

RESOLUTION NO. 2013-0056

Adopted by the Sacramento City Council

February 26, 2013

ESTABLISH A CAPITAL IMPROVEMENT PROJECT AND APPROPRIATE FUNDS FOR THE 5TH STREET AND RAILYARDS BOULEVARD PROJECT (T15135800)

BACKGROUND

- A. The City will deliver the 5th Street and Railyards Boulevard Project at the request of IA Holdings under a project delivery agreement. The City will be reimbursed by IA Holdings for all costs associated with the delivery of the 5th Street and Railyards Boulevard Project. Establishment of a capital improvement project (CIP) and appropriation of funds are necessary to properly account for the expenditures related to this effort.

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

- Section 1. The City Manager or his designee is authorized to execute the 5th Street and Railyards Boulevard project delivery agreement, which is attached as Exhibit A and is made part of this resolution.
- Section 2. The City Manager or his designee is authorized to execute all City lien waivers, utility agreements, and other documents necessary to implement the 5th Street and Railyards Boulevard project delivery agreement.
- Section 3. 5th Street and Railyards Boulevard Project (T15135800) is established as a new Capital Improvement Project.
- Section 4. The City Manager is authorized to appropriate \$225,000 to the 5th Street and Railyards Boulevard Project (T15135800).
- Section 5. Exhibit B is hereby incorporated into and is part of this Resolution.

Table of Contents:

Exhibit A: Project Delivery Agreement

Exhibit B: Location Map

Adopted by the City of Sacramento City Council on February 26, 2013 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, Hansen, McCarty, Pannell, Schenirer, and Warren.

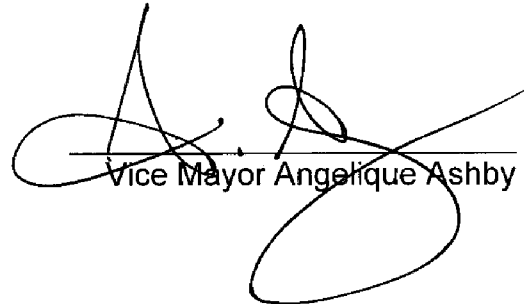
Noes: None.

Abstain: None.

Absent: Mayor Johnson

Attest:


Shirley Concolino, City Clerk


Vice Mayor Angelique Ashby

PROJECT DELIVERY AGREEMENT

THIS PROJECT DELIVERY AGREEMENT (this "**Agreement**") is dated February __, 2013, and is between IA SACRAMENTO HOLDINGS, L.L.C., a Delaware limited liability company ("**IA Holdings**") and the City of Sacramento, a California municipal corporation (the "**City**").

RECITALS

A. In connection with certain loans made by IA Sacramento Rail, L.L.C., a Delaware limited liability company ("**Lender**"), an affiliate of IA Holdings, to S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company ("**Thomas**"), as the then owner of that certain real property located in the City and County of Sacramento, California, commonly known as the Sacramento Railyards (the "**Railyards**"), Thomas executed and delivered to Lender certain promissory notes, secured by, among other things, two deeds of trust in favor of Lender encumbering the Railyards. On October 22, 2010, IA Holdings acquired fee title interest to the Railyards pursuant to a foreclosure of one of the foregoing deeds of trust.

B. The Railyards is currently entitled for the development of the Railyards as a mixed-use urban district, including, among other things, residential units, retail and office space, and cultural attractions (the "**Railyards Project**") in accordance with the Railyards Specific Plan adopted by the City on December 11, 2007, and that certain Development Agreement dated January 10, 2008 (the "**Development Agreement**"), which entitlements contemplate the construction of Railyards Boulevard, an east-west street that will connect Jibboom Street and 12th Street, and construction of an extension of 5th Street between H Street and the North B Street. The construction of Railyards Boulevard between 7th Street and Bercut Drive and the 5th Street extension between H Street and Railyards Boulevard are collectively referred to as the "**Roadway Project**".

C. The State Department of Housing and Community Development ("**HCD**") prior to October 22, 2010, awarded the City a grant funded by Proposition 1C in the amount of Seventeen Million Dollars (\$17,000,000) (the "**TOD Grant**") to reimburse roadway design and construction costs of certain portions of the Roadway Project. Pursuant to that certain Assignment and Assumption Agreement, by and between IA Holdings and the City, dated as of March 29, 2011 (the "**Assignment Agreement**"), the City assigned to IA Holdings all of the City's rights under the Revised TOD Contract (as defined in the Assignment Agreement) and IA Holdings assumed the obligations of the City under the Revised TOD Contract in accordance with the terms and conditions set forth in the Assignment Agreement. The parties do not intend for this Agreement to modify the terms and conditions of the Assignment Agreement, and the parties do not intend for their performance of this Agreement or failure to perform this Agreement to affect their rights or duties under the Assignment and Assumption Agreement.

D. HCD previously awarded prior to October 22, 2010, a grant under the Infill Infrastructure Grant Program funded by Proposition 1C in the amount of Thirty Million Dollars (\$30,000,000) (the "**IIG Grant**"), such funds to be used to pay for costs associated with the infrastructure construction of a portion of the Roadway Project. Following IA Holdings' acquisition of fee title interest to the Railyards following the foreclosure, the award of the IIG

Grant was transferred to IA Holdings pursuant to and in accordance with that certain Transfer of Interest Agreement, dated as of April 26, 2011, by and between HCD and IA Holdings. The TOD Grant and IIG Grant are collectively referred to as the “**HCD Grants**”.

E. In its capacity as a secured lender in possession of the Railyards through foreclosure, IA Holdings has concluded that to protect the value of its security interest in the Railyards, it is necessary for IA Holdings to ensure the completion of the Roadway Project that benefits the Railyards and was planned, approved, and funded prior to the foreclosure. To accomplish the foregoing in its capacity as a secured lender and because IA Holdings does not have roadway infrastructure project oversight expertise, IA Holdings would like to utilize the City’s experience in expediently and cost-effectively delivering public infrastructure projects by hiring the City to deliver the Roadway Project.

F. Although the City does not ordinarily deliver infrastructure projects for private parties, the City is willing to deliver the Roadway Project for IA Holdings because the City recognizes the importance of the successful completion of the Roadway Project; however, the parties recognize that the City is not willing to assume the financial risks in delivering the Roadway Project. Furthermore, the parties recognize that the City, as a public entity, is subject to policies, procedures, charter provisions, and local, state, and federal laws, when delivering the Roadway Project to which a private construction manager would not be subject. This Agreement reflects these unique circumstances.

NOW, THEREFORE, the parties hereto, intending legally to be bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Each of the following terms is defined as follows:

(a) “**Contractor**” means each party who enters into a contract directly with the City and who provides labor, services, or materials for any part of the Roadway Project under the terms of a Construction Contract. The term Contractor includes the General Contractor and the Construction Manager.

(b) “**Construction Budget**” means the projected costs and expenses, in the form attached hereto as Exhibit “A” (which shall be based upon the Construction Schedule), prepared by the City and approved in writing by IA Holdings, and any changes thereto approved in writing by IA Holdings. The Construction Budget is intended to reflect all projected costs and expenses to be incurred in connection with the completion of the Roadway Project through Final Completion.

(c) “**Construction Contract**” means any contract between the City and a Contractor providing for the construction of, or any services related to the construction of, any portion of the Roadway Project. The term Construction Contract includes the General Contract and the Construction Management Contract.

(d) **“Construction Contract Documents”** means the Contract Documents as defined in section 1 of the City’s modified construction contract for projects over \$25,000 (the **“City Construction Agreement”**), which City Construction Agreement is attached as Exhibit “B”.

(e) **“Construction Manager”** means Vali Cooper & Associates, Inc., the construction management firm to be retained by the City.

(f) **“Construction Management Contract”** means the construction management agreement between the City and the Construction Manager providing for the management of the construction of any portion of the Roadway Project. The City will use its standard professional services agreement for architects, landscape architects, professional engineers, and professional land surveyors (the **“Standard PSA”**), which is attached as Exhibit “C”, as the form for the Construction Management Contract.

(g) **“Construction Schedule”** means the initial construction schedule attached hereto as Exhibit “D”.

(h) **“Deliver”** means to oversee, manage, and coordinate all phases of the Roadway Project from pre-bid through Final Completion and to enter into all Construction Contracts necessary for the construction and oversight of construction of the Roadway Project.

(i) **“Direct Costs”** means the amount of money due to the Contractors under the Construction Contract and the Construction Management Contract.

(j) **“Final Completion”** refers to the completion of the Roadway Project, and shall mean and be effective at such time as (a) the satisfactory lien-free completion of the Roadway Project substantially in accordance with the Project Documents (including completion of the punch list items and execution of a final pay request), as evidenced by (i) final unconditional lien waivers by all Contractors (and, if applicable, the consent of each surety which shall have issued a performance and payment bond for the benefit of the City or IA Holdings with respect to the Roadway Project), and (ii) such other waivers and releases from the General Contractor and/or the Contractors as IA Holdings and its title insurer may reasonably require in order to assure lien free completion of the Roadway Project (including any equitable lien claims), and (b) the receipt by IA Holdings (or by the City on behalf of IA Holdings) of all necessary final certificates, (c) the receipt by IA Holdings (or by the City on behalf of IA Holdings) of six copies of a final “as-built” construction survey (which means a survey showing vertical and horizontal control points), a final record set of Construction Contract Documents showing actual changes made during construction, (d) the General Contractor has completed its final site cleanup and restoration, including, without limitation, removal of all excess materials, rock, sand, paving, and miscellaneous debris, supplies, equipment and trailers; and (e) all temporary utilities, if any, are disconnected.

(k) **“General Contract”** means the construction contract entered into between the City and the General Contractor for the construction of the Roadway Project. The City will use the City Construction Agreement as the form for the General Contract, without material modification thereto unless approved in writing by IA Holdings.

(l) **“General Contractor”** means the lowest responsible and responsive bidder for the construction of the Roadway Project to be identified by the City and approved in writing by IA Holdings prior to award of the General Contract by the City’s city council.

(m) **“Project Documents”** means:

- (i) The Construction Budget;
- (ii) All Construction Contracts and Construction Contract Documents;
- (iii) The Construction Schedule;
- (iv) The Construction Management Agreement;
- (v) The Roadway Plans and Specifications;
- (vi) This Agreement; and
- (vii) All applications, permits, easements, approvals, surety bonds, and all other contracts and agreements relating to the Roadway Project executed or otherwise approved in writing by IA Holdings or which the City is otherwise authorized to execute or enter into pursuant to this Agreement.

(n) **“Roadway Plans and Specifications”** means the final plans and specifications for the construction of the completion of the Roadway Project as prepared on behalf of IA Holdings by Kimley-Horn and Associates, Inc.

(o) **“Standard Agreements”** means the City Construction Agreement and the Standard PSA.

(p) **“Standard Policies and Procedures”** means the policies, procedures, and requirements in the Construction Contract Documents, the City’s charter and city code, and state and federal laws that the City follows in delivering public projects.

(q) **“Termination Costs”** means expenses reasonably incurred by the City in connection with stopping planned work because this Agreement and/or any Construction Contracts are terminated for a reason other than as a result of an Event of Default (as defined in Section 8.4) by City, whether by the City or IA Holdings, prior to Final Completion of the Roadway Project.

(r) **“Public Utilities”** means every public utility defined in Public Utilities Code section 216, subsection (a); it also means the Sacramento Municipal Utility District.

ARTICLE II

PROJECT DELIVERY SCOPE OF SERVICES

2.1 The City shall provide IA Holdings with the following services (the “Project Delivery Services”):

(a) Deliver the Roadway Project for IA Holdings in substantial compliance with the Standard Policies and Procedures, except as expressly provided in this Agreement.

(b) Submit to IA Holdings for IA Holdings’ review the City’s bid analysis for each bid received in connection with the Roadway Project.

(c) Select each Contractor and negotiate each Construction Contract on the City Construction Agreement form; provided, however, that final approval of the selection of each Contractor, approval of any material deviations to the City Construction Agreement form, and the approval of the amount of each Construction Contract is reserved to IA Holdings.

(d) Recommend that the City Council award a General Contract to the lowest responsive and responsible bidder only if IA Holdings first approves the Contractor and the amount of the Construction Contract in writing.

(e) Recommend that the City Council authorize the city manager to execute a Construction Management Contract with the Construction Manager, who was pre-selected through a request for qualifications solicitation process, if IA Holdings first approves the Construction Manager and the amount of the Construction Manager Contract in writing.

(f) Reject all bids and not award a Construction Contract to a General Contractor if directed in writing by IA Holdings to do so.

(g) Include in each Construction Contract requirements that: (i) each progress payment request be accompanied by a conditional lien waiver executed by the Contractor; (ii) each Contractor execute and submit an unconditional lien waiver not more than 5 business days after receiving each progress payment; and, (iii) each Contractor execute and submit an unconditional lien waiver not more than 5 business days after receiving final payment. To the extent allowed by law, the City will require each Contractor to impose the same conditions on every subcontractor or materialmen.

(h) Review and analyze the Construction Schedule prepared by the General Contractor; the City will accept the Construction Schedule only when approved by IA Holdings.

(i) Prior to the award of any Construction Contract, the City shall cause the preparation, for approval by IA Holdings, of an update to the Construction Schedule identifying a change in the number of working days, if necessary.

(j) Cause the General Contractor to obtain, and to provide to IA Holdings copies of, all permits identified in the Construction Contract Documents. IA Holdings is responsible for obtaining all other permits and shall provide copies to the City. Prior to the

award of the General Contract by the City, IA Holdings shall obtain written verification from the California Department of Toxic Substances Control ("DTSC"), to the satisfaction of the City, that the right-of-way of the Roadway Project has been remediated pursuant to a DTSC-approved remedial action plan and that the use of the right-of way of the Roadway Project for its intended use is consistent with the remediation level of the Roadway Project site and any applicable deed restrictions.

(k) Update the Construction Budget so that it remains an accurate reflection of the future costs and expenses through Final Completion.

(l) Cause the progress of the work on the Roadway Project to be inspected and shall promptly notify IA Holdings and the applicable Contractor of any defective work or any other default under a Construction Contract observed.

(m) Identify and analyze alternative courses of action for unforeseen conditions, such as shortages, work stoppages, and/or accidents or casualties, as they occur, and make recommendations to IA Holdings about how to respond.

(n) Review each Contractor's monthly payment requisitions and, if appropriate or necessary, negotiate revisions thereto with such Contractor.

(o) Review the completeness of all monthly reports prepared by each Contractor, the final punch list prepared by the Construction Manager and approved in writing by IA Holdings for finalizing the work; monitor each Contractor to facilitate the satisfactory completion of all of the work to be done under such Contractor's Construction Contract; cause the General Contractor to coordinate any modification of such systems as required; and procure record drawings with notation of all changes and added details.

