



REPORT TO COUNCIL 7

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
May 1, 2007

Honorable Mayor and
Members of the City Council

Title: Award Contract for Phase I of the Fulton Avenue Development Project (PN: CB37) and Authorize Payment to a Vernal Pool Conservation Fund Account

Location/Council District: 3701 Fulton Ave (District 2)

Recommendation: Adopt a **Resolution:** 1) approving plans and specifications; 2) awarding a construction contract with Teichert Construction in the amount of \$3,455,048 for Phase I of the Fulton Avenue Development Project (PN;CB37); 3) authorizing the City Manager to execute such contract; and 4) authorize the payment of \$505,926 to the U.S. Fish & Wildlife Service for a Vernal Pool Conservation Fund.

Contact: Dean Peckham, Senior Project Manger, (916) 808-7063; Jim Rinehart, Citywide Economic Development Manager (916) 808-5054

Presenters: N/A

Department: Economic Development

Division: Citywide Economic Development

Organization No: 4453

Description/Analysis

Issue: As part of the Fulton Avenue Development project, the City is ready to begin construction of Phase I of the site improvements. Site improvements include the removal of contaminated material, bringing in fill material, and grading of the site for development. The Department of Transportation, acting as the City's construction contract manager, issued the bid package for the subject work on February 7, 2007. Bids were received on March 28, 2007 from sixteen responsible construction firms. Four of the bids did not qualify because they failed to meet the City's 20 percent ESBD requirement. Teichert Construction is the lowest responsive and responsible bidder. City Council approval is necessary to move forward with awarding the construction contracts.

Phase II of the site construction, (roads, traffic signal, water, sanitary sewer lift station improvements) will begin in late Summer 2007. Staff will return to Council prior to Phase II, requesting approval to award the contract for this work as well.

Second, as part of the site development, the City has submitted various reports

to the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service because the site contains 1.2492 acres of endangered species habitat (vernal pool fairy shrimp). In order to mitigate the impacts associated with site development the U.S. Fish & Wildlife Service requires the City to deposit \$505,926 into a Vernal Pool Conservation Fund Account, prior to site construction. This amount will address the purchase of 1.2492 preservation credits and 0.6246 creation credits.

Policy Considerations: This action requested herein is consistent with the Sacramento City Code, Title 3 and with the City of Sacramento Strategic Plan goals to expand economic development throughout the city.

Environmental Considerations: The City Council Certified an Environmental Impact Report and adopted a Mitigation Monitoring Plan for this project on January 16, 2007.

Rationale for Recommendation: Teichert Construction is the lowest responsive and responsible bidder. Project funding is sufficient to award the base bid and the additive alternate bid.

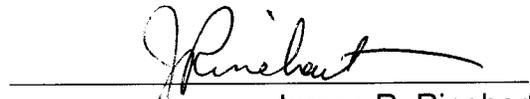
Payment into the Vernal Pool Conservation Fund Account is required prior to construction. If the City does not pay, it would be in violation of federal law and/or the City could potentially lose a tenant (Mel Rapton Honda) for the site.

Financial Considerations: Financing for this project has been provided by pre-development funding in the amount of \$500,000 and a bridge loan in the amount of \$6.4 million, approved by the Council on May 23, 2006. To date, approximately \$713,000 has been expended on the project.

Additional funding will be provided by the Economic Development CIP Program, funded by the Departments of Transportation and Utilities. These obligations total \$1.3 million and the balance of the project funding, \$3 million, will come from Mel Rapton Honda as agreed upon in the Conditions Precedent Agreement #2006-1393, as approved by Resolution 2006-898.

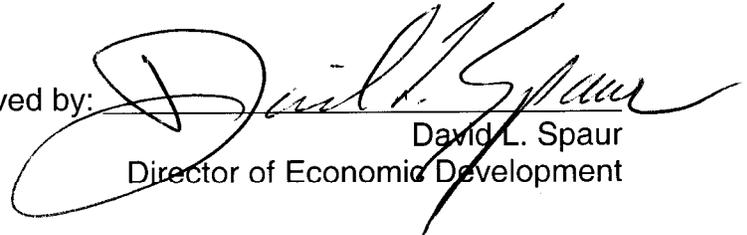
Emerging Small Business Development (ESBD): The ESBD goal is 20%. To encourage small and emerging business participation, plans and specifications were sent to 14 plan rooms and construction service organizations for publication. All are directly involved with ESBD construction firms. The project was also announced on the City's Project Internet site at www.cityofsacramento.org/bids. Teichert Construction submitted a bid with 26.2% ESBD participation.

