

Recording Requested By
and
When Recorded Mail To:

City Clerk
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code '6103

(ABOVE SPACE FOR RECORDER'S USE ONLY)

AGREEMENT FOR THE CONSTRUCTION OF A PUBLIC PARK FOR THE CHULA VISTA CENTER RESIDENTIAL DEVELOPMENT PROJECT

This Agreement for the Construction of a Public Park (the “Agreement”) is made as of February 13, 2024, by and between the CITY OF CHULA VISTA, a California municipal corporation and charter city (“City”) and CWC BROADWAY CV 256, LLC, a Delaware limited liability company (“Developer”) with reference to the following facts:

I. RECITALS:

WHEREAS, Tentative Map (TM22-0001) was approved by the City of Chula Vista Planning Commission on January 25, 2023, Resolution No. 2023-03, to subdivide a 15.54-acre site located at the southeast corner of H Street and 5th Avenue, immediately adjacent to the Chula Vista Center mall (“Sears Site”) into three parcels: one parcel for residential townhomes, one commercial parcel, and a 0.5 acre parcel for a public park.

WHEREAS, the Developer intends to develop the 13.3-acre parcel (“Site”) within the Sears Site and will construct 244 market-rate attached townhomes and a 0.5-acre public park (the “Project”) on the Site. The legal description of the Site, which is the subject of this Agreement, is described in Exhibit A-1 and shown in Exhibit A-2 attached hereto

WHEREAS, the Developer is required to comply with the City's Parklands and Public Facilities Ordinance, Chula Vista Municipal Code ("CVMC") Chapter 17.10 ("PLDO"), as amended.

WHEREAS, the PLDO requires development projects to provide land and improvements for parks and recreational facilities, allows for a credit against the payment of fees or dedication of land if the developer provides the park and recreational improvements, and permits the City to require a combination of dedication and payment of in-lieu fees if the City determines that the combination would better serve the public.

WHEREAS, the Project is required to provide 1.91 acres of developed parkland, based upon the persons per household factor established by the PLDO of 2.61 persons per attached multifamily dwelling unit and 3.0 acres of park per 1,000 residents.

WHEREAS, the City, by entering into this Agreement, finds that, due to the unique, urban, high-density nature of the Project and its proximity to the Chula Vista Center mall, Developer cannot provide suitable land to satisfy the entire 1.91-acre parkland requirement solely through the dedication of parkland;

WHEREAS, the City further finds that, as a result of the urban, high-density nature of the Project, public interest and the park and recreation needs of the Project's future residents would be better served through a combination of parkland dedication, parkland development improvements, and in-lieu fees.

WHEREAS, Developer will satisfy a portion of its park requirements by providing 0.5-acre of usable onsite park as shown conceptually on Exhibit B in "Turnkey" condition ("Project Park"), pursuant to the terms and conditions of this Agreement.

WHEREAS, Developer will further satisfy its park requirements by providing the equivalent of 1.0 acre of Parkland Acquisition Fees and Parkland Development Fees in enhanced amenities for the Project Park, pursuant to the terms and conditions of this Agreement.

WHEREAS, the Developer's remaining 0.41-acre obligation will be met pursuant to the payment of the in-lieu Parkland Acquisition Fees and Parkland Development Fees.

WHEREAS, this Agreement for the development (including design and construction) and the endowment for the long-term maintenance of the Public Park, pursuant to this Agreement, will fully satisfy conditions of approval related to Project's PLDO obligations, including conditions 7, 61, and 62 of Planning Commission Resolution No. 2023-03.

WHEREAS, this Agreement does not increase or decrease any park obligation but instead clarifies responsibility for the delivery of a developed park by addressing the Project Park design, Park construction, bonding, reimbursements, and the level of amenities to be provided.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

II. DEFINITIONS

In addition to terms defined in the Recitals, the following terms shall have the indicated definitions throughout this Agreement:

- a. "Bid Documents" means the documents prepared by the Developer that describes the elements associated with the construction of the Project Park and become the basis of the construction contract pursuant to CVMC Chapter 2.56.

