



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 1/10/2012

**Report Type:** Staff/Discussion

**Title: Agreement: Cosumnes River Blvd. /I-5 Interchange Agreement and Sacramento Transportation Authority funding allocation changes with Richards Blvd/I-5 Interchange Project (Continued from 12-6-11)**

**Report ID:** 2011-00890

**Location:** Cosumnes Blvd Interchange: along Interstate 5, one mile south of Pocket Road/Meadowview Road , Districts 7 and 8). Richards Blvd/I-5: located in the River Districts 3 and 4

**Recommendation:** Pass a motion authorizing the City Manager to 1) execute a Cost Sharing Agreement with M&H Realty Partners VI, LP outlining the roles and responsibilities for financing and construction of the I-5 Interchange and Cosumnes River Boulevard extension (Cosumnes River Boulevard Project); 2) request Sacramento Transportation Authority (STA) approval to reprogram from the Measure A Expenditure Plan \$3,193,000 in FY 2013/14 and \$5,905,000 in FY 2015/16 from the Richards/ I-5 Project to the Cosumnes River Boulevard Project; and 3) request Sacramento Transportation Authority to reprogram up to an estimated \$29,066,700 from FY 2017/18 to FY 2023/24, from the Cosumnes River Boulevard Project to the Richards/ I-5 project.

**Contact:** Sheri Smith, Project Manager, (916) 808-7204, Economic Development Department

**Presenter:** Sheri Smith, Project Manager, (916) 808-7204, Economic Development Department, Tim Mar, Supervising Engineer, (916) 808-7531, Department of Transportation

**Department:** Economic Development Dept

**Division:** Citywide Development

**Dept ID:** 18001031

**Attachments:**

---

- 1- Description/Analysis
- 2- Background
- 3- Sources
- 4 -Location Map
- 5 -Cost Sharing Agreement With M and H Realty Partners

---

**City Attorney Review**

Approved as to Form  
Jerry Hicks  
11/30/2011 2:44:13 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Janelle Gray  
10/27/2011 4:05:49 PM

**Approvals/Acknowledgements**

Department Director or Designee: Jim Rinehart - 11/22/2011 5:14:39 PM

## Description/Analysis

### Issue:

The Cosumnes River Boulevard Project (T15018000) proposes to extend Cosumnes River Boulevard from its westerly terminus at Franklin Boulevard to an at-grade intersection with Freeport Boulevard (in the unincorporated town of Freeport), and construct a new interchange at I-5. Construction of the interchange is a key component to the Delta Shores development project proposed by M&H Realty Partners VI, LP (Developer).

The City and Developer have entered into a Development Agreement for the Delta Shores Project (City Agreement No. 2009-0060, approved by Ordinance No. 2009-003, adopted on January 13, 2009, and amended by City Agreement No. 2009-0060-1) that references the Project and, along with the Financing Plan, contemplates the City and Developer entering into a Cost Sharing Agreement (CSA) to specify how they will fund the Project cost (See Background, Attachment 1).

The total Project cost is estimated at \$95 million. Per the approved Financing Plan, the developer's portion of that cost is approximately \$52 million and the City's portion is approximately \$43 million. The developer has funds ready to contribute and will secure them with a Letter of Credit. The City has a combination of state, federal, and local transportation funds allocated to the project but they are spread out over time and, because of current economic conditions, the City cannot utilize customary bond financing to raise the up front cash needed to begin construction.

A solution to the cash flow issue is to request a swap of a portion of the funds allocated by the Sacramento Transportation Authority (STA) to the Cosumnes River Boulevard Project and the Richards/I-5 Project. The Richards/I-5 Project currently has a programmed STA allocation of \$13,363,000 but only \$4,265,000 is needed between FY 2012/13 and FY 2015/16 to complete the environmental, planning, design, and approval processes. This staff report recommends moving the remaining \$9,098,000 to the Cosumnes River Boulevard Project to allow the project to advance to construction.

Transferring the \$9,098,000 of allocation to the Cosumnes project resolves the cash flow issue and allows the City to move forward with the CSA, purchase necessary right-of-way, and award a construction contract in the summer of 2012 (See Funding Sources, Attachment 2). This report recommends allocating all STA allocations not needed for construction of Cosumnes River Boulevard to the Richards/I-5 Project. By leveraging developer investment and utilizing the Richards Boulevard Project allocation, it is estimated that \$29 million in future STA funds can be moved to the Richards/I-5 Project. Moving the remaining amount currently allocated for the Cosumnes River Boulevard to the Richards/I-5 Project reduces the construction funding gap for the Richards/I-5 Project from a \$50 million current gap to a \$30 million gap. The proposed swap of allocations allows both the Richards/I-5 and Cosumnes River Boulevard Projects to move forward and does not affect the timing of the Richards/I-5 Project.

The CSA identifies project funding sources and defines how the City and Developer will work together to construct the interchange and extension as a public/private partnership (See Cost

Sharing Agreement, Attachment 3). This document outlines a unique and creative partnership and has the following notable components:

- **Construction Management** – The Developer and the City will each have a representative at the project site to oversee project construction and ensure the project costs and change orders are acceptable to both parties.
- **Future Transportation Development Impact Fees** – In recognition of the Developer's substantial financial investment in the project and to incentivize development of the Delta Shores Project, the CSA exempts the Delta Shores Project from any new, City imposed, transportation impact fees for a period of ten years or until the exempted fees equal the amount of the Developer's investment into the Cosumnes River Boulevard Project.
- **Reimbursement of Advanced Payments** – The Developer is advancing the cost of improvements that benefit Delta Shores as well as nearby property owners. The CSA, in accordance with the approved finance plan, provides for reimbursements to the Developer when the other property owners develop their property.
- **Project Management** – The City will manage the project. In the event that the City cannot fund its share of the project to completion, the Developer has the right to assume project management and complete construction of the project. If the Developer assumes sole management of the project, the CSA provides for amounts owed to the Developer by the City to be offset by City fees imposed on development of Delta Shores.

**Policy Considerations:** The proposed City Council action is consistent with the City's Strategic Plan goals of improving the transportation system, enhancing livability, and expanding economic development throughout the city.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The Cosumnes River Boulevard Project final Environmental Impact Report was approved by City Council on May 15, 2007. As the project has federal funding, NEPA approval has also been obtained.

**Sustainability Considerations:** The Cosumnes River Boulevard Project will improve access, provide route continuity, and reduce overall vehicle miles traveled in the south area of the City. The Project will construct new sidewalks and bike lanes and increase the City's urban forest canopy, creating an environment conducive to pedestrian and bicycle trips and encouraging the use of alternate modes of transportation. All of these considerations and improvements are consistent with City sustainability goals.

**Commission/Committee Action:** On December 8, 2011 the STA board approved the re-allocation of funds between the Cosumnes River Boulevard and the Richards/I-5 Projects as described above, contingent upon City Council approval.

**Rationale for Recommendation:** Approval of the swap of allocation from STA allows both projects to move forward and has the following benefits:

### **For the Cosumnes River Boulevard Project**

- Provides for the CSA to be completed and the Cosumnes River Boulevard Project to move forward
- Construction contract can be awarded in Summer 2012
- Creates an estimated 1,200 construction jobs
- Enables the City to leverage \$52 million from private development team
- Jump starts the Delta Shores Project which is estimated to generate \$3.8 million in sales tax and \$5.3 million in property tax annually when completed.

### **For the Richards Blvd I-5 Project:**

- Allocates \$4.2 million to Richards Blvd I-5 project to begin environmental, design, and planning approval processes in 2012
- Increases the overall amount of STA resources available to the project from \$13 million to \$33 million
- Reduces current construction gap from \$50 to \$30 million – resources still need to be identified to complete construction under either scenario
- Does not affect the timing of the ultimate project

**Financial Considerations:** This report recommends approval of a Cost Sharing Agreement, and authority to request moving funding allocations from the Sacramento Transportation Authority. There are no impacts to project funding or the General Fund from these actions. Future funding for the Cosumnes River Boulevard Project and the Richards Boulevard I-5 Project will be appropriated when received.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.



## Attachment 1

### Background

The proposed action for December 6, 2011 is to:

- Approve the Cost Sharing Agreement between the City and M&H Realty Partners outlining the roles and responsibilities for financing and constructing the project.
- Authorize a request to the Sacramento Transportation Authority to allocate \$3,193,000 in F/Y 2013/14 and \$ 5,905,000 in F/Y 2015/16 from the Richards I-5 project to the Cosumnes Boulevard Project
- Authorize a request to Sacramento Transportation Authority to allocate an estimated \$29,066,700 from the FY2017/18 to FY/2023/24 programmed allocation from the Cosumnes River Boulevard Project to the Richards/I-5 project.

The I-5/Cosumnes River Boulevard Extension and Interchange Project (T15018000) proposes to extend Cosumnes River Boulevard from its westerly terminus at Franklin Boulevard to an at-grade intersection with Freeport Boulevard (in the unincorporated town of Freeport), and construct a new interchange at I-5. As of October 2011, the City has completed 95% of the final design.

On May 15, 2007, the City Council approved the final EIR for the Project. The final EIR identified project impacts and mitigation measures. The Cosumnes River Boulevard Project (T15018000) required the purchase of 3.481 conservation credits for giant garter snake, 16 acres of Swainson's Hawk mitigation habitat, 1.0 vernal pool preservation credit, 11 elderberry shrub transplants, and 10 valley elderberry longhorn beetle credits. Approved mitigation banks within the service area of the Project were contacted to provide quotes for the required mitigation. The mitigation banks that provided the lowest quotes were selected for the purchase of the needed credits.

The construction of the Interchange at I-5 required the relocation of a portion of a 20-inch SMUD high-pressure natural gas pipeline (Pipeline) that currently exists within the vicinity of the future Project. On February 21, 2007 the City and SMUD entered into a Facilities Relocation Agreement that allowed SMUD to relocate this Pipeline and provided a detailed cost sharing methodology and roles and responsibilities. In order to relocate the Pipeline, SMUD needed an encroachment permit from Caltrans. In order to issue the encroachment permit, Caltrans required an executed Utility Agreement between the City and SMUD. The City and SMUD completed project construction and relocated the Pipeline in the summer of 2009.

