City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
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Meeting Date: **8/9/2012** **Report Type:** Consent

Title: Ordinance Amendment: Delta Shores Planning Area Regional Infrastructure Fee Passed for publication on 7-31-12; published on 8-3-12)

Report ID: 2012-00197

Location: District 7, 8

Recommendation: Pass an Ordinance adding Chapter 18.38 to the City Code, establishing the Delta Shores Planning Area Regional Infrastructure Fee.

Contact: Mark Griffin, Finance Department, Program Manager, (916) 808-8788

Presenter: None

Department: Finance
Division: Public Improvement Finance
Dept ID: 06001321

Attachments:

1-Description/Analysis
2-Schedule of Proceedings
3-Vicinity Map
4-Ordinance
5-Cost Sharing Agreement 2012-0059

City Attorney Review
Approved as to Form
Joseph Cerullo
7/31/2012 10:58:35 AM

City Treasurer Review
Reviewed for Impact on Cash and Debt
Russell Fehr
7/23/2012 11:38:36 AM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 7/30/2012 10:23:50 AM

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Description/Analysis:

Issue: On January 10, 2012, the City Council approved City Agreement 2012-0059 (the **Agreement**), the Cost Sharing Agreement with M&H Realty Partners VI, LP (**M&H**) outlining the roles and responsibilities for the financing and construction of the $95,307,000 I-5 Interchange and Cosumnes River Boulevard extension project (the **Project**). The Agreement divides funding between the City and M&H based on regional versus development-serving benefit. These shares are 45.8% and 54.2% respectively as provided for in the Delta Shores Financing Plan approved by Resolution 2009-037 (the **Plan**).

M&H's share includes an advance of the cost of development-serving infrastructure (frontage and other improvements) that benefits property not owned by parties to the Agreement (the **Stone-Boswell Property**). Section 21(c) of the Agreement requires that the City Council impose development-impact fees on the Stone-Boswell Property in accordance with the Plan and state law and use the fee revenues to reimburse M&H for the advance. The proposed ordinance addresses this requirement by establishing the Delta Shores Regional Infrastructure Fee (the **Fee**).

The Agreement requires that the ordinance be in effect at least fifteen days before the City awards the construction contract for the Project; currently the award is scheduled for October 2, 2012. Failure to enact the ordinance by this deadline releases all parties from any obligation under the Agreement. See the Schedule of Proceedings and Events set forth in Attachment 1. In addition, a vicinity map is provided as Attachment 2, the proposed ordinance is Attachment 3, and the Agreement is Attachment 4.

The amount of the M&H advance for the Stone-Boswell Property, estimated in the Agreement to be $8,394,000, will be based on actual Project cost, which will be determined at the conclusion of the Project and adjusted for inflation.

Under the ordinance, as each portion of the Stone Boswell Property is developed (other than portions subject to development agreements), the City will require, as a condition for approval of the first entitlement on the portion, payment of the Fee in an amount equal to the portion's fair share of the actual M&H advance. Under the Agreement, the City must reimburse M&H for the advance as the Fee is collected.

The City Council will set the initial amount of the Fee by adopting a resolution after holding a public hearing. The initial amount will then be adjusted annually for inflation. As the Stone Boswell Property develops, the City Manager or his designee will calculate the Fee due for each development project.

Proposed development uses that are less or more intense than currently anticipated in the Plan will result in a Fee amount for the development that is

either higher or lower than that required by the Agreement. Any difference in amount will reflect a change in the regional versus development-serving benefit. Under the Agreement, a lower Fee will increase the regional share. The difference will be made up by additional regional sources payable from City Transportation funds (federal, state, regional, or local sources). The Agreement allows no recourse to the City's General Fund. A higher Fee will reflect an increase in the development-serving benefit, resulting in a reimbursement to the City after payment of the amount due to M&H.

Policy Considerations: Adoption of the ordinance will provide a fair-share mechanism to allocate the cost of the Project to the owners of the Stone Boswell Property. No costs will be allocated unless development occurs, and then only on the part developed and only commensurate with the proportional impact of the development. This policy is consistent with the requirements of the Mitigation Fee Act (Government Code section 66000 et. seq.).

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): Adoption of the ordinance is not a "project" subject to CEQA because (a) it has no potential to cause a significant effect on the environment and (b) it pertains to creation of a government-funding mechanism not involving a commitment to a specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs., title 14, sections 15061(b)(3) and 15378(b)(4).) In addition, the projects to be funded through the ordinance have already been the subject of CEQA review.

Committee/Commission Action: The ordinance was heard and passed for Council consideration at the June 19, 2012, meeting of the Law and Legislation Committee. On July 31, 2012, City Council reviewed and passed the ordinance for publication.

Rationale for Recommendation: The ordinance is necessary to satisfy the requirements of the Agreement.

Financial Considerations: None

Emerging Small Business Development (ESBD): There are no ESBD considerations as there are no goods or services being purchased.

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SCHEDULE OF PROCEEDINGS AND EVENTS

Ordinance Adding Chapter 18.38 to the City Code, Establishing the Delta Shores Planning Area Regional Infrastructure Fee

June 19, 2012	Law and Legislation Committee Considers Ordinance
July 31, 2012	Pass for Publication
August 9, 2012	**Adopt Ordinance**
September 9, 2012	Ordinance Effective
September 17, 2012	Agreement 2012-0059 Ordinance Deadline
October 2, 2012	Planning Date: Construction Contract Award

