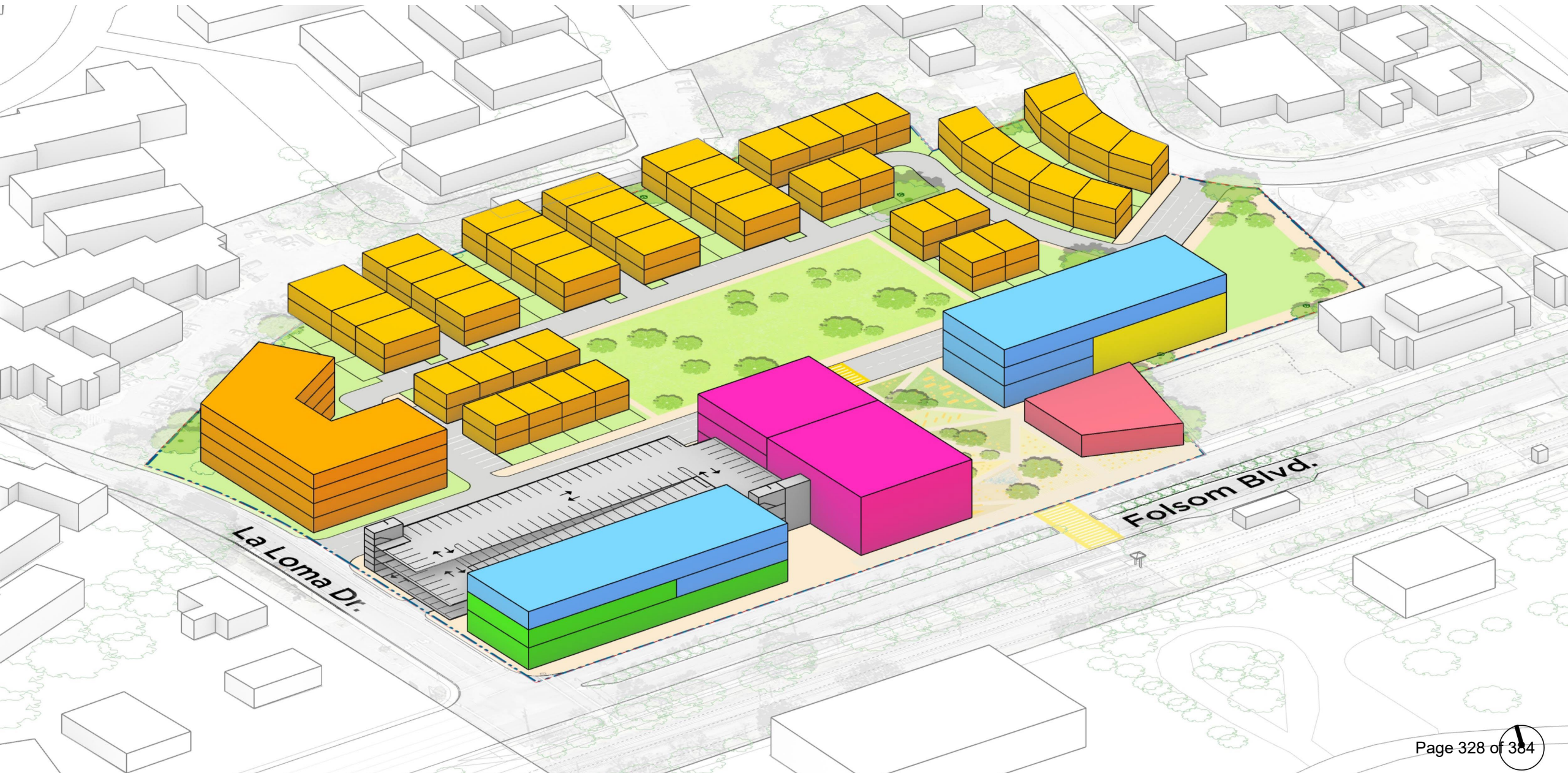
ITEM 12.1

5 MAJOR WORK STREAMS

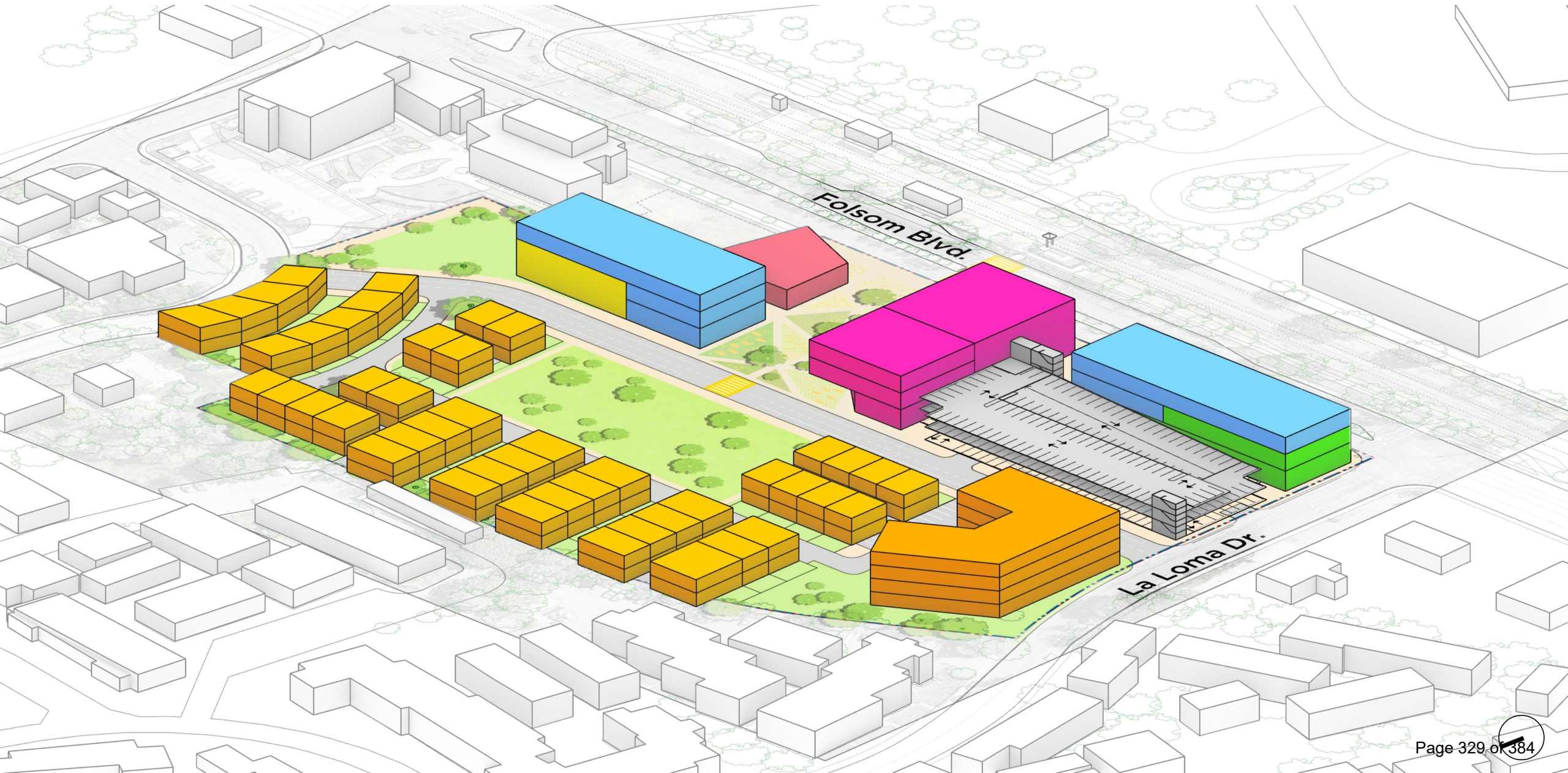


ITEM 12.1
MASTER PLAN | 3d 360° Model

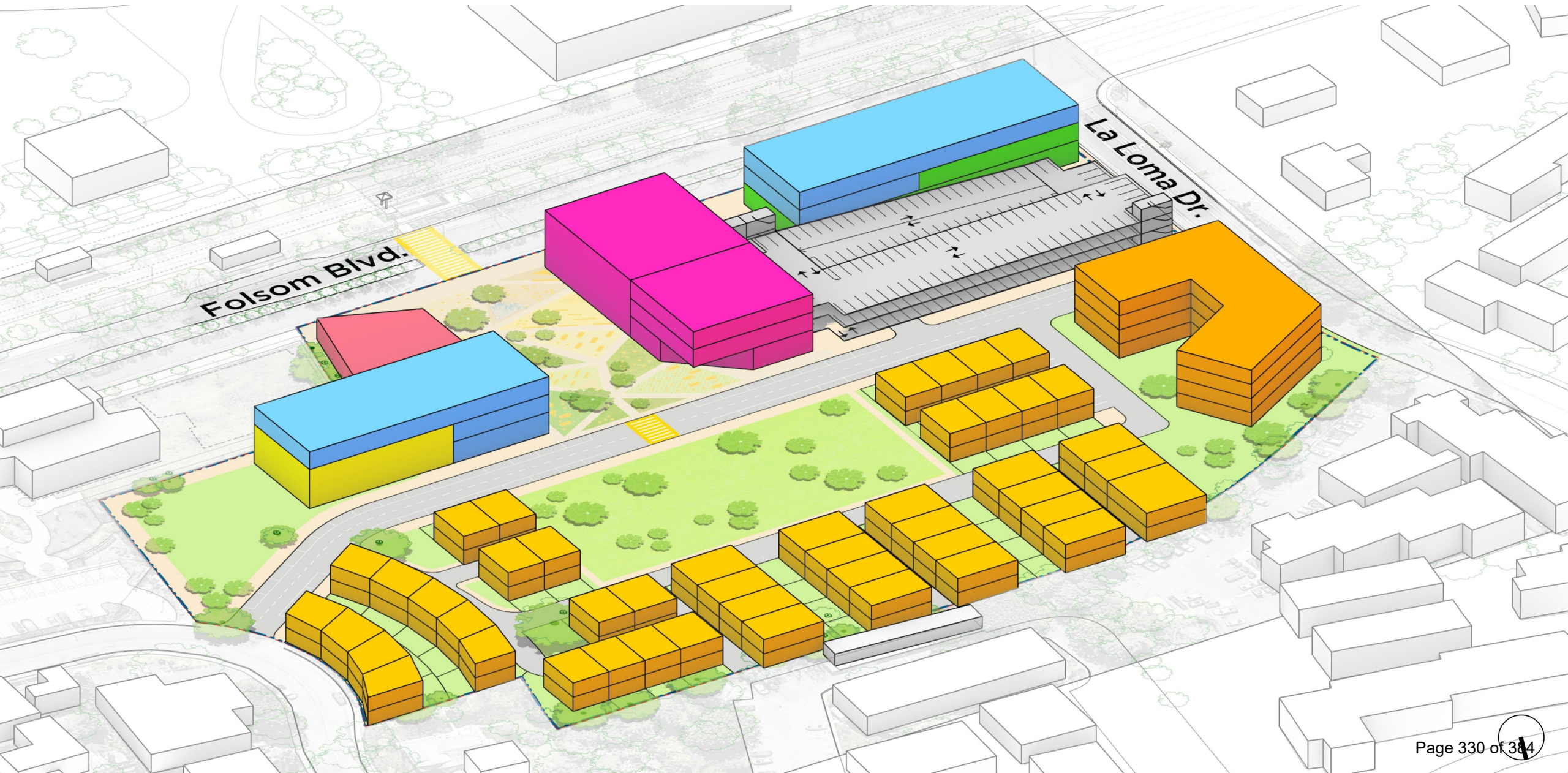




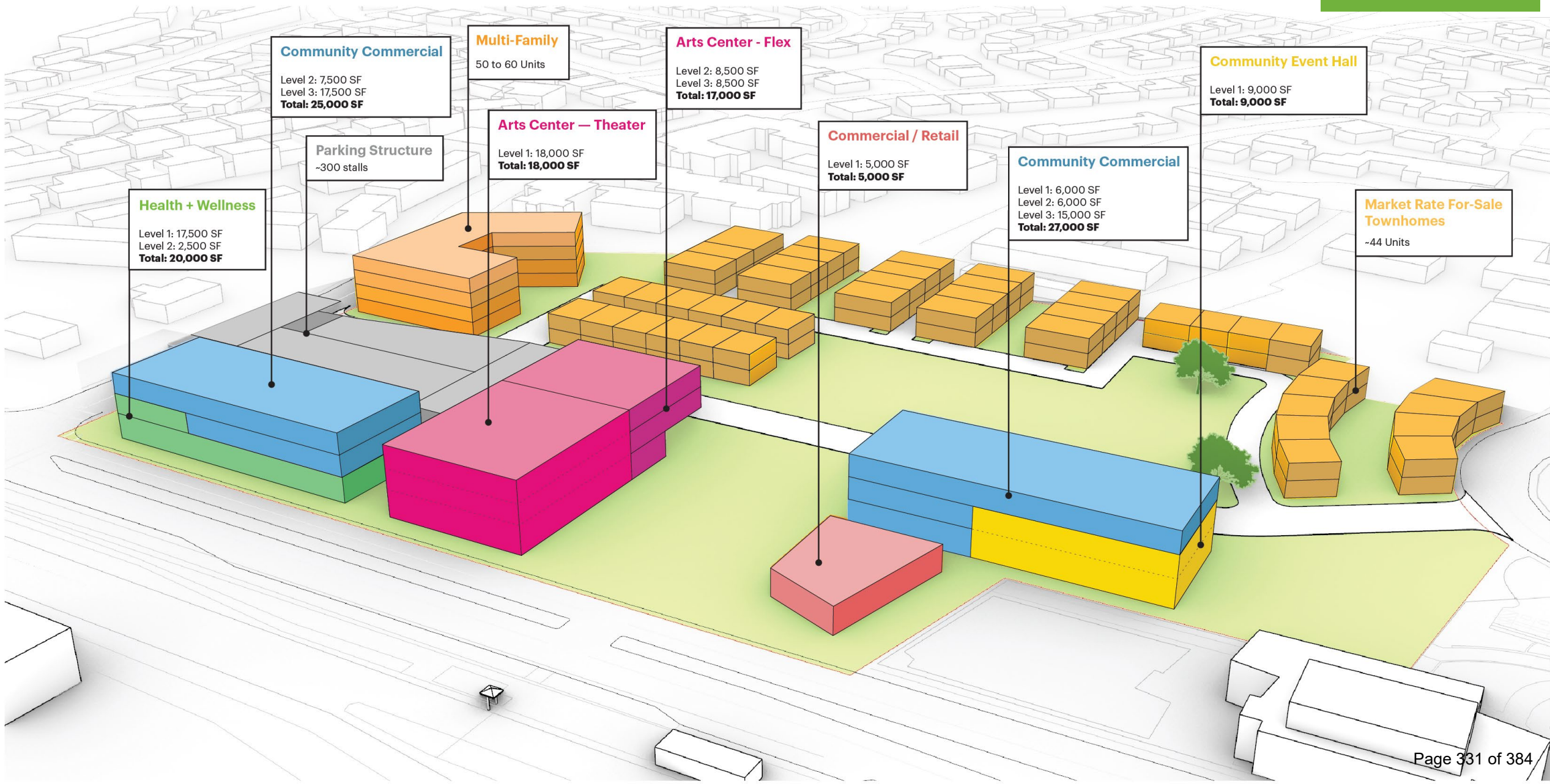
ITEM 12.1
MASTER PLAN | 3d 360° Model



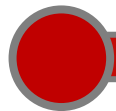
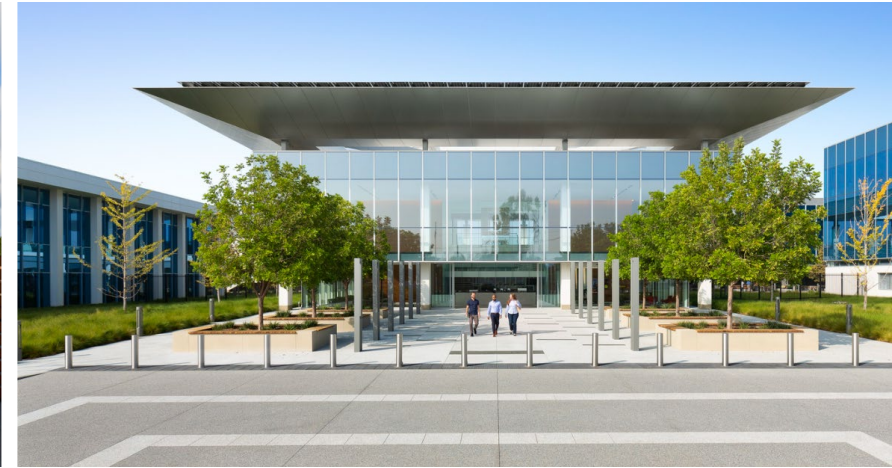
ITEM 12.1
MASTER PLAN | 3d 360° Model



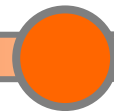
ITEM 12.1.
Master Plan Site Design Refinement



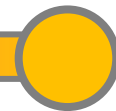
ITEM 12.1
ARCHITECTURAL CHARACTER | Spectrum