(p) Obtain certificates of insurance from (and ensure that insurance is maintained for) each Contractor and forward such certificates to IA Holdings.

(q) Perform its obligations under this Agreement in timely manner.

(r) Review any final claims and proposed final change orders and closeout of each Construction Contract; review all payments, including the final payment on each Construction Contract; obtain written confirmation or certificates from each Contractor with respect to work performed to date that such work has been properly done; collect conditional and final lien waivers (confirm correct amount) from all subcontractors, and materialmen if required by HCD, working on the Roadway Project and, comply with all stop payments notices (as defined in Civil Code section 8044) served on the City. The City will not be in default of its obligations under this subsection if it makes reasonable efforts to collect conditional and final lien waivers from subcontractors and materialmen, but is unable to collect them provided that the City does not make any payment under the applicable Construction Contracts without first receiving such conditional and/or final lien waivers.

(s) Make timely payments due under each Construction Contract in the manner specified in the applicable Construction Contract, provided that payments shall be made

by the City only following receipt of IA Holdings approval for payment of such amounts in accordance with Article IV below.

(t) Maintain or caused to be maintained records of costs incurred, and any potential claims against any entity, in connection with construction of the Roadway Project, including costs advanced prior to the date of this Agreement, and make them available to IA Holdings to inspect and copy at IA Holdings' own expense during regular business hours, at the place where they are then regularly maintained, on reasonable advance notice to the City.

(u) Not amend or modify the Construction Contract Documents without the prior written consent of the IA Holdings.

(v) Keep IA Holdings informed of all proposed changes to the Construction Contract Documents with respect to (i) the validity, necessity and cost thereof, and (ii) any implications to the overall job progress and costs, applicable Construction Contracts or engineering contracts and identify possible alternatives. The City shall not authorize work which will modify the Direct Costs or Construction Schedule based on, or with respect to, any such proposed change until the City receives an executed Change Order from IA Holdings (which will be sufficient if given by electronic mail), except that the City may issue a field order (i) if the proposed changes to the Construction Contract Documents are necessary to avoid an unjustifiable project delay or increase in project cost and such changes do not increase the Direct Costs by more than \$5000.00 or (ii) if IA Holdings shall fail to respond to a request (which will be sufficient if given by electronic mail) for approval of a proposed Change Order or field order, or alternative thereto, within five (5) business days after such submission in writing by the City to IA Holdings and such Change Order or field order does not modify the Direct Costs or Construction Schedule, then IA Holdings shall be deemed to have approved the City's recommended action. The City shall provide concurrent written notice to IA Holdings at the time of issuing any Change Order or field order provided by subsections (i) or (ii) of this paragraph.

(w) Employ at its own expense such qualified and capable personnel as may be necessary and appropriate to perform its obligations and carry out its responsibilities under this Agreement.

(x) Provide IA Holdings with information relevant to the Roadway Project, including periodic reports as required herein, and provide day-to-day coordination and periodic evaluation of the activities of all surveyors, architects, Contractors, engineers, consultants, public utilities, and government agencies in connection with the Roadway Project, and shall promptly advise IA Holdings with respect to any significant issues that may arise.

(y) Make recommendations to IA Holdings in connection with decisions regarding the Roadway Project reserved to IA Holdings.

(z) In the event of an emergency on the Roadway Project, the City shall act reasonably under the circumstances and at IA Holdings' expense to protect IA Holdings' interest in the Roadway Project after first making all reasonable efforts to contact IA Holdings orally for approval of such action and confirm in writing the action so taken promptly thereafter.

(aa) Notify IA Holdings in writing, promptly after it has knowledge of any potential claim against any entity, or any action, suit, or proceeding in connection with the Roadway Project. The City shall analyze such claim and make recommendation for a course of action to IA Holdings. The City shall review any disputed issues, provide analysis, and make recommendations to IA Holdings for the resolution of any claims and disputes. IA Holdings acknowledges that this Agreement does not create an attorney-client relationship between the City and IA Holdings; and, the parties agree that in performing its obligations under this subsection (aa), the City will not provide IA Holdings with legal advice or representation.

(bb) May assign, delegate, or subcontract all or a portion of its duties and obligations under this Agreement to Construction Manager without the written consent of IA Holdings; provided, however, that such assignment or delegation shall be set forth in the Construction Management Contract.

(cc) Use commercially reasonable efforts to provide IA Holdings with advance notice of, and IA Holdings shall have the right to participate in, all meetings concerning construction of the Roadway Project, including meetings with subcontractors regarding material disputes, meetings with consultants and other third parties regarding the Roadway Project, and all regularly scheduled project meetings with the General Contractor, provided, however, it is not intended that the City notify IA Holdings of day-to-day meetings involving only its employees and the General Contractor (and subcontractors). However, the City shall inform IA Holdings if such meetings result in an impact to the Construction Budget or Schedule. The City is not required to postpone or cancel a meeting because IA Holdings is not available at the scheduled meeting time.

2.2 The City shall prepare and distribute monthly executive summary reports that include 1) an overview of the current stage of the project, 2) an assessment of actual versus projected schedule and 3) budget status and trend reporting for anticipated costs in comparison to the Approved Budget.

2.3 Upon IA Holdings' reasonable advance notice, the City shall meet with IA Holdings and/or its designees (telephonically or in-person); the City shall determine in its sole and exclusive discretion the City staff who will attend the meetings. In advance of such meetings, the City will provide reports in such forms as may be reasonably required by IA Holdings, including reports regarding: (a) the costs incurred in connection with the construction of the Roadway Project, on a line by line basis as itemized in the Construction Budget and on a cumulative basis; (b) a comparison of costs incurred to the date of such report with the Construction Budget; and (c) any recommended revision of any or all of the Project Documents.

2.4 If a Public Utility requires that new utilities be installed in the right-of-way during the completion of the Roadway Project, or if a Public Utility requires that existing utilities in the right-of-way be inspected during the completion of the Roadway Project, then to the extent agreed to by the Public Utility and IA Holdings, and provided that the City agrees to the form and substance of the contract, the City shall enter into a contract with the Public Utility to install or inspect the utilities during completion of the Roadway Project. The parties acknowledge that City Council approval may be required before the City enters into a utility service contract with a Public Utility. Prior to entering into any utility service contract, the City shall also obtain IA

Holdings' prior approval of the form of such contract. Within twenty (20) days of receipt of an invoice due under any utility service contract, IA Holdings shall submit payment for such amount to the City and the City shall pay such amounts directly to the applicable Public Utility.

2.5 The City shall act as a conduit for communication and resolution of the day-to-day queries and issues that arise on the Roadway Project.

2.6 The City shall coordinate IA Holdings' involvement throughout the construction process to enable positive engagement, buy-in to results, necessary support and responsive decision making as required to support the demands of the Roadway Project.

2.7 All written data and materials, including all records, contracts, receipts for deposits, unpaid bills, and other papers or documents in the possession of the City or its affiliates which pertain to the Roadway Project are records subject to disclosure under the California Public Records Act, and they are subject to City and state document retention requirements.

ARTICLE III

PROJECT REPRESENTATIVES

3.1 IA Holdings shall, from time to time, designate in writing one or more "representatives" to receive reports and notices on behalf of IA Holdings under this Agreement. Initially, IA Holdings' representatives for this purpose shall be Dean Stermer and Lynx Chan and for purposes of processing Payment Requests under Article V or requests for payment of the Fee under Article VII, IA Holdings' representative shall be Dean Stermer, Lynx Chan and Anaam Hasan.

3.2 The duties of the City hereunder shall be supervised at all times during the term of this Agreement by Fran Halbakken and the City staff assigned responsibility for oversight and implementation of public works projects in the Standard Policies and Procedures.

ARTICLE IV

PAYMENT OF CONSTRUCTION CONTRACT

4.1 No later than the fourth (4th) Tuesday of each calendar month, the City shall meet with IA Holdings and/or its designees (telephonically or in-person) and Construction Manager to complete a "pencil draw" review and preliminary approval ("**Pencil Draw**") of the then next due payment request from each Contractor for costs associated with the Roadway Project.

4.2 The City shall submit to IA Holdings on the first (1st) business day of every calendar month a payment request for costs associated with the Roadway Project for IA Holdings review and approval, which payment request shall have been previously reviewed by the City, IA Holdings and Construction Manager during the Pencil Draw ("**Payment Request**"), which payment request shall include all supporting documentation (provided, however, that IA Holdings acknowledges that the final unconditional lien waiver from each Contractor shall be submitted to the City concurrently with the final payment of retainage and a copy shall promptly thereafter be forwarded to IA Holdings).

4.3 Provided IA Holdings has received a Payment Request and supporting documentation by the first (1st) business day of the calendar month, then no later than the fifth (5th) day of the calendar month, IA Holdings shall provide the City with written notice (the "**Payment Notice**") stating either that IA Holdings agrees with the amount of the payment requested in the Payment Request or if IA Holdings disputes any portion of the payment requested, or is not satisfied with the supporting documentation, the Payment Notice shall set forth the same in detail and the City shall return the Payment Notice to Contractor immediately but no later than seven (7) days following receipt of the Payment Request in accordance with applicable law. IA Holdings' approval of a Payment Request shall not be unreasonably withheld, conditioned or denied, and IA Holdings shall not disapprove of any costs of the Roadway Project as long as such costs are properly documented and in accordance with the Construction Budget and the Pencil Draw.

4.4 The City shall provide written acknowledgement of approval of the Payment Notice to IA Holdings no later than the twelfth (12th) day of the calendar month ("**Confirmation Notice**"); the Confirmation Notice may be provided by e-mail. Following IA Holdings' receipt of the Confirmation Notice, IA Holdings shall process the non-disputed portion of the Payment Request and deliver payment to the City by wire or check no later than the twenty-second (22nd) day of the calendar month.

4.5 The City shall make timely payments of the non-disputed Payment Request no later than the thirtieth (30th) day of the calendar month or as may earlier be required in the manner set forth in the applicable Construction Contract and in accordance with applicable law, provided that payments shall be made by the City only following receipt of IA Holdings' approval for payment of such amounts in accordance with this Article V.

4.6 Provided the City has fulfilled its obligations under this Article and there is a good-faith dispute between the City and IA Holdings as to the amount of a payment that is owed to a Contractor, then IA Holdings shall bear at its own expenses and without reimbursement from the City all claims, costs, damages, penalties, and damages that arise because the City makes payment to the Contractor in the amount of the non-disputed amount only.

ARTICLE V

RESPONSIBILITIES OF IA HOLDINGS

IA Holdings shall do all of the following:

5.1 Respond to all written requests submitted by the City, and make all necessary decisions called for in such requests as soon as practicable following receipt of such request taking into account the subject matter of such request.

5.2 Provide the City with access to any information or documents which will reasonably assist the City in meeting its obligations.

5.3 IA Holdings shall have the right of final approval as to all material documentation relating to the Roadway Project, including all Project Documents, all change orders, and any substantial change in any of the foregoing. Notwithstanding the foregoing, material

documentation shall not include equipment leases, temporary staging agreements, and other similar documents in the ordinary course of developing the Roadway Project; none of which by the terms thereof will continue in effect after Final Completion without the prior review and approval of IA Holdings.

ARTICLE VI

PAYMENT FOR SERVICES

6.1 In consideration of the City's services provided under this Agreement, IA Holdings shall pay the City on a time and materials basis calculated in accordance with the hourly rates as approved by the Public Works Engineering Division Manager (the "**Fee**"). The City estimates that the Fee shall not exceed Two Hundred Twenty Five Thousand Dollars (\$225,000.00), but this is an estimate only. In the event that the total amount due to the City under this Agreement reaches \$225,000.00, then unless IA Holdings agrees to pay the City for its actual time and materials in excess of \$225,000.00, the City may terminate this Agreement and the Construction Contracts. The Fee does not include costs typically associated with roadway projects, such as plan check fees, surveying fees, and electrical/traffic signal turn-on costs; IA Holdings is responsible for payment of these fees.

6.2 On or before the fifth (5th) business day of each month, the City shall submit to Owner an accurate and complete invoice requesting, in a form acceptable to Owner, payment for services performed by the City incurred during the preceding month (the "**Application for Payment**"). Only one Application for Payment shall be submitted during any single month. Each Application for Payment shall be signed by the City and shall include the employees' hours of service rendered, the employees' rates, and the stated reporting category of the work as shown in the City's accounting system. The City shall deliver to IA Holdings a conditional lien release executed by the City, conditionally releasing all lien rights with respect to services for the time period covered by the Application for Payment, and unconditionally releasing all such rights for the period of time covered by the immediately preceding Application for Payment.

6.3 IA Holdings shall make payment of the total amount contained in each Application for Payment no later than the last business day of each month, except that IA Holdings shall have no less than twenty-five (25) days from its receipt of the Application for Payment in which to review and approve such Application for Payment.

6.4 Except to the extent permitted by Section 6.1 above, the City shall not stop, slow or suspend performance of the services required of the City hereunder on account of a good faith dispute between IA Holdings and the City as to the appropriate amount due and payable to the City for services rendered hereunder.

ARTICLE VII

TERM

The term of this Agreement shall commence on the date hereof and shall terminate at such time as (i) Final Completion has been achieved and the City has performed its obligations,

or (ii) if prior thereto, the City receives a written notice from IA Holdings that it is abandoning the Roadway Project, or (iii) the Agreement is terminated pursuant to section 6.1, section 8.1, section 8.2, section 8.3, or section 8.4 hereof. In the event that this Agreement is terminated prior to Final Completion for any reason other than as a result of an Event of Default (as defined in Section 8.4 below) by the City, then the City shall be entitled, as its sole and exclusive remedy if this Agreement to the amount of the Fee earned to the date of such termination plus all Termination Costs, which amount shall be paid within thirty (30) days following IA Holdings' receipt of the invoice and supporting documentation reasonably requested by IA Holdings, such as a labor cost reports from the City accounting system.

ARTICLE VIII

DEFAULT AND TERMINATION

8.1 IA Holdings, upon seventy-two (72) hours written notice to the City, may terminate this Agreement for convenience, in which case the City shall be entitled to the amount of the Fee earned to the date of such termination plus Termination Costs, which amount shall be paid within thirty (30) days following IA Holdings' receipt of the invoice and all required supporting documentation. Such payment shall be requested and made in accordance with the terms and conditions of this Agreement. If IA Holdings terminates the Agreement under this section 8.1, then the City shall cause the Contractors to immediately stop all planned work under the Construction Contracts and commence contract termination activities, and IA Holdings shall be responsible for the payment of all costs for the work performed under the Construction Contracts up to the date of the work stoppage and all Termination Costs.