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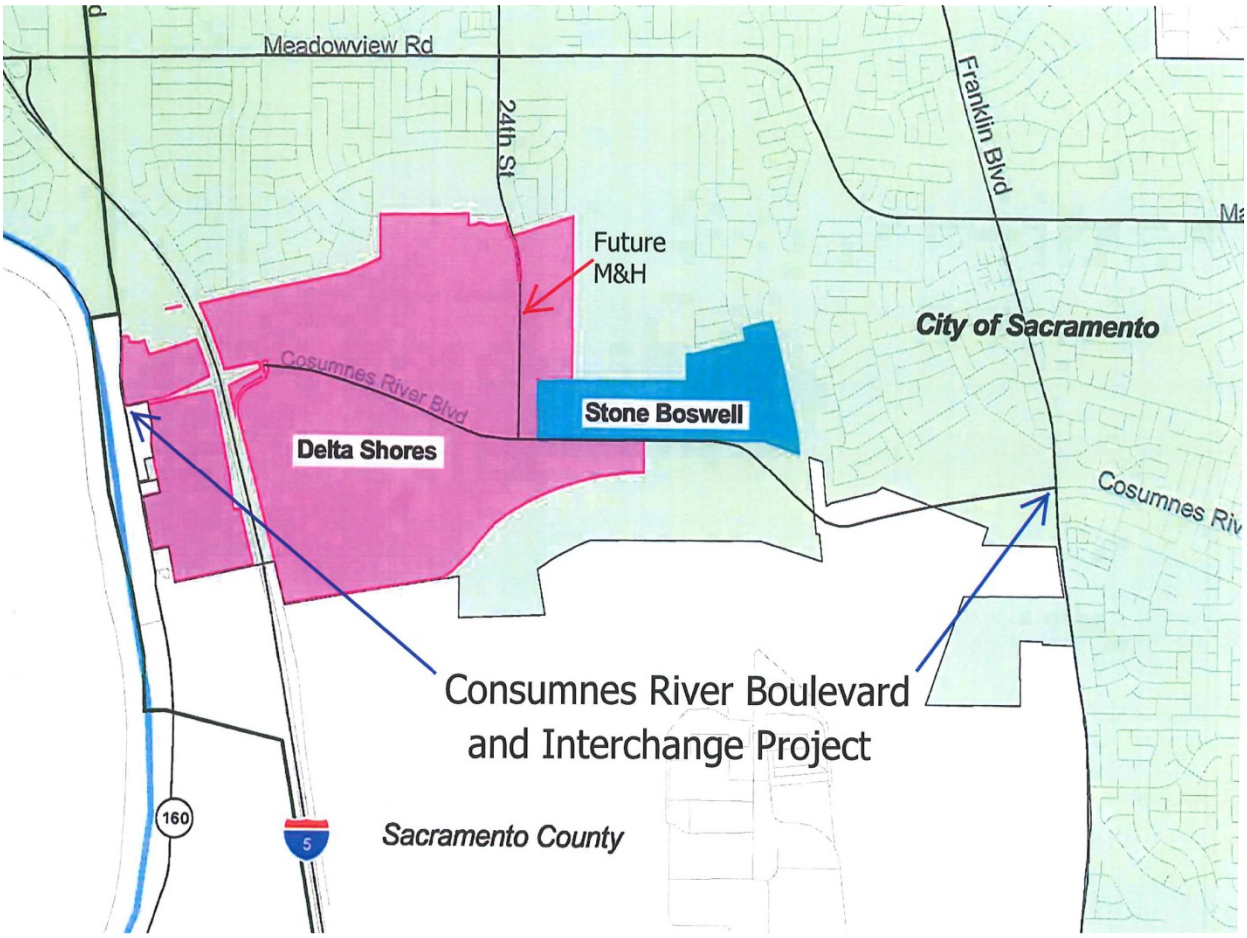
VICINITY MAP
Delta Shores Planning Area



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NO. 2012-

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE ADDING CHAPTER 18.38 TO THE SACRAMENTO CITY CODE, RELATING TO THE DELTA SHORES PLANNING AREA REGIONAL INFRASTRUCTURE FEE

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

SECTION 1

Chapter 18.38 is added to the Sacramento City Code to read as follows:

CHAPTER 18.38 DELTA SHORES PLANNING AREA REGIONAL INFRASTRUCTURE FEE

18.38.010 Definitions.

The following definitions apply in this chapter:

"Cost Sharing Agreement" means City Agreement No. 2012-0059 (dated January 10, 2012) between the City and M&H, as amended or supplemented from time to time.

"Delta Shores Area" means the proposed master-planned community that is identified in the Finance Plan as Delta Shores and consists of residential, commercial, and retail uses on approximately 780 acres within the City limits and adjacent to the City's southern boundary.

"Delta Shores Regional Infrastructure Fund" means the fund created by subsection A of section 18.38.090.

"Development" means the uses to which land will be put, the buildings and improvements to be constructed on it, and the construction of those buildings and improvements, together with the process of obtaining all required land-use entitlements.

"Development Project" means any project undertaken for the purpose of Development within the Stone Boswell Area but does not include projects undertaken by or for public agencies, including but not limited to schools and parks.

"Enhancement Cost" means the costs of enhancements to the Regional Infrastructure that will benefit the Delta Shores Area and the Stone Boswell Area but not the City. The

Finance Plan allocates the Enhancement Cost as follows: 84% to the Delta Shores Area and 16% to the Stone Boswell Area.

“Entitlement” means any of the following when associated with a Development Project: a master parcel map (section 16.32.160 of this code), a subdivision map or parcel map (sections 16.12.020 and 16.12.030), or a building permit (chapter 15.08).

“Government Code” means the California Government Code, as amended or renumbered from time to time.

“Finance Plan Area” means the Delta Shores Area and the Stone Boswell Area, as those areas may exist from time to time.

“Finance Plan” means the Delta Shores Public Facilities Financing Plan adopted by the City Council by Resolution No. 2009-037 dated January 13, 2009, as amended or supplemented from time to time.

“Manager” means the City Manager or his or her designee.

“M&H” means M&H Realty Partners VI, L.P., a California limited partnership.

“Regional Infrastructure Fee” means a monetary exaction that fits the definition of “fee” in Government Code section 66000 and is established in accordance with this chapter to finance the design, construction, installation, and acquisition of the Regional Infrastructure.

“Regional Infrastructure” means the freeway interchange at the future intersection of Cosumnes River Boulevard and Interstate Highway 5, the extension of Cosumnes River Boulevard from Interstate Highway 5 east to Franklin Boulevard, and the extension of Cosumnes River Boulevard from Interstate Highway 5 west to Freeport Boulevard.

“Stone Boswell Area” means the approximately 125 acres adjacent to the eastern boundary of the Delta Shores Area and identified in the Finance Plan as the Stone Boswell site. As of January 10, 2012, the Stone Boswell Area comprised a 15-acre parcel (APN 053-0010-049), a 37-acre parcel (APN 053-0010-047), and a 73-acre parcel (APN 053-0010-048), with the 15-acre parcel and the 73-acre parcel zoned R-1A (Single-Family Alternative Zone) and the 37-acre parcel zoned R-1 (Standard Single-Family Zone).

“Stone Boswell Share” means 7.9% of the following: the total cost of the Regional Infrastructure less the Enhancement Cost.

18.24.020 Purpose.

The Cost Sharing Agreement obligates M&H to advance the following portion of the funds the City needs to design, construct, install, and acquire the Regional Infrastructure: the Stone Boswell Share and the16% of the Enhancement Cost allocated to the Stone Boswell Area. The agreement also obligates the City to establish a development-impact fee in accordance with the Finance Plan and the California

Mitigation Fee Act (Government Code sections 66000 through 66025), to impose the development-impact fee on Development Projects, and to use the fee revenues to reimburse M&H for the funds advanced. This chapter implements the City's obligation under the Cost Sharing Agreement to establish, impose, and collect fees. By enacting this chapter, the City intends to protect and promote the public health, safety, and welfare by designing, constructing, installing, and acquiring the Regional Infrastructure and by allowing Development within the Stone Boswell Area on the condition that applicants for the first Entitlements on the Development Projects pay their share of the design, construction, installation, and acquisition costs.

18.38.030 Establishment of the Regional Infrastructure Fee.

A. A Regional Infrastructure Fee is hereby established to provide funding for the design, construction, installation, and acquisition of the Regional Infrastructure and for the administration of this chapter.