Traditional
/Historical

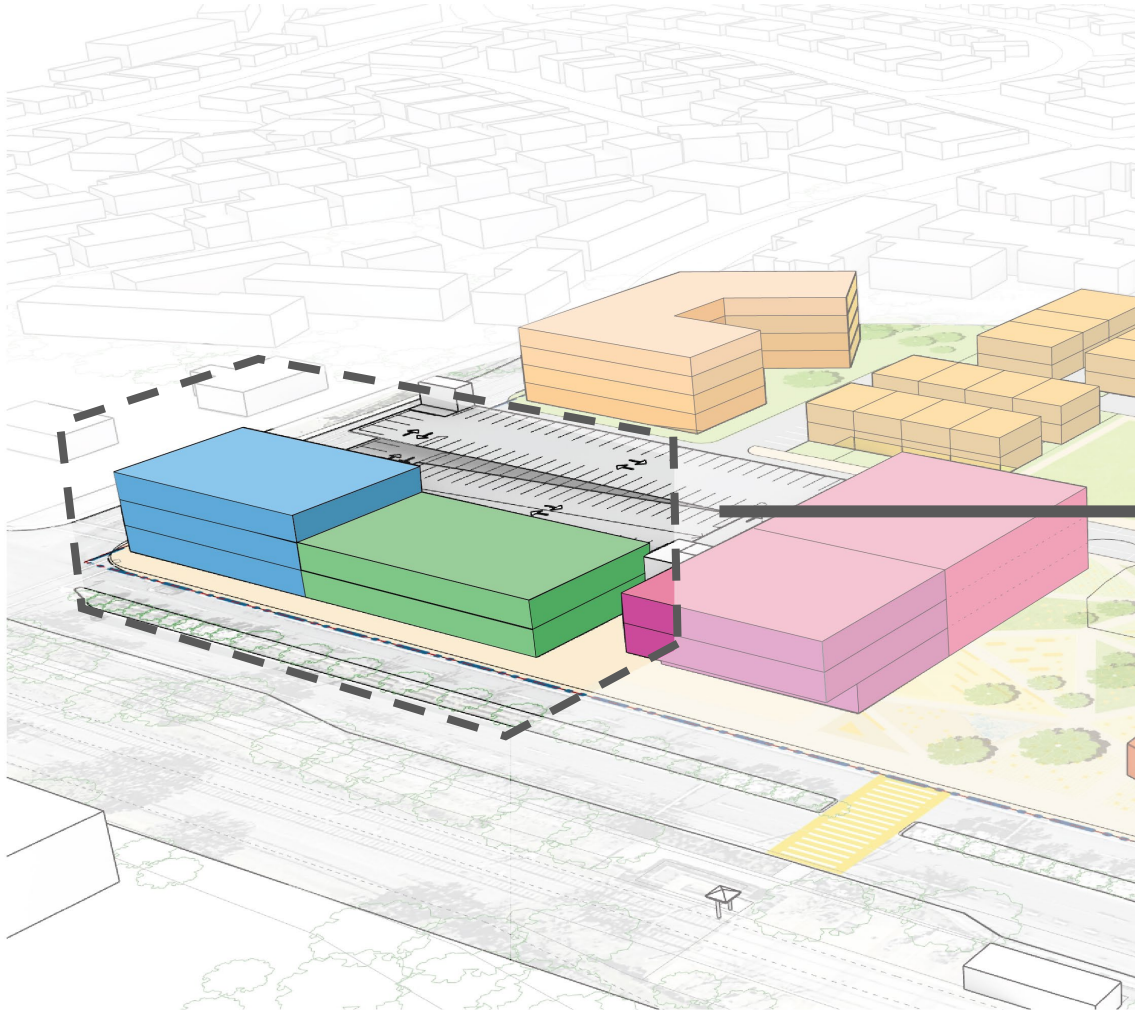


Contemporary
/Contextual

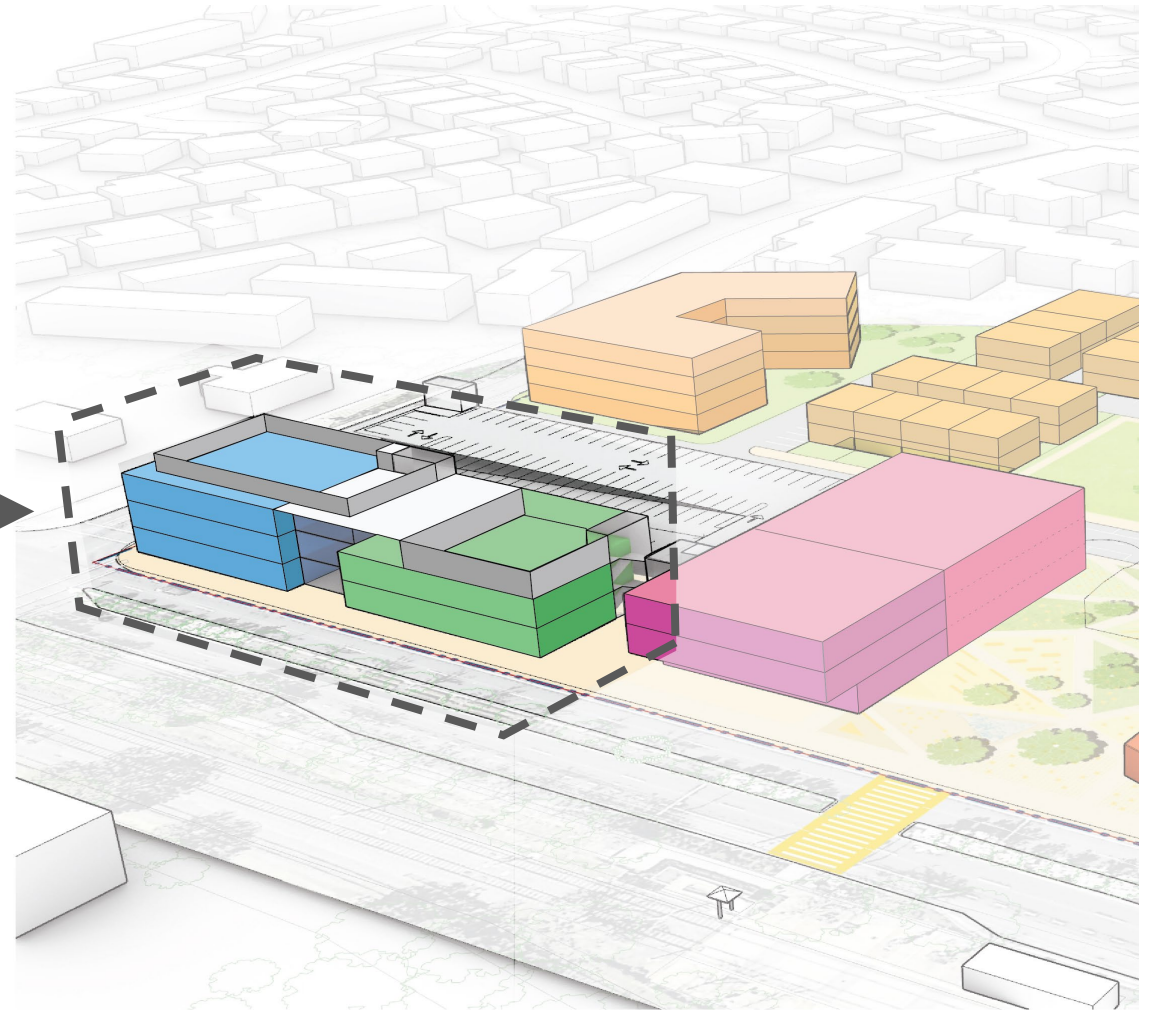


Progressive
/Forward-thinking

ITEM 12.1
MASTER PLAN | Refined Building Details

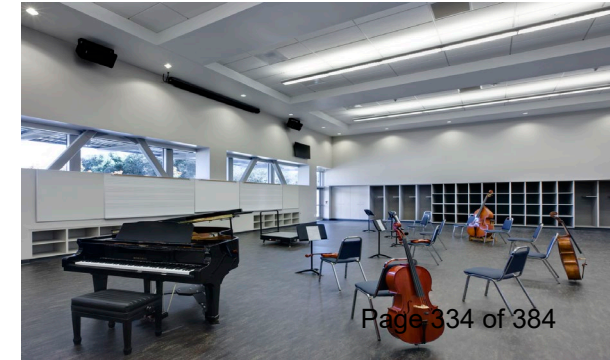
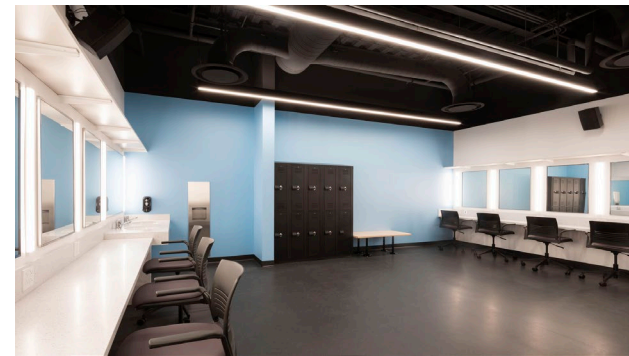
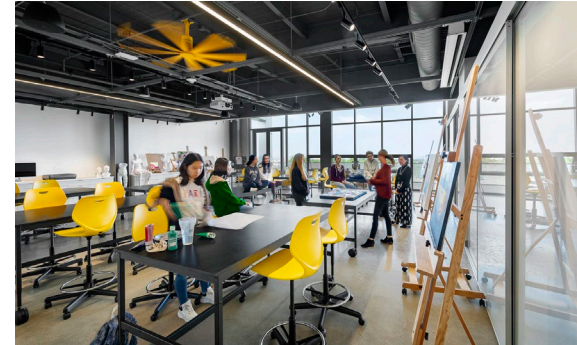
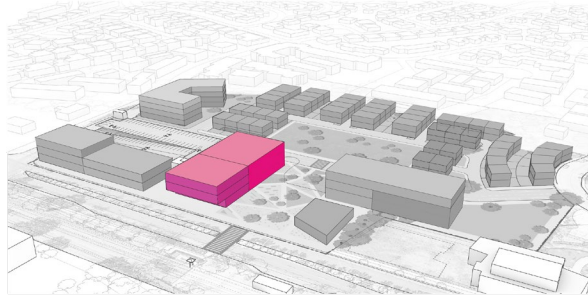
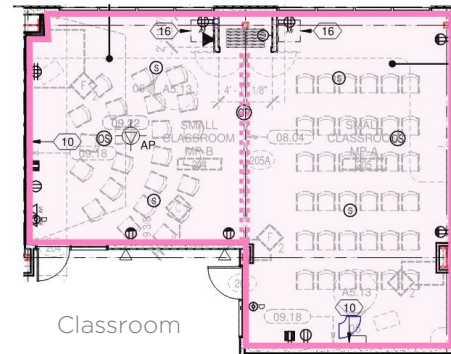
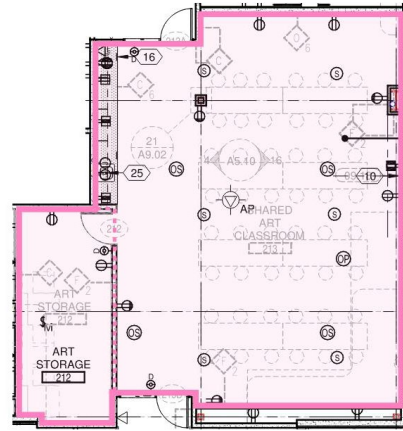
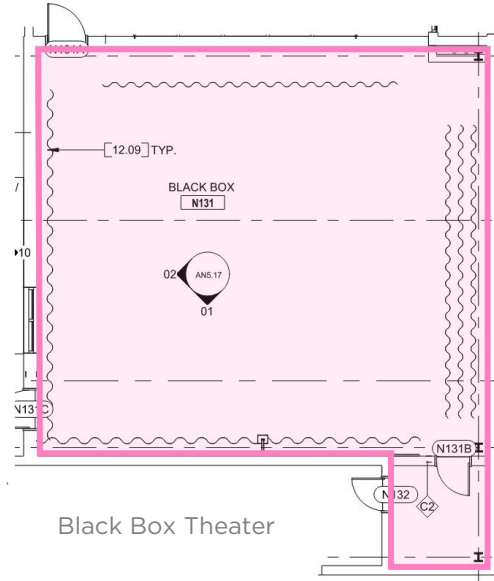


Right-Sized:
Health + Wellness: 20,000 sf
Community Commercial: 25,000 sf
Total: 45,000sf



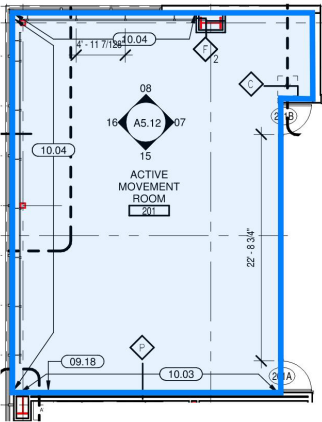
Refined:
Health + Wellness: 20,000 sf
Community Commercial: 25,000 sf
Revised Total: 45,000sf

Arts Center

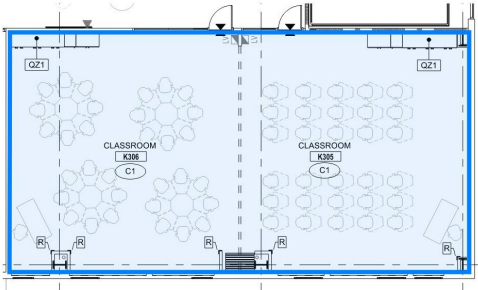


PROGRAM VALIDATION

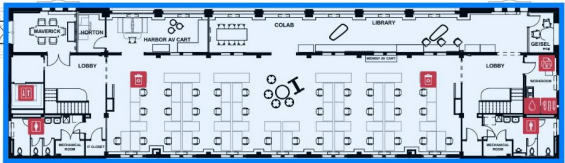
Community-Commercial



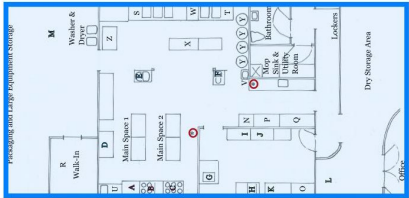
Activity Room



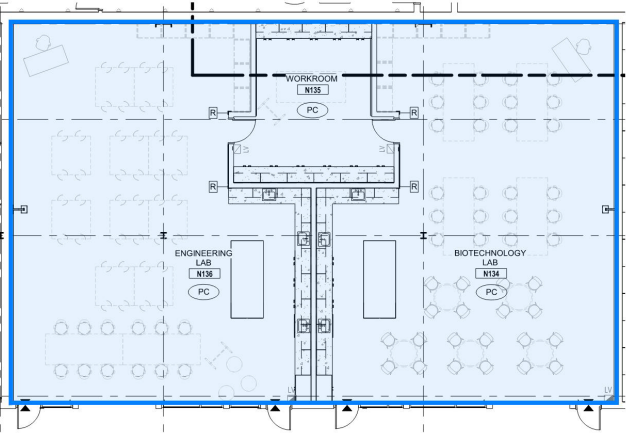
Classroom



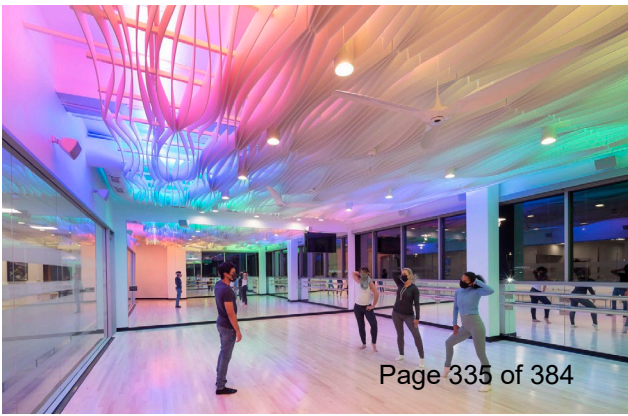
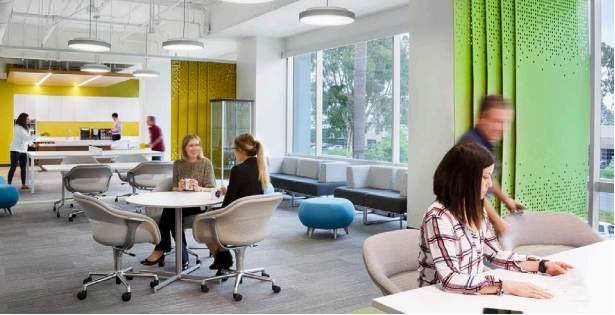
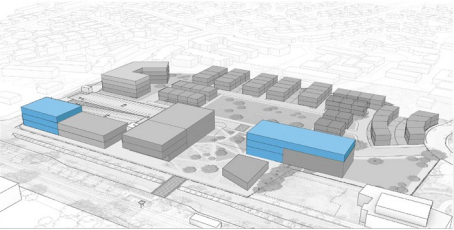
Office



Incubator Kitchen



Maker Space



ITEM 12.1

5 MAJOR WORK STREAMS

- 1

Process / Approvals
- 2

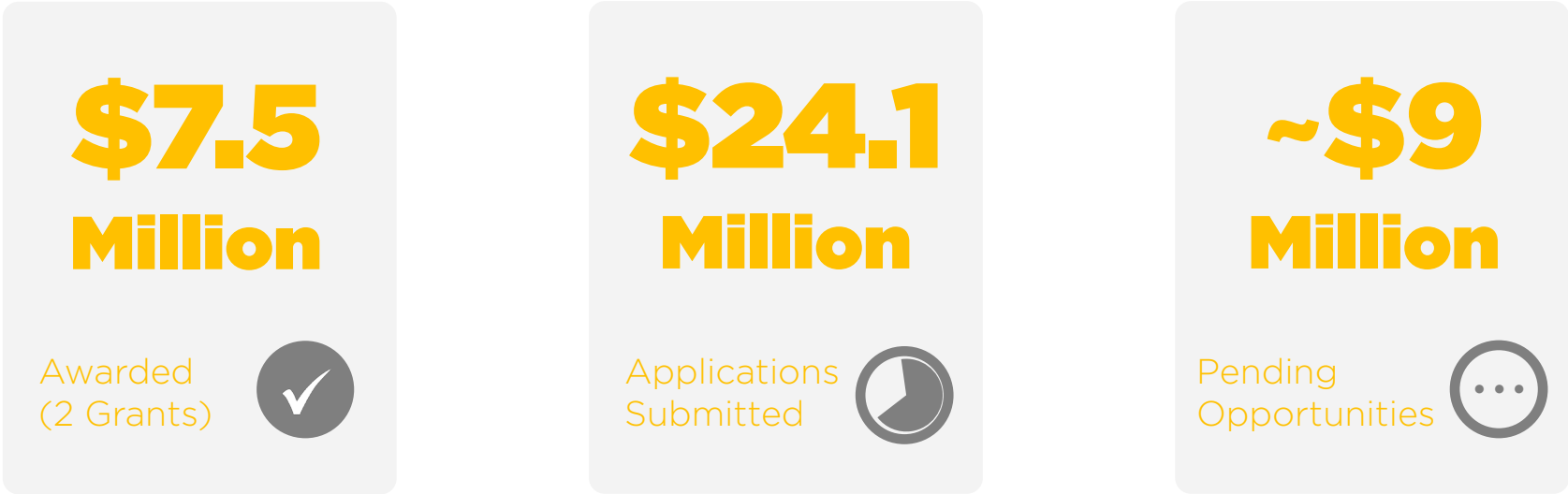
Design & Engineering
- 3

Project Financing
- 4

Community Engagement
- 5

Operations & Occupancy

Augmenting the City’s Investment with Grants and New Markets Tax Credits (NMTCs)



SACOG named Mills Crossing one of the Sacramento Region’s Top 10 of 2022



How housing, transit, and community space will transform area along Folsom Boulevard. Rancho Cordova's plan for a bustling 10-acre transit oriented development site is moving forward. It is one of the best TOD opportunities within the city.

[Read more](#)

ITEM 12.1

5 MAJOR WORK STREAMS

- 1

Process / Approvals
- 2

Design & Engineering
- 3

Project Financing
- 4

Community Engagement
- 5

Operations & Occupancy

May 2023

Design Charrettes



Pop-Up Workshops



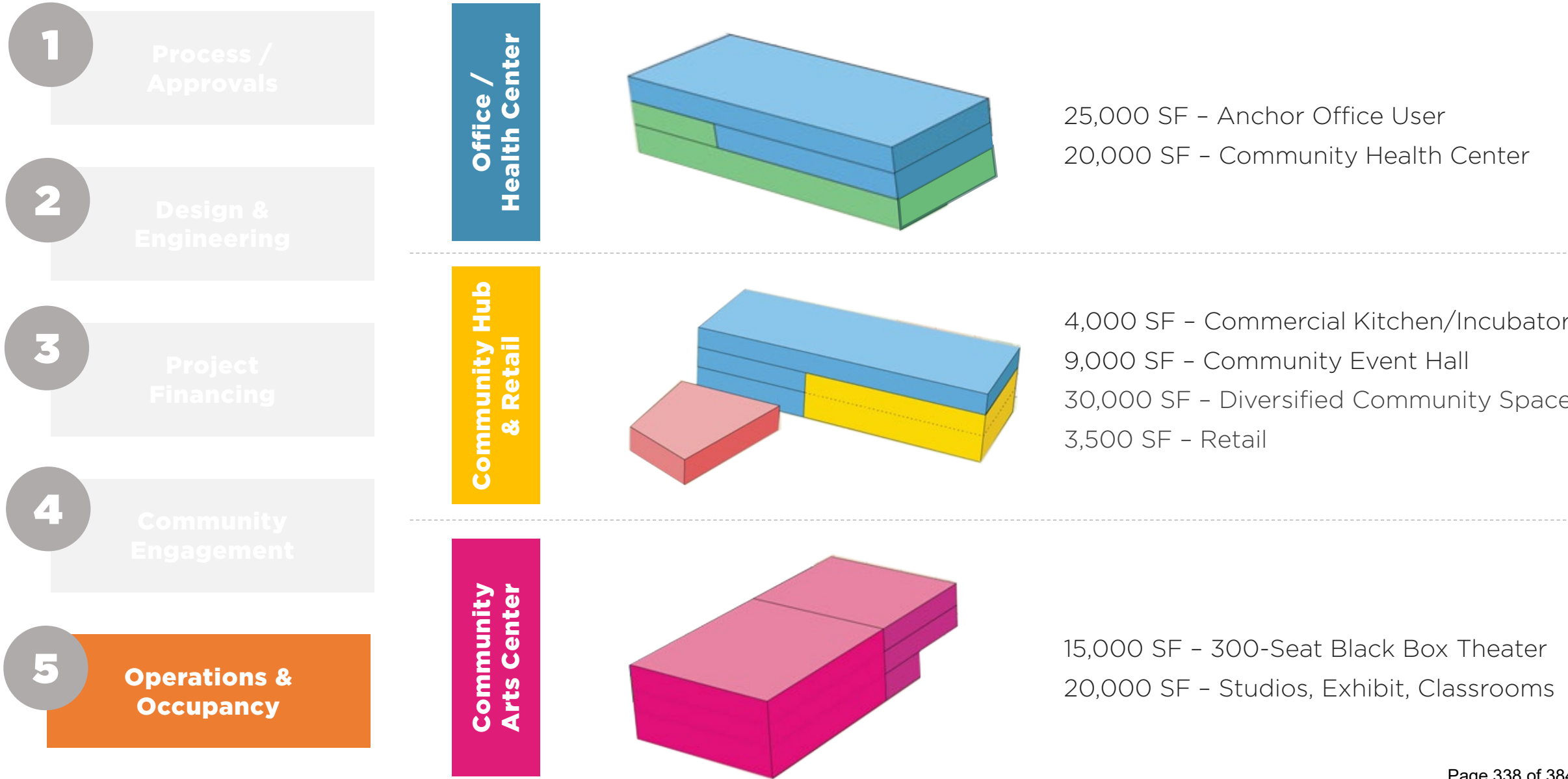
Surveys,
Social Media
Videos & Photos

Community Workshops



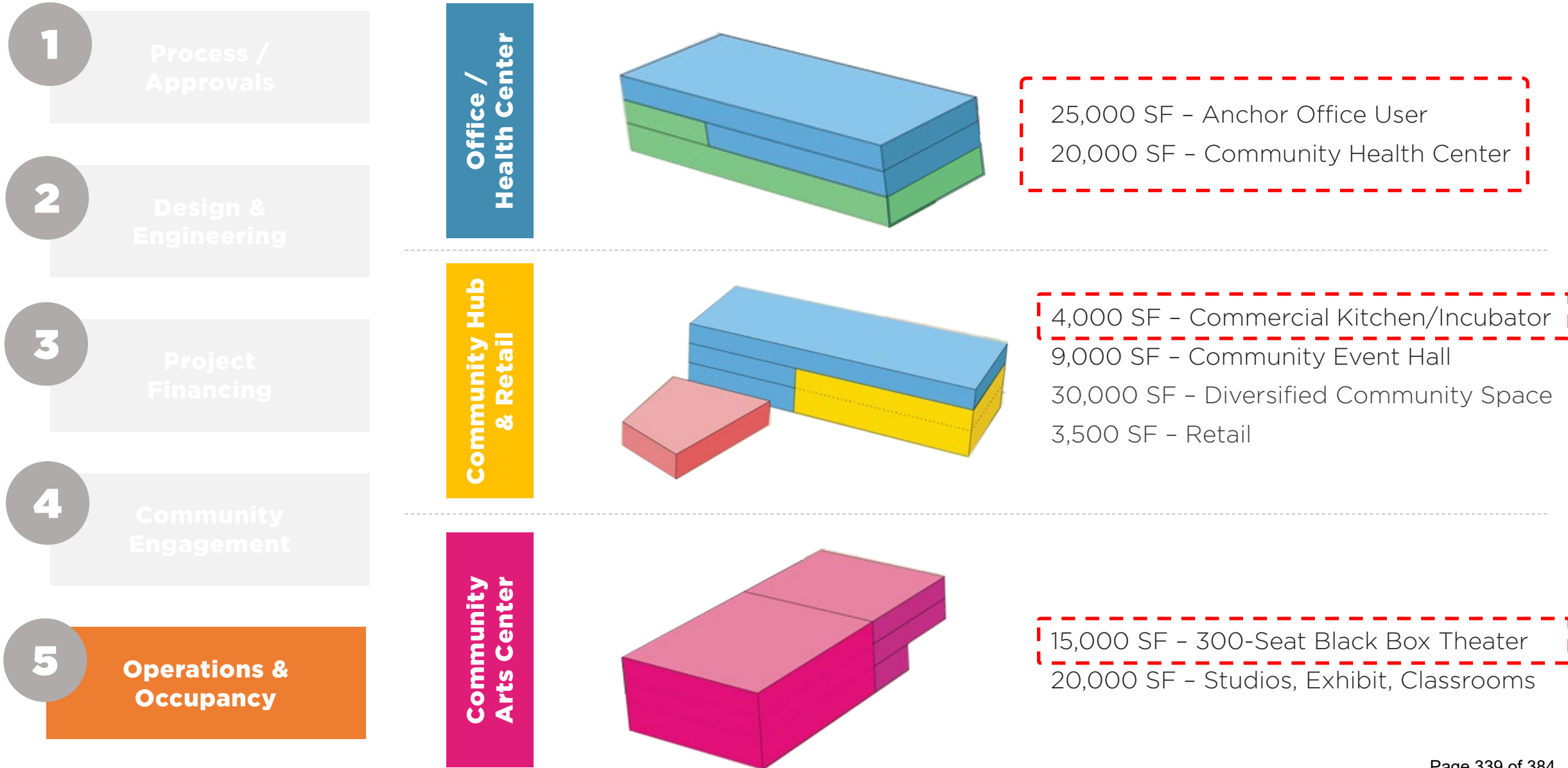
ITEM 12.1.