On January 6, 2009 Council approved agreements with the following entities to further the project:

- United States Fish and Wildlife Service and the Center for Natural Land Management to mitigate for impacts on the giant garter snake in the amount of \$195,807;

- Wetland Resources LLC to buy credits for Swainson's Hawk habitat in its Elsie Gridley Mitigation Bank in the amount of \$104,000;
- Wildlands, Inc. to buy credit for vernal pool preservation in its Laguna Terrace East Conservation Bank in the amount of \$175,000;
- Wildlands, Inc. to transplant elderberry shrubs in its River Ranch VELB Conservation Bank in the amount of \$16,390;
- Sacramento River Ranch, LLC to buy valley elderberry longhorn beetle credits in its River Ranch VELB Conservation Bank in the amount of \$35,000;
- Utility Agreement with SMUD to relocate a 20 inch gas pipeline in the amount of \$3,663,450.

On April 15, 2008, the City executed an Assignment and Assumption Agreement with M & H Realty Partner VI, LP, SunCal Delta Shores, LLC, and Mark Thomas and Company, Inc. for the Project. The Assignment and Assumption Agreement allowed the City to assume the consultant agreement with Mark Thomas and Company, Inc. from the Developers of Delta Shores in order to complete the engineering design for the Project. Supplemental Agreement No. 2 was approved January 6, 2009 to comply with new requirements of approving agencies, provide additional services that were not included in the original scope of work, meet project timelines, and compensate for extra efforts needed to coordinate with the development of Delta Shores. The extra work included providing additional analysis for Morrison Creek, designing a flood wall east of Morrison Creek, performing additional right of way engineering, designing a new fiber optic connection, performing a constructability review, performing comprehensive value analysis, performing additional mitigation analysis and applying for new permits, designing geo-foam to protect existing utilities, designing under drainage facilities for auxiliary lanes, amending the project report, and paying for certain fees on the City's behalf for certain agencies to review project plans.



	With Swap		With No STA Swap	
	Richards Blvd I -5	Cosumnes Blvd I-5	Richards Blvd I -5	Cosumnes Blvd I-5
<b>Project Costs</b>				
Total Estimated Project Costs	\$ 62,900,000	\$ 95,000,000	\$ 62,900,000	\$ 95,000,000
Project Costs 2012 - 2016	\$ 4,265,000	\$ 95,000,000	\$ 4,265,000	\$ 95,000,000
<b>Sources</b>				
Richards STA allocation 2013	\$ 4,265,000	\$ 3,193,000	\$ 7,458,000	
Richards STA allocation 2015		\$ 5,905,000	\$ 5,905,000	
Cosumnes STA allocation 2013-2016		\$ 10,431,000		\$ 10,431,000
Cosumnes STA allocation 2017-2023	\$ 29,066,700			\$ 29,066,700
DOT funds spent to date		\$ 12,800,000		\$ 23,300,000
CTC- STIP Funds		\$ 10,500,000		
Developer Funding		\$ 52,247,000		
<b>Total Sources</b>	\$ 33,331,700	\$ 95,076,000	\$ 13,363,000	\$ 62,797,700
<b>Remaining Construction Gap</b>	<b>\$ 29,568,300</b>	<b>\$ -</b>	<b>\$ 49,537,000</b>	<b>\$ 32,202,300</b>

# Location Map for I-5/COSUMNES RIVER BOULEVARD EXTENSION AND INTERCHANGE PROJECT (PN: T15018000)



Department of  
**TRANSPORTATION**  
City of Sacramento

Map Contact: S. Tobin  
Map Date: March, 2008

0 750 1,500 3,000 4,500 6,000 Feet





## Cost Sharing Agreement

### I-5 Interchange & Cosumnes River Boulevard Extension

This agreement, dated January 10, 2012, for purposes of identification only, is between the City of Sacramento, a California municipal corporation (the “City”); and M & H Realty Partners VI, L.P., a California limited partnership (“M&H”).

#### Background Facts

- A. M&H owns the Delta Shores Project (#P06-197), a proposed master-planned community comprising residential, commercial, and retail uses on approximately 780 acres within the City limits and adjacent to the City’s southern boundary (the “**Delta Shores Project**”). On January 13, 2009, the Sacramento City Council adopted Resolution No. 2009-035, approving land-use entitlements for the Delta Shores Project. On the same day, the City Council also adopted Resolution No. 2009-037, approving the Delta Shores Public Facilities Financing Plan (the “**Financing Plan**”), which covers not only the Delta Shores Project but also approximately 125 acres adjacent to the eastern boundary of the Delta Shores Project and identified in the Financing Plan as the Stone Boswell site (the “**Stone-Boswell Property**”). The Financing Plan contemplates that the Stone-Boswell Property will eventually be subdivided and developed for residential and commercial uses.
- B. In accordance with the Financing Plan, the City plans to construct a freeway interchange at the future intersection of Cosumnes River Boulevard and Interstate Highway 5, and extensions of Cosumnes River Boulevard from Interstate Highway 5 east to Franklin Boulevard and west to Freeport Boulevard (the “**Project**”). The Project’s design has been substantially completed by the Mark Thomas Company, and the Project has received the necessary approvals from the City; from the State of California through the California Department of Transportation, except for an encroachment permit; and from the federal government through the Federal Highway Administration. A scope of work for the Project, which does not include the installation or maintenance of landscaping at the interchange of Cosumnes River Boulevard and Interstate Highway 5, is attached to this agreement as Exhibit A (the “**Project Scope**”).
- C. As set forth in Exhibit B to this agreement, the total cost of the Project (the “**Project Cost**”) is estimated to be \$95,307,000. The Project Cost includes costs of project design, environmental review, permitting, right-of-way acquisition, construction engineering, construction, and construction management.
- D. A portion of the Project consists of improvements that will benefit the Delta Shores Project, the Stone-Boswell Property, and the City (i.e., current City residents as well as future developers of land in the vicinity) (the “**Shared Improvements**”). The portion of the Project Cost allocated to the Shared Improvements (the “**Shared Cost**”) is estimated

to be \$84,630,000. The Financing Plan allocates the Shared Cost as follows: 41.3% to the Delta Shores Project (the “**Delta Shores Share**”), 7.9% to the Stone-Boswell Property (the “**Stone-Boswell Share**”), and 50.8% to the City (the “**City Share**”). M&H will pay both the Delta Shores Share and the Stone-Boswell Share with the understanding that the City, to the extent allowed by law, will require the owners of the Stone-Boswell Property to reimburse M&H later for the Stone-Boswell Share, all as set forth below.

- E. The balance of the Project Cost is for certain architectural features and facility upgrades, more specifically described in Exhibit A, that will benefit the Delta Shores Project and the Stone-Boswell Property but not the City (the “**Enhancements**”). As set forth in Exhibit B, the cost of the Enhancements (the “**Enhancement Cost**”) is estimated to be \$10,677,000. The Financing Plan allocates the Enhancement Cost as follows: 84% to the Delta Shores Project and 16% to the Stone-Boswell Property. At M&H’s request, the City will construct the Enhancements as part of the Project, and M&H will pay the entire Enhancement Cost with the understanding that the City, to the extent allowed by law, will require the owners of the Stone-Boswell Property to reimburse M&H later for their 16% share, all as set forth below.
  
- F. M&H currently does not intend to develop the residential property within the Delta Shores Project; instead, it intends to sell this land to residential developers and home builders who will benefit from, and make use of, the Project (the “**Future Owners**”). The City plans to obligate Future Owners to contribute their fair share of the Project Cost and desires to cooperate with M&H in identifying and implementing a means for accomplishing this, including a public-financing mechanism to ensure that the Future Owners pay their fair share of the Project Cost.
  
- G. The City and M&H have entered into a Development Agreement for the Delta Shores Project (City Agreement No. 2009-0060, approved by Ordinance No. 2009-003, adopted on January 13, 2009, and amended by City Agreement No. 2009-0060-1) that references the Project and, along with the Financing Plan, contemplates the City and M&H entering into this agreement to specify how they will fund the Project Cost (the “**Development Agreement**”).

***With these background facts in mind, the City and M&H agree as follows:***

**1. Allocation of the Project Cost.**

(a) *Shared Cost.*

- (1) M&H shall pay the Delta Shores Share and the Stone-Boswell Share (totaling 49.2% of the Shared Cost, or approximately \$41,637,960) in accordance with Section 2 below, subject to the following: the City shall require that the owners of the Stone-Boswell Property reimburse M&H for the Stone-Boswell Share in accordance with Section 6 below.

- (2) The City shall pay the City Share (50.8% of the Shared Cost), or approximately \$42,992,040, subject to Section 5 below.
- (b) *Enhancement Cost.* M&H shall pay 100% of the Enhancement Cost (approximately \$10,677,000) in accordance with Section 2 below, subject to the following: the City shall require that the owners of the Stone-Boswell Property reimburse M&H for 16% of the Enhancement Cost, in accordance with Section 6 below.

## **2. Payments of the Project Cost.**

- (a) Each month, the City shall provide M&H with a written request for payment setting forth the City's calculation of the portions of the City Share, the Delta Shore Share, the Stone-Boswell Share, and the Enhancement Cost then due. Each request for payment must include the following:
  - (1) A summary showing monthly expenditures allocated to the City Share, the Delta Shores Share, the Stone-Boswell Share, and the Enhancement Cost; the summary must also show total Project expenditures and allocations to date, as well as the remaining funding for the Project.
  - (2) Copies of all contractor pay-request applications, schedules of values, and consultant invoices that pertain to the request for payment and are endorsed to show the City's approval.
  - (3) Copies of documents supporting the City's actual internal costs. As used in this Section 2(a)(3), the phrase "City's actual internal costs" means the full cost to the City (including wages, benefits, and overhead) of work on the Project by City personnel, including the following: real-property agents, civil project managers, professional civil engineers, contract administrators, construction office engineers, civil inspectors, construction-staking crews, labor-compliance personnel, and account clerks.
  - (4) Copies of any change orders for which payment is requested.
  - (5) Copies of any waivers and releases of stop notices given under Civil Code section 3262 and of any other documents provided to the City that reasonably confirm that the amount being paid will be used for labor and materials provided for the Project.
  - (6) A description of the amount of any accrued retention the City is holding and has not yet paid to contractors, subcontractors, or suppliers.