B. The City Council shall, by resolution, establish the initial amount of the Regional Infrastructure Fee in accordance with section 18.38.040. When establishing the initial amount, the City Council may, by resolution, adopt additional provisions, procedures, and policies to implement the Regional Infrastructure Fee.

C. The amount of Regional Infrastructure Fee and the provisions, procedures, and policies adopted by resolution under this section must be consistent with the Cost Sharing Agreement and the Finance Plan.

18.38.040 Proceedings to set the initial amount of the fee.

A. Public hearing. At the time of setting the initial amount of the Regional Infrastructure Fee, the City Council shall hold a public hearing on the proposed amount in the manner required by Government Code sections 66016, 66017, and 66018.

B. Findings. The City Council shall make the following findings when it adopts the initial amount of the Regional Infrastructure Fee:

    1. A finding that the amount has been determined and calculated in the manner consistent with the Cost Sharing Agreement and the Finance Plan.

    2. Findings addressing the matters set forth in subdivisions (a) and (b) of Government Code section 66001.

C. Effective date. The effective date of any resolution that establishes the initial amount of the Regional Infrastructure Fee is to be determined in accordance with Government Code section 66017.

18.38.050 Automatic annual adjustment.

A. Definitions. The following definitions apply only in this section:

"Advance Payment" means any portion of the Stone Boswell Share or the 16% of the Enhancement Cost allocated to the Stone Boswell Area that M&H has paid in advance, as calculated under section 6 of the Cost Sharing Agreement.

"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.

"ENR Index" means the Engineering News Record Construction Cost Index for San Francisco.

B. Annual Adjustment. The City shall, by resolution, annually adjust the initial amount of the Regional Infrastructure Fee by the greater of the following (but in no event by less than zero percent), with all calculations carried out to three decimal places:

1. the most recent ENR Index, calculated with the year-over-year change as of each anniversary of the Advance Payment; or

2. 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.

C. The effective date of any resolution that adjusts the initial amount of the Regional Infrastructure Fee is to be determined in accordance with Government Code section 66017.

18.38.060 Imposition of Regional Infrastructure Fee.

The City shall impose the Regional Infrastructure Fee on each Development Project, except as follows: a Development Project that is on property subject to a development agreement authorized by chapter 18.16 of this code and Government Code sections 65864 through 65869.5 will be exempt from the Regional Infrastructure Fee if the development agreement includes a requirement that the owner of the property pay to the City a fee calculated in accordance with section 6(a) of the Cost Sharing Agreement.

18.38.070 Computation of fee amount for each Development Project.

The Manager shall determine and calculate the Regional Infrastructure Fee due for each Development Project, using the fee amount in effect when the first Entitlement for the project is recorded (if a map) or issued (if a building permit), as follows:

A. 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 of the Stone Boswell Area subject to an Entitlement and a denominator equal to the total acreage of the Stone Boswell Area. Neither the numerator nor the denominator is to include any acreage then reserved or entitled for open-space or governmental uses.

B. Adjust the resulting product in accordance with section 18.38.050.

C. Multiply the adjusted product from subsection B by 0.03 to determine the administrative component of the fee. The City shall use the administrative component to pay its costs of administering this chapter.

D. Add the administrative component from subsection C to the resulting product from subsection B. This is the amount of the fee due unless subsection E of this section applies.

E. When the Regional Infrastructure Fee is imposed on a Development Project that qualifies as a “housing development” under Government Code section 66005.1, and if that Development Project has the characteristics set forth in subdivision (a) of section 66005.1, then the Manager shall adjust the fee amount in accordance with section 66005.1 unless the City Council adopts findings, after a public hearing, establishing that the Development Project, even with those characteristics, would not generate fewer automobile trips than a housing development without those characteristics. If the fee due for a Development Project is adjusted in accordance with this subsection E, then the Manager shall proportionally adjust the fee amounts imposed on other Development Projects.

18.38.080 Time of payment of fee.

A. Except as otherwise provided in subsection B of this section, or by any policies, guidelines, or procedures the City Council establishes under Section 18.38.030.B (pertaining to provisions, procedures, and policies to implement the Regional Infrastructure Fee), the applicant for the first Entitlement on a Development Project must pay the Regional Infrastructure Fee as a condition of approval for the Entitlement. The City shall collect the fee, and the fee will be due and payable, as follows:

    1. Master parcel maps. The fee will be due and payable when the final map for each master parcel is filed with the City for recordation. Fees paid under this subsection A.1 are not refundable except as provided in Section 18.38.100.

2. Subdivision and parcel maps. The fee will be due and payable when a final map or parcel map is filed with the City for recordation. Fees paid under this subsection A.2 are not refundable except as provided in Section 18.38.100.

3. Building permits.

   a. If, while the zoning of a parcel is the same as it was on January 10, 2012, a special permit is sought for a Development Project authorized under the zoning designation for that parcel, then the City shall not issue building permits for construction in accordance with the special permit until the Regional Infrastructure Fee for the parcel is paid.

   b. If, after January 10, 2012, the zoning designation of a parcel is changed to allow large-scale office, commercial, hospital, manufacturing, or industrial uses, then the City shall not issue building permits for a Development Project on the rezoned parcel until the Regional Infrastructure Fee for the parcel is paid.

   c. If a building permit expires before construction begins, then the person or entity that paid the Regional Infrastructure Fee under this subsection A.3 will be entitled to a refund of the fee paid, subject to the following: (i) the fee payer must submit a written refund application to the Manager within 90 days after the building permit expires; (ii) the amount refunded will not include interest and will not include the administrative component of the fee, which reimburses the City's costs to administer this chapter; and (iii) failure to timely submit a refund application will constitute an absolute and unconditional waiver of any right to a refund except as provided in Section 18.38.100.

   d. If the Regional Infrastructure Fee is refunded under subsection A.3.c, then the applicant for the next building permit for the Development Project must pay the Regional Infrastructure Fee as a condition of approval for that permit.

B. Notwithstanding subsection A of this section, and in accordance with Government Code section 66007, when the Regional Infrastructure Fee is imposed on a residential Development Project, the fee will be due and payable before the final inspection or the issuance of a certificate of occupancy, whichever occurs first, unless one of the following applies:

   1. The Manager determines that Delta Shores Regional Infrastructure Fund has been established, that funds for the Regional Infrastructure have been

appropriated, and that the City has adopted a proposed construction schedule or plan.

2. The fee is to reimburse the City for expenditures previously made.

C. The Regional Infrastructure Fee owed for a Development Project may not be prepaid.

D. When the Regional Infrastructure Fee for a Development Project is due and payable under this section, the Manager shall provide to the applicant a written notice that—

1. states the amount of the Regional Infrastructure Fee due and payable; and

2. explains that the applicant may protest the fee in accordance with section 18.38.130 and Government Code section 66020 by filing a written protest within 90 days after the date of the notice and by tendering payment of the amount due.