- b. “Commence Construction” means a construction permit or other such approval necessary to commence construction has been issued by the City and construction staging has begun.
- c. “Completion of Construction” means that the Project Park has been completed to the reasonable satisfaction of the City's Director of Public Works and Director of Development Services, or their designee, exclusive of the Maintenance Establishment Period.
- d. “Construction Costs” means the costs of constructing the Project Park, including: design costs; labor and materials; project management, administration and supervision; and maintenance costs during any required establishment and warranty period.
- e. “CVMC” means the Chula Vista Municipal Code.
- f. “Developer” has the meaning given to such term in the preamble.
- g. “Enhanced Amenities” means the park improvements that are included in the Public Park that are equal in value to the Enhanced Amenity Equivalency defined below.
- h. “Enhanced Amenity Equivalency” means the dollar value of the equivalent of 1.0 acre of Parkland Acquisition Fees and Parkland Development Fees at the fee rate in effect as of the issuance of the first building permit. For purposes of reference only, Exhibit C includes the fee rates that are in effect at the execution of this Agreement.
- i. “Maintenance Establishment Period” means the period of time between Completion of Construction and the City’s acceptance of the completed Project Park in which the contractor is responsible for maintaining the park to ensure that the plant material is fully established before its opened for public use, and that other Park Improvements such as irrigation systems, electrical systems, and park equipment or facilities that are fully operational and functional. The duration of this period and maintenance operations will be specified in the contract documents for the Project Park, subject to reasonable adjustments as determined by the City's Director of Development Services, or their designee, in their sole discretion.
- j. “Project Park” means the usable 0.5-acre public park, including the Enhanced Amenities, to be constructed on site by the Developer as conceptually shown on Exhibit B.
- k. “Park Budget” means the Construction Costs for the Project Park that is equal to the dollar value of 0.5 acres of the Parkland Development Fee and the Enhanced Amenity Equivalency.

- l. “Park Credit” means the Parkland Acquisition and Development (“PAD”) credits granted to the Developer by the City in satisfaction of the Project meeting its PLDO obligations.
- m. “Park Improvements” means the improvements per the City-approved construction documents for the Project Park.
- n. “Park Master Plan” means the Master Plan for the Project Park, as defined in the Chula Vista Landscape Manual (Part 3 – Public City Requirements, Section 1 – Submittals).
- o. “Parkland Acquisition Fees” means the acquisition portion of the Parkland Acquisition and Development fees due pursuant to CVMC 17.10 and as set forth in the City’s Master Fee Schedule.
- p. “Parkland Development Fees” means the park development portion of the Parkland Acquisition and Development Fees, at the rate in effect at the first building permit issuance as set forth in the City’s Master Fee Schedule. For purposes of reference only, Exhibit C includes the fee rates that are in effect at the execution of this Agreement.
- q. “Turnkey” means designed and constructed by the Developer consistent with the provisions of the Chula Vista Landscape Manual, Park Master Plan, and related City specifications and policies in effect on the date of this Agreement, as determined by the Director of Development Services, or their designee.
- r. “Useable acres” means an area of land that is free and clear of encumbrances such as easements, utilities, and non-park related improvements, unless approved by the City in its sole discretion. Slope areas within the park boundaries greater than 4:1 (25%) are ineligible for park credit.

III. TURNKEY PARK

3.1. Turnkey Park Development. Developer will satisfy 1.5 acres of the Parkland Acquisition and Development requirements of the PLDO by constructing the Project Park equal to the amount of the Park Budget in “Turnkey” condition, pursuant to the terms and conditions of this Agreement.

3.1.1 Park Design and Approval of Construction Documents. Developer shall use the City's customary procedures to design and obtain the City’s reasonable approval for the design of the Project Park. The Project Park shall be designed consistent with the applicable requirements of an approved Park Master Plan, the City's Landscape Manual and the City’s Parks and Recreation Master Plan. The Park Master Plan once completed, shall be presented to the Parks & Recreation Commission, and must be approved City Council.

3.1.2. Processing Park Master Plan. The Parties agree to diligently process the Park Master Plan in accordance with the requirements of the Chula Vista Landscape Manual (Part 3 – Public City Requirements, Section 1 – Submittals), including the following:

(a) Developer shall enter into an agreement with a landscape architect to design a Park Master Plan and to prepare the construction documents for the Project Park.

(b) City and Developer shall hold a scoping meeting at the beginning of the design process for the Project Park to confirm the design intent and to identify applicable City requirements prior to initiating design work.

(c) Prior to presentation to the Parks and Recreation Committee, the Developer shall hold two public meetings, noticed in accordance with City Policy 400-02, to receive community input on the Park Master Plan for the Project Park. The City agrees to administer and facilitate the two meetings and to use reasonable due diligence to complete the process in a timely fashion so as not to delay the Commencement of Construction of the Project Park.