- (b) Within 15 days after receiving a request for payment, M&H shall pay to the City the portions of the Delta Shore Share, the Stone-Boswell Share, and the Enhancement Share set forth in the request.
- (c) At M&H's request, the City shall provide M&H with information confirming, to M&H's reasonable satisfaction, the City's payment of all portions of the Project Cost that M&H has previously paid in accordance with this Section 2.
- (d) If, after receiving payment from M&H under Section 2(b), the City withholds any payment from the general contractor, including any withholding in accordance with Civil Code section 3186 (or any successor to that statute), then the City shall withhold the portion of M&H's payment that is allocable to the Delta Shore Share, the Stone-Boswell Share, and the Enhancement Cost attributable to the payment withheld from the contractor in the same manner and for the same time that it withholds the portion allocable to the City Share.

**3. M&H Letter of Credit.** To secure performance of M&H's obligations under Sections 1 and 2, M&H shall provide the City with an irrevocable, unconditional letter of credit containing terms substantially the same, in the exclusive judgment of the Sacramento City Attorney's Office, as those in the sample letter of credit attached to this agreement as Exhibit C. The financial institution that issues the letter of credit must be a commercial bank lawfully operating within the United States and acceptable to the City in the exclusive judgment of the Sacramento City Treasurer's Office.

- (a) Within 60 days after the effective date of this agreement, M&H shall identify for the City the financial institution that will issue the letter of credit and shall provide to the City, for the City's review and approval, the form of the proposed letter of credit. The City shall promptly notify M&H whether the financial institution and the form are acceptable or unacceptable. If the form is unacceptable, then the City's notice must also identify the deficiencies.
- (b) Before the City issues a letter giving notice of its intent to award a contract for construction of the Project, the City shall notify M&H of the amount of the lowest responsive bid from a responsible bidder. The amount of the letter of credit will be calculated using that bid amount and the formula in Exhibit D.
- (c) Notwithstanding any other provision of this agreement, if, on the tenth day before the meeting of the Sacramento City Council at which the award of a contract for construction of the Project will be on the agenda, M&H has not provided a letter of credit from a financial institution acceptable to the City and in a form acceptable to the City, then this agreement will terminate in accordance with Section 21(b).

- (d) If M&H fails to perform under Section 2 when required, then the City may draw on the letter of credit an amount equal to the amount then due from M&H, and a draw that does not exhaust the letter of credit will be a partial draw that leaves the balance of the letter of credit intact. The City may also draw on the letter of credit in accordance with the terms of the letter of credit. At the end of each calendar quarter while the letter of credit is in effect, the City shall instruct the issuer of the letter of credit to reduce the amount of the letter by the amount of payments M&H made under this agreement during the quarter.
- (e) The City shall release the letter of credit within 10 days after the City has paid the final retention for the Project. Until then, M&H shall maintain the letter of credit in effect as originally issued or as properly reduced, renewed, or replaced.

**4. Reimbursement for Design and Engineering Costs; Pre-construction Reconciliation.**

- (a) Besides funding its portion of Shared Cost, M&H has advanced \$938,662.24 to the City for the design and engineering of the Project. To the extent this amount pertains to design or engineering of the improvements funded with the Shared Cost, the City shall credit it against the Delta Shore Share. In addition to funding its portion of the Shared Cost, the City advanced \$6,328,413.96 to M&H for the Delta Shores Share and the Stone-Boswell Share of design and engineering for the Project.
- (b) Within 15 days after the City issues a notice of intent to award a contract for construction of the Project, M&H and the City shall jointly perform a reconciliation of pre-construction Project Costs (sometimes called a “true up”), through which they will offset amounts M&H then owes the City against amounts the City then owes M&H, including the amounts described in Section 4(a). As part of the reconciliation, the parties shall provide each other with backup information to substantiate the amounts of the pre-construction costs.
  - (1) If, as anticipated, the reconciliation indicates that M&H owes the City more than the City owes M&H, then M&H shall deliver to the City, no later than 10 days before the meeting of the Sacramento City Council at which the award of a contract for construction of the Project is on the agenda, a check for the amount owed. The City shall not cash the check until after the award of the contract. If the City does not award a contract, then the City shall return the un-cashed check to M&H within two business days after the decision not to award.
  - (2) If the reconciliation indicates that the City owes M&H more than M&H owes the City, then the City shall credit the amount owed against the amounts M&H owes under Section 2.

5. **Payment and Funding of the City Share and any Delay Charges.** The City shall pay each portion of the City Share, when due, from any combination of the following financial sources: the City's building excise tax, also known as the major street construction tax (City Code chapter 3.36); the state gas tax; the State Transportation Improvement Program (STIP); the Sacramento County Measure A sales tax, which is dedicated to transportation improvements; and the federal Regional Surface Transportation Program (RSTP), which is administered by the Federal Highway Administration. The City has identified sufficient monies to fund the entire City Share, as shown in Exhibit E to this agreement, and shall not reprogram or reallocate those monies for other projects in the City. The City is not obligated to sell bonds to fund the Project Cost or any portion of it. **In addition, the City is not obligated to pay the Project Cost or any portion of it from the City's General Fund, and there shall be no recourse to the City's General Fund for the Project Cost or any amount incurred or owed that is related in any way to the Project or this agreement.** The City shall not use any of the funds paid by M&H to pay the City Share. M&H is not obligated to provide advance funding for the City Share. M&H is also not obligated to pay any share of the interest charges, delayed-payment fees, or other charges that the general contractor may require from the City as a condition of allowing the City to make delayed payments for any portion of the City Share ("**Delay Charges**"). Delay Charges are not part of the Shared Cost but are subject to the restrictions in this Section 5.

6. **Reimbursement to M&H for Advance Payments of the Stone-Boswell Share and the Enhancement Cost.** To the extent allowed by law, and at the earliest possible time, the City shall reimburse M&H for M&H's advance payments of the Stone-Boswell Share (including M&H's reimbursement to the City under Section 4 for the Stone-Boswell Share of design and engineering) and of 16% of the Enhancement Cost, as follows:

(a) *Development Agreements.* The City shall in good faith attempt to negotiate and enter into, with each willing owner of the Stone-Boswell Property or any portion of it, a development agreement as authorized by California Government Code sections 65864 through 65869.5 and City Code chapter 18.16. The City shall not enter into any development agreement with any owner of the Stone-Boswell property unless the development agreement includes a requirement that the owner pay to the City, before the City signs and records the agreement, a fee calculated as follows:

(1) Multiply the sum of the Stone-Boswell Share and 16% of the Enhancement Cost by a fraction with a numerator equal to the gross acreage subject to the development agreement and a denominator equal to the total acreage of the Stone-Boswell Property. Neither the numerator nor the denominator is to include any acreage then reserved or entitled for open-space or governmental uses.

- (2) Adjust the resulting product in Section 6(a)(1) using the cost-adjustment procedure in Exhibit F to this agreement.
- (b) *Development-Impact Fees.* For any portion of the Stone-Boswell Property that is not subject to a development agreement entered into in accordance with Section 6(a), the City shall reimburse M&H from development-impact fees imposed in accordance with the Financing Plan (as updated from time to time) and applicable law (including the California Mitigation Fee Act\*), as follows:
- (1) The following definitions apply in this Section 6(b):
    - (A) **“Entitlement”** means any of the following: a master parcel map (City Code sections 16.32.160 through 16.32.240), a subdivision map or parcel map (City Code sections 16.12.020 and 16.12.030), or a building permit (City Code chapter 15.08).
    - (B) **“Reimbursement Amount”** means the amount of the Stone-Boswell Share and the 16% of the Enhancement Cost attributable to property that is subject to an Entitlement, calculated as follows:
      - (i) Multiply the sum of the Stone-Boswell Share and 16% of the Enhancement Cost by a fraction with a numerator equal to the gross acreage subject to the Entitlement and a denominator equal to the total acreage of the Stone-Boswell Property. Neither the numerator nor the denominator is to include any acreage then reserved or entitled for open-space or governmental uses.
      - (ii) Adjust the resulting product in Section 6(a)(1) using the cost-adjustment procedure in Exhibit F to this agreement.
    - (C) **“Updated Financing Plan”** means the Financing Plan as updated to reflect the land uses authorized by the Entitlement for which a fee is collected.
  - (2) The City shall require, as a condition of approval for the first Entitlement on any portion of the Stone-Boswell Property, the payment to the City of a development-impact fee equal to the amount of the Shared Cost and

---

\* See chapter 5 (beginning with section 66000), chapter 6 (beginning with section 66010), chapter 7 (beginning with section 66012), chapter 8 (beginning with section 66016), and chapter 9 (beginning with section 66020) in division 1 of title 7 of the California Government Code.

the Enhancement Cost attributable to that portion, calculated in accordance with Section 6(b)(3). The City shall collect the fee, and the fee will be due and payable, as follows:

- (A) Master parcel maps. The fee will be due and payable on or before recordation of the final map for each master parcel.
  - (B) Subdivision and parcel maps. The fee will be due and payable on or before recordation of a final map or a parcel map.
  - (C) Building permits. As of the date of this agreement, the zoning designation of the Stone-Boswell Property comprises a 15-acre parcel, a 37-acre parcel, and a 73-acre parcel. The 15-acre parcel and the 73-acre parcel are zoned R-1A (Single-Family Alternative Zone). The 37-acre parcel is zoned R-1 (Standard Single-Family Zone).
    - (i) If, while the zoning of a parcel is the same as it was on the date of this agreement, a special permit is sought for a use authorized under the zoning designation for that parcel, then the City will not issue building permits for construction in accordance with the special permit until the fee for the parcel is paid.
    - (ii) If the zoning designation of a parcel is changed to allow large-scale office, commercial, hospital, manufacturing, or industrial uses, then the City will not issue building permits for the rezoned parcel until the fee for the parcel is paid.
- (3) The fee will equal the sum of the amounts of the Shared Cost and the Enhancement Cost that are attributable under the Updated Financing Plan to the portion of the Stone-Boswell Property subject to the Entitlement. The City shall calculate the fee as follows:
- (A) Add the portion of the Project Share attributable under the Updated Financing Plan to the property subject to the Entitlement and the portion of the Enhancement Cost attributable under the Updated Financing Plan to the property subject to the Entitlement.
  - (B) Adjust the resulting sum in Section 6(b)(3)(A) using the cost-adjustment procedure in Exhibit F to this agreement.