“ANCHOR TENANTS”



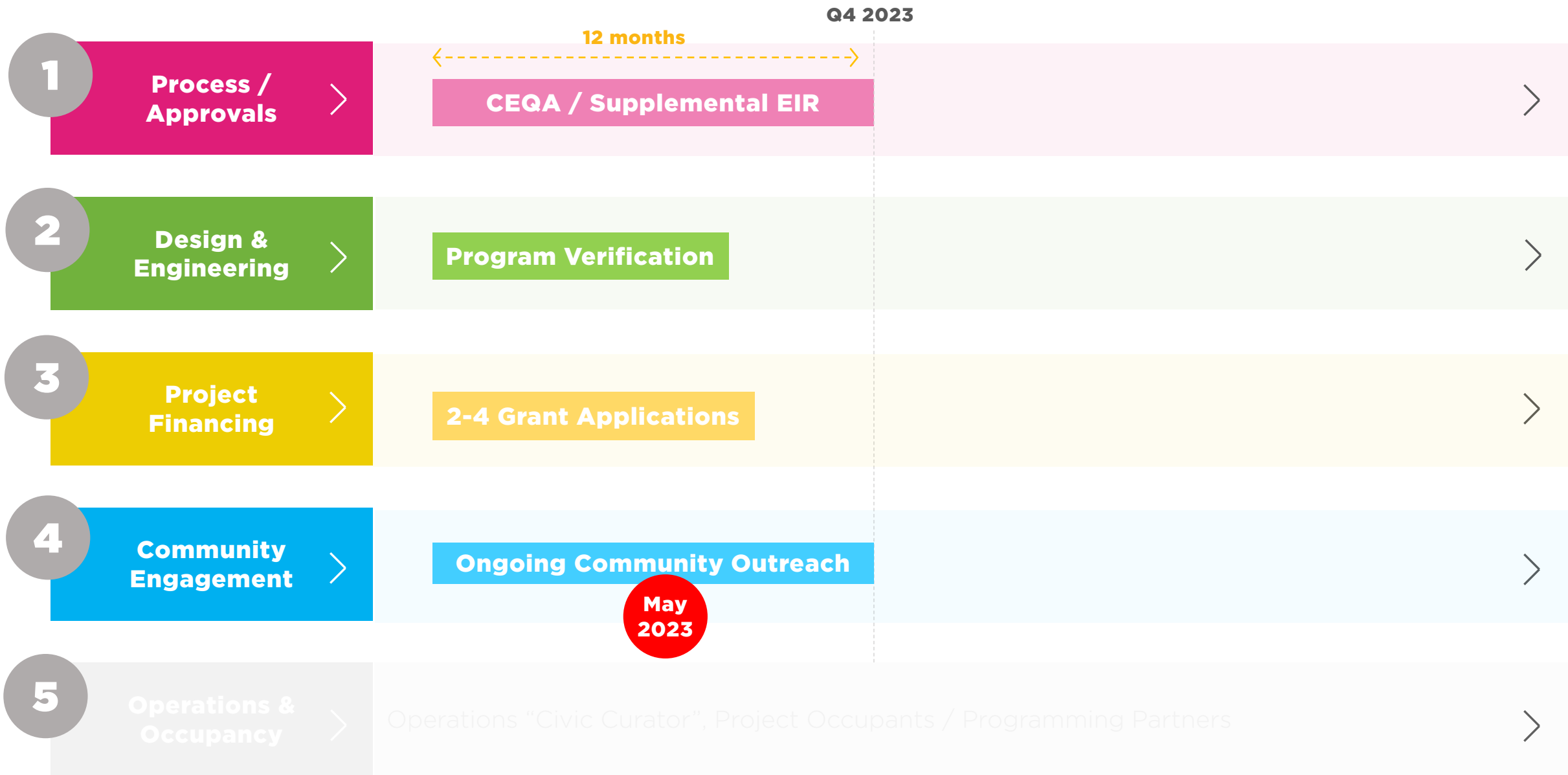
ITEM 12.1.

“ANCHOR TENANTS”



ITEM 12.1

5 MAJOR WORK STREAMS





4. In Focus

Design Progress



Pending:
2020-22

A circular icon with a blue outline and a blue wedge-shaped segment inside, representing an in-progress status.

In Progress:
2022-25



Completion:
2026-27
Page 341 of 384

ITEM 12.1 DESIGNS ARE CONCEPTUAL

ATTACHMENT 1

To be programmed
and detailed with City,
Council, & Community
Feedback and
Collaboration

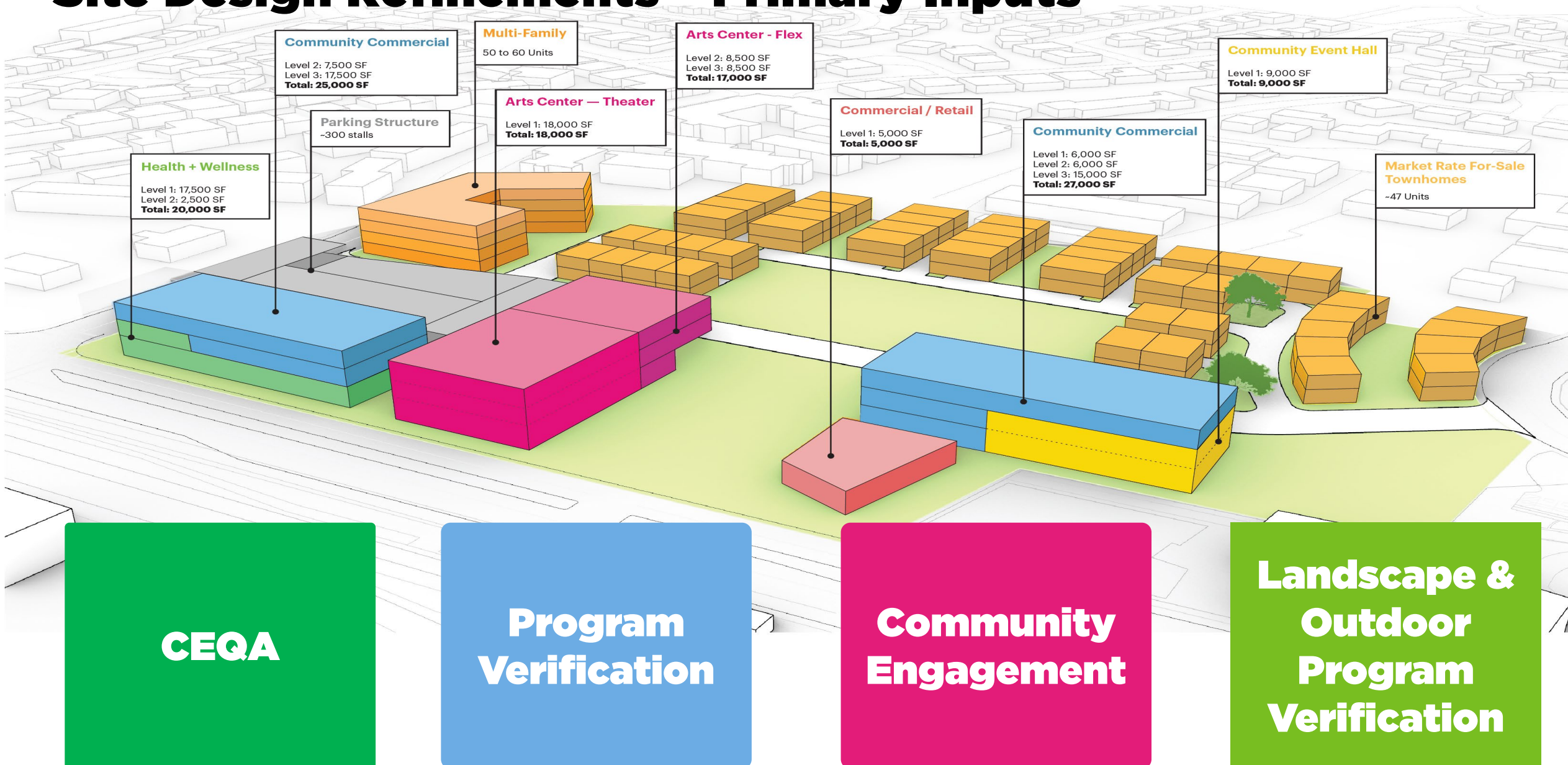


LOOKING AHEAD:

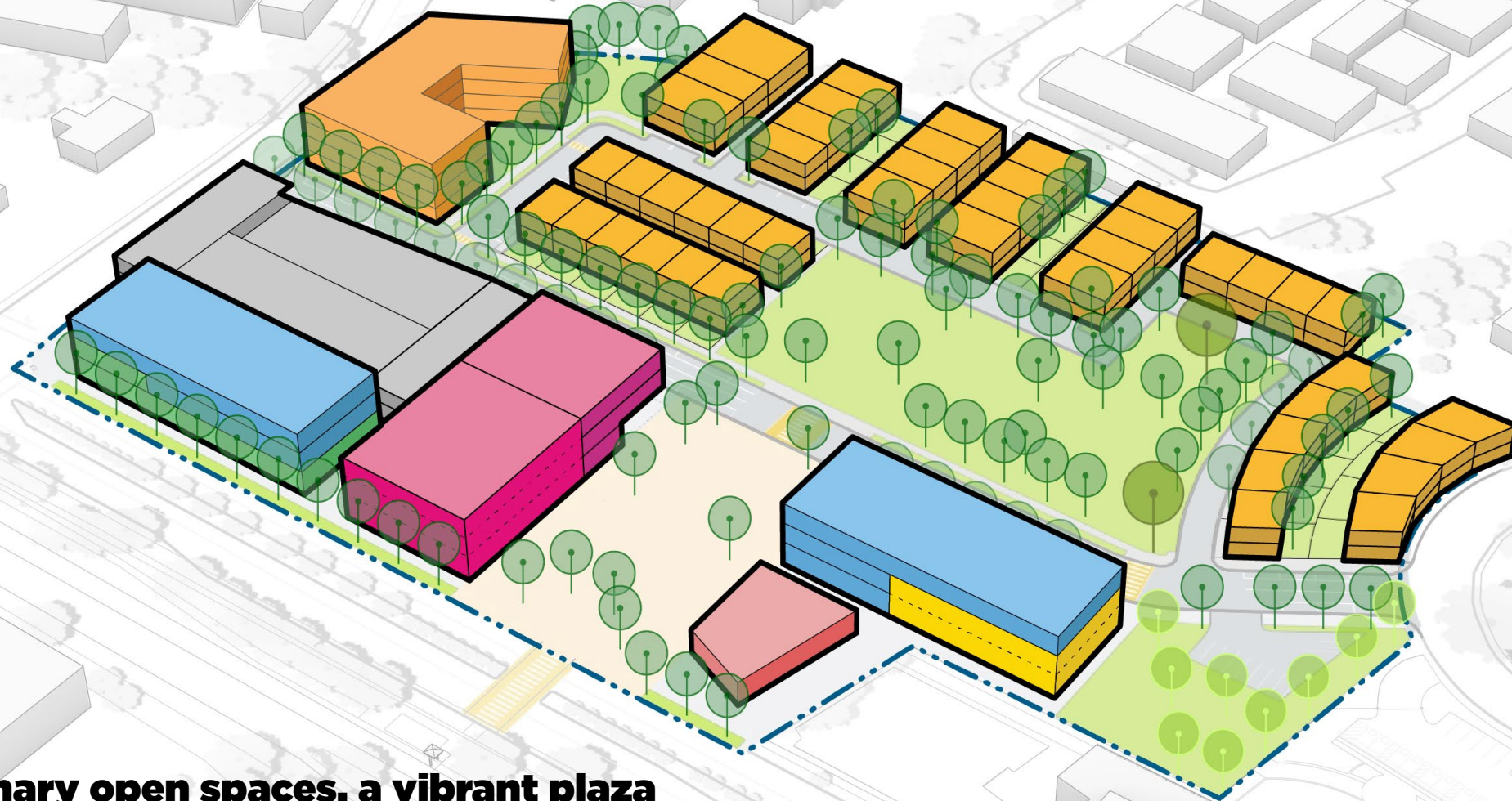
As We Work Towards a **May 2023** Design Charrette

ITEM 12.1. Site Design Refinements – Primary Inputs

ATTACHMENT 1



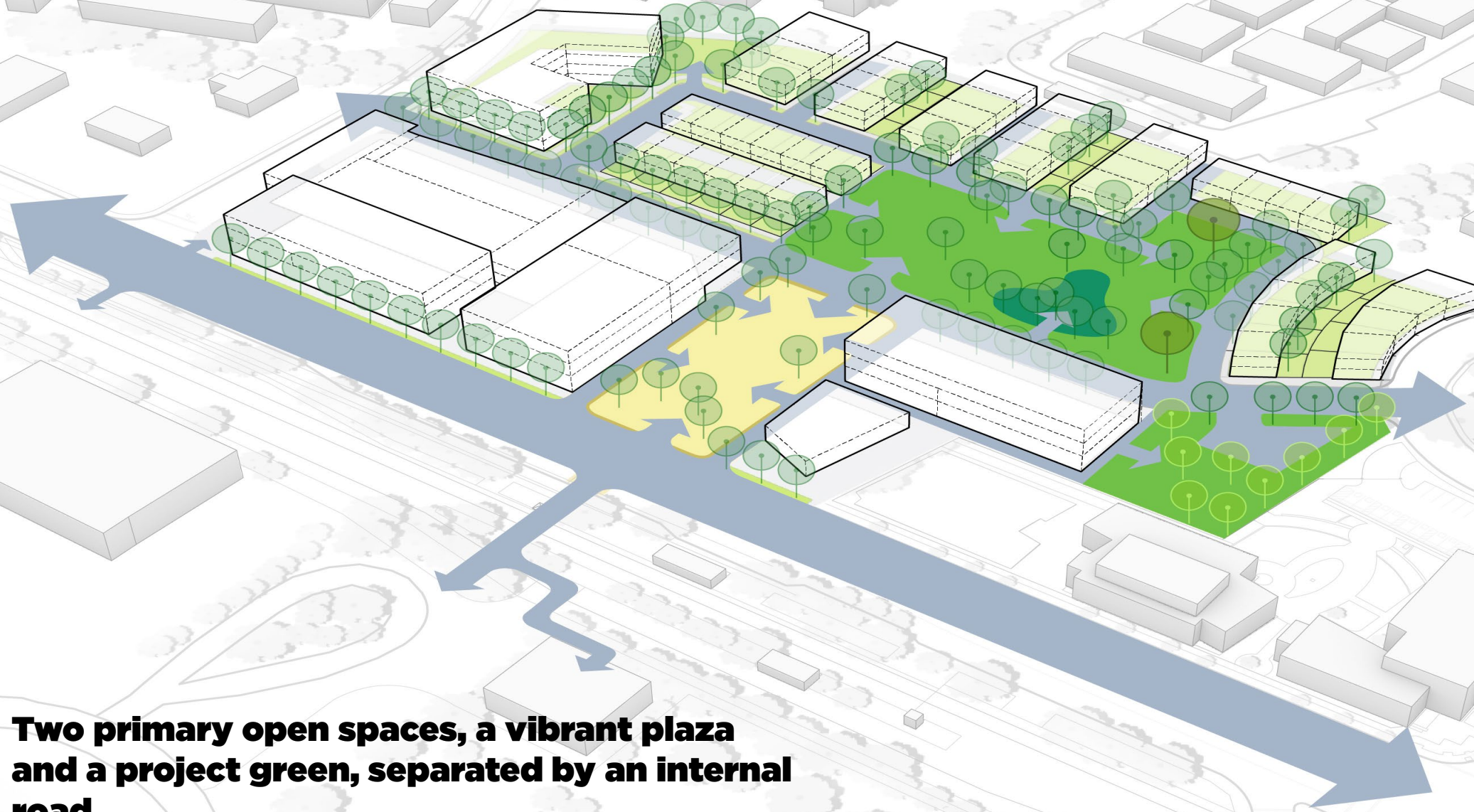
Example Site Refinement



Two primary open spaces, a vibrant plaza and a project green, separated by an internal road

Example Site Refinement | Open Space

ATTACHMENT 1

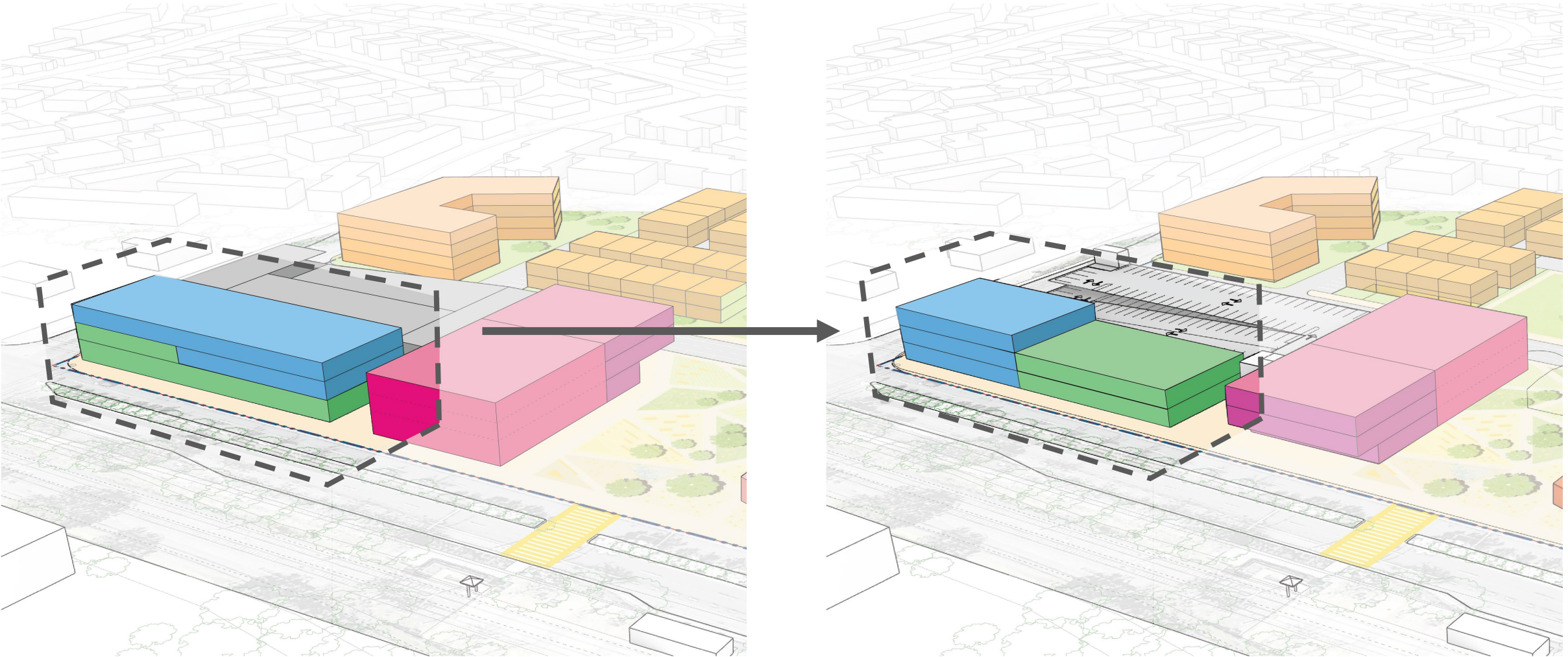


Two primary open spaces, a vibrant plaza and a project green, separated by an internal road

ITEM 12.1.

