

**Meeting Date: 8/27/2013**

**Report Type:** Consent

**Report ID:** 2013-00635

**Title: Maintenance Reimbursement Agreement with the Township 9 Owners Association**

**Location:** District 3

**Issue:** A Mello-Roos Community Facility District has been formed to fund maintenance of public facilities necessitated by the Township 9 development. The Township 9 Owners Association will maintain most public improvements under this agreement with reimbursements funded by Mello-Roos taxes on the development.

**Recommendation:** Pass a Motion authorizing the City Manager or his designee to execute the Maintenance Reimbursement Agreement with Township 9 Owners Association to maintain certain public facilities necessitated by the development.

**Contact:** Mark Griffin, Program Manager, (916) 808-8788, Department of Finance; Rachel Hazlewood, Senior Project Manager, (916) 808-8645, Economic Development Department

**Presenter:** None

**Department:** Finance

**Division:** Public Improvement Finance

**Dept ID:** 06001321

**Attachments:**

1-Description/Analysis

2-Exhibit 1 (Township 9 Maintenance Agreement)

---

**City Attorney Review**

Approved as to Form  
Sheryl Patterson  
8/20/2013 3:11:56 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
8/13/2013 1:14:43 PM

**Approvals/Acknowledgements**

Department Director or Designee: Dennis Kauffman - 8/19/2013 9:13:43 AM

## **Description/Analysis:**

**Issue:** On August 28, 2007, the City Council approved the Township 9 development project, which is located on 65 acres of land north of Richards Boulevard between 5<sup>th</sup> and 7<sup>th</sup> Streets. The project consists of 2,350 housing units, 839,628 square feet of office, 147,000 square feet of retail, 5,389 off-street parking spaces, and 27 acres of parks and open space. The entitlements include conditions requiring the construction of various public improvements by Capitol Station 65, LLC (Developer) that are to be dedicated to the City.

In accordance with the requirements of the Tentative Map and the Development Agreement, the Developer initiated the formation of a Community Facilities District (District) to encompass all of the property. In addition, lands adjacent to the property on the east side of North 7th Street were brought into the District through the efforts of the Developer with affected landowners. These additional properties will fund a fair share of the maintenance of North 7<sup>th</sup> Street.

The District was formed as the Township 9 CFD No. 2012-06 on August 21, 2012. The special tax generated by the District will allow for the maintenance of parks, roadway amenities in excess of City standards, transit station amenities in excess of Regional Transit standards, and drainage sedimentation and filtration vaults.

With the exception of drainage vault maintenance, all work can be contracted to the non-profit Owners Association established by the Developer, with funding provided by the District. Drainage vault maintenance will remain the responsibility of the Department of Utilities and will also be funded by the District.

The maintenance agreement (Agreement) with the Owners Association specifies the work to be performed, maintenance standards, reimbursement procedures, and accounting standards. The City retains sole and absolute discretion to undertake any maintenance for health and safety reasons, to limit access in the performance of any City work, to audit, and to terminate any or all maintenance provided by the Owners Association within the scope of the Agreement.

All work performed that is funded by the special tax must comply with City Code bidding and procurement requirements and all applicable state laws and regulations for the type of maintenance work to be performed.

The full Agreement is provided as Exhibit 1.

**Policy Considerations:** This Agreement expands the use of Community Facility Districts as a source of funding for Owners Associations to manage public improvements associated with a development. The City retains control of the level and quality of service delivery as well as the right to assume the services and to modify or terminate the services.

**Economic Impacts:** This report does not have direct economic impacts.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** Under the CEQA guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

**Sustainability Considerations:** There are no sustainability considerations applicable to administrative activities.

**Commission/Committee Action:** None

**Rationale for Recommendation:** The Agreement provides for maintenance and maintenance standards for public amenities in the Township 9 development with funding provided through reimbursement from the CFD district established for this purpose.

**Financial Considerations:** Reimbursements under the Agreement are limited to funds available in the CFD. There is no General Fund obligation. The special tax, maintenance activities, and reimbursements will commence as warranties expire on improvements. The tax and activities are estimated at \$31,000 this fiscal year, gradually increasing to \$600,000 as the development builds out.

A separate item will be brought to Council in the near future to establish the accounting fund and budget.

**Emerging Small Business Development (ESBD):** None. No goods or services are being purchased.

**PUBLIC IMPROVEMENT  
MAINTENANCE AND REIMBURSEMENT AGREEMENT**

**FOR  
TOWNSHIP 9 PROJECT**

**Between  
CITY OF SACRAMENTO  
and  
TOWNSHIP 9 OWNERS ASSOCIATION**

**Approved on:**

\_\_\_\_\_

**By Motion No. 2013 - \_\_\_\_\_**

**PUBLIC IMPROVEMENT  
MAINTENANCE AND REIMBURSEMENT AGREEMENT  
TOWNSHIP 9 PROJECT**

Table of Contents

<u>Section Heading</u>		<u>Page No.</u>
RECITALS		2
ARTICLE I	DEFINITIONS AND EXHIBITS	3
ARTICLE II	MAINTENANCE WORK	5
ARTICLE III	CONTRACTING FOR MAINTENANCE WORK	11
ARTICLE IV	REIMBURSEMENT OF MAINTENANCE COSTS	15
ARTICLE V	MISCELLANEOUS PROVISIONS	18
EXHIBIT A	SPECIAL TAX DISTRICT BOUNDARY	24
EXHIBIT B	STREET SIDEWALK MAINTENANCE STANDARDS	25
EXHIBIT C	STANDARD CITY CONTRACT PROVISIONS	26
EXHIBIT D	CITY BID PREFERENCES	40
EXHIBIT E	BOND FORMS FOR PUBLIC WORKS PROJECTS	42

**PUBLIC IMPROVEMENT  
MAINTENANCE AND REIMBURSEMENT AGREEMENT  
TOWNSHIP 9 PROJECT**

This PUBLIC IMPROVEMENT MAINTENANCE AND REIMBURSEMENT AGREEMENT (hereinafter "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and the TOWNSHIP 9 OWNERS ASSOCIATION, a California corporation (hereinafter "T9 OA"). The CITY and T9 OA may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

**RECITALS**

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

A. **Project Site.** The Township 9 project is located on 65 acres of land which lies north of Richards Boulevard between 5<sup>th</sup> and 7<sup>th</sup> Street in the River District area of the City of Sacramento (the "Project Site"). The land encompassing the Project Site is depicted in **Exhibit A**, attached hereto and incorporated herein by this reference, (the "Property"), and referred to as Assessor Parcel Numbers 001-0020-056, -057, -058, -059, -060, -061, -062, -063, -064, -065, and -066. .

B. **Development Project.** On August 28, 2007, the City Council approved certain entitlements for development of 2,350 housing units, 839,628 square feet of office, 147,000 square feet of retail, 5,389 off-street parking spaces and 27 acres of parks and open space at the Project Site based on the development scenario B that was evaluated in the environmental impact report (the "Development Project"). The entitlements included a Tentative Map to subdivide the 65 acre Project Site into 36 parcels, and included conditions requiring the construction of various public improvements by Capitol Station 65, LLC (the "Developer") to serve the Development Project which were to be dedicated to the CITY.

C. **Public Improvements.** Developer has undertaken the design and construction of public improvements for the first phase of the Development Project in accordance with the Tentative Map requirements and the Design Guidelines. Developer intends to construct all of the public improvements required for the remaining phases of the Development Project, or may arrange for others who acquire parcels within the Development Project to undertake such work in accordance the Tentative

Map requirements and the Design Guidelines. The public improvements that are the subject of this Agreement are to be owned by CITY, after completion of construction by Developer (or others) and acceptance by CITY, or by other public agencies as referenced in this Agreement.

D. **Maintenance Special Tax District.** In accordance with the requirements of the Tentative Map and the Development Agreement, Developer initiated the formation of a Community Facilities District under the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311-53368.3; "Act") to encompass all of the Property and the adjacent property along North 7<sup>th</sup> Street as depicted in Exhibit A (the "Special Tax District Boundary"). The Special Tax District allows for collecting a Special Tax from property owners to be used for specified purposes, in an amount determined by the City Council in accordance with the method of apportionment set forth in the Rate and Method of Apportionment of Special Tax in the Hearing Report required by the Act, to fund the maintenance of specified public improvements as set forth in the Hearing Report.

E. **Citywide Landscaping and Lighting District.** The Property is also included in the citywide lighting and landscaping district, which funds the maintenance of certain landscaping and the street lighting fixtures along major arterials, such as Richards Blvd, and the utility costs for those streetlights. The amounts set forth in the Hearing Report were adjusted to credit the costs to be paid by owners of the Property so as to avoid duplicate charges for the same purpose.

F. **T9 OA Maintenance.** Within the Project Site, there will be common open space areas owned and maintained by the T9 OA, which has been formed by Developer. The purpose of this Agreement, in furtherance of the terms in the Development Agreement between CITY and Developer, is to allow for CITY to contract with the T9 OA to assume that responsibility for maintenance of the Special Public Improvements (as defined below) included in the Hearing Report with the opportunity for the T9 OA to obtain reimbursement of such costs from the Special Tax collected by CITY.

## **AGREEMENT**

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

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

1.1 **Recitals.** For purposes of this Agreement and all Exhibits, the capitalized terms shall have the meanings set forth below or in the Recitals, unless the context otherwise requires or if the capitalized term is defined in a particular section.

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

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

1.4 **Special Tax District.** The Township 9 Community Facilities District No. 2012-06, which was formed in accordance with the Mello-Roos District Policy Manual and was established by the City Council on July 24, 2012 (Resolution No. 2012-267).