3.1.3 Coordination. City and Developer acknowledge the need for close coordination during the design phase to ensure the Park Master Plan reflects the intent of the City's Parks and Recreation Master Plan, the Parks and Recreation Element of the City's General Plan, and other applicable City requirements. City and Developer also acknowledge that refinement to the process may be appropriate over the term of this Agreement to improve the design, review, delivery, and ongoing operation of the Project Park. The Parties agree to use its best efforts to cooperate should such refinements be required.

3.1.4 Construction/Timing of Park. Developer shall construct the Project Park, including the Park improvements, in accordance with the Project Budget and the approved Park Master Plan, in "Turnkey" condition, pursuant to the terms and conditions of this Agreement.

a. The Parties acknowledge that the Developer may make reasonable modifications to the conceptual design plan, attached hereto as Exhibit B, subject to the City's reasonable approval, and provided the features of the proposed design concepts are included.

b. Developer shall start the concept design for the Project Park no later than the issuance of the building permit containing the 50th residential unit.

c. Developer shall commence construction once the City has approved the Bid Documents and Park Budget and shall complete construction of the Project Park with final inspections and acceptance by the City's Director of Public Works and Director of Development Services, or their designee, no later than the issuance of the building permit for the building or unit containing the 192nd residential unit for the Project (the point when 100% of the Parkland Acquisition and Development fees attributed to the Park Budget would have been collected). The Developer shall pursue such construction diligently to completion and in accordance with the timeframes, subject to force majeure, and as set forth in the Bid Documents, which

shall be reviewed and approved in writing by the City's Director of Development Services, or their designee.

d. For purposes of 3.1.4 of this Agreement, "force majeure" shall mean an event beyond Developer's reasonable control, including, without limitation, strikes or other labor difficulties, earthquake or other natural disaster, epidemic or pandemic (including COVID-19 and residual effects thereof), or emergency governmental actions, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, material adverse weather conditions and acts of God, or delays in the issuance of any governmental approvals or authorizations from government agencies necessary to proceed with construction (provided that Developer has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations). Performance by Developer shall not be deemed to be in default where delays or defaults are due to a force majeure event. Any extension of time to perform or cure shall be for the period of the delay and shall commence to run from the time of commencement of the cause; provided, however, that if notice by the party claiming such extension is sent to the other party more than 60 days after the commencement of the cause, the period shall commence to run only upon the giving of such notice.

3.2. **Park Budget.**

3.2.1 *Establishment of Budget.* The Park Budget shall equal the dollar value of the Parkland Development Fee portion for 0.5 acres plus the amount of the Enhanced Amenity Equivalency. For purposes of reference only, Exhibit C includes the fee rates that are in effect at the execution of this Agreement.

3.2.2 *Overruns.* Prior to the commencement of construction, if the Developer determines that actual Construction Costs may exceed the Park Budget, then the Developer may propose to pay the additional actual Construction Costs or modify the Park Master Plan to reduce costs consistent with the estimated Construction Costs, subject to the approval of the Director of Development Services, or their designee.

Upon discovery of any cost overruns, including but not limited to initial construction bids, change orders, etc.), after construction of the Project Park has commenced, the parties shall meet and confer in good faith to eliminate or reduce such cost overrun, through value engineering or by other means such as adjusting the various elements (amenities) of the park to stay within the Park Budget. Notwithstanding the foregoing, the Developer may expend additional funds on the development of the Project Park, at its sole and absolute discretion.

3.3. **Maintenance Costs:** Upon the City's acceptance of the completed Project Park as discussed in Section 3.1.4.c above, the Developer shall pay the City a fixed amount of \$309,167 to fund the perpetual maintenance of the Project Park, which has been added to the cost of the improvements as set forth in the Park Budget, notwithstanding however, such costs will not be counted towards the amount of the improvements that will be provided by the Developer as set forth in paragraph

3.2.1 above .

3.4. **Documentation of Costs.** Developer shall, within sixty (60) days of Completion of Construction of the Project Park, provide City, for its review and approval, all documentation City reasonably requires to evidence the completion and costs of the Project Park. Developer shall, within sixty (60) days of completion of the Maintenance Establishment Period, provide the City, for its review and approval, all documentation City reasonably requires to evidence the satisfactory completion of the Maintenance Establishment Period.

3.5. **Security:** Upon the commencement of construction of the Project Park, the Developer shall post security, including one or more bonds in accordance with the CVMC, for the construction of the Project Park. City may use that security to complete construction of such Park should Developer fail to meet its obligations to do so. City may reduce and release the securities pursuant to City's customary procedures and schedules pro rata upon completion of the Project Park. Bond shall be based on the accepted Bid amount for construction of the park and shall be in place prior to commencement of construction of the Project Park.

