

# Folsom City Council Staff Report

<b>MEETING DATE:</b>	8/24/2021
<b>AGENDA SECTION:</b>	Public Hearing
<b>SUBJECT:</b>	<p>UCD Health Sciences Campus Development Agreement Amendment – Northwest corner of East Bidwell Street and Street B (PN 21-153)</p> <p>i. Ordinance No. 1316 - An Uncodified Ordinance of the City of Folsom Approving Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus Project (Introduction and First Reading)</p>
<b>FROM:</b>	Community Development Department

**RECOMMENDATION / CITY COUNCIL ACTION**

Move to introduce and conduct first reading of Ordinance No. 1316 - An Uncodified Ordinance of the City of Folsom Approving Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus Project (Introduction and First Reading)

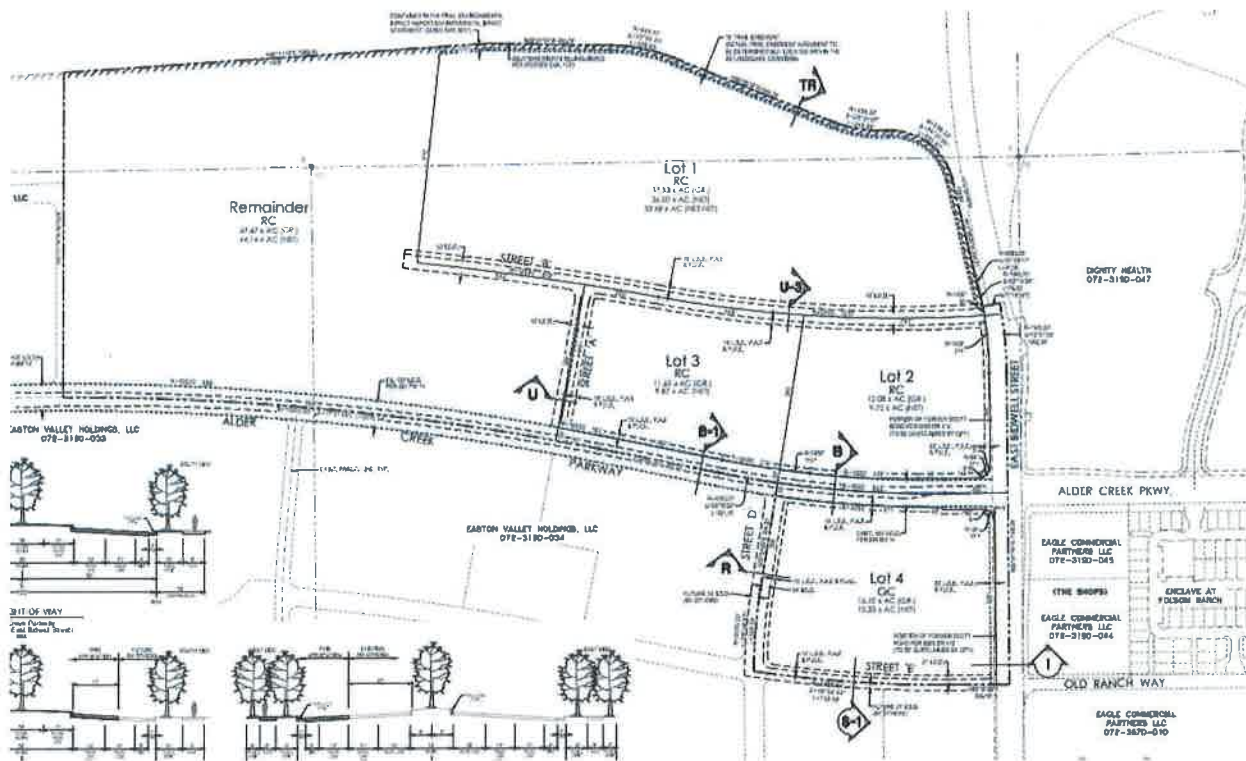
**BACKGROUND / ISSUE**

The City and Landowner’s predecessor (Eagle Commercial Partners, LLC) previously entered into the First Amended and Restated Tier 1 Development Agreement By and Between the City of Folsom and Landowner Relative to the Folsom South Specific Plan on July 15, 2014. Section 1.5 of the Restated Development Agreement allows the Restated Development Agreement to be amended from time to time by mutual written consent of the parties. On November 12, 2015, Eagle Commercial Partners, LLC and the City entered into Amendment No. 1 to First Amended and Restated Tier 1 Development Agreement Relative to the Folsom South Specific Plan.

The applicant is proposing Amendment No. 2 to the First Amended and Restated Development Agreement by and between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus project.

On June 16, 2021, the Planning Commission approved a Tentative Parcel Map, Planned Development Permit, and Commercial Design Guidelines for Parcels 61 and 71 located within the Folsom Plan Area. The Tentative Parcel Map subdivided a 123-acre property located at the northwest corner of East Bidwell Street and Alder Creek Parkway into four individual parcels and a remainder lot, for future sale, lease, and financing. The Planned Development Permit established unique development standards relative to minimum lot size for the subject parcels. Lastly, the Folsom Ranch Commercial Design Guidelines were established to guide design and development of future commercial development on the subject parcels. The UCD Health Sciences Campus project will be located on a 34.5-acre parcel (Lot/Parcel 1) that was created by the aforementioned Tentative Parcel Map that was approved by the Planning Commission in June of this year. The approved Tentative Parcel Map is shown in Figure 1 below.

FIGURE 1: PARCEL 61 AND 77 TENTATIVE PARCEL MAP



## Physical Setting

The UCD Health Sciences Campus project site is a rectangular-shaped 34.5-acre parcel located near the northwest corner of the intersection of East Bidwell Street and Alder Creek Parkway within the Folsom Plan Area. A Conceptual Site Plan for the Health Sciences Campus is shown in Figure 2 below.

FIGURE 2: CONCEPTUAL SITE PLAN



UC Davis Health | Folsom Center  
Conceptual Planning and Program

UC DAVIS  
HEALTH

The applicant, the University of California, Davis, is requesting approval of a Development Agreement Amendment (Attachment 2) associated with future development of a 400,000-square-foot health sciences campus (UCD Health Sciences Campus) on a 34.5-acre site located near the northwest corner of the intersection of East Bidwell Street and Alder Creek Parkway within the Folsom Plan Area. Specifically, the proposed project includes Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus project. The duration of the Development Agreement Amendment follows the existing term of the Restated Development Agreement with an expiration date of June 30, 2044.

The Development Agreement Amendment is intended to incorporate in the definition of “entitlements” the previous approvals by the City for the project including a Parcel Map, a Planned Development Permit, and the Folsom Ranch Commercial Design Guidelines, as well as the proposed Development Agreement Amendment once approved by the City Council. The Development Agreement Amendment is also intended to recognize and memorialize that

as a State agency, the applicant is permitted to exercise its land use authority as a lead agency for development of the subject property under the California Constitution, subject to the applicant's promise and commitment to subject itself to the City's Zoning Code and the Folsom Plan Area Specific Plan, except as otherwise specified in the Development Agreement Amendment. In addition, the Development Agreement Amendment requires the applicant to pay all development impact fees, connection fees, and mitigation fees for development of the subject property as required by Section 2.2.4 of the Restated Development Agreement.

As mentioned previously, the applicant is a State agency and has its own land use authority, and it intends to exercise its own public review and approval processes for development of the subject property, including environmental review and analysis under the California Environmental Quality Act (CEQA). Notwithstanding its land use authority, the applicant has agreed to subject itself to the City's Zoning Code and the Folsom Plan Area Specific Plan, except as specified in the Development Agreement Amendment. The development standards specified in the Development Agreement Amendment are consistent with recently approved standards for the Dignity Medical Center project:

- (1) Setback (Building) – 10 feet between buildings for every story.
- (2) Height (Building) – Height limits of (i) 80 feet for Office uses, (ii) 100 feet for Lodging uses and (iii) 120 feet for Medical Services/Hospital uses. The foregoing height limits shall include all architectural features, mechanical equipment, parapets, etc.
- (3) Floor to Area Ratio (FAR) – maximum 0.55.
- (4) Parking – Subject to Specific Plan requirements (including bicycle parking) or a City-approved alternate or City-approved shared use parking plan and implementing agreements.
- (5) Traffic Circulation – No vehicular exit to or from E. Bidwell Street between US50 and Alder Creek Parkway without the approval and consent of both the California Department of Transportation and the City.
- (6) Signage – Any freestanding, freeway-oriented sign ~~within 75 feet of the freeway~~ will be subject to City approval.
- (7) Landscaping – Provide City-approved landscaping and ongoing maintenance within the 25-foot-wide landscape corridor easement once Class 1 Bicycle Path is constructed by the City.
- (8) Heliport – Requires approval by the City and other applicable Authorities Having Jurisdiction.
- (9) Landscaping – Minimum of 20 percent of Property must be landscaped; minimum may include Class 1 Bicycle Path landscaping
- (10) Water use shall not exceed amount contemplated for the Property in the Specific Plan.
- (11) Building Code – University of California Facilities Manual, Volume 3, Chapter 4 shall apply <https://www.ucop.edu/construction-services/facilities-manual/volume-3/vol-3-chapter-4.html#intro>
- (12) The Property is part of Parcel 61, which has approved 302,481 square feet of Regional Commercial, 270,072 square feet of General Commercial, and

196,745 square feet of Industrial/Office Park. Owner/Applicant shall coordinate with owner(s) of the rest of Parcel 61 so that the aforementioned limitation for the entire Parcel 61 shall not be exceeded with the Development of the Property.

As noted previously, the Development Agreement Amendment also requires the applicant to pay all existing development impact fees, connection fees, and mitigation fees for development of the subject property as required by the original Restated Development Agreement. However, the Development Agreement Amendment does specify that, as long as the property is developed consistent with the aforementioned development standards and operated to fulfill its health, educational, research, and public service mission, the subject property shall not be subject to: (1) City development processing fees except for matters the applicant requests the City to process, review or approve; and (2) any new citywide regulatory or non-impact fees for a period of 15 years from the effective date of the Amendment.

On August 4, 2021, the Planning Commission held a public hearing to consider the UCD Health Sciences Campus Development Agreement Amendment project. Planning Commission discussion and comments were focused primarily on the City's role and involvement in future approvals and public participation in the review process for the UCD Health Sciences Campus project. With respect to future approvals, the Commission was particularly interested in whether the City should have a more active role in reviewing the architecture and design of a potential hotel on the project site given that this use may not be perceived as a health or medical-related use. The applicant indicated that the hotel, which is integral to the medical campus, is intended to serve patients as well as family and friends who are visiting/assisting patients in the health science campus facilities on a short or long-term basis (similar to hotels that currently serve the UCD campuses in Davis and in Sacramento). The applicant also stated that the State has a robust design review process and that they are committed to adhering to existing design guidelines established for the Folsom Plan Area with respect to the hotel design.

In relation to future approvals, the Commission also expressed concern regarding proposed language in the Development Agreement Amendment relative to future freeway-oriented signs on the project site. The Development Agreement Amendment states that any freestanding, freeway-oriented sign within 75 feet of the freeway will be subject to City approval. The applicant's intent in including this language in the Amendment was to accommodate potential future signage for the current landowner within a 75-foot-wide signage easement area adjacent to U.S. Highway 50. The Commission did not believe that it was appropriate to limit City review of future freestanding freeway-oriented signs to a distance of 75 feet from U.S. Highway 50, and that the City should have review authority for all proposed freestanding freeway-oriented signs on the entire project site. As a result, the Commission recommended that the language in the Development Agreement Amendment relative to signage be modified as follows:

- (6) Signage – Any freestanding, freeway-oriented sign ~~within 75 feet of the freeway~~ will be subject to City approval.

The applicant is agreeable to this modification.

The Commission also expressed an interest in knowing what type of opportunities would be available for public participation in the CEQA review process. In addition, the Commission wanted to verify that the public would have the opportunity to review and comment on the overall design of the UCD Health Sciences Campus project. In response to these comments, the applicant indicated that both the City and the public would be provided the opportunity to provide comments and feedback on both the CEQA review process and the overall project design through public meetings under the applicant's land use authority. Ultimately, the Commission voted 5-1-1 to recommend to the City Council approval of the Development Agreement Amendment.

### **POLICY / RULE**

As set forth in the State Planning and Zoning Law, approval of, or amendments to, a Development Agreement is a legislative act which requires approval by the City Council following review and recommendation by the Planning Commission.

### **ANALYSIS**

The applicant has submitted a project narrative (Attachment 6) in which they describe the goals and objectives associated with development of a health sciences campus on the subject property and the rationale for entering into a Development Agreement Amendment with the City. In terms of goals and objectives the applicant indicates that development of a health sciences campus on the subject property would serve a number of purposes including expanding the UCD health services and patient access in Folsom, replacing existing UCD health care services in existing facilities in Folsom where leases are set to expire, and securing a prime location in Folsom that exudes wellness, community, convenience, and excellence.

In reviewing the original Restated Development Agreement, the applicant noted that the Agreement appears to overlap with respect to the typical land use entitlement authority granted to the University of California. The applicant states that the Development Agreement, as a recorded deed encumbrance, extends beyond typical master developer obligations and includes design and plan review provisions and would remain enforceable even during ownership by the University of California. The applicant comments that carrying these development agreement requirements forward would essentially duplicate the public agency review and entitlement processes by requiring duplicative review and consideration by both the City of Folsom and by the University of California. Thus, the applicant is requesting to amend the Development Agreement to allow it to exercise its own land use review and entitlement authority with respect to the subject property. The following is a list of Development Agreement Amendment benefits provided by the applicant:

- **Remove Duplicate Entitlement Process:** The proposed action would remove duplication in the entitlement process for the property helping to avoid development delays and inefficiencies.
- **Standard University of California Ownership:** The proposed action would ensure the land ownership and entitlement process would be standard for the Board of Regents of the University of California. The University commits to comply with the City's Zoning Code and the Folsom Plan Area Specific Plan, and intends to work collaboratively with the City of Folsom to maintain consistency of planning goals, infrastructure construction and maintenance and pursuit of overall community goals for the City of Folsom.
- **Avoid Contradictory/Overlapping Requirements:** The amendment would provide long-term certainty to the Regents while still maintaining a strong public engagement process for the local and University communities. The University planning process is robust, thorough and complete with extensive consideration of serving the public need, exceptional design details and high-quality architecture, advanced sustainability measures, and careful compliance with public contracting and labor agreements.
- **Establish Public Clarity:** The amendment would ensure that the University is identified as the responsible public agency for entitlements, design review and other matters.
- **Demonstrate Public Efficiency:** The amendment would demonstrate two public agencies working collaboratively and efficiently in furtherance of public service goals and kickstarting the construction that has been planned at the parcel.

In evaluating the proposed Development Agreement Amendment, staff determined that there are significant benefits to the City and the region associated with development of the new Health Science Campus within the Folsom Plan Area. In addition, staff determined that there are a number of unique characteristics associated with buildout of the UCD Health Science Campus. Listed below are the public benefits and unique characteristics associated the UCD Health Campus project:

- Development of the UCD Health Science Campus will occur over a long period of time, with a phased timeline for construction and potential adjustments to physical structures as medical delivery systems change over time.
- The California Office of Statewide Health Planning and Development ("OSHPD") is required to approve the medical office building, the micro hospital building, and the ambulatory surgery center designs which may result in required changes to the design of the Medical Center buildings and related structures.
- The UCD Health Sciences Campus will generate significant employment and other economic benefits to the City.

- The UCD Health Science Campus will provide needed expansion of access to health care services for the City and other jurisdictions in the region.
- A significant capital investment is required for the UCD Health Sciences Campus buildings and related structures; and
- The status of applicant as a not-for-profit public benefit corporation.

City staff is supportive of the Development Agreement Amendment as modified by the Planning Commission at its August 4, 2021 meeting.

### **FINANCIAL IMPACT**

No financial impact is anticipated with approval of the Development Agreement Amendment associated with the UCD Health Sciences Campus Project as the project will not result in any change in the total amount of commercial square footage or residential unit count within the Folsom Plan Area.

### **ENVIRONMENTAL REVIEW**

The City, as the lead agency under the California Environmental Quality Act, previously approved an Addendum to the FPASP EIR/EIS for the subject property. The City has determined that the adoption of this Amendment No. 2 to the First Amended and Restated Development Agreement Amendment relative to the Folsom South Specific Plan involves no new impacts not considered in the FPASP EIR/EIS and the Parcels 61 and 77 Addendum to the FPASP EIR/EIS. Since the Addendum was approved, none of the events described in Public Resources Code section 21166 or CEQA Guidelines section 15162 (e.g. substantial changes to the project) have occurred. Further environmental review is not required.

### **ATTACHMENTS**

1. Ordinance No. 1316 - An Uncodified Ordinance of the City of Folsom Approving Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus Project (Introduction and First Reading)
2. Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus Project
3. Planning Commission Staff Report, dated August 4, 2021



Submitted,

A handwritten signature in blue ink, appearing to read "Pam Johns", with a long horizontal flourish extending to the right.

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PAM JOHNS  
Community Development Director

## Attachment 1

Ordinance No. 1316 – An Uncodified Ordinance of the City  
of Folsom Approving Amendment No. 2 to the First  
Amended and Restated Tier 1 Development Agreement  
between the City of Folsom and the Regents of the University  
of California relative to the  
UCD Health Sciences Campus Project  
(Introduction and First Reading)

**ORDINANCE NO. 1316**

**AN UNCODIFIED ORDINANCE OF THE CITY OF FOLSOM APPROVING  
AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED TIER 1  
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FOLSOM AND THE  
REGENTS OF THE UNIVERSITY OF CALIFORNIA RELATIVE TO THE UCD  
HEALTH SCIENCES CAMPUS PROJECT**

**WHEREAS**, a Final Environmental Impact Report/Environmental Impact Statement for the Folsom Plan Area Specific Plan was prepared and certified by the City Council on June 11, 2011, and the Sacramento Local Agency Formation Commission approved the City's annexation of the Folsom Plan Area on January 18, 2012; and

**WHEREAS**, pursuant to the authority in Sections 65864 through 65869.5 of the Government Code, the City Council, following a duly notified public hearing on June 28, 2011, approved the Tier 1 Development Agreement relative to the Folsom South Specific Plan (Tier 1 DA) for the development of the Folsom Plan Area by adopting Ordinance No. 1149 on July 12, 2011; and

**WHEREAS**, the City Council, following a duly noticed public hearing on May 27, 2014, approved a request to amend the Tier 1 DA to the development of the Westland/Eagle Project by approving a First Amended and Restated Tier 1 Development Agreement (ARDA) between the City and the developer of the Westland/Eagle Project, Eagle Commercial Partners, LLC, by adopting Ordinance No. 1204 on June 10, 2014; and

**WHEREAS**, the City Council, following a duly noticed public hearing on September 22, 2015, approved a request to amend the ARDA to the development of the Westland/Eagle Project by approving Amendment No. 1 to ARDA between the City and the developer of the Westland/Eagle Project, Eagle Commercial Partners, LLC, by adopting Ordinance No. 1237 on October 13, 2015; and

**WHEREAS**, the proposed UCD Health Sciences Campus Project consists of the development of an approximately 400,000-square-foot medical campus on a 34.5-acre site located at the northeast corner of the intersection of East Bidwell Street and Street B within the Folsom Plan Area; and

**WHEREAS**, the City and the landowner/developer of the UCD Health Sciences Campus Project desire to further amend the ARDA in order to provide greater certainty and clarity to matters that are common, necessary and essential for the development of the project; and

**WHEREAS**, the Planning Commission, at its regular meeting on August 4, 2021, considered Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus project at a duly noticed public hearing as prescribed by law, and recommended that the City Council approve said Amendment No. 2; and

**WHEREAS**, all notices have been given at the time and in the manner required by State Law and the Folsom Municipal Code.

**NOW, THEREFORE**, the City Council of the City of Folsom hereby does ordain as follows:

**SECTION 1 FINDINGS**

- A. The above recitals are true and correct and incorporated herein by reference.
- B. The Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan and the Folsom Plan Area Specific Plan.
- C. The Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement is in conformity with public convenience, general welfare, and good land use practices.
- D. The Amendment No. 2 will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole.
- E. The Amendment No. 2 will not adversely affect the orderly development of property or the preservation of property values.
- F. The Amendment No. 2 has been prepared in accordance with, and is consistent with, Government Code Sections 65864 through 65869.5, and City Council Resolution No. 2370.
- G. All notices have been given at the time and in the manner required by State Law and the Folsom Municipal Code.

H. The Amendment No. 2 is consistent with the Environmental Impact Report/Environmental Impact Statement for the Folsom Plan Area Specific Plan certified by the City Council on June 11, 2011 and the 2021 Parcels 61 and 77 Addendum, which are incorporated herein by reference. None of the events in Sections 15162 and 15163 of the CEQA Guidelines exists which warrant the preparation of a subsequent EIR or supplemental EIR.

**SECTION 2 APPROVAL OF AMENDMENT TO DEVELOPMENT AGREEMENT**

The Mayor is hereby authorized and directed to execute the Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California on behalf of the City after the effective date of this Ordinance.

**SECTION 3 SEVERABILITY**

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

**SECTION 4 EFFECTIVE DATE**

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on August 24, 2021 and the second reading occurred at the regular meeting of the City Council on September 14, 2021.

On a motion by Council Member \_\_\_\_\_ seconded by Council Member \_\_\_\_\_, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 14th day of September 2021, by the following roll-call vote:

**AYES:** Councilmember(s):  
**NOES:** Councilmember(s):  
**ABSENT:** Councilmember(s):  
**ABSTAIN:** Councilmember(s):

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Michael D. Kozlowski, MAYOR

ATTEST:

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Christa Freemantle, CITY CLERK

## Attachment 2

Amendment No. 2 to the First Amended and Restated Tier 1  
Development Agreement between the City of Folsom and the  
Regents of the University of California relative to the  
UCD Health Sciences Campus Project

FOR THE BENEFIT OF THE CITY OF FOLSOM  
PURSUANT TO GOVERNMENT CODE §6103

RECORDING REQUESTED BY CITY CLERK

WHEN RECORDED MAIL TO:

City Clerk  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**AMENDMENT NO. 2 TO  
FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT  
AGREEMENT  
RELATIVE TO FOLSOM SOUTH SPECIFIC PLAN  
(UNIVERSITY OF CALIFORNIA, DAVIS)**



**AMENDMENT NO. 2 TO  
FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT  
RELATIVE TO FOLSOM SOUTH SPECIFIC PLAN  
(UNIVERSITY OF CALIFORNIA, DAVIS)**

This Amendment No. 2 to First Amended and Restated Development Agreement (“Amendment No. 2”) is entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Folsom (“City”) and The Regents of the University of California, a California corporation on behalf of its Davis Campus (“Landowner”) pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California. All capitalized terms used herein and not otherwise defined herein shall mean and refer to those terms as defined in Section 1.3 of the Restated Development Agreement and Amendment No. 1 to the Restated Development Agreement, described below between the Predecessor in Interest to Landowner and the City.

**RECITALS**

A. Restated Development Agreement and Amendments Thereto. The City and Landowner’s predecessor in interest Eagle Commercial Partners, LLC (referred to herein as the “Predecessor in Interest”) previously entered into that certain First Amended and Restated Tier 1 Development Agreement By and Between the City of Folsom and Landowner Relative to the Folsom South Specific Plan, recorded on July 15, 2014, in the Official Records of the County Recorder of Sacramento County in Book 20140715, Page 0517 (the “Restated Development Agreement”). Section 1.5 of the Restated Development Agreement allows the Restated Development Agreement to be amended from time to time by mutual written consent of the parties. On November 12, 2015, Eagle Commercial Partners, LLC and the City entered into Amendment No. 1 to First Amended and Restated Tier 1 Development Agreement Relative to the Folsom South Specific Plan, recorded on January 29, 2016, in the Official Records of the County Recorder of Sacramento County in Book 0160129, Page No. 0385 (“Amendment No. 1”). The Restated Development Agreement and Amendment No. 1 are collectively referred to herein as the “Development Agreement.”

B. Pending Conveyance of Property to Landowner and Assignment of Development Agreement. Predecessor in Interest is in the process of conveying the Property identified by legal description on Exhibit A-1 and depicted on Exhibit A-2 (“Property”) to its affiliate, Enclave at Folsom Ranch, LLC (“Predecessor Affiliate”), who will in turn convey the Property to Landowner in or around [September \_\_\_\_\_], 2021. Predecessor in Interest will enter into an Assignment and Assumption Agreement Relative to The Folsom South Specific Plan Amended and Restated Tier 1 Development Agreement with Predecessor Affiliate, pursuant to a form approved and required by the City (“Assignment and Assumption Agreement”). Concurrent with its anticipated conveyance of the Property to Landowner, Predecessor Affiliate will enter into an Assignment and Assumption Agreement with Landowner to transfer all rights, title, interest, burdens and obligations of the Predecessor in Interest under the Development Agreement with respect to the Property to Landowner. Said Assignment

and Assumption Agreement will be recorded in the Official Records of the County Recorder of Sacramento County.

C. Effect of Amendment No. 2 Subject to Conveyance of Property to Landowner and Assignment of Development Agreement. This Amendment No. 2 is subject to, and will take effect only upon, the transfer and conveyance of legal title to Property from Predecessor Affiliate to Landowner. Notwithstanding any provision to the contrary, this Amendment No. 2 will automatically terminate without further action by City or Landowner if Landowner does not obtain legal title to Property on or prior to December 31, 2021 as evidenced by a deed signed by Predecessor Affiliate on or prior to that date.

D. Prior City Approvals Relative to the Property. The Property is identified as "Lot 1" of "Parcel 61" on a Parcel Map approved by the City Planning Commission on June 16, 2021 (PN 21-043). Lot 1 is one of four parcels created by the subdivision of the property identified as Parcel 61 in the Specific Plan. The Final Parcel Map including Lot 1 was filed for record on \_\_\_\_\_, 2021 in Book \_\_\_\_\_, Page \_\_\_\_\_ of Parcel Maps, Sacramento County. Concurrent with the approval of the subdivision of Parcel 61 on June 16, 2021, the Planning Commission also approved an Addendum to the Final EIR for the Folsom Plan Area Specific Plan, a Planned Development Permit that reduced the minimum parcel size for Regional Commercial from 60-acres to 0.25 acre, and the Folsom Ranch Commercial Design Guidelines to guide commercial and office design and development.

E. Purpose of Amendment; Findings Related to Health Sciences Campus. Landowner is processing Subsequent Entitlements for the Development of the Property for comprehensive health, educational, research and public service uses (as further defined in Section 1.3 of this Amendment No. 2 and hereafter the "Health Sciences Campus"). Landowner has requested that the Prior City Approvals of the Parcel Map, Planned Development Permit, and Folsom Ranch Commercial Design Guidelines be included in the definition of Entitlements in the Development Agreement. As a public trust corporation known as The Regents of the University of California, Landowner further requests to be permitted to exercise its land use authority as lead agency for Development of the Property under Section 9 of Article IX of the California Constitution, subject to Landowner's promise and commitment to subject itself to the City's land use and zoning ordinances, including the City's Building and Zoning Codes, except as otherwise specified in this Amendment No. 2. The City Council has determined that the development of the Health Sciences Campus on the Property presents significant benefits to the City and the region.

F. Property. The subject of this Amendment No. 2 is the Development of the Property, as defined in Section 1.3. Landowner has an equitable interest in the Property and intends to become legal owner of the Property and shall be bound by this Amendment No. 2 and the Development Agreement.

G. Hearings. On August 4, 2021, the City Planning Commission, designated as the planning agency for purposes of development agreement review pursuant to Government Code section 65867, in a duly noticed and conducted public hearing, considered this Amendment No. 2 and recommended that the City Council approve this Amendment No. 2 to the Development Agreement. On August 24, 2021, the City Council, in a duly noticed and conducted public hearing, conducted the first reading of Ordinance No. [REDACTED] and approved this Amendment No. 2, and thereafter conducted the second reading of Ordinance No. [REDACTED] at a duly noticed regular meeting of the City Council on [September 14, 2021 and adopted the Ordinance approving this Amendment No. 2.

H. Environmental Review. On June 16, 2021, the Planning Commission considered the Environmental Checklist and Addendum (the "Addendum") to the Folsom Plan Area Specific Plan EIR/EIS for the Property. All applicable mitigation measures to reduce environmental impacts to less than significant have been incorporated into the Parcel Map, the Planned Development Permit, and the Folsom Ranch Commercial Design Guidelines as reflected by the findings adopted by the Planning Commission in connection with the aforementioned approvals, including the City Council's consideration, adoption of findings, and approval of this Amendment No. 2.

I. No New Impacts Associated with Approval of Amendment. The City Council has determined that the adoption of this Amendment No. 2 involves no new impacts not considered in the Specific Plan EIR, the Previous Environmental Analyses listed in Section I, "Introduction and Background" of the Addendum, and the Addendum; therefore, no further environmental documents relating to the adoption of this Amendment No. 2 are required.

J. Consistency with General Plan and Specific Plan. Having duly examined and considered this Amendment No. 2, the City finds and declares that this Amendment No. 2 is consistent with the General Plan and the Specific Plan.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties agree to hereby amend the Development Agreement as follows:

### **AMENDMENTS**

1. Incorporation of Recitals. The Recitals above are true and correct and constitute enforceable provisions of this Amendment No. 2.

2. Definition and Section 1.5.3 – Subsequent Entitlements. The term "Subsequent Entitlements" in the Definitions Section of the Development Agreement and also referenced in Section 1.5.3 of the Development Agreement is amended to include the following:

- a. The Parcel Map approved by the Planning Commission on June 16, 2021.
  - b. The Planned Development Permit approved by the Planning Commission on June 16, 2021.
  - c. The Folsom Ranch Commercial Design Guidelines approved by the Planning Commission on June 16, 2021.
  - d. This Amendment No. 2 approved by the Folsom City Council on [September 14, 2021.
3. **Section 1.3 – Definitions.** The following Definitions are added:

“Adopting Ordinance” means Ordinance No. [REDACTED], dated [September 14, 2021, approving this Amendment No.2.

“Addendum” means the Environmental Checklist and Addendum dated May 28, 2021.

“Design Guidelines” means the Folsom Ranch Commercial Design Guidelines approved by the City Planning Commission.

“Effective Date” means the date which is the later of (i) thirty (30) calendar days after the date of the Ordinance approving this Amendment No. 2, or (ii) the date title to the Property vests in Landowner.

“Environmental Analysis” means the Addendum and the Previous Environmental Analyses listed in Section I, “Introduction and Background” of the Addendum.

“Landowner” means The Regents of the University of California, a California corporation on behalf of its Davis Campus.

“Planned Development Permit” means the Planned Development Permit approved by the Planning Commission in connection with its approval of the Parcel Map.

“Health Sciences Campus” means the buildings and related structures, improvements and facilities developed on the Property to support the health, education, research and public service missions of Landowner.

“Predecessor in Interest” shall mean the prior owner of the Property and party to the Restated Development Agreement and Amendment No. 1, i.e., Eagle Commercial Partners, LLC.

“Predecessor Affiliate” shall mean the affiliate of Predecessor in Interest, Enclave at Folsom Ranch, LLC.

“Project” means development of the Property consistent with the Development Agreement and the Subsequent Entitlements.

“Property” means the land identified by legal description on Exhibit A-1 and depicted on Exhibit A-2.

“Subsequent Entitlements” shall have the amended definition set forth in paragraph 2, subsections (a)-(d), inclusive, of this Amendment No. 2.

“Vested Rights” means the rights to Develop the Property consistent with the terms and provisions of the Restated Development Agreement, Amendment No. 1, this Amendment No. 2 and the provisions of the Subsequent Entitlements.

4. Section 1.4.1 – Commencement, Extension, Expiration. This Amendment No. 2 shall become operative on the Effective Date and continue through the Term of the Development Agreement. Landowner may request an additional extension pursuant to Section 1.4.1 of the Development Agreement.

5. Section 1.6 – Changes to the City’s Inclusionary Housing Ordinance. Section 1.6 of the Development Agreement is hereby revised to read as follows: “The City has amended the Inclusionary Housing Ordinance (i.e., Folsom Municipal Code Chapter 17.104) by Ordinance No. 1243, to eliminate Second Dwelling Units (also referred to as “granny flats”) as an alternative means of meeting the City’s inclusionary housing requirements. Landowner hereby acknowledges and agrees that there is no vested right to use Second Dwelling Units as an alternative means for meeting the City’s inclusionary housing requirements and that this alternative shall not be available to Landowner from and after the date of Ordinance No. 1243. Landowner further acknowledges that the State adopted amendments to Section 65850 of the California Government Code (specifically Section 65850(g)), effective January 1, 2018, to allow for the implementation of inclusionary housing requirements in residential rental units, upon adoption of an ordinance by the City. The Landowner is not currently contemplating any residential rental projects within the Property; however, in the event the City amends its Inclusionary Housing Ordinance with respect to rental housing pursuant to Section 65850(g), Landowner (or a successor in interest) agrees that the Property shall be subject to said City Ordinance, as amended, should any residential rental project be proposed within the Property. Other than the elimination of the “granny flat” option and the possible future application of an inclusionary housing requirement on residential rental properties (upon the conditions stated herein), the Parties agree that all other alternatives for meeting the City’s inclusionary housing requirements remain vested to the full extent provided for in the Development Agreement.”

6. Section 2.1 – Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings and

related structures and setbacks shall be consistent with the Specific Plan and the City's Zoning Code, as applicable, except as specifically provided for in this Amendment No. 2.

7. **Section 2.2 - Vested Rights.** The City agrees that, except as otherwise provided in and as may be amended in accordance with the Exceptions to Vested Rights set forth in Section 2.2.3 of the Development Agreement the City is granting, and grants herewith, Vested Rights to Development for the Term of this Amendment No. 2 in accordance with the terms and conditions set forth herein. The City acknowledges that the rights vested by the Development Agreement include the land uses and approximate acreages for the Property as shown and described in **Exhibits A-1 and A-2** attached hereto, or as such land uses and approximate acreages may be amended by those Specific Plan Amendments referenced in Section 1.5.3 of the Development Agreement. Nothing in this Amendment No. 2 shall impair or affect the rights of Landowner under a vesting tentative map or the City's rights to condition such maps. (Govt. Code Sec. 66498.1, et seq.)

Such uses shall be developed in accordance with the Subsequent Entitlements, as the Subsequent Entitlements are described in Section 1.5.3 of this Amendment No. 2 and as approved by the City on the Effective Date.

**Section 2.2.1 – 2.2.8.** No changes, except for the modification of two items in Section 2.2.4 and the addition of Section 2.2.9 as an Exception to Vested Rights, as follows:

**Section 2.2.4 – City Fees and New Plan Area Fees, Including Cost Increases.** Notwithstanding any other provision in the Development Agreement, as amended hereby, Landowner and the City agree that, so long as the Property is developed consistent with the standards in Section 3.9.3 and operated by the Landowner to fulfill its health, educational, research and public service mission consistent with Section 9 of Article IX of the California Constitution, (a) the fees included in Subparagraph (6) of Section 2.2.4 shall not apply to the Property except for matters Landowner requests the City to process, review, or approve; and (b) the fees included in Subparagraph (8) of Section 2.2.4 shall not apply to the Property for a period of fifteen (15) years following the Effective Date. Except as otherwise expressly provided in this Amendment, Landowner acknowledges and agrees to pay the fees enumerated in Section 2.2.4.

**Section 2.2.9 – Class 1 Bicycle Path.** Landowner acknowledges that it is responsible for rough grading and installation of any necessary retaining wall at its sole cost and expense to accommodate the Class 1 Bicycle Path on the northern portion of the Property as shown in Figure 7.32 of the Specific Plan. Grading for the proposed Class 1 Bicycle Path and the construction of any necessary retaining walls shall commence at the time of the initial construction of the first building on the Property.

8. **Section 3.5 – EIR Mitigation Measures.** Notwithstanding any other provision in the Development Agreement, as amended hereby, as and when Landowner elects to Develop the Property, or any portion of the Property, Landowner shall be perform necessary environmental review and analysis under CEQA. Where consistent with the CEQA Guidelines, the Landowner shall incorporate applicable mitigation measures or their equivalent from the currently certified City CEQA document for the Folsom Plan Area. Landowner shall provide to City a summary document demonstrating compliance with this requirement.