Respectfully Submitted by:



James R. Rinehart
Citywide Division Manager, Economic Development

Approved by:



David L. Spaur
Director of Economic Development

Recommendation Approved:

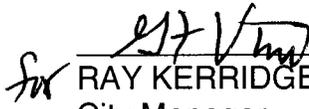

RAY KERRIDGE
City Manager

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Attachment 1

Background Information:

In 2002, the City Council directed staff to examine potential alternatives for the “highest and best” uses for the 21-acre Sacramento Trapshoot Club Site adjacent to Haggin Oaks Golf Course. In 2004, Mel Rapton Honda, currently located on Fulton Avenue, submitted a written request to the City to lease a portion of the existing property. An Exclusive Rights to Negotiate was executed on June 1, 2004, between the City and Mel Rapton Honda.

In July 2004, the City initiated a process under the regulatory oversight of the County of Sacramento Environmental Management Department and the California Regional Water Quality Control Board (Board) wherein the contamination of the site would be characterized and appropriate remediation would be developed and ultimately implemented.

In July 2005, the City initiated the process of pursuing various permits from the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service associated the on-site wetlands and related habitat.

On June 30, 2006, the lease to the Sacramento Trapshoot Club was terminated.

On December 12, 2006 the City Council approved the Conditions Precedent Agreement between the City of Sacramento and Mel Rapton Honda that memorializes the parties' progress in negotiating a lease and commits the parties to perform specified tasks.

In January 2007 the City Council approved the Environmental Determination: Environmental Impact Report; Mitigation Monitoring Plan; General Plan Amendment to redesignate 20± (twenty) gross acres from Parks, Recreation and Open Space to Heavy Commercial/Warehouse; Rezone of 20± (twenty) gross acres from the Single Family (R-1) zone to the Heavy Commercial Planned Unit Development (C-4 PUD) zone; Establishment of the Fulton Avenue Planned Unit Development (PUD), including PUD Guidelines and a PUD Schematic Plan; Tentative Parcel Map to subdivide one parcel into two (2) parcels; Subdivision Modifications to allow non-standard streets and elbows rezoning and tentative map for the Fulton Avenue development (former Sacramento Trapshoot Club).

In March 2007 the County of Sacramento Environmental Management Department approved the Final Implementation Plan for the remediation of the Fulton Avenue Development site (formerly Sacramento Trapshoot Club).

On April 4, 2007 the City received a letter of approval from the U.S. Fish & Wildlife Service for the mitigation of on-site wetlands removal and the associated impacts to vernal pool fairy shrimp. Mitigation of these impacts requires the payment of \$505,926

into a Vernal Pool Conservation Fund Account.

The Fulton Avenue Development Project (PN: CB37) consists of two phases. Phase I consists of implementation of the remediation plan and provides a buildable site to Mel Rapton Honda. Phase II consists of building the public infrastructure such as roads, utilities, traffic signal, water main, and sewer lift station improvements and other improvements necessary to access the site.

Phase I improvements were advertised on February 12, 2007, and sixteen bids were received on March 28, 2007. Teichert Construction is the lowest responsive bidder. The bids are summarized below:

Contractor	Total Bid	ESBD
Teichert Construction, Inc.	\$ 3,455,048.00	26.2%
McGuire and Hester	\$ 3,547,000.00	25.0%
Sierra National Construction	\$ 3,597,175.00	37.5%
Sierra Nevada Construction, Inc.	\$3,793,007.00	26.3%
Envirocon, Inc.	\$3,988,587.50	18.3%
C & C Construction Inc.	\$4,083,474.00	24.6%
Western Engineering	\$4,324,348.00	15.0%
FCI Constructors, Inc.	\$4,353,145.00	21.0%
HSR General Engineering, Inc.	\$4,485,230.00	84.9%
Nordic Industries, Inc.	\$4,564,920.00	14.4%
DeSilva Gates Construction	\$4,727,750.00	21.8%
Granite Construction Company	\$4,860,860.00	21.6%
Evans Brothers, Inc.	\$4,940,682.00	20.1%
Gold Valley Construction, Inc.	\$5,246,145.00	99.8%
Meyers Earthwork, Inc.	\$5,282,300.00	99.3%
Martin Brothers Construction	\$6,691,045.00	16.4%