3.6. **Bidding and Public Works Project:** When constructing, or entering into any contract relating to the design or construction of a Project Park, a Park Improvement or any other park or recreational improvements required by this Agreement, Developer shall comply with City Charter Section 1009, CVMC Chapter 2.56.160 (H), the City's policies and procedures governing bidding for public works projects, and all other applicable local, state and federal requirements in effect at the time the bidding and contracting for, or construction of, the improvements takes place.

Developer shall solely determine whether the Project Park is a public work subject the State's prevailing wage laws (California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as Title 8, Section 16000 *et seq.* of the California Code of Regulations) ("Prevailing Wage Laws") If the California Department of Industrial Relations, or any other applicable governing body, court, or board, determines that the Project Park is a public work subject to the Prevailing Wage Laws, then Developer and all of its contractors, subcontractors, and vendors shall fully comply with such Prevailing Wage Laws and shall cause all applicable work performed in connection with the Public Park to be performed as a "public work." Developer shall be solely responsible to determine what parts of the Public Park is subject to the Prevailing Wage Laws, including but not limited to construction, alteration, demolition, installation and repair work, and work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including inspection and land surveying work, and work performed during the postconstruction phases of construction, including all cleanup work at the jobsite. (See Lab. Code, §1720, subs. (a)(1), (a)(3), and (b)(4). If the Project Park is deemed a public work, Developer and all of its contractors, subcontractors, and vendors shall pay all workers on applicable Public Park work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 *et seq.* of the California Labor Code. The general prevailing rates of per diem wages for each craft, classification, or type of worker needed to implement this Agreement, as determined by the Department of Industrial Relations are available at <http://www.dir.ca.gov> Developer shall also be solely responsible for any

and all violations and fines imposed pursuant to the Prevailing Wage Laws. Developer shall defend, indemnify, and hold each the City and its representatives, officials, employees, staff, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure by Developer or any of its contractors, subcontractors, or vendors to comply with the Prevailing Wage Laws. It shall be mandatory upon Developer or any of its contractors, subcontractors, or vendors to comply with all applicable California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, debarment of contractors and subcontractors, and payroll records regarding the Public Park work.

Pursuant to Labor Code Sections 1725.5 and 1771.1, and if the Public Park work is a public work under the Prevailing Wage Laws, then Developer or any of its contractors, subcontractors, or vendors performing applicable work on the Public Park that are subject to the Prevailing Wage Laws must be registered with the Department of Industrial Relations. Developer or any of its contractors, subcontractors, or vendors shall maintain registration for the duration of the work on the Public Park. All or part of the Improvements may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. Developer shall post applicable job site notices, as prescribed by the Prevailing Wage Laws. Without limiting the foregoing, Developer, as applicable, shall comply with all requirements of Labor Code 1771.4, including the registration and compliance monitoring provisions and furnishing its certified payroll records to the Labor Commissioner of California, and shall comply with any applicable enforcement by the Department of Industrial Relations. It shall be Tenant's sole responsibility to comply with all applicable registration and labor compliance requirements.

IV. DEDICATION OF LAND

4.1. **Granting IOD:** The Developer shall grant on the first Final Map for Tentative Map (TM22-0001), an Irrevocable Offer of Dedication ("IOD") to the City for a total of 0.5 usable acres for the Project Park. The final usable acres shall be determined during the final design of the Park Master Plan. Such IOD shall be free and clear of all encumbrances and easements that would prevent use of the Park for public park purposes, subject to the review and approval of the Development Services Director, or their designee. The IOD shall be accepted by the City Clerk via separate instrument after completion of Park construction prior City's acceptance of the completed Project Park.

V. PARK DEVELOPMENT FEES

5.1. **Additional Fees.** In satisfaction of the remaining 0.41-acre PLDO obligation, the Developer shall pay Parkland Acquisition and Development Fees upon the issuance of the building permit containing the 193rd residential unit and for each unit, thereafter, based on the rate set forth in the City's Master Fee Schedule at the time the construction contract for the Project Park has been executed by the Developer. Until the construction contract for the Project Park has been executed by the Developer, the Developer understands that the fees set forth in the Master Fee Schedule are subject to annual indexing increases every October.

