

going development in the air basin would increase cumulative levels of ozone precursors.

- Impact 5.6-3: Operation of the proposed project could permanently expose sensitive receptors to increased traffic noise levels from local roadways.

- Impact 5.9-7: Implementation of the project under Baseline plus Project conditions could affect the Meadowview Road/Freeport Boulevard intersection.

- Impact 5.9-9: Under Baseline Plus Project conditions, the project would have a significant impact on freeway operations.

- Impact 5.9-13: Under Cumulative plus Project conditions the segment of Cosumnes River Boulevard from I-5 to Delta Shores Circle could be impacted by the project.

- Impact 5.9-14: Under Cumulative plus Project conditions the segment of Delta Shores Boulevard south of Meadowview Road could be impacted by the project.

- Impact 5.9-16: Under Cumulative plus Project conditions the Meadowview Road/Franklin Boulevard intersection could be impacted by the project.

- Impact 5.9-20: Under Cumulative plus Project conditions the Cosumnes River Boulevard/Delta Shores Circle (West) intersection could be impacted.

- Impact 5.9-23: Under Cumulative plus Project conditions, the project would have a significant cumulative impact on freeway operations.

In addition to the above impacts, this Statement of Overriding Considerations applies to those residual impacts which have been substantially lessened or avoided, but not necessarily reduced to a level of less than significant, as well as the Project's cumulative contribution to green gas emissions which have no measurable impact on Global Climate Change.

The City Council believes that many of the unavoidable and irreversible environmental effects, as well as many of the environmental effects which have not been mitigated to a less than significant level will be substantially reduced by the mitigation measures incorporated into the Project and in the EIR. The Council recognizes that the implementation of the Project will result in certain potentially irreversible environmental effects.

In reaching the Council's decision to approve the Project and all related documentation, the Council has carefully considered each of the unavoidable impacts, each of the

impacts that have not been substantially mitigated to a less than significant level, as well as each of the residual impacts over which there is a dispute concerning the impact's significance following mitigation.

Specific Findings.

1. **Project Benefits Outweigh Unavoidable Impacts.** The remaining unavoidable and irreversible impacts of the Project are acceptable in light of the economic, fiscal, social, public safety, environmental, land-use and other considerations set forth herein because the benefits of the Project outweigh any significant and unavoidable or irreversible adverse environmental impacts of the Project, as well as outweighing any residual impacts over which a controversy exists concerning the impacts' significance following mitigation.

2. **Rejected Mitigation Measures.** Any of the mitigation measures which were suggested in the EIR but not incorporated into the Project due to their infeasibility are infeasible in part because such measures would impose limitations and restrictions on the Project so as to prohibit the attainment of economic, social and other benefits of the Project which this Council finds outweigh the unmitigated impacts of the Project.

3. **Balance of Competing Goals.** The Council finds that it is imperative to balance competing goals in approving the Project and certifying the environmental documentation for the Project. Not every policy or environmental concern has been fully satisfied because of the need to satisfy competing concerns to a certain extent. Accordingly, in some instances the City Council has chosen to accept certain environmental impacts because to eliminate them would unduly compromise some other important economic, social, environmental or other goals, such as encouraging people to use public transit, to walk and to bicycle. The Council finds and determines that the design of the Project and the supporting environmental documentation provide for a positive balance of the competing goals and that the economic, fiscal, social, environmental, land use, and other benefits to be provided by the Project outweigh any environmental and related potential detriment from the Project.

Overriding Considerations.

Based upon the above enumerated objectives and the comprehensive vision developed by the Council through extensive public participation, the Council has determined that the Project should be approved and that any remaining unmitigated environmental impacts attributable to the Project are outweighed by the following specific economic, fiscal, social, environmental, land-use and other overriding considerations.

1. **Economic Considerations.**

Substantial evidence is included in the Record demonstrating the economic benefits which the City would derive from implementation of the Project. The Project will provide the City with a high quality commercial, retail and residential development on vacant property located in the south area of the City and adjacent to the intersection of Interstate 5 and the Cosumnes River Boulevard extension. The regional commercial uses in the Project will meet current commercial needs in that area of the City. In addition, the Project will provide the City with high quality residential development to meet current and future needs for that type of land use in the City. The Project also will provide employment opportunities within the City by allowing the development of underutilized property.

2. Environmental and Land Use Considerations.

a. Substantial evidence is included in the record that the implementation of the Project will have beneficial as well as potential adverse impacts relating to environmental and land use considerations.

b. The proximity of the Project to the South Area light rail line and light rail station will implement the goals of the General Plan and the City's goal of encouraging higher density developments around light rail lines in order to promote the use of public transit. The Project's location along the light rail line with a combination of uses consisting of retail, commercial and residential, situates the Project at one of the most desirable locations in the greater Sacramento region for locating such mixed uses.

c. The Council finds that the Project, through its PUD Guidelines, will incorporate strong architectural and design features that are compatible with adjacent land uses, while providing a unique identity for the Project as a whole.

d. The design of the Project will reduce any global warming impacts by promoting pedestrian uses, providing retail and residential uses adjacent to employment opportunities, by requiring the planting of numerous trees along the Project's roadways and parking areas, and by encouraging the use of public transit modes in order to reduce vehicle miles traveled and motor vehicle emissions of criteria air pollutants and greenhouse gases.

e. Based upon these land use and environmental considerations, the Council has determined that any environmental detriment caused by the Project has been minimized to the extent feasible. Where not feasible, the environmental detriment is outweighed and counterbalanced by the significant economic, fiscal, environmental and land use benefits to be generated for the City.

3. Other Related Overriding Considerations.

In addition to the economic, fiscal, environmental and land use considerations identified above, the Council has considered various factors in arriving at its decision to approve the Project. Although economic, fiscal, environmental and land use benefits to be derived by the City are the primary reasons for the City's decision to approve the Project, other factors have been considered by the City in the planning process and add to the benefits of the Project when weighed against any unavoidable environmental impacts identified in the EIR. Among these factors include the prospect of creating a development plan for vacant, underutilized land which will serve as a model for the future environmentally sensitive development of infill locations throughout the City and elsewhere.

Conclusion

The City Council has determined that any remaining significant effects on the environment attributable to the Project which are found to be unavoidable, irreversible or not substantially lessened are acceptable due to the overriding considerations set forth in this Statement of Overriding Considerations. The Council has concluded that with all the environmental trade-offs of the Project taken into account, its implementation will represent a net positive impact on the City, and based upon such considerations after a comprehensive analysis of all the underlying planning and environmental documentation, the Council has approved the Project.

J. FINDINGS REGARDING RECIRCULATION

The City Council finds that no new information which might demonstrate that the Project would have a new potentially significant environmental impact was presented in the Final EIR or during the public comment period or during any hearing on the Project. Information provided in the Final EIR concerning the need for two offsite improvements consisting of the construction of a stormwater drainage pipeline to connect the Project's detention basin to the City's Sump 89 and construction of a sewer force main in the Cosumnes River Boulevard Extension's right of way from the Project to the SRCSD Central Interceptor at Franklin Boulevard does not show any significant new environmental impacts that could not be mitigated to a less than significant level by compliance with the mitigation measures already contained in the EIR and MMP pertaining to air quality, noise, cultural resources, biological resources, hazards, transportation and circulation.

In addition, certain revisions were made by the Final EIR to the mitigation measures proposed in the DEIR, but those changes did not identify any new impacts or identify any substantial increase in the severity of an environmental impact that would not be reduced to a less-than-significant level through mitigation, nor would the revised mitigation measures result in new significant environmental impacts. (CEQA Guidelines, Sections 15088.5(a)(1) and 15088.5(a)(2). Instead, the revised mitigation measures

clarify and strengthen the effectiveness of the mitigation measures to help further reduce or avoid an impact. Further, with the revisions, the revised mitigation measures did not include a new feasible way to mitigate or avoid an impact (including a feasible project alternative) that the City has declined to implement (CEQA Guidelines section 15088.5(a)(3)). Because no new unmitigated impacts have been identified or created by the revised mitigation, the EIR is not changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project (CEQA Guidelines section 15088.5(a)(4)). Therefore, the City Council finds that the revisions to the EIR's mitigation measures represent improvements to the analysis and mitigation of impacts and do not warrant recirculation of the EIR.

MITIGATION MONITORING PLAN

INTRODUCTION

CEQA requires review of any project that could have significant adverse effects on the environment. CEQA also requires reporting on and monitoring of mitigation measures adopted as part of the environmental review process (Public Resources Code section 21081.6). This MMP is designed to aid the City of Sacramento in its implementation and monitoring of measures adopted from the Delta Shores Draft EIR.

The mitigation measures are taken from the Delta Shores Draft EIR (including the Initial Study, see Appendix A of the Draft EIR). Mitigation measures in this MMP are assigned the same number they had in the Draft EIR and Initial Study. The MMP is presented in table format and it describes the actions that must take place to implement each mitigation measure, the timing of those actions, the entities responsible for implementing and monitoring the actions, and verification of compliance.

MMP COMPONENTS

The components of the MMP table are summarized below.

Mitigation Measure: All mitigation measures identified in the Delta Shores Draft EIR (including the Initial Study) are presented, and numbered as they appear in the Draft EIR. Any change to the text of a mitigation measure presented in Chapter 2, Changes to the Draft EIR, of this Final EIR is included in this MMP.

Action: Identifies the action that must be completed in order for the mitigation measure to be considered implemented. For every mitigation measure, one or more action is described.

Implementing Party: Identifies the entity that will be responsible for implementing the action.

Timing: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified.

Monitoring Party: Identifies the entity that will be responsible for monitoring implementation of the required action. The City of Sacramento is responsible for ensuring that most mitigation measures are successfully implemented. Within the City, a number of departments and divisions will have responsibility for monitoring some aspect of the overall project. Occasionally, monitoring parties outside the City are identified; these parties are referred to as "Responsible Agencies" by CEQA.

Verification of Compliance: Identifies verification of compliance for each identified mitigation measure.

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
5.2 Agricultural Resources					
5.2-1 The Development Agreement shall include a special condition requiring the preservation of farmland at a 1:1 mitigation ratio by preserving approximately five hundred (500) acres at the Brannan Island Farms site and approximately two hundred eighty-two (282) acres elsewhere in Sacramento County at a site approved by the City comprised of Prime Farmland and Farmland of Statewide Importance, prior to the issuance of any grading permit, in order to reduce any impacts arising from the conversion of the current agricultural uses at the project site to urban development.	Verify that this condition is included in the DA.	Project Applicant	Prior to project approval.	Development Services	
5.2-2 The project applicant or developer shall provide all future homeowners with a copy of the Right-to-Farm in California included in the California Code of Regulations (CCR), Title 3, Sections 3482.5 and 3482.6 that outline allowable farming and agricultural operations.	Verify that homeowners received a copy of the Right-to-Farm Act included in the CCR.	Project Applicant ¹	Prior to issuance of occupancy permits.	Development Services	
5.2-4 Implement Mitigation Measure 5.2-2.	See MM 5.2-2	See MM 5.2-2	See MM 5.2-2	See MM 5.2-2	
5.3 Air Quality					
5.3-1 a) The project shall provide a plan, for approval by the lead agency in consultation with the SMAQMD, demonstrating that the heavy-duty (>50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, would achieve a project wide fleet-average 20% NO _x reduction and 45% particulate reduction compared to the most recent CARB fleet average at time of construction. The SMAQMD shall make the final decision on the emission control technologies to be used by the project construction equipment; however, acceptable options for reducing emissions may include use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and/or other options as they become available.	Verify that construction bid documents include required measures to minimize ozone precursor emissions.	Project Applicant and/or contractor	Prior to issuance of grading permits or building permits.	Development Services	
b) The project applicant and/or contractor shall submit to SMAQMD a	Verify that an off-	Project Applicant	Prior to	Development	

¹ In the event the Project Applicant sells, assigns or transfers its interests in the Property or in any portion of the Property pursuant to the terms and conditions of the Development Agreement between the Project Applicant and City, the purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Project Applicant, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred.

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>comprehensive inventory of all off-road construction equipment, equal to or greater than 50 horsepower, that shall be used an aggregate of 40 or more hours during any phase of the construction project. The inventory shall include the horsepower rating, engine production year, and projected hours of use or fuel throughput for each piece of equipment. The inventory shall be updated and submitted monthly throughout the duration of the project, except that an inventory shall not be required for any 30-day period in which no construction activity occurs. At least 48 hours prior to the use of subject heavy-duty off-road equipment, the project applicant and/or contractor shall provide SMAQMD with the anticipated construction timeline, including start date and name and phone number of the project manager and on-site foreman.</p>	<p>road construction equipment inventory is submitted to the SMAQMD.</p>	<p>and/or contractor</p>	<p>construction activities Monthly reports ongoing during construction.</p>	<p>Services</p>	
<p>c) The project applicant and/or contractor shall ensure that emissions from all off-road diesel powered equipment used on the project site do not exceed 40% opacity for more than three minutes in any one hour. Any equipment found to exceed 40% opacity (or Ringelmann 2.0) shall be repaired immediately and SMAQMD shall be notified within 48 hours of identification of non-compliant equipment. A visual survey of all in-operation equipment shall be made at least weekly by contractor personnel certified to perform opacity readings, and a monthly summary of the visual survey results shall be submitted to the SMAQMD throughout the duration of the project, except that the monthly summary shall not be required for any 30-day period in which no construction activity occurs. The monthly summary shall include the quantity and type of vehicles surveyed as well as the dates of each survey.</p>	<p>Verify that visual surveys of all in-operation equipment are completed weekly by certified personnel and that a monthly summary report is submitted to the SMAQMD.</p>	<p>Project Applicant and/or contractor</p>	<p>Weekly surveys and monthly reports ongoing during construction.</p>	<p>Development Services</p>	
<p>d) Limit vehicle idling time to five minutes or less.</p>	<p>Verify that all construction equipment does not idle for longer than 5 minutes.</p>	<p>Project Applicant and/or contractor</p>	<p>Daily, ongoing during construction.</p>	<p>Development Services</p>	

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
e) In consultation with SMAQMD staff, and prior to the issuance of each grading permit, a construction mitigation fee and appropriate SMAQMD administrative fee shall be calculated and paid to the district based on the number of acres to be graded and the equipment to be used during grading activities. Fees shall be calculated using the Carl Moyer cost effectiveness figure of \$16,000 per ton of NO _x plus the 5% administrative fee, or applicable fee in effect at the time the grading permit is issued.	Verify that the construction mitigation fee and appropriate SMAQMD administrative fee has been calculated and paid.	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services	
5.3-2					
a) The project applicant shall limit the project's maximum acreage graded per day to no more than 15 acres or the project applicant shall model the project using a PM modeling program, such as the BEEST or AERMOD models, to determine the full PM impact of the project under the proposed grading acreages. Upon completion of the PM modeling, the results and recommended mitigation measures to reduce PM emissions below SMAQMD thresholds shall be submitted to the City for their approval. If more than 15 acres will be graded per day, dispersion modeling following SMAQMD procedures shall be completed, and mitigation measures shall be approved by the City prior to the issuance of grading permits. In either case, the project applicant shall implement Mitigation Measures 5.3-2 (b) through (m) below and other mitigation measures, deemed appropriate, as a result of the PM modeling to reduce local particulate matter concentrations below 50 µg/m ³ per day.	Verify that the measures to reduce PM emissions are implemented as set forth in MM 5.3-2(a).	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
b) All disturbed areas, including storage piles that are not being actively used for construction purposes, shall be covered or watered with sufficient frequency as to maintain soil moistness.	Verify that all disturbed area, including storage piles are covered or watered.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
c) All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or a chemical stabilizer or suppressant;	Verify that unpaved access roads are stabilized.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
d) When materials are transported off-site, they shall be covered, effectively wetted to limit visible dust emissions, or maintained with at least 2 feet of freeboard space from the top of the container;	Verify that materials transported off-site are covered.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
e) All operations shall limit or expeditiously remove the accumulation of project-generated mud or dirt from adjacent public streets at least once	Verify that project-generated mud or	Project Applicant	Daily, ongoing during	Development	

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
every 24 hours when operations are occurring;	dirt is removed from adjacent public streets in a timely fashion.	and/or contractor	construction.	Services	
f) Following the addition of materials to, or the removal of materials from, the surfaces of outdoor storage piles, the storage piles shall be effectively stabilized of fugitive dust emissions using sufficient water or a chemical stabilizer or suppressant;	Verify that storage piles are effectively stabilized.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
g) On-site vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph);	Verify that on-site vehicle speeds on unpaved roads are limited to 15 mph.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
h) Wheel washers shall be installed for all trucks and equipment exiting from unpaved areas or wheels shall be washed manually to remove accumulated dirt prior to leaving the site;	Verify that well washers have been installed.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
i) Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from adjacent project areas with a slope greater than 1 percent;	Verify that sandbags or other erosion control measures have been installed.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
j) Excavation and grading activities shall be suspended when winds exceed 20 mph;	Verify that excavation and grading activities are suspended during windy days.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
k) The extent of areas simultaneously subject to excavation and grading shall be limited, wherever possible, to the minimum area feasible.	Verify that excavation and grading are limited to the minimum area feasible.	Project Applicant and/or contractor	Daily, ongoing during construction.	Development Services	
l) The text of this measure shall be included in all construction plans and specifications.	Verify that the text of this measure has been included in all construction plans and specifications.	Project Applicant and/or contractor	Prior to issuance of grading permits.	Development Services	

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
m) For all future discretionary projects associated with this project, either this measure shall apply, or additional PM analysis shall be required, which may include BEEST modeling if maximum acreage graded per day exceeds the acreage ranges in Table B.1 of the SMAQMD Guide.	Verify that the measures to reduce PM emissions are implemented as set forth in MM 5.3-2(m).	Project Applicant and/or contractor	Ongoing during operation.	Development Services	
5.3-3 (a) The project applicant shall implement the emission reduction strategies contained in the Delta Shores Air Quality Management Plan (AQMP). The AQMP shall be endorsed by the SMAQMD prior to the release of the Draft EIR. Documentation confirming implementation of the AQMP shall be provided to the SMAQMD and the City of Sacramento prior to issuance of occupancy permits, as required.	Verify that emission reduction strategies contained in the Delta Shores AQMP are implemented.	Project Applicant and/or contractor	Prior to issuing occupancy permits.	Development Services	
(b) Prior to the issuance of building permits for the commercial portion of the project, the project applicant shall either enter into an existing Transportation Management Association (TMA), or create a new TMA to serve the project area. Funding shall be provided by the project applicant through a Community Facilities District (CFD) or other financing mechanism approved by the City.	Verify that the applicant has either entered into a TMA or created one to serve the project site.	Project Applicant	Prior to issuance of building permits	Development Services	
5.3-7 Implement Mitigation Measures 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	See MM 5.3-1 (a) through (e).	
5.3-8 Implement Mitigation Measures 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	See MM 5.3-2(a) through (m).	
5.3-9 Implement Mitigation Measure 5.3-3.	See MM 5.3-3.	See MM 5.3-3.	See MM 5.3-3.	See MM 5.3-3.	

