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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WEST SACRAMENTO

AND

ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE BILLY  
G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST, AS LANDOWNERS  
RELATIVE TO YARBROUGH

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## **DEVELOPMENT AGREEMENT RELATIVE TO YARBROUGH**

This Yarbrough Development Agreement (“Agreement”) is made and entered into between the CITY OF WEST SACRAMENTO, a municipal corporation (“City”), and ASB Southport II LLC, a California limited liability company and the Billy G. and Louise Yarbrough Trust, a revocable family trust, (collectively, the “Landowner”). City and Landowner are hereinafter collectively referred to as the “Parties” and singularly as “Party.”

### **RECITALS**

1. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code section 65864 et seq. (the “Development Agreement Statute”), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property, which is the subject of the development project application.

2. **Public Hearing.** The Planning Commission of the City of West Sacramento, serving as the City’s planning agency for purposes of development agreement review pursuant to Government Code section 65867, considered this Agreement and recommended approval of this Agreement to the City Council.

3. **Environmental Review.** The City Council certified as adequate and complete, the Environmental Impact Report (“EIR”) for the Project in Resolution 08-40. Mitigation Measures were identified in the EIR. The City Council has adopted Mitigation Measures, as reflected in the CEQA findings of fact adopted by the Council, and in the City’s Mitigation Monitoring and Reporting Program in City Resolution 08-4. The Mitigation Measures adopted by the City are incorporated into the Project and, in part, into the terms and conditions of this Agreement, as reflected by the CEQA findings of fact adopted by the City Council concurrently with this Agreement.

4. **Need for Services and Facilities.** Development of the Property will result in a need for municipal services and facilities, some of which will be provided by the City to the Project, subject to the performance of Landowner’s obligations hereunder.

5. **Contribution to Costs of Facilities and Services.** Landowner agrees to contribute to the costs of public facilities and services as required herein to mitigate impacts on the community of the development of the Property, and City agrees to provide such public facilities and services as required herein to assure that Landowner may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Landowner recognize and agree that, but for Landowner’s contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City’s covenant to provide certain facilities and services for development of the Property, Landowner would not and could not commit to provide the mitigation as provided by this Agreement. City’s vesting of the right to develop the Property, as provided herein, is in reliance upon and in consideration of Landowner’s agreement to make contributions towards



the cost of public improvements as herein provided to mitigate the impacts of development of the Property as development occurs and as consistent with this Agreement.

6. **Public Benefits**. Development of the Project will result in significant public benefits, as more fully described hereinafter, including, without limitation:

6.1. Implementation of the development goals set forth in the Southport Framework Plan;

6.2. The provision of additional recreational opportunities and the enhancement of the appearance of the Southport area;

6.3. The provision of services within walking distance to development, as well as opportunities for employment;

6.4. The provision of a mixed-use development that is a logical extension of adjacent uses;

6.5. The furtherance of the goals and objectives of the City's affordable housing plan.

7. **Landowner Assurances**. In exchange for the benefits to the City in the preceding Recitals, together with the other public benefits that will result from the development of the Property, Landowner will receive by this Agreement assurance that it may proceed with the Project in accordance with the Project Approvals, and therefore, desires to enter into this Agreement.

8. **Consistency with General Plan and Southport Framework Plan**. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, in City Ordinance No. 08-4, the City found that this Agreement satisfies the Government Code section 65867.5 requirement of general plan consistency. The City has also found that this Agreement satisfies the project specific Southport Framework Plan, a planned development overlay, as more particularly described in City Ordinance No. 95-8.

NOW, THEREFORE, in consideration of the above Recitals and mutual promises, conditions and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## DEFINITIONS

1. **Definitions**. In this Agreement, unless the context otherwise requires, terms have the following meaning. Capitalized terms within the Exhibits not defined below have the meaning set out in the Exhibits.

1.1. "Adopting Ordinance" means Ordinance Number 08-4, adopted by the City Council on June 18, 2008, which approves this Development Agreement as required by the Development Agreement Law.

1.2. "Agreement" means this Development Agreement, inclusive of all exhibits attached hereto.

1.3. "CEQA" means the California Environmental Quality Act, as set forth at California Public Resources Code, Division 13, commencing at Section 21000 and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at Section 15000.

1.4. "City" means the City of West Sacramento, including its agents, officers, employees, representatives and elected and appointed officials.

1.5. "City Manager" means the City Manager of the City of West Sacramento, or his or her designee.

1.6. "Clubhouse" means the main building located at the village core. The Clubhouse is envisioned to be a two-story, approximately twenty-six thousand (26,000) square feet building containing a golf clubhouse with Pro Shop, administration offices, banquet facilities, restaurant, lounge area, and golf cart storage facility.

1.7. "Collective Standards" means: (i) the provisions of this Development Agreement; (ii) the Project Approvals; (iii) land use entitlement and approvals to the Project and the Property that may be granted following the Effective Date; and (iv) Existing Land Use Regulations, except to the extent that they are collectively or individually subject to Reserved Powers.

1.8. "Designated Trail System" means a recreational system that includes bicycle trails, pedestrian trails, equestrian trails, and an equestrian staging area.

1.9. "Development Agreement Law" means Government Code section 65864 et seq. and the procedures and requirements for the consideration of development agreements contained in City Resolution No. 88-111, as amended by City Council Resolution No. 96-62. In the event of a conflict, the requirements of Government Code section 65864 et seq. shall control.

1.10. "Effective Date" means that day on which the Adopting Ordinance shall be effective. The Adopting Ordinance shall be effective thirty (30) days after its adoption by the City Council, unless the Adopting Ordinance becomes subject to a qualified referendum, in which case, the Effective Date shall be the day after the referendum election, if the Adopting Ordinance is approved by a majority of the voters. Litigation filed to challenge the Adopting Ordinance or this Agreement shall not affect the Effective Date, absent a court order or judgment overturning or setting aside the Adopting Ordinance, or staying the Effective Date, or remanding the Adopting Ordinance to the City. Notwithstanding the foregoing, this Agreement shall not become effective until fully executed.

1.11. "EIR" means the Draft and Final Environmental Impact Report for the "Yarborough General Plan Amendment and Rezoning Project," including the Mitigation Measures and Mitigation Monitoring and Reporting Plan (State Clearinghouse No. 2005072101).

1.12. "Existing Land Use Regulations" means the ordinances, resolutions and regulations applicable to the Project, to the extent they govern the permitted uses of land, and the density and intensity of land use, as set forth in the following plans and ordinances as they exist on the Effective Date:

- (i) The West Sacramento General Plan;
- (ii) The Southport Framework Plan; and
- (iii) The West Sacramento Zoning Code.

1.13. "Existing Plus Approved" means residential development identified in the City's traffic model base updated in January 2008 and includes existing residential units and residential tentative maps which were approved as of December 31, 2007. A copy of the updated traffic model base is on file with the City.

1.14. "Fee" means all charges, expenses, costs, monetary exactions and any other monetary obligations imposed on Landowner by the City, other than assessments or regular or special taxes, and shall not be limited to fees paid pursuant to this Agreement. (The term "fee" need not be capitalized in this Agreement.)

1.15. "General Plan" means the General Plan of the City including the text and maps, as approved by the City in 2004, plus any other General Plan amendments approved by the City on or before the Effective Date.

1.16. "Grand Meadow" means a small meadow area, approximately two (2) to three (3) acres in area, that provides a place for concerts, festivals, and larger people-gathering events. Typical elements include a lawn area, sitting areas, and plaza.

1.17. "Improvement" means any on-site or off-site conveyance, grant or dedication of property or property rights, non-monetary exaction, construction and/or installation of a work of public improvement, street, facility, utility, park facility or recreational amenity which is to be transferred to the City, or any other contribution of property (other than fees), imposed on Landowner by the City.

1.18. "Infrastructure" means the basic facilities, services, and installations needed for the functioning of the Improvements, the golf course and park facilities. (The term "infrastructure" need not be capitalized in this Agreement.)

1.19. "Lake Park" means a linear park that allows access to the lake water edge while connecting with a series of day use recreation nodes and landscape features with a Designated Trail System. Typical elements include par courses, small plazas with lake overlooks, informal tree groves, accent plantings, rock outcroppings, a village green, a boat ramp, and the Grand Meadow. A figure showing the general location of the Lake Park is attached hereto at Exhibit D and incorporated herein by reference.

1.20. "Landowner" means, collectively, ASB II LLC, a California limited liability company and the Billy G. and Louise Yarbrough Trust, a revocable family trust, together with any successors in interest approved by the City pursuant to this Agreement.

1.21. "Law" means the case law, ordinances, statutes, rules, regulations, or any order, decree or directive of any court or any local, regional, state or federal government agency, unless the context suggests a different meaning.

1.22. "Master Affordable Housing Agreement" means the document between the City and Landowner that will govern the development, construction, sale and resale of the Yarbrough Inclusionary Units and will ensure compliance with the requirements of Chapter 15.40 of the City's Municipal Code, to the extent that those requirements do not conflict with Exhibit F. The Master Affordable Housing Agreement is more particularly described in Section 11 and Exhibit F of this Agreement.

1.23. "Mitigation Measures" means the mitigation measures recommended in the EIR as modified or adopted by the City Council.

1.24. "Mitigation Monitoring and Reporting Program" means the plan for implementation of the Mitigation Measures, identified in the EIR, and adopted by the City Council.

1.25. "Neighborhood Park" means a five (5) acre park that serves the informal, daily recreation needs of nearby residents in a neighborhood. An example of an existing neighborhood park is Elkhorn Park, located in the City.

1.26. "Non-Project Specific" means rules, regulations, or laws adopted by the City that, while not applicable City-wide, apply uniformly to all properties that are similarly situated, whether by geographic location or other distinguishing circumstances.

1.27. "Not a Part Lands" means approximately 45.8 acres of land that is located in the south-central area of the Property, as shown on Figure 2-3 of the EIR and labeled "N.A.P." The Not a Part Lands are generally surrounded by, but are not a part of, the Property.

1.28. "Planning Commission" means the City of West Sacramento Planning Commission.

1.29. "Pocket Park" means a small recreation area, tot lot or sitting area that serves the daily recreational needs of nearby residents and that is generally less than four (4) acres in area. These areas typically include children's play areas, sitting areas, and limited green space, but not formal play fields. An example of an existing Pocket Park is Redwood Park, located in the City.

1.30. "Project" means the physical development of the Property as described in the project description in the EIR, and as supplemented by the provisions of this Agreement, including Exhibit C. The Project consists of the development of a seven hundred and eleven (711) acre mixed use project containing three thousand and four (3,004) residential units, to be located on the Property.

1.31. "Project Approvals" means the entitlements that are the subject of this Agreement, consisting of the following land use approvals:

- (i) The EIR.
- (ii) This Development Agreement (DA 07-01), as adopted on June 18, 2008 by City Ordinance No. 08-4 (the "Adopting Ordinance").
- (iii) A General Plan Amendment (GPA 04-02), by City Resolution No. 08-3.

(iv) A Southport Framework Plan Amendment by City Ordinance No. 08-11.

(v) A Rezone, by City Ordinance No. 08-3.

(vi) The Yarbrough Design Guidelines, incorporated into the Southport Framework Plan Amendment, in Ordinance 08-11.

(vii) Additions to the Traffic Impact Fee Study, reflected in Exhibit I, and adopted by City Resolution 08-41.

1.32. "Property" means that certain real property consisting of approximately seven hundred and eleven (711) acres in the City of West Sacramento, County of Yolo, as more particularly described in Exhibit A and depicted in Exhibit B, attached hereto.

1.33. "Pro Shop" means a shop located at the golf course where green fees are paid, tee times are reserved, and golf merchandise is offered for sale or rent.

1.34. "Public Works and Community Development Director" or "Director" means the Public Works and Community Development Director of the City of West Sacramento, or his or her designee.

1.35. "Reserved Powers" means those powers explicitly reserved to the City by this Agreement pursuant to Section 6.2 of this Agreement.

1.36. "Southport Area" means that area of land located in the southern portion of the City and generally bound by the Deep Water Ship Channel on the north and west, the Sacramento River on the east and current City limits on the south.

1.37. "Southport Framework Plan" means that certain document adopted by the City in May 1995, together with any amendments as approved by the City on or before the Effective Date of this Agreement. The Southport Framework Plan is the development master plan for the Southport Area. The Southport Framework Plan is intended to be a refinement of the City's General Plan and is intended to establish the foundation for a village-oriented, mixed use development. The Southport Framework Plan includes the Land Use Map, Design Guidelines, and Implementation Plan.

1.38. "Successor" or "Successor in Interest" means any subsequent owner that acquires all or any portion of the Property. This term shall not include private parties that acquire recorded residential lots that have been developed with residential dwellings within the Property. This term shall also mean any assignee under the form of assignment attached hereto as Exhibit N (i.e., any recognized successor in interest under this Agreement), and any subsequent assignee.

1.39. "Vested Right" means the right to proceed with the development of the Project in accordance with the terms of the Collective Standards, which Collective Standards may not be amended, modified or changed by the City except as provided by this Agreement. (The term "vested right" shall not be capitalized in this Agreement.)

1.40. "Yarbrough Design Guidelines" means the design guidelines for the Project, consisting of:

(i) The Master Design Guidelines, as more specifically described in Section 10.3 of this Agreement; and

(ii) The additional design guideline elements listed in Exhibit E attached hereto, which shall become part of the Yarbrough Design Guidelines upon approval by the Planning Commission in accordance with Section 10.3; and

(iii) Amendments to the Yarbrough Design Guidelines approved in accordance with Section 10.3.4.

1.41. “Yarbrough Inclusionary Units” means the affordable housing units required to be developed on the Property by Landowner, in accordance with this Agreement and as set forth in Exhibit F of this Agreement.

## **AGREEMENT**

1. **Incorporation of Recitals.** The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full.

2. **Description of Property.** The Property, which is the subject of this Agreement, is described in Exhibit A and depicted in Exhibit B attached hereto (“Property”).

3. **Relationship of City and Landowner.** It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that Landowner is not an agent of City. The City and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Landowner joint venturers or partners.

4. **Representations, Warranties and Acknowledgments.**

4.1 **Title to Property.** Landowner represents and warrants that as of the Effective Date, Landowner holds legal and/or equitable interest in and to the Property and that all persons holding legal or equitable interest in the Property shall be bound by the Agreement.

4.2 **Authority.** The Parties represent and warrant that the persons signing this Agreement are duly authorized to enter into and execute this Agreement on behalf of their respective principals.

4.3 **Brokers.** The Parties represent and warrant that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Agreement. In the event any real estate broker or agent shall come forward and claim the right to a commission or other form of compensation in connection with this Agreement, Landowner shall indemnify, defend and hold harmless the City in accordance with Section 26.1.

4.4 **Procedures and Requirements.** The Parties acknowledge that this Agreement is subject to the procedures for approval, amendment and administration set forth in the Development Agreement Law.

5. **Effective Date and Term.**

5.1 **Effective Date.** The effective date of this Agreement means the date defined at Section 1.10 of this Agreement.

5.2 **Term.** The term of this Agreement shall commence on the Effective Date and extend for a period of fifteen (15) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement.

5.2.1. **Tolling.** The term of this Agreement shall be tolled if and for as long as City determines development within the Southport area is infeasible due to State, Federal or local health and safety requirements; provided, however, that under this circumstance the term of this Agreement shall not be tolled for longer than five (5) years.

5.2.2. **Extension.** The term of this Agreement may also be extended for a maximum period of five (5) years if development of at least fifty percent (50%) of residential units in the Project has occurred and all of the improvements and infrastructure associated with those units are constructed and accepted by the City, as appropriate.

Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

5.3 **Automatic Termination Upon Completion and Sale of Individual Lots.** Except as provided herein, this Agreement shall automatically be terminated, without any further action by either party or need to execute or record any additional document, with respect to any improved commercial or residential lot within a parcel designated by the Project Approvals for such use, upon issuance by the City of a final certificate of occupancy or its equivalent for a commercial structure or dwelling unit upon such lot and conveyance of such lot by Landowner to a bona-fide, good-faith individual purchaser. In connection with its issuance of a final inspection for any residential lot, the City shall confirm that all Improvements which are required to serve the lot have been dedicated to and accepted by the City, and all applicable fees have been paid by Landowner. Termination of this Agreement as to any such commercial or residential lot shall not in any way be construed to terminate or modify any applicable assessment district, special tax lien, fee credit, or right of reimbursement with respect to such lot. Termination of this Agreement as to any such lot shall extend solely to that lot and shall not extend to other parcels or property encompassed by this Agreement.

5.4 **Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of all the Parties. Any fees paid or Improvements dedicated to the City prior to the date of termination shall be retained by the City.

5.5 **Effect of Termination.** This Agreement was entered into by the Parties for the limited purpose of setting forth certain terms and conditions concerning the proposed development of Project in a manner that is consistent with the Collective Standards. Accordingly, nothing contained herein is intended or shall be construed to grant to Landowner any rights in connection with the future development of the Property, except for those rights set forth in the Collective Standards and in this Agreement.

The Parties recognize and agree that this Agreement imposes certain continuing obligations and responsibilities on the City and Landowner. Termination of this Agreement,

whether by default as provided in Section 25 or by expiration of its own accord, shall not: (1) affect any pre-existing liability under this Agreement owed by one Party to the other, which remains unsatisfied as of the date of termination; (2) affect those provisions of this Agreement which provide that they shall survive the termination of this Agreement, including, but not limited to the City's Purchase Option Agreement set forth in Section 12.1.2, or Landowner's obligations to comply with the Yarbrough Design Guidelines or Mitigation Measures; (3) be construed to terminate or modify an applicable covenant, condition, servitude or restriction that runs with the land and binds Successors; (4) affect the validity of any structure on the Property or Improvement which is completed as of the date of termination and is in compliance with all necessary permits; or (5) prevent Landowner from completing any structure on the Property or Improvement under construction at the time of termination, provided that any such structure or Improvement is completed in accordance with all necessary permits.

6. **Project Approvals and Vested Rights.**

6.1 **Project Approvals.** Upon the Effective Date, Landowner shall acquire a vested right to the Project Approvals as set forth in Section 10.1. Except as otherwise provided in Section 22.4, if Landowner applies to the City Council to amend the Project Approvals, and the City Council approves the requested amendments, then Landowner shall acquire a vested right to such amendments to the Project Approvals as of the date of approval of the amendments by the City Council; provided, however, that Landowner shall not, by virtue of this Agreement, acquire a vested right to any amended Project Approval approved after the expiration of the term of this Agreement.

6.2 **Reserved Powers Relating to Project Entitlements and Approvals.** Notwithstanding any other provision of this Development Agreement to the contrary, the City retains the following reserved powers and retains the authority to take the following actions:

6.2.1. Grant or deny applications for land use entitlements and approvals for the Project and the Property, provided such action is consistent with the Collective Standards;

6.2.2. Approve, disapprove or revise subdivision maps, parcel maps or lot line adjustments for the Project and the Property, provided such action is consistent with the Collective Standards;

6.2.3. Apply, or adopt and apply, design and construction requirements for specific public improvements to serve the Project on the Property, except to the extent that such requirements are a part of the Collective Standards or expressly set forth in this Development Agreement;

6.2.4. Adopt and apply City-wide or Non-Project Specific property transfer and/or excise taxes;

6.2.5. Adopt and apply City-wide or Non-Project Specific utility charges;

6.2.6. Adopt and apply City-wide or Non-Project Specific permit processing fees;



6.2.7. Adopt and apply regulations to protect the City and its citizens from immediate risks to health and safety. The Landowner hereby agrees that any regulation with respect to flood protection adopted in response to Federal or State guidelines, regulations, or directives shall be deemed necessary to protect the public health and safety;

6.2.8. Adopt or increase fees, charges, assessments or special taxes otherwise authorized by and in compliance with State law (e.g. Gov. Code sections 66000 et seq.), except to the extent prohibited by this Development Agreement;

6.2.9. Adopt and apply City-wide or Non-Project Specific regulations relating to the temporary use of land, the control of traffic, the regulation of sewers, water, and similar subjects, and the abatement of public nuisances;

6.2.10. Adopt and apply engineering design standards and construction specifications;

6.2.11. Adopt and apply City-wide or Non-Project Specific building and fire construction standards;

6.2.12. Adopt or undertake enforcement of land use regulation ordinances, policies, programs, or resolutions in order to comply with Federal or State laws, provided that in the event that such Federal or State laws, plans, programs or regulations prevent or preclude compliance with one (1) or more provisions of this Agreement, such provision or provisions shall be modified or suspended solely as may be necessary to comply with such Federal or State laws or regulations;

6.2.13. Adopt land use regulations, ordinances, policies, programs or resolutions that are not in conflict with, or that are less restrictive than, the terms and conditions for development of the Project on the Property established by this Development Agreement or otherwise applicable Collective Standards and which do not impose additional burdens on such development other than those that are merely procedural in nature;

6.2.14. Adopt land use regulations, ordinances, policies, programs, resolutions or fees that are in conflict with the Collective Standards, but which are either expressly made not applicable to the Property or are consented to in writing by the Landowner either through amendment of this Development Agreement or by separate document.