9. **Additions to Development Agreement.** The following Sections are also added to the Development Agreement as follows:

a. **Section 3.9.3 – Landowner Land Use Authority.** Landowner has land use authority and exercises discretionary approval for Development of the Property pursuant to Section 9 of Article IX of the California Constitution, however, Landowner promises and commits that the Development of the Property will be consistent with the City's Zoning Code and the Specific Plan, and further reaffirms Landowner's obligation and commitment to pay the applicable development, connection, and mitigation fees for development of the Property as required by Sections 2.2.4 and 3.1 of the Development Agreement, as amended. Based on the foregoing and notwithstanding any conflicting requirements of the Development Agreement, the Specific Plan or the City's Zoning Code, City agrees that, as long as the development standards for Development of the Property do not exceed the standards specified below, Landowner shall not be required to seek City discretionary approval for Development of the Property:

- (1) Setback – 10 feet between buildings for every story.
- (2) Height – Height limits of (i) 80 feet for Office uses, (ii) 100 feet for Lodging uses and (iii) 120 feet for Medical Services/Hospital uses. The foregoing height limits shall include all architectural features, mechanical equipment, parapets, etc.
- (3) Floor to Area Ratio (FAR) – maximum 0.55.
- (4) Parking – Subject to Specific Plan requirements (including bicycle parking) or a City-approved alternate or City-approved shared use parking plan and implementing agreements.<sup>1</sup>

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<sup>1</sup> Landowner may provide City with a shared use parking agreement committing two or more nearby parcels to provide sufficient parking to meet expected needs for weekend and weekday peak uses. Any available street parking would not be included in the calculation. The shared use agreement would require approval from the City of Folsom Community Development Director prior to implementation. The Landowner expects to have substantial excess parking during weekends and could potentially assist with overall parking needs within the planned development. Any shared use agreement must include a reversionary clause to meet City of Folsom parking standards upon termination of the agreement.

- (5) Traffic Circulation – No vehicular exit to or from E. Bidwell Street between US50 and Alder Creek Parkway without the approval and consent of both the California Department of Transportation and the City.
- (6) Signage – Any freestanding, freeway oriented sign within 75 feet of the freeway will be subject to City approval.
- (7) Landscaping – Provide City-approved landscaping and ongoing maintenance within the 25-foot wide landscape corridor easement once Class 1 Bicycle Path is constructed by the City.
- (8) Heliport – Requires approval by the City and other applicable Authorities Having Jurisdiction.
- (9) Landscaping – Minimum of 20 percent of Property must be landscaped; minimum may include Class 1 Bicycle Path landscaping
- (10) Water use shall not exceed amount contemplated for the Property in the Specific Plan.
- (11) Building Code – University of California Facilities Manual, Volume 3, Chapter 4 shall apply <https://www.ucop.edu/construction-services/facilities-manual/volume-3/vol-3-chapter-4.html#intro>
- (12) The Property is part of Parcel 61, which has approved 302,481 square feet of Regional Commercial, 270,072 square feet of General Commercial, and 196,745 square feet of Industrial/Office Park. Landowner shall coordinate with owner(s) of the rest of Parcel 61 so that the aforementioned limitation for the entire Parcel 61 shall not be exceeded with the Development of the Property.

Further review and approval by the City Planning Commission prior to construction of any permanent building shall be required should Landowner need to deviate from the aforementioned development standards. Excluding those associated with infrastructure to be dedicated to the City, all permits and inspections for Landowner's buildings, improvements and facilities shall be provided by Landowner as the Authority Having Jurisdiction (AHJ) or other applicable State authority including, without limitation, the Office of Statewide Health Planning and Development.

10. **Section 4.10 – Commencement of Construction and Term of Planned Development Permit.** In light of the extended Term of this Amendment No. 2, the City agrees that the provisions of Folsom Municipal Code section 17.38.110 related to expiration, revocation or abandonment of a Planned Development Permit shall have no effect, and that the term of the Planned Development Permit is equal to the Term of this Amendment No. 2.

11. **Effect of Amendment.** This Amendment No. 2 amends, but does not replace or supersede, the Development Agreement. In the event of any conflict, the language of this Amendment No. 2 shall be controlling in all events or circumstances. Except as modified hereby, all other terms and provisions of the Development Agreement and shall remain in full force and effect.



12. **Section 7.8 – Notices.** All notices required by the Development Agreement or this Amendment No. 2 as such requirements relate to the Property or the Subsequent Entitlements, or the enabling legislation or the procedure adopted pursuant to Government Code section 65865 shall be as provided for in Section 7.5 of the Development Agreement, with the substitution for Landowner as follows:

The Regents of the University of California  
University of California, Davis  
225 Cousteau Place  
Davis, CA 95618  
Attention: Executive Director, Real Estate Services

With copies to:

The Regents of the University of California  
1111 Franklin Street, 6<sup>th</sup> Floor  
Oakland, California 94607  
Attention: Director, Real Estate

13. **Form of Amendment – Execution in Counterparts.** This Amendment No. 2 is executed in duplicate originals, each of which is deemed to be an original, and may be executed in counterparts.

IN WITNESS WHEREOF, the City of Folsom has authorized the execution of this Amendment No. 2 in duplicate by its Mayor and attested to by the City Clerk under the authority of Ordinance No. [ ] adopted by the City Council on the \_\_\_ day of \_\_\_\_\_, 2021.

**CITY:**

**CITY OF FOLSOM  
a municipal corporation**

\_\_\_\_\_  
Michael Kozlowski, Mayor

**LANDOWNER:**

**The Regents of the University  
of California, a California corporation**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Elaine Andersen, City Manager

**UC LEGAL APPROVED AS TO FORM:**

\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steven Wang, City Attorney

**ATTEST:**

\_\_\_\_\_  
Christa Freemantle, City Clerk  
[Notary Pages to be Added]

## **EXHIBIT LIST**

- A-1** Legal Description of the Property
- A-2** Depiction of Parcel 1 on Map
- B** Conceptual Site Plan

**EXHIBIT A-1  
LEGAL DESCRIPTION OF PROPERTY**

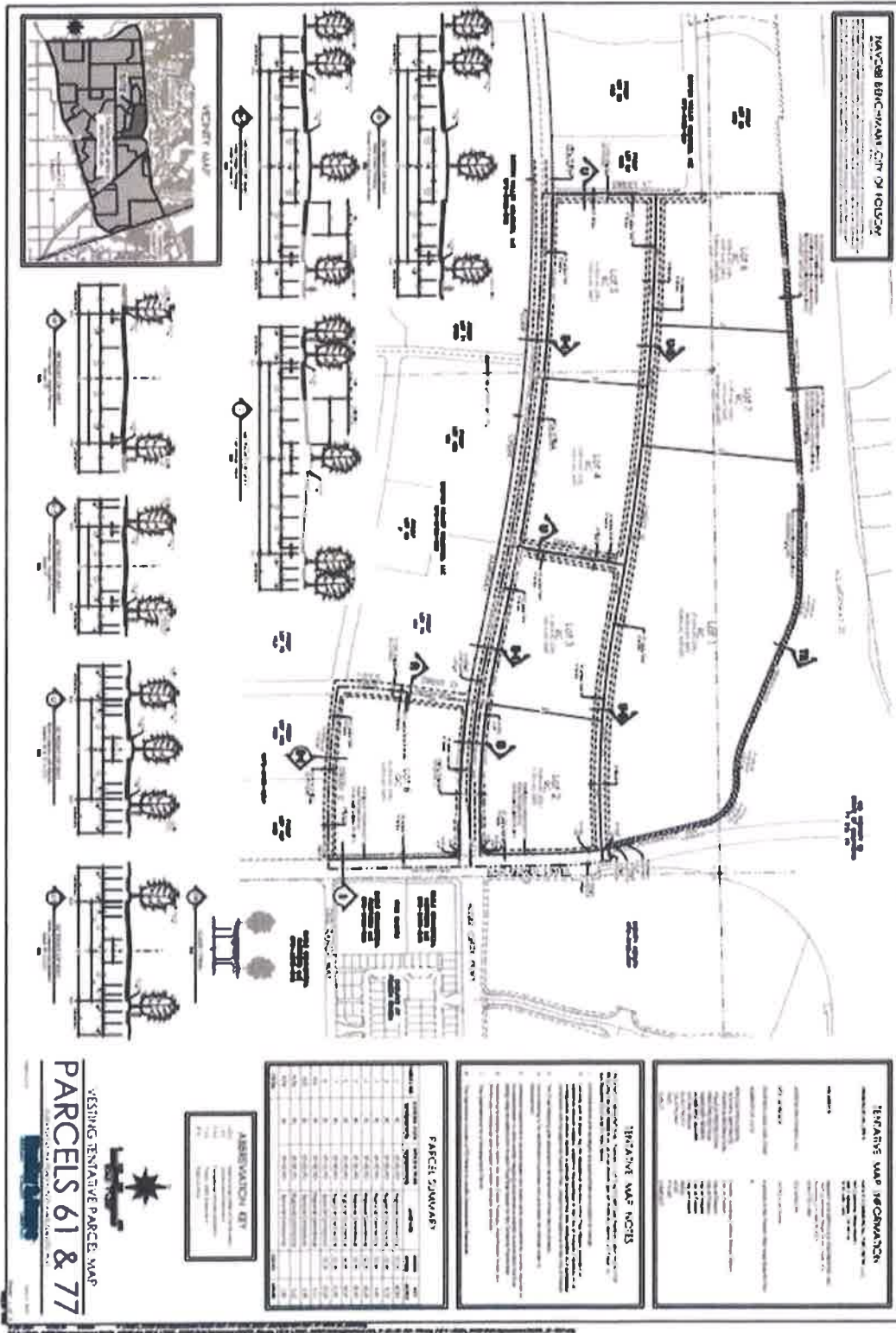
**THE FOLLOWING LEGAL DESCRIPTION IS FOR PROFORMA PURPOSES ONLY, AND IS NOT TO BE UTILIZED IN A RECORDED DOCUMENT UNTIL THE PARCEL MAP CONFIRMING SAID DESCRIPTION HAS BEEN RECORDED:**

The land described herein is situated in the State of California, County of Sacramento, City of Folsom, described as follows:

Lot 1 as shown on that certain map entitled "Vesting Tentative Parcel Map, Parcels 61 & 77" filed for record in the office of the Recorder of the County of Sacramento, City of Folsom, State of California on TBD, in Book TBD of Parcel Maps, at Page TBD, Sacramento County Records.

APN: 072-3190-030-0000 (a portion)

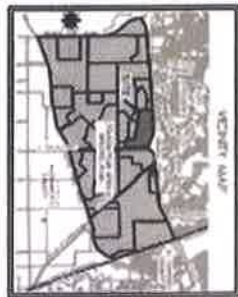
### EXHIBIT A-2 DEPICTION OF PARCEL 1 ON RECORDED PARCEL MAP



**MAINTENANCE MAP INFORMATION**

MAINTENANCE MAP INFORMATION

MAINTENANCE MAP INFORMATION



**TRAFFIC MAP INFORMATION**

TRAFFIC MAP INFORMATION

TRAFFIC MAP INFORMATION

**IRVING MAP NOTES**

IRVING MAP NOTES

IRVING MAP NOTES

**PARCEL SUMMARY**

ITEM	DESCRIPTION	QUANTITY	UNIT	TOTAL
1	Asphalt Paving	10	Lot	10
2	Concrete Paving	10	Lot	10
3	Grass	10	Lot	10
4	Signage	10	Lot	10
5	Landscaping	10	Lot	10



**EXISTING TENTATIVE PAVEMENT MAP  
PARCELS 61 & 77**

# EXHIBIT B CONCEPTUAL SITE PLAN

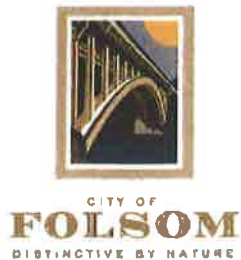


UC Davis Health | Folsom Center  
Conceptual Planning and Program

UC DAVIS  
HEALTH

**Attachment 3**

**Planning Commission Staff Report  
Dated August 4, 2021**



## **Planning Commission Staff Report**

50 Natoma Street, Council Chambers  
Folsom, CA 95630

**Project:** UCD Health Sciences Campus Development Agreement Amendment  
**File #:** PN-21-153  
**Requests:** Development Agreement Amendment  
**Location:** The UCD Health Sciences Campus project is located near the northwest corner of the intersection of East Bidwell Street and Alder Creek Parkway within the Folsom Plan Area  
**Staff Contact:** Steve Banks, Principal Planner, 916-461-6207  
sbanks@folsom.ca.us

### **Property Owner**

**Name:** Enclave at Folsom Ranch, LLC  
**Address:** 100 Pine Street, 29<sup>th</sup> Floor  
San Francisco, CA 94111

### **Applicant**

**Name:** University of California, Davis  
**Address:** 255 Cousteau Place  
Davis, CA 95618

**Recommendation:** Conduct a public hearing and upon conclusion recommend that the City Council approve a Development Agreement Amendment for the UCD Health Sciences Campus project, subject to the findings (Findings A-L) attached to this report.

**Project Summary:** The proposed project includes Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California, on behalf of its Davis Campus, relative to the UCD Health Sciences Campus project. The purpose of the Development Agreement Amendment is to incorporate in the definition of "entitlements" that are vested the entitlements previously approved by the City for the project site including a Parcel Map, a Planned Development Permit, and the Folsom Ranch Commercial Design Guidelines, as well as the proposed Development Agreement Amendment once approved by the City Council. The purpose of the Development Agreement Amendment is also to recognize and memorialize that as a State agency (The Regents of the University of California), the applicant is requesting to be permitted to exercise its land use authority as a lead agency for development of the subject property. In addition, the Development Agreement Amendment memorializes the applicant's commitment that the subject property will be subject to the City's Zoning Code and the Folsom Plan Area





CITY OF  
**FOLSOM**  
DISTINCTIVE BY NATURE

**AGENDA ITEM NO. 2**  
**Type: Public Hearing**  
**Date: August 4, 2021**

Specific Plan, except as otherwise specified in the Development Agreement Amendment. Lastly, the applicant acknowledges and agrees in the Development Agreement Amendment that it will pay all existing development impact fees, connection fees, and mitigation fees applicable to the development of the subject property.

**Table of Contents:**

Attachment 1 - Background and Setting

Attachment 2 - Project Description

Attachment 3 - Analysis

Attachment 4 - Amendment No. 2 to First Amended and Restated Development Agreement Relative to Folsom South Specific Plan (UCD Medical Center)

Attachment 5 - Conceptual Site Plan

Attachment 6 - Project Narrative

Attachment 7 - First Amended and Restated Development Agreement Relative to the Folsom South Specific Plan

Submitted,

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**PAM JOHNS**  
Community Development Director

**ATTACHMENT 1  
BACKGROUND AND SETTING**

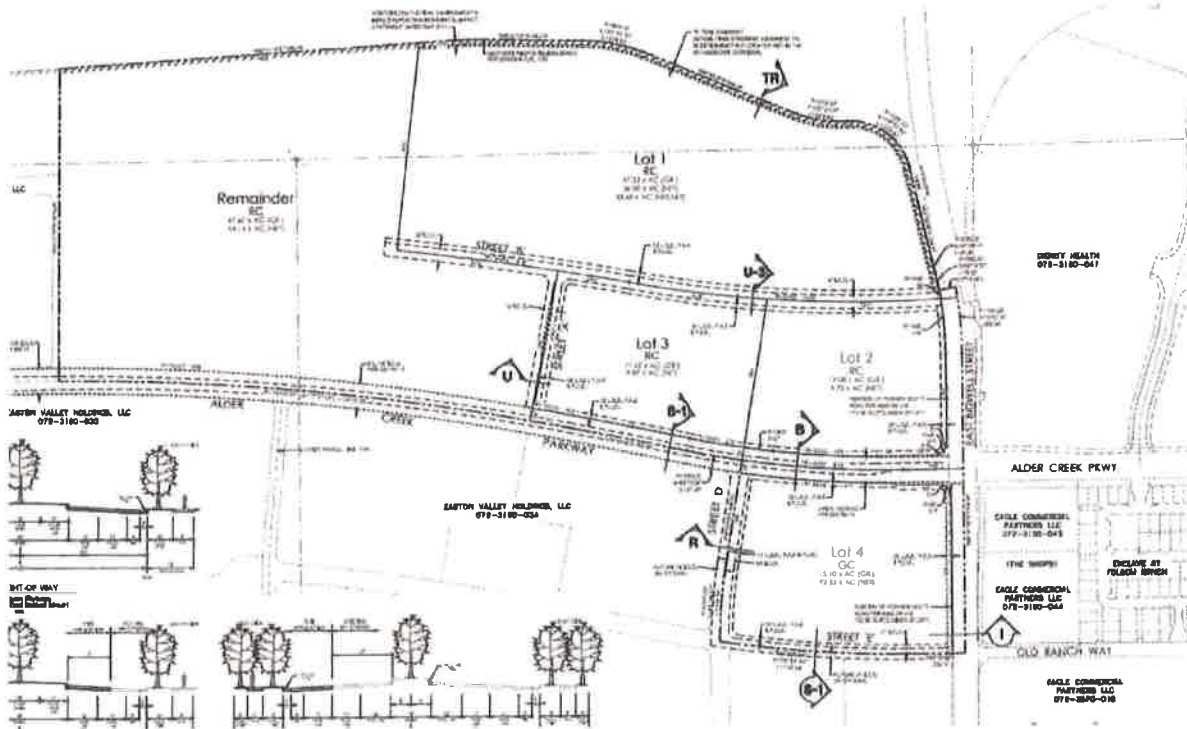
**Background:**

The City and Landowner's predecessor (Eagle Commercial Partners, LLC) previously entered into the First Amended and Restated Tier 1 Development Agreement By and Between the City of Folsom and Landowner Relative to the Folsom South Specific Plan on July 15, 2014. Section 1.5 of the Restated Development Agreement allows the Restated Development Agreement to be amended from time to time by mutual written consent of the parties. On November 12, 2015, Eagle Commercial Partners, LLC and the City entered into Amendment No. 1 to First Amended and Restated Tier 1 Development Agreement Relative to the Folsom South Specific Plan. The applicant is proposing Amendment No. 2 to the First Amended and Restated Development Agreement by and between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus project.

On June 16, 2021, the Planning Commission approved a Tentative Parcel Map, Planned Development Permit, and Commercial Design Guidelines for Parcels 61 and 71 located within the Folsom Plan Area. The Tentative Parcel Map subdivided a 123-acre property located at the northwest corner of East Bidwell Street and Alder Creek Parkway into four individual parcels and a remainder lot, for future sale, lease, and financing. The Planned Development Permit established unique development standards relative to minimum lot size for the subject parcels. Lastly, the Folsom Ranch Commercial Design Guidelines were established to guide design and development of future commercial development on the subject parcels. The UCD Health Sciences Campus project will be located on a 34.5-acre parcel (Lot/Parcel 1) that was created by the aforementioned Tentative Parcel Map that was approved by the Planning Commission in June of this year. The approved Tentative Parcel Map is shown in Figure 1 on the following page.

Planning Commission  
UCD Health Sciences Campus Development Agreement Amendment  
August 4, 2021

FIGURE 1: PARCEL 61 AND 77 TENTATIVE PARCEL MAP



**Physical Setting**

The UCD Health Sciences Campus project site is a rectangular-shaped 34.5-acre parcel located near the northwest corner of the intersection of East Bidwell Street and Alder Creek Parkway within the Folsom Plan Area. A Preliminary Site Plan for the Health Sciences Campus is shown in Figure 2 on the following page.

Planning Commission  
 UCD Health Sciences Campus Development Agreement Amendment  
 August 4, 2021

FIGURE 2: CONCEPTUAL SITE PLAN



UC Davis Health | Folsom Center  
 Conceptual Planning and Program



## **ATTACHMENT 2 PROJECT DESCRIPTION**

### **APPLICANT'S PROPOSAL**

The applicant, the University of California, Davis, is requesting approval of a Development Agreement Amendment (Attachment 4) associated with future development of a 400,000-square-foot health sciences campus (UCD Health Sciences Campus) on a 34.5-acre site located near the northwest corner of the intersection of East Bidwell Street and Alder Creek Parkway within the Folsom Plan Area. Specifically, the proposed project includes Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement by and between the City of Folsom and the Regents of the University of California relative to the UCD Health Sciences Campus project. The term of the Development Agreement Amendment follows the existing term of the Restated Development Agreement with an expiration date of June 30, 2044.

The Development Agreement Amendment is intended to incorporate in the definition of "entitlements" that are vested the entitlements previously approved by the City for the project including a Parcel Map, a Planned Development Permit, and the Folsom Ranch Commercial Design Guidelines, as well as the proposed Development Agreement Amendment once approved by the City Council. The Development Agreement Amendment is also intended to recognize and memorialize that as a State agency, the applicant is requesting to be permitted to exercise its land use authority as a lead agency for development of the subject property under the California Constitution, subject to the applicant's promise and commitment to subject itself to the City's Zoning Code and the Folsom Plan Area Specific Plan, except as otherwise specified in the Development Agreement Amendment. In addition, the Development Agreement Amendment requires the applicant to pay all development impact fees, connection fees, and mitigation fees for development of the subject property as required by Section 2.2.4 of the Restated Development Agreement.

As mentioned previously, the applicant has land use authority and intends to exercise its own discretionary review and approval processes for development of the subject property. However, through the Development Agreement Amendment, the applicant has committed to subject itself to the City's Zoning Code and the Folsom Plan Area Specific Plan, except as specified in the Development Agreement Amendment. The specific exceptions to the City's Zoning Code and the Specific Plan, which were crafted to be consistent with recently approved standards for the Dignity Medical Center project, include the following:

- (1) Setback (Building) – 10 feet between buildings for every story.
- (2) Height (Building) – Height limits of (i) 80 feet for Office uses, (ii) 100 feet for Lodging uses and (iii) 120 feet for Medical Services/Hospital uses. The foregoing height limits shall include all architectural features, mechanical equipment, parapets, etc.
- (3) Floor to Area Ratio (FAR) – maximum 0.55.

- (4) Parking – Subject to Specific Plan requirements (including bicycle parking) or a City-approved alternate or City-approved shared use parking plan and implementing agreements.
- (5) Traffic Circulation – No vehicular exit to or from E. Bidwell Street between US50 and Alder Creek Parkway without the approval and consent of both the California Department of Transportation and the City.
- (6) Signage – Any freestanding, freeway-oriented sign within 75 feet of the freeway will be subject to City approval.
- (7) Landscaping – Provide City-approved landscaping and ongoing maintenance within the 25-foot-wide landscape corridor easement once Class 1 Bicycle Path is constructed by the City.
- (8) Heliport – Requires approval by the City and other applicable Authorities Having Jurisdiction.
- (9) Landscaping – Minimum of 20 percent of Property must be landscaped; minimum may include Class 1 Bicycle Path landscaping
- (10) Water use shall not exceed amount contemplated for the Property in the Specific Plan.
- (11) Building Code – University of California Facilities Manual, Volume 3, Chapter 4 shall apply <https://www.ucop.edu/construction-services/facilities-manual/volume-3/vol-3-chapter-4.html#intro>
- (12) The Property is part of Parcel 61, which has approved 302,481 square feet of Regional Commercial, 270,072 square feet of General Commercial, and 196,745 square feet of Industrial/Office Park. Owner/Applicant shall coordinate with owner(s) of the rest of Parcel 61 so that the aforementioned limitation for the entire Parcel 61 shall not be exceeded with the Development of the Property.

As noted previously, the Development Agreement Amendment also requires the applicant to pay all existing development impact fees, connection fees, and mitigation fees for development of the subject property as required by the original Restated Development Agreement. However, the Development Agreement Amendment does specify that, as long as the property is developed by the applicant consistent with the aforementioned development standards and operated to fulfill its health, educational, research, and public service mission, the subject property shall not be subject to: (1) City development processing fees except for matters the applicant requests the City to process, review or approve; and (2) any new citywide regulatory or non-impact fees for a period of 15 years from the effective date of the Amendment.

### ATTACHMENT 3 ANALYSIS

The applicant has submitted a project narrative (Attachment 6) in which they describe the goals and objectives associated with development of a health sciences campus on the subject property and the rationale for entering into a Development Agreement Amendment with the City. In terms of goals and objectives the applicant indicates that development of a health sciences campus on the subject property would serve a number of purposes including expanding UCD health services and patient access in Folsom, replacing existing UCD health care services in existing facilities in Folsom where leases are set to expire, and securing a prime location in Folsom that exudes wellness, community, convenience, and excellence.

In reviewing the original Restated Development Agreement, the applicant noted that the Agreement appears to overlap with respect to the typical land use entitlement authority granted to the University of California. The applicant states that the Development Agreement, as a recorded deed encumbrance, extends beyond typical master developer obligations and includes design and plan review provisions and would remain enforceable even during ownership by the University of California. The applicant comments that carrying these development agreement requirements forward would essentially duplicate the public agency review and entitlement processes by requiring duplicative review and consideration by both the City of Folsom and by the University of California. Thus, the applicant is requesting to amend the Development Agreement to allow it to exercise its own land use review and entitlement authority with respect to the subject property. The following is a list of Development Agreement Amendment benefits provided by the applicant:

- **Remove Duplicate Entitlement Process:** The proposed action would remove duplication in the entitlement process for the property helping to avoid development delays and inefficiencies.
- **Standard University of California Ownership:** The proposed action would ensure the land ownership and entitlement process would be standard for the Board of Regents of the University of California. The University commits to comply with the City's Zoning Code and the Folsom Plan Area Specific Plan, and intends to work collaboratively with the City of Folsom to maintain consistency of planning goals, infrastructure construction and maintenance and pursuit of overall community goals for the City of Folsom.
- **Avoid Contradictory/Overlapping Requirements:** The amendment would provide long-term certainty to the Regents while still maintaining a strong public engagement process for the local and University communities. The University planning process is robust, thorough and complete with extensive consideration of serving the public need, exceptional design details and high-quality architecture, advanced sustainability measures, and careful compliance with public contracting

and labor agreements.

- **Establish Public Clarity:** The amendment would ensure that the University is identified as the responsible public agency for entitlements, design review and other matters.
- **Demonstrate Public Efficiency:** The amendment would demonstrate two public agencies working collaboratively and efficiently in furtherance of public service goals and kickstarting the construction that has been planned at the parcel.

In evaluating the proposed Development Agreement Amendment, staff determined that there are significant benefits to the City and the region associated with development of the new Health Science Campus within the Folsom Plan Area. In addition, staff determined that there are a number of unique characteristics associated with buildout of the UCD Health Science Campus. Listed below are the public benefits and unique characteristics associated the UCD Health Campus project:

- Development of the UCD Health Science Campus will occur over a long period of time, with a phased timeline for construction and potential adjustments to physical structures as medical delivery systems change over time.
- The California Office of Statewide Health Planning and Development (“OSHPD”) is required to approve the medical office building, the micro hospital building, and the ambulatory surgery center designs which may result in required changes to the design of the Medical Center buildings and related structures.
- The UCD Health Sciences Campus will generate significant employment and other economic benefits to the City.
- The UCD Health Science Campus will provide needed expansion of access to health care services for the City and other jurisdictions in the region.
- A significant capital investment is required for the UCD Health Sciences Campus buildings and related structures; and
- The status of applicant as a not-for-profit public benefit corporation.

City staff is supportive of the Development Agreement Amendment as proposed. The Planning Commission will be making a recommendation regarding the Development Agreement Amendment to the City Council as Development Agreements require City Council review and approval.



### **ENVIRONMENTAL REVIEW**

The City, as the lead agency under the California Environmental Quality Act (CEQA), previously approved an Addendum to the FPASP EIR/EIS for the subject property. The City has determined that the adoption of this Amendment No. 2 to the First Amended and Restated Development Agreement Amendment relative to the Folsom South Specific Plan involves no new impacts not considered in the FPASP EIR/EIS and the Parcels 61 and 77 Addendum to the FPASP EIR/EIS. Since the Addendum was approved, none of the events described in Public Resources Code section 21166 or CEQA Guidelines section 15162 (e.g. substantial changes to the project) have occurred. Therefore further environmental review is not required.

### **RECOMMENDATION**

Staff recommends that the Planning Commission review and make a recommendation to the City Council to approve the proposed Development Agreement Amendment for the UC Davis Health Sciences Campus.

### **PLANNING COMMISSION ACTION**

Move to recommend to the City Council approval of Amendment No. 2 to the First Amended and Restated Tier 1 Development Agreement Relative to the Folsom South Specific Plan for the UCD Health Sciences Campus project. This approval is subject to the proposed findings below (Findings A-L).

### **GENERAL FINDINGS**

- A. NOTICE OF HEARING HAS BEEN GIVEN AT THE TIME AND IN THE MANNER REQUIRED BY STATE LAW AND CITY CODE.
- B. THE PROJECT IS CONSISTENT WITH THE GENERAL PLAN AND THE FOLSOM PLAN AREA SPECIFIC PLAN.

### **CEQA FINDINGS**

- C. THE CITY, AS LEAD AGENCY, PREVIOUSLY CERTIFIED AN ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT FOR THE FOLSOM PLAN AREA SPECIFIC PLAN.
- D. AN ADDENDUM TO THE FOLSOM PLAN AREA SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT WAS CERTIFIED BY THE CITY IN 2021 FOR PARCELS 61 AND 77 PROJECT IN ACCORDANCE WITH CEQA.

- E. THE CITY HAS DETERMINED THAT THE IMPACTS OF THE UCD HEALTH SCIENCES CAMPUS DEVELOPMENT AGREEMENT AMENDMENT PROJECT ARE ADEQUATELY ADDRESSED BY THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE FOLSOM PLAN AREA SPECIFIC PLAN AND THE ADDENDUM FOR THE PARCELS 61 AND 77 PROJECT.
- F. NONE OF THE EVENTS SPECIFIED IN SECTION 21166 OF THE PUBLIC RESOURCES CODE OR SECTION 15162 OF THE CEQA GUIDELINES HAVE OCCURRED.
- G. NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED.

**DEVELOPMENT AGREEMENT AMENDMENT FINDINGS**

- H. THE PROPOSED AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT IS CONSISTENT WITH THE OBJECTIVES, POLICIES, GENERAL LAND USES AND PROGRAMS SPECIFIED IN THE CITY GENERAL PLAN AND THE FOLSOM PLAN AREA SPECIFIC PLAN).
- I. THE PROPOSED AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT IS IN CONFORMITY WITH PUBLIC CONVENIENCE, GENERAL WELFARE, AND GOOD LAND USE PRACTICES.
- J. THE PROPOSED AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY, AND GENERAL WELFARE OF PERSONS RESIDING IN THE IMMEDIATE AREA, NOR BE DETRIMENTAL OR INJURIOUS TO PROPERTY OR PERSONS IN THE GENERAL NEIGHBORHOOD OR TO THE GENERAL WELFARE OF THE RESIDENTS OF THE CITY AS A WHOLE.
- K. THE PROPOSED AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT WILL NOT ADVERSELY AFFECT THE ORDERLY DEVELOPMENT OF PROPERTY OR THE PRESERVATION OF PROPERTY VALUES.
- L. THE PROPOSED AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED TIER DEVELOPMENT AGREEMENT IS CONSISTENT WITH THE PROVISIONS OF GOVERNMENT CODE SECTIONS 65864 THROUGH 65869.5.

## **Attachment 4**

### **Amendment No. 2 to First Amended and Restated Development Agreement Relative to Folsom South Specific Plan (UCD Medical Center)**

FOR THE BENEFIT OF THE CITY OF FOLSOM  
PURSUANT TO GOVERNMENT CODE §6103

RECORDING REQUESTED BY CITY CLERK

WHEN RECORDED MAIL TO:

City Clerk  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**AMENDMENT NO. 2 TO  
FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT  
AGREEMENT  
RELATIVE TO FOLSOM SOUTH SPECIFIC PLAN  
(UNIVERSITY OF CALIFORNIA, DAVIS)**

**AMENDMENT NO. 2 TO  
FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT  
RELATIVE TO FOLSOM SOUTH SPECIFIC PLAN  
(UNIVERSITY OF CALIFORNIA, DAVIS)**

This Amendment No. 2 to First Amended and Restated Development Agreement ("Amendment No. 2") is entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Folsom ("City") and The Regents of the University of California, a California corporation on behalf of its Davis Campus ("Landowner") pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California. All capitalized terms used herein and not otherwise defined herein shall mean and refer to those terms as defined in Section 1.3 of the Restated Development Agreement and Amendment No. 1 to the Restated Development Agreement, described below between the Predecessor in Interest to Landowner and the City.

**RECITALS**

A. Restated Development Agreement and Amendments Thereto. The City and Landowner's predecessor in interest Eagle Commercial Partners, LLC (referred to herein as the "Predecessor in Interest") previously entered into that certain First Amended and Restated Tier 1 Development Agreement By and Between the City of Folsom and Landowner Relative to the Folsom South Specific Plan, recorded on July 15, 2014, in the Official Records of the County Recorder of Sacramento County in Book 20140715, Page 0517 (the "Restated Development Agreement"). Section 1.5 of the Restated Development Agreement allows the Restated Development Agreement to be amended from time to time by mutual written consent of the parties. On November 12, 2015, Eagle Commercial Partners, LLC and the City entered into Amendment No. 1 to First Amended and Restated Tier 1 Development Agreement Relative to the Folsom South Specific Plan, recorded on January 29, 2016, in the Official Records of the County Recorder of Sacramento County in Book 0160129, Page No. 0385 ("Amendment No. 1"). The Restated Development Agreement and Amendment No. 1 are collectively referred to herein as the "Development Agreement."

B. Pending Conveyance of Property to Landowner and Assignment of Development Agreement. Predecessor in Interest is in the process of conveying the Property identified by legal description on Exhibit A-1 and depicted on Exhibit A-2 ("Property") to its affiliate, Enclave at Folsom Ranch, LLC ("Predecessor Affiliate"), who will in turn convey the Property to Landowner in or around [September           ], 2021. Predecessor in Interest will enter into an Assignment and Assumption Agreement Relative to The Folsom South Specific Plan Amended and Restated Tier 1 Development Agreement with Predecessor Affiliate, pursuant to a form approved and required by the City ("Assignment and Assumption Agreement"). Concurrent with its anticipated conveyance of the Property to Landowner, Predecessor Affiliate will enter into an Assignment and Assumption Agreement with Landowner to transfer all rights, title, interest, burdens and obligations of the Predecessor in Interest under the Development Agreement with respect to the Property to Landowner. Said Assignment

and Assumption Agreement will be recorded in the Official Records of the County Recorder of Sacramento County.

C. Effect of Amendment No. 2 Subject to Conveyance of Property to Landowner and Assignment of Development Agreement. This Amendment No. 2 is subject to, and will take effect only upon, the transfer and conveyance of legal title to Property from Predecessor Affiliate to Landowner. Notwithstanding any provision to the contrary, this Amendment No. 2 will automatically terminate without further action by City or Landowner if Landowner does not obtain legal title to Property on or prior to December 31, 2021 as evidenced by a deed signed by Predecessor Affiliate on or prior to that date.

D. Prior City Approvals Relative to the Property. The Property is identified as "Lot 1" of "Parcel 61" on a Parcel Map approved by the City Planning Commission on June 16, 2021 (PN 21-043). Lot 1 is one of four parcels created by the subdivision of the property identified as Parcel 61 in the Specific Plan. **The Final Parcel Map including Lot 1 was filed for record on \_\_\_\_\_, 2021 in Book \_\_\_\_\_, Page \_\_\_\_\_ of Parcel Maps, Sacramento County.** Concurrent with the approval of the subdivision of Parcel 61 on June 16, 2021, the Planning Commission also approved an Addendum to the Final EIR for the Folsom Plan Area Specific Plan, a Planned Development Permit that reduced the minimum parcel size for Regional Commercial from 60-acres to 0.25 acre, and the Folsom Ranch Commercial Design Guidelines to guide commercial and office design and development.