E. If, after payment of the Regional Infrastructure Fee due for an Entitlement, the zoning of the affected land is changed to allow a more-intensive use, then the applicant for the first Entitlement based on the more-intensive use shall pay, as a condition of approval for that Entitlement, a supplemental Regional Infrastructure Fee equal to the difference between the Regional Infrastructure Fee previously paid and the Regional Infrastructure Fee that applies when the Entitlement based on the more-intensive use is approved.

F. The City's failure to collect the Regional Infrastructure Fee when due does not waive the obligation to pay the fee. If the City records a final map for master parcel map, records a final map or parcel map, or issues a building permit without receiving full payment of the associated Regional Infrastructure Fee, then the applicant for that Entitlement shall pay the fee owed within 30 days after the applicant receives the City's written demand for payment.

18.38.090 Establishment of Regional Infrastructure Fund; use of fee revenues.

A. The Delta Shores Regional Infrastructure Fund is hereby established specifically to hold the revenues generated by the Regional Infrastructure Fee, and the City shall deposit all such revenues into that fund, which the City shall manage in accordance with Government Code section 66006. The City shall also deposit in the fund any interest income earned on the fund balance.

B. The City shall use the fee revenues and interest income deposited in the Delta Shores Regional Infrastructure Fund to reimburse M&H in accordance with the Cost Sharing Agreement and to reimburse the City for the costs of administering

this chapter. The City shall not use the fee revenues and interest income to make inter-fund transfers or loans.

18.38.100 Disposition of unexpended or unappropriated fee revenues.

A. Beginning with the fifth fiscal year following the first deposit into the Delta Shores Regional Infrastructure Fund, and in each fiscal year thereafter, the City Council shall make the following findings with respect to the moneys in the Delta Shores Regional Infrastructure Fund that remain unexpended, whether committed or uncommitted as of the date of the report:

1. A finding identifying the purpose to which the fee revenues and any interest earned on them are to be put.

2. A finding demonstrating a reasonable relationship between the Regional Infrastructure Fee and the purpose for which it is charged.

3. A finding identifying all sources and amounts of funding anticipated to complete financing of incomplete components of the Regional Infrastructure.

4. A finding designating the approximate dates on which the funding referred to in subsection A.3 of this section is expected to be deposited into the Delta Shores Regional Infrastructure Fund.

B. The City Council shall make the findings required by subsection A of this section in connection with the information required by subsection A of section 18.38.120. If the findings are not made as required by subsection A of this section, then the City shall refund the moneys in the Delta Shores Regional Infrastructure Fund in accordance with subsection C of this section.

C. Except as provided in subsection D of this section, when the City has collected sufficient funds to complete financing of an incomplete component of the Regional Infrastructure, as determined under subsection A.6 of section 18.38.120, the City shall take one of the following actions within 180 days of the determination that sufficient funds have been collected:

1. Identify an approximate date by which the construction of the component will be commenced.

2. Refund on a prorated basis to the then-current record owner or owners of the lots or units of the Development Project or Development Projects, as identified on the last equalized assessment roll, the unexpended portion of the Regional Infrastructure Fee and any interest accrued on it, subject to following:

a. The City may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means consistent with the purpose of this section.

b. If the administrative cost of refunding the unexpended or unappropriated fee revenue exceeds the amount to be refunded, then the City Council, after considering the matter at a public hearing, notice of which is given in the manner provided for by subdivision (f) of Government Code section 66001, may appropriate the revenue for any other public improvement, facility, or property in the Finance Plan Area for which development-impact fees are imposed under title 18 of this code and which the City Council determines will benefit the Stone Boswell Area.

c. The portion of any fee revenue the City received as reimbursement of its costs to administer this chapter will not be refunded but will be applied to reduce the portion of the Regional Infrastructure Fee charged for administrative purposes.

D. This section is to be applied consistently with subdivisions (d), (e), and (f) of Government Code section 66001.

18.38.110 Other fee and dedication requirements.

This chapter does not release any owner of residential or nonresidential property within the Finance Plan Area from complying with the following:

A. The obligation to pay other applicable fees relating to Development of property, including but not limited to application fees, processing fees, mitigation fees, and other development-impact fees within the City's control.

B. Any public-facility or public-improvement requirements imposed by applicable law, including but not limited to this code.

C. Any requirement under applicable law, including but not limited to this code, the City Charter, and the Government Code, to dedicate property for public use at the time of approval of a tentative subdivision map, tentative master-parcel map, certificate of compliance, building permit, or other land-use entitlement.

D. Any obligation to comply with mitigation requirements for identified project-related environmental effects.

18.38.120 Annual reports and review of fee.

A. Within 180 days after the end of each fiscal year, the Manager shall prepare for the City Council a report identifying the following information for that fiscal year:

1. A brief description of the Regional Infrastructure Fee.

2. The amount of the Regional Infrastructure Fee.

3. The beginning and ending balances of the Delta Shores Regional Infrastructure Fund.

4. The amount of revenues that were collected from the Regional Infrastructure Fee and the interest earned on the revenues.

5. Identification of the each component of the Regional Infrastructure on which revenues from the Regional Infrastructure Fee were expended and the amount of the expenditures for each component, including the total percentage of the cost of the component that was funded with the fee revenues.

6. For each component of the Regional Infrastructure that remains incomplete and for which the City determines that sufficient funds have been collected to complete financing of the component, identification of an approximate date by which construction of the component will commence if the City determines that sufficient funds have been collected to complete financing of the component.

7. The amount of refunds made in accordance with section 18.38.100 and of any allocations made in accordance with subsection C.2.b of section 18.38.100.

8. The amount of any automatic annual adjustment made under section 18.38.050, including the basis of the calculation.

B. In addition to the report described in subsection A of this section, the Manager shall present to the City Council, at least once each fiscal year, a proposed capital-improvement program for the Regional Infrastructure, assigning moneys (including any accrued interest) from the Delta Shores Regional Infrastructure Fund to specific components and related expenses. The adoption of a capital-improvement program must comply with the provisions of Government Code section 66002.

C. The Manager and the City Clerk shall make the report available to the public as required by subdivision (b) of Government Code section 66006, and the City Council shall review the report at its first regularly scheduled public meeting held

at least 15 days after the report is made available to the public. The City Clerk shall comply with subdivision (b) of Government Code section 66006 when scheduling the hearing and giving notice of it.

D. The City Council may, by resolution, revise the Regional Infrastructure Fee to reflect the findings made from City Council's consideration of the annual report and to include additional projects previously not foreseen as being needed, provided that all revisions are consistent with the Finance Plan.

18.38.130 Protest of fee.

A. The applicant for the first Entitlement on a Development Project may file a protest of the Regional Infrastructure Fee imposed on the project by filing a written protest notice with the Manager and the City Council in the manner provided in, and within the times specified in, Government Code sections 66020 and 66021.