The foregoing Reserved Powers may be exercised by the City acting through its elected or appointed officials or its employees (subject to the appeal rights (if any) set forth in the Municipal Code), or directly by the electors through the initiative process.

6.3 **Meet and Confer.** If Landowner believes that the City is taking action to impair a vested right conferred by this Agreement, other than as allowed in this Agreement, Landowner shall provide to City written notice, describing the basis for Landowner's position. The Parties shall meet and confer within thirty (30) days thereafter in an attempt to arrive at a mutually acceptable solution.

6.4 **Further Reviews.** Landowner acknowledges that the Collective Standards contemplate further reviews of elements of portions of the Project by the City. These reviews include, but are not limited to, monitoring and implementation of environmental

mitigation measures. Nothing in this Agreement shall be deemed to limit or expand the legal authority of City with respect to such reviews, as provided for by, and which are otherwise consistent with, this Agreement.

6.5 **Referendum.** Landowner acknowledges that the Adopting Ordinance, the Southport Framework Plan Amendment, the General Plan Amendment, and the Rezone, as legislative land use approvals, are potentially subject to referendum. Notwithstanding anything in this Agreement to the contrary, Landowner shall not acquire a vested right to any legislative land use approval (or to any amendment thereto): (1) while such approval or amendment is still potentially subject to referendum or (2) in the event that such approval or amendment is reversed by referendum.

7. **Subdivision Maps.**

7.1 **Term of Tentative Subdivision Maps.** Notwithstanding Government Code section 66452.6(a), the term or “life” of any tentative map for the Project shall be determined by reference to the Subdivision Map Act other than Section 66452.6(a), and shall not be automatically extended for the term of this Agreement.

7.2 **Vesting Tentative Maps.** Landowner reserves the right to file a “vesting tentative map” as that term is defined in Government Code section 66498.1. Landowner agrees, however, that any such vesting tentative map filed in connection with the Project will not vest the Landowner in any rights with respect to any matter that is identified in the Comprehensive Financing Agreement, the Master Affordable Housing Agreement, the Comprehensive Recreational Phasing and Financing Plan, and this Agreement (including its Exhibits). Landowner further agrees that the Comprehensive Financing Agreement, the Comprehensive Development Phasing Plan, and the Comprehensive Recreational Phasing and Financing Plan shall govern the financing and construction of infrastructure for the Project.

8. **Applicable Rules, Regulations, Fees and Official Policies.**

8.1 **Rules Regarding Design and Construction.** Unless otherwise expressly provided in this Agreement, all other ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project and to public improvements to be constructed by the Landowner shall be those in force and effect at the time the applicable permit approval is granted.

8.2 **Uniform Codes Applicable.** Unless otherwise expressly provided in this Agreement, the Project shall be constructed in accordance with the California Building Standards Codes, Title 24 of the California Code of Regulations, as adopted and amended by the City, as the same shall be in effect as of the time of approval of the permit in question. The Project shall also be constructed in accordance with the provisions of the California Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permit is required for a given infrastructure improvement or other improvement, such improvement will be constructed in accordance with said Codes in effect in the City as of the commencement of construction of such improvement.

### 8.3 **Fees, Dedications, Assessments and Taxes.**

8.3.1. **Waiver of Fee Establishment Procedures.** Notwithstanding anything in this Agreement to the contrary, Landowner hereby waives the procedures and requirements imposed on cities by the Mitigation Fee Act (Government Code sections 66000 et seq.) for establishing, expending, returning, and reporting on all "fees" as that term is defined in the Mitigation Fee Act, as to the fees established as of the Effective Date of this Agreement. This waiver shall not apply to any fees adopted after the Effective Date; thus, as to fees adopted or revised after the Effective Date, Landowner shall retain whatever rights it has under Federal and State law.

8.3.2. **Processing Fees and Charges.** Landowner shall pay those processing, inspection, and plan check fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder.

8.3.3. **Development Impact Fees, Exactions and Dedications.** Landowner shall make all dedications of land and pay all development impact fees, connection or mitigation fees, and exactions required by the City to support in the construction of any public facilities and improvements or the provision of public services in relation to development of the Property (together "Exactions") authorized by City after the Effective Date as long as said Exactions otherwise comply with applicable law, and are either (1) required on a City-wide basis, or (2) apply uniformly to all properties within the City that are zoned consistent with the Project Approvals, or (3) are Non-Project Specific. Except as otherwise provided in this Agreement, Exactions required by City to be paid by the Landowner that do not meet one of the preceding criteria, shall be the Exactions authorized as of the Effective Date. Wherever this Agreement obligates Landowner to design, construct or install any improvements, the cost thereof shall be provided by Landowner, or may be provided by a Community Facilities District ("CFD") or other such financing mechanism acceptable to the City, subject to and in accordance with the provisions thereof.

8.3.4. **Exhibits Not Exclusive.** Landowner acknowledges that the fees and Improvements set forth in the attached Exhibits are not exclusive, but are merely set forth to clarify some of Landowner's obligations under this Agreement.

8.3.5. **Mitigation of EIR Impacts.** Landowner shall timely satisfy and comply with all Mitigation Measures in accordance with the schedule in the Mitigation Monitoring Plans. The Mitigation Measures are conditions of Project approval but are not the exclusive conditions of Project approval. A failure to timely satisfy any Mitigation Measure or other conditions of Project Approval without prior written City approval shall be a default of this Agreement, subject to the default and cure provisions set forth in Section 25 of this Agreement.

8.3.6. **Other Public Agencies.** Nothing in this Agreement is intended to govern the authority of other public agencies to impose fees.

8.3.7. **Public Works and Community Development.** All Improvements and work performed by Landowner in connection with the Project shall be to the satisfaction of the City Public Works Director and Community Development Director.

8.3.8. **Acquisition of Land for Improvements.** Landowner acknowledges that some of the public improvements required for the Project will be constructed on land that is not under the control of the Landowner or the City. The City is under no obligation to acquire land needed for the construction of such improvements, and the Parties agree that nothing in Government Code section 66452.5 or any other provision of State law will require the City to waive any conditions set forth in the Project approvals related to construction of the Project. If City acquires such land, Landowner shall be responsible for all of City's costs associated with such acquisition (including legal counsel and appraisal fees), subject to possible reimbursement as provided in Section 14.3.

9. **Payment and Performance Bonds.** Landowner has an affirmative obligation to secure its obligations to construct Project improvements, as required in this Agreement. Landowner shall secure all infrastructure improvements by delivering payment and performance bonds to City, in a manner consistent with City ordinances and in accordance with this section.

Prior to the commencement of construction of any infrastructure improvement, Landowner or Landowner's general contractor shall furnish City with payment and performance bonds ("Bonds"), issued by a corporate surety company that is an admitted insurer in the State of California and licensed to do business in California, in an amount approved by City, but not less than the full amount of the construction contract, and shall name City as obligee. The Bonds shall remain in effect until the later of (1) the date that the entire cost of developing the improvement shall have been paid in full, (2) the date that the improvement shall have been completed in accordance with this Agreement, and/or (3) the date on which the City accepted the improvement.

The Bonds shall be in the form prescribed by Government Code sections 66499.1 and 66499.2 for performance and payment bonds and be reasonably satisfactory to City.

10. **Use of Property.**

10.1 **Right to Develop.** Landowner shall have the vested right to proceed with development of the Project in accordance with the terms and conditions of this Agreement, the Collective Standards, and any amendments to the Project Approvals as shall, from time to time, be approved pursuant to this Agreement. Landowner's development of the Property shall be subject to the terms set forth in any subsequent approvals needed for development; provided however, that any conditions, terms, restrictions and requirements contained in any subsequent approvals shall not be inconsistent with or otherwise prevent development of the Property for the uses, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, as long as Landowner is not in default under this Agreement.

10.2 **Permitted Uses.** The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location and maintenance of on-site and off-site improvements, location of public utilities and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Collective Standards and any amendments to this Agreement or the Project Approvals. City acknowledges that the Project Approvals provide for the land uses and approximate acreages for the Property as set forth in Exhibit C and Exhibit D.

### 10.3 **Design Guidelines.**

10.3.1. **Accessible Design.** Medium density designated residential units in the Project shall vary in product type and include accessible designs. For purposes of this section, accessible design may include, for example, single story units, units with living quarters and bedrooms located on the first floor, and/or units that incorporate architectural elements such as wide hallways that promote use of the unit by senior citizens or people with disabilities.

10.3.2. **Master Design Guidelines for the Project.** Master Design Guidelines for the Yarbrough Project were approved as part of the Southport Framework Plan Amendment and incorporated into the Southport Framework Plan Design Guidelines.

10.3.3. **Additional Components.** Landowner shall have additional design guidelines, identified in Exhibit E, reviewed and approved by the City's Planning Commission, in the exercise of its discretion. The additional design guidelines shall be approved by the Planning Commission, based on the timing set forth in Exhibit E, before the corresponding map or permit is issued to Landowner. Upon approval, the additional design guidelines shall be deemed incorporated into the Southport Framework Plan Design Guidelines.

10.3.4. **Amendments and Modifications.** Amendments or modifications to the Yarbrough Design Guidelines shall be made in accordance with the Southport Framework Plan.

11. **Master Affordable Housing Agreement.** Prior to or concurrent with the approval of the first tentative map for the Project, Landowner shall identify the substantive terms of the Master Affordable Housing Agreement, which substantive terms shall be to the satisfaction of City staff. Prior to or concurrent with the approval of the first final map for the Project, Landowner shall enter into the Master Affordable Housing Agreement with the City, to the satisfaction of the City. At a minimum, the Master Affordable Housing Agreement shall contain the requirements set forth in Exhibit E, attached hereto and incorporated herein by reference.

### 12. **Recreational Uses.**

12.1 **Golf Course.** The golf course located on the Property, and more particularly described in Exhibit G and depicted in Exhibit D, shall be an 18-hole public golf course, including a Pro Shop, and be available to City residents during normal business hours. Construction of the golf course shall not be credited towards the Project's Park Impact Fee obligations.

12.1.1. **Timing of Construction.** Construction of the golf course shall commence with the first phase of construction of the Project in accordance with the terms of the Comprehensive Development Phasing Plan. If the golf course is not completed prior to the issuance of the one thousand two hundredth (1,200<sup>th</sup>) residential building permit, then no further residential building permits shall be issued. For purposes of this section, the term "completed" shall mean that the golf course, including all infrastructure and improvements thereon, has been constructed and that the golf course is in the "grow in" or "course maturation" phase. The Pro Shop shall be constructed upon completion of the golf course such that it is open to the public for use and enjoyment at the same time that the golf course is open to the public for use and enjoyment.

12.1.2. **Purchase Option.** Prior to approval of the first tentative map for the Project, Landowner shall enter into a Purchase Option Agreement with the City (the "Option"). The Option shall allow the City to acquire the golf course and resume operation of the golf course in the event the Landowner (or its successor) decides to cease operating the golf course as a public golf course, consistent with the intent of the City Council expressed at its May 14, 2008 meeting.

12.1.2.1. **Legal Description To Purchase Option.** Concurrent with the approval of the first final map creating the parcel(s) containing the golf course, the Parties shall amend the Option by inserting a legal description for the golf course.

12.1.3. **Indemnification.** In the event the golf course closes or the City exercises its purchase option in accordance with Section 12.1.2 herein, all releases, indemnification, defenses, and protection running from individual homeowners and/or the homeowner's association shall be transferred from the existing golf course operator to the City, its agents, designees, employees, and assigns. Landowner shall do all things necessary to cause this transfer to occur such that the City, as operator, possesses the same releases, indemnification, defenses, and protection as the existing golf course operator arising from activities related to the operation and maintenance of the golf course.

12.1.4. **Operation and Maintenance.** In the event that the City exercises its Option to purchase the golf course from the Landowner, Landowner shall transfer to the City any funds collected for the purpose of operating and maintaining the golf course. Landowner shall also transfer to the City control over any funding mechanism created for the operation and maintenance of the golf course.

12.2 **Parks.** The Project Approvals include a five (5) acre Neighborhood Park, the Lake Park (including the recreational and open space improvements included in the Lake Park), Pocket Parks, a village green, and a Designated Trail System, together with recreational and open-space improvements to these areas.

12.2.1. **Funding of the Updated Parks Master Plan Park Impact Fee Study.** Except as otherwise provided in Section 12.2.5, Landowner shall fund its proportionate share of an update to the Parks Master Plan and a Park Impact Fee Study. Proportionate share shall be determined based upon the projects participating in the update and is initially estimated to be twenty five percent (25%) of two hundred thousand dollars (\$200,000). Landowner shall deposit funds with City within thirty-five (35) days of the Effective Date, or the date the City determines Landowner's proportionate share, whichever occurs later.

12.2.2. **Update to the Master Plan and Fee Study.** Except as otherwise provided in Section 12.2.5, the City shall commence the update of the Parks Master Plan and Fee Study not more than thirty (30) days after receipt of funds from all participating projects. Once the update and fee study are commenced, the City shall move forward expeditiously with the development and approval of the update and fee study. Landowner expressly acknowledges and agrees that City shall not commence the update to the Master Plan and Fee Study until and unless it receives fees sufficient to cover the costs of the updates.

12.2.3. **Purpose of the Update to the Parks Master Plan and Park Impact Fee Study.** The purpose of this update shall be to (1) reflect additional population projections in the Southport area (including the Project), (2) identify park facilities necessary to

serve that population, (3) determine the costs associated with developing the identified park facilities, (4) to evaluate to what extent the park improvements included in the Project, including the Lake Park and those improvements programmed as part of the Lake Park, will be incorporated into the Parks Master Plan and eligible for park credits, and (5) include a Park Impact Fee Study for the purpose of updating the City's park-related fees. Once the update is commenced, the City shall move forward expeditiously with the development and approval of the fee update. The Landowner shall be subject to the updated Park Impact Fee and shall pay that fee.

12.2.4. **Building Permits.** No building permits shall be issued for the Project until the update of the Parks Master Plan and Park Impact Fee Study is completed and the updated impact fee is approved. All required improvements identified in the updated Master Plan shall be financed and constructed in accordance with the Comprehensive Recreational Phasing and Financing Plan. Notwithstanding the foregoing, in the event that the update to the Parks Master Plan and Park Impact Fee Study has not been approved within eighteen (18) months of the City commencing the update, Landowner may be eligible to pull building permits if Landowner pays the then existing park impact fee and enters into an agreement with the City to pay the updated park impact fee when it is approved. Landowner expressly acknowledges and agrees, however, that no building permits will be issued until and unless City receives fees from Landowner and participating projects, sufficient to cover the cost to commence the update to the Master Plan and Fee Study.

12.2.5. **Alternative Timing for Update to the Master Plan and Fee Study.** If the City has not obtained all the funds necessary to update the Parks Master Plan and Park Impact Fee Study within ninety (90) days of the Effective Date, then Landowner may request that the City commence the updates to the Master Plan and Impact Fee Study specifically for the Project, subject to the written approval of the Director. Upon approval of the Director, Landowner shall deposit with the City one hundred percent (100%) of the cost of the updates; Landowner acknowledges that, notwithstanding Section 14.3, Landowner shall not be entitled to reimbursement for funding the updates under this section since the update would only include the Project. The City and Landowner acknowledge and agree that the intent of this section is to provide Landowner an opportunity to move forward with the Parks Master Plan and Park Impact Fee Study, in the event that the City is unable to obtain funding from all participating projects.

12.2.6. **Ownership and Maintenance.** The Neighborhood Park and Designated Trail System shall be publicly owned and maintained, and open to the public for use and enjoyment. Unless otherwise indicated in the Comprehensive Recreational Phasing and Financing Plan, all other park facilities developed as part of the Project shall be open to the public for use and enjoyment, but shall be privately owned and maintained.

12.2.7. **Credits.**

12.2.7.1. Upon completion of the construction of the park facilities identified in the Comprehensive Recreational Phasing and Financing Plan, and at such time as the improvements are "completed," Landowner shall be eligible for park impact fee credits to the extent that the facilities are consistent with the City's updated Parks Master Plan and identified in the Master Plan as being eligible for credit. For purposes of this section, park facilities are "completed" when the facility and corresponding improvements and infrastructure are constructed and available for public use and enjoyment.

12.2.7.2. The City shall have a controlling role in programming, design, and construction of any park facilities eligible for credit; however, all costs associated with any park facility shall be borne by the Landowner. The term “controlling role” shall be described in the Comprehensive Recreational Phasing and Financing Plan.

12.2.8. **Timing of Improvements of Parks.** The construction of park facilities shall be phased in accordance with Section 12.2.9, the Comprehensive Recreational Phasing and Financing Plan. Park facilities adjacent to a residential neighborhood shall be constructed and completed prior to completion of fifty percent (50%) of the residential dwelling units in the residential neighborhood. For purposes of this section 12.2.8, park facilities are “completed” when the park facility and corresponding improvements and infrastructure are constructed and available for public use and enjoyment. A residential dwelling unit is “completed” when the City has performed its final inspection of the unit and the unit is eligible for the issuance of a certificate of occupancy or its equivalent.

12.2.9. **Comprehensive Recreational Phasing and Financing Plan.** Landowner agrees to prepare and implement a Comprehensive Recreational Phasing and Financing Plan that shall include, but not be limited to the following:

- 12.2.9.1. Designated Trail System,
- 12.2.9.2. The Lake Park,
- 12.2.9.3. The Neighborhood Park, and
- 12.2.9.4. Pocket Parks.

The Comprehensive Recreational Phasing and Financing Plan shall identify specific residential neighborhoods and the timing of construction of the corresponding park facilities adjacent to those neighborhoods to ensure compliance with the provisions set forth in this Agreement and the Parks Master Plan update. The Comprehensive Recreational Phasing and Financing Plan shall also define, with specificity, Landowner’s obligation to finance the park facilities. Prior to the issuance of the first tentative map for the Project, Landowner shall identify the substantive terms of the Comprehensive Recreational Phasing, Financing, and Reimbursement Plan. The Comprehensive Recreational Phasing and Financing Plan shall be subject to the review and written approval of the City, prior to the approval of the first final map for the Project.

12.2.10. **Designated Trail System.** No later than the timing set forth in the Comprehensive Recreational Phasing and Financing Plan of the subdivision improvements, Landowner shall design, construct, and grant a Designated Trail System. Segments of the Designated Trail System shall be phased to provide connectivity to other transit corridors within the Property.

13. **Public Improvements.**

13.1 **Drainage Master Plan and Drainage Impact Fee Study.**

13.1.1. **Funding of the Updated Master Plan and Fee Study.** Except as otherwise provided in Section 13.1.6, Landowner shall fund its proportionate share of an update



to the Drainage Master Plan and a Drainage Impact Fee Study. Proportionate share shall be determined based upon the projects participating in the update and their respective equivalent dwelling units. Landowner shall deposit funds with City within thirty-five (35) days of the Effective Date, or the date the City determines Landowner's proportionate share, whichever occurs later.

13.1.2. **Update of the Master Plan and Fee Study.** Except as otherwise provided in Section 13.1.6, the City shall commence the update of the Drainage Master Plan and Fee Study not more than thirty (30) days after receipt of funds from all participating projects. Once the update and fee study are commenced, the City shall move forward expeditiously with the development and approval of the update and fee study. Landowner expressly acknowledges and agrees that City shall not commence the update to the Master Plan and Fee Study until and unless it receives fees sufficient to cover the costs of the updates.

13.1.3. **Eligibility for Reimbursement.** Eligibility of Landowner for reimbursement, including reimbursement for the construction and improvement of the lakes and waterways as a retention basin for purposes of drainage, shall be in accordance with Section 14.3. Credits or reimbursements shall be limited to the amount of land necessary to provide drainage for the Project as reflected in the Hydrology study in the EIR.

13.1.4. **Construction and Financing of Improvements.** All improvements and infrastructure identified in the update to the Drainage Master Plan shall be incorporated into the Comprehensive Development Phasing Plan and Comprehensive Financing Agreement.