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

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

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

1.8 **Design Guidelines.** The architectural and site design standards that are applicable to the Development Project, as approved by the City Council by Resolution No. 2007-643, and as said Design Guidelines may be amended from time to time.

1.9 **Development Agreement.** The agreement dated August 28, 2007, between CITY and Developer for the Development Project (Agreement No. 2007-1081), which was approved by the City Council by Ordinance No. 2007-069, was amended on September 3, 2008 (Agreement No. 2007-1081-1), on September 1, 2010 (Agreement No. 2007-1081-2), on December 15, 2011 (Agreement No. 2007-1081-3), and as said Development Agreement may be amended from time to time.

1.10 **Hazardous Substances.** Any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted.

1.11 **Hearing Report.** The report for the Township 9 Community Facilities

District No. 2012-06, approved on July 24, 2012 by Resolution No. 2012-267, which identifies the public improvements and the Special Tax amount required for maintenance thereof.

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

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

1.14 **Maximum Special Tax.** The maximum Special Tax that can be levied against the Property as approved by the Township 9 property owners by special election on August 2, 2012 and as enacted by the City Council on August 21, 2012 (Ordinance No. 2012-034) in accordance with the Hearing Report.

1.15 **Special Public Improvements.** The specific Special Street Improvements and Parks described in Section 2.1 of this Agreement.

1.16 **Special Tax.** The special tax to be levied against the Special Tax District as approved by the Township 9 property owners and adjacent property owners by special election on August 2, 2012, and as enacted by the City Council on August 21, 2012 (Ordinance No. 2012-034) in accordance with the Hearing Report.

1.17 **Tentative Map.** The “tentative master parcel map” as defined in City Code Section 16.32.160 that subdivides the Property into legal parcels pursuant to the Subdivision Map Act (commencing at Section 66410 of the Government Code), as approved by the City Council by Resolution No. 2007-644, and as said Tentative Map may be amended from time to time.

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

2.1 **Special Public Improvements.** Effective as of September 1, 2013, T9 OA shall maintain the Special Street Improvements, Parks and the LRT Station truss structure described in this Section 2.1 in accordance with the maintenance standards set forth in Section 2.4.

2.1.1 **“Special Street Improvements”** are non-standard design features within public street rights of way as follows: (i) special paving, including colored concrete and pavers, generally located at intersections and along Signature Street, (ii) sidewalks when the abutting property owner is not required to undertake the repairs per City Code, (iii) ornamental acorn street lights, (iv) non-regulatory directional signage, (v) trees and mow strips and irrigation systems located between the curb and the back of the sidewalk within the street right of

way (e.g., easement area), (vi) all landscaping and irrigation systems within Street medians, both linear and circular designs, and (vii) fountains and all water features within Street medians. The Special Street Improvements are or will be located along one or more of the following “Streets” within the Project Site as identified in the Hearing Report, and the Street right of way includes the sidewalks:

- A, B, C, D, E, F and G Streets (streets to be renamed)
- North 5<sup>th</sup> Street
- North 7<sup>th</sup> Street
- Park Blvd
- Richards Blvd (east and west)
- Riverine Street (previously referred to as Riverfront Drive)
- Signature Street
- Vine Street

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

- Central Park, to be named as Victory Park
- North 7<sup>th</sup> Street Parkway (street median), to be named as 7<sup>th</sup> Street Promenade
- Park Blvd Parkway
- Mew, to be named as Victory Promenade
- Paseos (6), to be named as Pear (2), Peach (2), Persimmons, and Cannery Plaza
- Riverfront Park, to be named as Township 9 Park
- Transit Plaza, to be named as Bercut-Richards Plaza

If and when ownership of the parcel of land which is not located within the Project Site, but which borders the Property on North 5<sup>th</sup> Street (the “5<sup>th</sup> Street Park”) is transferred to CITY, then “Parks” also includes all improvements within the 5<sup>th</sup> Street Park. The 5<sup>th</sup> Street Park is fully developed and currently owned by the County of Sacramento. CITY anticipates that the County will transfer the 5<sup>th</sup> Street Park to CITY. The 5<sup>th</sup> Street Park was included in the Hearing Report.

2.2 **Scope of Street Maintenance Work.** Under this Agreement, the T9 OA will be responsible for maintaining only the Special Street Improvements within the Streets as defined in Section 2.1.1. CITY will retain responsibility for maintaining the remaining portions of the Streets, including, without limitation, the roadway paving, curbs, manhole covers, the standard street lights which are located on Richards Blvd, regulatory traffic signage and striping, traffic signals, and all utility improvements within

the Streets, including, without limitation, the storm drainage vaults and chambers. Individual property owners will remain responsible for Street sidewalk maintenance in accordance with the City Code, as summarized in Exhibit B, which is attached and incorporated herein by this reference. Nothing contained herein is intended to conflict, nor shall any term or condition in this Agreement be valid and enforceable if it conflicts, with the City Code.

2.3 **Utilities.** T9 OA shall be responsible for the cost of all utilities provided by CITY, SMUD, PG&E and the Sacramento Regional County Sanitation District (SCRSD) for the Special Public Improvements. These utility costs shall be part of the cost of maintaining the Special Public Improvements. The utility billings submitted to CITY for reimbursement shall be based on meter readings that only measure the services for the Special Public Improvements or the utility costs can be apportioned by other means of measurement satisfactory to the CITY.

2.4 **Maintenance Standards.** In performing maintenance work under this Agreement, the T9 OA shall maintain the Special Public Improvements in good repair and condition and in compliance with the manufacturer's specifications, all applicable laws, regulations and the City Code, and all of the following requirements:

2.4.1 **Special Street Improvements.** The T9 OA shall routinely inspect the Special Street Improvements and repair or replace any defective, damaged or missing components on an as needed basis to maintain the improvements in a safe and attractive condition and in full operation in accordance with the original improvement plans and specifications and the manufacturer's specifications, as applicable, and the Design Guidelines. Maintenance of all Landscaping improvements within the Street rights of way shall comply with Section 2.4.2, below.

2.4.1.1 **Sidewalks.** The T9 OA shall routinely inspect the street sidewalks and repair or replace any defect (as defined in Exhibit B) to maintain the sidewalks in a safe and attractive condition and in full operation in accordance with the original improvement plans and specifications, unless the property owner holding the fee interest in the defective portion of the sidewalk is required to undertake the repair work in accordance with the City Code, as summarized in Exhibit B. If the property owner is required to repair the defective portion of the sidewalk, the T9 OA may assist CITY in coordination with the property owner to insure that the repairs are made expeditiously, in accordance with CITY specifications, and the repair costs are paid for by the property owner.

2.4.1.2 **Special Paving.** Unless an exception is approved in advance by CITY in writing, the T9 OA shall repair or replace any defective, damaged or missing pavers, colored concrete, and similar special paving within the Street right of way with the same or substantially the same materials to maintain the design and appearance of the special paving in accordance with the Design Guidelines. If the T9 OA fails or refuses to repair or replace the special paving or this Agreement is terminated or cancelled, CITY shall have no obligation to repair

or replace the special paving with the same or substantially the same materials and the Parties acknowledge that CITY will instead use asphalt or concrete to maintain those improvements notwithstanding the Design Guidelines.

2.4.1.3 Ornamental Street Lights. Unless an exception is approved in advance by CITY in writing, the T9 OA shall repair or replace any defective, damaged or missing components of the ornamental street lights (e.g., acorn design) within the Street right of way with the same or substantially the same materials to maintain a street lighting system with a uniform appearance in accordance with the Design Guidelines.

2.4.1.4 Non-Regulatory Signage. The T9 OA may, with CITY's prior written approval, modify, remove and replace all directional and informational non-regulatory signage within Streets as may be needed or as may be desired by the T9 OA. No signage shall be permitted to remain in place or be erected if it blocks visibility or an accessible path, or the content is incorrect or contains commercial or political speech, as determined by CITY in its sole discretion. The T9 OA shall remove or relocate all unpermitted signage after receipt of CITY's written notice which specifies the violation and the corrective action required.

2.4.2 Street Landscaping. The Landscaping along Streets within the Property shall be maintained by the T9 OA at or above the standards specified in that certain document entitled City of Sacramento Landscape Maintenance Services General Specifications and Provisions (LS10-1) dated February 23, 2010 (the "Street Landscape Maintenance Standards"), which is incorporated herein by reference as though fully set forth. The T9 OA acknowledges that it has had an opportunity to fully review the Street Landscape Maintenance Standards prior to execution of this Agreement and consents to be subject to such standards. If CITY amends and/or restates such standards, the T9 OA shall comply with the revised standards after receipt of a copy thereof.

2.4.3 Parks. All improvements within Parks shall be maintained by the T9 OA at or above the standards specified in that certain document entitled Exhibit A of the City of Sacramento Park Maintenance Services General Specifications and Provisions (PLS06-1) dated September 15, 2006 (the "Park Maintenance Standards"), which is incorporated herein by reference as though fully set forth. The T9 OA acknowledges that it had had an opportunity to fully review the Park Maintenance Standards prior to execution of this Agreement and consents to be subject to such standards. If CITY amends and/or restates such standards, the T9 OA shall comply with the revised standards after receipt of a copy thereof. Because some of the Parks may include improvements which are not addressed in the Park Maintenance Standards, CITY may notify the T9 OA in writing of such additional maintenance specifications for those improvements. The Parties shall strive to identify such additional maintenance obligations at the time the Park design is subject to review and approval by CITY and prior to CITY's acceptance of the Park and assignment of its maintenance to the T9 OA.