B. Concurrently with filing the written protest notice, the applicant must tender to the Manager the full amount of the fee under protest, together with payment of a non-refundable protest-filing fee in the amount established by the City Council to offset the City's reasonable costs of processing the protest and any appeal. The applicant will be liable for the City's actual cost to process the protest, including the cost of any appeal to the City Council, to the extent that the actual cost exceeds the filing fee. The City may deduct the excess amount from any refund found due and owing to the applicant or may add it to the amount of the Regional Infrastructure Fee found to be due or owing from the applicant, as the case may be.

C. The Manager shall consider the protest at an informal hearing held within 60 days after the filing of the protest notice. The Manager shall issue a decision on the protest and send a copy of the decision to the applicant by first-class mail, postage prepaid, within 15 days after the later of the following: the date of the informal hearing or the date the Manager sets during the informal hearing for the applicant's submission of any additional evidence the Manager determines to be necessary to the decision. The applicant's failure to timely submit additional information requested by the Manager may result in denial of the protest. The decision of the Manager will be final and will not be appealable, except as provided in subsections F and G of this section.

D. The Manager shall consider the following when determining whether to approve or deny a protest:

1. The matters set forth in subdivisions (a) and (b) of Government Code section 66001.

2. The substance and nature of the evidence presented by the applicant.

3. The facts, findings, and conclusions stated in the Finance Plan and the Cost Sharing Agreement, including technical information, studies, audited construction costs, and reports contained within and supporting the plan and agreement, together with findings supporting the resolution setting the amount of the fee or fees in question. The applicant must present comparable technical information, studies, and reports to demonstrate that the fee is inappropriate for the Development Project involved.

E. If the Manager grants the protest and reduces the fee amount owed, and if the zoning within the Development Project involved is subsequently changed to allow a more-intensive use, then the applicant for the first Entitlement based on the more-intensive use shall pay, as a condition of approval for that Entitlement, a supplemental Regional Infrastructure Fee equal to the difference between the Regional Infrastructure Fee previously paid and the Regional Infrastructure Fee that applies when the Entitlement based on the more-intensive use is approved.

F. The applicant may appeal the Manager's decision to the City Council in accordance with chapter 1.24 of this code by filing a notice of appeal with the City Clerk within 10 days after the date of the Manager mails the decision. In deciding the appeal, the City Council or the appointed hearing examiner, as the case may be, shall consider the factors set forth in subsection D of this section. The City Clerk shall mail the City Council's or hearing examiner's decision to the applicant by first-class mail, postage prepaid, within five days after the hearing on the appeal concludes. The decision will be final and not appealable, except as provided in subsection G of this section.

G. The protest procedures set forth in this section are administrative procedures that must be exhausted before the filing of any petition seeking judicial review. Such a petition must be filed under Code of Civil Procedure section 1094.5 on or before the later of the following: the 90th day after the date on which the decision is mailed to the applicant, or the expiration of the 180-day limitation period set forth in subdivision (d)(2) of Government Code section 66020.

18.38.140 Mitigation Fee Act.

This chapter and all resolutions adopted under it are subordinate to the Mitigation Fee Act (Government Code sections 66000 through 66025) as that act exists on the date this chapter is enacted and as it may subsequently be amended or renumbered from time to time. The Mitigation Fee Act will control if a conflict arises between it and this chapter.

18.38.150 Severability.

A. If, for any reason, any part of this chapter is invalid, then all valid parts that are severable from the invalid part remain in effect.

B. If, for any reason, any fee amount established by this chapter is invalid, then all remaining fee amounts so established remain in effect.

C. If the Regional Infrastructure Fee is invalid because of an insufficient nexus to a specific component of the Regional Infrastructure, then the fee remains valid as it relates to other components of the Regional Infrastructure.

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(b)(1)(B)(i) 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

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* 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.

a development-impact fee equal to the amount of the Shared Cost and 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 61st 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 or 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 61st 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 61st 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.

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* 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. (7th 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 15th 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 exe-

cuted 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, a California municipal corporation

By: _____

Printed Name: James R. Rinehart,
Title: Economic Development Director
Date: January ____, 2012

Attest:
Sacramento City Clerk

By: _____
1-19-12

Approved as to Form
Sacramento City Attorney

By: _____
Senior Deputy City Attorney

M & H Realty Partners VI, L.P., a California limited partnership

By: MHRP VI, L.P., a California limited partnership

Its: General Partner

By: Merlone/Hagenbuch VI, Inc., a California corporation

Its: General Partner

By: _____

BRADLEY A. GEIER
Print Name
MANAGING DIRECTOR

Its: _____
Title

Date: January 6, 2012

Approved as to Form
Law Offices of Gregory D. Thatch

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 24th Street.
- Construction of a new 4-lane segment of CRB between 24th 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
Shared Cost				
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
Total Shared Cost	**$61,480,000**	**$3,000,000**	**$20,150,000**	**$84,630,000**
Enhancement Cost (Developers Only)				
• 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
• 4th Lane on Westbound Cosumnes	$94,286	$20,000	$20,000	$134,286
Contingency (6.06%)	$486,857	0	0	$486,857
Total Enhancement Cost	**$8,520,000**	**$453,000**	**$1,704,000**	**$10,677,000**
Total Cost	**$70,000,000**	**$3,453,000**	**$21,854,000**	**$95,307,000**

* "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:_____

c/o 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 (**"L"**) is to be calculated to the nearest dollar using the following formula:

$$L = m(n + x)$$

Definitions of formula terms

- **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.
- **m** = The decimal representing the 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 $4,000,000 Project contingency.

Illustration

Assume that x = $66,000,000, y = $10,677,000, and z = $55,323,000.

- **m** = [0.492($55,323,000) + $10,677,000] ÷ $66,000,000 = 0.5742
- **n** = $4,000,000
- **L** = 0.5742($4,000,000 + $66,000,000) = **$40,194,000**

Exhibit "E"
Funding Sources for the Project

Cosumnes I-5 Project Sources and Uses

Based on cost estimates as of October 2011 - actual costs will change at time of construction