13.1.5. **Building Permits.** No building permits shall be issued for the Project until the update of the Drainage Master Plan and Drainage Impact Fee Study is completed and the updated impact fee is approved. All required improvements identified in the updated Master Plan shall be financed and constructed in accordance with the Comprehensive Financing Agreement and Comprehensive Development Phasing Plan. Notwithstanding the foregoing, in the event that the update to the Drainage Master Plan and Drainage Impact Fee Study has not been approved within eighteen (18) months of the City commencing the update, Landowner may be eligible to pull building permits if Landowner pays the then existing drainage impact fee and enters into an agreement with the City to pay the updated drainage impact fee when it is approved. Landowner expressly acknowledges and agrees, however, that no building permits will be issued until and unless City receives fees from Landowner and participating projects, sufficient to cover the cost to commence the update to the Master Plan and Fee Study.

13.1.6. **Alternative Timing for Update to the Master Plan and Fee Study.** If the City has not obtained all the funds necessary to update the Drainage Master Plan and Drainage Impact Fee Study within ninety (90) days of the Effective Date, then Landowner may request that the City commence the updates to the Master Plan and Impact Fee Study specifically for the Project, subject to the written approval of the Director. Upon approval of the Director, Landowner shall deposit with the City one hundred percent (100%) of the cost of the updates; Landowner acknowledges that, notwithstanding Section 14.3, Landowner shall not be entitled to reimbursement for funding the updates under this section since the update would only include the Project. The City and Landowner acknowledge and agree that the intent of this section is to provide Landowner an opportunity to move forward with the Drainage Master Plan and Drainage Impact Fee Study, in the event that the City is unable to obtain funding from all participating projects.

13.1.7. **Lakes and Waterways.** Lakes and waterways developed as part of the Project shall be privately owned by the Landowner. Landowner shall maintain and operate the lakes and waterways in accordance with Exhibit E and to the satisfaction of Reclamation District 900, its successors or assigns. Upon approval of the final map for the Project that identifies and creates the lakes and waterways as a separate parcel of land, Landowner shall grant the City an Irrevocable Offer of Dedication (the "IOD") to the said parcel. The IOD shall be in a form prepared by the City and offer the City the right, but not the obligation, to accept the lakes and waterways. In the event that the City accepts the lakes and waterways from the Landowner, the Landowner shall transfer to the City any funds collected for the purpose of operating and maintaining the lakes and waterways. Landowner shall also transfer to the City control over any funding mechanism created for the operation and maintenance of the lakes and waterways. Upon transfer of the funds and funding mechanism from Landowner to the City, the City shall be responsible for the operation and maintenance of the lakes and waterways. Nothing in this section shall be construed to allow Landowner to receive compensation or to be eligible for reimbursements or credits toward development impact fees for the IOD.

## 13.2 **Water Master Plan.**

13.2.1. **Funding of the Updated Master Plan and Fee Study.** Except as otherwise provided in Section 13.2.6, Landowner shall fund its proportionate share of an update to the Water Master Plan and a Water Impact Fee Study. Proportionate share shall be determined based upon the projects participating in the update and their respective equivalent dwelling units. Landowner shall deposit funds with the City within thirty-five (35) days of the Effective Date, or the date the City determines Landowner's proportionate share, whichever occurs later.

13.2.2. **Update of the Master Plan and Fee Study.** Except as otherwise provided in Section 13.2.6, the City shall commence the update of the Water Master Plan and Fee Study not more than thirty (30) days after receipt of funds from all participating projects. Once the update and fee study are commenced, the City shall move forward expeditiously with the development and approval of the update and fee study. Landowner expressly acknowledges and agrees that City shall not commence the update to the Master Plan and Fee Study until and unless it receives fees sufficient to cover the costs of the updates.

13.2.3. **Water Supply, Treatment Extensions and Storage.** Landowner shall construct or advance funds for water supply, treatment extensions and/or storage expansion, or other infrastructure necessary to serve the Project, as identified in the updated Water Master Plan. The City shall have a controlling role in the program, design, and construction of such facilities.

13.2.4. **Eligibility for Reimbursement.** Eligibility of Landowner for reimbursement shall be in accordance with Section 14.3.

13.2.5. **Building Permits.** No building permits shall be issued for the Project until the update of the Water Master Plan is completed and the updated impact fee approved. All required improvements identified in the updated Water Master Plan shall be financed and constructed in accordance with the Comprehensive Financing Agreement and Comprehensive Development Phasing Plan. Notwithstanding the foregoing, in the event that the update to the Water Master Plan and Fee Study has not been approved within eighteen (18)

months of the City commencing the update, Landowner may be eligible to pull building permits if Landowner pays the then existing water impact fee and enters into an agreement with the City to pay the updated water impact fee when it is approved. Landowner expressly acknowledges and agrees, however, that no building permits will be issued until and unless City receives fees from Landowner and participating projects, sufficient to cover the cost to commence the update to the Master Plan and Fee Study.

**13.2.6. Alternative Timing for Update to the Master Plan and Fee Study.** If the City has not obtained all the funds necessary to update the Water Master Plan and Water Impact Fee Study within ninety (90) days of the Effective Date, then Landowner may request that the City commence the updates to the Master Plan and Impact Fee Study specifically for the Project, subject to the written approval of the Director. Upon approval of the Director, Landowner shall deposit with the City one hundred percent (100%) of the cost of the updates; Landowner acknowledges that, notwithstanding Section 14.3, Landowner shall not be entitled to reimbursement for funding the updates under this section since the update would only include the Project. The City and Landowner acknowledge and agree that the intent of this section is to provide Landowner an opportunity to move forward with the Water Master Plan and Water Impact Fee Study, in the event that the City is unable to obtain funding from all participating projects.

### **13.3 Sewer Master Plan.**

**13.3.1. Funding of the Updated Master Plan and Fee Study.** Except as otherwise provided in Section 13.3.6, Landowner shall fund an update to the Sewer Master Plan and a Sewer Impact Fee Study. Proportionate share shall be determined based upon the projects participating in the update and their respective equivalent dwelling units. Landowner shall deposit funds with City within thirty-five (35) days of the Effective Date, or the date the City determines Landowner's proportionate share, whichever occurs later.

**13.3.2. Update of the Master Plan and Fee Study.** Except as otherwise provided in Section 13.3.6, the City shall commence the update of the Sewer Master Plan and Fee Study not more than thirty (30) days after receipt of funds from all participating projects. Once the update is commenced, the City shall move forward expeditiously with the development and approval of the update and fee study. Landowner expressly acknowledges and agrees that City shall not commence the update to the Master Plan and Fee Study until and unless it receives fees sufficient to cover the costs of the updates.

**13.3.3. Wastewater Treatment.** Landowner shall cooperate with Sacramento Regional County Sanitation District ("SRCSD") regarding the capacity of the wastewater treatment and lower northwest inceptor. Landowner shall also construct or advance funds for any required pump station improvements and/or wastewater infrastructure expansion. The City and SRCSD shall have a controlling role in the program, design, and construction of such facilities.

**13.3.4. Eligibility for Reimbursement.** Eligibility of Landowner for reimbursement shall be in accordance with Section 14.3.

**13.3.5. Building Permits.** No building permits shall be issued for the Project until the update of the Sewer Master Plan is completed and the updated impact fee approved. All required improvements identified in the updated Sewer Master Plan shall be

financed and constructed in accordance with the Comprehensive Financing Agreement and Comprehensive Development Phasing Plan. Notwithstanding the foregoing, in the event that the update to the Sewer Master Plan and Fee Study has not been approved within eighteen (18) months of the City commencing the update, Landowner may be eligible to pull building permits if Landowner pays the then existing sewer impact fee and enters into an agreement with the City to pay the updated sewer impact fee when it is approved. Landowner expressly acknowledges and agrees, however, that no building permits will be issued until and unless City receives fees from Landowner and participating projects, sufficient to cover the cost to commence the update to the Master Plan and Fee Study.

**13.3.6. Alternative Timing for Update to the Master Plan and Fee Study.** If the City has not obtained all the funds necessary to update the Sewer Master Plan and Sewer Impact Fee Study within ninety (90) days of the Effective Date, then Landowner may request that the City commence the updates to the Master Plan and Impact Fee Study specifically for the Project, subject to the written approval of the Director. Upon approval of the Director, Landowner shall deposit with the City one hundred percent (100%) of the costs of the updates; Landowner acknowledges that, notwithstanding Section 14.3, Landowner shall not be entitled to reimbursement for funding the updates under this section since the update would only include the Project. The City and Landowner acknowledge and agree that the intent of this section is to provide Landowner an opportunity to move forward with the Sewer Master Plan and Sewer Impact Fee Study, in the event that the City is unable to obtain funding from all participating projects.

#### 13.4 **Traffic.**

**13.4.1. Funding of the Updated Fee Study.** Except as otherwise provided in Section 13.4.5, Landowner shall fund an update to the Traffic Impact Fee Study. Proportionate share shall be determined based upon the projects participating in the update and their respective equivalent dwelling units. Landowner shall deposit funds with City within thirty-five (35) days of the Effective Date, or the date the City determines Landowner's proportionate share, whichever occurs later.

**13.4.2. Update of the Fee Study.** Except as otherwise provided in Section 13.4.5, the City shall commence the update of the Traffic Impact Fee Study not more than thirty (30) days after receipt of funds from all participating projects. Once the update of the fee study has commenced, the City shall move forward expeditiously with the development and approval of the fee study. The updated Traffic Impact Fee study shall include the improvements set forth in Exhibit I of this Agreement. Landowner also agrees to make the improvements and funding commitments more particularly described in Exhibit J of this Agreement. Landowner expressly acknowledges and agrees that City shall not commence the update to the Fee Study until and unless it receives fees sufficient to cover the costs of the updates.

**13.4.3. Eligibility for Reimbursement.** Eligibility of Landowner for reimbursement shall be in accordance with Section 14.3.

**13.4.4. Building Permits.** No building permits shall be issued for the Project until the update of the Traffic Impact Fee Study is completed and the updated impact fee approved. All required improvements identified in the updated Traffic Impact Fee Study shall be financed and constructed in accordance with the Comprehensive Financing Agreement and Comprehensive Development Phasing Plan. Notwithstanding the foregoing, in the event that

the update to the Traffic Impact Fee Study has not been approved within eighteen (18) months of the City commencing the update, Landowner may be eligible to pull building permits if Landowner pays the then existing traffic impact fee and enters into an agreement with the City to pay the updated traffic impact fee when it is approved. Landowner expressly acknowledges and agrees, however, that no building permits will be issued until and unless City receives fees from Landowner and participating projects, sufficient to cover the cost to commence the update to the Traffic Impact Fee Study.

13.4.5. **Alternative Timing for Update to the Fee Study.** If the City has not obtained all the funds necessary to update the Traffic Impact Fee Study within ninety (90) days of the Effective Date, then Landowner may request that the City commence the updates to the Traffic Impact Fee Study specifically for the Project, subject to the written approval of the Director. Upon approval of the Director, Landowner shall deposit with City one hundred percent (100%) of the cost of the updates and Landowner acknowledges that, notwithstanding Section 14.3, it shall not be entitled to reimbursement for funding the update under this section since the update would only include the Project. The City and Landowner acknowledge and agree that the intent of this section is to provide Landowner an opportunity to move forward with the Traffic Impact Fee Study, in the event that the City is unable to obtain funding from all participating projects.

#### 13.4.6. **South River Road Bridge.**

13.4.6.1. **Construction of the South River Road Bridge.** The South River Road Bridge, as more particularly described in Exhibit H, shall be constructed and completed prior to the issuance of the combined total of two thousand (2,000) residential building permits within the Southport area beyond those identified as Existing plus Approved. Once the two thousandth (2,000<sup>th</sup>) threshold is reached, no further building permits shall be issued for the Project until the South River Road Bridge is constructed and open to the public for use and enjoyment.

13.4.6.2. **Funding of the South River Road Bridge.** Landowner shall pay or advance all fees and costs for the design, development and construction of the South River Road Bridge at least eighteen (18) months before the issuance of the two thousandth (2,000<sup>th</sup>) building permit in the Southport area, or as more particularly described in the Comprehensive Financing Agreement. The Comprehensive Financing Agreement shall identify with specificity the timing of Landowner's obligations towards financing the South River Road Bridge and the Landowner's proportionate share of costs.

13.4.6.3. **Reimbursement.** Landowner shall be eligible for reimbursement pursuant to Section 14.3. In the City's sole discretion, Landowner may alternatively establish or join a financing mechanism to fund the design, development, and construction of the bridge.

### 14. **Phasing and Financing of Improvements and Infrastructure.**

#### 14.1 **Phasing.**

14.1.1. **Comprehensive Development Phasing Plan.** Landowner shall identify and agrees to prepare and implement a comprehensive development phasing plan that

shall include, but not be limited to the phasing of the following (collectively, the “Comprehensive Development Phasing Plan”):

- 14.1.1.1. Project construction activities, generally,
- 14.1.1.2. Infrastructure development, including any Improvements identified in the updated Water, Sewer, Drainage, and Traffic Impact Fee Study, but not including park facilities, which are separately addressed in the Comprehensive Recreational Phasing and Financing Plan,
- 14.1.1.3. Commercial site availability for development,
- 14.1.1.4. The golf course,
- 14.1.1.5. Affordable housing construction, and
- 14.1.1.6. Planning and implementation of interim and alternative transit modes and routes, including a mechanism to permit substitution of transportation improvements and/or mitigation measures to achieve equivalent mitigation while protecting the interests of the affected neighborhood.

The substantive terms of the Comprehensive Development Phasing Plan shall be identified and generally accepted by City staff, prior to the approval of the first tentative map for the Project. The Comprehensive Development Phasing Plan shall be subject to the review and written approval of the City, and shall be approved prior to the issuance of the first final map for the Project. In reviewing and approving the Comprehensive Development Phasing Plan, City staff shall take into consideration the phasing of the Project in an effort to limit the potential temporal disturbance from construction activities on surrounding residential properties.

## 14.2 **Financing.**

14.2.1. **Comprehensive Financing Agreement.** The substantive terms of the Comprehensive Financing Agreement shall be identified and generally accepted by City staff, prior to the approval of the first tentative map for the Project. Prior to approval of the first final map for the Project, Landowner and City shall enter into an agreement defining with specificity Landowner’s obligations in connection with the financing and construction of certain infrastructure improvements in the City (the “Comprehensive Financing Agreement”). The Comprehensive Financing Agreement shall include the financing of improvements identified in Exhibit M, attached hereto and incorporated herein by reference.

14.2.2. **Advance Funding for Traffic Improvements.** The City will use its reasonable efforts to require any new development in the Southport area that is greater than fifty (50) residential units to participate in the advance funding of the South River Road Bridge and other Southport area traffic improvements identified in the Updated Traffic Impact Fee Study.

14.3 **Reimbursement.** Whenever the size of any improvements set forth in this Agreement are partly attributable to other development projects, or Landowner advances funds in excess of its proportionate share for the update of any master plan or fee study in accordance with this Agreement, Landowner and the City will enter into a reimbursement

agreement pursuant to the City's Municipal Code Chapter 16.48. The City acknowledges that the intent of a reimbursement agreement is to provide a mechanism by which Landowner may be eligible to receive reimbursement when the reasonable cost incurred by developer in constructing public improvements exceeds the developer's "fair share" of the cost of the improvements. Under such circumstances, Landowner may be eligible to receive reimbursement from applicable impact fees paid by the Landowner or other developers. Landowner acknowledges, however, that a reimbursement agreement does not guarantee reimbursement. The City finances the development of other public improvements in a similar manner, and as a result, some or all of the fees that the City will collect or be entitled to collect from other development may be used to reimburse other developers for eligible public improvements constructed by them. In addition, the City may contract directly for the construction of public improvements using available or anticipated impact fees. Consequently, the City makes no representation or warranty concerning the availability or sufficiency of future fees to provide full reimbursement to Landowner. Furthermore, in some cases Landowner may be required by the terms of this Agreement or the Comprehensive Financing Agreement to pay more than its "fair share" of the cost of certain public improvements. In such cases, Landowner may not be eligible for reimbursement or may be eligible for reimbursement, but in an amount less than what Landowner might otherwise be eligible to receive but for this Agreement. Nevertheless, the City and Landowner understand and agree that, within the constraints identified above, the intent of this Agreement is to attempt to provide a mechanism for reimbursing Landowner to the extent that reasonable costs exceed Landowner's "fair share," and although the City cannot guarantee a particular outcome, the City shall use its best efforts to exercise its discretion in a manner consistent with this intent.

15. **Levee Improvements.**

15.1 Prior to the approval of the first final map for the Project, Landowner shall comply with and implement any levee improvements determined by the City to be necessary for development of the Project. The parties anticipate that the improvements may include the following:

15.1.1. Conversion of Project's in-lieu fees with a mutually acceptable funding mechanism to City and Landowner, and/or,

15.1.2. Dedication of any land, permanent easement or right-of-way required for construction or maintenance of any feasible levee improvement which shall qualify for reimbursements or credits against the Project's in-lieu fees, in accordance with Section 14.3.

15.1.3. Compliance with any flood construction standards that may be eventually mandated by the City or state, and/or additional financial advancements.

The value of any dedicated land, easements, or rights-of-way, shall be determined by the City at the time of the first tentative map approval.

In addition to any of the above improvements, Landowner shall make a financial advancement beyond the payment of in-lieu fees, to achieve a Federal Emergency Management Agency ("FEMA") designation to allow the development of the Project; provided, however, that Landowner's requirement to make additional financial contributions is Non-Project Specific and the financial advancement is proportionate to the Project. The City and Landowner understand and acknowledge that such financial advancement, if required, may affect the

phasing of the golf course. The Comprehensive Financing Agreement shall address the timing and phasing of such improvements and financial contributions.

15.2 **Construction Easements.** Prior to the approval of the first final map for the Project, Landowner shall grant to the City, without compensation or credits, temporary construction easements along the deep water ship channel, as required by the Army Corps of Engineers, Reclamation District 900, and/or the West Sacramento Flood Control Agency, for levee improvements within the Property. Landowner agrees that areas designated by those agencies shall be no build areas until such time that the levee improvements are constructed and completed.

16. **Additional Obligations.**

16.1 **Fire and Police.** Landowner shall dedicate property to the City for the purpose of a planned fire station (relocated Station # 42) and police annex within the Project, in accordance with the Comprehensive Development Phasing Plan and Comprehensive Financing Agreement and the Southport Fire Response Study. The timing of construction shall be identified in the Comprehensive Phasing Agreement. The dedication of property and any advance funding for the design and construction of the planned fire station and police annex will be eligible for impact fee credits and reimbursements in accordance with Section 14.3.

16.2 **School Agreement.** Landowner shall enter into an agreement with the Washington Unified School District, to the satisfaction of the School District, for the phasing and development of school facilities to serve the Project. Prior to the approval of the first final map for the Project, Landowner shall provide the City with evidence of the fully executed agreement.

16.3 **Enhanced Transit System.** The Comprehensive Development Phasing Plan and Comprehensive Financing Plan shall require Landowner to participate in a mechanism to finance capital costs for an enhanced transit system and to participate in a financing mechanism for annual operating costs. Landowner's contribution to capital costs is initially estimated at one million seven hundred thousand dollars (\$1,700,000), and Landowner's contribution to operating costs is initially estimated at six hundred thousand dollars (\$600,000) per year. These financing mechanisms shall include the Project and any other projects as bound between Jefferson Boulevard, the Sacramento River, and the barge canal, for an enhanced Southport-wide transit system upon City adoption. The Comprehensive Development Phasing Plan and Comprehensive Financing Plan shall address the timing and/or phasing of such mechanisms along with interim and alternative transit modes and routes.

16.4 **Traffic Reduction Plan.** Landowner shall devise a traffic reduction plan for the Project that provides measures to reduce traffic, such as:

16.4.1. Parking facilities: preferential parking for carpools and vanpools, perimeter or park-and-ride lots with shuttle service, restricted parking for single-occupancy vehicles;

16.4.2. Bicycle facilities: secured bicycle parking facilities, bicycle lockers, bicycle racks, showers and lockers;



16.4.3. Services: on-site sale of transit passes, shuttle services, carpool/vanpool matching services, informational and promotional programs, guaranteed ride-home program;

16.4.4. Subsidies: subsidies for transit passes/tickets, parking subsidies, vanpool subsidies;

16.4.5. Special incentives: creative incentive programs, disincentives, schedules (flextime, alternative work shifts), telecommuting; and,

16.4.6. Other: golf cart transportation routes between residences within the Project and the village core, golf cart parking within the village core, employee travel allowance, reduced-emission vehicles, and on-site child care facilities.

## 16.5 **Evacuation and Emergency Management Plan.**

16.5.1. **Funding of the Updated Evacuation and Emergency Management Plan.** Except as otherwise provided in Section 16.5.5, Landowner shall fund its proportionate share of an update to the City's Evacuation and Emergency Management Plan to include the Project. Proportionate share shall be determined based upon the projects participating in the update and their respective equivalent dwelling units. Landowner shall deposit funds with City within thirty-five (35) days of the Effective Date, or the date the City determines Landowner's proportionate share, whichever occurs later.