**2.4.4 Fountains and Water Features.** The costs for maintenance of fountains and other water features within Streets and Parks so that they remain operational and in an attractive condition can be significant because pumps, filters and other equipment will have to be replaced in the future, the water may have to be specially treated, and the drains may need to be cleaned-out frequently. The Parties acknowledge and understand that if the costs for CITY and the T9 OA maintenance of the Special Public Improvements as set forth in the Hearing Report exceeds the Maximum Special Tax and/or the T9 OA refuses to continue to maintain or to properly maintain the fountains and other water features in accordance with the plans and specifications and the manufacturer's specifications; CITY has the right to discontinue operation of the fountains and/or the other water features and may remove all or part of such improvements and equipment. However, before the CITY takes such action, it shall notify the T9 OA in writing of the basis and scope of its proposed action and the Parties shall meet to determine if they can mutually agree to modify the design or operation of the fountains and other water features and/or if the T9 OA is willing to continue to maintain such improvements and equipment without full reimbursement of such costs with the Special Tax proceeds.

**2.5 CITY's Reserved Rights.** Notwithstanding the CITY's assignment of the maintenance responsibilities for the Special Public Improvements to the T9 OA under this Agreement, CITY retains the right to undertake maintenance of the Special Public Improvements without providing prior notice to the T9 OA if, in CITY's sole and absolute discretion, CITY determines that immediate repairs or replacements are needed to protect the public health or safety. CITY may also at any time and without prior notice to the T9 OA prevent public access and use of the Special Public Improvements until repairs can be made by CITY or by the T9 OA. CITY may, but is not required to, routinely inspect the Special Public Improvements to verify if the T9 OA is properly discharging its duties and obligations under this Agreement. CITY will notify the T9 OA if any omissions or violations are discovered and may issue directives to correct the deficiencies without the need for an amendment to this Agreement. CITY may off-set its costs to undertake these reserved rights from the Special Tax proceeds.

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

**2.7 Maintenance Schedule.** The T9 OA shall submit to CITY's Project Manager for approval a maintenance performance schedule ("Maintenance Schedule") for each existing Street and Park, the dedication of which has been accepted by CITY, within thirty (30) days from the Effective Date. A new or revised Maintenance Schedule shall be submitted within thirty (30) days after each Park and each Street has been accepted by CITY, or after receiving the CITY's written request for a new or revised schedule. Each Maintenance Schedule shall identify all of the maintenance tasks and the frequency per week when each task will be undertaken by the T9 OA. The Maintenance Schedule shall identify all of the T9 OA contractors which are under

contract to undertake maintenance of each of the Special Public Improvements. CITY will not unreasonably withhold, condition of delay approval of each Maintenance Schedule. CITY may suspend the T9 OA's right to reimbursement of costs under this Agreement if it fails to timely submit a new or revised Maintenance Schedule when requested and extending until the new or revised Maintenance Schedule has been approved by CITY.

2.8 **Site Access.** The T9 OA covenants that the CITY Project Manager, CITY inspectors and any other CITY officers, employees, agents and contractors and consultants will be permitted access into the Project Site to inspect the work site and the progression of the maintenance of the Special Public Improvements at all times. The T9 OA shall also permit site inspections by any other public entities or public utilities which have issued permits for the work.

2.9 **Rights of Entry.** The T9 OA and its contractors shall have rights of entry across property owned or controlled by CITY to undertake the maintenance work as permitted under this Agreement if CITY has approved the Maintenance Schedule and the maintenance contract. However, CITY, in its sole and absolute discretion, may deny such access at any time if it determines that such access may unreasonably interfere or impede with CITY operations, traffic controls, construction of CITY projects, or threaten the public health, safety or welfare. CITY may also deny T9 OA contractors access to property owned or controlled by CITY if CITY has issued to the T9 OA a stop work order as set forth in Section 2.10.1, or the immediate denial of access is required to prevent damage to the Special Public Improvements.

2.10 **Inspection of Work.** Should the CITY Project Manager or a CITY inspector find noncompliance by a T9 OA contractor with the maintenance requirements set out in this Agreement, applicable state and local laws and regulations, or the work threatens the public health, safety or welfare; the CITY Project Manager will notify the T9 OA's site superintendent of such noncompliance and they shall jointly determine the nature of the corrective action to be taken in accordance with the terms of this Agreement.

2.10.1 **Stop Work Order.** If the CITY Project Manager and the T9 OA's site superintendent are unable to agree upon the corrective action to be taken, the CITY Project Manager may order that work on certain items or areas of the Special Public Improvements be stopped immediately. The T9 OA shall comply with all of the requirements set forth in the stop work order and must obtain the CITY Project Manager's written approval before work by the T9 OA contractor can resume.

2.11 **Changes to Scope of Maintenance Work; Termination of Agreement.** CITY reserves the right, for its convenience and in its sole and absolute discretion, at any time to terminate and remove from the scope of this Agreement any and all of the Special Street Improvements, Parks and/or the LRT Station truss by providing written notice thereof to the T9 OA and specifying the effective date that CITY will assume responsibility for maintenance thereof. However, CITY shall remain liable to make

payment to the T9 OA for its costs to cancel or partially terminate its contracts for maintenance of the Special Public Improvements which costs are caused solely by the CITY's action. If CITY removes all of the Special Street Improvements and Parks from the scope of this Agreement, then this Agreement shall terminate for the CITY's convenience as of the effective date of CITY's assumption of all of the maintenance responsibilities for the Special Public Improvements. In that event and if applicable, CITY shall arrange with RT to provide Special Tax funding for the costs for continued maintenance of the LRT Station truss as set forth in the CITY-RT agreement.

**2.12 Indemnification for Claims.** The T9 OA agrees and covenants to, and shall fully indemnify, defend and hold harmless, CITY and its elective and appointive boards, commissions, officers, employees, agents, contractors and subcontractors from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively "Claims") arising by reason of any death, bodily injury, personal injury, property damage, and losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any actions or omissions in connection with the maintenance of the Special Public Improvements by the T9 OA, which includes the T9 OA's officers, employees, agents, contractors and subcontractors.

Notwithstanding the foregoing paragraph, the T9 OA shall not be liable hereunder to indemnify, defend or hold harmless CITY or its elective and appointive boards, commissions, officers, employees, agents, contractors or subcontractors against any Claims alleging the sole and active negligence of CITY arising from CITY's inspection and maintenance of the Special Public Improvements; provided that nothing in this Agreement shall be construed as a waiver by CITY of any immunity or defense it may have under applicable laws relating to any such Claim, including without limitation, immunity or defenses relating to the design of the Special Public Improvements and construction and maintenance thereof.

**2.13 Indemnification for Hazardous Substances.** The Parties acknowledge and understand that CITY has not conducted any review, examination or assessment to assess, identify or detect the presence of any Hazardous Substances on, under or around the Property or the Special Public Improvements. The T9 OA agrees and covenants to, and shall fully indemnify, defend and hold harmless CITY, and its elective and appointive boards, commissions, officers, employees, agents, contractors and subcontractors from and against any and all Claims (as defined in Section 2.12) arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal by the T9 OA and/or its contractors of any Hazardous Substances on, about, or around the portion of the Property on which the Special Public Improvements are located.

**ARTICLE III**  
**CONTRACTING FOR MAINTENANCE WORK**

3.1 **Special Tax.** T9 shall comply with this Article III for all Special Public Improvements maintenance work to be funded by the Special Tax. This Article III shall not apply to maintenance of the Special Public Improvements if the work is to be funded solely by the T9 OA and not with Special Tax proceeds. .

3.2 **Solicitations and Contracts.** The Parties anticipate that the T9 OA will perform its maintenance obligations under this Agreement using third party contractors rather than its own forces. For maintenance work funded with the Special Tax assessed by CITY, the T9 OA must comply with the City Code bidding and procurement requirements and all applicable state laws and regulations for the type of maintenance work to be performed on the Special Public Improvements as follows:

3.2.1 **Bidding Requirements.** The solicitation requirements set forth in CITY's Administrative Policy for procurement of non-professional services, AP 4101, which is incorporated herein by this reference as though fully set forth, shall be followed by the T9 OA and the contract shall be awarded to the lowest responsive and responsible bidder, unless CITY approves in writing T9 OA's request to vary from such requirements. The T9 OA acknowledges that it has had an opportunity to fully review AP 4101 prior to execution of this Agreement.

3.2.2 **Standard Contract Provisions.** The T9 OA shall include in its maintenance service contracts substantially the same terms and conditions as set forth in the CITY's standard contract provisions, which are set forth in Exhibit C and attached and incorporated herein by this reference. CITY may revise its standard contract provisions during the term of this Agreement and the T9 OA shall include the revised requirements in its maintenance service contracts after receipt thereof from CITY.

3.2.3 **State Law Requirements.** The T9 OA shall include in its invitations to bid and contracts for maintenance of the Special Public Improvements the applicable state law requirements in effect at the time of bidding, which include, without limitation, contractor licensing and workers compensation insurance. In addition, the invitation to bid and contract for maintenance of the Special Public Improvements shall include the state law requirements for payment of the applicable prevailing wage for all of the contractor's and subcontractor's employees and submittal of certified payroll records if applicable to the type of maintenance work to be performed (see Labor Code Section 1720 *et seq.* and State Department of Industrial Relations regulations), but only if the total contract amount will exceed \$25,000 (per City Code Section 3.60.180).

3.2.4 **City Code Requirements.** The T9 OA shall also include in its invitations to bid and contracts for maintenance of the Special Public Improvements the following CITY requirements, with the terms and provisions

based on the applicable City Code chapter in effect at the time the invitation to bid is issued:

3.2.4.1 Bid Preferences. Bid price preferences to promote the participation and utilization of small and emerging business enterprises (SBE/ESB) and local business enterprises (LBE) as set forth in City Code Chapter 3.60 (see Article VIII). The CITY's current bid specifications for SBE/ESB and LBE preferences is set forth in Exhibit D, which is attached and incorporated herein by this reference.