- (4) If, because of restrictions imposed by law (including the California Mitigation Fee Act), the fee that the City collects for a property subject to an Entitlement is less than the Reimbursement Amount for that property, calculated in accordance with Section 6(b)(1)(B), then the City shall bear the shortfall and shall pay the amount of the shortfall to M&H in accordance with Section 6(c) from the financial sources available for the Project, identified in Section 5.
  - (5) If the City approves an Entitlement for a portion of the Stone-Boswell Property and does not collect the fee required by this Section 6(b) for reasons other than restrictions imposed by law (including the California Mitigation Fee Act), then the City shall pay the amount of the uncollected fee to M&H in accordance with Section 6(c) from the financial sources available for the Project, identified in Section 5.
- (c) *Reimbursement to M&H.* The City shall pay to M&H, within 60 days after collection, each fee the City collects in accordance with Section 6(a) or Section 6(b). In addition, if the City is obligated under Section 6(b)(5) to pay M&H for an uncollected fee, then the City shall pay to M&H, within 60 days after the date the fee should have been collected, the amount of the uncollected fee. If the City does not pay a fee within the 60 days, then, beginning with the 61<sup>st</sup> day, interest will accrue on the fee at the annual rate (simple interest, calculated daily) of either 8% or prime plus 2%, whichever is greater. M&H may offset any unpaid fees and any accrued interest against any future City fees that apply to the development of the Delta Shores Project (e.g., development fees, permit fees).

## **7. Contributions from Future Owners.**

- (a) If, as anticipated, M&H sells or transfers portions of the Delta Shores Project to the Future Owners, then, except as provided in Section 7(b), the City shall reimburse M&H for the Future Owners' fair share of the Project Cost. The City shall do this by requiring all Future Owners who seek to develop land within the Delta Shores Planning Area, as depicted on Exhibit G to this agreement, to participate in public-financing mechanisms that the City implements in accordance with the Financing Plan, except that the City shall use the cost-adjustment procedure in Exhibit F to adjust the amount of any reimbursement to M&H under this Section 7. Such public-financing mechanisms include but are not limited to development-impact fees and community facilities districts. The City shall reimburse M&H from revenues generated through the public-financing mechanisms, and only from those revenues, by paying the revenues to M&H within 60 days after they become available to the City. M&H's right to reimbursement under this Section 7(a) expires when M&H has been fully reimbursed in accordance with this agreement for the Future Owners' fair share of the Project Cost.

- (b) As an alternative to Section 7(a), M&H may elect, in its sole and absolute discretion, to enter into separate reimbursement agreements with the Future Owners. Reimbursement under those agreements will be in lieu of reimbursement through a public-financing mechanism. M&H shall provide the City with copies of these agreements within 30 days after entering into them, but the City will have no responsibility for negotiating, administering, or enforcing these agreements.

**8. Review of Project Records; Final Project Accounting.**

- (a) The City shall provide M&H and M&H's accountants, auditors, and attorneys with access during the City's normal business hours to all non-privileged records that pertain to the Project.
- (b) M&H may request an audit of the Project Cost and the City's payment of the Project Cost at any time and from time to time.
  - (1) If M&H requests an audit, then M&H and the City shall jointly select the auditor and shall pay the cost of the audit, which is not a Project Cost, as follows: if the auditor determines that the City has overcharged M&H for the Delta Shores Share, the Stone-Boswell Share, and the Enhancement Cost by two percent or more, then the City alone shall pay the cost of the audit; otherwise, M&H alone shall pay the cost of the audit.
  - (2) If an audit reveals that the amount the City previously determined to be the Delta Shores Share, the Stone-Boswell Share, or the Enhancement Cost was incorrect, then the City shall correct the error. If the error resulted in an overpayment, then the City shall promptly return to M&H the amount overpaid or apply that amount against M&H's future payments. If the error resulted in M&H's underpayment of the Delta Shores Share, the Stone-Boswell Share, or the Enhancement Cost, then M&H shall promptly pay the City the amount underpaid.
- (c) Within 180 days after the City records a notice of completion for the Project, the City shall give M&H a final accounting of the total Project Cost, which must include a final calculation of the City Share, the Delta Shore Share, the Stone-Boswell Share, and the Enhancement Cost plus a summary of the total contributed by each party to pay the Project Cost (the "**Final Project Accounting**").
  - (1) If the Final Project Accounting shows that M&H's total paid contribution was in excess of the final calculation of the Delta Shore Share, the Stone-Boswell Share, and the Enhancement Cost, then the City shall refund the overpayment to M&H within 60 days after delivering the Final Project Accounting to M&H. If the City does not refund the overpayment within 60 days, then, beginning with the 61<sup>st</sup> day, interest will accrue on the over-

payment at the annual rate (simple interest, calculated daily) of either 8% or prime plus 2%, whichever is greater. As an alternative to a refund, M&H may offset any non-refunded overpayment (with any accrued interest) against any future City fees that apply to the development of the Delta Shores Project (e.g., development fees, permit fees).

- (2) If the Final Project Accounting shows that the M&H's total paid contribution is less than the final calculation of the Delta Shore Share, the Stone-Boswell Share, and the Enhancement Cost, then M&H shall pay the amount of the underpayment to the City within 60 days after receiving the Final Project Accounting. If M&H does not pay the underpayment within 60 days, then, beginning with the 61<sup>st</sup> day, interest will accrue on the underpayment at the annual rate (simple interest, calculated daily) of either 8% or prime plus 2%, whichever is greater.
- (3) The Final Project Accounting will not be subject to challenge, except as follows: M&H will be entitled to review and audit the Final Project Accounting during the 90 days after M&H receives it.
  - (A) During the 90-day period, the City shall provide to M&H, within 10 days after receiving M&H's written request, complete and legible copies of any relevant books, records, and source documents.\*
  - (B) Before the 90-day period expires, M&H may notify the City in writing that it disputes one or more items in the Final Project Accounting, describing its position in reasonable detail, with supporting documentation if relevant. Within 30 days after the City receives the notice, the City and M&H shall meet in the City Manager's Office and attempt in good faith to resolve the dispute. If M&H and the City do not resolve the dispute within 60 days after the City receives M&H's notice, then M&H may initiate litigation over the Final Project Accounting.

**9. Project Right-of-Way.** The rights-of-way necessary for the Project are generally depicted on the diagram attached as Exhibit H to this agreement. When determining each party's share of the Project Cost, the acquisition costs of the rights-of-way will be included as part of the Project Cost.

---

\* In the context of construction, representative "source documents" are daily inspection reports, monthly quantity takeoffs, force-account logs, certified payroll reports, schedules of values, and change orders that document and support the monthly progress payments to the contractor. In the context of design, representative "source documents" are City budget-and-expense reports, City labor reports, consultant invoices, work orders from the City's Real Estate Services Department, and consultant payment logs—all of which show whom, what, and how much the City paid for items.

- (a) The City shall compensate M&H in accordance with this agreement and Section 9.A of the Development Agreement for rights-of-way across lands owned by M&H and provided to the City for the Project, whether the City acquires the rights-of-way by dedication, purchase, or eminent domain.
- (b) Within 30 days after the City has paid in full for, and acquired title to, all of the needed rights-of-way, M&H and the City shall jointly perform a reconciliation of the City Share, the Delta Shores Share, and the Stone-Boswell Share of the acquisition costs. Within 30 days after the reconciliation is complete, M&H shall pay the City the amount M&H owes for the Delta Shores Share and the Stone-Boswell Share of the acquisition costs.

**10. Interchange Landscaping.** As noted in Paragraph B of the Background, the Project Scope does not include the installation or maintenance of landscaping for the interchange at Cosumnes River Boulevard and Interstate Highway 5. The contract for the installation and the contract for maintenance of that landscaping will be separate from the contract for construction of the Project, and the City and M&H shall negotiate in good faith on a separate cost-sharing agreement for that landscaping work.

**11. Transportation Development Impact Fees.** In recognition of M&H's substantial financial investment in the Project, and to encourage development of the Delta Shores Project, the City shall exempt the Delta Shores Project from all transportation- or traffic-related development-impact fees (each, a "TDIF") the City itself initiates and imposes after the effective date of this agreement, subject to the following:

- (a) The TDIF exemption does not cover any TDIF imposed under chapter 18.48 of the Sacramento City Code or any TDIF that a federal, state, or local agency (other than the City) imposes and requires the City to collect to mitigate traffic impacts from development of the Delta Shores Project.
- (b) The TDIF exemption expires 10 years after the date the City issues a notice to proceed for construction of the Project. After that expiration date, the Delta Shores Project will be subject to a TDIF only when and if the aggregate amount of all TDIFs that would then apply to the Delta Shores Project exceeds the aggregate amount of M&H's eligible payments to the City under this agreement, with those payments adjusted annually using the adjustment procedure in Section 3 of Exhibit H to the Development Agreement. As used in this Section 11(b), the phrase "M&H's eligible payments" means M&H's payments to the City, under Section 2, of the Delta Shores Share and 84% of the Enhancement Cost; *plus* M&H's payment to the City, under Section 4, of the Delta Shores Share of design-and-engineering costs; *minus* any payments M&H has received from the City in accordance with Section 7(a) or to which M&H is entitled under reimbursement agreements entered into in accordance with Section 7(b).