8.2 Upon request from IA Holdings, the City shall cause the Contractors to suspend or stop all work under the Construction Contracts in the event all or any portion of either of the HCD Grants are terminated or reduced for any reason, in which case the City shall be entitled to the amount of the Fee earned to the date of IA Holdings' request to suspend or stop work. If IA Holdings elects to so order that work be stopped or suspended, then in such event IA Holdings shall also be responsible for (a) the payment of all costs for the work performed under the Construction Contracts up to the date of the work suspension or stoppage, as such costs have been approved by the City and IA Holdings and (b) all costs for the work performed under the Construction Contracts related to the suspension or stoppage of work or all Termination Costs in the event that the Construction Contracts are terminated.

8.3 If IA Holdings fails to pay the City in accordance with the terms and conditions of this Agreement any undisputed amount due the City and such failure continues for more than thirty (30) days after written notice from the City to IA Holdings identifying such default, then the City shall have, in addition to all other remedies available to it provided by law and this Agreement, the right in its sole discretion to either: (i) to terminate this Agreement and seek payment in accordance with the terms and conditions of this Agreement, or (ii) suspend this Agreement and the Construction Contracts until IA Holdings cures the default. In the event the City terminates this Agreement under this section or section 6.1, the City may also terminate the Construction Contracts and IA Holdings shall be responsible for the payment of all costs for the work performed under the Construction Contracts up to the date of termination, as well as any Termination Costs. If the City chooses to suspend this Agreement and the Construction Contracts

under this section 8.3, then IA Holdings is responsible for all costs that arise because the City suspends the Construction Contracts.

8.4 If the City fails to perform its obligations under this Agreement and (a) the City fails to cure the default within thirty (30) days after written notice from IA Holdings identifying such default or, if the default cannot be reasonably cured within thirty (30) days, (b) does not begin work on a cure within thirty (30) days after written notice from IA Holdings identifying such default and diligently pursue the cure to completion within sixty (60) days after work begins, then the foregoing shall be an Event of Default and IA Holdings may, among other things, terminate this Agreement.

8.5 In addition to all other requirements of the City hereunder, upon the expiration of the term of this Agreement, whether by completion of the Roadway Project or any earlier termination, the City shall deliver to IA Holdings at IA Holdings' expense the original (or copies if originals are not available) of all materials relating to the Roadway Project prepared pursuant to this Agreement or any of the Project Documents and/or other materials prepared with respect to the Roadway Project which are in the possession of the City if allowed by law, except as provided in the Assignment and Assumption Agreement.

8.6 In the event this Agreement is terminated prior to Final Completion, the City shall, at the option of IA Holdings, assign its rights, duties and obligations under the Construction Contracts and any utility service contracts to a third party identified by IA Holdings. The City's obligation to assign its rights, duties and obligations under this section 8.6 is subject to the condition that the City receive from each Contractor and Public Utility a written release, in a form reasonably acceptable to the City Attorney's Office, releasing the City from its obligations under the Construction Contract or utility service contract.

8.7 In no event does this Agreement, the performance of this Agreement, or the failure to perform this Agreement, affect the parties' rights and duties under the Assignment and Assumption Agreement.

ARTICLE IX

SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon, and inure to the benefit of, IA Holdings, the City and their respective successors, and assigns; provided, however, except as expressly provided herein, neither party may assign or transfer its interest in this Agreement without the written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed.

ARTICLE X

INDEMNITY AND LIMITATION OF LIABILITY

10.1 Each of IA Holdings and the City (the "indemnifying party") shall indemnify, defend, and hold harmless the other party, its officers and employees (the "indemnified party"), from and against any and all actions, damages, costs, liabilities, claims, demands, losses,

judgments, penalties, costs and expenses of every type and description, including, but not limited to, reasonable attorneys' fees (including in-house attorneys' fees) and/or costs and any fees and expenses incurred in enforcing this provision, including but not limited to Liabilities arising from personal injury or death, damage to personal or real property or the environment, contractual or other economic damages, or regulatory or statutory penalties (collectively referred to as "Liabilities"), arising out of or in any way connected with the gross negligence or willful misconduct of the indemnifying party, 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.

10.2 The City shall not be liable for environmental conditions encountered in connection with the completion of the Roadway Project.

10.3 The City's total liability, in the aggregate, for claims arising out of or in any way connected with performance of or failure to perform this Agreement or the Construction Contract by the City, and regardless of the form of action, whether in contract or in tort, is limited to the total amount of the Fee. Notwithstanding the foregoing, this limitation on liability does not apply to claims based solely on the gross negligence or willful misconduct of the City. In no event will the City be liable for consequential, incidental, indirect, or special damages, even if the City receives notice of the possibility of such damages. This does not waive or limit the City's sovereign immunity or any other immunity from suit provided by law.

ARTICLE XI

INSURANCE

11.1 The City, at its sole expense, shall place and maintain in force until Final Completion or the earlier termination of this Agreement insurance with coverage, limits, and amounts as follows:

(a) Worker's Compensation insurance as required by law (including employers' liability insurance of not less than \$1,000,000 per accident) covering employees of the City, employed in, on or about the Roadway Project, in an amount sufficient to provide statutory benefits as required by applicable laws.

(b) Commercial General Liability insurance, with limits of at least \$2,000,000.00 per occurrence. The policy(ies) for such insurance shall: (i) name IA Holdings as an additional insured, (ii) be issued by insurers, and be in forms and for amounts, approved by IA Holdings, (iii) be effected under valid and enforceable policies issued by insurers of recognized responsibility, and (iv) provide that such policy(ies) shall be primary and non-contributory and shall not be canceled without at least thirty (30) days' prior written notice to IA Holdings.

(c) Automobile Liability insurance with limits of at least \$2,000,000 per occurrence. The policy(ies) for such insurance shall name IA Holdings as an additional insured and will be primary and non-contributory.

(d) IA Holdings, its 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 the City, products and completed operations of the City, and premises owned, leased or used by the City. 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.

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

(i) City's insurance coverage shall be primary insurance as respects IA Holdings, its officials, employees and volunteers. Any insurance or self-insurance maintained by IA Holdings, its officials, employees or volunteers shall be in excess of the City's insurance and shall not contribute with it.

(ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to IA Holdings, its officials, employees or volunteers.

(iii) Coverage shall state that the City'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.

(iv) IA Holdings will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms

(f) 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 11.1 must be declared to and approved by the IA Holdings in writing prior to execution of this Agreement.

(g) City shall furnish IA Holdings with certificates and required endorsements evidencing the insurance required. Copies of policies shall be delivered to IA Holdings on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(h) It is understood and agreed by City that its liability to IA Holdings shall not in any way be limited to or affected by the amount of insurance coverage required or carried by City in connection with this Agreement.

(i) The City is a self-insured public agency and may satisfy any or all of the insurance requirements of this Article XI through use of the City's self-insurance program. If the City elects to satisfy the insurance requirements of this Article XI through use of its self-insurance program, then the City shall provide IA Holdings with a letter of self-insurance from the City stating that its self-insurance program adequately protects against liabilities and claims the types of which the insurance required by Article XI are intended to protect against.

11.2 The City shall require and verify that all Contractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Section 11.2

during the entire term of the Construction Contracts and until completion and final acceptance of the Roadway Project as provided in the Construction Contract Documents.

(a) Minimum Scope and Limits of Insurance Coverage

(i) 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 \$2,000,000 per occurrence and \$2,000,000 per project aggregate. The policy shall provide contractual liability and products liability and products and completed operations coverage for the term of the policy.

(ii) 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 \$2,000,000 per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

(iii) Worker's Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of not less than \$1,000,000. The Worker's Compensation policy shall include a waiver of subrogation in favor of the City and IA Holdings. In the event Contractor is self-insured, it shall furnish City with a certificate of consent to self-insure issued by the director of the California Department of Industrial Relations.

(b) In addition to the insurance coverage requirements set forth in Section 11.2(a), the City shall require and verify that the General Contractor maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Section 11.2(b) during the entire term of the Construction Contracts and until completion and final acceptance of the Roadway Project as provided in the Construction Contract Documents:

(i) Pollution Legal Liability Insurance (including asbestos and lead paint) providing coverage on an occurrence basis form with limits of not less than \$10,000,000 per occurrence.

(ii) Umbrella/Excess Liability Insurance providing coverage at least as broad as the underlying policies and with limits of not less than \$25,000,000 per occurrence on an occurrence basis in excess of the underlying insurance coverage limits.

(iii) **Builder's Risk Insurance.**

(1) Contractor shall purchase and maintain Builder's Risk Insurance with a company or companies lawfully authorized to do business in the State of California. Such policy shall be written in the amount of the total bid amount set forth in Contractor's Proposal Form, plus the value of subsequent Contract modifications, comprising the total value Work at the project site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed upon in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no persons or entities other than

the Contractor has an insurable interest in the Work required to be covered, whichever is later. This insurance shall include the City, IA Holdings, and all subcontractors working on the Work as primary additional insureds. Contractor shall be responsible to pay any deductible under the policy.

(2) Such policy or policies shall provide waivers of all subrogation rights against the City of Sacramento, IA Holdings, and all subcontractors working on the Work, even if their negligence causes a covered loss, and regardless of the extent of their insurable interest in the covered property.

(3) Such Builder's Risk Insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage), flood, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup and debris removal.

(4) Such policy or policies shall cover portions of the materials for the Work that are stored off of the project site and also portions in transit.

(c) In addition to the insurance coverage requirements set forth in Section 11.2(a), the City shall require and verify that the Construction Manager maintains Errors and Omissions coverage with a limit of not less than \$2,000,000 per claim. Such coverage shall be provided on a coverage form acceptable to IA Holdings.

(d) Additional Insured Coverage.

(i) Commercial General Liability Insurance: The City, IA Holdings, and their 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 all Contractors, products and completed operations of Contractors, and premises owned, leased or used by Contractors. 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.

(ii) The City, IA Holdings, and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured under the automobile liability insurance of all Contractors and pollution legal liability insurance and umbrella/excess liability insurance policies for General Contractor.

(e) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(i) Contractor's insurance coverage shall be primary insurance with respect to the City, IA Holdings, and their officials, employees and volunteers. Any insurance or self-insurance maintained by the City, IA Holdings, and their officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

(ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, IA Holdings and their officials, employees or volunteers.

(iii) 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.

(iv) City will be provided with written notice of cancellation or material change in the policy language or terms and shall convey such information to IA Holdings.

(f) 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 11.2 must be declared to and approved by the City Risk Management Division and IA Holdings in writing prior to execution of this Agreement.

(g) Verification of Coverage. Contractor shall furnish City with certificates and required endorsement 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 City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

11.3 IA Holdings, at its sole expense, shall place and maintain in force until Final Completion or the earlier termination of this Agreement commercial general liability insurance with coverage, limits, and amounts as follows:

(a) 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 two million dollars (\$2,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(b) 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 IA Holdings, products and completed operations of IA Holdings, and premises owned, leased or used by IA Holdings. 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.

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

(i) IA Holdings' insurance coverage shall be primary insurance as

respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of IA Holdings' insurance and shall not contribute with it.

(ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.

(iii) Coverage shall state that IA Holdings' 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.

(iv) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

(d) 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 11.4 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

(e) IA Holdings shall furnish the City with certificates and required endorsements evidencing the insurance required. 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.

(f) It is understood and agreed by IA Holdings that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by IA Holdings in connection with this Agreement.

ARTICLE XII SECURITY

12.1 In order to secure its obligations under this Agreement, IA Holdings shall not later than thirty (30) days after this Agreement is executed by the parties deliver to the City an irrevocable letter of credit. The letter of credit shall be in the original amount of Five Million Dollars (\$5,000,000). The letter of credit must comply with, and will be subject to, the requirements, criteria, terms, and conditions set forth in sections 12.2 – 12.6 below.

12.2 The letter of credit that IA Holdings provides under this Agreement must satisfy all of the following requirements:

(a) The letter of credit by its express terms must be irrevocable, unconditional, and absolutely free of defenses on the part of IA Holdings or the bank or financial institution that is the issuer of the letter.

(b) The bank or financial institution proposed by IA Holdings to be the issuer of the letter of credit is subject to the City's prior approval, which will be in the reasonable

discretion of the City Treasurer's Office, however, the bank or financial institution must have a Fitch Ratings individual rating of C or above.

(c) The expiration date of the letter of credit will be (i) three years after the date of issuance, or (ii) one year after the date of issuance, subject to the following: the letter of credit will extend automatically for additional 12-month periods unless the issuer gives the City written notice that the letter of credit will not extend beyond the then-applicable expiration date. A notice of non-extension must be sent to the City's address set forth in article XIV, below, by certified U.S. Mail (with postage prepaid and a return receipt requested) or by express courier (who must provide a receipt of delivery), and the City must actually receive the notice at least 30 days before the expiration date. A notice that is received less than 30 days before the expiration date will be ineffective for all purposes. Upon receiving a timely notice of non-extension, the City will be entitled to draw the entire remaining balance of the letter of credit unless a replacement letter of credit has been issued by the issuer or by another financial institution under section 12.2(b), and the replacement is in substantially the same form as the letter of credit and complies in every respect with the requirements specified in this Agreement (in the reasonable discretion of the Sacramento City Attorney's Office). If the City draws on a letter of credit under this subsection (c)(ii) because it receives notice of non-renewal, then the City shall deposit the proceeds into an escrow account, and the use and disposition of the proceeds will be subject to the provisions of this section 12.

(d) The letter of credit must substantially conform to the sample letter set forth in Exhibit "E" to this Agreement. The City Attorney's Office will determine, in its reasonable discretion, what constitutes substantial conformance.

12.3 The City shall release the letter of credit provided under this Agreement, as follows:

(a) If the Roadway Project is constructed to Final Completion, then this letter of credit will be released upon IA Holdings' payment of: (i) all Fees earned by the City in performing services under this Agreement, (ii) all costs for the work performed under the Construction Contracts, (iii) all Closeout Costs, and (iv) payment of all Liabilities then due and payable.

(b) If this Agreement is terminated, whether by the City or IA Holdings, prior to Final Completion of the Roadway Project, then this letter of credit will be released upon IA Holding's payment of: all Fees earned by the City in performing services under this Agreement, (ii) all costs for the work performed under the Construction Contracts, (iii) all Termination Costs, and (iv) payment of all Liabilities then due and payable.

12.4 The City is absolutely and unconditionally entitled to draw on the letter of credit provided under this Agreement, in accordance with the terms and conditions of the letter of credit and this Agreement, as follows:

(a) If IA Holdings fails to make payment in the amount and within the time required by this Agreement upon expiration of the notice and cure periods set forth in Section 8.3

or fails to fulfill its obligations under section 10.1, then the City may draw on the letter of credit an amount equal to (i) the unpaid Fees, Closeout Costs, Termination Costs, costs for the work performed under the Construction Contracts, and Liabilities then due and payable and (ii) the City's reasonable out of pocket costs in presenting the letter of credit if the issuing bank or financial institution requires that presentment occur at a location outside the County of Sacramento, California.