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
5.4 Biological Resources					
5.4-1					
a) The project applicant shall, where feasible, preserve the maximum amount of existing wetlands and establish minimum 250-foot buffers around wetlands with listed species or 50-foot buffers around wetlands without listed species (species presence shall be verified as described in Impact 5.4-3 or assumed). Where wetlands are preserved, a Wetland Avoidance Plan (WAP) shall be prepared by a qualified biologist and submitted to the City for review and approval prior to the issuance of grading permits or any groundbreaking activity. The WAP shall include project designs that shall not cause significant changes to the pre-project hydrology, water quality or water quantity in any wetland that is to be retained on site, and shall include maps and provisions for buffers that will prevent construction equipment, debris and sediment from entering wetland features.	Verify that the maximum amount of existing wetlands has been preserved and that a WAP has been prepared; ensure that minimum buffers around wetlands have been established.	Project Applicant	Prior to issuance of grading permits.	Development Services	
b) Where avoidance of existing wetlands and drainages is not feasible, mitigation measures shall be implemented prior to the approval of grading permits or any groundbreaking activity within 250 feet of wetlands for the project-related loss of any existing wetlands, such that there is no net loss of wetland acreage or habitat value. The required distance can be reduced to 50 feet where determinate surveys have shown no special status species within wetland features.	Verify that no net loss of wetland acreage or habitat value occurs.	Project Applicant	Prior to issuance of grading permits.	Development Services	
c) Prior to the issuance of grading permits by the City for any work within 250 feet of wetlands, the project applicant shall acquire all applicable wetland permits. The required distance can be reduced to 50 feet where determinate surveys have shown no special status species within wetland features. These permits may include, but would not be limited to, a Section 404 Wetlands Fill Permit from the U.S. Army Corp of Engineers, a Section 401 Water Quality Certification from the Regional Water Quality Control Board, and/or a Section 1601 Streambed Alteration Agreement from the California Department of Fish and Game.	Verify that all applicable wetland permits have been acquired.	Project Applicant	Prior to issuance of grading permits.	Development Services/USACE/CVRWQCB/CDFG	

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>d) Wetland mitigation shall be developed as a part of the permitting process(es) as described above. Mitigation shall be provided prior to construction related impacts on the existing wetlands. The exact mitigation ratio is variable, based on the type and value of the wetlands affected by the project, but agency standards typically require a minimum of 1:1 for preservation and 1:1 for restoration. In addition, unless other mitigation is required by permitting processes that would provide similar or greater mitigation, a wetland mitigation and monitoring plan shall be developed that includes the following:</p> <ul style="list-style-type: none"> • Descriptions of the wetland types, and their expected functions and values; • Performance standards and monitoring protocol to ensure the success of the mitigation wetlands over a period of five to ten years; • Engineering plans showing the location, size and configuration of wetlands to be created or restored; • An implementation schedule showing that construction of mitigation areas shall commence prior to or concurrently with the initiation of construction; and • A description of legal protection measures for the preserved wetlands (i.e., dedication of fee title, conservation easement, and/or an endowment held by an approved conservation organization, government agency or mitigation bank). 	<p>Verify that mitigation is provided prior to construction related impacts on the existing wetlands. Develop a wetland mitigation and monitoring plan.</p>	<p>Project Applicant</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/USACE/CVRWQCB/CDFG</p>	
<p>5.4-2 a) The project applicant, in consultation with the USFWS, shall either (1) complete surveys for federally listed branchiopods, or (2) assume presence of federally-listed branchiopods in all affected pools where surveys have not been completed. Surveys shall be conducted by qualified biologists in accordance with the most recent USFWS guidelines or protocols to determine the time of year and survey methodology. The survey(s) and subsequent report(s) shall include at a minimum:</p> <ul style="list-style-type: none"> • A complete list of species observed in the vernal pools and seasonal wetlands. 	<p>Verify that a qualified biologist conducts surveys for federally listed branchiopods or that the applicant assumes the presence of federally listed branchiopods were surveys have not been completed. If surveys are</p>	<p>Project Applicant</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Public Works/USFWS</p>	

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MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<ul style="list-style-type: none"> A detailed description of methodology including dates of field visits, the names of survey personnel with resumes and a list of references cited and persons contacted. Survey results that include at a minimum: <ul style="list-style-type: none"> A map showing the location(s) of any federally listed branchiopods species identified within the project site. A detailed description of any identified federally listed branchiopods or populations including information on the density, distribution and habitat quality relative to typical occurrences of the species in question. A discussion of the importance of the population(s) with consideration of both nearby populations and total species distribution. An assessment of significance related to project impacts on any federally listed branchiopods populations identified on the project site. 	<p>conducted, verify that the survey results are submitted to USFWS and the City of Sacramento.</p>				
<p>b)</p> <p>If surveys within the project site reveal no occurrences of federally listed branchiopods, no further mitigation would be required. However, if surveys determine that one or more federally listed branchiopod species occur within the project site, or if the project applicant, in consultation with the USFWS, assumes presence of federally-listed branchiopods in any affected pools, the following measures shall be required for those pools with species surveyed or assumed present. The selected measures may be part of the permitting process.</p> <ul style="list-style-type: none"> For every acre of habitat impacted, at least one wetland creation credit shall be dedicated within a USFWS-approved mitigation bank. For every acre of habitat impacted, at least two wetland preservation credits shall be dedicated within a USFWS-approved mitigation bank. 	<p>If federally listed branchiopods are present, verify that the measures to protect the species are implemented as set forth in MM 5.4-2(b).</p>	Project Applicant	Prior to issuance of grading permits.	Development Services/Public Works/USFWS	

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MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<ul style="list-style-type: none"> If habitat is avoided (preserved) on site, a USFWS-approved biologist (monitor) shall inspect any construction-related activities at the proposed project site to ensure that no unnecessary take of listed species or destruction of their habitat occurs. The biologist shall have the authority to stop all activities that the biologist deems may result in such a take or destruction until appropriate corrective measures have been completed. The biologist shall also immediately report any unauthorized impacts to the City, the USFWS and the CDFG. Adequate fencing shall be placed and maintained around any avoided (preserved) wetland habitat to prevent impacts from vehicles. The project proponent shall conduct Worker Environmental Awareness Program (WEAP) training for construction crews (primarily crew and construction foreman) and City inspectors before construction activities begin. The WEAP shall include a brief review of the special status species and other sensitive resources that could occur in the proposed project site (including their life history and habitat requirements and what portions of the proposed project area they may be found in) and their legal status and protection. The program shall also cover all mitigation measures, environmental permits and proposed project plans, such as the SWPPP, BMPs, erosion control and sediment plan, and any other required plans. During WEAP training, construction personnel shall be informed of the importance of avoiding ground-disturbing activities outside of the designated work area. The designated biological monitor shall be responsible for ensuring that construction personnel adhere to the guidelines and restrictions. WEAP training sessions shall be conducted as needed for new personnel brought onto the job during the construction period. The project proponent shall ensure that activities that are inconsistent with the maintenance of the suitability of remaining wetland habitat and associated watershed on-site are prohibited. 					

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MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>5.4-3 Prior to the issuance of grading permits, the project applicant shall preserve an equal amount of suitable raptor foraging habitat, at a 1:1 ratio or greater. Suitable foraging habitat includes alfalfa or other low growing crops. The applicant shall preserve approximately 100 acres of suitable Swainson's hawk habitat closest to within a five mile radius of the project site. An additional approximately 800 acres at the Brannon Farms location shall be actively farmed and maintained with a crop rotation that is known to support high quality foraging habitat (e.g., alfalfa) in perpetuity. The Brannon Island Farms site is currently located within close proximity to several active Swainson's hawk nests, according to the CNDDB. Any habitat identified by the applicant shall be evaluated using the following five criteria in consultation with the CDFG:</p> <ul style="list-style-type: none"> i. Does the mitigation parcel provide suitable foraging habitat? ii. Is the parcel located in close proximity to the impacted foraging habitat? iii. Is the parcel occupied or adjacent to active Swainson's hawk nests? iv. Is the parcel adjacent to other protected habitat thereby contributing to a larger habitat preserve? v. Is the parcel outside of areas identified for urban growth? <p>Preservation shall occur through the purchase of conservation easements or fee title of lands with suitable foraging habitat. A mitigation plan shall be established and submitted to the City for approval prior to the issuance of grading permits and, at a minimum, shall include confirmation of title and encumbrances, details on mitigation site location, development, maintenance and monitoring. Any easements shall be in compliance with Government Code Section 65965. Land and easements shall be approved by the City in consultation with CDFG.</p>	<p>Verify that suitable raptor foraging habitat has been preserved.</p>	<p>Project Applicant</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Public Works/CDFG</p>	

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<p>5.4-4</p> <p>a) Between March 1 and August 1, the project applicant or developer(s) shall have a qualified biologist conduct nest surveys within 30 days prior to any demolition/ construction or ground disturbing activities that are within ¼ mile of potential nest trees. A pre-construction survey shall be submitted to CDFG and the City of Sacramento that includes, at a minimum: (1) a description of the methodology including dates of field visits, the names of survey personnel with resumes, and a list of references cited and persons contacted; and (2) a map showing the location(s) of raptor and migratory bird nests observed on the project site. If no active nests of MBTA, CDFG or USFWS covered species are identified then no further mitigation is required.</p>	<p>Verify that a qualified biologist conducts pre-construction nest surveys and that the survey results are submitted to CDFG and the City of Sacramento.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading, or building permits and every calendar year that construction activities occur.</p>	<p>Development Services/Public Works/CDFG/USFWS</p>	
<p>b) Should active nests of protected bird species be identified in the survey conducted in accordance with Mitigation Measure 5.4-4(a), the applicant, or developer(s), in consultation with the City of Sacramento and CDFG, shall delay construction in the vicinity of active nest sites during the breeding season (March 1 through August 1) while the nest is occupied with adults and/or young. A qualified biologist shall monitor any occupied nest to determine when the nest is no longer used. If the construction cannot be delayed, avoidance shall include the establishment of a non-disturbance buffer zone around the nest site. The size of the buffer zone shall be determined in consultation with the CDFG, but will be a minimum of 100 feet and no more than ¼ mile. The buffer zone shall be delineated with highly visible temporary construction fencing.</p>	<p>Verify that if active nests of protected bird species are identified that construction activities are delayed or non-disturbance buffer zone enforced.</p>	<p>Project Applicant and/or contractor</p>	<p>Ongoing during construction.</p>	<p>Development Services/Public Works/CDFG/USFWS</p>	
<p>c) No intensive disturbance (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within the established buffer zone of an active nest between March 1 and August 1.</p>	<p>Verify that no use of heavy equipment occurs within established buffer zones.</p>	<p>Project Applicant and/or contractor</p>	<p>Ongoing during construction.</p>	<p>Development Services</p>	

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d) If demolition/construction activities are unavoidable within the buffer zone, the project applicant shall consult with CDFG and the City, to develop CDFG approved appropriate impact reduction and take avoidance measures, which may include retaining a qualified biologist to monitor the nest site or taking any nestlings to a local wildlife rehabilitation center.	Verify that a qualified biologist is on-site during the site disturbing activities to monitor any active nest sites in the buffer zone.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/CDFG/US FWS	
5.4-5 a) Prior to any demolition/construction activities that occur between March 1 and September 15 the applicant or developer(s) shall have a qualified biologist conduct surveys for nesting migratory birds on the project site and within a half mile ² of demolition/construction activities unless the City and CDFG approve a reduced survey area. Surveys shall be conducted no more than 30 days prior to the start of any site disturbance for each phase of the project. If there is a lapse in construction of more than two weeks, new surveys would be required. If no active nests are identified on or within a quarter mile of construction activities, a letter report summarizing the survey results shall be sent to the City of Sacramento and no further mitigation is required.	Verify that a qualified biologist conducts pre-construction nest surveys and that the survey results are submitted to CDFG and the City of Sacramento.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/CDFG	
b) If active nests are found, measures that will avoid impacts to nesting migratory birds, including measures consistent with the CDFG Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California shall be implemented as follows: 1. Nest trees shall not be removed unless there is no feasible way of avoiding their removal. 2. If there is no feasible alternative to removing a nest tree, a Management Authorization (including conditions to offset the loss of the nest tree) shall be obtained from CDFG with the tree removal period (generally between October 1 and February 1) to be specified in the Management Authorization.	Verify that if active nests of protected bird species are identified that the measures set forth in MM 5.4-2(b) are implemented.	Project Applicant and/or contractor	Ongoing during construction.	Development Services/Public Works/CDFG	

2 Swainson's Hawk Technical Advisory Committee. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley, May 31, 2000.

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<p>3. No intensive disturbances (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within half mile or less, as determined by CDFG, (buffer zone as defined in the CDFG Staff Report) of an active Swainson's hawk nest or 500 feet for other nesting migratory birds, between March 1 and September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained from CDFG for the project. The buffer zone may be reduced in consultation with CDFG.</p> <p>4. If demolition/construction activities are unavoidable within the buffer zone of an active Swainson's hawk nest site, the project applicant or developer(s) shall consult with the CDFG and the City, and if necessary, obtain an incidental take permit issued pursuant to Fish and Game Code section 2081.</p>					
<p>5.4-6 a)</p> <p>Prior to the issuance of grading permits, the project applicant shall retain a qualified biologist to conduct a pre-construction burrowing owl survey in accordance with most current version of the California Burrowing Owl Consortium Burrowing Owl Survey Protocol and Mitigation Guidelines. Surveys shall be conducted no more than 30 days prior to the start of any demolition or construction activities. If no suitable burrows are found, no further mitigation is required. If suitable burrows are found, but no owls are found, all burrows shall be hand-excavated and collapsed prior to project construction. If nesting owls are found, no disturbance shall be allowed within 160-feet of the active nest burrow between February 1 and August 31. Outside the nesting season, and/or upon confirmation by the qualified biologist, and in consultation with CDFG, that all young have fledged and left an active nest, burrowing owls present in the burrow shall be excluded from the burrow(s) by a qualified biologist through a passive relocation as outlined in the California Burrowing Owl Consortium's April 1993 Burrowing Owl Survey Protocol and Mitigation Guidelines. Once the burrows have been cleared, they must be hand-excavated and collapsed prior to project construction.</p>	<p>Verify that a qualified biologist has conducted a pre-construction survey for burrowing owls. If present, verify appropriate measures have been incorporated in construction contracts to protect owls.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition, grading, or building permits every calendar year that such activities occur.</p>	<p>Development Services/ CDFG</p>	

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<p>b) To offset the loss of foraging and burrow habitat on the project site, and prior to issuance of grading permits, the project proponent shall preserve a minimum of 6.5 acres of foraging habitat (calculated on a 100 m [approx. 300 ft.] foraging radius around the burrow) per pair or unpaired resident bird, in accordance with the most current "California Burrowing Owl Consortium's (April 1993) Burrowing Owl Survey Protocol and Mitigation Guidelines." The protected lands shall be adjacent to burrowing owl habitat and at a location acceptable to the CDFG. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances. Preservation shall occur through the purchase of conservation easements or fee title of lands and any easements shall be in compliance with Government Code Section 65965. The project proponent shall provide funding for long-term management and monitoring of the protected lands, by way of an endowment account (based on a Property Analysis Record type analysis) that is approved by CDFG. A mitigation and monitoring plan shall be submitted to CDFG and the City for approval and include details on mitigation site location, development, maintenance and monitoring. The monitoring plan shall include success criteria, remedial measures, and an annual report to the Department. This mitigation could overlap with mitigation provided for Swainson's hawk foraging habitat as deemed appropriate by CDFG.</p>	<p>Verify that replacement habitat has been acquired and permanently protected in accordance with procedures outlined in MM 5.4-6(b).</p>	<p>Project Applicant</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Public Works/CDFG</p>	
<p>c) If destruction of occupied burrows is unavoidable, the project applicant shall coordinate with CDFG to identify existing suitable burrows located on the protected lands site to be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1.</p>	<p>Verify that suitable burrows are provided in accordance with procedures outlined in MM 5.4-6(c).</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Public Works/CDFG</p>	
<p>5.4-7 a) The proposed project shall be designed to avoid ground disturbance within 100 feet of the dripline of elderberry shrubs identified in the ECORP VELB Surveys as having stems greater than or equal to one inch in diameter. The 100 foot buffer could be adjusted in consultation with the USFWS. If avoidance is achieved, a letter report confirming avoidance shall be sent to the City of Sacramento and no further mitigation is required.</p>	<p>Verify that project design avoids disturbance within 100 feet of elderberry shrub dripline and that avoidance is documented in a</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition or grading permits.</p>	<p>Development Services/Public Works/USFWS</p>	