VI. CHANGES

6.1. **Changes.** City reserves its right to amend the PLDO (CVMC 17.10, et. seq) and the Parks Master Plan, subject to state and federal law. The Parties agree that, should any changes in state or federal law result in one or more provisions of this Agreement no longer being enforceable, the Parties shall meet and confer regarding amending the Agreement accordingly. The applicable required CVMC 17.10 fee obligations and values are subject to annual indexing every October 1st.

VII. SATISFYING PLDO.

7.1. **PLDO.** Developer shall fully satisfy the land dedication requirements of the PLDO for the Project by providing the City with an IOD for the Project Park as described in paragraph 3.2 of this Agreement. Developer shall fully satisfy the park development requirements of the PLDO for the Project by providing the Turnkey Park and by paying in-lieu fees as provided in paragraph 5.1 herein.

7.2. **Park Credits.** Upon the City's approval of the Park Budget, the Developer shall receive Park Credits equal to 100% of the Project's PLDO obligation for the first 192 residential units of the Project relating to the usable 1.5 acres of the Parkland Acquisition and Development requirements of the PLDO discussed in Section 3.1 of this Agreement above.

7.3. **Payment of additional amounts.** After Completion of Construction of the Project Park, should the Construction Costs be less than the amount of the Park Budget and the associated Park Credits that have been applied to building permits issued for Project as set forth in paragraph 7.2, the amount of the deficit shall be applied to the PLDO obligation set forth in paragraph 5.1 above and paid on a prorated basis with the issuance of each building permit.

7.4 **Map Conditions.** This Agreement for the development (including design and construction) and the one-time payment for the long-term maintenance of the park, will fully satisfy conditions of approval related to the Project's related park obligations, including conditions 7, 61, and 62 of Planning Commission Resolution No. 2023-03.

VIII. CITY ACTION

8.1. If the City Council finds that the proposed design of the Project Park is inconsistent with the Urban Core Specific Plan, Developer shall have the opportunity to re-design the Project Park and submit the revised design for the City Council's consideration.

IX. MISCELLANEOUS PROVISIONS

9.1 **Notices.** All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next business day, if sent prepaid by recognized overnight service such as FedEx for delivery the next business day; or (iii) three (3) business days after deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid. Until notice of a change of address is properly given, notice shall be given:

If to City: City of Chula Vista
Attn: City Manager
276 Fourth Avenue
Chula Vista, California 91910

With a copy to: Office of the City Attorney
Attn: City Attorney
276 Fourth Avenue
Chula Vista, California 91910

If to Developer: CWC BROADWAY CV 256 LLC
Attn: Matt Thorne
5927 Priestly Drive, Suite 110
Carlsbad, CA 92009

9.2 **Captions.** Captions in this Agreement are inserted for convenience of reference. They do not define, describe, or limit any term of this Agreement.

9.3 **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties regarding the subject matter hereof. No prior or contemporaneous oral or written representations, agreements, understandings and/or statements regarding its subject matter shall have any force or effect. This Agreement is not intended to supersede or amend any other agreement between the parties unless expressly noted. However, all previous written agreements, such as supplemental subdivision improvement agreements, by and between the parties relating to park obligations, as well as City's Parks and Recreation Master Plan and Landscape Manual, remain in full force and effect except to the extent they conflict with this Agreement.

9.4 **Scope.** This Agreement applies only to the Developer Property; it shall not relieve developers other than the Developer (and its subsidiary entities, merchant builders and other buyers of portions of the Developer Property) from any responsibility to meet park development obligations per CVMC 17.10.

9.5 **Contents of Agreement.** All recitals set forth above and all exhibits attached hereto are part of this Agreement.

9.6 **Severability.** If any provision of this Agreement or its particular application is held invalid or unenforceable, the remaining provisions of this Agreement, and their application, shall remain in full force and effect, unless a party's consideration materially fails as a result.

9.7 **Recordation.** The City may record this Amendment in the Office of the County Recorder of San Diego County, California.

9.8 **Preparation of Agreement.** No inference, assumption or presumption shall be drawn from the fact that a party or its attorney drafted this Agreement. It shall be conclusively presumed that all parties participated equally in drafting this Agreement.

9.9 **Authority.** Each party warrants and represents that it has legal authority and capacity to enter into this Agreement, and that it has taken all necessary action to authorize its entry into this Agreement. Each individual signing this Agreement on behalf of an entity warrants that his/her principal has duly authorized him/her to sign this Agreement on its behalf so as to bind his/her principal.

9.10 **Modification and Binding Effect.** This Agreement may not be modified, terminated, or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the parties hereto, their successors or assigns. Further, this Agreement shall be binding on Developer and its successors and assigns.