12. **City's Discretion.** This agreement does not limit, control, commit, condition, or influence in any manner the City's police power or its discretion to approve, conditionally approve, or deny any or all of the development of the Delta Shores Project. But this agreement does not modify the City's or M&H's obligations under the Development Agreement.
13. **Project Management.** The City, in consultation with M&H, has sole responsibility for managing construction of the Project, including advertising for bids, awarding a contract to the successful bidder, entering into a construction contract and a construction-management agreement, relocating utilities, entering into change orders, and making payments to the contractor in accordance with the Project's construction plans and specifications, the City's Standard Specifications, and this agreement, subject to the following:
- (a) *Contracts.* The City shall give M&H a copy of each contract the City enters into for the Project, including a copy of the construction contract and a copy of the professional-services agreement for construction management, within 10 days after the contract is effective. This requirement applies only to contracts included in the Shared Cost.
  - (b) *Contract Requirements.* The City shall require that the general contractor construct the Project in accordance with the City's standard construction contract for public projects over \$25,000 and in accordance with all applicable laws, regulations, orders, and other governmental requirements in effect during construction.
  - (c) *Change Orders.* Before entering into any change order, the City shall provide a copy of it to M&H. The change order must list each addition to, or reduction in, a work item; the reason for each addition or reduction; the increased or decreased cost that results from each addition or reduction; the total increase or decrease in the contract amount that results from the change order; and any additional work days associated with the change order.
    - (1) If M&H does not object to a change order, in writing, within three business days after receiving it, then M&H will be deemed to have accepted it, except as provided in Section 13(b)(2).
    - (2) M&H will not be obligated for any change order to which any of the following applies unless M&H expressly approves the change order in writing: (A) the aggregate cost of all change orders previously entered into exceeds \$4,000,000; (B) entering into the change order would cause the aggregate cost of all change orders to exceed \$4,000,000; or (C) the change order is for work not consistent with the Project Scope.

(d) *Construction Management.*

(1) In consultation with M&H, the City shall request proposals from consultants for construction-management services, including the following: construction management, inspection, construction staking, materials testing, and biological monitoring. Alternatively, and at the City's sole discretion, the City may have City employees perform some or all of these services, in whole or part, so long as the cost of having City employees perform the services does not exceed the cost submitted for the same services by the top-ranked firm in the City's request-for-proposals process. M&H may participate, through its designated representative, in the City's cost negotiations with the top-ranked firm. Whether provided by a consultant or by City employees, the cost of construction-management services will be a Shared Cost, except as otherwise provided in Section 13(d)(2).

(2) An M&H employee, Barron Caronite (or a suitable replacement), will be part of the construction-management team under a subconsultant agreement between the City's construction manager and M&H, which must be in a form acceptable to both the City and M&H. Mr. Caronite's cost will consist only of wages, benefits, and overhead (i.e., no markup), and M&H shall submit to the City's construction manager documents that verify compliance with this limitation. Even though Mr. Caronite's cost is a Shared Cost, the City Share of Mr. Caronite's cost will not exceed \$125,000 a year during Project construction, which for purposes of this Section 13(d)(2) begins on the date the City issues a notice to proceed to the general contractor and ends on the date the City records a final notice of completion for the Project. M&H shall pay all costs associated with Mr. Caronite's services that exceed the annual \$125,000 limit on the City Share.

(e) *M&H Assumption of Project Management.* M&H is entitled to assume sole responsibility for managing construction of the Project if, after construction begins, the City discontinues construction for more than 30 days because the sources of funding for the City Share (described in Section 5) are no longer available or adequate, and the City has identified no alternative sources of funding. To exercise this right, M&H must give the City a written notice of assumption.

(1) Within 10 days after receiving the notice of assumption, the City must either resume construction or comply with all the following:

(A) release in full the letter of credit provided under Section 3;

- (B) assign to M&H all contracts for the design and construction of the Project, including supply contracts; and
  - (C) deliver to M&H all documents, permits, plans, and specifications M&H needs to assume control of the Project and complete it.
- (2) To facilitate M&H's exercise of its rights under this Section 13(e), the City shall include in all design, construction, and supply contracts the City's right to assign them to M&H without the contractor's consent and with no M&H liability for the City's obligations arising before, or the City's breaches occurring before, the assignment. In addition, the City shall require that all payment and performance bonds for the work name M&H as a dual obligee under a dual-obligee rider acceptable to M&H.
- (3) Upon assumption of sole responsibility for managing construction of the Project, M&H will have the right and power to do the following:
  - (A) Modify or terminate contractual arrangements in its discretion.
  - (B) Draw on and use proceeds from payment and performance bonds for the work.
  - (C) Take all other actions M&H reasonably determines to be necessary to complete the Project.
  - (D) Perform all other non-governmental acts for the Project to the same extent as the City could have performed them.
- (4) If M&H assumes sole responsibility for managing construction of the Project, then the following apply:
  - (A) The City will remain liable under this agreement for payment of the City Share and any Delay Charges.
  - (B) If M&H pays all or part of the City Share or any Delay Charges, then the City shall reimburse M&H for those payments as soon as funding is available from the financial sources available for the Project, identified in Section 5. The City shall reimburse M&H on a first-priority basis from those sources and shall not use any funds from those sources for any other City projects until M&H has been fully reimbursed for all payments and interest in accordance with this Section 13(e)(4).
  - (C) The amount to be reimbursed under Section 13(e)(4)(B) will be the payments M&H made plus interest at the annual rate (simple

interest, calculated daily) of either 8% or prime plus 2%, whichever is greater, accruing from the date M&H makes the payments to the date the City reimburses M&H.

- (D) As an alternative to reimbursement, M&H may offset all or part of the amounts the City owes it under this Section 13(e)(4) against any City fee the City imposes on development of the Delta Shores Project (e.g., City development fees or City permit fees) after M&H has assumed responsibility.

**14. Dispute Resolution.** The following procedures govern all disputes that relate to the Project or this agreement and arise before the City records the final notice of completion for the Project.

- (a) Either party may give the other party written notice demanding that the parties meet and attempt in good faith to resolve the dispute through negotiation. The parties shall meet within three business days after the notice is effective.
- (b) If the parties do not resolve the dispute through negotiation within five business days after they first meet, or if the parties fail for any reason to meet and negotiate within three business days after a notice demanding negotiation is effective, then, within ten business days after the notice demanding negotiation is effective, either party may give the other party written notice demanding binding final-offer arbitration\* in accordance with the following procedures:
  - (1) The dispute will be submitted to JAMS for arbitration before a single arbitrator in Sacramento County, California, and the parties waive any right to an oral hearing before the arbitrator. The parties shall select the arbitrator as follows:
    - (A) Within three business days after the notice demanding arbitration is effective, each party shall submit to the other a list naming three proposed arbitrators and ranking them 1, 2, and 3 in descending order of preference.
    - (B) If more than one name appears on both lists, then the rankings for those arbitrators will be added, and the arbitrator who has the lowest sum will be selected. If there is a tie, then the parties will attempt in good faith to select one of the tied arbitrators.

---

\* "Final-offer arbitration," also known as "baseball arbitration," requires the City and M&H to submit their "final offers" to the arbitrator, who may choose only one. (See Black's Law Dict. (7<sup>th</sup> ed. 1999) p. 100, col. I.)

- (C) If only one name appears on both lists, then that arbitrator will be selected.
  - (D) If no name appears on both lists, or if there is a tie in the rankings of arbitrators, then the parties shall attempt in good faith to select one of the six arbitrators listed.
  - (E) If the parties do not select the arbitrator within six business days after the notice demanding arbitration is effective, then either party may ask JAMS to select the arbitrator as quickly as practicable.
- (2) Within 10 business days after selection of the arbitrator, the parties shall exchange with each other and submit to the arbitrator their written proposals for resolving the dispute. Each proposal must specify the amount of money damages that the party offers or demands and may include any supporting evidence (which must be submitted by affidavit or declaration under penalty of perjury). Within 10 business days after exchange and submission of proposals, either party may submit to the other party and to the arbitrator either or both of the following:
- (A) additional evidence in support of the party's proposal or in opposition to the other party's proposal; and
  - (B) a revised, final proposal.
- (3) The arbitrator will select one of the two proposals within 20 business days after the date on which both parties have submitted their original proposals (as opposed to any revised proposals submitted under Section 14(b)(2)(B)). The arbitrator's decision will be final, and any court with jurisdiction may render judgment on it.
- (A) If the arbitrator's decision is in the City's favor, then M&H shall pay the City the amount of the award as soon as practicable. If M&H fails to pay the award, then the City may collect the award by drawing on the letter of credit M&H provides under Section 3.
  - (B) If the arbitrator's decision is in M&H's favor, then the City shall pay M&H the amount of the award as soon as practicable from the financial sources available for the Project, identified in Section 5. If the City fails to pay the award or otherwise remedy the matter in dispute as directed by the arbitrator, then M&H will be entitled to offset the amount of the award against any further payments to City under this agreement or against any future City

fees that apply to the development of the Delta Shores Project (e.g., development fees, permit fees).