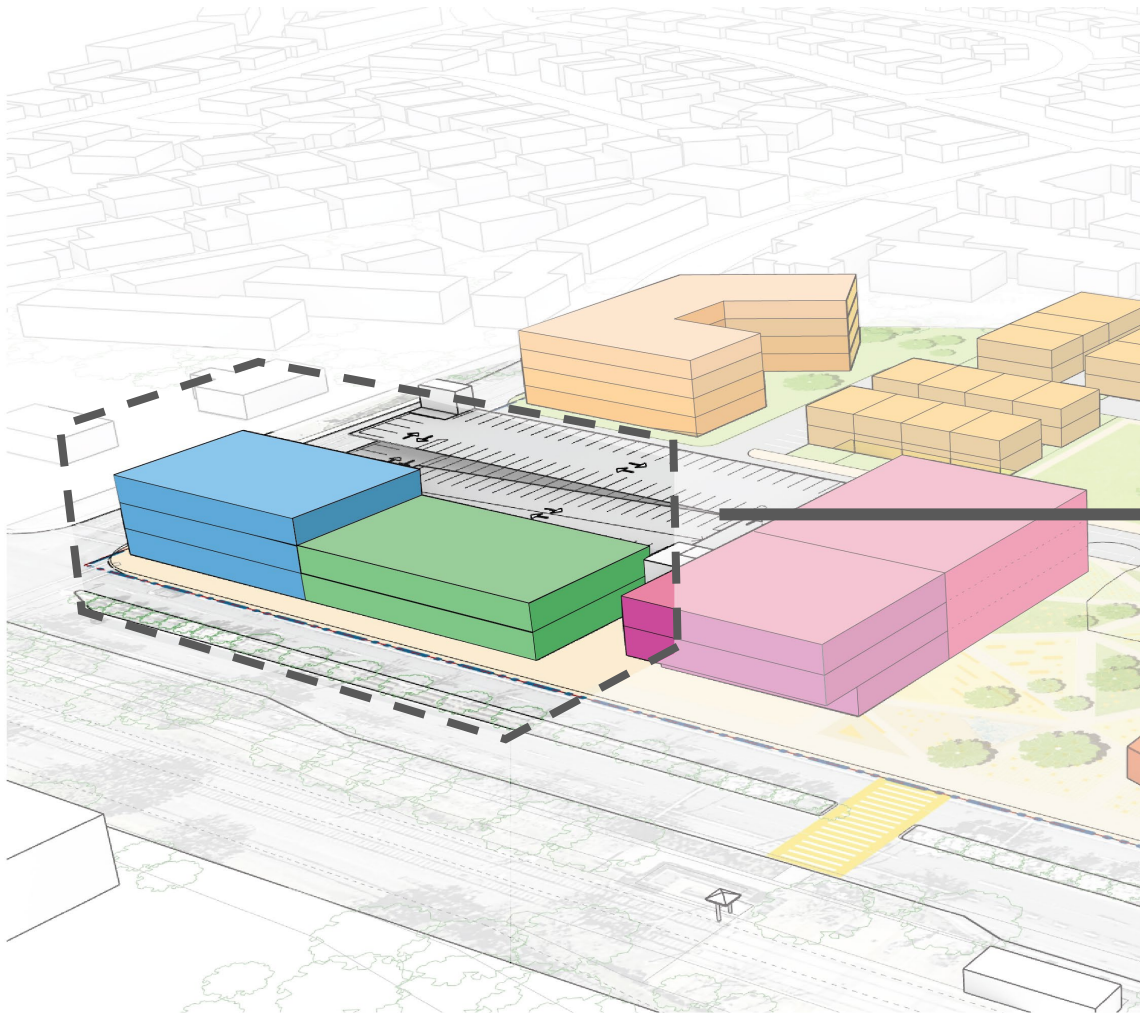
OUTDOOR SPACES | A Variety of Opportunities



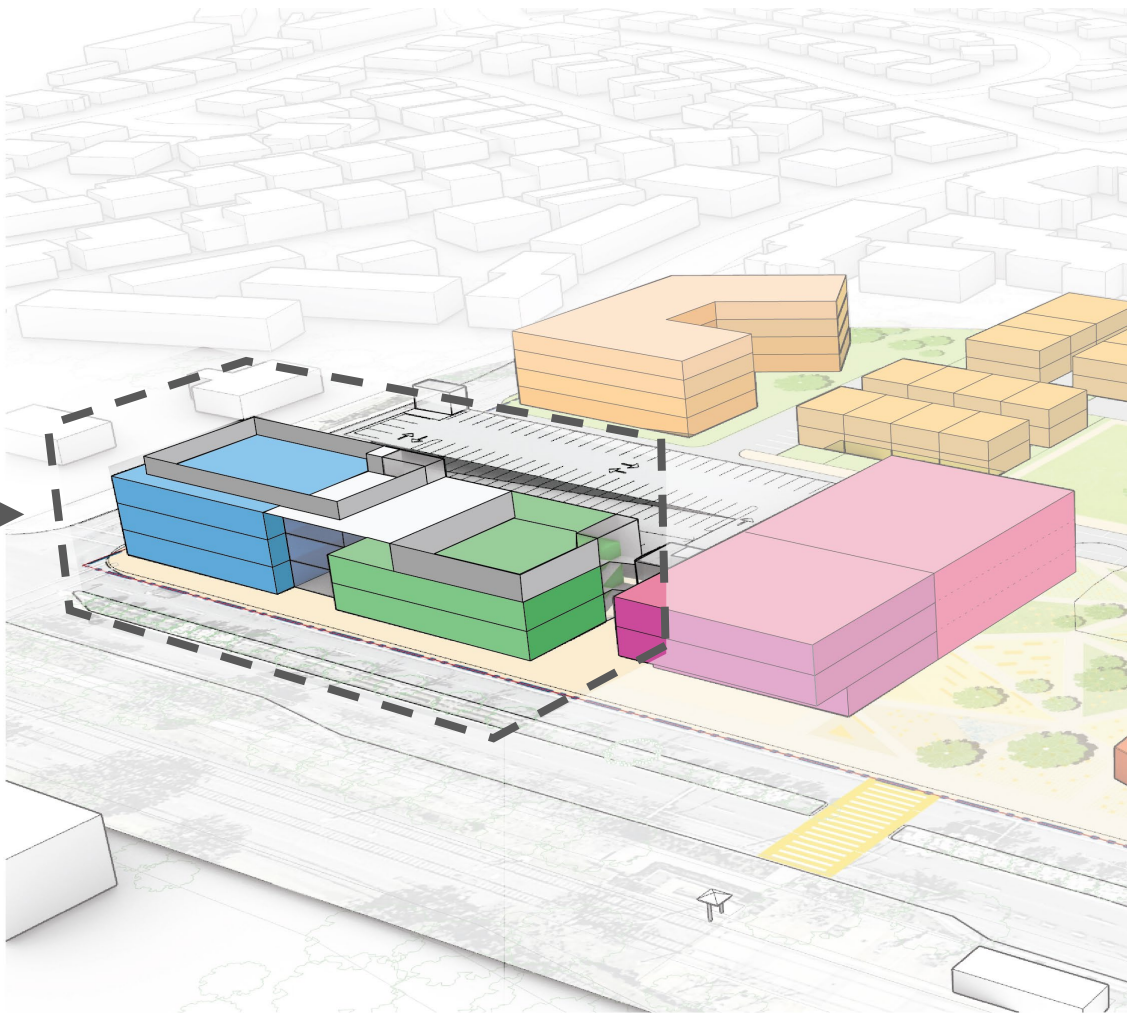


CEQA:
Health + Wellness: 27,000 sf
Community Commercial: 25,000 sf
Total: 52,000sf

Right-Sized:
Health + Wellness: 20,000 sf
Community Commercial: 25,000 sf
Revised Total: 45,000sf

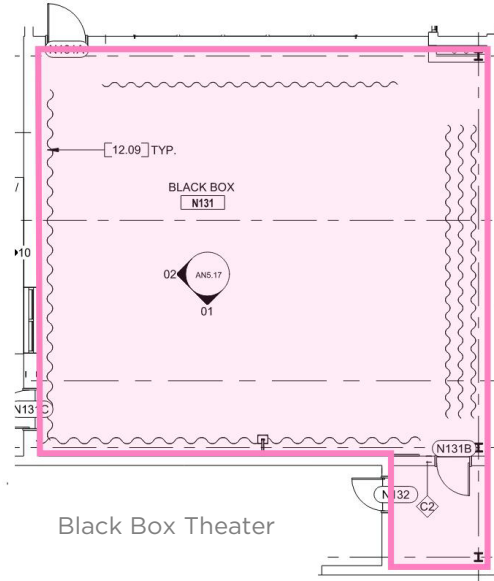


Right-Sized:
Health + Wellness: 20,000 sf
Community Commercial: 25,000 sf
Total: 45,000sf

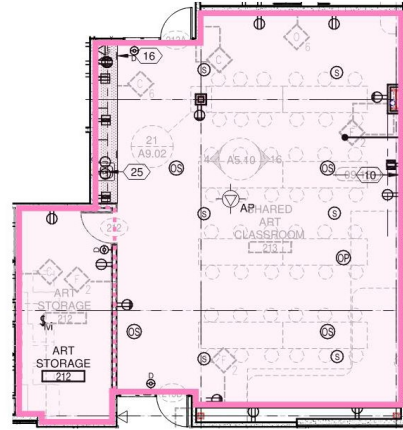


Refined:
Health + Wellness: 20,000 sf
Community Commercial: 25,000 sf
Revised Total: 45,000sf

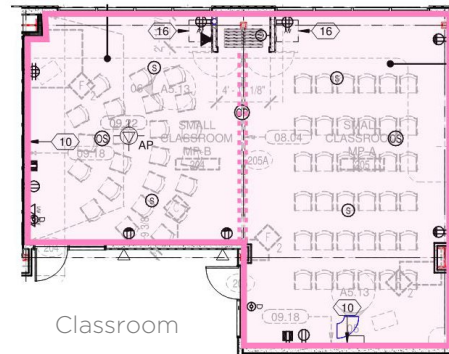
Arts Center



Black Box Theater



Art Studio

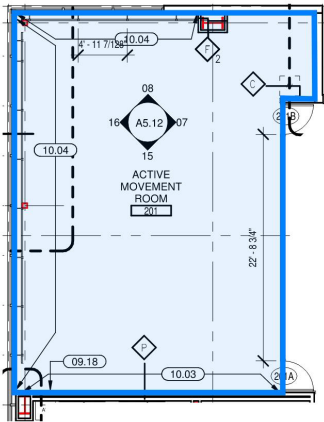


Classroom

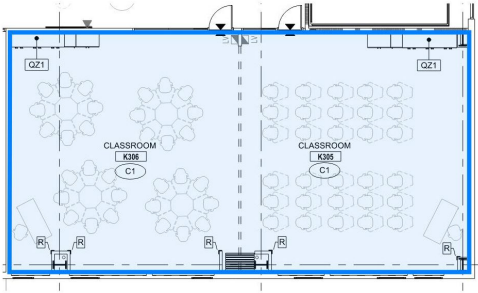


PROGRAM VALIDATION

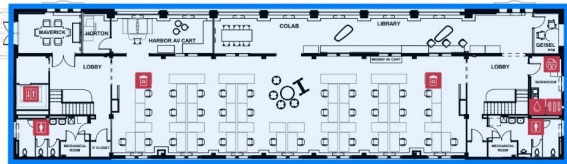
Community-Commercial



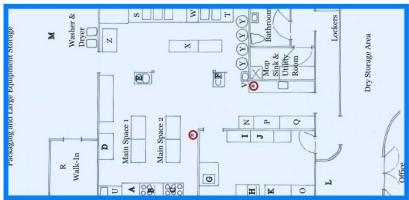
Activity Room



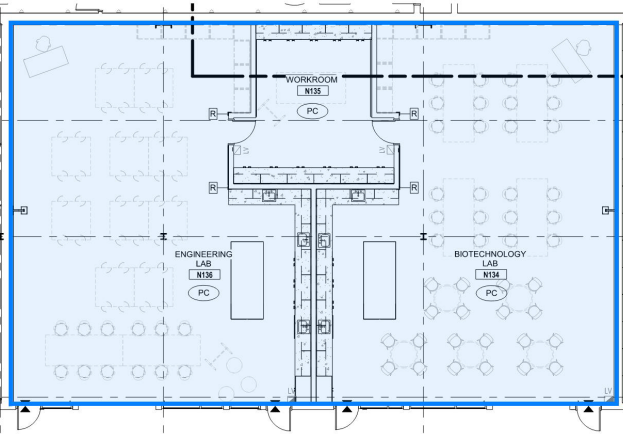
Classroom



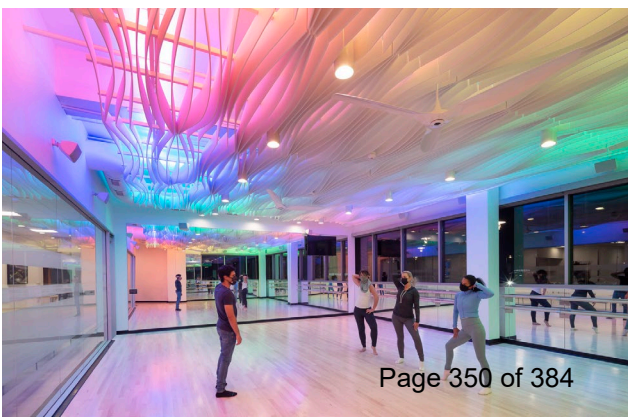
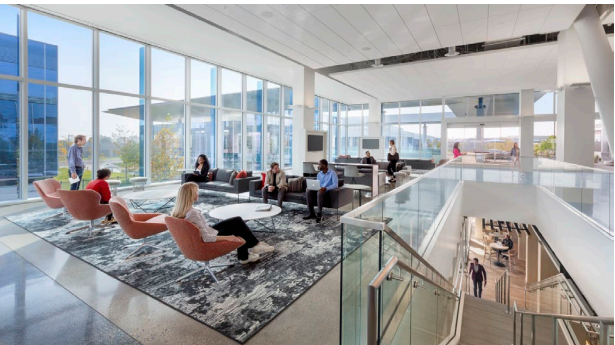
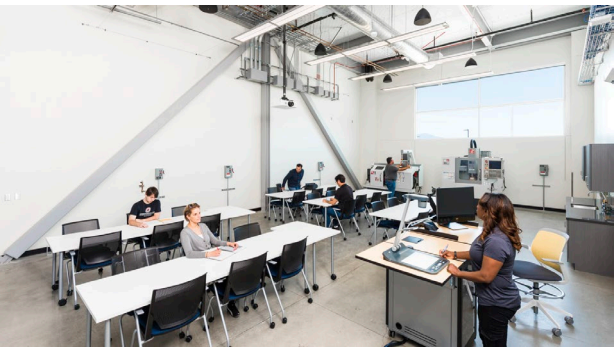
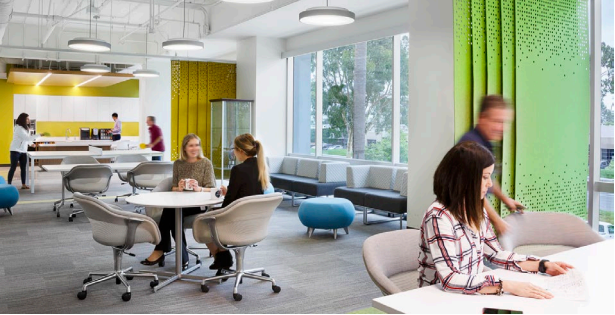
Office



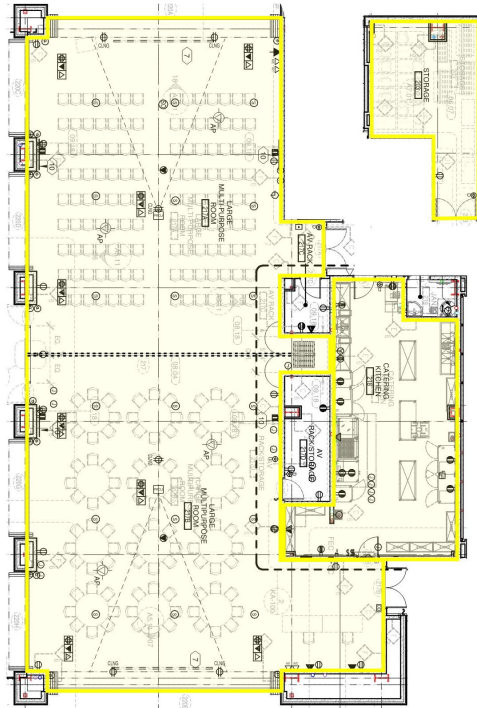
Incubator Kitchen



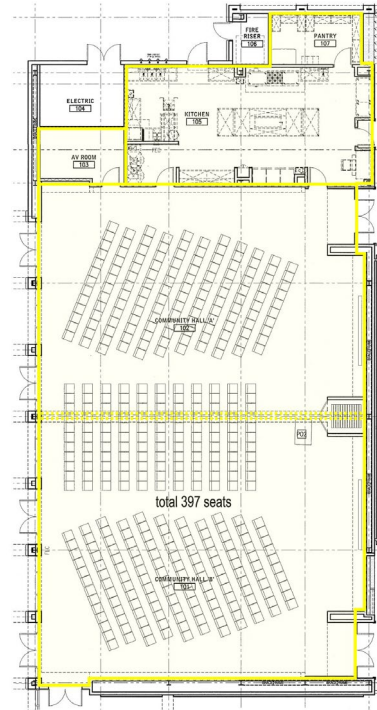
Maker Space



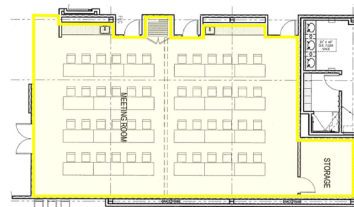
ITEM 12.1. PROGRAM | Events Hall



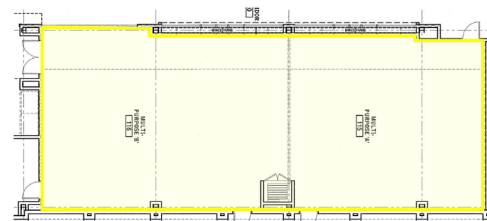
Event Space + Catering Kitchen



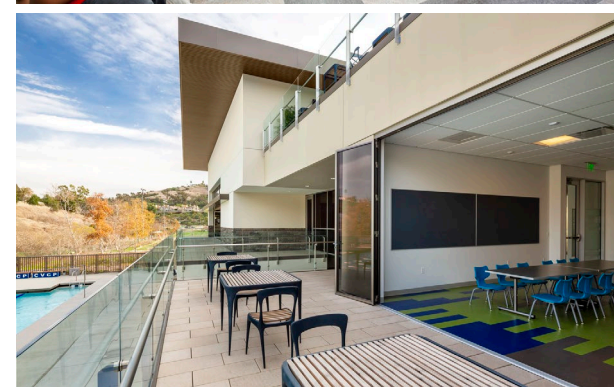
Event Space + Catering Kitchen



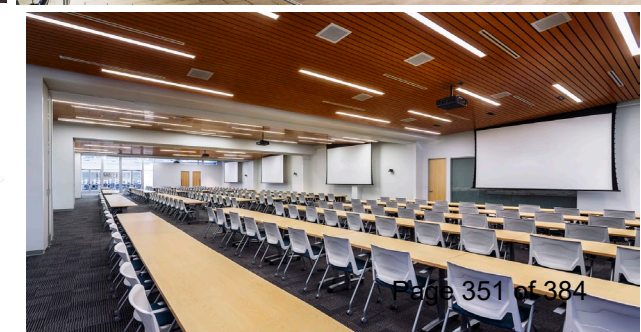
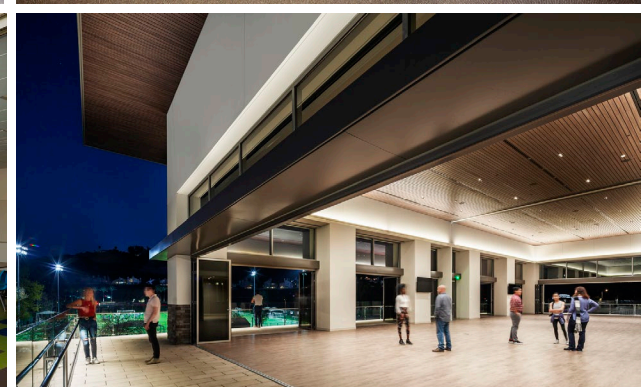
Meeting Room