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<p>b) If disturbance within 100 feet of the dripline of the elderberry shrub with stems greater than or equal to one inch in diameter is unavoidable, then the project applicant shall retain the services of a qualified biologist to develop a formal VELB mitigation plan in accordance with the most current USFWS mitigation guidelines for unavoidable take of VELB habitat pursuant to either Section 7 or Section 10(a) of the Federal Endangered Species Act. Prior to implementation by the applicant the mitigation plan shall be reviewed and approved by the USFWS.</p> <p>c) If the VELB is delisted by the USFWS prior to the initiation of any ground disturbing, demolition, or construction activities, the project applicant shall proceed consistent with any requirements that accompany the VELB delisting notice.</p>	<p>report submitted to the City of Sacramento.</p> <p>Verify that a qualified biologist develops a formal VELB mitigation plan and that appropriate mitigation guidelines are implemented.</p> <p>Verify the implementation of any requirements consistent with the VELB delisting notice.</p>	<p>Project Applicant and/or contractor</p> <p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition or grading permits.</p> <p>Prior to issuance of grading permits.</p>	<p>Development Services/Public Works/USFWS</p> <p>Development Services/Public Works/USFWS</p>	
<p>5.4-8</p> <p>a) Prior to issuance of any grading permits or any groundbreaking activity, whichever comes first, the applicant shall submit all grading and trenching plans to the Urban Forest Services' (UFS) City Arborist for review to ensure protection of Heritage trees located on site. Along with this plan, a supplemental survey of trees that may be impacted by construction shall be conducted and a report shall be submitted. This survey report shall include the dbh of all potentially impacted trees, which shall be verified by the City Arborist. The City Arborist will provide written verification and additional protection measures not available at this time to the City's Development Services Department prior to issuance of the grading permit.</p>	<p>Verify that all grading and trenching plans have been submitted to the City Arborist. Submit a supplemental survey of trees that may be impacted by construction.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Urban Forests Division</p>	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>b) Heritage trees identified by the City Arborist, both on- and off-site, are recommended for preservation to the extent feasible without substantially altering the project site plan. If trees should require removal, the applicant/developer shall obtain authorization through a tree removal permit from the City Urban Forest Services. The project applicant/developer shall coordinate with the City of Sacramento Urban Forest Services Division to identify any trees able to be preserved. If trees are identified for preservation, the applicant/developer shall coordinate with the Urban Forest Services Division in preparation of a preservation plan for any and all trees identified for preservation. The preservation plan shall include, but not be limited to the following measures 5.4-8(b)(i) thru 5.4-8(b)(xi) to prevent impacts to the trees during construction of the proposed project:</p> <ul style="list-style-type: none"> i. A 6' high cyclone fence shall be installed around each tree at a distance determined adequate by the City Arborist to protect trees from damage. This fencing will define the construction exclusion zone (CEZ) and no vehicles, construction equipment, mobile home/office, supplies, materials or facilities shall be driven, parked, stockpiled or located within the CEZ of protected trees. A laminated sign indicating such shall be attached to fencing surrounding trees on-site. Fencing shall be shown on all construction and preservation plans and shall be installed prior to any construction activities. The appropriate CEZ distances for trees 173, 186, 109, 110 and 112 were previously determined by the City Arborist. Tree 173 shall require a 20.5' CEZ, tree 186 shall require a 17.5' CEZ, tree 109 shall require a 16.0' CEZ, tree 110 shall require a 19.0' CEZ and tree 112 shall require a 23.5' CEZ, if they are able to be preserved. ii. Prior to any pruning of heritage trees, the applicant or contractor shall obtain a heritage tree pruning permit from UFS (808-6345). Any required pruning shall be performed by an International Society of Arboriculture (ISA) certified arborist. The contractor shall contact the City Arborist for a root inspection(s) for trenching activities within the dripline(s) of trees to be saved. 	<p>Verify that a tree removal permit from the City Urban Forest Services is obtained if heritage trees are to be removed. Verify the tree preservation plan for trees to be preserved, that includes the measures identified in 5.4-8(b)(i) through 5.4-8(b)(xi) or equally effective measures.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Urban Forests Division</p>	

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<p>iii. If during excavation for the project, tree roots greater than two inches in diameter are encountered, work shall stop immediately until the City Arborist can perform an on site inspection. All roots shall be cut clean and the tree affected may require supplemental irrigation/fertilization and pruning as a result of the root cutting. The contractor will be responsible for any costs incurred. Depending upon the amount of roots encountered and the time of year, wet burlap may be required along the sides of the trench.</p> <p>iv. The contractor shall be held liable for any damage to existing trees, i.e. trunk wounds, broken limbs, pouring of any deleterious materials, or concrete washout under the dripline of the trees. Damages will be assessed using the "Guide to Plant Appraisal" eighth edition, published by the International Society of Arboriculture. An appraisal report shall be submitted for review by the City Arborist.</p> <p>v. Drainage patterns on the site shall not be modified so that water collects or stands within 8 feet of the trunk of any Heritage tree that is to be preserved.</p> <p>vi. No lawn irrigation system shall be installed within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p> <p>vii. No planting of landscaping within 6 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p> <p>viii. No trenching activity within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p> <p>ix. No grading activity within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services. In the absence of an approved grading plan, the applicant/developer shall agree to mitigate for the loss of any Heritage tree that the City Arborist determines has been irreparably damaged by grading or other construction activity.</p> <p>x. No impervious surfaces shall be allowed within 8 feet of the trunk of any Heritage tree that is to be preserved unless otherwise approved by Urban Forest Services.</p>					

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<p>xi. City Ordinances 12.56.060 (Protection of trees), 12.64.040 (Protection of Heritage trees during construction activities), and 12.64.050 (Maintenance responsibility – Permits for activities affecting Heritage trees) must be followed at all phases of construction.</p> <p>Tree protection methods noted above shall be identified on all construction plans for the project.</p> <p>c) If Heritage Trees 173, 186, 109, 110 and 112, or any other heritage trees are unable to be preserved, prior to removal of these trees, the project applicant/developer shall coordinate with City of Sacramento Urban Forest Services Division to obtain the necessary permits for removal of the trees in accordance with the Heritage Tree Ordinance (City Code 12.64). All trees that fall under this category shall have a supplemental survey report prepared, as specified in Mitigation Measure 5.4-8 (a). All heritage trees removed shall be mitigated. Mitigation for removed trees can be carried out on site through the planting and care of young trees as specified by the City Arborist, or through the payment of in lieu fees to the City of Sacramento Urban Forest Services Division at the currently accepted rate. If in lieu fees are paid, verification of payment shall be provided to the Development Services Department. These fees would be used to provide planting and care of replacement trees. If the applicant can provide on-site mitigation, planting will be subject to the following City of Sacramento Urban Forest Services conditions:</p> <ul style="list-style-type: none"> • Preparation of a tree mitigation planting plan prepared for review and approval by Urban Forest Services which shall include the following minimum elements: <ol style="list-style-type: none"> 1. Species, size, and locations of all replacement plantings (the plan shall provide adequate planter and canopy space for trees to grow to maturity). 2. Method of irrigation. 3. A tree planting detail. 4. Planting, irrigation, and maintenance schedules. 5. Identification of the maintenance entity and a written agreement with that entity to provide care and irrigation of the trees. • Inspection of nursery stock (prior to planting) by Urban Forest Services. 	<p>Verify that a tree removal permit is obtained if heritage trees are to be removed. Prepare a tree mitigation plan as outlined in MM 5.4-8(c).</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services/Urban Forests Division</p>	

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<p>• Post-planting inspection by Urban Forest Services.</p>					
<p>5.4-9</p> <p>a) Prior to demolition and tree removal activities, the project applicant or developer(s) shall retain a qualified biologist to conduct a focused survey for bats and potential roosting sites within the project site. If no roosting sites or bats are found within the project site, a letter report confirming absence shall be sent to the City of Sacramento and no further mitigation is required.</p>	<p>Verify that a qualified biologist conducts a bat survey and that a letter report confirming absence is submitted to the City of Sacramento.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition or grading permits.</p>	<p>Development Services/Public Works</p>	
<p>b) If bats are found roosting at the site outside of nursery season (May 1st through October 1st), then they shall be evicted as described under (c) below. If bats are found roosting during the nursery or maternity season, then they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or monitoring the roost after the adults leave for the night to listen for bat pups. If the roost is determined to not be a maternal roost, then the bats shall be evicted as described under (c). Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. A 250-foot (or as determined in consultation with CDFG) buffer zone shall be established around the roosting site within which no construction shall occur.</p>	<p>Verify that proper procedures are followed as outlined in MM 5.4-9(b).</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition or grading permits.</p>	<p>Development Services/Public Works/CDFG</p>	
<p>c) Eviction of bats shall, as specified above, be conducted using bat exclusion techniques, developed by Bat Conservation International (BCI) and in consultation with CDFG, that allow the bats to exit the roosting site but prevent re-entry to the site. This would include but not be limited to the installation of one way exclusion devices. The devices shall remain in place for seven days and then the exclusion points and any other potential entrances shall be sealed. This work shall be completed by a Bat Conservation International recommended exclusion professional.</p>	<p>Verify that proper procedures are followed as outlined in MM 5.4-9(c).</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuing demolition or grading permits.</p>	<p>Development Services/Public Works/CDFG</p>	

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<p>5.4-10 The project applicant shall consult with the USFWS to address potential impacts on giant garter snake (GGS). Due to the minimal area of potential impact, it is likely that the proposed project could be covered under the Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California. For construction activities within the vicinity of Morrison Creek or the ditch north of the project site, the following avoidance measures shall be implemented consistent with the USFWS-Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat:</p> <ul style="list-style-type: none"> • Confine movement of heavy equipment to existing roadways to minimize habitat disturbance. • Construction shall be restricted to the active season for GGS (mid-March through early October), or as determined in consultation with the USFWS. • Construction personnel shall receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s). • 24-hours prior to construction activities, the project area shall be surveyed for giant garter snakes. Survey of the project area should be repeated if a lapse in construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the snake will not be harmed. Report any sightings and any incidental take to the Service immediately. 	Verify the project applicant has consulted with the USFWS and follows the requirements set forth in this MM, if required.	Project Applicant	Prior to issuance of grading permits for the offsite infrastructure.	Development Services/Public Works/CDFG	
5.4-11 Implement Mitigation Measure 5.4-1.	See MM 5.4-1	See MM 5.4-1	See MM 5.4-1	See MM 5.4-1	
5.4-12 Implement Mitigation Measure 5.4-3.	See MM 5.4-3	See MM 5.4-3	See MM 5.4-3	See MM 5.4-3	
5.4-14 Implement Mitigation Measure 5.4-5.	See MM 5.4-5	See MM 5.4-5	See MM 5.4-5	See MM 5.4-5	
5.4-15 Implement Mitigation Measure 5.4-6(a) through (d).	See MM 5.4-6(a) through (d)	See MM 5.4-6(a) through (d)	See MM 5.4-6(a) through (d)	See MM 5.4-6(a) through (d)	

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5.4-16	Implement Mitigation Measure 5.4-8.	See MM 5.4-8	See MM 5.4-8	See MM 5.4-8	
5.6 Noise					
5.6-1	The project contractor(s) shall ensure that the following measures are implemented during all phases of project construction:				
a)	Whenever construction occurs on parcels adjacent to existing off-site residential neighborhoods or schools or, when it occurs during later project stages on parcels near residential and other noise-sensitive uses built on-site during earlier project stages, temporary barriers shall be constructed around the construction sites to shield the ground floor and lower stories of the noise-sensitive uses. These barriers shall be of ½-inch Medium Density Overlay (MDO) plywood sheeting, or other material of equivalent utility and appearance, and shall achieve a Sound Transmission Class of STC-30, or greater, based on certified sound transmission loss data taken according to ASTM Test Method E90. The barrier shall not contain any gaps at its base or face, except for site access and surveying openings. The barrier height shall be designed to break the line-of-sight and provide at least a 5 dBA insertion loss between the noise producing equipment and the upper-most story of the adjacent noise-sensitive uses. If, for practical reasons, which are subject to the review and approval of the City, a barrier cannot be built to provide noise relief to the upper stories of nearby noise-sensitive uses, then it must be built to the tallest feasible height.	Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(a).	Project Applicant and/or contractor	Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.	Development Services/Building Division
b)	Construction activities shall comply with the City of Sacramento Noise Ordinance, which limits such activity to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday, the hours of 9:00 a.m. to 6:00 p.m. on Sunday, prohibits nighttime construction, and requires the use of exhaust and intake silencers for construction equipment engines.	Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(b).	Project Applicant and/or contractor	Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.	Development Services/Building Division
c)	Construction equipment staging areas shall be located as far as possible from residential areas while still serving the needs of construction contractor(s). Prior to the approval of all construction related permits, including grading permits, improvement plans, and building permits, a plan shall be submitted for approval to the City showing the proposed	Verify noise reduction and attenuation measures are implemented as set	Project Applicant and/or contractor	Prior to issuance of grading or building permits; implement measures during	Development Services/Building Division

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<p>location of all staging areas. This plan may be included with grading permit, improvement plan, and building permit submittals (i.e., it may be included in improvement plans) and can be reviewed and approved concurrently with permits.</p> <p>d) High noise activities, such as jackhammers, drills, impact wrenches and other generators of sporadic high noise peaks, shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, unless it can be proved to the satisfaction of the City that the allowance of Saturday work on certain onsite parcels (i.e., those as far from noise-sensitive uses as possible) would not adversely affect nearby noise-sensitive receptors. Prior to any such work outside of the specified hours, the applicant shall obtain written approval from the City.</p>	<p>forth in MM 5.6-1(c).</p> <p>Verify noise reduction and attenuation measures are implemented as set forth in MM 5.6-1(d).</p>	<p>Project Applicant and/or contractor.</p>	<p>ground disturbing and construction activities.</p> <p>Prior to issuance of grading or building permits; implement measures during ground disturbing and construction activities.</p>	<p>Development Services/Building Division</p>	
<p>5.6-3 At the time of building permits, the project applicant or developer shall be required to comply with the City's adopted General Plan policies that pertain to acceptable noise levels. This may require construction of a soundwall, if appropriate and feasible given the exposure circumstances of the residence(s) along 24th Street, to minimize traffic noise.</p>	<p>Verify compliance with the City's General Plan policies.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of building permits.</p>	<p>Development Services/Building Division</p>	
<p>5.6-4 The project applicant shall have a certified acoustical professional prepare a site-specific analysis for all residential uses fronting both sides of I-5 that details how exterior noise levels would achieve exterior noise levels less than 65 dB Ldn and interior noise levels less than 45 dB Ldn. The results of the analysis shall be submitted to the City of Sacramento for review and approval and appropriate recommended noise reduction measures/design features shall be incorporated into project design. Noise reduction measures/design features may include, but are not limited to the following:</p>					
<p>a) Prior to final design review, all low-density and medium-density residences west of I-5 and medium-density residential residences east of I-5 (in the 8.62-acre parcel adjacent to I-5) would be designed and constructed to Title 24 standards which specify that interior noise levels attributable to exterior sources shall not exceed 45 dBA Ldn in any habitable room of new dwellings.</p>	<p>Verify preparation of a site-specific acoustical analysis has been prepared that addresses MM 5.6-4(a) and has been submitted to the city for review and approval.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of building permits.</p>	<p>Development Services/Building Division</p>	

