

Meeting Date: 3/29/2016

Report Type: Consent

Report ID: 2016-00338

Title: Agreement Regarding the Installation and Maintenance of Landscaping Along Certain Roadways Serving the Delta Shores Project

Location: District 7

Recommendation: Pass a Motion 1) approving an agreement with M&H VI Projects, LLC concerning the installation and maintenance of landscaping along certain roadways in the Delta Shores Project; and 2) authorizing the City Manager or his designee to sign the agreement on the City's behalf.

Contact: Mark Griffin, Special Districts Manager, (916) 808-8788, Department of Finance; Jerry Way, Director of Public Works, (916) 808-6381, Department of Public Works

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

1-Description/Analysis

2-Exhibit A

City Attorney Review

Approved as to Form
Joseph Cerullo
3/23/2016 11:56:47 AM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 3/11/2016 1:43:52 PM

Description/Analysis

Issue: On January 13, 2009 (by Resolution No. 2009-035), the City Council approved the 782-acre Delta Shores Unit Development (#P06-197) (the Delta Shores Project). M&H VI Projects, LLC (M&H), the owner/developer of the Delta Shores Project, and the City of Sacramento are parties to City Agreement No. 2012-0059 (the Cost Sharing Agreement), which sets forth both (1) how costs will be shared for the construction of the interchange at Interstate-5 and Cosumnes River Boulevard (CRB) and the extension of CRB between Franklin Boulevard and Freeport Boulevard; and (2) how future development projects will contribute their fair share.

The Cost Sharing Agreement does not address the installation and maintenance of landscaping at the interchange; instead, section 10 of the Cost Sharing Agreement obligates the parties to negotiate a separate cost-sharing agreement for that work. The Cost Sharing Agreement also does not address the landscaping along the extension. That is covered by the Delta Shores Finance Plan (the Finance Plan), which contemplates that a benefit-assessment district or community facilities district (CFD) will be established to finance the operation and maintenance of landscaping along the extension and certain “backbone” roadways.

The proposed *Agreement Regarding the Installation and Maintenance of Landscaping Along Certain Roadways Serving the Delta Shores Project* (the Landscaping Agreement) was negotiated between M&H and the City Departments of Public Works and Finance to implement section 10 of the Cost Sharing Amendment and the Finance Plan. Key features of the Landscaping Agreement are as follows:

- The Interchange. The City will construct the interchange landscaping and maintain it for five years after the notice of completion on the landscaping. Thereafter, the costs will be shared, with 49% paid by M&H and 51% by the City.
- The Extension and Backbone Roadways. M&H will pay 100% of the landscape maintenance costs.
- Future Development. As other lands that benefit from the interchange and extension are developed, the land-use entitlements will include conditions requiring fair-share participation in maintenance costs. The prime example for future development is the previously land-locked “Stone-Boswell” property, which directly benefits from the construction and maintenance of the abutting CRB extension.
- Source of Private Funding. M&H will pay its fair share through a CFD. Future development will likewise participate through a CFD or other, equivalent mechanism.

The City Council is being requested to pass a motion approving the Landscaping Agreement and authorizing the City Manager to sign it on the City’s behalf.

Policy Considerations: The recommended action is consistent with City policy to implement special districts to fund the maintenance and repair of the amenities, facilities, and improvements within a project area that exceed City standards.

Environmental Considerations: Passage of the motion 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 continuing administrative activities. (14 Cal. Code Regs. §§ 15061(b)(3), 15378(b)(2).) On January 13, 2009, the City Council certified an Environmental Impact Report for the Delta Shores Project (Resolution No. 2009-030).

Rationale for Recommendation: The recommended action will permit the annexation of the Delta Shores Project to the Sacramento Maintenance District Community Facilities District No. 2014-04.

Financial Considerations: The City obligations for construction are being funded by local Measure A funds (2001). The obligations of M&H will be paid exclusively from special taxes levied on the lands of M&H and any subsequent, benefitting lands. City maintenance obligations will be funded from the Citywide Landscape & Lighting District. There are no obligations on the General Fund.

Local Business Enterprise (LBE): Not applicable.

Agreement Regarding the Installation and Maintenance of Landscaping Along Certain Roadways Serving the Delta Shores Project

This agreement, dated March 29, 2016, for purposes of identification only, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”); and M&H VI PROJECTS, LLC, a Delaware limited-liability company (“M&H”).