- (4) If neither party gives a timely notice demanding binding arbitration, then either party may pursue any other remedy at law or in equity and any other remedy that might be specified in this agreement. All remedies are cumulative, and the exercise of one remedy will not preclude the exercise of any other remedy.
  - (5) Each party shall pay half of JAMS's fees for the arbitration. The parties shall pay their own attorneys' fees and costs.
- (c) Any negotiation or arbitration under this Section 14 will not interrupt construction of the Project, which will continue according to schedule during the negotiation or arbitration.
- 15. Assignment.** M&H may assign its right to reimbursement under this agreement, in whole or in part, without the City's consent. To be effective, an assignment must be in writing and signed by representatives of M&H and the assignee, and a copy must be provided to the City.
- 16. Indemnification.** This agreement is for funding and reimbursement purposes only, and the City retains sole and absolute final approval rights, as described in Section 13, over the construction and other services necessary to complete the Project. Accordingly, the City shall indemnify, defend, protect, and hold M&H and M&H's officers, partners, members, shareholders, employees, agents, and consultants harmless from all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) (collectively "**Claims**") that arise out of, or are in any way related to, caused by, or based upon, M&H's provision of funding for the Project Costs; the City's management of the Project; or the City's payment of contractors, engineers, material suppliers, laborers, and other vendors providing labor, goods, and services for the Project. This Section 16 does not apply to any Claims that involve disputes between the City and M&H regarding payments the City is obligated to make to M&H under this agreement. This Section 16 also does not apply to Claims arising from M&H's management of the Project if M&H assumes responsibility for management in accordance with Section 13(e). The City's obligation under this Section 16 will survive the expiration or termination of this agreement.
- 17. Notices.** Any notice given under this agreement must be in writing and will be effective only when mailed or delivered in the manner provided by this Section 17 to the address set forth in Section 17(a) or Section 17(b), as appropriate. A mailed notice will be effective on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice sent in any other manner will be effective when actually delivered. A party may change

its address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

(a) If to City: Director of Transportation  
City of Sacramento  
915 "I" Street, Room 2000  
Sacramento, CA 94814  
Re: Cosumnes River Boulevard/I-5 Project

(b) If to M&H: M&H Realty Partners VI, L.P.  
3580 Carmel Mountain Road, Suite 260  
San Diego, CA 92130  
Attn: Scott McPherson

*with a copy to—*

Law Offices of Gregory D. Thatch  
1730 "I" Street, Suite 220  
Sacramento, CA 95814  
Attn: Gregory D. Thatch, Esq.

- 18. Damage to Project; Insurance.** Until the Project is completed, the City shall carry, or shall require the general contractor for the Project to carry, casualty insurance that will provide full replacement-cost coverage if the Project is damaged or destroyed, in whole or part, by fire, flood, earthquake, or any other insurable cause. The insurance must be endorsed to name M&H as an additional insured as its interest may appear, and the City shall provide M&H with a copy of the endorsement. The City shall use the proceeds of such insurance to repair the damage and shall diligently prosecute the work to completion without any increase in the Delta Shore Share, the Stone-Boswell Share, or the Enhancement Cost. The City shall consult with M&H before initiating litigation over insurance claims; if the parties agree to pursue such litigation, then the cost of the litigation (including attorneys' fees) will be a Shared Cost.
- 19. Access to Project.** The City shall allow M&H and its representatives and consultants to enter upon the Project site and inspect the progress of construction at all reasonable times, subject to any reasonable safety precautions the City or its contractors require. The City shall allow M&H and its representatives and consultants to examine and copy, during the City's normal business hours, all plans, shop drawings, and specifications kept at the Project site, the offices of Project consultants, or the City's offices.
- 20. Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits A, B, C, D, E, F, G, and H are part of this agreement. **"Include"** and its variants are not restrictive. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to."

## 21. Early Termination.

- (a) *Excessive Bid.* If the notice that the City gives M&H in accordance with Section 3(b) states that the amount of the lowest responsive and responsible bid for construction of the Project is more than \$66,000,000, then M&H will be entitled to terminate this agreement by giving the City written notice of termination within 21 days after the City's notice to M&H is effective. Upon such termination, the parties will have no further obligations under this agreement.
- (b) *Letter of Credit.* If M&H does not provide a letter of credit in accordance with Section 3, then this agreement will terminate automatically, and the parties will have no further obligations under this agreement.
- (c) *Failure to Establish a Fee Program.* If, by the 15<sup>th</sup> day before the meeting of the City Council at which the award of a contract for construction of the Project is on the agenda, the City has not enacted an ordinance establishing a program for imposing development-impact fees on the Stone-Boswell Property in accordance with the Financing Plan and the California Mitigation Fee Act, then this agreement will terminate automatically, and the parties will have no further obligations under this agreement.
- (d) *Failure to Timely Commence Construction.* If construction of the Project does not begin before July 1, 2013, then this agreement will terminate automatically and the parties will have no further obligations under this agreement.

**22. Remedies and Waivers.** Subject to Sections 5 and 14, each party is entitled to all remedies available at law or in equity in addition to the remedies specified in this agreement. All remedies are cumulative, and the exercise of one remedy will not preclude the exercise of any other remedy. A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving party.

**23. The City's Representations.** As an inducement for M&H to enter into, and perform its obligations under, this agreement, the City represents as follows:

- (a) The City has the power, authority, and legal right to engage in the transactions contemplated by this agreement.
- (b) The City's execution and delivery of this agreement and the carrying out of the transactions contemplated by this agreement will not (1) conflict with, or result

in a breach of, any law, regulation, order, or other requirement of any court or other government body; or (2) constitute a default (with or without notice or lapse of time) under any agreement other instrument to which the City is a party or by which the City is bound.

- (c) The City has no knowledge of any violations of federal, state, or local laws, regulations, orders, or other requirements affecting the Project or the City's ability to perform its obligations under this agreement.
- (d) The persons signing this agreement on the City's behalf have the full power and right to do so, and their actions have been approved by the Sacramento City Council, which intends that the City be fully bound by those actions for all purposes.
- (e) The City will pay promptly when due all bills and other obligations the City incurs for the Project.

**24. M&H's Representations.** As an inducement for the City to enter into, and perform its obligations under, this agreement, M&H represents as follows:

- (a) M&H has the power, authority, and legal right to engage in the transactions contemplated by this agreement.
- (b) M&H's execution and delivery of this agreement and the carrying out of the transactions contemplated by this agreement will not (1) conflict with, or result in a breach of, any law, regulation, order, or other requirement of any court or other government body; or (2) constitute a default (with or without notice or lapse of time) under any agreement other instrument to which M&H is a party or by which M&H is bound.
- (c) M&H has no knowledge of any violations of federal, state, or local laws, regulations, orders, or other requirements affecting the Project or M&H's ability to perform its obligations under this agreement.
- (d) The persons signing this agreement on M&H's behalf have the full power and right to do so, and their actions have been approved by M&H's general partner, which intends that M&H be fully bound by those actions for all purposes.
- (e) M&H will pay promptly when due all bills and other obligations M&H incurs for the Project.

**25. Partial Invalidity.** If a court of law with jurisdiction determines that any part of this agreement is unlawful or unenforceable, then the parties shall promptly meet and attempt in good faith to revise this agreement (and, if appropriate, any documents ex-

ecuted under this agreement) to give effect to their mutual intention when they entered into this agreement.

26. **Authorized Signatures.** Each person who signs this agreement on behalf of a party represents that he or she is authorized to sign this agreement for that party and to bind that party to the obligations imposed on it by this agreement.
27. **Execution of Agreement.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
28. **Further Assurances.** Upon demand, each party shall do any act or execute any additional documents that may be reasonably required to comply with this agreement.
29. **Time.** Time is of the essence in the performance of this agreement.
30. **No Third-Party Beneficiaries.** This agreement is made for the sole benefit of the parties and their successors and assigns.
31. **Computation of Time.** The time within which any act under this agreement must be done is to be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday observed by the City, then the time period is to be extended so that it ends on the next succeeding day that is not a Saturday, Sunday, or legal holiday. As used this agreement, “**day**” means calendar day unless a provision specifically refers to business days. “**Business day**” means any day the City’s offices located at 915 I Street, Sacramento, California, are open to the public.
32. **Relationship of Parties.** This agreement does not create the relationship of principal and agent between the City and M&H, nor does it create a partnership, a joint venture, or any other association between the City and M&H.
33. **Jurisdiction.** The City and M&H consent to the exclusive jurisdiction of California courts as to any matter arising under, or pertaining to, this agreement.
34. **Effective Date.** This agreement is effective on the date the City and M&H have both signed it, as indicated by the dates in the signature blocks below.
35. **Integration and Modification.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_  
John F. Shirey, City Manager  
Date: January \_\_, 2012

Attest:  
Sacramento City Clerk

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

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Senior Deputy City Attorney

**M & H Realty Partners VI, L.P.**

By: MHRP VI, L.P.  
Its: General Partner

By: Merlone/Hagenbuch VI, Inc.  
Its: General Partner

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

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

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

Title

Date: January \_\_, 2012

Approved as to Form  
Law Offices of Gregory D. Thatcher

By: \_\_\_\_\_  
Attorneys for M & H Realty Partners VI, L.P.

## Exhibit “A”

### Project Scope

The Project Scope will be as set forth in the final plans and specifications the City approves and uses to solicit bids and award the construction contract for the Project. When approved, those plans and specifications will be deemed incorporated into this agreement and made part of it. The Project Scope will include but not be limited to the following:

- ❖ Removal of the existing Stonecrest Bridge overcrossing of Interstate Highway 5 (“I-5”).
- ❖ Construction of a new interchange at Cosumnes River Boulevard (“CRB”) and I-5.
- ❖ Construction of a new 4-lane segment of CRB between Freeport Boulevard and I-5.
- ❖ Construction of a new 6-lane segment of CRB between I-5 and 24<sup>th</sup> Street.
- ❖ Construction of a new 4-lane segment of CRB between 24<sup>th</sup> Street and Franklin Boulevard, including a new 4-lane bridge over the Union Pacific Railroad tracks and Morrison Creek.
- ❖ Landscaping and street lighting along both sides of the new segments of CRB.
- ❖ Construction of drainage improvements, including underground drainage pipes, drain inlets, culverts, and drainage ditches.
- ❖ New and modified traffic signals along the new segments of CRB.
- ❖ M&H’s enhancements to the Project, consisting of (a) a full signal light at Delta Shores Circle and CRB; (b) a half signal light at the driveway between Delta Shores Circle and the northbound on-ramp to I-5, (c) 8”, 12”, 18”, and 24” water lines serving the Delta Shores Project; (d) utility conduits, including a new gas main in the CRB/I-5 bridge to serve the Delta Shores Project; (e) an extended left-turn lane on southbound Freeport Boulevard to eastbound CRB; (f) additional southbound off ramp lane from I-5 to CRB, plus an additional lane on CRB over and across I-5 to Delta Shores Circle; (g) intersection improvements for future subdivision road connections to CRB; and (h) an additional lane on westbound CRB between Delta Shores Circle and the northbound I-5 on ramp.