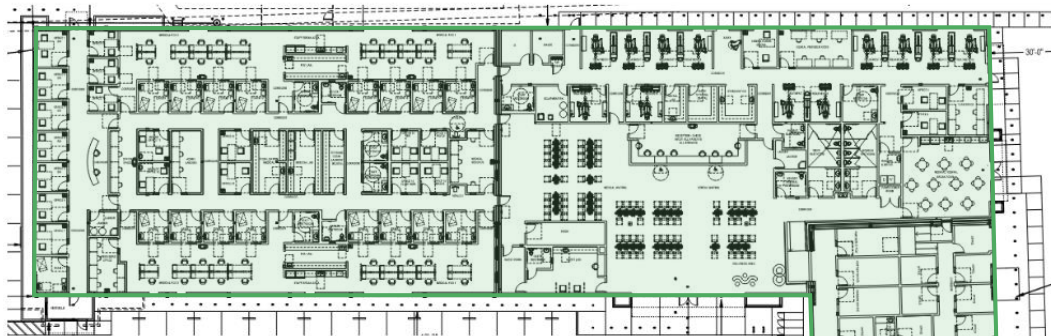
Multipurpose Room



ATTACHMENT 1



ITEM 12.1. PROGRAM | Health + Wellness



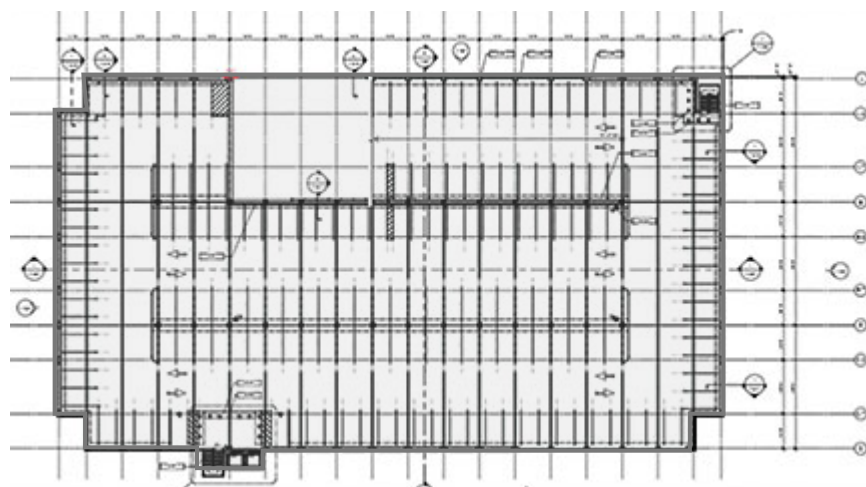
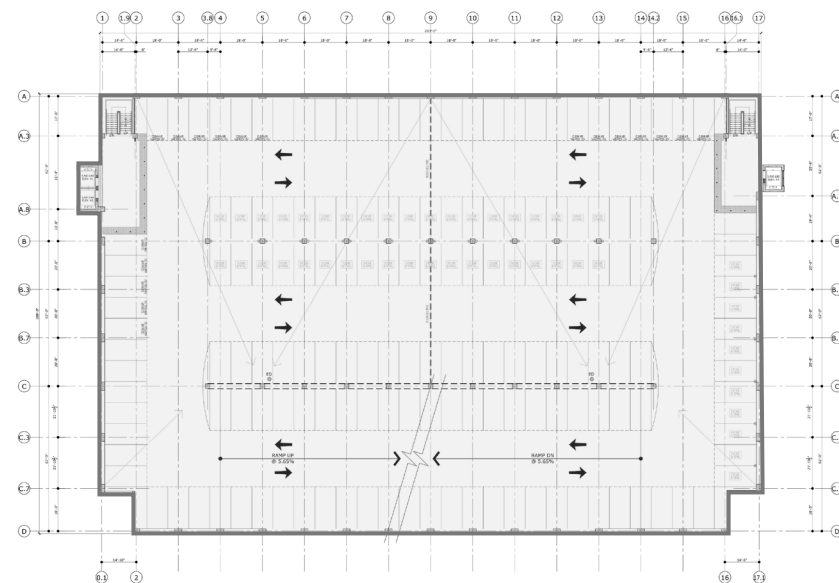
Whole Person Community Clinic



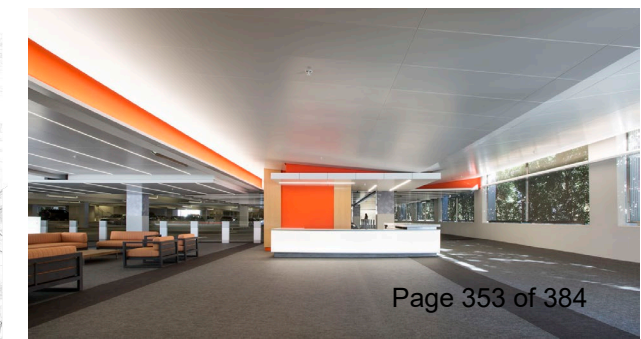
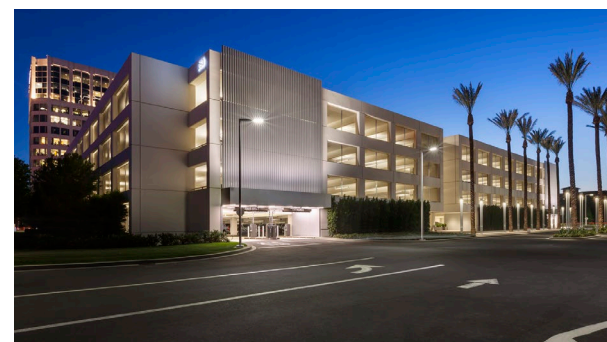
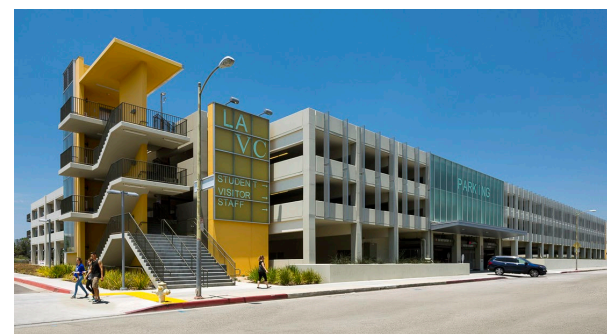
Outpatient Clinic

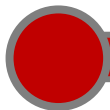
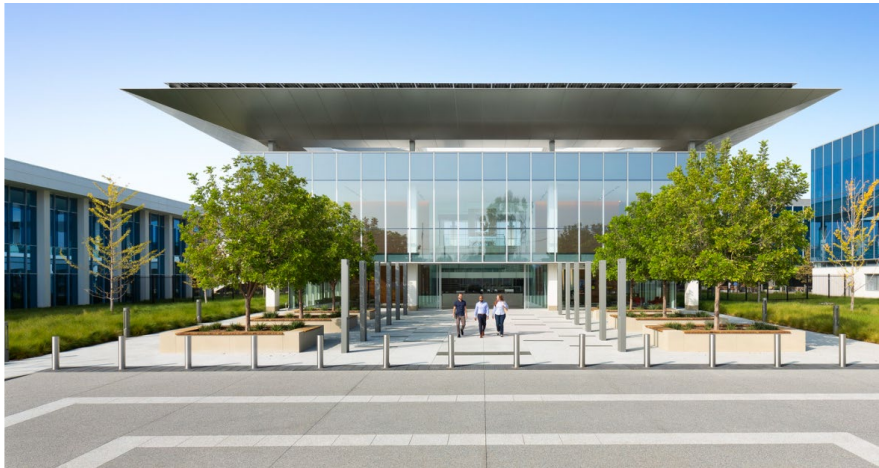


ITEM 12.1. PROGRAM | Parking Structure

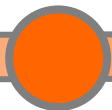


~300 Parking Spaces





Traditional
/Historical



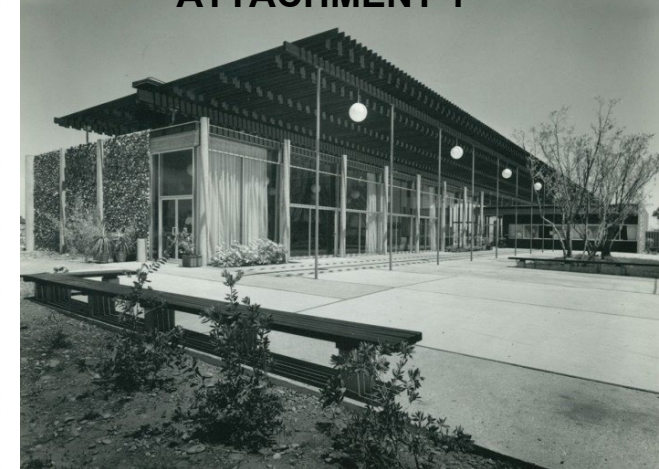
Contemporary
/Contextual



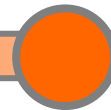
Progressive
/Forward-thinking

ITEM 12.1 Character | Traditional

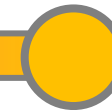
- Inspired by the past, re-interpreted for today
- Using traditional forms with modern materials



Traditional
/Historical



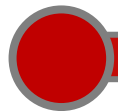
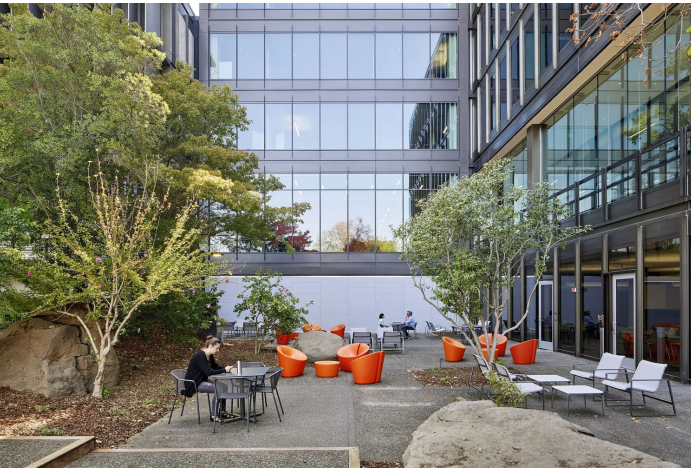
Contemporary
/Contextual



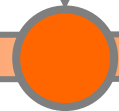
Progressive
/Forward-thinking

ITEM 12.1 Character | Contemporary/Contextual

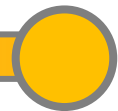
- *Inspired by the community and its context*
- *Responding to place*
- *Looking to the future, but grounded by the past*



Traditional
/Historical



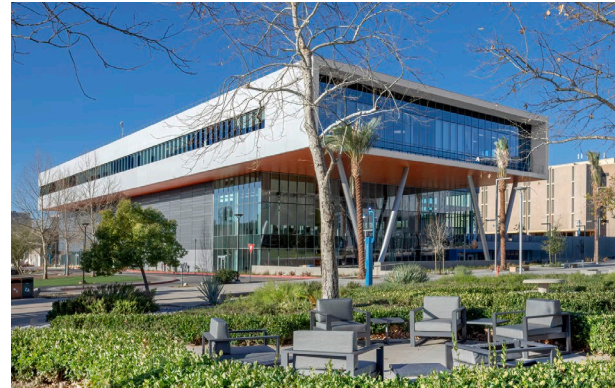
Contemporary
/Contextual



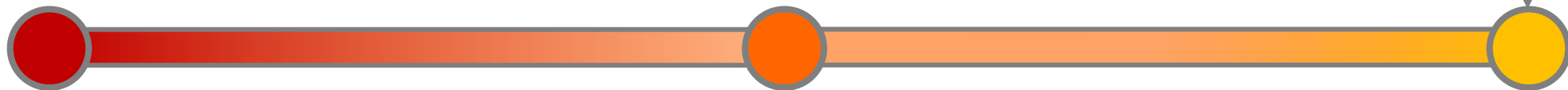
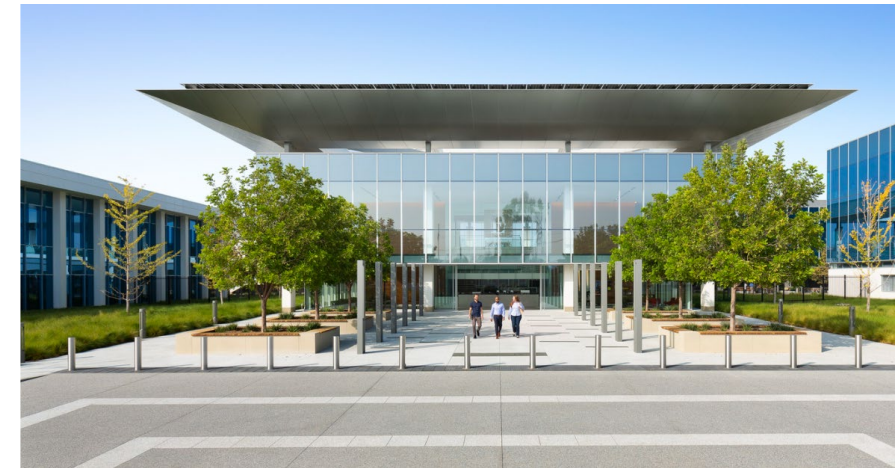
Progressive
/Forward-thinking

ITEM 12.1 Character | Progressive/Forward-thinking

ATTACHMENT 1



- *At the forefront of design and technology*
- *High-tech materials and finishes*
- *Sustainability on display*



Traditional
/Historical

Contemporary
/Contextual

Progressive
/Forward-thinking



5. Next Steps



Pending:
2020-22

A circular icon with a blue outline and a blue wedge-shaped segment inside, representing an in-progress status.

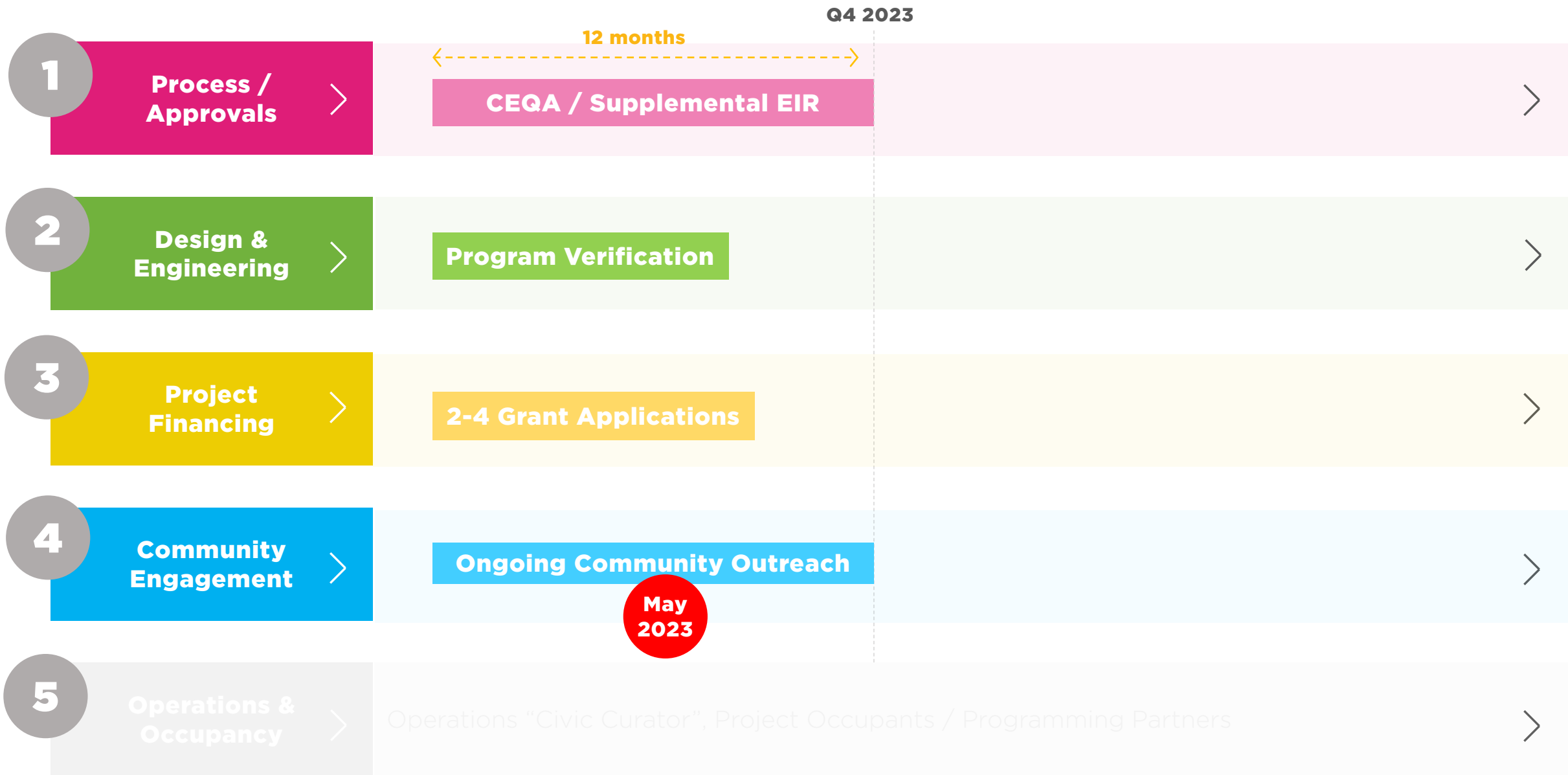
In Progress:
2022-25



Completion:
2026-27
Page 358 of 384

ITEM 12.1

5 MAJOR WORK STREAMS





Project Name

Design Character

Outdoor Events, Programming

Housing Opportunities

How to Stay Involved

MEMORANDUM



ITEM 12.2.

DATE: February 21, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Drew Hart, Senior Transportation Planner
SUBJECT: **PROPOSED NEIGHBORHOOD TRAFFIC MANAGEMENT PROGRAM,
PHASE VI**

RECOMMENDATION

Receive staff presentation and provide comments on the proposed Phase VI Neighborhood Traffic Management Program (NTMP).

RESULT OF RECOMMENDED ACTION

Staff will incorporate City Council direction and proceed with the final design process.

BACKGROUND

The City Council adopted the NTMP manual in 2006, which established a process for selecting and prioritizing neighborhoods and specific street locations for installation of traffic calming measures. The first step to initiating an NTMP project is resident submission of a petition to the City with a minimum of 10 signatures in support of traffic calming. Staff then collects vehicle speeds, traffic volumes, and accident history to report to the Neighborhood Traffic Safety Committee (NTSC). The NTSC consists of representatives of Rancho Cordova citizens, Sacramento Metropolitan Fire, Rancho Cordova Police and Public Works.

The NTSC reviews the proposed projects, recommends approval or denial, and prioritizes approved petitions based on criteria outlined in the NTMP. The final step in the NTMP approval process is mailing a ballot to affected residents. A minimum of 25% of the ballots must be returned with at least 67% approval for a specific traffic calming measure to proceed with bidding and construction.

The proposed Phase VI traffic calming measures included in Attachments 1 and 2 were recommended for approval by the NTSC. The proposed scopes were vetted at neighborhood meetings to present the proposed Phase VI projects, solicit feedback, and answer questions. The majority of resident comments were supportive of the NTMP project, with some key discourse focused on the severity of speeding, enforcement, and location of proposed devices. Staff incorporated resident comments into the proposed scopes shown in Attachment 2. In subsequent months, the ballots were mailed out, collected, and tallied. All seven locations in this Phase VI package received sufficient votes from responding residents.

The estimated total cost of the Phase VI Neighborhood Traffic Management project is \$310,000. Staff will incorporate direction provided by Council in the final design phase of these individual locations. Bidding and construction are scheduled for the end of 2023.

FISCAL IMPACT AND FUNDING SOURCE

This current fiscal year budget for the NTMP is \$300,000. The funding sources include New Measure A Construction, Measure A - Streets, Bike, & Ped Program, and the Capital Infrastructure Fund. This project will have no impact on the General Fund.

ATTACHMENT(S)