E. Purpose of Amendment; Findings Related to Health Sciences Campus. Landowner is processing Subsequent Entitlements for the Development of the Property for comprehensive health, educational, research and public service uses (as further defined in Section 1.3 of this Amendment No. 2 and hereafter the "Health Sciences Campus"). Landowner has requested that the Prior City Approvals of the Parcel Map, Planned Development Permit, and Folsom Ranch Commercial Design Guidelines be included in the definition of Entitlements in the Development Agreement. As a public trust corporation known as The Regents of the University of California, Landowner further requests to be permitted to exercise its land use authority as lead agency for Development of the Property under Section 9 of Article IX of the California Constitution, subject to Landowner's promise and commitment to subject itself to the City's land use and zoning ordinances, including the City's Building and Zoning Codes, except as otherwise specified in this Amendment No. 2. The City Council has determined that the development of the Health Sciences Campus on the Property presents significant benefits to the City and the region.

F. Property. The subject of this Amendment No. 2 is the Development of the Property, as defined in Section 1.3. Landowner has an equitable interest in the Property and intends to become legal owner of the Property and shall be bound by this Amendment No. 2 and the Development Agreement.

G. Hearings. On August 4, 2021, the City Planning Commission, designated as the planning agency for purposes of development agreement review pursuant to Government Code section 65867, in a duly noticed and conducted public hearing, considered this Amendment No. 2 and recommended that the City Council approve this Amendment No. 2 to the Development Agreement. On August 24, 2021, the City Council, in a duly noticed and conducted public hearing, conducted the first reading of Ordinance No. [REDACTED] and approved this Amendment No. 2, and thereafter conducted the second reading of Ordinance No. [REDACTED] at a duly noticed regular meeting of the City Council on [September 14, 2021 and adopted the Ordinance approving this Amendment No. 2.

H. Environmental Review. On June 16, 2021, the Planning Commission considered the Environmental Checklist and Addendum (the "Addendum") to the Folsom Plan Area Specific Plan EIR/EIS for the Property. All applicable mitigation measures to reduce environmental impacts to less than significant have been incorporated into the Parcel Map, the Planned Development Permit, and the Folsom Ranch Commercial Design Guidelines as reflected by the findings adopted by the Planning Commission in connection with the aforementioned approvals, including the City Council's consideration, adoption of findings, and approval of this Amendment No. 2.

I. No New Impacts Associated with Approval of Amendment. The City Council has determined that the adoption of this Amendment No. 2 involves no new impacts not considered in the Specific Plan EIR, the Previous Environmental Analyses listed in Section I, "Introduction and Background" of the Addendum, and the Addendum; therefore, no further environmental documents relating to the adoption of this Amendment No. 2 are required.

J. Consistency with General Plan and Specific Plan. Having duly examined and considered this Amendment No. 2, the City finds and declares that this Amendment No. 2 is consistent with the General Plan and the Specific Plan.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties agree to hereby amend the Development Agreement as follows:

### **AMENDMENTS**

1. Incorporation of Recitals. The Recitals above are true and correct and constitute enforceable provisions of this Amendment No. 2.

2. Definition and Section 1.5.3 – Subsequent Entitlements. The term "Subsequent Entitlements" in the Definitions Section of the Development Agreement and also referenced in Section 1.5.3 of the Development Agreement is amended to include the following:

- a. The Parcel Map approved by the Planning Commission on June 16, 2021.
- b. The Planned Development Permit approved by the Planning Commission on June 16, 2021.
- c. The Folsom Ranch Commercial Design Guidelines approved by the Planning Commission on June 16, 2021.
- d. This Amendment No. 2 approved by the Folsom City Council on [September 14, 2021.

3. **Section 1.3 – Definitions.** The following Definitions are added:

“Adopting Ordinance” means Ordinance No. [REDACTED], dated [September 14, 2021, approving this Amendment No.2.

“Addendum” means the Environmental Checklist and Addendum dated May 28, 2021.

“Design Guidelines” means the Folsom Ranch Commercial Design Guidelines approved by the City Planning Commission.

“Effective Date” means the date which is the later of (i) thirty (30) calendar days after the date of the Ordinance approving this Amendment No. 2, or (ii) the date title to the Property vests in Landowner.

“Environmental Analysis” means the Addendum and the Previous Environmental Analyses listed in Section I, “Introduction and Background” of the Addendum.

“Landowner” means The Regents of the University of California, a California corporation on behalf of its Davis Campus.

“Planned Development Permit” means the Planned Development Permit approved by the Planning Commission in connection with its approval of the Parcel Map.

“Health Sciences Campus” means the buildings and related structures, improvements and facilities developed on the Property to support the health, education, research and public service missions of Landowner.

“Predecessor in Interest” shall mean the prior owner of the Property and party to the Restated Development Agreement and Amendment No. 1, i.e., Eagle Commercial Partners, LLC.



“Predecessor Affiliate” shall mean the affiliate of Predecessor in Interest, Enclave at Folsom Ranch, LLC.

“Project” means development of the Property consistent with the Development Agreement and the Subsequent Entitlements.

“Property” means the land identified by legal description on Exhibit A-1 and depicted on Exhibit A-2.

“Subsequent Entitlements” shall have the amended definition set forth in paragraph 2, subsections (a)-(d), inclusive, of this Amendment No. 2.

“Vested Rights” means the rights to Develop the Property consistent with the terms and provisions of the Restated Development Agreement, Amendment No. 1, this Amendment No. 2 and the provisions of the Subsequent Entitlements.

4. **Section 1.4.1 – Commencement, Extension, Expiration.** This Amendment No. 2 shall become operative on the Effective Date and continue through the Term of the Development Agreement. Landowner may request an additional extension pursuant to Section 1.4.1 of the Development Agreement.

5. **Section 1.6 – Changes to the City’s Inclusionary Housing Ordinance.** Section 1.6 of the Development Agreement is hereby revised to read as follows: “The City has amended the Inclusionary Housing Ordinance (i.e., Folsom Municipal Code Chapter 17.104) by Ordinance No. 1243, to eliminate Second Dwelling Units (also referred to as “granny flats”) as an alternative means of meeting the City’s inclusionary housing requirements. Landowner hereby acknowledges and agrees that there is no vested right to use Second Dwelling Units as an alternative means for meeting the City’s inclusionary housing requirements and that this alternative shall not be available to Landowner from and after the date of Ordinance No. 1243. Landowner further acknowledges that the State adopted amendments to Section 65850 of the California Government Code (specifically Section 65850(g)), effective January 1, 2018, to allow for the implementation of inclusionary housing requirements in residential rental units, upon adoption of an ordinance by the City. The Landowner is not currently contemplating any residential rental projects within the Property; however, in the event the City amends its Inclusionary Housing Ordinance with respect to rental housing pursuant to Section 65850(g), Landowner (or a successor in interest) agrees that the Property shall be subject to said City Ordinance, as amended, should any residential rental project be proposed within the Property. Other than the elimination of the “granny flat” option and the possible future application of an inclusionary housing requirement on residential rental properties (upon the conditions stated herein), the Parties agree that all other alternatives for meeting the City’s inclusionary housing requirements remain vested to the full extent provided for in the Development Agreement.”

6. **Section 2.1 – Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings and

related structures and setbacks shall be consistent with the Specific Plan and the City's Zoning Code, as applicable, except as specifically provided for in this Amendment No. 2.

7. **Section 2.2 - Vested Rights.** The City agrees that, except as otherwise provided in and as may be amended in accordance with the Exceptions to Vested Rights set forth in Section 2.2.3 of the Development Agreement the City is granting, and grants herewith, Vested Rights to Development for the Term of this Amendment No. 2 in accordance with the terms and conditions set forth herein. The City acknowledges that the rights vested by the Development Agreement include the land uses and approximate acreages for the Property as shown and described in **Exhibits A-1 and A-2** attached hereto, or as such land uses and approximate acreages may be amended by those Specific Plan Amendments referenced in Section 1.5.3 of the Development Agreement. Nothing in this Amendment No. 2 shall impair or affect the rights of Landowner under a vesting tentative map or the City's rights to condition such maps. (Govt. Code Sec. 66498.1, et seq.)

Such uses shall be developed in accordance with the Subsequent Entitlements, as the Subsequent Entitlements are described in Section 1.5.3 of this Amendment No. 2 and as approved by the City on the Effective Date.

**Section 2.2.1 – 2.2.8.** No changes, except for the modification of two items in Section 2.2.4 and the addition of Section 2.2.9 as an Exception to Vested Rights, as follows:

**Section 2.2.4 – City Fees and New Plan Area Fees, Including Cost Increases.** Notwithstanding any other provision in the Development Agreement, as amended hereby, Landowner and the City agree that, so long as the Property is developed consistent with the standards in Section 3.9.3 and operated by the Landowner to fulfill its health, educational, research and public service mission consistent with Section 9 of Article IX of the California Constitution, (a) the fees included in Subparagraph (6) of Section 2.2.4 shall not apply to the Property except for matters Landowner requests the City to process, review, or approve; and (b) the fees included in Subparagraph (8) of Section 2.2.4 shall not apply to the Property for a period of fifteen (15) years following the Effective Date. Except as otherwise expressly provided in this Amendment, Landowner acknowledges and agrees to pay the fees enumerated in Section 2.2.4.

**Section 2.2.9 – Class 1 Bicycle Path.** Landowner acknowledges that it is responsible for rough grading and installation of any necessary retaining wall at its sole cost and expense to accommodate the Class 1 Bicycle Path on the northern portion of the Property as shown in Figure 7.32 of the Specific Plan. Grading for the proposed Class 1 Bicycle Path and the construction of any necessary retaining walls shall commence at the time of the initial construction of the first building on the Property.

8. **Section 3.5 – EIR Mitigation Measures.** Notwithstanding any other provision in the Development Agreement, as amended hereby, as and when Landowner elects to Develop the Property, or any portion of the Property, Landowner shall be perform necessary environmental review and analysis under CEQA. Where consistent with the CEQA Guidelines, the Landowner shall incorporate applicable mitigation measures or their equivalent from the currently certified City CEQA document for the Folsom Plan Area. Landowner shall provide to City a summary document demonstrating compliance with this requirement.

9. **Additions to Development Agreement.** The following Sections are also added to the Development Agreement as follows:

a. **Section 3.9.3 – Landowner Land Use Authority.** Landowner has land use authority and exercises discretionary approval for Development of the Property pursuant to Section 9 of Article IX of the California Constitution, however, Landowner promises and commits that the Development of the Property will be consistent with the City's Zoning Code and the Specific Plan, and further reaffirms Landowner's obligation and commitment to pay the applicable development, connection, and mitigation fees for development of the Property as required by Sections 2.2.4 and 3.1 of the Development Agreement, as amended. Based on the foregoing and notwithstanding any conflicting requirements of the Development Agreement, the Specific Plan or the City's Zoning Code, City agrees that, as long as the development standards for Development of the Property do not exceed the standards specified below, Landowner shall not be required to seek City discretionary approval for Development of the Property:

- (1) Setback – 10 feet between buildings for every story.
- (2) Height – Height limits of (i) 80 feet for Office uses, (ii) 100 feet for Lodging uses and (iii) 120 feet for Medical Services/Hospital uses. The foregoing height limits shall include all architectural features, mechanical equipment, parapets, etc.
- (3) Floor to Area Ratio (FAR) – maximum 0.55.
- (4) Parking – Subject to Specific Plan requirements (including bicycle parking) or a City-approved alternate or City-approved shared use parking plan and implementing agreements.<sup>1</sup>

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<sup>1</sup> Landowner may provide City with a shared use parking agreement committing two or more nearby parcels to provide sufficient parking to meet expected needs for weekend and weekday peak uses. Any available street parking would not be included in the calculation. The shared use agreement would require approval from the City of Folsom Community Development Director prior to implementation. The Landowner expects to have substantial excess parking during weekends and could potentially assist with overall parking needs within the planned development. Any shared use agreement must include a reversionary clause to meet City of Folsom parking standards upon termination of the agreement.

- (5) Traffic Circulation – No vehicular exit to or from E. Bidwell Street between US50 and Alder Creek Parkway without the approval and consent of both the California Department of Transportation and the City.
- (6) Signage – Any freestanding, freeway oriented sign within 75 feet of the freeway will be subject to City approval.
- (7) Landscaping – Provide City-approved landscaping and ongoing maintenance within the 25-foot wide landscape corridor easement once Class 1 Bicycle Path is constructed by the City.
- (8) Heliport – Requires approval by the City and other applicable Authorities Having Jurisdiction.
- (9) Landscaping – Minimum of 20 percent of Property must be landscaped; minimum may include Class 1 Bicycle Path landscaping
- (10) Water use shall not exceed amount contemplated for the Property in the Specific Plan.
- (11) Building Code – University of California Facilities Manual, Volume 3, Chapter 4 shall apply <https://www.ucop.edu/construction-services/facilities-manual/volume-3/vol-3-chapter-4.html#intro>
- (12) The Property is part of Parcel 61, which has approved 302,481 square feet of Regional Commercial, 270,072 square feet of General Commercial, and 196,745 square feet of Industrial/Office Park. Landowner shall coordinate with owner(s) of the rest of Parcel 61 so that the aforementioned limitation for the entire Parcel 61 shall not be exceeded with the Development of the Property.

Further review and approval by the City Planning Commission prior to construction of any permanent building shall be required should Landowner need to deviate from the aforementioned development standards. Excluding those associated with infrastructure to be dedicated to the City, all permits and inspections for Landowner's buildings, improvements and facilities shall be provided by Landowner as the Authority Having Jurisdiction (AHJ) or other applicable State authority including, without limitation, the Office of Statewide Health Planning and Development.

10. **Section 4.10 – Commencement of Construction and Term of Planned Development Permit.** In light of the extended Term of this Amendment No. 2, the City agrees that the provisions of Folsom Municipal Code section 17.38.110 related to expiration, revocation or abandonment of a Planned Development Permit shall have no effect, and that the term of the Planned Development Permit is equal to the Term of this Amendment No. 2.

11. **Effect of Amendment.** This Amendment No. 2 amends, but does not replace or supersede, the Development Agreement. In the event of any conflict, the language of this Amendment No. 2 shall be controlling in all events or circumstances. Except as modified hereby, all other terms and provisions of the Development Agreement and shall remain in full force and effect.

12. **Section 7.8 – Notices.** All notices required by the Development Agreement or this Amendment No. 2 as such requirements relate to the Property or the Subsequent Entitlements, or the enabling legislation or the procedure adopted pursuant to Government Code section 65865 shall be as provided for in Section 7.5 of the Development Agreement, with the substitution for Landowner as follows:

The Regents of the University of California  
University of California, Davis  
225 Cousteau Place  
Davis, CA 95618  
Attention: Executive Director, Real Estate Services

With copies to:

The Regents of the University of California  
1111 Franklin Street, 6<sup>th</sup> Floor  
Oakland, California 94607  
Attention: Director, Real Estate

13. **Form of Amendment – Execution in Counterparts.** This Amendment No. 2 is executed in duplicate originals, each of which is deemed to be an original, and may be executed in counterparts.

IN WITNESS WHEREOF, the City of Folsom has authorized the execution of this Amendment No. 2 in duplicate by its Mayor and attested to by the City Clerk under the authority of Ordinance No. [ ] adopted by the City Council on the \_\_\_ day of \_\_\_\_\_, 2021.

**CITY:**

**CITY OF FOLSOM**  
**a municipal corporation**

\_\_\_\_\_  
Michael Kozlowski, Mayor

**LANDOWNER:**

**The Regents of the University**  
**of California, a California corporation**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Elaine Andersen, City Manager

**UC LEGAL APPROVED AS TO FORM:**

\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steven Wang, City Attorney

**ATTEST:**

\_\_\_\_\_  
Christa Freemantle, City Clerk  
[Notary Pages to be Added]

**EXHIBIT LIST**

- A-1** Legal Description of the Property
- A-2** Depiction of Parcel 1 on Map
- B** Preliminary Site Plan

**EXHIBIT A-1  
LEGAL DESCRIPTION OF PROPERTY**

**THE FOLLOWING LEGAL DESCRIPTION IS FOR PROFORMA PURPOSES ONLY, AND IS NOT TO BE UTILIZED IN A RECORDED DOCUMENT UNTIL THE PARCEL MAP CONFIRMING SAID DESCRIPTION HAS BEEN RECORDED:**

The land described herein is situated in the State of California, County of Sacramento, City of Folsom, described as follows:

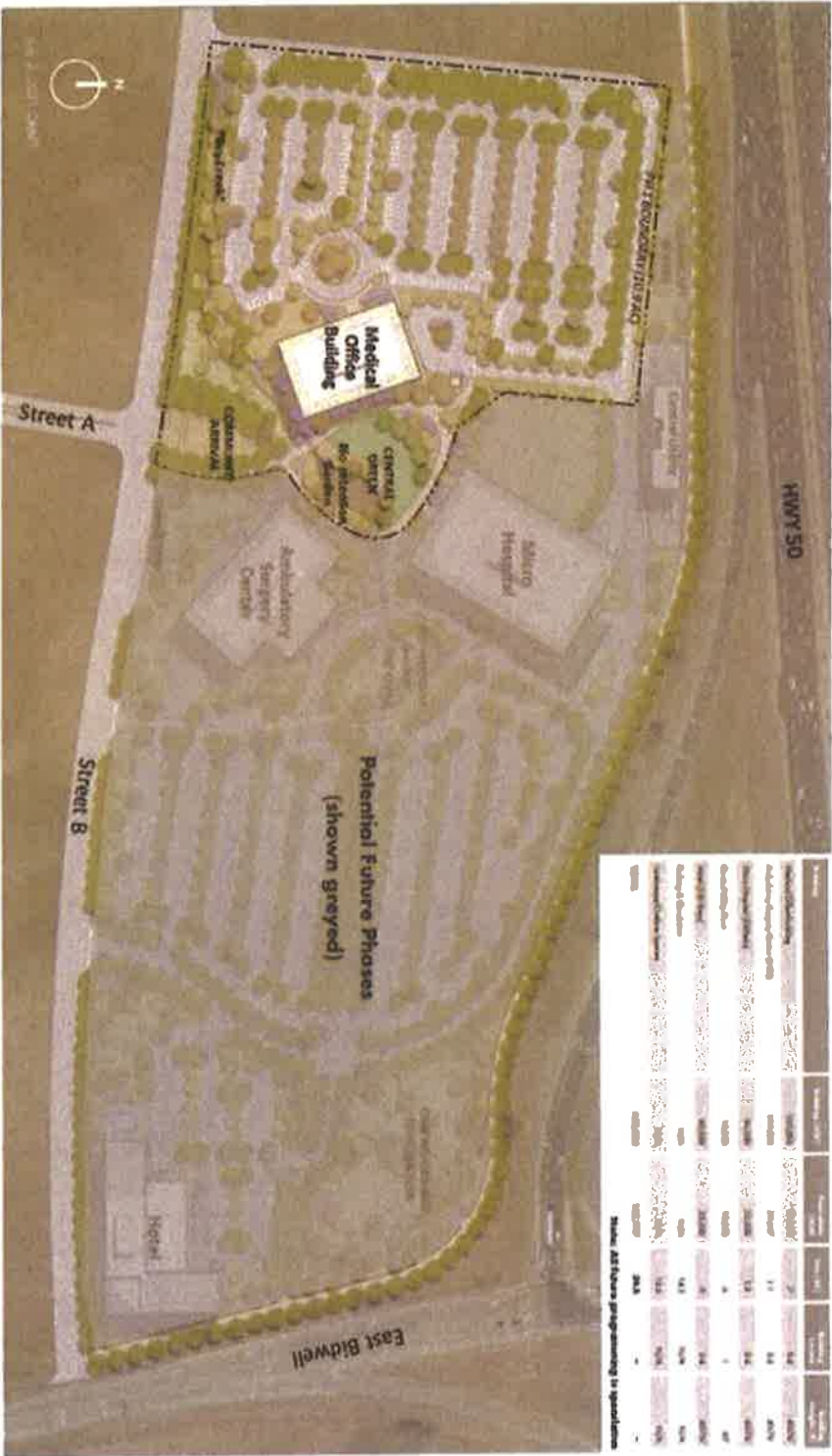
Lot 1 as shown on that certain map entitled "Vesting Tentative Parcel Map, Parcels 61 & 77" filed for record in the office of the Recorder of the County of Sacramento, City of Folsom, State of California on TBD, in Book TBD of Parcel Maps, at Page TBD, Sacramento County Records.

APN: 072-3190-030-0000 (a portion)





# EXHIBIT B PRELIMINARY SITE PLAN



UC Davis Health | Folsom Center  
Conceptual Planning and Program



**Planning Commission  
UCD Health Sciences Campus Development Agreement Amendment  
August 4, 2021**

**Attachment 5  
Conceptual Site Plan**



**UC Davis Health | Folsom Center**  
 Conceptual Planning and Program



# **Attachment 6**

## **Project Narrative**

## UC Davis Health | Folsom Center

### Development Narrative

July 2, 2021

#### Background

UC Davis provides extensive healthcare resources for the Sacramento region and continually evaluates long-term healthcare facility needs. With expected population growth in the Folsom area and a need for new facilities, UC Davis has entered into a Purchase and Sale Agreement for 34.547 net acres of property at Folsom Ranch. The parcel is a key component of the Folsom Specific Plan and is located at the southwest corner of the Highway 50 and East Bidwell Street interchange. UC Davis evaluated property acquisitions beginning in 2018 and identified potential key properties within the City of Folsom and further selected the proposed property based on the location and the existing City of Folsom long-term planning vision for the Folsom Specific Plan area.

Purchase of the property by the University would serve several goals which include the following:

- Expanding UC Davis Health services and patient access in Folsom to its residents and to the surrounding communities.
- Replacing existing facilities currently housed in leased spaces in Folsom set to expire in Sept 2023.
- Securing a prime spot in Folsom that exudes wellness, community, convenience, and excellence.

The University intends to phase the full site development over many years. The first phase of development is expected to include a medical office building, associated sidewalks, plazas, landscaping, surface parking, and outdoor space for patient and staff wellness and healing. While details are not certain at this point, the medical office building is targeted at approximately 100,000 to 120,000 square feet and three to four stories in height. Planning for subsequent project phases and those timeframes have not been determined at this time but will be in support of the goals of the site to expand patient care and access.

As a constitutionally created entity with “full powers of organization and government” pursuant to Article IX, Section 9 of the California Constitution, UC is not subject to regulation by local jurisdictions (except when exercising its police power) on property UC owns or controls and uses in furtherance of its academic and research mission.<sup>1</sup> This exemption allows UC to grant itself authority to construct and renovate buildings without complying with otherwise applicable land use and zoning requirements.<sup>2</sup> With this authority comes the responsibility to comply with the California Environmental Quality Act (CEQA), a statute designed to facilitate informed decision-making by public entities through the

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<sup>1</sup> California Constitution, art. IX §9 (“... (a) The University of California shall constitute a public trust, to be administered by the existing corporation known as “The Regents of the University of California,” with full powers of organization and government ... (f) The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit ...”. *San Francisco Labor Council v. Regents of University of California*, (1980) 26 Cal. 3d 785, 788).

<sup>2</sup> See, e.g., *Hall v. City of Taft* (1956) 47 Cal.2d 177, 183 (construction of school facility not subject to local regulation); *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136 (construction by University of California in a rented commercial building of facilities for University purposes was not subject to local land use authority).

disclosure of the potential environmental impacts of the projects they approve. The CEQA process also requires the University to certify that it has mitigated to the extent feasible the significant impacts associated with project implementation and operation. Development proposals are typically reviewed and considered by the University with careful local city and/or county coordination.

### **Requested Action**

UC Davis carefully reviewed the existing City of Folsom Development Agreement for the FPASAP which appears to overlap the typical land use entitlement authority of the University of California. The development agreement, as a recorded deed encumbrance, extends beyond typical master developer obligations and includes design and plan review provisions and would remain enforceable even during ownership by the University of California. Carrying these development agreement requirements forward would essentially duplicate the public agency review and entitlement processes by requiring development review consideration by both the City of Folsom and by the University of California. The University of California has collaborated with the existing property owner and with City of Folsom staff to carefully consider this issue.

At this time, UC Davis is requesting that the City of Folsom amend the development agreement to remove City of Folsom land use entitlement requirements from the 34.547 acre parcel. The remainder of the provisions included in the development agreement will remain unaltered by the proposed amendment. The requested action would keep all impact fee requirements (including property owned by the University) as full obligations for the property. The proposed action would apply only to the land owned by the University of California.

Benefits of the requested action include the following:

**Remove Duplicate Entitlement Process.** The proposed action would remove duplication in the entitlement process for the property helping to avoid development delays and inefficiencies.

**Standard University of California Ownership.** The proposed action would ensure the land ownership and entitlement process would be standard for the Board of Regents of the University of California. In addition, this action would ensure that City of Folsom would be outside of any legal challenge or public controversies related to the University entitlements. The University intends to work collaboratively with the City of Folsom to maintain consistency of planning goals, infrastructure construction and maintenance and pursuit of overall community goals for the City of Folsom.

**Avoid Contradictory/Overlapping Requirements:** The amendment would provide long-term certainty to the Regents while still maintaining a strong public engagement process for the local and University communities. The University process is robust, thorough and complete with extensive consideration of serving the public need, exceptional design details and high-quality architecture, advanced sustainability measures, and careful compliance with public contracting and labor agreements.

**Establish Public Clarity.** The amendment would ensure that the University is identified as the responsible public agency for entitlements, design review and other matters.

**Demonstrate Public Efficiency.** The amendment would demonstrate two public agencies working collaboratively and efficiently in furtherance of public service goals and kickstarting the construction that has been planned at the parcel.

**Proposed Development Concepts**

The action to amend the development agreement would establish the University of California as the public entity responsible for final entitlements. The following narrative provides an overview of the development concepts and processes that the University is expecting to consider for the property. The overall concept for the site envisions the medical office building and future projects that could potentially include an ambulatory surgery center and micro-hospital pinwheeling around a shared central landscaped space that will create an anchor for the planned future Main Street (currently designated as Street 'A') directly to the south.

The architectural character of buildings and landscape character of the site will reflect the vision and mission of UC Davis and share many of the design principles and high-level of building finishes that are in place for the Sacramento and Davis campuses. A masterplan for UC Davis Health Folsom Center will be considered to ensure efficient and cohesive planning for the building density/floor area ratio, setbacks, landscape coverage, building separation, building height and parking needs. Development of the site masterplan will be informed by the planning intent and objectives contained in the Folsom Ranch Specific Plan.

The University will implement proposed projects within the University of California Sustainable Practices Policy ensuring that strong levels of energy efficiency, water conservation, waste reduction, transportation efficiency, and procurement measures will be applied to the site planning and operations. While the overall University of California site development details are not available at this time, the University expects that site planning will reflect the types of intent and details contained in the Folsom Ranch Specific Plan. One example of a potential divergence from the Folsom Ranch Specific Plan is the apparent building height restriction for the property of 50 feet. UC Davis will consider building heights of 3 to 4 stories which will likely exceed 50 feet. The consideration of taller buildings than currently allowed in the Specific Plan would allow flexibility for patient care efficiencies within each building and for improved land utilization efficiency across the entire parcel.

Ultimately, the University development will seek to reinforce the vision of UC Davis Health of creating a healthier world through bold innovation and the mission of improving lives and transforming health care by providing excellent patient care, conducting groundbreaking research, fostering innovative, interprofessional education, and creating dynamic, productive partnerships with the community.



## **Attachment 7**

# **First Amended and Restated Development Agreement Relative to the Folsom South Specific Plan**



Sacramento County Recorder  
David Villanueva, Clerk/Recorder  
BOOK **20140715** PAGE **0344**

Tuesday, JUL 15, 2014 9:26:57 AM  
Ttl Pd \$0.00 Ropt # 0008277825

TML/85/1-92

FOR THE BENEFIT OF THE CITY OF FOLSOM  
PURSUANT TO GOVERNMENT CODE §6103

RECORDING REQUESTED BY CITY CLERK

WHEN RECORDED MAIL TO:

City Clerk  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF FOLSOM AND  
WEST SCOTT ROAD, LLC  
RELATIVE TO THE FOLSOM SOUTH SPECIFIC PLAN**



Folsom File No. 174-21 14-023



**FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT  
RELATIVE TO THE FOLSOM SOUTH SPECIFIC PLAN**

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**FIRST AMENDED AND RESTATED TIER 1 DEVELOPMENT AGREEMENT  
RELATIVE TO THE FOLSOM SOUTH SPECIFIC PLAN**

This First Amended and Restated Tier 1 Development Agreement (the "Restated Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Folsom ("City") and West Scott Road, LLC, a Delaware Limited Liability Company ("Landowner") pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California. All capitalized terms used herein and not otherwise defined herein shall mean and refer to those terms as defined in Section 1.3 of the Tier 1 Development Agreement between the parties hereto.

**RECITALS**

A. Tier 1 Development Agreement. The City and Landowner (or Landowner's predecessor-in-interest, as reflected in the definition of "Landowner" in the Tier 1 Development Agreement), previously entered into that certain Tier 1 Development Agreement By and Between the City of Folsom and Michele M. Carr and Melissa A. Barron, Et. Al., Relative to the Folsom South Specific Plan, dated August 2, 2011 and recorded on August 3, 2011, in the Official Records of the County Recorder of Sacramento County in Book 20110803, Page 0422 (the "Agreement"). Section 1.5 of the Agreement allows the Agreement to be amended from time to time by mutual written consent of the parties.

B. Purpose of Restated Agreement. The City and Landowner desire to provide greater certainty and clarity to matters that are common, necessary and essential for the development of the Property in the Plan Area, including but not limited to dedication of open space and land for public facilities, environmental mitigation and monitoring, as well as the contribution and reimbursement of the facilities' costs and services by and amongst Landowner and its successors-in-interest. Additionally, Landowner desires to proceed with Development consistent with the Entitlements or any Subsequent Entitlements that may be included within the scope of this Restated Agreement as those terms are described herein. As contemplated and required by the Tier 1 Development Agreement, prior to any Development being approved for or occurring within the Property (including any approval of tentative residential small-lot subdivision maps or grading or construction of any improvements within or serving the Property), Landowner must obtain approval from the City of a Tier 2 Development Agreement (as defined herein). This Restated Agreement is intended to replace the Tier 1 Development Agreement for the Property, implement the requirements of the Entitlements and the Specific Plan EIR as applied to Development of the Property, satisfy the condition for a Tier 2 Development Agreement prior to Development of the Property, and establish a process for evaluating the inclusion of future Specific Plan Amendments within the scope of this Restated Agreement in the event such amendments are approved by the City Council.

C. Effect of Restated Agreement. The Tier 1 Development Agreement requires the agreement and approval of a Tier 2 Development Agreement in conjunction with subsequent project-specific approvals, and prior to physical development of the Property. This Restated Agreement shall be deemed to implement and satisfy this requirement. Accordingly, upon the recordation of this Restated Agreement in the Official Records of Sacramento County, the Tier 1 Development Agreement, as applied to the Property, shall be deemed amended and replaced in its entirety by this Restated Agreement. The replacement of the Tier 1 Development Agreement by this Restated Agreement as to the Property shall not affect or impair the continuing validity of the Tier 1 Development Agreement and encumbrance thereof on other properties within the Plan Area that do not have an approved, executed and recorded Tier 2 Development Agreement or this Restated Agreement.

D. Property. The subject of this Restated Agreement is the development of the Property and the Plan Area. Landowner owns or has the right to acquire the Property and represents that all persons holding legal or equitable interests in the Property shall be bound by this Restated Agreement.

E. Specific Plan and Public Facilities Financing Plan. The City Council adopted the Specific Plan which Plan is applicable to the Property pursuant to Resolution No. 8863 on June 28, 2011. The City Council also approved the Public Facilities Financing Plan pursuant to Resolution No. 9298 on January 28, 2014 related to the planned development of the Specific Plan, consistent with the requirements of the Tier 1 Development Agreement.

F. Hearings. On May 7, 2014, the City Planning Commission, designated as the planning agency for purposes of development agreement review pursuant to Government Code Section 65867, in a duly noticed and conducted public hearing, considered this Restated Agreement and recommended that the City Council approve this Restated Agreement.

G. Mitigation Measures. Mitigation measures were recommended in the Specific Plan EIR and Supplemental Environmental Review(s), if any, related to the City's approval of the Specific Plan, the Agreement, and this Restated Agreement, and have been incorporated in the Specific Plan and the Entitlements and in the terms and conditions of this Restated Agreement, as reflected by the findings adopted by the City Council concurrently with this Restated Agreement.

H. Entitlements. Following consideration and certification of the aforementioned Specific Plan EIR, any Supplemental Environmental Review(s), and CEQA related findings, the City Council has adopted applicable statement(s) of overriding considerations and has approved the following Entitlements that are currently applicable to the Property, which Entitlements are the subject of this Restated Agreement:

1. The General Plan;

2. The Specific Plan;
3. This Restated Agreement;
4. The Public Facilities Financing Plan (the "PFFP"); and
5. The City and Landowner acknowledge that Design Guidelines for the Plan Area will be presented to the City by Landowners and other Participating Landowners for review and approval by the City. Upon approval of the Design Guidelines by the City, such Design Guidelines shall be an Entitlement without the necessity of further amendment to this Restated Agreement.

I. General and Specific Plans. Development of the Property in accordance with the Entitlements and this Restated Agreement will provide orderly growth and development of the area in accordance with the policies set forth in the General Plan and the Specific Plan.

J. Substantial Costs to Landowner. Landowner has incurred and will incur substantial costs in order to implement the Specific Plan and to assure Development in accordance with the Entitlements and the terms of this Restated Agreement.

K. Need for Services and Facilities. Development of the Property will result in a need for urban services and facilities, which services and facilities will be provided by City and other public agencies to such Development subject to the performance of Landowner's obligations hereunder, including but not limited to Landowner's obligation to fund such facilities and services.

L. Contribution to Costs of Facilities and Services. Landowner agrees as provided herein to provide for the costs of such public facilities, services and infrastructure, including but not limited to the Backbone Infrastructure required for the Development of the Property and/or required by the Entitlements, and to mitigate impacts on the City of the Development. City agrees to provide municipal services subject to Landowner's payment of such costs and compliance with the terms and conditions in this Restated Agreement. Landowner, through the development of its Property in accordance with the Entitlements and this Restated Agreement, will contribute as part of the Specific Plan towards providing a mix of housing and commercial uses meeting a range of needs for the City, dedication of land for, and funding of, public facilities, open space, parkland and related park amenities, and other services and amenities that will be of benefit to the future residents of the City.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:



## ARTICLE 1

### GENERAL PROVISIONS

**1.1 Incorporation of Recitals.** The Recitals above are true and correct and constitute enforceable provisions of this Restated Agreement.

**1.2 Property Description and Binding Covenants.** Upon recordation of this Restated Agreement pursuant to Section 1.4.1 below, the provisions of this Restated Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors-in-interest to and assigns of the parties hereto. Accordingly, all references herein to "Landowner" shall include each and every subsequent purchaser or transferee of the Property, or any portion thereof, from Landowner, whether or not such purchaser or transferee executes an assumption of this Restated Agreement with respect thereto.

**1.3 Definitions.**

"Adopting Ordinance" means Ordinance No. 1195, dated June 10, 2014, approving this Restated Agreement.

"Advancing Owners" means the landowners within the Plan Area described in Section 4.2.1 and listed as Advancing Owners in Exhibit 4.2.1 of this Restated Agreement.

"Aerojet/Easton Property" means the real property located within the Specific Plan owned by Aerojet Rocketdyne, Inc. and Easton Development Company, LLC, as of the Effective Date, as more particularly shown on Exhibit 2.2.3.2 attached hereto and made a part hereof.

"Agreement" means the Tier I Development Agreement dated August 2, 2011.

"Area 40" means that portion of the Aerojet/Easton Property adjacent to Prairie City Road in the Specific Plan area as delineated by the EPA in the Superfund cleanup effort as depicted on Exhibit 2.2.3.2

"Backbone Infrastructure" means the infrastructure described on Exhibit 2.2.1, attached hereto and made part hereof.

"Backbone Lands" means the land areas within the Specific Plan as shown on Exhibit 3.8.

"CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq., and all regulations and guidelines promulgated thereunder.

"City" means the City of Folsom, a municipal corporation.

"City Council" means the City Council of the City.

"City Zoning Ordinance" means the provisions of the City Municipal Code, Title 17 et seq.

"CFD" means a Community Facilities District established pursuant to the CFD Act.

"CFD Act" means the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq.), and the City of Folsom Community Financing Law (Folsom Municipal Code Chapter 3.110) as amended from time to time.