12.5 The City shall notify IA Holdings before the City exercises its right to draw upon the letter of credit under section 12.4. above. The City and IA Holdings agree that IA Holdings be given at least ten business-days' written notice.

12.6 If the City draws on the letter of credit, then the City shall deposit the proceeds into the appropriate funds, as determined in the sole discretion of the City Treasurer's Office, for use in paying: (a) the portion of the Fee earned by the City that remains unpaid, (b) the portion of the costs for the work performed under the Construction Contracts that remains unpaid, (c) the Closeout Costs that remain unpaid, (d) the Termination Costs that remain unpaid, (e) the Liabilities that remain unpaid, and (f) the City's reasonable out of pocket costs, if any, incurred in presenting the letter of credit, as described in Section 12.4.

ARTICLE XIII

DEDICATION

IA Holdings and the City hereby agree that IA Holdings shall dedicate to the City in fee title the public street right-of-way of the Roadway Project, and the City hereby agrees to accept IA Holding's offer of dedication of the public street right-of-way of the Roadway Project upon Final Completion of the Roadway Project, subject to the following conditions: (a) IA Holdings and the City have entered into a mechanically stabilized earth wall maintenance easement agreement for 5th Street, (b) IA Holdings and the City have entered into an interim maintenance funding agreement for 5th Street and Railyards Boulevard, (c) the public street right-of-way of the Roadway Project is free and clear of all liens and all encumbrances identified by the City in a writing provided to IA Holdings not more than 30 days after the effective date of this Agreement; provided, however, in no event shall either party have any obligation to remove or resolve any lien or encumbrance identified by the City, and, (d) the public street right-of-way of the Roadway Project is free and clear of all liens and all encumbrances recorded after the effective date of this Agreement, except those that the City has consented to in writing. IA Holdings and the City hereby agree that the dedication to the City of the public street right-of-way of the Roadway Project shall be completed substantially in the form of Grant Deed attached hereto as Exhibit "F".

ARTICLE XIV

NOTICES

All notices, requests, demands, and other communications required or permitted to be given under this instrument shall be in writing and shall be conclusively deemed to have been duly given or delivered, as the case may be, (a) when hand delivered or sent by facsimile (if

confirmation of receipt has been received) to the addressee; (b) three (3) business days after having been sent by certified mail, postage prepaid return receipt requested; or (c) one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next-business-day delivery, with a nationally-recognized overnight courier service. All such notices, requests, or demands shall be addressed as set forth below, or to such other address as a party may from time to time designate by notice given to the other party(ies). A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Article XIII. Courtesy copies are provided as a convenience only. Failure to provide courtesy copies does not affect the timeliness of or invalidate a notice, request, demand, or other communication.

If to IA Holdings: c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Dean Stermer
Facsimile: (630) 954-5655
Telephone: (630) 586-6463
dean.stermer@inland-investments.com

With a courtesy copy to: c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Michael Podboy
Facsimile: (630) 954-5655
Telephone: 630-218-8000
Podboy@inlandgroup.com

With a courtesy copy to: c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Jack Potts
Facsimile: (630) 954-5655
Telephone: 630-218-8000
potts@inland-investments.com

With a courtesy copy to: c/o The Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Scott W. Wilton
Facsimile: (630) 954-5655
Telephone: 630-218-8000
swilton@inlandgroup.com

With a courtesy copy to: DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
Attention: James L. Beard

Facsimile: (312) 630-7379
Telephone: (312) 368-2169
james.beard@dlapiper.com

With a courtesy copy to:

DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, California 94303
Attention: Angela L. Castro
Facsimile: (650) 687-1110
Telephone: (650) 833-2352
angela.castro@dlapiper.com

If to the City:

City of Sacramento
Office of the City Manager,
Operations Manager
City Hall
915 I Street, 5th Floor
Sacramento, CA 95814-2604
Attention: Francesca Halbakken
Facsimile: (916) 808-7618
Telephone: (916) 808-7194
fhalbakken@cityofsacramento.org

With a courtesy copy to:

City of Sacramento
Office of the City Attorney
City Hall
915 I Street, 4th Floor
Sacramento, CA 95814-2604
Attention: Michael Sparks
Facsimile: (916) 808-7455
Telephone: (916) 808-5346
Msparks@cityofsacramento.org

Any time period following notice shall commence on the date of such delivery.
Rejection or other refusal to accept or inability to deliver because of change of address as to which no notice has been given shall constitute receipt of any such notice, demand, or request.

ARTICLE XV

MISCELLANEOUS

15.1 IA Holdings and any other designated representative of IA Holdings shall, at all times during the term of this Agreement, have the right of entry and free access to the area of the Roadway Project, subject to California Division of Occupational Safety and Health rules and regulations, and the right (but not the obligation) to inspect all work done, labor performed, and materials furnished in and about the Roadway Project and the right (but not the obligation) to inspect and audit all books, records, and contracts relating to the Roadway Project.

15.2 In performing its services hereunder, the City (including the City's employees) is and shall be, an independent contractor and not an employee of IA Holdings.

15.3 Whether or not expressly required by the other provisions hereof, no approval by IA Holdings shall be effective unless contained in a writing signed by its Representative.

15.4 Time is of the essence in the performance of this Agreement.

15.5 The provisions of this Agreement that by their nature survive completion of the Roadway Project or termination of this Agreement, including, without limitation, all warranties and indemnities, shall remain in full force and effect after completion of the Roadway Project or termination of this Agreement.

15.6 If a nonmaterial provision, or portion of a provision, of this Agreement is held to be invalid, illegal, or unenforceable, then the validity, legality, and enforceability of the remaining provisions or portions shall not be affected and shall be enforceable to the fullest extent allowable by law in order to give maximum legal force and effect to those provisions or portions that are not invalid, illegal, or unenforceable.

15.7 The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, PDFs, and photocopies of signature pages of this agreement will have the same binding effect as originals.

15.8 A waiver by either IA Holdings or the City of any breach of a term or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term or condition contained in this Agreement, whether of the same or a different character. No payment by IA Holdings to the City shall constitute a waiver by IA Holdings of any breach, violation, or default the Agreement. A waiver is binding only if set forth in a writing signed by the waiving party.

15.9 This Agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Any litigation concerning this Agreement must be brought and prosecuted in the Superior Court of California, County of Sacramento.

15.10 This Agreement is solely for the benefit of the City and IA Holdings. It is not intended to benefit any third parties.

15.11 The parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement, except as provided in Article X, above.

15.12 This Agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the day and year first set forth above.

IA HOLDINGS:

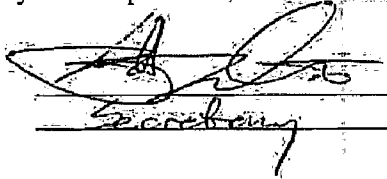
IA Sacramento Holdings, L.L.C., a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By:

Its:



CITY OF SACRAMENTO:

City of Sacramento,
a California municipal corporation

By: _____
Name: Francesca Halbakken
Title: Operations Manager

Approved as to Legal Form

By: _____
Senior Deputy City Attorney

Attest: _____

By: _____
City Clerk

EXHIBIT A

CONSTRUCTION BUDGET 5th Street & Railyards Boulevard Roadway Project

Pre-Construction Cost

1	Civil Engineering (estimated cost to complete)	\$ 191,000.00	
2	Project Management	<u>\$ 1,072,000.00</u>	
	Total Pre-Construction Cost		\$ 1,263,000.00

Construction Cost

3	Construction Cost Estimate		\$ 23,291,500.00
4	Soil Remediation		\$ 350,000.00
5	Soil Surcharge		\$ 48,500.00
	Utility Fees		
6	PG&E Gas	\$ 135,000.00	
7	City DOU - Water Meter	\$ 6,400.00	
8	City DOU - Water Development	\$ 29,600.00	
9	City DOU - Water Resource Control Board	\$ 10,000.00	
10	Kinder Morgan - Deposit - Gas Line Inspection	\$ 10,000.00	
11	RT Conduit	\$ 25,000.00	
12	SMUD	<u>\$ 450,000.00</u>	
	TOTAL Utility Fees (items 6-12)		<u>\$ 666,000.00</u>
	Construction Management		
13	Construction Management (Vali Cooper & Assoc.)	\$ 1,648,600.00	
14	City Inspection/Construction Monitoring	\$ 302,400.00	
15	City Surveying	<u>\$ 150,000.00</u>	
	Total Construction Management (items 13-15)		<u>\$ 2,101,000.00</u>
	Total Construction Cost		\$ 26,457,000.00

Contingency

16	Contingency		<u>\$ 2,218,000.00</u>
	Total Project Cost		<u>\$ 29,938,000.00</u>

Exhibit B

AGREEMENT (Construction 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 OF CONTRACT

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:)

including the Work called for in the following alternative bid items described in the Proposal Form:

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

5. CONTRACT AMOUNT AND PAYMENTS

City agrees to pay and Contractor agrees to accept, as complete payment for the above Work, 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, a total sum that shall not exceed the total bid amount set forth in Contractor's Proposal Form. In addition, subject to deductions, withholdings and additions as specified in the Contract Documents, payment for individual items of the Work shall be computed as follows:

(A) For items of the Work for which a lump sum price is specified in Contractor's Proposal Form, Contractor shall be paid the lump sum price(s) specified in Contractor's Proposal Form; and

(B) For items of the Work for which a unit price is specified in Contractor's Proposal Form, Contractor shall be paid the sum computed at such unit price, or computed at a different price if such different price is determined by City in accordance with the Standard Specifications, based on the actual amount of each such item performed and/or furnished and incorporated in the Work; provided that in no event shall the total sum for a unit price item exceed the total bid amount set forth for such item in the Contractor's Proposal Form, unless authorized by Change Order.

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 showing the amount of labor and materials incorporated in the Work through the twentieth (20) calendar day of the preceding month. , and, 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, if (i) both Contractor and Engineer approve the statement in writing; (ii) the City's labor compliance officer provides written approval; and, (iii) Contractor executes and submits to City a conditional waiver and release for the amount certified by the City on a form that complies with Civil Code section 8132. Not later than five (5) days after receipt of a progress payment, Contractor shall execute and submit to City an unconditional waiver and release on a form that complies with Civil Code section 8134 for an amount equal to the progress payment.

(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) 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 (i) completion and final acceptance of the Work by City; and (ii) Contractor executes and submits to City a conditional waiver and release for the amount to be released on a form that complies with Civil Code section 8136. Not later than five (5) days after receipt of final payment, Contractor shall execute and submit to City an unconditional waiver and release on a form that complies with Civil Code section 8138 for an amount equal to the final payment. Acceptance by Contractor of the final payment 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 by the Contractor and the Engineer 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.

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 not later than fifteen (15) working days after the date of the written Notice to Proceed from City to Contractor and shall diligently prosecute the Work to final completion. The phrase "commence the Work" means to engage in a continuous program on-site including, but not limited to, site clearance, grading, dredging, land filling and the fabrications, erection, or installation of the Work. The Notice to Proceed shall be issued within fifteen (15) calendar days following execution of the Agreement by the City and the filing by Contractor of the required Bonds and proof of insurance, provided that the Engineer may delay issuance of the Notice to Proceed if the Engineer determines in the Engineer's sole discretion that conditions on the site of the Work are unsuitable for commencement of the Work. After the Notice to Proceed is issued, the continuous

prosecution of Work by Contractor shall be subject only to Excusable Delays as defined in this Agreement.

9. TIME OF COMPLETION

The entire Work shall be brought to completion in the manner provided for in the Contract Documents on or before _____ days from the date of the Notice to Proceed (hereinafter called the "Completion Date") unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the entire 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 of the entire 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, if such defect or imperfection becomes evident at any time prior to final acceptance of the entire Work, 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 the final acceptance of the Work as a whole, 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 final acceptance of the entire Work by the City. 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 completion and final acceptance of the Work by City.

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 entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein 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 and/or any specified portion thereof, and shall be presumed to be the amount of damages sustained by the failure of Contractor to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

(B) Contractor shall pay liquidated damages to City for failure to complete the entire 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 the entire 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.

The parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date (as extended in accordance with the Contract Documents, if applicable) until the date of completion of the entire Work as determined by the Engineer in accordance with Section 8-4 of the Standard Specifications, whether or not the Work or any portion thereof is claimed or determined to be substantially complete prior to such date of completion.

SHADED TEXT BELOW ALSO CAN BE OMITTED IF NOT APPLICABLE

THE FOLLOWING ADDITIONAL LIQUIDATED DAMAGES PROVISION(S) APPLY IF CHECKED:

☐ In addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City for failure to complete the portion of the Work specified below by the milestone date specified below (as such milestone date may be extended in accordance with the Contract Documents, if applicable). The amount of such additional liquidated damages shall be either *[check one]*:

☒ a lump sum amount of _____, OR

☐ the daily amount of _____ for each calendar day after such milestone date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which such portion of the Work is completed.

Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

Portion of the Work _____ Milestone Date _____

CONTRACTOR'S ACKNOWLEDGMENT:

☐ In addition to the potential damages described above, failure to complete the entire Work within the time(s) specified herein may expose the City to penalties or fines and/or may negatively affect the availability of project funding. In recognition of these potential damages, in addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City in the lump sum amount of _____ if the entire Work is not completed by _____. Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

CONTRACTOR'S ACKNOWLEDGMENT:

(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-erectations, 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 the 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 two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) per project aggregate. 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 two million dollars (\$2,000,000) 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 in favor of the City of Sacramento, IA Sacramento Holdings, L.L.C. In the event Contractor is self-insured, it shall furnish City with a certificate of consent to self-insure issued by the director of the California Department of Industrial Relations.

(4) Pollution Legal Liability Insurance (including asbestos and lead paint) providing coverage on an occurrence form with limits of not less than \$10,000,000 per occurrence.

(5) Umbrella/Excess Liability Insurance providing coverage at least as broad as the underlying policies and with limits of not less than \$25,000,000 per occurrence on an occurrence basis in excess of the underlying insurance coverage limits.

(6) Builder's Risk Property Insurance

- i. Contractor shall purchase and maintain Builder's Risk Insurance with a company or companies lawfully authorized to do business in the State of California. Such policy shall be written in the amount of the total bid amount set forth in Contractor's Proposal Form, plus the value of subsequent Contract modifications, comprising the total value Work at the project site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed upon in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no persons or entities other than the Contractor has an insurable interest in the Work required to be covered, whichever is later. This insurance shall include the City, IA Holdings, and all subcontractors working on the Work as primary

additional insureds. Contractor shall be responsible to pay any deductible under the policy.