Expenses		As of 12/31/11	Mobilization, grading embankments and underground for Interchange As of 12/31/2012	Start Interchange and Complete M&H Infrastructure As of 12/31/2013	Finish Interchange As of 12/31/2014	Continue with Extension As of 12/31/2015	Finish Extension 2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
	Design/Environmental	$9,000,000												
	R/W and Utilities	$2,012,000	$ 1,850,000											
	Construction/ Construction Engineering		$ 8,028,000	18,160,000	10,606,000	35,000,000	10,513,000							
Total Expenses		$11,012,000	$9,878,000	$18,160,000	$10,606,000	$35,000,000	$10,513,000							
City Share	50.8%	$5,594,096	$5,018,024	$4,736,084	$5,387,848	$16,845,280	$5,340,604							
City Sources	STIP Allocation		$10,500,000											
	Measure A Cosumnes Allocation*	$12,862,000		$6,927,000	$ 7,807,000		$ 3,588,000	$ 3,698,000	$ 3,806,000	$ 3,920,000	$ 4,039,000	$ 4,160,000	4,284,000	5,190,000
	Measure A Richards I-5 Allocation													
	Prop1 - B 100% SLPP Match Richards I-5			$6,927,000										
Total City Funding		$12,862,000	$10,500,000	$13,854,000	$7,807,000	$0	$3,588,000	$3,698,000						
City Fund Balance		$7,267,904	$12,749,880	$21,867,796	$24,286,948	$7,441,668	$5,689,064							
Developer Share	49.2%	$5,417,904	$4,859,976	$4,586,916	$5,218,152	$16,314,720	$5,172,396							
Developer Share(100%)				$8,837,000		$1,840,000								
Developer Funding		$5,417,904	$4,859,976	$13,423,916	$5,218,152	$18,154,720	$5,172,396							
Developer Balance		$0	$0	$0	$0	$0	$0							

Note*: All unused Cosumnes 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	***Sample #2***	***Sample #3***
ENR Index *increase* of 2%	ENR Index *increase* of 1%	ENR Index *decrease* of 0.5%
Caltrans Index *increase* of 3.1%	Caltrans Index *decrease* of 1%	Caltrans Index *decrease* of 1%
Adjustment: plus 3.1%	**Adjustment: plus 1%**	**Adjustment: 0%**

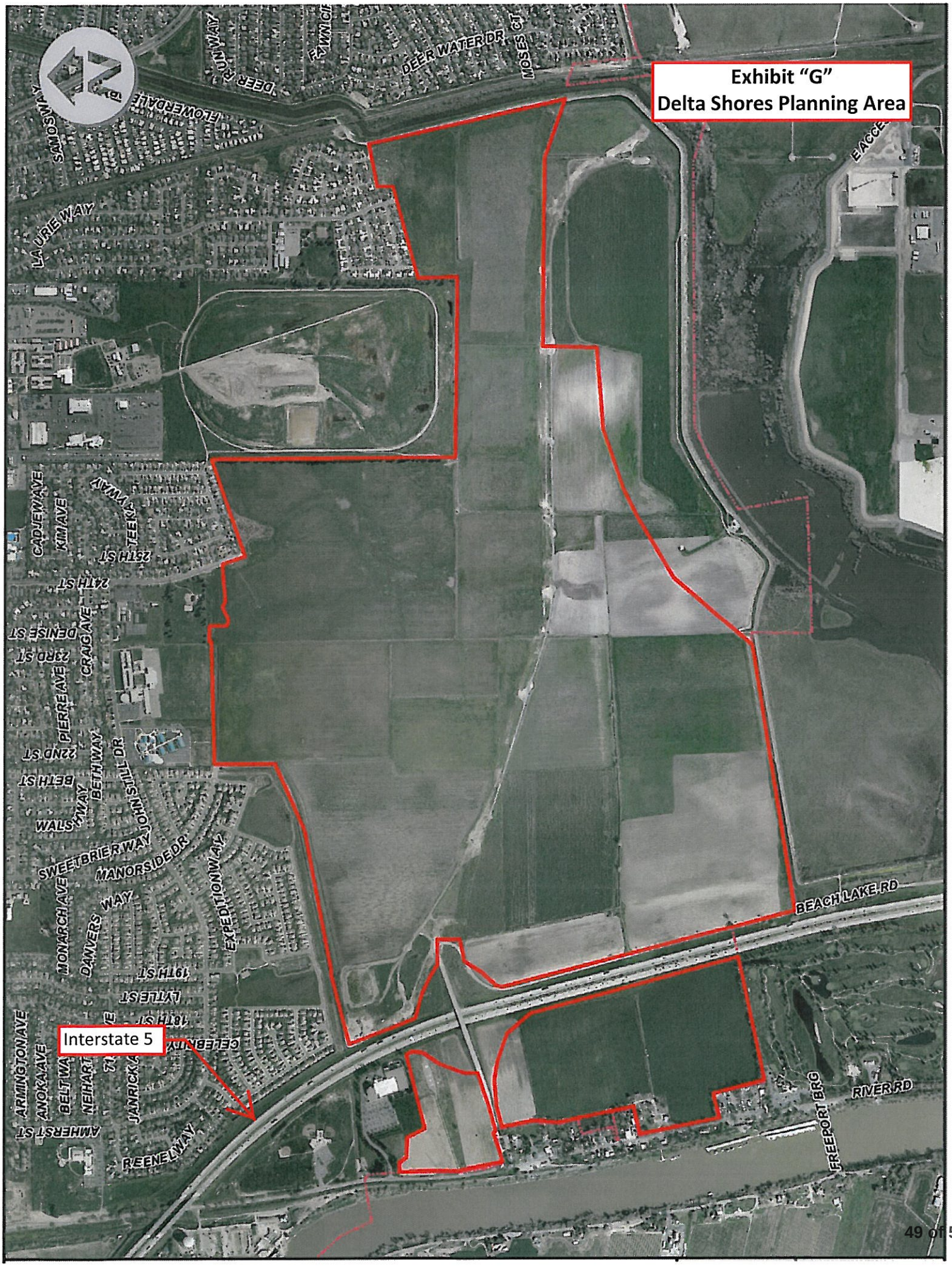


Exhibit "G"
Delta Shores Planning Area
Interstate 5
DEER WATER DR
MOSES CT
LA URIE WAY
CADJEW AVE
KIM AVE
TEEKA WAY
25TH ST
24TH ST
DENISE ST
23RD ST
CRAIG AVE
PIERRE AVE
22ND ST
BETH ST
BETH WAY
JOHN STILL DR
WALS WAY
SWEETBRIER WAY
MANORSIDE DR
MONARCH AVE
DANVERS WAY
EXPEDITION WAY
19TH ST
LYTLE ST
ARMINGTON AVE
ANOKA AVE
AMHERST ST
BEACH LAKE RD
RIVER RD
FREEPORT BRG

Exhibit "H"