DELTA SHORES PROJECT

MITIGATION MONITORING PLAN

Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
b) Prior to issuance of occupancy permits, the project applicant would construct a sound wall west of the southbound lane of traffic along I-5 with a minimum height of 15 feet, that is capable of reducing exterior noise levels below 65 dB Ldn outside the closest residential units. The project applicant would also construct a sound wall for residences proposed north of the interchange (in the 8.62-acre parcel adjacent to I-5) along the east side of the northbound lane of I-5 with a minimum height of 15 feet that is capable of reducing exterior noise levels below 65 dB Ldn outside the closest residential units.	Verify construction of sound wall that addresses MM 5.6-4(b).	Project Applicant and/or contractor	Prior to issuance of occupancy permits.	Development Services/Building Division	
5.6-5					
a) Prior to the issuance of building permits, the applicant shall submit engineering and acoustical specification for project mechanical HVAC equipment to the Planning Director (or their designee) demonstrating that the equipment design (types, location, enclosure, specifications) would control noise from the equipment to at least 10 dBA below existing ambient noise levels at nearby residential and other noise-sensitive land uses.	Verify that engineering and acoustical specification for project Mechanical HVAC equipment is submitted to the Planning Director.	Project Applicant and/or contractor	Prior to issuance of building permits.	Development Services/Building Division	
b) Garbage storage containers and retail/commercial building loading docks shall be placed to allow adequate separation to shield adjacent residential or other noise-sensitive uses. If the placement of garbage storage containers or loading docks away from adjacent noise-sensitive uses is not feasible, these noise-generating areas shall be enclosed or acoustically shielded to reduce noise-related impacts to these noise-sensitive uses. The location of garbage storage containers and loading docks shall be shown on building plans reviewed by the City. If these noise-generating structures will be located near sensitive uses, a plan shall be submitted to the City for review and approval, demonstrating adequate acoustical shielding to reduce noise-related impacts to an appropriate level.	Verify that the project design does not place garbage containers or loading docks in areas that would disturb residential or other noise-sensitive uses.	Project Applicant and/or contractor	Prior to issuance of building permits.	Development Services/Building Division	
c) Noise generating stationary equipment associated with proposed commercial and/or office uses, including portable generators, compressors, and compactors shall be enclosed or acoustically shielded to reduce noise-related impacts to noise-sensitive residential uses. Such shielding shall be detailed in all plans submitted to the City for approval which include these equipment types.	Verify all stationary equipment is adequately shielded.	Project Applicant	Prior to issuance of building permits.	Development Services/Building Division	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>d) Prior to tentative map approval, the project applicant shall have a certified acoustical professional prepare a site-specific analysis for residential uses adjacent to the Sacramento Job Corps facility that details how exterior noise levels would achieve exterior noise levels less than 65 dB L_{dn} and an interior noise level of less than 45 dB L_{dn}. The results of the analysis shall be submitted to the City of Sacramento for review and approval and appropriate recommended noise reduction measures/design features shall be incorporated into project design and be printed on all construction documents. Noise reduction measures/design features shall include, but are not limited to the following:</p> <ul style="list-style-type: none"> • All residences immediately west of the Sacramento Job Corps facility shall be designed and constructed to Title 24 standards which specify that interior noise levels attributable to exterior sources shall not exceed 45 dBA CNEEL in any habitable room of new dwellings. • The project applicant shall construct a rear-yard sound wall of adequate height and building specifications, as determined by the acoustical professional, between residential uses located adjacent to the Sacramento Job Corps facility that would reduce exterior noise levels to less than 65 dB L_{dn} and interior noise levels to less than 45 dB L_{dn}. • All prospective buyers shall be informed of the operational activities that occur at the Sacramento Job Corps facility site and the noise levels associated with those activities. All residential contracts shall include a disclosure statement that a purchaser, lessee, or transferee signs at the time of sale, purchase, contract of sale, transfer, or lease of real property. 	<p>Verify preparation of a site-specific acoustical analysis that addresses MM 5.6-5(d) and has been submitted to the city for review and approval.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of building permits.</p>	<p>Development Services/Building Division</p>	
<p>5.6-7 Implement Mitigation Measure 5.6-4.</p>	<p>See MM 5.6-4</p>	<p>See MM 5.6-4</p>	<p>See MM 5.6-4</p>	<p>See MM 5.6-4</p>	
5.7 Public Services					
<p>5.7-1 Prior to the issuance of building permits, the project developer shall enter into a funding agreement with the City of Sacramento Department of Development Services to pay its fair share contribution toward the development of the Sacramento Police Department's new Meadowview Area facility. The fair share contribution for the proposed project has been determined to be \$1,182,000.00, per the City. Implementation of</p>	<p>Verify that funding amount outlined in MM 5.7-1 has been paid.</p>	<p>Project Applicant</p>	<p>Prior to issuance of building permits.</p>	<p>Development Services</p>	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>this funding agreement shall be monitored by the City's Planning Department.</p> <p>5.7-2 Implement Mitigation Measure 5.7-1.</p>	See MM 5.7-1	See MM 5.7-1	See MM 5.7-1	See MM 5.7-1	
5.9 Transportation and Circulation					
<p>5.9-1 The project applicant shall be required to develop the Delta Shores Finance Plan for review and approval by the City before project approval. The plan shall identify the financing mechanisms for all feasible transportation improvements defined as mitigation measures including, but not limited to, new roadways, roadway widening, traffic signals and public transit. The project applicant shall coordinate preparation of the finance plan with the City of Sacramento. All mitigation measures with "fair share" contributions would be implemented through the proposed financing mechanisms(s) indicated in the finance plan or by some other mechanism as determined by the City of Sacramento. The City shall adopt the Delta Shores Finance Plan at the time the project is considered for approval.</p>	<p>Verify that a Finance Plan has been developed and that the plan was reviewed and approved by the City of Sacramento.</p>	Project Applicant	Concurrent with project approval.	Development Services and Department of Transportation	
<p>5.9-2 The project applicant shall construct an exclusive eastbound right turn lane at the intersection of Meadowview Road/Freeport Boulevard. This improvement has to be in place at the time when building permits for 200 dwelling units have been issued.</p>	<p>Verify that this improvement has been completed.</p>	Project Applicant	Prior to issuance of building permits for 200 dwelling units.	Development Services and Department of Transportation	
<p>5.9-3 The project applicant shall coordinate with Regional Transit to provide transit facilities to serve the project area. The project applicant, in coordination with Regional Transit, shall also identify the specific locations of sheltered transit stops with bus turnouts. The City of Sacramento Development Engineering Division, working in conjunction with Regional Transit, shall approve the location, design, and implementation timing of the sheltered transit stops and bus turnouts prior to the issuance of building permits. Construction of these on-site bus stop facilities shall be phased consistent with the phased development of the project. Once demand for public transit services reaches 50 service requests, the project applicant shall work with Regional Transit to begin to provide transit services and shall increase those services in proportion to the development levels and increased rider ship levels occurring on the project site. Final design and operation of the transit service will be subject to the approval of the City and other</p>	<p>Verify that coordination has occurred with Regional Transit.</p>	Project Applicant	Prior to issuance of building permits.	Development Services and Department of Transportation	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>proposed operating agencies (e.g., RT).</p> <p>5.9-5 Before issuance of grading permits for the project site, the project applicant shall prepare a detailed Traffic Management Plan that would be subject to review and approval by the City Department of Transportation, Caltrans, and local emergency service providers including the City of Sacramento fire and police departments. The plan shall ensure that acceptable operating conditions on local roadways and freeway facilities are maintained. At a minimum, the plan shall include:</p> <ul style="list-style-type: none"> • The number of truck trips, time, and day of street closures • Time of day of arrival and departure of trucks • Limitations on the size and type of trucks, provision of a staging area with a limitation on the number of trucks that can be waiting • Provision of a truck circulation pattern • Provision of driveway access plan so that safe vehicular, pedestrian, and bicycle movements are maintained (e.g., steel plates, minimum distances of open trenches, and private vehicle pick up and drop off areas) • Maintain safe and efficient access routes for emergency vehicles • Manual traffic control when necessary • Proper advance warning and posted signage concerning street closures • Provisions for pedestrian safety • A copy of the construction traffic management plan shall be submitted to local emergency response agencies and these agencies shall be notified at least 14 days before the commencement of construction that would partially or fully obstruct roadways. 	<p>Verify that a Traffic Management Plan has been prepared and reviewed and approved by the city.</p>	<p>Project Applicant</p>	<p>Prior to issuance of grading permits.</p>	<p>Development Services and Department of Transportation</p>	
<p>5.9-6 The project applicant shall construct an exclusive southbound right turn lane at the intersection of Meadowview Road/Freeport Boulevard before completion of development that would generate 80 percent of the PM peak hour project traffic, assuming construction of the I-5/Cosumnes River Boulevard interchange and the Cosumnes River Boulevard Extension west to Freeport Boulevard.</p>	<p>Verify that this improvement has been completed.</p>	<p>Project Applicant</p>	<p>Prior to the completion of development that would generate 80 percent of the PM peak hour</p>	<p>Development Services and Department of Transportation</p>	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
5.9-8 The project applicant shall install a traffic signal at the Meadowview Road/Manorside Drive intersection before completion of development that would generate 70 percent of the PM peak hour project traffic, assuming construction of the I-5/Cosumnes River Boulevard interchange and the Cosumnes River Boulevard Extension west to Freepport Boulevard.	Verify that this improvement has been completed.	Project Applicant	Prior to the completion of development that would generate 70 percent of the PM peak hour project traffic.	Development Services and Department of Transportation	
5.9-9 The project applicant shall be required to pay a fair share development impact fee towards the I-5/Cosumnes River Boulevard interchange project, as well as the I-5 corridor impact fee that is in effect at the time of issuance of building permits.	Verify that the applicant has paid their fair share fees.	Project Applicant	Prior to issuance of building permits.	Development Services and Department of Transportation	
5.9-10 The project applicant shall coordinate with Regional Transit to provide transit facilities to serve the project area. This may include but not be limited to, creating new bus routes or/ add rerouting existing bus services through the project area to connect the project site with the future light rail station at Morrison Creek or to Meadowview station or to downtown Sacramento. The project applicant, in coordination with Regional Transit, shall also identify the specific locations of sheltered transit stops with bus turnouts. The City of Sacramento Development Engineering Division, working in conjunction with Regional Transit, shall approve the location, design, and implementation timing of the sheltered transit stops and bus turnouts prior to the issuance of building permits. Construction of these on-site bus stop facilities shall be phased consistent with the phased development of the project. Once demand for public transit services reaches 50 service requests, the project applicant shall coordinate to begin to provide transit services and shall increase those services in proportion to the development levels and increased rider ship levels occurring on the project site. Final design and operation of the transit service would be subject to the approval of the City and other proposed operating agencies (e.g., RT).	Verify that coordination has occurred with Regional Transit.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-12 Implement Mitigation Measure 5.9-5.	See MM 5.9-5	See MM 5.9-5	See MM 5.9-5	See MM 5.9-5	
5.9-15 The project applicant shall pay a fair share towards the addition of a	Verify that the	Project Applicant	Prior to project	Development	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
second exclusive southbound left turn lane, an exclusive southbound right turn lane, and shall pay a fair share to recover costs for the City's Traffic Operations Center monitoring and retiming of modifications to the traffic signal to provide an overlap phase for the southbound right turn/eastbound left turn movements at the intersection of Meadowview Road/Freepport Boulevard.	applicant has paid their fair share towards this improvement and towards the City's recovery costs.		occupancy.	Services and Department of Transportation	
5.9-17 The project applicant shall pay a fair share to recover costs for the City's Traffic Operations Center monitoring and retiming of the traffic signal to provide an overlap phase for the eastbound right-turn/northbound left-turn movements at the intersection of Mack Road/Franklin Boulevard.	Verify that the applicant has paid their fair share towards the City's recovery costs.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-18 The project applicant shall pay a fair share towards the addition of a second exclusive northbound left-turn lane at the intersection of Cosumnes River Boulevard/Franklin Boulevard.	Verify that the applicant has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-19 The project applicant shall pay a fair contribution toward the construction of the Cosumnes River Boulevard/Freepport Boulevard intersection as defined in the Delta Shores Finance Plan.	Verify that the applicant has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-20 The project applicant shall construct two southbound through lanes and two northbound through lanes on Delta Shores Circle South between Cosumnes River Boulevard and Street D (north). The project applicant shall pay a fair share towards modifying the planned westbound approach of the Cosumnes River Boulevard/I-5 northbound ramps intersection to provide two through lanes and two exclusive right-turn (mixed flow) lanes. This configuration would allow mixed flow vehicles to use both westbound right-turn lanes to enter the northbound on-ramp. This differs from the planned configuration which only allows high occupancy vehicles (HOV) to turn right from a shared through/right-turn lane. The HOV bypass lane would begin just downstream on the northbound on-ramp.	Verify that the applicant has constructed the two SB lanes and has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-21 Implement the Mitigation Measure 5.9-8.	See MM 5.9-8.	See MM 5.9-8.	See MM 5.9-8.	See MM 5.9-8.	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
5.9-22 Consummes River Boulevard Interchange. The project applicant shall pay a fair contribution toward the construction of the interchange as defined in the Delta Shores Finance Plan and the cost of widening the southbound off ramp and I-5 overcrossing additional eastbound lane.	Verify that the applicant has paid their fair share towards this improvement.	Project Applicant	Prior to project occupancy.	Development Services and Department of Transportation	
5.9-23 Implement Mitigation Measure 5.9-9.	See MM 5.9-9	See MM 5.9-9	See MM 5.9-9	See MM 5.9-9	
5.9-24 Implement Mitigation Measure 5.9-10.	See MM 5.9-10	See MM 5.9-10	See MM 5.9-10	See MM 5.9-10	
5.10 Global Climate Change					
5.10-1 In order to further reduce and substantially lessen the impacts on global climate change resulting from construction and operation of the project, the project applicant has voluntarily agreed to implement the following mitigation measures:	Verify all feasible measures are implemented as part of the project.	Project Applicant	Prior to project occupancy and prior to issuance of building permits (in some instances)	Development Services	
a) Priority parking for hybrid and alternative energy vehicles shall be provided at commercial and retail parking areas, and provide passenger loading, unloading and waiting areas for ridesharing in commercial/retail/office developments.					
b) Pedestrian and bike paths shall be located in a manner to minimize road crossings to promote safety and encourage children to walk or bike to school, consistent with the project's Air Quality Management Plan.					
c) Energy efficiency shall be increased fifteen percent (15%) above Title 24 requirements and comply with the City's Green Building program.					
d) Light-colored roofing materials and paints shall be used on building roofs.					
e) Energy star rated appliances shall be installed in all residential development.					
f) Encourage participation in the California Energy Commission's New Solar Homes Partnership and encourage solar power in the project's PUD Guidelines.					
g) Encourage energy efficient design, such as providing hot water systems with booster heating and locating hot water heaters near hot water taps					

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
<p>in the project's PUD Guidelines.</p> <p>h) Encourage the use of solar on retail/commercial rooftops and parking lots in the PUD Guidelines. The project applicant shall inform all tenants and building owners of solar power options since the project applicant will not be constructing all buildings at the project site.</p> <p>i) The project applicant shall comply with the City's Shade Tree Parking Ordinance as well as the PUD Guidelines to avoid heat island and similar environmental impacts, as well as use high reflectance or lighter colored paving in accordance with the AQMP which requires all unshaded parking lot areas, driveways fire lanes and other paved areas to have a minimum albedo of .3 or greater.</p> <p>j) Light emitting diodes (LED) for traffic, street and other outdoor lighting shall be installed at the project site.</p> <p>k) Outdoor lighting shall be limited, as specified in Table K in the Draft EIR Appendices.</p> <p>l) The project applicant shall participate and fund a transportation management association (TMA) that shall operate ridesharing and shuttle services programs, and also provide educational materials on energy efficiency, as required by the project's Air Quality Management Plan.</p> <p>m) The project applicant shall ensure the project site accommodates future Regional Transit bus service.</p> <p>n) Class I and Class II bike lanes shall be constructed throughout the project site in excess of those required by the City's 2010 Bikeway Master Plan.</p> <p>o) Onsite bicycle and pedestrian facilities shall be provided, including showers and bicycle parking for non-residential projects.</p> <p>p) The project applicant shall comply with Sacramento City Code Section 17.72.030 which establishes separate waste and recycling disposal requirements for all new uses, including the use of separate receptacles, including green waste and food recycling.</p> <p>q) The project applicant shall comply with Sacramento City Code Section 13.10.400 which requires the separate collection of garden wastes from</p>					

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
residential properties.					
r) The project applicant shall comply with Sacramento City Code Section 15.76.030 which requires that all shower fixtures be fitted with low-flow features.					
s) The project applicant shall comply with Sacramento City Code Section 15.92.080 which establishes maximum water usage for landscaping and limits the use of turf, and requires the use of climate-adapted landscaping.					
t) Electrification stations/connections shall be installed in all project loading docks for use by transportation refrigeration units.					
u) The project applicant shall comply with Sacramento City Code Section 17.68.040 which requires the planting of shade trees to ensure that 50% of all surface parking areas are shaded within 15 years of development.					
v) Enlarged sidewalks shall be installed to encourage pedestrian movement throughout the project site.					
w) The project applicant shall comply with Sacramento City Code, Chapter 8.116, which prohibits the idling of diesel powered vehicles for more than five consecutive minutes or five minutes total in one hour.					
x) Recycled building materials shall be used, where feasible, in building designs.					
y) During project construction, alternative fuel (such as aqueous diesel fuel) or catalyst equipped diesel construction equipment shall be used.					
z) Reuse and recycle construction waste where feasible.					
aa) Efficient fluorescent lighting shall be provided for all primary lighting within project buildings. Accent and aesthetic lighting shall not be subject to this condition.					
bb) The project shall be designed consistent with the City's Smart Growth Principles and associated strategies and initiatives, including jobs/housing balance, the mixing of land use, and transit oriented development.					
cc) The project applicant shall implement additional greenhouse gas reduction strategies through application of future city ordinances to be					

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<p>applied to the project via the MIMP and the Development Agreement.</p>					
<p>Initial Study - 9: Hazards</p>					
<p>9-1 Prior to issuance of grading permits at the subject property, a Phase II ESA for the subject property shall be prepared by the permit applicant, as recommended in the Phase I Environmental Site Assessment, Delta Shores, Sacramento, California, prepared by Toxichem Management Systems, Inc., February 21, 2007. The Phase II ESA shall provide additional information regarding the recognized environmental conditions (RECs) present at the subject property, determine whether the RECs pose a threat during project construction and/or operation, and recommend additional steps that should be taken to identify and control hazards that could pose a risk to construction workers and future occupants, including residents, school children, visitors, and workers. Such actions shall include, but would not be limited to, soil and groundwater testing and data evaluation, remediation, or physical and/or institutional controls to effectively manage contaminants to levels that would not pose a human health or environmental risk.</p>	<p>Verify that a Phase II ESA was prepared for the project site.</p>	<p>Project Applicant</p>	<p>Prior to approval of the Final Tentative Map.</p>	<p>Development Services</p>	
<p>9-2 If the results of the Phase II ESA indicate the need for remediation or risk management, a work plan that describes how hazards will be managed shall be prepared by a qualified professional and submitted to the City in conjunction with any applications for a grading permit. The need for a site-specific risk assessment, use of target screening levels, and development (if required) of risk-based cleanup levels shall be addressed in the work plan. The City shall not issue grading permits until all identified hazards are managed in accordance with the work plan approved by the City and the Sacramento County Environmental Management Department (SCEMD). The work plan shall address how hazards to construction workers, future occupants, and visitors will be minimized. The work plan shall identify the specific environmental controls that must be in place to manage air emissions from soil or groundwater remediation, stormwater runoff controls from remediation sites, a health and safety plan, and on- and off-site movement, transport, and/or disposal of soil and groundwater in accordance with state and local laws and regulations. In addition, the City shall ensure grading/construction contracts specifically include any notifications or restrictions that pertain to the potential for encountering contaminants in soil or groundwater. The need for reporting releases to, or further</p>	<p>Verify that a qualified professional prepared a work plan, if necessary, and that all identified hazards are managed properly.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading or building permits.</p>	<p>Development Services and SCEMD</p>	

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<p>consultation and/or approvals from the Department of Toxic Substances Control and/or Regional Water Quality Control Board, shall be determined by the City in accordance with established regulations.</p> <p>9-3 In the event that previously unidentified soil or groundwater contamination, USTs, or other features or materials that could present a threat to human health or the environment are discovered during excavation and grading or construction activities, all construction within the project site shall cease immediately, and the applicant shall retain a qualified professional to evaluate the type and extent of the hazardous materials contamination and make appropriate recommendations, including, if necessary, the preparation of a site remediation plan. Pursuant to Section 25401.05 (a)(1) of the California Health and Safety Code, the plan shall include: a proposal in compliance with applicable law, regulations, and standards for conducting a site investigation and remedial action, a schedule for the completion of the site investigation and remedial action, and a proposal for any other remedial actions proposed to respond to the release or threatened release of hazardous materials at the property. Work within the project site shall not proceed until all identified hazards are managed to the satisfaction of the City and the SCEMD.</p>	<p>Verify that measures addressing unidentified hazards are implemented as set forth in MM 9-3.</p>	<p>Project Applicant and/or contractor</p>	<p>During all earth disturbing activities.</p>	<p>Development Services and SCEMD</p>	
Initial Study - 14. Cultural Resources					
<p>14-1 Should paleontological resources be encountered during project-related earth-disturbing construction activities, all ground-disturbing activity within 100 feet of the discovery shall be halted, and the City of Sacramento Development Services Department shall be notified. The project applicant shall retain a paleontological professional to evaluate the find. Mitigation shall be conducted as follows:</p> <ol style="list-style-type: none"> 1. Identify and evaluate paleontological resources by intense field survey where impacts are considered high; 2. Assess effects on identified sites; 3. Consult with the institution/academic paleontologists conducting research investigations within the geological formations that are slated to be impacted; 4. Obtain comments from the researchers; and 5. Comply with researchers' recommendations to address any significant adverse effects where determined by the City to be 	<p>Hire a Project Archaeologist to perform test trenching in the area of the former Russian Embarcadero.</p>	<p>Project Applicant and/or contractor</p>	<p>Prior to issuance of grading permit and during ground disturbance activities.</p>	<p>Development Services</p>	

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Mitigation Measure	Action	Implementing Party	Timing	Monitoring Party	Verification of Compliance
feasible.					
14-2 The project applicant shall hire a qualified archaeologist to perform test trenching in the area of the former Russian Embarcadero to determine if there are subsurface features or deposits associated with this era that remain. If cultural resources are uncovered during test trenching data recovery or other methods determined adequate by a qualified archaeologist and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation shall be implemented in order to ensure that resources are not significantly impacted.	Hire a Project Archaeologist to perform test trenching in the area of the former Russian Embarcadero.	Project Applicant and/or contractor	Prior to issuance of grading permit and during ground disturbance activities.	Development Services	
14-3 The project proponent shall hire a qualified archaeologist to monitor all ground disturbing activities in the vicinity of the former Russian Embarcadero and the dairy complex. If cultural resources are uncovered during construction Mitigation Measure 14-1 shall be implemented.	Hire a Project Archaeologist to monitor all ground disturbing activities in the vicinity of the former Russian Embarcadero and the dairy complex.	Project Applicant and/or contractor	Prior to issuance of grading permit and during ground disturbance activities.	Development Services	
14-4 In the event that any prehistoric or historic subsurface archaeological features or deposits, including locally darkened soil ("midden") that could conceal cultural deposits, animal bone, obsidian, and/or mortar are discovered during construction-related earth-moving activities, all ground-disturbing activity within 100 feet of the resources shall be halted and the City of Sacramento Development Services Department shall be notified. The Development Services Department shall consult with a qualified archeologist to assess the significance of the find. Impacts to any significant resources shall be mitigated to a less-than-significant level through data recovery or other methods determined adequate by a qualified archaeologist and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation.	If prehistoric or historic subsurface archaeological features or deposits are discovered, halt construction within 100 feet of discovery, and notify the Development Services Department immediately.	Project Applicant and/or contractor	Prior to issuance of grading permit and during ground disturbance activities.	Development Services	
14-5 If human remains are discovered at any project construction sites during any phase of construction, all ground-disturbing activity within 50 feet of the remains shall be halted immediately, and the City of Sacramento Development Services Department and the County coroner shall be notified immediately. If the remains are determined by the County coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours, and the guidelines	If human remains are discovered, halt construction within 100 feet of discovery, and notify Sacramento County coroner and	Project Applicant and/or contractor	Ongoing during construction.	Development Services	

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<p>of the NAHC shall be adhered to in the treatment and disposition of the remains. The project proponent shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The County Coroner shall be responsible for approval of recommended mitigation as it deems appropriate, taking account of the provisions of State law, as set forth in CEQA Guidelines section 15064.5(e) and Public Resources Code section 5097.98. The project applicant shall implement approved mitigation, to be verified by the City of Sacramento Development Services Department, before the resumption of ground-disturbing activities within 50 feet of where the remains were discovered.</p>	<p>Development Services Department immediately.</p>				

Attachment 7 - Development Agreement Ordinance

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

**AN ORDINANCE RELATING TO THE APPROVAL OF A
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
SACRAMENTO AND THE DELTA SHORES PROPERTY OWNERS
FOR THE DELTA SHORES PROJECT (P06-197)**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

- A. This Ordinance incorporates, and by this reference makes part hereof, that certain Development Agreement, by and between the City of Sacramento and the Delta Shores Property Owners, a copy of which is attached hereto.
- B. On December 11, 2008, the Planning Commission conducted a noticed public hearing on the application for the Delta Shores Development Agreement in accordance with Government Code Section 65867 and received and considered evidence, and forwarded to the City Council the Delta Shores PUD Project with no recommendation.
- C. On January 13, 2009 the City Council conducted a noticed public hearing on the application for the Delta Shores Development Agreement in accordance with Government Code Section 65867, and received and considered evidence concerning the Delta Shores PUD Project and the Development Agreement.