9.11 **Term.** Unless terminated earlier in accordance with this Agreement, this Agreement shall remain in effect until, but shall automatically terminate upon the City's acceptance of the IOD for the Project Park and payment of PAD fees; provided, however, that the provisions of Section 8.15 (Indemnification) shall survive termination of this Agreement.

9.12 **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.

9.13 **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the CVMC, as same may from time to time be amended (the provisions of which are incorporated by this reference as if fully set forth herein), and such policies and procedures used by City in the implementation of same.

9.14 **Indemnification.** Developer shall timely indemnify, protect, reimburse, and hold the City, its officers, employees, agents and independent contractors, free and harmless from any liability, costs, injury, including death, or damage of any kind or nature, relating to, arising out of, or alleged to be the result of the acts, omissions, negligence or willful misconduct of Developer or Developer's employees, subcontractors or other persons, agencies or firms for whom Developer is legally responsible, (collectively, "Developer"), relating to or arising from Developer's activities contemplated under this Agreement, excepting only those claims for damages arising from the judicially determined active negligence or willful misconduct of the City. Developer shall defend, at its own expense with counsel approved in writing by the City, including attorneys' fees, the City, its officers, agents, employees, and independent contractors in any legal action based upon such alleged acts or omissions of Developer. The City may, in its discretion, participate in the defense

of any such legal claim, action or proceeding at its own expense with the understanding that Developer's attorneys shall be lead counsel and City's attorneys shall, to the maximum extent feasible, cooperate with Developer's attorneys.

9.15 **Insurance.** Developer agrees that Developer, landscape architects and contractors hired by Developer to complete a Turnkey Park shall have the following insurance:

9.15.1. **Minimum Scope and Limit of Insurance.**

a. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

c. Workers’ Compensation: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

d. Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

9.15.2. **Proof of Insurance Coverage.** Developer shall demonstrate proof of coverage herein required, prior to the commencement of services required under this Agreement, by delivery of Certificates of Insurance/Policy Endorsements demonstrating same, and further indicating that the policies may not be canceled without at least thirty (30) calendar days written notice to the Additional Insured. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9.15.3 **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Specifically,

endorsement must not exclude Products/Completed Operations.

9.15.4. **Primary Coverage.** For any claims related to this contract, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

9.15.5 **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

9.15.6 . **Waiver of Subrogation.** Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer or Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

9.15.7. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Developer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

9.15.8 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

9.15.9. **Claims Made Policies.** If any of the required policies provide claims-made coverage:

i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Developer must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

9.15.10 **Special Risks or Circumstances.** Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

9.16 **Non-liability of City Officials and Employees.** No member, official, employee or consultant of the City shall be personally liable to Developer or its successor-in-interest in the event of any default or breach by City, or for any amount which may become due to Developer or to its successor-in-interest, or on any obligations under the terms of this Agreement.

9.17 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.

9.18 **Remedies.** Notwithstanding Section 3.3.3 herein, the City shall retain the right to any and all remedies in law or equity, including the right to withhold the issuance of building permits should Developer not have begun design for the Park prior to the issuance of the building permit containing the 50th residential unit.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Agreement is executed by the City of Chula Vista acting by and through its City Manager pursuant to Resolution No. _____, authorizing such execution, and by Developer as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By: _____
Maria Kachadoorian, City Manager

APPROVED AS TO FORM:

By: _____
Jill D. S. Maland
Lounsbery Ferguson Altona & Peak, LLP
Acting City Attorney

DEVELOPER

CWC BROADWAY CV 256, LLC, a Delaware limited liability company

By: CWC Broad 256 MGMT LP, a California limited partnership, its Managing Member

By: CW PROJ MGMT LLC, a California limited liability company, its General Partner

By: _____

Name: Matthew Thorne
Title: COO

Exhibit A-1

A PORTION OF PARCEL 4 OF PARCEL MAP 16411, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 28, 1991, DESCRIBED AS FOLLOWS;

SITE:

ALL OF PARCEL 4 OF SAID PARCEL MAP 16411,
EXCEPT THE NORTHERLY 160.09 FEET, AS MEASURED PERPENDICULAR
TO "H" STREET. (13.1 ACRES, MORE OR LESS)