- ii. Such policy or policies shall provide waivers of all subrogation rights against the City of Sacramento, IA Holdings, and all subcontractors working on the Work, even if their negligence causes a covered loss, and regardless of the extent of their insurable interest in the covered property.
- iii. Such Builder's Risk Insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage), flood, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup and debris removal.
- iv. Such policy or policies shall cover portions of the materials for the Work that are stored off of the project site and also portions in transit.

(B) Additional Insured Coverage

(1) Commercial General Liability Insurance: The City, IA Sacramento Holdings, L.L.C., and their 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, IA Sacramento Holdings, L.L.C., and their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds under the automobile liability insurance, pollution legal liability insurance, and umbrella/excess liability insurance policies.

(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, IA Sacramento Holdings, L.L.C., and their officials, employees and volunteers. Any insurance or self-insurance maintained by City, IA Sacramento Holdings, L.L.C., and their 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, IA Sacramento Holdings, L.L.C., and their 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 sixty (60) 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 subsections A(1), A(2) and A(3) 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 therefor 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; sitdowns; 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 (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, 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 approval by City of a change order granting such time extension. 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 by a duly authorized change order.

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 under the Contract (including but not limited to punch list items) are not completed as of the Completion Date (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, including but not limited to incomplete punch list items. 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 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 claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and

(C) 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 Sureties 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, both 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) Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

(C) The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date set for opposite their names.

CONTRACTOR

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

DATE _____

BY _____

Print Name

Title

BY _____

Print Name

Title

Federal ID#

State ID#

City of Sacramento Business Operation Tax
Certificate No. (City will not award contract until
Certificate Number is obtained)

Type of Business Entity (*check one*):

- ____ Individual/Sole Proprietor
- ____ Partnership
- ____ Corporation
- ____ Limited Liability Company
- ____ Other (*please specify:* _____)

CITY OF SACRAMENTO
a municipal corporation

DATE _____

BY _____

For: _____
City Manager

Original Approved As To Form:

Attest:

City Attorney

City Clerk

Exhibit C

PROJECT #:
PROJECT NAME:
DEPARTMENT:
DIVISION:

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTS, LANDSCAPE
ARCHITECTS, PROFESSIONAL ENGINEERS,
AND PROFESSIONAL LAND SURVEYORS**

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Name of Contractor
Address
Phone/Fax

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of

this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

Exhibit A - Scope of Service
Exhibit B - Fee Schedule/Manner of Payment
Exhibit C - Facilities/Equipment Provided
Exhibit D - General Provisions
Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

NAME OF FIRM

Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

____ Individual/Sole Proprietor
____ Partnership
____ Corporation (*may require 2 signatures*)
____ Limited Liability Company
____ Other (*please specify: _____*)

Signature of Authorized Person

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: _____

Address: _____

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

- b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to

maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mail

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mail

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

- 2. Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is ___ is not ___ [check one] required for this Agreement. If required, such coverage must be continued for at least ___ year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

- A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: ☐ yes ☐ no [check one].

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the "assuming office" statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** [Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:]

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

5. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$_____.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

Office
Address
Phone/Fax

Attn: _____

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, 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.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [check one] ☐ Not furnish any facilities or equipment for this Agreement; or

☐ furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

- 8. Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the

standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, 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 "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims 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. Insurance Policies; Intellectual Property Claims: 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 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

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 the Services provided by CONTRACTOR under this Agreement. 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 or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & 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 two million dollars (\$2,000,000) 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 two million dollars (\$2,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (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 for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

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

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than two million (\$2,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, IA Sacramento Holdings, L.L.C., and their 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 for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

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

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

- (2) Automobile Liability Insurance: The CITY, IA Sacramento Holdings, L.L.C., and their 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) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, IA Sacramento Holdings, L.L.C. and their officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, IA Sacramento Holdings L.L.C., and their 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, IA Sacramento Holdings L.L.C., and their 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 11 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 named in Exhibit A. 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 this Agreement 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 Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in

subsection A, above (excluding Professional Liability Insurance).

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance;

provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **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. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- | | |
|---|-------------------------------|
| - Bereavement leave | - Moving expenses |
| - Disability, life and other types of insurance | - Pension and retirement |
| - Family medical leave | benefits |
| - Health benefits | - Vacation |
| - Membership or membership discounts | - Travel benefits |
| | - Any other benefits given to |
| | employees |

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- ☐ Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- | | |
|---|---|
| - Bereavement leave | - Moving expenses |
| - Disability, life and other types of insurance | - Pension and retirement benefits |
| - Family medical leave | - Vacation |
| - Health benefits | - Travel benefits |
| - Membership or membership discounts | - Any other benefits given to employees |

If you feel you have been discriminated against by your employer . . .

You May . . .

- ☐ Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- ☐ Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

Exhibit D

5th Street and Railyards Blvd Project Schedule February 20, 2013

Milestones	Dates
Complete 100 percent Plans, Specifications and Estimate	3/21/2013
Complete Soil Management Plan	3/21/2013
Advertise for Bids	3/26/2013
Open Bids	5/7/2013
Award Construction Contracts and Execute Soil Management Agreement	6/4/2013
Start Construction	6/12/2013
Complete Construction	10/14/2014
Execute Wall Maintenance Agreement and Interim funding Agreement	11/1/2014
Dedicate Right of Way	11/14/2014
Complete Final Billing	12/11/2014
HCD Performance Milestone - Construction Completion & Filing of Notice of Completion	2/2/2015
HCD Performance Milestone - Program Funds Fully Disbursed	4/1/2015

Exhibit E

[Place on Issuer's Letterhead]

Irrevocable Letter of Credit

Beneficiary: City of Sacramento

Letter of Credit No. _____

Date: _____

c/o City Treasurer's Office
City of Sacramento
915 1 Street
Historic City Hall, Third Floor (0900)
Sacramento, CA 95814

This irrevocable, unconditional letter of credit is issued to the City of Sacramento (the "Beneficiary"), a California municipal corporation, by [name of issuer] (the "Issuer") at the request of, and for the account of, [name of applicant] (the "Applicant"). It is provided to comply with the Applicant's obligation under Article XII of the following agreement between the Beneficiary and the Applicant (the "Agreement"):

Project Delivery Agreement
City Agreement No. 2013-

The Issuer hereby establishes this irrevocable, unconditional letter of credit in the Beneficiary's favor in the amount of Five Million U.S. Dollars (\$5,000,000.00) available with the Issuer, at the address stated below, by payment of the Beneficiary's draft or drafts drawn at sight and accompanied by a signed-and-dated demand letter worded substantially as follows:

"I, [insert "the City Treasurer" or "an official representative"] of the City of Sacramento, California, hereby demand payment under [identify the letter of credit] in the amount of the sight draft that accompanies this letter."

This letter of credit is absolute and unconditional, and it may not be dishonored for any reason before it expires. It is not subject to any offset or defense that may have existed in the past or may exist now or in the future between the Issuer and the Beneficiary, or between the Applicant and the Beneficiary, or between the Applicant and the Issuer.

Each sight draft presented under this letter of credit must be accompanied by this original letter of credit for the Issuer's endorsement on this letter of credit of the amount of the draft. After endorsement, the Issuer will return this letter of credit to the Beneficiary unless it is fully utilized.

This letter of credit expires at the Issuer's close of business on [insert date], subject to the following: this letter of credit will extend automatically for additional 12-month periods unless the Issuer gives the Beneficiary written notice that this letter of credit will not extend beyond the then-applicable expiration date. A notice of non-extension must be sent to the Beneficiary's address set forth above by certified U.S. Mail (with postage prepaid and a return receipt requested) or by express courier (who must provide a receipt of delivery), and the Beneficiary must actually receive the notice at least 30 days before the expiration date. A notice that is received less than 30 days before the expiration date will be ineffective for all purposes. Upon receiving a timely notice of non-extension, the Beneficiary will be entitled to present a demand letter, in the form specified above, to draw the entire remaining balance of this letter of credit unless a replacement letter of credit has been issued by the Issuer or by another financial institution acceptable to the Beneficiary (in the reasonable discretion of the Sacramento City Treasurer's Office), and the replacement is in substantially the same form as this letter of credit and complies in every respect with the requirements specified in the Agreement (in the reasonable discretion of the Sacramento City Attorney's Office).

The total amount of this letter of credit may be reduced, in the exclusive discretion of the Beneficiary, upon specific written instructions signed by the Sacramento City Treasurer's Office and accompanied by this original letter of credit.

The person who signs below for Issuer represents that he or she has unconditional and full execution authority to sign letter of credit for the Issuer and that this letter of credit is a valid and binding obligation of the Issuer.

This letter of credit may be presented for payment in accordance with the Supplement to the 2007 Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the "eUCP").

This letter of credit is subject to the 2007 Uniform Customs and Practice for Documentary Credits – ICC Pub. No. 600 as supplemented by the eUCP ("UCP 600") and to the laws of the State of California to the extent they are not inconsistent with UCP 600.

[Issuer's name]

[Issuer's address]

By: _____

[Name & title]

Exhibit E

[Place on Issuer's Letterhead]

Irrevocable Letter of Credit

Beneficiary: City of Sacramento

Letter of Credit No. _____

Date: _____

c/o City Treasurer's Office
City of Sacramento
915 1 Street
Historic City Hall, Third Floor (0900)
Sacramento, CA 95814

This irrevocable, unconditional letter of credit is issued to the City of Sacramento (the "Beneficiary"), a California municipal corporation, by [name of issuer] (the "Issuer") at the request of, and for the account of, [name of applicant] (the "Applicant"). It is provided to comply with the Applicant's obligation under Article XII of the following agreement between the Beneficiary and the Applicant (the "Agreement"):

Project Delivery Agreement
City Agreement No. 2013-

The Issuer hereby establishes this irrevocable, unconditional letter of credit in the Beneficiary's favor in the amount of Five Million U.S. Dollars (\$5,000,000.00) available with the Issuer, at the address stated below, by payment of the Beneficiary's draft or drafts drawn at sight and accompanied by a signed-and-dated demand letter worded substantially as follows:

"I, [insert "the City Treasurer" or "an official representative"] of the City of Sacramento, California, hereby demand payment under [identify the letter of credit] in the amount of the sight draft that accompanies this letter."

This letter of credit is absolute and unconditional, and it may not be dishonored for any reason before it expires. It is not subject to any offset or defense that may have existed in the past or may exist now or in the future between the Issuer and the Beneficiary, or between the Applicant and the Beneficiary, or between the Applicant and the Issuer.

Each sight draft presented under this letter of credit must be accompanied by this original letter of credit for the Issuer's endorsement on this letter of credit of the amount of the draft. After endorsement, the Issuer will return this letter of credit to the Beneficiary unless it is fully utilized.

This letter of credit expires at the Issuer's office on [insert date].

The total amount of this letter of credit may be reduced, in the exclusive discretion of the Beneficiary, upon specific written instructions signed by the Sacramento City Treasurer's Office and accompanied by this original letter of credit.

The person who signs below for Issuer represents that he or she has unconditional and full execution authority to sign letter of credit for the Issuer and that this letter of credit is a valid and binding obligation of the Issuer.

This letter of credit may be presented for payment in accordance with the Supplement to the 2007 Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the "eUCP").

This letter of credit is subject to the 2007 Uniform Customs and Practice for Documentary Credits – ICC Pub. No. 600 as supplemented by the eUCP ("UCP 600") and to the laws of the State of California to the extent they are not inconsistent with UCP 600.

[Issuer's name]

[Issuer's address]

By: _____
[Name & title]

Exhibit F

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO

NO FEE DOCUMENT

Govt Code 6103

WHEN RECORDED MAIL TO

CITY OF SACRAMENTO

Real Estate Services

5730 24th Street, Building 4

Sacramento, California 95814

NO TRANSFER TAX DUE per R&T Code 11922

Grantee is a Government Agency

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ACQ-12-08-00

RES File

5012873

Escrow

002-0010-047.055

APN

City Agreement #2012-0083

Agreement #

GRANT DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("GRANTOR") hereby grants to the CITY OF SACRAMENTO, a Municipal Corporation ("CITY"), the real property in the City of Sacramento, County of Sacramento, State of California, described as follows (the "Property"):

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT 'A'
AND DIAGRAMMED IN THE CORRESPONDING PLAT MAP ATTACHED AS EXHIBIT 'B'

GRANTOR, for itself, and its successors and assigns, hereby waives any claim for any and all severance damages to its remaining property contiguous to the Property hereby conveyed, related to or arising by reason of this conveyance.

IN WITNESS WHEREOF, GRANTOR has executed this Grant Deed as of this ____ day of October, 2012.

GRANTOR:

IA Sacramento Holdings, L.L.C.,
a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

"Approved as to form - City Attorney"

EXHIBIT A

Page 1 of 3

A portion of the tract of land described as Parcel 1 of Exhibit A in that certain Grant Deed to S. Thomas Enterprises of Sacramento, LLC, recorded in Book 20061228, Page 1675, Official Records of Sacramento County, located in the City of Sacramento, being more particularly described as follows:

Commencing at the point of intersection of the westerly line of 6th Street (80 feet wide) and the northerly line of H Street (80 feet wide) also being the point of beginning of said Parcel 1; thence along said northerly line of H Street, North 71°31'11" West (Record South 71°33'22" East) 318.55 feet to the TRUE POINT OF BEGINNING.