SECTION 2

The City Council finds:

- 1. The agreement is consistent with the city general plan and the goals, policies, standards and objectives of any applicable specific or community plan;
- 2. The project should be encouraged in order to meet important economic, social, environmental or planning goals of any applicable specific or community plan;
- 3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement;
- 4. The landowner will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;

5. The landowner will participate in all programs established and/or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation monitoring plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public;

6. The landowner has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations.

SECTION 3

The Development Agreement attached hereto is hereby approved, and the Mayor is authorized to execute after the effective date of this Ordinance said Development Agreement on behalf of the City of Sacramento. This approval and authorization is based upon the Environmental Impact Report and Mitigation Monitoring Plan which is the subject of a separate resolution adopted by City Council prior to or concurrent with the adoption of this Ordinance.

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Exhibit A: Delta Shores Development Agreement

No Fee Required: Recording benefits the City of Sacramento, a government entity.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

FOR

Delta Shores Project

Project # P06-197

Between

CITY OF SACRAMENTO

and

M&H Realty Partners VI, L.P.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

DELTA SHORES DEVELOPMENT AGREEMENT

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- Exhibit "F" Irrevocable Offer of Dedication Form
- Exhibit "G" Map and Categorical Listing of Land and Infrastructure
- Exhibit "H" Procedures for Adjusting Development Fees
- Exhibit "I" Diagram of Delta Shores Planning Area

FOR CITY CLERK USE ONLY

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DATE ADOPTED: _____

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
M&H REALTY PARTNERS VI, L.P.**

This Development Agreement (hereinafter "Agreement") is made and entered into this ___ day of _____, 2009, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and M&H REALTY PARTNERS VI, L.P., a California limited partnership(hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party", as the context requires.

RECITALS

- A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted section 65864 et seq. of the Government Code which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project, in order to establish certain rights and obligations of the parties relative to the Property.
- B. LANDOWNER owns a legal or equitable interest in those certain parcels of real property (hereinafter the "Property"), described in Exhibit "A" attached hereto and incorporated herein by this reference, which are located within the CITY. The Property consists of lands designated as **Assessor Parcels Nos.** 119-0010-060; 119-0010-001; 119-0010-002; 119-0010-003; 119-0010-004; 119-0010-005; 119-0010-006; 119-0010-007; 119-0010-008; 119-0010-009; 119-0010-011; 119-0010-012; 119-0010-013; 119-0010-015; 119-0010-034; 119-0010-040; 119-0010-041; 119-0010-042; 119-0010-043; 119-0010-044; 119-0010-045; 119-0010-046; 119-0010-047; 119-0010-0048; 119-0010-049; 119-0010-051; 119-0010-052; 119-0010-053; 119-0190-026; 119-0190-028; 119-0090-011; 119-0190-024; 119-0190-025; 119-0090-001; 119-0190-030; 119-0090-005; 119-0090-013; 053-0010-051; 053-0010-059; 053-0010-0060; 053-0010-061; 119-0010-026; and 119-0010-050. LANDOWNER seeks to develop the Property consistent with CITY's General Plan, the Airport/Meadowview Community Plan (hereinafter "Community Plan"), the PUD Guidelines, and the Zoning Ordinance as they exist on the Effective Date.
- C. The City Council has held duly noticed public hearings on the CITY's General Plan, the Community Plan and the Environmental Impact Reports prepared therefor. At the

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conclusion of these hearings, the City Council, on January 19, 1988, certified the Environmental Impact Report on the City General Plan Update as adequate and complete, and on _____, certified the Environmental Impact Report on the Community Plan Update as being adequate and complete.

The City Council on January 19, 1988, after making specific findings and adopting a Statement of Overriding Considerations, approved a revised General Plan by Resolution No. 88-058 (hereinafter the "General Plan"). The City Council on _____, after making specific findings and adopting a Statement of Overriding Considerations, approved the Community Plan by Resolution No. _____. The uses allowed under the General Plan, the Community Plan, the PUD Guidelines and the applicable zoning ordinances provide for a balanced mix of residential housing and employment opportunities as well as provide for the protection of major open space and recreational resources.

The City Council on _____, after a duly noticed public hearing, approved the Delta Shores Finance Plan to provide a plan for the financing of the Infrastructure and public improvements needed for the development of the Property over time.

- D. CITY and LANDOWNER desire to enter into a development agreement pursuant to the provisions of Government Code section 65865 et seq. in order to provide for the orderly development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan, the Community Plan and the PUD Guidelines.
- E. The coordinated and orderly development of the Property, and LANDOWNER's commitment to the implementation of the Delta Shores Finance Plan in order to assure the timely and properly-phased construction of all required Infrastructure and facilities, are essential to the proper implementation of the General Plan and the Community Plan.
- F. LANDOWNER desires to facilitate implementation of the General Plan, the Community Plan and the Delta Shores Finance Plan, and LANDOWNER therefore agrees to develop the Property in a manner consistent with the policies of the General Plan, the Community Plan the Delta Shores Finance Plan and the Special Conditions, provided that LANDOWNER is assured that no subsequent changes in the General Plan, the Community Plan the Delta Shores Finance Plan, the PUD Guidelines, the Zoning Ordinance or the Special Conditions shall apply to the Property during the term of this Agreement.

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- G. The City Council, on September 10, 1996, adopted the Procedural Ordinance set forth at Chapter 18.16 of the City Code, by which CITY will, inter alia, consider, adopt, amend and subsequently review the development agreement by and between CITY and LANDOWNER.
- H. Development of the Property, in accordance with the conditions of this Agreement, will provide orderly growth and development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan and the Community Plan. At the same time, it will assure that LANDOWNER is committed to funding its appropriate share of the cost of Infrastructure and other facilities which are the subject of the Delta Shores Finance Plan, and that the funding for acquisition and construction of those facilities will be available to CITY as and when required under the Infrastructure phasing program.
- I. This Agreement is voluntarily entered into by LANDOWNER in order to assure the implementation of the General Plan, the Community Plan and the Delta Shores Finance Plan, and is made in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan, the Community Plan and the Delta Shores Finance Plan and in consideration of the agreements and undertakings of LANDOWNER hereunder. But for LANDOWNER's contribution to and participation in programs to mitigate the impacts of the development of the Property and the cumulative impacts of development in the Delta Shores Planning Area as shown on Exhibit "I" attached hereto and incorporated herein by reference (the "DSP Area"), and to the implementation of the Delta Shores Finance Plan, the CITY would not approve development of the Property.
- J. The authority for this Agreement is contained in the City Charter of CITY, the Procedural Ordinance, other applicable CITY ordinances, resolutions and procedures and Government Code section 65864 et seq.
- K. CITY and LANDOWNER have taken all actions mandated by and have fulfilled all requirements set forth in the Procedural Ordinance for the adoption of this Agreement by the City Council.
- L. The City Council has reviewed and approved this Agreement. Pursuant to section 18.16.110A of the Sacramento City Code, it finds the following: (i) the Agreement is consistent with the General Plan, the Community Plan, and the goals, policies, standards and objectives of the DSP Area the Delta Shores Finance Plan, the PUD Guidelines and all other applicable CITY ordinances, rules and regulations; (ii) the

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subject project should be encouraged in order to meet important economic, social, environmental or planning goals of the City for the DSP Area; (iii) the project would be unlikely to proceed in the manner proposed in the absence of a development agreement; (iv) LANDOWNER will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit; (v) LANDOWNER will participate in all programs established and /or required under the General Plan and all of its approving resolutions (including any mitigation monitoring plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all which accrue to the benefit of the public; (vi) LANDOWNER has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations. The City Council further finds that the implementation of this Agreement is in the best interest of CITY and the health, safety and welfare of its residents. The environmental impacts of the development contemplated herein were adequately considered in the environmental documentation prepared by CITY and adoption of the ordinance and approval of this Agreement complies in all respects with the California Environmental Quality Act.

AGREEMENT

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I

DEFINITIONS

The terms set forth below, unless the context otherwise requires, shall have the meanings prescribed, for purposes of this Agreement.

- **Adopting Ordinance:** the ordinance pursuant to which the City Council approves this Agreement.
- **Allocation Procedures:** those procedures set forth in section 5H of this Agreement, whereunder the various uses and densities are distributed to and among the various parcels, or portions of them, comprising the Property.
- **Annual Review:** the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance

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by LANDOWNER with all of the terms and conditions of this Agreement, which process and procedures are as specified in section 17 of this Agreement.

- **Assessment:** a special assessment levied on real property within the DSP Area, for the purpose of financing Infrastructure and/or public facilities, or maintenance thereof, in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.
- **Assessment District Policy Manual:** the document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.
- **Assignee:** a third Person executing an Assumption Agreement prepared in accordance with the format prescribed in Exhibit D.
- **Assignment:** the sale or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement.
- **Assumption Agreement:** the agreement prescribed in Exhibit D or such other form as shall be proposed by LANDOWNER or Assignee and approved by the City Attorney.
- **Building Permit:** a permit issued pursuant to Title 15 of the City Code that allows for construction of improvements on the Property as specified in the permit.
- **CEQA:** the California Environmental Quality Act, set forth at California Public Resources Code section 21000 et seq., as amended from time to time.
- **CITY:** the City of Sacramento.
- **City Agency:** the Redevelopment Agency of the City of Sacramento, and the Housing Agency of the City of Sacramento.
- **City Council:** the Council of the City of Sacramento.
- **Community Plan:** the Airport/Meadowview Community Plan as adopted by the City Council on _____, as said plan may be amended from time to time.

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- **Comprehensive Flood Management Plan:** that plan required to be prepared, and to be adopted by the City Council, pursuant to the CITY's floodplain policy adopted by Resolution No. 93-696.
- **Days:** as used in this Agreement, "days" means calendar days.
- **Dedication:** the transfer of real property, or a defined interest therein, to CITY or another public agency, free of all encumbrances and other matters affecting the title except as may otherwise be agreed to by CITY or such other public agency, and at no cost to CITY or such other public agency, unless otherwise provided in the Delta Shores Finance Plan or in this Agreement.
- **Deed of Trust:** a real property security device whereby the debtor (trustor) conveys title to real property to a trustee as security for a debt owed to the creditor (beneficiary).
- **Default:** a failure of performance, or unreasonable delay in performance, by either Party to this Agreement, of any of its terms, conditions, obligations or covenants. Default shall include but not be limited to failure to comply with all provisions of the Delta Shores Finance Plan and/or failure to pay any fee, tax or assessment enacted pursuant to that Plan.
- **Delta Shores Finance Plan:** the plan, as it may be amended from time to time, which establishes methods for financing required Infrastructure through a combination of land transfers, dedications, contributions, fees, assessment districts, community facilities districts, and other measures. As to development fees, the Delta Shores Finance Plan will provide for adjustment of fee amounts in accordance with the principles in the procedure set forth in Exhibit H, and incorporated herein by reference.
- **Development (or Develop):** the use(s) to which the Property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements in accordance with the Land Use and Development Regulations, Building Permits, and all other Land Use Entitlements.
- **Development Agreement:** this Agreement.
- **Development Fee:** all fees now or in the future collected by the CITY from LANDOWNER or Assignees as a condition of Development of the Property for the funding of Public Facilities. Development Fees also include any lawfully imposed fees

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imposed by another public agency having jurisdiction and which CITY is required or authorized to collect pursuant to State law or local ordinance.

- **Development Plan:** LANDOWNER's plan for development of the Property, including, but not limited to, the PUD Guidelines, the PUD Schematic Land Use Plan and all other land use entitlements for the Property, as set forth in Exhibit B of this Agreement, as they may be amended or modified from time to time.
- **Discretionary Action:** a discretionary approval or disapproval and means an action that requires exercise of judgment, deliberation or a decision, and that contemplates and authorizes the imposition of revisions or conditions by CITY, including any board, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity. Any such approval, disapproval or exercise of judgment, deliberation or a decision shall be subject to a standard of "reasonableness".
- **Drainage Master Plan:** the Drainage System for Delta Shores, prepared by a consulting firm and approved by the Department of Utilities, as it may be amended from time to time.
- **Drainage Phasing Plan:** that portion of the Drainage Master Plan which identifies the sequence of construction of the Drainage System.
- **Drainage System:** that drainage system set forth in the Drainage Master Plan, as that plan may exist from time to time.
- **Drainage Sub-basin:** the individual drainage sub-areas identified in the Drainage Master Plan.
- **DSP Area:** the area including the Property and other real property in close proximity thereto as shown on Exhibit "I" attached hereto and incorporated herein by reference.
- **Effective Date:** the date upon which the Adopting Ordinance becomes effective (not the date on which this Agreement has been approved by the City Council).
- **Finance Plan:** the Delta Shores Finance Plan that encompasses the Property and the Project as approved by the City Council, as it may be amended from time to time.
- **Finance Plan Area:** the lands within the area covered by the Delta Shores Finance Plan, and which are obligated thereby, as that area may exist from time to time.

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- **General Plan:** the General Plan of the City of Sacramento, as adopted by the City Council on January 19, 1988, as said plan may be amended from time to time.
- **Inclusionary Housing Agreement:** the agreement between CITY or City Agency and LANDOWNER that specifies the terms and conditions for LANDOWNER's implementation of the Inclusionary Housing Plan.
- **Inclusionary Housing Ordinance:** Title 17, Chapter 17.190 of the City Code, entitled the "Mixed Income Housing Ordinance," and as said ordinance may be amended from time to time.
- **Inclusionary Housing Plan:** the plan prepared by LANDOWNER and approved by the City Council by its resolution as part of the Land Use Entitlements, that specifies the percentage, number, type, location and phasing of development of housing affordable to very low and low income households for compliance with the Inclusionary Housing Ordinance, as more particularly described in Exhibit C and Exhibit C-1.
- **Infrastructure:** all public facilities and improvements needed to serve urban development, as identified in subdivision maps or parcel maps, master plans, improvement plans, or as may otherwise be constructed and conveyed to CITY or another public agency, including but not limited to street improvements, drainage improvements, sanitary sewer improvements and water storage and transmission facilities.
- **Irrevocable Offer of Dedication:** an unconditional and irrevocable offer by LANDOWNER to transfer real property to CITY in accordance with the provisions of the Delta Shores Finance Plan, this Agreement and/or any condition of approval of any Land Use Entitlement applicable to the Property, in the form specified in Exhibit F.
- **Land Acquisition Fee (LAF):** the fee/reimbursement program if made a part of the Delta Shores Finance Plan, and which is designed to equalize the cost of land acquisition for infrastructure among the various landowners within the Delta Shores Finance Plan Area.
- **Land Acquisition Program:** the plan, if made a part of the Delta Shores Finance Plan, designed to provide a means for transfer to or acquisition by CITY, or such other public agency as is appropriate, of all lands within the DSP Area which are designated to be held publicly, at no cost to CITY.

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- **Land Use and Development Regulations:** the Zoning Ordinance, Subdivision Ordinance, and the other provisions of the City Code (including the Sign Code) applicable to Development of the Property, together with the PUD Guidelines approved by City and any other City ordinances, resolutions, rules, regulations and official policies of the City as they exist on the Effective Date, which govern or regulate land use and/or development in the Community Plan area which encompasses the Property.
- **Land Use Entitlement:** the plans, ordinances, resolutions, maps, plan review, design review, preservation review, and permits and approvals which have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which is set out in Exhibit B. The Land Use Entitlements include the Plans, this Agreement, the Tentative Maps and their conditions of approval, Zoning Map, the Inclusionary Housing Plan, the Mitigation Measures, Design Guidelines and all other official actions in furtherance of Project approval, including modifications to the City Code as set out in this Agreement, as well as modifications and amendments to the Plans and Land Use Entitlements subsequent to the Effective Date as set out in any Subsequent Approval.
- **Lender:** a Person (or a successor in interest to such person) who has advanced funds to, or who is otherwise owed money by a debtor, where the obligation is embodied in a promissory note or other evidence of indebtedness, and where such note or other evidence of indebtedness is secured by a Mortgage or Deed of Trust.
- **Ministerial Action:** a ministerial approval or disapproval and means an action that merely requires a determination whether there has been compliance with applicable statutes, ordinances, resolutions, regulations or conditions of approval including, without limitation, the Plans, Land Use Entitlements and Special Conditions.
- **Mitigation Measures:** the measures adopted by the Planning Commission and/or by the City Council as part of the certification of the Final Environmental Impact Report as of the Effective Date which apply to Development of the Property for the Project and as may be referenced in the Land Use Entitlements.
- **Mitigation Monitoring Program (Plan):** the plan for implementation of the Mitigation Measures as of the Effective Date and as may be referenced in the Land Use Entitlements.
- **Mortgage:** a contract by which the mortgagor (debtor) as owner hypothecates or pledges real property, or otherwise grants a security interest therein to a Lender

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(mortgagee), to secure performance under a promissory note or other evidence of indebtedness, and where the holder of the mortgage is granted a power of sale.