1. Proposed Traffic Calming Features
2. Map of Citywide Traffic Calming Project
3. NTMP Phase VI Presentation

Proposed Traffic Calming Measures* **Dawes St & Malaga Way**

 Project Street

Existing Features

 Crosswalk

 Traffic Signal

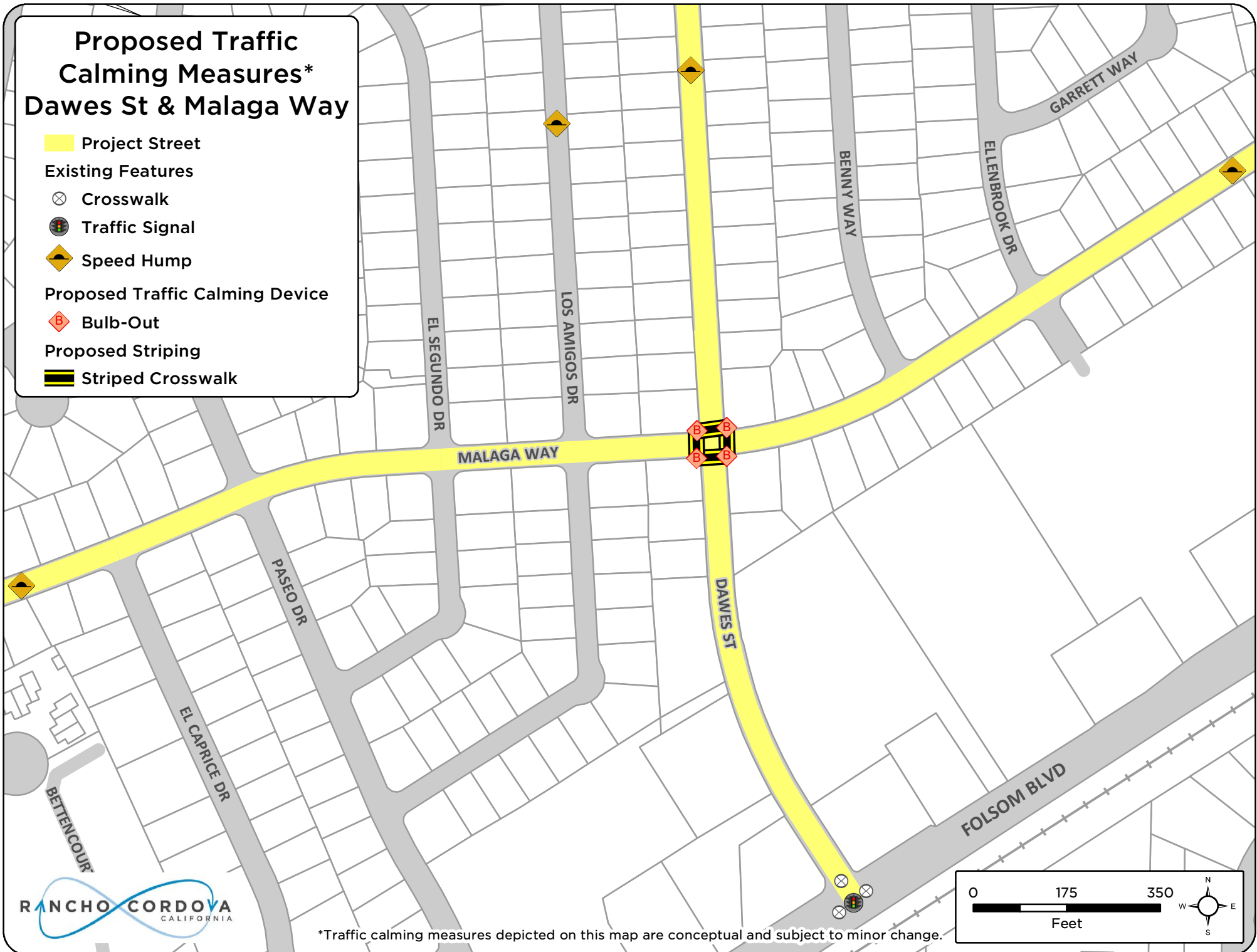
 Speed Hump

Proposed Traffic Calming Device

 Bulb-Out

Proposed Striping

 Striped Crosswalk



Proposed Traffic Calming Measures* Edington Dr

 Project Street

Proposed Traffic Calming Devices



25 MPH Speed Limit Sign



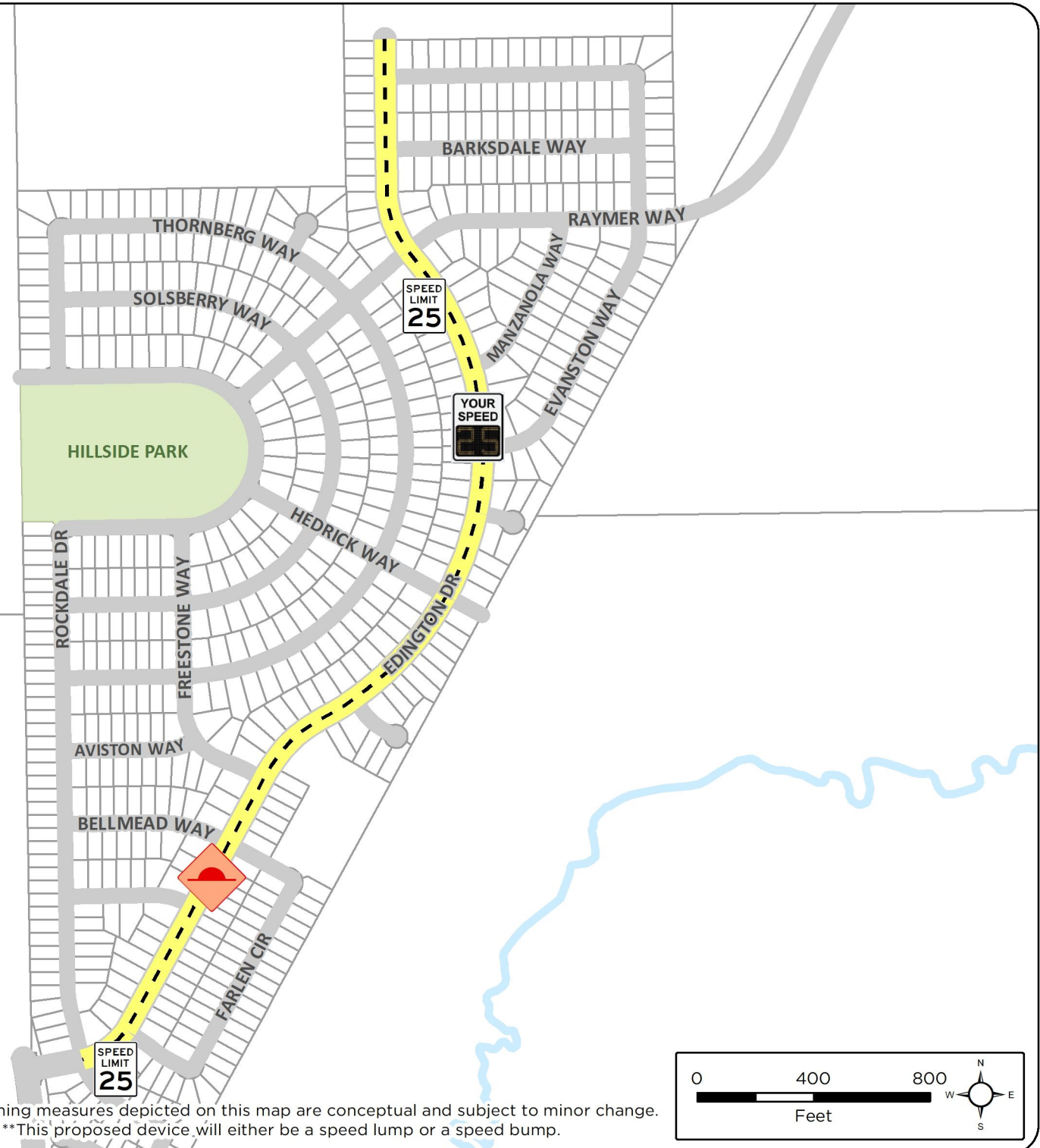
Speed Feedback Sign



Speed Bump/Speed Lump**

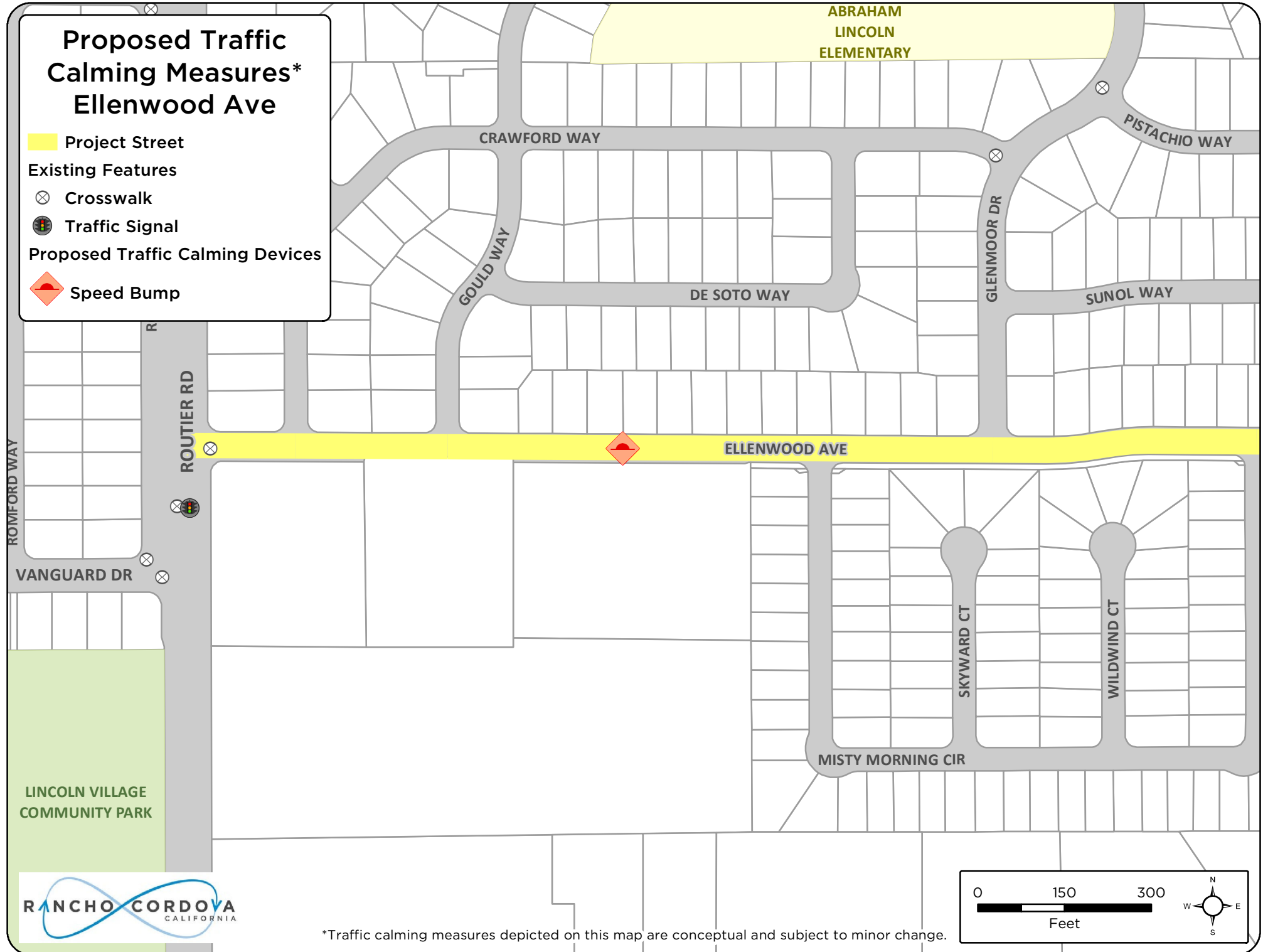
Proposed Striping

— 5' Bike, 7' Parking, 10' Travel Lane,
and Street Centerline



Proposed Traffic Calming Measures* Ellenwood Ave

- Project Street**
- Existing Features**
-  Crosswalk
 -  Traffic Signal
- Proposed Traffic Calming Devices**
-  Speed Bump



Proposed Traffic Calming Measures* Justinian Dr

 Project Street

Existing Features

 Crosswalk

 Traffic Signal

Proposed Traffic Calming Devices

 "25 MPH" Speed Sign

 Bulb-Out

 Speed Bump

Proposed Striping

 High Visibility Crosswalk

 Shared Parking/Bike Lane

RUBY LANDING WAY

ROSE WIND CT

LILAC CANYON CT

ANATOLIA DR

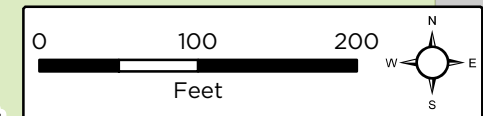
JUSTINIAN-DR

SUNRISE BLVD

HERON
LANDING
PARK



*Traffic calming measures depicted on this map are conceptual and subject to minor change.



Proposed Traffic Calming Measures* Mills Tower Dr

 Project Street

Existing Features

 Crosswalk

 Traffic Signal

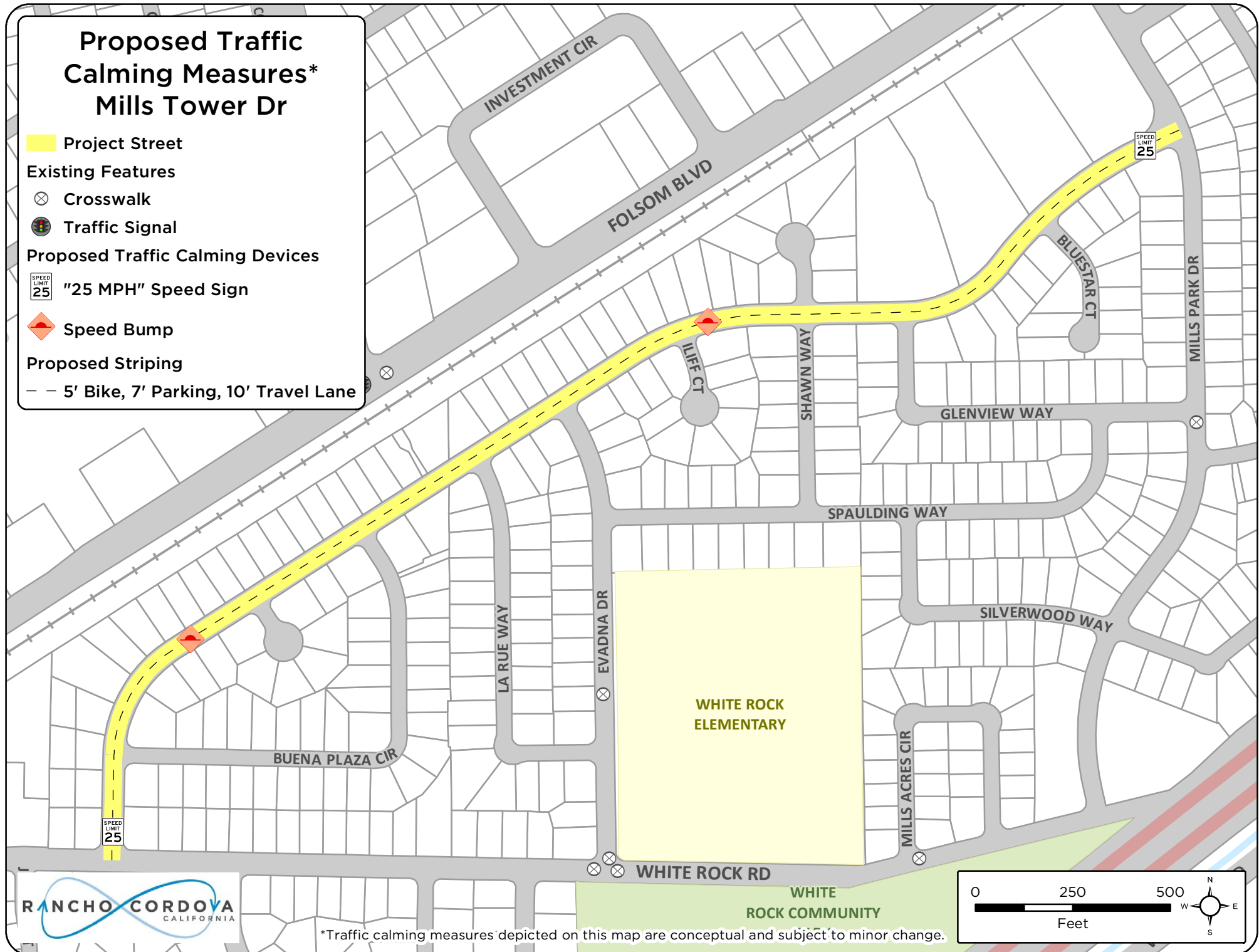
Proposed Traffic Calming Devices

 "25 MPH" Speed Sign

 Speed Bump

Proposed Striping

— 5' Bike, 7' Parking, 10' Travel Lane



Proposed Traffic Calming Measures* W La Loma Dr

 Project Street

Existing Features

 Crosswalk

 Traffic Signal

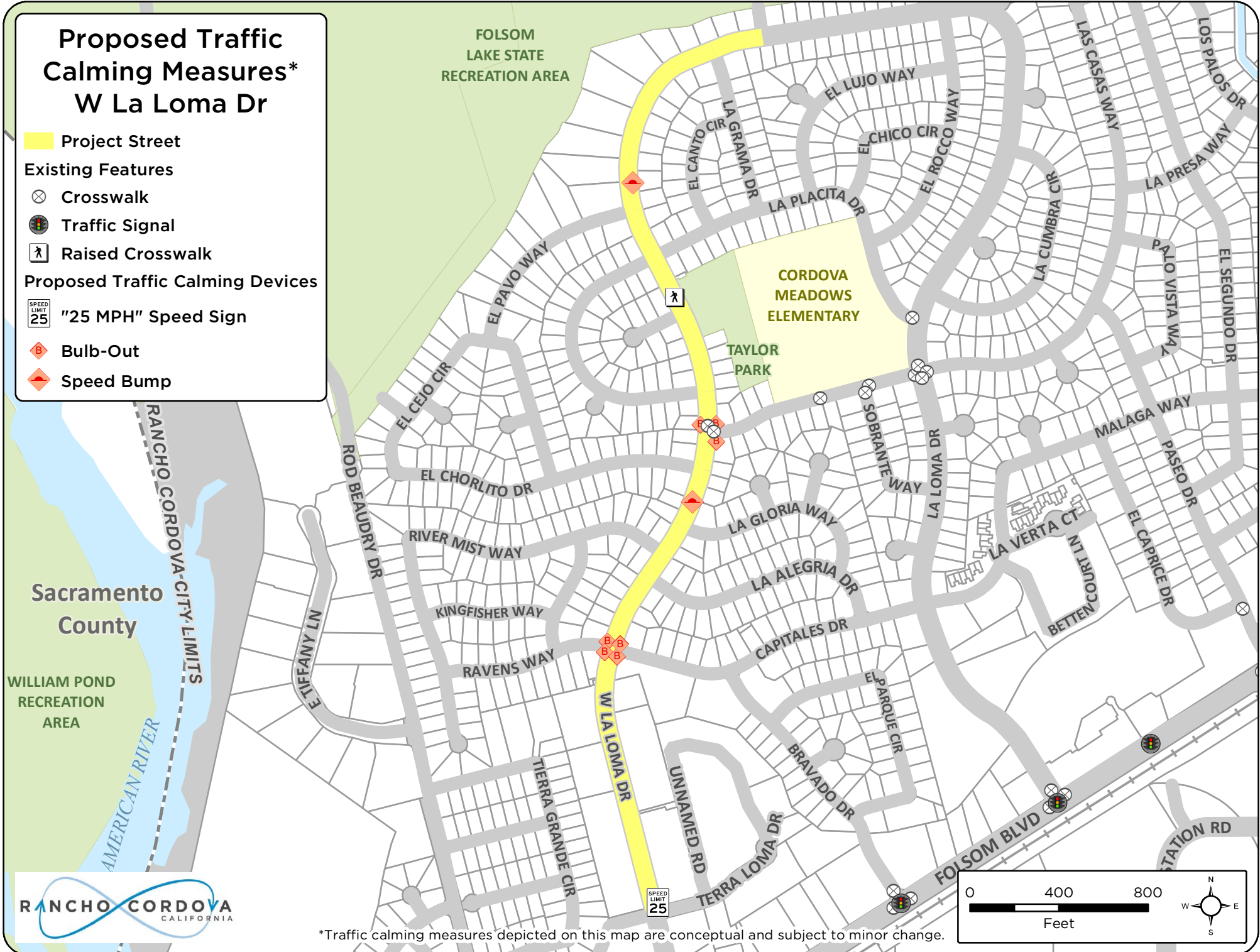
 Raised Crosswalk

Proposed Traffic Calming Devices

 "25 MPH" Speed Sign

 Bulb-Out

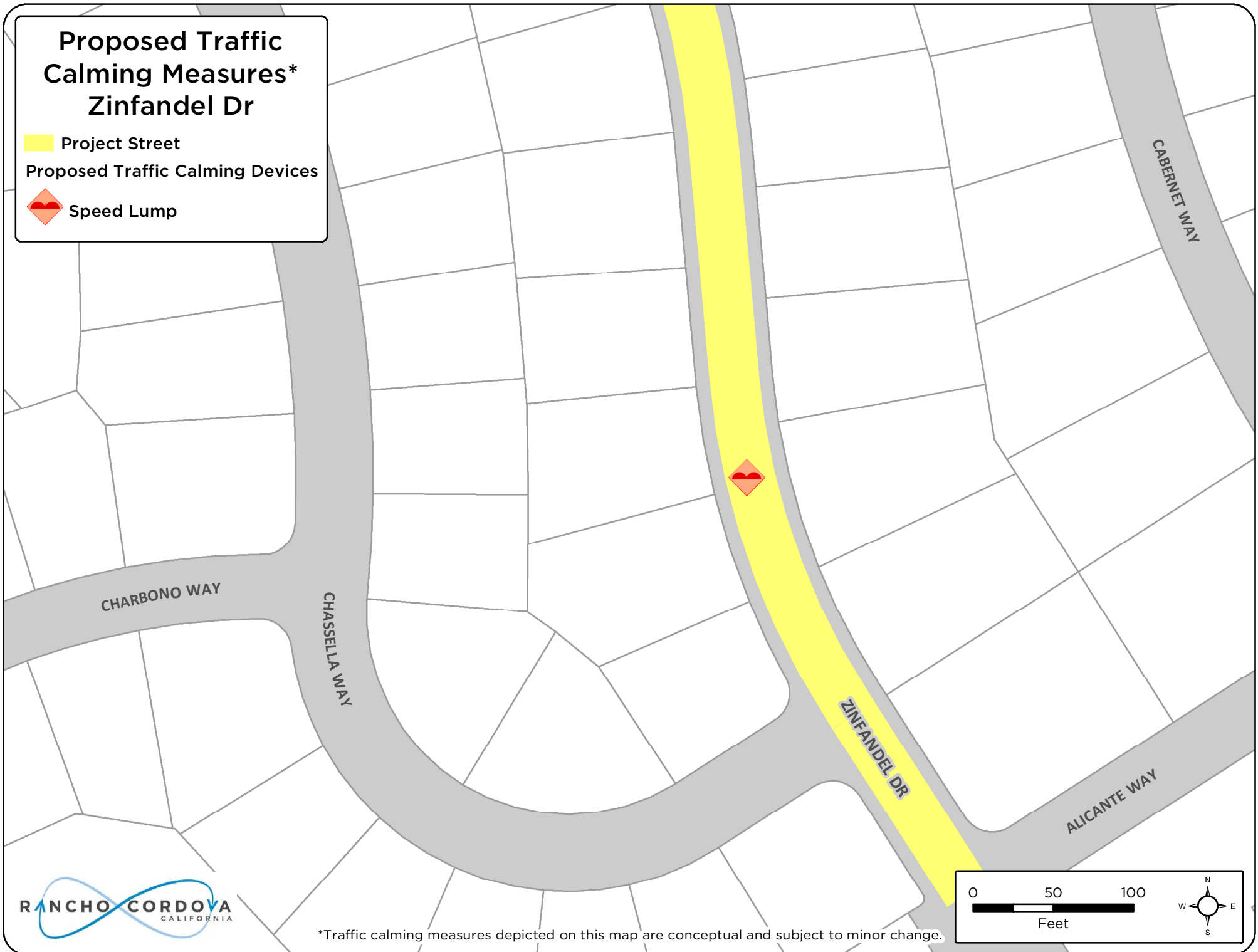
 Speed Bump



*Traffic calming measures depicted on this map are conceptual and subject to minor change.