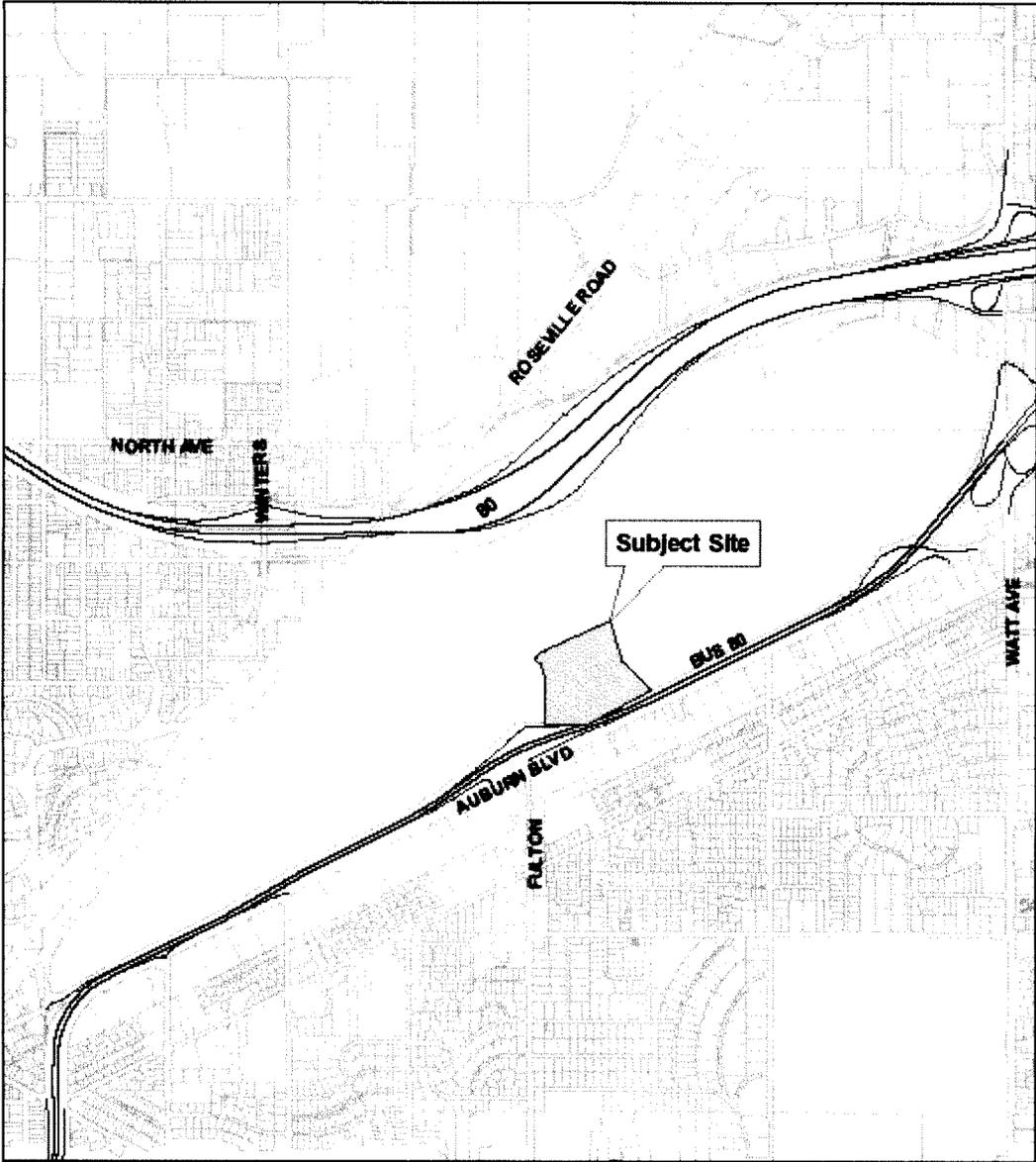
The engineer's estimate for the project was \$5,500,000.

Phase I Construction is expected to begin in June 1, 2007 and be completed by September 2007.

Phase II Construction is expected to be begin late Summer 2007 and be completed February 2008.