- **Person:** any person, firm, association, organization, partnership, business trust, corporation or company.
- **Plans:** The General Plan, Community Plan, Specific Plan, and Financing Plan. The reference to "Plans" may also include the Development Plan as the context indicates.
- **Procedural Ordinance:** Chapter 18.16 of the City Code, which sets forth procedures for application, review, approval, implementation, amendment, recordation, compliance review and related matters with respect to development agreements for lands outside of the North Natomas Community Plan area (which is governed by Ordinance No. 95-012).
- **Project:** part or all of the elements set forth in LANDOWNER's Development Plan.
- **Project Review:** CITY's actions in reviewing any project proposed by LANDOWNER with respect to the Property, including but not limited to review of all required Land Use Entitlement applications.
- **Property:** the real property owned by LANDOWNER, as set forth in Exhibit A.
- **Protest Waiver:** the agreement set forth in Exhibit E, executed by LANDOWNER pursuant to this Agreement, or in connection with the conditions of any required Land Use Entitlement.
- **Public Facilities:** all public infrastructure, facilities, improvements and amenities needed to serve the Project as identified in the Plans, the Development Plan, the Drainage, Water and Sewer Master Plans, the Land Use Entitlements, the Finance Plan or Subsequent Approvals; or as may otherwise be constructed or owned by, or conveyed to, CITY, City Agency or other public agency, including, without limitation: (i) streets, alleys, bridges, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) heavy and light rail and trolley lines, stations, and passenger facilities; (iii) bus rapid transit lanes and bus transfer facilities, turnouts and stops; (iv) surface and storm drainage improvements; (v) sanitary sewer improvements; (vi) water storage and transmission facilities; (vii) flood control improvements; (viii) solid waste facilities; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire stations; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins; (xv)

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schools and educational facilities; (xvi) public community centers, performing arts centers, and museums; and (xvii) publicly owned artwork.

- **Public Financing Mechanism:** an assessment district, a community facilities district, a fee district, area of benefit district, or any similar financing mechanism imposed on real property or as a condition of development approval, excluding Development Fees.
- **PUD Guidelines:** the Delta Shores Design Guidelines adopted by the Sacramento City Council for the Delta Shores Planned Unit Development (PUD).
- **Purchaser:** an assignee.
- **Reconfiguration:** the reconfiguration, adjustment or alteration of property lines through parcel or subdivision mapping, or lot line adjustment.
- **Reimbursement:** the reimbursement of monies to a Person who has advanced funds for Infrastructure required for development of the Property, or who has advanced funding for Infrastructure or other improvements which are required in the DSP Area by the Finance Plan, the PUD Guidelines or other document, and which have benefit to land beyond the Property, in accordance with a reimbursement agreement approved by CITY. Any such agreement will be limited to the portion of the funding advanced which is in excess of the allocable share of the cost of the Infrastructure or improvement attributable to the Property.
- **Reimbursable Infrastructure Costs:** those costs paid by LANDOWNER, and which are identified as reimbursable pursuant to CITY's Assessment District Policy Manual (as set forth in section 8D(1) of this Agreement).
- **Sewer Master Plan:** the Sewer System for Delta Shores, prepared by a consulting firm and approved by the Department of Utilities, as it may be amended from time to time.
- **Sewer System:** that sewer system set forth in the Sewer Master Plan, as that plan may exist from time to time.
- **Special Conditions:** those conditions, terms and requirements specified in Exhibit C.
- **Special Permit:** any discretionary permit required pursuant to the Land Use and Development Regulations, and issued by CITY for development of the Property, upon proper application therefor by LANDOWNER.

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- **Subsequent Approvals:** any Ministerial or Discretionary Action of approval or other action by CITY to implement the Development Plan after the Effective Date that is necessary or desirable to implement LANDOWNER's Vested Rights under this Agreement, including Discretionary and Ministerial Actions, that are not set out as a Land Use Entitlement.
- **Term:** the length of this Agreement in terms of time, as specified in section 3, or as that time may be extended pursuant to any applicable provision of this Agreement.
- **Transfer:** an assignment.
- **Transferee:** an assignee.
- **Vested Right:** a property right conferred by this Agreement, pursuant to Government Code Section 65865.4, to develop the Property for the Project in accordance with the Development Plan and consistent with the Plans and Land Use Entitlements, that may not be cancelled or revoked by CITY after the Effective Date, except as expressly provided in this Agreement.
- **Water Master Plan:** the Water System for Delta Shores, prepared by a consulting firm and approved by the Department of Utilities, as it may be amended from time to time.
- **Water System:** that water system set forth in the Water Master Plan, as that plan may exist from time to time.
- **Zoning:** the division of the City of Sacramento into districts, and the application of zoning regulations and the PUD Guidelines thereto, which include (without limitation) regulation of the height or bulk of buildings (structural and architectural design) and the use to which the land and buildings within prescribed districts may be put, all as specified in the Zoning Ordinance, as modified by the PUD Guidelines.
- **Zoning Ordinance:** the Comprehensive Zoning Plan of the City of Sacramento, which is set out in Title 17 of the City Code, as that ordinance exists on the Effective Date.

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II

TERMS AND CONDITIONS OF AGREEMENT

- 1. **Property Description and Binding Covenants.** The Property is that certain real property owned by LANDOWNER and described in Exhibit "A." The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, the parties and, subject to section 4 below, to their successors-in-interest.
- 2. **Interests of Landowner.** LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property have executed and are bound by this Agreement.
- 3. **Term.**
 - A. **Initial Term.** The term of this Agreement shall commence on the Effective Date and shall extend for a period of twenty (20) years thereafter, unless it is sooner terminated or modified by the mutual consent of the parties.
 - B. **Renewal Options.** Subject to the provisions of this subsection, LANDOWNER shall have the right to renew this Agreement on its same terms and conditions, taking into account any amendments hereto mutually agreed upon after the Effective Date. The term of this Agreement shall mean and include the initial term, plus any renewal periods. The specific conditions for exercise of the renewal options are as follows:
 - (1) On the Exercise Date, LANDOWNER shall not be in default (as defined in Section 16 hereof) in any material respect under this Agreement, including any amendments hereto, beyond any applicable cure periods. For purposes of this subsection, "Exercise Date" shall mean the date that LANDOWNER or LANDOWNER's successor in interest gives written notice of intention to exercise the option to renew this Agreement, in accordance with the provisions of section 20 hereof.
 - (2) The option to renew shall be exercisable by giving CITY written notice of LANDOWNER's intention to exercise the option on or before the Exercise Date, which notice shall be given not later than one hundred eighty (180) days prior to expiration of the initial term or any renewal term.

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- (3) LANDOWNER shall be limited to two (2) renewal periods of five (5) years each; the parties specifically intend that under no circumstances shall the term of this Agreement extend beyond thirty (30) years, unless this Agreement is amended in accordance with the procedures set forth herein for Agreement amendments.

4. Assignment.

- 4.1 **Right to Assign.** LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all of any portion of the Property and improvements thereon, and as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code Section 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice thereof to CITY in the manner provided for notices hereunder not later than thirty (30) days before the effective date of such sale, transfer or assignment; provided, however, that LANDOWNER's failure to provide such notice shall not invalidate such sale, transfer or assignment and provided further that any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without entering into an Assignment and Assumption Agreement with CITY.
- 4.2 **Release of LANDOWNER.** Such purchaser, assignee or transferee shall execute and deliver to CITY an Assignment and Assumption Agreement whereby such purchaser, assignee or transferee assumes all obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. Upon such execution and delivery, CITY shall release LANDOWNER from all duties, liabilities and obligations under the Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.
- 4.3 **Assignees.** The Assignee shall be obligated and bound by the terms and conditions of this Agreement if it executes the Assignment and Assumption Agreement, and shall be the beneficiary hereof and a party hereto, only with respect to the Property, or such portion thereof, sold, assigned or transferred to Assignee by LANDOWNER. The Assignee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the

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portion of the Property sold, assigned, or transferred. CITY shall release Assignee from all duties, liabilities and obligations under the Development Agreement of LANDOWNER with respect to the interest(s) that are not sold, assigned or transferred to Assignee. Any such assumption agreement shall be deemed to be to the satisfaction of the City Attorney if executed substantially in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "D" and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment.

5. **Development of the Property.**

A. **Permitted Uses and Development Standards.** Subject to the Special Conditions set forth in Exhibit C, attached hereto and incorporated herein by this reference (herein the "Special Conditions"), any reserved discretionary approvals specified in this Agreement, and all other terms and conditions of this Agreement, LANDOWNER may develop the Property in accordance with and subject to the terms and conditions specified in the Land Use and Development Regulations in effect on the Effective Date, or, where applicable, the Development Plan, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Specifically, the permitted uses, density or intensity of use, height or size of buildings and provisions for reservation and dedication of land for public purposes shall be as set forth in the Development Plan and all land use entitlements.

B. **Discretionary Approvals.**

(1) **Project Review.** Development of the Property is subject to all required discretionary approvals. In reviewing and approving applications for special permits and other discretionary approvals, CITY may exercise Project Review and may attach such conditions and requirements as are consistent with the policies, goals, standards and objectives of the General Plan, the Community Plan, the PUD Guidelines and as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such reserved discretionary approvals.

C. **Development Timing.** This Agreement contains no requirement that LANDOWNER must initiate or complete development of any phase of the development of the Property or any portion thereof within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to develop the Property in accordance with LANDOWNER's own schedule; provided, however,

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that to the extent that phasing is required by the PUD Guidelines, by this Agreement, or by conditions of approval of any Land Use Entitlements, such provisions shall govern. No future modification of the Sacramento City Code or any ordinance or regulation which limits the rate of development over time shall be applicable to the Property. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions in any permit or subdivision map approval or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions.

D. **Special Conditions.** Development of the Property shall be subject to the Special Conditions, as specified in Exhibit C.

E. **Land Use and Development Regulations.**

- (1) Subject to the Special Conditions specified in Exhibit C, development of the Property shall be subject to the Land Use and Development Regulations applicable to such development on the Effective Date.
- (2) Except as otherwise provided in this Agreement, to the extent any future changes in Land Use and Development Regulations adopted by CITY purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, including subsection 5E(1) above, the terms and conditions of this Agreement shall prevail, unless the parties or their successors in interest mutually agree to amend or modify this Agreement in accordance with the provisions for modification hereinafter set forth.
- (3) To the extent that any future changes in the Land Use and Development Regulations adopted by CITY are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Agreement, such future changes shall be applicable to the Property.
- (4) Nothing in this Agreement shall preclude the application to development of the Property of changes in the Land Use and Development Regulations, the terms of which are specifically mandated by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the effective date of this Agreement or action by any governmental jurisdiction other than CITY prevent or preclude compliance with one or more

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provisions of this Agreement or require changes in permits, maps or plans approved hereunder by CITY, this Agreement shall be modified, extended or suspended as may be necessary to comply with such specific state or federal laws or regulations or the regulations of such other governmental jurisdiction.

- (5) To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including CITY, required by federal or state agencies or actions of CITY taken in good faith in order to prevent adverse impacts upon CITY by state or federal actions) have the effect of preventing, delaying or modifying development of the DSP Area or any subarea therein, CITY shall not in any manner be liable for such prevention, delay or modification of said development. Such actions may include, but are not limited to, flood plain or wetlands designations and actions of CITY or regional agencies as a result thereof and the imposition of air quality measures or sanctions and actions of CITY or regional and local agencies as a result thereof. In such a situation, CITY's actions shall not be arbitrary or capricious, and the parties shall meet and endeavor to achieve solutions which preserve the integrity of the development of the DSP Area, while to the extent feasible allow development of the Property in the manner contemplated by this Agreement.
- (6) Nothing herein shall be construed to limit the authority of CITY to enact amendments to the Land Use and Development Regulations, or enact other ordinances or resolutions, which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk. The foregoing includes, without limitation, ordinances enacted to implement greenhouse gas emission (GHG) reductions and LANDOWNER has agreed to be subject to such GHG ordinances.
- (7) Building codes, ordinances and regulations relating to construction standards or permits shall apply as of the time of grant of each applicable construction permit.
- (8) No modification of CITY's ordinances, resolutions, policies, rules or regulations adopted after the Effective Date, which purport to limit the rate of development over time or to govern the sequence of development of land within the Community Plan area, shall apply to the Property. The provisions of this subsection apply to modifications adopted or imposed by the City

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Council, or through the initiative or referendum process; provided, however, nothing in this subsection shall limit the ability of CITY to act in accordance with the provisions of subsections 5E(3), 5E(4), 5E(5) and 5E(6) of this Agreement.

- F. **CITY Review of Applications.** Consistent with the standards set forth in section 15 of this Agreement, nothing contained in this Agreement shall preclude CITY from its right and responsibility to review applications for entitlements submitted by LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law.

- G. **Extension of Entitlements.** Pursuant to Government Code section 66452.6 all tentative vesting subdivision maps, tentative master parcel maps, parcel maps, tentative subdivision maps, planned unit development permits, special permits, or any other maps, rezonings or land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Development Agreement, shall be valid for a minimum term equal to the full term of this Agreement (including the initial term, and any renewal period resulting from exercise by LANDOWNER of the options provided for in section 3 hereof), or for a period of thirty-six (36) months, whichever is longer, but in no event for a shorter period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements.

- H. **Allocation Procedures for Building Square Footage.** Procedures for allocating the uses or densities approved for the Property among the various parcels and/or portions thereof, and for resolution of any disputes regarding such allocations, shall be as follows:
 - (1) **Allocation.** Unless otherwise identified in the Development Plan, which is attached as Exhibit B to this Agreement, the allocation of building square footage shall be as identified in subsequent entitlements for the Property, including but not limited to parcel maps, subdivision maps, PUD schematic plans and development guidelines. The appropriate entitlement to address the allocation of nonresidential building square footage shall be determined by CITY in the land use entitlement process. Allocations for residential development shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.

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- (2) **Dispute Resolution.** Where a dispute exists between LANDOWNER, and/or any successor or successors in interest which does not involve the CITY, with respect to any matter involving allocation of nonresidential building square footage for or on the Property, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of the American Arbitration Association, or some other alternative dispute resolution procedure mutually agreed upon by the parties involved in the dispute. In no case shall CITY be a party to such dispute, or to the dispute resolution procedures. All of the provisions of this Agreement relating to indemnification and defense of CITY, and payment of CITY costs, shall apply to all disputes relating directly or indirectly to allocation.

6. Fees, Charges, Assessments and Taxes.

A. City Fees. All applications for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, mitigation fees and other development fees within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

B. Levies Imposed by Other Jurisdictions. LANDOWNER shall be responsible for:

- (1) all fees, charges, assessments, special taxes or levies of any sort imposed by any other state or local agency, including but not limited to the Sacramento Area Flood Control Agency, in the future as a charge for mitigation measures imposed for the purpose of mitigation of environmental impacts associated with the provision of flood control improvements and measures for the Community Plan area;
- (2) all fees, charges, assessments, special taxes or levies of any sort associated with the financing of the construction and implementation of said flood control improvements and measures;
- (3) all special benefit assessments, special taxes or levies of any sort associated with construction of or maintenance of public improvements, where the Property is located within a district formed for that purpose by any agency other than CITY;

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(4) ad valorem real estate taxes, and utility fees.

In the event that any of the fees, charges, assessments, special taxes or levies covered by this subsection B are imposed by or with the assistance of CITY, LANDOWNER shall nevertheless be responsible therefor. Nothing in this Agreement shall be construed to limit LANDOWNER's right to protest, in accordance with applicable provisions of law: the formation of any district included within the provisions of this subsection or to protest the amount of any assessment levied by or on behalf of such district on the Property or any portion thereof; or to protest the nature and amount of any tax, fee, assessment or charge imposed pursuant to this subsection.

C. **Implementation of the Delta Shores Finance Plan.** The Delta Shores Finance Plan (hereafter "Finance Plan") establishes a method for financing of required Infrastructure and public facilities through a combination of land transfers, dedications and contributions, fees, assessment districts, community facilities districts and other sources, so that the land within the Finance Plan Area pays for its share of the cost of such Infrastructure and facilities. The Finance Plan also recognizes that there is a regional benefit associated with certain portions of the Infrastructure and public facilities, and that the regional cost share will ultimately have to be paid from other sources and other property owners that benefit therefrom. LANDOWNER acknowledges that it may have to participate in funding regional costs of such Infrastructure and facilities that is located off-site of the Property on a fair share basis as identified in the Finance Plan and Final Environmental Impact Report. LANDOWNER shall participate in the Finance Plan, as made applicable to the development of the Property, and shall faithfully and timely comply with each and every provision thereof, including but not limited to the Land Acquisition Fee (if any), assessments, special taxes, and other development fees and exactions set forth therein. Without limiting the foregoing, applications for special permits, subdivision maps or other land use entitlements and building permits may be made subject to LANDOWNER's participation in and compliance with the Finance Plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and the Procedural Ordinance shall apply. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the Finance Plan, and performance of all obligations imposed thereby.

D. **LANDOWNER's Waivers.** LANDOWNER hereby agrees to the provisions of Exhibit E, which (without limitation) contains a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of development

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and impact fees; and CITY's actions in forming assessment districts and community facilities districts, and in levying assessments and taxes pursuant thereto. As set forth in Exhibit E, LANDOWNER reserves the right to protest the actual amount of the fee, assessment or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Finance Plan.

7. **Reconfiguration of Parcels.** LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, or for master parcelization of all or part of the Property, for the purpose of Reconfiguration of the Property. Such applications shall be processed and determined in accordance with the provisions of section 5, and all other applicable provisions of this Agreement. Where Reconfiguration requires a Special Permit, or a Planned Unit Development (PUD) designation, or other Land Use Entitlement applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such Land Use Entitlements as a condition of granting the application.

8. **Infrastructure.**

A. **Construction by CITY.** To the extent that funds are available to CITY pursuant to the Finance Plan, and to the extent that any required real property has been transferred to CITY, or has been obtained by CITY through its power of eminent domain, which CITY agrees to utilize, where required, and subject to LANDOWNER's compliance with the terms of this Agreement and all of the terms and conditions of any Land Use Entitlement applicable to the Property, CITY agrees to use its best efforts to bring about the construction of the Infrastructure required to implement the Development Plan (Exhibit B). Provided, however, that CITY's obligations hereunder shall be limited to those items of Infrastructure which, under the Finance Plan, are to be constructed by CITY or under CITY's direction and control; where Infrastructure is to be constructed by LANDOWNER, either pursuant to conditions of approval or otherwise, the provisions of this subsection 8A shall not apply.

B. **Construction by LANDOWNER.** When required by conditions of approval, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall be responsible for the construction of Infrastructure required for implementation of the Development Plan (Exhibit B). LANDOWNER shall further comply with all required funding requirements specified in the Finance Plan, and all real property transfers required pursuant to this Agreement or the Land Use Entitlements. Provided, however, LANDOWNER shall enter into a separate agreement with CITY no later than February 20, 2009,

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or such other date as CITY and LANDOWNER may otherwise agree to address funding of the development, design, environmental matters, right of way acquisition and construction of the Cosumnes River Boulevard/I-5 Interchange and Extension Project, including construction of traffic signals, median, landscaping and utilities. That agreement shall specifically address fair share contributions for CITY and LANDOWNER and the project schedule.