Proposed Traffic Calming Measures* Zinfandel Dr

-  Project Street
- Proposed Traffic Calming Devices
-  Speed Lump



NTMP Project Street

W LA LOMA DR

DAWES ST/
MALAGA WAY

ZINFANDEL DR

MILLS TOWER DR

WHITE ROCK RD

EDINGTON DR

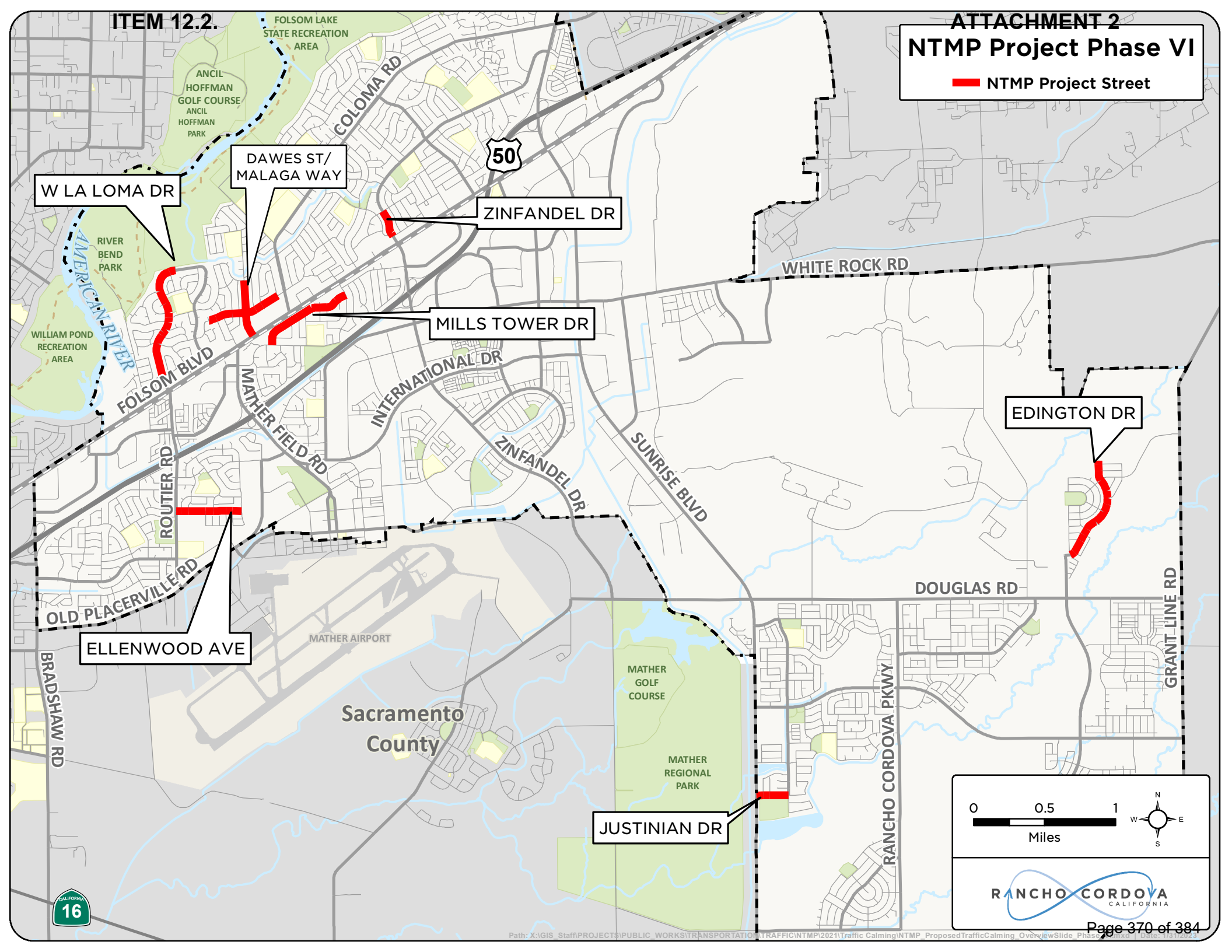
DOUGLAS RD

ELLENWOOD AVE

JUSTINIAN DR

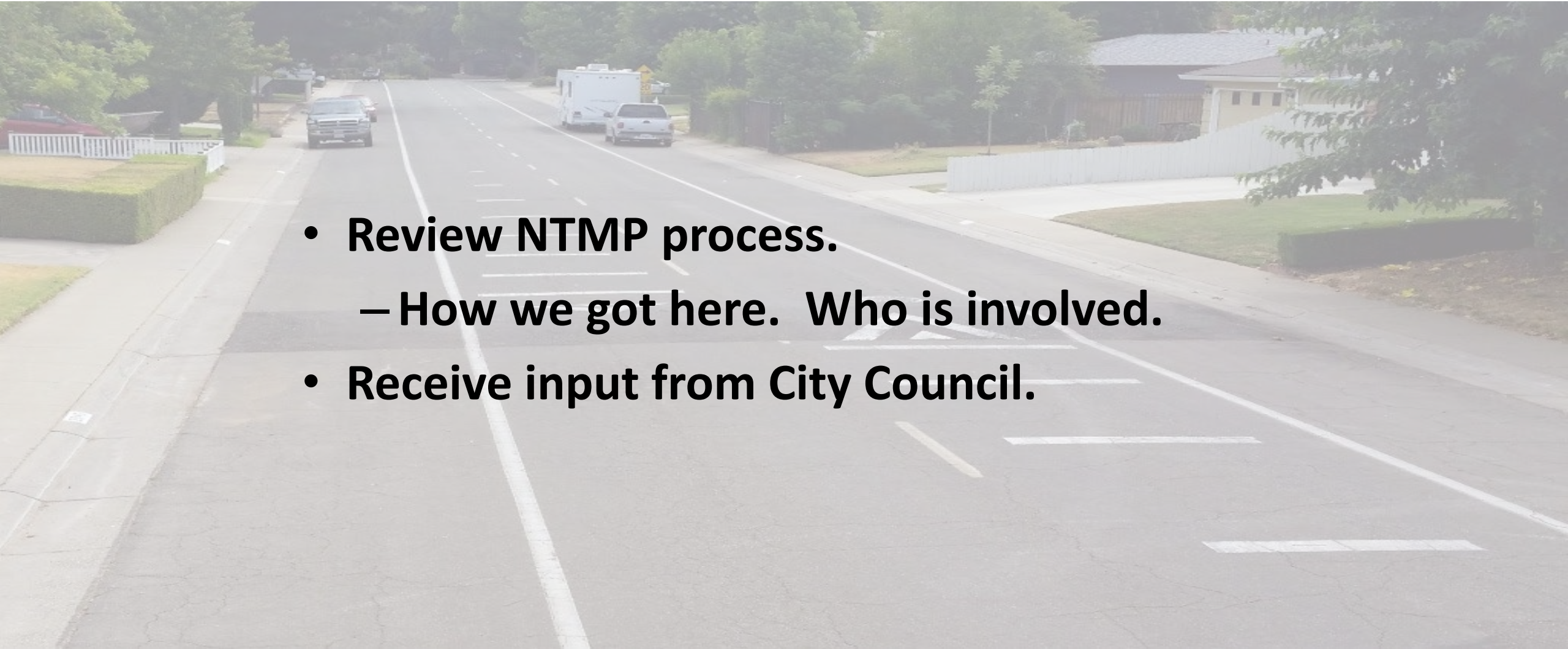
Sacramento
County

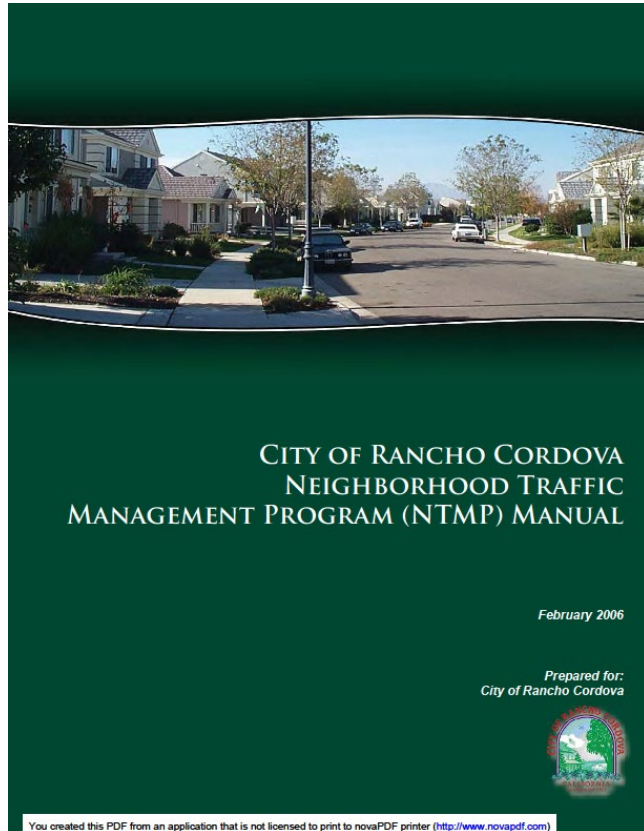
RANCHO CORDOVA
CALIFORNIA



Neighborhood Traffic Management Project Phase VI

February 21, 2023

- 
- **Review NTMP process.**
 - **How we got here. Who is involved.**
 - **Receive input from City Council.**



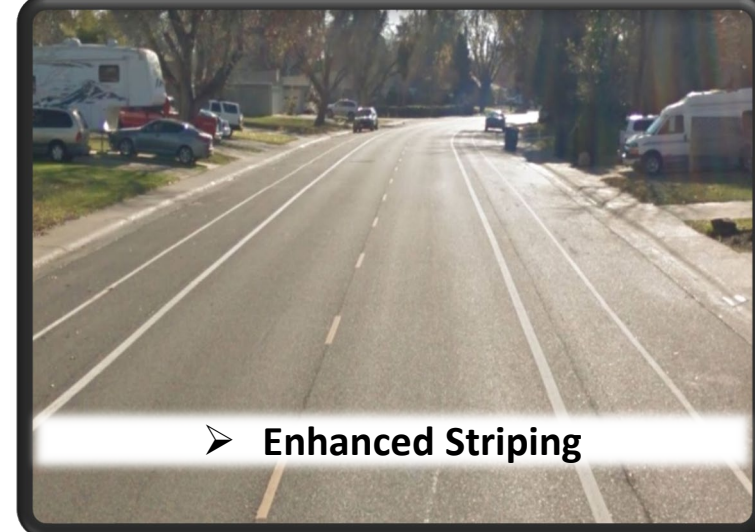
- Provides a means for residents to request traffic calming.
- Established a committee (NTSC) to review and prioritize requests.
 - NTSC comprised of Fire Dept, Police Dept, residents and City Staff.
- Sets threshold for ballots to ensure the community has consensus prior to installation.
 - 25% min response rate, 67% approval rate.



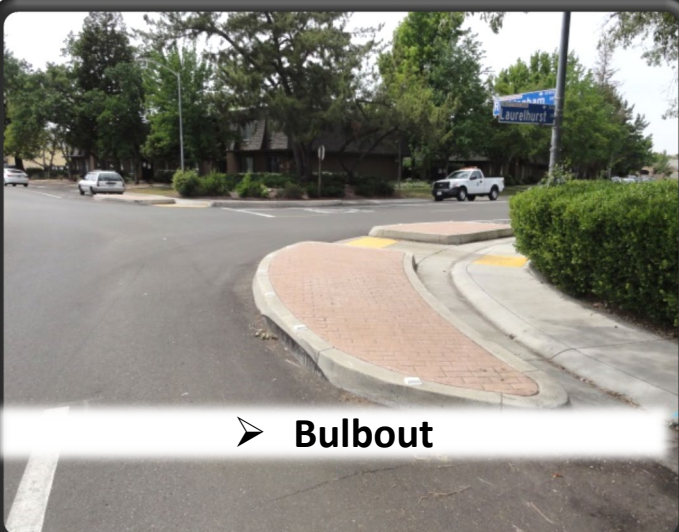
➤ **High Visibility Crosswalk**



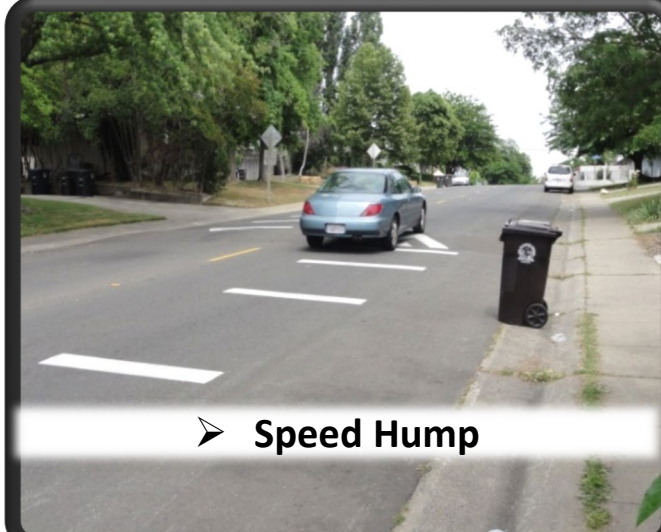
➤ **Solar Powered
School Crossing Sign**



➤ **Enhanced Striping**



➤ **Bulbout**



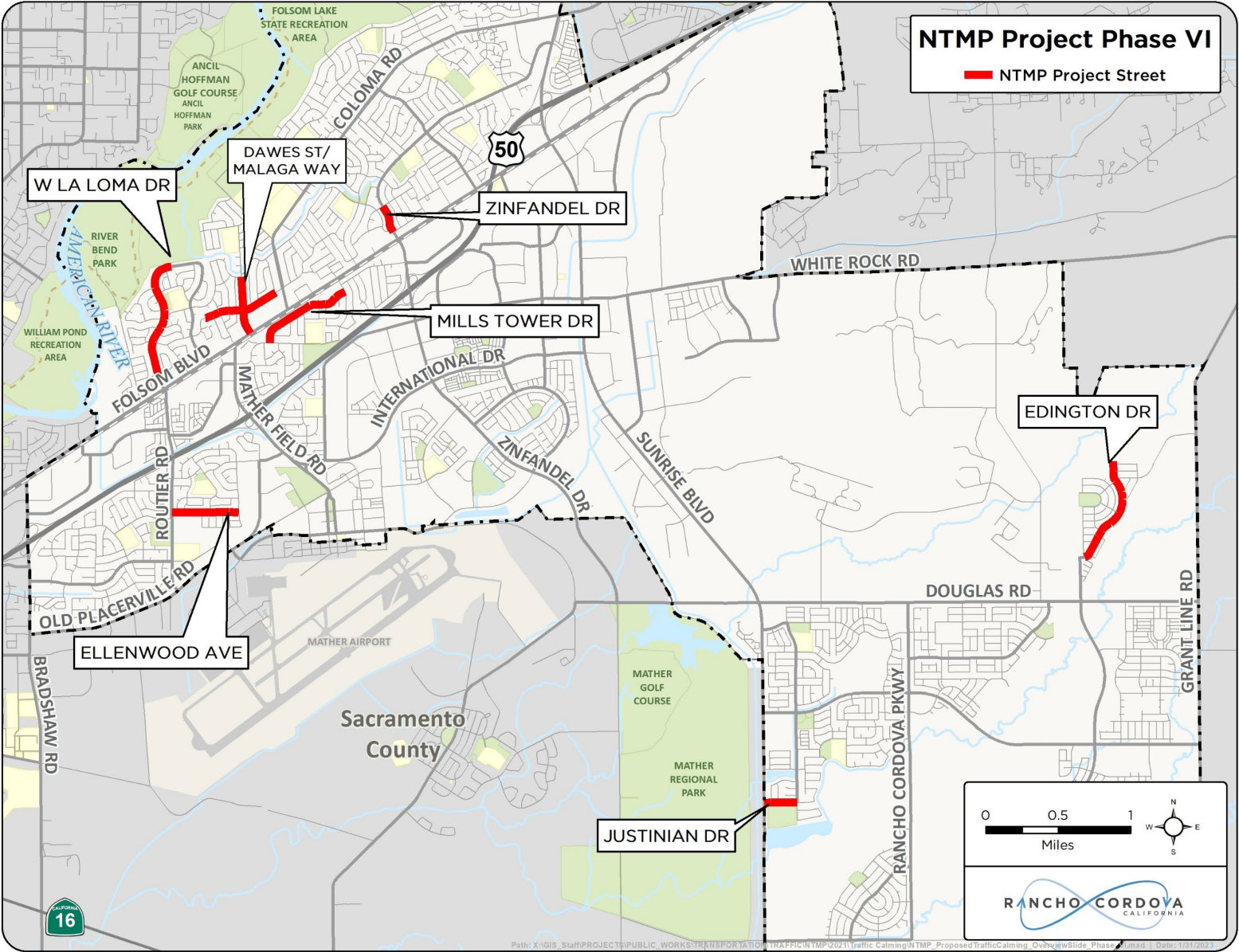
➤ **Speed Hump**

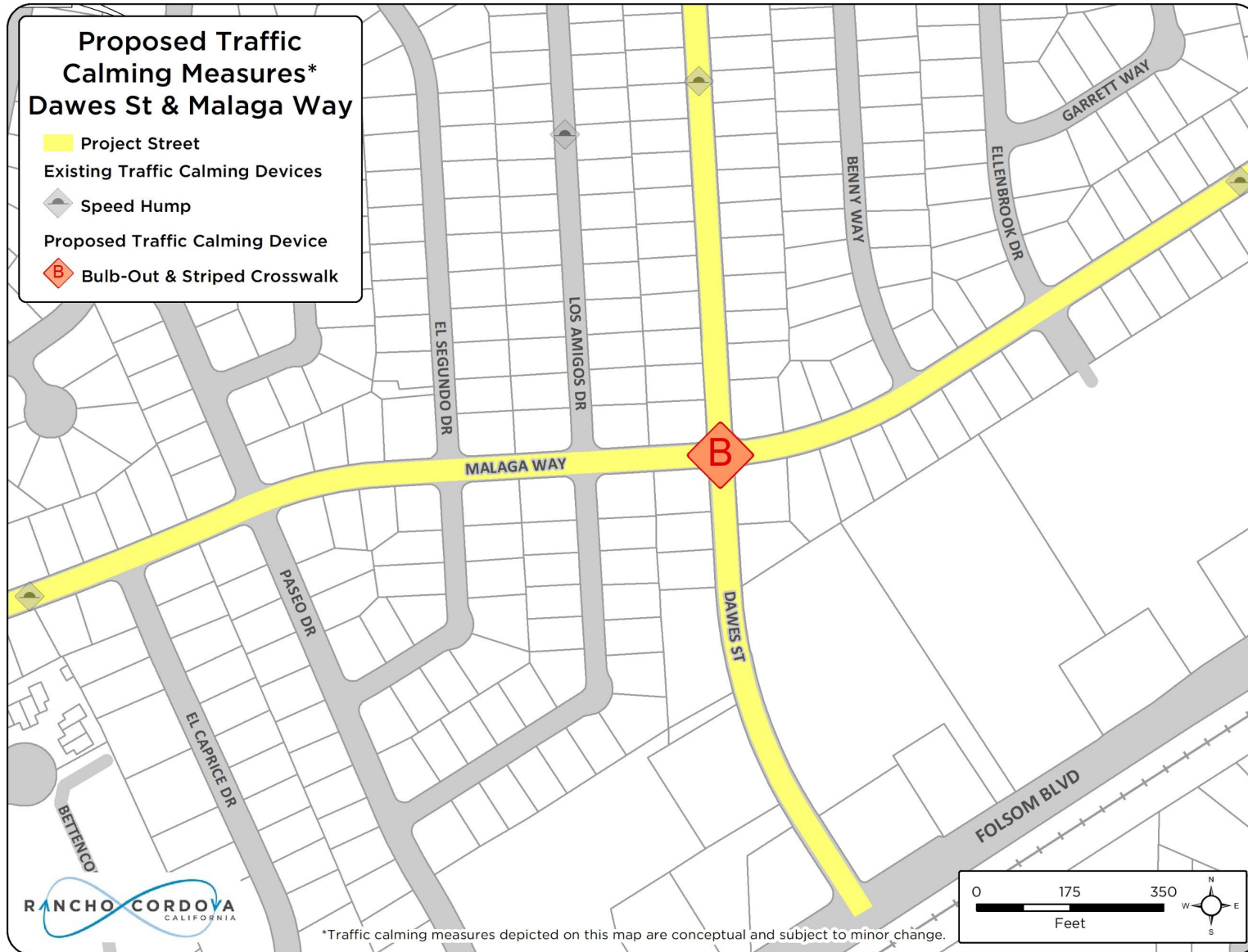


➤ **Speed Feedback Sign**



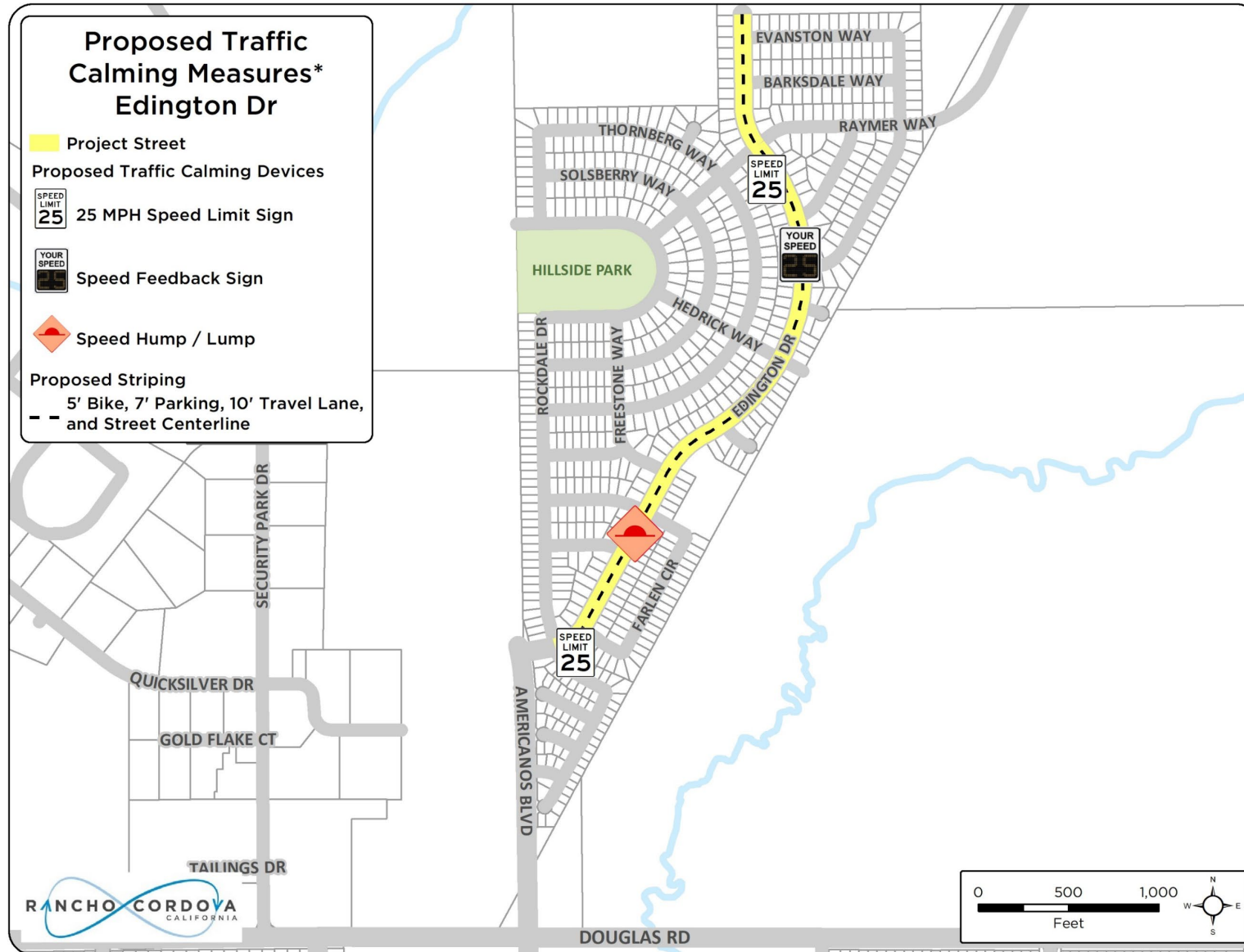
- **Slower vehicles.**
 - **Better Pedestrian Connections.**
 - **Safer neighborhoods.**
-
- ❖ **Safe, Inviting, and Livable Communities.**