16.5.2. **Update of the Plan.** Except as otherwise provided in Section 16.5.5, the City shall commence the update of the Evacuation and Emergency Management Plan not more than thirty (30) days after receipt of funds from all participating projects. Once the update is commenced, the City shall move expeditiously with the development and approval of the update. Landowner expressly acknowledges and agrees that City shall not commence the update to the Evacuation and Emergency Management Plan until and unless it receives fees sufficient to cover the costs of the updates.

16.5.3. **Eligibility for Reimbursement.** Eligibility of Landowner for reimbursements shall be in accordance with Section 14.3.

16.5.4. **Final Maps.** No final maps shall be issued for the Project until the update of the Evacuation and Emergency Management Plan is completed. Notwithstanding the foregoing, in the event that the update to the Evacuation and Emergency Management Plan has not been approved within six (6) months of the City commencing the update, Landowner shall be eligible to request the issuance of a final map for the Project.

16.5.5. **Alternative Timing for Update to the Evacuation and Emergency Management Plan.** If the City has not obtained all the funds necessary to update the Evacuation and Emergency Management Plan within ninety (90) days of the Effective Date, then Landowner may request that the City commence the updates to the Management Plan specifically for the Project, subject to the written approval of the Director. Upon approval of the Director, Landowner shall deposit with the City one hundred percent (100%) of the cost of the updates; Landowner acknowledges that, notwithstanding Section 14.3, Landowner shall not be entitled to reimbursement for funding the update under this section since the updated would only include the Project. The City and Landowner acknowledge and agree that the intent of this

section is to provide Landowner an opportunity to move forward with the Evacuation and Emergency Management Plan, in the event that the City is unable to obtain funding from all participating projects.

16.6 **Planning Area 14 Rural Estate Buffer.** The northern ten (10) acres within Planning Area 14 (Exhibit D) designated as Medium Density Residential (MR), shall be developed at no more than four (4) units per acre (large lots) to provide for transition to the existing Rural Estate (RE) lands on the north side of Bevan Road. In addition, a minimum twenty (20) foot wide landscaped buffer shall be developed along the south side of Bevan Road within Planning Area 14. The remainder of Planning Area 14 shall be developed within the prescribed density range identified by the Southport Framework Plan. The density range for the MR land use is currently prescribed as 5.1 to 12.0 dwelling units per acre.

17. **Tower Court Fee Credits.** Landowner and the City's Redevelopment Agency (the "RDA") are in the process of negotiating the sale of a property located at Tower Court, APN No. 67-330-17, located in the City of West Sacramento, County of Yolo ("Tower Court"). Landowner proposes to purchase the Tower Court property from the RDA with fee credits. For purposes of this section, the term "fee credits" refers to the fact that Landowner is entitled to reimbursement of at least three million two hundred and fifty thousand dollars (\$3,250,000) from the City for costs associated with Landowner's construction of improvements for other projects. Instead of being reimbursed by the City, under this transaction, Landowner would use the right to reimbursement to purchase Tower Court. If this sale occurs, then Landowner shall not transfer any other fee credits to or from any builder or related party to this Project for use in offsetting or paying City-wide development impact fees towards the Yarbrough Project, until such time that builder(s) or any related party has first purchased credits from the City's Redevelopment Agency for the value determined in accordance with the Development and Disposition Agreement for Tower Court. In the event that the Tower Court property is not purchased by the Landowner with existing fee credits, this section shall not preclude Landowner from transferring fee credits to third parties at any time.

18. **Community Facilities District.**

18.1 **Financing.** Landowner may request that the City initiate the formation of a Community Facilities District ("CFD") formed pursuant to the Mello Roos Community Facilities Act of 1982 (Government Code section 53311 et seq.) for the purpose of financing the acquisition or construction of the Improvements and the issuing of bonds. The decision of whether to initiate CFD formation procedures shall be within the absolute discretion of the City.

18.2 **Costs.** Landowner shall be responsible for the costs of establishing any CFDs.

19. **Service District for Maintenance.**

19.1 **Formation.** Landowner waives its rights with respect to the formation of or inclusion in a special assessment district formed for the purposes of operation of Improvements or publicly owned parks and facilities. Landowner acknowledges that the services to be financed by the Assessment Districts will provide a "special benefit" to the Property (as defined in Article XIII D of the California Constitution).

20. **Home Owners Association.** Landowner shall cause to be established a Home Owners Association or other non-City entity, to the satisfaction of the City, to own and maintain such Improvements within the Project as are designated by the City, and in accordance with the Comprehensive Financing Agreement. The City shall have the right to approve and enforce all bylaws for the Home Owners Association and all Covenants, Conditions and Restrictions for the Property as they pertain to maintenance and repair of Improvements or the golf course or any park facilities.

21. **Not a Part Lands.**

21.1 The Not a Part Lands are not a part of the Project nor a party to this Agreement; therefore, no rights are vested to the Not a Part Lands pursuant to the Agreement.

21.2 No application for entitlements associated with the Not a Part Lands has been submitted to the City. Development of the Not a Part Lands would require separate application(s) and approval by the City, and could require amendments to the General Plan, Southport Framework Plan, and/or Zoning ordinance, depending on the project(s) proposed. In order to facilitate the City's consideration of such application(s), should application(s) be submitted, Landowner shall consult with the owners of the Not a Part Lands, with the aim of submitting a single application encompassing that portion of the Not a Part Lands seeking such approvals. Although the environmental impacts of development associated with such approvals are analyzed generally as "Alternative 5" in the EIR, Landowner understands and acknowledges that further environmental analysis of any such application will be required under CEQA. If authorized by the landowners of the Not a Part Lands to file such single application, Landowner agrees to pay for the cost of processing such single application, including costs associated with additional environmental analysis and deposits and/or filing fees. Nothing in this Agreement shall constrain the City's exercise of its discretion with respect to whether or on what terms to approve such an application.

21.3 Consistent with existing City policy, the Master Plan Updates required by this Agreement shall anticipate the future development potential of the Not a Part Lands. Project design shall not preclude the potential future development of adjacent Not a Part Lands.

21.4 A thirty- (30) foot wide agricultural buffer shall be incorporated into the Project adjacent to the Not a Part Lands. Residential uses shall not be permitted within this buffer. This requirement shall not apply to Not a Part Lands that are rezoned to non-agricultural uses.

21.5 Tentative maps for portions of the Project adjacent to the Not a Part Lands shall include a condition of approval requiring the Landowner to provide financial assurances to the Not a Part Lands landowners in the event that construction activities associated with the Project cause property damage to the Not a Part Lands.

22. **Amendment or Cancellation.**

22.1 **Amendment by Mutual Consent.** Except as otherwise provided in Section 22.4, this Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures of State law and the Municipal Code.

22.2 **Insubstantial Amendments.** The City Manager is authorized to approve insubstantial amendments to this Agreement on behalf of the City without a hearing before or action by the Planning Commission or City Council. “Insubstantial amendments” means amendments to this Agreement which do not relate to (1) the term of the Agreement; (2) the permitted uses of the Property; (3) the reservation or dedication of land; (4) the location and maintenance of on-site and off-site improvements; (5) the density or intensity of use of the Project; (6) the maximum height or size of proposed buildings or (7) monetary contributions by Landowner required by this Agreement. All other amendments shall require approval by the City Council in accordance with the Development Agreement Law.

22.3 **Amendment of Project Approvals.** Except as otherwise provided in Section 22.4, any amendment of Project Approvals relating to: (1) the permitted use of the Property; (2) provision for reservation or dedication of land; (3) the density or intensity of use of the Project; (4) the maximum height or size of proposed buildings; (5) monetary contributions by the Landowner; (6) the location and maintenance of on-site and off-site improvements; or (7) any other issue or subject not identified as an “insubstantial amendment” in Section 22.2 of this Agreement, shall require an amendment of this Agreement. Other amendments of the Project Approval(s) shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

22.4 **Limitation on Number of Units.** Landowner acknowledges and agrees that the development of this Project shall not exceed three thousand and four (3,004) residential units. Landowner expressly waives its rights under the Development Agreement Law to request an amendment to this Agreement or the Project Approvals for the purpose of increasing the number of units for this Project to more than three thousand and four (3,004) residential units.

23. **Rights and Duties of Mortgage Lenders in Possession of Property.** Any Mortgage Lender (“Mortgage Lender”) who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a Mortgage, or deed in lieu of such foreclosure, shall not be eligible to apply for, receive, or exercise any rights under this Agreement or any of the Project Approvals which were vested in its predecessor in title prior to the time that the Mortgage Lender comes into possession, until the Mortgage Lender contractually assumes all of the obligations of its predecessor in title under this Agreement with respect to such property, including those obligations which accrued prior to the time that the Mortgage Lender came into possession of such property. The Mortgage Lender shall be entitled to the rights of this Agreement upon presentation to the City of a written agreement between the Landowner (or Subsequent Landowner) and the Mortgage Lender clearly indicating the transfer and/or assignment and assumption of the Landowner’s obligations under the Agreement.

Any such assignment and assumption by the Mortgage Lender in possession and title shall be to the satisfaction of and in a form acceptable to the City Attorney, and shall be effective when the Mortgage Lender executes and delivers to the City Clerk an express agreement to contractually assume all of the obligations of its immediate predecessor in title under this Agreement with respect to all of the Property, or portion thereof, to which it has come into possession.

24. **Annual Review of Agreement.**

24.1 **Review Date.** The annual review date of this Agreement (the "Review Date") as required by Development Agreement Law shall be approximately twelve (12) months from the Effective Date and every twelve (12) months thereafter.

24.2 **Procedures.** The procedures for annual review shall be as set forth in the Development Agreement Law.

24.3 **Fee for Annual Review.** The cost for the City's annual review of this Agreement shall be paid by Landowner.

25. **Default.**

25.1 **Default.** The failure of either party to perform any obligation or duty under this Agreement within the time required by this Agreement shall constitute an event of default. (For purposes of this Agreement, a party asserting that the other party is in default shall be referred to as the "Complaining Party" and the other party shall be referred to as the "Defaulting Party.")

25.2 **Notice.** The Complaining Party may not place the Defaulting Party in default unless it has first given written notice to the Defaulting Party, specifying the nature of the default and the manner in which the default may be cured, if known to the Complaining Party. Any failure or delay by the Complaining Party in giving such notice shall not waive such default or waive any of the Complaining Party's remedies.

25.3 **Cure.** The Defaulting Party shall have thirty (30) days from the receipt of notice to cure the default. If the default cannot be reasonably cured within such time, the default cure shall be deemed cured if: (1) the cure is commenced at the earliest practicable date following receipt of notice; (2) the cure is diligently prosecuted to completion at all times thereafter; (3) at the earliest practicable date (but in no event later than thirty (30) days after receiving the notice of default), the Defaulting Party provides written notice to the Complaining Party that the cure cannot be reasonably completed within such thirty (30) day period; and (4) the default is cured at the earliest practicable date, but in no event later than ninety (90) days after receipt of the first notice of default.

25.4 **Remedies.** If the Defaulting Party fails to cure a default in accordance with the foregoing, the Complaining Party shall have the right to terminate this Agreement upon notice to the Defaulting Party and, except as provided in Section 25.7, may pursue all remedies available at law or in equity, including specific performance and injunctive relief.

25.5 **Additional Procedures and Remedies.** The parties acknowledge that the foregoing default procedures and remedies are in addition to, and not in lieu of, the procedures and remedies set forth in City Council Resolutions 88-111 and 96-62, and Landowner waives the argument that any default taken against Landowner is not valid for failing to comply with the procedures and remedies set forth in City Council Resolutions 88-111 and 96-62.

25.6 **Building Permits.** In addition to and not in lieu of its other remedies, in the event that the City gives Landowner a notice of default and opportunity to cure as provided

in Section 25, the City shall have the right to withhold issuance of any building permits for the Project, provided there is a nexus between the default and the structure for which the permit is being withheld. Such withholding shall cease when the default is cured in accordance with this Agreement. For purposes of this Section 25.6, a nexus shall be deemed to exist if the default involves the failure of Developer to timely pay fees or undertake or complete construction of the Improvements, the golf course, any park facilities, or any public improvement identified in this Agreement, the Mitigation Monitoring and Reporting Program, the Comprehensive Financing Agreement, the Comprehensive Development Phasing Plan, or any subsequent approval by the City related to the Project.

25.7 **Waiver of Damages.** Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that the City would not have entered into this Agreement had it been exposed to liability for damages from Landowner, and that therefore, Landowner hereby waives all claims for damages against the City for breach of this Agreement. Landowner further acknowledges that under the Development Agreement Law, land use approvals (including development agreements) must be approved by the City Council and that under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Landowner therefore waives all claims for damages against the City in the event that this Agreement or any Project Approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Landowner is opposed, subject to Landowner's rescission rights under Section 25.8. Landowner further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Landowner waives all claims for damages against the City in this regard.

25.8 **Rescission.** In the event that Landowner believes that the purposes of this Agreement have been frustrated by the City Council's approval of this Agreement or any Project Approval with new changes, amendments, conditions or deletions to which Landowner is opposed, Landowner shall have ten (10) days after such approval in which to provide notice to the City that this Agreement shall be rescinded, without any further liability of the parties.

26. **Insurance and Indemnity.**

26.1 **Indemnification, Defense and Hold Harmless.** Landowner shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City (as defined in this Agreement) from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the Project, the Project Approvals or the Property (including any challenge to the validity of any provision of this Agreement or the Project Approvals, and including any actions or inactions of Landowner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Property and the Project), or Landowner's failure to comply with any of its obligations in this Agreement, or Landowner's failure to comply with any current or prospective Law; provided, however, that Landowner shall have no obligations under this section for such loss or damage which was caused by the sole negligence or willful misconduct of the City, or with respect to the maintenance, repair or condition of any Improvement after dedication to and acceptance by the City or another public entity (except as provided in an improvement agreement or warranty

bond). This indemnification obligation shall survive this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.

## 26.2 **Insurance.**

26.2.1. **Public Liability and Property Damage Insurance.** At all times that Landowner is constructing any Improvements, Landowner shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of one million dollars (\$1,00,000) and a deductible of not more than fifty thousand dollars (\$50,000) per claim. The policy so maintained by Landowner shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

26.2.2. **Workers' Compensation Insurance.** At all times that Landowner is constructing any Improvements, Landowner shall maintain workers' compensation insurance for all persons employed by Landowner for work at the Project site. Landowner shall require each contractor and subcontractor similarly to provide workers' compensation insurance for its respective employees. Landowner agrees to indemnify the City for any damage resulting from Landowner's failure to maintain any such insurance.

26.2.3. **Evidence of Insurance.** Prior to commencement of construction of any Improvements, Landowner shall furnish City satisfactory evidence of the insurance required in Sections 26.2.1 and 26.2.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Landowner performing work on the Project.

## 27. **Binding Effect on Successors.**

### 27.1 **Assignment.**

27.1.1. Landowner may not assign its interests under this Agreement without the: (1) written consent of the City Manager, which consent shall not be unreasonably withheld; and (2) execution by Landowner and the assignee of the form of assignment attached hereto as Exhibit N. Upon such assignment and assumption, Landowner shall be released from any further liability or obligation hereunder related to that portion of the Property so conveyed, and the Successor shall be deemed to step into the shoes of Landowner for purposes of this Agreement with respect to such conveyed property. For purposes of this section, it shall not be unreasonable for the City Manager to withhold consent unless and until the proposed assignment demonstrates that it has the financial capability and experience needed to complete development of the Project or respective portions thereof, in the case of a partial assignment, and in accordance with the terms of this Agreement.

27.1.2. Any attempt to assign any rights under this Agreement other than by executing the form of assignment attached hereto at Exhibit N shall be void and constitute a default under this Agreement. Notwithstanding the foregoing, private parties who purchase an individual parcel defined by an approved and recorded final subdivision map that has been improved with a dwelling structure shall not be required to execute the form of assignment attached hereto as Exhibit N, shall not be considered Successors, and this Agreement shall not be binding upon them.

27.2 **Subsequent Assignments.** Any Successor may assign its rights under this Agreement by complying with the procedures set forth in this Agreement.

27.3 **Runs with the Land.** Except as otherwise provided in this Agreement, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1466 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property: (a) is for the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties.

28. **Miscellaneous.**

28.1 **Prevailing Wages.** Landowner shall pay prevailing wages, and shall direct its contractors and other parties with which it has a contractual relationship with respect to the Project, to pay prevailing wages only if the same is required by the Prevailing Wage Law (Labor Code section 1720 et seq.). Landowner's indemnification, defense and hold harmless obligations under Section 26.1 shall extend to any failure to pay prevailing wages in connection with the Project, only as required by State law.

28.2 **Estoppel Certificate.** Either Party may at any time request the other Party to certify in writing that: (1) this Agreement is in full force and effect; (2) this Agreement has not been amended except as identified by the other Party; and (3) to the best knowledge of the other Party, the requesting Party is not in default, or if in default, the other Party shall describe the nature and any amount of any such default. The other Party shall use its best efforts to execute and return the estoppel certificate to the requesting Party within thirty (30) days of the request. The City Manager shall have authority to execute such certificates on behalf of the City.

28.3 **Recordation.** This Agreement shall not be operative until recorded with the Yolo County Recorder's office. Landowner shall record this Agreement at its expense with the County Recorder's office within ten (10) days of the Effective Date, and shall cause any amendment to this Agreement or any instrument affecting the term of this Agreement to be recorded within ten (10) days from date on which the same become effective. Any amendment to this Agreement or any instrument affecting the term of this Agreement which affects less than all of the Property shall contain a legal description of the portion thereof that is the subject of such amendment or instrument. Alternatively, Landowner and City may execute the instrument entitled "Memorandum of Development Agreement" attached hereto as Exhibit K, which shall be recorded against the Property, in lieu of recording the entire Agreement.

28.4 **Notices.** All notices required by this Agreement or the Development Agreement Law shall be in writing and personally delivered or sent by certified mail, postage prepaid, return receipt requested.



Notice required to be given to the City shall be addressed as follows:

CITY OF WEST SACRAMENTO  
1110 West Capitol Avenue  
West Sacramento, CA 95691  
ATTN: Public Works and Community Development Director

Notice required to be given to the Landowner shall be addressed as follows:

ASB Southport II, LLC  
707 Kentucky Street  
Fairfield, CA 94533-5515

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. All notices shall be deemed received on the earlier of the date that personal delivery is effected or the date shown on the return receipt.

28.5 **References to Municipal Code.** This Agreement contains references to articles and sections of the City's Municipal Code. If, after the Effective Date, the City amends or renumbers its Municipal Code, then the references in this Agreement shall be understood to apply to the amended or renumbered Municipal Code.

28.6 **Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Parties and any Successors. No other party shall have any cause of action or the standing to assert any rights under this Agreement.

28.7 **Force Majeure.** Neither Party shall be liable for, and both Parties shall be excused from, any failure to deliver or perform or for delay in delivery or performance (except any obligation to pay any sum of money) due to any act of God. The foregoing shall not apply to floods that affect the Property. The Party claiming an extension due to Force Majeure shall send written notice to the other Party within thirty (30) days from the commencement of the cause describing the circumstances.

28.8 **Bankruptcy.** The obligations of this Agreement shall not be dischargeable in bankruptcy.

28.9 **Attorneys' Fees and Costs in Legal Actions By Parties to the Agreement.** Should any legal action be brought by either Party for breach of this Agreement or to enforce any provisions herein, the prevailing Party to such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the Court.

28.10 **Attorneys' Fees and Costs in Legal Actions By Third Parties to the Agreement.** If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the Parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding, provided that City reasonably cooperates with Landowner in the defense of such action.

28.11 **Liability of City Officials.** No City official or employee shall be personally liable under this Agreement.

28.12 **Delegation.** Any reference to any City body, official or employee in this Agreement shall include the designee of that body, official or employee, except where delegation is prohibited by law.

28.13 **Severability.** Should any provision of this Agreement be found invalid or unenforceable by a court of law, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

28.14 **Integration.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any previous oral or written agreement. This Agreement may be modified or amended only by a subsequent written instrument executed by all of the Parties.

28.15 **Counterparts.** This Agreement may be signed in one (1) or more counterparts, and will be effective when all of the Parties have affixed their signatures to the counterparts, at which time the counterparts together shall be deemed one (1) original document; provided, however, that all executed counterparts are provided to the City Clerk.

28.16 **Interpretation.** The Parties acknowledge that this Agreement has been negotiated by both Parties and their legal counsel and agree that this Agreement shall be interpreted as if drafted by both Parties.