Attachment 2

Rapton Honda Trapshoot Club Site



Map Contact
D. Peckham, Economic Development
June, 2006

0 0.1 0.2 0.4 0.6 0.8 Miles ■

Attachment 3

**AGREEMENT BETWEEN
THE UNITED STATES FISH AND WILDLIFE SERVICE,
VERNAL POOL CONSERVATION FUND PARTICIPANT AND
THE CENTER FOR NATURAL LANDS MANAGEMENT**

This Agreement is entered into this ____ day of _____, 2007, by and between the United States Fish and Wildlife Service (the "Service"), the Center for Natural Lands Management (the "CNLM") and _____ Vernal Pool Conservation Fund Participant (Participant), hereinafter referred to collectively as the "Parties"

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Biological opinion/Habitat Conservation Plan (HCP) (Service file 1-1-07-F-0110), dated _____, between the Service and _____, issued pursuant to section 7/section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1533 et seq. (ESA), evaluates the impacts of the Participant's activities on threatened and endangered vernal pool species and their habitats and specifies alternative measures available to the Participant to minimize the take of said vernal pool species incidental to the Participant's activities. In accordance with the biological opinion/HCP, the Participant elects and hereby agrees to deposit, through CNLM, a vernal pool fee established by the Service in the amount of five hundred five thousand and nine hundred twenty six dollars (\$505,926) (the "Vernal Pool Conservation Fee") into one or more Vernal Pool Conservation Fund Accounts at a reputable financial institution reasonably acceptable to the CNLM and the Service in such investments as are approved by the Service, as a means of minimizing the incidental take of vernal pool species resulting from the Participant's activities and otherwise reducing the impacts of the Participant's activities on vernal pool species and their habitats.

2. The Parties agree that the total amount of the Vernal Pool Conservation Fee (including any interest accrued thereon) deposited by the Participant in the Vernal Pool Conservation Fund Account, with the exception of the management fee identified in paragraph 6 of this Agreement, shall be used, at the direction of the Service, to purchase 1,2492 preservation credits and 0.6246 creation credits in one or more Service approved vernal pool conservation banks or for the reimbursement of the purchase of land or conservation easements, adequately managed, endowed and protected to provide permanently protect and manage vernal pool species habitats.

3. The Parties agree that any portion of the Vernal Pool Conservation Fee (including any interest accrued thereon) deposited by the Participant into the Vernal Pool Conservation Fund Account in excess of the amount used to purchase the 1,2492 preservation credits and 0,6246 creation credits in one or more Service approved conservation banks or for the purchase of land or conservation easements shall be refunded by CNLM at the direction of the Service to the Participant within 30 days of receipt by the CNLM of written notice from the Service setting forth the amount to be refunded to the Participant.

4. The Parties jointly acknowledge and agree that the Vernal Pool Conservation Fee shall be managed and disbursed in accordance with the "AGREEMENT BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE CENTER FOR NATURAL LANDS MANAGEMENT" dated September 9, 2004 (Service-CNLM Agreement), attached hereto as Exhibit A. If for any reason the Service-CNLM Agreement is terminated, the Service shall ensure to the extent practicable that the Vernal Pool Conservation Fee deposited by the Participant into the Vernal Pool Conservation Fund Account will be used in accordance with this Agreement to satisfy the Participant's obligations under the biological opinion/HCP referenced above in paragraph one, and the CNLM shall have no further liabilities or obligations hereunder.

5. The Participant acknowledges and agrees that it has voluntarily elected to deposit the Vernal Pool Conservation Fee into the Vernal Pool Conservation Fund Account in satisfaction of their obligations under the biological opinion and in lieu of carrying out other alternative conservation measures identified by the Service as available to the Participant to minimize the impacts of the Participant's activities on listed vernal pool species and their habitats.

6. The Participant further acknowledges that the CNLM's fee for administering the Vernal Pool Conservation Fund Account (Administration Fee) is two point five percent (2.5%) of the Vernal Pool Conservation Fee specified above in paragraph one, and agrees to the deduction of said Administration Fee from the total Vernal Pool Conservation Fee deposited.

7. Participant's check made payable to the Vernal Pool Conservation Fund Account shall be forwarded together with a fully executed copy of this Agreement and the Payment Receipt form to The Center for Natural Lands Management at 425 East Alvarado Street, Suite II, Fallbrook, California 92028-2960.