Project Right-of-Way

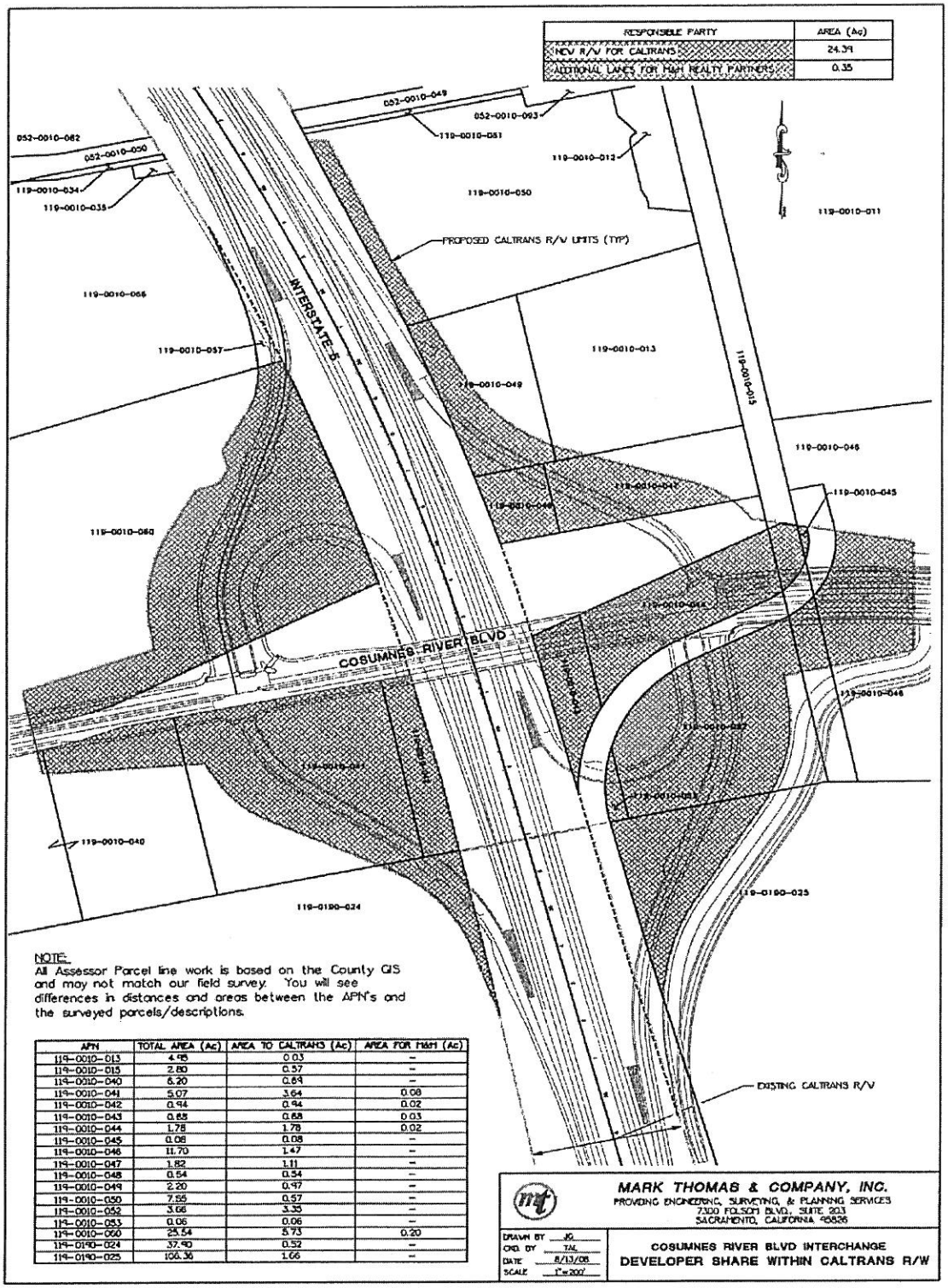
Attached:

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



APN	TOTAL AREA (Ac)	AREA TO CALTRANS (Ac)	AREA FOR HWY (Ac)
119-0010-013	4.95	0.03	–
119-0010-015	2.80	0.57	–
119-0010-040	6.20	0.69	–
119-0010-041	5.07	3.64	0.08
119-0010-042	0.94	0.94	0.02
119-0010-043	0.85	0.68	0.03
119-0010-044	1.78	1.78	0.02
119-0010-045	0.08	0.08	–
119-0010-046	11.70	1.47	–
119-0010-047	1.82	1.11	–
119-0010-048	0.54	0.54	–
119-0010-049	2.20	0.97	–
119-0010-050	7.55	0.57	–
119-0010-052	3.66	3.35	–
119-0010-053	0.06	0.06	–
119-0010-060	25.54	5.73	0.20
119-0190-024	37.90	0.52	–
119-0190-025	106.36	1.66	–

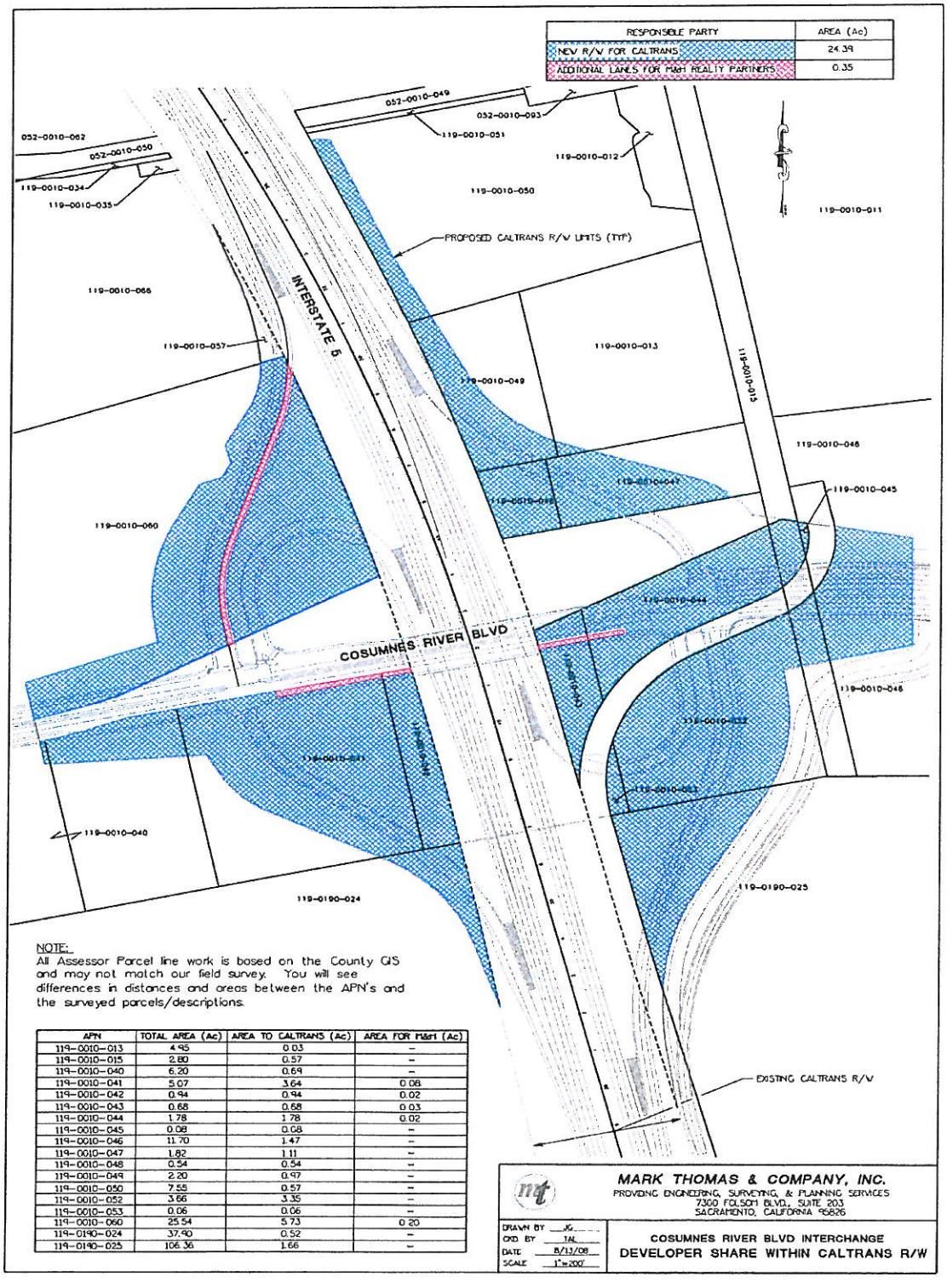
Exhibit "H-2"