Thence from said TRUE POINT OF BEGINNING the following ten (10) courses: (1) North 18°31'52" East 210.98 feet; (2) along the arc of a tangent 565.00 foot radius curve concave southeasterly, having a central angle of 12°35'10" with a chord bearing North 24°49'27" East 123.86 feet; (3) along the arc of a compound 10.00 foot radius curve concave southerly, having a central angle of 77°10'31" with a chord bearing North 69°42'17" East 12.47 feet; (4) tangent South 71°42'28" East 51.51 feet; (5) North 18°17'32" East 80.00 feet; (6) North 71°42'28" West 9.22 feet; (7) along the arc of a tangent 16.00 foot radius curve concave easterly, having a central angle of 114°40'31" with a chord bearing North 14°22'12" West 26.94 feet; (8) along the arc of a compound 565.00 foot radius curve concave southeasterly, having a central angle of 5°21'47" with a chord bearing North 45°38'56" East 52.87 feet; (9) along the arc of a reverse 635.00 foot radius curve concave northwesterly, having a central angle of 47°37'50" with a chord bearing North 24°30'55" East 512.81 feet; (10) tangent North 0°42'00" East 35.03 feet to a point on the northerly line of Railroad Easement II as described in Exhibit D of said Grant Deed to S. Thomas Enterprises of Sacramento, LLC; thence along said northerly line along the arc of a non-tangent 824.96 foot radius curve concave northerly, a radial bearing to which bears South 10°50'48" East, having a central angle of 0°21'17" with a chord bearing North 78°58'34" East 5.11 feet; thence leaving said northerly line the following twenty three (23) courses: (1) North 0°42'00" East 373.35 feet; (2) along the arc of a tangent 10.00 foot radius curve concave

southeasterly, having a central angle of $90^{\circ}00'00''$ with a chord bearing North $45^{\circ}42'00''$ East 14.14 feet; (3) tangent South $89^{\circ}18'00''$ East 15.00 feet; (4) North $00^{\circ}42'00''$ East 62.00 feet; (5) North $89^{\circ}18'00''$ West 15.00 feet; (6) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of $90^{\circ}00'00''$ with a chord bearing North $44^{\circ}18'00''$ West 14.14 feet; (7) tangent North $0^{\circ}42'00''$ East 248.23 feet; (8) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of $93^{\circ}43'42''$ with a chord bearing North $47^{\circ}33'51''$ East 14.59 feet; (9) along the arc of a compound 2960.00 foot radius curve concave southerly, having a central angle of $0^{\circ}26'51''$ with a chord bearing South $85^{\circ}20'52''$ East 23.12 feet; (10) North $4^{\circ}52'33''$ East 80.00 feet; (11) along the arc of a non-tangent 3040.00 foot radius curve concave southerly, a radial bearing to which bears North $4^{\circ}52'33''$ East, having a central angle of $0^{\circ}34'14''$ with a chord bearing North $85^{\circ}24'34''$ West 30.28 feet; (12) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of $85^{\circ}46'00''$ with a chord bearing North $42^{\circ}48'41''$ West 13.61 feet; (13) along the arc of a reverse 640.00 foot radius curve concave westerly, having a central angle of $2^{\circ}32'09''$ with a chord bearing North $1^{\circ}11'46''$ West 28.32 feet; (14) tangent North $2^{\circ}27'51''$ West 284.18 feet; (15) South $87^{\circ}32'09''$ West 80.00 feet; (16) South $2^{\circ}27'51''$ East 284.18 feet; (17) along the arc of a tangent 560.00 foot radius curve concave westerly, having a central angle of $1^{\circ}56'11''$ with a chord bearing South $1^{\circ}29'45''$ East 18.93 feet; (18) along the arc of a compound 10.00 foot radius curve concave northwesterly, having a central angle of $92^{\circ}57'02''$ with a chord bearing South $45^{\circ}56'51''$ West 14.50 feet; (19) along the arc of a reverse 3040.00 foot radius curve concave southerly, having a central angle of $0^{\circ}15'25''$ with a chord bearing North $87^{\circ}42'20''$ West 13.64 feet; (20) South $2^{\circ}09'57''$ West 80.00 feet; (21) along the arc of a non-tangent 2960.00 foot radius curve concave southerly, a radial bearing to which bears North $2^{\circ}09'57''$ East, having a central angle of $0^{\circ}19'04''$ with a chord bearing South $87^{\circ}40'31''$ East 16.42 feet; (22) along the arc of a compound 10.00 foot radius concave southwesterly, having a central angle of $88^{\circ}12'58''$ with a chord bearing South $43^{\circ}24'29''$ East 13.92 feet; (23) tangent South $0^{\circ}42'00''$ West 723.57 feet to a point in said northerly line of Railroad Easement II; thence along said northerly line South $80^{\circ}06'54''$ West 5.09 feet; thence leaving said northerly line the following four (4) courses: (1) South $0^{\circ}42'00''$ West 19.96 feet; (2) along the arc of a tangent

555.00 foot radius curve concave westerly, having a central angle of $47^{\circ}37'50''$ with a chord bearing South $24^{\circ}30'55''$ West 448.21 feet; (3) along the arc of a reverse 645.00 foot curve concave easterly, having a central angle of $29^{\circ}47'58''$ with a chord bearing South $33^{\circ}25'51''$ West 331.70 feet; (4) tangent South $18^{\circ}31'52''$ West 211.05 feet to a point on said northerly line of H Street; thence along said northerly line of H Street, South $71^{\circ}31'11''$ East 80.00 feet to the TRUE POINT OF BEGINNING.

Excepting therefrom said Railroad Easement II. Also excepting therefrom Area A and Area B as described in that certain "Easement for Public Road and Public Utilities, (5th Street Bridge Improvements)" recorded in Book 20091125, Page 0700, Official Records of Sacramento County.

All as shown on Exhibit B attached hereto and by this reference made a part hereof.

MICHAEL JAMES KNAPTON

DATE

P.L.S.8012

EXPIRES 12/31/2012



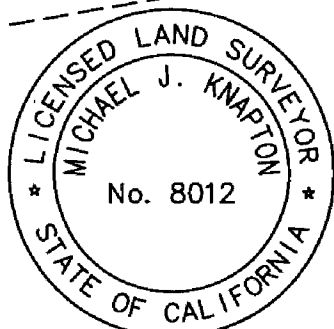
SEE SHEET 2 FOR CONTINUATION

RAILROAD EASEMENT II
PER EXHIBIT D OF
GRANT DEED TO S.
THOMAS ENTERPRISES
OF SACRAMENTO LLC
20061228 O.R. 1675

EXCEPTION AREA
RAILROAD EASEMENT II

N0°42'00"E
35.03'

EXCEPTION AREA
AREA B PER
20091125 O.R. 0700



$\Delta=47^{\circ}37'50''$
R=555.00'
CH=S24°30'55"W
448.21'

$\Delta=47^{\circ}37'50''$
R=635.00'
CH=N24°30'55"E
512.81'

$\Delta=29^{\circ}47'58''$
R=645.00'
CH=S33°25'51"W
331.70'

N71°42'28"W
9.22'

$\Delta=114^{\circ}40'31''$
R=16.00'
CH=N14°22'12"W
26.94'

N18°17'32"E
80.00'
S71°42'28"E
51.51'

$\Delta=77^{\circ}10'31''$
R=10.00'
CH=N69°42'17"E
12.47'

$\Delta=12^{\circ}35'10''$
R=565.00'
CH=N24°49'27"E
123.86'

211.05'
S18°31'52"W
210.98'
N18°31'52"E
80.00'

TRUE POINT
OF BEGINNING

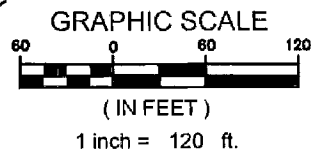
S71°31'11"E
90' 5TH ST.

N71°31'11"W
80' H ST.

318.55'

6TH ST.

POINT OF COMMENCEMENT
INTERSECTION OF WESTERLY LINE OF
6TH STREET AND NORTHERLY LINE
OF H STREET



**Kimley-Horn
and Associates, Inc.**

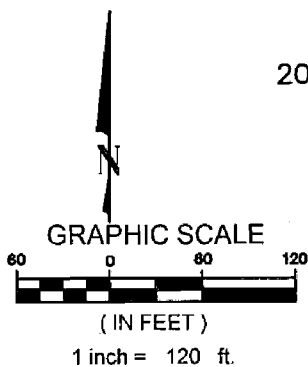
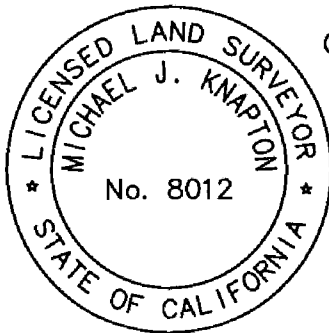
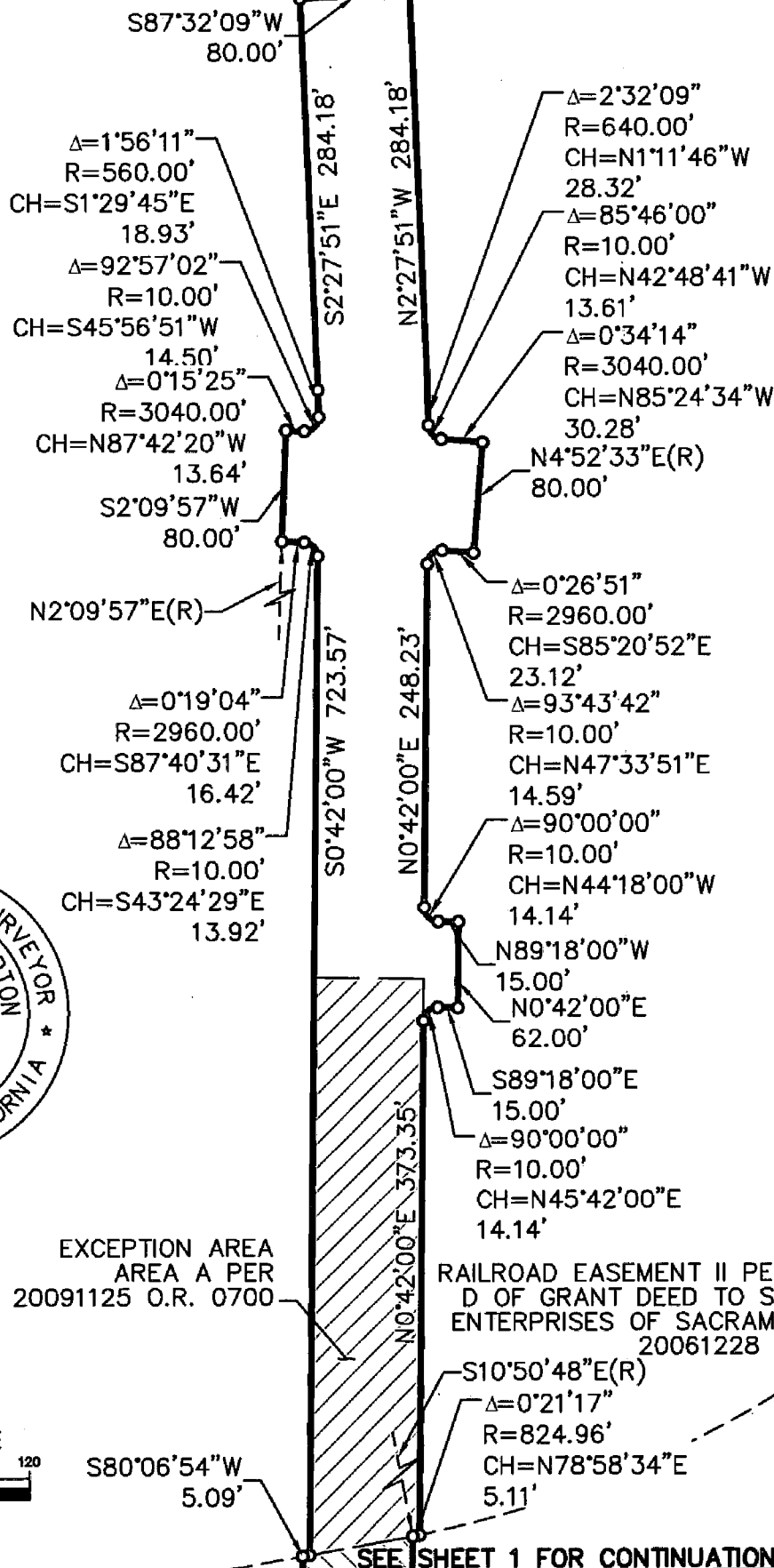
Engineering, Planning, and Environmental Consultants
11919 Foundation Place, Suite 200
Gold River, California 95670
Tel. No. (916) 858-5800
Fax No. (916) 858-0855
© 2012
www.kimley-horn.com

EXHIBIT B

SCALE:
HORIZ. 1"=120'
VERT. _____
DATE: 6/08/2012
PROJECT NO.: 097677002

SHEET
1
OF
2

Jun 11, 2012 - 3:46pm - USER: kwh/kms
K:\SAC_LIVE\097677002 Rel\jorge\100 Overall\08 CAD\01\Jaguar\Shi St.dwg



**Kimley-Horn
and Associates, Inc.**

Engineering, Planning, and Environmental Consultants
11919 Foundation Place, Suite 200
Oakland, California 94612
www.kimley-horn.com

Tel. No. (916) 658-5800
Fax No. (916) 608-0825

EXHIBIT B

SCALE:	1"=120'	SHEET
HORIZ.		2
VERT.		OF
DATE:	6/08/2012	2
PROJECT NO.	097877002	

Jun 11, 2012 - 3:30pm - USER: kwh/kim
K:\SAC_DEV\097877002\097877002.dwg

Exhibit F

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO
NO FEE DOCUMENT

Govt Code 6103

WHEN RECORDED MAIL TO
CITY OF SACRAMENTO

Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95814

NO TRANSFER TAX DUE per R&T Code 11922
Grantee is a Government Agency

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ACQ-12-08-00
RES File

5012873
Escrow

002-0010-047.055
APN

City Agreement #2012-0083
Agreement #

GRANT DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("GRANTOR") hereby grants to the CITY OF SACRAMENTO, a Municipal Corporation ("CITY"), the real property in the City of Sacramento, County of Sacramento, State of California, described as follows (the "Property"):

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT 'A'
AND DIAGRAMMED IN THE CORRESPONDING PLAT MAP ATTACHED AS EXHIBIT 'B'

GRANTOR, for itself, and its successors and assigns, hereby waives any claim for any and all severance damages to its remaining property contiguous to the Property hereby conveyed, related to or arising by reason of this conveyance.

IN WITNESS WHEREOF, GRANTOR has executed this Grant Deed as of this ____ day of _____, 2013.

GRANTOR:

IA Sacramento Holdings, L.L.C.,
a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: _____
Its: _____

"Approved as to form - City Attorney"

EXHIBIT A

Page 1 of 4

A portion of the land described as Parcel 1 of Exhibit A in that certain Grant Deed to S. Thomas Enterprises of Sacramento, LLC, recorded in Book 20061228, Page 1675, Official Records of Sacramento County, located in the City of Sacramento, being more particularly described as follows:

Beginning at the northwesterly corner of 6th Street as described in that certain Grant Deed recorded in Book _____, Page _____, Official Records of Sacramento County; thence along the northerly line of said 6th Street, South 71°07'47" East 80.00 feet to the northeasterly corner thereof; thence leaving said northerly line of 6th Street the following five (5) courses: (1) North 18°52'13" East 7.66 feet; (2) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 86°35'54" with a chord bearing North 62°10'10" East 13.72 feet; (3) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 2°53'14" with a chord bearing South 73°05'16" East 148.56 feet; (4) tangent South 71°38'40" East 163.05 feet; (5) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 47°48'47" with a chord bearing South 47°44'16" East 8.10 feet to a point on the westerly line of 7th Street as shown on that certain Record of Survey recorded in Book 66 of Surveys, Page 15, Official Records of Sacramento County, said point lying North 27°16'48" East 2235.62 feet of the point of intersection of the westerly line of 6th Street (80 feet wide) and the northerly line of H Street (80 feet wide).