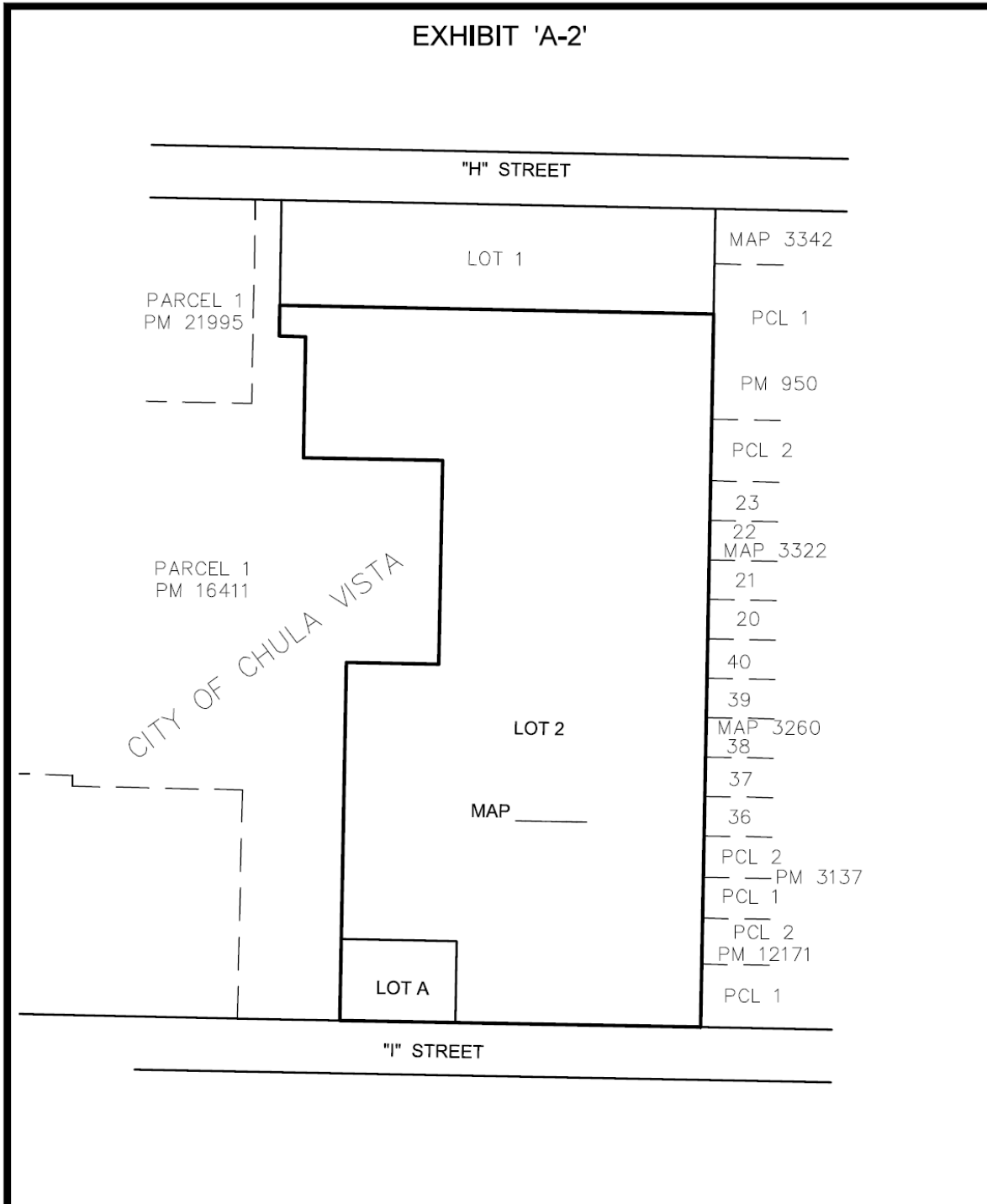
PARK PROJECT:

THAT PORTION OF PARCEL 4 OF PARCEL MAP 16411, DESCRIBED AS
FOLLOWS;

THE WESTERLY 175.81 FEET OF THE SOUTHERLY 123.88 FEET, AS MEASURED
PERPENDICULAR TO "I" STREET.