Background Facts

- A. M&H owns the Delta Shores Project (#P06-197), a master-planned community comprising residential, commercial, and retail uses on approximately 782.13 acres within the City limits near 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, and Resolution No. 2009-037, approving the Delta Shores Public Facilities Financing Plan (the “Financing Plan”). The Financing Plan 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. The City and M&H (as successor in interest to M&H Realty Partners VI, L.P., a California limited partnership) are parties to City Agreement No. 2012-0059, titled *Cost Sharing Agreement | I-5 Interchange & Cosumnes River Boulevard Extension* (the “Cost Sharing Agreement”), which sets forth how they will share the cost to design and construct the freeway interchange at the intersection of Cosumnes River Boulevard and Interstate Highway 5 (the “Interchange”) and extensions of Cosumnes River Boulevard from Interstate Highway 5 east to Franklin Boulevard and west to Freeport Boulevard (the “Extensions”).
- C. The Cost Sharing Agreement provides, in section 10, that the scope of work for constructing the Interchange and the Extensions does not cover the installation of landscaping for the Interchange (the “Interchange Landscaping”) or the maintenance of the Interchange Landscaping (the “Interchange Maintenance”). Section 10 further provides that the contract for the Interchange Landscaping and the contract for the Interchange Maintenance will be separate from the contract for construction of the Interchange and that the City and M&H “shall negotiate in good faith on a separate cost-sharing agreement for that landscaping work.”
- D. Chapter 17 of the Financing Plan specifies that developers of land within the plan area “may be required to participate in a series of special financing districts to fund public services and the maintenance and operation of the public improvements” and that one or more benefit-assessment districts or community facilities districts will be established to fi-

nance the operation and maintenance of landscaped corridors and medians along the Extensions and along Delta Shores Circle South and 24th Street (the “**Backbone Roadways**”). In section 6.C of City Agreement No. 2009-0060, titled *Development Agreement for Delta Shores Project No. P06-197*, M&H has agreed to implement the Financing Plan.

- E. The City and M&H enter into this agreement to implement Section 10 of the Cost Sharing Agreement and Chapter 17 of the Financing Plan by determining (1) how they will share the capital cost of installing the Interchange Landscaping and (2) how they will allocate the cost of the Interchange Maintenance and the cost of maintaining the landscaping along the Extensions and Backbone Roadways.

With these background facts in mind, the parties agree as follows:

1. **Capital Cost of Interchange Landscaping.** The City shall pay 100% of the initial capital cost to install the Interchange Landscaping. M&H is entitled to review the City’s landscape plans and comment on them before installation begins, but the City is not required to revise the plans in response to M&H’s comments to the extent doing so would increase the cost of installing the landscaping or alter the scope of the planting program in the plans.
2. **Annexation to Sacramento Maintenance Community Facilities District No. 2014-04.** The City has initiated proceeding to annex the territory of the Delta Shores Project (the “**Annexation Area**”) to the Sacramento Maintenance District Community Facilities District No. 2014-04 (the “**CFD**”), which will finance, among other things, the costs of the Interchange Maintenance and the costs to maintain the landscaping along the Extensions and the Backbone Roadways by annually levying, in accordance with the CFD’s rate and method of apportionment, a special tax on lands within the boundaries of the Annexation Area that the City determines to be benefited by the landscaping.
 - (a) ***Initial Boundaries.*** The initial boundaries of the Annexation Area will be coextensive with the boundaries of the Delta Shores Project shown on Exhibit A to this agreement (the “**Initial Boundaries**”).
 - (b) ***Annexation of Property after Formation.*** Initially, the Annexation Area will not include the Stone-Boswell Property, which nevertheless will benefit from the Interchange Landscaping and the landscaping along the Extensions and the Backbone Roadways. When the owners of the Stone-Boswell Property apply for entitlements to develop it, the City shall require, as a condition for the issuance of any land-use entitlements authorizing development, either (1) that the Stone-Boswell Property be annexed to the CFD and be taxed in the same manner and at the same rates as similarly classified lands in the Annexation Area (the tax levied on the Stone-Boswell Property is the “**Stone-Boswell Fair Share**”); or (2) that a new CFD be formed or an endowment created to fund the Stone-Boswell Fair Share plus other facilities that do not benefit the Annexation Area.