8. Participant acknowledges and agrees that the CNLM's sole obligation pursuant to the terms and conditions of the Service-CNLM Agreement and this Agreement, hereinafter referred to collectively as the "Agreements", is to accept the Vernal Pool Conservation Fee, deposit the Vernal Pool Conservation Fee into the Vernal Pool Conservation Fund Account and to disburse the Vernal Pool Conservation Fee solely at the direction of the Service, subject to the terms and conditions of the Agreements. The CNLM is accepting the Vernal Pool Conservation Fee solely as an accommodation to the Service and the Participant. Participant acknowledges and agrees that acceptance, deposit and disbursement of the Vernal Pool Conservation Fee by the CNLM does not create any liability or duty to Participant and Participant hereby releases the CNLM

from any and all liability or claims due to the existence of these Agreements, the Vernal Pool Conservation Fund Account, Participant's development and/or the ESA.

9. Participant acknowledges and agrees that the CNLM has made no representations or warranties to the Participant whatsoever and Participant assumes all risks related to its proceeding with development activities, in reliance on the section 7/section 10(a)(1)(B) authorization issued by the Service. Participant does hereby agree to indemnify the CNLM, defend and hold the CNLM harmless from and against any and all claims, damages, losses, liabilities, costs and expenses, including without limitation, attorneys' fees arising out of or in any way connected with or related to the Agreements or Participant's development.

10. Participant acknowledges and agrees that the Service has made no representations or warranties to the Participant whatsoever and Participant assumes all risks related to its proceeding with development activities, in reliance on the section 7/section 10(a)(1)(B) authorization issued by the Service. Participant does hereby agree to indemnify the Service, defend and hold the Service harmless from and against any and all claims, damages, losses, liabilities, costs and expenses, including without limitation, attorneys' fees arising out of or in any way connected with or related to the Agreements, the Vernal Pool Conservation Fund Account, Participant's development and/or any act or related to section 7/section 10(a)(1)(B) of the ESA. In addition, Participant agrees to indemnify the Service, defend and hold the Service harmless from and against any and all claims, damages, losses, liabilities, costs and expenses, including without limitation, attorneys' fees in the event that any claim is brought against the Service for any act or omission arising out of or any acts it takes pursuant to the Agreement or Participant's development.

11. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby. This Agreement represents the entire agreement of the parties and may not be amended, except in writing signed by each party hereon. Each party to this Agreement warrants to the other that it is duly organized, validly existing and, if a corporation, qualified to do business in the State of California, and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.

In witness whereof, this Agreement is executed as of the date and year first above written, at _____, California.

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____
(Signature)

Name: Peter Cross

Title: Deputy Assistant Field Supervisor

THE CENTER FOR NATURAL LANDS MANAGEMENT

By: _____
(Signature)

Name: Sherry Teresa

Title: Executive Director

VERNAL POOL CONSERVATION FUND PARTICIPANT

By: _____
(Signature)

Name:

Title:

U. S. FISH & WILDLIFE SERVICE
VERNAL POOL CONSERVATION FUND ACCOUNT
PAYMENT RECEIPT

PROJECT PARTICIPANT INFORMATION

Name:
Address:
Telephone:
Contact:

PROJECT INFORMATION

Project Name: Sacramento Trap Range Remediation
Project Location: Sacramento
County: Sacramento
Project Description: Remediation and Commercial Development
Service File #: 1-1-07-R-0110 Corps/Other File #: S2K-2007-21-SO
Total Acres Impacted: Approximately 20 Acres of Vernal Pools Impacted: 2,692

FEE INFORMATION

Preservation Credits Purchased: 1,2492 Payment Amount: 5337,284
Creation Credits Purchased: 0.6246 Payment Amount: \$168,642
Total Payment Amount: \$505,926

PAYMENT INFORMATION

Payee: Vernal Pool Conservation Fund Account
Payer:
Amount: five hundred five thousand and nine hundred twenty six dollars (\$505,926)
Method of Payment: Check No. _____ Money Order No. _____ Wire Transaction
Received by: Name: _____ Title:

(Signature) _____ Date:

**AGREEMENT BETWEEN THE
UNITED STATES FISH AND WILDLIFE SERVICE
AND
THE CENTER FOR NATURAL LANDS MANAGEMENT**

This Agreement is made this 2nd day of September, 2004, by and between the United States Fish and Wildlife Service ("Service") and the Center for Natural Lands Management ("CNLM"), hereinafter referred to collectively as the "Parties." This Agreement hereby supercedes and replaces a similar Agreement entered into on September 9, 2000 and its predecessors which established the Vernal Pool Conservation Fund.