"Community Development Department" means the Community Development Department of the City.

"Community Development Director" means the Community Development Director of the City.

"Constructing Owner" means either Landowner or any other Participating Landowner who elects to construct any PFFP Facilities.

"Constructing Owner's Property" means the property within which any fee credits associated with the Constructing Owner's construction of any PFFP Facilities may be applied, as more particularly described in Section 4.3 below.

"Day(s)" means business day(s), except as expressly stated herein.

"Design Guidelines" means the design guidelines for the FPA approved by the City, and thereafter to be applied by the City to guide and evaluate the design of certain improvements within the Plan Area.

"Develop" or "Development" means any development, construction and use of the Property pursuant to a lawfully issued permit by the City of Folsom in furtherance of the Specific Plan and the Entitlements, including without limitation, the processing and approval of any tentative or final Large-Lot or Small-Lot Maps.

"Development Agreement Statute" means Government Code Section 65864, et seq.

"Development Phase" or "Phase" means a Development Phase as described in Section 3.9 and subsections to Section 3.9 of this Restated Agreement.

"Effective Date" means the date which is thirty (30) calendar days after the date of the Adopting Ordinance approving this Restated Agreement.

"Entitlements" means the entitlements described in items 1 through 5, inclusive, of Recital I above, and those Specific Plan Amendments referenced in Section 1.5.3 of this Restated Agreement.

"Existing Fees" means the development impact and mitigation fees existing in the City as of the Effective Date of the Agreement set forth in Exhibit 2.2.4 attached hereto.

"Existing Rules", unless otherwise expressly provided in this Restated Agreement or the Entitlements, means City's ordinances, and resolutions in force and effect on the Effective Date of the Agreement.

"FPA" means the Folsom Plan Area annexed by the City of Folsom on or about January 18, 2012.

"General Plan" means the Folsom General Plan, as amended by Resolution No. 8861.

"Infrastructure CFD" means a CFD formed to finance (i) the acquisition and/or construction of any Backbone Infrastructure or other public facilities or improvements serving development of the Plan Area and/or (ii) the payment of the SPIF.

"Infrastructure CFD Improvements" means the public facilities or improvements authorized for acquisition or construction by the applicable Infrastructure CFD.

"Landowner" means West Scott Road, LLC, a Delaware Limited Liability Company, and its heirs, successors and assigns.

"Land Use Plan" means the Specific Plan Land Use Plan for the Property, as set forth on Figure 4.1 of the Specific Plan, adopted by the City Council pursuant to Resolution No. 8863 and made a part hereof.

"Large-Lot Map" means a subdivision or parcel map processed and approved pursuant to the Subdivision Map Act that, upon recordation hereof, will create Large Lot Parcels.

"Large Lot Parcel" means a parcel created by the recordation of a parcel map, subdivision map consistent with the Subdivision Map Act that is either planned for non-residential or multi-family use, or is planned for single-family residential use

"Mitigation Fee Act" means the Mitigation Fee Act, as defined and implemented pursuant to Section 66000 et seq. of the California Government Code, or any successor statute thereto.

"Mitigation Monitoring and Reporting Program" means the mitigation monitoring and reporting program approved by the City in connection with its approval of the Specific Plan EIR pursuant to Resolution Number 8860, as may be revised from time to time in connection with the City's approval of any Supplemental Environmental Review(s) applicable to Development of the Property.

"Mortgagee" means any lender or other entity that obtains a mortgage or deed of trust against the Property.

"New Rules" means any new or modified resolution, rule, and/or ordinance adopted by the City or by initiative (whether initiated by the City Council or by a voter petition, which initiative changes, alters or amends the rules, regulations and policies applicable to the rate, timing or sequencing and density and intensity of use or Development of the Property) after the Effective Date which is not part of the Existing Rules. "New Rules" does not include a referendum that specifically overturns the City's approval of any of the Entitlements.

"New Plan Area Fees" means the new development impact and mitigation fees, including the SPRF, SPIF and New Plan Area Fees for City Facilities, to be adopted and imposed in connection with the Development of the Plan Area consistent with the terms of the PFFP and this Restated Agreement, as specifically listed and identified in Exhibit 2.2.4 attached hereto under the Fee categories entitled "New FPASP Plan Area Fees for City Facilities," "New FPASP Plan Area Fee for Specific Plan Infrastructure (SPIF)," and "New FPASP Planning and Land Fees."

"New Plan Area Fees for City Facilities" means the new development impact fees to be adopted and imposed in connection with the Development of the Plan Area to finance certain City facilities consistent with the terms of the PFFP and this Restated Agreement, as listed and identified in Exhibit 2.2.4 under the Fee category entitled "New FPASP Plan Area Fees for City Facilities."

"Participating Landowners" means Landowner and any and all other landowners of other properties within the Plan Area who have then obtained approval and have executed and recorded, and are not in breach, of a Tier 2 Development Agreement or this Restated Agreement for such other properties.

"Permit Streamlining Act" means the provisions of Government Code Section 65920 et seq.

"PFFP" ("Public Facilities Financing Plan") means the Public Facilities Financing Plan prepared by Economic and Planning Systems and the Folsom Office of Management and Budget approved by the City on January 28, 2014 by Resolution No. 9298.

"PFFP Facilities" means the public improvements and facilities serving the Plan Area that are to be financed, in whole or in part, by the Plan Area pursuant to the terms and provisions of the PFFP.

"Plan Area" means the entire Specific Plan area shown on Exhibit B hereto.

"Planning Commission" means the Planning Commission of the City.

"Project" means Development consistent with the Entitlements, including this Restated Agreement.

"Property" means those certain parcel(s) of land described in Exhibit A-1 and shown on Exhibit A-2 attached hereto and made a part hereof within the Plan Area.

"Public Parcels" means the parcels within the Plan Area planned for open space and public uses described and shown on Exhibit B hereto.

"Restated Agreement" means this First Amended and Restated Tier 1 Development Agreement.

"Small-Lot Map" means a subdivision map processed and approved pursuant to the Subdivision Map Act that, upon recordation thereof, will create either individual lots or parcels upon which building permits may be issued for the construction of commercial buildings or single-family residential units within a parcel planned for commercial or single-family use, or for construction and sale of individual condominium units within a parcel planned for commercial or multifamily residential use, consistent with the underlying zoning in the Entitlements.

"Specific Plan" means the Folsom Specific Plan adopted by the City Council by Resolution No. 8863 on June 28, 2011.

"Specific Plan Amendment" means an amendment to the Specific Plan approved by the City Council.

"Specific Plan EIR" means the Final EIR for the Specific Plan certified as adequate and complete by the City Council by Resolution No. 8860 on June 14, 2011 (State Clearinghouse No. 2008092051).

"SPIF" means the Specific Plan Infrastructure Fee to be adopted and imposed in connection with the Development of the Plan Area consistent with the terms of the PFFP and Section 4.2.2 of this Restated Agreement.

"SPRF" means the Specific Plan Reimbursement Fee to be adopted and imposed in connection with the Development of property within the Plan Area consistent with the terms of the PFFP and Section 4.2.1 of this Restated Agreement.

"Standard Design and Construction Specifications" means the standard specifications approved by the City Council and published and maintained by the City, as amended from time to time.

"Subdivision Map Act" means the provisions of Government Code Section 66410 et seq.

"Subsequent Entitlements" means those project specific approvals which, in addition to the Entitlements, are required in order for Development to occur on a Landowner's Property. Subsequent Entitlements include, but are not limited to,

tentative and final Large and Small-Lot Maps, parcel maps, use permits, design review, grading plans and building permits, and all of the conditions of approval associated with such project specific approvals.

"Supplemental Environmental Review(s)" means any supplemental or additional environmental review and analysis approved or certified by the City, in addition to the review and analysis certified by the City Council in the Specific Plan EIR, associated with and/or required by the City's review and approval of the Entitlements, including without limitation, any addenda, amendments, or mitigated negative declarations that may be approved or certified by the City in connection with any and all amendments to the Specific Plan.

"Term" means the term of this Restated Agreement as defined in Section 1.4.1 hereof.

"Tier 1 Development Agreement" means the Tier 1 Development Agreement described in Recital A.

"Tier 2 Development Agreement" means a development agreement required by the Tier 1 Development Agreement.

"Vested Rights" means the rights to Develop the Property consistent with the terms and provisions of this Restated Agreement.

"Water Supply Agreement" means that certain Water Supply and Facilities Financing Plan and Agreement Between the City of Folsom and Certain Landowners in the Folsom Plan Area, entered into by and between the City and Folsom Real Estate South, LLC, et al., dated December 11, 2012, and recorded in the Official Records of Sacramento County, Book 20130124, Page 1382, on January 24, 2013, as amended.

#### **1.4 Term.**

**1.4.1 Commencement; Extension; Expiration.** The Term shall commence upon the Effective Date. This Restated Agreement shall be recorded against the Property within ten (10) calendar days after City enters into this Restated Agreement, as required by California Government Code Section 65868.5. The Term of this Restated Agreement shall extend from the Effective Date through June 30, 2044, unless said Term is earlier terminated, modified or extended by circumstances set forth in this Restated Agreement or by mutual consent of the parties hereto. Nothing herein prevents the City from exercising its sole and complete discretion in determining whether this Restated Agreement shall be extended at the end of the Term, and whether any of the terms contained herein should be amended as part of the extension.

Following the expiration of the Term, or if terminated earlier in accordance with the terms of this Restated Agreement, this Restated Agreement shall be deemed terminated and of no further force and effect, except for the implementing ordinances for the SPRF and the SPIF, which shall survive unless and until amended or revoked by

the City Council, and the indemnification obligations in this Restated Agreement, which shall survive termination of this Restated Agreement.

**1.4.2 Tolling and Extension During Judicial Challenge or Moratoria.**

In the event that this Restated Agreement is subjected to a judicial challenge by a third party other than Landowner, and Landowner gives written notice to City that it is electing not to proceed with the Project until such litigation is resolved, the Term of this Restated Agreement and timing for obligations imposed pursuant to this Restated Agreement shall, upon written request of Landowner, be extended and tolled during such litigation until the entry of a final order or judgment upholding this Restated Agreement, or the litigation is dismissed by stipulation of the parties. Similarly, if Landowner is unable to undertake Development due to the imposition by the City or other public agency of a development moratoria for imminent health or safety reasons unrelated to the performance of Landowner's obligations hereunder, then the Term of this Restated Agreement and timing for obligations imposed pursuant to this Restated Agreement shall, upon written request of Landowner, be extended and tolled for the period of time that such moratoria prevents development of the Property. In no event shall any extension of the term of this Restated Agreement under this section exceed twenty four (24) months from the date of filing of any judicial challenge without further action and approval of the City Council.

Notwithstanding any extension or tolling of the Term of this Restated Agreement as provided above in this Section 1.4.2, the City may, at Landowner's sole cost and expense, process any preliminary plans submitted by a Landowner, including, without limitation, any applications for tentative parcel map or tentative subdivision map approval, during such tolling period, provided, however, that Landowner waives the time limits set forth in the Subdivision Map Act or Permit Streamlining Act for any action by City during the tolling period to approve such tentative parcel map or tentative subdivision map or other development permit approval. In the event of a moratorium or judicial challenge as provided in this section City shall not be obligated to hold any hearings, public meetings or to approve such tentative map or development permit during the moratorium, but may proceed with processing of preliminary plans at Landowner's expense.

**1.5 Amendment of Restated Agreement.** When the City Council finds it in the best interests of the City to do so, this Restated Agreement may be amended from time to time by mutual written consent of City and Landowner with respect to the Property in accordance with the provisions of the Development Agreement Statute and City ordinances. Except as provided in Section 1.5.1, if the proposed amendment affects less than the entirety of the Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment.

**1.5.1 Required Provisions in Subsequent Tier 2 Development Agreements and Amendments to Incorporate Subsequent Entitlements.** In light of the necessity for full and ongoing funding of the FPA as provided in this Restated Agreement and the Entitlements, including the PFFP, the Parties agree that the terms and provisions of this Restated Agreement identified in this section must be included in

any other Tier 2 Development Agreement or subsequent Amended and Restated Development Agreement for other properties within the Plan Area. The Parties further agree that the terms and provisions enumerated herein may not be modified or amended as to any property within the Plan Area without the written consent of all of the then existing Participating Landowners. In addition, unless otherwise agreed to in writing by a Constructing Owner, the rights of a Constructing Owner who is no longer a Participating Landowner to any outstanding fee reimbursements and/or fee credits under a Fee Reimbursement Agreement with the City (as defined in Section 4.3 below) shall be protected from the effects of any proposed amendment to Sections 2.2.1, 4.2.1, 4.2.2 and 4.3 of this Restated Agreement through the Constructing Owner's contractual rights related thereto under such Fee Reimbursement Agreement. The following terms and provisions fall within the scope of this section:

- A. Portions of the PFFP, SPRF and SPIF; Credits and Reimbursements (Sections 2.2.1, 4.2.1, 4.2.2 and 4.3): The provisions of the PFFP as set forth in Section 2.2.1 (subject to the re-opener provisions of Section 2.2.4.1), the Specific Plan Reimbursement Fee as set forth in Section 4.2.1, the Specific Plan Infrastructure Fee as set forth in Section 4.2.2, and the Fee Credit and Reimbursement rights as set forth in Section 4.3;
- B. Portions of the Financing Programs outlined in the PFFP (Sections 2.2.3.5, 2.5.3 and 3.2): Landowner's and City's commitments under Recital L, Section 2.2.3.5 related to adoption and implementation of the PFFP and the SPIF, Section 2.5.3 to support the formation and implementation of all finance programs and CFDs described therein, including the Aquatic Center CFD for purposes of financing as outlined in the PFFP, and Section 3.2 related to the formation and implementation of any infrastructure CFDs;
- C. New Plan Area Fees (Section 2.2.4 and 2.2.4.1): Landowner's commitment in this Restated Agreement to support and pay the New Plan Area Fees, and all other fees adopted by the City consistent with this Restated Agreement, as and when required by the PFFP and the adopting ordinances;
- D. Design Guidelines (Recital H): The Design Guidelines for the Project upon approval by the City;
- E. Dedications of Backbone and Lands Public Parcels (Sections 3.8 - 3.8.5.1): Landowner's commitment to dedicate and/or grant the Backbone Lands and Public Parcels required for development of the Plan Area at no cost to the City; and



- F. Phasing of Backbone Infrastructure (Sections 3.9 – 3.9.2): Subject to the City's discretion, as described in this Restated Agreement, to determine the phasing and timing for construction of necessary Backbone Infrastructure as maps are processed, Landowner's commitment to maintain the underlying requirement to construct the portion of the Backbone Infrastructure as determined for each Development Phase pursuant to Section 3.9 of this Restated Agreement.

Nothing stated herein is intended to modify the exceptions to vested rights set forth in Section 2.2.3, the re-opener provisions of Section 2.2.4.1, the provisions allowing for cost of living adjustments in Section 2.2.4(7), or the rights of the City under Sections 2.2.5, 2.2.6 and 2.2.7 to enact new laws or regulations as provided for in those sections.

**1.5.2 No Amendment Required for Minor Administrative Modifications.**

The parties acknowledge that under the Specific Plan, the Community Development Director of the City has the discretion to approve minor modifications to approved land use entitlements without the requirement for a public hearing or approval by the City Council. Accordingly, the approval by the Community Development Department of any Minor Administrative Modifications (as defined in the Specific Plan on the Effective Date of this Restated Agreement) to the Entitlements that are consistent with this Restated Agreement shall not constitute nor require an amendment to this Restated Agreement to be effective. Notwithstanding the procedure for minor amendments, nothing in the Entitlements or this Restated Agreement would preclude the Community Development Director or the City Manager from bringing such amendments to the Planning Commission and/or City Council for action if he/she believes it is in the best interests of the City to do so.

**1.5.3 Amendments to Restated Agreement after Approval of Subsequent Entitlements.** A Participating Landowner may file an application for a Specific Plan Amendment and Subsequent Entitlements associated with the Specific Plan Amendment after the approval, execution and recordation of this Restated Agreement. As part of such applications, the Participating Landowner must also obtain an Amendment to this Restated Agreement to allow for the application of the terms of this Restated Agreement to the Specific Plan Amendment and the Subsequent Entitlements it seeks. Such amendments shall be referenced as Amendment No.[ ] to the Landowner's Restated Agreement, and shall be considered and processed by the City in accordance with the terms of Government Code Section 65864 through 65869.5, inclusive, and any and all applicable provisions of the Folsom Municipal Code and the City Charter and City Council Resolution No. 2370. The City Council retains sole and absolute discretion to evaluate the Specific Plan Amendment and related Subsequent Entitlements, including imposing conditions of development and to conduct any and all necessary Supplemental Environmental Review prior to consideration of the approval of the Specific Plan Amendment and the Subsequent Entitlements. If the City, in its sole and absolute discretion, approves the Specific Plan Amendment and the Subsequent Entitlements and provided that Landowner also reaffirms its agreement to abide by the provisions of this

Restated Agreement and any modifications to the Restated Agreement and the Specific Plan or conditions imposed on the project, then the Specific Plan Amendment and Subsequent Entitlements shall be included within the definition of Entitlements as that term is used throughout this Restated Agreement.

**1.5.3.1 Specific Plan Amendment Cut-Off Date.** The terms set forth in this Restated Agreement shall apply to Specific Plan Amendments approved by the City Council prior to that date that is two (2) years from the date of publication in the Federal Register of the Record of Decision for the Section 404 Permit issued by the United States Army Corps of Engineers relative to Backbone Infrastructure, or July 1, 2016, whichever is later (the "Specific Plan Amendment Cut-off Date"). For Specific Plan Amendments approved by the City Council on or after the Specific Plan Amendment Cut-off Date, the City retains the right to modify this Restated Agreement as applied to the lands covered by the proposed Specific Plan Amendment, to impose additional conditions or requirements of the Project that are not project specific or "nexus" based, including imposing additional costs, conditions or requirements to: (1) fund and/or construct facilities other than PFFP Facilities, and (2) fund services or amenities other than those described in the PFFP, in conjunction with the approval of an amendment to the Specific Plan or to accelerate the funding of projects in the PFFP. Nothing in this section is intended to prevent development of the Property for the uses and to the density or intensity of development or the rate and timing of development as set forth in this Restated Agreement and the Entitlements, or permit modifications of other existing rights or application of New Rules, except as expressly permitted in this Restated Agreement including, as provided in Government Code Section 65865.2. Landowner retains its right to object to the cost of additional conditions or requirements, but expressly waives any argument that the imposition of such conditions or requirements violate the terms of this Restated Agreement and agrees to comply with such conditions or requirements, including any cost associated therewith, should such be imposed by the City as part of an amendment to this Restated Agreement following consideration of Landowner's objection. Regardless of the date of approval of a Specific Plan Amendment, nothing stated herein is intended to modify, alter or limit in any way the City's right to impose new conditions or terms which derive from environmental review and are required to mitigate environmental impacts, or are otherwise directly project related or "nexus" based.

**1.5.4 Recordation Upon Amendment or Termination.** Except in the event that this Restated Agreement is automatically terminated due to the expiration of the Term, the City shall cause any amendment hereto, including any extension of the Term, and any other termination hereof to be recorded, with the County Recorder within ten (10) calendar days after City executes such amendment or termination. Any amendment or termination of this Restated Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

## ARTICLE 2

### DEVELOPMENT OF THE PROPERTY

**2.1 Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location of public utilities and public improvements shall be those set forth in the Entitlements and this Restated Agreement.

**2.2 Vested Rights.** City agrees that, except as otherwise provided in and as may be amended in accordance with the Exceptions to Vested Rights set forth in Section 2.2.3 below, City is granting, and grants herewith, vested rights to Development for the Term of this Restated Agreement in accordance with the terms and conditions set forth herein. City acknowledges that the rights vested by this Restated Agreement include the land uses and approximate acreages for the Property as shown and described in Exhibit A-1 and Exhibit A-2 attached hereto, or as such land uses and approximate acreages may be amended by those Specific Plan Amendments referenced in Section 1.5.3 of this Restated Agreement. Nothing in this Restated Agreement shall impair or affect the rights of Landowner under a vesting tentative map or the City's rights to condition such maps. (Govt. Code Sec. 66498.1, et seq.)

Such uses shall be developed in accordance with the Entitlements, as the Entitlements described in Recital H provide on the Effective Date of this Restated Agreement and/or as any Subsequent Entitlement incorporated therein provides on the date of approval thereof by City.

**2.2.1 Vested Provisions of the PFFP.** The parties agree that the PFFP is not a vested document in its entirety. They further agree that only those portions of the following Chapters and Appendices in the PFFP specifically referenced below will vest for the term of this Restated Agreement:

- A. The list of PFFP Facilities to be constructed in and/or financed by the Plan Area, as set forth in Appendices B through G and I through O of the PFFP, as may be revised in accordance with the provisions of Section 2.2.3.5 herein and subject to the re-opener provisions set forth in Section 2.2.4.1 herein. The initial list of PFFP Facilities is attached hereto as Exhibit 2.2.1;
- B. The development impact fee provisions, as set forth in the Executive Summary, Chapters 5 and 8 and Table 13 of the PFFP, including payment of such fees at building permit or occupancy and establishment of fee reimbursement and credit provisions for advance-funded improvements;
- C. The SPIF Implementation provisions, as set forth in Appendix S of the PFFP, including the SPIF Set-Aside for certain Phase 1 and

Phase 2 sewer and water infrastructure and the SPIF fee reimbursement and fee credit implementation and prioritization;

- D. The Sewer and Offsite Water CFD and Extended Term CFD provisions, as set forth in Chapters 5 and 6 and Appendix U of the PFFP; and
- E. The City Loan for Water/Sewer Financing provisions, as set forth in Chapters 5 and 6 and Appendix U of the PFFP, including City loan repayment from Sewer and Offsite Water CFD revenues and establishment of SPIF Set-Aside with applicable credits for eligible improvements.

As to the provisions of the SPIF, including the Set-Aside described in 2.2.1(C), the Parties agree that additional details for implementation of the SPIF Set-Aside will be subject to refinement and substantiation as part of and in connection with the City's adoption of the SPIF ordinance consistent with the parameters and purposes identified in the above referenced sections of the PFFP. The City also shall have the authority to adopt the ordinance for the New Plan Area Fees to accomplish the purpose outlined in the PFFP consistent with the parameters and purposes identified in the above referenced sections of the PFFP.

**2.2.2 Vested Provisions of the Specific Plan.** The parties recognize the need to vest certain portions of the Specific Plan and also recognize that during the term of this Restated Agreement that there may be a need for changes in the plan to keep pace, for example, with new regulatory requirements, new technology, changing trends and a need for flexibility to address changes and needs and goals of the City as expressed by the City Council over time. The parties recognize that the Specific Plan is not vested in its entirety and agree that the following sections of the Specific Plan are vested and will not be altered by New Rules:

- A. Development Standards set forth in Appendix A of the Specific Plan;
- B. Land Use and Zoning set forth in Section 4 of the Specific Plan; and
- C. The street widths and roadway section provisions of Section 7.7.2 of the Specific Plan as depicted in Figures 7.24, 7.25, 7.26 and 7.27 related to Local Streets for a period of ten (10) years from the Effective Date of this Restated Agreement

**2.2.3 Exceptions to Vested Rights.** The parties specifically agree that no vested rights exist and/or the term of such vesting under this Restated Agreement may be limited and subject to modification and the parties recognize that provisions in the Entitlements related to these issues may differ from the existing code and the Specific Plan and that the terms of this Restated Agreement shall control with respect to the following issues:

**2.2.3.1 Affordable Housing.** The existing Housing Element and Folsom Municipal Code contain provisions associated with affordable housing and these provisions are vested until January 1, 2020 (i.e., the date that is 12 months before the expiration of the current Housing Element). Until January 1, 2020, the City agrees it shall not amend provisions of the Housing Element associated with affordable housing, except for such amendments that do not alter land uses, result in additional financial burdens on development in the Plan Area, amend the Land Use Plan, rezone any portion of the Property without the Landowner's written consent or to comply with state law or court order. Nothing herein shall prohibit Landowner from proposing or agreeing to any changes to the Land Use Plan or zoning for the Property. In any subsequent Housing Element the City may adopt a Housing Element in its discretion and will look citywide to meet its State-imposed Regional Housing Needs Allocation (RHNA) and retains all rights to modify the Land Use Plan and rezone any portion of the Property, add, modify or delete programs, policies and goals, excluding however any portion(s) of the Property for which a vesting map has been approved and remains valid. Nothing in this Restated Agreement is intended to limit the Landowner's ability to obtain vested maps as allowed by law or City ordinance.

The City agrees that when examining land to address future RHNA requirements, it will, to the extent feasible in the FPA, maintain rough proportionality of the mix of residential and commercial as exists in the Specific Plan on the Effective Date of this Restated Agreement. For purposes of this section, "rough proportionality" shall mean plus or minus 10%. The City agrees that when it examines the RHNA requirements it will endeavor to maintain the rough proportionality of commercially zoned land to residentially zoned land. Notwithstanding the objective to maintain rough proportionality, the City may consider among other information available at the time it is reviewing its Housing Element, including the number of and type of financially feasible and available sites, criteria used for evaluating financing of affordable housing projects (including but not limited to qualification for tax credits), the extent to which vested maps or other vested rights exist on commercial and residential property, the extent to which other lands have been rezoned to a different zoning designation since the Effective Date of this Restated Agreement, avoiding overconcentration of affordable housing and the policies of the Housing Element and may, in its discretion, rezone lands necessary to meet the City's RHNA obligations.

**2.2.3.2 Area 40 - Community Park West.** The term "Community Park West" refers to that portion of the Aerojet/Easton Property designated as the site for Community Park West, as depicted in **Exhibit 2.2.3.2**. At the time of adoption of this Restated Agreement, the land uses have been identified in and approved as part of the Specific Plan, and the Parties believe such uses are consistent with the uses permitted by state and federal regulatory agencies in that portion of the Aerojet/Easton Property referred to as Area 40 that has Superfund status. The City and Easton Development and Aerojet Rocketdyne ("Aerojet/Easton") have met to address the current provision related to Area 40 in the Tier 1 Development Agreement. The parties have agreed to replace the Tier 1 provision with the provisions contained in this section and to provide for an alternate site if Community Park West has not received regulatory clearance for

the park uses called for in the Specific Plan during the timeframe outline in this section. This Agreement grants to Easton and Aerojet, as owners of the Aerojet/Easton Property, and their successors-in-interest, the right to develop portions of the Aerojet/Easton Property, other than properties designated as Community Park West and the Alternate Site (defined below), consistent with the Specific Plan subject to the provisions of this section.

No later than the issuance of the 800<sup>th</sup> residential building permit within the Aerojet/Easton Property and those parcels designated for residential use within the community park service area depicted in Figure 9.1 in the Specific Plan ("the Service Area"), Aerojet/Easton shall create, record and irrevocably offer to dedicate to City the parcel for the neighborhood park depicted in the Specific Plan as a 10.0 acre park. In addition, Aerojet/Easton shall demonstrate to the City's satisfaction, at the time of the offer of dedication, that infrastructure (e.g., access streets, curb, gutter and sidewalk, water and power services) are available to serve the neighborhood park parcel. The City and Aerojet/Easton have met and agreed upon an alternate site for Community Park West in the event that all regulatory clearances for the uses in Community Park West are not achieved as set forth herein. The alternate site for Community Park West is depicted in **Exhibit 2.2.3.2** ("Alternate Site") which has been agreed to by Aerojet/Easton, the City, and the landowners who are party to a Restated Agreement. Notwithstanding the foregoing sentence, agreement of landowners who are a party to a Restated Agreement shall not be construed as a waiver on the part of such landowners of the right to request mitigation measures as part of the park project approval process to reduce impacts of Community Park West on properties adjacent to or in the vicinity of the Alternate Site. The parties agree that the Alternate Site shall not exceed the size (approximately 47.8 acres) of Community Park West as reflected in the Specific Plan adopted in 2011. Aerojet/Easton shall process parcel maps with its first land use application or submittal of a Specific Plan Amendment in the Service Area separately delineating the Alternate Site and Community Park West. When the parcel map is created for the Alternate Site, Aerojet/Easton shall grant, execute and provide to the City an irrevocable offer of dedication of the Alternate Site for a community park use conditioned as set forth in this section.

Upon issuance of the 1,000<sup>th</sup> residential building permit within the Service Area, Aerojet/Easton and City shall meet to discuss the progress of regulatory clearance for use of Community Park West, as well as timing and process for use of the Alternate Site should Community Park West not be available upon issuance of the 1200<sup>th</sup> residential building permit in the Service Area. In the event that Community Park West is not available for park use when the 1,200<sup>th</sup> residential building permit is issued in the Service Area or if a final determination (including applicable appeals) is made by the EPA that Community Park West cannot be used for the intended park purposes, whichever occurs first, the City may accept the offer of dedication of the Alternate Site as a permanent replacement for Community Park West. City agrees to accept and process an application from Aerojet/Easton for a Specific Plan Amendment, which application shall include, unless separately submitted in advance, the creation of the parcel maps and the Irrevocable Offer of Dedication referred to above. Any such

Specific Plan Amendment by Aerojet/Easton shall be processed by City following the City's typical review and approval process, which shall include CEQA review. Aerojet/Easton may proceed through the entitlement process on all Aerojet/Easton Property in the Plan Area, except Community Park West and the Alternate Site, and for those sites the entitlement process shall not proceed beyond a parcel map and zoning until the use of the Community Park West site has been resolved.

A deed restriction for park use only shall be recorded against the Community Park West and Alternate Site parcels, attaching a copy of this section which shall run with the land, until final approval of either site for a community park. Any entitlements for the Aerojet/Easton Property shall plan for and be consistent with the use of the Alternate Site for community park purposes and to assure access and circulation for the surrounding properties, acknowledging that doing so may necessitate or be facilitated by minor adjustments to the parcel map creating the Alternate Site. Aerojet/Easton shall be responsible for all the costs associated with the processing of any Specific Plan Amendments and environmental documents related to Specific Plan Amendment applications, including use of the Alternate Site for park purposes. Any cost adjustments required to construct park facilities at the Alternate Site shall be included in applicable New Plan Area Fees as set forth in Section 2.2.4(1) herein.

Disclosures shall be required and included as map conditions for the sale of all residential property sold in the Service Area of both Community Park West and the Alternate Site advising potential purchasers of the potential uses of these sites, including but not limited to future residential development or park and recreation use involving lighted playing fields. When the roadways adjacent to Community Park West and the Alternate Site have been constructed and opened for use, signage, to the satisfaction of the City, that is easily read by passing traffic shall be erected announcing residential development or the potential for park facilities on these sites. Unless otherwise approved by the City Council, Community Park West and the Alternate Site shall remain in ownership by Aerojet/Easton until final approval of either site for the community park. Any transfer approved by the City Council shall be subject to conditions it imposed and shall be accompanied by an Assignment and Assumption Agreement outlining the terms contained herein or as otherwise approved by the City Council.

Upon final approval of either site as a community park or when an irrevocable offer of dedication for the approved site is accepted by the City, the restrictions and limitations set forth herein for the site not used as a community park shall be removed.

The Parties acknowledge and agree that the vested rights conveyed by this Restated Agreement shall not prevent City from initiating or approving amendments to the approved Specific Plan, or adopting ordinances to achieve the purposes of this section. The Parties also acknowledge and agree that, the City's interests having been protected by the disclosures and restrictions noted above, Aerojet/Easton shall be permitted to submit and process for approval large and small lot tentative and final maps throughout the Aerojet/Easton Property, except the Alternate Site and Community

Park West, subject to City's regular review and approval process; however no entitlements shall be approved if such entitlements or components thereof would impede or limit the use of either site for a community park. The Parties and landowners further acknowledge and agree that limitations set forth herein on the use of the Alternate Site may not be resolved until after the deadline for the revision of the PFFP and adjustment to the SPIF described in Section 2.2.3.6 herein and therefore agree Aerojet/Easton or the City may initiate a revision to the PFFP and SPIF to address this issue up to ninety (90) days after the authorization to proceed with development on the Alternate Site. Upon approval of the Alternate Site for residential purposes, SPIF may be reallocated over the Aerojet/Easton Property for any such property that has not received a building permit.

The PFFP provides for a number of community facilities districts in the Plan Area and unit allocations for SPIF purposes. The parties and landowners agree and the district formation documents shall provide that neither the Alternate Site nor Community Park West will be subject to any community facilities district tax until such time the Alternate Site is used for residential purposes. The district formation documents shall provide that the taxable allocation from the Alternate Site shall be allocated to the remaining Aerojet/Easton Property and upon approval for residential purposes it may be reallocated, annexed to the district or the tax imposed.

Failure of Aerojet/Easton to comply with the terms set forth in this section shall be grounds to cease the application process for any entitlements in the Aerojet/Easton Property, including waiver of any permit streamlining provisions, as well as other remedies contained in this Restated Agreement. Provided, however, the effect of any such non-compliance and enforcement of any such remedies shall be limited to the Aerojet/Easton Property and shall not apply against or affect Development within any other Participating Landowner's property in the Plan Area.

**2.2.3.3 Quarry Traffic.** Section 7 of the Specific Plan addresses circulation in the Plan Area. Landowner acknowledges that, as provided in Section 2.2.2 above, this Restated Agreement does not vest any rights with respect to changes to the Circulation Chapter to assure compliance with the Quarry Truck Management Plan (TMP) approved by the Sacramento County Board of Supervisors on December 14, 2011 (Resolution No. 2011-0938). The City retains all rights and authority to make changes to the circulation provisions of the Specific Plan based on final implementation of the TMP. With respect to any portion of the Property impacted by the roadway alignments required by the TMP (the "TMP Alignments"), Landowner agrees to offer irrevocably for dedication or grant (at the City's discretion) easements and rights-of-way required for traffic and circulation under or in connection with the TMP at no cost to the City prior to the approval of the first tentative Small Lot Map for any portion of the Property impacted by the TMP Alignments, or any portion or phase thereof. Landowner may look to entities other than the City of Folsom for compensation associated with the TMP requirements, but any dispute related to compensation shall not delay or impede the ability of the City to obtain necessary easements or right of way. Any necessary



adjustments to dedications shall be governed by the provisions of Sections 3.8.3 and 3.8.4 of this Restated Agreement.

Landowner acknowledges and agrees that Development of the Property shall comply with the requirements of the Quarry Traffic Management Plan Funding Mechanism Program adopted by the County of Sacramento on December 14, 2011, as Resolution Number 2011-0938, as well as requirements in the Agreement Between the County of Sacramento, the Sacramento County Water Agency, and the City of Folsom, Relating to Transportation and Water Supply Issues Involving the South of Highway 50 Folsom Plan Area Annexation dated December 21, 2011.

**2.2.3.4 Corporation Yard.** The parties understand and agree that a new corporation yard equivalent to approximately 30 acres will be located in the vicinity of, but not within, the Plan Area. Such property has been tentatively identified, with a final purchase and sale agreement pending, pertaining to the location of the corporation yard. Landowners will be responsible for one hundred (100%) percent of the cost of land acquisition for such corporation yard as provided in the PFFP and Section 2.2.3.4.1 below. The Plan Area will fund its fair share of capital costs for all improvements and facilities required for the corporation yard. Such financing for capital costs shall be provided in accordance with the terms of the PFFP.

The City and certain landowners have identified a potential site for the corporation yard outside the Plan Area. The location is part of a Williamson Act contract and entitlements must be obtained through the County. Should the proposed use of the identified site as a corporation yard not be approved by the County, the Participating Landowners and the City will meet jointly to identify another suitable alternate site within sixty (60) calendar days following a final determination of disapproval by the County. The City may proceed with an alternate site should the landowners and City not mutually identify an alternate site. Additional land acquisition cost for an alternate site may be included in the PFFP.

**2.2.3.4.1 Purchase of Corporation Yard.** The Corporation Yard Purchase Price shall include the following amounts: (1) appraised value of the land (\$820,000.00); (2) interest at the rate of 3 percent, compounded annually, and (3) City costs as enumerated in the Purchase Agreement in an amount not to exceed \$36,000.00. The obligation for the Corporation Yard Purchase Price is an obligation of the Participating Landowners within the Folsom South Specific Plan Area, as set forth in the Amended and Restated Development Agreement, Section 2.2.3.4 and to be shared thereby consistent with the cost allocation method therefor under the Public Facilities Financing Plan ("PFFP"). To facilitate the financing of the Corporation Yard Purchase Price, this amount shall be identified as an eligible and authorized facility in the Infrastructure CFD or CFDs to be formed pursuant to the PFFP, including any extended term CFD.