28.17 **Inconsistency.** In the event of any conflict or inconsistency between the provisions of this Agreement and the Project Approvals or Exhibits, this Agreement shall prevail.

28.18 **Incorporation.** The Recitals, Exhibits, and all defined terms in this Agreement are part of this Agreement.

28.19 **Compliance with Laws.** In connection with its performance under this Agreement, Landowner shall comply with all applicable present and prospective laws.

28.20 **Applicable Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. In the event of litigation arising under this Agreement, venue shall reside exclusively in the Superior Court of the County of Yolo.

28.21 **Time of the Essence**. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto are executing this Agreement on the dates set forth below, to be effective as of the Effective Date.

“CITY”

CITY OF WEST SACRAMENTO,  
a municipal corporation

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

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2008

ATTEST:

\_\_\_\_\_  
Kryss Rankin,  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert E. Murphy,  
City Attorney

“LANDOWNER”

ASB SOUTHPORT II LLC,  
a California Limited Liability Company

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

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2008

BILLY G. AND LOUISE YARBROUGH TRUST,  
A Revocable Family Trust

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

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2008

## EXHIBIT LIST

<b>Exhibit A:</b>	Legal Description of the Property
<b>Exhibit B:</b>	Diagram of the Property
<b>Exhibit C:</b>	Project Description and Conceptual Maps for the Property
<b>Exhibit D:</b>	Land Use Table and Planning Areas Diagram
<b>Exhibit E:</b>	Additional Yarbrough Design Guidelines Components
<b>Exhibit F:</b>	Master Affordable Housing Agreement Requirements
<b>Exhibit G:</b>	Description of the Golf Course
<b>Exhibit H:</b>	South River Road Bridge
<b>Exhibit I:</b>	Traffic Impact Fee Study
<b>Exhibit J:</b>	Traffic Improvements and Funding Commitment
<b>Exhibit K:</b>	Memorandum of Development Agreement
<b>Exhibit L:</b>	Mitigation Monitoring and Reporting Program
<b>Exhibit M:</b>	Comprehensive Financing Agreement
<b>Exhibit N:</b>	Form of Assignment

## EXHIBIT A

### Legal Description of the Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF WEST SACRAMENTO, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

#### **PARCEL 1:**

Lot 1, Boulevard Subdivision, filed March 4, 1913 in Book 2 of Maps, at Page 74, Yolo County Records.

EXCEPTING THEREFROM, all that portion thereof conveyed to Reclamation District 900 in Deed recorded April 8, 1915 in Book 89 of Deeds, at Page 11.

APN: 045-200-10-1, 045-200-19-1

#### **PARCEL 2:**

Lots 2 and 3, Boulevard Subdivision of West Sacramento Co's Properties, filed March 4, 1913 in Book 2 of Maps, Page 74, Yolo County Records.

APN: 045-200-11-1

#### **PARCEL 2A:**

The land described as "LOT LINE ADJUSTMENT NEW LOT 4 (2 MAPS 74) APN 045-270-18 WEST SACRAMENTO, CALIFORNIA" in Exhibit "A" of that certain "CERTIFICATE OF COMPLIANCE" recorded June 6, 2007, as Instrument No. 2007-0020544, Yolo County Records.

APN: 045-270-18-1 (portion)

#### **PARCEL 2B:**

The land described as "LOT LINE ADJUSTMENT NEW LOTS 47-A AND 48-A (2 MAPS 68) APN 045-230-06 WEST SACRAMENTO, CALIFORNIA" in Exhibit "B" of that certain "CERTIFICATE OF COMPLIANCE" recorded June 6, 2007, as Instrument No. 2007-0020544, Yolo County Records.

EXCEPTING THEREFROM, the mineral rights excepted in the Deed executed by Coast Service Company, a corporation, recorded January 25, 1944 in Book 187 of Official Records, Page 291, as follows:

Saving, excepting and reserving unto the Grantor, its successors and assigns from all the above

A-1

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described lands all oil, gas and minerals now or at any time hereafter situate therein and hereunder together with all easements and rights necessary or convenient for the production, storage and transportation thereof and the exploration and testing of the said real property and also the right to drill for, produce and use water from the said real property in connection with its drilling or mining operations thereon, however, that if the Grantor shall mine the said real property for minerals, it shall pay to the Grantee one half of 1/10 of the actual proceeds derived from the sale of minerals so mined and if it shall drill the said real property for oil or gas, it shall pay to the Grantee one half of 1/8 of the actual proceeds derived from the sale of all oil, gas, gasoline, asphaltum, or other hydrocarbon substances produced and saved and sold, or if the prevailing royalty rate for oil, or gas in the field is different from 1/8, then one half of such royalty share of such proceeds, but in no event more than one half of 1/6 thereof, deducting therefrom the same proportion of all taxes levied against the oil, gas and minerals herewith reserved, as the Grantee's share of the proceeds bears to the total proceeds. If the mineral rights are not separately assessed, the Grantee's share of any increase in taxes because of oil, gas or minerals, shall be determined and deducted on the same basis.

If the Grantor executes leases of all or any part of the said rights reserved hereby, it shall pay to the Grantee one half of the net amount received by it under any such leases. If the Grantor shall drill the said real property for oil, gas or other hydrocarbons or mine the same for minerals, it shall compensate the Grantee for any damage done to growing crops and improvements and shall pay to the Grantee the reasonable agricultural value of all land actually taken for the said purposes and if the Grantor leases said real property and secures an agreement from any such Lessee assuming tile covenants of the Grantor to so compensate the grantee, such Lessee drilling or mining the said real property shall along be liable under such covenants and the Grantor shall have no liability whatever hereunder in connection with such Lessees drilling or mining operations, and the Grantor shall not be liable in any event for any act of its Lessee, except that in those cases in which any such Lessee does not assume the said covenants of the Grantor to so compensate the Grantee, the Grantor shall bear the said expenses. If the Grantor, or any of its Lessees and the Grantee cannot agree with regard to the amount of such compensation, the same shall be determined from time to time as it becomes necessary to determine it by arbitration, the Grantor, or its Lessee, to appoint one arbitrator, and the Grantee another arbitrator, and the two so appointed to appoint a third and a decision of a majority to be conclusive; provided that the Grantor, or any of its Lessees, may exercise all of the rights reserved hereby at any time and from time to time without first being required to agree with respect to such compensation or having the same fixed by arbitration, and that such compensation shall be fixed either by agreement or arbitration after the Grantor, or any Lessee, has commenced and is prosecuting operations, and all parties agree to cooperate to the end that such compensation will be fixed by either of the said methods within a reasonable time after the occasion for fixing the same arises. The covenants and provisions hereof shall inure to the benefit of and bind the successors, assigns and Lessees of the Grantor and the personal representatives, heirs, successors, Lessees and assigns of the Grantee.

The surface rights to the parcel or parcels of land above described and for a distance of not more than five hundred feet (500') in depth and nothing herein contained shall in any way be construed to prevent, hinder or delay the free and unlimited right to mine, drill, bore, operate and remove from beneath tile surface of said land or lands, at any levels five hundred feet (500') or more below the surface of said land for the removal of all oil, gas, minerals and other hydrocarbons situated therein or hereunder or producible therefrom, together with all water necessary in connection with its drilling or mining operations hereunder have been quitclaimed

by Deed recorded September 29, 1986 in Book 1801 of Official Records, Page 24.

EXCEPTING AND RESERVING THEREFROM a drill site area described as follows:

The South 295 feet of the West 295 feet of said Lot 37-A for a drill site.

APN: 045-270-18-1 (portion) & 045-230-06-1

**PARCEL 3:**

Lots 37-A, 38-A, 41-A, 42-A, 45-A, 46-A, 49-A and 50-A, West Sacramento Co's Properties Subdivision A, filed January 7, 1913 in Book 2 of Maps, Page 68, Yolo County Records.

EXCEPTING THEREFROM, the mineral rights excepted in the Deed executed by Coast Service Company, a corporation, recorded January 25, 1944 in Book 187 of Official Records, Page 291, as follows:

Saving, excepting and reserving unto the Grantor, its successors and assigns from all the above described lands all oil, gas and minerals now or at any time hereafter situate therein and hereunder together with all easements and rights necessary or convenient for the production, storage and transportation thereof and the exploration and testing of the said real property and also the right to drill for, produce and use water from the said real property in connection with its drilling or mining operations thereon; however, that if the Grantor shall mine the said real property for minerals, it shall pay to the Grantee one half of 1/10 of the actual proceeds derived from the sale of minerals so mined and if it shall drill the said real property for oil or gas, it shall pay to the Grantee one half of 1/8 of the actual proceeds derived from the sale of all oil, gas, gasoline, asphaltum, or other hydrocarbon substances produced and saved and sold, or if the prevailing royalty rate for oil, or gas in the field is different from 1/8, then one half of such royalty share of such proceeds, but in no event more than one half of 1/6 thereof, deducting therefrom the same proportion of all taxes levied against the oil, gas and minerals herewith reserved, as the Grantee's share of the proceeds bears to the total proceeds. If the mineral rights are not separately assessed, the Grantee's share of any increase in taxes because of oil, gas or minerals, shall be determined and deducted on the same basis.

If the Grantor executes leases of all or any part of the said rights reserved hereby, it shall pay to the Grantee one half of the net amount received by it under any such leases. If the Grantor shall drill the said real property for oil, gas or other hydrocarbons or mine the same for minerals, it shall compensate the Grantee for any damage done to growing crops and improvements and shall pay to the Grantee the reasonable agricultural value of all land actually taken for the said purposes and if the Grantor leases said real property and secures an agreement from any such Lessee assuming tile covenants of the Grantor to so compensate the grantee, such Lessee drilling or mining the said real property shall along be liable under such covenants and the Grantor shall have no liability whatever hereunder in connection with such Lessees drilling or mining operations, and the Grantor shall not be liable in any event for any act of its Lessee, except that in those cases in which any such Lessee does not assume the said covenants of the Grantor to so compensate the Grantee, the Grantor shall bear the said expenses. If the Grantor, or any of its Lessees and the Grantee cannot agree with regard to the amount of such compensation, the same shall be determined from time to time as it becomes necessary to determine it by arbitration, the Grantor, or its Lessee, to appoint one arbitrator, and the Grantee

another arbitrator, and the two so appointed to appoint a third and a decision of a majority to be conclusive; provided that the Grantor, or any of its Lessees, may exercise all of the rights reserved hereby at any time and from time to time without first being required to agree with respect to such compensation or having the same fixed by arbitration, and that such compensation shall be fixed either by agreement or arbitration after the Grantor, or any Lessee, has commenced and is prosecuting operations, and all parties agree to cooperate to the end that such compensation will be fixed by either of the said methods within a reasonable time after the occasion for fixing the same arises. The covenants and provisions hereof shall inure to the benefit of and bind the successors, assigns and Lessees of the Grantor and the personal representatives, heirs, successors, Lessees and assigns of the Grantee.

The surface rights to the parcel or parcels of land above described and for a distance of not more than five hundred feet (500') in depth and nothing herein contained shall in any way be construed to prevent, hinder or delay the free and unlimited right to mine, drill, bore, operate and remove from beneath tile surface of said land or lands, at any levels five hundred feet (500') or more below the surface of said land for the removal of all oil, gas, minerals and other hydrocarbons situated therein or hereunder or producible therefrom, together with all water necessary in connection with its drilling or mining operations hereunder have been quitclaimed by Deed recorded September 29, 1986 in Book 1801 of Official Records, Page 24.

EXCEPTING AND RESERVING THEREFROM a drill site area described as follows:

The South 295 feet of the West 295 feet of said Lot 37-A for a drill site.

APN: 045-230-04-1, 045-230-05-1

**PARCEL 4:**

Lot 39-A, Subdivision "A" of West Sacramento Company's Properties, filed August 8, 1913 in Book 2 of Maps, Page 68, Yolo County Records.

EXCEPTING THEREFROM an undivided one half interest in and to all oil, gas, petroleum, naphtha, other hydrocarbon substances and minerals of whatsoever kind and nature in, upon or beneath the herein above described property, Together with the right of entry and all other rights, including all rights of way and easements, which may be necessary for the development, production and removal of all such substances and minerals and the full enjoyment of the Grantor's interest herein reserved, as set forth in Deed executed by the Federal Land Bank of Berkeley, a Corporation, to Howard S. Reamer and Helen P. Reamer, his wife, dated February 25, 1941, and recorded July 17, 1941 in Book 155 of Official Records at Page 175, without, however, the right of surface entry and all oil, gas, petroleum, naphtha and other hydrocarbon substances and minerals of whatsoever kind and nature lying above a depth of 500 feet as relinquished and quitclaimed by Deed recorded August 19, 1991 in Book 2255 of Official Records at Page 38, Yolo County Records.

APN: 045-230-08-1

**PARCEL 5:**

All of Lot 34-A and a portion of Lots 33-A and 29-A of West Sacramento Company Properties



Subdivision A, as same appears of record on the map thereof, filed in Book 2 of Maps, Page 68, said portion of Lots 33-A and 29-A being more particularly described as follows:

BEGINNING at the Southwest corner of said Lot 29-A and extending thence North, along the lot lines a distance of 1056.00 feet to the Northwest corner of said Lot 33-A; thence East along the North line of said Lot 33-A, 691.90 feet; thence South 11.60 feet to the Northwest corner of S.L.S. No. 171; thence along the West line of said S.L.S. No. 771, South 0° 39' 02" East a distance of 880.45 feet to a point within the right of way of Jefferson Boulevard; thence West 40.21 feet to the Northwesterly right of way line of said Jefferson Boulevard; thence continuing West a distance of 293.98 feet; thence South 164.00 feet to the South line of said Lot 29-A; thence West, along said South line of 29-A, a distance of 373.71 feet to the POINT OF BEGINNING.

APN: 045-230-16-1

**PARCEL 6A:**

That portion of Lot 33-A and Lot 29-A of Subdivision A that is situate to the East of the West line of S.L.S. No. 771 as said lots appear of record on the Map of West Sacramento Company Properties Subdivision A, which is filed in Book 2 of Maps, Page 68, Yolo County Records, and being described as follows:

BEGINNING at a point in the East line of said Lot 33-A that is situate South 11.60 feet from the Northeast corner thereof and extending thence from said point of beginning along the East line of said Lot, South 750.25 feet to the centerline of Jefferson Blvd.; thence along the center line of Jefferson Blvd., South 36° 13' 30" West 197.61 feet to the West line of said S.L.S. No. 771; thence along said S.L.S. line, North 0° 39' 02" West 909.72 feet to the Northwest corner of said S.L.S. No. 771; thence along the North line of Said S.L.S. No. 771, East 127.10 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM all oil, gas, minerals and other hydrocarbons lying in and under the property herein described, together with the right to drill for and explore for aid oil, gas and minerals and other hydrocarbons as reserved in Deed recorded May 22, 1957 in Book 513 of Official Records, Page 571, Yolo County Records.

**PARCEL 6B:**

A portion of Lot 33-A, West Sacramento Co's Properties Subdivision A, filed January 7, 1913, in Book 2 of Maps, Page 68, Yolo County Records, described as follows:

BEGINNING at the Northeast corner of said Lot 33-A; running thence along the East line thereof South 11.60 feet to the North line of Swamp Land Survey No. 771~ thence along said North line West 127.10 feet to the East line of the parcel on land described in the Deed to Hideo Nishimura, et al., recorded March 21, 1957, in Book 509 of Official Records, Page 121; thence along said East line North 11.60 feet to the North line of said Lot 33-A; thence along said North line East 127.10 feet to the POINT OF BEGINNING.

APN: 045-230-14-1

**PARCEL 7:**

Lots 16-A, 19-A, 24-A, 25-A and 28-A of West Sacramento Company's Properties Subdivision A, filed in Book 2 of Maps, Page 68, Yolo County Records.

APN: 045-230-17-1; 045-240-05-1, 045-240-06-1

**PARCEL 8:**

Lots 17-A, 18-A, 26-A, 27-A and 35-A, West Sacramento Company's Properties A, filed January 7, 1913 in Book 2 of Maps, Page 68, Yolo County Records.

EXCEPTING THEREFROM that portion lying within the parcel described in Deed to Reclamation District No. 900, recorded July 17, 1915 in Book 89 of Deeds, Page 11, Yolo County Records.

APN: 045-230-18-1, 045-230-20-1; 045-240-02-1, 045-240-04-1

**PARCEL 9:**

Lots 36A, 43A, 44A and S1A, Subdivision A of West Sacramento Company's Property, filed January 7, 1913 in Book 2 of Maps, Page 68, Yolo County Records.

EXCEPTING THEREFROM the parcel of land described in the Deed to Reclamation District No. 900, recorded July 17, 1915 in Book 89 of Deeds, Page 11, Yolo County Records.

ALSO EXCEPTING from Lot 36A that portion described in Deed to the City of West Sacramento in Deed Recorded April 14, 2005 Instrument No. 2005-0017047, Yolo County Records.

APN: 045-230-02-1, 045-230-10-1, 045-230-27-1

**PARCEL 10A:**

BEGINNING at the southwest corner of lot S of Boulevard Subdivision of West Sacramento Company's Properties as said Lot 5 appears on the Map of Boulevard Subdivision of West Sacramento Company's Properties in Book 2 of Maps, Page 74, Yolo County Records, said POINT OF BEGINNING being also the Northeast corner of Lot 48-A, of Subdivision "A" of West Sacramento Company's Properties filed August 8, 1913 in the Office of the County Recorder of said County of Yolo and running thence from said POINT OF BEGINNING East and along the South boundary of said Boulevard Subdivision of West Sacramento Company's Properties, a distance of 1280.27 feet to the Southeast corner of Lot 6 of said Boulevard Subdivision of West Sacramento Company's Properties; thence leaving said South boundary line of said Boulevard Subdivision of West Sacramento Company's Properties and running South 36° 13' 30" West 654.41 feet; thence East 156.52 feet to a point on the centerline of the main drainage canal, also South 528 feet from the Southeast corner of Lot 7 of said Boulevard Subdivision of West Sacramento Company's Properties~ thence following the centerline of said line of said main drainage canal South 1509 feet; thence on a curve to the right with a radius of 75 feet a distance of 111.81 feet; thence West 1841.9 feet to the Southeast corner of Lot 39A of said Subdivision "A" of West Sacramento Company's Properties; thence leaving the centerline of

said main drainage canal and following the Eastern boundary of said Subdivision "A" North 36° 13' 30" East 654.51 feet; thence West 119.90 feet; thence North 1584 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM an undivided 1/2 interest in and to all oil, gas, petroleum, naphtha, other hydrocarbon substances and minerals of whatsoever kind and nature in, upon, or beneath the herein above described property, together with the rights of entry and all other rights, including all rights of way and easements which may be necessary for the development, production and removal of all such substances and minerals and the full enjoyment of the Grantor's interest herein reserved, as set forth in Deed executed by the Federal Land Bank of Berkeley, a Corporation to Howard J. Reamer and Helen P. Reamer, his wife, dated February 25, 1941 and recorded July 17, 1941 in Book 155 of Official Records, Page 175, without, however the right of surface entry and all oil, gas, petroleum, naphtha and other hydrocarbon substances and minerals of whatsoever kind and nature lying above a depth of 500 feet, as relinquished and quitclaimed by Deed, recorded August 19, 1991, Instrument No. 20791, Yolo County Records.

**PARCEL 10B:**

COMMENCING at the Southwest corner of Lot 5 of Boulevard Subdivision of West Sacramento Company's Properties, filed in Book 2 of Maps, Page 74, Yolo County Records, said point of beginning being also the Northeast corner of Lot 48-A of Subdivision "A" of West Sacramento Company's Properties, filed in Book 2 of Maps, Page 68, Yolo County Records; thence East and along the South boundary of said Boulevard Subdivision of West Sacramento Company's Properties, a distance of 1280.27 feet to the Southeast corner of Lot 6 of said Boulevard Subdivision of West Sacramento Company's Properties; thence leaving said South boundary line of said Boulevard Subdivision of West Sacramento Company's Properties and running South 36°13'30" West 654.51 feet to the ACTUAL POINT OF BEGINNING; running thence East 756.52 feet to a point on the center line of the main drainage canal, also South 528 feet from the Southeast corner of Lot 7 of said Boulevard Subdivision of West Sacramento Company's Properties; thence following the center line of said main drainage canal South to an angle point and West to the Southeast corner of Lot 39-A of said Subdivision "A" of West Sacramento Company's Properties; thence leaving the center line of said main drainage canal and following the Eastern Boundary of said Subdivision "A" and its direct extension, North 36°13'30" East to the POINT OF BEGINNING.