Proposed Improvements

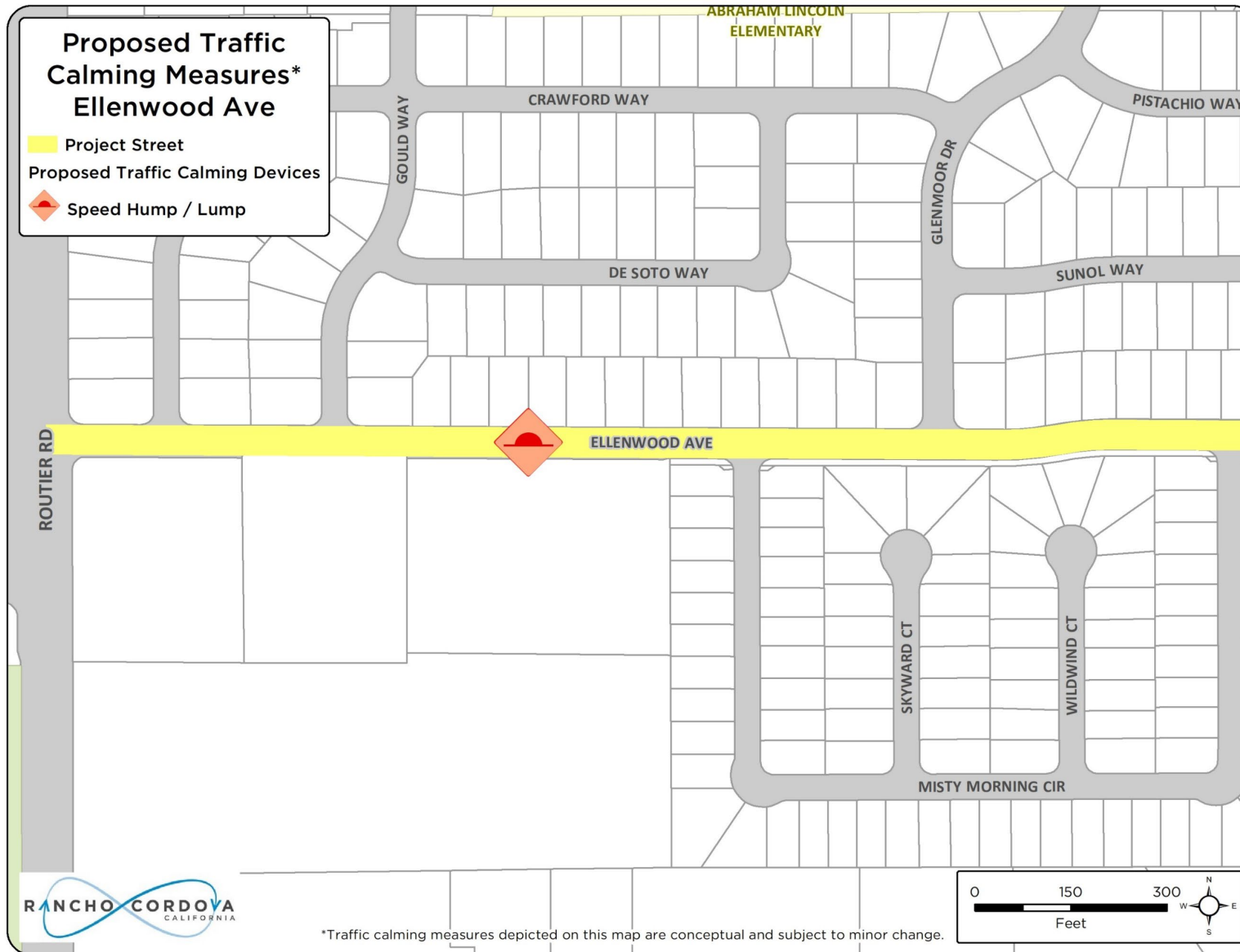
- Bulbouts
- High Visibility Crosswalk Striping



*Traffic calming measures depicted on this map are conceptual and subject to minor change.

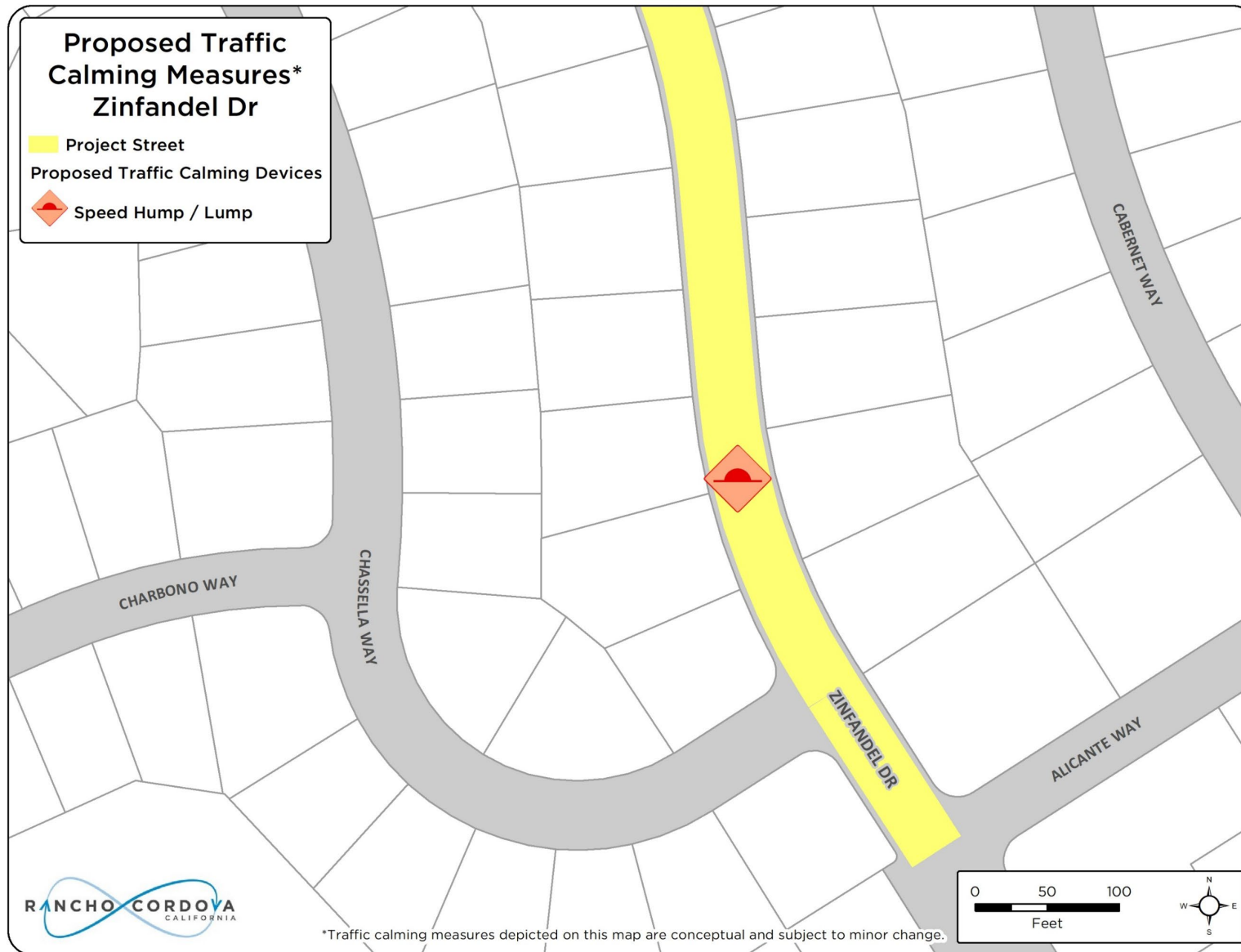
Proposed Improvements

- Speed Limit Sign
- Speed Feedback Sign
- Speed Hump / Lump



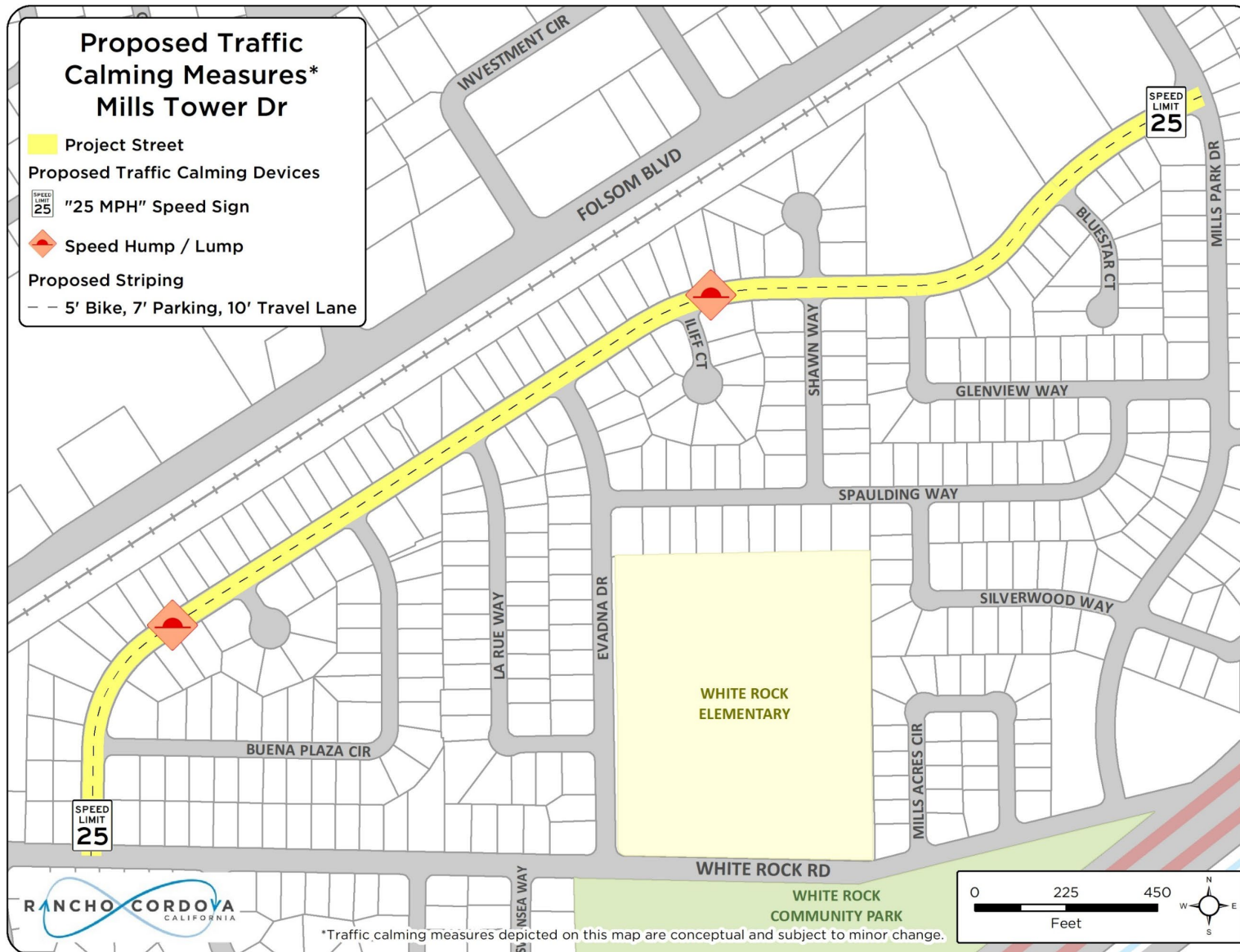
Proposed Improvements

- Speed Hump / Lump



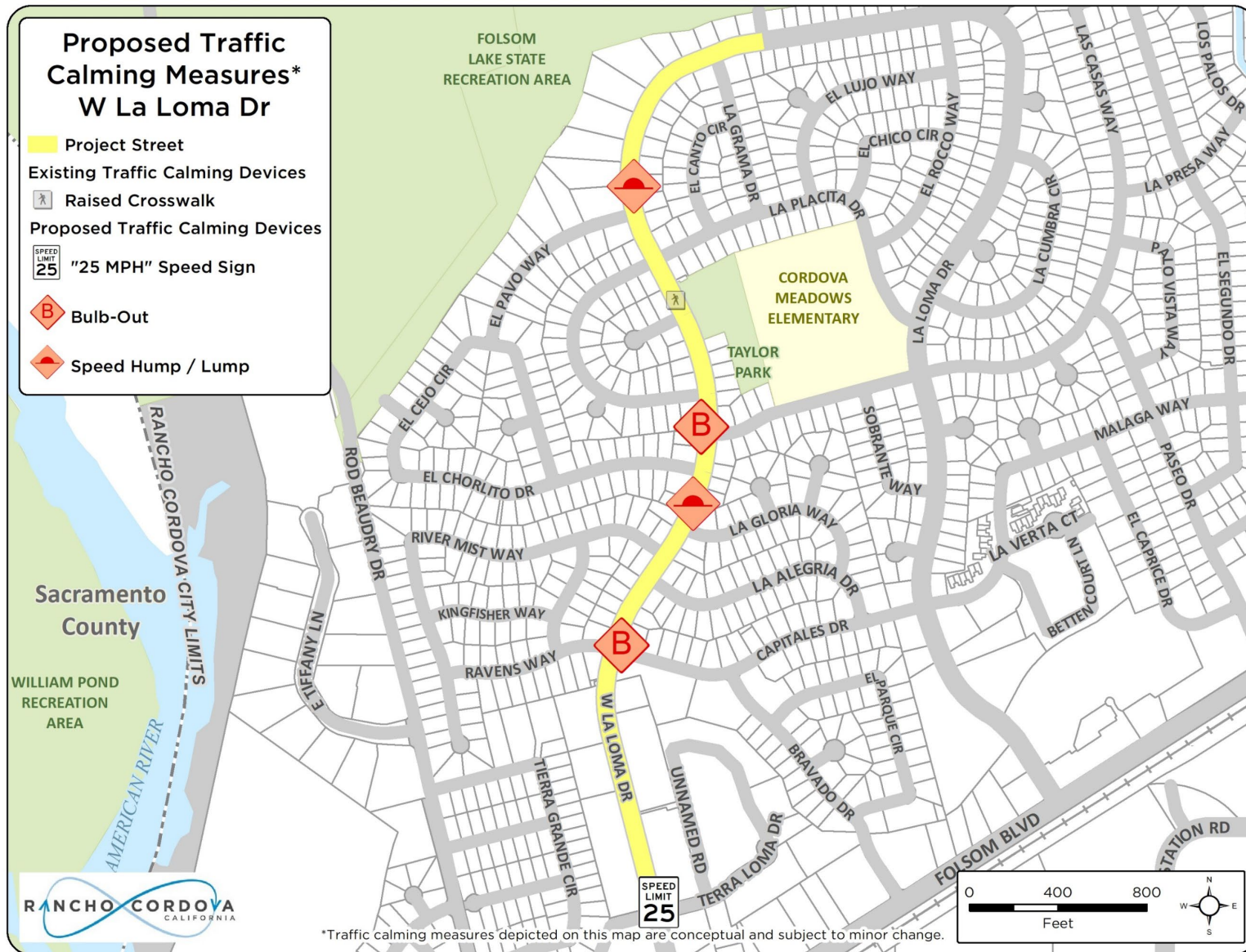
Proposed Improvements

- Speed Hump / Lump
- Bulbouts
- High Visibility Crosswalk Striping
- Enhanced Striping - Shared Parking and Bike Lane



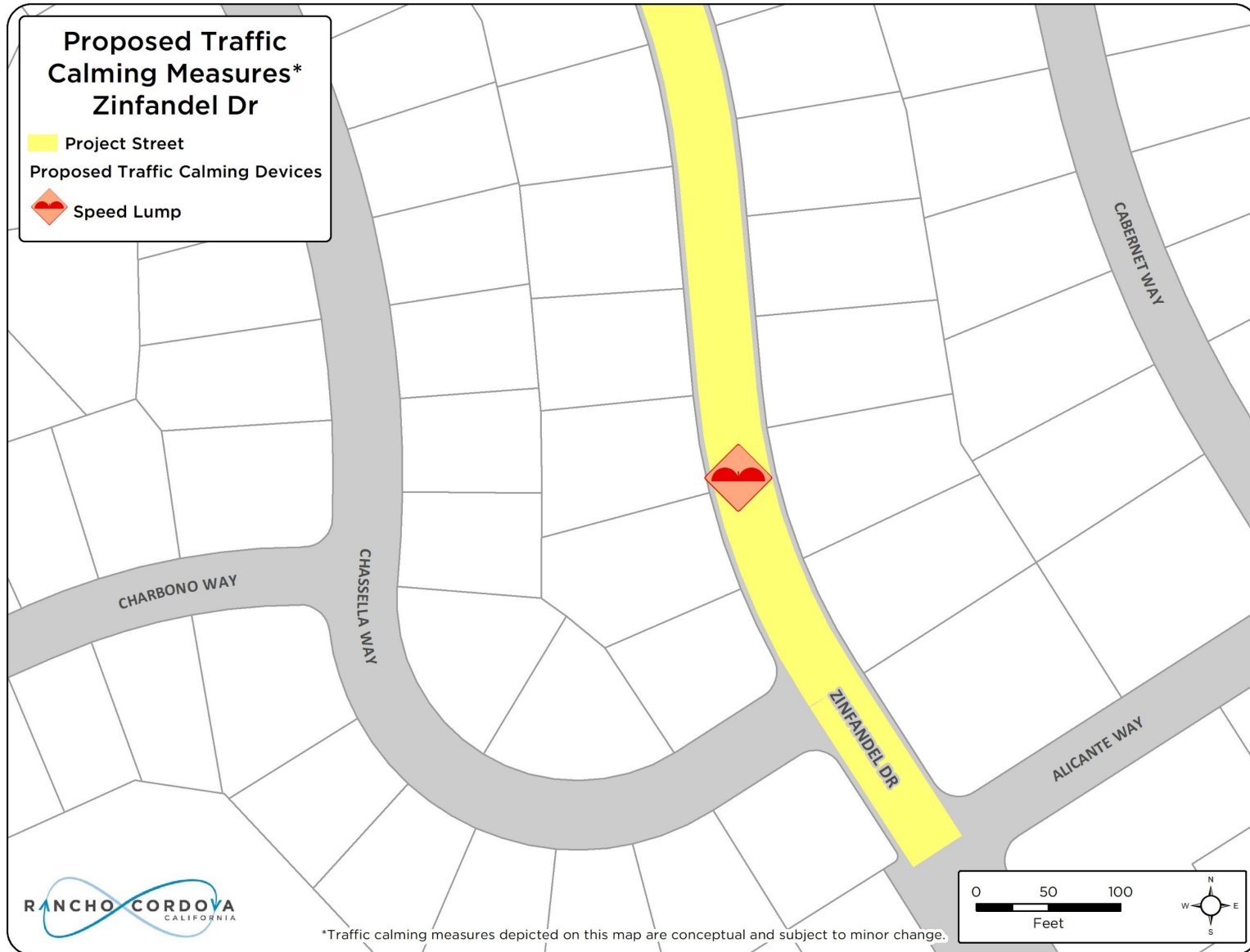
Proposed Improvements

- **Speed Hump / Lump**
- **Enhanced Striping –**
 - **Bike and Parking lane**
- **Speed Limit Signs**



Proposed Improvements

- **Speed Hump / Lump**
- **Bulbouts**
- **Speed Limit Signs**



Proposed Improvements

- Speed Hump / Lump

- **Incorporate comments from this meeting**
- **Contract with a designer to create Design Plans**
- **Finalize Construction Documents and Begin Construction**

Questions and Input