The City and Aerojet shall enter into promissory note for the Purchase Price, which shall include only the appraised value of the land and any interest accruing thereon, and shall provide that the City will make annual

payments to Aerojet from the "Note Payment Sources" (which are comprised of (1) 90% of Corporation Yard permit fees paid to the City, to the extent the City has received such amounts as of the applicable payment due date, and (2) a credit to Easton of 90% of the value of the Corporation Yard permit fees that would be owed by Easton on any building permit pulled by Easton in the Plan Area). The promissory note shall further provide that all outstanding amounts are due and payable to Aerojet on the 7<sup>th</sup> Anniversary of the closing.

In the event there is a balance owed to Aerojet on the 7<sup>th</sup> Anniversary of the Closing, any remaining balance shall come from the Participating Landowners, in accordance with their relative fair shares for such obligation, provided each Participating Landowner's fair share shall be offset by the share of any Corporation Yard permit fees previously paid by such Participating Landowner and applied to the Note payments. At the discretion of each Participating Landowner, a Participating Landowner's outstanding share may be paid from any funds available from any bond proceeds or PAYGO revenues ("CFD Revenues" as defined in the PFFP) generated by an Infrastructure CFD that includes the Participating Landowner's property. This obligation of the Participating Landowners shall be joint and several, with right of equitable indemnity as between themselves. If any Participating Landowner fails to pay its share of the outstanding amount due on the Note, such defaulting Participating Landowner shall be deemed to be in breach of this Restated Agreement and the other Participating Landowners shall be obligated to advance the share of such defaulting Participating Landowner in proportion to their relative fair share obligations (with a right to reimbursement thereof, plus interest, from the delinquent Participating Landowner).

For each Participating Landowner who advances its share of such payment or directs CFD Revenues from such Participating Landowner's property to be used to pay all or any portion of its share of the balanced owed on the Note on the 7<sup>th</sup> Anniversary of the Closing, the City will implement a corresponding fee credit against the Corporation Yard impact fee for each Participating Landowner that contributes to the Corporation Yard Purchase Price through such payment or tax on its property.

The Landowners and the City will evaluate whether an amendment to the PFFP (including Appendix U) is necessary to provide that the Corporation Yard Purchase Price is an eligible and authorized facility as set forth herein, and that the fee credits specified herein shall be incorporated into the Corporation Yard impact fee.

**2.2.3.5 PFFP and SPIF.** The PFFP has been approved by the City Council and is agreed to by Landowner. The PFFP sets forth the finance plan for funding the costs to construct the PFFP Facilities and to maintain and provide the municipal services required to serve the development of the Plan Area consistent with the Entitlements. Landowner agrees to support the adoption and implementation of all

financial programs described in the PFFP for the Development of the Property consistent with the terms of the PFFP, including the adoption and implementation of the SPIF described therein and the New Plan Area Fees.

As provided in Section 2.2.1 above, certain provisions of the PFFP are vested; however, as provided herein, the City may otherwise modify the PFFP over time. All impact fees and increases in impact fees, other than inflationary adjustments, shall be adopted and implemented by the City in accordance with the Mitigation Fee Act. Landowner acknowledges that, as set forth in the PFFP, the Existing Fees and the New Plan Area Fees may be increased by the City from time to time based on a cost of construction inflation factor and/or based on changes in the actual or estimated costs of construction of the facilities or improvements to be financed thereby.

As each Development Phase within the Plan Area is processed for approval by the City, the specific, detailed components and timing of the PFFP Facilities required to serve such Development Phase shall be determined by the City, consistent with the PFFP and the Specific Plan EIR and this Restated Agreement. As PFFP Facilities are developed over time, the general description of PFFP Facilities addressed by the PFFP may be updated and/or amended as deemed necessary by the City, provided the overall cost for the Facilities does not increase, except as provided in the re-opener provisions of Section 2.2.4.1. Nothing shall limit the ability of the City to modify the types of facilities within the overall cost structure provided in the PFFP. Updates and/or amendments to the PFFP shall not require an amendment of this Restated Agreement or the Specific Plan.

The parties understand and agree that best efforts have been made to calculate costs of development of the infrastructure and facilities in the Plan Area based on available information and current laws and regulations. Further, the PFFP identifies various methods to pay for the costs articulated and necessary for the Plan Area. The responsibility for payment of the costs in the PFFP shall not be, in any case, the responsibility of the City. To the extent the estimated costs of the PFFP Facilities in the Plan Area are higher than expected, Landowners shall be responsible for the increased costs of such PFFP Facilities allocable to the Plan Area, either through adjustments of the Existing City Fees or New Plan Area Fees or other methods of financing as provided in the PFFP, but not through reductions in services or facilities in the Plan Area.

To the extent the costs to develop the Plan Area are less than expected, the City may, but is not required to examine and assess whether modifications to fees are appropriate. Landowner acknowledges that certain Landowners believe that the fee burden on commercial is higher than residential and the City may, but is not required to examine the fee burdens on commercial and residential in the future. In no case is the City required to reduce services or facilities should the cost of improvements be less than anticipated.

**2.2.3.6 Adjustment to SPIF After July 1, 2016.** Landowners acknowledge that the costs to fund the Property's share of the PFFP Facilities under the

PFFP, including the amount of the SPIF, will be based on the land uses allocable to the Property. The Landowners acknowledge that early changes in the Specific Plan can alter SPIF payments, but there must be a time in which the SPIF would not be adjusted merely due to changes in land uses or facilities. Therefore, in the event of any amendments to the land uses for the Property requested by Landowner and approved by the City on or before July 1, 2016, the City shall be authorized to revise the PFFP and, upon the request of any Participating Landowner to update the SPIF during such period, the City shall use good faith, diligent efforts to thereafter update the PFFP, the list of PFFP Facilities, and the New Plan Area Fees related thereto, including the SPIF, as needed, to revise the allocation of such costs to the Property under the PFFP consistent with the methodology of the PFFP and based on the revised land uses for the Property (and any other such land uses changes within the Plan Area). After July 1, 2016, changes in land uses shall not trigger a revision or an update to the SPIF in the manner described above. Provided, however, on and after the Cut-off Date for Specific Plan Amendments set forth in Section 1.5.3.1 of this Restated Agreement, nothing herein shall limit the City, when a land use change is requested for any portion of the Property, from reviewing and modifying the SPIF as applicable solely to the portion of the Property that is the subject of the proposed Specific Plan amendment or imposing a condition or requirement on and only on such portion of the Property that is the subject of the proposed Specific Plan amendment to: (1) fund and/or construct facilities other than PFFP Facilities, or (2) fund services or amenities other than those described in the PFFP in conjunction with the approval of such amendment to the Specific Plan.

#### **2.2.4 City Fees and New Plan Area Fees, Including Cost Increases.**

As described in the PFFP, the City and Landowners have agreed to a financing plan for development of the Plan Area. Among the financing mechanisms are application of the Existing Fees and adoption of New Plan Area Fees. The Existing Fees and New Plan Area Fees are set forth in Exhibit 2.2.4 hereto. Subject to the limitations in Section 2.2.4.1 (5000 units or ten (10) years) regarding City revisions to the list of PFFP Facilities and modification to the New Plan Area Fees for City Facilities to provide additional funding for development of the Plan Area, the City agrees not to adopt or to increase any fees or to apply other fees to Landowner except as follows:

1. Any fees described in the PFFP and/or Exhibit 2.2.4, including New Plan Area Fees and Existing Fees. Notwithstanding any provision to the contrary, Existing Fees adopted City-wide that are not replaced by New Plan Area Fees may be increased from time to time by resolution of the City Council, provided with respect to any such Existing Fees subject to the Mitigation Fee Act, the increase will be made in accordance with the Act.
2. Any mitigation fees required under the Specific Plan EIR and any Supplemental Environment Review(s)
3. Storm Drainage Funding – At the time of this Restated Agreement, the complete Storm Drainage plan and costs for the Folsom Plan Area have not been determined. Landowners are responsible for funding and fees

associated with implementation of the Stormwater Drainage Plan. No vesting is applicable to drainage required by state or regional, non-City local laws/regulations.

4. **Non-potable Water System** – At the time of this Restated Agreement, a non-potable water supply for the Folsom Plan Area has not been identified and the off-site transmission for and storage of any such supply for the Folsom Plan Area have not been included for the funding of the Plan Area. If the City identifies a non-potable water supply source as available for the Plan Area, Landowner acknowledges that Development may become responsible for and will not be vested against any fees adopted by the City (consistent with the Mitigation Fee Act) associated with funding the installation of the additional off-site transmission, on-site storage infrastructure and other necessary infrastructure, for any such non-potable water system. Landowner shall not be responsible for the costs of acquiring the identified non-potable water supply. The requirements in this subsection may be funded in whole or in part by fees or other sources, including rates, grants or other funding.
5. **Light Rail Fee** - The City may adopt or modify a Light Rail Fee to be applicable to the Folsom Plan Area.
6. **Development Processing Fees**, including but not limited to fees for project application, plan check, permit, inspection, and related fees in conjunction with any development applications.
7. **Adjustments for Costs of Living or Cost of Construction:** Existing and New Plan Area fees, including SPIF, may be adjusted by the City at any time based on cost of living or other such inflationary adjustments (including inflationary adjustments based on the Engineering New Record Cost of Construction Index, a Consumer Price Index or other method in accordance with the ordinances adopting the Existing Fees and New Plan Area Fees. Similarly, the City may adjust New Plan Area Fees on the basis of revised cost estimates or experience and the ordinances adopting such fees.
8. **Any regulatory or other non-Impact fee adopted Citywide.**
9. **Any fees or increases in such fees for unforeseen or unaccounted for costs for the PFFP Facilities arising out of a mutual mistake by the parties including inadvertent failure to include all or a portion of the costs or to comply with the requirements imposed by state law or court decisions associated with the construction and installation of the PFFP Facilities, any of which have the effect of imposing an additional financial burden on the City in connection with the construction and installation of the PFFP Facilities may be added or modified so there is no additional cost to the City in connection therewith.**

All fees and adjustments to fees described above shall be adopted by the City by ordinance or fee resolution and any impact fees are to be adopted and implemented by the City in accordance with the terms and provisions of the Mitigation Fee Act.

Notwithstanding any provision to the contrary, Landowner is solely responsible for the payment, as and when due upon the recordation of any Large Lot Maps or Small Lot Maps or upon the issuance of any grading permit, building permit or other such permit for development or occupancy of any unit or building within the Property, of all fees imposed and/or assessed by non-City public agencies, entities, and districts.

**2.2.4.1 Re-Opener on New Plan Area Fees for City Facilities.** In addition to and separate from any inflationary or cost of construction adjustments to the New Plan Area Fees consistent with this Restated Agreement and the PFFP, after the issuance of building permits for the construction of 5000 residential units or ten (10) years from the Effective Date of this Restated Agreement, whichever comes first, within the Plan Area, the City may revise the list of facilities to be funded by the New Plan Area Fees for City Facilities and modify the New Plan Area Fees for City Facilities in relation thereto, subject to the following conditions: (i) New Plan Area Fees for City Facilities shall not be increased by more than five percent (5%) per year or twenty five percent (25%) every five (5) years as a result of such changes to the list of facilities to be funded by the remaining development within the Plan Area (separate from and in addition to cost of construction adjustments for the prior list of PFFP Facilities); (ii) the inclusion of the additional facilities for financing by the remaining development within the Plan Area must comply with the nexus requirements of the Mitigation Fee Act; (iii) any increase to the New Plan Area Fees for City Facilities associated with the inclusion of the additional facilities shall not be applied to any portions of the Property zoned for non-residential development until five (5) years have passed after the issuance of 5000th building permit for the construction of residential units, or fifteen (15) years from the Effective Date of this Restated Agreement, whichever comes first, and (iv) the adjustments to New Plan Area Fees for City Facilities shall not be applied retroactively to any portion of the Property that has then paid the New Plan Area Fees for City Facilities with respect to development thereof. For purposes of this section, residential units means any dwelling (single, multi-family, mixed use) for full time habitation.

**2.2.5 Police Powers and Citywide Ordinances.** Nothing in this Restated Agreement limits or is intended to limit the City from exercising its police powers and adopting New Rules when the City Council finds that such New Rules are necessary to promote the public health, safety and welfare, provided such New Rules do not impair the financial provisions of this Restated Agreement, do not impair the vested rights of Landowner under this Restated Agreement, and do not adversely impact the land use designations in the Specific Plan and any Specific Plan Amendment, the density and intensity of use, the rate and timing of development, the maximum height and size of proposed buildings, and the provisions for reservation or dedication of land for public purposes and location of public utilities and public improvements.

Further, nothing in this Restated Agreement limits or is intended to limit the City from adopting New Rules that are applicable citywide, provided such New Rules do not impair the financial provisions of this Restated Agreement, do not impair the vested rights of Landowner under this Restated Agreement, and do not adversely impact the land use designations in the Specific Plan and any Specific Plan Amendment, the density and intensity of use, the rate and timing of development, the maximum height and size of proposed buildings, and the provisions for reservation or dedication of land for public purposes and location of public utilities and public improvements.

**2.2.6 Application of Changes Due to State and Federal Laws.** Nothing in this Restated Agreement shall preclude the application to Development of changes in City laws, regulations, plans, policies, or fees mandated by State or Federal law or a court order issued by a court of competent jurisdiction, in order to comply with mandates or requirements due to changes in State or Federal laws or regulations or an order issued by a court of competent jurisdiction. To the extent that such changes in City laws, regulations, plans, policies, or fees mandated by State or Federal law prevent, delay or preclude compliance with one or more provisions of this Restated Agreement, City may modify or suspend such provisions of this Restated Agreement as may be necessary to comply with such State or Federal laws or regulations or court order, and City and Landowner shall take such action as may be required pursuant to this Restated Agreement to comply therewith.

**2.2.7 Uniform Codes and Standard Construction Specifications.** Nothing herein shall preclude City from applying to the Property standards contained in uniform building, construction, electrical, plumbing, fire or other uniform codes and Title 24 of the California Code of Regulations or City modifications thereto and City's Standard Construction Specifications relating to building standards in effect at the time of approval of the appropriate permits which may include, but not be limited to, building, grading or other construction permits approvals for the Property, as the same may be adopted or amended from time to time by City, provided that the provisions of any such modifications shall:

- A. Apply on a City-wide basis; and
- B. With respect to those portions of any such uniform code that have been adopted by City without amendment, be interpreted and applied in a manner consistent with the general application of such code in the City.

**2.2.8 Conflict Between Existing Rules, Entitlements and Restated Agreement.** In the event of any conflict or inconsistency between the Existing Rules, the Entitlements, and this Restated Agreement the following applies:

- A. In the event of any conflict or inconsistency between the Existing Rules and this Restated Agreement, the provisions of this Restated Agreement shall prevail and control.

- B. In the event of any conflict or inconsistency between the Entitlements, the Existing Rules and this Restated Agreement, the provisions of this Restated Agreement shall prevail and control.

**2.3 Density Transfer.** Density transfers shall be permitted as set forth in the Specific Plan in effect as of the Effective Date of this Restated Agreement.

**2.4 Subsequent Entitlements.** Each Landowner's Vested Rights to proceed with Development is subject to the approval of Subsequent Entitlements which shall be obtained in conjunction with any necessary project-specific approvals and required grading, building and other such permits as required by the Existing Rules.

**2.5 Ordinance, Resolution and Officially Adopted Rules.**

**2.5.1 Conflicting Ordinances or Moratoria.** Except as provided in this Restated Agreement, so long as this Restated Agreement remains in full force and effect, no future resolution, City Council adopted rule, ordinance adopted by the City or by initiative (whether initiated by the City Council or by a voter petition, other than a referendum that specifically overturns the City's approval of any of the Entitlements) shall directly or indirectly limit the rate, timing or sequencing and/or density and intensity of use or of the Development in accordance with and as permitted by the Entitlements and this Restated Agreement. Subject to the foregoing, the parties hereto acknowledge the powers reserved to the City's electors in the City Charter.

**2.5.2 Authority of City.** This Restated Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by City or any of its officers or officials.

**2.5.3. Requirements for Subsequent Plans, Guidelines, Funding Mechanisms, Community Facilities Districts and Land Dedications.** The following plans, guidelines and funding mechanisms must be completed for the Plan Area by Landowner and approved by the City and land dedications offered to the City prior to approval of the first tentative Small Lot Map for the Property, or any portion thereof, prior to approval of the first final Small Lot Map (or first building permit, if Development may occur without any subdivision) for any portion of the Property, or applicable portion thereof, as follows:

- A. Prior to Approval of First Tentative Small Lot Map:
- (1) Public Right-of-Way and Land Dedication Plan;
  - (2) Open Space Management and Financing Plan;
  - (3) Drainage Facilities Maintenance and Financing Plan; and
  - (4) Design Guidelines.



- B. Prior to Approval of First Final Small Lot Map in the FPA (or First Building Permit if Development May Occur Without Any Subdivision):
- (1) Formation of the Sewer and Off-Site Water CFD as provided in the PFFP to fund a portion of the Plan Area sewer and water infrastructure, provided, however, Landowner may elect to exclude the Property, or any portion thereof, from such CFD, subject to Landowner consenting to a map condition and City and Landowner executing an agreement specifying how the Property, or excluded portion thereof, will pay its share of the sewer and water infrastructure, on a building permit by building permit basis (or other payment methodology mutually agreed to by Landowner and the City) that would otherwise be funded by inclusion thereof in the CFD, consistent with the PFFP;
  - (2) Formation of the Aquatic Center CFD related to the recreational facilities that may include an aquatic center, sports complex and/or community center, provided, however, Landowner may elect to exclude the Property, or any portion thereof, from such CFD, subject to Landowner consenting to a map condition and City and Landowner executing an agreement specifying how the Property, or excluded portion thereof, will pay its share of the recreational facilities, on a building permit by building permit basis, (or other payment methodology mutually agreed to between Landowner and the City), that would otherwise be funded by inclusion thereof in the CFD, consistent with the PFFP;
  - (3) Formation of the Parks, Trails, Landscape Corridors, Medians and Open Space Maintenance CFD (the "Services CFD"), the Storm Drainage Maintenance CFD (unless such drainage maintenance is included in the Services CFD), and the Street Maintenance District/Lighting Maintenance District CFD (unless such street maintenance is included in the Services CFD), as provided in the PFFP;
  - (4) Adoption of the New Plan Area Fees, including the New Plan Area Fees for City Facilities, the SPIF, and the SPRF, as provided in the PFFP and listed on **Exhibit 2.2.4** attached hereto;
  - (5) Dedication or grant of the rights of way and easements for all Backbone Lands for roadways and utilities within the Property as provided herein; and

- (6) For each final Small Lot Map, offers of dedication of the Public Parcel(s) described in Section 3.8.5 below located within the portion of the Property affected by the final Small Lot Map, or within sixty (60) days of Landowner's receipt of a written request for dedication thereof from the City, whichever occurs first.
- C. Prior to First Building Permit within the Property (or portion thereof to be included within an Infrastructure CFD desired to be formed by Landowner):
  - (1) Formation of one or more Infrastructure CFDs, which do not need to include the entire Plan Area or the entire Property, to fund a portion of required Backbone Infrastructure or other public facilities as desired by Landowner, and will also fund the Property's share of the improvements and facilities to be funded through the extended-term of the Infrastructure CFDs (the "Extended Term Infrastructure CFD Facilities") consistent with the PFFP and Section 3.2 of this Restated Agreement, provided, however, Landowner may elect to exclude the Property, or any portion thereof, from such Infrastructure CFDs, subject to Landowner and City executing an agreement specifying how the Property, or excluded portion thereof, will pay its share of the Backbone Infrastructure, other public facilities, or the Extended Term Infrastructure CFD Facilities on a building permit by building permit basis (or other payment methodology mutually agreed to between Landowner and the City) consistent with the PFFP.
- D. Compliance with Submittal Requirements. Specific projects proposed under the tentative Small Lot Map shall comply with all submittal and review requirements in effect at the time of submittal.
- E. No Limitation on Timing for Commencement of Special Tax. The parties agree that, except with respect to the Aquatic Center CFD, and the Sewer and Off-Site Water CFD, and the Extended Term CFD (as defined in the PFFP), which will levy special taxes on the Property only after issuance of building permits thereon unless otherwise agreed to by Landowner, nothing in this Restated Agreement limits the timing for commencement of annual CFD tax payments
- F. Landowner Consent. Landowner has agreed to the financing provisions set forth in this Section 2.5.3 and the PFFP and to perform the obligations hereunder in exchange for the consideration and benefits provided to Landowner by City under this Restated

Agreement. Accordingly, Landowner does hereby irrevocably consent to: 1) the formation of a CFD, the issuance of CFD Bonds, the imposition of taxes against the Property with respect thereto, and the apportionment of the costs and expenses of the proposed Backbone Infrastructure, Facilities, Maintenance and other CFD purposes as set forth in the PFFP, and waives any and all right of protest or objection with respect thereto or 2) the execution of an agreement with the City to pay its share of the improvements that otherwise would be required consistent with the terms set forth in this section.

G. CFD Districts. CFDs may be formed as stand-alone districts or combined, at the discretion of the City and in consultation with the landowners.

2.5.4 Satisfaction of LAFCO Conditions. The Parties acknowledge that Development consistent with the terms and conditions of the Entitlements and this Restated Agreement complies with and satisfies all conditions for development imposed in the annexation process by the LAFCO Commission under LAFCO Resolution No. 1196.

2.5.5 Mather Noise Easements. Landowner shall, prior to or concurrent with the execution and recordation of this Restated Agreement, record a noise easement over the Property in the form attached hereto as Exhibit 2.5.5 relating to noise caused by aircraft arriving or departing from Mather Airport.

2.5.6 School Impact Mitigation. Landowner shall comply with Measure W and Section 16.32.110 of the Folsom Municipal Code and mitigate all impacts on the demand for school facilities associated with Development pursuant to the Entitlements and this Restated Agreement through the payment of school impact fees adopted by the Folsom Cordova Unified School District in accordance with applicable statutory authority and requirements (the "Statutory School Impact Fees"). The Statutory School Impact Fees shall be paid as and when building permits are issued for development within the Property required to pay the Statutory School Impact Fee, except as the timing for such payment may be deferred by agreement between Landowner and the Folsom Cordova Unified School District. The revenues to be generated by the Property's payment of such Statutory School Impact Fees, in combination with the general obligation bonding capacity and state funding available to the Folsom Cordova Unified School District, are anticipated to fully mitigate all impacts on the demand for school facilities associated with Development in compliance with the requirements of the school mitigation provision set forth in Measure W (Folsom Charter Provision Section 7.08D) and of LAFCO Resolution No. 1196, Section 13 (requiring incorporation of feasible school impact mitigation). Nothing in this Restated Agreement is intended to address funding of schools under applicable laws or subsequent amendments to such laws.

2.6 Application, Development and Project Implementation Fees. Landowner shall pay application, development processing, inspection and plan checking fees and charges as may be required by City under the regulations existing at the time of submittal.

## ARTICLE 3

### LANDOWNER OBLIGATIONS

**3.1 Development, Connection and Mitigation Fees.** Except as otherwise provided in this Restated Agreement, any and all required payments of development, connection or mitigation fees by Landowner shall be made at the time and in the amount specified by then applicable City ordinances.

**3.2 Infrastructure CFDs.** Except as may otherwise be agreed to by Landowner and the City during the formation of an Infrastructure CFD for the Property as provided in Section 2.5.3, the following **specific** provisions shall be included within the applicable terms and conditions of an Infrastructure CFD related to the Property. The CFD shall be consistent with any City adopted **Finance Policies relating to such financing**, the current policy is provided in Resolution No. 9282 and the City's Financial Policies adopted on May 25, 2004 or as hereafter amended. The term of the special tax to be levied by any Infrastructure CFD against the Property shall be sufficient to support multiple bond sales and Pay-Go revenues as described in the PFFP. Available CFD bond proceeds and/or special tax proceeds may also be used to fund reimbursement of previously paid SPIFs but such proceeds may not be used for any other fees, including Impact Fees. In no event shall CFD proceeds be used to pay SPIF obligations arising out of dedication of land, including but not limited to dedications for roads, schools, parks, and trails. Payment of SPIF obligations, fee reimbursements from the SPIF, and SPIF fee credits converted from outstanding SPIF reimbursements, shall be allowed and available to Landowner for Infrastructure CFD Improvements financed by CFD proceeds generated by and allocable to the Property. When the CFD's are created the City will include provisions that permit the use of excess capacity for eligible facilities as outlined in the CFD formation documents. For purposes of this section, excess capacity is defined as capacity over and above full payment for the primary eligible facilities identified in the CFD formation documents. Where a CFD is used for eligible facilities Landowner shall not be entitled to any fee credits, except for SPIF fee credit or reimbursement from the SPIF program for that portion paid for with CFD funds.

**3.2.1 Participation by Landowner.** With respect to the formation of any Infrastructure CFDs, nothing in Section 3.2 or Section 2.5.3 shall be construed to require Landowner to form an Infrastructure CFD provided Landowner pays its fair share or enters into an agreement with the City to pay its fair share contribution for Plan Area wide CFD facilities at the time the CFD is formed and when the special tax is levied. Further, if a CFD is formed, nothing precludes the payment by an owner of any parcel(s) within the Property to be included within the Infrastructure CFD of a cash amount equivalent to its proportionate share of costs to be financed for the Infrastructure CFD improvements, or any portion thereof, prior to the issuance of any CFD bonds by such Infrastructure CFD.

**3.2.2 Formation of CFD Subject to City Discretion.** Nothing in this Restated Agreement shall be construed to require City to form a CFD if City determines,

in its reasonable discretion, that formation would not be consistent with adopted City policies and prudent public fiscal practice.

**3.3 Alternative Financing Mechanisms.** Nothing herein shall be construed to limit Landowner's option to install any improvements through the use of traditional assessment districts or private financing or other financing mechanisms as permitted by law and authorized by the City. Landowner is solely responsible for all costs related to the construction and installation of all infrastructure improvements required for Development of the Property as set forth in the PFFP, and understands and agrees that the City shall not be responsible for any of such costs. To the extent the costs of the infrastructure improvements and public facilities required for Development of the Property exceeds the proceeds from the Infrastructure CFDs or other financing mechanism of the Landowner, Landowner shall be solely responsible for such shortfall without reducing levels of service or facilities identified in the Public Facilities Financing Plan.

**3.4 Disclosure to Subsequent Purchasers.** This Restated Agreement shall constitute notice to all successors to Landowner hereunder, and to all subsequent purchasers of any lots, parcels and/or residential units within the Property, of all of the matters set forth herein, provided, however, the effect of this notice and disclosure shall automatically terminate and be of no further force or effect upon any termination of this Restated Agreement with respect to any such lots, parcels and/or residential units, including without limitation, any termination of this Restated Agreement pursuant to the terms of this Restated Agreement.

**3.5 EIR Mitigation Measures.** Notwithstanding any other provision in this Restated Agreement to the contrary, as and when Landowner elects to Develop the Property, or any portion or phase thereof, Landowner shall be bound by, and shall perform, or cause to be performed, all mitigation measures contained in the Specific Plan EIR and any Supplemental Environmental Review(s) related to Development of the Property which are adopted by City and are identified in the Mitigation and Monitoring and Reporting Program as being a responsibility of Landowner for Development of the Property.

**3.6 Mitigation Monitoring and Reporting Program.** Separate from and in addition to the requirements in Section 3.5 of this Restated Agreement, Landowner shall be responsible for all of the costs and expenses associated with the Mitigation Monitoring and Reporting Program under the California Environmental Quality Act as part of the Specific Plan EIR and any Supplemental Environmental Review(s) related to the Development. In furtherance of this provision, Landowner shall pay all costs required by the City associated with the Mitigation Monitoring and Reporting Program as set forth in the conditions of approval on the Entitlements.

**3.7 Backbone Infrastructure.** Based on the Specific Plan and the PFFP, the Backbone Infrastructure required to support development of the Plan Area consistent with applicable City development standards consists of the improvements that are required to provide access and public utilities to any part of the Plan Area, as

more particularly described and listed as the Backbone Infrastructure in **Exhibit 2.2.1** attached hereto. Landowner's obligation to install any of the Backbone Infrastructure, or any elements thereof, in connection with its Development shall be determined by the City in accordance with the development phasing provisions of Section 3.9 below. The parties recognize that the definition of Backbone infrastructure in the PFFP excludes sound walls and landscape corridors and Landowner agrees that such costs are the Landowner's responsibility on a project basis.

The City will use reasonable efforts to seek other funding to assist Landowner with the costs of the Backbone Infrastructure such as supporting the (a) formation of CFDs and adoption of fees described in the PFFP and this Restated Agreement; (b) collection of reimbursements by other benefitted properties under SPIF, and (c) application such as applying for available regional, statewide and federal funding for Backbone Infrastructure.

**3.7.1 White Rock Road Improvements.** As part of Sacramento County's transportation planning for the area that includes the Plan Area, the County approved a plan and certified an EIR for the Southeast Capital Connection that includes road improvements to White Rock Road along the southern boundary of the Plan Area. In connection therewith, the County prepared a study, a copy of which is attached to the PFFP, that allocates \$15.2 million to the Plan Area as its fair share for the Southeast Capital Connection improvements and intends to include such costs within its pending Sacramento County Development Transportation Fee (the "SCDTF") to finance such road improvements. The Landowners shall pay the SCDTF as the Plan Area's fair share of funding for improvements to White Rock Road as part of the Southeast Capital Connection. The City agrees that the Plan Area's obligation to construct any improvements to White Rock Road shall be limited to dedication of easements and rights-of-way required for improvements to White Rock Road and payment of its fair share obligation set forth in the SCDTF adopted or to be adopted by the County. The only road improvements to White Rock Road to be included in the list of Backbone Infrastructure shall be the intersection improvements within the Plan Area required to connect the Plan Area roadway network to White Rock Road, including without limitation, the intersection improvements planned at Oak Avenue, Scott Road (east), Placerville Road and Empire Ranch Road; no other improvements to White Rock Road shall be required to be funded by the Plan Area (except through the payment of the SCDTF) or included within the list of Backbone Infrastructure, including without limitation, any potential grade separations along White Rock Road.

If the Connector alignment changes or the alignment requires right of way from Landowners in the Folsom Plan Area, Landowner(s) will sell the land necessary to facilitate the connector project at no cost to the City, but upon compensation acceptable to Landowner(s) to be paid by other entities, such as the Capital Southeast Connector Joint Powers Authority (the "Connector JPA"). Nothing herein shall limit compensation paid by other entities. No compensation from the City will be required for connections to the Connector project as identified in the Backbone Infrastructure. City will cooperate with the Participating Landowners, including Landowner, to support, as may be

necessary, the desired alignment for the Connector as shown in the Specific Plan with the Connector JPA.

**3.8 Dedications of Backbone Lands.** If and to the extent not previously granted by Landowner pursuant to the Tier 1 Development Agreement, rights of way and easements for all Backbone Lands will be granted to all the Landowners in a format acceptable to the City for purposes of access and construction of public improvements, and to the City in a form acceptable to the City, prior to the recordation of the first final parcel or subdivision Map for the Property, but in no event later than 180 days after the Effective Date for purposes of access and public utilities. Such dedications and/or grants shall be at no expense to the City. As necessary, the easements shall also benefit the City. These rights of way and easements will be recorded at the Sacramento County Recorder's Office and shall be for the benefit of each Landowner. The Backbone Lands on which Backbone Infrastructure are to be constructed are depicted on Exhibit 3.8 attached hereto and made a part hereof (the "**Backbone Lands**"). The easement width for Backbone Lands shall be to the width of the road right-of-way plus 25' or the back of the landscape corridor, whichever is less and include a temporary construction easement of a width adequate to allow the necessary grading to construct the improvement and to facilitate construction access, including increasing the width when required by site conditions. In the case of an easement outside a road right-of-way, the width shall be consistent with the requirements of the City and include a temporary construction easement. A survey map exhibit of the easements will accompany the descriptions and plats and shall be recorded as a supplemental exhibit(s).

**3.8.1 Temporary Construction Easements.** The construction obligation of each phase or sub-phase of development of the Plan Area may require construction of certain portions of Backbone Infrastructure on the property of other Specific Plan Landowner(s). This will require access for the purpose of construction on, over and across the Backbone Lands. To assure that all owners of land within the Specific Plan have confidence that they can access, construct, and offer to the City public improvements required of the phase or sub-phase of development, Landowner hereby agrees to provide all other Landowners, without cost, rights of way, easements, and temporary construction and access easements to those Backbone Lands on which Backbone Infrastructure is to be constructed as depicted on Exhibit 3.8 or as later modified for the Backbone Infrastructure in the Plan Area, provided any such modifications shall not affect the location of the Backbone Infrastructure within the Property without the Landowner's consent. Such temporary construction easements shall include the ability to access open space parcels to construct improvements required by conditions of applicable Clean Water Act Section 404 Permit(s). Subject to indemnification of the other Landowner(s) and the City, when applicable, by the Constructing Owner, such access temporary easement rights shall not be withheld, nor shall the Constructing Owner be required to pay any compensation to any underlying Landowner(s) for such access easement, during the term of this Restated Agreement. Temporary construction easements shall automatically terminate upon formal acceptance of the fully-completed public improvements by City in writing. Nothing shall limit the terms of temporary access easements related to insurance, indemnification,

restoring premises to pre-easement condition and non-interference with uses of the burdened property and other reasonably necessary terms relating to such easements.

3.8.2 **Manner of Dedication.** The easements described in this Section 3.8 may be granted or dedicated, as the case may be, by separate legal instruments, or by reference thereto on the face of a parcel map or subdivision map for the sole purpose of right of way and utility easement dedication, which shall be recorded with the Recorder's Office of the County of Sacramento. City shall use its best efforts, to the greatest extent permitted by law, to impose the obligations described in this Section 3.8 upon every owner of land within the Plan Area.

3.8.3 **Adjustments to Dedications.** City and Landowners acknowledge that, as Landowner processes large lot and small lot subdivision maps for the Property and as the Connector or other public projects envisioned in the Plan Area progress, or any portion or phase thereof, minor adjustments to the boundaries of the areas dedicated pursuant to the terms of the Restated Agreement may be required based on the final engineering for such maps and Landowner and the City may also propose to relocate certain roadways, utilities or other City facilities. City and Landowner agree to cooperate with any such proposed adjustments or relocations, provided the approval of such adjustments or relocations shall be subject to the City's sole discretion. Upon such approval, City and Landowner will cooperate to effect such adjustments or relocations, subject to Landowner offering to dedicate to the City any replacement area that may be required by such adjustment or relocation so long as any such replacement area has not then been developed by Landowner.

3.8.4 **Release of Excess Offers of Dedication/No Compensation.** In addition to adjustments to dedicated property pursuant to Section 3.8.3 above, City may determine, in its sole discretion, that certain property offered for dedication may not be necessary for public purposes associated with the Specific Plan. Because the offers of dedication previously made pursuant to this Restated Agreement have been or are being made early in the planning process to assure the availability of the areas planned for the Backbone Infrastructure, City agrees: 1) that unnecessary easements or IOD's will be abandoned or quitclaimed to the original grantor or its successor-in-interest; and 2) that subsequent quitclaims or releases of areas approved by the City that were previously offered for dedication by Landowner shall not require any compensation to be paid by Landowner or its successor-in-interest for the property released unless Landowner or successors have been paid for the land through the SPIF or other program, notwithstanding any existing City ordinances or policies to the contrary. The timing and conditions for release of excess dedication is solely in the City's reasonable discretion. Landowner's early dedication hereunder, together with its covenant to dedicate any replacement area that may be required by an adjustment or relocation, provides adequate compensation to the City for any such subsequent abandonment by the City of these dedicated areas.