Thence continuing along said westerly line of 7th Street, along the arc of a 8547.63 foot radius curve concave easterly, a radial to which bears North 69°04'19" West, having a central angle of 0°42'48" with a chord bearing North 21°17'05" East 106.42 feet; thence leaving said westerly line of 7th Street the following sixty four (64) courses: (1) North 71°38'40" West 175.90 feet; (2) along the arc of a tangent 3051.50 foot radius curve concave southerly, having a central angle of 2°41'41" with a chord bearing North 72°59'30" West 143.51 feet; (3) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 92°43'55" with a chord bearing North 27°58'23" West 14.48 feet; (4) tangent North 18°23'34" East 15.29'; (5)

North 71°36'26" West 80.00 feet; (6) South 18°23'34" West 21.70 feet; (7) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 85°23'34" with a chord bearing South 61°05'21" West 13.56 feet; (8) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 4°16'58" with a chord bearing North 78°21'22" West 228.05 feet; (9) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 98°53'24" with a chord bearing North 31°03'09" West 15.20 feet; (10) tangent North 18°23'34" East 9.32 feet; (11) North 71°36'26" West 80.00 feet; (12) South 18°23'34" West 26.66 feet; (13) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 79°12'37" with a chord bearing South 57°59'53" West 12.75 feet; (14) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 3°31'12" with a chord bearing North 84°09'25" West 187.44 feet; (15) along the arc of a reverse 20.00 foot radius curve concave northeasterly, having a central angle of 84°31'34" with a chord bearing North 43°39'14" West 26.90 feet; (16) along the arc of a compound 1160.00 foot radius curve concave easterly, having a central angle of 0°21'39" with a chord bearing North 1°12'38" West 7.31 feet; (17) South 88°58'12" West 80.00 feet; (18) along the arc of a 1240.00 foot radius curve concave easterly, a radial to which bears South 88°58'12" West, having a central angle of 0°25'41" with a chord bearing South 1°14'39" East 9.27 feet; (19) along the arc of a reverse 10.00 foot radius curve concave northwesterly, having a central angle of 93°29'39" with a chord bearing South 45°17'20" West 14.57 feet; (20) along the arc of a reverse 3051.50 foot radius curve concave southerly, having a central angle of 6°52'17" with a chord bearing South 88°36'01" West 365.75 feet; (21) along the arc of a reverse 10.00 foot radius curve concave northeasterly, having a central angle of 84°56'10" with a chord bearing North 52°22'03" West 13.50 feet; (22) tangent North 9°53'58" West 3.47 feet; (23) South 80°06'02" West 64.00 feet; (24) South 9°53'58" East 9.21 feet; (25) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 93°30'05" with a chord bearing South 36°51'04" West 14.57 feet; (26) along the arc of a reverse 3039.50 foot radius curve concave southerly, having a central angle of 3°34'14" with a chord bearing South 81°48'59" West 189.39 feet; (27) tangent South 80°01'52" West 162.53 feet; (28) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°04'10" with a chord bearing North 54°56'03" West 14.15 feet; (29) tangent North 9°53'58" West 17.00

feet; (30) South 80°06'02" West 80.00 feet; (31) South 9°53'58" East 17.12 feet; (32) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 89°55'50" with a chord bearing South 35°03'57" West 14.13 feet; (33) tangent South 80°01'52" West 321.78 feet; (34) along the arc of a tangent 10.00 foot radius curve concave northeasterly, having a central angle of 90°04'10" with a chord bearing North 54°56'03" West 14.15 feet; (35) tangent North 9°53'58" West 17.36 feet; (36) South 80°06'02" West 80.00 feet; (37) South 9°53'58" East 17.48 feet; (38) along the arc of a tangent 10.00 foot radius curve concave northwesterly, having a central angle of 89°55'50" with a chord bearing South 35°03'57" West 14.13 feet; (39) tangent South 80°01'52" West 396.47 feet; (40) South 9°58'08" East 6.50 feet; (41) South 5°10'54" West 68.38 feet; (42) South 9°58'08" East 18.50 feet; (43) North 80°01'52" East 414.21 feet; (44) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 90°04'10" with a chord bearing South 54°55'57" East 14.15 feet; (45) tangent South 9°53'58" East 19.10 feet; (46) North 80°06'02" East 80.00 feet; (47) North 9°53'58" West 19.22 feet; (48) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 89°55'50" with a chord bearing North 35°03'57" East 14.13 feet; (49) tangent North 80°01'52" East 321.78 feet; (50) along the arc of a tangent 10.00 foot radius curve concave southwesterly, having a central angle of 90°04'10" with a chord bearing South 54°56'03" East 14.15 feet; (51) tangent South 9°53'58" East 17.59 feet; (52) North 80°06'02" East 80.00 feet; (53) North 9°53'58" West 17.72 feet; (54) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 89°55'50" with a chord bearing North 35°03'57" East 14.13 feet; (55) tangent North 80°01'52" East 162.66; (56) along the arc of a tangent 2948.50 foot radius curve concave southerly, having a central angle of 3°42'11" with a chord bearing North 81°52'58" East 190.53 feet; (57) along the arc of a compound 10.00 foot radius curve concave southwesterly, having a central angle of 86°21'59" with a chord bearing South 53°04'57" East 13.69 feet; (58) tangent South 9°53'58" East 22.89 feet; (59) North 80°06'02" East 64.00 feet; (60) North 9°53'58" West 16.35 feet; (61) along the arc of a tangent 10.00 foot radius curve concave southeasterly, having a central angle of 95°16'36" with a chord bearing North 37°44'20" East 14.78 feet; (62) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of 6°39'49" with a chord bearing North 88°42'32" East 342.73 feet; (63) along the arc of a compound 20.00 foot

radius curve concave southwesterly, having a central angle of $85^{\circ}29'43''$ with a chord bearing South $45^{\circ}12'42''$ East 27.15 feet; (64) tangent South $2^{\circ}27'51''$ East 14.30 feet to the northwesterly corner of 5th Street as described in that certain Easement for Public Road recorded in Book _____, Page _____, Official Records of Sacramento County; thence along the northerly line of said 5th Street, North $87^{\circ}32'09''$ East 80.00 feet to the northeasterly corner of said 5th Street; thence leaving said northerly line of 5th Street the following four (4) courses: (1) North $2^{\circ}27'51''$ West 2.35 feet; (2) along the arc of a tangent 20.00 foot radius curve concave southeasterly, having a central angle of $96^{\circ}51'52''$ with a chord bearing North $45^{\circ}58'05''$ East 29.93 feet; (3) along the arc of a compound 2948.50 foot radius curve concave southerly, having a central angle of $9^{\circ}06'45''$ with a chord bearing South $81^{\circ}02'36''$ East 468.45 feet; (4) along the arc of a compound 10.00 foot radius curve concave southwesterly, having a central angle of $95^{\circ}21'27''$ with a chord bearing South $28^{\circ}48'30''$ East 14.79 feet to the northwesterly corner of said 6th Street and the Point of Beginning

All as shown on Exhibit B attached hereto and by this reference made a part hereof.

Containing an area of 289,337 square feet more or less.

MICHAEL JAMES KNAPTON

DATE

P.L.S.8012

EXPIRES 12/31/2012



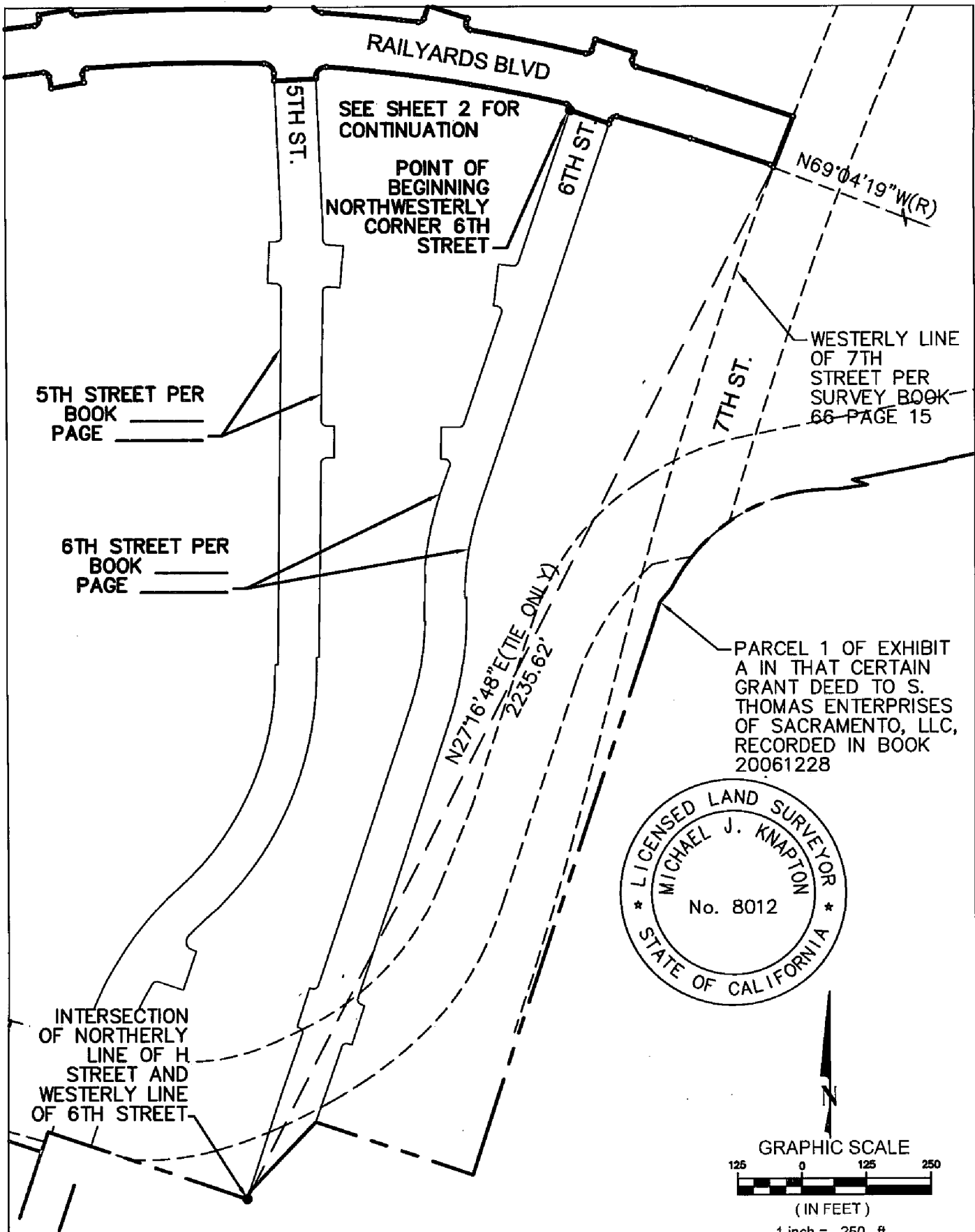


EXHIBIT B



**Kimley-Horn
and Associates, Inc.**

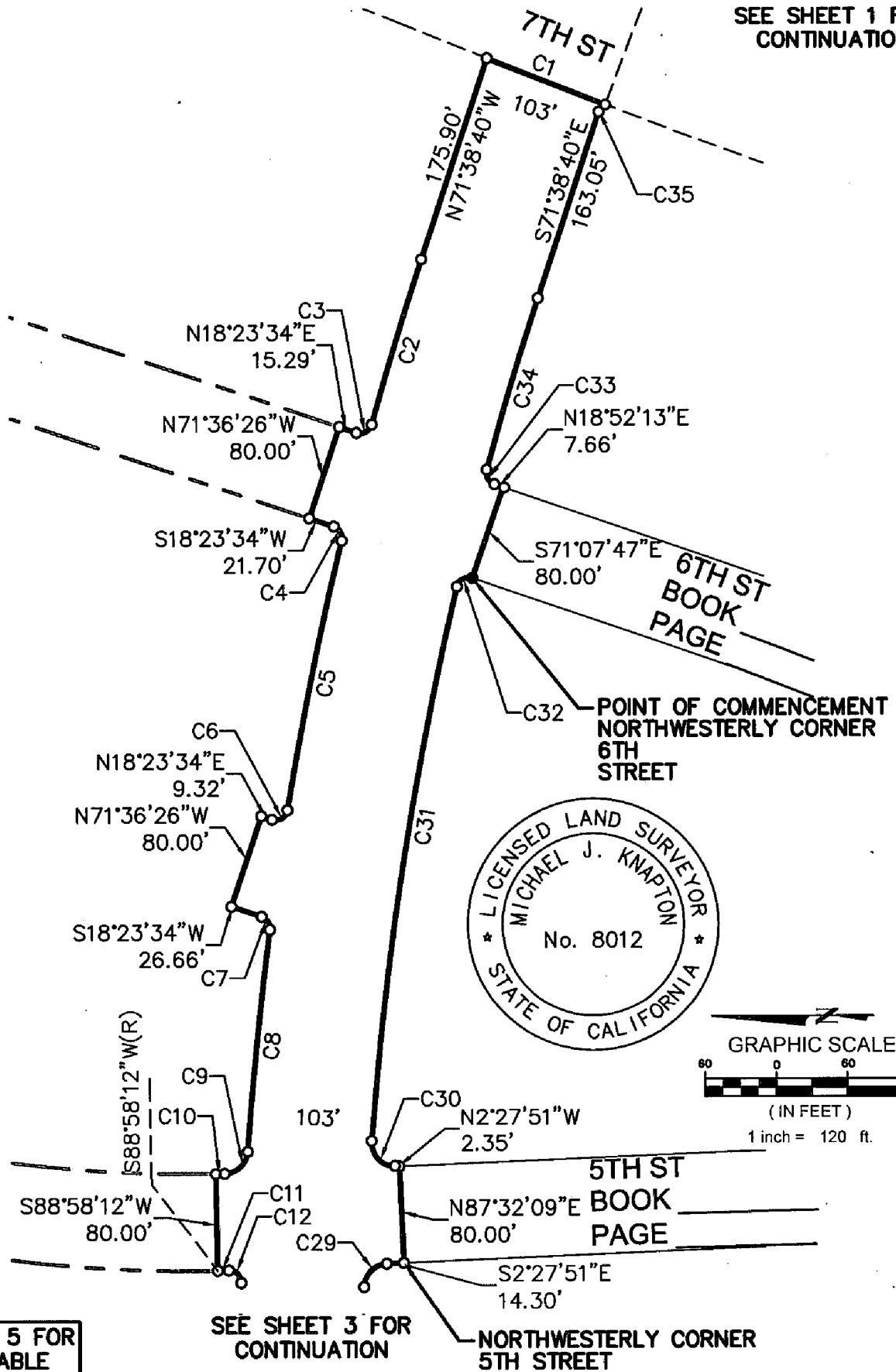
Engineering, Planning, and Environmental Consultants
11919 Foundation Place, Suite 200 Tel. No. (916) 656-5900 © 2012
Gold River, California 95670 Fax No. (916) 608-0885
www.kimley-horn.com

SCALE: 1"=120'
HORIZ.
VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET
1
OF
5

Jun 11, 2012 - 3:32pm - USER: Kevin.Jane
K:\SAC\DEV\097922008 Railyards\100 Overal\08 CAD\01 Civil\Large\Railyards Blvd.dwg

SEE SHEET 1 FOR
CONTINUATION



SEE SHEET 5 FOR
CURVE TABLE

SEE SHEET 3 FOR
CONTINUATION

EXHIBIT B

SCALE:	1"=120'	SHEET
HORIZ.		2
VERT.		OF
DATE:	6/08/2012	5
PROJECT NO.		