3.2.4.2 Business Operations Tax. All contractors must have a valid CITY business operations tax certificate at the time of contract award.

3.2.4.3 Living Wage and Health Benefits. All contractors must comply with the living wage requirements as set forth in Chapter 3.58 of the City Code. The CITY's current living wage requirements are set forth in Exhibit D of the Street Landscape Maintenance Standards.

3.2.4.4 Non-Discrimination in Employment Benefits. All contractors must comply with the non-discrimination in employee benefits as set forth in Chapter 3.54 of the City Code. The current non-discrimination in employee benefit requirements are set forth in Exhibit E of the Street Landscape Maintenance Standards.

3.2.5 Construction Repair Work. If the scope of the maintenance work requires reconstruction of all or a portion of a Public Improvement, then the invitation to bid and contract requirements must conform with the state laws and regulations and the City Code requirements (Chapter 3.60) for public works projects. However, prevailing wage requirements only apply if the total contract amount will exceed \$25,000 (per City Code Section 3.60.180). In addition, for public works contracts in excess of \$25,000, payment and performance bonds shall be required as a condition of contract award in the form which is substantially the same as the forms set forth in Exhibit E, which is attached and incorporated herein by this reference. CITY shall be named as an additional obligee in all payment and performance bonds. The T9 OA shall furnish copies of the contractor's bonds to the CITY Project Manager for approval prior to issuance of a notice to proceed to the contractor to commence repair work for the Special Public Improvements.

3.2.6 Insurance. All contractors shall be required as a condition of contract award to furnish a certificate of insurance substantiating the fact that the contractor possesses insurance coverages in accordance with the CITY's insurance requirements as provided as Exhibit C. CITY may revise the insurance requirements during the term of this Agreement and T9 OA shall comply with the revised requirements after receipt thereof from CITY. The contractor's insurance policies shall be endorsed to name CITY as an additional insured and the T9 OA shall furnish copies of the contractor's insurance

certificates to the CITY Project Manager for approval prior to issuance of a notice to proceed to the contractor to commence maintenance and repair work for the Special Public Improvements.

3.2.7 **Permits.** Prior to commencement of any maintenance work, the contractor shall be required to pay the applicable fees and obtain all permits and approvals required for such work from CITY and from all applicable federal, state or local agencies.

3.2.8 **Stop Work Order.** The T9 OA shall include in its maintenance contracts the right of CITY to issue to contractor a stop work order with regard to maintenance of the Special Public Improvements, in accordance with the provisions of Sections 2.9 and 2.10.

3.3 **Bidding Process.** The T9 OA shall not issue any invitation for bid for any Special Public Improvement maintenance work funded with the Special Tax prior to receipt of the CITY Project Manager's written approval of the form and content of the solicitation and method of advertisement, which approval shall not be unreasonably withheld or conditioned.

3.4 **Contract Award.** The T9 OA must obtain prior written approval by the CITY Project Manager before entering into any Special Public Improvement maintenance contracts funded with the Special Tax.

3.5 **No CITY Funding Guarantee.** Notwithstanding CITY's review or approval of the T9 OA's submittals, invitations to bid and contracts for maintenance of the Special Public Improvements as set out above, nothing herein shall impose any obligation on CITY to insure that the T9 OA receives all of the Special Tax proceeds as may be needed to pay for such work.

#### **ARTICLE IV**

#### **REIMBURSEMENT OF MAINTENANCE COSTS**

4.1 **Special Tax.** CITY established the Special Tax to fund the cost of maintaining the Special Public Improvements. CITY and T9 OA may, from time to time, agree that specified Special Public Improvements maintenance work will be funded with the Special Tax proceeds. This Article IV shall only apply to Special Public Improvements maintenance work to be funded by the Special Tax.

4.2 **Eligible Costs.** The payments made by the T9 OA under its contracts, as approved by CITY, for the maintenance of the Special Public Improvements undertaken in compliance with this Agreement, and which do not exceed the rates and amounts under each contract, are "Eligible Costs." The term Eligible Costs also includes the T9 OA's direct costs, excluding overhead and profit, as approved by CITY to: (i) prepare and advertise the bid solicitations and award the contracts, (ii) pay applicable permit

fees, (iii) inspect the Special Public Improvements and the contractor's work, (iv) process payment of contractor's invoices, and (v) resolve any contractor claims. The T9 OA's internal staff costs, office overhead, other overhead and indirect costs, and any mark-ups or profit are not Eligible Costs. The T9 OA shall provide to CITY copies of all contracts, change orders, and invoices for the costs of the maintenance work, and such other documentation as may be reasonably requested by CITY, to verify the Eligible Costs incurred and paid by the T9 OA. The T9 OA shall not be entitled to reimbursement for Special Public Improvements maintenance work that is under a warranty required by an improvement agreement between CITY and Developer. The Maintenance Schedule required under Section 2.7, above, shall identify the expiration date of the warranty period for each Street and Park. However, nothing contained herein is intended to prevent the T9 OA from undertaking warranty work for or on behalf of the Developer.

**4.3 Net Special Tax Proceeds.** The amount of funds available to pay the T9 OA's Eligible Costs each fiscal year (July 1 through June 30) shall not exceed the "Net Special Tax Proceeds," which is the gross amount of the Special Tax actually collected or received by CITY during that period plus any distribution from carryover reserve minus: (i) a minimum reserve of \$25,000, (ii) CITY's estimated maintenance costs for the subsequent fiscal year for improvements included in the Hearing Report which were not delegated to the T9 OA to maintain under this Agreement, (iii) CITY's direct staff costs to administer this Agreement, inspect the maintenance work, and process payments to the T9 OA, and (iv) CITY's costs to administer the Special Tax District and collect the Special Tax.

**4.4 Annual Budget.** The T9 OA shall submit to CITY a Maintenance Schedule and cost estimate (collectively the "Annual Budget") for the maintenance work to be performed by the T9 OA under this Agreement for the upcoming fiscal year (July 1 to June 30) by March 15. The Annual Budget shall include all costs and all sources of funds for the maintenance of the Special Public Improvements to be undertaken by the T9 OA. The Parties shall meet within thirty (30) days thereafter to review the proposed Annual Budget and the estimated amount of the Net Special Tax Proceeds expected to be available to pay the T9 OA's invoices for the upcoming fiscal year, and to identify if there are any changes to the method, manner, or scope of the maintenance work which is mutually agreeable to the Parties that could result in cost savings.

**4.5 Commencement and Schedule of Payments.** The annual Special Tax will be collected with the regular county property taxes commencing with the 2013-14 Tax Roll. Payment by CITY for the T9 OA's Eligible Costs will occur in arrears after CITY receives the Special Tax proceeds from the county, which occurs twice each year by the months of March and July. The T9 OA may invoice CITY for work performed no more frequently than twice per year. No invoice may be submitted until after the work has been performed and the T9 OA has made payment to the contractor. All invoices shall be in the form as specified by CITY and accompanied by the information and back-up documentation as reasonably required by CITY to verify that the work has been properly completed and the contractor has been properly paid. CITY shall make payment within sixty (60) days after receipt of a proper invoice. The amount CITY shall

owe the T9 OA shall not exceed the Net Special Tax Proceeds held by CITY at the time of payment of the invoice. Any amount that may be owed to the T9 OA which was not paid due to the insufficiency of the amount of the Net Special Tax Proceeds may be carried over to the next invoice period. In no event shall CITY be liable to the T9 OA for interest charges due to late payment or non-payment of an invoice because of the insufficiency of the Net Special Tax Proceeds to make such payment.

4.6 **Release of Liens.** If CITY receives a written notice from a contractor, subcontractor, supplier, or laborer performing maintenance work for the Special Public Improvements under contract to the T9 OA that such person or entity has not been properly paid for work performed, CITY may withhold up to 125% of the amount in dispute until either the amount owed has been fully paid or the claim has been satisfactorily resolved. Upon request of the CITY Project Manager, the T9 OA shall provide a lien release to assure that payment of any outstanding claims of the the T9 OA's contractors, subcontractors, suppliers and laborers have been fully paid.

4.7 **Sources for Reimbursement.** As set forth on Section 4.3, the only source of funds to pay the T9 OA's Eligible Costs for maintenance of the Special Public Improvements is the Net Special Tax Proceeds. Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, CITY's general or special funds, or any other funds in the hands of CITY or its accounts now and in the future. The obligations under this Agreement are not a debt of CITY, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of CITY's property, assets, income, receipts, or revenues.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

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

5.2 **Legal Actions by Parties.** In addition to any other rights or remedies as set out in this Agreement, either Party may institute legal action to enforce or require performance of the terms of this Agreement, to cure, correct, or remedy any default (as defined in Section 5.3) by any other Party to this Agreement, or to enjoin any threatened or attempted violation hereunder. The prevailing party in such suit or proceeding shall be entitled to recover from the other Party reasonable costs and expenses, including

attorneys' fees, including outside counsel (and, in the case of CITY, the City Attorney). This Agreement shall be construed and enforced in accordance with the laws of the State of California, the state in which the Agreement is signed. The Parties agree to submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento, California. Nothing in this Agreement shall be construed to prohibit the Parties from engaging in alternative dispute resolution processes prior to initiating legal proceedings, including, without limitation, mediation and arbitration, upon the discretion and mutual consent of the Parties.