C. **Drainage, Water and Sewer Infrastructure.** As of the Effective Date, it is contemplated that the water and sewer systems and permanent drainage for the Property, and the entire Finance Plan Area, will be provided by the Water System, Sewer System, and Drainage System, respectively. Construction of the Water, Sewer and Drainage Systems will require land transfers to CITY pursuant to conditions for the Land Use Entitlements and this Agreement, or acquisition of required land by CITY through the use of eminent domain procedures, and funding for the required improvements, all on a timely basis and in accordance with the Finance Plan, or such other arrangement which has been implemented or required by CITY, together with any Drainage Sub-basin agreement, or substitute therefore, as specified in the Special Conditions. In recognition of the need for retention of flexibility and CITY discretion with respect to decisions relating to the ultimate solution to drainage, water, and sewer for the Community Plan area, and the need for unconditional provision of financing by LANDOWNER and other owners of land in the Finance Plan Area through the mechanisms specified in the Finance Plan, the parties agree as follows:

- (1) **Establishment of Financing Mechanisms.** CITY shall, as soon as feasible following the adoption of the Finance Plan by the City Council, establish public financing mechanisms as identified in the Finance Plan, applicable to lands within the Community Plan area which will benefit from the Water, Sewer and Drainage Systems.
- (2) **Issuance of Bonds.** Decisions as to whether to issue bonds pursuant to such financing mechanisms, and the timing and manner of issuance thereof, shall be within the sole and exclusive discretion of CITY; provided, however, that CITY shall exercise its discretion in a good faith manner, so as to provide for timely construction of Infrastructure in order not to stop or slow development.
- (3) **Linkage of Development to Completion of Drainage, Water and Sewer Systems.** CITY has established a performance standard that requires (inter alia) that the Drainage System, Water System and Sewer System be

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completed and in operation no later than the point in time when building permits have been issued for fifty percent (50%) build-out of the Finance Plan Area, as measured by developable residential and commercial acreage as defined in the Finance Plan; however, CITY shall not issue any certificates of occupancy or approval of final inspection for any lot or parcel until the Drainage System, Water System and Sewer System serving said lot or parcel is, in fact, completed and in operation. In the event that a different phasing plan is approved by LANDOWNER and is adopted and implemented by CITY, LANDOWNER shall comply with all provisions of such a plan, and shall execute any agreement or other document, or participate in any mechanism as is reasonably required by CITY to implement such a plan.

D. Infrastructure Financing Proceedings.

- (1) **LANDOWNER-Initiated Proceedings.** In the event that LANDOWNER desires to initiate proceedings for the formation of an assessment district, community facilities district, or other similar form of improvement financing mechanism to fund the construction of Infrastructure required by conditions of approval or otherwise, LANDOWNER shall file an application with CITY for that purpose in accordance with CITY's Assessment District Policy Manual, as same may be amended from time to time, or such other policy document as may after the Effective Date be adopted by the City Council as a substitute therefor. CITY agrees to diligently process any such application, provided that such application:
 - (a) is complete and is accompanied by payment of CITY fees applicable on the date of filing of the application;
 - (b) otherwise complies with the Land Use and Development Regulations and applicable law, as the applicable law exists on the date of the application, including but not limited to the Assessment District Policy Manual;
 - (c) is consistent with CITY's policies and procedures;
 - (d) provides for a value to lien ratio and other financial terms that are acceptable to CITY, which acceptance shall not be unreasonably conditioned or delayed;

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- (e) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion; and
- (f) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

Notwithstanding any other provision of this Agreement, CITY agrees that upon request made by LANDOWNER, CITY will consider making exceptions to the Assessment District Policy Manual, to allow for alternative methods of financing in-tract improvements, including but not limited to formation of assessment districts or similar financing mechanisms, where such alternatives are contemplated by the Finance Plan, including any amendments thereto. Provided, however, that CITY reserves its discretion to condition use of any such alternatives on satisfaction of performance preconditions (including but not limited to water, sewer and drainage capacity), and to consider underwriting considerations and criteria, together with the manner in which such alternatives further the overall implementation of the Finance Plan. Further, CITY may in its reasonable discretion deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent. CITY and LANDOWNER further agree that CITY will not sell any bonds for any LANDOWNER-initiated assessment district, community facilities district or other similar form of improvement financing mechanism until they have agreed upon the timing and date of such bond sale.

- (2) **Proceedings Initiated by CITY.** In the event that CITY in its discretion determines that a particular financing mechanism, including but not limited to an assessment district, a community facilities district, a fee district, a development fees procedure, or any similar mechanism, is required in order to implement the Finance Plan, LANDOWNER's participation obligations set forth in this Agreement (including but not limited to Exhibit C) shall apply.
- (3) **Maintenance Districts.**
 - (a) LANDOWNER may, following the procedures specified in subsection 8D(1) above, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping or other public improvements, whereunder lands benefitting from the

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improvements and their maintenance are assessed for a proportionate share of the maintenance cost.

- (b) LANDOWNER shall request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping the Consumnes River Boulevard/I-5 Interchange.

E. Reimbursement to LANDOWNER.

- (1) **From Financing Proceeds.** Subject to the Finance Plan, where LANDOWNER has provided advance funding for public Infrastructure required by the Finance Plan or has constructed such Infrastructure under the direction and control of CITY, LANDOWNER shall be reimbursed for Reimbursable Infrastructure Costs ("Costs"), with adjustments for Costs as provided for in the Finance Plan, but not less than zero percent (0.0%) for each annual adjustment, at such time as CITY has established a permanent financing mechanism in the form of an assessment district, community facilities district, or other similar mechanism through which permanent public financing for such improvements is established and funds are received therefrom. Those items qualifying as Reimbursable Infrastructure Costs shall be determined pursuant to CITY policies in existence at the time of establishment of the permanent financing mechanism. CITY agrees to entertain reasonable requests from LANDOWNER for exceptions to such policies; provided, however, that CITY may, in its reasonable discretion, deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent. Nothing in this Agreement shall authorize reimbursement of any cost which, in the opinion of CITY's bond counsel, is not permissible for purposes of establishing or retaining tax free status of any bonds issued, or contemplated to be issued by CITY. The foregoing provisions of this Section 8.E.(1) shall not apply to a separate written agreement between CITY and LANDOWNER for the Interstate 5/Cosumnes River Boulevard Interchange and Extension Project.
- (2) **Reimbursement From Others Benefitted.** In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of improvements required for development by the Finance Plan, in excess of or beyond those required for development of the Property, or, where required by the Finance Plan, this Agreement, or conditions of approval of the Land Use Entitlements to make dedications,

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provide mitigation or incur costs in connection with public improvements or the planning of the DSP Area and/or Community Plan area in excess of or beyond those required for development of the Property, and the provisions of subsection 8E(1) do not apply, CITY shall make reasonable efforts to require that all other Persons benefitted by the improvements shall reimburse LANDOWNER (through fee districts, agreements, conditions of approval, or otherwise) for such Person's proportionate share of such costs, with adjustments for such costs as provided for in the Finance Plan, but not less than zero percent (0.0%) for each annual adjustment, and as otherwise determined in accordance with the Finance Plan, or by CITY. No permits for construction by such other Persons shall be issued by City until such reasonable efforts are applied. For purposes of this Agreement, the term "in excess of or beyond those required for development of the Property" means requirements which exceed LANDOWNER's fair proportionate share, as determined in accordance with the provisions of the Finance Plan and any associated documents or studies.

Such reimbursement shall be subject to the limitations specified in the preceding paragraph (including those provisions relating to consideration by CITY of exceptions to its policies), relating to CITY policy and Reimbursable Infrastructure Costs. Reimbursement shall be limited to that amount which exceeds LANDOWNER's appropriate share of the cost, determined in accordance with principles established in the Finance Plan, and any associated documents or studies.

- (3) **Reimbursement of Planning, Engineering and Staff Costs.** In accordance with the provisions of the Finance Plan and the Citywide Fee and Charges Policy, CITY shall impose a fee upon the DSP Area landowners, including LANDOWNER, to pay the planning, engineering, staff and related costs (including but not limited to CITY staff and related costs), as specified in the Finance Plan, and which relate to development of the DSP Area, the Finance Plan, the Drainage Master Plan, the Water Master Plan, the Sewer Master Plan, and all related documents. The fee shall be spread across lands within the DSP Area in the same fashion as the public facilities fees. Credits shall be given to those landowners who have paid some or all of their share of the said costs, for the amounts so paid. The fee shall be payable prior to issuance of the first discretionary Land Use Entitlement for each individual parcel of land or approved phase thereof as to which an application has been filed with CITY.

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9. **LANDOWNER Obligations.**

A. **Transfer of Land to CITY.** As set forth in the Development Plan, Land Use Entitlements, and Special Conditions, LANDOWNER has agreed to transfer lands at no cost that are needed for Infrastructure or public facilities to CITY, City Agency or other public agency, as specified or appropriate, excluding, however, any and all lands owned by LANDOWNER to be acquired by CITY for the Interstate 5/Cosumnes River Boulevard Interchange and Extension project which will be the subject of a separate acquisition agreement between CITY and LANDOWNER. Set forth in Exhibit G, attached hereto and incorporated herein by this reference, are maps depicting the currently contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY, together with a categorical listing of the types of Infrastructure and public facilities which are covered by the terms of this subsection. Included as part of Exhibit G are maps that depict (in red and dark blue) the location and amount of lands owned by LANDOWNER to be dedicated to CITY for the Interstate 5/Cosumnes River Boulevard Interchange and Extension project. LANDOWNER will receive compensation and/or credit for the value of the land donation for the Interstate 5/Cosumnes River Boulevard Interchange and Extension project pursuant to the Finance Plan and the terms of a separate construction cost sharing agreement between CITY and LANDOWNER for the project. LANDOWNER shall transfer the said required lands to CITY either by a statement on the final map in accordance with Government Code section 66439, or by Grant Deed as specified in the conditions of approval, or by utilizing the Irrevocable Offer of Dedication form set forth in Exhibit F, attached hereto and incorporated herein by this reference, at such time as is:

- (1) required pursuant to a condition or term of any Land Use Entitlement for use or development of the Property; or
- (2) requested by CITY, where LANDOWNER has not applied for a Land Use Entitlement for use or development of the Property, but the land is needed, in CITY's sole discretion, for purposes of construction of Infrastructure or public facilities.

In the event that, at the time of the required transfer to CITY, the location of, or the quantity of land required for the Infrastructure or public facilities has changed from that depicted on Exhibit G, to such a significant degree or extent that the location or quantity is inconsistent with the Community Plan as it exists on the effective date of this Agreement and the Finance Plan, the Parties shall meet and

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negotiate, and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow development of the Property in a reasonable manner, taking into account the changes in Infrastructure and public facilities. If agreement is reached between the Parties, the procedures specified herein and in the Procedural Ordinance shall apply to amendments to this Agreement. If agreement is not reached, either Party shall have the right to terminate this Agreement by providing the other Party sixty (60) days notice.

- B. **Development Timing.** LANDOWNER shall have no obligation to initiate or commence development of any particular phase of the Property within any period of time.
- C. **Transfer of Park Funds to CITY.** As set forth in Exhibit C, LANDOWNER shall transfer four million dollars (\$4,000,000) to CITY for purposes of future development of a regional park (the "Regional Park Fee") upon issuance of the 3,375th residential building permit at the Property. LANDOWNER waives any and all administrative or judicial challenges that it can legally make based on insufficient nexus for the Regional Park Fee.
- D. **Waiver of Nexus Challenge.** LANDOWNER waives any and all administrative or judicial challenges that it can legally make based on insufficient nexus relative to lands or funds it is required to transfer to CITY or to other public agencies pursuant to the conditions of approval for the Land Use Entitlements, tentative or final maps, or this Agreement for Infrastructure, as appropriate.

10. **Litigation/Indemnification.**

A. **Third-party Challenge to Agreement or Entitlements.**

- (1) In the event of any action instituted by a third party challenging the validity of any portion of this Agreement, including but not limited to, the proceedings taken for its approval (including the requirements of the California Environmental Quality Act – "CEQA") or any other act undertaken by the parties hereto in furtherance of this Agreement or its terms, or any action instituted by a third party challenging the validity of any of the entitlements specified herein (including CEQA challenges), the parties agree to cooperate in the defense of the action. In all such litigation brought to contest the validity of this Agreement or such entitlements, the following shall apply:

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- (a) City may, in its sole discretion, either defend such litigation or tender its defense to LANDOWNER.
 - (b) In the event that CITY determines to defend the action itself, LANDOWNER shall be entitled, subject to court approval, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each Party shall bear its own attorney fees and costs.
 - (c) In the event that CITY determines to tender the defense of the action to LANDOWNER, LANDOWNER shall defend the action on its behalf and on behalf of CITY, and shall bear all attorney fees and costs associated with such defense from and after the date of the tender. Provided, however, that CITY may at any time after the tender elect to assume representation of itself; in that event, from and after the date CITY gives notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.
- (2) If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any entitlement issued during the term of this Agreement and pursuant to its terms, the following shall apply:
- (a) If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order. Provided, however, that if the litigation relates entirely, solely and exclusively to a challenge to the Community Plan in general, separate and apart from this Agreement or any entitlement relating to the Property, and if LANDOWNER is named or becomes a party in such litigation, LANDOWNER and CITY shall bear the cost of the successful party's attorney fees and/or costs in the manner specified in the court's judgment.
 - (b) CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow development of the Property to proceed in a reasonable manner, taking

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into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified herein shall apply. If agreement is not reached, either Party shall have the right to terminate this Agreement by giving the other Party sixty (60) days' notice of termination.

- (c) In the event that amendment is not required, and the court's judgment or order requires CITY to engage in other or further proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously.

B. **Indemnification.** LANDOWNER agrees to defend and indemnify CITY, its elective and appointive boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to develop the Property, undertaken by LANDOWNER or LANDOWNER's contractors, subcontractors, agents or employees.

11. **Effect of Subsequent Laws.**

A. **Laws of Other Agencies.**

- (1) If any public agency, other than CITY, adopts any new law, regulation, ordinance or imposes any new condition (herein referred to collectively as "the New Law") after the date of this Agreement, which prevents or precludes either the CITY or LANDOWNER, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law the parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain LANDOWNER's right to develop the Property in a reasonable manner in accordance with Exhibit B of this Agreement.
- (2) In the event that the parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either Party shall have the right to terminate

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this Agreement by giving the other Party sixty (60) days' written notice of termination.

- (3) LANDOWNER or CITY shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, CITY shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the parties shall proceed under the provisions of subsections 11A(1) and 11A(2) above.

B. Laws Passed by CITY. Subject to the provisions of section 5 of this Agreement, neither the CITY nor any CITY Agency shall enact any initiative, ordinance, policy, resolution, general plan amendment or other measure that relates to the density or intensity of development on the Property, or the rate, timing or sequencing of the development or the construction on the Property on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

12. Enforced Delay; Extension of Times of Performance. In addition to other specific provisions of this Agreement, performance by either Party hereunder shall not be deemed in default where delay or inability to perform is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, enactment of conflicting state or federal laws or regulations, new or supplementary environmental laws or regulations, litigation instituted by third parties challenging the validity of this Agreement or any of the vested entitlements described in section 5 of this Agreement. Upon request of either Party to the other, a written extension of time for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon.

13. Legal Actions; Applicable Law; Attorney's Fees.

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- A. **Legal Actions.** In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default by any other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder. Notwithstanding any other provision of law, or of this Agreement, in no event shall a Party (or successor), or its officers, agents or employees, be liable to the other Party (or successor), or its officers, agents or employees, in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

- B. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. LANDOWNER agrees and acknowledges that CITY has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of CITY.

- C. **Attorney Fees.** In any arbitration, quasi-judicial, administrative or judicial proceeding (including appeals), brought by either Party hereto to enforce or interpret any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this section, and any other portion of this Agreement relating to attorney fees, reasonable attorneys fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in Sacramento County.

- 14. **Amendment of Agreement.** This Agreement may be amended from time to time only by the mutual written consent of the Parties, in accordance with the provisions of Government Code sections 65867 and 65868.

- 15. **CITY's Good Faith in Processing.** Subject to the provisions of subsection 5B hereof, and LANDOWNER's compliance with each and every term and condition of this Agreement and all of its exhibits, CITY agrees that it will accept in good faith for processing, review, and action, all complete applications for master parcel maps,

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zoning, planned unit development designation, planned unit development guidelines, schematic plans, special permits, building permits, parcel maps, subdivision maps, or other Land Use Entitlements for use of the Property in accordance with the General Plan, the Community Plan, PUD Guidelines, and this Agreement.

CITY shall inform the LANDOWNER, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use in advance, and shall expeditiously review said application for completeness and shall schedule the application for expeditious review by the appropriate authority.

16. **Default, Remedies, Termination.**

A. **General Provisions.** Subject to any extensions of time by mutual consent of the parties, and subject to the cure provisions set forth herein, any failure or unreasonable delay by either Party to perform any material term or provision of this Agreement shall constitute a default.

- (1) **LANDOWNER Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with subsection 16B., wherein a default by LANDOWNER is alleged, CITY shall not be obligated to issue any building permit, or grant any Land Use Entitlement as to which an application has been filed.
- (2) **CITY Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with subsection 16B, wherein a default by CITY is alleged, any resulting delays in LANDOWNER's performance caused by CITY's default shall not constitute a LANDOWNER default, or be grounds for termination or cancellation of this Agreement.
- (3) **Successors in Interest.** Where the Property, after the Effective Date, has been lawfully conveyed in whole or in part to one or more successors in interest in such a manner as to invoke the provisions of section 4 of this Agreement, and one or more of such successors in interest is in default with respect to the portion of the Property owned by it, neither LANDOWNER nor any other non-defaulting successor in interest shall be liable for the default, if the provisions of section 4 have been complied with, and in accordance with the terms and conditions of that section.

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- B. **Cure of Default.** In the event of an alleged default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

- C. **Remedies After Expiration of Cure Period.** After notice of default or breach pursuant to subsection 16B and expiration of the specified period to cure, if the alleged default has not been cured in the manner set forth in the notice, the other Party may at its option:
 - (1) institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or

 - (2) give the other Party notice of intent to terminate this Agreement pursuant to Government Code section 65868. In the event that such notice is given, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where LANDOWNER is the Party alleged to be in default, LANDOWNER shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNER at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNER copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing.

17. **Annual Review.**

- A. **General Provisions.** In accordance with Government Code section 65865.1, CITY shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct an annual review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future annual review or to otherwise enforce the provisions of this Agreement, nor shall a party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this

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Agreement or excuse any party hereto from performing its obligations under this Agreement.