EXCEPTING THEREFROM, that portion thereof lying within the lines of the parcel of land described in the Deed to Frank B. Anderson, et al., recorded May 18, 1915, in Book 87 of Deeds, Page 361.

APN: 045-230-12-1

Portion of APN: 046-190-02-1

**PARCEL 11:**

BEGINNING at the Southwest corner of Lot 7 of Boulevard Subdivision of West Sacramento Company's Properties as said Lot 7 appears on the Map of Boulevard Subdivision of West Sacramento Company's Properties in Book 2 of Maps, at Page 74, Yolo County Records and

running thence South 36° 13-1/2 West 654.51 feet along the centerline of Jefferson Boulevard; thence East 756.52 feet to the centerline of the main drainage canal of Reclamation District No. 900; thence North 528 feet along the centerline of said main drainage canal to the Southeast corner of said Lot 7 of said Boulevard Subdivision; thence West 369.73 feet along the South line of said Lot 7 to the POINT OF BEGINNING.

EXCEPTING THEREFROM an undivided 1/2 interest in and to all oil, gas, petroleum, naphtha, other hydrocarbon substances and minerals of whatsoever kind and nature in, upon or beneath the herein above described property, together with the rights of entry and all other rights, including all rights of way and easements which may be necessary for the development, production and removal of all such substances and minerals and the full enjoyment of the Grantor's interest herein reserved, as set forth in Deed executed by the Federal Land Bank of Berkeley, a Corporation to Howard S. Reamer and Helen P. Reamer, his wife, dated February 25, 1941 and recorded July 17, 1941 in Book 155 of Official Records, Page 175, without, however, the right of surface entry and all oil, gas, petroleum, naphtha and other hydrocarbon substances and minerals of whatsoever kind and nature lying above a depth of 500 feet, as relinquished and quitclaimed by Deed recorded August 19, 1991, Instrument No. 20791, Yolo County Records.

APN: 046-190-02-1

**PARCEL 12:**

Lot 40-A of Subdivision "A" of West Sacramento Company's Properties as the same appears upon the map of Subdivision "A" of West Sacramento Company's Properties, filed January 7, 1913 in Book 2 of Maps, Page 68, Yolo County Records.

EXCEPTING THEREFROM an undivided 1/2 interest in and to all oil, gas, petroleum, naphtha, other hydrocarbon substances and minerals of whatsoever kind and nature in, upon or beneath the herein above described property, together with the rights of entry and all other rights, including all rights of way and easements which may be necessary for the development, production and removal of all such substances and minerals and the full enjoyment of the Grantor's interest herein reserved, as set forth in Deed executed by the Federal Land Bank of Berkeley, a Corporation to Howard J. Reamer and Helen P. Reamer, his wife, dated February 25, 1941 and recorded July 17, 1941 in Book 155 of Official Records, Page 175, without, however, the right of surface entry and all oil, gas, petroleum, naphtha and other hydrocarbon substances and minerals of whatsoever kind and nature lying above a depth of 500 feet, as relinquished and quitclaimed by Deed, recorded August 19, 1991, Instrument No. 20791, Yolo County Records.

APN: 045-230-07-1

**PARCEL 13:**

Parcels 3 and 12, Record of Survey, filed January 24, 1969 in Book 10 of Maps and Surveys, Page 41, Yolo County Records.

EXCEPTING THEREFROM all of the minerals, oil, gas, asphaltum and other hydrocarbons and substances associated therewith and other minerals whether similar to those herein specified or

not, now or at any time hereafter in, on or under said property, as reserved in the Deed executed by Ralph J. Cebrian, et al., recorded February 18, 1969 in Book 903 of Official Records at Page 558.

Said mineral rights were granted to West Sacramento Port Center, Inc., a California corporation by Deed recorded February 18, 1969 in Book 903 of Official Records at Page 560.

The right to enter upon the surface or upper 500 feet of said land were quitclaimed by West Sacramento Port Center, Inc., to Wes Pac Properties, Inc., by Deed recorded May 24, 1977 in Book 1247 of Official Records at Page 435.

APN: 046-180-06-1, 046-180-07-1; 046-190-03-1

**PARCEL 14:**

Lots 5-A, 6-A, 7-A, 10-A, 11-A, 12-A, 14-A, 15-A, 20-A of West Sacramento Company's Properties Subdivision A, filed January 7, 1913 in Book 2 of Maps, Page 68, Yolo County Records.

APN: 046-200-01-1, 046-200-04-1, 046-200-08-1

**PARCEL 15:**

Parcel 10, as shown on that Record of Survey, filed January 24, 1969, in Book 10 of Maps and Surveys, pages 39 to 48, Yolo County Records.

EXCEPTING THEREFROM, fifty per cent (SO<sup>o</sup>/o) of all oil, mineral, geothermal and similar rights, together with a right-of-entry upon the real property hereby conveyed for the purpose of extracting the same so long as the grantee's reasonable use of the real property hereby conveyed is not unreasonably disturbed, as reserved in the Deed executed by West Sacramento Port Center, Inc., recorded November 30, 1978, in Book 1340 of Official Records, Page 400.

APN: 046-210-02-1

**PARCEL 16:**

Parcel 2, as shown on that Record of Survey filed January 24, 1969, in Book 10 of Maps and Surveys, pages 39 to 48, Yolo County Records.

EXCEPTING THEREFROM, fifty percent (SO%) of all oil, mineral, geothermal and similar rights, together with a right-of-entry upon the real property hereby conveyed for the purpose of extracting the same so long as the grantee's reasonable use of the real property hereby conveyed is not unreasonably disturbed, as reserved in the Deed executed by West Sacramento Port Center, Inc., recorded November 30, 1978, in Book 1340 of Official Records, Page 400.

APN: 046-210-01-1

**PARCEL 17:**

The land described herein is situated in the State of California, County of Yolo, City of West Sacramento, and is described as follows:

**PARCEL 17A:**

BEGINNING at the Southeast corner of Lot 22-A of Subdivision A of West Sacramento Company's Properties, Subdivision A, 488.26 acres, filed for record in the office of the Recorder of Yolo County, California on January 7, 1913 in Book 2 of Maps at Page 68; thence from said point of beginning, North 1571.9 feet along the Easterly boundary of said Subdivision A to a point in the Northerly boundary of Swamp Land Survey No. 771, Yolo County Surveys; thence South 89° 58' East 1650.0 feet along said North boundary line; thence South 1570.9 feet to a point in the center line, produced Easterly of Burrows Avenue of said West Sacramento Company's Properties, Subdivision A; thence West 1650.0 feet along said Easterly production of the center line of Burrows Avenue to the POINT OF BEGINNING.

**PARCEL 17B:**

BEGINNING at a point on the dividing line between Swamp Land Surveys Nos. 644 and 991, Yolo County Surveys, which is North 25° 42' East 17.7 feet from an iron pipe set in the ground at the Northeast corner of Swamp Land Survey No. 771, Yolo County Surveyors; thence from said POINT OF BEGINNING West 532.19 feet, more or less to a point on the dividing line between the property belonging to Lizzie H. Glide, formerly belonging to George B. Wall in said Swamp Land Survey No. 991; thence South 0° 23' East 13.15 feet to a point on the Northerly boundary of said Swamp Land Survey No. 711; thence North 89° 58' West 86.0 feet along said Northerly boundary line to a point on the Southerly projection of the center line of the main drainage canal of Reclamation District No. 900; thence South 1271.21 feet along said Southerly projection of the center line of said main drainage canal, to a point which is North 25° 42' East 332.6 feet from the point of intersection of the dividing line between Swamp Land Surveys Nos. 644 and 771, with the Easterly production of the center line of Burrows Avenue, Burrows Avenue being delineated on the Map of West Sacramento Company's Properties, Subdivision A, 488.26 acres, according to the Official Plat thereof, filed for record in the Office of the Recorder of Yolo County, California, on January 7, 1913 in Book 2 of Maps, at Page 68; thence North 25° 42' East 1425.3 feet along the dividing line between said Swamp Land Survey 644 and Swamp Land Survey 771, and the dividing line between said Swamp Land Survey 644 and Swamp Land Survey 991 to the POINT OF BEGINNING.

**PARCEL 17C:**

BEGINNING at a point on the dividing line between Swamp Land Surveys 771 and 991, Yolo County Surveys, which is North 89° 58' West 525.5 feet from an iron pipe set in the ground at the Northeast corner of said Swamp Land Survey 171; thence from said POINT OF BEGINNING North 0° 23' West 13.15 feet along the dividing line between the property of Lizzie H. Glide and the property formerly belonging to George B. Wall in said Swamp Land Survey 991; thence West 85.91 feet to a point on the Southerly projection of the center line of the main drainage canal of Reclamation District No. 900; thence South 13.1 feet along said Southerly projection of the center line of said main drainage canal to a point on the dividing line between

Swamp Land Survey 711 and said Swamp Land Survey 991; thence South 89° 58' East 86.0 feet along said dividing line to the POINT OF BEGINNING.

**PARCEL 17D:**

BEGINNING at the Northeast corner of Lot 31-A of the Subdivision A West Sacramento Company's Properties, Subdivision A, containing 488.26 acres according to the Official Plat thereof, filed for record in the Office of the recorder of Yolo County, California in Book 2 of Maps, at Page 68; thence from said POINT OF BEGINNING East 1650.0 feet along the center line and the Easterly production of the center line of the main drainage canal of Reclamation District No. 900; thence South 13.1 feet to a point in the North boundary of Swamp Land Survey 711, Yolo County Surveys; thence North 89° 58' West 1650.0 feet along said North boundary line to a point in the East boundary of said West Sacramento Company's Properties Subdivision A~ thence North 12.1 feet along said Easterly boundary of said Subdivision A to the POINT OF BEGINNING.

APN: 046-190-04-1

**PARCEL 18:**

Parcel 2, Parcel Map No. 4505, filed November 19, 2001 in Book 2001 of Maps Page 130, Yolo County Records. EXCEPTING THEREFROM all oil, minerals, asphaltum and other hydrocarbons now or at any time hereafter in, on, or under said real property but without the right of surface entry through the surface of said land or upper 500 feet thereof, as reserved by West Sacramento Port Center, Inc. in Deed recorded May 12, 1977 in Book 1245 of Official Records, Page 443, Yolo County Records.

APN: 046-190-08-1

**PARCEL 19:**

Lot 32A, West Sacramento Co's Properties Subdivision A, filed January 7, 1913, in Book 2 of Maps, Page 68, Yolo County Records.

APN: 045-230-13-1

**PARCEL 20:**

BEING A PORTION OF LOT 29-A, WEST SACRAMENTO LAND COMPANY SUBDIVISION "A," IN PROJECTED SECTION 19, TOWNSHIP 8 NORTH, RANGE 4 EAST, M.D.B.& M., YOLO COUNTY', CALIFORNIA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

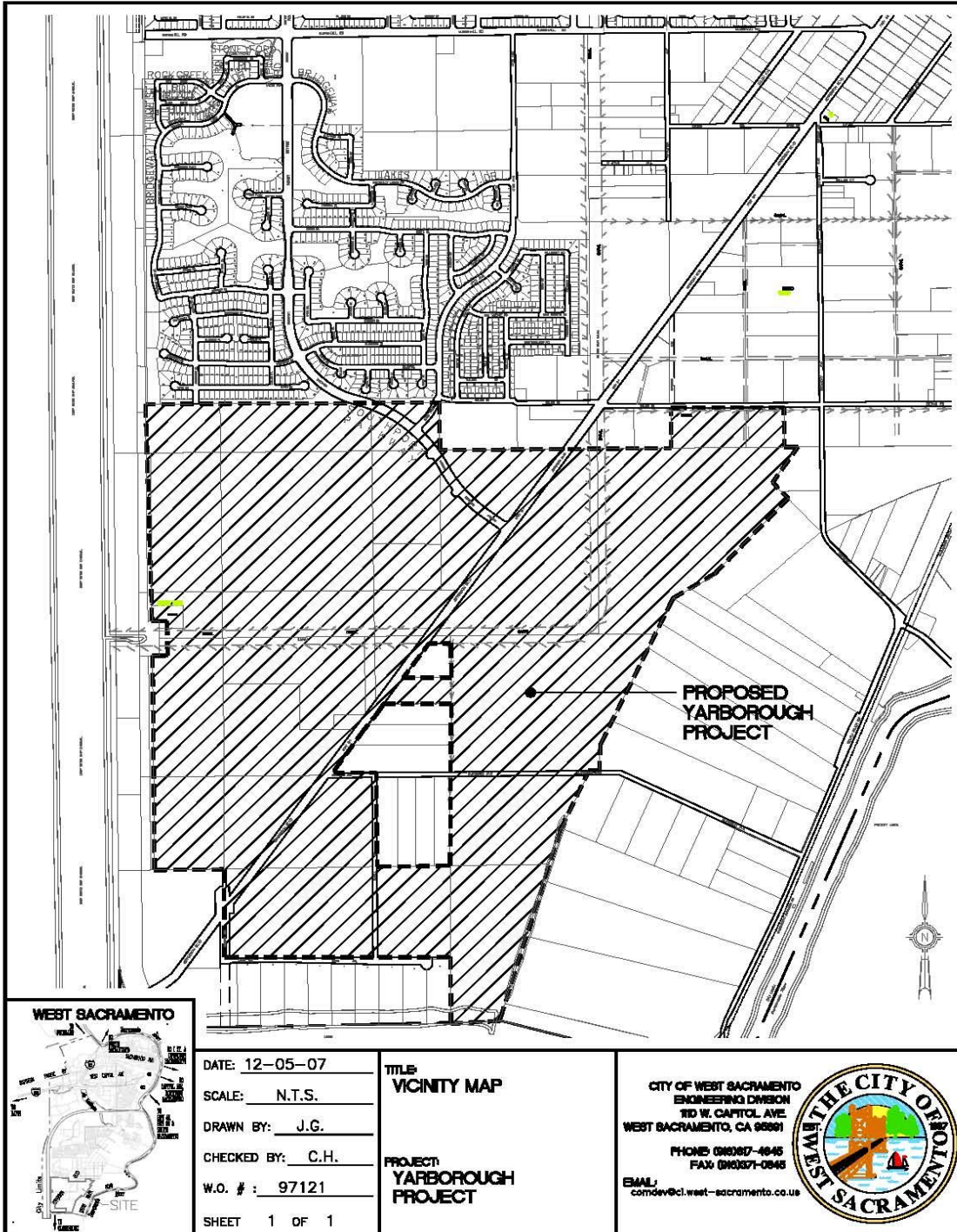
BEGINNING ATA POINT THAT IS SITUATE EAST 373.71 FEET FROM THE SOUTHWESTERLY CORNER OF SAID LOT 29-A, WEST SACRAMENTO LAND COMPANY SUBDIVISION "A," FILED FOR RECORD IN MAP BOOK 2, PAGE 68, YOLO COUNTY RECORDS, THENCE FROM SAID POINT OF BEGINNING, SAID POINT BEING ON THE SOUTH LINE OF SAID LOT 29-A, NORTH 164.00 FEET; THENCE EAST 293.98 FEET TO THE NORTHWESTERLY RIGHT OF WAY OF JEFFERSON BOULEVARD; THENCE ALONG SAID NORTHWESTERLY RIGHT OF WAY OF JEFFERSON BOULEVARD SOUTH 36° 13' 30"

WEST, 203.30 FEET TO THE SOUTH LINE OF SAID LOT NO. 29-A; THENCE LEAVING SAID NORTHWESTERLY RIGHT OF WAY OF JEFFERSON BOULEVARD AND ALONG THE SAID SOUTH LINE OF LOT NO. 29-A WEST 173.83 FEET TO THE POINT OF BEGINNING.

APN: 045-230-15-1



**EXHIBIT B**  
**Diagram of the Property**



DATE: 12-05-07  
 SCALE: N.T.S.  
 DRAWN BY: J.G.  
 CHECKED BY: C.H.  
 W.O. #: 97121  
 SHEET 1 OF 1

TITLE:  
**VICINITY MAP**

PROJECT:  
**YARBOROUGH PROJECT**

CITY OF WEST SACRAMENTO  
 ENGINEERING DIVISION  
 110 W. CAPITOL AVE  
 WEST SACRAMENTO, CA 95661

PHONE: (916)837-4645  
 FAX: (916)837-0845

EMAIL:  
 comdev@ci.west-sacramento.ca.us



The logo for the City of West Sacramento, featuring a circular emblem with a bridge, water, and a sun, surrounded by the text 'THE CITY OF WEST SACRAMENTO'.

## EXHIBIT C

### PROJECT DESCRIPTION AND CONCEPTUAL MAPS FOR THE PROPERTY

Yarbrough is located in the southwest village of Southport and generally bound by the Deep Water Ship Channel (DWSC) to the west, the Bridgeway Lakes communities to the north, agricultural land immediately to the east, and the southeast village of Southport beyond the former Yolo Shortline Railroad corridor. A narrow portion adjoins the southern city limits, which mark the proposed Project's southern boundary. The diagram of the property below illustrates the location of the project.

The project's land use designations will support development of approximately 3,004 residential units, including single-family detached homes on large- and medium-sized lots, alley-loaded homes, "Z" lots (staggered zero-lot line lots), clusters, duplexes, live/work townhomes, courtyard townhomes, and apartments. The project includes a "village core," as envisioned by the Southport Framework Plan, located in the north-central portion of the development, connecting surrounding high- and moderate-density neighborhoods to the retail and commercial uses in the core by a network of small-scaled, tree-lined streets. A network of lakes and waterways would meander through the area. The project includes the development of a residential component (described above), open space framework, golf course, circulation plan, and infrastructure plan.

The village core consists of mixed-use development covering 47.5 acres and includes a neighborhood shopping center of up to 150,000 square feet of retail uses, up to 25,000 square feet of office development, up to 40 live/work residential units, up to 40,000 square feet of community facilities (including a golf clubhouse, daycare center, banquet facilities, worship centers, and recreation club facilities), and up to 800 high- and medium-density residential units. The clubhouse for the golf course will be integrated into the village core. The village core will adjoin the chain of lakes (described below) on its south and east sides and will provide pedestrian connectors along selected local streets.

The compact, mixed-use character of the village core is intended to offer certain traffic-reduction benefits over conventional development patterns. It locates high- and medium-density residential units close to retail, is linked to the surrounding neighborhoods by a network of pedestrian and bicycle routes, and places a concentration of residences within walking distance of the bus route along Jefferson Boulevard.

An elementary school site is designated at the northern edge of the project site as part of the village core, north of Southport Parkway and west of Jefferson Boulevard. The planned school site is located on an approximately 10-acre site; 3.5 acres of the campus are located within the project boundary. North of the project boundary and the campus, 1.5 acres are proposed for a joint park facility for school use.

Amenities on the project site would include an 18-hole golf course, neighborhood parks, and two (2) lake parks. The neighborhood parks would include a 5-acre sports park at the eastern side of the project site (East Sports Park) and six (6) smaller parks integrated into the neighborhoods and the lake park. The East Sports Park would include various sports fields (baseball, softball, and soccer), picnic areas, restrooms, and parking but is not proposed to include night lighting. The 15-acre lake park would include shoreline park space, a

promenade/walking path along the lakes, small plazas, a par course, an open meadow for gatherings, an amphitheater, and active and passive recreation areas.

The project includes a Designated Trail System and a Lake Park which includes the Grand Meadow described above; Class 2 bike lanes along Jefferson Boulevard, Southport Parkway, and collector roads within the project site; and pedestrian connectors along selected local streets (See Open Space Map contained in Exhibit D). "Class 2" bike lanes consist of lanes painted on the street and marked by signs.

The project includes a comprehensive system of arterial and collector streets (See Circulation Map contained in Exhibit D). Jefferson Boulevard will be expanded to four (4) lanes from the northern edge of the project site to the intersection with Southport Parkway in the village core; it would transition to two (2) lanes south of that point. Jefferson Boulevard will cross the lake on a new bridge south of the village core. Jefferson Boulevard will be built as a parkway, with a landscaped median and sides. Southport Parkway has been constructed to the intersection with Jefferson Boulevard. south of the Bevan Road intersection. The extension of Village Parkway shall intersect at the same location.

To provide the necessary drainage capacity, the project entails removal of the existing Main Drain and replacing its flood control and storm drainage functions with a string of lakes and waterways (See Drainage Map contained in Exhibit D). The lake and waterway system will be designed to provide enough floodwater storage to replace the capacity currently provided by the agricultural land on the project site and accommodate additional runoff produced by proposed development. Another function of the lake and waterway system will be to attenuate the increases in peak flow volumes resulting from the current system, which directs storm drainage to channels. Because the lake/waterway system would provide an additional increment of stormwater detention capacity beyond that needed to serve the project alone, it would allow a reduction in the capacity of the planned Main Drain Pump Station rehabilitation and pump upgrade. The lakes would also provide replacement habitat for that lost with the removal of the Main Drain, which consists of 13,500 linear feet (includes both sides). The proposed project includes approximately 47,500 linear feet of lake and canal edge within the project site, which replaces the ruderal habitat in a slightly different configuration than that of the Main Drain.