**5.3 Cancellation for Breach.** In the event of a default by either Party, the other Party may cancel this Agreement for breach by providing written notice to the other Party of the basis of the default and the effective date of cancellation. Subject to any mutual extensions, notice and opportunity to cure, the term “default” shall mean a material failure of performance or a substantial and unreasonable delay in performance by either Party of any of term, condition, obligation or covenant of this Agreement, including, without limitation, the abandonment or failure to properly maintain the Special Public Improvements. However, the T9 OA shall not be in default under this Agreement if the sole cause of its abandonment or failure to properly maintain the Special Public Improvements was due to the fault of the CITY’s failure to properly maintain the Streets and Parks for which CITY has or may retain such responsibility, which prevented or impeded the T9 OA from discharging its obligations under this Agreement.

Unless the following actions have been terminated or released within sixty (60) days thereafter, the term “default” shall also mean: (i) the transfer or assignment of the T9 OA’s obligations under this Agreement without the CITY’s prior written consent, (ii) a voluntary filing by the T9 OA for reorganization or other relief under any Federal or State bankruptcy or insolvency law, (iii) an involuntary bankruptcy or insolvency action filed against the T9 OA by a trustee, or (iv) an appointment of a receiver to take possession of the assets of the T9 OA.

**5.3.1 Cure Period.** In the event of an alleged default of any term or condition of this Agreement, the Party alleging such default shall give the other Party notice in writing as provided in Section 5.14 specifying the nature of the alleged default, the manner in which said default may be satisfactorily cured, and a reasonable period of time in which to cure the default, which shall not be less than thirty (30) days following receipt of notice of default. If requested by either Party, the Parties shall meet and confer in an attempt to resolve the matter raised by the notice of default. During any such cure period, the Party charged shall not be considered in default for purposes of cancellation or termination of this Agreement and neither Party may institute legal proceedings related to the alleged default.

**5.3.2 Remedies After Expiration of Cure Period.** After expiration of the cure period, if the alleged default has not been cured in the manner set forth in the notice and to the satisfaction of the Party issuing the default notice, the non-defaulting Party may at its option: (i) institute legal proceedings to obtain

appropriate judicial relief including, without limitation, mandamus, specific performance, or injunctive relief; and/or (ii) give the other Party notice of intent to cancel this Agreement.

5.4 **Enforced Delay, Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to CITY by the T9 OA within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon by the Parties. The T9 OA's financial inability to perform shall not be a ground for claiming an enforced delay. The Party claiming force majeure or enforced delay shall notify the other Party of its intent to claim a permitted delay and the specific ground for such delay as soon as is reasonable based on the circumstances. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay.

5.5 **Representations.** Each individual executing this Agreement on behalf of its corporation represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement. Each of the covenants, conditions and statements contained in this Agreement was and is a material inducement to CITY to enter into this Agreement and CITY materially relied upon each such covenant, condition, and statement in making this Agreement. The T9 OA also represent that to the extent approval of this Agreement is required by any lender, its members, or by any third party, such consent has been obtained prior to T9 OA's execution of this Agreement.

5.6 **Audit.** The T9 OA shall maintain its books, records, payrolls, documents, and other data and evidence directly pertinent to work performed under this Agreement (collectively "Accounting Records") in accordance with generally accepted accounting principles (GAAP) and practices. The T9 OA shall maintain the Accounting Records to support all costs supported in whole or part by the Special Tax levied and reimbursed in support of those costs under this Agreement for a period of four (4) years from the date of completion of each contract for maintenance services. The T9 OA shall permit CITY or its duly authorized representative to inspect the Accounting Records to conduct financial audits of the T9 OA's Accounting Records pertaining to the payments made by CITY under this Agreement within ten (10) days from the date of issuance of a written notice requesting inspection of the T9 OA's Accounting Records.

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

5.8 **Assignment.** This Agreement may not be assigned without the mutual written consent of the other Party and any attempt to assign this Agreement without such consent shall be void. Without the prior written consent of CITY, which may be withheld in the sole discretion of CITY, the T9 OA nor any person acting on its behalf or on behalf of any creditor or creditors of the T9 OA shall assign, hypothecate or otherwise transfer or pledge or encumber any sum which may become due pursuant to this Agreement or create any security interest of any nature therein.

5.9 **Successors.** All of the covenants, terms and conditions set forth in this Agreement shall be binding upon the Parties and to their respective heirs, successors and assigns. All of the covenants, terms and conditions set forth in this Agreement shall inure to the benefit of the respective heirs, successors and assigns of the Parties subject to compliance with the provisions of Section 5.8.

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

5.11 **Survivorship.** The T9 OA's obligations and covenants arising under this Agreement pertaining to indemnity, attorneys' fees, and audit, and in particular as those obligations are set out in Sections 2.12, 2.13, 5.2, and 5.6, shall survive the termination or cancellation of this Agreement.

5.12 **No Agency, Joint Venture, Partnership, or Other Relationship.** Neither the T9 OA nor any of its respective employees, agents, consultants, contractors or subcontractors are or shall be considered to be agents of CITY in connection with the performance of any of the T9 OA's obligations under this Agreement. Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between CITY and the T9 OA. Each Party is acting as an independent entity and not as an agent of the other in any respect.

This Agreement shall constitute only an obligation to pay money for the purposes stated herein upon satisfaction of the conditions precedent stated herein, and no person or government entity shall have the right to obtain any payment, present value or otherwise, of any obligation pursuant to this Agreement until all such conditions precedent are satisfied. This Agreement does not create or constitute a trust, expressed or implied, for the benefit of the T9 OA, or any other person or third party. CITY shall have no fiduciary duty to the T9 OA, or to any other person or third party with respect to any funds or source of revenue with respect to any obligation created or anticipated by this Agreement.



"an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this Agreement.

5.18 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties as provided in Section 5.10. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof.

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

5.20 **Integrated Documents/Entire Agreement.** This Agreement, the Exhibits and the documents incorporated by reference in this Agreement or in the Exhibits are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. This Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. No oral or written statement, representation, or agreement - written, oral, express, or implied - concerning the subject matters contained herein shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

[signature page follows]

**IN WITNESS WHEREOF**, the CITY and the T9 OA have executed this Agreement as of the Effective Date.

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

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

APPROVED AS TO FORM:

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

ATTEST:

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

T9 OA:  
**TOWNSHIP 9 OWNERS ASSOCIATION**,  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
T9 OA Counsel



# Exhibit B

## STREET SIDEWALK MAINTENANCE STANDARDS

### DEPARTMENT OF TRANSPORTATION SIDEWALK INSPECTION – POLICIES, PROCEDURES AND GUIDELINES

June 2, 2010

#### **The California Streets and Highway Code 5610 states:**

When any portion of the sidewalk is out of repair or pending reconstruction and in a condition to endanger persons or property or in a condition to interfere with the public convenience in the use of such sidewalk, the superintendent of streets shall notify the owner or person in possession of the property fronting that portion of such sidewalk so out of repair, to repair the sidewalk.

#### **The City of Sacramento Code 12.32.020 states:**

An owner shall maintain and repair any defective sidewalk fronting such owner's lot, lots or portion of a lot. Where a defective sidewalk is caused in whole or in part by a tree root or roots, the owner shall nevertheless have the duty to repair the sidewalk. The director may grant permission to cut the root(s) after consulting with the city arborist.

**“Defective Sidewalk”** Means a sidewalk where, in the judgment of the inspector, the vertical or horizontal line of grade is altered or displaced or such other condition exists that interferes with the public convenience in the use of the sidewalk.

Some examples of these conditions are:

- Has a significant vertical or horizontal displacement
- An area of sidewalk that has spacing with a width of ½” or greater
- Settlement of sidewalk causing water to pond and creating a slipping condition to pedestrians
- Excessive cross slopes caused by tree roots
- Chipped and spalled sidewalk surfaces creating a defective condition
- An area of sidewalk that is off grade (and adjacent to the curb and gutter) to the point where the curb and gutter has a significant displacement between the curb, gutter and sidewalk
- Any conditions identified by the inspector as defective or pose an inconvenience to the pedestrian path of travel.

**“Repair”** Means elimination of a defective sidewalk by removal and replacement of all or portion of the existing sidewalk or by other methods.

#### **Site Inspections**

Due to the volume of sidewalks in the city, sidewalk inspections are complaint based or a defective condition has been identified through the daily on site work activities of the inspector. Once a complaint has been made by the public or other, **the general rule is the inspector is to inspect the site of the complaint identified as defective and 50ft. to 75ft. in either direction, or the corner if closer.**

#### **When Property Owners Are Not Responsible For Sidewalk Repairs**

The property owner is not responsible for the repair of the sidewalk when the following exist:

- City Utility cuts have caused the defect (water, waste water, electrical pull boxes, SMUD, etc;)
- Round Corners at intersecting streets (curb return to curb return)
- A.D.A Curb Cut Ramps
- Persons other than property owners has damaged sidewalks (and been identified)
- Double frontage

# EXHIBIT C

## CITY STANDARD CONTRACT PROVISIONS

(Maintenance Contract Over \$25,000)

**THIS AGREEMENT**, dated for identification \_\_\_\_\_, 20\_\_\_\_, is made and entered into between the CITY OF SACRAMENTO, a municipal corporation (“City”), and \_\_\_\_\_ “Contractor”).