**Exhibit “B”**  
**Project Cost (Estimated)**

Description	Construction Cost*	Right-of-Way Cost	Project Development*	Total
<b>Shared Cost</b>				
City Share	\$29,568,002	\$1,530,000	\$10,280,000	\$41,378,002
M&H and Stone-Boswell Shares	\$28,398,858	\$1,470,000	\$9,870,000	\$39,738,858
Contingency (6.06%)	\$3,513,140	0	0	\$3,513,140
<b>Total Shared Cost</b>	<b>\$61,480,000</b>	<b>\$3,000,000</b>	<b>\$20,150,000</b>	<b>\$84,630,000</b>
<b>Enhancement Cost (Developers Only)</b>				
• Signal Lights (Half Signal & Delta Shores)	\$471,428	0	\$100,000	\$571,428
• 8” and 12” Water Lines	\$754,285	0	\$160,000	\$914,285
• 18” and 24” Water Mains	\$3,582,857	0	\$760,000	\$4,342,857
• Miscellaneous Utility Crossings	\$94,287	0	\$20,000	\$114,287
• Freeport Extended Turn Lanes	\$141,429	\$40,000	\$30,000	\$211,429
• Interchange Improvements	\$1,159,714	\$63,000	\$246,000	\$1,468,714
• Intersection Improvements	\$1,734,857	\$330,000	\$368,000	\$2,432,857
• 4 <sup>th</sup> Lane on Westbound Cosumnes	\$94,286	\$20,000	\$20,000	\$134,286
Contingency (6.06%)	\$486,857	0	0	\$486,857
<b>Total Enhancement Cost</b>	<b>\$8,520,000</b>	<b>\$453,000</b>	<b>\$1,704,000</b>	<b>\$10,677,000</b>
<b>Total Cost</b>	<b>\$70,000,000</b>	<b>\$3,453,000</b>	<b>\$21,854,000</b>	<b>\$95,307,000</b>

\* “Project Development” includes the full cost to the City (including wages, benefits, direct costs, and overhead) of work on the Project by City personnel and consultants, including the following: real-property agents, civil project managers, professional civil engineers, contract administrators, construction office engineers, civil inspectors, construction-staking crews, labor-compliance personnel, and accounting clerks.

**Exhibit "C"**

**(Sample) Irrevocable Letter of Credit**

Beneficiary: City of Sacramento

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

<sup>c/o</sup> City Treasurer's Office  
City of Sacramento  
915 1 Street  
Historic City Hall, Third Floor  
Sacramento, CA 95814

This irrevocable, unconditional letter of credit is issued to the City of Sacramento (the "**Beneficiary**"), a California municipal corporation, by [name of issuer] (the "**Issuer**") at the request of, and for the account of, [name of applicant] (the "**Applicant**"). It is provided to comply with the Applicant's obligation under section 2 of the following agreement between the Beneficiary and the Applicant (the "**Agreement**"):

*Cost Sharing Agreement*  
*I-5 Interchange & Cosumnes River Boulevard Extension*  
City Agreement No. \_\_\_\_-\_\_\_\_

The Issuer hereby establishes this irrevocable, unconditional letter of credit in the Beneficiary's favor in the amount of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) available with the Issuer, at the address stated below, by payment of the Beneficiary's draft or drafts drawn at sight and accompanied by a signed-and-dated demand letter worded substantially as follows:

"I, [insert "the City Treasurer" or "an official representative"] of the City of Sacramento, California, hereby demand payment under [identify the letter of credit] in the amount of the sight draft that accompanies this letter."

This letter of credit is absolute and unconditional, and it may not be dishonored for any reason before it expires. It is not subject to any offset or defense that may have existed in the past or may exist now or in the future between the Issuer and the Beneficiary, or between the Applicant and the Beneficiary, or between the Applicant and the Issuer.

Each sight draft presented under this letter of credit must be accompanied by this original letter of credit for the Issuer's endorsement on this letter of credit of the amount of the draft. After endorsement, the Issuer will return this letter of credit to the Beneficiary unless it is fully utilized.

This letter of credit expires at the Issuer's close of business on [insert date], subject to the following: this letter of credit will extend automatically for additional 12-month pe-

riods unless the Issuer gives the Beneficiary written notice that this letter of credit will not extend beyond the then-applicable expiration date. A notice of non-extension must be sent to the Beneficiary's address set forth above by certified U.S. Mail (with postage prepaid and a return receipt requested) or by express courier (who must provide a receipt of delivery), and the Beneficiary must actually receive the notice at least 30 days before the expiration date. A notice that is received less than 30 days before the expiration date will be ineffective for all purposes. Upon receiving a timely notice of non-extension, the Beneficiary will be entitled to present a demand letter, in the form specified above, to draw the entire remaining balance of this letter of credit unless a replacement letter of credit has been issued by the Issuer or by another financial institution acceptable to the Beneficiary (in the exclusive judgment of the Sacramento City Treasurer's Office), and the replacement is in substantially the same form as this letter of credit and complies in every respect with the requirements specified in the Agreement (in the exclusive judgment of the Sacramento City Attorney's Office).

The total amount of this letter of credit may be reduced, in the exclusive discretion of the Beneficiary, upon specific written instructions signed by the Sacramento City Treasurer's Office and accompanied by this original letter of credit.

The person who signs below for Issuer represents that he or she has unconditional and full execution authority to sign letter of credit for the Issuer and that this letter of credit is a valid and binding obligation of the Issuer.

This letter of credit may be presented for payment in accordance with the Supplement to the 2007 Uniform Customs and Practice for Documentary Credits for Electronic Presentation (the "eUCP").

This letter of credit is subject to the 2007 Uniform Customs and Practice for Documentary Credits – ICC Pub. No. 600 as supplemented by the eUCP (collectively, "UCP 600") and to the laws of the State of California to the extent they are not inconsistent with UCP 600.

[Issuer's name & address]

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

\_\_\_\_\_  
Name & Title

## Exhibit "D"

### Formula for Calculating the Amount of the Letter of Credit

The formula for calculating the amount of the letter of credit M&H must provide under Section 3 of this agreement is to be calculated using the following formula:

$$L = L_1 + L_2 = m(s + x) + n(u)$$

#### *Definitions of formula terms*

---

- L** = Total amount of the letter of credit.
- L<sub>1</sub>** = Portion of the **L** attributable to work included in the bid, calculated with the following formula to the nearest dollar, plus contingency: **L<sub>1</sub> = m(s + x)**.
- L<sub>2</sub>** = Portion of **L** attributable to outstanding work not included in the bid, calculated with the following formula to the nearest dollar, plus contingency: **L<sub>2</sub> = n(u)**.
- x** = The amount of the lowest responsive and responsible bid for construction of the Project and construction management, rounded to the nearest dollar.
- y** = The portion of **x** allocable to the Enhancements (the cost of which is paid by M&H and Stone-Boswell but not by the City).
- z** = The portion of **x** allocable to the Shared Improvements.
- u** = The cost of all Project work not included in the bid and still outstanding.
- v** = The portion of **u** allocable to the Enhancements (the cost of which is paid by M&H and Stone-Boswell but not by the City).
- w** = The portion of **u** allocable to the Shared Improvements.
- m** = The decimal representing the 49.2% portion of **x** paid by M&H and Stone-Boswell, calculated with the following formula and rounded to four decimal places: **m = (0.492z + y) ÷ x**.
- n** = The decimal representing the 49.2% portion of **u** paid by M&H and Stone-Boswell, calculated with the following formula and rounded to four decimal places: **n = (0.492w + v) ÷ u**.
- s** = The allocation of the \$4 million Project contingency to work included in the bid, calculated with the following formula to the nearest dollar: **s = \$4,000,000[x ÷ (x + u)]**.

### Illustration 1:

Assume that **x** equals \$66,000,000 and that all Project work is included in the construction contract (i.e., **L<sub>2</sub>** = 0). Thus,

$$\begin{array}{ll} \mathbf{x} & = \$66,000,000 & \mathbf{u} & = \$0 \\ \mathbf{y} & = \$10,667,000 & \mathbf{v} & = \$0 \\ \mathbf{z} & = \$55,333,000 & \mathbf{w} & = \$0 \end{array}$$

$$\begin{array}{ll} \mathbf{m} & = [0.492(\$55,333,000) + \$10,667,000] \div \$66,000,000 = \mathbf{0.5741} \\ \mathbf{n} & = \text{Not applicable}^* \\ \mathbf{s} & = \$4,000,000[\$66,000,000 \div (\$66,000,000 + \$0)] = \mathbf{\$4,000,000} \\ \mathbf{L}_1 & = 0.5741(\$4,000,000 + \$66,000,000) = \mathbf{\$40,187,000} \\ \mathbf{L}_2 & = \text{Not applicable (L}_2 = 0) \\ \mathbf{L} & = \mathbf{L}_1 + \mathbf{L}_2 = \mathbf{L}_1 + 0 = \mathbf{\$40,187,000} \end{array}$$

### Illustration 2:

Assume that the winning bid (**x**) is \$66,000,000 and that outstanding Project work (**u**) not included in the bid is \$25,307,000, of which \$2,157,000 is for the Enhancements. Thus,

$$\begin{array}{ll} \mathbf{x} & = \$66,000,000 & \mathbf{u} & = \$25,307,000 \\ \mathbf{y} & = \$10,667,000 & \mathbf{v} & = \$ 2,157,000 \\ \mathbf{z} & = \$55,333,000 & \mathbf{w} & = \$23,150,000 \end{array}$$

$$\begin{array}{ll} \mathbf{m} & = [0.492(\$55,333,000) + \$10,667,000] \div \$66,000,000 = \mathbf{0.5741} \\ \mathbf{n} & = [0.492(\$23,150,000) + \$2,157,000] \div \$25,307,000 = \mathbf{0.5353} \\ \mathbf{s} & = \$4,000,000[\$66,000,000 \div (\$66,000,000 + \$25,307,000)] = \mathbf{\$2,891,345} \\ \mathbf{L}_1 & = 0.5741(\$2,891,345 + \$66,000,000) = \mathbf{\$39,550,521} \\ \mathbf{L}_2 & = 0.5353(\$25,307,000) = \mathbf{\$13,546,837} \\ \mathbf{L} & = \mathbf{L}_1 + \mathbf{L}_2 = \mathbf{\$53,097,358} \end{array}$$

---

\* Mathematically, **n** is meaningless in Illustration 1, as it results in division by zero.