3.8.5 **Dedication of Public Parcels.** Portions of the Property, if any, described and designated as Public Parcels as shown on **Exhibit B** and further described in Appendices I through M and Appendix O of the PFFP (the "Public



Parcels"), shall be offered irrevocably for dedication or granted to the City, at the City's discretion and in a form acceptable to the City, free and clear of any encumbrances (including but not limited to any assessment or special tax previously imposed on the properties), when requested by the City, whichever is sooner. The Public Parcels shall be offered for dedication or granted to the City by Landowner within either: (i) 60 days of the Landowner's receipt of a written request from the City therefore, or (ii) upon recordation of a Final Small Lot Map that includes the Public Parcels, whichever occurs first.

Dedications and/or grants provided herein shall be at no expense to the City. The timing of acceptance of the Public Parcels is subject to the reasonable discretion of the City. The irrevocable offers of dedication or grants may be granted by separate legal instruments, or by reference thereto on the face of a parcel map or subdivision map, which shall be recorded with the Recorder's Office of the County of Sacramento. Dedication of Public Parcels shall be subject to approval by the City of: (i) the physical condition of the planned open space and other public property within the Property and (ii) the formation of a financing mechanism acceptable to City to fund the costs of ownership and maintenance responsibility areas as applicable within the Property. As provided in Section 3.8.3, in the event minor adjustments to the boundaries of a Public Parcel dedicated or conveyed to the City for open space or public facilities may be required based on the final engineering of the development in the area, City or Landowner may propose to relocate and/or revise the boundaries of the Public Parcel at the Landowner's sole cost and expense, subject to City approval at its reasonable discretion.

**3.8.5.1 Maintenance of Open Space/Public Property/Fuel Modification Area.** Landowner shall include the Property in a financing mechanism(s) for funding the maintenance of open space and other public property within the Plan Area. Landowner will be required to create a funding mechanism satisfactory to the City to create a fuel modification area of between 30 and 100 feet from the Landowner's property line into any City-owned property or other publicly-owned open space and parkland adjacent to the Property or as provided in the adopted Open Space Management Plan or the City Fire Code. It is the intent of the parties that a funding mechanism will be created by each Development Project or Plan Area wide to pay for the clearing of brush, grasses and other debris along and within adjacent public properties within the Plan Area on an annual basis to reduce fire danger. The fuel modification may be accomplished by a CFD, private homeowners association, other private entity, City resources paid for by the aforementioned funding mechanism or as otherwise agreed to by the parties.

**3.9 Phasing of Development.** Until December 31, 2015, the City agrees to provide a procedure, at Landowners' expense, for notification to other Participating Landowners when Landowner has submitted an application for development of the Property, or any portion thereof (each, a "Development Phase"). The purpose of the notification process is to permit coordinating of phasing and construction of infrastructure with other property owners. Each Development Phase application shall be consistent with the provisions of FMC Chapter 16.20 and is intended to inform the

City, as well as other Participating Landowners, of Landowner's intended phasing of development for its Property, including the intended phasing for any Backbone Infrastructure. To the extent practicable, a Development Phase application shall identify anticipated phases beyond Landowner's next, immediate phase of development, in furtherance of this disclosure objective, with more specific and refined phasing information to be included with information available at the time of submittal of improvement plans.

**3.9.1 Phasing of Necessary Backbone Infrastructure Through Map Conditions.** Each tentative subdivision map or tentative parcel map approved by the City for the Property, or any portion thereof, shall include a condition that requires, for purposes of determining the necessary set of Backbone Infrastructure to be installed in connection with the final subdivision map(s) related thereto, preparation and staff approval of technical engineering studies identifying the Backbone Infrastructure required to meet the then current City's Standard Design and Construction Specifications for such proposed final map. The technical studies are subject to City approval prior to approval of any related final subdivision map or final parcel map, and shall determine the Backbone Infrastructure required to meet the then current City's Standard Design and Construction Specifications and the City's desire to have the Plan Area built in an efficient, cost effective, orderly and cohesive manner consistent with and as required by the Entitlements, based on development of the proposed final map and all other approved and reasonably foreseeable maps within the Plan Area. The technical studies, as approved by the City, will provide the basis for determining the Backbone Infrastructure required to satisfy the condition of the tentative subdivision map and to establish the list of Backbone Infrastructure, if any, required to be installed as part of the subdivision improvement agreement for the proposed final subdivision map or parcel map.

The intent of this technical review is to allow the City to confirm that the portion of the Backbone Infrastructure proposed to be constructed by Landowner in connection with its proposed Development Phase will satisfy the then current City's Standard Design and Construction Specifications and further to determine the extent of Backbone Infrastructure that the City will require Landowner to construct and at the same time allow Landowner to build the Backbone Infrastructure required to satisfy such standards to facilitate development and evaluate the amount of and timing of advance funding and oversizing of improvements related thereto. With respect to roadway improvements specifically, where the technical study requires the installation of all roadway Backbone Infrastructure located adjacent to or within the Development Phase to their full planned right-of-way dimensions, the City shall allow development of the Development Phase consistent with the mitigation measures in the Specific Plan EIR (e.g., Mitigation Measure 3A.15-1d). The calculation of the Level of Service thresholds shall be determined consistent with the methodology employed by the City for evaluating such levels of service for purposes of its General Plan and Circulation Element thereof in effect on the Effective Date of this Restated Agreement.

The scope of the technical studies shall be determined by the City and may identify overlapping facilities required for development of other reasonably

foreseeable projects and potential development in the Plan Area that may be anticipated and required for the orderly development of the Plan Area, as well as any existing deficiencies in service levels that may exist at the time of preparation of the technical studies. Where disagreement arises between the Landowner and the City as to the extent of Backbone Infrastructure and roadway improvements, the City and Landowner will work cooperatively and in good faith to determine the extent of roadway backbone infrastructure to be constructed by the Landowner considering a reasonable timeframe for future projects in the vicinity, reasonably anticipated needs of the City, its residents and businesses, existing service level deficiencies, financial feasibility, and avoiding impacting areas with phased construction projects.

**3.9.2 Phasing of In-Tract Improvements.** Landowner shall be allowed to phase development of an approved tentative subdivision map with multiple final Small-Lot Maps as provided and consistent with Folsom Municipal Code Chapter 16.20.

**3.10 Park Improvement and Trail Funding and Construction.** The timing of park and trail development will be coordinated with public need in the Plan Area, cash flow, and annual City Council budget authorization. The City agrees to use good faith and diligent efforts to complete park construction in a timely manner with respect to Plan Area population and need, as well as other necessary public facilities included in the PFFP. As recreation trends change and evolve, the City reserves the right to modify, add, and delete park and recreation facilities as it deems appropriate to serve the needs of future Plan Area residents consistent with the re-opener provisions set forth in Section 2.2.4.1.

At the City's sole discretion and subject to a separate agreement between City and Landowner, turn-key park improvements may be constructed by the Landowner and receive Park Fee credits therefore, provided however the parties agree that park fee credits are not permitted for park improvements paid for with CFD proceeds. The park construction agreement will specify the location of the park, specific park improvements to be constructed, the timing for commencement and completion thereof, and the Park Fee credits assigned to Landowner.

The costs of construction of park and trail improvements within the Plan Area shall be funded as part of the New Plan Area Fees for City Facilities to be established by the City pursuant to and consistent with the PFFP.

Consistent with the requirements of the Folsom Municipal Code, parkland proposed for dedication must have a general grade of less than five percent (5%). If a proposed site exceeds 5%, Landowner shall rough grade the site to plus or minus one foot (1') of estimated rough grade as approved by the Parks and Recreation Director. Landowner shall not receive credits or reimbursement for rough grading of proposed park sites where grades exceed 5%, except to the extent that the Park Fee has expressly included funding for rough grading to plus or minus one foot (1'). In connection with Landowner's installation of improved access to the park site, Landowner shall receive credits against the Park Fee for rough grading of each park

site associated with overall grading of the mapped portion of the property if the grading plan has received prior approval from the Parks and Recreation Director.

Landowner shall be responsible for installing improved access to each park. Improved access defined in the City of Folsom Standard Street Improvements (typical street pavement width, section and grade, curb, gutter and sidewalk) together with adequately sized utility extensions (water, sewer, storm drain, power, and communication) to edge of right of way on the park site as provided in the project conditions of approval.

**3.11 Timing of Access Improvements for Fire Stations.** Conditions of approval of tentative subdivision or parcel maps within the Property shall identify when improved access (roads and utilities) must be made available to each Fire Station Site, based on building permits issued within the overall Plan Area.

**3.12 Reimbursement of Pro Rata Share of City Costs for Compliance with Requirements of this Restated Agreement.** This Restated Agreement provides various requirements or actions by the City. Landowner agrees to pay its Pro Rata share all of the costs of compliance by City staff or consultants retained by the City in order to comply with the requirements of this Restated Agreement where cost of such compliance is not otherwise provided in a fee program. In the case of actions covered by a fee program, Landowner agrees to pay the then existing rate associated with such action, subject to any credits that may be available to Landowner with respect thereto, including any credits associated with advances of such costs by Landowner. In no event shall these costs be the responsibility of the City.

**3.13 Sales Tax Point of Sale in City of Folsom.** Landowner and the City share, to the fullest extent feasible, the mutual goal of maximizing sales tax revenue in the City of Folsom and supporting Folsom-based businesses. Landowner agrees that for any Backbone Infrastructure construction project or public facility construction project financed by the New Plan Area Fees that meet the requirements of the Board of Equalization Regulation 1806, Landowner shall include in its bid specifications and construction contracts for such project that the City of Folsom shall be the point of sale for any applicable sales tax and that Contractor shall take such actions as may be required under the Board of Equalization Compliance Policy and Procedures Manual (CPPM) in order to establish the City of Folsom as such point of sale. To further the intent of this provision, Landowners agree to bundle comparable and similar Backbone Infrastructure construction projects and public facility construction projects financed by the New Plan Area Fees (such as similar road or utility projects that are required to serve the Landowner's development) where feasible in order to meet the monetary threshold in CPPM Section 260.020 (\$5 million as of the effective date of this Agreement), as amended from time to time.

Notwithstanding the foregoing, Landowner's bid specifications or construction contracts may include that a Contractor shall be exempt from having to comply with such point of sale provisions if such compliance will cause Contractor to violate any

legal or contractual requirement such Contractor may have at the time of its bid or execution of such construction contract.

Landowner also agrees to include provisions in its bid specification and construction contracts for any Backbone Infrastructure or public facilities construction project financed by the New Plan Area Fees that, to the fullest extent economically feasible, where the Contractor receives "comparable" bids for materials, considering not only price, but also the quality, service and experience of the suppliers, the Contractor will accept the comparable bid that maximizes the acquisition of construction materials from suppliers in Folsom or where the point of sales for sales tax purposes is Folsom. For any Backbone Infrastructure construction project or public facility construction project financed by the New Plan Area Fees in the FPA, Landowner shall include in its bid specifications and construction contracts that the Contractor demonstrate to the City that it has made a good faith effort to utilize and enter subcontracts with suppliers of goods which have a point of sale in the City of Folsom taking into account all such factors. City acknowledges the potential adverse impacts of a delay in the contracting process and therefore agrees that it will not unreasonably delay its evaluation of the Contractor's compliance with this provision.

Landowner's obligations hereunder shall extend only to the requirements to include such provisions in such bid specifications and construction contracts. Contractor's failure to comply with such contractual provisions shall not be deemed for any reason to constitute a default by Landowner under this Restated Agreement.

#### **ARTICLE 4**

#### **CITY OBLIGATIONS**

**4.1 City Cooperation.** City agrees to work in good faith with Landowner as it applies to City for permits that may be required by City and, to the extent applicable, other public, state and federal agencies. In the event state or federal laws or regulations enacted after this Restated Agreement has been executed or action of any governmental jurisdiction other than the City prevents or precludes compliance with one or more provisions of this Restated Agreement, or requires material modification of the Entitlements, Landowner shall notify City in writing of the anticipated duration of any delay caused thereby, and, provided any such delay is not the fault of Landowner, the parties agree Landowner may seek an extension of this Restated Agreement as approved by the City Council as may be reasonably necessary to comply with such new state and federal laws or regulations or the regulations of the other governmental jurisdictions.

**4.2 New Plan Area Fees.** In addition to Existing City Fees applicable to the Property, the following development impact fees (collectively, the "New Plan Area Fees") will be adopted and imposed by the City to mitigate the impacts of development within the Specific Plan and equitably spread the burden of such mitigation to all benefitted properties within the Specific Plan as contemplated or required by the PFFP and this Restated Agreement:

**4.2.1 Specific Plan Reimbursement Fee.** Certain landowners within the Plan Area thereto (the "Advancing Owners") have paid the costs for the preparation of the City feasibility studies, other technical studies, the Specific Plan, including design guidelines, development standards, financing plan(s), and infrastructure plans, and the EIR and other environmental studies. Such preparation has benefited other non-participating owners of property within the Plan Area (the "Reimbursing Owners"). A list of the Advancing Owners and Reimbursing Owners, and the properties within the Specific Plan owned or controlled thereby, is attached hereto as **Exhibit 4.2.1**. To provide the Advancing Owners with reimbursement for the planning and environmental costs described above, the parties agree that the City shall require the Reimbursing Owners to pay to City a specific plan fee, on terms and conditions acceptable to City (the "Specific Plan Reimbursement Fee" or "SPRF"). The SPRF shall be proposed to the City Council pursuant to the provisions of Government Code Section 65456. Adoption of the SPRF and the amount of its fees shall be at the discretion of the City Council, and nothing herein prohibits subsequent modification or repeal of any fee, except that the SPRF, if adopted by the City Council, shall not be repealed during the Term of this Restated Agreement and shall not be modified in a manner to significantly alter the ability of a Landowner to be reimbursed for advances. Subject to the foregoing, City shall make a good faith, diligent effort to establish the SPRF within one (1) year of submittal of all of the eligible costs for reimbursement by the Advancing Owners for City's review, which shall be submitted within six (6) months of the approval of the later of the Effective Date.

The costs eligible for reimbursement shall be submitted to the City by the Advancing Owners for City's review and approval. Except as may otherwise be provided by the ordinance adopting the SPRF, the SPRF shall become payable by a Reimbursing Owner after such Reimbursing Owner applies for any land use entitlements for Development of the Reimbursing Owner's property within the Plan Area, or any portion thereof, and shall be due within ten (10) days after written notice from the City that such application for entitlements is complete or deemed complete by the City pursuant to California Government Code Section 65943. In the event of a dispute between the Advancing Owners and any Reimbursing Owner or pertaining to submittals by Advancing Owners to the City related to repayment of SPRF costs, amount of allowable reimbursement or other matters related to the SPRF program, the City shall examine the facts and shall make a determination on the dispute, which may be reviewed upon request by the City Manager and subject to appeal to the City Council, which decision shall be final and binding, subject only to review by writ of mandate.

Since the SPRF is for the benefit of the Landowner as a member or successor of the Advancing Owners, the Participating Landowners, including Landowner and Advancing Landowners, shall protect, defend, indemnify and hold harmless the City and its officers, agents, and employees from any and all claims and/or causes of action, whether at law or in equity, for any loss or damage relating to the SPRF reimbursement, excluding any claims or causes related thereto solely caused by willful misconduct of such indemnitees. In no case shall the repayment of SPRF be an obligation or a liability of the City, beyond payment of moneys received.

4.2.1.1 **No SPRF Reimbursements or Credits On Default.** No Landowner shall be entitled to SPRF reimbursement or credits, nor may any credits be used if Landowner is in default of any of its obligation to the City whether arising out of this Restated Agreement or other project specific obligations.

4.2.2 **Specific Plan Infrastructure Fee.** To provide for an equitable funding mechanism for the Backbone Infrastructure to be installed to serve development of the Plan Area, to pay for certain City costs or the City loan and to provide a funding mechanism as described below to pay City for Plan Area wide costs not otherwise covered by a fee or agreement, City and Landowner, together with other Participating Landowners, agree to implement a Specific Plan Infrastructure Fee ("SPIF"). The basic terms and provisions to be incorporated into and used to establish and implement the SPIF are included in the PFFP, as more particularly described in Appendix S of the PFFP, and City agrees to establish the SPIF materially consistent with the terms and provisions of the PFFP and Appendix S, provided nothing herein is intended to limit the City's ability to adopt a SPIF ordinance or New Plan Area fees to accomplish the purposes of the SPIF and the PFFP. As more particularly described in the PFFP and Appendix S, the SPIF will be collected by the City and the proceeds thereof used to fund the cost of dedication of the Backbone Lands and Public Parcels and of the construction of the Backbone Infrastructure, paying certain City costs and repaying the City loan, or as the case may be, equitably reimburse or credit the Specific Plan Landowners who dedicate such Backbone Lands and Public Parcels and construct the Backbone Infrastructure. The SPIF shall further include a component to reimburse the City for staff, consultant and other expenditures required for actions to implement the PFFP on a plan area wide basis where such costs are not otherwise included in reimbursement agreements or other funding mechanisms. (Examples of such work may include but is not limited to ordinances, agreements, fee and other studies and plans, guidelines, and area wide permits). The SPIF shall provide the Specific Plan Landowners who dedicate the Backbone Lands and Public Parcels and/or install the Backbone Infrastructure with reimbursements from the SPIF (that are also convertible to credits against the SPIF) as provided in the PFFP and as will be detailed in the SPIF ordinance.

Adoption of the SPIF shall be by ordinance approved by the City Council. The eligible SPIF costs for reimbursement shall be submitted to the City by Landowners for City's review and approval. Nothing herein prohibits subsequent modification or repeal of any fee, except that the SPIF, if adopted by the City Council, shall not be repealed during the Term of this Restated Agreement, except by unanimous agreement of the Participating Landowners, which may involve an agreement upon an alternative funding source acceptable to the parties. City shall make a good faith, diligent effort to establish the SPIF within one (1) year of the Effective Date. As described in the PFFP, the SPIF shall thereafter be adjusted from time to time upon request of a Participating Landowner or the City, but not less than annually, based on updates to the dedicated land values and costs of construction (pursuant to an index or other cost of construction adjustment). The timing for payment of the SPIF shall be as provided by the PFFP and the ordinance adopting the SPIF.

Since the SPIF is for the benefit of the Landowner as a member or successor of the Advancing Owners, Landowner, shall protect, defend, indemnify and hold harmless the City and its officers, agents, and employees from any and all claims and/or causes of action, whether at law or in equity, for any loss or damage relating to the SPIF reimbursement, excluding any claims or causes related thereto solely caused by willful misconduct of such indemnitees.

**4.2.2.1 No SPIF Reimbursement for Required Park Dedication.** In no case shall SPIF reimbursement apply for required dedications of parkland pursuant to the City's Quimby ordinance. In other words, SPIF reimbursement is applicable only when the Landowner has dedicated over and above the dedication requirements provided in City ordinances.

**4.2.2.2 No SPIF Reimbursements or Credits On Default.** Landowner shall not be entitled to SPIF reimbursement or credits, nor may any credits be used if Landowner is in default of any of its obligation to the City whether arising out of this Restated Agreement or other project specific obligations. In the event of a default, the City may pay any SPIF fees received to the next Constructing Owner with the highest priority for SPIF reimbursement until such time as Landowner has cured the default, at which point Landowner then shall regain its priority status for future reimbursement.

**4.3 Reimbursements/Credits Personal to Dedicating and Constructing Owner.** Any reimbursement due to Landowner as a Constructing Owner (and any fee credits converted from such reimbursements by Landowner) as provided in the Restated Agreement and pursuant to the terms of the PFFP and the adopting ordinances for the SPIF shall be the personal property of Landowner and shall not be affixed to or run with the land. Any such fee reimbursements and converted credits shall be subject to and contingent upon Landowner as a Constructing Owner entering into a fee reimbursement agreement with the City to document Landowner's rights to such reimbursements and provide for the City's administration thereof (a "Fee Reimbursement Agreement"). The Fee Reimbursement Agreement shall provide that the rights of a Constructing Owner shall be protected from the effects of any proposed amendment to Sections 2.2.1, 4.2.1, 4.2.2 and 4.3 of this Restated Agreement.

Except as may otherwise be limited by the applicable fee program, Landowner may sell, assign, transfer or hypothecate any such reimbursement or converted credits in a manner consistent with this section and with the adopted SPIF ordinance at any time upon written notice to City, provided the transferring Landowner owes no monetary obligation to the City at the time of such proposed transfer. If Landowner owes City any monetary obligation within the Plan Area at the time of such proposed transfer the City may, in its discretion, either require the monetary obligation to be met before transfer of the credit or apply any reimbursement or converted credit then owned by Landowner against the obligation owed by Landowner.

Credits against the SPIF, converted from reimbursements or transferred as provided in this section and consistent with the PFFP, may only be used in conjunction



with Development of the Property (with respect to credits associated with Landowner's dedication of Backbone Lands or Public Parcels) or Development of the Constructing Owner's Property (as described below, with respect to credits associated with Landowner's construction of improvements financed by the SPIF), and may only be used to satisfy SPIF obligations. For purposes hereof, where Landowner is the Constructing Owner, the "Constructing Owner's Property" within which any such converted credits may be applied against the SPIF shall refer to the area within the Specific Plan, including the Property, outlined on **Exhibit 4.3** attached hereto, together with any additional property contiguous thereto, not exceeding five percent (5%) in area, that may hereafter be added to the description thereof by lot line adjustment, subdivision or other such lawful land division and requested by Landowner as the owner of such converted credits to be eligible for application in conjunction with Development thereof; as part of each Fee Reimbursement Agreement, a map of the Constructing Owner's Property shall be attached to and maintained for purposes of administering and tracking the application of any such converted credits.

**4.4 Collection and Administration of New Plan Area Fees.** When the City adopts the New Plan Area Fees, there will be administrative costs associated with administration of the fee programs and such fees will include a percentage or other component to ensure that the City does not have any unreimbursed expenses related to the administration of such fees. The fee shall be in an amount required to reimburse the City for the actual, direct costs of administration of such fee program. The fees may provide an adjustment for inflation as determined by the City Council. In no case shall the City, in any manner be subject to any liability for failing to collect any fees specified herein other than paying to the Landowner any fees collected and in no case shall any SPIF repayment be an obligation of the City beyond payment of moneys received, less administrative costs. The parties agree that the City has no obligation to pay any fees or make any reimbursement for cost incurred except to the extent that such fees have been collected from the Landowner. The parties agree and acknowledge that the obligations in Article 6 of this Restated Agreement relating to Defense, Indemnification and Hold Harmless are applicable to any challenges, claims or suits associated with the fees referenced herein (provided any such costs to successfully defend such fees shall be included for reimbursement to Landowner and other Participating Landowners as a cost of such fees).

Upon receipt of any proceeds from the SPRF or SPIF (or from any other development impact fee for facilities with respect to which Landowner has advanced funds and is entitled to reimbursement therefore pursuant to a fee reimbursement agreement with the City), City shall, to the extent permitted by law, pay the applicable share thereof, if any, to Landowner or its assignee, without regard to the status of Landowner's development activities on the Property and consistent with the terms of the applicable fee program ordinances. In the event of a dispute between the Participating Landowners or between the Advancing Owner and the City relating to payment of SPIF fees allowable reimbursement or credits or other matters related to the SPIF program, the City shall examine the facts make a determination on the dispute, which may be reviewed upon request by the City Manager and subject to appeal to the City Council,

which decision shall be final and binding, subject only to review by writ of mandate. The process and timing shall be set forth in the SPIF ordinance.

The City will use its good faith efforts to collect the fees in the manner described herein, however is not required to take legal action or other legal remedies. If despite its good faith efforts or if it elects not to pursue recovery of fees owed, then City shall, upon request by Landowner assign its rights to Landowner so that it can pursue collection of the applicable fee from the benefitting, non-paying owner. However, City may continue to collect such fees from other persons seeking governmental approvals and, if it collects such fees, City shall, to the extent reimbursements are owed, pay the applicable shares of such proceeds to Landowner or Landowner's assignee to the extent permitted by law and to the extent such proceeds are actually received by the City.

Nothing in this section or this Restated Agreement obligates the City to take any legal action to collect any SPIF or SPRF obligation. In the event any such action is taken by the City upon the written request of Landowner or with the written consent of Landowner, then Landowner shall be responsible for all attorney's fees and expenses associated with the collection efforts of the City, if and to the extent such costs are not otherwise funded by the administration component of the SPIF or through any administrative or legal action taken by the City against the non-paying owner.

The City shall, to the extent legally permissible, condition final approval of an entitlement for any development within the Plan Area on payment of lawfully owed SPIF or SPRF obligations.

**4.5 Applications for Permits and Entitlements.** City agrees that it will accept, in good faith, for processing review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Entitlements and this Restated Agreement, and shall exercise its best efforts to act upon such applications consistent with department policy and practice. Accordingly, to the extent that the applications and submittals are in conformity with the Entitlements and this Restated Agreement and adequate funding by Landowner exists therefore, City agrees to diligently and promptly accept, review and take action on all subsequent applications and submittals made to City by Landowner in furtherance of the Project. Similarly, City shall promptly and diligently review and act upon improvement plans, conduct construction inspections and accept completed facilities constructed in accordance with the approved improvement plans therefore, as determined by the City to the City's satisfaction. Nothing in this section is intended to shorten any statutory review periods. City may utilize, consistent with City policy, outside consultants for inspection and plan review purposes at the sole expense of Landowner. Landowner acknowledges that, notwithstanding the ability to hire such outside consultants, City may need to retain adequate staff to supervise the work of the consultants, which may require additional lead time and expense in order for the City to effectively and efficiently use the consultants to assist in this work.

4.5.1 **Plan Check.** City shall use good faith, diligent efforts to promptly review and process improvements plans submitted by Landowner and return comments as soon as practicable in the ordinary course of business.

4.5.2 **Compliance with Government Code Section 66473.7.** A subdivision, as defined in Government Code Section 66473.7, shall not be approved unless any tentative map prepared for the subdivision complies with the provisions of said Section 66473.7; this provision is included in this Restated Agreement to comply with Section 65867.5 of the Government Code.

4.6 **Water Supply.** A Judgment Validating Water Supply Agreement) was entered by Sacramento County Superior Court Judge Raymond Cadei on October 16, 2013 (Sacramento County Superior Court Case No. 34-2013-00138798. Subject to Landowner, as a party to the Water Supply Agreement or successor thereto, complying with its obligations under the Water Supply Agreement, the City shall make the FPA Water Supply (as defined in the Water Supply Agreement) available to Development of the Property, in accordance with the terms of the Water Supply Agreement. Nothing in this Restated Agreement or the Water Supply Agreement shall limit the City's ability to address water shortages on a citywide basis, including but not limited to cut backs, limitations on water use as provided in the Folsom Municipal Code or by City Council action and other steps to assure an adequate supply exists for all residents and businesses.

4.7 **City Acceptance of Conservation Easement(s) on Open Space.** Subject to approval by the City, in the City's reasonable discretion, of (i) the physical condition of the planned open space within the Plan Area, (ii) the form, restriction and limitation on any areas proposed or intended to be open for general public access or use associated with the conservation easement(s) over such open space areas, and (iii) the formation of a financing mechanism acceptable to City to fund the costs of the City's ownership and maintenance responsibility for the open space areas as the grantee under the conservation easement(s), the City shall accept, as grantee, the rights and obligations under the conservation easements for the open space areas within the Specific Plan for wetlands permitting and mitigation purposes pursuant to Section 404 of the Clean Water Act.

Subject to project conditions deemed necessary by the City, including payment of mitigation costs, City may authorize mitigation measures to be implemented on open space or other land to be dedicated for a public use in its discretion provided such does not limit the City's intended and anticipated use of the property, adequate funding is provided and compensation for any mitigation bank is paid. Prior to the use of any open space or other land to be dedicated to a public use for mitigation purposes owner must receive City Council approval.

4.8 **City/County SCDTF Agreement/Highway 50 Coalition Fee.** As provided by the MMRP, the Plan Area is obligated to fund, among other things, its fair share of the cost to widen Highway 50. Within one (1) year from the Effective Date of this Restated Agreement, the City shall use good faith, diligent efforts to enter into an

agreement with Sacramento County to grant Plan Area landowners, including Landowner, credit against the Sacramento County Development Transportation Fee ("SCDTF") for duplicate funding of any Backbone Infrastructure that is also included for funding in the proposed Highway 50 Coalition Fee, as, if and when the same is adopted by Sacramento County, unless no duplicate funding of any Backbone Infrastructure was included in the Highway 50 Coalition Fee. City and Landowner will use good faith efforts to cause adoption and implementation of said Highway 50 Coalition Fee in the amount and as described in that certain report entitled "Fair Share Cost Allocation – Sacramento County and City of Folsom," prepared by DKS, dated November 9, 2012. The parties anticipate that the Coalition Fee will satisfy, among other things, the Plan Area's obligation to fund its fair share of the Highway 50 widening. If such Highway 50 Coalition Fee is not adopted within one (1) year of the Effective Date, the City shall use good faith, diligent efforts to enter into an alternative agreement with the California Department of Transportation or appropriate agencies to create an alternative financing mechanism acceptable to the Participating Landowners whereby the Plan Area's obligation to fund its fair share of the Highway 50 widening can be satisfied.

**4.9 Assistance with Acquisition of Necessary Real Property Interests.** In any instance where Landowner is required by this Restated Agreement to construct any public improvement on land not owned by Landowner or other Participating Landowners, Landowner at its sole cost and expense shall, in a timely fashion to allow it to construct the required improvements, acquire or cause to be acquired the real property interests necessary for the construction of such public improvements.

Subject to City's concurrence, in the event Landowner is unable after exercising all reasonable efforts, including but not limited to the rights under Sections 1001 and 1002 of the California Civil Code, to acquire the real property interests necessary for the construction of such public improvements as to property within the City of Folsom, Landowner shall request the City to assist in the acquisition of the necessary real property interests. Landowner shall provide adequate security for all costs the City may reasonably incur (including the costs of eminent domain proceedings, legal fees and costs, and the value of the real property). Upon receipt of the security in a form acceptable to the City Attorney, City shall commence negotiations to purchase the necessary real property interests to allow Landowner to construct the public improvements as required by this Restated Agreement and, if necessary, in accordance with the procedures established and to the extent allowed by law, may use its power of eminent domain to acquire such required real property interests. Any such acquisition by City shall be subject to the City's discretion, which is expressly reserved by City, to make all necessary findings to acquire such interest, including a finding of public necessity.

In those circumstances where the City owns property in fee on or over which development of the Property requires permanent and temporary construction easements, road rights-of-way and/or sites for public facilities, City shall grant, at Landowner's sole cost and expense, such permanent easement, temporary easements, rights-of-way, or sites as reasonably needed for the timely and efficient development of the Property, subject to conditions acceptable to the City.

This section is not intended by the parties to impose upon the Landowner an enforceable duty to acquire land or construct any public improvements on land not owned by Landowner, except to the extent that the Landowner elects to proceed with the development of the Property.

## ARTICLE 5

### DEFAULT, REMEDIES, TERMINATION

**5.1 General Provisions.** Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Restated Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Restated Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) calendar days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty-day period, the other party to this Restated Agreement at its option may institute legal proceedings pursuant to this Restated Agreement or give notice of intent to terminate this Restated Agreement pursuant to California Government Code Section 65868 and regulations of City implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City regulations implementing such Sections.

Following consideration of the evidence presented in said review before the City Council, either party alleging the default by the other party may give written notice of termination of this Restated Agreement to the other party.

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Restated Agreement pursuant to Government Code Section 65865.1. If either party determines that the other party is in default following the completion of the normally scheduled periodic review, said party may give written notice of default of this Restated Agreement as set forth in this section, specifying in said notice the alleged nature of the default, and potential actions to cure said default and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured within thirty (30) calendar days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the other party may terminate this Restated Agreement.

Notwithstanding the above, a default by an individual or entity within the definition of Landowner shall not constitute a default by other individuals or entities within definition of Landowner.

**5.2 Annual Review.** City shall, at least every twelve (12) months during the Term of this Restated Agreement, review the extent of good faith substantial compliance by Landowner with the terms of this Restated Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Restated Agreement pursuant to Section 65865.1 of the Government Code and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code of the State of California. Notice of such annual review shall include the statement that any review of obligations of Landowner as set forth in this Restated Agreement may result in termination of this Restated Agreement with respect to Landowner's Property. A finding by City of good faith compliance by Landowner with the terms of this Restated Agreement shall be conclusive with respect to the performance of Landowner during the period preceding the review. Each Landowner shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review of such Landowner's compliance, the payment of which shall be due within thirty (30) calendar days after conclusion of the review and receipt from the City of the bill for such costs.

In the event that a twelve month review is not completed, is not completed in a timely manner or inadvertently a finding of good faith compliance is not made, such shall not constitute a waiver of the City's right to review and make any necessary determinations that would be made if the review had been conducted and shall not be construed that Landowner is otherwise in full compliance.

Upon not less than thirty (30) calendar days written notice by the City, Landowner shall provide such information as may be reasonably requested and deemed to be required by the Planning director in order to ascertain compliance with this Restated Agreement.

Upon written request by the Landowner(s) the City shall deposit in the mail to the requesting Landowner(s) a copy of all staff reports and related exhibits concerning contract performance and, to the extent practical, at least ten (10) calendar days prior to any such periodic review. If the City has not performed an annual review, Landowner(s) may request, in writing, that it be performed

**5.2.1 Permitted Delay, Extension of Times of Performance.** In addition to specific provisions of this Restated Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, and terrorist acts, new or supplementary environmental regulation, changes due to state or federal laws as described in Section 2.2.6 hereof, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) calendar days of the commencement of such delay, a reasonable extension of time for such cause shall be granted in writing for the period of such delay, or longer as may be mutually agreed upon. Nothing in this section is intended to apply to an extension of the term of this Restated Agreement, which requires City Council approval.

**5.2.2 Permitted Extensions by City.** In addition to any extensions to the time for performance of any obligation due to a delay under Section 5.2.1 above, the

City, in its sole discretion (acting through the City Manager or designee) may extend the time for performance by any Landowner of any obligation hereunder. Any such extension shall not require an amendment to this Restated Agreement, so long as such extension only involves the time for performance thereof and does not change the obligations to be performed by such Landowner as a condition of such extension. Nothing in this section is intended to apply to an extension of the term of this Restated Agreement, which requires City Council approval.

**5.3 Legal Action; No Obligation to Develop; Specific Enforcement.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Venue for all legal actions shall be in the Superior Court of the County of Sacramento, State of California. Notwithstanding anything in this Restated Agreement to the contrary, the parties acknowledge that the City would not have entered into this Restated Agreement had it been exposed to liability for damages from Landowner, and that therefore each Landowner hereby waives all claims for damages against the City and its officers, agents and employees for breach of this Restated Agreement. The parties further acknowledge that damages are not a remedy under this Restated Agreement and therefore Landowner waives all claims for damages against the City and its officers, agents and employees in the event that this Restated Agreement or any other Entitlement is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Landowner is opposed. Either Party may, without any claim for damages of any kind, in addition to any other rights or remedies, institute an action to cure, correct or remedy any default, enforce any covenant or agreement in this Restated Agreement, enjoin or restrain any threatened or attempted violation of this Restated Agreement or enforce by specific performance the obligations and rights of the parties to this Restated Agreement, or to obtain any other remedy. Landowner further acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that under law, the City Council's discretion to vote in any particular way may not be constrained by contract, except as permitted in the Development Agreement Statute. Landowner further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and each Landowner waives all claims for damages against the City and its officers, agents and employees in this regard.

By entering into this Restated Agreement, Landowner shall not be obligated to Develop the Property and Landowner shall not be obligated to install or pay for the costs to install any improvements or facilities except as otherwise provided herein. Nothing in this section shall be construed to excuse Landowner from making lawfully approved CFD tax payments.

**5.4 Automatic Termination Upon Completion and Sale of Residential Unit.** This Restated Agreement shall automatically be terminated, without any further action by

either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the Specific Plan for residential use, upon completion of construction and issuance by the City of a final inspection for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Landowner to a bona-fide good faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that: (i) all improvements which are required to serve the lot, as determined by City, have been completed and formally accepted by City in writing; and (ii) all other conditions of approval applicable to said lot have been complied with to the City's satisfaction as evidenced by the City's issuance of a certificate of occupancy or final inspection permitting occupancy of the improved lot. Termination of this Restated Agreement for any such residential lot as provided for in this Section 5.4 shall not in any way be construed to terminate or modify any CFD tax lien or other such lien, assessment, fee or charge affecting such lot at the time of termination.