- (c) For purposes of this section 2, "land-use entitlements" means any of the following: a development agreement (California Government Code sections 65864 through 65869.5 and City Code chapter 18.16), 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).
- 3. Allocation of Costs for Interchange Maintenance.** The CFD will allocate the annual costs for Interchange Maintenance as follows:
- (a) During the first five years after the date the City issues a notice of completion for the Interchange Landscaping to its landscaping contractor, 100% to the City.
- (b) Beginning on the first day of the sixth year after issuance of the notice of completion for the Interchange Landscaping, and continuing thereafter, 51% to the City and 49% to the lands within the Annexation Area, with the allocation to be done in accordance with the CFD's rate and method of apportionment, except that the allocation to the Annexation Area will be reduced proportionally if and when benefiting properties are taxed for, or fund, the Stone-Boswell Fair Share under Section 2(b) above.
- 4. Maintenance of Landscaping on Roadways.** The CFD will allocate to the Annexation Area, in accordance with the CFD's rate and method of apportionment, 100% of the annual maintenance costs for the landscaping along the Extensions and the Backbone Roadways. This allocation will be reduced proportionally when benefiting properties are taxed for, or fund, the Stone-Boswell Fair Share under Section 2(b) above.
- 5. High-Density Residential and Commercial Properties.** The special taxes levied and collected by the CFD will not be used to pay the costs of maintaining landscaping along the portions of the Extensions that front properties developed for high-density residential (HDR) or commercial uses. The owners of those properties are solely responsible for those costs.
- 6. 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.
- 7. 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 7 to the address set forth below, 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.

If to City:

Public Works Director
City of Sacramento
915 "I" Street, Room 2000
Sacramento, CA 94814
Re: Cosumnes River Boulevard/I-5 Project

If to M&H:

M&H VI Projects, LLC
Re: Delta Shores CFD
Attn: Lease Administration
425 California Street, 10th Floor
San Francisco, CA 94104-2113
Telephone: (415) 693-9000
Facsimile: (415) 693-0480

with a copy to—

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

8. **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. "Include" and its variants are not restrictive. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to."
9. **Waivers.** 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.
10. **Partial Invalidity.** If a court of law with jurisdiction determines that any material 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 executed in accordance this agreement) to give effect to their mutual intention when they entered into this agreement.
11. **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.
12. **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.
13. **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.
14. **Time.** Time is of the essence in the performance of this agreement.

- 15. No Third-Party Beneficiaries.** This agreement is made for the sole benefit of the parties and their successors and assigns.
- 16. 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.
- 17. 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.
- 18. 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: _____
John F. Shirey, City Manager
Date: _____, 2016

Attest:
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Senior Deputy City Attorney

M&H VI Projects, LLC,
a Delaware limited-liability company

By: M&H VI Investments, LLC,
a Delaware limited-liability company
Its: Sole Member

By: M&H Realty Partners VI L.P.,
a California limited partnership
Its: Sole Member

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

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

By: 
PETER J. MERLONE
PRESIDENT

Its: _____
Title

Date: March 23, 2016

Approved as to Form
Law Offices of Gregory D. Thatch

By: _____
Attorneys for M&H VI Projects, LLC

City of Sacramento,
a California municipal corporation

By: _____
John F. Shirey, City Manager
Date: _____, 2016

Attest:
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Senior Deputy City Attorney

M&H VI Projects, LLC,
a Delaware limited-liability company

By: M&H VI Investments, LLC,
a Delaware limited-liability company
Its: Sole Member

By: M&H Realty Partners VI L.P.,
a California limited partnership
Its: Sole Member