Right-of-Way for Cosumnes River Boulevard

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

Exhibit "H-1"

Right-of-Way for Intersection



NOTE:
All Assessor Parcel line work is based on the County GIS and may not match our field survey. You will see differences in distances and areas between the APN's and the surveyed parcels/descriptions.

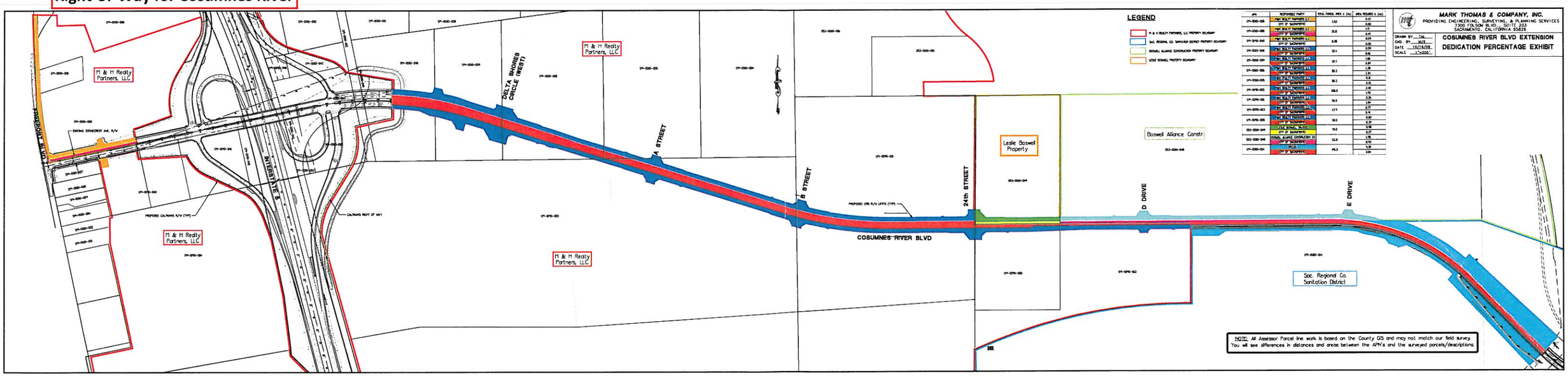
APN	TOTAL AREA (Ac)	AREA TO CALTRANS (Ac)	AREA FOR MMH (Ac)
119-0010-013	4.95	0.03	–
119-0010-015	2.80	0.57	–
119-0010-040	6.20	0.69	–
119-0010-041	5.07	3.64	0.06
119-0010-042	0.94	0.94	0.02
119-0010-043	0.68	0.68	0.03
119-0010-044	1.78	1.78	0.02
119-0010-045	0.08	0.08	–
119-0010-046	11.70	1.47	–
119-0010-047	1.82	1.11	–
119-0010-048	0.54	0.54	–
119-0010-049	2.20	0.97	–
119-0010-050	7.55	0.57	–
119-0010-052	3.66	3.35	–
119-0010-053	0.06	0.06	–
119-0010-060	25.54	5.73	0.20
119-0190-024	37.90	0.52	–
119-0190-025	106.36	1.66	–

MARK THOMAS & COMPANY, INC.
PROVIDING ENGINEERING, SURVEYING, & PLANNING SERVICES
7300 FOLSOM BLVD., SUITE 203
SACRAMENTO, CALIFORNIA 95826

DRAWN BY JG
CKD BY TAL
DATE 8/13/08
SCALE 1"=200'

COSUMNES RIVER BLVD INTERCHANGE
DEVELOPER SHARE WITHIN CALTRANS R/W

Exhibit "H-2"
Right-of-Way for Cosumnes River



APN	RESPONSIBLE PARTY	TOTAL PARCEL AREA (± AC)	AREA REQUIRED (± AC)
119-0220-028	M&H REALTY PARTNERS LLC	1.50	0.02
	CITY OF SACRAMENTO		0.02
119-0220-030	M&H REALTY PARTNERS LLC	21.8	1.11
	CITY OF SACRAMENTO		0.24
119-0210-040	M&H REALTY PARTNERS LLC	6.58	0.09
	CITY OF SACRAMENTO		0.02
119-0222-046	M&H REALTY PARTNERS LLC	12.4	0.74
	CITY OF SACRAMENTO		0.42
119-0220-029	M&H REALTY PARTNERS LLC	12.1	1.05
	CITY OF SACRAMENTO		0.89
119-0220-026	M&H REALTY PARTNERS LLC	20.2	1.38
	CITY OF SACRAMENTO		1.19
119-0220-025	M&H REALTY PARTNERS LLC	20.2	1.3
	CITY OF SACRAMENTO		0.15
119-0210-020	M&H REALTY PARTNERS LLC	108.3	2.45
	CITY OF SACRAMENTO		1.92
119-0210-018	M&H REALTY PARTNERS LLC	74.0	3.35
	CITY OF SACRAMENTO		1.81
119-0210-013	M&H REALTY PARTNERS LLC	17.9	0.77
	CITY OF SACRAMENTO		0.41
119-0210-035	M&H REALTY PARTNERS LLC	10.0	0.60
	CITY OF SACRAMENTO		0.24
013-0260-049	M&H REALTY PARTNERS LLC	19.0	0.58
	CITY OF SACRAMENTO		0.27
013-0260-048	BOSWELL ALLIANCE CONSTRUCTION CO	13.8	1.92
	CITY OF SACRAMENTO		0.92
119-0220-024	TOTALS	415.2	4.31
	CITY OF SACRAMENTO		2.84

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7300 FOLSOM BLVD., SUITE 203
SACRAMENTO, CALIFORNIA 95826

DRAWN BY: TAL
CKD BY: MJS
DATE: 10/15/08
SCALE: 1"=200'

COSUMNES RIVER BLVD EXTENSION
DEDICATION PERCENTAGE EXHIBIT