## EXHIBIT D

### Land Use Table and Planning Areas Diagram

#### Land Use Table

Land Use	Acres	Density	Unit-Low	Unit-High	Target Units
LR	144.8	1.1-5	159	724	575
MR	191.6	5.1-12	977	2,299	1,230
HR	37.9	12.1-25	459	948	539
MU	51.9	5.1-25	159	779	660
PQP	8.7	-	-	-	-
RP	201.6	-	-	-	-
OS	55.9	-	-	-	-
Roads	18.5	-	-	-	-
<b>Total</b>	<b>711</b>	<b>-</b>	<b>1,754</b>	<b>4,749</b>	<b>3,004</b>

Up to twenty percent (20%) of dwelling units may be transferred within the Project, in accordance with Section 2.4.3 of the Southport Framework Plan; provided, however, that such transfer(s) satisfy the City's regional housing needs and are consistent with state and local laws.

#### Legend

<b>LR</b>	Low Density Residential
<b>MR</b>	Medium Density Residential
<b>HR</b>	High Density Residential
<b>MU</b>	Mixed Use
<b>PQP</b>	Public/Quasi-Public
<b>RP</b>	Recreation Park Facilities
<b>OS</b>	Open Space

## Planning Areas Diagram

### Statistical Summary:

Use	Acreage
Residential	320.7
Mixed Use/Village Core	47.5
Elementary School	3.5
Community Facilities	5.5
Golf (includes 35 acres of water)	190
Water	44
Lake Park	15
Neighborhood Parks	11
Pocket Park	12.5
Regional Multi-Use Trail/ Equestrian Trail/Staging	16.4
Arterial/Collector Road	32
Open Space/Edge Conditions/ Greenbelt	12.8
<b>Total</b>	<b>711</b>

Detail of Residential Land Uses	
Residential Acreage	320.7 acres
Mixed-Use Residential	31.7 acres
Net Residential Acreage	352.4 acres
Total Units	3,004
Net Density	8.5 units/acre



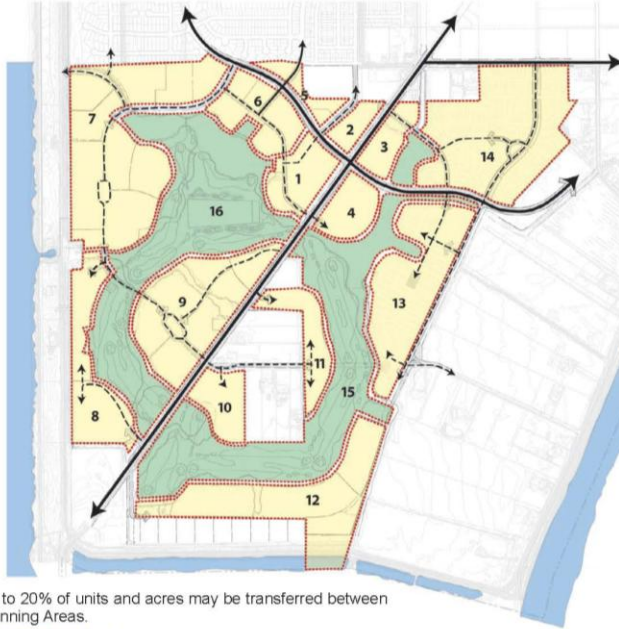
Note: Specific density locations as shown on this exhibit are conceptual and represent the scale and grain of housing type distribution. See Planning Area Map for maximum density proposed.

*The Plan*

## Planning Areas Diagram

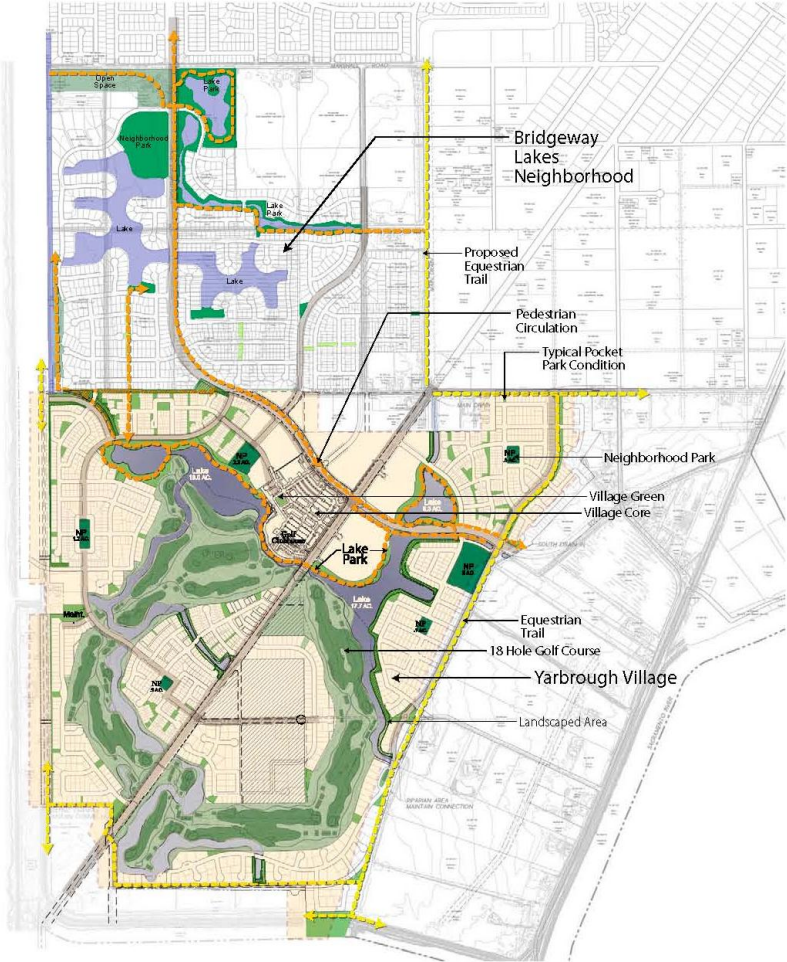
Planning Area Statistics

Planning Area	Target Dwelling Units
1	100
2	220
3	150
4	190
5	30
6	335
7	499
8	120
9	425
10	100
11	75
12	186
13	162
14	412
15	0
16	0
Roads	0
<b>Maximum Dwelling Units</b>	<b>3,004 DU</b>



Up to 20% of units and acres may be transferred between Planning Areas.  
*Planning Area Map*

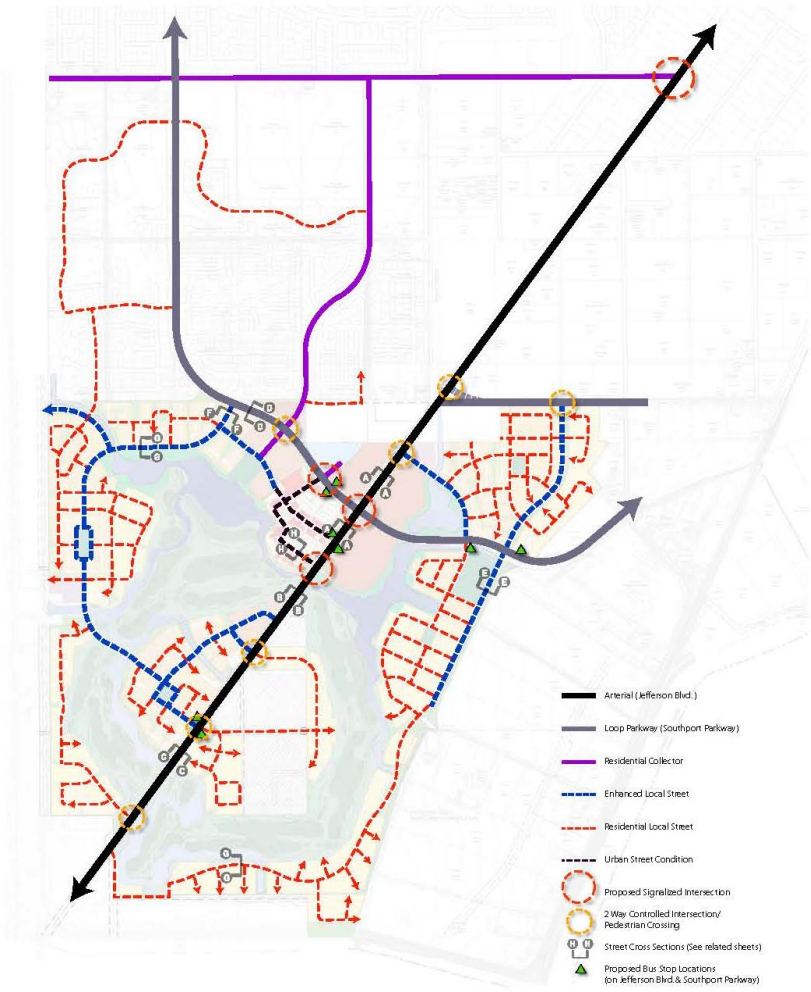
# Open Space Map For the Property



Conceptual Open Space Plan

Illustrations are concept only. Specific site plan proposals will be defined in subsequent PD, site plan and tract map applications.

# Circulation Map For the Property



*Vehicular Circulation Plan*



## Drainage Map For the Property



*Proposed Drainage Plan*

Note: Specific density locations as shown on this exhibit are conceptual and represent the scale and grain of housing type distribution. See Planning Area Map for maximum density proposed.

## EXHIBIT E

### Additional Yarbrough Design Guideline Components

Additional Yarbrough Design Guidelines components shall be incorporated into the Yarbrough Design Guidelines for the Project and include and/or address the following:

IMPROVEMENT	TIMING
<p><b><u>Golf Course and Open Space Guidelines.</u></b> Landowner shall identify and agrees to prepare and implement golf course and open space guidelines, including a master plan sign program for these amenities, and Best Management Practices for golf course operation to ensure water quality protection.</p>	<p>Landowner shall prepare a draft of the golf course and open space guidelines, and submit to the City for review, prior to the approval of the first tentative map containing the golf course.</p> <p>The golf course and open space guidelines shall be finalized by the Landowner and ready for implementation, prior to the approval of the first final map containing the golf course. No final maps containing the golf course shall be approved unless and until the City first approves the golf course and open space guidelines.</p>
<p><b><u>Master Sign Program.</u></b> Landowner shall identify and agrees to prepare and implement a Master Sign Program for residential subdivisions and future development advertising, including off-site signs.</p>	<p>Prior to or concurrent with the approval of the first final map.</p>
<p><b><u>Master Fence Program.</u></b> Landowner shall identify and agrees to prepare and implement a Master Fence Program.</p>	<p>Prior to or concurrent with the approval of the first final map.</p>
<p><b><u>Condominiums.</u></b> Landowner shall need design review approval of condominiums.</p>	<p>Prior to or concurrent with an application for a subdivision map, creating condominium lots.</p>
<p><b><u>Lake and Waterway Management Plan.</u></b> Landowner shall prepare and implement a lake and waterway management plan. The lake and waterway management plan shall address urban runoff, Reclamation District 900 management and operation requirements, and include Best Management Practices.</p>	<p>Prior to the approval of the first final map for the Project, whichever occurs first.</p> <p>Lake and Waterway Management Plan must be approved by both City and Reclamation District 900.</p>
<p><b><u>Signage.</u></b> Landowner shall prepare and implement signage along the lake and water system and pumping facility to define proper and improper usage and to minimize the potential for the introduction of exotic fish.</p> <p>Landowner shall prepare and implement construction/safety signage along the lake and water system and pumping facility as soon as there is water in the lakes and/or canals.</p>	<p>Prior to the approval of the first site improvement permit or final map for the Project, whichever occurs first.</p> <p>Prior to the approval of the first grading permit for the Project.</p>

<p><b><u>Levee Construction Restriction.</u></b> Landowner shall identify areas subject to the potential for construction and improvements which might include limitations on in-ground swimming pools, spas, or basements.</p>	<p>Prior to or concurrent with the approval of each tentative map.</p>
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## EXHIBIT F

### Master Affordable Housing Agreement

The Master Affordable Housing Agreement shall be drafted based on the following:

1. The substantive terms of the Master Affordable Housing Agreement shall be identified and generally accepted by City staff, prior to the approval of the first tentative map for the Project. No final map may be filed or issued for the Project until the Master Affordable Housing Agreement is approved by the City.

2. The Project shall comply with Chapter 15.40 of the City's Municipal Code (as that Chapter exists at the time of execution of the Master Affordable Housing Agreement) with modifications as set forth in the Master Affordable Housing Agreement, including, but not limited to:

a. The Master Affordable Housing Agreement shall address the inclusionary housing obligations adopted by the City for Bridgeway Lakes II (DA No. 04-02, Ordinance No. 05-1). Landowner's first priority shall be to fulfill this obligation and inclusionary units must be built prior to or concurrent with the Yarbrough inclusionary units. This requirement does not replace the Landowner's concurrent development of Yarbrough units (unless otherwise provided in the Master Agreement).

b. The provisions set forth in this Agreement, including the Master Affordable Housing Agreement, shall not supersede any requirement that Landowner has with respect to the Bridgeway Lakes II project, including but not limited to the City's option, the number of inclusionary units required to be built, and specific dates/triggers for completion of construction of the inclusionary units.

c. Affordable housing for the Yarbrough Project shall be based on 3,004 residential units.

d. Affordable housing units shall be constructed concurrently with market rate development.

## **EXHIBIT G**

### **DESCRIPTION OF THE GOLF COURSE**

The golf course will be a full length 18-hole course with two loops of returning nines and will include a Pro Shop. Near the Pro Shop will be a full length driving range that will accommodate golfers for everyday play as well as tournament events. Also near the Pro Shop will be a practice putting area and an area for golf construction. The golf course will have multiple sets of tees designed to accommodate a broad range of skill levels. The total yardage of the course will range from approximately five thousand five hundred (5,500) to seven thousand (7,000) yards. Full length golf cart and maintenance paths will be included. The course will have wide fairways and generous greens averaging six thousand five hundred (6,500) square feet. There will be several water features incorporated into the golf course design. The purpose of the water features will be to help drain the surrounding development and add playing interest to the course.

## EXHIBIT H

### SOUTH RIVER ROAD BRIDGE PROJECT

The South River Road Barge Canal Crossing and Village Parkway Extension Project (the “South River Road Bridge”) includes the following, in addition to the right-of-way for each:

- Construction of a four- (4) lane bridge over the Yolo Barge Canal, approximately four hundred and sixty (460) feet long.
- Extension of the four- (4) lane Village Parkway from Stonegate Boulevard to the new canal crossing
- Widening South River Road to three (3) lanes (north of Barge Canal to the US-50 highway off-ramp).
- Lineal footage of the roads is approximately seven thousand two hundred feet (7,200).

The widening of South River Road to three (3) lanes north of the Barge Canal is considered interim due to existing right-of-way constraints along this segment, enabling earlier implementation of the project. As the South River Road industrial area redevelops, the ultimate widening of South River Road to four (4) lanes will be required. Additionally, the project will include a two- (2) way left-turn lane, median islands, bike lanes, traffic signals, curb, gutter, sidewalk, storm drainage, and landscaping.

## EXHIBIT I

### TRAFFIC IMPACT FEE STUDY REQUIREMENTS

The following improvements shall be included in the update to the Traffic Impact Fee study:

<b>IMPROVEMENT</b>	<b>TIMING</b>
The realignment of the Harbor/Industrial Intersection to three (3) legs.	Needed at combined development of 6,300 residential units in the Southport Area beyond those identified as Existing plus Approved.
The construction, striping, and signage of a free right-turn lane on the westbound approach to Gateway Drive at the Jefferson Boulevard intersection.	Needed at combined development of 350 residential units in the Southport Area beyond those identified as Existing plus Approved.
The construction, striping, and signage of a free right-turn lane on westbound Linden Road (north) at the Jefferson Boulevard intersection.	Needed at combined development of 2,650 residential units in the Southport Area beyond those identified as Existing plus Approved.
The construction, striping, and signage of an additional left-turn lane on 15 <sup>th</sup> Street at Jefferson Boulevard.	Needed at combined development of 2,750 residential units in the Southport Area beyond those identified as Existing plus Approved.
The construction, striping, and signage of a third left-turn lane and expansion of the intersection by converting the dedicated northbound right-turn lane to a combined through/right-turn lane at the Jefferson Boulevard/Lake Washington Boulevard intersection. Improvements shall include signal timing interconnect at the Southport Parkway/Lake Washington Boulevard intersection.	Needed at combined development of 3,900 residential units in the Southport Area beyond those identified as Existing plus Approved.
The widening of Jefferson Boulevard from Linden Road (south) to Marshall Road.	Needed prior to any residential development in the Southport Area beyond those identified as Existing plus Approved.
Signal modifications at Jefferson Boulevard/Higgins Road.	Needed at development of 2,250 units within the Project.
The construction of a traffic signal at the Jefferson Boulevard/Davis Road intersection and reconstruction and improvement of a southbound left-turn lane.	Needed at development of 1,000 units within the Project.
The construction of a traffic signal at the Jefferson Boulevard/Davis Road intersection and reconstruction and improvement of a northbound right-turn lane.	Needed at development of 2,250 units within the Project.
The construction of a traffic signal at the Jefferson Boulevard/Bevan Road intersection and reconstruction and improvement of a northbound and southbound left-turn lane.	Needed at development of 1,000 units within the Project.

\* For purposes of this Agreement, "development" occurs with the issuance of a building permit.

**EXHIBIT J**

**Traffic Improvements and Funding Commitment**

The following Improvements and funding commitments shall be at the sole expense of the Landowner. Unless otherwise indicated, the Improvements and funding commitments shall not be eligible for credits or reimbursement by the City.

<b>IMPROVEMENT</b>	<b>TIMING</b>
<p><b><u>Traffic Signal.</u></b> Landowner shall install a traffic signal at the Jefferson Boulevard/Southport Parkway intersection and reconstruct the left-turn lane, through lane, and right-turn lane. (Eligible for credit).</p>	<p>Prior to the development of the 500<sup>th</sup> residential unit in the Project.</p>
<p><b><u>Bridge.</u></b> Landowner commits and agrees to advance “sufficient funds” for the construction of the South River Road Bridge, as reduced by advance funding contributions made by other Project applicants. For purposes of this section, sufficient funds shall mean the engineer’s cost estimate to construct the bridge and related improvements, as described in <u>Exhibit H</u>, as approved by the City’s Public Works and Community Development Director, and as determined prior to the approval of the first final map for the Project. (Eligible for credit).</p>	<p>Funding for the design, construction, and development of the South River Road Bridge shall be made by Landowner at least eighteen (18) months before the combined development of 2,000 residential units in the Southport Area, beyond those identified as Existing plus Approved, or as more particularly described in the Comprehensive Financing Agreement.</p> <p>The South River Road Bridge shall be completed prior to the combined development of two thousand (2,000) residential units in the Southport Area, beyond those identified as Existing plus Approved.</p>
<p><b><u>Village Parkway Extension.</u></b> Landowner shall commit to construct or advance funds in an amount equivalent to the Project’s share of costs for the Village Parkway Extension which shall extend north and east beyond the Project boundaries to Davis Road. (A portion of the improvement is eligible for credit).</p>	<p>Commitment shall be made prior to the approval of the first final map for the Project. Landowner shall perform construction of the Village Parkway Extension or transfer funds to the City prior to the combined development of 3,000 residential units for the Project and southeast village of Southport.</p>
<p><b><u>Jefferson Boulevard.</u></b> Landowner shall construct the widening of Jefferson Boulevard from Marshall Road to the Project into four (4) lanes. (May be eligible for credit).</p>	<p>Concurrent with the Project development as prescribed by the updated Traffic Study prepared by the City. Improvements shall be made by Landowner prior to the development of the 1,501<sup>th</sup> residential unit in the Southport Area beyond those identified as Existing plus Approved</p>



IMPROVEMENT	TIMING
<p><b><u>Gregory Avenue.</u></b> Landowner shall commit to and construct traffic improvements to Gregory Avenue at the new Village Parkway Crossing; provided, however, that the construction of the improvements and costs thereof will be shared by other proposed projects in the Southport Area. (Not eligible for credit).</p>	<p>Construction shall be concurrent with Project development as prescribed by the updated Traffic Study prepared by the City and shall be completed prior to sixty-five percent (65%) buildout of the Project.</p> <p>Sixty-five percent (65%) build out shall mean no more than the sum of three hundred and fifty (350) low-density residential dwelling units and eight hundred and twenty (820) medium-density residential dwelling units and three hundred and fifty (350) high-density residential dwelling units.</p>
<p><b><u>Burrows Avenue.</u></b> Landowner shall reconstruct Burrows Avenue to the latest Rural Road Standards, within the Project and to the east of the Project (extending from Jefferson Boulevard to Gregory Avenue), including traffic calming measures, as approved in writing by the City. (Not eligible for credit).</p>	<p>Concurrent with Project development along Bevan Road.</p>
<p><b><u>Bevan Road.</u></b> Landowner shall reconstruct Bevan Road east of Jefferson Boulevard to Gregory Avenue, and to the latest Rural Road Standards, including traffic calming measures, as approved in writing by the City. (Not eligible for credit).</p>	<p>Concurrent with Project development along Burrows Avenue.</p>
<p><b><u>Southport Parkway.</u></b> Landowner shall install a traffic signal at the Southport Parkway and Marshall Road intersection and add a second (2<sup>nd</sup>) through lane to northbound Southport Parkway. (Eligible for credit).</p>	<p>Traffic signal shall be installed concurrent with Project development as prescribed by the updated Traffic Study prepared by the City. All improvements shall be completed prior to the development of 2,551 residential units in the Project.</p>

\* For purposes of this Agreement, “development” occurs with the issuance of a building permit.