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

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

By: _____

Print Name

Its: _____
Title

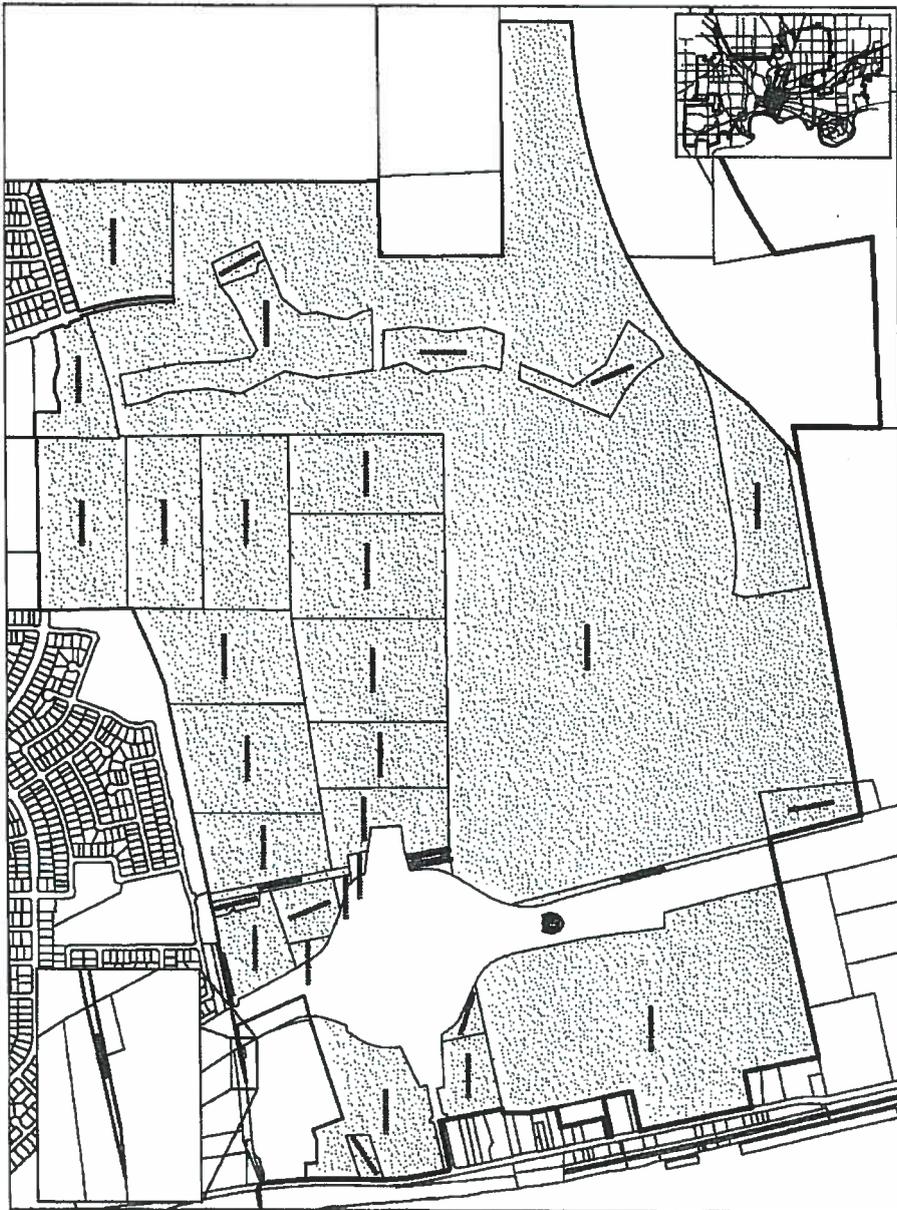
Date: _____, 2016

Approved as to Form
Law Offices of Gregory D. Thatch

By: *Larry C. Larsen*
Attorneys for M&H VI Projects, LLC

Exhibit A: Initial Boundaries Area

BOUNDARY MAP
 SACRAMENTO MAINTENANCE
 COMMUNITY FACILITIES DISTRICT NO. 2014-04
 ANNEXATION NO. 1 CITY OF SACRAMENTO,
 COUNTY OF SACRAMENTO, STATE OF CALIFORNIA
 SHEET 1 OF 1



CLERK'S MAP FILING STATEMENT.
 FILED IN THE OFFICE OF THE CLERK OF CITY OF
 SACRAMENTO, COUNTY OF SACRAMENTO, STATE
 OF CALIFORNIA, THIS _____ DAY OF _____, 2016.

 CITY CLERK
 CITY OF SACRAMENTO, CALIFORNIA

CLERK'S CERTIFICATE.
 I HEREBY CERTIFY THAT THE MAP SHOWING BOUNDARY
 MAP; SACRAMENTO MAINTENANCE COMMUNITY FACILITIES
 DISTRICT NO. 2014-04 ANNEXATION NO. 1, CITY OF SACRAMENTO,
 COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, WAS APPROVED
 BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO AT
 A MEETING THEREOF, HELD ON THE 19TH DAY
 OF MAY 2016, BY ITS RESOLUTION NO. 2016-0180.

 CITY CLERK
 CITY OF SACRAMENTO, CALIFORNIA

COUNTY RECORDER'S FILING STATEMENT.
 FILED THIS _____ DAY OF _____ 2016 AT THE
 HOUR OF _____ O'CLOCK _____ M. IN BOOK _____ OF MAPS
 OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS
 AT PAGE _____ IN THE OFFICE OF THE COUNTY RECORDER
 OF THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

 COUNTY CLERK RECORDER
 OF THE COUNTY OF SACRAMENTO, CALIFORNIA

BY: _____ DEPUTY _____ DOCUMENT NO. _____



City of
SACRAMENTO
 Finance Department

OFFICIAL LISTING INFORMATION AVAILABLE ONLINE THROUGH THE PUBLIC ACCESS SYSTEM (PAS) AT WWW.SACRAMENTO.CA.GOV