The City and Contractor hereby mutually agree as follows:

### 1. CONTRACT DOCUMENTS

The Contract Documents, sometimes also referred to as the “Contract,” consist of the following items, which are hereby incorporated by reference as if set forth in full in this Agreement:

- The Notice to Contractors
- The Proposal Form submitted by the Contractor
- The Instructions to Bidders
- The Emerging and Small Business Enterprise (ESBE) Requirements
- The Requirements for the Non-Discrimination in Employee Benefits by City Contractors Ordinance and the Declaration of Compliance
  
- The City’s Reference Guide for Construction Contracts
- The Addenda, if any
- This Agreement
- The Standard Specifications
- The Special Provisions
- The Plans and Technical Specifications
- The drawings and other data and all developments thereof prepared by City pursuant to the Contract

Any modifications of any of the foregoing made or approved by City, including but not limited to duly authorized change orders.

Unless specifically noted otherwise, references to the “Standard Specifications” shall mean and refer to the Standard Specifications for Public Construction of the City of Sacramento approved by the Sacramento City Council on June 4, 2007 (Resolution No. 2007-350), and any subsequent amendments thereto approved by the Sacramento City Council or the Sacramento City Manager. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles and headings contained in the Contract Documents are provided solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.

**2. DEFINITIONS**

Unless otherwise specifically provided herein, all words and phrases defined in the Standard Specifications shall have the same meaning and intent in this Agreement.

**3. AGREEMENT CONTROLS**

In the event of a conflict between any of the terms and conditions set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail, except that the provisions of any duly authorized change order shall prevail over any conflicting provisions of this Agreement.

**4. SCOPE AND TERM OF CONTRACT**

(A) Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of City, all the Work called for in the Contract Documents entitled:

\_\_\_\_\_ (PN: )

Contractor agrees to perform such Work in the manner designated in and in strict conformity with the Contract Documents.

(B) A general scope of work is contained in the Technical Specifications and may be further defined in a job/task order. Work shall be assigned to Contractor by City on an individual job or task basis, by City’s issuance of a job/task order that specifies the scope of work for that job or task. All such job/task orders will constitute part of this Contract, and the Contractor shall perform, comply with and be subject to all provisions of this Contract with regard to any work performed pursuant to any such job/task orders.

(C) For job/task orders exceeding \$25,000, pursuant to Sacramento City Code Section 3.60.180, the Contractor is required and agrees to pay the State of California, Department of Industrial Relations prevailing wage rates for covered trades employed. The prevailing wage rate may be found at <http://www.dir.ca.gov/dlsr/pwd/>. For job/task orders \$30,000 or greater, the Contractor agrees to utilize apprentices, as required by the State of California Labor Code.

(D) The initial term of this Contract is one (1) year from the date of City award. The Contract term may be extended for additional successive one (1) year periods, provided that the total Contract term including any such extensions shall not exceed five (5) years. A term extension shall become effective upon City’s issuance of a written notice of extension that is signed by Contractor.

**5. CONTRACT AMOUNT AND PAYMENTS**

(A) Payment for each job or task shall be authorized by job/task order as provided in Section 4, above, and City shall have no responsibility or liability for any payment not authorized by a City-issued job/task order. All payments shall be made in accordance with the schedule and procedures set forth in the Contract Documents and subject to deductions, withholdings and additions as specified in the Contract Documents.

- (B) Unit prices and hourly rates shall not exceed the amount(s) set forth in Contractor's Proposal Form, provided that for each year the Contract term is extended, to account for inflation, the unit prices and hourly rates set forth in Contractor's Proposal Form shall be increased by an amount equal to three (3) percent or the percentage increase for the previous 12 month period in the Consumer Price Index (CPI), San Francisco area, whichever is less.
- (C) Subject to deductions, withholdings and additions as specified in the Contract Documents, Contractor shall be paid the sum computed at such unit prices or hourly rates, or computed at a different price if such different price is determined by City in accordance with the Standard Specifications, based on the actual hours worked or actual amount of each such unit price item performed and/ or furnished and incorporated in the Work.
- (D) Maximum Annual Payment: The total amount paid for all Work authorized by job/task orders during any one year term of the Contract shall not exceed \$\_\_\_\_\_.

**6. PROGRESS PAYMENTS**

Subject to the terms and conditions of the Contract, City shall cause payments to be made upon demand of Contractor as follows:

- (A) On or about the first of the month, the Engineer shall present to the Contractor a statement (in the format required by City) showing the amount of labor and materials incorporated in the Work through the twentieth (20) calendar day of the preceding month. For job/task orders exceeding \$25,000, after both Contractor and Engineer approve the statement in writing, and the City's labor compliance officer provides written approval, the City shall issue a certificate for ninety-five (95) percent of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations. For job/task orders of \$25,000 or less, after both Contractor and Engineer approve the statement in writing, the City shall issue a certificate for one hundred (100) percent of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations.
- (B) No inaccuracy or error in said monthly estimates shall operate to release Contractor from damages arising from such Work or from enforcement of each and every provision of the Contract Documents, and City shall have the right subsequently to correct any error made in any estimate for payment.
- (C) Contractor shall not be paid for any defective or improper Work.
- (D) If the job/task order exceeds \$25,000, the remaining five (5) percent of the value of the Work performed under the Contract, if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, shall be released not later than sixty (60) days after completion and final acceptance by City of the Work specified in the job/task order. Acceptance by Contractor of the final payment for a job/task order shall constitute a waiver of all claims against the City arising under the Contract Documents, except for disputed claims in stated amounts that the Contractor specifically reserves in writing, but only to the extent that the Contractor has complied with all procedures and requirements applicable to the

presentation and processing of such claim(s) under the Contract Documents. Contractor shall be entitled to substitute securities for retention or to direct that payments of retention be made into escrow, as provided in Public Contract Code Section 22300, upon execution of the City's Escrow Agreement for Security Deposits in Lieu of Retention.

(E) The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code Section 20104.50, the date that the City receives a statement jointly approved as provided above shall be deemed to constitute the date that City receives an undisputed and properly submitted payment request from the Contractor. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Public Contract Code Section 20104.50.

(F) Statements may be personally delivered or mailed to:

City Of Sacramento, Department of General Services  
5730 24<sup>th</sup> Street, Bldg. #1  
Sacramento, CA 95822  
**ATTN: (PROJECT MANAGER NAME)**

## **7. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR**

When, under the provisions of this Contract or any applicable Laws or Regulations, City is authorized or required to withhold, deduct or charge any sum of money against Contractor, City may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate(s), or from any other moneys due or that may become due Contractor from City. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay City's charges, City shall have the right to recover the balance from Contractor or its Sureties.

## **8. COMMENCEMENT AND PROSECUTION OF WORK**

Contractor shall commence the Work for a job or task as directed in the City-issued job/task order and shall diligently prosecute the Work to final completion. The continuous prosecution of Work by Contractor shall be subject only to Excusable Delays as defined in this Agreement.

## **9. TIME OF COMPLETION**

If so specified in a City-issued job/task order, the Work required by the job/task order shall be brought to completion in the manner provided for in the Contract Documents on or before the date specified in the job/task order (hereinafter called the "Completion Date") unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete such Work by the Completion Date and in the manner provided for in the Contract Documents shall subject Contractor to liquidated damages as provided in this Agreement. Time is and shall be of the essence in the performance of the Contract and the Work.

## **10. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK**

The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability

of Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.

#### **11. ACCEPTANCE NOT RELEASE**

Contractor shall correct immediately any defective or imperfect work or materials that may be discovered before final acceptance any Work, whether or not such defect or imperfection was previously noticed or identified by the City. The inspection of the Work, or any part thereof, shall not relieve Contractor of any of its obligations to perform satisfactory work as herein specified.

Failure or neglect on the part of City or any of its officers, employees or authorized agents to discover, identify, condemn or reject defective or imperfect work or materials shall not be construed to imply an acceptance of such work or materials, nor shall such failure or neglect be construed as barring City from enforcing Contractor's warranty(ies) or otherwise recovering damages or such a sum of money as may be required to repair or rebuild the defective or imperfect work or materials whenever City may discover the same, subject only to any statutes of limitation that may apply to any such claim.

#### **12. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART**

The City shall have the right at any time to enter upon the Work and perform work not covered by this Contract, or to occupy and use a portion of the Work, prior to the date of acceptance of the Work, without in any way relieving Contractor of any obligations under this Contract.

#### **13. NO WAIVER OF REMEDIES**

Neither the inspection by City, its officers, employees or agents, nor any certificate or other approval for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City, its officers, employees or its agents shall operate as a waiver of any provision of the Contract Documents nor of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. All remedies provided in the Contract Documents shall be taken and construed as cumulative; in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

#### **14. WARRANTY**

Except as otherwise expressly provided in the Contract Documents, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect by City, Contractor warrants and guarantees all Work executed and all supplies, materials and devices of whatsoever nature incorporated in or attached to the Work, or otherwise provided as a part of the Work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after City acceptance of the Work performed for the applicable job/task order. Contractor shall repair or replace all work or material, together with any other work or material that may be displaced or damaged in so doing, that may prove defective in workmanship or material within this one year warranty period without expense or charge of any nature whatsoever to City.

In the event that Contractor shall fail to comply with the conditions of the foregoing warranty within ten (10) days after being notified of the defect in writing, City shall have the right, but shall

not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing warranty results in a condition that constitutes an immediate hazard to public health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary and permanent repairs that may be required as determined in the sole discretion and judgment of City.

In addition to the above, the Contractor shall make a written assignment of all manufacturer's and other product warranties to the City, prior to City acceptance of the Work performed for the applicable job/task order.

The Contractor's Performance Bond shall secure the performance of the Contractor's obligations under this Section 14, and the Contractor and its Surety shall be jointly and severally liable for these obligations.