I. RECITALS

This Agreement is based on the following facts, intentions and expectations:

A. The Service and the CNLM wish to cooperate in facilitating the development of a regional program to conserve vernal pools and the threatened and endangered species that occupy vernal pool habitats in California. A major goal of this program is to provide an effective, efficient means by which consulting Federal or State agencies and/or private individuals (hereafter collectively referred to as the "Proponents"), can, in accordance with the Endangered Species Act of 1973, as amended (ESA), minimize and mitigate certain impacts of their projects on vernal pool associated threatened or endangered species or their habitats and carry out their obligations in a manner that allows the Service to maximize protection for these species and their habitats. Pursuant to this Agreement, third parties who voluntarily elect to do so, will, at the direction of the Service, deposit fees into one or more accounts as defined in Paragraph II.A.2(a). Upon receipt of written instructions from the Service and solely at the direction of the Service, the CNLM will cause the disbursement of the funds held in the account to Service-approved vernal pool conservation banks, or for the purchasing of land or conservation easements to provide permanent protection and perpetual management of habitat for vernal pool species. The Service has developed this process in consultation with representatives of the development and environmental communities in an effort to facilitate planned natural resource conservation while ensuring the implementation of conservation measures to minimize and mitigate the adverse effects of development projects on vernal pool associated threatened or endangered species or their habitats.

B. The Service, a constituent agency within the U.S. Department of the Interior, is mandated under the ESA and other Federal conservation laws, to protect and conserve wildlife, fish and plant species. The Service has jurisdiction over the conservation, protection, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of these species.

- C. The CNLM is a non-profit corporation of the State of California that was created in 1990 to preserve native plants and animals in their natural environments and protect the diversity of species with consideration for their complicated interrelationships.
- D. The Service is authorized to enter into this Agreement by the ESA, 15 U.S.C. 1531 et seq., the Fish and Wildlife Coordination Act, 16 U.S.C. 661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. 742(f) et seq.
- E. The purpose of this Agreement is to facilitate the preservation, restoration, enhancement and creation of vernal pool associated threatened or endangered species habitats, by providing a means for third parties to expedite their compliance with the ESA through payment of a Vernal Pool Conservation Fee to be used to conserve vernal pool associated threatened or endangered species or their habitats.

II. AGREEMENT

In consideration of the recitals set forth above, the covenants herein and other consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

A. Obligations of the Parties

1. The Service

- (a) The Service shall establish voluntary Vernal Pool Conservation Fees to minimize the effects of projects resulting in take of vernal pool associated threatened or endangered species, or otherwise adversely affect these species and their habitats that require review under section 7 or section 10 of the ESA. The Service shall notify the consulting Federal agency and Proponent, if any is involved, of the availability and amount of the voluntary Vernal Pool Conservation Fee, the payment of which will satisfy, in whole or in part, the Proponent's obligations under the ESA to address project impacts on the vernal pool associated threatened or endangered species or their habitats.
- (b) The Service shall inform each Proponent in writing that payment of a Vernal Pool Conservation Fee into the Vernal Pool Conservation Fund Account (as defined herein below) is voluntary and other options are available to satisfy the Proponent's obligation under the ESA to address the impacts of its project on vernal pool associated threatened or endangered species or their habitats. The Service shall provide each Proponent with a copy of this Agreement prior to the Proponent's payment of a Vernal Pool Conservation Fee and advise the

Proponent that the CNLM's fee for administering the Vernal Pool Conservation Fund shall be the amount set forth below in Paragraph II.A.2(b) of this Agreement. An additional agreement, attached hereto and in the form thereof, as Exhibit A, shall be executed by the Service, the CNLM and the Proponent for each fee deposited to the Vernal Pool Conservation Fund Account.

- (c) The Service will direct all Vernal Pool Conservation Fees deposited in the Vernal Pool Conservation Fund Account in accordance with this Agreement, and interest and earnings thereon, and all disbursements from the Account, with the exception of the Management Fee identified under Paragraph II.A.2(b) below, to finance the acquisition and management of vernal pool associated threatened or endangered species habitat to offset project impacts to such habitat and species as provided in Paragraphs II.A.1(a) and (b) above.
- (d) The Service shall be solely responsible for identifying and approving appropriate vernal pool associated threatened or endangered species habitat conservation lands to be acquired and managed with Vernal Pool Conservation Fees and shall direct the CNLM to disburse funds from the Vernal Pool Conservation Fund Account for such acquisition and management including restoration and creation when appropriate. The Service shall keep a record of all conservation bank transactions and shall provide the CNLM with reasonable access and copies of such records.