(0.5 ACRES, MORE OR LESS)

Exhibit A-2



PLSA
PLSAENGINEERING.COM

SCALE = 1" = 200'

PLSA 3687



PARK AGREEMENT

Exhibit B

Park Conceptual Plan

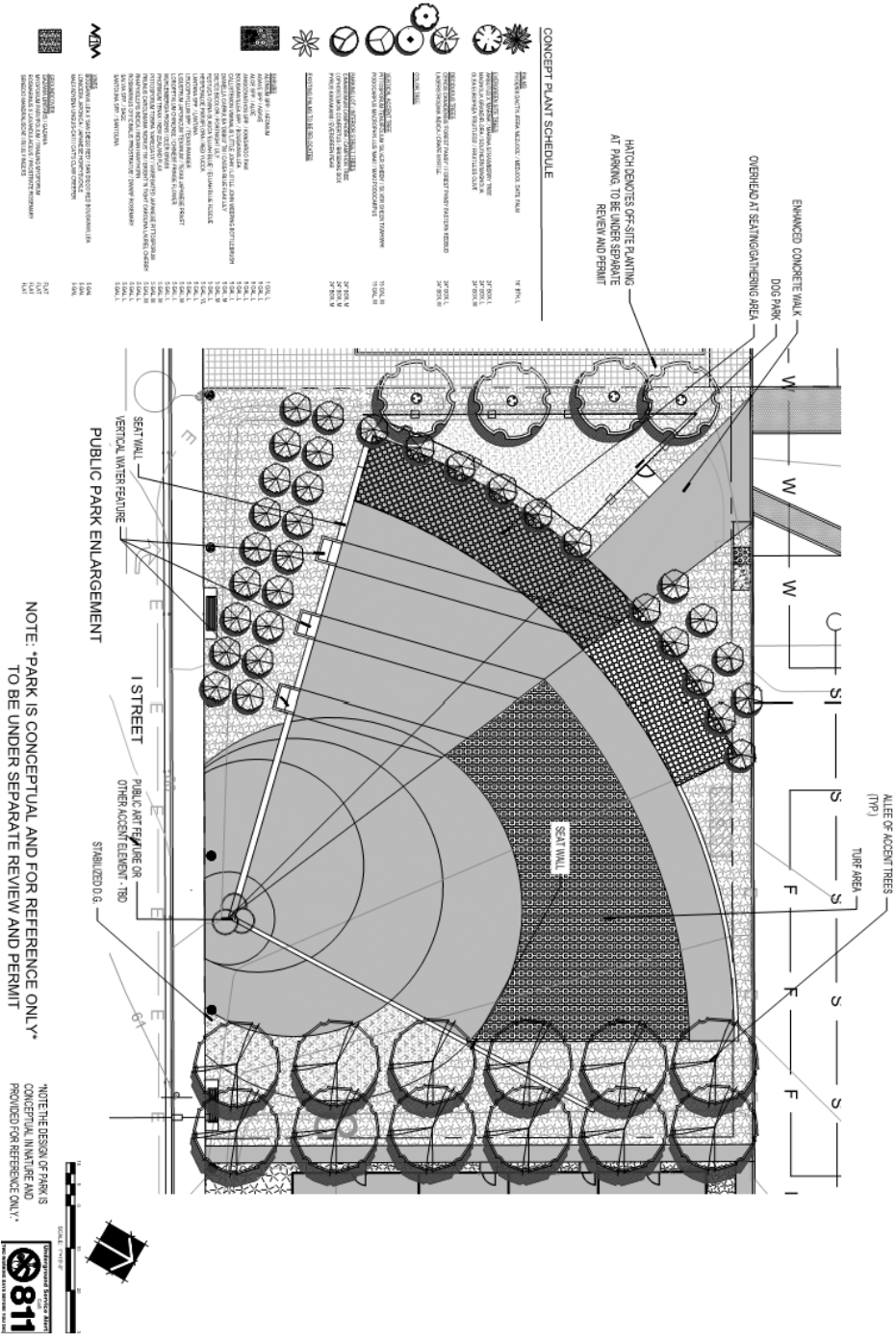


Exhibit C

Reference Only – fees in place at the time of agreement execution

Chula Vista Center Redevelopment Project - 565 Broadway					
Project Units		244			
Park Ratio (MF)		1 acre per 128 Units			
Project Park Requirement		1.91 acres			
Acquisition Fee per Acre		\$474,443.00			
Development Fee per Acre		\$905,753.00			
Project Approach			Acres	On-Site: Park Dev Budget	Off-Site: In-Lieu Fees
On-Site: Acquisition			0.5	N/A	N/A
On-Site: Development			0.5	\$452,876.50	N/A
On-Site: Enhancement: Acquisition			1	\$474,443.00	N/A
On-Site: Enhancement: Development			1	\$905,753.00	N/A
Off-Site: Acquisition			0.41		\$194,521.63
Off-Site: Development			0.41		\$371,358.73
Total			1.91	\$1,833,072.50	\$565,880.36
*One time Maintenance fee (not subject to PLDO escalation)				\$309,167.00	