- B. **Scope of Review.** The annual review shall be limited in scope to compliance with the terms and conditions of this Agreement.
- C. **Proceedings.** The procedures specified in the Procedural Ordinance for conduct of the annual review by the City Manager, and by the City Council, shall apply to each annual review of this Agreement. At least ten (10) days prior to the commencement of any annual review, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects.

At the conclusion of the annual review, CITY shall make written findings and determinations on the basis of substantial evidence, as to whether or not LANDOWNER or its successors have complied in good faith with the terms and conditions of this Agreement.

- D. **Failure of Compliance.** Any determination of failure of compliance shall be subject to the notice requirements and cure periods set forth in section 16 of this Agreement. If termination is proposed, it shall apply solely with respect to that portion of the Property (if less than all) affected by the failure to show good faith compliance. If modification of the Development Agreement is proposed, the modification shall pertain solely to the provisions hereof as applicable to that portion of the Property (if less than all) affected by the condition that has prompted the proposed modification.

18. **Termination Upon Completion of Development.**

- A. **General Provisions.** This Agreement shall terminate as to each parcel of property contained within the Property when that parcel of land: (i) has been fully developed with all buildings; (ii) all occupancy permits for the buildings constructed thereon have been issued by CITY; (iii) CITY has accepted any public facilities constructed by LANDOWNER thereon or required to serve that parcel; (iv) CITY has accepted the dedications thereon; and (v) all of LANDOWNER'S obligations in connection therewith are satisfied, as reasonably determined by CITY. CITY

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shall, upon written request made by LANDOWNER to CITY's Development Services Department, determine if the Agreement has terminated with respect to any parcel of land contained within the Property, and shall not unreasonably withhold, condition or delay termination as to that parcel if LANDOWNER'S obligations therewith are satisfied. LANDOWNER, or its successor, shall prior to said termination pay to CITY a fee commensurate with the cost of processing the request and making such a determination, including but not limited to CITY's administrative and legal expenses. Such fee shall be determined in accordance with CITY's established fees and charges then in effect. Upon termination of this Agreement, CITY shall upon LANDOWNER's request expeditiously record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. The aforesaid notice may specify, and LANDOWNER agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement, and shall have the effect as set forth in subsection 18C.

B. **Multi-family and Single Family Residential Projects** . This Agreement shall automatically terminate and be of no further force and effect as to any single family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when CITY has issued an occupancy permit for that residence or building or otherwise has been approved by CITY for occupancy.

C. **Effect Of Termination On Landowner Obligations.** Termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with CITY's General Plan, the DSP Area, the PUD Guidelines, and all Land Use Entitlements issued for the Property, nor shall it affect any other covenants of this Agreement specified in this Agreement to continue after the termination of this Agreement, including but not limited to those specified in sections 6 and 10 and subsection 13C.

19. **No Joint Venture, Partnership, or Other Relationship.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between CITY and LANDOWNER. No relationship exists as between LANDOWNER and CITY other than that of a governmental entity regulating the development of private property, and the owners of such private property.

20. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt

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requested, to the principal offices of the CITY and LANDOWNER or LANDOWNER's assigns and successors, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other Party as indicated below:

Notice to the CITY: City of Sacramento
915 I Street
Sacramento, California, 95814
ATTN: City Manager

Notice to the LANDOWNER: M&H Realty Partners VI, L.P.
3580 Carmel Mountain Road, Suite 260
San Diego, California 92130
ATTN: Scott McPherson

with copies to:

Law Offices of Gregory D. Thatch
1730 I Street, Suite 220
Sacramento, California 95811
ATTN: Gregory D. Thatch

and to:

Peter Merlone
425 California Street, 11th floor
San Francisco, California 92104-2113

Any party may change the address to which notices are to be mailed by giving written notice of such changed address to each other party in the manner provided herein.

- 21. **Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties, utilizing the procedures provided in section 14 of this Agreement. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party

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shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. In the event either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by CITY with respect to the Property, any portion thereof, prior to the termination date except as specified in subsection 18C.

22. **Recording.** The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days following execution of this Agreement by CITY, which execution will take place no sooner than the effective date of the ordinance approving this Agreement.

23. **OMITTED.**

24. **Provisions Relating to Lenders.**

A. Lender Rights and Obligations.

(1) **Prior to Lender Possession.** No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement, which pertains to the Property or such portion thereof in which it holds an interest. Nothing in this section shall be construed to grant to a Lender rights beyond those of LANDOWNER hereunder, or to limit any remedy CITY has hereunder in the event of default by LANDOWNER, including but not limited to termination and/or refusal to grant Land Use Entitlements with respect to the Property.

(2) **Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive Land Use Entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development

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contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of LANDOWNER hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions of this Agreement against CITY unless and until such Lender or successor thereof qualifies as a recognized assignee under the provisions of section 4 of this Agreement.

- B. **Notice of LANDOWNER's Default Hereunder.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender, concurrently with service thereon to LANDOWNER, any notice given to LANDOWNER with respect to any claim by CITY that LANDOWNER has committed a default, and if CITY makes a determination of non-compliance, CITY shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on LANDOWNER.
- C. **Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed or the areas of non-compliance set forth in CITY's notice. Such action shall not entitle a Lender to develop the property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder.
- D. **Other Notices Given By City.** A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided in section 20 hereof.

25. **Conflicts.**

- A. **Concurrent Map Conditions.** In the event any requirements imposed on the Project by any of the maps or conditions of approval thereto which are approved concurrently with this Agreement conflict with requirements of the PUD Guidelines or this Agreement, the map requirements shall control.
- B. **Future Map Conditions.** No requirement shall be imposed on the Project by any maps or conditions of approval thereto subsequent to execution of this Agreement if such requirement directly conflicts with any specific provision of this Agreement.

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- 26. **Construction.** All Parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. 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.
- 27. **Counterparts.** This 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.
- 28. **Time.** Time is of the essence of each and every provision hereof.
- 29. **Limitation of Actions.** No court action shall be filed by a party to this Agreement on the ground of default or breach of its terms unless such action is filed within one hundred eighty (180) days from the date of discovery by the aggrieved party of the facts underlying the claim of breach or default.
- 30. **No Third Parties Benefitted.** No Person who is not a qualified successor or assign of a party hereto pursuant to section 4 of this Agreement, or who has not become a party by duly adopted amendment hereof, may claim the benefit of any provision of this Agreement.
- 31. **Effect of Agreement Upon Title to Property.** In accordance with the provisions of Government Code section 65868.5, from and after the time of recordation of this Agreement, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of California. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.
- 32. **Covenant of Good Faith.** CITY and LANDOWNER agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement.
- 33. **Exhibits:** The following are the exhibits to this Agreement:
 - A Legal Description of the Property
 - B Landowner's Development Plan
 - C Special Conditions

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- D Assignment and Assumption Agreement
- E Protest Waiver Form
- F Irrevocable Offer of Dedication Form
- G Map and Categorical Listing of Land and Infrastructure
- H Procedures for Adjusting Development Fees
- I Diagram of Delta Shores Planning Area

34. **Entire Agreement/Integrated Document.** This Agreement, the Exhibits and the documents incorporated by reference in this Agreement or in the Exhibits, are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. This Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.
35. **City Attorney Costs.** Landowner shall pay to the City of Sacramento the sum of ten thousand dollars (\$10,000) as and for reimbursement of the costs of the City Attorney in preparation and processing of this Agreement. Said sum shall be paid to CITY prior to the City Attorney approving this Agreement as to form.

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IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Development Agreement as of the date first set forth above.

CITY OF SACRAMENTO

ATTEST:

By: _____
Mayor

City Clerk

APPROVED FOR LEGAL FORM:

Senior Deputy City Attorney

M&H REALTY PARTNERS VI, L.P.
A California limited partnership

By: _____
Name: _____
Title: _____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

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EXECUTION PAGE FOR LENDER

[Name + nature of entity] (herein "LENDER") owns an equitable interest in the Property described in Exhibit "A" of this Agreement as the beneficiary of that certain deed of trust and assignment of rents dated _____ and recorded on _____, as Instrument No. _____, in Book _____, Page _____, Official Records, Sacramento County, California.

LENDER hereby executes this Agreement and agrees to be bound by the terms and condition hereof, subject to the limitations set forth in section 24 hereof.

LENDER requests that it be provided with copies of all notices mailed to LANDOWNER pursuant to the terms of this Agreement and that said copies be addressed as follows:

Attn: _____

Dated: _____

LENDER: _____

By: _____

Its: _____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

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EXHIBIT A
LEGAL DESCRIPTION OF
LANDOWNER'S PROPERTY

SEE ATTACHED

NOTE: UPON RECORDATION OF FINAL MASTER PARCEL SUBDIVISION MAP, THIS EXHIBIT A WILL BE REPLACED BY THE SAID MAP, WITHOUT NEED FOR AMENDMENT OF THIS AGREEMENT; PROVIDED, HOWEVER, IF THE FINAL MAP IS RECORDED IN PHASES, ONLY THE PERTINENT PORTIONS OF THIS EXHIBIT A WILL BE REPLACED BY THE FINAL MASTER PARCEL SUBDIVISION MAP PHASES, AS APPROPRIATE, WITHOUT THE NEED FOR AMENDMENT OF THIS AGREEMENT.

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CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT B
LANDOWNER'S DEVELOPMENT PLAN

SEE ATTACHED

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EXHIBIT C

SPECIAL CONDITIONS

I. PURPOSE AND INTENT

The definitions applicable to the body of the Agreement shall apply to this Exhibit C.

In order to achieve its objectives, and in order to obtain from each LANDOWNER and developer, all required contributions, fees, land transfers, agreements, and other mechanisms required to implement its terms, the Community Plan provides that all rezoning and development shall occur through the planned unit development process. Development agreements should be entered into with LANDOWNERS whenever feasible under the circumstances.

Under no circumstances can development of the Property proceed without satisfaction of the conditions specified in this exhibit. These Special Conditions shall constitute binding and legally enforceable obligations of LANDOWNER and its successors and assigns, and binding and legally enforceable requirements and conditions for the development of the Property, in addition to other obligations, requirements and conditions imposed during the rezoning, special permit, subdivision map and other Land Use Entitlement processes.

II. LANDOWNERS' OBLIGATIONS

A. **Mitigation Monitoring.** When required in order to comply with the Final Environmental Impact Report for the Project, LANDOWNER shall execute a mitigation monitoring plan agreement and comply with all applicable mitigation measures therein. LANDOWNER shall fully cooperate with CITY in implementing any mitigation monitoring plan adopted as part of the approval process for development of the Property.

B. **Agreements With Other Agencies.** As required by CITY, LANDOWNER shall enter into agreements with other affected agencies, including but not limited to:

1. Appropriate sanitation districts, including but not limited to Sacramento County Regional Sanitation District ("SCRSD"), for provision of facilities, payment of fees and charges, and payment (if applicable) of any proportionate share of penalties imposed by the Environmental Protection Agency. CITY and LANDOWNER acknowledge and agree that the sewer interceptor serving the

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Property is already surcharged, but that SCRSD has nonetheless agreed to allow the Property to connect its sewer system to said interceptor.

C. **Inclusionary Housing Requirements.** CITY has enacted a mixed-income housing policy ("Policy"), as set forth in Chapter 17.190 of the Sacramento City Code. To the extent that the Property is subject to the Policy, certain Land Use Entitlements for the Property will contain conditions which implement the Policy, including but not limited to conditions requiring an inclusionary housing plan ("IHP") and an inclusionary housing agreement ("IHA"). The IHP for the property, where the Policy is applicable, is attached to this Exhibit C as Exhibit C-1, and incorporated herein by this reference. The requirements specified in the IHP shall be implemented by LANDOWNER, and LANDOWNER shall execute the required IHA.

D. **Flood Insurance; TMA Requirement.** As required by CITY, LANDOWNER shall do the following:

1. **Flood Insurance.** For residential units constructed in any area within the Project designated as Zone A99 by the Federal Emergency Management Agency (FEMA), LANDOWNER shall provide, at its cost, flood insurance for two (2) years, from the time of sale of individual units to homebuyers, for all residential units on the project site, provided that the total cost not exceed one thousand dollars (\$1,000) per unit.
2. **TMA Requirement.** Prior to the issuance of building permits for the commercial portion of the project, LANDOWNER shall either enter into an existing Transportation Management Association (TMA), or create a new TMA to serve the project area. Funding may be provided by the project applicants through a Community Facilities District (CFD). Currently, the nearest existing TMA which would cover the Project area is the Sacramento TMA.

F. **Parkland Dedication; Park Funding Requirement.** As required by CITY, LANDOWNER shall do the following:

1. **Parkland Dedication.** For purposes of calculating parkland dedication pursuant to Section 16.64.030 of the Sacramento City Code, the parkland dedication requirement shall be based upon the highest residential density allowed within the zoning designation applied for, unless the LANDOWNER enters into an agreement with CITY for a lower density which shall specify a lower parkland dedication requirement. Using the number and type of lots

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proposed in the Delta Shores East and Delta Shores West Tentative Subdivision Maps and the highest density for all remaining unmapped areas proposed for residential uses would put LANDOWNER's parkland dedication requirement at 73.06 acres. Pursuant to Section 16.64.030, the Parties hereby agree that the total parkland dedication for the Delta Shores PUD shall be 61.28± acres, based upon an assumed maximum housing unit count within the Delta Shores PUD Schematic Land Use Plan of 5,222 units, where 2,012 are single-family detached units and 3,210 are attached units. The total parkland dedication requirement may be amended based upon the actual number of units constructed pursuant to the following formula. This parkland dedication is determined according to the formula $D \times F = A$, where D = the number of dwelling units, F = a 'factor' that when multiplied by the number of units will produce five acres per thousand population (for single-family detached units the factor is 0.0149, and for attached and multi-family units the factor is 0.0088), and A = the buildable acres to be dedicated. Because parkland dedication requirements are based both on unit type and count, the number of acres of parkland dedicated with the Tentative Master Parcel Subdivision Map establishes a limit on the number and type of units that may be approved without additional parkland dedication or in-lieu fee obligations under Chapter 16.64 of the Sacramento City Code. In reaching this agreement, it is the intent of the Parties to establish a parkland dedication limit based on how LANDOWNER proposes to develop the site, but to allow CITY to reserve the ability to require more parkland dedication, in the event LANDOWNER exceeds the assumed unit count or type so as to require more than the 61.28± acres using the formula outlined above.

2. **Land Dedication Security.** The Delta Shores PUD includes a Tentative Master Parcel Subdivision Map and subsequent tentative maps entitled Delta Shores East and Delta Shores West Tentative Subdivision Maps, respectively, and will also include future subsequent tentative subdivision maps. The Parties acknowledge that each tentative map subsequent to the Tentative Master Parcel Subdivision Map may or may not be able to completely satisfy its Quimby Act parkland dedication requirements as a stand alone map, but it is the Parties' intent to meet the parkland cumulative dedication requirement for the Project overall. Therefore, if any map subsequent to the Tentative Master Parcel Subdivision Map contains less parkland than is required to meet its Quimby parkland dedication requirement for such map, the parkland dedication for such map together with the accumulated totals for both residential units and parkland for all preceding final maps, shall be compared to the required cumulative parkland dedications for those maps. If the cumulative dedications for all such maps

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are less than the required dedications for those maps, LANDOWNER shall provide the City with a letter of credit or other authorized security in a form approved by the City Attorney, in an amount equal in value to the balance of parkland due, to secure the dedication of parkland for the Final Map. The Letter of Credit shall be released by CITY upon acceptance of the IOD for the balance of the parkland dedication that is due. The dedication of excess parkland does not obligate CITY to reimburse the LANDOWNER for the value of the land dedicated.

- 3. **Park Funding Requirement.** As required by subsection 9C of the Development Agreement, LANDOWNER shall transfer four million dollars (\$4,000,000) to CITY for purposes of future development of a regional park to be located on or adjacent to the Property (the "Regional Park Fee") upon or before issuance of the 3,375th residential building permit at the Property.

LANDOWNER shall execute a promissory note (hereafter, "Note") by February 20, 2009 in favor of CITY for a principal sum of \$4,000,000, bearing interest at a rate calculated by the procedure used for adjusting development fees pursuant to Exhibit H of this Development Agreement, secured by a Deed of Trust on the Property. The fee-adjustment procedure in effect at the time each installment payment is made shall apply.

- G. **Global Climate Change Mitigation Conditions.** LANDOWNER shall implement the voluntary mitigation measures identified as Mitigation Measures 5.10-1(a) through and including 5.10-1(dd) in the Final Environmental Impact Report for the Project.

- H. **Agricultural Impact Mitigation Condition:** LANDOWNER shall undertake preservation of farmland at a 1:1 mitigation ratio by preserving approximately five hundred (500) acres at the Brannan Island Farms site and approximately two hundred eighty-two (282) acres elsewhere in Sacramento County at a site approved by the City comprised of Prime Farmland and Farmland of Statewide Importance, prior to the issuance of any grading permit, in order to reduce any impacts arising from the conversion of the current agricultural uses at the project site to urban development.

III. CONDITIONS OF DEVELOPMENT; SPECIAL FINDINGS REQUIRED

- A. In addition to other findings and conditions as may be deemed applicable, no special permit, subdivision map or other land use entitlement for the Property shall be approved unless the approving body either: (1) makes the following

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findings; or (2) expressly waives such findings, in whole or in part, as not applicable to the Property and stating the reasons therefor with such waiver and the reasons therefor appear in the record or document of approval. These findings are:

1. The approval of the proposed project is consistent with the policies, goals, standards and objectives of the General Plan, the Community Plan, the PUD Guidelines and other relevant factors and circumstances, including but not limited to:
 - a. The adequacy of the required interim and permanent Infrastructure needed to support the project planned for the Property;
 - b. The extent of participation required of LANDOWNER under the Finance Plan has been determined;
 - c. The extent to which LANDOWNER has complied with provisions of this Agreement.
 2. The Delta Shores Finance Plan has been adopted by the City Council.
 3. All transfers of land applicable to the specific parcel in question, owned by or under the control of LANDOWNER, have been transferred to CITY or to the appropriate public agency. For this purpose, a transfer will be deemed to occur upon delivery to CITY of an Irrevocable Offer of Dedication in form and manner approved by the Department of Transportation and the City Attorney. These dedications include, but are not limited to streets, utilities, drainage facilities and public transit.
 4. LANDOWNER has entered into all agreements required pursuant to sections II.A through II.F, inclusive, above.
 5. Appropriate environmental review of the proposed project has been completed, and any suggested mitigation measures resulting therefrom have been included in the approval of the project to the extent feasible.
- B. In the event that any of the special findings required herein cannot be made and are not waived, approval may nevertheless be given to the proposed project if all of the following conditions can be satisfied with respect to each such special finding not made:

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