2. The CNLM

- (a) Vernal Pool Conservation Fees will be deposited into one or more interest-bearing accounts ("Vernal Pool Conservation Fund Account") at a reputable financial institution reasonably acceptable to the Service. Any interest or earnings accrued shall remain with the account.
- (b) Upon deposit by the CNLM of the Vernal Pool Conservation Fee in the Vernal Pool Conservation Fund Account the CNLM shall deduct from the Vernal Pool Conservation Fund Account, a Management Fee, set at the rate of two point five percent (2.5%) of each deposit in the Vernal Pool Conservation Fund Account to defray the costs associated with administration of the Account.
- (c) The CNLM shall provide to the Service on or before December 31st of each year, an annual accounting showing the deposits, interest and

earnings received, disbursements of all sums made pursuant to this Agreement, and the associated Service file numbers related to each transaction, during the preceding fiscal year period beginning October 1st and ending on September 30th.

- (d) Duly authorized employees of the CNLM shall disburse all funds in the Vernal Pool Conservation Fund Account solely at the written direction of the Service.

III. SPECIAL TERMS AND CONDITIONS

- A. Vernal Pool Conservation Fees deposited with the CNLM in accordance with this Agreement shall not be used for the "creation" of vernal pools or acquisition of land for "creation" of vernal pool associated threatened or endangered species habitat, unless approved in writing by the Service.
- B. This Agreement does not impose upon the CNLM any obligation to acquire or manage any vernal pool associated threatened or endangered species habitats.
- C. This Agreement does not impose upon the CNLM any obligations to maintain an accounting of the biological values associated with Vernal Pool Conservation Fees deposited or disbursed pursuant to this Agreement or to match Vernal Pool Conservation Fees deposited with specific vernal pool associated threatened or endangered species habitat acquisitions.
- D. Nothing in this Agreement shall prohibit the disbursement of Vernal Pool Conservation Fees to enable the purchase of a land parcel otherwise appropriate for use as a conservation bank or other conservation purpose, because a portion of the parcel is not suitable for vernal pool associated threatened or endangered species habitat conservation. Because such habitat may occur within a larger land parcel that is only available as a single unit, disbursements from the Vernal Pool Conservation Fund Account may be made to acquire an entire parcel.
- E. Notwithstanding anything contained herein to the contrary, the CNLM shall have no obligation pursuant to this Agreement other than to deposit and disburse the Vernal Pool Conservation Fees in accordance with this Agreement, subject to the terms and conditions hereof.

IV. EFFECTIVE DATE

This Agreement shall replace the previous Agreement dated September 9, 2000 which is now in effect and due to expire on September 9, 2004. This Agreement shall take effect immediately upon execution by the Service and the CNLM.

V. TERM OF AGREEMENT

Except as otherwise provided herein, this Agreement shall be in effect until September 30, 2008.

VI. AMENDMENTS

Amendments to this Agreement may be proposed by either Party and shall become effective upon the written agreement of both Parties.

VII. TERMINATION

This Agreement may be terminated by either Party without cause at any time upon thirty (30) days written notice to the other Party. Upon termination, the CNLM shall provide the Service with an accounting for the Vernal Pool Conservation Fund Account in accordance with the procedure set forth in Paragraph D.A.2(c) of this Agreement. All funds remaining in the account shall be transferred to an entity designated by the Service to receive such funds. Within 30 days following final disbursement of funds, the CNLM shall provide the Service a final accounting showing the deposits (including interest accrued thereon) and disbursements of all sums received pursuant to this Agreement, from the date of the last annual accounting through the date of final disbursement.

VIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement

This Agreement and its related Exhibits contain the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by either Party, or to any employee, officer, or agent of either Party, which is not contained in this Agreement shall be binding or valid.

B. Interpretation and Headings

The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against either Party. Headings of the paragraphs of this Agreement are for the purpose of convenience only and the words contained in such headings

shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

C. Notices

All notices, demands, or requests from one Party to the other Party may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph and shall be effective at the time of personal delivery, facsimile, transmission, or mailing.