#### **15. LIQUIDATED DAMAGES IF WORK NOT COMPLETED ON TIME**

- (A)** The actual fact of the occurrence of damages and the actual amount of the damages that City would suffer if the Work specified in a job/task order were not completed by the Completion Date specified therein are dependent upon many circumstances and conditions that could prevail in various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that City would suffer in the event of such delay include: loss of the use of the project; expenses of prolonged assignment to the project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired operation of other facilities dependent upon completion of the project; and the loss and inconvenience suffered by the public within the City of Sacramento by reason of the delay in the completion of the project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Contract to estimate the damages that may be incurred by City and the public due to the Contractor's delay in completion of the Work specified in a job/task order by the Completion Date specified therein, and shall be presumed to be the amount of damages sustained by the failure of Contractor to complete such Work within such time.
- (B)** If a job/task order specifies a Completion Date for the Work required by the job/task order, Contractor shall pay liquidated damages to City for failure to complete such Work by the Completion Date (as extended in accordance with the Contract Documents, if applicable) in the amount of \_\_\_\_\_ for each calendar day after the Completion Date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which such Work is completed. Such amount is the actual cash value agreed upon by the City and Contractor as the loss to City and the public resulting from Contractor's default.
- (C)** In the event Contractor shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments that otherwise would be or become due Contractor until the liability of Contractor under this section is finally determined. City shall have the right to use and apply such

payments, in whole or in part, to reimburse City for all liquidated damages due or to become due to City. Any remaining balance of such payments shall be paid to Contractor only after discharge in full of all liability incurred by Contractor under this section or otherwise under any provision of the Contract Documents or any applicable Law or Regulation. If the sum so retained by City is not sufficient to discharge all such liabilities of Contractor, Contractor shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as specified above shall in any manner be construed to constitute a release of any such liabilities nor a waiver of the City's right to withhold payment for such liabilities.

## **16. INDEMNITY AND HOLD HARMLESS**

- (A) Contractor shall defend, hold harmless and indemnify the City, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.
- (B) The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 16, nor shall the limits of such insurance limit the liability of Contractor hereunder. The provisions of this Section 16 shall survive any expiration or termination of the Contract.

## **17. CONTRACTOR SHALL ASSUME RISKS**

Until the completion and final acceptance by City of all Work under this Contract, the Work shall be under Contractor's responsible care and charge, and Contractor, at no cost to City, shall rebuild, repair, restore and make good all injuries, damages, re-erectments, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work.

## **18. GENERAL LIABILITY OF CONTRACTOR**

Except as otherwise herein expressly stipulated, Contractor shall perform all the Work and furnish all the labor, materials, tools, equipment, apparatus, facilities, transportation, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner and within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as a limitation or restriction of any general liability or

duty of Contractor, and any reference to any specific duty or liability shall be construed to be solely for the purpose of explanation.

## 19. INSURANCE

During the entire term of this Contract and until completion and final acceptance of all Work as provided in the Contract Documents, Contractor shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Contract. No additional compensation will be provided for Contractor's insurance premiums.

It is understood and agreed by the Contractor that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required of or carried by the Contractor.

### (A) Minimum Scope and Limits of Insurance Coverage

- (1) **Commercial General Liability Insurance**, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) **Automobile Liability Insurance** providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.
- (3) **Workers' Compensation Insurance** with statutory limits, and **Employers' Liability Insurance** with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.

### (B) Additional Insured Coverage

- (1) **Commercial General Liability Insurance**: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Contractor, products and completed operations of Contractor, and premises owned, leased or used by Contractor. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier.

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

- (2) **Automobile Liability Insurance**: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

(C) **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Contractor's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

(D) **Acceptability of Insurance**

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 19 must be declared to and approved by the City Risk Management Division in writing prior to execution of this Agreement.

(E) **Verification of Coverage**

- (1) Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative designated by City. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The City may withdraw its offer of contract or cancel the Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The City may withhold payments to Contractor and/or cancel the Contract if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

(F) **Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

## **20. FAILURE TO MAINTAIN BONDS OR INSURANCE**

If, at any time during the performance of this Contract, Contractor fails to maintain any item of the bonds and/or insurance required under the Contract in full force and effect, Contractor shall immediately suspend all work under the Contract and notify City in writing of such failure. After such notice is provided, or if City discovers such failure and notifies Contractor, the City thereafter may withhold all Contract payments due or that become due until notice is received by City that such bonds and/or insurance have been restored in full force and effect and that the premiums therefore have been paid for a period satisfactory to the Division of Risk Management. Contractor shall not resume work until notified by City to do so, and the City shall have no responsibility or liability for any costs incurred by Contractor as a result of such suspension of Work.

In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Contract will be sufficient cause for termination of the Contract by City.

The Contractor shall be solely responsible for, and shall defend, indemnify and hold harmless the City, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of Work or termination of the Contract under the provisions of this Section.

## **21. EXCUSABLE DELAYS**

For the purpose of these Contract Documents, the term "Excusable Delay" shall mean, and is limited to, delay caused directly by: acts of God; acts of a public enemy; fires; inclement weather as determined by the Engineer; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; acts of a governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the Work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by City insofar as they necessarily require additional time in which to complete the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's subcontractors or suppliers; or the prevention of Contractor from commencing or prosecuting the Work because of a Citywide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (i) any delay that could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor; (ii) any delay in the prosecution of any part of the Work that does not constitute a Controlling Operation, whether or not such delay is unavoidable; (iii) any reasonable delay resulting from time required by City for review of any Contractor submittals and for the making of surveys, measurements and inspection; and, (iv) any delay arising from an interruption in the prosecution of the Work on account of reasonable interference by other Contractors employed by City that does not necessarily prevent the completion of the entire Work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date specified in a job/task order (not in excess of the period of such delay as determined by City) and shall not under any circumstances increase the amount City is required to pay Contractor except as otherwise provided in these Contract Documents.

## **22. CONTRACTOR TO SERVE NOTICE OF DELAYS**

Whenever Contractor foresees any delay in the prosecution of the Work, and in any event as soon as possible (not to exceed a period of ten (10) calendar days) after the initial occurrence of any delay that Contractor regards as or may later claim to be an Excusable Delay, the Contractor shall notify the Engineer in writing of such delay and its cause, in order that the Engineer: (i) may take immediate steps to prevent if possible the occurrence or continuance of the delay; or (ii) if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the Work are delayed thereby. Said written notice shall constitute an application for an extension of time only if the notice requests such an extension and sets forth the Contractor's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part or whole of the Work, the Engineer, in estimating the amount due Contractor, will assume that any and all delays that may have occurred in its prosecution and completion were not Excusable Delays, except for such delays for which the Contractor has provided timely written notice as required herein, and that the Engineer has found to be excusable. Contractor shall not be entitled to claim Excusable Delay for any delay for which the Contractor failed to provide such timely written notice.

## **23. EXTENSION OF TIME**

If the Contractor complies with Section 22, above, and the Engineer finds a delay claimed by the Contractor to be an Excusable Delay, if the applicable job/task order specifies a Completion Date, the Contractor shall be allowed an extension of time to complete the Work that is proportional to the period of Excusable Delay determined by the Engineer, subject to the issuance by City of a revised job/task order granting such extension of the Completion Date. During a duly authorized extension for an Excusable Delay, City shall not charge liquidated damages against the Contractor for such delay.

If the City extends the time to complete the Work as provided herein, such extension shall in no way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties of the Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such extension of time. The granting of any extension of time as provided herein shall in no way operate as a waiver on the part of City of its rights under this Contract, excepting only extension of the Completion Date for such period of Excusable Delay as may be determined by the Engineer and approved as provided herein.

## **24. NO PAYMENT FOR DELAYS**

No damages or compensation of any kind shall be paid to Contractor or any subcontractor because of delays in the progress of the Work whether or not such delays qualify for extension of time under this Agreement; except that this provision shall not preclude the recovery of damages for a delay caused by the City that is unreasonable under the circumstances and that is not within the contemplation of the parties, provided that the Contractor timely submits all such written notice(s) and fully complies with such other procedures as may be specified in the Contract Documents or any Laws or Regulations for Contractor to claim damages for such delay.

## **25. CHANGES IN THE WORK**

Changes in the Work authorized or directed in accordance with the Contract Documents and extensions of time of completion made necessary by reason thereof shall not in any way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties on Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such change in Work and to any extension of time made by reason thereof.

## **26. TERMINATION AFTER COMPLETION DATE**

In addition to any other rights City may have, if any services or work required by a job/task order are not completed as of the Completion Date specified in the job/task order, if any (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), City may terminate the Contract at any time after the Completion Date (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), by providing a written notice to Contractor specifying the date of termination. Such notice also may specify conditions or requirements that Contractor must meet to avoid termination of the Contract on such date. If Contractor fails to fulfill all such conditions and requirements by such termination date, or, if no such conditions or requirements are specified, Contractor shall cease rendering services and performing work on such termination date, and shall not be entitled to receive any compensation for services rendered or work performed after such termination date. In the event of such termination, Contractor shall remain liable to City for liquidated damages incurred for any period of time prior to the termination date.

In addition to any other charges, withholdings or deductions authorized under the Contract or any Laws or Regulations, if City terminates the Contract pursuant to this section, City may withhold and deduct from any payment and/or retention funds otherwise due Contractor any sum necessary to pay the City's cost of completing or correcting, or contracting for the completion or correction of, any services or work under the Contract that are not completed to the satisfaction of the City or that otherwise are deficient or require correction as of such termination date. Such costs shall include all of the City's direct and indirect costs incurred to complete or correct such services or work, including the City's administrative and overhead costs. If the amount of payment(s) and/or retention funds otherwise due the Contractor are insufficient to pay such costs, City shall have the right to recover the balance of such costs from the Contractor and/or its Surety(ies).

