

ORDINANCE NO. 2032

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF MERCED APPROVING
DEVELOPMENT AGREEMENT NO. DA21-001 BY AND
BETWEEN THE COUNTY OF MERCED AND VIRGINIA
SMITH TRUST**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED HEREBY
ORDAINS AS FOLLOWS:**

SECTION 1. Merced County Code Chapter 18.148 provides a procedure for processing development agreements for projects.

SECTION 2. California Government Code Sections 65864 through 65869.5 authorize the County of Merced to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. References are made herein to Development Agreement No. DA21-001 between the County of Merced and Virginia Smith Trust (“Agreement”), attached hereto as Exhibit A and incorporated herein by reference. The Agreement sets forth in detail the development schedule and the specific restrictions on the development of the subject property. The Agreement is binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the Board of Supervisors of this County.

SECTION 5. Pursuant to Section 15162 (“Subsequent EIRs and Negative Declarations”) of the CEQA Guidelines, the Board of Supervisors has certified a Subsequent Environmental Impact Report (SEIR) for the Project and adopted Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program.

SECTION 6. The Agreement complies with Chapter 18.148 of the Merced County Zoning Code, which sets forth requirements for the filing, processing, review, and approval of development agreements.

SECTION 7. The Board of Supervisors finds that Development Agreement No. DA21-001 is in compliance with Merced County Code Chapter 18.148, including the contents of the development agreement application and the proposed agreement itself. In accordance with Merced County Code Section 18.148.050, the Board of Supervisors finds as follows:

- a. The development agreement is in the best interests of the County, due to the resulting development of various housing types, especially deed-restricted affordable housing, and that the proposed activities included in the proposal and stipulated in this development agreement will assist with the completion of critical County infrastructure;

- b. The development agreement includes commitments from the developer that exceed requirements associated with development of housing, infrastructure, and open space amenities, and is otherwise consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan, the University Community Plan, and the Merced County Zoning Code;
- c. The development agreement provides the developer with security in developing the project, which will support the provision of education scholarships for local students, and otherwise meets County and City planning and development regulations where applicable. The project as a result promotes the public convenience, health, interest, safety, and general welfare of the County;
- d. The project is compatible with the uses authorized in, and the regulations prescribed for, the University Community Plan area;
- e. The project will maintain expected development patterns, densities, and volumes analyzed by the County in its planning activities and considered by the City of Merced in review of potential annexation activities, and as included in the University Community Plan. Therefore, the project will not adversely affect the orderly development of property or the preservation of property values;
- f. The project furthers important Countywide goals in the Merced County General Plan, University Community Plan, and Board of Supervisors' legislative agenda; and,
- g. The project will provide the County with important, tangible benefits beyond those that may be required by the County through project conditions of approval. In particular, the provision of a mix of housing types, including deed-restricted affordable housing, and funding and construction of a portion of Campus Parkway that exceeds what would otherwise be required via conditions of approval at the time of project approval.

SECTION 8. The Agreement is hereby approved and authority is hereby granted for the County Executive Officer to execute the Agreement approved by the Board of Supervisors during the public hearing process.

SECTION 9. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 10. Notice is hereby given that, pursuant to the Mitigation Fee Act, the County of Merced charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provided. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.

SECTION 11. This Ordinance was introduced at the regular meeting of the Board of Supervisors on October 17, 2023. This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Merced.

The foregoing Ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California at a regular meeting thereof held on the 17th day of October, 2023, by the following vote:

SUPERVISORS

AYES: Scott M. Silveira, Rodrigo Espinosa, Josh Pedrozo, Daron McDaniel,
Lloyd Pareira, Jr.

NOES: None

ABSENT: None



Scott M. Silveira
Chairman, Board of Supervisors

ATTEST:

RAUL LOMELI MENDEZ
Clerk of the Board of Supervisors

By



Deputy



APPROVED AS TO FORM AND LEGAL EFFECT:
FORREST W. HANSEN,
MERCED COUNTY COUNSEL

By:



Michael E. Profant, Deputy

RECORDING FEES EXEMPT PURSUANT TO
GOVERNMENT CODE § 27383.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

THE COUNTY OF MERCED

DEVELOPMENT AGREEMENT
BY AND BETWEEN

THE COUNTY OF MERCED,

AND

VIRGINIA SMITH TRUST

RELATING TO
THE VST SPECIFIC PLAN

(The "DEVELOPMENT AGREEMENT")

As Adopted by the County of Merced Board of Supervisors
on October 17, 2023 by Ordinance No. 2032

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DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF MERCED AND
VIRGINIA SMITH TRUST RELATING TO THE VST DEVELOPMENT PLAN

THIS DEVELOPMENT AGREEMENT is entered into this ___ day of _____, 2023 (“**Execution Date**”), by and between the COUNTY OF MERCED, a political subdivision (“**County**”) and VIRGINIA SMITH TRUST, a trust established by the Testamentary Trust under the Will of Virginia Smith, deceased, and administered by the Merced County Office of Education Board of Trustees as Trustee (“**VST**” or “**Developer**”), hereinafter referred to as the “**Development Agreement**.” For purposes of this Development Agreement, the County and VST are individually referred to as a “**Party**” and collectively as the “**Parties**.”

RECITALS AND DEFINITIONS

A. The “**Project**,” as referenced in this Development Agreement, consists of the development of housing, neighborhood commercial buildings, parks, agricultural and open space uses, and various public infrastructure facilities located within the University Community Plan North subarea of the University Community Plan area within the City’s Sphere of Influence and east of Lake Road, as more particularly described and defined in Section 2.01 below.

B. The “**Property**,” as referenced in this Development Agreement, consists of approximately 654 gross acres of land, identified as Assessor’s Parcel Numbers (APN) 60-010-004 and 60-020-048. The Property is more fully shown on **Exhibit A** attached hereto and incorporated herein by this reference. **Exhibit B** attached hereto sets forth the legal description for the Property. VST represents and warrants to County that as of the Execution Date, VST has a legal or equitable interest in the Property.

C. Upon the effective date of the County ordinance approving this Development Agreement, this Development Agreement becomes effective, as defined in Section 1.02 below, as to the Property and the County will record it against the Property.

D. The County adopted the University Community Plan (“**UCP**”) in 2001. The Property is part of the University Community Plan area (the “**UCP Area**”). On December 9, 2014, City adopted an update to the Land Use and Circulation Elements of the City’s General Plan that included the UCP Area. The City’s General Plan designates the Property for a variety of land uses including residential, neighborhood commercial, open space, and agricultural, and provides for the development of these uses so as to benefit the City and its residents.

E. County, the City of Merced (“**City**”) and VST have engaged in a cooperative and successful relationship to establish the UCP and the UCP North subarea in particular pursuant to the Memorandum of Understanding Between the County of Merced and the City of Merced Relating to the Referral and Review Pursuant to Government Code Section 65919 of Potential Entitlement Applications by the Virginia Smith Trust entered into June 8, 2021, attached hereto and incorporated herein as **Exhibit C** (the “**County/City Memorandum of Understanding**”). VST proposes a modification of the UCP North Plan and the development of a Specific Plan that conforms with the policies of the UCP and the Merced County General Plan, as amended, and the

City of Merced General Plan. The parties have worked cooperatively to adopt and implement the following entitlements and approvals:

- (1) The Final Focused Subsequent Environmental Impact Report and associated Mitigation Monitoring and Reporting Plan (including all mitigation measures therein) for the project based on the 2004 UCP Final EIR (SCH: 2001021056) which were certified and adopted, respectively, by Resolution No. 2023-81, on October 17, 2023.
- (2) The Amendment to University Community Plan and corresponding amendments to the County's General Plan as adopted by Resolution No. 2023-81, October 17, 2023.
- (3) The Specific Plan and Development Plan approved by Resolution No. 2023-81, on October 17, 2023.
- (4) Ordinance No. 2032 dated October 17, 2023 adopting this Development Agreement ("the **Adopting Ordinance**").
- (5) The conditions of approval of each of the foregoing.

These approvals described in this Recital E, together with the Final Subsequent Environmental Impact Report and related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Plan described in Recital F below, are referred to herein, collectively, as the "**Approvals**" or "**Project Approvals**."

F. Before approving the Project Approvals described in Recital E above, the Board of Supervisors of the County of Merced: (i) reviewed and considered the significant environmental impacts of the Project and several alternatives to the Project, as described in that certain Final Subsequent Environmental Impact Report for the Project (the "**Final SEIR**") and (ii) adopted Resolution No. 2023-81 on October 17, 2023 which certified the Final SEIR, making Findings Concerning Mitigation Measures and Alternatives (the "**Findings**"), adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Plan (the "**MMRP**"), all in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code Section 21000, *et seq.* ("**CEQA**").

G. One of the principal purposes of this Development Agreement is to further the cooperative relationship between the County and VST for the benefit of all residents of the County during the implementation of the Project. The County and VST join as Parties to this Development Agreement to ensure the requirements of the Development Agreement Statute (California Government Code Section 65864, *et seq.*) are satisfied. As more fully set forth below, this Development Agreement contains both covenants of a personal nature and covenants and/or servitudes that run with title to the Property.

H. This Development Agreement is intended to achieve the following purposes:

- (1) that the County shall be kept and/or made "whole" by VST as to the payment of County's costs associated with the implementation of this Development

Agreement, the Project Approvals, all other planning and environmental efforts described and envisioned by this Development Agreement, the Subsequent Approvals (as defined in Section 2.03 below) and the Project, and the mitigation of the Project's environmental impacts;

- (2) that once this Development Agreement has taken legal effect, VST shall have a full and vested right, throughout the term of this Development Agreement, to the Rights and Obligations as to the Property;
- (3) that this Development Agreement is intended to reduce the uncertainty in planning and implementation for and, and to secure the orderly development of, the Project, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure and services appropriate for the development of the Project, ensure maximum effective utilization of resources within the County, and provide other significant benefits to the County and its residents;
- (4) to secure Project features and Project Approval conditions above and beyond those that may be imposed by the County under existing zoning and development regulations and the Final SEIR;
- (5) that this Development Agreement is intended to be consistent with and implement the County General Plan;
- (6) that the development of the Project will enable the County to provide opportunities to house and provide services to UC Merced staff that are currently located outside the community, and locate existing staff and students closer to the university in order to complete a vibrant university community adjacent to the campus;
- (7) that the Project will enable the County and City and the region to substantially reduce regional vehicle miles travelled (Specific Plan, pp. 20, 36; Draft SEIR, pp. 2-25, 4-5), greenhouse gas emissions (Specific Plan, p. 84; Draft SEIR, p. 3.4-21), and to capture sales taxes that are being leaked to other communities because of the jobs-housing imbalance associated with university staff and students located outside of the City (Specific Plan, p. 124);
- (8) that the development of the Project would result in the capture of an estimated 1,000 households that commute to jobs in Merced and UC Merced in particular, resulting in the reduction of Countywide vehicle miles traveled for those trips by approximately 9.2 million miles per year (Specific Plan, p. 36; Draft SEIR, pp. 3.7-18—19);
- (9) that the Project will provide affordable housing opportunities for lower and moderate-income households in the County, consisting of 1,500 units, including approximately 400 to 500 units that will be deed-restricted affordable units as described in the VST Specific Plan (Specific Plan, pp. 19, 39);

- (10) that the development of the Project will generate \$18.4 million of tax revenue for use by the County, City, public school districts, as well as other special districts, that all provide essential public services to County and City residents (Specific Plan, p. 124, append. N; Draft SEIR, pp. 1-20—23);
- (11) that the development of the Project will maximize the value of the endowment within the land use regulations contained in the UCP and VST Specific Plan so that the benefits to eligible students are maximized and the Project will generate an endowment that will generate approximately \$8-10 million annually in scholarships and grants, which will be used for college scholarships to eligible Merced County students (Specific Plan, pp. 13; Draft SEIR, pp. ES-3, 2-4, 2-11);
- (12) that the Project will include a Community Benefits assessment on property sales which will generate between \$350,000 and \$500,000 annually to fund Merced County Office of Education Foundation programs, including early childhood development, education and enrichment, and to fund vocational education programs and scholarships that will greatly benefit County and City residents (Specific Plan, p. 141); and
- (13) that the value of the County's obligations to the Developer pursuant to this Development Agreement are anticipated to be less than the benefits provided to the community as a whole and to the County in particular (Specific Plan, p. 124).

The Rights and Obligations of the Parties to this Development Agreement shall be construed and interpreted so as to give full effect to each and all of these purposes.

I. As used in this Development Agreement, “**Rights**” shall mean all of the vested and other rights and benefits of the Development Agreement, and the term “**Obligations**” shall mean all of the duties, obligations, responsibilities and other burdens of the Development Agreement.

J. As used in this Development Agreement, the terms, phrases and words shall have the meanings and be interpreted as set forth in this Development Agreement (the meaning given the term in the singular shall include the term in the plural and vice versa) unless the context clearly indicates the Parties intended another meaning. To the extent that any capitalized terms contained in this Development Agreement are not defined within it, then such terms shall have the meaning ascribed to them in the Applicable Laws, other applicable law or, if no meaning is given a term in any of those sources, the common understanding of the term shall control.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth in this Development Agreement, the Parties hereby agree as follows:

ARTICLE 1 GENERALLY

Section 1.01 Definition of “VST”. As used herein, “VST” means Virginia Smith Trust, as that business entity existed on the Effective Date and any permitted successor, assign, or transferee of Virginia Smith Trust.

Section 1.02 Effective Date. This Development Agreement is entered into by and between the County and VST and takes legal effect on November 16, 2023, the date that County’s adoption of Ordinance No. 2032 approving the Development Agreement takes legal effect (“**Effective Date**”). The terms and conditions of this Development Agreement shall be for the benefit of or a burden upon the Property, shall run with title to the Property, and shall be binding upon VST and its permitted successors, assigns and transferees during their respective ownerships of any portion of the Property.

Section 1.03 Term.

Section 1.03.1 In General.

(a) The term of this Development Agreement (“**Term**”) shall commence upon the Effective Date and shall continue until, and terminate at 12:01 a.m. on the Twentieth (20th) year anniversary of the Effective Date, November 16, 2043 (“**Termination Date**”), unless VST requests, and the County approves an extension of the Term. Such request for extension shall be submitted, in writing, to the County Executive Officer at least 180 days, but no earlier than 365 days, before the 2043 Termination Date.

(b) This Development Agreement shall be of no further force, effect or operation upon the Termination Date. Subject to the provisions of Section 8.04 below, in no event shall the expiration or termination of this Development Agreement result in expiration or termination of any Approval without further action by County.

Section 1.04 Execution and Recordation of Agreement.

Section 1.04.1 Execution and Recordation. VST shall execute this Development Agreement in conformance with Section 15.15 of this Agreement, prior to the date of adoption of the Adopting Ordinance referenced in Recital E above. Provided VST has so executed this Agreement, County shall execute this Agreement, in conformance with Section 15.14 of this Agreement, within five (5) business days of the adoption of the Adopting Ordinance.

Section 1.04.2 Recordation. County shall deliver this Agreement to the County Recorder for recordation within 10 days following its execution.

ARTICLE 2 DESCRIPTION OF THE PROJECT

Section 2.01 In General. As used herein, “**Project**” means the development of the Property as described in the “**Project Approvals**” (defined in Section 2.02 below), including all on-site and off-site “**Project Facilities and Infrastructure**” (defined in Section 5.02.1 below) contemplated as part of the development of the Specific Plan. As set forth on pages 23 through 31 of the VST Specific Plan, the VST Specific Plan plans for the development of 425 acres of residential land uses, 113 acres of open space and parks, 20 acres for a K-8 elementary school, 44 acres for commercial development, and 79 acres for roads and other improvements with approximately 3,900 residential units (4,400 total units including anticipated density bonus units) and 862,000 square feet of commercial buildings. The 862,000 square feet of commercial development consists of 585,500 square feet of Village Mixed Use, 104,500 square feet of

Neighborhood Commercial/Retail uses, and 175,000 square feet of Community Commercial retail uses. Low-, medium-, medium-high-, and high-density residential development projects would be constructed along planned collector and residential roadways. A community recreation center would be provided, as well as a charter school, along with 39 mini-parks and pocket parks, two community parks (one for each development phase), and a 36-acre regional sports park.

Section 2.02 Project Approvals. As used herein, “**Project Approvals**” include, but are not limited to: (i) those provisions of the County General Plan that relate to or affect the Property, as the General Plan existed on the Effective Date and as it may be amended from time to time consistently with this Development Agreement (the “**General Plan**”), (ii) those provisions of the Development Plan (including the Design Guidelines) that relate to or affect the Property, as incorporated into and specified in the Specific Plan, existing on the Effective Date and as it may be amended from time to time consistently with this Development Agreement (the “**Development Plan**”), (iii) the zoning of the Property, existing on the Effective Date and as it may be amended from time to time consistently with this Development Agreement thereafter (the “**Zoning**”) and (iv) the other entitlements listed in Recital E above; provided that “**Project Approvals**” shall not mean or include amendments to the General Plan, UCP or Zoning of the Property that conflict with the Project Approvals as they existed on the Effective Date unless VST consents in writing to such conflicting amendments.

Section 2.03 Subsequent Approvals. As used herein, “**Subsequent Approvals**” mean those permits and approvals (other than the Project Approvals and amendments thereto) necessary or desirable for the development of the Project including, without limitation, those identified in Section 2.04 below.

Section 2.04 Subsequent Approval Documents. The “**Subsequent Approvals**” defined in Section 2.03 above include, but are not limited to the approvals identified in the Specific Plan chapter entitled, “**Plan Administration**” and include: (i) subdivision maps, parcel maps, and related or similar approvals issued under the California Subdivision Map Act, (ii) architectural review, (iii) building permits, (iv) any other discretionary or ministerial permits or approvals of County necessary or appropriate for build-out of the Project and Property, and (v) any amendments to any of the foregoing necessary or appropriate for the development of the Project.

Section 2.05 Approvals. Project Approvals, amendments to Project Approvals, and Subsequent Approvals are sometimes referred to in this Development Agreement collectively as the “**Approvals**” and each individually as an “**Approval**.”

ARTICLE 3 DEVELOPMENT OF PROJECT IN GENERAL

Section 3.01 Consideration to VST. The Parties acknowledge and agree that County’s agreement to perform and abide by the covenants and Obligations of County set forth herein is material consideration for VST’s agreement to perform and abide by the covenants and Obligations of VST set forth herein.

Section 3.02 Consideration to County. The Parties acknowledge and agree that VST’s agreement to perform and abide by the covenants and Obligations of VST set forth herein is

material consideration for County's agreement to perform and abide by the covenants and Obligations of County set forth herein.

Section 3.03 Rights of VST Generally. VST shall have a fully vested right to develop the Project and to use the Property in a manner consistent with this Development Agreement and Applicable Law.

Section 3.03.1 Vested Rights to Develop Project. During the Term of this Development Agreement, the Developer shall have a vested right to develop the Property to the fullest extent permitted by the Project Approvals and this Development Agreement. Except as provided within this Development Agreement, the Project Approvals shall exclusively control the development of the Property, including the uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project. The maximum number of residential units authorized to be constructed hereunder and the approximate acreage of commercial development, without regard to any density bonus or incentive or concession pursuant to Government Code Sections 65915-65918 or other similar legislation or regulation, is approximately 3,900 residential units (4,400 total units after application of anticipated density bonuses) and approximately 862,000 square feet of commercial/mixed use development as described in the Specific Plan. In furtherance of the foregoing, the Developer retains the right to apportion the uses, intensities and densities, between itself and any other owners of the Property, upon the sale, transfer or assignment of any portion of the Property, so long as such apportionment is consistent with the Project Approvals and this Development Agreement. The Project shall be developed in sequential phases as described in the Specific Plan and in accordance with Exhibit G as further referenced below in Section 6.01.2 of this Development Agreement.

Section 3.03.2 Vested Rights to Project Approvals. Subject to the County's exercise of its police power authority and discretion, the Developer shall have a vested right to develop the Property consistent with the Project Approvals, including, but not limited to the vested right to (i) receive from the County all future development approvals for the Property that are consistent with and implement the Project Approvals and this Development Agreement; (ii) not to have such approvals be conditioned or delayed for reasons which are inconsistent with the Project Approvals or this Development Agreement unless there is a public health and safety reason affecting the ability to proceed with the Project Approvals; and (iii) to develop the Property in a manner consistent with such approvals in accordance with the Project Approvals and this Development Agreement. All future development approvals for the Property, including without limitation general plan amendments, zoning changes, parcel maps or tract maps, shall upon approval of the County be vested in the same manner as provided in this Development Agreement as for the Project Approvals. The Parties understand and agree that the objective of this Agreement is for the County to entitle the Project for development. This Agreement, however, contemplates the Project being built in the City of Merced as contemplated in the County/City Memorandum of Understanding. Notwithstanding the foregoing, in the unlikely event that the Property is not annexed to the City of Merced, Section 3.06.4 of this Development Agreement sets forth the Parties' rights and obligations with respect to the process to obtain the County's approval of the Subsequent Approvals and implement the Project in accordance with the terms of this Development Agreement.

Section 3.04 Rights of County Generally. County shall have a right to regulate development of the Project and use of the Property consistent with this Development Agreement and Applicable Law. County's responsibilities under this Development Agreement, except for County's commitment to complete certain specified segments of Campus Parkway set forth in Section 7.10 of this Agreement, shall terminate upon annexation pursuant to and as defined in Section 3.06 of this Agreement.

Section 3.05 Project Parameters. The permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of buildings included in the Project, and provisions for the reservation and dedication of land (collectively, the "Project Parameters") shall be as set forth herein and in the Project Approvals.

Section 3.06 Pre-Annexation Obligations and Commitments.

Section 3.06.1 Commitment to Initiate Annexation Proceedings. After the Effective Date of this Development Agreement, consistent with the covenants, terms and conditions of this Development Agreement, the County and Developer will work with the City to initiate proceedings under the Cortese-Knox-Hertzberg Act (California Government Codes Sections 56000, *et seq.*) for the annexation of the Property ("Annexation") by the Merced County Local Agency Formation Commission ("LAFCO"). The County and Developer acknowledge that it is their mutual intent to support the City's Annexation of the Property. The Developer shall work with the City to determine the timing of such Annexation to coincide with the Developer's development of the Property and in a manner that is mutually acceptable to both Developer and the City. Absent amendment of this Agreement, the Annexation shall be completed within one (1) year of the Effective Date. Prior to Annexation, or in the event that the Annexation does not take effect within two (2) years of the Effective Date, then County and VST shall proceed with the Project in accordance with the Project Approvals, including, but not limited to, development of the Project in the County with an Out of Boundary Services Agreement for the use of City utilities and services, and the establishment of the Financing Mechanisms described herein.

Section 3.06.2 Effectiveness of Project Approvals. The parties acknowledge and agree that the Project Approvals are material to the City's agreement to annex the Property to the City and that the City is relying on the Project Approvals being implemented through to construction as a condition to agreeing to the Annexation. As a condition precedent to completion of Annexation, the Parties agree that they shall not take any action to modify or overturn the Project Approvals, or impede their implementation, nor take any other action inconsistent with the Project Approvals and the effectiveness of this Agreement as a development agreement.

Section 3.06.3 County Support for Annexation. County and all County departments will support the Annexation proposal consistent with LAFCO policies and procedures.

Section 3.06.4 County Process in the Event Annexation Does Not Occur. The Parties contemplate that the City of Merced will proceed with Annexation of the Property in accordance with the Project Approvals. In the event that Annexation is not complete within two (2) years of the Effective Date, the Parties agree that development of the Project shall occur consistent with the Project Approvals, and may occur in the County. The County shall then process

applicable Subsequent Approvals, if applied for, in accordance with Applicable Law as defined below. Notwithstanding the foregoing, the County may impose through the small lot subdivision map process, development standards in effect as of the Effective Date of this Development Agreement provided that such standards remain in substantial compliance with the development and design standards set forth in the Specific Plan, and City improvement standards as required by the County/City Memorandum of Understanding, University Community Plan and the City/County Tax Sharing Agreement. In such event, County shall refer the small lot subdivision maps to the City for review and concurrence. In the event of a conflict between City and County improvement standards, the Parties agree that the development and design standards set forth in the County/City Memorandum of Understanding shall govern.

ARTICLE 4 APPLICABLE LAW

Section 4.01 In General.

Section 4.01.1 Applicable Law Defined. Except as the Parties may otherwise agree, the rules, regulations and official policies applicable to the Project and the Property during the Term of this Development Agreement shall be those set forth in this Development Agreement and, except as otherwise set forth herein, the rules, regulations and official policies of County (including the plans, municipal codes, ordinances, resolutions and other local laws, regulations, capital facilities fees and policies of County) in force and effect on the Effective Date (collectively, “**Applicable Law**”).

Section 4.01.2 Approvals as Applicable Law. Applicable Law shall include, without limitation, Approvals as they may be issued from time to time consistently with this Development Agreement.

Section 4.02 Application of Other County Laws.

Section 4.02.1 No Conflicting County Laws.

(a) County may apply to the Project and the Property any rule, regulation or official policy of County (including any plan, municipal code, ordinance, resolution or other local law, regulation, capital facility fee or policy of County) (each a “**County Law**”) that does not conflict with Applicable Law or this Agreement. County shall not, however, without the written consent of VST apply to the Project or the Property (whether by initiative, referendum, imposition of mitigation measures under CEQA or otherwise) any County Law that is in conflict with Applicable Law or this Development Agreement. Notwithstanding the foregoing, County Laws shall apply unless this Development Agreement provides that a City Law shall apply to the Project in accordance with the City/County Memorandum of Understanding and Applicable UCP policies.

(b) If County attempts to apply to the Project a County Law which Developer believes conflicts with Applicable Law or this Development Agreement, VST shall give County written notice describing the legal and factual basis for VST’s position. The County and VST shall meet and confer within 30 days of County’s receipt of such written notice to seek to resolve any disagreement. If no mutually acceptable solution can be reached, either Party may take such action as may be permitted under Article 11 below.

(c) Notwithstanding the foregoing, the County may impose new conditions on future subdivision map approvals provided that such conditions would be imposed in a manner consistent with the Project Approvals.

Section 4.03 Uniform Codes and Standard Specifications.

Section 4.03.1 Uniform Codes. Nothing herein shall prevent County from applying to the Project standards contained in uniform building, construction, fire, or other uniform codes, as the same may be adopted or amended from time to time by County, provided that the provisions of any such uniform code shall:

(a) Apply to the Project only to the extent that such code is in effect on a County-wide basis; and

(b) With respect to those portions of any such uniform code that have been adopted by County without amendment, be interpreted and applied consistently with the generally prevailing interpretation and application of such code in California, subject to the Chief Building Official's discretion.

Section 4.03.2 County Application of City Standards. In accordance with the terms of the County/City Memorandum of Understanding and this Development Agreement, the County shall apply to the Project the City's standards and specifications for public improvements (e.g., streets, storm drainage, parking lots, and driveway widths) adopted or amended from time to time by the City, provided that such standards and specifications shall apply to the Project and the Property only to the extent that they are in effect on a City-wide basis, provided that such City standards and specifications are consistent with the standards and requirements in the Specific Plan, and provided that County may lawfully do so. County and City agree to impose the Specific Plan design standards as in conformance with the County General Plan and the City's Improvement Standards, except to the extent that NCHRP Research Report 1043 Design Standards shall apply to the design of any roundabouts. County and City agree to impose the road sections and design standards applicable to County roadways and City streets as set forth in the Specific Plan.

Section 4.03.3 County Building Permits. County shall require all building permits to comply with the UCP Update, Specific Plan, Final SEIR, design regulations, and other building design requirements adopted with the Project Approvals, including as to all public buildings constructed on the Property.

Section 4.04 State and Federal Law.

Section 4.04.1 Change in County Law. Nothing herein shall prevent County from applying to the Project or the Property any change in County Law required by: (i) state or federal law; or (ii) any governmental agency that, due to the operation of state law (and not the act of County through a memorandum of understanding, joint exercise of powers or other agreement entered into after the Effective Date), has binding legal authority on County.

Section 4.04.2 Compliance with Applicable Laws. If the application of such changes prevents or precludes performance of one or more provisions of this Development

Agreement, County and VST shall take any and all such actions as may be necessary or appropriate to ensure the provisions of this Development Agreement shall be implemented to the maximum extent practicable.

ARTICLE 5 FINANCIAL COMMITMENTS OF COUNTY AND VST

Section 5.01 In General. This Article 5 establishes a framework for the imposition and allocation to the extent permitted by law of fees, taxes, assessments and other revenues to be generated and/or paid by the Project and/or the Property. The provisions of this Article 5 are intended to prevent the Project from resulting in negative fiscal impacts on the County as determined by the fiscal impact analysis prepared for the Project; to facilitate the construction, operation and maintenance of infrastructure and facilities to avoid or limit the physical impacts of development; and to assist in the development of the Project so as to provide long-term fiscal and other benefits to County, including increased employment opportunities, an increased tax base and revenues to County, and an enhanced quality of life for the County's residents.

Section 5.01.1 Basic Purposes. This Article 5 is intended to serve three basic purposes: first, that there shall be no cost to County for the construction of the fair share allocation of public facilities and infrastructure needed to serve the Project or the Property or for the provision of services to the Project or the Property, including the operation and maintenance of facilities and infrastructure to serve the Project (collectively, the "**Project Facilities and Infrastructure**"); second, that the Project shall establish financing mechanisms for the cost of public services and the maintenance of public facilities (collectively, the "**Financing Mechanisms**"); and, third, that the County shall establish reliable and predictable mechanisms for the reimbursement of Developer's costs of construction of infrastructure that exceeds its fair share contribution, including but not limited to the reimbursement of Developer's costs through fee credits or other third party payment of applicable impact fees in accordance with the Specific Plan.

Section 5.01.2 Cost of Providing Project Facilities and Infrastructure. The cost of providing Project Facilities and Infrastructure to the Project or the Property shall be consistent with the following principles: Except as otherwise specifically permitted by this Development Agreement and not in limitation of any other provisions hereof, (i) there shall be a reasonable relationship between any County costs required to be borne by the Project and the type of development within the Project to which such cost is attributable; (ii) there shall be a reasonable relationship between the need to incur any such County cost and the type of development within the Project to which such cost is attributable; (iii) no County cost required to be borne by the Project shall exceed the estimated reasonable cost of providing the service or facility to which such County cost relates; (iv) for any County cost borne by the Project for Project Facilities and Infrastructure in excess of the Project's "fair share" cost, County shall exercise reasonable good faith efforts to use adopted impact fee program reserves funded by impact fees paid by other properties that benefit from said improvements; and (v) with respect to any fee Developer is required to pay in order to finance Project Facilities and Infrastructure, there shall be a reasonable relationship between the amount of the fee and the cost of the Project Facilities and Infrastructure funded by such fee.

Section 5.01.3 Project Facilities and Infrastructure. As used herein, the term "**Project Facilities and Infrastructure**" shall include public facilities and infrastructure only to

the extent they serve the Project, and shall not include public facilities or infrastructure to the extent such facilities or infrastructure serve projects or areas other than the Project or the Property, unless the public facilities and infrastructure serving the Project or Property are required to be oversized to serve other projects or areas in accordance with the provisions of Section 6.02.2, below.

Section 5.02 Financing of Infrastructure; Operation and Maintenance. Prior to or concurrent with the recordation of the first final map, and/or the first Project building permit as may be applicable, County and VST shall establish Financing Mechanisms to finance Project Facilities and Infrastructure and Project-related services or the operation and maintenance portion of the Project Facilities and Infrastructure, which are consistent with and functionally equivalent to those described in the Specific Plan section entitled Financing, Services and Governance:

Section 5.02.1 Community Facilities District. A community facilities district (“CFD”) shall cover the cost of maintaining and operating all parks (but not the Community Recreation Center), trails, open space, parkway strips, street trees, street lights, park facilities, storm drainage facilities, bioswale, medians and roundabouts. (Specific Plan, p. 120.)

Section 5.02.2 Responsibility for Costs. Any costs associated with such mechanisms shall be borne by the Project, which may be reimbursed by the Financing Mechanisms as defined below.

Section 5.02.3 Financing Mechanisms. The County may require as a condition of approval of a large lot tentative subdivision or parcel map such Financing Mechanisms to finance the operation and maintenance of Project Facilities and Infrastructure.

Section 5.02.4 Community Recreation Center. A Master Homeowner’s Association, established under the Davis-Sterling Act of 2014 (Cal. Code Regs. § 2792.32(a)) shall be used for the operation and maintenance of the Community Recreation Center.

Section 5.03 Establishment of Financing Mechanisms.

The establishment of any mechanism to finance the operation or maintenance of Project Facilities and Infrastructure (each a “**Financing Mechanism**”) shall be initiated upon VST’s written request to the County’s Director of Public Works. Such request shall outline the purposes for which the Financing Mechanism is to be established and the general terms and conditions upon which the establishment of the Financing Mechanism will be based. County’s consideration of VST’s request may include County’s adoption of a Specific Plan fee program for the funding of Project Facilities and Infrastructure as described in the Financing, Services and Governance chapter of the Specific Plan, or functionally equivalent Financing Mechanisms. If VST requests that the County form a Mello-Roos Community Facilities District to finance the operation or maintenance of Project Facilities and Infrastructure, County shall use its best efforts to cause such district to be formed and special taxes to be levied to the extent permitted by Applicable Law, provided that all formation costs shall be borne by Developer.

Section 5.04 Imposition of and Increases in Fees, Taxes, Assessments and Other Charges.

Section 5.04.1 Processing and Plan Check Fees. Developer shall pay those planning and engineering inspection and plan check fees and charges required by County for processing applications and requests for Subsequent Approvals under the applicable regulations in effect at the time such applications and requests are submitted to County. Except as otherwise specifically stated below, any financial obligation imposed against or applied to the Project shall be consistent with the provisions of controlling California law, including California Government Code Section 66000, *et seq.*, California Constitution, Article XIII A and its implementing statutes. VST shall pay County reasonable staff and consultant time and other reasonable costs (including reasonable consultant costs) associated with County's approval and implementation of this Development Agreement and the Project. Notwithstanding the foregoing, Developer shall pay the costs of submitting planning, engineering and design plans to an outside contractor for expedited review if County makes this option available.

Section 5.04.2 Project Development/ Construction Fees. Fees, taxes, assessments and other charges in effect upon the adoption of the Development Agreement related to development and construction of the Project shall be imposed on the Project.

Section 5.04.3 County Development Impact Fees. Consistent with the terms of the Agreement, County has not adopted any development impact fees for the Project ("**Development Fees**") as of the Effective Date. The Parties understand and agree that any Development Fees imposed on the Project shall only be those Development Fees adopted by the County applicable to the Specific Plan area and imposed on the Project following preparation and approval of an AB 1600 nexus study in accordance with the "**Specific Plan Impact Fees Applicable to the Project**" set forth in Exhibit D and the "**Timing of Payment of Impact Fees; Adjustments**" set forth in Exhibit E, attached hereto and incorporated herein by this reference. This Section 5.04.3 shall not prohibit County from imposing on Developer any fee or obligation that is imposed by a regional agency or the State of California in accordance with state or federal obligations and required to be implemented by County.

Section 5.04.4 Development Fees. If County adopts a Specific Plan Development Impact Fee ("**DIF**") program applicable to the UCP area to include additional projects or costs for the benefit of the Project (either new projects or increased costs for projects included in the analysis supporting existing fees) for improvements necessary to satisfy Project requirements, Developer will be required to pay the DIF fees as determined through the Project small lot tentative subdivision map process. In such event, credits applied towards Project Facilities and Infrastructure costs advanced by Developer shall apply when building permits are issued or fees are otherwise due and shall arise only from Developer-funded construction of infrastructure or community facilities included in the project list on which a particular fee was based. Credits applied when building permits are issued or fees are otherwise due pursuant to this section shall be adjusted for inflation consistently with such adjustments of the fees against which credits are allowed.

Section 5.04.5 Fee Credits. County acknowledges that Developer may dedicate property and install infrastructure improvements beyond its "fair share" cost, and/or install

improvements that are funded from the Specific Plan DIF fees. If and to the extent that the Developer constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of the Project Infrastructure and Facilities required to serve the Project or mitigate its impacts, or installs Project Infrastructure and Facilities that one or more undeveloped properties within the UCP will be benefitted by, the County and VST may enter into a reimbursement agreement in accordance with Section 5.05.3 below.

Section 5.05 Other Commitments of County and VST Related to Financing.

Section 5.05.1 Arrangements with Other Governmental Agencies. County and VST acknowledge and agree that County may from time to time enter into joint exercise of power agreements, memoranda of understanding or other agreements with other governmental agencies consistent with and to further the purposes of this Development Agreement.

Section 5.05.2 Other Funding Sources. Any obligation of VST under this Development Agreement to fund or otherwise bear the costs of the construction of improvements, the provision of services or any other item, whether or not the sole obligation of VST, may be satisfied through the use of funds provided by, from or through any third-party (including other governmental) sources.

Section 5.05.3 Reimbursement. If, and to the extent that the Developer constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of the Project Infrastructure and Facilities required to serve the Project or mitigate its impacts, or installs Project Infrastructure and Facilities, the County shall pay VST for the cost of any improvements that are funded with Specific Plan DIF fees. The County shall enter into a reimbursement agreement with the Developer, in a form mutually acceptable to County and Developer, which provides for the reimbursement of all excess costs and expenses incurred by the Developer in constructing such improvements in accordance with Government Code Section 66485, *et seq.* and in accordance with this Section 5.05.3. The County shall enter into a private party reimbursement agreement for reimbursement of the cost of other improvements that are above VST's fair share that benefit other properties in the UCP area by imposing a condition of payment to VST for any discretionary approvals on benefitting properties.

ARTICLE 6 DEVELOPER OBLIGATIONS REGARDING PROJECT FACILITIES AND INFRASTRUCTURE

Section 6.01 Backbone Infrastructure Phasing Plan. The Project Backbone Infrastructure is planned to be designed and constructed in six (6) phases in accordance with the discussion of infrastructure phasing set forth in the Specific Plan. Phasing of "Backbone" and "Offsite" Infrastructure, construction and dedication of Project Facilities and Infrastructure, and dedications shall be consistent with the Project Approvals.

Section 6.01.1 Development Plan Phasing Plan. The improvements described in the VST Specific Plan Infrastructure Plan and **Exhibit F** attached hereto and incorporated herein constitute the "**Project Backbone and Offsite Infrastructure.**" The Parties acknowledge that further analysis may result in a more cost-effective approach to the provision of such infrastructure

to adequately serve development within the Plan Area, and that they may be revised accordingly by agreement of the Parties.

Section 6.01.2 Phasing Plan. The VST Specific Plan Phasing Plan is discussed in the Specific Plan on pages 37 through 40 (the “**Phasing Plan**”) and attached to this Agreement and incorporated herein as **Exhibit G**.

Section 6.01.3 Phasing Plan Amendments. The Phasing Plan may be amended by agreement of the Parties to take advantage of new technologies, to respond to changes in the underlying land use assumptions, actual absorption and sale of various residential and commercial building types, or for such other reasons as the Parties may agree. Amendments to the Phasing Plan may be considered a “**Minor Amendment**” of the Specific Plan if they meet the criteria set forth in the Plan Administration Chapter of the Specific Plan. If the Phasing Plan is amended there shall be concurrent agreement with the County and Developer on the phasing of the Backbone and Offsite infrastructure.

Section 6.02 Construction and Dedication of Project Facilities and Infrastructure.

Section 6.02.1 Construction and Funding of Project Facilities and Infrastructure by VST. The County may, in any manner consistent with the terms and provisions of this Development Agreement, require VST to construct or fund the construction of any Project Facilities and Infrastructure when needed to satisfy the “**Project Backbone Infrastructure Phasing Plan**,” as set forth in **Exhibit H**.

Section 6.02.2 Oversizing of Project Facilities and Infrastructure.

(a) In addition to requiring VST to construct or fund the construction of Project Facilities and Infrastructure, County may require any Project Facilities and Infrastructure constructed or funded by VST under Section 6.01 above to be oversized to serve projects or areas other than the Project or the Property; provided that:

(i) County shall establish a Financing Mechanism to provide additional funding to VST to finance such oversizing; and,

(ii) County will consider adopting a Specific Plan DIF Fee Program and require, as a condition of any discretionary approvals on benefitting properties reimbursement to VST for the costs associated with VST’s funding or construction of that portion of any such oversized improvements that is attributable to projects or areas other than the Project or the Property.

Section 6.03 Dedications.

Section 6.03.1 VST Dedication. To the extent rights-of-way or other interests in real property owned by VST within the Property are needed for the construction, operation or maintenance of Project Facilities and Infrastructure, VST shall dedicate or otherwise convey such rights-of-way or other interest in real property to City, or as necessary to County. Such rights-of-way shall be dedicated or otherwise conveyed in the widths set forth in the VST Specific Plan.

Section 6.03.2 Free from Liens and Hazardous Materials. Any public improvements constructed by VST and conveyed to City or County, as may be appropriate, and any right-of-way or other real property conveyed to City or County, as may be appropriate, shall be dedicated or otherwise conveyed (i) free and clear of any liens unacceptable to the City or County and (ii) except as otherwise agreed to by City or County, in a condition free of any hazardous materials. Nothing herein shall prevent City's or County's right to pursue a claim against responsible parties under applicable law.

Section 6.04 Cooperation with Respect to Project Facilities and Infrastructure.

Section 6.04.1 Off-Site Improvements. Developer acknowledges that certain off-site improvements are required as part of the Project's conditions of approval and mitigation measures which include, but may not be limited to:

(a) Completion of the northern and southern portions of Campus Parkway in the Plan Area, as well as the northern half of Meyers Gate Road between Lake Road and University, and the southern one-third of Cardella from Golden Bobcat to Lake Road, as shown in Exhibit I attached hereto and incorporated herein. Construction will occur in accordance with the schedule of the "Campus Parkway Connection Right of Way and Improvements" for which VST is responsible.

(b) Water and sewer improvements in Lake Road from Cardella to Bellevue.

Section 6.04.2 Easements and Rights of Way. County and VST acknowledge that in order to construct those Off-Site Improvements, certain easements and rights-of-way not currently owned or controlled by County or VST may need to be acquired. County shall acquire the off-site easements and rights of way necessary for the completion of Campus Parkway. With regard to any other easements or rights of way necessary for construction of the Off-Site Improvements, VST shall exhaust all reasonable efforts and diligently pursue acquisition of such necessary easements and/or rights of way within one hundred and eighty (180) days of commencement of the acquisition process and obtain an order for immediate possession as may be necessary. For purposes of this Section, the term "**reasonable efforts**" shall include proof that VST has made a commercially reasonable written offer to purchase the property interest at fair market value, in accordance with an appraisal conducted by an MAI appraiser.

Section 6.04.3 Eminent Domain. If after exercising reasonable efforts VST is unable to acquire the necessary easements and/or rights of way, the County, upon written request of VST, may either: (1) require VST to construct functionally equivalent alternative improvements to those previously approved, provided such alternative improvements are equally or more effective in addressing the impact that the improvement was intended to address; or (2) pursue acquisition of the real property interests by means of eminent domain. County and VST acknowledge that eminent domain is a discretionary process and the County cannot commit to its use unless and until all appropriate notifications, hearings and proceedings have been undertaken. If the County chooses to pursue acquisition of the real property interests by means of eminent domain, the County shall take all reasonable steps necessary towards that endeavor, including undertaking appraisals, noticing property owners, noticing and holding required public hearings

and meetings, and following any other procedures required for pre-judgment possession and VST shall pay all costs reasonably incurred by the County related to, arising from, or associated with such acquisition or condemnation proceedings, including but not limited to, attorneys' fees, expert witness fees, settlement costs, and jury awards of any kind. In addition, VST shall indemnify, defend and hold County harmless from and against any and all claims, liabilities or causes of action of any kind associated with County's acquisition of such real property interests, excluding therefrom any claims, liabilities or causes of action arising from County's gross negligence or willful misconduct.

If and to the extent this section demands more of VST than does Section 66462.5 of the Subdivision Map Act, this section shall apply in addition to the Developer's obligations under the Subdivision Map Act. This requirement shall be included, and, if necessary, detailed, in any subdivision improvement agreement entered into between the Developer and the County pursuant to Government Code section 66462.

Section 6.04.4 Commencement of Construction. Upon acquisition of the necessary interest in land, or upon obtaining right of entry, either by agreement or court order, VST shall commence and complete the Off-Site Improvements as contemplated in the Project Approvals.

ARTICLE 7 OTHER COMMITMENTS OF COUNTY AND VST

Section 7.01 Mutual Cooperation for Other Governmental Permits. VST shall be responsible to apply to other governmental or quasi-governmental agencies for necessary permits and approvals for development and use of the Property (e.g., agencies having jurisdiction over water supply; wastewater treatment, reuse and disposal; access to the Property; wetlands-related and other biological issues), and County will assist in these efforts to the extent required by the agencies having jurisdiction. County and VST each shall take any and all actions as may be necessary or appropriate to process successfully such permits and approvals, provided such permits and approvals are consistent with the VST Specific Plan and agreed by the County and VST to be reasonably necessary or desirable for the construction, maintenance or operation of the Project.

Section 7.02 Timing of Development.

Section 7.02.1 Timing Requirements.

(a) VST shall comply with the terms and conditions of the Project Approvals and this Development Agreement. The Parties acknowledge that the rate at which phases of the Project develop depends upon numerous factors and market conditions that are not entirely within VST's or the County's control such as market demand, interest rates, absorption rates, completion schedules, availability of labor, and other factors. The Parties wish to avoid the result of *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties therein to consider and expressly provide for the timing of development resulted in the court's determination that a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties acknowledge that VST shall have the right to develop the Project at such time VST deems appropriate in the exercise of its subjective business judgment except as provided in this section below and the County shall not attempt to limit or

restrict the timing of development of the Project except in accordance with the terms of this Development Agreement.

(b) VST shall complete the Backbone and Offsite Infrastructure for the Project and in the sequence depicted in **Exhibit F**, including the installation of those certain improvements required under either the VST Specific Plan or Final SEIR. Notwithstanding the foregoing, VST may proceed with the development of any portion of the Project, or make any financial commitment associated with any such development when, in VST's sole and absolute discretion, VST determines that it is in VST's best financial or other interest to do so. The foregoing sentence shall not, however, limit any obligation of VST under this Development Agreement with respect to any development activities that VST chooses to undertake hereunder.

(c) VST shall pursue buildout of the Project in conformance with the Specific Plan Phasing Plan. The Parties acknowledge that, except as expressly required by Section 1.03.1(a)(2), the actual timing of buildout will vary from year to year due to a variety of factors such as market demand, economic conditions, etc.

Section 7.03 Dedication of Park Lands. VST shall dedicate and develop parkland in excess of that ordinarily required by the County. VST shall provide at least 97.8 acres of public parks (the "**Public Parks**") as part of the Project, or at a rate of at least 6 acres per 1,000 persons. Developer shall construct two community parks, 39 pocket parks and miniparks, a Community Recreation Center, and a Regional Sports Park as part of the Public Parks described on page 5 of the Specific Plan. The Public Parks shall be developed in a manner consistent with Table 10 of the VST Specific Plan. Notwithstanding the foregoing, County shall compensate VST for certain land dedications and in the amounts specified in the Specific Plan, including such amounts determined for the fair market value of the right of way for Campus Parkway as set forth in Table 10 of the Specific Plan. County shall reimburse VST for the dedication of Park Land required as part of VST's construction of certain community and neighborhood park facilities in accordance with the amounts specified in Table 12 of the Specific Plan.

Section 7.04 Dedication of Open Space. To meet the open space objectives of the UCP Update and VST Specific Plan, VST shall dedicate 15.5 acres of linear parks and trails in accordance with the Specific Plan as set forth on page 5.

Section 7.05 Schools. The Merced County Office of Education ("**MCOE**") has acquired a 15-acre site for a K-8 public school designed to accommodate up to 950 students. MCOE has reserved the school site for MCOE to determine an eligible school district to use the school site. The K-8 school site is located in Phase 1E of the VST Project and shall be conveyed at fair market value to a school district in adequate time to accommodate an initial enrollment of at least 600 students. MCOE has also reserved a 5-acre site at the southwest corner of Center Street and Meyers Gate Road for a Merced Scholars Charter School that will be operated by MCOE as a university preparatory school for up to 300 students as further described on page 29 of the Specific Plan. No additional school facilities shall be required for the Project. Developers shall pay customary school district school mitigation fees as mitigation for school impacts.

Section 7.06 Affordable Housing and Workforce Housing and Related Programs. VST shall provide affordable housing for the Project in accordance with the "**Affordable Housing**

Plan” attached hereto and incorporated herein as **Exhibit J**. VST shall also provide workforce housing and shall implement the local preference “**UC Workers First**” program, owner occupancy restrictions and down payment assistance program as described in **Exhibit J**. In order to achieve the objectives of the Affordable Housing Plan in **Exhibit J** the County agrees to process density bonus applications in conformance with State Density Bonus Law and County Code Chapter 18.66. This density bonus shall be assigned to the remaining 42.4-acre R-4 portion of the development. This density bonus shall be in addition to project-specific density bonuses, up to an overall maximum of 35 percent for the R-4 development. Project-specific density bonuses are proposed for the Mixed Use Village Center, with 25 Very Low Income units proposed for a 50% density bonus, and 50% density bonus on the 10.7 acres of land dedicated for the 300 Extremely Low, Very Low and Low Income units.

Section 7.07 Energy.

Section 7.07.1 Energy Conservation and Climate Action Plan. VST shall implement solar PV energy generation for 100 percent of onsite residential electrical demand as described in Section 13 of the Development Plan and evaluated on page 2-25 and 3.8-19 of the Draft SEIR. The Project shall also include energy efficiency standards in excess of the current Building Code as set forth on page 3.1-11 of the Draft SEIR.

Section 7.07.2 Sustainability Features. Developer shall provide sustainability features including solar electric panels, integrated power outlets for electric vehicles and electric bicycles, and work-at-home options with high-speed internet connectivity as described in Section 13 of the Development Plan and pages 2-25 and 3.1-20 of the Draft SEIR.

Section 7.08 Water.

Section 7.08.1 SGMA. VST shall comply with the California Water Code and the regulations imposed by the City before or after the Effective Date in its capacity as the Groundwater Sustainability Agency pursuant to the Sustainable Groundwater Management Act (“SGMA”). The VST project shall include water conservation features as described in Section 13.3 of the Specific Plan and on page 3.1-19 of the Draft SEIR to achieve a residential water consumption rate of 100 gallons per day per person or less.

Section 7.08.2 SGMA. VST shall install water system improvements necessary to serve the Project as shown in the “**Water System Master Plan**” attached hereto and incorporated herein as **Exhibit K**.

Section 7.08.3 Reservation of Water Rights. Except as otherwise provided, VST reserves all groundwater or other water rights with respect to the unsubdivided portion of the Property and shall be entitled to irrigate agricultural or open space land with groundwater from onsite wells, to the extent that such reservation and action does not violate Applicable Law and so long as such water meets or exceeds all applicable water quality standards. With respect to the subdivided portion of Property developed pursuant to the Project Approvals, VST shall have the right to convey any water rights to successors in interest necessary to develop the Project.

Section 7.08.4 Storm Drain Facilities. Before approval of a Final Subdivision Map or building permit for a use that does not require a map, VST shall cause to be provided storm

drain facilities adequate to accommodate the storm water runoff from the area subject to the Final Subdivision Map or building permit, in compliance with County's Drainage Manual, and the University Community Plan's stormwater management and infrastructure policies.

Section 7.09 Fire Station and Police Substation. VST shall dedicate 0.71-acre Lot 8 of the large lot conveyance map for a Fire Station and a Police Substation located in Phase 1A and east of Campus Parkway on Virginia Smith Parkway. VST shall provide public utilities to the site, including road frontages and utility stubs in accordance with the Specific Plan. (Specific Plan, p. 37.)

Section 7.10 Traffic and Circulation Improvements. VST shall construct or fund the traffic and circulation improvements as identified in the Final SEIR, the VST Specific Plan and Development Plan. County and VST acknowledge that these improvements are necessary to mitigate project impacts, improve access to and from the Project, relieve existing or future traffic deficiencies, and bring such intersections into compliance with the County and City General Plan policies in advance of impacts associated with the Project.

Section 7.10.1 Campus Parkway Improvements. VST shall, at its own expense and without reimbursement from County, construct the portion of Segment 4 of Campus Parkway which is on the Property from the northern VST property line to the southern VST property line, as illustrated in Exhibit L attached hereto and incorporated herein by reference. VST shall construct "Phase 1" of Campus Parkway on the VST property in conjunction with the development of Phase 1A of the Specific Plan, which shall include the full road and improvement section in Phase 1A, the three roundabouts (subject to County acquisition of right of way from UC and Hunt), and the median and No. 1 through lanes on Phase 1B. VST Campus Parkway Phasing shall occur in accordance with Exhibit L.

No later than June 30, 2028, County shall construct a minimum of two additional through lanes on the Campus Parkway segment 4 located on the Hunt and the UC Merced properties, and the Lake Road cul-de-sac north of Meyers Gate Road, subject to County acquiring the rights of way and constructing the improvements necessary to connect the VST portion of Campus Parkway to the Hunt and UC Merced properties.

Section 7.10.2 Campus Parkway Road Improvement Standards. VST shall construct Campus Parkway roadway improvements as approved by the County Director of Public Works or City Engineer, depending on whether the Property has been annexed at the time of plan approval. With respect to Campus Parkway Segment 4 through the VST Project, the County agrees to the following design requirements consistent with the Specific Plan and Exhibit M, "**Campus Parkway South Design Speed**," dated September 21, 2023, attached hereto and incorporated herein:

- (i) Horizontal alignment as previously established;
- (ii) Roundabouts that comply with NHCRP 1043 at the following intersections with Campus Parkway:
 - (a) Meyers Gate Road

- (b) Virginia Smith Parkway
- (c) Cardella Road
- (iii) Right turn only at the intersection of Campus Parkway and University Avenue;
- (iv) Design Speed of 35 miles per hour; Application of City standards to create an urban context to the extent feasible by law; and
- (v) Approximately 107-foot right of way (ROW) width as identified in the VST Specific Plan.

County will refer the improvement plans to the City for review and comment for compliance with City design standards. County reserves the right to confirm the appropriate geometric design standards for the roundabouts at Campus Parkway and Meyers Gate Road and Campus Parkway and Cardella Road as part of the development process as consistent with the Specific Plan roadway design standards for Campus Parkway.

Section 7.10.3 Satisfaction of Campus Parkway Fair Share Obligations. The Parties agree that construction of the full portion of Campus Parkway by VST on the VST Property satisfies VST's fair share obligations for the construction of any Campus Parkway improvements. VST shall be entitled to reimbursement from DIFs for dedicating the right of way necessary for completion of the Campus Parkway improvements that benefit other properties in the UCP area. Notwithstanding the foregoing, in the event development occurs in the County, then County agrees to include VST's cost of its excess contribution to Campus Parkway improvements, as determined by a nexus study, in the DIFs or to establish another mechanism for this reimbursement. The Parties further agree that VST's construction responsibilities will be limited to the onsite portion of Campus Parkway. Notwithstanding the foregoing, VST shall be responsible for the construction of any frontage improvements on the VST Property specified in the Specific Plan from Cardella to Meyers Gate Road. VST shall make improvements to Lake Road across its frontage (Meyers Gate Road to Cardella) as described in the Specific Plan, but shall not be responsible for any improvements to Lake Road that are not along its frontage.

Section 7.11 Bicycle and Multimodal Transportation Improvements. VST shall construct or fund the "**Bicycle and Multimodal Transportation Improvements**" as established in the Final SEIR and Development Plan as further described in Exhibit N attached hereto and incorporated herein.

Section 7.12 Miscellaneous.

Section 7.12.1 Master HOA and Covenants, Conditions, and Restrictions (CC&Rs). Developer shall form a Master Homeowners Association (the Master HOA) for the purpose of design review, financing and operating the community recreation center, and as a governance entity to interface with the County. Special HOA subcommittees shall be formed for design review, parks maintenance and operation, and recreation programs at the community recreation center. The Master HOA shall own and operate the community recreation center (but

not the adjacent park) for the benefit of project residents. County agrees that the sole responsibility of the Master HOA will be for the maintenance and operation of the community recreation center; *provided, however*, that the Master HOA shall have the right but not the obligation to perform parks and landscaping maintenance in the event that the CFD is dissolved by the district voters, or if the district voters are dissatisfied with the maintenance of the facilities. County shall consult with the Master HOA each year regarding the adequacy of such maintenance and operation.

Prior to County approval of a Final Map or issuance of a building permit for a land use that does not require a final map, the CC&R disclosure statement shall be provided to County Counsel for review and approval.

Section 7.12.2 Ownership and Maintenance of Public Improvements and Facilities. The County and Developer agree that there shall be no or limited reliance on the HOA to maintain public facilities, except where there is private Common Area that cannot be maintained by a Mello Roos District, Landscaping and Lighting Act Assessment District, or other mechanism.

Section 7.12.3 Public Utilities Easements. All land subject to public utilities easements (PUEs); public water, sewer, or storm drain easements; and public access easements shall be open and accessible to the County at all times.

Section 7.12.4 Design Review of Major Surface Facilities. Design Review shall be completed for all major surface public facilities for which it is required before construction.

Section 7.12.5 Design and Construction Standards for Sewer and Water Facilities. All sewer and water facilities shall conform to the City of Merced Design and Construction Standards in effect for the Project as they exist on the date of approval of the VTM. The submittal shall include all pertinent engineering analysis and design calculations.

Section 7.12.6 Establishment of Community Foundation. Prior to the recordation of the first Parcel Map or first Final Map, County agrees to cooperate with VST, as and if necessary, to establish and adopt through master conditions, covenants and restrictions for all Specific Plan properties and levy a Community Educational Enhancement Fee on property sales and resales (including residential and commercial property) in the VST Plan Area equal to 0.375% of the sales price, or an equivalent fixed fee per unit (the “**Community Educational Enhancement Fee**”). The Community Educational Enhancement Fee shall be payable to the Merced County Office of Education Foundation for the provision of childhood education and enrichment, scholarships for Merced College, vocational certificate programs, employee training programs, and other activities that may not be eligible under the VST or CST scholarship programs, and shall provide funding for MCOE Foundation’s STEM program, MCOE Foundation’s Camp Green Meadows program, performing arts program, and funding for the MCOE “University” charter schools that are planned for the VST site.

ARTICLE 8 CONSIDERATION OF PERMITS AND APPROVALS

Section 8.01 In General.

Section 8.01.1 Review and Action Generally. Upon VST’s submission of any complete application for an Approval together with any fees permitted under Article 5 and required

by County in accordance with Applicable Law, County shall use its best efforts to commence and complete promptly and diligently all steps necessary to act on the application. VST promptly shall provide to County all information reasonably requested by County for its consideration of any such application.

Section 8.01.2 Applicable Law. Except as otherwise specifically provided in this Article 8, all applications for Approvals submitted by VST shall be considered by County in accordance with Applicable Law. To the extent an approval would amend Applicable Law as set forth in Section 4.01.1, the aspect of Applicable Law to be amended by the approval shall not apply to the County's consideration of the application.

Section 8.02 General Plan and UCP Amendments. The parties anticipate that VST may request amendments to the General Plan or the UCP to respond to changing circumstances and conditions. County is not obligated to approve any such application and may, in the exercise of its legislative discretion, approve, deny or propose conditions or modifications thereto, including conditions or modifications that might otherwise be prohibited by the vested rights provided by this Development Agreement. VST shall be afforded a reasonable opportunity to review any such proposed conditions and modifications and to withdraw its application for a General Plan amendment or UCP amendment (in which case neither VST's proposed amendments nor the County's proposed modifications shall become effective).

Section 8.03 CEQA Compliance. When conducting an environmental review of any application for an Approval, County shall review the MMRP to determine if any mitigation measure contained in the MMRP as to the portion of the Property subject to this Development Agreement should be incorporated into the design of, or added as a condition of approval to, such Approval.

Section 8.04 Life of Approvals. Any Approval issued by County, including vesting maps as defined in Section 8.05 below, shall continue in effect until the Termination Date.

Section 8.05 Vesting Maps. The ordinances, standards and policies applicable to any vesting tentative map, vesting parcel map, vesting subdivision map or any other type of vesting map ("**Vesting Map**") under California Government Code section 66474.2, and the ordinances, policies and standards vested under any Vesting Map pursuant to California Government Code Section 66498.1(b) shall be those established as Applicable Law under this Agreement. If this Development Agreement terminates before the expiration of any Vesting Map or the vested rights provided thereby, such termination of this Development Agreement shall not affect VST's right to proceed with development under such Vesting Map in accordance with the ordinances, policies and standards so vested under the Vesting Map. Notwithstanding the foregoing, no Vesting Map shall extend Applicable Law beyond the Term of this Development Agreement (and the rules, regulations and official policies of the County applicable to that portion of the Property covered by such Vesting Map shall become those in effect as of the expiration of such term) except as otherwise agreed by County and VST; *provided, however*, that County and VST may agree to an extension of the Term of this Development Agreement with respect to the area covered by any such Vesting Map.

Section 8.06 Need for Flexibility. The provisions of this Development Agreement require a close degree of cooperation between the County and VST. Implementation of the Project may require minor modifications of the details of the Development Plan and affect the performance of the Parties to this Development Agreement. The anticipated refinements of the Project and the development of the Property may require that appropriate clarifications and refinements are made to this Development Agreement and the Project Approvals with respect to the details of the performance of the County and the Developer. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Development Agreement.

ARTICLE 9 AMENDMENTS

Section 9.01 Amendments of Agreement.

Section 9.01.1 General. This Development Agreement may be amended from time to time only upon the mutual written consent of County and Developer and in compliance with, as applicable, Section 18.148.070 of the County Code; *provided, however*, that in connection with the transfer of any portion of Developer's Rights and/or Obligations under this Development Agreement to another person, entity, or organization pursuant to the provisions of Article 11 below, Developer, such transferee and County may agree that the signature of such transferee may be required to amend this Development Agreement insofar as such amendment would materially alter the Rights and/or Obligations of such transferee hereunder. In no event shall the signature or consent of any "Non-Assuming Transferee" (as defined in Section 13.03 below) be required to amend this Agreement.

Section 9.01.2 Future Approvals Do Not Require Amendments to Agreement. Except as the Parties may otherwise agree, no amendment of this Development Agreement shall be required in connection with the issuance of any Approval, or an amendment to the MMRP. Any Approval issued after the Effective Date as to a portion of the Property shall be incorporated automatically into this Development Agreement and vested hereby. County shall not, however, amend or issue any Approval unless VST requests such an amendment or issuance from County unless otherwise permitted by this Agreement.

ARTICLE 10 MITIGATION MONITORING AND REPORTING PROGRAM EVALUATION; DEVELOPMENT AGREEMENT REVIEW

Section 10.01 Mitigation Monitoring and Reporting Program Evaluation.

Section 10.01.1 In General. During its Annual Review, the County Community and Economic Development Director shall evaluate whether the mitigation measures adopted by County in connection with its approval of the Project Approvals are being implemented as set forth in the MMRP (the "**MMRP Evaluation**").

Section 10.01.2 MMRP Implementation. As set forth in the MMRP, County shall consider in connection with any application for an Approval the extent to which mitigation measures described in the MMRP should be incorporated into the design of the project under consideration or set forth in conditions to the County's approval of the application. During an MMRP Evaluation, the County shall evaluate its overall success over the prior year in implementing such mitigation measures, as set forth above.

Section 10.01.3 Enforcement. VST shall be responsible only for those mitigation measures the County requires to be incorporated into the design of the Project, including those that are attached as conditions to any Approval. Failure to comply with any such design requirement or any condition of approval shall be enforced in any manner authorized by Applicable Law.

Section 10.02 Development Agreement Review. The County Community and Economic Development Director shall review this Development Agreement annually as required by Section 18.148.080 of the County Code (the “**Development Agreement Annual Review**”). The Development Agreement Review shall be conducted concurrently with MMRP Evaluation, pursuant to Article 10 and this Section 10.02. In connection with the Development Agreement Review, VST shall provide information as reasonably requested by County.

ARTICLE 11 DEFAULT, REMEDIES, TERMINATION OF DEVELOPMENT AGREEMENT

Section 11.01 Defaults.

Section 11.01.1 Notice and Cure. Any failure by a Party to perform any term or provision of this Agreement, which failure continues uncured for 60 days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any such notice shall specify the nature of the alleged failure and, where appropriate, how such alleged failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within 60 days, then commencement of the cure within that time, and diligent prosecution to completion of the cure thereafter, shall be timely. If the alleged failure is cured, then no default shall exist and the noticing Party shall take no further action and acknowledge the cure in writing to the other Party. If the alleged failure is not cured, then a default shall exist under this Development Agreement and the noticing Party may exercise any of the remedies available under Sections 11.02 through 11.04 below. No failure or delay in giving notice of default shall constitute a waiver of default; *provided, however*, that the provision of notice and opportunity to cure is a prerequisite to the enforcement or correction of any default.

Section 11.01.2 Actions during Cure Period. During any cure period specified under Section 11.01.1 and before delivery of a notice of failure or default, the Party charged shall not be considered in default of this Agreement. If there is a dispute as to the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter, pending its resolution or formal termination of the Agreement. County shall continue to process in good faith applications for Approvals during any cure period, but need not approve any such application if it relates to a development project as to which there is an alleged default hereunder.

Section 11.02 Remedies of Non-Defaulting Party.

Section 11.02.1 In General. If any Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) in County’s case, pursue administrative remedies as provided in Section 11.02.3 below, (iii) pursue judicial remedies as

provided for in Section 11.02.4 below; and / or (iii) terminate this Development Agreement as and to the extent permitted by Section 11.03.4 below and consistently with Section 18.148.080(G) of the County Code. In no event shall County modify this Development Agreement as a result of a default by a defaulting Party except in accordance with the provisions of Section 9.01 above.

Section 11.02.2 Severability of Default. County acknowledges that the development of the Project may be carried out by more than one person, entity or organization under this Development Agreement (e.g., portions of VST's interest in the Property and this Development Agreement may be transferred to another person, entity or organization, a "Transferee" under Article 13 below). Accordingly, (i) if County determines to terminate or exercise any other remedy under this Development Agreement due to a default by VST or any Transferee (hereinafter "**Defaulting Developer**"), such termination or other remedy shall apply only with respect to the Rights and Obligations of such Defaulting Developer, (ii) County shall, to the extent possible, refrain from seeking any termination of this Development Agreement or other remedy if such remedy would affect materially the ability of a non-defaulting Developer and / or a Transferee (hereinafter "**Non-Defaulting Developer**") to realize the Rights provided hereunder, and (iii) any termination of this Development Agreement as to any Defaulting Developer shall be deemed to terminate only those Rights and Obligations arising hereunder between County and such Defaulting Developer. The Parties acknowledge and agree that, in accordance with Article 13 below, more than one Transferee may be responsible for certain actions required or forbidden by this Agreement, and that more than one Transferee therefore may be in default with respect thereto. The Parties further acknowledge and agree that, notwithstanding the provisions of (ii) in this Section above, in certain instances it may not be possible for County to exercise remedies against the Defaulting Developer of one portion of the Project without affecting in some way a Non-Defaulting Developer of the same or of some other portion of the Project.

Section 11.02.3 Administrative Remedies. Except as otherwise specifically stated in this Development Agreement, County may exercise any and all administrative remedies to the extent necessary or appropriate to secure compliance with this Agreement. Such administrative remedies may include, among others, withholding building permits, certificates of occupancy or other Approvals relating to that portion of the Project in default of this Agreement.

Section 11.02.4 Judicial Remedies. Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, enforce by specific performance the Obligations and Rights of the Parties hereto or obtain any other remedy consistent with this Agreement; *provided, however*, that in no event shall any person be entitled hereunder to monetary damages for any cause, including breach of contract by a Party to this Agreement; *provided, however*, that County may enforce payment obligations under Applicable Law, including this Agreement. Nothing in this section shall be deemed to limit either Party's rights under the Government Claims Act, Government Code Section 810, *et seq.* For purposes of instituting a legal action under this Agreement, any County Board of Supervisors determination under this Development Agreement shall be deemed final agency action unless expressly stated otherwise.

Section 11.03 Termination Due to Default.

Section 11.03.1 In General. Either Party may terminate this Development Agreement pursuant to Section 11.04.2 below and Section 18.148.070 of the County Code in the event of a default by the other Party, provided: (i) such default is prejudicial to the interests of the non-defaulting Party and is neither minor nor technical and (ii) in the case of any termination by County, County first shall have exercised any and all administrative or other remedies short of filing suit available to secure VST's compliance with this Agreement. Notwithstanding (ii) of this Section above, County shall not be required, as a prerequisite to initiating the termination of this Agreement, to exercise its administrative and other non-judicial remedies for more than 180 days or, if the Parties are making reasonable progress towards resolution of the matter claimed to be a default hereunder, such longer period to which the Parties may agree. Termination of this Development Agreement by VST or a Transferee as to any portion or portions of the Property shall not affect the Rights or Obligations of VST or any other Transferee as to any other portion or portions of the Property.

Section 11.03.2 Procedures for Termination. Before any proposed termination of this Development Agreement pursuant to this Section 11.04, and following the 180-day period specified in Section 11.04.1 above to the extent applicable, a non-defaulting Party intending to seek termination of this Development Agreement shall deliver to the defaulting Party (or Parties) a written "Preliminary Notice of Intent to Terminate" this Agreement, and all Parties shall meet and confer in good faith effort to agree upon an alternative to termination that will afford the non-defaulting Party the benefit of its bargain in this Agreement. If those discussions are not successful in resolving the dispute, the non-defaulting Party desiring to terminate this Development Agreement shall deliver to the defaulting Party a written "Final Notice of Intent to Terminate" this Agreement.

Section 11.03.3 Notice of Intent. Within 60 days after the County delivers a Final Notice of Intent to Terminate to a defaulting Party, the Board of Supervisors shall review the matter as set forth in California Government Code Sections 65865, 65867, and 65868 and Section 18.148.080 and Chapter 18.146 of the County Code. Termination shall be effective 30 days after such Board of Supervisors review, unless the default is sooner resolved to the mutual satisfaction of the Parties.

Section 11.03.4 Termination. Within 60 days after VST delivers a Final Notice of Intent to Terminate to County, the County shall consider whether County should take any further curative action. Termination shall be effective 30 days following such Board of Supervisors consideration (or 90 days following delivery by VST of a Final Notice of Intent to Terminate if the Board of Supervisors fails to complete its consideration by that date), unless the default is sooner resolved to the mutual satisfaction of the Parties.

ARTICLE 12 INTENTIONALLY OMITTED

ARTICLE 13 ASSIGNMENT, TRANSFER AND NOTICE

Section 13.01 Assignment of Interests, Rights and Obligations. VST may transfer or assign ("**Transfer**") all or any portion of its Rights and Obligations under this Development

Agreement as to any portion of the Property (the “**Transferred Property**”) to any person acquiring an interest in such Transferred Property, including, without limitation, purchasers or ground lessees of lots, parcels or facilities on such portion of the Property (a “**Transferee**”). Any such Transfer shall relieve the transferring party (a “**Transferor**”) of any and all Rights and Obligations under this Development Agreement insofar as they pertain to the Transferred Property, as provided in this Article 13.

Section 13.02 Transfers In General.

Section 13.02.1 In General. In connection with any Transfer of all or any portion of the Project or the Property, other than a transfer or assignment to a “Non-Assuming Transferee” as described in Section 13.03 below, or a “Mortgagee” as defined in Section 14.01 below, the Transferor and the Transferee may enter into a written agreement regarding their respective Rights and Obligations in and under this Development Agreement (a “**Transfer Agreement**”). Any such Transfer Agreement may contain provisions: (i) releasing the Transferor from any Rights and Obligations under this Development Agreement that relate to the Transferred Property, provided the Transferee expressly assumes all such Rights and Obligations, (ii) transferring to the Transferee rights to improve the portion of the Property transferred and any other Rights and Obligations of the Transferor arising under this Agreement, and (iii) addressing any other matter deemed necessary or appropriate in connection with the Transfer.

Section 13.02.2 County Review of Release Provisions. A Transferor shall have the right, but not the obligation, to seek County’s consent to those provisions of any Transfer Agreement purporting to release such Transferor from any Rights and Obligations arising under this Development Agreement (the “**Release Provisions**”). If a Transferor fails to seek County’s consent or County does not consent to any such Release Provisions, then such Transferor may nevertheless transfer to the Transferee any and all Rights and Obligations of such Transferor arising under this Development Agreement (as described in Sections 13.02.1(i) and (ii) above) but, with respect to County, shall not be released from those Rights and Obligations described in the Release Provisions to which County has not consented. If County consents to any Release Provisions, then: (i) the Transferor shall be free from any and all Rights and Obligations accruing on or after the date of any Transfer with respect to those Rights and Obligations described in such Release Provisions and (ii) no default hereunder by Transferee with respect to any Rights and Obligations from which the Transferor has been released shall be attributed to the Transferor, nor may such Transferor’s rights hereunder be canceled or diminished in any way by any such default. County may consent, or conditionally consent, to all, none, or some of the Release Provisions.

Section 13.02.3 County Consent to Release. County shall review and consider promptly, reasonably and in good faith any request by a Transferor for County’s consent to any Release Provisions. County’s consent to any such Release Provisions may be withheld only if: (i) reliable evidence supports a conclusion that the Transferee will be unable to perform the Rights and Obligations proposed to be assumed by the Transferee pursuant to the Transfer Agreement, (ii) the Rights and Obligations are not reasonably allocable among particular portions of the Project and Property, such as the Transferred Property, (iii) the Transferor or Transferee fails to provide acceptable security, as and if reasonably requested by County, to ensure the performance of the Rights and Obligations proposed to be assumed by the Transferee pursuant to the Transfer Agreement, or (iv) the Transferor or Transferee fail to provide information reasonably requested

by the County to assist it in making the determinations described in this paragraph. In no event shall County unreasonably withhold consent to any Release Provisions. County shall respond within 30 days to any request by a Transferor for consent to any Release Provisions.

Section 13.02.4 County Refusal to Release. Subject to the provisions of subsection (b) above, because and to the extent certain obligations arising under this Development Agreement may not reasonably be allocable among portions of the Project, County may refuse to release the Transferor of one portion of the Project from such Rights and Obligations under this Development Agreement even though the Rights and Obligations are being or have been assumed by the Transferee of some other portion of the Project.

Section 13.03 Non-Assuming Transferees. Except as otherwise required by a Transferor, the Obligations of a Transferor shall not apply to any purchaser of any property that has been established as a single legal parcel for nonresidential use that does not require any further on-site or off-site infrastructure. The Transferee in such a transaction and the successors and assigns of such a Transferee (“**Non-Assuming Transferees**”) shall be deemed to have no Obligations under this Agreement, but shall continue to benefit from the Rights provided by this Development Agreement for the duration of its term. Nothing in this section shall exempt any Transferred Property transferred to a Non-Assuming Transferee from payment of applicable fees, taxes and assessments or compliance with applicable conditions of an Approval or with Applicable Law.

Section 13.03.1 County Transfer of Obligations to City. Upon Annexation, the County’s obligations shall transfer to the City with respect to the vested rights for VST to develop the Project. Notwithstanding the foregoing, County shall be obligated to complete any and all obligations with respect to the construction of the Campus Parkway improvements set forth in Section 7.10 of this Agreement.

ARTICLE 14 MORTGAGEE PROTECTION

Section 14.01 In General. The provisions of this Development Agreement shall not limit VST’s right to encumber the Property or any portion thereof, or any improvement thereon by any mortgage, deed of trust or other device securing financing with respect to such portion. County acknowledges that lenders providing such financing and other “Mortgagees” (defined below) may require certain interpretations and modifications of this Development Agreement and agrees upon request, from time to time, to meet with VST and representatives of such lenders to negotiate in good faith any such request for an interpretation or modification. County shall 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 Agreement. Any person holding a mortgage, deed of trust or other security instrument on all or any portion of the Property made in good faith and for value (each, a “**Mortgagee**”), shall be entitled to the rights and privileges of this Article 14.

Section 14.02 Impairment of Mortgage or Deed of Trust. Except as otherwise specifically stated in the terms of any security instrument held by a Mortgagee, no default under this Development Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made, or other interest in the Property acquired, by any Mortgagee in good faith and for value.

Section 14.03 Notice of Default to Mortgagee. If a Mortgagee has submitted a written request to County as specified herein for notice, County shall use its best efforts to provide to such Mortgagee written notification of any failure or default by VST in the performance of VST's obligations under this Agreement, which notification shall be provided to such Mortgagee when such notification is delivered to VST.

Section 14.04 Right of Mortgagee to Cure. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by VST during the cure period allowed VST under this Agreement, plus an additional 90 days if, to cure such failure or default, the Mortgagee must obtain possession of the property as by seeking appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure any such failure or default shall provide written notice to County of that fact; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

Section 14.05 Liability for Past Defaults or Obligations. Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof, shall take such property subject to the Rights and Obligations of this Development Agreement and in no event shall any such property be released from any Obligations. Nothing in this Article 14 shall prevent County from exercising any remedy it may have for a default under this Agreement; *provided, however*, that in no event shall such Mortgagee be liable personally for any defaults or monetary obligations of VST arising before such Mortgagee acquires or possesses such property.

ARTICLE 15 GENERAL PROVISIONS

Section 15.01 Incorporation of Recitals and Exhibits. The Recitals set forth above and the Exhibits A - N attached hereto are incorporated herein as though set forth in full.

Section 15.02 Project is a Private Undertaking. The development VST proposes to undertake is a private development, and VST shall exercise full dominion and control over the Project subject only to VST's limitations and Obligations contained in this Agreement.

Section 15.03 Cooperation in the Event of Legal Challenge.

Section 15.03.1 In General. If any person not party to this Development Agreement institutes any administrative, legal or equitable action or other proceeding challenging the validity of any provision of this Agreement, any Approval or the sufficiency of any review of this Development Agreement or any Approval under CEQA (each a "**Third-Party Challenge**"), the Parties promptly shall meet and confer as to the most appropriate response to such Third-Party Challenge; *provided, however*, that any such response shall be consistent with Sections 15.03.2 and 15.03.3 below.

Section 15.03.2 Tender to and Conduct of Defense by VST. VST shall indemnify County against any and all fees and costs arising out of the defense of such Third-Party Challenge. VST shall cooperate with County in the defense and / or settlement of such Third-Party Challenge and VST may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith; *provided, however*, that VST shall seek and secure County's consent to any

settlement of such Third-Party Challenge, which consent shall not unreasonably be withheld or delayed.

Section 15.03.3 Defense by County. If VST should fail to accept County's tender of defense as set forth in Section 15.03.2, County shall defend such Third-Party Challenge and control the defense and/or settlement of such Third-Party Challenge as County decides (in its sole discretion), and County may take any and all actions it deems necessary and appropriate (in its sole discretion) in connection therewith; *provided, however*, that County shall seek and secure VST's consent to any settlement of such Third-Party Challenge, which consent shall not unreasonably be withheld or delayed. VST shall indemnify County against any and all fees and costs arising out of the County's defense of such Third-Party Challenge. Notwithstanding the foregoing, if VST determines for any reason that it no longer intends to develop the Project, then it may deliver notice of such determination to County and shall not be liable for any defense costs incurred by County more than 90 days following the delivery of such notice.

Section 15.04 Defense and Indemnity. VST shall defend and indemnify County from and against any and all damages, claims, costs and liabilities arising out of the personal injury or death of any person, or damage to the property of any person, to the extent such damages, claims, costs or liabilities result from the construction of the Project by VST or by VST's contractors, subcontractors, agents or employees, except as caused by the negligence or willful misconduct of County, its officers, employees, contractors, consultants or agents. Nothing in this Section 15.04 shall be construed to mean that VST shall defend or indemnify County from or against any damages, claims, costs or liabilities arising from, or alleged to arise from, activities associated with the maintenance or repair by County or any other public agency of improvements that have been offered for dedication and accepted by County or such other public agency. County and VST may from time to time enter into subdivision improvement agreements, as authorized by the Subdivision Map Act, which agreements may include defense and indemnity provisions different from those contained in this Section 15.04. If any conflict appears between such provisions in any such subdivision improvement agreement and the provisions set forth above, the provisions of such subdivision improvement agreement shall prevail.

Section 15.05 Governing Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any dispute arising under this Agreement lies in the County of Merced and VST hereby consents to personal jurisdiction there for that purpose. The Parties will cooperate to facilitate venue for any Third-Party Challenge set forth in Section 15.03 above in Merced County. The terms and provisions of this Section 15.05 shall survive any termination of this Agreement.

Section 15.06 Force Majeure. Performance by any Party of its Obligations hereunder shall be excused during any period of "**Permitted Delay**" as hereinafter defined. For purposes hereof, Permitted Delay shall include delay beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) including, but not limited to: (i) acts of God, (ii) pandemics, civil commotion and acts of terrorism, (iii) riots, (iv) strikes, picketing or other labor disputes, (v) shortages of materials or supplies, (vi) damage to work in progress by reason of fire, floods, earthquake or other casualties, (vii) failure, delay or inability of the other Parties to act, (viii) as to VST only, the failure, delay or inability of County or City to provide adequate levels of public services, facilities or infrastructure to the Property, (ix) as to County only, with

respect to completion of the Annual Review or processing applications for Approvals, the failure, delay or inability of VST to provide adequate information or substantiation as reasonably required to complete the Annual Review or process applications for Approvals; (x) delay caused by restrictions imposed or mandated by governmental entities other than the County or City; (xi) enactment of conflicting state or federal laws or regulations, (xii) judicial decisions or similar legal incapacity to perform, and (xiii) litigation brought by a third party attacking the validity of this Agreement. Any Party claiming a Permitted Delay shall notify the other Party (or Parties) in writing of such delay within 30 days after the commencement of the delay, which notice (“**Permitted Delay Notice**”) shall include the estimated length of the Permitted Delay. A Permitted Delay shall be deemed to occur for the time set forth in the Permitted Delay Notice unless a Party receiving the Permitted Delay Notice objects in writing within 10 days after receiving the Permitted Delay Notice. Upon such an objection, the Parties shall meet and confer within 30 days after the date of the objection in a good faith effort to resolve their disagreement as to the existence and length of the Permitted Delay. If no mutually acceptable solution can be reached, any Party may take action as may be permitted under Article 12 above.

Section 15.07 Waiver.

Section 15.07.1 Legal Rights. VST acknowledges and agrees that the terms and provisions of this Development Agreement specifically permit County in some instances to impose requirements upon the Project that County would not otherwise be able to impose due to a lack of nexus, rough proportionality or reasonable relationship between the Project and such requirement or other reasons. To the extent any such requirement is imposed by County upon the Project consistently with the terms and provisions of this Agreement, VST waives any right to challenge judicially the imposition of such requirement by County. Except as otherwise provided in this Section 15.07.1, County shall comply with Applicable Law.

Section 15.07.2 Other Rights. While Section 15.07.1 prohibits VST from challenging judicially certain County and City requirements imposed consistently with this Agreement, nothing in this Development Agreement shall be deemed to abrogate or limit, nor be deemed to be a waiver by VST of, any right of VST (whether arising under the United States Constitution, the California Constitution or otherwise) to request County to refrain from imposing upon VST, the Project or the Property any requirement that this Development Agreement permits County so to impose or otherwise petition County with respect to any matter related to the Project or the Property.

Section 15.07.3 Notices. Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally, by facsimile (with original forwarded promptly by regular U.S. Mail) or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice or communication shall be deemed to be given and received when delivered to the Party to whom addressed. If given by facsimile transmission, a notice or communication shall be deemed to be given and received upon receipt of the entire document by the receiving Party’s facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next business day. If given by Federal Express or similar courier, a notice or communication shall be deemed to be given and received when delivered as shown on

a receipt issued by the courier. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to County, to: County of Merced
2222 M Street
Merced, CA 95340
Attn: Community and Economic Development Director

With a courtesy copy to: County of Merced
2222 M Street
Merced, CA 95340
Attn: County Counsel

If to VST, to: Virginia Smith Trust
c/o Merced County Office of Education
632 W. 13th Street
Merced, CA 95341
Attn: Dr. Steve Tietjen

With a courtesy copy to: Buchalter, A Professional Corporation
425 Market Street, Suite 2900
San Francisco, CA 94105-2491
Attn: Alicia Guerra

Any Party may at any time, change its address or facsimile number for notice by giving 10 days' written notice to the others.

Section 15.08 No Joint Venture or Partnership. Nothing in this Development Agreement or in any document executed in connection with it shall be construed as creating a joint venture, partnership or any agency relationship between County and VST. County or City shall not be responsible for public improvements unless and until they are accepted by County or City as may be appropriate in the manner required by law.

Section 15.09 Severability. If any provision of this Development Agreement is held invalid, void or unenforceable but the remainder of this Development Agreement can be enforced without failure of material consideration to any Party, then this Development Agreement shall not be affected and shall remain in full force and effect, unless amended by mutual consent of the Parties.

Section 15.10 Estoppel Certificate. Any Party and any Mortgagee may, at any time, and from time to time, deliver written notice to the other Party or Parties requesting such Party or Parties to certify in writing that, to the knowledge of the certifying Party: (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) as of the date of the last Annual Review, the requesting Party (or any Party specified by a Mortgagee) is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate or give a written,

detailed response explaining why it will not do so within 30 days of receipt of a request. Each Party acknowledges that such a certificate may be relied upon by third parties acting in good faith. A certificate provided by County establishing the status of this Development Agreement shall be in recordable form and may be recorded at the expense of the recording Party.

Section 15.11 Further Assurances. Each Party shall execute and deliver to the other Party or Parties all such other further instruments and documents and take all such further actions as may be reasonably necessary to carry out this Development Agreement and the Approvals and to provide and secure to the other Party or Parties the full and complete enjoyment of their Rights hereunder.

Section 15.12 Construction.

Section 15.12.1 All Parties have been represented by counsel in the preparation of this Development Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to its interpretation or enforcement. 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. If any conflict appears between this Development Agreement and the rules, regulations or official policies of County, the provisions of this Development Agreement shall prevail and be deemed to have amended any such conflicting rules, regulation or official policy as of the Effective Date.

Section 15.12.2 The Parties intend this Agreement to be consistent with the requirements of Chapter 18.148 of the County Code and it shall be construed consistently with that intent. Should any conflict arise between this Agreement and that Chapter 18.148 as it exists on the Effective Date, that Chapter 18.48 shall control.

Section 15.13 Other Miscellaneous Terms. In construing this Agreement, the singular includes the plural; the masculine gender includes the feminine and the neuter; “shall” is mandatory; “may” is permissive.

Section 15.14 Counterpart Execution. This Development Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart.

Section 15.15 Time. Time is of the essence of each and every provision of this Agreement.

Section 15.16 Good Faith/Fair Dealing. The Parties agree that a covenant of good faith and fair dealing shall apply to all actions of the Parties. As used herein, this covenant shall mean that the Parties shall act reasonably, and no Party shall do anything which shall have the effect of destroying or injuring the rights of any other Party to receive the benefit of its bargain in this Agreement. Nothing in this Section 15.16 shall detract from the principle of Section 13.02.4 that none of the Parties shall be entitled to damages for breach of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the Execution Date above.

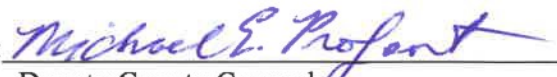
COUNTY:

COUNTY OF MERCED, a political subdivision of the State of California

By: 
Raul L. Mendez, County Executive Officer


APPROVED AS TO FORM:

Forrest W. Hansen
Merced County Counsel

By: 
Deputy County Counsel

VST:

VIRGINIA SMITH TRUST

By: 
Dr. Steve Tietjen

EXHIBITS

- A. Property Exhibit
- B. Legal Description
- C. County/City Memorandum of Understanding
- D. Specific Plan Impact Fees Applicable to the Project
- E. Timing of Payment of Impact Fees; Adjustments
- F. Project Backbone and Offsite Infrastructure
- G. Phasing Plan
- H. Backbone Infrastructure Phasing Plan
- I. Campus Parkway Connection Right of Way and Improvements
- J. Affordable Housing Plan
- K. Water System Master Plan
- L. Onsite Campus Parkway to be Constructed by VST
- M. Campus Parkway South Design Speed
- N. Bicycle and Multimodal Transportation Improvements

Exhibit A

Property Exhibit

T. 7S., R.14E., M.D.B & M.

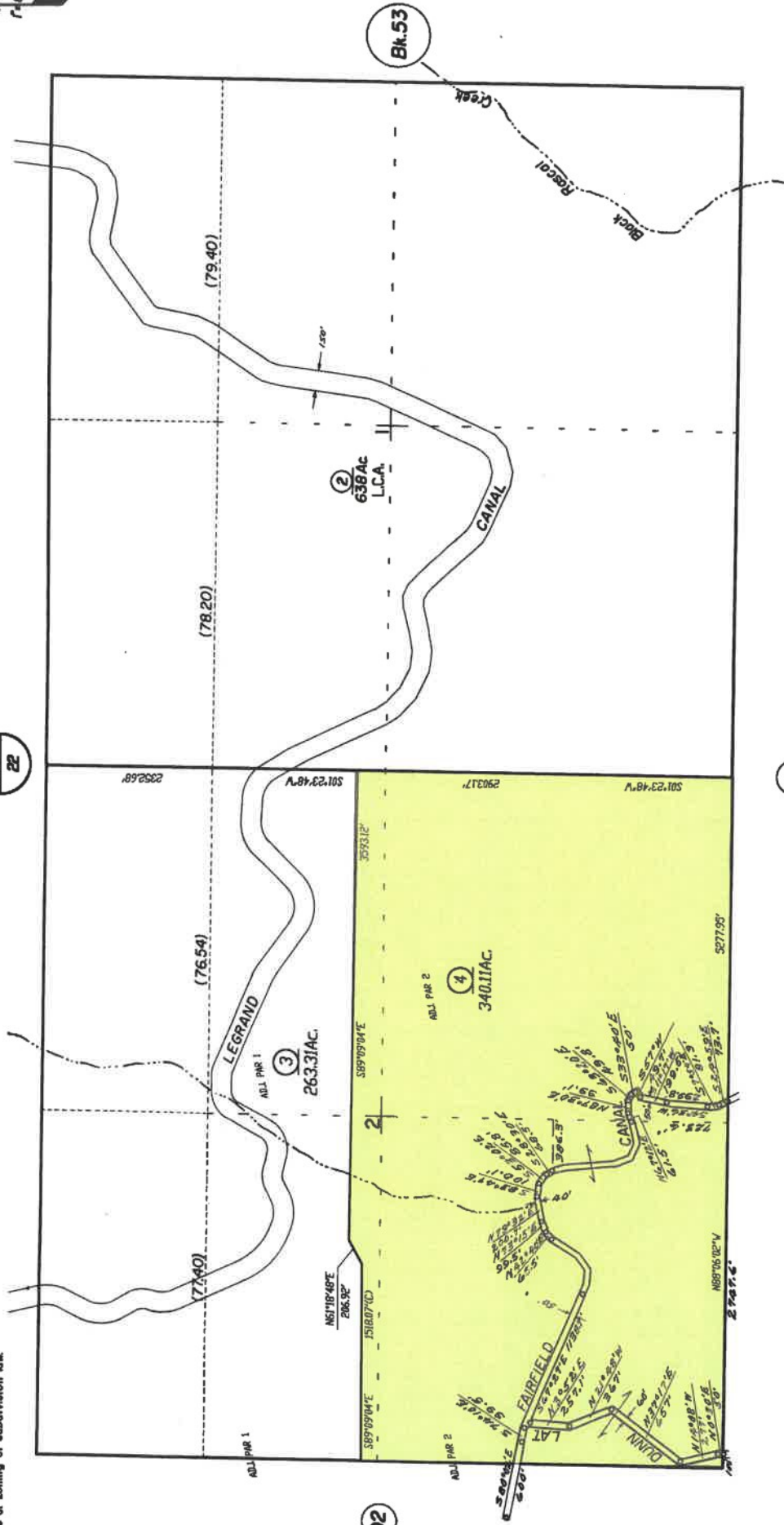
Tax Rate Area 110-06

60-01



-NOTE-
This map is for Assessment purposes only.
It is not to be construed as purporting
legal ownership or divisions of land for
purposes of zoning or subdivision law.

170
22



02

06

REVISED 8-67
12-30-81
12-30-16

NOTE-Assessor's Block Numbers shown in Ellipses
Assessor's Parcel Numbers shown in Circles

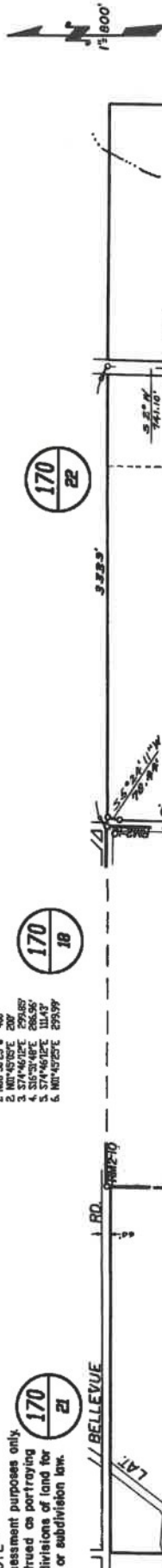
Assessor's Map Bk.60-Pg.01
County of Merced, Calif.
1959

T.7S., R.14E., M.D.B. & M.

Tax Rate Area 83-02 60-02
83-28

-NOTE-
 This map is for Assessment purposes only.
 It is not to be construed as portraying
 legal ownership or divisions of land for
 purposes of zoning or subdivision law.

- 1. N89°22'24" W 40'
- 2. N17°40'20" E 200'
- 3. S85°34'46" E 206.50'
- 4. S25°34'46" E 206.50'
- 5. S74°46'12" E 114.37'
- 6. N17°40'20" E 209.99'



05 Assessor's Map Bk. 60-Pg.02
County of Merced, Calif.
1959

NOTE-Assessor's Block Numbers shown in Ellipses
Assessor's Parcel Numbers shown in Circles

Addition to Yosemite Colony R.M. Bk.2, Pg.10 .

REVISED 5-65
 12-68
 7/73
 1/74
 8/81
 10-12-13
 12-31-16

Exhibit B

Legal Description

Exhibit B

LEGAL DESCRIPTION

That portion of Sections 2 and 3, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, in the County of Merced, State of California, described as follows:

Beginning at a point on the South line of said Section 3 which lies S. 89 deg. 54' 21" E. 50.02 feet from the Southwest corner of said Section 3, said point being at the Southeast corner of that parcel granted to Merced County by Deed recorded in Volume 2288 of Official Records of Merced County, at Page 783; thence N. 01 deg. 45' 25" E. 2620.39 feet, along the East line of said parcel granted to Merced County, being parallel with the West line of said Section 3; thence S. 89 deg. 09' 04" E. 4984.81 feet; thence N. 00 deg. 50' 56" E. 129.31 feet; thence S. 89 deg. 56' 10" E. 1764.31 feet; thence N. 61 deg. 18' 48" E. 206.92 feet; thence S. 89 deg. 09' 04" E. 3593.12 feet to the East line of said Section 2; thence S. 01 deg. 23' 48" W. 2903.17 feet, along said East line, to the Southeast corner of said Section 2; thence N. 88 deg. 06' 02" W. 5277.95 feet, along the South line of said Section 2 to the Southwest corner of said Section 2; thence N. 89 deg. 54' 21" W. 5259.27 feet, along the South line of said Section 3, to the point of beginning.

Also being shown as "Adjusted Parcel 2" by Certificate of Compliance No. 16009 for Property Line Adjustment No. 16014 recorded October 19, 2016 as Series No. 2016035817 of Official Records, Merced County.

Assessor's Parcel No.: 060-010-004-000; 060-020-048-000

Exhibit C

County/City Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING ("MOU")

BETWEEN

**THE COUNTY OF MERCED AND THE CITY OF MERCED
RELATING TO THE REFERRAL AND REVIEW PURSUANT TO GOVERNMENT CODE
§65919 OF POTENTIAL ENTITLEMENT APPLICATIONS BY THE VIRGINIA SMITH
TRUST**

THIS AGREEMENT is entered into this 8 day of June, 2021 by and between the COUNTY OF MERCED, hereinafter "County," and the CITY OF MERCED, hereinafter "City" each individually a "Party" and collectively the "Parties."

WHEREAS, the County of Merced, a political subdivision of the State of California, has jurisdiction and land use authority over any development project proposed in an unincorporated area of the County; and,

WHEREAS, the City of Merced, a municipal corporation of the State of California, has a specific interest in any development project within its Sphere of Influence; and,

WHEREAS, the County adopted the University Community Plan (UCP) in 2004, and General Plan in 2013. The City adopted its General Plan in 2012. Together these plans comprise the guiding land use policies applicable to potential entitlement applications ("Potential Applications") by the Virginia Smith Trust ("VST") to facilitate the development of housing, neighborhood commercial uses, parks, public facilities, and various public infrastructure facilities ("Possible Project") on property adjacent to the University of California, Merced ("UC Merced"), in the UCP North sub-area, within the City Sphere of Influence ("SOI") and Specific Urban Development Plan ("SUDP") ("Possible Project Site"); and,

WHEREAS, the County and City have executed a Property Tax Sharing Agreement that applies to the Possible Project Site and that would, upon potential future annexation to the City, provide adjustments to the allocation of property taxes, assist in aligning the interests of both jurisdictions, and facilitate sound planning and the provision of services as a result of potential future development; and,

WHEREAS, if UC Merced is later annexed to the City, there may be an opportunity for the owners of adjacent land, including the Possible Project Site, to seek annexation to the City; and

WHEREAS, in consideration of potential future annexation of the Possible Project Site, the City of Merced, Merced County Local Agency Formation Commission, and other responsible agencies may elect to rely on planning or environmental analysis and studies related to Potential Applications for the Possible Project; and

WHEREAS, given the interest of both Parties in any proposed development located on the Possible Project Site, the County and City desire to coordinate efforts for analyzing the Possible Project for consistency with applicable plans and policies; and,

WHEREAS, in order to memorialize a framework for future cooperative efforts between the City and the County in reviewing and considering Potential Applications for development of the Possible Project, the Parties enter into this MOU as follows:

1. **DEFINITION OF THE POSSIBLE PROJECT SITE:** The Possible Project Site consists of approximately 654 acres of land owned by VST located east of Lake Road and immediately south of the UC Merced Campus and identified as APNs 60-010-004 and 60-020-048, as described in **Attachment A**. The Possible Project Site is located in unincorporated Merced County in the University Community Plan North subarea of the University Community Plan area and within the City SOI and SUDP and is designated for residential mixed-use development as part of the UCP.
2. **PURPOSE:** The County and the City have adopted policies in their respective General Plans to cooperate in the review of entitlement applications within the UCP area, the City SOI, and the SUDP. This MOU outlines how those policies will be implemented should the County receive Potential Applications for the Possible Project. Notably, pursuant to State and local guidelines, the Possible Project would be required to satisfy the requirements of the California Environmental Quality Act (CEQA) and other applicable City and County requirements. Development of the properties within the UCP, including the Possible Project Site, was previously analyzed in the UCP Environmental Impact Report (EIR) at a program level by Merced County in 2004. The Potential Applications for the Possible Project would entail additional environmental review for specific project-level approvals. The City's General Plan Policy UE-1.4 would govern potential future annexation of the Possible Project Site into the City. Such annexation could be considered concurrently with any amendment to the University Community Plan to include a Specific Plan, or concurrently with other Project Applications as described in this MOU.

The County and the City agree upon a procedure for referral by the County to the City or by the City to the County of proposed actions and for comment upon those proposals in accordance with Government Code §65919.1, and to provide an orderly and clear approach to the review and analysis of Potential Applications for the Possible Project, including the possible implementation of the Specific Plan approval process prescribed by the UCP and the Urban Expansion policies of the City of Merced 2030 General Plan, to further the cooperative relationship between the County, City, and VST, and to support potential future development of the Possible Project Site. This MOU does not commit the Parties to approval of Potential Applications for the Possible Project, as any such approvals would be within the sole discretion of the Parties' governing bodies.

3. **EFFECTIVE DATE:** This MOU is entered into by and between the County and City and takes effect on June 8, 2021, ("Effective Date").
4. **TERM:** The term of this MOU shall commence upon the Effective Date and shall terminate if and when the Parties' governing bodies have taken final action on Potential Applications for the Possible Project, or as otherwise provided herein.
5. **COOPERATION:** City and County intend to engage in a cooperative relationship to process any Potential Applications for the Possible Project, as described in Section 7. In fur-

therance of the processing of Potential Applications, the County and City desire to specify their respective responsibilities for review, coordination, preparation of environmental documents, and other matters. This Agreement is specifically intended to establish a process to comply with Section 3.3 of the Implementation Plan of the UCP, and Policy UE-1.4 of the City's Urban Expansion policies related to the UCP area. Per these policies and other applicable policies, the issues to be addressed prior to any future development of the Possible Project Site would include:

- i. Connection of the Possible Project to the City of Merced water distribution system, the timing of related improvements, and the Possible Project's fair share of costs for the improvements (UCP Implementation Policy 3.3).
- ii. Connection of the Possible Project to the City's wastewater treatment and collection system, including the amount and timing of effluent to be collected and treated by the City, the alignment, extent and timing of necessary offsite collection improvements, and the Project's fair share of costs for these improvements (UCP Implementation Policy 3.3, UE Policy UE-1.4.a, Public Services and Facilities Policy 4.1.c).
- iii. A determination of the appropriate land uses, densities, and improvements that should link and serve as transitions between the City's urban area and the University Community (UCP Implementation Policy 3.3).
- iv. The process for the possible future annexation of the UC Campus to the City, including evaluating various corridors for possible annexation in order to bridge the gap between the current City limits and the Campus boundary (City Urban Expansion Policy UE-1.4.a).
- v. Phasing and servicing of any development through the use of annexation agreements and phased annexations (or phasing within a Specific Plan), not through the creation of a County services district, either as an interim or permanent measure (City Urban Expansion Policy UE-1.4.b).
- vi. Implementation of the adopted UCP as a general conceptual framework for development of the UCP project area (including the revised 2009 external boundaries for the University and the University Community North) and development of a special planning process to implement the UCP to be funded by applicants, developers and the County, and not City residents (City Urban Expansion Policies-1.4.b, City Land Use Element Policy 3.7.3).
- vii. Revision of all City planning documents to accommodate the possible incorporation of the University Community into the City of Merced. These include not only the General Plan, but also plans for wastewater treatment, water, storm drainage, parks, fire protection, and other services

(City Urban Expansion Policy UE-1.4.b).

- viii. Work with the County to implement Campus Parkway (City Transportation and Circulation Element Policy 1.2.d).
- ix. Coordination of bicycle planning with the University in UC's Long-Range Development Plan, and the County's University Community Plan (City Transportation and Circulation Element Policy 2.6.a).
- x. Implementation of the City's Urban Design goals and policies.

6. **POTENTIAL ENTITLEMENT APPLICATIONS:** The County and City intend to exercise their respective land use authorities as Lead or Responsible Agency for the consideration of any Potential Applications for the Possible Project, which may include the following:

- i. California Environmental Quality Act (CEQA) Compliance – including preparation of an Initial Study and subsequent environmental document that analyzes the potential impacts of the Possible Project – by County – Lead Agency.
- ii. An Amendment to the UCP by County, and consideration of the Amended UCP as a General Plan Amendment by County – Lead Agency and City – Responsible Agency.
- iii. A Specific Plan as defined in and in conformance with the requirements of the Amended UCP – by County– Lead Agency and City – Responsible Agency.
- iv. Preparation, execution, and adoption of cooperative agreements with the City of Merced, Merced Irrigation District, Weaver Union School District, Merced City Schools and other jurisdictions called for in the Amended UCP, or as required by documents for Potential Entitlement Applications – by County– Lead Agency and City – Responsible Agency.
- v. Vesting Tentative Tract Map for Phase 1 – by County – Lead Agency.
- vi. Consideration of Possible Annexation. The Parties recognize that the passage of AB 3312 (Chapter 56, Statutes of 2020) may enable the UC Merced Campus and immediately adjacent properties, after January 1, 2021, to be annexed to the City of Merced through normal annexation procedures. Such possible annexation could facilitate the provision of public services to the Possible Project Site. Prior to commencing any formal annexation process, the City would process a revised Pre-Annexation Application for the Possible Project Site. Any proposed formal annexation would be subject to approval by the City Council and subject to CEQA. Any such proposal would also be subject to considera-

tion and possible approval action by the Merced Local Agency Formation Commission (LAFCO) – by City – Lead Agency.

vii. Pre-Annexation Development Agreement – by City – Lead Agency.

7. **ROLES & RESPONSIBILITIES:**

CEQA:

Lead Agency: County would be designated as the Lead Agency for Potential Applications for the Possible Project, except for any future potential annexation of the Possible Project Site and related pre-annexation development agreement, for which City would be designated as the Lead Agency. The lead agency is responsible for preparing, processing and securing all necessary environmental documents required by CEQA, as amended.

Responsible Agency: City may be designated as a Responsible Agency for Potential Applications for the Possible Project, except for Annexation and Pre-Annexation Development agreement, for which County would be designated a Responsible Agency. Should County receive Potential Applications for the Possible Project, County would share all administrative draft documents, studies, and environmental reports with City prior to releasing the documents for public review, including but not limited to the Environmental Checklist to determine additional issues to cover in a supplemental environmental analysis, the administrative draft EIR, and the administrative draft of the Final EIR. County would be responsible for determining, in its independent judgment and discretion per CEQA Guidelines Sections 15084(e) and 15090, that the environmental documents were adequate and represented the independent judgement of the County; however, the County would give due consideration to any comments made by the City on the administrative draft documents and would integrate such comments and requested revisions to the extent feasible.

Project Planner(s). The County Planning Department would perform all tasks necessary to review and process the Potential Applications and would prepare all notices, staff reports, and community outreach related to obtaining County entitlements. The City Planning Department would perform all tasks necessary to review and process any potential entitlement applications and prepare all notices and staff reports related to obtaining City entitlements, should the Possible Project Site be later annexed into the City.

Meetings. The County agrees to establish a Project and Technical Review Team and initiate a process for the review of Potential Applications. The Technical Review Team would meet monthly for the purpose of reviewing interim work products, reviewing technical reports, and reviewing any issues related to the Possible Project.

Review and Approval Process: The Parties intend to implement procedures for referral and review of Potential Application documents above and beyond the minimum procedures required by California Government Code Section 65919 *et seq.* Such procedures shall be determined on case-by-case basis and mutually agreeable by the Project and Technical Review Team Members.

8. **APPLICABLE LAWS AND STANDARDS:** The County would process any Potential Applications based on the County's applicable rules, regulations, ordinances, and policies in effect at the time said Potential Applications were deemed complete. The County would require any Possible Project to comply with the following development standards of the City and as otherwise established in the UCP:
- i. Improvement Standards for the City of Merced related to the design of public infrastructure in effect at the time of filing of the Vesting Tentative Map for Phase I.
 - ii. City standards for the development of parks and recreation facilities.
 - iii. Architectural review and approval as defined in the Specific Plan.
 - iv. City General Plan standards and policies for the level of service on City roadways for Project roadways and City roadways affected by the Project.
 - v. Compliance with the City's Active Transportation Plan.
 - vi. Compliance with the City Water Master Plan and Sewer Master Plan.
 - vii. Compliance with any adopted pre-annexation agreement between the City and VST.

Infrastructure Design Elements: The Parties also agree that the planning and development of Campus Parkway, Bellevue Road, and the Merced-Atwater Expressway in general is of concern to the City and County. County agrees to consult with City on the design and development options for the completion of Campus Parkway between Yosemite Avenue and Bellevue Road.

9. **INDEMNIFICATION:** City and County shall include the following indemnification language in any and all Potential Applications related to the Possible Project and/or Possible Project Site and as a condition of approval for all entitlements related to the Possible Project and/or Possible Project Site:

The developer/applicant shall indemnify, protect, defend (with counsel selected by the City and/or County), and hold harmless the City and County, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City and/or County, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval and/or any and all conditions of approval of the City and/or County, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City and/or County, concerning the project and the approvals and/or any and all conditions of approval granted herein. In addition, developer/applicant shall indemnify, protect, defend (with counsel selected by the

City and/or County), and hold harmless the City and County, and any officers, officials, employees, or agents thereof from any and all claims, actions, suits, proceedings, or judgments directly or indirectly related to the project. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City and County, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City and/or County indemnify and defend such governmental entity. City and/or County shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City and/or County, including, but not limited to, City's and/or County's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and/or County Counsel and to provide all required deposits to fully fund the City's and/or County's defense immediately but in no event later than five (5) days from that date of a demand to do so from City and/or County. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City and/or County by any order or judgment.

10. NOTICES: All notices, requests, demands or other communications under this MOU shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the Party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the Party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the Parties to this MOU at the time of endorsement of this MOU is as follows:

County of Merced
Mark Hendrickson
2222 "M" Street

City of Merced
Development Services Div.
678 W. 18th St.

Merced, CA 95340
Phone: (209) 385-7686
Mark.Hendrickson@countyofmerced.com

Merced, CA 95340
Phone: (209) 385-6858
planningweb@cityofmerced.org

Any Party may change its address by giving the other Party notice of the change in any manner permitted by this MOU.

11. MISCELLANEOUS:

- A. **No Waiver.** Any waiver with respect to any provision of this MOU shall not be effective unless in writing and signed by the Party against whom it is asserted. The waiver of any provision of this MOU by a Party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this MOU.
- B. **Counterparts.** This MOU may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.
- C. **Authority.** Each Party to this MOU warrants to the other that it has the right and authority to enter into and to perform its obligations under this MOU, without the consent of any third party, and that the person signing below is authorized to bind such Party.
- D. **No Third-Party Beneficiary.** This MOU confers no rights on any person or entity that is not a Party hereto and there are no third-party beneficiaries of this Agreement.
- E. **Exhibits.** The exhibits referenced herein and/or attached hereto are a part hereof and incorporated herein by this reference.
- F. **Electronic Signatures.** This MOU may be executed by electronic signatures (e.g., using DocuSign or e-SignLive) or signatures transmitted in portable document format ("pdf"), and copies of this MOU executed and delivered by means of electronic or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original manually executed signatures. The Parties may rely upon electronic and pdf signatures as if such signatures were manually executed originals and agree that an electronic or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this MOU as if it were an original manually executed signature page.
- G. **Relationship of Parties.** City and County are not and shall not be considered joint venturers nor partners, and neither shall have power to bind or obligate the other. This MOU creates the framework for a cooperative relationship between the Parties with respect to the Possible Project, but does not create enforceable rights with respect thereto. This MOU, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by either Party at any time without cause or

legal excuse by providing the other Party with thirty (30) calendar days written notice of such termination.

- H. Compliance with Law. The Parties shall at all times act in accordance with State and local law in their implementation of this MOU; such governing law shall take precedence over any provisions of this MOU that may be in conflict with such law.
- I. Entire Agreement. This MOU supersedes all previous oral and written agreements between and representations by or on behalf of the Parties and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This MOU may not be amended, except by a written agreement executed by both Parties.

IN WITNESS WHEREOF, the parties hereto, or their duly authorized representatives, have affixed their hands.

CITY OF MERCED

COUNTY OF MERCED

A California Charter Municipal Corporation

A Political Subdivision of the State of California

BY: Stephanie R. Dietz
City Manager

BY: Daron McDaniel
Daron McDaniel, Chairman
Board of Supervisors

Date: 7/1/2021

Date: JUN 8 2021

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

APPROVED AS TO LEGAL FORM
FORREST W. HANSEN
MERCED COUNTY COUNSEL

BY: Janice Larson
Assistant/Deputy City Clerk

BY: Michael E. Profant
Michael E. Profant, Deputy

APPROVED AS TO FORM:

BY: Priscilla Ce...
City Attorney

301634
ACCOUNT DATA:

BY: [Signature]
Verified by Finance Officer

NO funds to encumber - 60130121
PL 7/1/21



ATTACHMENT A

PROPERTY DESCRIPTION

That portion of Sections 2 and 3, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, in the County of Merced, State of California, described as follows:

Beginning at a point on the South line of said Section 3 which lies S. 89 deg. 54' 21" E. 50.02 feet from the Southwest corner of said Section 3, said point being at the Southeast corner of that parcel granted to Merced County by Deed recorded in Volume 2288 of Official Records of Merced County, at Page 783; thence N. 01 deg. 45' 25" E. 2620.39 feet, along the East line of said parcel granted to Merced County, being parallel with the West line of said Section 3; thence S. 89 deg. 09' 04" E. 4984.81 feet; thence N. 00 deg. 50' 56" E. 129.31 feet; thence S. 89 deg. 56' 10" E. 1764.31 feet; thence N. 61 deg. 18' 48" E. 206.92 feet; thence S. 89 deg. 09' 04" E. 3593.12 feet to the East line of said Section 2; thence S. 01 deg. 23' 48" W. 2903.17 feet, along said East line, to the Southeast corner of said Section 2; thence N. 88 deg. 06' 02" W. 5277.95 feet, along the South line of said Section 2 to the Southwest corner of said Section 2; thence N. 89 deg. 54' 21" W. 5259.27 feet, along the South line of said Section 3, to the point of beginning.

Also being shown as "Adjusted Parcel 2" by Certificate of Compliance No. 16009 for Property Line Adjustment No. 16014 recorded October 19, 2016 as Series No. 2016035817 of Official Records, Merced County.

Assessor's Parcel No.: 060-010-004-000; 060-020-048-000

Exhibit D

Specific Plan Impact Fees Applicable to the Project

Land Use Type	Unit	Specific Plan Impact Fees	
		Traffic	Parks
Residential			
R-1 Low (12,500)	Dwelling Unit	\$ 1,251	\$ 8,489
R-1 Low-Medium (7000)	Dwelling Unit	\$ 1,251	\$ 8,489
R-1 Medium	Dwelling Unit	\$ 1,251	\$ 8,489
R-1 Medium Cluster	Dwelling Unit	\$ 1,251	\$ 8,489
R-2 (Cluster)	Dwelling Unit	\$ 1,251	\$ 8,489
R-3 Medium High	Dwelling Unit	\$ 1,251	\$ 5,306
R-4 High	Dwelling Unit	\$ 695	\$ 5,306
Town Center Mixed Use	Dwelling Unit	\$ 580	\$ 3,979
Commercial			
Retail Mixed	SF	\$ 3.86	\$ 1.40
Office	SF	\$ 1.64	\$ 1.40
NC/Retail	SF	\$ 3.86	\$ 1.40
Community Commercial	SF	\$ 3.86	\$ 1.40
Elementary School	Students	\$ 319	\$ -
Parks	Acres	\$ 526	\$ -

Exhibit E

Timing of Payment of Impact Fees; Adjustments

Timing and Payment of Impact Fees

1. City PFFP Impact Fees and Specific Plan Impact Fees shall be paid in time, manner and with the adjustments described in City of Merced Administrative Policies and Procedures regarding “Public Facilities Impact Fees and Administrative Policy” A-32 dated December 19, 2022 and included herein.
2. Credits and adjustments to City PFFP Impact Fees and Specific Plan Impact Fees for affordable housing units and projects shall be in conformance with the “Affordable Housing Project Impact Fee Schedule of Adjustments” included herein.

RESOLUTION NO. 2022- _____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA
AMENDING ADMINISTRATIVE POLICY AND
PROCEDURE A-32 REGARDING PUBLIC
FACILITIES IMPACT FEES**

WHEREAS, the administrative guidelines for the calculation, reimbursement, credit or deferred payment of Public Facilities Impact Fees are adopted by City Council Resolution pursuant to Section 17.62.080 of the Merced Municipal Code; and,

WHEREAS, the Public Facilities Impact Fees Administrative Policy and Procedure A-32 was previously approved by City Council Resolution 98-40 and amended by Resolution Nos. 98-73, 98-87, 2003-93, 2005-113, 2021-82, 2021-93, and 2022-07; and,

WHEREAS, A comprehensive update of the Public Facilities Financing Plan and Public Facilities Impact Fee Program in 2022 necessitates certain updates to the Administrative Policy to be consistent with the modified Public Facilities Impact Fee Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The City's Administrative Policy and Procedure A-32, as shown in Exhibit "A" attached hereto, is hereby adopted and incorporated herein by reference.

SECTION 2. Said Administrative Policy and Procedure repeals and replaces the previously adopted Administrative Policy and Procedure and establishes guidelines and procedures necessary to implement the provisions of the City's Public Facilities Impact Fee Ordinance.

SECTION 3. This Resolution shall be effective on December 19, 2022.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the _____ day of _____ 2022, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:


Mayor

ATTEST:
STEPHANIE DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:



City Attorney

11/30/22
Dated

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: PUBLIC FACILITIES IMPACT FEES AND
ADMINISTRATIVE POLICY

EFFECTIVE: December 19, 2022 (Replaces policy dated March 26, 2022)

PURPOSE:

The purpose of this Administrative Policy is to establish a procedure for the Public Facilities Financing Plan and Fee Program.

POLICY:

The City Manager was granted authority by the Merced City Council on July 21, 2003 to establish this policy and procedure. This Policy supersedes and replaces the previous Policy with an effective date of March 26, 2022.

PROCEDURES:

PAYMENT OF PUBLIC FACILITIES FEES

Public facilities fees shall be charged and paid at the time of issuance of the certificate of occupancy. The fee shall be determined by the fee schedule in effect on the date of building permit issuance. If a Mello-Roos, assessment district, or other arrangement of such a nature has been made, only the portion of the fee not covered by the district shall be assessed. If a specific use is not addressed in the fee schedule or definitions contained in this document, the fee will be determined by the Development Services Department as described in Merced Municipal Code Section 17.62.100.

Fees not paid at certificate of occupancy shall require an agreement as specified in Government Code Section 66007, Subsection (C). Should any interpretation or disagreement arise which is not addressed by this administrative policy, the City Manager or designee shall have the authority to render a decision. The City Manager or designee has authority to authorize credits and reimbursements be paid to developers as outlined in this policy. Such decisions shall be in writing.

DEFINITIONS

1. Retail Commercial

“Retail Commercial” includes a wide range of retail and service uses, both freestanding and in shopping centers including, but not limited to, supermarkets, drugstores, department stores, general merchandise, specialty retail stores, discount stores, hardware/paint stores, garden centers or nurseries, wholesale markets, apparel stores, furniture stores, video arcades and car sales. This category includes banks/savings and loans, restaurants of all types, and auto-oriented uses.

2. Industrial

Facilities in which the primary activity is the production of finished items through manufacture, fabrication, processing, packaging, or treatment of raw materials or parts, except heavy industrial uses. Uses, which are considered to be in this category, include uses such as those listed below:

- A) Electronics assembly, paper products
- B) Metal fabricator
- C) Bottling plant
- D) Cabinet shop
- E) Machine shop
- F) Sheet metal shop
- G) Welding shop
- H) Wholesale business
- I) Printing plant
- J) Material testing labs manufacturer
- K) Warehouse
- L) Corporation yard, freight yard
- M) Equipment rental yard
- N) Moving and storage service
- O) Bulk feed storage
- P) Lumber yard
- Q) Cannery/Food Processing

3. Mixed Uses

When a development proposal contains more than an incidental mixture of uses, the general types of uses should be segregated and treated separately for the purpose of calculating development fees.

4. Office

Includes professional offices, business parks, business or administrative offices, insurance sales, research centers, and medical or dental services, and other health-related services (excluding hospitals).

5. Residential Single Family

Typically single family detached homes on individual lots, such as in residential subdivisions, but could also be in planned developments. Density of development may vary, but is typically six dwellings per acre or less.

6. Public Facilities Impact Fee, But Not Including Sewer and Water Charges

The term “Public Facilities Impact Fee” shall mean the fee charged new construction, including, in some cases, the expansion of and/or the addition to an existing structure to mitigate an unfunded portion of the determined impact of the development. For the purpose of this policy, Public Facilities Impact Fees shall not include sewer and water charges as defined in Chapter 15 of the Merced Municipal Code.

7. Residential Multiple Family

Includes two- and multiple-family dwelling units of several types, including high and low rise apartments, high and low rise condominiums, and multi-family residential planned unit developments. This category also applies to mobile homes in mobile home parks.

8. Institutional

Includes nonprofit or quasi-public uses, such as a religious institution, library, public or private school or college, nonprofit cultural or community centers, hospitals, residential care facilities, charitable organizations, or government-owned or government-operated structures used for public purposes. Note that federal, state, county, and City owned facilities are exempt from the City’s impact fees. Fees for these uses will be determined on a case-by-case basis by the Director of Development

Services based on his/her determination of the similar nature of the use to one of the other land use categories.

9. Lodging

Includes hotels, motels, and other commercial operations which provide lodging for a fee, with or without cooking facilities, in individual rooms or suites. Includes extended stay hotels/motels, but does not include residential care facilities.

EXEMPTIONS

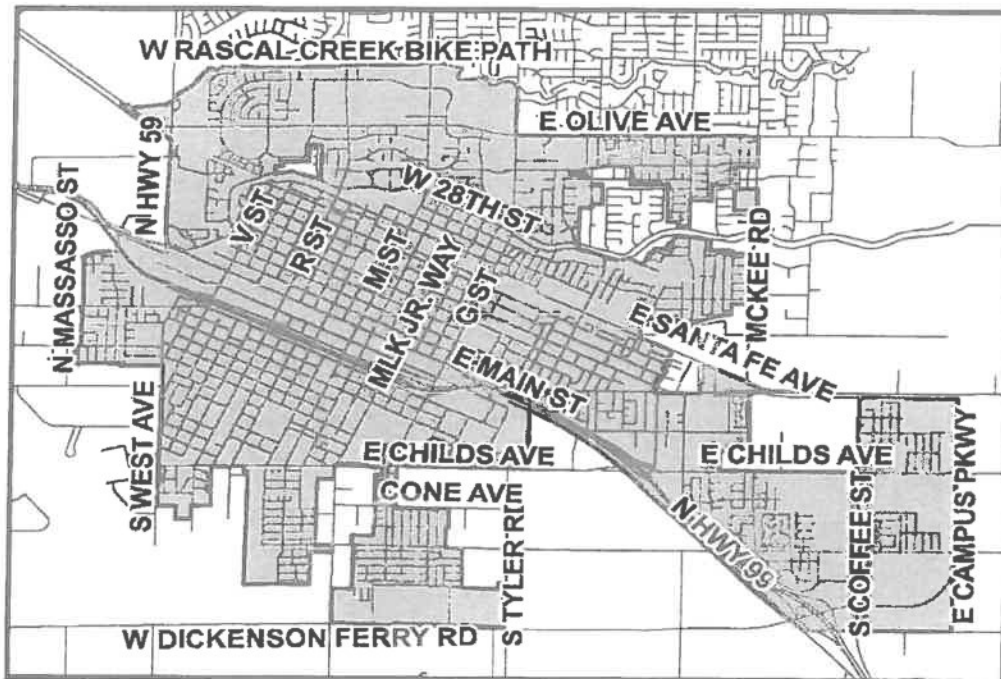
Fees shall not be imposed on any of the following:

1. Any alteration or addition to a **residential** structure except to the extent that additional units or guestrooms are created.
2. Any alteration or addition to a **non-residential** structure if the square footage of the structure is increased less than 10 percent, unless the alteration or addition changes the use of the structure to a higher intensity category, or results in the generation of additional peak hour trips (PHT).
3. Any replacement or reconstruction of an **existing residential** structure that has become destroyed or demolished, provided that the building permit for reconstruction is obtained within fifteen (15) years after the building was demolished, except to the extent that additional units or guest rooms are created.
4. Any replacement or reconstruction of an **existing non-residential** structure that has been destroyed or demolished, provided that the building permit for reconstruction is obtained within fifteen (15) years after the building was demolished, unless the replacement or reconstruction increases the square footage of the structure 10 percent or more or changes the use of the structure to a higher intensity category or results in the generation of additional peak hour trips (PHT). Whenever the alteration, addition, replacement, or reconstruction is not exempt, the fee shall be imposed only on the additional units of guest rooms, square footage, change in use to a higher intensity category, or additional peak hour trips (PHT) generated.

SPECIAL FEES

Fees for the following land uses shall be:

1. **ACCESSORY DWELLING UNITS (ADUs):** Per MMC 20.42.040(D)(3), A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees. However, no impact fees shall be imposed on ADUs of less than 750 square feet. For an ADU larger than 750 square feet, any impact fee shall be charged proportionately in relation to the square footage of the single-family dwelling on the property.
2. **INFILL DEVELOPMENT AND OPPORTUNITY ZONES:** Within the central area of the City and the Opportunity Zones, within the area below (see map below), impact fees shall be 50 percent of the standard fee based on their impact on public facilities.



Infill Development and Opportunity Zones

3. **AFFORDABLE HOUSING:** Fees for affordable housing projects shall be determined on a case-by-case basis depending on the level of affordability, number of affordable units, etc. The determination shall be made by the Director of Development Services but can be appealed to the City Council per the provisions of MMC 17.62.050.
4. **SINGLE-FAMILY HOMES SMALLER THAN THE AVERAGE HOME SIZE IN MERCED:** The average single-family home size in Merced based on building permits issued in 2021 was 1,920 square feet. For homes that are at least 10 percent below that average size, a fee shall be charged proportional to the percent below the average single-family home size.

DEFERRED PAYMENT

If the total amount of public facilities fees due and payable at the time of issuance of a certificate of occupancy for a non-residential or multi-family project exceeds \$50,000, the property owner may enter into a Deferred Payment Agreement with the City to pay twenty-five percent (25%) of those fees at the time the certificate of occupancy is issued with the remaining seventy-five percent (75%) to be paid in equal installments over the next five (5) years (or less at the developer's option).

REPAYMENT TERMS

- 1) **INTEREST:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.
- 2) **DUE ON TRANSFER:** The unpaid balance, together with accrued interest, shall be due and payable in full upon the sale or any other transfer of the property.
- 3) **RECORDING AND PROCESSING FEES:** All such fees shall be paid by the owner or applicant.

SECURITY

The developer shall, as security for repayment, execute a promissory note or bond evidencing the obligation and terms of repayment. In addition to the promissory note or bond, the developer may be required, at the discretion of the City, to provide additional security of a type and amount determined by the City.

PROCESSING DEFERRED FEE REQUESTS

A developer who requests the deferral of public facilities fees shall make application to the Development Services Department, for review, processing, and determination of eligibility. Such requests shall have a processing fee of Eight Hundred Seventy-One Dollars (\$871.00) in 2022, adjusted each January 1, per the Consumer Price Index (CPI).

CREDIT OR REIMBURSEMENT

If the developer constructs improvements that are part of the public facility fee program and required by the City, the following shall apply:

1. If the actual cost of the improvement is equal to or less than the total amount of fees to be paid, the developer will receive a credit in an amount equal to the actual cost of the improvements (but in no event in excess of the City Engineer's estimate). No credit shall be given until and unless the improvement is constructed and accepted by City or until developer provides security for the improvement in the same manner as security for subdivision improvements.
2. If the actual cost of the improvements is greater than the total amount of fees to be paid, a reimbursement agreement with the City shall be established. No reimbursement shall be given until and unless the improvement is constructed and accepted by City.
3. Developers shall be reimbursed on a first in time basis and based on the availability of public facility fee program funds. First in time shall be determined by when the public improvement is completed and accepted by City.

4. Of the fees collected for projects, one-half shall be dedicated to repayment for developer installed improvements and one-half shall be earmarked for improvements to be installed by the City. In its discretion, the City may use any or all of the fees to reimburse developers.
5. City shall be under no obligation to reimburse developers except from the one-half of the fees collected, and no reimbursement shall be owed until fees for said purpose have been collected and until the installing developer has filed a written request for reimbursement with the City Clerk. In no event shall reimbursement be made to the installing developer after the tenth anniversary of the date the public improvement was accepted by the City.
6. Reimbursements, if any, shall not bear interest.
7. Unused Park and Recreation Facilities Fee credits granted per the now repealed Merced Municipal Code Section 17.38 can be applied toward the Public Facilities Impact Fees.
8. To be eligible for credit or reimbursement, all public improvements that are part of the public facility fee program shall be paid at prevailing wages. That includes any portion of the public improvement which is not eligible for reimbursement (i.e. curb, gutter, sidewalk, landscaping, etc.)

RIGHT-OF-WAY DEDICATION AND REIMBURSEMENT

Unless provided otherwise by development agreement, condition of approval, mitigation measure, or by city standards, the developer will be eligible for credit/reimbursement for the cost of any additional right-of-way required for street improvements in excess of the first 37 feet (or other collector standard) required for a one-half street section measured from the ultimate right-of-way line. In calculating the value of the right-of-way, the value will be determined by the City Engineer. If the developer objects to the determined fair market value, he/she may appeal to the City Council. The burden of proof shall lie with the developer. Any right-of-way required to accommodate access to a given parcel such as “deceleration lanes” will be dedicated at the developer’s expense and is not subject to credit/reimbursement.

STREET CONSTRUCTION PAVING REIMBURSEMENT

The first 24 feet of paving adjacent to the curb line plus all paving required to accommodate deceleration lanes and driveways are a developer responsibility and are not subject to credit/reimbursement. The developer will be eligible for credit/reimbursement for the remainder of the street section outside of the first 24 feet of paving on either side of the street.

TRAFIC SIGNAL REIMBURSEMENT

Unless provided otherwise by development agreement or by use permit, the developer will be eligible for 100 percent credit/reimbursement for installation of traffic signals at the intersection of two arterial streets, and for 50 percent reimbursement at an intersection of an arterial and collector street.

ARTERIAL BRIDGE REIMBURSEMENT

Unless provided otherwise by development agreement or by use permit, the developer will be eligible for 100 percent credit/reimbursement for construction of arterial bridges.

APPROVED:

Stephanie R. Dietz
City Manager

**RECORDING REQUESTED
BY:**

City of Merced, A California
charter municipal corporation

**WHEN RECORDED MAIL
TO:**

City Clerk
City of Merced
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

**AGREEMENT AFFECTING REAL PROPERTY & CREATING A
LIEN TO SECURE DEFERRED PAYMENT OF CITY PUBLIC
FACILITY FINANCING PLAN IMPACT FEES**

THIS AGREEMENT is made this _____ day of _____,
20__, by and between _____ [Requestor],
a(n) _____ [describe entity (individual, partnership,
LLP, corporation, etc.)] (hereinafter referred to as "Grantor") and the CITY
OF MERCED, a California charter municipal corporation (hereinafter referred
to as "Grantee").

WHEREAS, Grantor has applied to the Grantee for a building permit on
the property known as _____
[Property Address or APN's], and more fully described on Exhibit "A"
attached hereto; and,

WHEREAS, Grantor has further applied for deferral of certain Public
Facility Financing Plan ("PFFP") fees in accordance with Section 17.62.050
of the Merced Municipal Code and the Administrative Procedures adopted
pursuant thereto, said fees being more fully described on Exhibit "B" attached
hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein 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:

1. **PFFP FEE OBLIGATION.** Grantor acknowledges and unconditionally agrees that it owes the Grantee the total sum of \$ _____ for PFFP fees.

2. **PFFP DOWN PAYMENT AND REPAYMENT SCHEDULE.** The Grantor agrees to pay twenty-five percent (25%) of the PFFP fees at the time the building permit is issued with the remaining seventy-five percent (75%) to be paid in equal monthly installments over the next five (5) years (or less at the Grantor's option).

3. **PFFP REPAYMENT TERMS AND CONDITIONS.**

A. **PAYMENT FREQUENCY:** Grantor shall make monthly payments on the remaining deferred PFFP fee obligation, the amount paid annually being at least one-quarter of the total deferred PFFP fee obligation, plus interest as described below. Payments shall be made on or before the first of each month and shall be made to the City of Merced, Finance Department, PFFP Fee Deferral for _____, [Reference to Fee Deferral Project] and made at 678 West 18th Street, Merced, California 95340. Grantee shall endeavor to send Grantor an invoice for payment at least thirty (30) days before the payment is due. However, Grantor unconditionally agrees to make said payment by the payment due date even if no invoice is received thereby. A late fee of five percent (5%) of the total fee payment shall be imposed for all late payments made.

B. **INTEREST:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th

District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.

- C. **DUE ON TRANSFER:** The unpaid deferred PFFP fee balance, together with accrued interest, and late fees shall be due and payable in full upon the sale or any other transfer of the property.
- D. **RECORDING AND PROCESSING FEES:** All such fees shall be paid by the Grantor.

4. **LIEN CREATED.** Grantor hereby grants to Grantee a lien against the real property described in Exhibit "A."

5. **LIEN AS SECURITY FOR DEFERRED PFFP FEES.** The lien created herein in the real property described in Exhibit "A" is intended to guarantee the payment in full, plus accrued interest, late fees, and the cost of collection of the deferred PFFP fees.

6. **LIEN PRECEDENCE.** The lien created herein shall be superior to all other liens or encumbrances against the real property described in Exhibit "A."

7. **GRANTEE'S AUTHORITY TO FORECLOSE ON LIEN.** The condition of this lien is such that if the above-named Grantor, its or their heirs or executors, administrators, successors, transferees, or assigns shall in all things stand to and abide by, and truly keep and perform the covenants, conditions, and provisions in this Agreement and any alteration thereof made therein and provided, on its or their part, to be kept and performed at the time and in the manner therein specified, and in all other respects according to their true intent and meaning, and indemnifies and saves harmless the Grantee, its officers, agents and employees as therein stipulated, then the liens shall become null and void upon recording of a release by the Grantee in substantially the form as shown on Exhibit "C" hereto; otherwise the lien shall remain in full force and effect.

8. **GRANTEE'S COSTS TO ENFORCE PAYMENT OBLIGATION INCLUDED IN AMOUNT OF LIEN.** As part of the obligation secured hereby and in addition to the amount stated above, there shall be included cost and reasonable expenses and fees, including reasonable

attorneys' fees and late fees, incurred by Grantee in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

9. EXTENSIONS OF TIME SHALL NOT CHANGE OBLIGATION TO PAY, PRIORITY, OR ENFORCEABILITY OF LIEN. The Grantor hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of this Agreement shall in any manner effect Grantor's obligations with respect to this lien.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

By: _____
(Signature)

Name: _____
(Typed Name)

Title: _____

Address: _____

Telephone: _____

GRANTEE:

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

ACKNOWLEDGEMENT

State of California

County of Merced

On _____, 20____, before me, _____,
a 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 the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Notary Public

(seal)

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Description of Deferred Fees

EXHIBIT "C"

Form of Notice to Release Lien When Payment is Paid

RECORDING REQUESTED BY:

City of Merced, A California Charter
Municipal Corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

**RELEASE OF LIEN UPON REAL PROPERTY
[DEFERRED PUBLIC FACILITY FINANCING PLAN FEES]**

WHEREAS, On _____, 20____,
(hereinafter "Grantor") and the City of Merced, a California Charter Municipal
Corporation, ("Grantee") entered into that certain Agreement entitled "Agreement
Affecting Real Property and Creating a Lien to Secure Deferred Payment of City
Public Facility Financing Plan Impact Fees," (the "Agreement"), which
Agreement was recorded as Vol. _____, Page _____, *et seq.*, Official Records of
Merced County on _____, 20____; and,

WHEREAS, Grantor has satisfied the conditions for the release of lien upon
the real property described in said Agreement.

NOW THEREFORE, the Grantee hereby releases all of its right, title, and
interest to the lien in the real property described in Exhibit "A" attached hereto,
and as created by the Agreement referenced above and recorded as Vol. _____, Page
_____, *et seq.*, Official Records of Merced County on _____, 200__.

///

///

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT "A"
LEGAL DESCRIPTION

**AGREEMENT TO SECURE DEFERRED PAYMENT OF CITY
PUBLIC FACILITY FINANCING PLAN IMPACT FEES**

THIS AGREEMENT is made this _____ day of _____, 20____, by and between _____ [Requestor], a(n) _____ [describe entity (individual, partnership, LLP, corporation, etc.)] (hereinafter referred to as "Grantor") and the CITY OF MERCED, a California charter municipal corporation (hereinafter referred to as "Grantee").

WHEREAS, Grantor has applied to the Grantee for a building permit on the property known as _____ [Property Address or APN's], and more fully described on Exhibit "A" attached hereto; and,

WHEREAS, Grantor has further applied for deferral of certain Public Facility Financing Plan ("PFFP") fees in accordance with Section 17.62.050 of the Merced Municipal Code and the Administrative Procedures adopted pursuant thereto, said fees being more fully described on Exhibit "B" attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein 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:

1. **PFFP FEE OBLIGATION.** Grantor acknowledges and unconditionally agrees that it owes the Grantee the total sum of \$ _____ for PFFP fees.

2. **PFFP DOWN PAYMENT AND REPAYMENT SCHEDULE.** The Grantor agrees to pay twenty-five percent (25%) of the PFFP fees at the time the building permit is issued with the remaining seventy-five percent (75%) to be paid in equal monthly installments over the next five (5) years (or less at the Grantor's option).

3. **PFFP REPAYMENT TERMS AND CONDITIONS.**

- A. **PAYMENT FREQUENCY:** Grantor shall make monthly payments on the remaining deferred PFFP fee obligation, the amount paid annually being at least one-quarter of the total deferred PFFP fee obligation, plus interest as described below. Payments shall be made on or before the first of each month and shall be made to the City of Merced, Finance Department, PFFP Fee Deferral for _____, [Reference to Fee Deferral Project] and made at 678 West 18th Street, Merced, California 95340. Grantee shall endeavor to send Grantor an invoice for payment at least thirty (30) days before the payment is due. However, Grantor unconditionally agrees to make said payment by the payment due date even if no invoice is received thereby. A late fee of five percent (5%) of the total fee payment shall be imposed for all late payments made.
- B. **INTEREST:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.
- C. **DUE ON TRANSFER:** The unpaid deferred PFFP fee balance, together with accrued interest, and late fees shall be due and payable in full upon the sale or any other transfer of the property.
- D. **RECORDING AND PROCESSING FEES:** All such fees shall be paid by the Grantor.

4. **SECURITY.** Grantor hereby provides security for the payment of the deferred PFFP Fees and related costs to Grantee the items of security as identified in Exhibit "A."

5. **SECURITY FOR DEFERRED PFFP FEES.** The security identified in Exhibit "A" is intended to guarantee the payment in full, plus accrued interest, late fees, and the cost of collection of the deferred PFFP fees.

6. **Reserved.**

7. **Reserved.**

8. **GRANTEE'S COSTS TO ENFORCE PAYMENT OBLIGATION INCLUDED IN AMOUNT OF SECURITY.** As part of the obligation secured hereby and in addition to the amount stated above, there shall be included cost and reasonable expenses and fees, including reasonable attorneys' fees and late fees, incurred by Grantee in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

9. **EXTENSIONS OF TIME SHALL NOT CHANGE OBLIGATION TO PAY, PRIORITY, OR ENFORCEABILITY OF LIEN.** The Grantor hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of this Agreement shall in any manner effect Grantor's obligations with respect to this lien.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

By: _____
(Signature)

Name: _____
(Typed Name)

Title: _____

Address: _____

Telephone: _____

GRANTEE:

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT "A"

Identification of Security

EXHIBIT "B"

Description of Deferred Fees

EXHIBIT “C”

Form of Notice to Release Security When Payment is Paid

CITY OF MERCED

PUBLIC FACILITY FINANCING PLAN

RELEASE OF SECURITY FOR DEFERRED PFFP FEES

WHEREAS, On _____, 20____, _____
(hereinafter "Grantor") and the City of Merced, a California Charter Municipal Corporation, ("Grantee") entered into that certain Agreement entitled "Agreement to Secure Deferred Payment of City Public Facility Financing Plan Impact Fees," (the "Agreement"); and,

WHEREAS, Grantor has satisfied the conditions for the release of the security described in said Agreement.

NOW THEREFORE, the Grantee hereby releases all of its right, title, and interest to the lien in the security described in Exhibit "A" attached hereto, and as created by the Agreement referenced.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT "A"

DESCRIPTION OF SECURITY

**CITY OF MERCED
PROMISSORY NOTE
(CONTAINING ACCELERATION CLAUSE)
(PFFP FEE DEFERRAL)**

Amount: _____, California

Dated: _____

FOR VALUE RECEIVED, on or before _____, [date] the undersigned individual(s) promise(s) to pay without demand therefore the City of Merced, a California charter law municipal corporation, or order at 678 West 18th Street, Merced, California 95340, or at such designate in writing, the principal sum of _____, [amount] (\$ _____), with annual the interest rate thereon equal to the 11th District cost of funds plus one percent (2%) [200 basis points] adjusted every July.

The undersigned promises and agrees to make monthly installment payments of _____ [amount] (\$ _____) for a period of time not to exceed five (5) years. Payments to be made to the City of Merced at the above referenced address. Should the Promisor fail to make any two consecutive payments, the entire remaining balance shall become due and payable immediately upon notice to the Promisor from the City or its legal representative. Notwithstanding the above, to any late payment, a late payment fee of five percent (5%) shall be imposed and applied on said payment. Should the late payments fee not be paid, it shall be added to and included within the sum secured by this Promissory Note.

If action is instituted on this Note, the undersigned promises to pay the holder thereof any expenses incurred thereby, including, but not limited to, court costs and such other sums as the Court may fix as reasonable attorney's fees.

It is further acknowledged and agreed that the unpaid balance, plus accrued interest shall be immediately due and payable upon the sale or transfer of the real property located at _____ and as described on Exhibit "A" hereto.

This Note or any portion thereof may be prepaid at any time without penalty.

In agreement thereof, I execute this Note on the ___ day of _____, 20__ in the City of _____, California.

Promisor's Signature

Promisor's Signature

CITY OF MERCED

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

Affordable Housing Project Impact Fee Schedule of Adjustments

Income Category	% of AMI		(% fee reduction)
Acutely Low	0-15		100%
Extremely Low	15-30		90%
Very Low	30-50		80%
Low	50-80		60%
Moderate	80-120		40%
Above Moderate	over 120		0%
Community Bldg/Office*			100

Acutely low income: 0-15% of AMI

Extremely low income: 15-30% of AMI

Very low income: 30% to 50% of AMI

Lower income: 50% to 80% of AMI; the term may also be used to mean 0% to 80% of AMI

Moderate income: 80% to 120% of AMI

*The Community Bldg/Office serves the tenants of the apartment complex. Therefore there are no additional impacts. A 100% reduction in impact fees is given for the Community Bldg/Office

Exhibit F

Project Backbone and Offsite Infrastructure

Project Backbone and Offsite Infrastructure

	Phase of Development				
	1A	1B	1C	1D	1E
Circulation Improvements					
Lake Road from Cardella to Virginia Smith		X			
Lake Road (Virginia Smith to Meyers Gate)	X				
Campus Parkway (Virginia Smith to Cardella)		X			
University Avenue (Meyers Gate - Campus Parkway)	X				
Campus Parkway (Meyers Gate to Virginia Smith)	X				
Campus Parkway (Virginia Smith to Cardella Road)		X			
Meyers Gate Road (Lake Road to Golden Bobcat)	X				
Meyers Gate Road (Golden Bobcat to Kibby Road)			X		
Golden Bobcat Ave (Meyers Gate Road to Virginia Smith)	X				
Golden Bobcat Ave (Virginia Smith to Cardella Road)		X			
Virginia Smith Parkway (Lake Road - Golden Bobcat Avenue)		X			
Virginia Smith Parkway (Golden Bobcat Avenue - Kibby Road)			X		
Virginia Smith Parkway (Kibby Road - Canal)					X
Main Street (Meyers Gate to Virginia Smith)			X		
Main Street (Virginia Smith - Cardella Road)				X	
Kibby Road (Meyers Gate Road to Virginia Smith)			X		
Kibby Road (Virginia Smith to Cardella Road)				X	
Cardella (Lake Road to Golden Bobcat)		X			
Cardella (Golden Bobcat to Kibby Road)				X	
Cardella (Kibby Road to Canal)					X
Road A from Virginia Smith to Cardella Road					X
Sewer Improvements					
Lift Station and forcemain to existing SS @ Bellevue RD		X			
Gravity Sewer in Cardella from Lift Station to Golden Bobcat		X			
Gravity in Virginia Smith Parkway to Golden Bobcat		X			
Gravity Sewer in Meyers Gate Between Lake Road and Golden Bobcat	X				
Gravity Sewer in University Avenue	X				
Gravity Sewer in Campus Parkway from Meyers Gate to Virginia Smith Parkway.	X				
Gravity Sewer in Golden Bobcat from Meyers Gate to Virginia Smith Parkway	X				
Gravity Sewer in Meyers Gate and Virginia Smith between Golden Bobcat and Kibby Road			X		
Gravity Sewer in Main Street from Meyers Gate to Virginia Smith			X		
Gravity Sewer in Cardella Road from Golden Bobcat to Road A				X	
Gravity in Main Street and Kibby Road from Virginia Smith to Cardella				X	
Gravity in Virginia Smith Parkway and Cardella from Kibby road to Phase 1 east boundary					X
Gravity Sewer in Road A from Virginia Smith Parkway to Cardella Road.					X
Water Improvements					
Water main in Lake Road from Bellevue to Cardella Road		X			
Water main in Virginia Smith Parkway and Cardella from Lake Road to Golden Bobcat		X			
Water main in Campus parkway and Golden Bobcat from Virginia Smith Parkway to Cardella.		X			
Install Water Well on East side of Golden Bobcat Ave.	X				
Water main in Campus parkway and Golden Bobcat from Meyers Gate Road and Virginia Smith	X				
Water main in Meyers Gate from Lake Road to Golden Bobcat	X				
Water main in Meyers Gate Road and Virginia Smith Parkway from Golden Bobcat to Kibby Road			X		
Water main in Main Street and Kibby Road from Meyers Gate Road to Virginia Smith Parkway			X		
Water main in Main Street and Kibby Road from Virginia Smith Parkway to Cardella Road				X	
Water main in Cardella Road from Golden Bobcat Road to Kibby Road				X	
Water main in Virginia Smith Parkway and Cardella Road from Kibby Road to Phase 1 eastern boundary					X
Water main in Road A from Virginia Smith and Cardella Road					X
Storm Drainage Improvements					
Storm Drain Infrastructure in Virginia Smith Parkway		X			
Storm Drain Basins along Virginia Smith Parkway between Lake Road and Golden Bobcat		X			
Storm Drain Basins along Campus Parkway and Creek between Virginia Smith Parkway and Cardella	X				
Storm Drain Infrastructure in Campus Parkway, University and Golden Bobcat between Meyers Gate Road and Virginia Smith Parkway	X				
Storm Drain Basins along University Avenue and Campus Parkway	X				
Storm Drain Infrastructure along Main Street and Kibby Road between Meyers Gate Road and Virginia Smith Parkway			X		
Storm Drain Basins along Virginia Smith and Kibby Road between Golden Bobcat Ave and Kibby			X		
Storm Drain Infrastructure along Cardella Road between Kibby Road and Golden Bobcat				X	
Storm Drain Basins along Cardella between Kibby Road and Golden Bobcat				X	
Storm Drain Infrastructure along Virginia Smith and Cardella Road between Kibby Road and Phase 1 eastern edge (including bypass line)					X
Storm Drain Basins along Cardella and adjacent to the canal (including outlets to canal)					X

Exhibit G

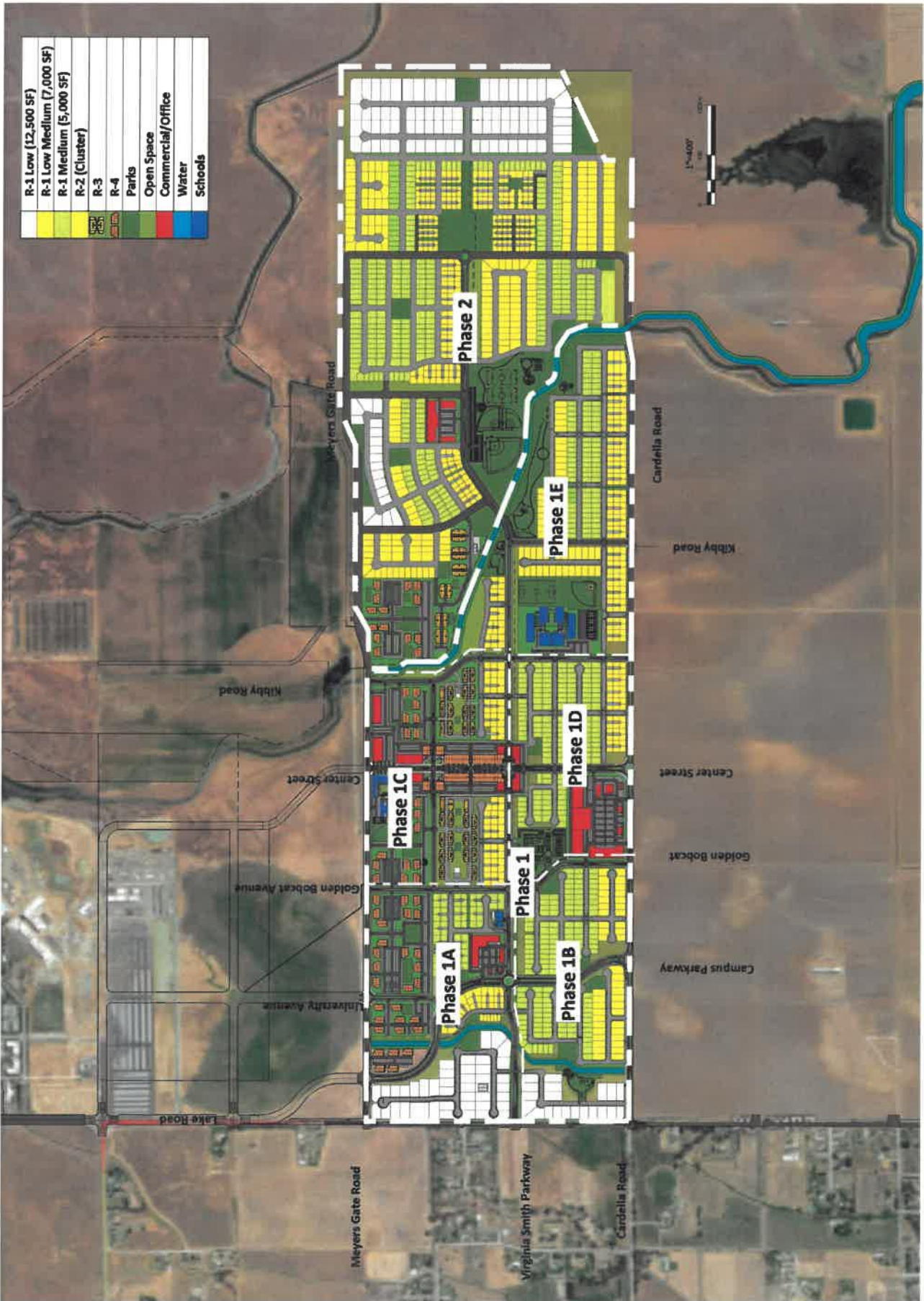
Phasing Plan



Phases

Virginia Smith Trust
Development Plan

1	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
2	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
3	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
4	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
5	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
6	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
7	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
8	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
9	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2
10	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E	Phase 2



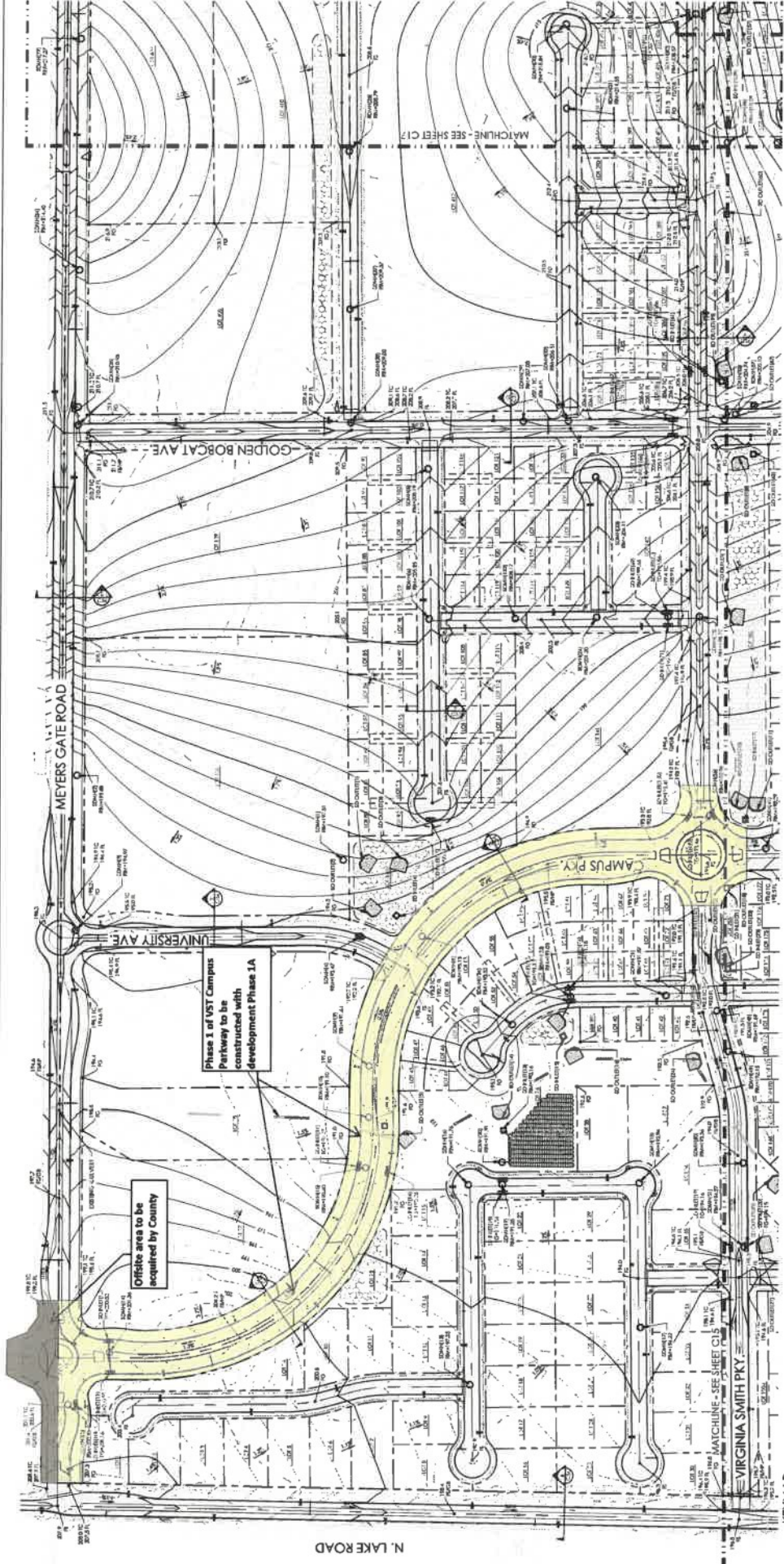
R-1 Low (12,500 SF)
R-1 Low Medium (7,000 SF)
R-1 Medium (5,000 SF)
R-2 (Cluster)
R-3
R-4
Parks
Open Space
Commercial/Office
Water
Schools

Exhibit H

Backbone Infrastructure Phasing Plan

Exhibit I

Campus Parkway Connection Right of Way and Improvements



- LEGEND**
- TRACT BOUNDARY
 - PROPOSED PROPERTY LINE
 - PROPOSED EASEMENT/SETBACK
 - PROPOSED RW
 - ▭ PROPOSED UNDERGROUND STORAGE CHAMBERS - SEE STORMWATER SHEETS FOR DMA'S AND RETAINED VOLUMES
 - PROPOSED BIO-RETENTION AREA
 - PROPOSED OUTLET WITH RP-RA P
 - PROPOSED STORM DRAIN MANHOLE
 - PROPOSED INLET / RISER



August 29, 2022

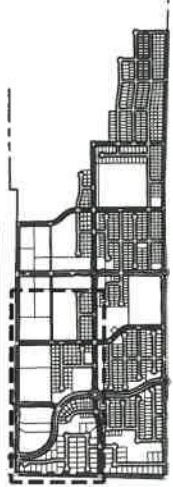
PRELIMINARY GRADING PLAN C14

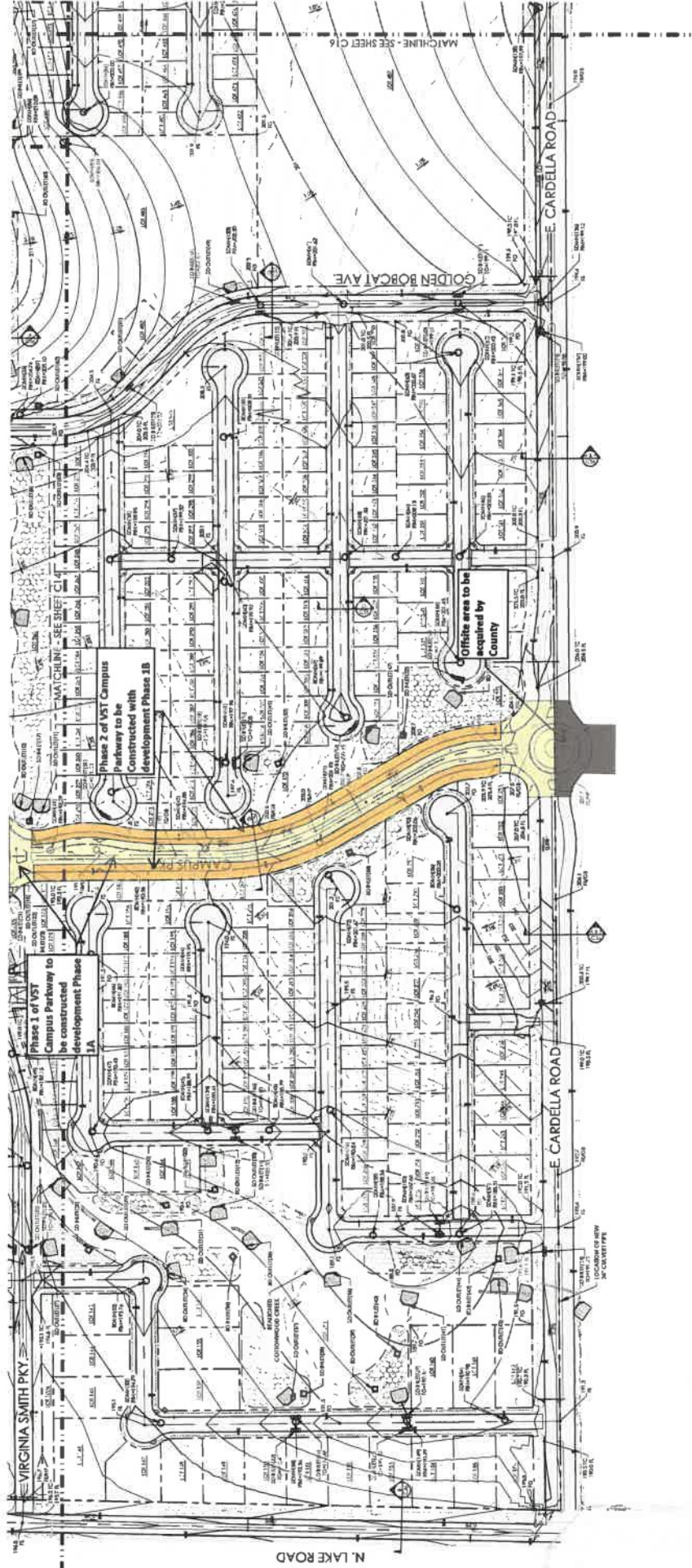
VIRGINIA SMITH LAND TRUST

Offsite area to be acquired by County

Phase 1 of VST Campus Parkway to be constructed with development Phase 1A

KEYMAP





KEYMAP



- LEGEND**
- TRACT BOUNDARY
 - PROPOSED PROPERTY LINE
 - PROPOSED EASEMENT/SETBACK
 - PROPOSED RW
 - PROPOSED UNDERGROUND STORAGE CHAMBERS. SEE STORMWATER SHEETS FOR DMA'S AND RETAINED VOLUMES
 - PROPOSED BIO-RETENTION AREA
 - PROPOSED OUTLET WITH RP-RAP
 - PROPOSED STORM DRAIN MANHOLE
 - PROPOSED INLET/ RISER



August 29, 2022



PRELIMINARY GRADING PLAN C15

VIRGINIA SMITH LAND TRUST

Exhibit J

Affordable Housing Plan

Virginia Smith Trust Property

Affordable Housing Plan

Affordable Housing Plan

In the larger scheme, the housing stock in Merced is adequate and affordable. Prices are still somewhat depressed from over-supply and the effects to the Great Recession. Apartments provide an affordable alternative to home ownership. However, it is still believed that programs should be provided to create workforce housing, increase the supply of housing available to UC employees and students, and provide preferences and incentives for individuals who work on campus at UC Merced. There should also be owner-occupancy restrictions in the single-family detached units to eliminate or substantially reduce the potential for converting single family neighborhoods to tracts of investor-owned rental for students (Isla Vista), and a special Workforce Housing Incentive Program should be established (basically a first time homebuyers program) which will provide deed-restricted units for workforce housing eligible households (households earning 121-160% of the Area Median income). This workforce housing program seeks to target the Project to all UC employees, reduce the influence of investors in the limitation of housing choice and availability, provide a down payment assistance program for Workforce Income families, and provide a certain number of units that will be deed-restricted. Finally, VST and its builders will team up with affordable housing providers to provide lots for "sweat equity" self-help housing. The elements of the program are as follows:

1. **Local Preference ("UC Workers First").** The UC and University Community Plan areas have been planned as an integrated unit for the last 25 years. The hope has always been that the UCP properties, including VST, would provide the residential and commercial support for UC's students and staff. It is known that many of the UC's staff live outside of the community and students are being accommodated inside the City at other locations. These commute trips result in an estimated 17.7 million vehicle miles (VMT) traveled each year by students and staff using passenger cars to and from the university. If VST can capture 35 percent of the current students, and 50% of the current staff, all vehicle trips will be shortened, and there will be a significant shift to non-vehicle modes of transportation resulting in a VMT reduction of approximately 9 million miles per year.

Incentives will be established to provide priority for existing UC staff and students as follows:

- a. Each development phase of VST is to maintain the interest list and shall separate and prioritize names of local employees based on interest in product type.
- b. When housing units are to become available, usually 270-360 days prior to certificate of occupancy (assuming a 180-day construction period), the builder shall notify those UC staff on the reservation list of the opportunity to purchase a residence starting with the "top of the list."

Those individuals shall have approximately 60 days to get pre-qualified to purchase the residence and to provide the builder with proof that the individual is a UC employee (i.e. paycheck or bonafide offer of employment from a local employer.)

- c. If an individual fails to get pre-qualified or fails to provide the builder with proof of UC employment within the time periods above, then the builder may remove or put that name at the end of the interest list.
 - d. UC staff and employees shall be provided with an incentive package worth \$5,000, including reductions off base price, option allowances, free bikes for transportation, allowance for closing costs, allowance for upgrades, or similar incentives at the discretion of the builder. This incentive would apply to all UC staff regardless of income.
2. **Owner-Occupancy Restrictions.** Establishing a stable and desirable neighborhood for UC staff will require some segmentation and separation of the student rentals and the ownership units. Builders will agree to include restrictions in the purchase agreement and Covenants Conditions and Restrictions (CC&Rs) for the R-1 single family detached units and at least 75% of the R-2 units to restrict these units for owner-occupancy only for the first five years after sale. In the case of units with Accessory Dwelling Units (ADUs), the Principal Dwelling or the ADU will need to be occupied by the property owner. The final form of these agreements will be determined at the time of development of the first final map, and will provide for appropriate monitoring and enforcement.
 3. **Workforce Housing Incentive Program (WHIP).** The project will provide Workforce Housing category, defined as household incomes of 121% to 160% of Area Median Income (AMI). This program would require that eligible households have incomes no greater than 160% of the then-current Area Median Income (AMI) and are income-certified by the local Housing Authority. Prices would be limited to no more than that required to achieve an Index of Affordability ("Index") of 31 percent (cost of housing including mortgage principal, mortgage interest, taxes and insurance divided by 140% of AMI). The maximum purchase price would be equal to 5.65 times (140% of 4.05 multiplier) the median income for each household size. These units would have to be occupied by an income qualifying Workforce Housing household for a minimum of ten (10) years, with preference to UC staff if legally permitted.
 4. **Down Payment Assistance Program.** The project would provide a matching down payment assistance (DPA) of five percent of the purchase price up to \$5,000 as a "silent second" on the initial sale of the five percent of the R-1 and R-2 homes. These units would have to be occupied by a UC staff earning less than Countywide "Moderate Income Limit" for Merced County as determined by State Housing and Community Development Department (HCD). These units would be occupied by a household for a minimum of ten (10) years; if resold within this ten-year period, the units would need to be sold to another income qualifying Workforce Housing buyer and the 10-year deed restriction would reset to 10 more years with the new buyer of the home. The DPA loan would be repaid upon sale of the unit or refinancing, and the proceeds would be placed in a revolving loan fund to assist future workforce, moderate, or lower income home buyers in the VST project. Unlike a reduction in price that would be captured by a future seller at the end of the affordability term, this assistance would continue throughout the life of the funds to assist buyers in the development.

5. **Self Help Housing.** VST would provide 25 improved R-2 lots for Self Help housing project for Very Low Income families. Floor plans, exterior elevations and finishes would be established by a master builder with the same basic specifications and finish qualities of market rate homes that are constructed by a builder for the balance of the development. Sites will be provided in conformance with Table 2 of the Specific Plan.

6. **Multifamily Construction Program.** The Specific Plan will provide improved sites that are adequate for up to 300 dwelling units, with sites for at least 200 units Phases 1A through 1E and 100 units in Phase 2. These sites will be provided to affordable housing providers and will be developed with a combination of market rate units, 50 deed-restricted Moderate Income units, 100 units for Extremely Low Income households, 100 units for Very Low Income House-holds, and 100 units for Low Income Households. In total this program will result in 350 units that will be enforceably restricted. In addition there would be 25 units for Very Low Income households in the Village Center Mixed Use area. Sites would be provided in conformance with Table 2 of the Specific Plan.

7. **Density Bonus Program.** The level of affordable housing in the Project is made possible by usage of the State and local Density Bonus Program (Chapter 20.56 of the Merced Municipal Code). The Project would dedicate land for the Self Help Housing and the Multifamily Construction programs, including 2.96 acres for 25 R-2 units for Low Income Self Help units, and 10.7 acres of R-4 land for 300 units (20.17% of total R4 units) on multiple sites, including 100 Low Income units, 100 Very Low income units, and 100 Extremely Low Income units. These would be constructed on multiple sites per the schedule and buildout in Table 2 of the Specific Plan. The dedication of the R-4 land would result in a 25% Land Dedication Density Bonus to the R-4 area for the 20.1% of affordable units in the R-4 area that would yield 372 additional R-4 units. For the purposes of this density bonus, the "development" would be defined as the entire 53-acre, 1,489-unit R-4 area. The dedicated land would be adequate for 300 Extremely Low, Very Low Income units and Low Income units. The dedicated R-4 sites would be provided with a 50% density bonus on the affordable sites totaling 150 market rate or Moderate Income units. There would be a total of 522 bonus units, 35% of the total development (and within the City guidelines), with 372 of the bonus units used in the R-4 area outside of the dedicated land, and 150 units used on the dedicated R-4 land.

There would also be a density bonus for the Very Low Income units in the Town Center Mixed Use area. The 25 Very Low Income Units would be 23.1% of the total units and would yield a 50% density bonus, increasing the total number of Town Center Mixed Use units to 162 units.

Specific Plan Table 2

Development Per Phase Land Use Type	Phase 1					Total Phase 1	Phase 2	Total
	Phase 1A	Phase 1B	Phase 1C	Phase 1D	Phase 1E			
Residential (Units)								
R-1	109	226	--	141	186	662	615	1,277
R-2	36	—	64	24	131	255	225	480
R-3	—	—	364	—	—	364	140	504
R-4	696	—	456	—	—	1,152	336	1,488
Mixed Use	—	—	108	—	—	108	—	108
Total Residential (Units)	841	226	992	165	317	2,541	1,316	3,857
Commercial (SF)								
Retail Mixed/Town Center	—	—	275,000	32,500	—	307,500	—	307,500
Hotel/Office	—	—	275,000	—	—	275,000	—	275,000
Neighborhood Commercial	50,000	—	—	—	—	50,000	54,500	104,500
Community Commercial	—	—	—	175,000	—	175,000	—	175,000
Total Commercial (SF)	50,000	—	550,000	207,500	—	807,500	54,500	862,000
Parks (Acres)								
Linear Parks	1.23	4.16		1.40	4.50	11.29	8.47	19.76
Public Parks	2.14	3.48		7.30	15.50	28.42	34.79	63.21
School Parks					4.82	4.82		4.82
Private Parks	1.88		5.79			7.67	2.36	10.03
Total Parks (Acres)	5.25	7.64	5.79	8.70	24.82	52.20	45.62	97.82
Public Facilities (Acres)								
Backbone Roads	10.58	6.52	12.92	6.17	6.17	42.36	27.46	69.82
Water	1.50	4.20				5.70	9.84	15.54
Other	7.50					7.5	7.5	15.0
Schools			4.40		14.89	19.29		19.29
Total Public Facilities (Acres)	19.58	10.72	17.32	6.17	21.06	74.85	44.80	119.65
Affordable Housing								
Workforce Housing Program	25		25		25	75	75	150
Self Help Housing Program		13			12	25		25
Multifamily New Construction	100		125			225	100	325
Total Affordable Housing Units	125	13	175		37	325	175	500
<small>(Units counts do not include permitted density bonuses for qualified projects.)</small>								

Exhibit K

Water System Master Plan

LEGEND

	PROPOSED 12" PVC WATER
	PROPOSED 12" PVC WATER
	PROPOSED 12" PVC WATER
	PROPOSED 12" PVC WATER
	PHASE I MICROPIE SYSTEM
	UTURE (PHASE II) 12" PVC WATER
	UTURE (PHASE II) 12" PVC WATER
	UTURE (PHASE II) 12" PVC WATER
	UTURE (PHASE II) 12" PVC WATER
	PROPERTY LINE
	ROOF-DRAIN LINE
	PANEL LOT LINE
	LOT NUMBER

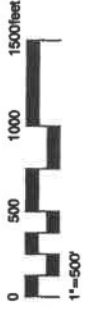
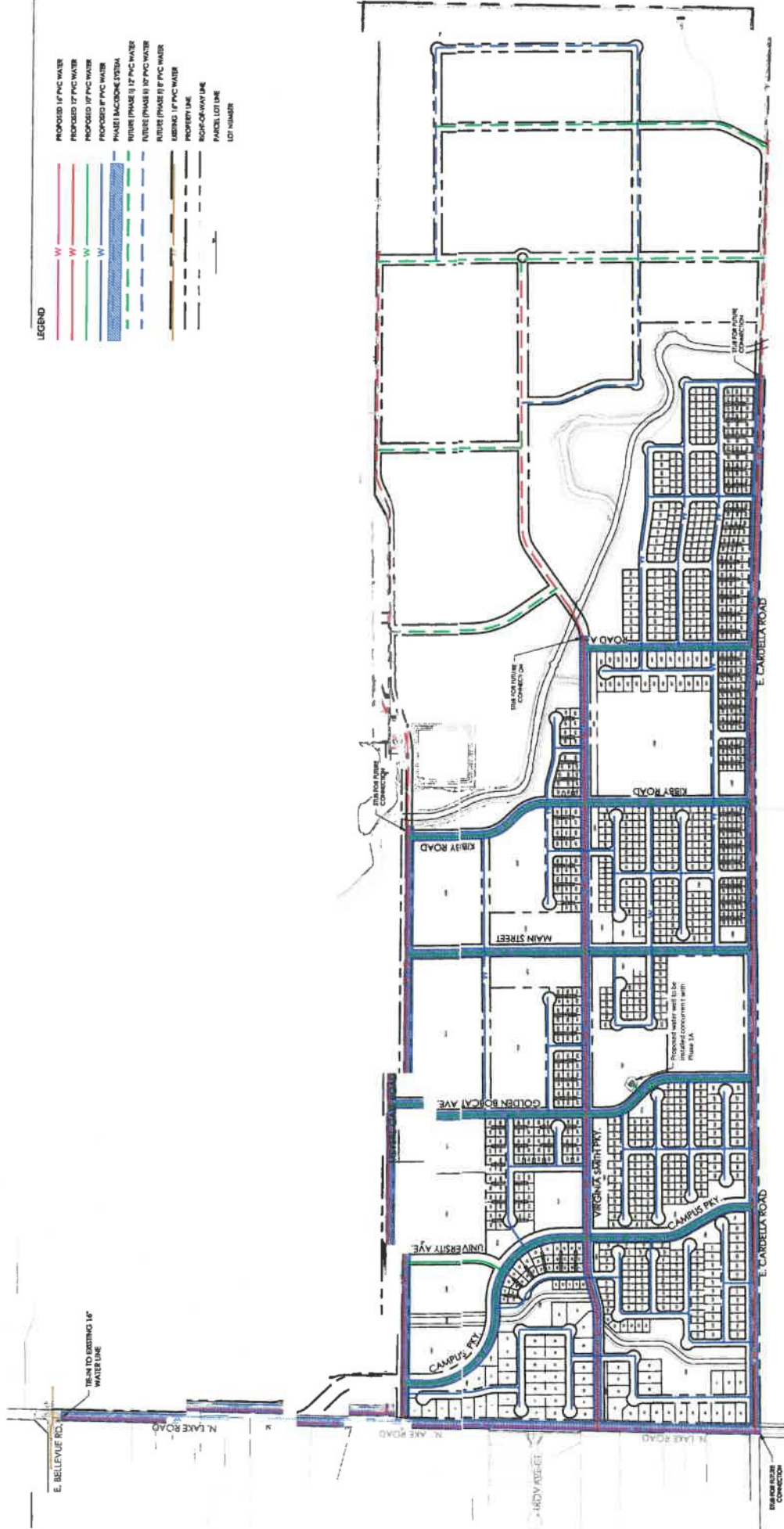
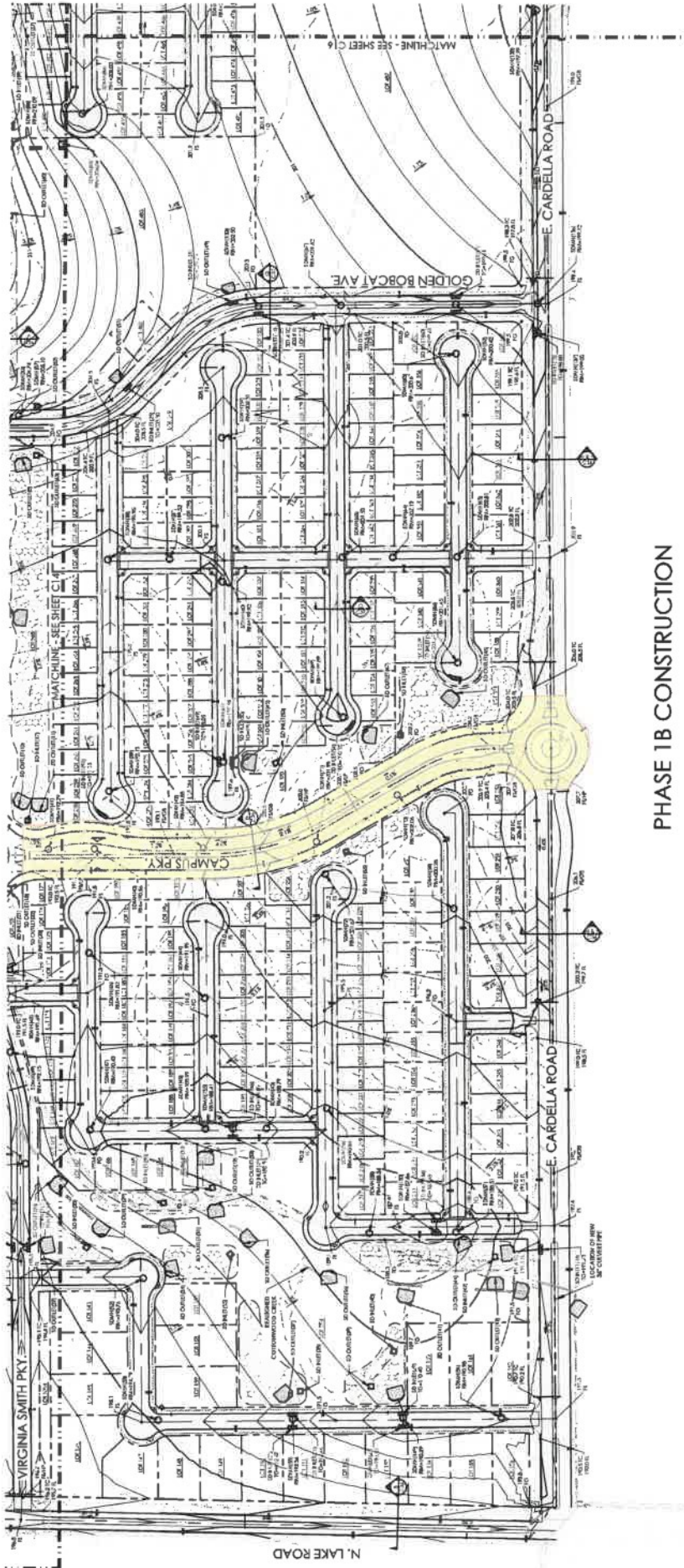


Exhibit L

Onsite Campus Parkway to be Constructed by VST



PHASE 1B CONSTRUCTION

KEYMAP



- LEGEND
- TRACT BOUNDARY
 - PROPOSED PROPERTY LINE
 - PROPOSED EASEMENT/SETBACK
 - PROPOSED RW
 - ▣ PROPOSED UNDERGROUND STORAGE CHAMBERS. SEE STORMWATER SHEETS FOR DMA'S AND RETAINED VOLUMES
 - PROPOSED BIO-RETENTION AREA
 - PROPOSED OUTLET WITH RIP-RAP
 - PROPOSED STORM DRAIN MANHOLE
 - PROPOSED INLET/ RISER

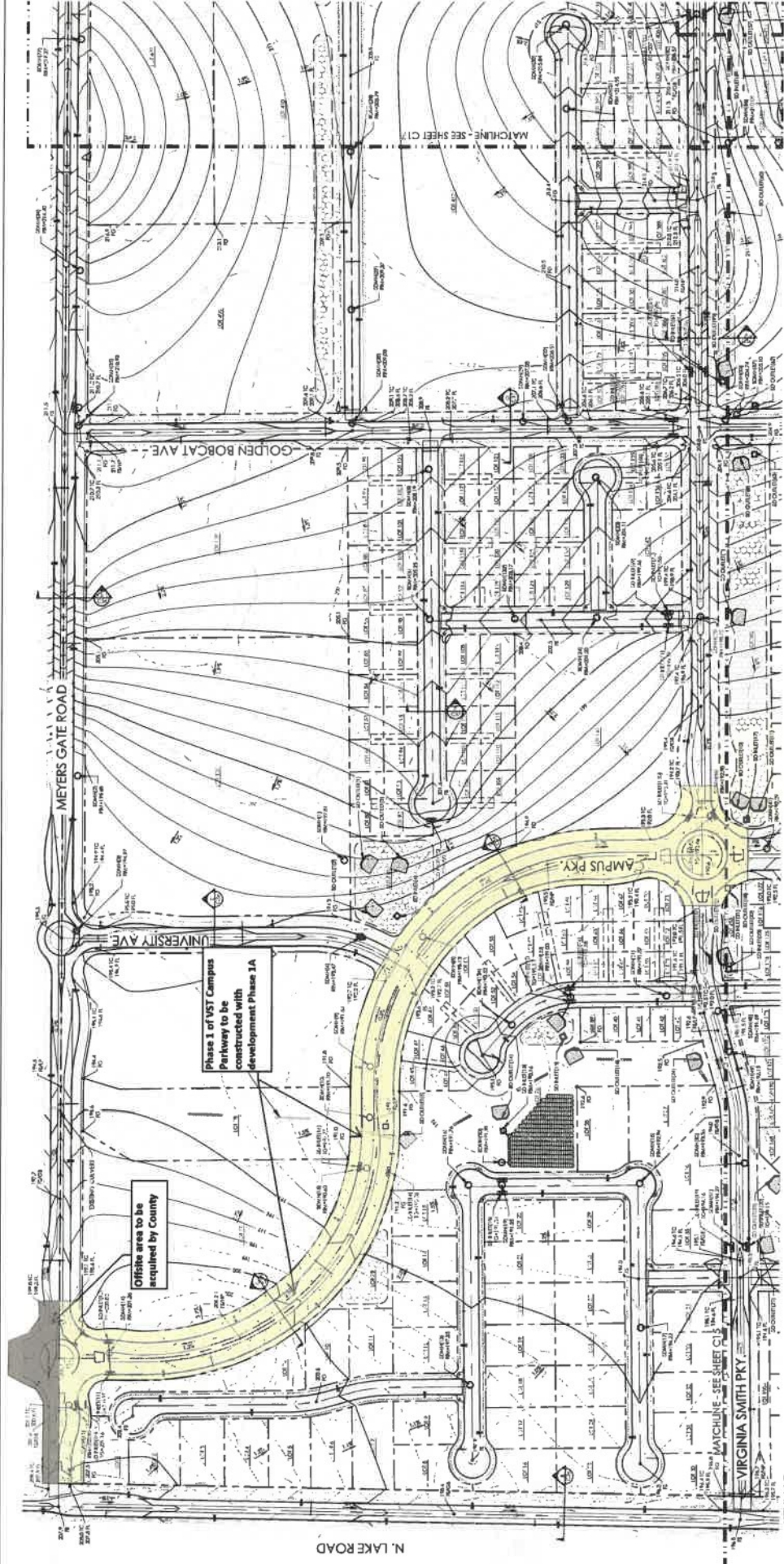


August 29, 2022



PRELIMINARY GRADING PLAN C15
VIRGINIA SMITH LAND TRUST

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- LEGEND**
- TRACT BOUNDARY
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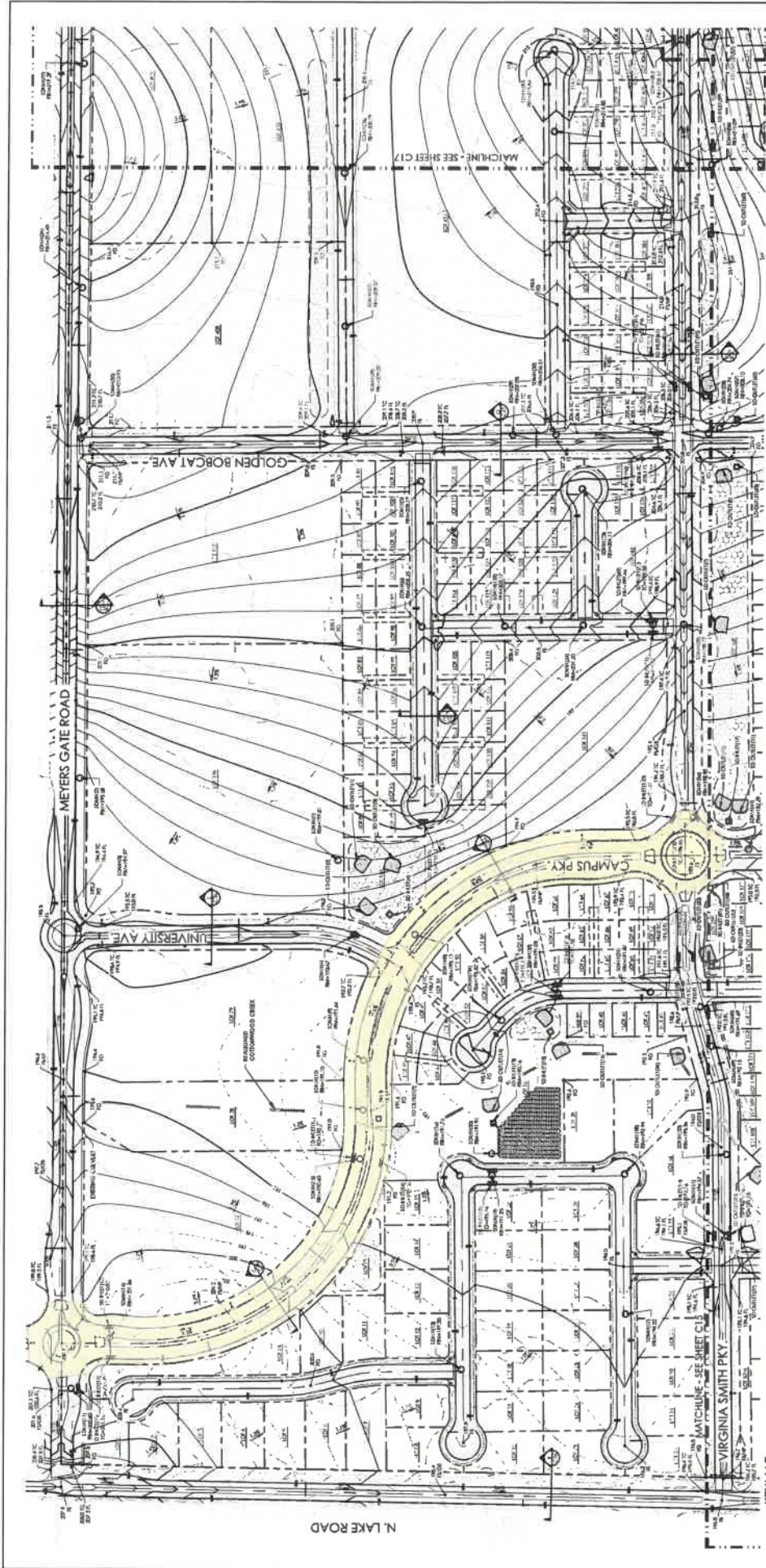


August 29, 2022

PRELIMINARY GRADING PLAN C14

VIRGINIA SMITH LAND TRUST





- LEGEND**
- TRACT BOUNDARY
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PHASE 1A CONSTRUCTION



August 29, 2022

PRELIMINARY GRADING PLAN C14
VIRGINIA SMITH LAND TRUST

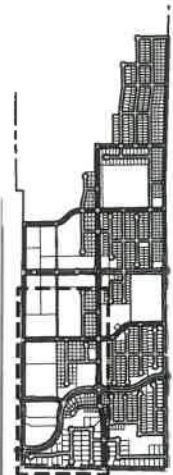


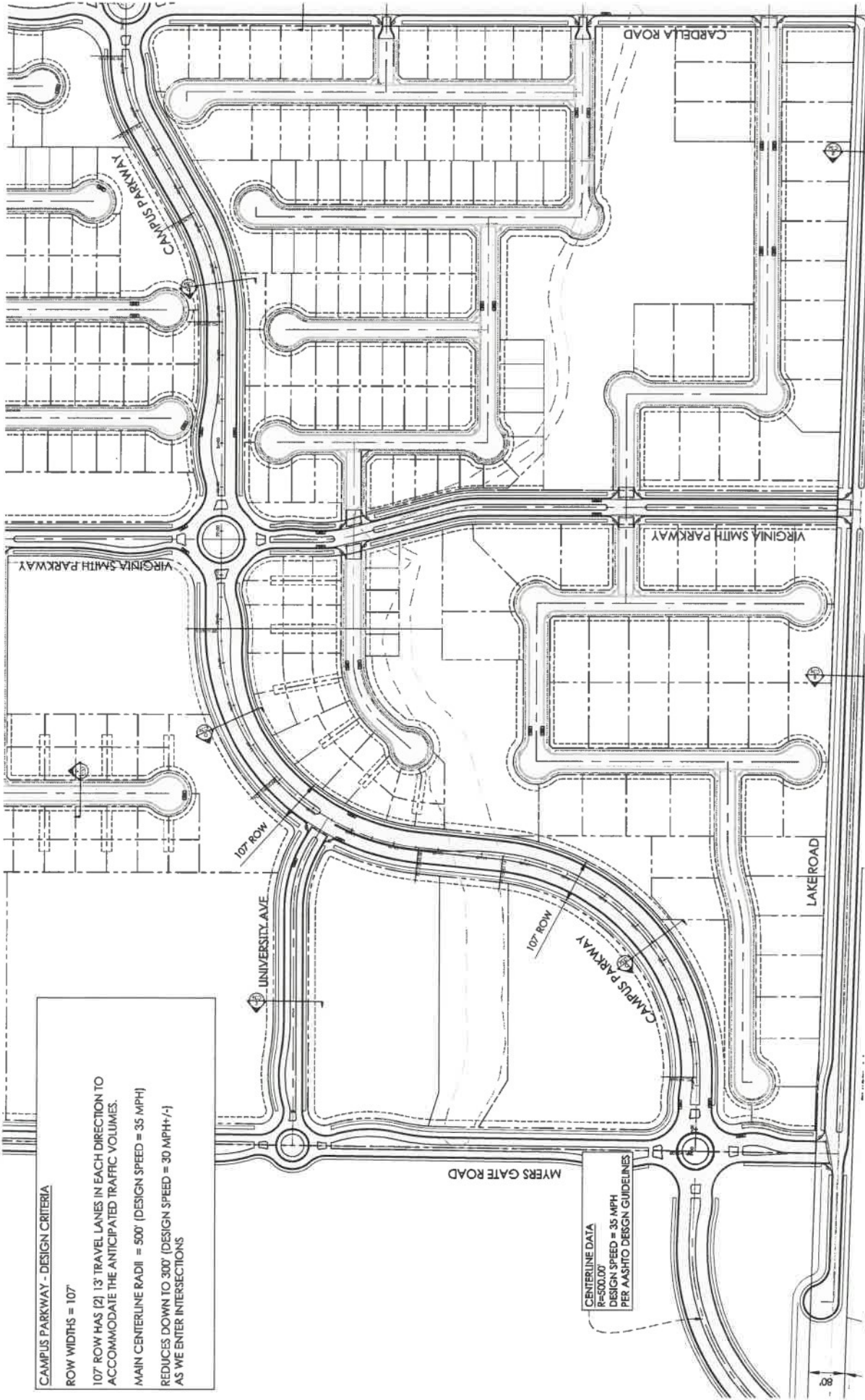
Exhibit M

Campus Parkway South Design Speed

VIRGINIA SMITH TRUST EX1

CAMPUS PARKWAY SOUTH - DESIGN SPEED EXHIBIT

September 21, 2023



CAMPUS PARKWAY - DESIGN CRITERIA
 ROW WIDTHS = 107'
 107' ROW HAS (2) 13' TRAVEL LANES IN EACH DIRECTION TO ACCOMMODATE THE ANTICIPATED TRAFFIC VOLUMES.
 MAIN CENTERLINE RADII = 500' (DESIGN SPEED = 35 MPH)
 REDUCES DOWN TO 300' (DESIGN SPEED = 30 MPH +/-) AS WE ENTER INTERSECTIONS

CENTERLINE DATA
 R=500.00'
 DESIGN SPEED = 35 MPH
 PER AASHTO DESIGN GUIDELINES



Exhibit N

Bicycle and Multimodal Transportation Improvements

STREET LEGEND

- Aerial Street
- Collector Street
- Local Street

Bus Stops

Proposed Bus Stop Locations



0' 75' 150' 300' 450'

SCALE 1" = 150'

DECEMBER 2020

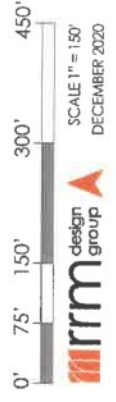
BUS AND STREET NETWORK

Virginia Smith Trust Land Plan and Vesting Tentative Map



BIKE CIRCULATION LEGEND

Proposed Class I Bikeway	Proposed Class II Bikeway	Proposed Class III Bikeway	Class IV Bikeway	Proposed Bikeway (1 Way)	Proposed Bikeway (2 Way)
-----	-----	-----	-----	-----	-----



OVERALL CIRCULATION PLAN
Virginia Smith Trust Land Plan and Vesting Tentative Map