The Service: 2800 Cottage Way, Rm. W-2605
Sacramento, CA 95825-1846
Attn: Chief, Endangered Species Division
Telephone: (916)414-6600
Facsimile: (916)414-6712

The CNLM: 425 East Alvarado Street, Suite H
Fallbrook, CA 92028-2960
Attention: Executive Director
Telephone: (760) 731-7790
Facsimile: (760) 731-7791

Either Party may change the address to which such notices, demands, requests or other communications may be sent by giving the other Party written notice of such change. The Parties agree to accept facsimile transmitted signed documents and agree to rely on such documents as if they bore original signatures. Each Party agrees to provide to the other Party, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

D. Successors and Assigns

This Agreement, and the rights and obligations thereunder shall not be transferred or otherwise assigned by the CNLM without the prior written approval of the proposed transferee/assignee by the Service.

E. Execution

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby. This Agreement represents the entire agreement of the parties and may not be amended, except in writing signed by each party hereto. Each party to this Agreement warrants to the other that it is duly organized, validly existing and, if a corporation, qualified to do business in the State of California, and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above:

UNITED STATES FISH AND WILDLIFE SERVICE

By: Ken Sanchez

Name: Ken Sanchez

Title: AFS - SFWO

Date: AUGUST 30, 2004

CENTER FOR NATURAL LANDS MANAGEMENT

By: Michael C. Stroud

Name: Michael C. Stroud

Title: Dir. of Operations

Date: 9/24/04

Enclosure (Exhibit A: Form of Three Party Agreement)

RESOLUTION NO.

Adopted by the Sacramento City Council

AWARD CONTRACT FOR PHASE I OF THE FULTON AVENUE DEVELOPMENT PROJECT (PN: CB37) AND AUTHORIZE PAYMENT TO A VERNAL POOL CONSERVATION FUND ACCOUNT

BACKGROUND

A. On December 12, 2006 the City Council approved the Conditions Precedent Agreement between the City of Sacramento and Mel Rapon Honda that memorializes the parties' progress in negotiating a lease and commits the parties to perform specified tasks.

B. In January 2007 the City Council approved the Environmental Determination: Environmental Impact Report; Mitigation Monitoring Plan; General Plan Amendment to redesignate 20± (twenty) gross acres from Parks, Recreation and Open Space to Heavy Commercial/Warehouse; Rezone of 20± (twenty) gross acres from the Single Family (R-1) zone to the Heavy Commercial Planned Unit Development (C-4 PUD) zone; Establishment of the Fulton Avenue Planned Unit Development (PUD), including PUD Guidelines and a PUD Schematic Plan; Tentative Parcel Map to subdivide one parcel into two (2) parcels; Subdivision Modifications to allow non-standard streets and elbows rezoning and tentative map for the Fulton Avenue development (former Sacramento Trapshoot Club).

C. In March 2007 the County of Sacramento Environmental Management Department approved the Final Implementation Plan for the remediation of the Fulton Avenue Development site (formerly Sacramento Trapshoot Club).

D. On April 4, 2007 the City received a letter of approval from the U.S. Fish & Wildlife Service for the mitigation of on-site wetlands removal and the associated impacts to vernal pool fairy shrimp. Mitigation of these impacts requires the payment of \$505,926 into a Vernal Pool Conservation Fund Account.

E. The Fulton Avenue Development Project (PN: CB37) consists of two phases. Phase I consists of implementation of the remediation plan and provides a buildable site to Mel Rapon Honda. Phase II consists of building the public infrastructure such as roads, utilities, traffic signal, water main, and sewer lift station improvements and other improvements necessary to access the site.

F. Phase I improvements were advertised on February 12, 2007, and sixteen bids were received on March 28, 2007. Teichert Construction is the lowest responsive bidder.

G. Phase I Construction is expected to begin in June 1, 2007 and be completed by September 2007. Phase II Construction is expected to be begin late Summer 2007 and be completed February 2008. . Staff will return to Council prior to Phase II, requesting approval to award the contract for this work as well.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Plans and specifications for Phase I of the Fulton Avenue Development Project (PN:CB37) are approved.
- Section 2. The construction contract for the Phase I base bid is awarded to Teichert Construction in the amount of \$3,455,048.00.
- Section 3. The City Manager is authorized and directed to execute a contract in the amount not to exceed \$3,455,048.00 to Teichert Construction for Phase I of the Fulton Avenue Development Project (PN: CB37).
- Section 4: The City Manager is authorized and directed to release \$505,926 to the U.S. Department of Fish & Wildlife for payment into a Vernal Pool Conservation Fund Account and sign the accompanying agreement.