## Exhibit "E"

### Funding Sources for the Project

Expenses	As of 12/31/11		As of 12/31/2012		As of 12/31/2013		As of 12/31/2014		As of 12/31/2015		2016/17		2017/18		2018/19		2019/20		2020/21		2021/22		2022/23		2023/24				
	Design/Environmental	Mobilization, grading embankments and underground for interchange	As of 12/31/2012	As of 12/31/2012	As of 12/31/2013	As of 12/31/2013	As of 12/31/2014	As of 12/31/2014	As of 12/31/2015	As of 12/31/2015	2016/17	2016/17	2017/18	2017/18	2018/19	2018/19	2019/20	2019/20	2020/21	2020/21	2021/22	2021/22	2022/23	2022/23	2023/24	2023/24			
	\$9,000,000																												
RAW and Utilities Construction Engineering	\$2,012,000	\$1,850,000																											
<b>Total Expenses</b>	<b>\$11,012,000</b>	<b>\$9,878,000</b>	<b>\$18,160,000</b>	<b>\$18,160,000</b>	<b>\$10,608,000</b>	<b>\$10,608,000</b>	<b>\$35,000,000</b>	<b>\$35,000,000</b>	<b>\$10,513,000</b>																				
<b>City Share</b>	<b>\$5,594,066</b>	<b>\$5,018,024</b>	<b>\$4,736,084</b>	<b>\$5,387,848</b>	<b>\$16,845,280</b>	<b>\$5,340,604</b>																							
<b>City Sources</b>	<b>\$12,862,000</b>	<b>\$10,500,000</b>	<b>\$13,854,000</b>	<b>\$7,607,000</b>	<b>\$0</b>	<b>\$3,588,000</b>	<b>\$3,698,000</b>	<b>\$3,698,000</b>	<b>\$3,588,000</b>	<b>\$3,698,000</b>																			
50.8% STIP Allocation Measure A Cosumes Allocation* Richards I-5 Allocation																													
Prop1 - B 100% SLPP Match Richards I-5																													
<b>Total City Funding</b>	<b>\$12,862,000</b>	<b>\$10,500,000</b>	<b>\$13,854,000</b>	<b>\$7,607,000</b>	<b>\$0</b>	<b>\$3,588,000</b>	<b>\$3,698,000</b>	<b>\$3,698,000</b>	<b>\$3,588,000</b>	<b>\$3,698,000</b>																			
<b>City Fund Balance</b>	<b>\$7,267,904</b>	<b>\$12,749,880</b>	<b>\$21,867,796</b>	<b>\$24,286,948</b>	<b>\$7,441,868</b>	<b>\$5,689,064</b>																							
<b>Developer Share</b>	<b>\$5,417,904</b>	<b>\$4,859,976</b>	<b>\$4,586,916</b>	<b>\$5,218,152</b>	<b>\$16,314,720</b>	<b>\$5,172,396</b>																							
<b>Developer Share(100%)</b>	<b>\$5,417,904</b>	<b>\$4,859,976</b>	<b>\$4,586,916</b>	<b>\$5,218,152</b>	<b>\$16,314,720</b>	<b>\$5,172,396</b>																							
<b>Developer Funding</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	

Note\*: All unused Cosumes Measure A Allocation will be re-allocated to the Richards I-5 Project

## Exhibit "F"

### Procedure for Adjusting the Amount Reimbursed to M&H for Advance Payments

#### 1. Definitions.

- (a) "**Advance Payment**" means either or both of the following:
- (1) any portion of the Stone-Boswell Share or the Stone-Boswell Property's 16% share of the Enhancement Cost that M&H has paid in advance, as calculated under Section 6 of this agreement;
  - (2) the amount of the Delta Shares Share paid by M&H for the benefit of Future Owners (see Section 7 of this agreement); and
  - (3) any portion of the City Share that M&H has paid and for which the City is obligated to reimburse M&H under Section 13(c) of this agreement.
- (b) "**Caltrans Index**" means the Quarterly California Highway Construction Cost Index (Price Index for Selected Highway Construction Items) published by the California Department of Transportation, Division of Engineering Services – Office Engineer.
- (c) "**ENR Index**" means the Engineering News Record Construction Cost Index for San Francisco.

#### 2. Adjustments of Reimbursement Amount. The amount reimbursed to M&H under Section 6, 7, or 13 of this agreement must be adjusted annually by the greater of the following (but in no event by less than zero percent), with all calculations carried out to three decimal places:

- (a) the most recent ENR Index, calculated with the year-over-year change as of each anniversary of the Advance Payment; or
- (b) the Caltrans Index 3-year moving average, calculated using the 12-quarter average through the last available quarter preceding the date of the Advance Payment over the 12-quarter average through the same quarter of the prior year.

#### 3. Sample adjustments:

**Sample #1**

ENR Index *increase* of 2%  
Caltrans Index *increase* of 3.1%  
**Adjustment: plus 3.1%**

**Sample #2**

ENR Index *increase* of 1%  
Caltrans Index *decrease* of 1%  
**Adjustment: plus 1%**

**Sample #3**

ENR Index *decrease* of 0.5%  
Caltrans Index *decrease* of 1%  
**Adjustment: 0%**

**Exhibit "G"**  
**Delta Shores Planning Area**

**[In place of this page, insert diagram of the Delta Shores Planning Area]**

**Exhibit “H”**  
**Project Right-of-Way**

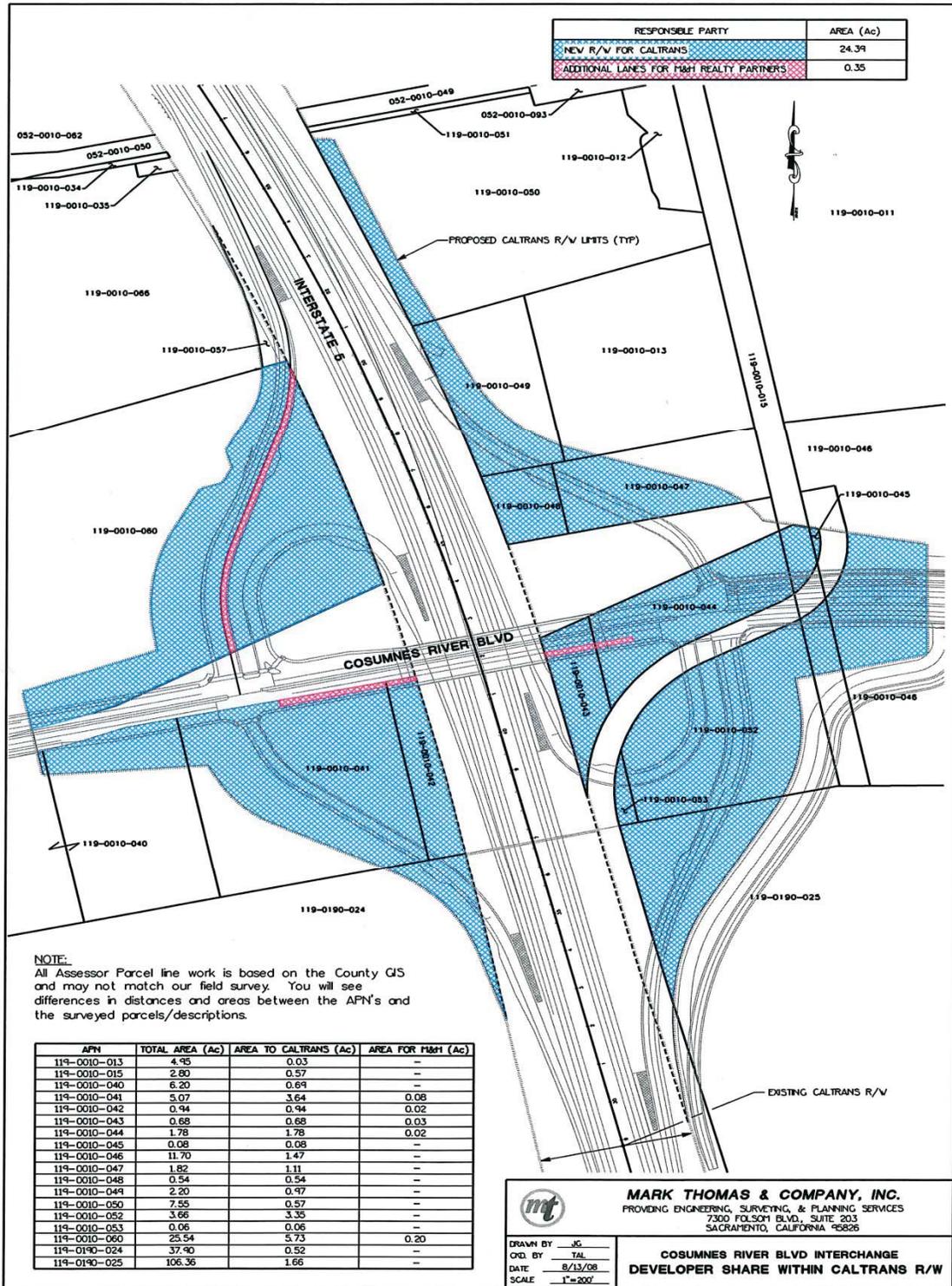
**Attached:**

**Exhibit “H-1” is a one-page document that depicts the right-of-way for the interchange at Interstate 5 and Cosumnes River Boulevard.**

**Exhibit “H-2” is a one-page document (11” X 17”) that depicts the right-of-way for the extensions of Cosumnes River Boulevard.**

# Exhibit "H-1"

## Right-of-Way for Intersection



**Exhibit “H-2”**

**Right-of-Way for Cosumnes River Boulevard**

**[In place of this page, insert diagram of the CRB right-of-way]**