**5.5 Termination Upon Landowner Request.** This Restated Agreement may also be terminated, at the election of the then Landowner, with respect to any legally subdivided parcel designated by the Specific Plan for residential or non-residential use (other than parcels designated for public use), when recording a final map for such parcel, or receiving a certificate of occupancy or final inspection, whichever is applicable, for a multi-family residential or non-residential building within such parcel, by giving written notice to City of its election to terminate this Restated Agreement for such parcel, provided that: (i) all improvements which are required to serve the parcel, as determined by City, have been completed and formally accepted by City in writing; and (ii) all other conditions of approval applicable to said parcel have been complied with to the City's satisfaction as evidenced by the City's issuance of a certificate of occupancy or final inspection permitting occupancy of the improved parcel. Landowner shall cause any written notice of termination approved pursuant to this subsection to be recorded with the Sacramento County Recorder against the applicable parcel at Landowner's expense. Termination of this Restated Agreement for any such parcel as provided for in this section shall not in any way be construed to terminate or modify any CFD tax lien or other such lien, assessment, fee or charge affecting such parcel at the time of termination.

**5.6 Effect of Termination.** If this Restated Agreement is terminated, in whole or part, following any event of default of any Landowner or for any other reason, such termination shall not affect the validity of this Restated Agreement with respect to any other Landowner's Property or any of the Entitlements, other than this Restated Agreement, for the defaulting Landowner's Property, nor shall such termination affect any building or improvement within the defaulting Landowner's Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Restated Agreement with respect to a defaulting Landowner's Property shall prevent such Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination and receives a certificate of occupancy or certificate of completion from



the City. Termination of this Restated Agreement by either shall not in any way be construed to terminate or modify any CFD tax lien or other such lien, assessment, fee or charge affecting such parcel at the time of termination or terminate any outstanding obligations of Landowner owed to the City (whether a one-time obligation or continuing obligations) pursuant to this Restated Agreement or any Entitlements.

**5.7 No Protest or Challenge To Fees.** Landowner hereby waives any and all rights to challenge or protest the imposition or payment of, and agrees to pay, and not to protest or challenge, or pay under protest, any fees contained or articulated in the PFFP or this Restated Agreement, whether adopted at the time of execution of this Restated Agreement or later adopted, including any inflationary or cost of construction adjustment to such fees. Those fees subject to the Mitigation Fee Act shall be reviewed by the parties in good faith and nothing is intended to limit a Landowner's right as permitted by law to challenge or protest such mitigation fee based solely on any alleged failure to comply with the Mitigation Fee Act, as opposed to the City's right to impose the fee in general.

**5.8 Applicable Law.** This Restated Agreement shall be construed and enforced in accordance with the laws of the State of California.

## ARTICLE 6

### HOLD HARMLESS AND COOPERATION

**6.1 Hold Harmless.** Landowner and its successors-in-interest and assigns, hereby agrees to, and shall protect, defend, indemnify and hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any costs, expenses, damages, liability for damages or claims of damage for personal injury, or bodily injury including death, as well as from claims for property damage which may arise from the operations of Landowner, or of Landowner's contractors, subcontractors, agents, or employees under this Restated Agreement, whether such operations be by Landowner, or by any of Landowner's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Landowner or Landowner's contractors or subcontractors, unless such damage or claim arises from the sole negligence or willful misconduct of City. The foregoing indemnity obligation of Landowner shall survive the termination or expiration of this Restated Agreement; however, notwithstanding any provision to the contrary, it shall not apply to any liability for damage or claims for damage with respect to any damage to or use of any public improvements after the completion and acceptance thereof by City.

In addition to the foregoing indemnity obligation, Landowner agrees to and shall protect, defend, indemnify and hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any and all lawsuits, claims, challenges, damages, expenses, costs, including attorneys' fees that may be awarded by a court, or in any actions at law or in equity arising out of or related to the processing, approval, execution, adoption or implementation of the Project, the Entitlements, the Tier 1 Development Agreement, the Public Facilities Financing Plan,

this Restated Agreement, or the environmental documentation and process associated with the same, exclusive of any such actions brought by Landowner, its successors-in-interest or assigns. The City shall retain the right to appear in and defend any such action or lawsuit on its own behalf regardless of any tender under this provision.

**6.2 Cooperation and Defense in the Event of Legal Challenge.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Restated Agreement, the parties hereby agree to cooperate in defending said action. If any person or entity not a party to this Restated Agreement initiates an action at law or in equity to challenge the validity of any provision of this Restated Agreement or the Entitlements, the parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall pay the City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding, provided that City reasonably cooperates with Landowner in the defense of such action. The City, in its sole discretion, and at the Landowner's expense may retain separate counsel and may defend, settle or compromise the action as it deems appropriate and in the best interests of the City. Prior to any settlement or other resolution of any matter covered by this paragraph, the City agrees that it will first consult with Landowner.

## **ARTICLE 7**

### **GENERAL**

**7.1 Enforceability.** The City agrees that unless this Restated Agreement is amended or canceled pursuant to the provisions of this Restated Agreement, this Restated Agreement shall be enforceable according to its terms by any party hereto notwithstanding any change hereafter in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or building regulation adopted by City, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the rate, timing or sequencing and density and intensity of use or Development of the Property at the time of approval of this Restated Agreement, as provided by Government Code Section 65866.

**7.2 City Finding.** The City hereby finds and determines that execution of this Restated Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan and Specific Plan.

**7.3 Third Party Beneficiaries.** This Restated Agreement is made and entered into for the sole protection and benefit of Landowner and City and their successors and assigns. No other person shall have any right of action based upon any provision in this Restated Agreement.

**7.4 Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the subject project is a private development, and that the City has no interest therein except as authorized in the

exercise of its governmental functions. No partnership, joint venture or other association of any kind is formed by this Restated Agreement.

**7.5 Notices.** All notices required by this Restated Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to the City shall be addressed as follows:

Community Development Director  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

With a copy to:

City Manager  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

City Attorney  
City of Folsom  
50 Natoma Street  
Folsom, CA 95630

Notice required to be given to Landowner shall be addressed to the Landowner as follows:

West Scott Road, LLC  
c/o HBT Mangini, LLC  
3907 Park Drive, Suite 235  
El Dorado Hills, CA 95762  
Attn: Bill Bunce

With a copy to:

West Scott Road, LLC  
c/o John Telischak  
45 Koch Road, Suite A  
Corte Madera, CA 94925  
Attn: John Telischak

Any party or addressee may change the address stated herein by giving notice in writing to the other parties, and, thereafter, notices shall be addressed and delivered to the new address.

**7.6 Severability.** If any term, covenant or condition of this Restated Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Restated Agreement, or the

application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Restated Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Restated Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Restated Agreement from and after such determination.

**7.7 Construction.** All parties have been represented by counsel in the preparation of this Restated Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement of this Restated Agreement. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

**7.8 Other Necessary Acts.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Restated Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

**7.9 Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Restated Agreement is in full force and effect and a binding obligation of the parties, (ii) this Restated Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Restated Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) calendar days following the receipt thereof.

**7.10 Mortgagee Protection.** The parties hereto agree that this Restated Agreement shall not prevent or limit Landowner, in any manner, at Landowner's sole discretion, from encumbering the Property or any portion thereof or any Improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property, except as limited by the provisions of this section. City acknowledges that the lenders providing such financing may require certain agreement interpretations and modifications and agrees upon request, from time to time, to meet with Landowner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Restated Agreement. Any Mortgagee shall be entitled to the following rights and privileges:

(a) Neither entering into this Restated Agreement nor a breach of this Restated Agreement shall defeat, render invalid, diminish or impair the lien of any

mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, may request to receive written notification from City of any default by Landowner in the performance of Landowner's obligations under this Restated Agreement.

(c) If City receives a timely request from a Mortgagee requesting a copy of any notice of default given to Landowner under the terms of this Restated Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) business days of sending the notice of default to Landowner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Landowner under this Restated Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed in lieu of such foreclosure or otherwise, shall take the Property, or part thereof, subject to the terms of this Restated Agreement, including payment of any outstanding fees or charges. Should such Mortgagee or successors or assigns of such Mortgagee choose to develop the Property, the development shall be subject to all of the terms and conditions of this Restated Agreement. Nothing in this Restated Agreement shall be deemed or construed to permit or authorize the Mortgagee or successors or assigns of such Mortgagee to devote the Property, or any portion thereof, to any uses or to construct any improvements thereon other than those uses and improvements provided for or authorized by this Restated Agreement.

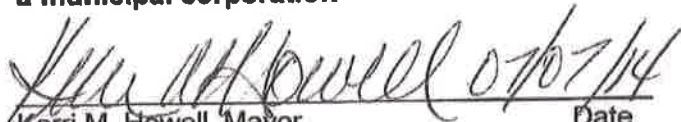
**7.11 Assignment.** From and after recordation of this Restated Agreement against the Property, Landowner, or any individual person or entity, shall have the full right to assign this Restated Agreement, with prior notification to the City, as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by a Landowner and assumption by the assignee of such assignment in the form attached hereto as **Exhibit 7.11**, and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner," with all rights and obligations related thereto, with respect to such conveyed property. No assignment shall be permitted and any attempt to assign shall be voidable by the City if the assigning Landowner has any outstanding payment or performance obligations to the City under this Restated Agreement or the PFFP as implemented by the City until such delinquency is satisfied or the parties enter into a payment or performance agreement in a form approved by the City Attorney.

**7.12 Entire Agreement.** This Restated Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Restated Agreement, inclusive of its Recitals and Exhibits, constitutes the entire understanding

and agreement of the parties. This Restated Agreement may be signed in identical counterparts and the signature pages and consents, together with appropriate acknowledgments, may be removed from the counterparts and attached to a single counterpart, which shall all be considered a fully-executed original for all persons and for purposes of recordation hereof.

IN WITNESS WHEREOF, the City of Folsom has authorized the execution of this Restated Agreement in duplicate by its Mayor, and attested to by the City Clerk under the authority of Ordinance No. 1195 adopted by the City Council on the 10<sup>th</sup> day of June, 2014.

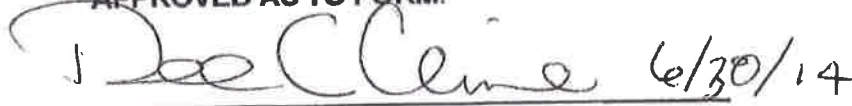
**CITY OF FOLSOM,  
a municipal corporation**

  
Kerri M. Howell, Mayor Date

**APPROVED AS TO CONTENT:**

  
Evert W. Palmer, City Manager Date

**APPROVED AS TO FORM:**

  
Bruce C. Cline, City Attorney Date

**ATTEST:**

  
Christa Saunders, City Clerk Date

**LANDOWNER SIGNATURES ON FOLLOWING PAGES**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }  
County of Sacramento }

On July 7, 2014, before me, C.L. Glass, Notary Public, personally appeared  
Kerri M. Howell

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

SIGNATURE C. L. Glass

PLACE NOTARY SEAL ABOVE

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of attached document**

Title or type of document: First Amended and Restated Tier 1 Development Agreement

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other than Named Above: \_\_\_\_\_

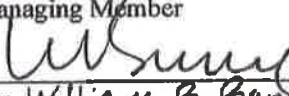
**IN WITNESS WHEREOF**, the parties below have caused this Amended and Restated Tier 1 Development Agreement to be duly executed:

**LANDOWNER:**

**APN(s): 072-0060-078**

**WEST SCOTT ROAD, LLC,  
a Delaware Limited Liability Company**

By: **HBT Mangini LLC,  
a Delaware Limited Liability Company  
Its Managing Member**

By:   
Name: William B. Bance  
Title: Managing Member

**This Amended and Restated Tier 1 Development Agreement must be duly Notarized.**



**ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
 County of El Dorado  
 On June 19, 2014 before me, Sean Stephen Sowers, Notary Public,  
Date Here Insert Name and Title of Officer  
 Personally appeared William B. Bunce  
Name(s) of Signer(s)



Who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sean Stephen Sowers  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer is Representing: \_\_\_\_\_

## **LIST OF EXHIBITS**

<b>Exhibit A-1</b>	<b>Legal Description of Property</b>
<b>Exhibit A-2</b>	<b>Map of Property</b>
<b>Exhibit B</b>	<b>Map of Specific Plan Land Use Plan</b>
<b>Exhibit 2.2.1</b>	<b>List of PFFP Facilities</b>
<b>Exhibit 2.2.3.2</b>	<b>Map of Aerojet/Easton Property, Including Map of Community Park West and Alternate Site</b>
<b>Exhibit 2.2.4</b>	<b>Existing and New Plan Area Fees Summary Sheet</b>
<b>Exhibit 2.5.5</b>	<b>Form of Mather Avigation Easement</b>
<b>Exhibit 3.8</b>	<b>Map of Backbone Lands</b>
<b>Exhibit 4.2.1</b>	<b>List of Advancing Owners and Reimbursing Owners for Advance Planning Costs</b>
<b>Exhibit 4.3</b>	<b>Map of Constructing Owner's Property</b>
<b>Exhibit 7.11</b>	<b>Form of Assignment of Development Agreement</b>

**EXHIBIT A-1  
WEST SCOTT ROAD, LLC PARCEL**

All that certain real property situated in the City of Folsom, County of Sacramento, State of California and being more particularly described as follows:

Being Parcel 3, as shown on that certain "Parcel Map", recorded October 11, 2012, in Book 218 of Parcel Maps at Page 0017

**APN 072-0060-078**

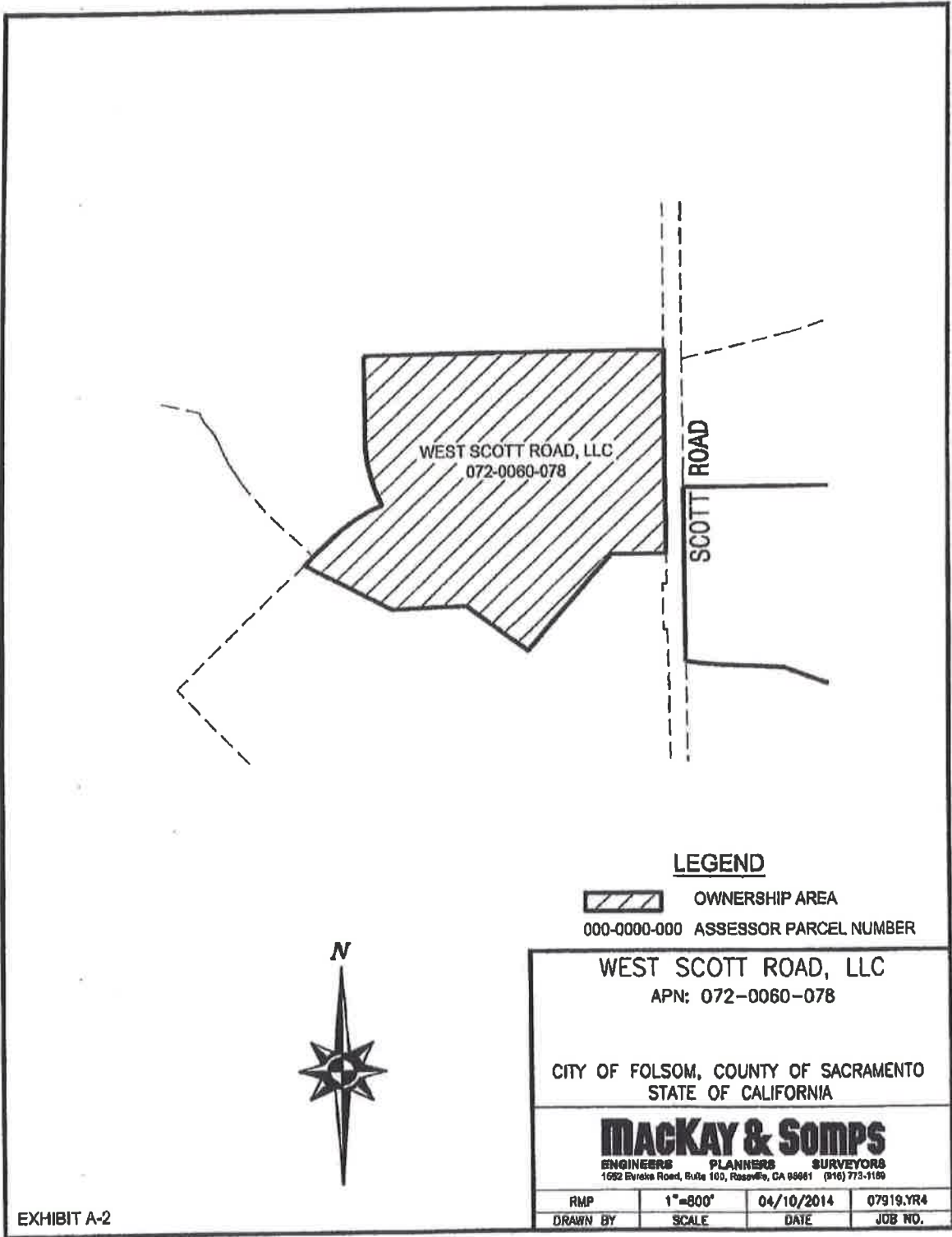
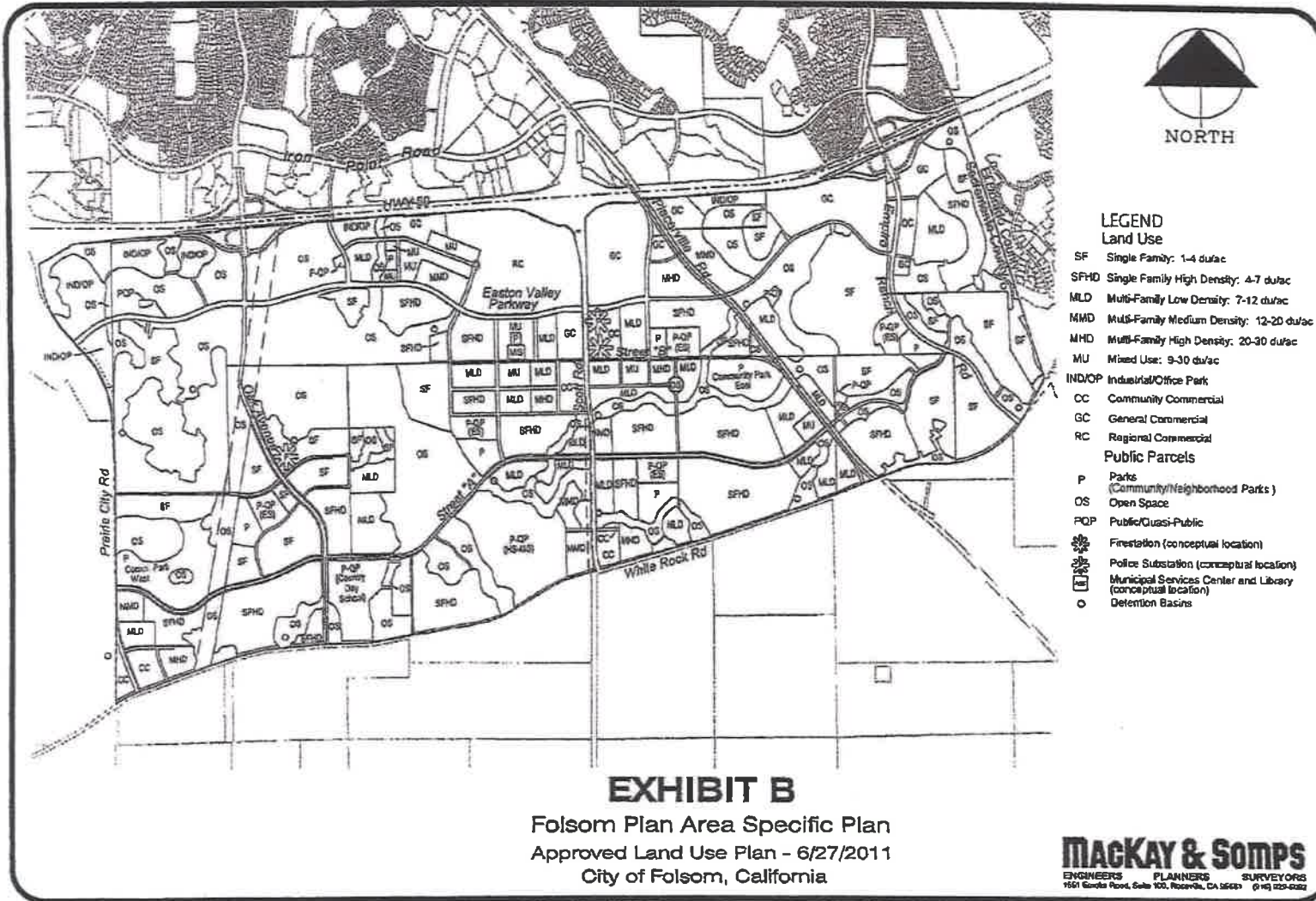


EXHIBIT A-2



## **Exhibit 2.2.1**

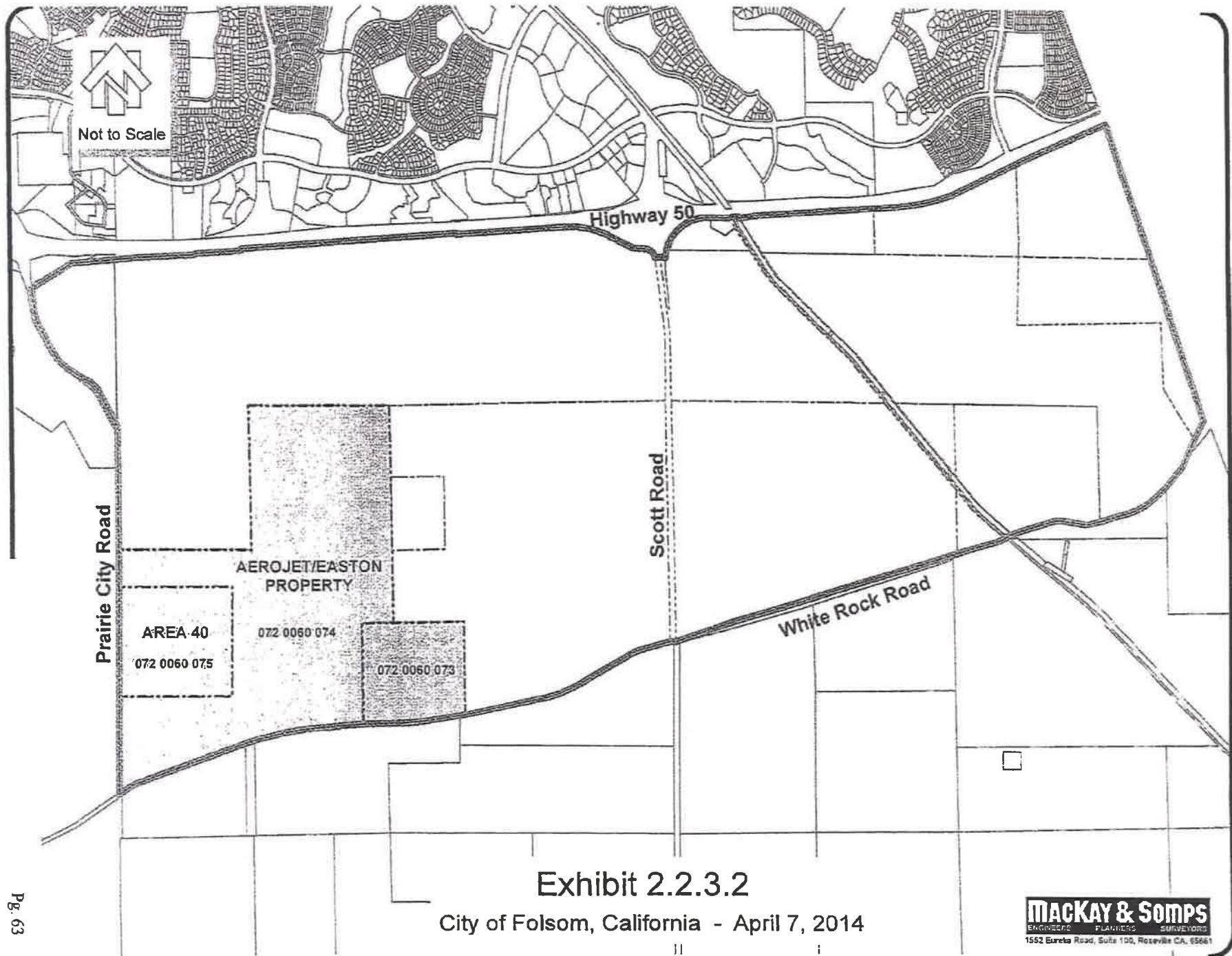
### **PFFP Facilities to be Constructed in and/or Financed by the FPASP Area**

#### **Backbone Infrastructure:**

- Roadway Improvements, as described in Appendix B of the PFFP
- On-Site Water System Improvements, as described in Appendix C of the PFFP
- Off-Site Water System Improvements, as described in Appendix D of the PFFP
- Recycled Water System Improvements, as described in Appendix E of the PFFP
- Sanitary Sewer System Improvements, as described in Appendix F of the PFFP
- Storm Drainage System Improvements, as described in Appendix G of the PFFP
- Habitat Mitigation, as described in the Executive Summary, Page ES-9, and in Appendix H of the PFFP
- Interchanges, as described in Appendix N of the PFFP

#### **Other Public Facilities**

- Fire Facilities and Equipment, as described in Appendix I of the PFFP
- Police Facilities and Equipment, as described in Appendix I of the PFFP
- Municipal Services Center, as described in Appendix I of the PFFP
- Branch Library, as described in Appendix I of the PFFP
- Corporation Yard, as described in Appendix J of the PFFP
- Transit System, as described in Appendix K of the PFFP
- Parks, as described in Appendix L of the PFFP
- Trails, as described in Appendix M of the PFFP
- Aquatic and Community Center, as described in Appendix O of the PFFP
- Solid Waste Facilities, as described in the Executive Summary, Pages ES-18 to ES-19, of the PFFP
- General Capital Facilities, as described in Chapter 4, Page 19, of the PFFP



**Exhibit 2.2.3.2**

City of Folsom, California - April 7, 2014

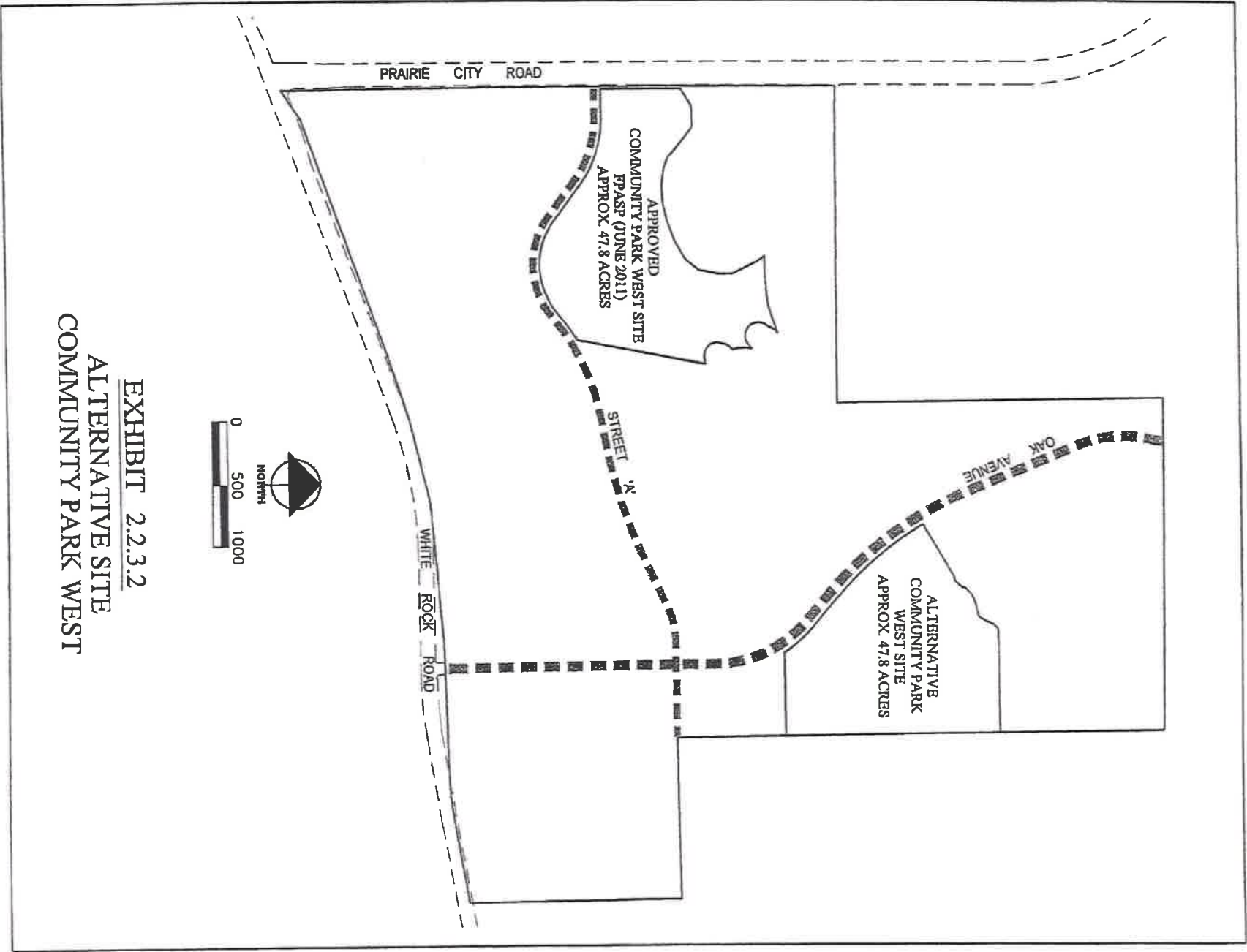


EXHIBIT 2.2.3.2  
 ALTERNATIVE SITE  
 COMMUNITY PARK WEST



Exhibit 2.2.4  
Existing and New Plan Area Fees

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**Existing City Fees [1]**

- Transportation Management Fee
- Solid Waste Capital Improvement Fee
- Capital Improvement Fee – Park Equipment
- Housing Trust Fund
- Water Buy-in and Connection Fee
- Water Usage Fee [2]

**FPASP Plan Area Fees**

**New Plan Area Fees for City Facilities (Combined)**

- General Capital Facilities
- Library
- Municipal Services Center
- Police Facilities
- Fire Facilities
- Parks
- Trails

**New Stand-Alone Plan Area Fees**

- Corporation Yard
- Transit
- Interchanges/HWY 50 Improvements

**FPASP Specific Plan Infrastructure Fee (SPIF)**

- On-Site Roadway
- Off-Site Roads within Folsom
- On-Site Water
- Off-Site Water
- Recycled Water
- Drainage
- Sewer
- Habitat Mitigation
- Administration

**FPASP Planning and Land Fees**

- Specific Plan Reimbursement
- Parkland Dedication (Quimby)

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[1] This list of Existing City Fees is intended to reflect all City development impact or mitigation fees existing on the Effective Date of the Restated Agreement which are not being replaced by new FPASP Plan Area Fees; however, to the extent such fees are inadvertently omitted from this list, those fees existing at the time of the Effective Date of this Restated Agreement and not replaced by the new FPASP Plan Area Fees shall apply. This list does not address, and is not intended to limit, the City's existing or future permit application, development processing, inspection and plan check and other such related fees imposed by the City in conjunction with development applications.

[2] Fee for volumetric water usage during construction.

**EXHIBIT 2.5.5**

**FORM OF MATHER AVIGATION EASEMENT**

FOR THE BENEFIT OF THE CITY OF FOLSOM  
PURSUANT TO GOVERNMENT CODE §6103

RECORDING REQUESTED BY CITY CLERK

WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF FOLSOM  
50 NATOMA STREET  
FOLSOM, CALIFORNIA 95630

**GRANT OF AVIGATION EASEMENT**

The Grant of Avigation Easement (herein collectively referred to as "Avigation Easement"), is made on \_\_\_\_\_, 2014, by and between \_\_\_\_\_, (herein referred to as "Grantor"), the County of Sacramento, a Political Subdivision of the State of California, acting by and through its Board of Supervisors and the City of Folsom, a municipal corporation, acting by and through its City Council (herein collectively referred to as "Grantees") with reference to the following facts:

A. Grantor owns real property in the City of Folsom, Sacramento County, California ("Grantor's Property"). The legal description for Grantor's Property is attached as Exhibit "A". Grantor's Property includes the air space above it.

B. The County of Sacramento owns and operates Sacramento Mather Airport in Sacramento County, California (the "Airport").

C. The Airport is a General Aviation airport for the region and also has various other aviation and related activity. Grantors and Grantees recognize and understand that the Airport will grow and traffic will increase over time.

D. Grantor has requested and received certain land use approvals including a Specific Plan (the "Folsom Specific Plan") and a Tier 1 Development Agreement. The land use approval requires Grantor to record an Avigation Easement on its property prior to or concurrently with the execution of its pending Amended and Restated Tier 1 Development Agreement (the "Restated Development Agreement") to address rights and obligations for future development of Grantor's Property. This Avigation Easement is a negotiated term of Grantor's Restated Development Agreement and the Tier 1 Development Agreement between the City of Folsom and all landowners in the Folsom Specific Plan.

E. Grantor has requested and in consideration for the land use approval, Grantor has agreed to grant the County of Sacramento and the City of Folsom the Avigation Easement described below.

NOW, THEREFORE, the parties agree as follows:

**Section 1. Grant of Avigation Easement**

A. For valuable consideration, Grantor grants to the County of Sacramento and the City of Folsom a perpetual, nonexclusive, assignable Avigation Easement in and over Grantor's Property for noise and other negative impacts resulting from aircraft flying to and from, and other operations at the Airport ("Airport Operations") and a right-of-way for the free and unrestricted passage of aircraft of any and all kinds now or hereafter known in, through, across and about the airspace beginning at an altitude of one thousand (1000) feet above the top of the highest obstacle on Grantor's Property (hereinafter "Permitted Airspace"). This Avigation Easement specifically permits the imposition of light, smoke, air currents, electronic or other emissions, vibrations, discomfort, inconvenience, and interference with use and enjoyment resulting from Airport Operations producing noise. This Avigation Easement is fully effective as of the date set forth above.

B. Such Avigation Easement and right-of-way includes, but is not limited to:

1. The Avigation Easement and right-of-way is for the use and benefit of the public and includes the continuing right to fly, or cause or permit the flight by any and all persons, of aircraft, of any and all kinds now or hereafter known, in, through, across or about any portion of the Permitted Airspace; and
2. The right to cause or create, permit or allow to be caused or created within all space above the existing surface of said Grantor's Property and any and all airspace laterally adjacent to said Grantor's Property, such noise, vibration, current and other effects of air, illumination and fuel consumption as may be inherent in, or may arise or occur from Airport Operations, or during the operation of aircraft of any and all kinds, now or hereafter known or used, for navigation of or flight in air within the Permitted Airspace; and
3. Nothing in this easement is intended to or shall it be interpreted to alter noise standards and methods of measurements or permit noise or vibration in excess of the standards utilized by the Federal Aviation Administration.
4. A continuing right to clear, and keep clear the Permitted Airspace and extending upwards thereafter (as necessary for air transportation or air operation purposes) of any portions of building, structures, or improvements of any and all kinds, and of trees or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees or other things

which extend into or above said Airspace and the right to cut to those portions of any trees which extend into or above the Airspace; and

5. The right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures or other improvements, and trees or other objects, which extend into or above the Permitted Airspace; and

6. The right to ingress to, passage within, and egress from the hereinabove described Grantor's Property for the purposes described in subparagraphs "4" and "5" above.

C. Grantor, on behalf of itself, its successors and assigns, hereby covenants with the County of Sacramento and the City of Folsom and for the direct benefit of the real property constituting Sacramento Mather Airport as follows:

1. That Grantor, its successors and assigns will not construct, install, permit or allow any building, structure, improvement, tree, or other object on the Grantor's Property described herein, to extend into or above the Permitted Airspace, or to obstruct or interfere with the use of the Avigation Easement and right-of-way herein granted.

2. Nothing in the Avigation Easement is intended to nor shall it affect Grantor's land use rights or require any additional land use review beyond that ordinarily required in the land use entitlement process.