## **27. TERMINATION FOR CONVENIENCE**

Upon written notice to the Contractor, the City may at any time, without cause and without prejudice to any other right or remedy of the City, elect to terminate the Contract for the convenience of City. In such case, the Contractor shall be paid (without duplication of any items, and after deduction and/or withholding of any amounts authorized to be deducted or withheld by the Contract Documents or any Laws or Regulations):

- (A)** For Work executed pursuant to approved job/task order(s) in accordance with the Contract Documents prior to the effective date of termination and determined to be acceptable by the Engineer, including fair and reasonable sums for overhead and profit on such Work;
- (B)** For reasonable expenses directly attributable to termination.

Contractor shall not be paid for any loss of anticipated profits or revenue for any Work not performed prior to termination, nor for any economic loss arising out of or resulting from such termination, except for the payments listed in this section. Contractor's warranty under Section 14 of this Agreement shall apply, and Contractor shall remain responsible for all obligations related to such warranty, with respect to all portions of the Work performed prior to the effective date of the termination for convenience pursuant to this section. The City shall be entitled to have any or all remaining Work performed by other contractors or by any other means at any time after the effective date of a termination for convenience pursuant to this section.

## **28. TERMINATION FOR BREACH OF CONTRACT**

If Contractor abandons the Work under this Contract, or if the Contract or any portion of the Contract is sublet or assigned without the consent of the City, or if the Engineer determines in the Engineer's sole discretion that the conditions of the Contract in respect to the rate of progress of the Work are not being fulfilled or any part thereof is unnecessarily delayed, or if Contractor violates or breaches, or fails to execute in good faith, any of the terms or conditions of the Contract, or if Contractor refuses or fails to supply enough properly skilled labor or materials or refuses or fails to make prompt payment to subcontractors for material or labor, or if Contractor disregards any Laws or Regulations or proper instruction or orders of the Engineer, then, notwithstanding any provision to the contrary herein, the City may give Contractor and its Surety(ies) written notification to immediately correct the situation or the Contract shall be terminated.

In the event that such notice is given, and, in the event such situation is not corrected, or arrangements for correction satisfactory to the City are not made, within ten (10) calendar days from the date of such notice or within such other period of time as may be specified by the City in the notice, the Contract shall upon the expiration of said period cease and terminate. In the event of any such termination, City may take over the Work and prosecute the Work to completion, or otherwise, and the Contractor and its Sureties shall be liable to City for any cost occasioned City thereby, as hereinafter set forth.

In the event City completes the Work, or causes the Work to be completed, no payment of any kind shall be made to Contractor until the Work is complete. The cost of completing the Work, including but not limited to, extra costs of project administration and management incurred by City, either direct or indirect, shall be deducted from any sum then due, or that becomes due, to Contractor from City. If sums due to Contractor from City are less than the cost of completing the Work, Contractor and its Sureties shall pay City a sum equal to this difference on demand. In the event City completes the Work, and there is a sum remaining due to Contractor after City deducts the costs of completing the Work, then City shall pay such sum to Contractor. The Contractor and Contractor's Sureties shall be jointly and severally liable for all obligations imposed on Contractor hereunder.

No act by City before the Work is finally accepted, including, but not limited to, exercise of other rights under the Contract, actions at law or in equity, extensions of time, payments, assessments of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach of Contractor, shall be construed to be a waiver or estoppel of the City's right to act pursuant to this Section upon any subsequent event, occurrence or failure by Contractor to fulfill the terms and conditions of the Contract. The rights of City to terminate the Contract pursuant to this Section and pursuant to Sections 26 and 27 are cumulative and are in addition to all other rights of City pursuant to the Contract and at law

or in equity.

## **29. CONTRACTOR BANKRUPT**

If Contractor should commence any bankruptcy proceeding, or if Contractor is adjudged a bankrupt, or if Contractor makes any assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, then the City may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice as provided in Section 28 above.

## **30. SURETIES' OBLIGATIONS UPON TERMINATION**

If the City terminates the Contract pursuant to Section 28 or Section 29 above:

- (A)** The Surety under Contractor's performance bond shall be fully responsible for all of the Contractor's remaining obligations of performance under the Contract as if the Surety were a party to the Contract, including without limitation Contractor's obligations, as provided in the Contract Documents, to complete and provide a one-year warranty of the entire Work, pay liquidated damages and indemnify, defend and hold harmless City, up to the full amount of the performance bond.
- (B)** The Surety under Contractor's payment bond shall be fully responsible for the performance of all of the Contractor's remaining payment obligations for work, services, equipment or materials performed or provided in connection with the Work or any portion thereof, up to the full amount of the payment bond.

## **31. ACCOUNTING RECORDS OF CONTRACTOR**

During performance of the Contract and for a period of three (3) years after completing the entire Work, Contractor shall maintain all accounting and financial records related to the Contract and performance of the Work in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.

## **32. USE TAX REQUIREMENTS**

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest, agrees as follows:

- (A)** Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
- (B)** The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

# EXHIBIT D

## CITY BID PREFERENCES

### **SBE/EBE FIVE PERCENT (5%) BID EVALUATION PREFERENCE**

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. Any bid or quotation submitted by a firm that is certified as a SBE by the City of Sacramento, or that is certified as an EBE by the City of Sacramento, will receive a five percent (5%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after applying the 5% bid evaluation preference, the bid of an SBE/EBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid. To receive this bid evaluation preference, a firm must be certified as a SBE or EBE at the time of bid opening. Questions regarding eligibility for SBE/EBE certification should be addressed to the City of Sacramento Office of Small Business Development at (916) 808-6747.

#### **1. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION**

Is the firm submitting the bid certified by the City of Sacramento as a Small Business Enterprise? Check the appropriate block below:

- YES** - the firm submitting the bid is certified by the City of Sacramento as a Small Business Enterprise.
- NO** - the firm submitting the bid is not certified by the City of Sacramento as a Small Business Enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number \_\_\_\_\_.

#### **2. EMERGING BUSINESS ENTERPRISE (EBE) CERTIFICATION**

Is the firm submitting the bid certified by the City of Sacramento as an *Emerging* Business Enterprise? Check the appropriate block below:

- YES** - the firm submitting the bid is certified by the City of Sacramento as an Emerging Business Enterprise.
- NO** - the firm submitting the bid is not certified by the City of Sacramento as an Emerging Business Enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number \_\_\_\_\_.

## **LBE TWO PERCENT (2%) BID EVALUATION PREFERENCE**

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise Preference program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities under \$100,000. A bid or quotation submitted by a firm that is located within the City of Sacramento and/or the unincorporated county of Sacramento will receive a two percent (2%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after applying the 2% bid evaluation preference, the bid of an LBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid. To receive this bid evaluation preference, a firm must be qualified as a LBE prior to the time bids are received.

Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Evidence of legitimate business presence in the city or unincorporated county of Sacramento shall include:

### **3. LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE PROGRAM**

1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License; and
2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento:
  - a. The LBE's principle business office or workspace; or
  - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.

#### **A. LOCAL BUSINESS ENTERPRISE (LBE)**

Is the firm submitting the bid qualified as a local business enterprise? Check the appropriate box below:

**YES** - the firm submitting the bid is qualified as a local business enterprise.

**NO** - the firm submitting the bid is not qualified as a local business enterprise.

If the response to the above is YES, provide the City of Sacramento Business Operations Tax Certificate Number and/or County of Sacramento Business License Number:

---

If the response to the above is YES, provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

If the response to the above is YES, provide business office or workspace address:

---

---

**EXHIBIT E**  
**BOND FORMS FOR PUBLIC WORKS PROJECTS**

**CITY OF SACRAMENTO  
PERFORMANCE BOND**  
Department of Transportation

**WHEREAS**, the City of Sacramento, State of California, hereinafter called City, has conditionally awarded to \_\_\_\_\_ as principal, hereinafter called Contractor, a contract for construction of:

**(Project Name)**

which contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the contract, and is hereinafter referred to as the Contract; and

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

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

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

\_\_\_\_\_ **DOLLARS (\$\_\_\_\_\_)**, for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless the City, its officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect. This obligation shall remain in full force and effect through the end of the Contract warranty period, which will expire one year after the completion of work date specified in the Notice of Completion filed for the above-named project.

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

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

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

\_\_\_\_\_  
(Contractor) (Seal)  
By \_\_\_\_\_  
\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
(Surety)(Seal)  
By \_\_\_\_\_  
\_\_\_\_\_  
Title \_\_\_\_\_

ORIGINAL APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CITY OF SACRAMENTO  
PAYMENT BOND**

Department of Transportation

**WHEREAS**, the City of Sacramento, in the State of California, hereinafter called City, has conditionally awarded to \_\_\_\_\_ hereinafter called Contractor, a contract for construction of:

**(Project Name)**

which contract is by reference incorporated herein and made a part hereof, and is hereinafter referred to as the Contract; and

**WHEREAS**, under the terms of the Contract, Contractor is required to furnish a good and sufficient payment bond to secure the claims to which reference is made in Title 15(commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

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

\_\_\_\_\_, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, and unto all subcontractors, laborers, material men and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code in the sum of \_\_\_\_\_

**DOLLARS (\$\_\_\_\_\_)**, on the condition that if Contractor shall fail to pay for any materials or equipment furnished or used in performance of the Contract, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses and fees, including attorney's fees, reasonably incurred by any party in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in any judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect, and shall bind Contractor, Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

It is hereby stipulated and agreed that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions and State agencies entitled to file claim under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

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

\_\_\_\_\_  
(Contractor) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
(Surety)(Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

ORIGINAL APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney