

EXHIBIT E

First Amended Agreement Regarding Further Obligations of Developer and City for Implementation of the Revised Project

This First Amended Agreement Regarding Further Obligations of Developer and City for Implementation of the Revised Project (“**Agreement**”) is entered into on April 18, 2006, by and between the City of Vacaville (“**City**”), a California municipal corporation, and Triad Communities, LP (“**Triad**” or “**Developer**”), a California limited partnership, and replaces, in full, the Agreement Regarding Further Obligations of Developer and City for Implementation of the Revised Project entered into on or about February 22, 2005 (“**Original Obligations Agreement**”). This Agreement is made for the purpose of documenting certain obligations of Developer and City with respect to development of the Lower Lagoon Valley Policy Plan Implementation Project (“**Revised Project**”) and implementing certain provisions of the Agreement to Settle Litigation Regarding Lower Lagoon Valley, finally executed by and between City, Developer and Greenbelt Alliance (“**Greenbelt**”), on December 7, 2004 (the “**Settlement Agreement**”), provided that City first approves the Revised Project substantially as proposed. Collectively, Triad and City shall be referred to herein as the “**Parties**.”

RECITALS

A. On June 8, 2004, City Council amended its General Plan to be consistent with the proposed Lower Lagoon Valley Specific Plan (the “**GPA**”).

B. On June 22, 2004, City Council adopted: (1) the Lower Lagoon Valley Specific Plan together with a rezoning of Lower Lagoon Valley in accordance with the Specific Plan (collectively, the “**Specific Plan**”); and (2) a development agreement with Triad (the “**Development Agreement**”), in accordance with California Government Code

sections 65864, *et seq.*, providing for the development of Lower Lagoon Valley in accordance with the GPA, the Specific Plan and the Lower Lagoon Valley Specific Plan Final Environmental Impact Report (the “**EIR**”) (collectively, the “**Project**”).

C. Subsequently, Greenbelt filed a lawsuit challenging City’s approvals of the Project. The Settlement Agreement resulted from negotiations among City, Triad and Greenbelt. As a condition of the Settlement Agreement, Greenbelt dismissed the lawsuit against the City’s approvals of the Project and the City rescinded certain approvals for the Project.

D. On December 7, 2004, the Vacaville City Council (“**City Council**”) approved the Settlement Agreement. A material provision of the Settlement Agreement allows Developer to propose, and City to consider, the Revised Project, which would consist generally of 1,025 residential units and 700,000 square feet of commercial space in a “**Business Village**”, as well as other components, all as more particularly described in the Settlement Agreement, including, but not limited to, **Exhibit A** thereto.

E. The Revised Project has been designed pursuant to and as a result of the settlement process that led to the Settlement Agreement. This Agreement shall constitute **Exhibit E** to the Settlement Agreement. Its purpose is to document certain obligations between City and Developer in the event the Revised Project is approved and implemented.

F. The City Council has previously found and determined, based on substantial record evidence, that: (1) there are adequate public facilities, infrastructure and services to serve the Revised Project, including its residential component, and

(2) there are significant public benefits related to the Revised Project as a whole, including the housing, jobs and golf course components.

G. The Revised Project shall include a golf course, substantially as shown on **Exhibit A** to the Settlement Agreement, as more particularly described in **Attachment A** hereto (the “**Golf Course**”) and as otherwise set forth herein.¹

H. This Agreement contains only those provisions that Developer and City agree are necessary to implement the Revised Project as described in this Agreement and **Exhibit A** to the Settlement Agreement, and subject to all rights and obligations of the Parties as set forth in the Settlement Agreement. This Agreement shall not contain any provision that conflicts with the Settlement Agreement. To the extent it contains any such provision, such provision shall be null and void and the Settlement Agreement shall control, unless otherwise expressly stated herein.

I. The Original Obligations Agreement was approved by the City and entered into on or about February 22, 2005. The parties are now entering into this Agreement, which amends and supersedes the Original Obligations Agreement, to clarify the parties’ understanding of certain provisions in the Original Obligations Agreement.

J. Greenbelt shall have the right to review and approve this Agreement as to its consistency with the Settlement Agreement. Such approval shall not be unreasonably withheld or withheld for purposes of delay. This Agreement shall not be considered a

¹ Certain attachments to this Agreement may be reproductions of original exhibits or attachments to the 2004 Development Agreement or the Specific Plan. To the extent attachments to this Agreement contain specific references to the 2004 Specific Plan or other documents that may have been repealed or superseded, those references shall remain applicable only as determined by City and Developer so as to be consistent with the Settlement Agreement, the applicable General Plan, the Policy Plan, and all other applicable laws and regulations, including, but not limited to, all approvals for the Revised Project. To the extent there is any conflict between such references and the Settlement Agreement, the Settlement Agreement shall control, unless otherwise expressly noted herein.

legislative approval for the purposes of the Settlement Agreement, including, but not limited to, **Sections B.2 and B.3** thereof.

AGREEMENT

I. Definitions.

The following terms shall have the meanings described in this **Section I** wherever and however such terms may be used elsewhere in this Agreement.

A. **“Business Village”** shall mean that portion of the Revised Project that is designated for non-residential, business uses, as shown in Exhibit A to the Settlement Agreement.

B. **“EDU”** or **“Equivalent Dwelling Unit”** shall mean a term to describe the units of capacity necessary to provide public services for both residents and employees. Non-residential land uses are equated to residential land uses in term of the burden they place on each class of public improvements (*e.g.*, roads, water systems, sewer systems, etc.). A single family home is defined as one (1.0) EDU. For purposes of fire protection services, each Business Village or Town Center acre developed for non-residential uses is equal to four (4.0) EDUs.

C. **“Improvement District”** shall mean any district or entity formed by City pursuant to California law to fund, construct or maintain public improvements in or related to the Revised Project by imposing special taxes or assessments on property.

D. **“Initial Final Map”** shall mean the first final map filed by Developer for any area within the Revised Project other than the Master Parcel Map, as defined below. The Initial Final Map is the first final map within the Revised Project that will create residential or commercial lots for sale to homeowners and business owners respectively.

The Initial Final Map shall include the improvement plans for the major infrastructure required for Phase 1 of the Revised Project.

E. **“Master Parcel Map”** shall mean the initial master parcel map proposed or approved for the entire Revised Project. The Master Parcel Map shall remove all existing lot lines and existing dedications and encumbrances within the entire Revised Project area and create “village” parcels for further subdivision into future residential and commercial lots, parcels within the Business Village, Golf Course parcels, open space parcels, and any other necessary large parcels. Each parcel created by the Master Parcel Map shall generally be a minimum of twenty (20) acres.

F. **“Master Tentative Subdivision Map”** shall mean the master vesting tentative or tentative subdivision map proposed or approved for the Revised Project.

G. **“Phase 1 of the Revised Project”** shall mean the first major phase of construction of improvements and homes in the Revised Project.

H. **“Project Infrastructure”** shall mean all public and private infrastructure needed to serve the Revised Project.

I. **“Service District”** shall mean a community facilities district, public safety district, lighting and landscaping maintenance district or any other similar district formed by City pursuant to State Law that pays for the cost of providing municipal services to the Revised Project as described herein.

J. **“1991 Development Agreement”** shall mean that certain Development Agreement dated October 29, 1991 and adopted by the City Council by Ordinance No. 1451, as amended.

II. Community Benefit Contribution and Payment for City Services.

A. Community Benefit Contribution.

1. Developer shall contribute to City an amount equal to:

(1) three-thousand four-hundred and fifty-five dollars (\$3,455) for each residential dwelling unit constructed within the Project, and (2) one dollar and thirty-seven cents (\$1.37) per square foot of building floor area for all non-residential development within the fifty-four (54)-acre business park property located within the Business Village, and (3) sixty-nine cents (\$0.69) per square foot of building floor area for the approximately 17.5-acre church site (collectively, the “**Community Benefit Contribution**”). The Community Benefit Contribution shall be paid to City upon issuance of each building permit, unless a different time of payment is otherwise specified herein. No Community Benefit Contribution, however, shall be charged for any Golf Course-related development, such as the clubhouse or maintenance building. City shall not increase the amount of the Community Benefit Contribution without the written concurrence of Developer, except for annual adjustments equal to the change, if any, in the Engineering News Record (San Francisco Bay Area Construction Cost Index) on January 1 of each year, beginning on January 1, 2005. City shall allocate four and one half million dollars (\$4,500,000) of the Community Benefit Contribution (in year 2004 dollars) for improvements to Lagoon Valley Park as described in greater detail in **Section II.B.1.c**, below. Developer shall make an initial Community Benefit Contribution payment of two million two hundred fifty thousand dollars (\$2,250,000) in year 2004 dollars to City concurrently with City’s approval of Developer’s Initial Final Map application. City shall allocate all of this initial Community Benefit Contribution toward the above

described allocation for improvements to Lagoon Valley Park and Lake. The remainder (*i.e.*, two million two hundred fifty thousand dollars (\$2,250,000) in year 2004 dollars), adjusted annually as described below, shall be obtained by City through Developer's payment of the Community Benefit Contribution at the time of City's issuance of each building permit for the Project. The initial Community Benefit Contribution payment shall be a credit against the Community Benefit Contribution payment that would otherwise be due and payable with each building permit, and shall be credited so as to proportionately reduce the amount of each payment due with a building permit by approximately thirty percent (30%) until the total credit amount is reached. The amount of the per-permit Community Benefit Contribution payment shall be annually adjusted by the change, if any, in the Engineering News Record (San Francisco Bay Area Construction Cost Index) on January 1 of each year, beginning on January 1, 2005. This payment shall satisfy the obligation of the 1991 Development Agreement regarding Developer's contribution to Lagoon Valley Park improvements.

2. Developer shall be responsible to equip and construct a Fire Station within the Revised Project, which shall be of a size capable of housing a five (5)-person crew. Developer shall design and construct the Fire Station to meet specifications to be determined by the City and substantially as shown in **Attachment B** (Fire Station Specifications and Program Requirements). City shall determine final specifications through its review and approval of the construction plans for the Fire Station prior to issuance of the building permit(s) for the Fire Station. This requirement is contrary to the requirement anticipated in the Settlement Agreement and is the result of a situation not contemplated at the time of preparation of the Settlement Agreement.

Therefore, notwithstanding any provision to the contrary, this provision shall supersede any provision of the Settlement Agreement stating that the Developer would only fund construction of the Fire Station, rather than construct it. Construction of the Fire Station shall be at no cost to the City, as further set forth below.

1. In addition to the required building and site improvements for the Fire Station, Developer shall provide \$1,000,000 for the purchase of equipment for the Fire Station, including the emergency vehicles and communications equipment. This amount shall be annually adjusted by the change, if any, in the Consumer Price Index for the San Francisco-Oakland-San Jose Metropolitan Statistical Area on January 1 of each year, beginning on January 1, 2005. City shall determine the timing of this payment prior to the approval of the Initial Final Map.

2. Developer shall receive a credit against the portion of the Building Permit Fees described in **Exhibit C** to the Settlement Agreement as attributable to Park and Recreation in an aggregate amount of two-million dollars (\$2,000,000) in connection with Developer's dedication to the City of the approximately 71-acre area north of Lagoon Valley Road and west of Lagoon Valley Park as more particularly described in the Vesting Tentative Map application and **Section E.7.a** of the Settlement Agreement. Developer shall also receive a credit against said Park and Recreation fees in an amount of one-hundred thousand dollars (\$100,000) per acre, up to a maximum of eight (8) acres of public park area, in connection with Developer's dedication and construction of a portion of the approximately eight-acre Village Green public park near the Business Village. These credits shall be given to developer in the full amount of the fees due with each building permit until the total credit amount is reached, rather than on a pro rata

basis across all building permits or EDUs in the Revised Project. While the requirements of this Paragraph differ in some respects from the requirements of **Section E.8** of the Settlement Agreement, it does not conflict with the purpose or intent of said **Section E.8** and is included here to address a situation that was not contemplated at the time of preparation of the Settlement Agreement.

B. Other Payments For City Services.

1. Payment for Police, Fire and Park Maintenance. As and in the manner more fully specified below, Developer shall cause payment to City for police and fire protection services for the Revised Project and the operation and maintenance of Lagoon Valley Park in the amounts described in this Agreement. The cost of these services shall be in addition to any other fee, tax or charge imposed upon Developer or the Revised Project. To fund these obligations, Developer and City shall work together to form a Service District. On or before City's approval of the Initial Final Map for the Revised Project, Developer shall submit all requisite information to allow the City to form Service District(s). City shall form Service District(s) to ensure payment for the cost of these police, fire and park operation and maintenance services in perpetuity. In no case shall City approve Developer's Initial Final Map application until Service District(s) for the police, fire and park operation and maintenance services, as described in this Agreement, has or have been formed, except as may be mutually agreed upon between Developer and City.

(a) Fire Protection Services. The Developer shall annually pay to City one million dollars (\$1,000,000), in year 2004 dollars, for fire protection services, including, but not limited to, ongoing staffing and operational costs of a three (3)-person

fire crew at the Fire Station until such time as Service District is formed to assume this funding obligation. Any additional staffing and operational costs in excess of a three (3)-person fire crew incurred at any time shall be borne by City. An initial annual payment of one million dollars (\$1,000,000) shall be due and paid to City when building permits for a cumulative total of two hundred (200) Equivalent Dwelling Units (“EDUs”) have been issued by City to Developer within the area of the Revised Project. Subsequent annual payments, funded by Service District property assessments, shall continue in perpetuity and shall be paid in the time and manner specified in the City’s action to form the Service District, including, but not limited to, payment by the Service District or its agent(s) rather than the Developer. The annual payment described in this Paragraph shall be allocated among the uses within the Revised Project as follows: (a) the residential portion of the Project Site shall pay eight hundred thousand dollars (\$800,000) per year, subject to the annual adjustment described in **Section II.B.1.c** below; and (b) the Business Village portion of the Project Site (as defined and described in the Settlement Agreement) shall pay two hundred thousand dollars (\$200,000) per year, subject to the annual adjustment described in **Section II.B.1.c** below. No fire protection assessments shall be levied against any Golf Course related development, including, but not limited to, the clubhouse or maintenance facilities, or the Golf Course itself. Payment shall be made on a per acre basis, based on the actual area as determined by the Master Parcel Map. The amount of the payment shall be the same for each acre, regardless of whether it is developed or undeveloped.

Prior to issuance of the initial grading permit for the Revised Project, an interim fire protection plan, including a mechanism to fund said plan, shall be developed to

provide emergency fire/medical response services to the Revised Project until the Fire Station becomes operational. Such plan shall be approved by City's Fire Chief.

(b) Police Protection Services. The Service District shall include an annual assessment for police protection services equal to five hundred fifty thousand dollars (\$550,000), in year 2004 dollars, at Revised Project buildout. The annual payment shall be allocated among the uses in the Revised Project as follows:

(a) the residential portion of the Revised Project shall pay eighty percent (80%), and

(b) the Business Village portion shall pay twenty percent (20%). By way of example only, if the total development acreage subject to police protection services assessments is 375 acres, and the Initial Final Map results in 205 residential units and five acres of the Business Village being issued building permits in the year in which said payments are due, said payment would equal \$159,600, calculated as $(\$440,000/1025*205 \text{ units} (= \$88,000 \text{ for residential})) + (\$110,000/50*5 \text{ acres} (= \$11,000 \text{ for Business Village})) + \$75,000 \text{ undeveloped area fee (including } \$3,500 \text{ for church parcel) less } \$14,400 \text{ credit for conversion. No police protection assessments shall be levied against any Golf Course related development, including, but not limited to, the clubhouse or maintenance facilities, or the Golf Course itself. Payments made on a per dwelling unit basis (for the residential portion of the Revised Project) and per developed-acre basis (for the Business Village portion) shall commence the year that the building permit for such dwelling unit or development is issued. To compensate for police services during construction of the Revised Project, Developer shall make an annual payment to City of two hundred dollars ($200) for each acre of undeveloped land within the Revised Project Site that is designated for urban development under the Revised Project, including, but not limited$

to, the residential areas, the Business Village and the church parcel. This annual payment by Developer shall be first due at the time of issuance of the initial grading permit within the Revised Project. Subsequent payments by Developer shall be paid on the annual anniversary date of the initial payment and shall continue until Developer and City agree that the Revised Project is complete. As such acreage fee is converted to residential and commercial levies during buildout, this fee shall be reduced accordingly at each anniversary date.

(c) Lagoon Valley Park Maintenance. The Service District shall include an annual assessment for maintenance and operation of Lagoon Valley Park equal to two hundred fifty thousand dollars (\$250,000), in year 2004 dollars, at Revised Project buildout. The annual payment shall be allocated among the uses in the Revised Project as follows: (a) the residential portion of the Revised Project shall pay eighty percent (80%), and (b) the Business Village portion shall pay twenty percent (20%). Payments made on a per dwelling unit basis (for the residential portion of the Revised Project) and per developed-acre basis (for the Business Village) shall commence the year that the building permit for such dwelling unit or development is issued. No Lagoon Valley Park maintenance and operation assessments shall be levied against any Golf Course related development, including, but not limited to, the clubhouse or maintenance facilities, or the Golf Course itself. In order to provide a source of funds for the current level of maintenance and operation of Lagoon Valley Park, commencing on June 30, 2005, Developer shall pay to City one hundred dollars (\$100) per acre of undeveloped land within the Revised Project that is designated for urban development under the Revised Project, including, but not limited to, the residential areas, the Business Village

and the church site. Subsequent payments by Developer shall be paid on the annual anniversary date of the initial payment and shall continue until Developer and City agree that buildout of the Revised Project is complete. As such acreage fee is converted to residential and commercial levies during buildout, this fee shall be reduced accordingly at each anniversary date, in the formula, but not an amount, similar to that described above for converting police services.

(d) Maintenance of Other Public Improvements and Facilities.

In addition to the formation of Service District(s) to pay for the cost of police, fire and Lagoon Valley Park maintenance, City contemplates the creation and establishment of Service District(s) to fund the operation and maintenance of public lands and public facilities within the Revised Project. These public lands and public facilities exclude areas within Lagoon Valley Park and include wetlands mitigation areas, storm water drainage and detention areas, landscape medians, neighborhood park(s), private landscaping areas other than areas on individual house lots, open space maintenance, street lighting and other improvements. Except with respect to storm water drainage and detention facilities, Developer (or a designated successor, agent or homeowners' association) shall be allowed to perform some or all of the maintenance of such lands and facilities within such Service District so long as such work is performed to City standards and, so long as it is, City shall allow the Developer (or a designated successor, agent or homeowners' association) to suspend payment of assessments to such Service District. However, if at anytime City, within its sole and absolute discretion, determines that the maintenance work is not being performed to City standards, City may notify Developer of the deficiency, and if not cured to City's satisfaction within thirty (30) days after

Developer's receipt of such notice, City may re-activate the Service District, collect the assessments, and maintain such Service District improvements and facilities. Developer shall bear all reasonable costs of inspection of any Service District improvements or facilities being maintained by Developer or its designated successor, agent or homeowners association.

City shall have the right to form or create such Service District(s) under any mechanism authorized by law where the benefited property may be assessed or charged its fair share of such Service District's maintenance and operating costs. Developer and/or City may initiate proceedings for formation of such Service District(s) with respect to all or any portion of the Revised Project to provide for maintenance of improvements for such portion without the consent of the owners of any other portion of the Revised Project so long as the owners of property not within such District are not responsible for any cost associated therewith, including formation costs and the assessments to be levied, and so long as the formation of such District will not interfere or overlap with the formation or operation of other Service District(s) created to maintain other facilities or infrastructure in the Revised Project.

2. Adjustment of Costs and Manner and Timing of Payments. The costs for police, fire, and park maintenance services described in this Agreement are expressed in year 2004 dollars and shall be increased annually at the rate of increase of the Consumer Price Index for the San Francisco-Oakland-San Jose Urban Wage Earners and Clerical Workers ("CPI"), commencing January 1, 2005. The manner and timing of payments for the cost of services shall be determined by City at the time of Service District formation. In calculating the service costs below, the areas of the Golf Course,

public lands and private open space lands have been excluded as they are deemed to be exempt from the payment of such fees in consideration of the open space/recreation and fire protection benefits such lands provide.

C. Annual Payments. The Service District(s) shall be established by City in such a manner as to yield, at Revised Project buildout, an annual payment for City services equal to one million eight hundred thousand dollars (\$1,800,000) per year, as expressed in year 2004 dollars. The distribution of this annual payment shall be as follows and as further described in **Exhibit D** to the Settlement Agreement:

<u>Type of Service</u>	<u>Amount of Annual Payment (2004 dollars)</u>
Fire Protection Services	\$1,000,000
Police Protection Services	\$550,000
Lagoon Valley Park Maintenance	\$250,000

D. Allocation of Costs. The exact allocation of costs on a per-acre or per-dwelling unit basis shall be determined through formation of the Service District(s), provided that such allocation is consistent with this **Section II**.

E. Future or Additional Charges.

1. Developer agrees that the amount of the fees and charges presently charged by City related to development comply with the requirements of the California Government Code. Such fees and charges include, but are not limited to, those set forth in **Exhibit C** to the Settlement Agreement, development impact fees, water and sewer connection fees, building permit plan check and inspection fees, processing fees for planning applications, and plan check and inspection fees related to subdivision improvements. City agrees that it will not apply to the Revised Project any City law or

fee not otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites with similar land use designations; the foregoing notwithstanding, City shall be allowed to establish zones of benefit, rate zones, benefit districts, improvement districts or similar financing mechanisms, which may apply to the Revised Project, so long as the costs associated with such zones or districts are: (i) uniformly applied to all similar uses within the zone or district, (ii) not exclusively imposed or assessed against the Revised Project, and (iii) not duplicative of the funding of services or improvements financed by or provided to or by the Revised Project pursuant to the requirements of the Settlement Agreement, including, but not limited to, this Agreement. By way of example only, the Revised Project would not be subject to a City-wide or area-wide tax for fire protection services because this Agreement requires the payment of fire protection services through a Service District(s).

2. Developer acknowledges and agrees that the Revised Project is and will be subject to City's paramedic tax, as may be subsequently amended, as it is not duplicative of the funding of services pursuant to this Agreement.

F. Drainage Detention Fees. City agrees that the Revised Project is not within an area covered by City's Drainage Detention Fee Program and that Developer shall not be subject to payment of the Drainage Detention fee under Chapter 11 of the Vacaville Municipal Code because Developer is required to install adequate drainage detention facilities in accordance with the requirements of the Policy Plan and the Revised Project. The amount of detention to be so provided by Developer exceeds the amount that would be provided through payment of the Drainage Detention fee to City.

III. Formation of Improvement District(s) and Community Association(s).

A. Improvement District. Developer shall take all actions necessary to allow City to form Improvement District(s) for the purpose of funding the construction of public infrastructure and operating such facilities. Improvements included in the Improvement District(s) shall be determined prior to approval of the Initial Final Map. Developer shall make the initial proposal for formation of the Improvement District, and City shall diligently process Developer's proposal (or proposals made by Developer for any other assessment or special taxing district) so long as: (i) the proposal(s) complies with law; (ii) is otherwise regular in form; (iii) is consistent with City's standards; (iv) provides for a lien-to-value ratio and other financial terms that are industry standard and reasonably acceptable to City; (v) the person, firm or entity initiating the proceedings advances such amounts as City may require to provide for City staffing and/or outside consultants or contractors needed to form the district; and (vi) City has reviewed and approved any consultants retained by Developer to assist in such formation including, but not limited to, bond counsel and financial advisory underwriter, which approval shall not be unreasonably withheld. City shall further diligently seek to sell any bonds to be issued and secured by such assessments or taxes upon the best terms reasonably available in the marketplace; provided, however, that City's duty to market bonds shall be suspended during any period when marketing conditions render the issuance economically infeasible. Developer may initiate improvement and assessment proceedings utilizing any assessment or taxing mechanism authorized under California law where the property subject to assessment provides primary security for payment of the assessments or taxes.

Developer may initiate such proceedings with respect to any portion of the Revised Project to provide financing for design or construction of improvements for such portion.

By entering into this Agreement, Developer does not waive any right to challenge, nor shall be barred from challenging, the assessment spread, or the costs of the public improvements to be constructed by, any such assessment or taxing mechanism, to the extent Developer is permitted to do so under law.

B. Community Association. Developer shall form a “Master Community Association” prior to City’s approval of Developer’s Initial Final Map application to create residential lots within the residential portion of the Revised Project. Each subsequent final map that creates residential lots shall be annexed into or made a part of the Master Community Association and individual Community Association(s) shall be formed for the area(s) covered by each subsequent final map. The purpose of the Community Association(s) is to maintain the common, private improvements and facilities in the residential portions of the Revised Project, including, but not be limited to the maintenance of: (a) private streets, streetlights and surface storm drain facilities within the street rights-of-way; and (b) all private common area improvements not included in the Service Districts specified herein, such as private parks and the landscaping adjacent to private streets. The Community Association(s) shall levy an assessment on all residential parcels within the Project Site that is adequate to maintain such improvements and facilities in good condition and repair at all times. The anticipated amount of such assessments is shown in **Exhibit D** to the Settlement Agreement. City shall not be a party to the Community Association nor shall it have any

power or obligation to enforce the rules and restrictions that may be approved or adopted by the Community Association.

IV. Dedication of Land.

A. Dedication of Land for Project Infrastructure. Developer shall dedicate to City (or other agencies as appropriate), without compensation, all rights-of-way and parcels (in fee title or easement, as appropriate) needed for the Project Infrastructure. These dedications shall occur at the time of recordation of the Initial Final Map for the Revised Project or, upon City's and Developer's agreement, at the time of recordation of subsequent final maps. Developer shall dedicate the Fire Station Site (defined below) at the time of City recording of the Initial Final Map.

B. Conveyance and Dedication to City of Open Space Lands. Developer shall convey or dedicate to City, without compensation, the land within the Project Site designated in the Revised Project as public open space as more particularly described in **Exhibit A** to the Settlement Agreement, except for land designated otherwise on **Attachment C** (Land Exchange) or for land required for biological resources impact mitigation. This conveyance or dedication shall occur concurrently with the recordation of the Master Parcel Map and shall be in a form acceptable to the City Attorney. Prior to dedication and acceptance of such lands, Developer shall propose and implement a mechanism acceptable to City to maintain said open space, greenbelt, park, trail or landscaped area, including, but not limited to, a Service District and/or community association.

C. Conveyed and Dedicated Lands Free of Encumbrances. All parcels or interests in land conveyed or dedicated by Developer to City or other agencies as

appropriate pursuant to **Sections IV.A and IV.B** above, shall be free and clear of all hazardous materials (as defined in **Section IV.D.2** below), liens, encumbrances, restrictions, and clouds on title, excepting thereto any such items or matters that do not unreasonably interfere with or preclude City's or such other appropriate agency's intended use of such property, or any reservations of rights set forth in the Settlement Agreement, including, but not limited to, Developer's right to enter onto and use all or any portion of that certain 71 acres north of Lagoon Valley Road for wetland and biological mitigation purposes as described in **Section E.7** of the Settlement Agreement. Any bonded indebtedness secured against the 71 acres may be transferred or defeased to other indebtedness, security interests or assessment or funding mechanisms.

D. Exchange of Open Space.

1. Exchange. Concurrently with the recordation of the Master Parcel Map, Developer and City agree to complete an open space land exchange or lease pursuant to which City shall convey to Developer fee title, or in the case of a lease all necessary rights, to approximately forty-nine (49) acres of land required for (and deed-restricted to the use for) approximately five holes of the Golf Course as shown in the Vesting Tentative Map for the Revised Project within the hill area at the west end of Lagoon Valley, as more particularly described on **Attachment C**. At the time of such conveyance, Developer will dedicate approximately eighty (80) acres of land to City for open space, as more particularly described on **Attachment C**. This open space area is in addition to the 71-acre site described in **Section E.7** of the Settlement Agreement.

2. Exchanged Land Free of Encumbrances and Hazardous Materials.

All such land so exchanged shall be free and clear of any hazardous materials, liens,

encumbrances, and clouds on title that would unreasonably interfere with or preclude use of the exchanged land for its intended purpose. For the purpose of this subsection, “hazardous materials” shall mean materials or substances deemed hazardous under federal or state law at the time of such conveyance.

3. Quitclaim of Easements. Concurrently with the dedication of the eighty (80) acres of land described in **Paragraph IV.D.1**, above, Developer shall record an instrument quit-claiming any easements it holds in or on City’s open space within the boundaries of the Lower Lagoon Valley Policy Plan. Such easements include, without limitation, an easement in favor of Developer, as successor in interest to McCuen, which grants to Developer the right to use two (2) twenty-five (25)-acre areas for golf course or other private recreation uses on City owned-open space.

E. Dedication of Fire Station Site. At the time of City’s recording of the Initial Final Map, Developer shall provide City with an irrevocable offer of dedication, at no cost to City, of the approximately one and one-half (1.5) acre Fire Station site within the Revised Project as more particularly shown on **Attachment B**. The specific location, site area and configuration of the Fire Station site (the “Fire Station Site”) shall be determined by City prior to Developer’s construction of the Fire Station through City’s approval of the Master Tentative Subdivision Map. City shall accept or reject such irrevocable offer of dedication within thirty (30) days after issuance of a certificate of occupancy for the Fire Station. City, absent extraordinary circumstances, shall not reject such irrevocable offer of dedication so long as a certificate of occupancy has been issued.

F. Dedication of Property for Transportation Improvements. City will dedicate all property controlled by the City, at no cost to Developer, as may be

reasonably required for Caltrans and/or Caltrans-related surface or subsurface improvements. If additional property, not owned by City or Developer, is needed to construct Caltrans and/or Caltrans-related surface or subsurface improvements or other Project Infrastructure, City will exercise any power of eminent domain necessary to obtain sufficient rights-of-way for construction of said improvements. All costs associated with City's eminent domain actions, if any, shall be the responsibility of Developer and paid utilizing project bond financing, at Developer's sole discretion, to City within thirty (30) days of Developer's receipt of City's written request for payment. City shall abandon existing rights-of-way of Lagoon Valley Parkway and Saddleback Parkway, Nelson Road and Rivera Road, located within the Revised Project, if City reasonably determines that all or a portion of such rights-of-way are not needed for public purposes. If City determines to abandon any such rights-of-way, it shall be done at no cost to Developer, concurrently with recordation of the Master Tentative Map. It is the City's sole discretion as to whether a right-of-way shall be abandoned, relocated or vacated as a public street, and whether the City shall retain ownership of the underlying land. City shall obtain, as and when needed and through eminent domain or otherwise, any and all necessary off-site easements or rights-of-way (surface and sub-surface) needed for construction of public improvements required by the Revised Project. Such improvements may include, but are not limited to, the sanitary sewer system to be completed in connection with the Revised Project, except in the event Option 1, defined in the Addendum for the Revised Project is selected, in which case there will be no such acquisition costs related to the sanitary sewer system. All costs associated with such off-site easement or right of way acquisitions shall be the Developer's responsibility and paid

to City within thirty (30) days of Developer's receipt of City's written request for payment together with reasonable supporting documentation.

V. Fire Station.

Developer shall design, construct and equip, at no cost to City, the Fire Station described in **Attachment B**. Design and construction of the Fire Station shall include, but not be limited to, all street frontage improvements (*i.e.*, streets, curb, gutter and sidewalks) and utility stubs to the Fire Station Site, in addition to the Fire Station building and related site improvements. The Fire Station shall be of a size capable of housing a five (5)-person fire crew and its design shall be consistent with the Revised Project Planned Development Permit and Design Guidelines. The commencement of construction of the Fire Station shall occur no later than issuance of the building permit for the 200th equivalent dwelling unit ("EDU") for the Revised Project and completion shall occur prior to issuance of the building permit for the 400th EDU for the Revised Project.

VI. Golf Course.

A. Construction of Golf Course. Developer shall construct the tournament-level **Golf Course** in substantial compliance with the Golf Course plan attached as **Attachment A**. If Developer fails to construct the Golf Course in accordance with the schedule set forth below, City shall withhold the issuance of residential building permits for the Revised Project until such time as the applicable phase of the Golf Course construction has been completed.

B. Phasing of Construction of Golf Course. The Golf Course shall be constructed in phases as follows:

1. Rough grading for the entire Golf Course shall commence with the grading for the initial phase of residential development of the Revised Project.

2. City shall not issue building permits for more than two hundred (200) dwelling units until Developer has completed: (i) rough grading for the entire Golf Course; (ii) shaping and fine grading of the entire Golf Course, including the berm to be installed between holes 4 and 5 and Interstate 80; and (iii) pre-design and design of the Solano Irrigation District (“SID”) irrigation system for the Golf Course and has exercised commercially reasonable efforts to commence construction of such irrigation system.

Notwithstanding the foregoing, Developer shall have the right to defer the completion of final grading and other improvements for hole 13 in the location that is currently occupied by the Hines commercial plant nursery until July 2008.

3. Additional Limits on Building Permits Related to Construction of Golf Course.

(a) City shall not issue building permits for more than four hundred (400) dwelling units until Developer has completed: (i) all SID irrigation improvements for the Golf Course and berm adjacent to holes 4 and 5; (ii) all cart paths, water features, sand traps and other similar features; (iii) planting on such berm, including trees and native grasses; (iv) planting fifty percent (50%) or more of the total number of trees to be planted on the Golf Course; and (v) “roughing in” the greens and tees for seeding at the next warm weather season.

(b) City shall not issue building permits for more than six hundred (600) dwelling units until the Golf Course has been completed and a temporary certificate of occupancy for the temporary clubhouse has been issued.

(c) City shall not issue building permits for more than eight hundred (800) dwelling units until the Golf Course and the permanent clubhouse have been completed, as evidenced by City's issuance of a temporary certificate of occupancy for both the Golf Course and permanent clubhouse.

C. Availability of Golf Course. The Golf Course may be public, private, or semi-private, at Developer's sole option and shall not be a "municipal" course; the term "public" means that the Golf Course is privately owned but open for play to the general public on a fee basis. If Developer elects to make the Golf Course private, the Golf Course shall nevertheless be open for public use on all Mondays of each year, federal holidays excepted. In addition, Developer shall allow qualified non-profit organizations within Vacaville to play, in total, up to twenty-six (26) days per year at a rate equal to not more than eighty-five percent (85%) of the Golf Course's normal green fee charged to non-Golf Course members. All reduced fee, non-profit play shall be on Mondays distributed throughout the year. Developer shall also cooperate with other Vacaville non-profit entities, including schools, in allowing a reasonable amount of non-exclusive play during non-peak periods.

D. Grading Permit for Golf Course. At the time of the initial grading permit application for the Revised Project, Developer may not have obtained environmental permits from state and federal regulatory agencies regarding streambed alterations, filling of wetlands, water quality impacts or other biological impacts within the Golf Course

area. At Developer's request, City shall issue a grading permit for those portions of the Revised Project outside of the state and federal jurisdictional areas. Moreover, if delays associated with securing such permits delay construction of the Golf Course, City shall only issue building permits for a maximum of four hundred (400) dwelling units, until the final grading and the Golf Course planting has been completed to City's satisfaction and subject to **Section VI.F, below** .

E. Cost Estimate for Golf Course Provided to City. Developer shall provide City with an estimate of the cost of Golf Course construction (including all estimated clubhouse and pre-opening related costs) within thirty (30) days of approval of the Vesting Tentative Map. Such estimate shall be subject to review and independent verification by City.

F. State and Federal Permits.

1. Developer shall diligently and in good faith pursue all state and federal agency permits required to construct the Golf Course. In addition to the broad meaning of the phrase "diligently and in good faith," specific actions to be taken by Developer that demonstrate diligence and good faith shall include the following:

a. Any state or federal agency permit filed by Developer shall include the Golf Course area with the residential and Business Village portions of the property in the same permit application.

b. Any state and federal agency permit application and its related studies shall show that the Golf Course is an integral part of the Revised Project and is needed for the economic success of the Revised Project.

c. The plan for the Golf Course shall be designed to maximize its wildlife habitat value and to minimize the impacts on the water quality of Lagoon Valley Lake and adjacent watercourses to the greatest extent practicable and consistent with all mitigation measures, conditions of approval, and other applicable requirements as determined by City. This plan shall be submitted to any state or federal agency as part of a requisite permit.

d. Developer, at its sole expense, shall devote and engage the services of appropriate experts to facilitate the review of the requisite permits by state and federal agencies. These experts would include engineers, biologists, attorneys and others who are familiar with the applicable state and federal requirements. Such experts shall meet and confer with the state and federal permitting agencies as necessary to seek and advocate for timely approval of applications pending before those agencies. Developer shall allocate sufficient financial resources to ensure that this facilitation will occur.

e. Neither Developer nor its agents or representatives shall propose or recommend to a state or federal agency that the Golf Course be eliminated from the Revised Project..

2. Prior to submitting the required permit application(s) to the appropriate state and federal agencies, Developer shall seek City's input on, and shall meet and confer with City, in good faith, regarding the content and substance included in the permit application(s).

G. On-Going Golf Course Maintenance. With the recordation of the Master Parcel Map for the Revised Project, Developer shall record a covenant on the parcel(s) comprising the Golf Course parcel(s) in a form acceptable to the City Attorney

that will ensure that the Golf Course will be maintained in a quality equal to the “best practices” specifications in **Attachment D** (Golf Course Maintenance). Developer shall submit the language of the covenant to the City Attorney for his/her approval prior to its recordation. This covenant shall include a provision granting City the right to enter upon the Golf Course property for the purpose of maintaining the Golf Course to such quality should Developer fail to do so and the right to recoup the reasonable cost thereof through lien rights against the Golf Course property. In the event that the amount of water delivered by SID to serve the Golf Course (defined below) is reduced due to drought or other catastrophic conditions not the fault of Developer, Developer shall have the right to install a temporary well to maintain the Golf Course tees, greens and limited fairway areas. Developer, however, shall obtain City’s approval and any other governmental approvals necessary for the temporary well prior to its installation.

VII. Road Improvements.

A. Developer to Pay Project TIF. The Revised Project is not included in City’s current Traffic Impact Fee study. Developer, however, shall pay to City a roadway mitigation fee in an amount equal to City’s city-wide Traffic Impact Fee as it may be increased or amended by City from time to time on a city-wide basis (the “**Project TIF**”). The Project TIF shall be deemed to represent the Revised Project’s “fair share” of the cost of the pre-design, design and construction, including, but not limited to, land acquisition, of all off-site road improvements that will be impacted by Revised Project traffic. The Project TIF shall be paid at the same time and in the same manner as City’s citywide Traffic Impact Fee. The purpose of the Project TIF is to pay for all required improvements to adjacent freeway ramps and related improvements, the

Revised Project's share of the cost of an auxiliary lane on Interstate 80 and the Revised Project's share of off-site road improvements needed to accommodate cumulative traffic development throughout certain City intersections, all as further described in the Revised Project's Mitigation Monitoring and Reporting Program. The Project TIF shall not be used to pay for local road improvements within the Revised Project, nor shall be it used for non-freeway improvements. If and to the extent that the Improvement District pays for such freeway improvements, Developer shall receive a credit against the Project TIF in an amount equal to such payment by the Improvement District.

B. Developer Responsible for Road Improvements. In addition to payment of the Project TIF, Developer shall be required to construct all road improvements required for the Revised Project, except that City shall coordinate the design and construction (including right-of-way acquisitions) of freeway improvements as described above, which will be paid for either through the Project TIF or the Improvement District in an amount not to exceed the amount of the Project TIF.

VIII. Infrastructure Construction.

A. Master Utility Plans. Master utility plans for municipal water, non-potable water, sewer, storm water drainage and detention, roads and pedestrian trails shall be prepared by Developer and submitted for review and approval by City concurrently with approval of the Revised Project's Master Tentative Map.

B. Developer to Fund Full Cost of Project Infrastructure. Developer shall pay for the full cost of construction of all on-site public and private infrastructure needed to serve the Revised Project, either directly or through the Improvement District as described above, which infrastructure is described more fully on **Attachment E**

(Infrastructure Plan), except as otherwise stated in this Agreement. To the extent Developer does not fund such construction costs through the Improvement District, Developer shall obtain alternative funding for such improvement work without cost to City, and shall provide assurances thereof in a form reasonably acceptable to the Vacaville City Attorney or his/her designee(s).

C. Application of City's Standard Specifications. Excluding those improvements to be financed and constructed through the Improvement District and those described below that City shall design and Developer shall construct, Developer shall design and construct all of the Project Infrastructure in accordance with City's "Standard Specifications," the requirements of the Policy Plan, and any modifications approved through the tentative subdivision map and Planned Development Permit process.

D. Private Infrastructure. As used in this Subsection D, the phrase "Private Infrastructure" means and includes private streets, common areas and private utilities (except potable and non-potable water, and sewer) to be developed within the Revised Project, including those items described on **Attachment F** (Private Infrastructure). The Private Infrastructure shall be owned and maintained by a Community Association.

E. Conditions for Construction of Public Infrastructure. Among the Project Infrastructure to be constructed are certain key public improvements that are typically designed and constructed by City in conjunction with the development of new communities. These improvements include: water pump stations, sewer lift stations, water storage reservoirs, and road improvements requiring Caltrans' approval. In approving the Revised Project, City would grant to Developer the right to construct

certain public improvements, provided they are not Private Improvements, and provided Developer complies with all of the following conditions:

1. City shall select the consulting engineer and sub-consultants for the purpose of preparing the pre-design and design plans, specifications, and drawings and also to provide certain design-related services during construction of such public improvements.

2. City shall administer the consultant contract, and manage the design process and the consultant services during the construction of such improvements at Developer's expense. Developer and Developer's engineer shall have the right to participate in the design process with the understanding that City retains sole discretion regarding the final design for each such improvement. City agrees to complete the design of each improvement in accordance with the schedule attached hereto as **Attachment E** (Infrastructure Schedule).

3. City shall establish selection criteria for the construction contractor(s) for each public improvement based on past successful experience with the same type of improvement project, including the requisite licensing requirements. City will also provide Developer with a list of qualified contractors known to the City that may meet these selection criteria. Developer shall not be limited to selecting contractors from this list, but in any event shall select a construction contractor who is qualified, experienced, and has all required licensing. If the contractor selected by Developer is not on City's pre-qualified list, City will, in its sole judgment, make the determination whether the selected contractor meets the selection criteria. Further, if the contractor is not on City's pre-qualified list, then prior to the award of contract to a construction

contractor, Developer shall notify City's Director of Public Works of the intended contractor and shall provide the Director with information on the contractor's qualifications prior to the award of contract. If the Director reasonably determines that the contractor is not qualified (*i.e.*, does not meet the minimum qualifications specified by this subsection), Developer shall select another contractor who, in the Director's judgment, satisfies such criteria.

4. Developer acknowledges that the full cost of the design (including City's project management and oversight), construction, and construction administration and inspection of the improvement is Developer's responsibility and that no public funds or financial assistance shall be provided or contributed towards the cost thereof. For improvements that require Caltrans approval, the "full cost of the design" includes the preparation of a project study report and project report; provided however, that Developer's financial obligation for the Caltrans improvements shall not exceed the cumulative total payment of the Project TIF.

5. Developer agrees to require, through its construction contract, that prevailing wages will be paid for the construction of each such public improvement as and to the extent required under California Labor Code sections 1720, *et seq.*

6. In addition to any other indemnity, hold harmless or defense clause herein or within the Settlement Agreement, Developer agrees to indemnify, defend with counsel approved by City, and hold harmless City, its officials, agents, and employees from and against any third-party challenges or suits concerning the design or construction of such improvements including, but not limited to, any challenge alleging that the contractor selection or award of contract does not comply with law including, but not

limited to, any law, rule, regulation, or ordinance pertaining to the solicitation of bids (provided, however, that Developer shall have no liability under this Agreement to the extent any claim for personal injury or damage is the result of faulty design by City or City's agents, consultants, employees or other persons directly acting on City's behalf).

7. Developer shall pay, on a monthly basis, City's cost for continuous inspection services during construction of any of the public improvements constructed by Developer. These costs shall include the salary and benefits of the inspectors, City administration and overhead costs, and any direct costs. These inspection services shall be provided for all phases of construction of each improvement. City's inspector(s) shall have full control over the job site, including the authority to test and inspect material prior to their installation and to stop work if such work does not comply with the approved plans and specifications or any requirement of law.

8. City shall accept all improvements constructed by Developer pursuant to this **Section VIII**, when City determines that such improvements have been completed in accordance with the design specifications and all applicable City, state and federal regulations.

F. Developer to Advance Funds. Developer shall advance the funds necessary to compensate City for the pre-design and design, administration, oversight, and inspection work described in this **Section VIII**, including funds for unexpected contingencies that may occur from time to time. Developer acknowledges and agrees that no pre-design, design or inspection work shall commence until receipt of such payment by City. In the event that the funds advanced hereunder exceed the amount needed to compensate City as provided herein, the excess funds shall be refunded to

Developer. Funds advanced pursuant to this **Section VIII.F** shall be placed in a segregated account maintained by City, which account shall be subject to reasonable review and audit by Developer, and shall be used only for the purposes described in this **Section VIII**. City shall maintain all records associated with said account for at least three (3) years.

G. Responsibility for and Election to Design and/or Construct SID

Improvements. In addition to the foregoing, SID may, in its sole discretion, elect to perform its own pre-design, design and construction work of the improvements comprising its non-potable water system on the Revised Project. Upon such election, SID shall design and may construct, or request Developer to construct, such improvements in phases as the demand or need for such improvements arises as the residential/commercial construction within the Revised Project progresses. Developer agrees that, in the event of such election by SID, Developer will advance funds to SID in order to compensate SID for such pre-design, design and construction work. Such funds may be made in installments, provided the installments are made sufficiently in advance of the work to be performed by SID. Such funds shall also include a contingency fund in order to ensure that SID will have funds on hand necessary to contend with any unforeseen contingencies or situations (*e.g.*, cost over-runs or construction changes) that may occur as such work progresses. Developer acknowledges and agrees that SID cannot proceed with the pre-design, design or construction work until the payments required hereunder are made to SID. Notwithstanding the foregoing, Developer may, with SID's consent, design and construct all SID improvements within the Revised Project, subject to SID's prior, written approval of plans for such improvements. Developer's obligation

to advance such funds to SID shall be contingent on SID's agreement that funds advanced pursuant to this **Section VIII.G** shall be placed in a segregated account maintained by SID, which account shall be subject to reasonable review and audit by Developer, and shall be used only for the purposes described in this **Section VIII.G**, and that SID shall maintain all records associated with said account for at least three (3) years.

IX. Water Supply and Storage Improvements.

A. Potable Water. Developer shall pay all costs for the pre-design, design and construction of potable water supply and storage system improvements as required by the Revised Project. Developer shall design and construct all required improvements, except when City elects to design and construct certain improvements.

B. Nonpotable Water. Developer shall pay for all costs associated with the pre-design, design and construction of a non-potable water system to irrigate the Golf Course and other major public or private common area landscape areas. Developer shall design and construct all required improvements, except if SID elects to design and construct those improvements itself. The cost of maintaining any and all private, on-site water facilities shall be funded by the Community Association or, within the Golf Course property, the Golf Course operator.

Untreated, raw water shall be provided by SID in accordance with the 1995 Master Water Agreement between the City and SID. Developer shall have the right to install the most efficient lateral extensions from the Golf Course system (with easements to SID) to such major landscaped areas. This may include, at SID's discretion, all off-site water line improvements needed to connect from existing SID facilities to the

project non-potable water system for Revised Project use only. All facilities constructed by Developer on behalf of SID shall comply with SID standards. Developer shall prepare and submit to City and SID a preliminary layout of all non-potable water system improvements prior to City's approval of the Initial Final Map.

X. Sanitary Sewer Improvements.

A. Developer to Pay for Costs of Sewer Improvements. Developer shall pay all costs for the pre-design, design and construction of the sanitary sewer system improvements, as required by the Revised Project or conditions of approval of the Master Tentative Subdivision Map. Developer shall design and construct all required improvements, except when City elects to design and construct certain improvements, as provided for in this Agreement.

B. Consideration and Selection of Option for Off-Site Sewer Improvements. Three alternatives for construction of off-site sewer improvements have been considered, These are: Option 1 – pump station and force main over ridge, Option 2 – gravity sewer, and Option 3 – forcemain in or immediately adjacent to Caltrans right-of-way. City shall review and consider these alternatives based on a reasonable balance of environmental, financial, timing (e.g., potential delays to issuance of building permits within the Revised Project), and maintenance issues. City shall then, in its sole discretion, select one (1) of these options for inclusion in the engineer's report for the Improvement District. If the City selects Option 1 or Option 3, the cost of maintaining the pump station and related mechanical equipment shall be included in Service District(s).

XI. Storm Water Drainage And Detention Facilities.

A. Storm Water Drainage Facilities. Developer shall design, construct and pay all costs in connection with the pre-design, design and construction of the storm water drainage system improvements, as required by the Policy Plan and a condition of approval of the Revised Project's Master Tentative Subdivision Map.

B. Storm Water Detention Facilities. Developer shall pay all costs for the pre-design, design and construction of the storm water detention system improvements, as required by the Policy Plan and a condition of approval of the Revised Project's Master Tentative Subdivision Map. The detention system improvements shall be designed and constructed in such a manner that the storm water peak flows from Lower Lagoon Valley, when fully developed, shall be reduced by at least ten percent (10%) of current peak flows as and to the extent described in the Policy Plan, thereby reducing the potential for downstream flooding. The design of the Golf Course shall include detention facilities within and adjacent to the Golf Course. The cost of maintaining the private storm water detention and conveyance facilities and improvements within the Golf Course property shall be funded by the Golf Course and the cost of maintaining the public storm water detention and conveyance facilities outside of the Golf Course shall be funded by Service District(s).

XII. Parks and Open Space Planning, Design and Construction.

City shall be responsible for the planning, design, and construction of any park improvements or lake restoration efforts. Should City determine that the full four and one-half million dollar (\$4,500,000) contribution is not needed to make Lagoon Valley Park improvements consistent with an adopted Lagoon Valley Park Master Plan, City

may use any unexpended funds for acquisition of open space lands or improvements to other City parks.

XIII. Miscellaneous Rights and Obligations.

A. Right of Reimbursement From Others Benefited. In any case where Developer plans, designs, funds or constructs improvements in excess of those required for development of the Revised Project, or makes dedications, provides mitigation or incurs costs in connection with public improvements in excess of those required to service the Revised Project, Developer may file an application requesting that City form a benefit district pursuant to the provisions of the Vacaville Municipal Code that would permit Developer to be reimbursed for the cost of such excess costs. A benefit district so formed shall require the payment of such costs by the parties benefited thereby and who utilize such excess improvements. The life or term of such benefit district shall be twenty (20) years. City shall not unreasonably deny Developer's request or withhold formation of the benefit district.

B. Compliance with Design Guidelines. Developer agrees that the Revised Project shall comply with the Planned Development Permit and the Design Guidelines for the Revised Project. Although Developer may request amendments or revisions to the Design Guidelines from time to time, in no event shall City approve any amendment or revision that would reduce or lessen the quality of design with respect to such aspects of the Revised Project as, but not limited to, architectural design, exterior building materials, lighting, architectural details, variation in wall planes, variation in rooflines, site improvements, signage, walls, traffic calming features, walkways, variation in landscape materials, and the amount of landscaping along streets and setback areas. City shall be

the sole judge as to whether a requested amendment or revision would reduce or lessen the quality of such design aspects.

C. Grading. Developer shall prepare and submit to City a conceptual grading plan for the Revised Project with the Master Tentative Map application. This conceptual grading plan shall be subject to review and approval by the City Engineer. Developer shall also prepare a phased grading plan showing how the various phases of the Revised Project will be graded into "super pads." Approval of the finished lot grading plans shall be accomplished in connection with City's review of Developer's individual tentative map applications for the Revised Project. The grading of such super pads, and the rough grading of the Golf Course, shall be balanced on-site to the maximum extent practicable to minimize the need for transporting earth on public roads and to further minimize dust impacts to residents within the Revised Project. Existing uses within the Revised Project shall be removed or reduced in size as needed to accommodate the initial rough grading of the Golf Course. The grading plan shall be designed to minimize the mixing of construction and residential traffic and shall also incorporate best management practices to minimize erosion and siltation in natural swales, streams and Lagoon Valley Lake. Notwithstanding any of the foregoing, Developer may grade Village 1 prior to grading any other portion of the Revised Project site, upon receiving approval of the necessary grading permit, which approval shall be expeditiously considered and not unreasonably withheld.

D. Undergrounding of Utilities. City will undertake its best efforts (at no cost to City) to cause PG&E, Pacific Bell and Comcast Cable to underground existing power,

telephone and other communication lines within and around the Revised Project so as to minimize or eliminate cost to Developer of such undergrounding.

E. Impact Mitigation; No Cost To City. All public improvements (including, without limitation, landscaping) needed to serve the Revised Project or that are required as a condition of development approval, shall be constructed or installed by Developer without cost or expense to City (not including those improvements that are to be funded by assessments levied against all or any portion of the Revised Project). City shall participate and cooperate in good faith with Developer and shall consider any proposal Developer submits to allow Developer to utilize City property and to partner with City with respect to certain improvements as such property and/or improvements, including, but not limited to stream and watershed improvements and City open space around and adjacent to the Revised Project, are necessary or beneficial to the Revised Project in satisfying its mitigation obligations under federal, state or local law or approvals, provided that any such use of City property and/or partnering shall be at the City's discretion and shall not substantially interfere with City's implementation of its Lagoon Valley Park Master Plan or City's management of existing public open space.

F. Indemnity and Hold Harmless. Developer, or, as applicable, its assigns and successor(s) in interest to all or any portion of the Revised Project Site, shall hold and save City, its officers and employees, harmless, and indemnify and defend (with counsel acceptable to City) them, of and from any and all claims, losses, costs, damages, injuries or expenses, arising out of or in any way related to injury to or death of persons or damage to property that may arise by reason of the physical development of that portion of the Revised Project Site owned by Developer or its assigns or successor(s) in

interest pursuant to this Agreement or by any activity of City, except to the extent such claim, loss, cost, damage, injury or expense arises out of the negligence, recklessness or willful misconduct of City, its officers or employees. The foregoing hold harmless and indemnity shall not include indemnification against suits and actions arising from the willful misconduct of City, its officers and employees.

G. Assignment. Except as set forth herein, Developer shall not assign or transfer any interest in this Agreement nor the performance of any of Developer's obligations hereunder, without the prior written consent of City, which shall not be unreasonably withheld. Prior to any assignment, Developer shall provide City with a copy of any and all relevant assignment agreements to assist City in its determination of whether or not to consent to such proposed assignment. City may base its decision as to whether or not to grant consent on such items (by way of example only) as whether the assignee has a demonstrated record in building high-end housing or the financial stability of the assignee. Any attempt by Developer to so assign or transfer this Agreement or any rights, duties or obligations arising hereunder without the prior written consent of City shall be void and of no effect. Notwithstanding the above, City acknowledges that Triad, the current Developer, intends to assign some or all of its rights, duties, obligations or other interest in this Agreement to Standard Pacific Corp., a Delaware Corporation ("**Standard Pacific**") and hereby consents to that assignment. Prior to the assignment occurring, Triad agrees to provide City written notice of any such assignment and the specific rights, duties, obligations or other interest in the Agreement that Triad is assigning to Standard Pacific along with a copy of the assignment agreement between Triad and Standard Pacific.

H. Applicable Law. Unless otherwise required by statute, this Agreement shall be construed under the laws of the State of California, and any disputes arising out of the execution or implementation of this agreement shall be resolved pursuant to

California law. The parties acknowledge that this Agreement and the related approvals for the Revised Project are subject to federal and state law. Should federal or state law, or the application thereof, affect the ability of the parties to comply with this Agreement or carry out the related approvals as originally contemplated, this Agreement and the related approvals shall remain in full force and effect and the parties shall meet and confer in good faith to carry out this Agreement and the related approvals, or to determine necessary modifications, if any, to ensure that the Revised Project is implemented as contemplated herein and in the related approvals to the greatest extent feasible and that any such modifications or applications of state or federal law do not materially affect the rights and obligations of any party to this Agreement.

I. Authority. Unless otherwise required by law, City's City Manager or Community Development Director shall have the authority to act on behalf of the City to carry out the purposes of and act in accordance with this Agreement, including, but not limited to, making and/or providing revisions or amendments hereto.

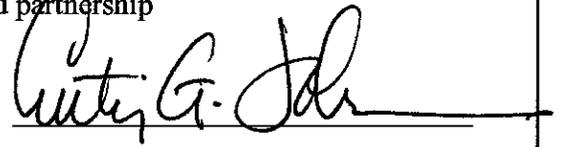
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinabove written.

Dated: April <u>18</u> , 2006	CITY OF VACAVILLE By:  Name: Scott D. Sexton Title: Community Development Director
Dated: April <u>18</u> 2006	CITY OF VACAVILLE Approved as to form: By:  Name: Melinda C.H. Stewart Title: Assistant City Attorney

Dated: April 3, 2006

TRIAD COMMUNITIES, LP, a California
limited partnership

By:



Name: Curt Johansen

Title: Executive Vice President

ATTACHMENT A

GOLF COURSE

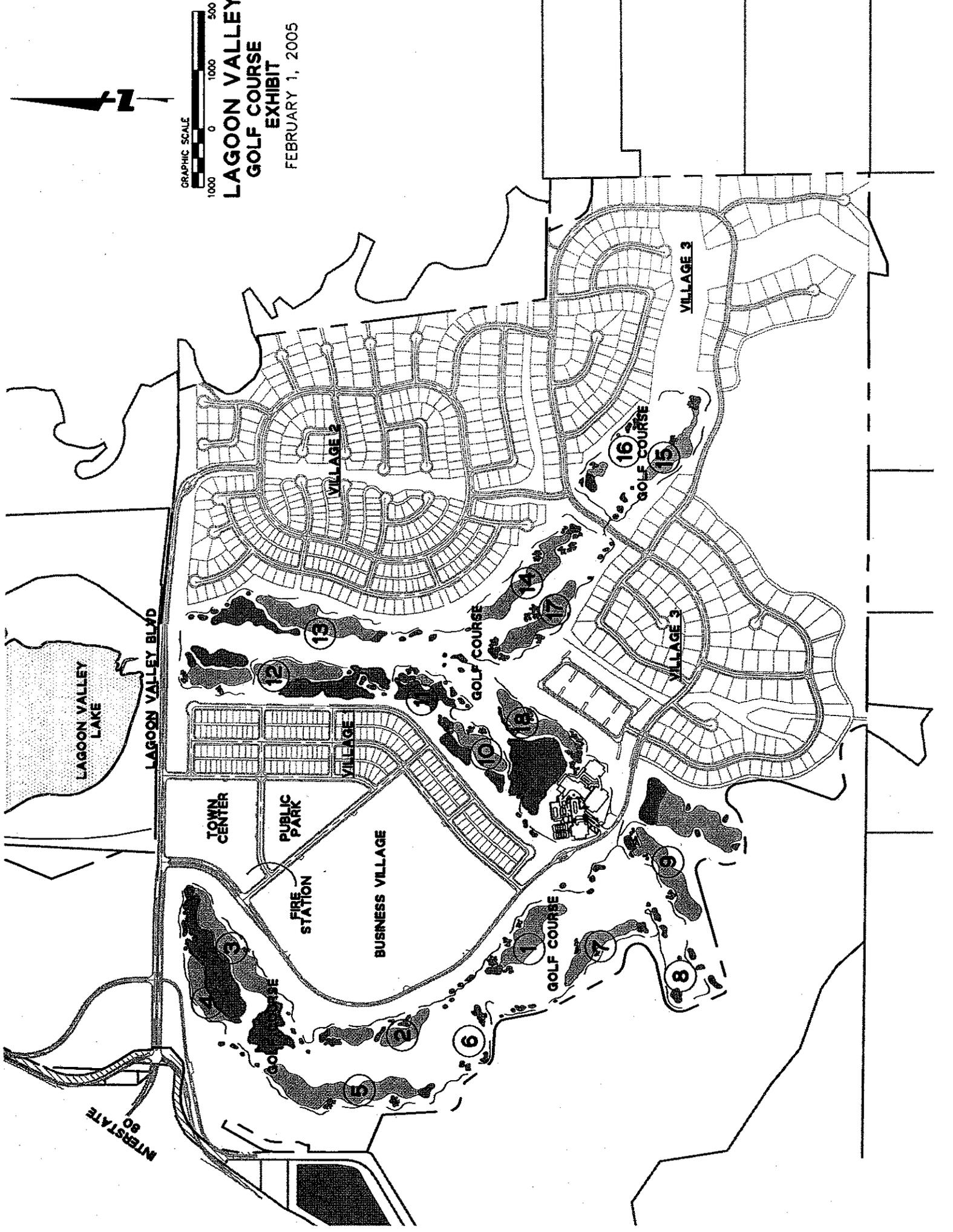


GRAPHIC SCALE



LAGOON VALLEY GOLF COURSE EXHIBIT

FEBRUARY 1, 2005

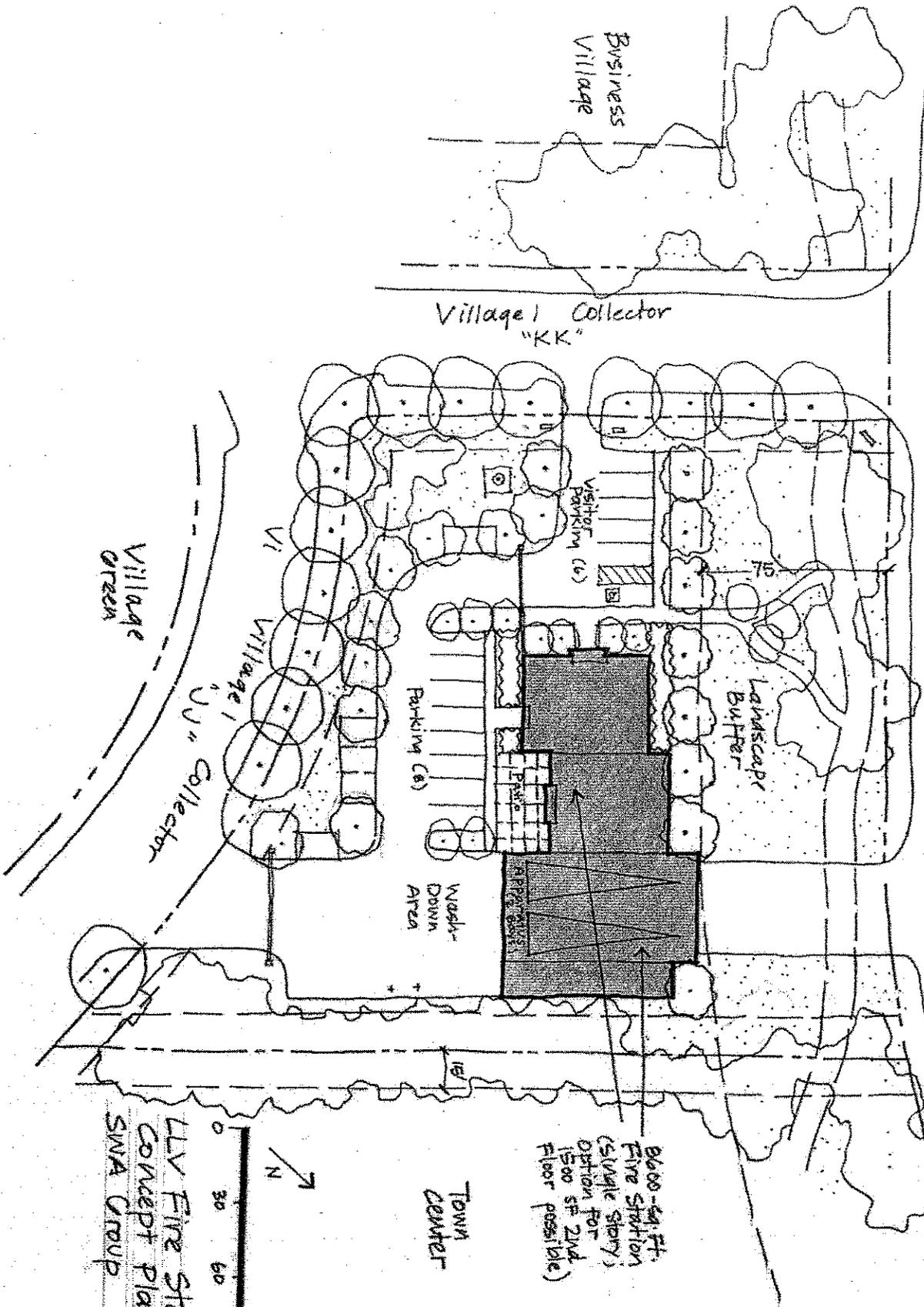


ATTACHMENT B

FIRE STATION SPECIFICATIONS AND PROGRAM REQUIREMENTS

- Single-story floor plan, with partial second floor pursuant to Revised Project Design Guidelines.
- 8,600 +/- square feet
- Two-bay apparatus room with drive-through capability
- Lobby and adjoining public restroom(s)
- Captain office
- Crew office space
- Police officer office space
- Day room (*i.e.*, living room)
- Kitchen
- Dining area
- Physical exercise room
- Training room
- Dormitory / sleeping rooms to accommodate five (5) on-duty personnel (using "warm bunk" configuration – total of ten (10) beds)
- Bathroom / shower areas to accommodate five (5) on-duty personnel (minimum of three (3) separate areas)
- Turn-out clothing locker area to accommodate at least twenty (20) lockers
- Laundry area (to accommodate commercial-style washer/extractor and dryer)
- Medical equipment decontamination area
- Shop area
- Separate storage areas for medical supplies, shop / apparatus room supplies, and general station materials and supplies, custodial closet (mop sink, etc.)

- Use(s) of second-floor space shall be determined by City's Fire Department
- Rooms for electrical, mechanical, telephone / data / radio equipment
- Hallway / vestibule / circulation areas
- Rear patio area (adjacent to kitchen / dining areas)
- Communications system (P.A., speakers, intercom, etc.)
- Emergency generator to power all building features
- Above-ground diesel fuel tank (minimum 1,000 gallon)
- Mechanical exhaust removal system for fire apparatus
- Parking to accommodate firefighters, police vehicle and the public



Median Break as Needed
(Cul-de-sacs or Pooled
Curbs)

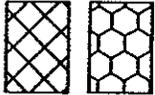
8600-84 Ft.
Fire Station
(Single Story)
Option for
1500 sq. 2nd
Floor possible)

LV Fire Station
Concept Plan
SMA Group 2/11/04

ATTACHMENT C
LAND EXCHANGE

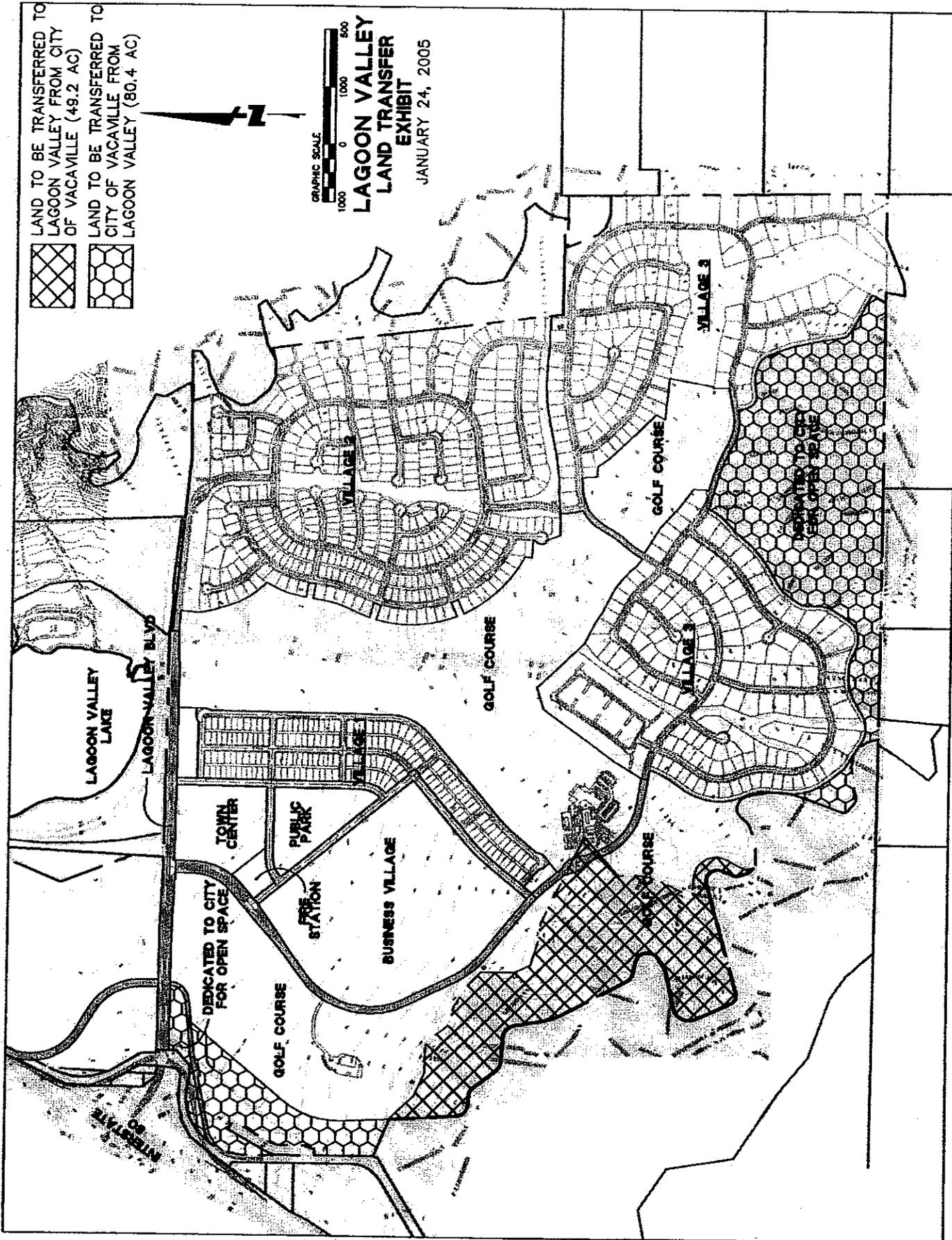
LAND TO BE TRANSFERRED TO
LAGOON VALLEY FROM CITY
OF VACAVILLE (49.2 AC)

LAND TO BE TRANSFERRED TO
CITY OF VACAVILLE FROM
LAGOON VALLEY (80.4 AC)



LAGOON VALLEY LAND TRANSFER EXHIBIT

JANUARY 24, 2005



ATTACHMENT D
GOLF COURSE MAINTENANCE

The Golf Course will be maintained to very high standards of the industry. It will also be maintained utilizing Best Management Practices that, when coupled with the water quality features, will improve the water quality of Lagoon Valley Lake. The grasses selected for the course will be the best adapted to the local environment and will allow a high level of maintenance with minimal chemical usage.

The planning, design, construction and maintenance of the Golf Course will adhere to the principles of “Environmental Principles for Golf Courses in the United States” developed by the United States Golf Association. The course will be designed with sustainable maintenance in mind.

The course will employ the principles of Integrated Plant Management (“IPM”), a system that relies on a combination of common sense practices of preventing and controlling pests (*e.g.*, weeds, diseases, insects) in which monitoring is utilized to identify pests, damage thresholds are considered, all possible management options are evaluated and selected control(s) are implemented. IPM involves a series of steps in the decisionmaking process:

- Through regular monitoring and record keeping, identify the pest problem, analyze the conditions causing it, and determine the damage threshold level below which the pest can be tolerated. Damage thresholds will be established for each specific pest problem for greens, tees, fairways, roughs and buffer areas. These thresholds will be used to identify the point at which Least Toxic Control Methods will be implemented.
- Devise ways to change conditions to prevent or discourage recurrence of the problem. Examples include: utilizing improved (*e.g.*, drought resistant, pest resistant) turfgrass varieties, modifying microclimate conditions, or changing cultural practice management programs. Turfgrasses will be selected for their suitability of use for golf courses within the Northern California region.

Improved varieties of bentgrass adapted to the climate will be selected for their heat tolerance and disease resistance.

- Turfgrass Cultural Practices will be the basis for minimizing the impact of golf course maintenance on the environment. The turfgrass cultural practices proposed for the maintenance of the golf course integrate mowing, aerification, irrigation, vertical mowing, spiking and topdressing to minimize the use of fertilizers and chemical pest controls.
- If damage thresholds are met, select the combination of control strategies to suppress the pest populations with minimal environmental impact, to avoid surpassing threshold limits. Control measures include biological, cultural, physical, mechanical, and least toxic chemical methods. Biological control methods must be environmentally sound and should be properly screened and tested before implementation. A hierarchy of agronomic, cultural, biological, mechanical and least toxic chemical controls is planned for the Golf Course.
- Non-chemical control measures will focus on practices such as the introduction of natural pest enemies (*e.g.*, parasites and predators), utilizing syringing techniques, improving air movement, soil aerification techniques, and mechanical traps. The selection of least toxic chemical control strategies will be utilized only when other strategies are inadequate.
- Solubility: The extent to which a chemical will dissolve in water is usually a good indicator of its mobility within a soil. Solubility must also be adjusted for a chemical's tendency to adhere to soils.
- Sorption: The potential for a chemical to leach or runoff is very dependent on the interaction of the pesticide with soil particles and organic matter. Factors that contribute to the sorption of the chemicals to soil particles include chemical and physical properties of the product; soil type and depth; nature of soil solution. Soils with greater amounts of silt, clay and organic matter will bind chemicals tightly.
- Microbial & Chemical Degradation: Chemicals are decomposed by soil microorganisms into one or more new compounds that behave differently in the environment. Chemical degradation is similar to microbial degradation except that chemical reactions such as hydrolysis and oxidation decompose the pesticides.
- Microbial and chemical degradation is best measured by the amount of time required for 50 percent of the original pesticide to breakdown into other products. Half-life values should be used as guidelines rather than absolute values.
- Volatilization & Evaporation: Volatilization is the process by which chemicals transform from a solid or liquid state into a gas. Volatilization loss increases with temperature and wind speed. Loss can be minimized by timing chemical

applications during periods of lower temperature and wind. Irrigation immediately after application decreases the loss of highly volatile chemicals. Volatilization is measured in units of vapor pressure.

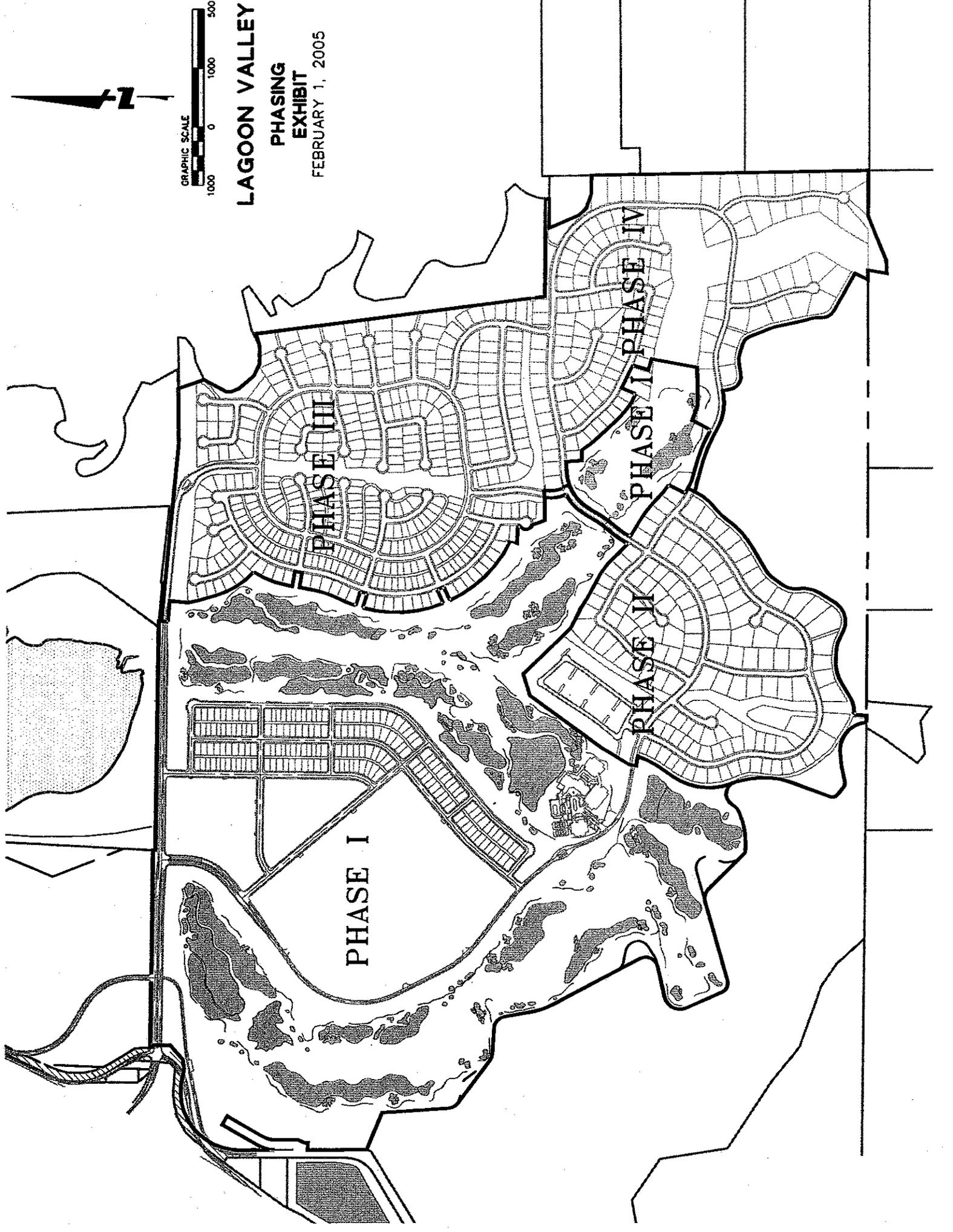
- Plant Uptake: Plants can absorb chemicals directly through leaves or indirectly through root uptake. Turfgrasses with higher rates of transpiration and well developed, functioning root systems can reduce the leaching potential of pesticides.

The Golf Course will make appropriate use of least toxic chemical pesticides for course maintenance as feasible and pursuant to the processes described above. All least toxic chemical and nutrient products when applied will be applied appropriately and safely pursuant to industry standards and practices.

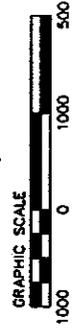
ATTACHMENT E
INFRASTRUCTURE PLAN



LAGOON VALLEY
PHASING
EXHIBIT
FEBRUARY 1, 2005



ATTACHMENT F
PRIVATE INFRASTRUCTURE



**LAGOON VALLEY
PRIVATE INFRASTRUCTURE
TO BE MAINTAINED BY
COMMUNITY ASSOCIATION
EXHIBIT**

FEBRUARY 1, 2005

MAINTENANCE RESPONSIBILITY

-  LAGOON VALLEY MASTER COMMUNITY ASSOCIATION
-  LAGOON VALLEY COMMUNITY ASSOCIATION-1 (INCLUDING FRONT YARD LANDSCAPING FOR ALL UNITS)
-  LAGOON VALLEY COMMUNITY ASSOCIATION-2 (LOT LANDSCAPING BY HOME OWNER)
-  LAGOON VALLEY COMMUNITY ASSOCIATION-3 (LOT LANDSCAPING BY HOME OWNER)