**Kimley-Horn
and Associates, Inc.**

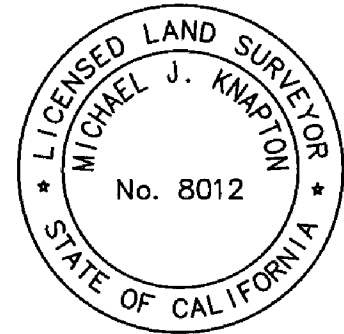
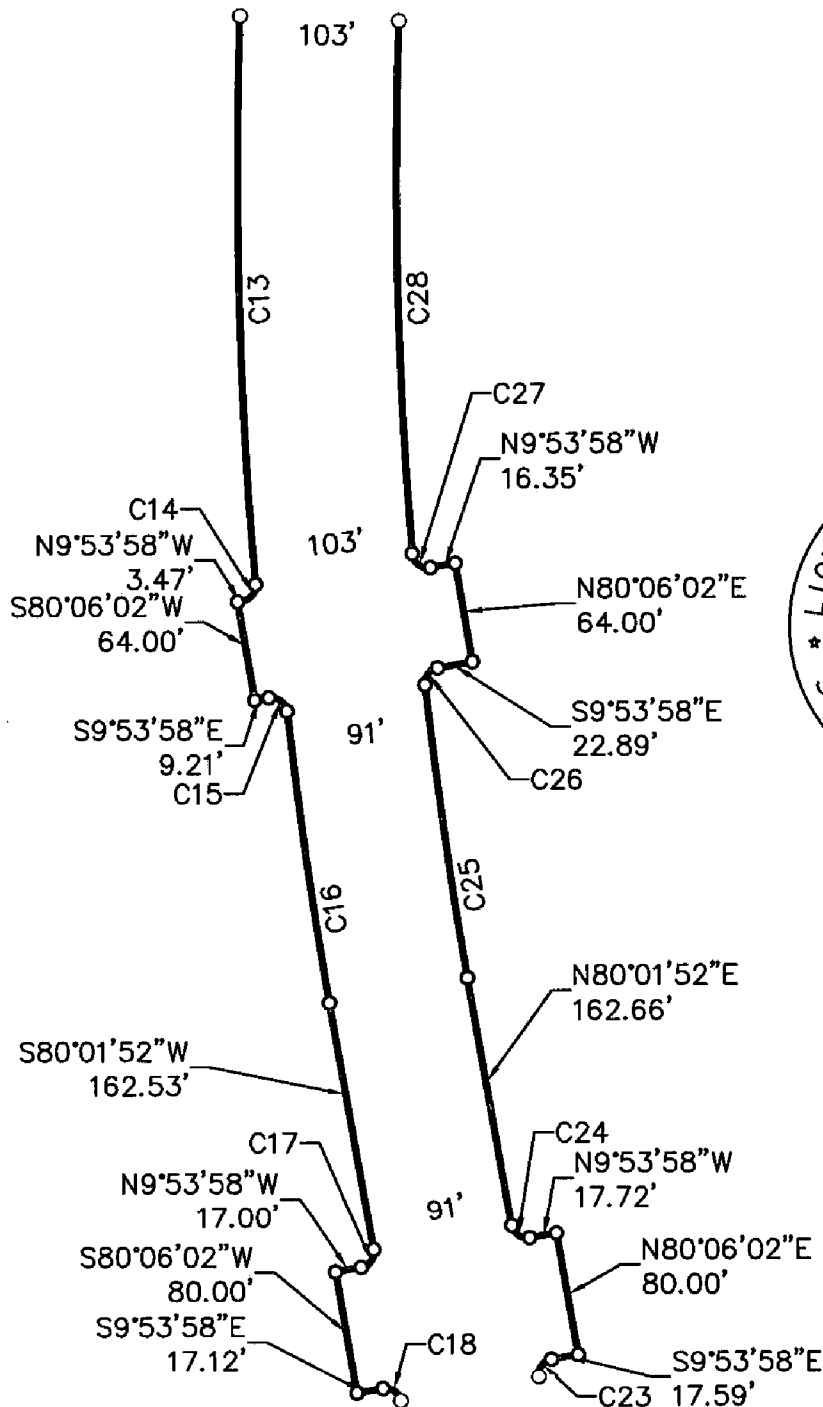
Engineering, Planning, and Environmental Consultants

11919 Foundation Place, Suite 200
Gold River, California 95670
www.kimley-horn.com

Tel. No. (916) 858-5800 © 2012
Fax No. (916) 858-0885

Jun 11, 2012 - 3:32pm - USER: kenhjane
K:\SAC\LINE\097822008 Rallye\100 Overall\08 CAD\04\Layout\Roller\Roller.dwg

SEE SHEET 2 FOR
CONTINUATION



SEE SHEET 4 FOR
CONTINUATION



(IN FEET)

1 inch = 120 ft.

SEE SHEET 5 FOR
CURVE TABLE



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Engineering, Planning, and Environmental Consultants

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Gold River, California 95670
www.kimley-horn.com

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EXHIBIT B

SCALE:
HORIZ. 1"=120'
VERT. _____
DATE: 6/08/2012
PROJECT NO. _____

SHEET
3
OF
5

Jun 11, 2012 - 5:32pm - USER: kndh.kara
K:\SAC\DEV\097922008 Rallye\000\Overall\08 CAD\Civil\Layouts\Rallye.dwg

SEE SHEET 3 FOR
CONTINUATION

S80°01'52"W
321.78'

N80°01'52"E
321.78'

C19
N9°53'58"W
17.36'

S80°06'02"W
80.00'

S9°53'58"E
17.48'
C20

RAILYARDS BLVD

C22
N9°53'58"W
19.22'
N80°06'02"E
80.00'

S9°53'58"E
19.10'
C21

S80°01'52"W
396.47'

N80°01'52"E
414.21'

S9°58'08"E
6.50'

91'

S9°58'08"E
18.50'
S5°10'54"W
68.38'

PARCEL 1 OF EXHIBIT A IN THAT
CERTAIN GRANT DEED TO S. THOMAS
ENTERPRISES OF SACRAMENTO, LLC,
RECORDED IN BOOK 20061228



(IN FEET)

1 inch = 120 ft.

SEE SHEET 5 FOR
CURVE TABLE



**Kimley-Horn
and Associates, Inc.**

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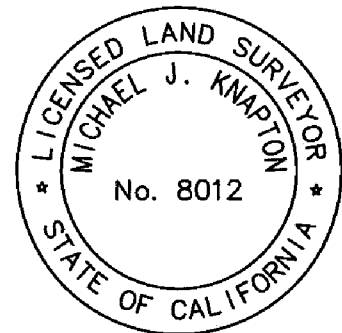
EXHIBIT B

SCALE: 1"=120'
HORIZ.
VERT.
DATE: 6/08/2012
PROJECT NO.

SHEET
4
OF
5

Jun 11, 2012 - 2:23pm - USER: kwh/kara
K:\SAC\LEVEE\097922008 Railyards\100 Overall\08 CAD\09\Levee Railyards Blvd.dwg

CURVE TABLE				
CURVE	DELTA	RADIUS	CHORD BEARING	CHORD
C1	0°42'48"	8547.63'	N21°17'05"E	106.42'
C2	2°41'41"	3051.50'	N72°59'30"W	143.51'
C3	92°43'55"	10.00'	N27°58'23"W	14.48'
C4	85°23'34"	10.00'	S61°05'21"W	13.56'
C5	4°16'58"	3051.50'	N78°21'22"W	228.05'
C6	98°53'24"	10.00'	N31°03'09"W	15.20'
C7	79°12'37"	10.00'	S57°59'53"W	12.75'
C8	3°31'12"	3051.50'	N84°09'25"W	187.44'
C9	84°31'34"	20.00'	N43°39'14"W	26.90'
C10	0°21'39"	1160.00'	N1°12'38"W	7.31'
C11	0°25'41"	1240.00'	S1°14'39"E	9.27'
C12	93°29'39"	10.00'	S45°17'20"W	14.57'
C13	6°52'17"	3051.50'	S88°36'01"W	365.75'
C14	84°56'10"	10.00'	N52°22'03"W	13.50'
C15	93°30'05"	10.00'	S36°51'04"W	14.57'
C16	3°34'14"	3039.50'	S81°48'59"W	189.39'
C17	90°04'10"	10.00'	N54°56'03"W	14.15'
C18	89°55'50"	10.00'	S35°03'57"W	14.13'
C19	90°04'10"	10.00'	N54°56'03"W	14.15'
C20	89°55'50"	10.00'	S35°03'57"W	14.13'
C21	90°04'10"	10.00'	S54°55'57"E	14.15'
C22	89°55'50"	10.00'	N35°03'57"E	14.13'
C23	90°04'10"	10.00'	S54°56'03"E	14.15'
C24	89°55'50"	10.00'	N35°03'57"E	14.13'
C25	3°42'11"	2948.50'	N81°52'58"E	190.53'
C26	86°21'59"	10.00'	S53°04'57"E	13.69'
C27	95°16'36"	10.00'	N37°44'20"E	14.78'
C28	6°39'49"	2948.50'	N88°42'32"E	342.73'
C29	85°29'43"	20.00'	S45°12'42"E	27.15'
C30	96°51'52"	20.00'	N45°58'05"E	29.93'
C31	9°06'45"	2948.50'	S81°02'36"E	468.45'
C32	95°21'27"	10.00'	S28°48'30"E	14.79'
C33	86°35'54"	10.00'	N62°10'10"E	13.72'
C34	2°53'14"	2948.50'	S73°05'16"E	148.56'
C35	47°48'47"	10.00'	S47°44'16"E	8.10'



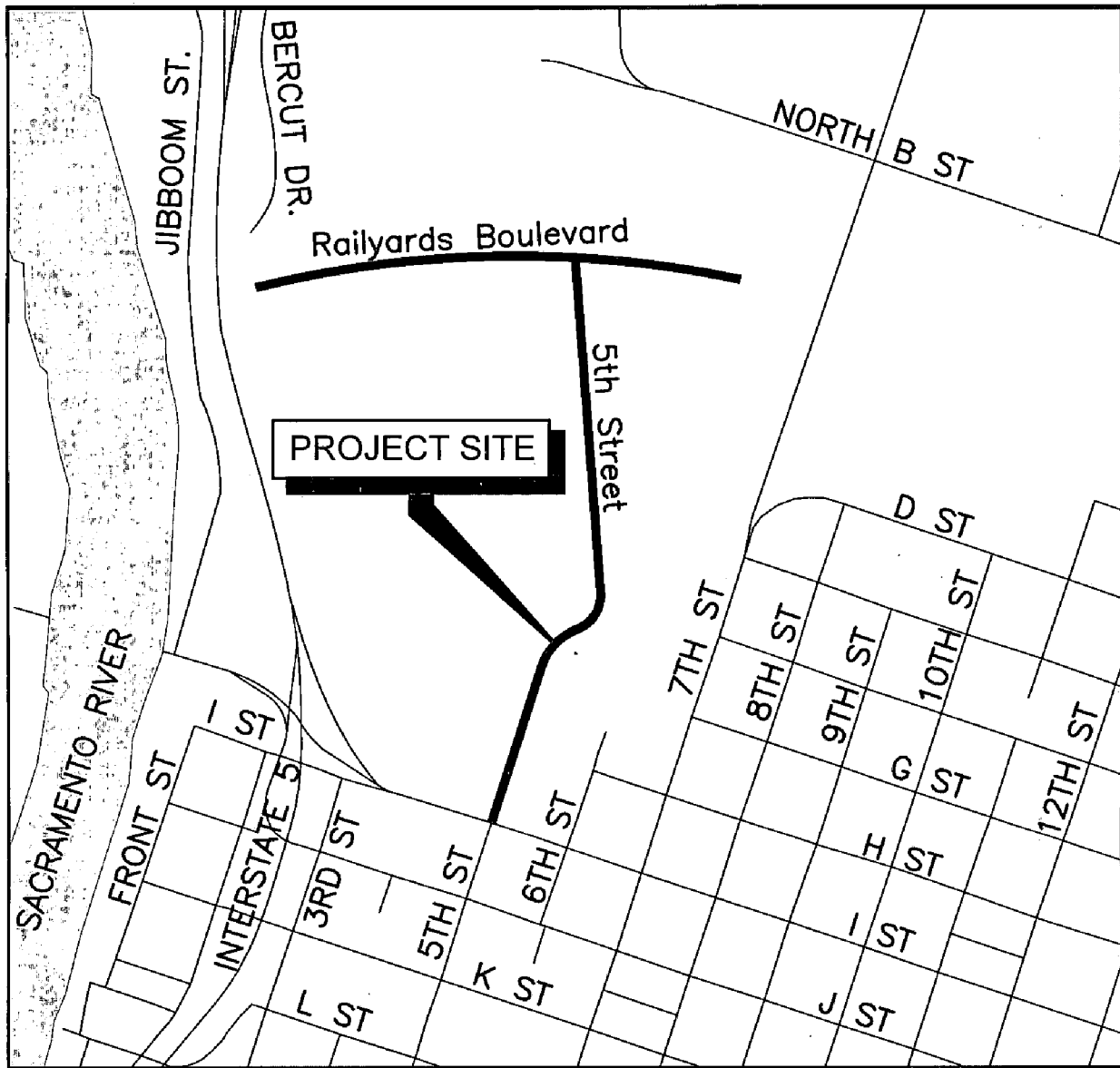
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EXHIBIT B

SCALE: 1"=120'
HORIZ. _____
VERT. _____
DATE: 6/08/2012
PROJECT NO. _____

SHEET
5
OF
5

Location map for:
**5th Street Roadway/
Railyards Boulevard Project**
PN: T15135800



Public Works
CITY OF SACRAMENTO

Map Contact: Boris Kiksman
Date: February 2013