D. The Avigation Easement and right-of-way granted herein shall be deemed both appurtenant to and for the direct benefit of that real property which constitutes the Sacramento Mather Airport, and shall further be deemed in gross, being conveyed to the Grantees for the benefit of the Grantees and any and all members of the general public who may use said Avigation Easement or right-of-way or derive benefit from the taking off from, landing upon or operating such aircraft in or about the said Sacramento Mather Airport, or in otherwise flying through said Permitted Airspace.

E. This Avigation Easement shall not operate to deprive the Grantor, its successors or assigns, of any rights, which it may from time to time have against any air carrier or private operator for negligent or unlawful operation of aircraft or any other rights, claims or causes of action that are not inconsistent with the Avigation Easement granted herein.

F. These covenants and agreement run with the land and are binding upon the heirs, administrators, executors, successors and assigns of the Grantor, and for the purpose of this instrument, the Grantor's Property as described in Exhibit "A" is the servient tenement and said Sacramento Mather Airport is the dominant tenement.

## **Section 2. Release**

Grantor releases the City of Folsom, the County of Sacramento and Airport operators and aircraft operators using the Airport from any claims, losses, liabilities or expenses (collectively, "Losses") arising from the impositions permitted by this Avigation Easement, as well as from noise and other negative impacts resulting from Airport Operations prior to the date of this Avigation Easement. This Release covers all past, present and future Losses, whether known or unknown. This Release includes damages for physical or emotional injuries, nuisance or any taking of Grantor's Property. Grantor specifically waives application of California Civil Code, Section 1542, which provides as follows:

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

Grantor shall not sue for damages in connection with Losses released by this Avigation Easement, nor seek to enjoin the impositions permitted by this Avigation Easement. The County of Sacramento will not have to set aside buffer lands, re-route air traffic, erect sound or other barriers, establish curfews, relocate Airport Operations or take other measures to eliminate or lessen the impositions permitted by this Avigation Easement. Flights paths may be altered or modified from time to time by the Federal Aviation Administration or the County of Sacramento to fly over Grantor's Property.

### **Section 3. Continuous Benefits and Burdens**

This Avigation Easement burdens the Grantors' Property for the benefit of the Airport. It runs with the land under California Civil Code Section 1468. The benefits and burdens created by this instrument apply to and bind the parties' successors, heirs and assigns.

Grantor agrees that in any marketing material regarding transfers, in whole or in part, of the Grantor's Property, this Avigation Easement and the terms thereof shall be disclosed. In addition, Grantor agrees that it will inform all interested parties including, but not limited to, those holding liens or encumbrances on all or a portion of the Property, about this Avigation Easement and shall provide a copy of this Avigation Easement if they so request.

### **Section 4. Recordation**

The County of Sacramento shall record this document in the Official Records of Sacramento County.

GRANTOR: \_\_\_\_\_

Dated: \_\_\_\_\_ By: \_\_\_\_\_

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }  
County of Sacramento }

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,

Personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE \_\_\_\_\_

PLACE NOTARY SEAL ABOVE

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of attached document**

Title or type of document: \_\_\_\_\_

\_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other than Named Above: None

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**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the within deed, the provisions of which are incorporated by this reference as though fully set forth in this Certification, to the County of Sacramento, a political subdivision of the State of California, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. 2011-0011 of the Board of Supervisors of said County adopted on January 11, 2011, and the Grantee consents to recordation thereof by its duly authorized officer.

---

Director of General Services

Date

**CITY OF FOLSOM  
CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the real property conveyed by the within Deed, the provisions of which are incorporated by this reference as though fully set forth in this Certification, to the City of Folsom, a political subdivision of the State of California, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. 2435 of the City Council of said City adopted on July 18, 1988, and the grantee consents to recordation thereof by its duly authorized officer.

Signature & Date: \_\_\_\_\_

Evert W. Palmer  
City of Folsom  
City Manager

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

\_\_\_\_\_  
\_\_\_\_\_  
State of California        }  
County of Sacramento    }

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary

Public, personally appeared Evert W. Palmer

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the forgoing paragraph is true and correct.

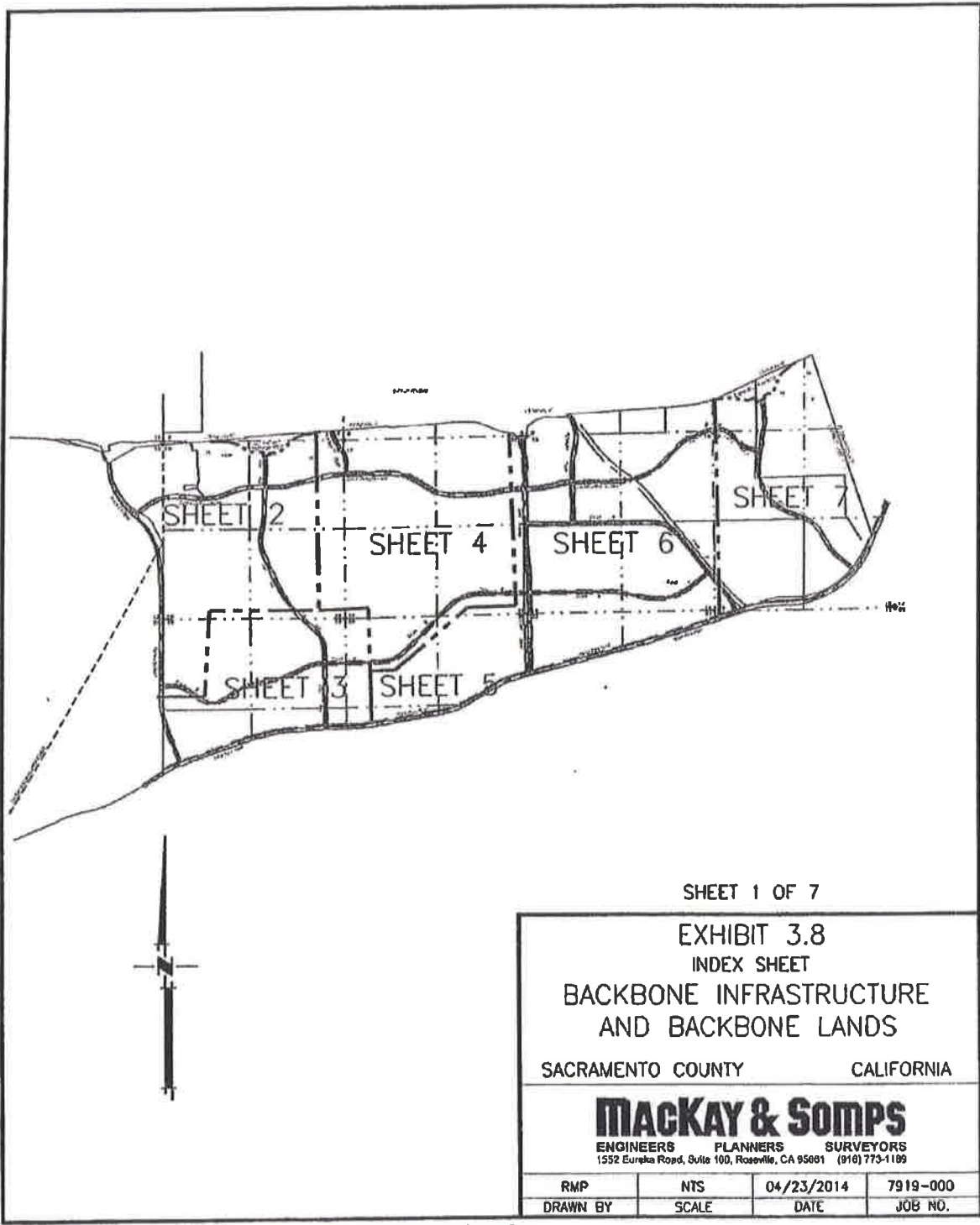
WITNESS my hand and official seal.

SIGNATURE \_\_\_\_\_

PLACE NOTARY SEAL ABOVE



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**



SHEET 1 OF 7

EXHIBIT 3.8  
 INDEX SHEET  
 BACKBONE INFRASTRUCTURE  
 AND BACKBONE LANDS

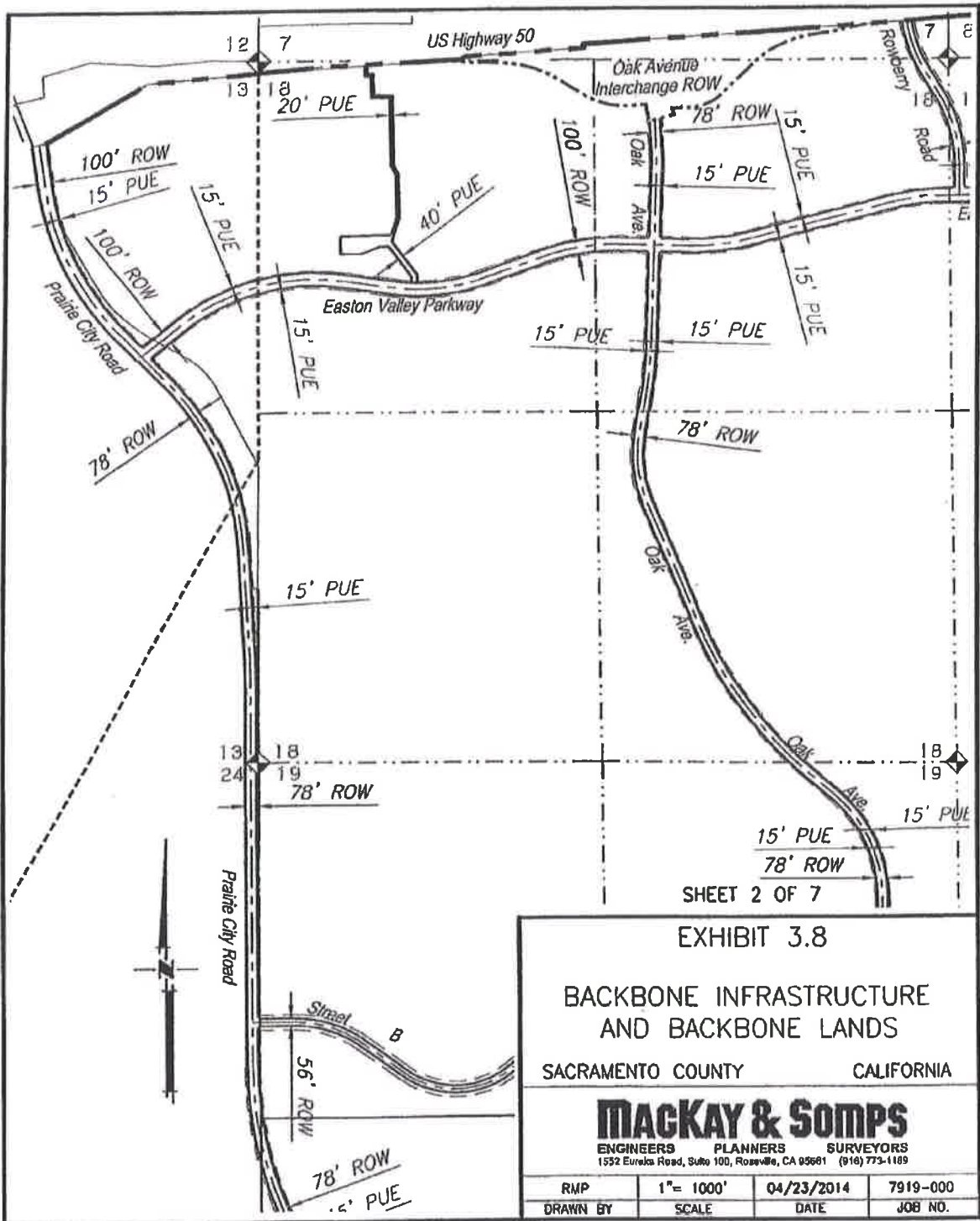
SACRAMENTO COUNTY CALIFORNIA

**MACKAY & SOMPS**

ENGINEERS PLANNERS SURVEYORS  
 1552 Eureka Road, Suite 100, Roseville, CA 95681 (916) 773-1189

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SHEET 2 OF 7

EXHIBIT 3.8

BACKBONE INFRASTRUCTURE  
AND BACKBONE LANDS

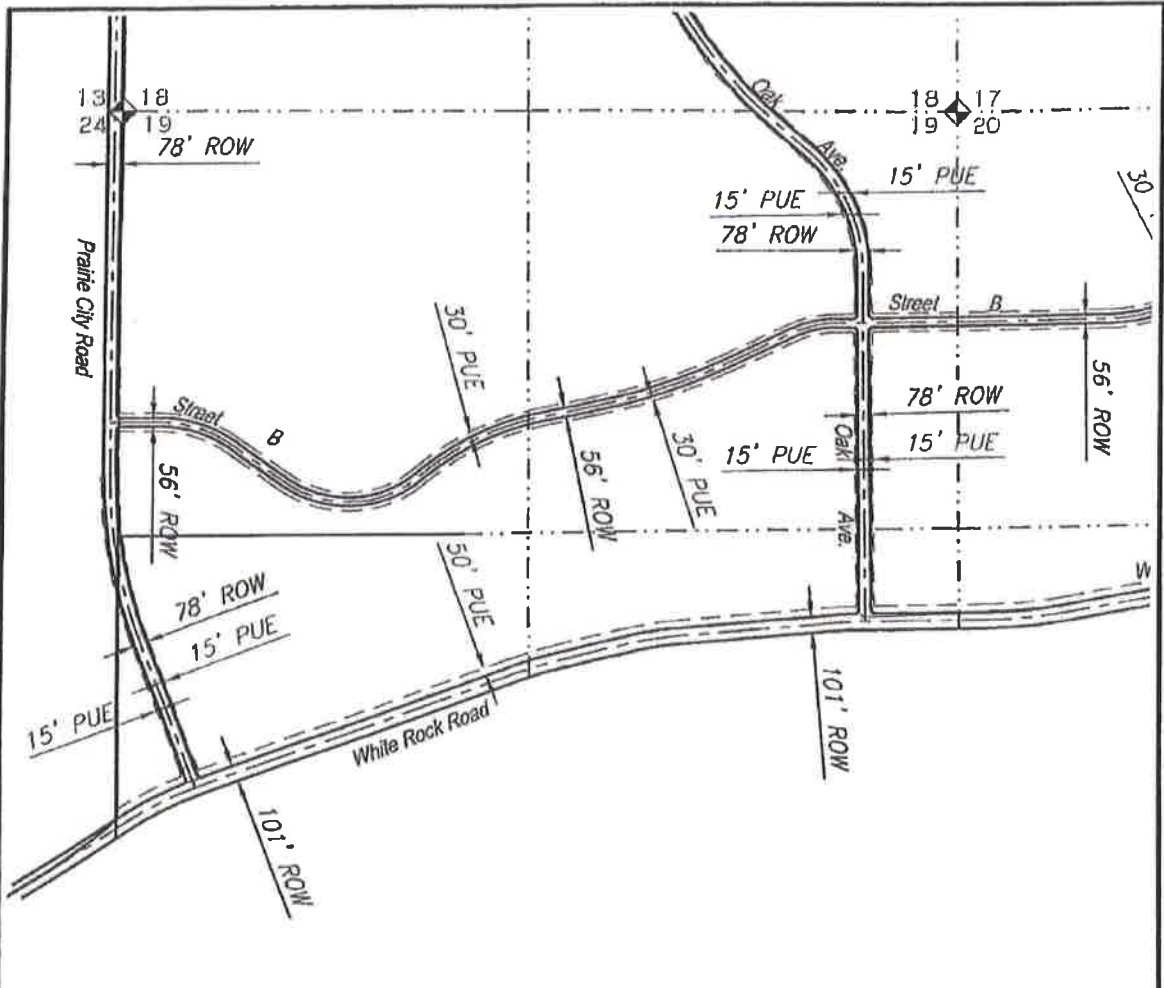
SACRAMENTO COUNTY CALIFORNIA

**MACKAY & SOMPS**

ENGINEERS PLANNERS SURVEYORS  
1532 Eureka Road, Suite 100, Roseville, CA 95681 (916) 773-1189

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SHEET 3 OF 7

EXHIBIT 3.8

BACKBONE INFRASTRUCTURE  
AND BACKBONE LANDS

SACRAMENTO COUNTY CALIFORNIA

**MACKAY & SOMPS**

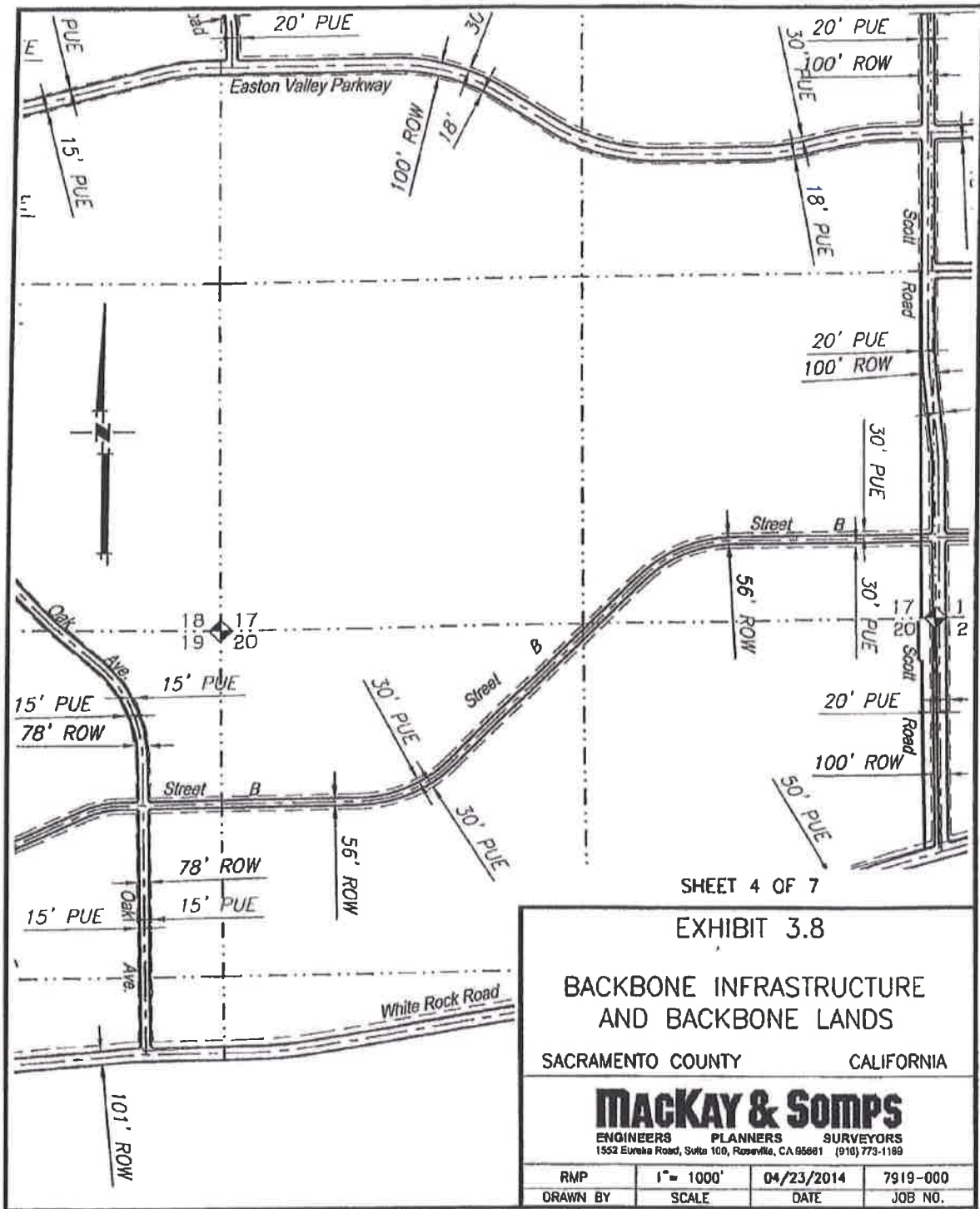
ENGINEERS PLANNERS SURVEYORS

1852 Eureka Road, Suite 100, Roseville, CA 95661 (916) 773-1180

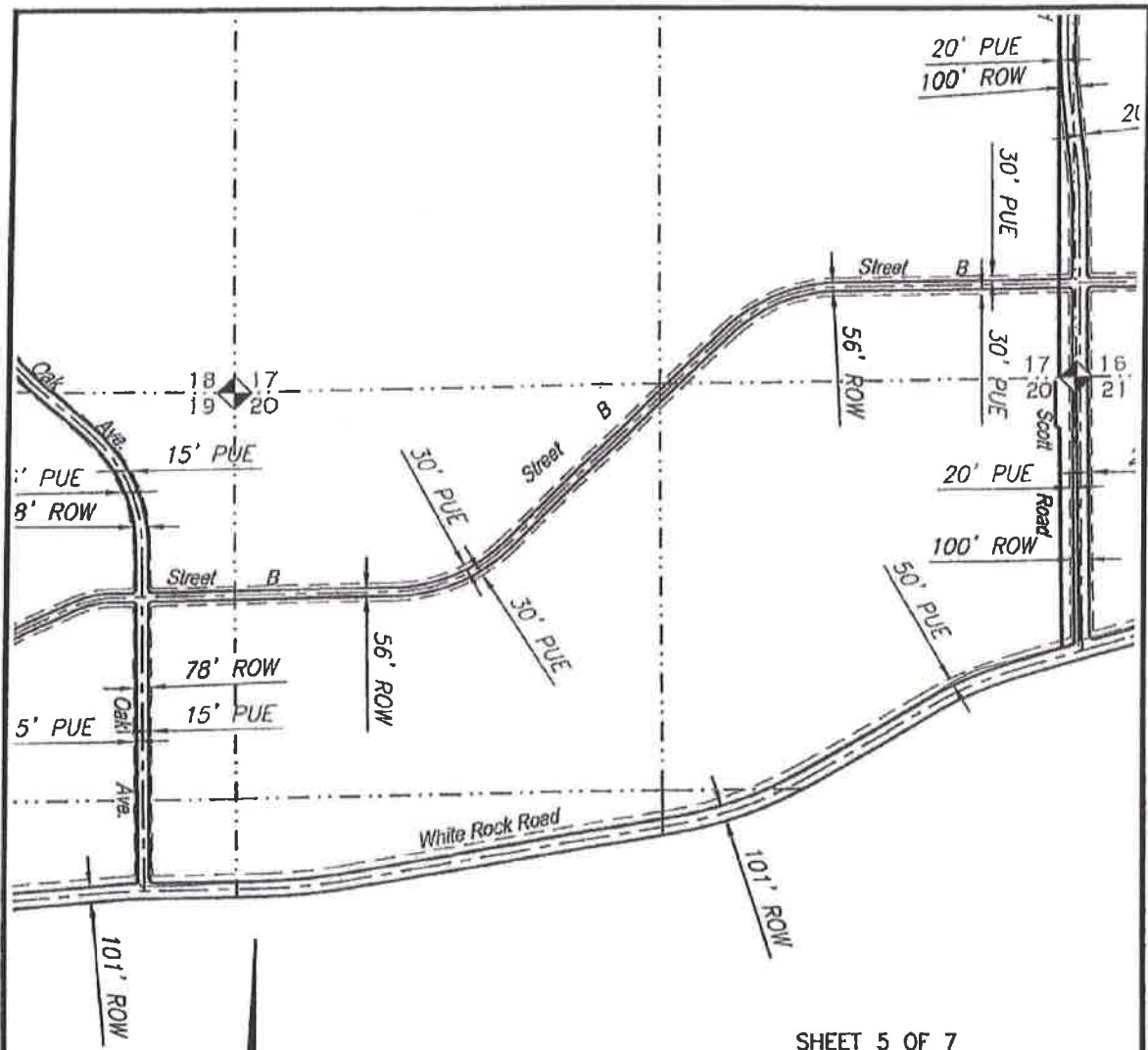
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SHEET 5 OF 7

EXHIBIT 3.8

BACKBONE INFRASTRUCTURE  
AND BACKBONE LANDS

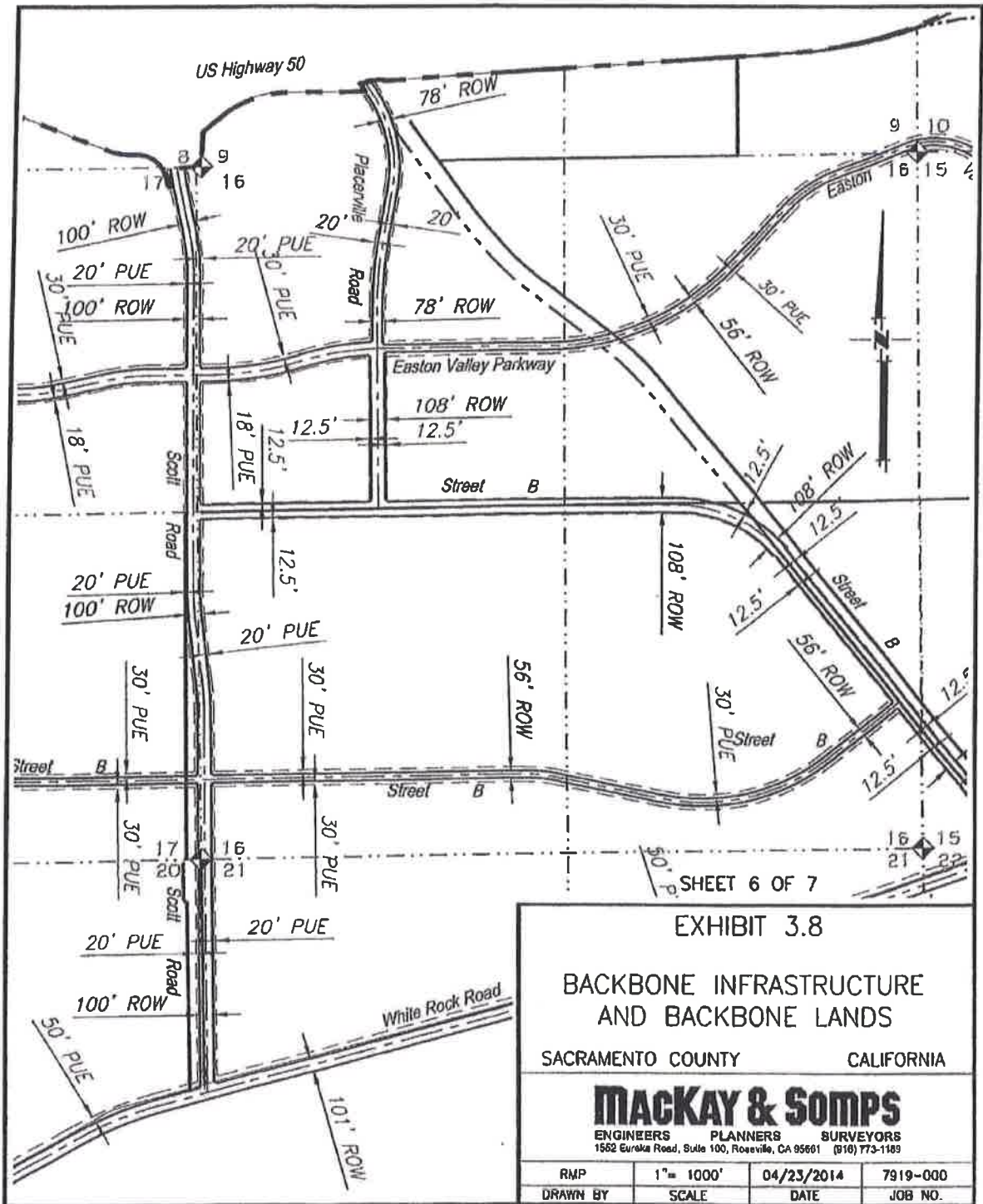
SACRAMENTO COUNTY CALIFORNIA

**MACKAY & SOMPS**

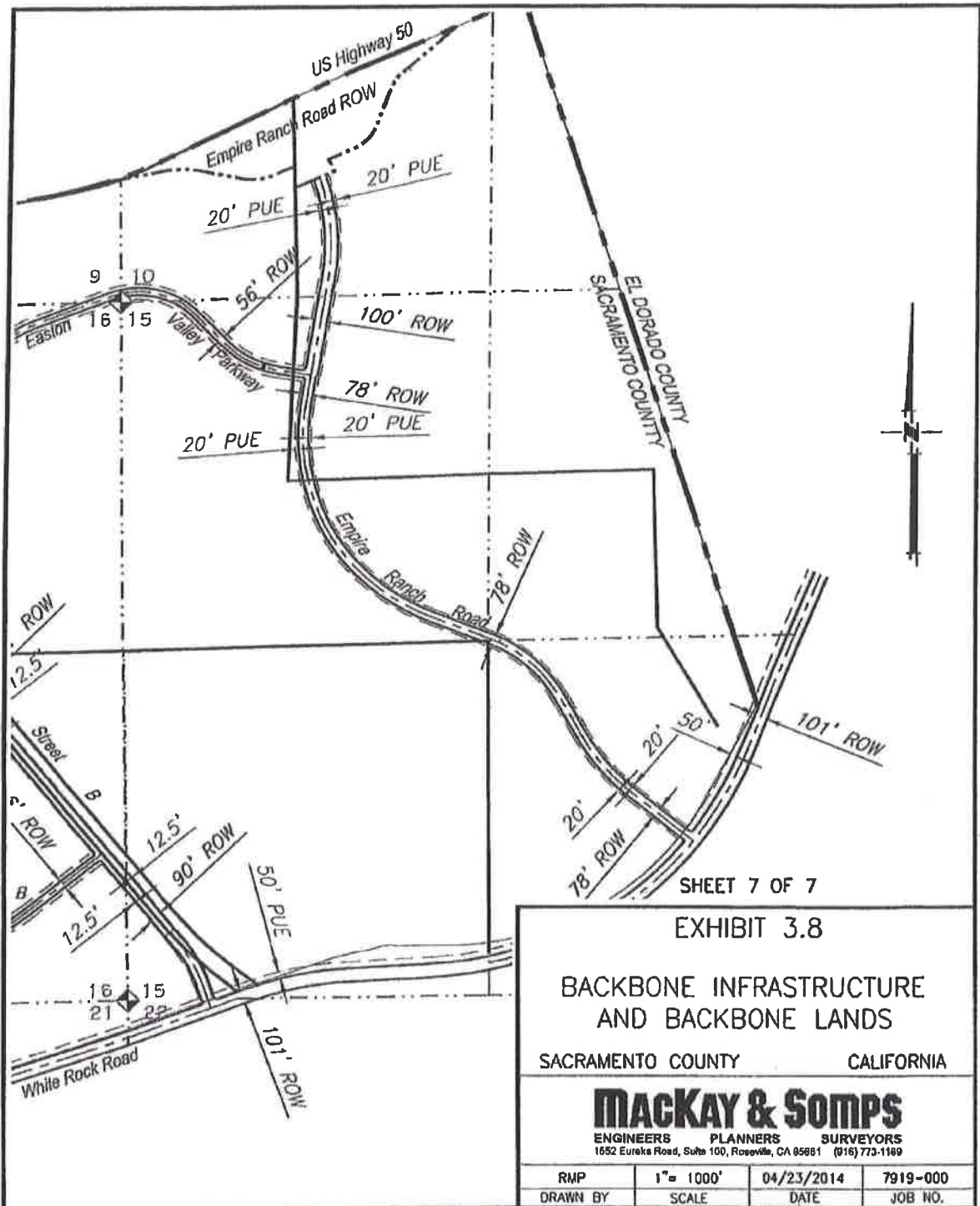
ENGINEERS PLANNERS SURVEYORS  
1552 Eureka Road, Suite 100, Roseville, CA 95661 (916) 773-1189

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Exhibit 4.2.1

List of Advancing Owners and Reimbursing Owners for Advance Planning Cost

**Advancing Owners:**

Folsom Real Estate South, LLC APN(s): 072-0060-076, -077, -079, -080, -081, -082 & -084
White Rock Land Investors, LLC APN(s): 072-0060-085
Mangini North Holdings, LLC APN(s): 072-0060-083
West Scott Road, LLC APN(s): 072-0060-078
TNHC Russell Ranch, LLC APN(s): 072-0070-032 & 072-0270-138
Eagle Office Properties, LLC APN(s): 072-3190-002 & -006
Eagle Commercial Properties, LLC APN(s): 072-3190-001 & -008
Carpenter East, LLC APN(s): 072-3190-009
Easton Valley Holdings, LLC APN(s): 072-3190-003, -004 & -005
West Prairie Estates APN(s): 072-3190-007
Aerojet Rocketdyne, Inc. APN(s): 072-0060-073, -074 & -075
Easton Development Company, LLC APN(s): 072-0231-048
Gragg Ranch Recovery Acquisition LLC APN(s): 072-0070-006
Arcadian Heights, LLC APN(s): 072-0070-021 (ptn)
Folsom Heights, LLC APN(s): 072-0270-001, -028 & 072-0070-023

**Reimbursing Owners:**

Michelle M. Carr, Trustee of the Michelle M. Carr 2012 Trust Melissa A. Barron APN(s): 072-0060-012
Elliott Homes APN(s): 072-0270-030
Zarghami & Javanifard APN(s): 072-0060-007



072-3190-007  
West Prairie  
Estates, LLC

072-3190-005  
Easton Valley  
Holdings, LLC

072-3190-003  
Easton Valley Holdings, LLC

072-3190-004  
Easton Valley  
Holdings, LLC

072-3190-009  
Carpenter East, LLC

072-0060-077  
Folsom Real Estate South, LLC

072-0060-081  
Folsom Real Estate South, LLC

072-0060-082  
Folsom Real Estate South, LLC

072-0060-078  
West Scott  
Road, LLC

072-0060-083  
Mangini North Holdings, LLC

072-0060-076  
Folsom Real Estate  
South, LLC

072-0060-078  
Folsom Real Estate  
South, LLC

072-0060-085  
White Rock Land Investors, LLC

072-0060-084  
Folsom Real Estate South, LLC

072-0060-080  
Folsom Real  
Estate South, LLC

### Map of Constructing Owner's Property Exhibit 4.3

City of Folsom, California - April 15, 2014



EXHIBIT 7.11

ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED TO:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT RELATIVE TO  
THE FOLSOM SPECIFIC PLAN AMENDED AND RESTATED TIER 1  
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement")  
is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between  
\_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Landowner"),  
and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter  
"Assignee").

RECITALS

A. On \_\_\_\_\_, 2011, the City of Folsom and Landowner entered into  
that certain agreement entitled "First Amended and Restated Tier 1 Development Agreement By  
and Between The City of Folsom and [Landowner Name] Relative to Folsom Specific Plan  
(hereinafter the "Development Agreement"). Pursuant to the Development Agreement,  
Landowner agreed to develop certain property more particularly described in the Development  
Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as  
set forth in the Development Agreement. The Development Agreement was recorded against  
the Subject Property in the Official Records of Sacramento County on \_\_\_\_\_,  
2014 [Instrument No. \_\_\_\_\_].

B. Landowner intends to convey a portion of the Subject Property to Assignee,  
commonly referred to as Parcel \_\_, and more particularly identified and described in Exhibit A,  
attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel"),  
or all of the Subject Property, as defined in the Development Agreement.

C. Landowner desires to assign and Assignee desires to assume all of Landowner's  
right, title, interest, burdens and obligations under the Development Agreement with respect to  
and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Landowner and Assignee hereby agree as follows:

1. Landowner hereby assigns, effective as of Landowner conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel. Landowner retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Landowner.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Landowner as the "Landowner" under the Development Agreement with respect to the Assigned Parcel. Assignee acknowledges and agrees that the assumption of Landowner's rights and obligations under the Development Agreement includes, without limitation, the waiver by Assignee under Section 5.3 of the Development Agreement of all claims for damages against the City for breach of the Development Agreement.

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

3. Notification to the City of Folsom is required by the Development Agreement Transferring Landowner shall provide notice, prior to the transfer to:

City of Folsom  
City Manager  
50 Natoma Street  
Folsom, California 95630

4. The Notice Address described in Article 7 of the Development Agreement for the Landowner with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

5. No assignment shall be permitted if there are any outstanding payment obligations to the City by the Landowner until such delinquency is satisfied or the parties enter into a payment or performance agreement in a form approved by the City Attorney.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

**LANDOWNER:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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