**EXHIBIT K**

**Memorandum of Development Agreement**

Recording Requested by and  
When Recorded Return to:

City of West Sacramento  
1110 West Capitol Avenue  
West Sacramento, California 95691

No recording fee required pursuant to  
Government Code Section 27383

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF DEVELOPMENT AGREEMENT  
Yarbrough**

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT is made this \_\_\_ day of  
\_\_\_\_, 2008, by and between the CITY OF WEST SACRAMENTO ("City") and  
\_\_\_\_\_ ("Landowner"), collectively referred to as the "Parties."

City and Landowner are Parties to that certain "Development Agreement" dated  
\_\_\_\_\_ (the "Development Agreement"), the terms and conditions of which are hereby  
incorporated by this reference as if set forth in full herein. The Development Agreement  
controls the development of that certain real property, including improvements thereto, situated  
in the County of Yolo, State of California, and described as follows (the "Property"):

[See Exhibit A]

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

THE CITY OF WEST SACRAMENTO

LANDOWNER

ASB SOUTHPORT II LLC,  
a California Limited Liability Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

BILLY G. AND LOUIS YARBROUGH TRUST,  
a Revocable Family Trust

\_\_\_\_\_  
Kryss Rankin,  
City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert E. Murphy  
City Attorney

**EXHIBIT L**

**Mitigation Monitoring and Reporting Plan**

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<b>AESTHETICS</b>			
<p><b>Mitigation Measure AES-3: Install Temporary Visual Barriers between Construction Zones and Residences</b>—During the construction period, the project proponent or the contractor will install temporary screen fencing to obstruct undesirable views of construction activities from rural residences’ backyards that abut the project site. The fencing is to be approximately 7 feet high to help maintain the privacy of residents. Fencing shall be installed along the common property line where the Yarbrough site abuts a rural residence.</p>	Prior to start of construction	Project proponent and construction contractor	City of West Sacramento
<b>AGRICULTURAL RESOURCES</b>			
<p><b>Mitigation Measure AG-1: Provide Compensatory Agricultural Land Protection</b>— The development agreement to be entered into by the City and developer shall require the developer to provide for the conservation of 405 acres of agricultural land of similar production value within Yolo County prior to the issuance of grading permits or recordation of final maps, whichever comes first. “Conservation” shall consist of the purchase of development rights and establishment of a conservation easement pursuant to Civil Code Section 815 et seq. for one or more parcels of land. The land may consist of one parcel or contiguous parcels, or parcels that are contiguous to existing conservation easements. The easement shall be dedicated to the Yolo Land Trust, or similar entity that meets the requirements of Civil Code Section 815.3.</p> <p>If the land subject to the easement is suitable as Swainson’s Hawk foraging habitat and as agricultural land, this may be coupled with lands conserved for Swainson’s hawk mitigation, when agreeable to the City.</p>	Prior to construction	Project proponent	City of West Sacramento
<b>AIR QUALITY</b>			
<p><b>Mitigation Measure AIR-1a: Implement Measures That Reduce NOX Emissions from</b></p>	During construction	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p><b>Heavy-Duty Equipment</b>—During all grading and construction activities, at least 10% of diesel engine-driven construction equipment on site shall be equipped with Tier 1 or Tier 2 engines as certified by the ARB or use engines, aqueous, or alternative diesel fuels certified by the applicable air district to provide equivalent benefits.</p> <ul style="list-style-type: none"> <li>■ At least 40% of the remaining diesel engine-driven construction equipment shall have diesel particulate filters and lean-NOX catalysts (or equivalent control devices).</li> <li>■ Minimize idling time to 5 minutes when construction equipment is not in use, unless idling is per engine manufacturer’s specifications or more time is required for safety reasons.</li> <li>■ To the extent practicable, manage operation of heavy-duty equipment to reduce emissions such as heavy-duty earthmoving, stationary, and mobile equipment in optimum running conditions, which can result in 5% fewer emissions.</li> <li>■ To the extent practicable, employ construction management techniques such as timing construction to occur outside the ozone season of May through October, or scheduling equipment use to limit unnecessary concurrent operation.</li> <li>■ Use electric equipment when feasible.</li> <li>■ Properly maintain equipment according to manufacturer’s specifications.</li> <li>■ District Rule 2.3 requires controlling visible emissions to not exceed 40% opacity for more than three minutes in any 1-hour period, which includes all (on-road and off-road) diesel-powered equipment.</li> </ul>		shall ensure construction contractor implements measure	
<p><b>Mitigation Measure AIR-1b: Implement the Yolo-Solano Air Quality Management District’s Best Available Control Measures to Reduce Fugitive Dust Emissions from Construction Activities</b>—Table 3.3-11 lists the YSAQMD’s recommended best available control measures to reduce fugitive dust emissions from construction activities. The YSAQMD recommends that the</p>	During construction	Construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
measures should be incorporated where applicable and has indicated that strict enforcement of these measures would effectively reduce fugitive dust emissions to a less-than-significant level.			
<p><b>Mitigation Measure AIR-1c: Implement Construction Phasing to Reduce Daily and Annual Emissions to the Maximum Extent Practicable</b>— The project applicant will implement phased grading that reduces the total active construction area on a daily basis to reduce total construction emissions. For locations other than the lake, not more than 100-acres in a single day may be graded. The lake area shall be graded in not less than two phases to reduce areas disturbed at one time. Phase 1 grading for the lake may occur to the west of Jefferson Boulevard, but must not occur to the east of Jefferson Boulevard. Phase 2 grading shall not begin until Phase 1 grading for the lake is complete. Phase 2 grading of the lake may occur to the east of Jefferson Boulevard.</p>	During construction	Project proponent	City of West Sacramento
<p><b>Mitigation Measure AIR-4: Include Construction and Design Features to Reduce Emissions from Operations</b>— The Yolo-Solano Air Quality Management District Handbook for Assessing and Mitigating Air Quality Impacts identifies several measures that can be used to minimize emissions associated with residential projects. These measures include:</p> <ul style="list-style-type: none"> <li>■ duct system within the building thermal envelope, or insulated to R-3;</li> <li>■ passive cooling strategies including passive or fan-aided cooling planned for or designed into structure, a cupola or roof opening for hot air venting or underground cooling tubes;</li> <li>■ outdoor lighting designed for high efficiency, solar-powered or controlled by motion detectors;</li> <li>■ natural lighting in buildings;</li> <li>■ building siting and orientation to reduce energy use;</li> <li>■ summer shading and wind protection</li> </ul>	Design phase	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>measures to increase energy efficiency;</p> <ul style="list-style-type: none"> <li>■ use of concrete or other non-polluting materials instead of asphalt for parking lots;</li> <li>■ use of landscaping to shade buildings and parking lots;</li> <li>■ photovoltaic and wind generators;</li> <li>■ installation of energy efficient appliances and lighting; and</li> <li>■ installation of mechanical air conditions and refrigeration units that use non-ozone depleting chemicals.</li> </ul> <p>The City shall amend the design guidelines as necessary to include the above measures.</p>			
<p><b>Mitigation Measure AIR-7a: Prioritize Parking</b>—Prioritized parking within commercial and retail areas shall be given to electric, hybrid, and alternative-fuel vehicles that emit no or reduced GHG emissions in comparison with gasoline or diesel-powered vehicles. Parking spaces shall be clearly marked to this effect.</p>	Design phase	Project proponent	City of West Sacramento
<p><b>Mitigation Measure AIR-7b: Employ Cool-Roof Technology</b>—Nonresidential buildings <u>with flat roofs</u> shall incorporate cool-roof technology (high reflectance, high-emittance roof surface) into their design, thereby reducing energy use for air conditioning in comparison with standard roofing (California Energy Commission 2005). The City shall require this to be included in nonresidential building plans.</p>	Design phase	Project proponent	City of West Sacramento
<p><b>Mitigation Measure AIR-7c: Require Leadership in Energy and Environmental Design (LEED) Certification</b>—Nonresidential development within the village core area shall be certified by Leadership in Energy and Environmental Design (LEED).</p>	Design phase	Project proponent	City of West Sacramento
<b>BIOLOGICAL RESOURCES</b>			
<p><b>Mitigation Measure BIO-1a: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel</b>—Before any work occurs in the project area, including grading, a qualified biologist will conduct mandatory contractor/worker awareness training</p>	Prior to start of construction	Project proponent and construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>for construction personnel. The awareness training will be provided to all construction personnel to brief them on the need to avoid impacts on biological resources, particularly riparian habitat, protected trees, and special-status wildlife (i.e., active nests of migratory birds and raptors, giant garter snakes), and the penalties for not complying with biological mitigation requirements. If new construction personnel are added to the project, the contractor will ensure that the personnel receive the mandatory training before starting work.</p>			
<p><b>Mitigation Measure BIO-1b: Install Construction Barrier Fencing to Protect Riparian Habitat and Other Sensitive Biological Resources Adjacent to the Construction Zone</b>—The developer or its contractor will install orange construction barrier fencing to identify environmentally sensitive areas that are to be avoided. The construction specifications will require that a qualified biologist identify riparian habitat, protected trees, and other sensitive biological habitat on-site and identify areas to avoid during construction. Sensitive communities within the area required for construction, including staging and access, shall be fenced off to avoid disturbance in these areas. Before construction, the construction contractor will work with the project engineer and a resource specialist to identify the locations for the barrier fencing and will place stakes around the sensitive resource sites to indicate these locations. The protected area will be designated an environmentally sensitive area and clearly identified on the construction specifications. The fencing will be installed before construction activities are initiated and will be maintained throughout the construction period. The following paragraph will be included in the construction specifications:</p> <p style="padding-left: 40px;">The contractor’s attention is directed to the areas designated “environmentally sensitive areas.” These areas are protected, and no entry by the contractor for any purpose will be allowed unless</p>	<p>Prior to and during construction</p>	<p>Construction contractor</p>	<p>City of West Sacramento</p>



Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>specifically authorized in writing by the project proponent. The contractor will take measures to ensure that contractor's forces do not enter or disturb these areas, including giving written notice to employees and subcontractors.</p> <p>Temporary fences around the environmentally sensitive areas will be installed as the first order of work. Temporary fences will be furnished, constructed, maintained, and removed as shown on the plans, as specified in the special provisions, and as directed by the project engineer. The fencing will be commercial-quality woven polypropylene, orange in color, and at least 4 feet high (Tensor Polygrid or equivalent). The fencing will be tightly strung on posts with a maximum 10-foot spacing.</p>			
<p><b>Mitigation Measure BIO-1c: Redesign Project or Compensate for Removal of Protected Trees</b>—To the maximum extent feasible, the project design will avoid loss of any protected tree. As part of project design, the developer shall retain a certified arborist to survey trees within the project boundaries, including potential contractor staging areas, and record their accurate location, species, size (diameter at breast height [dbh]), and canopy diameter. If the arborist's survey does not identify any protected trees that would be removed or damaged as a result of the proposed project, no further mitigation would be necessary. Measures will be taken to avoid impacts on protected trees, as detailed in the City's tree ordinance. Protected trees that are lost due to the project will be replaced according to the provisions of the ordinance, which generally requires a 1-inch-diameter replacement for each inch lost. Any trees planted as remediation for failed plantings shall be planted as stipulated here for original plantings and monitored for a period of 5 years following installation. Tree replacement shall occur after project construction.</p> <p>The developer shall enter into a tree mitigation agreement with the City, pursuant to the City's tree ordinance, prior to any removal of trees.</p>	Design phase	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p><b>Mitigation Measure BIO-3a: Obtain and Comply with State, Federal, and Local Permits</b>—Before construction begins, the developer will conduct a delineation of waters of the United States within the project area and submit a report and map of the results to the Corps for verification. If the Corps determines that the seasonal wetlands and irrigation ditches are not waters of the United States, the developer will not need to obtain a Clean Water Act Section 404 permit. If the Corps decides that these resources are waters of the United States, and therefore are under its jurisdiction, the developer will obtain a Section 404 permit from the Corps for placement of fill within waters of the United States and a Section 401 certification from the RWQCB.</p> <p>In addition, the developer will identify the extent of the irrigation ditches that are within jurisdiction of DFG for the purpose of obtaining a Section 1602 Streambed Alteration Agreement. All conditions that are attached to the state and federal permits would be implemented as part of the project. The conditions would be clearly identified in the construction plans and specifications and monitored during and after construction to ensure compliance.</p>	Prior to start of construction	Project proponent	City of West Sacramento
<p><b>Mitigation Measure BIO-3b: Implement conditions of Federal and State Permits Regarding Waters of the United States</b>—As part of the Section 404 and Section 7 processes (for giant garter snake habitat in the irrigation canals), the project proponent will compensate for permanent impacts on waters of the United States (including wetlands and giant garter snake habitat) to ensure no net loss of habitat functions and values. The compensation will be determined as part of the state and federal permitting process and may be a combination of on-site restoration/creation, off-site restoration, or mitigation credits. Compensation ratios will be based on site-specific information and determined through coordination with state and federal agencies, as part of the permitting process for the project.</p>	Prior to and during construction	Project proponent	City of West Sacramento
<p><b>Mitigation Measure BIO-4a: Establish a Minimum 20-foot-wide Buffer around the</b></p>	Prior to and during	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p><b>Elderberry Shrub That Will Be Avoided</b>—Before any ground-disturbing activities occur, the developer will ensure that a minimum 4-foot-tall, temporary plastic mesh-type construction fence (Tensor Polygrid or equivalent) is installed at least 20 feet from the dripline of the elderberry shrub. This fencing is intended to prevent encroachment by construction vehicles and personnel. The exact location of the fencing will be determined by a qualified biologist, with the goal of protecting sensitive biological resources (i.e., habitat for VELB). The fencing will be strung tightly on posts set at a maximum interval of 10 feet. The fencing will be installed in a way that prevents equipment from enlarging the work area beyond what is necessary to complete the work. The fencing will be checked and maintained weekly until all construction is completed. This buffer zone will be marked by a sign stating the following:</p>	construction	and construction contractor	
<p style="padding-left: 40px;">This is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment.</p>			
<p>No construction activity, including grading, will be allowed until this condition is satisfied. The fencing and a note reflecting this condition will be shown on the construction plans.</p>			
<p><b>Mitigation Measure BIO-4b: Transplant Elderberry Shrub That Cannot Be Avoided or Implement Dust Control Measures during Construction</b>—If the elderberry shrub in the project area cannot be avoided during construction of the proposed residential development, then the shrub will be transplanted to a USFWS-approved conservation area in accordance with <i>Conservation Guidelines for Valley Elderberry Longhorn Beetle</i> (U.S. Fish and Wildlife Service 1999a). The elderberry shrub will be transplanted when it is dormant (after it loses its leaves), in the period starting approximately in November and ending in the first 2 weeks of</p>	Prior to and during construction	Project proponent will ensure construction contractor implements measure	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>February. A qualified specialist familiar with elderberry shrub transplantation procedures will supervise the transplanting. The location of the conservation area transplantation site will be approved by USFWS before removal of the elderberry shrub.</p> <p>In the event that the elderberry shrub can be retained on-site but occurs within 20 feet of proposed construction activities, the developer will ensure that dust control measures (e.g., watering) are implemented in the vicinity of the shrub. To further minimize impacts associated with dust accumulation, the elderberry shrubs will be covered by a protective cloth (i.e., burlap) during all ground-disturbing activities occurring within 20 feet of the shrubs. The cloth will be removed daily and immediately after ground-disturbing activities are completed. In addition, temporary construction fencing will be placed around the dripline of the elderberry shrubs before the start of construction activities to ensure that the shrub is not inadvertently removed.</p>			
<p><b>Mitigation Measure BIO-4c: Compensate for Direct Effects on Valley Elderberry Longhorn Beetle Habitat</b>—In addition to implementation of Mitigation Measure BIO-4b, the developer will compensate for direct impacts (including transplanting) on all elderberry stems measuring 1 inch or more at ground level (i.e., VELB habitat) that are located within 20 feet of construction activities. Compensation will include replacement plantings of elderberry seedlings or cuttings and associated native plantings in a USFWS-approved conservation area, at a ratio between 1:1 and 8:1 (ratio = new plantings to affected stems), depending on the diameter of the stem at ground level, the presence or absence of exit holes, and whether the shrub is located in riparian habitat (U.S. Fish and Wildlife Service 1999a).</p>	After construction	Project proponent	City of West Sacramento
<p><b>Mitigation Measure BIO-5a: Minimize Potential Impacts on Giant Garter Snake during Construction within Suitable Habitat</b>—To avoid and minimize impacts on giant garter snake, the project proponent will implement the following measures.</p>	Prior to and during construction	Project proponent and construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>All construction activity within giant garter snake aquatic and upland habitat in and around irrigation ditches will be conducted between May 1 and October 1, the active period for giant garter snakes. This would reduce direct impacts on the species because the snakes would be active and respond to construction activities by moving out of the way.</p>			
<ul style="list-style-type: none"> <li>■ Prior to any construction within suitable giant garter snake aquatic habitat (irrigation ditches), the habitat will be dewatered and must remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling of dewatered habitat.</li> <li>■ A USFWS-approved biologist will conduct a preconstruction survey, no more than 24 hours before construction, in suitable habitat and will be on-site during construction activity in potential aquatic and upland habitat. The construction area will be resurveyed whenever there is a lapse in construction activity of 2 weeks or more.</li> <li>■ If a giant garter snake is encountered within the construction work area, construction activities must cease until the snake moves out of the work area unassisted. Capture and relocation of trapped or injured individuals can be attempted only by USFWS-permitted personnel. The developer or its contractors will notify USFWS within 24 hours and submit a report, including dates, locations, habitat description, and any corrective measures taken to protect the snake(s) encountered. For each giant garter snake encountered, the biologist will submit a completed CNDDDB field survey form (or equivalent) to DFG no more than 90 days after completing the last field visit to the project site.</li> <li>■ Construction personnel will participate in a USFWS-approved worker environmental-awareness program. A qualified biologist will inform all construction personnel about</li> </ul>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>the life history of giant garter snake and the terms and conditions of the biological opinion. Proof of this instruction will be submitted to the USFWS Sacramento field office.</p> <ul style="list-style-type: none"> <li>■ To ensure that construction equipment and personnel do not affect giant garter snake aquatic habitat outside the construction work area (specifically along the northern boundary of the project area), orange barrier fencing will be erected to clearly delineate the aquatic habitat to be avoided.</li> <li>■ A post-construction compliance report prepared by a qualified biologist will be forwarded to the chief of the Endangered Species Division of the USFWS Sacramento field office within 60 days after completion of the proposed project. This report will include dates that construction occurred, pertinent information about the applicant's success in implementing project mitigation measures, an explanation of any failures to implement mitigation measures, any known project impacts on federally listed species, any occurrences of incidental take of federally listed species, and any other pertinent information.</li> </ul>			
<p><b>Mitigation Measure BIO-5b: Compensate for Permanent Loss of Giant Garter Snake Habitat</b>— If on-site compensation is the preferred option, then the developer will establish a conservation area(s) that includes suitable giant garter snake aquatic and upland habitat. The developer will also prepare a giant garter snake management plan that will specify success criteria, identify remedial measures, and require an annual report to be submitted to DFG and USFWS.</p> <p>The City shall permit the use of the same off-site mitigation land for more than one purpose only where both the nature of the terrain and limitations on the use of the land ensure that the land can in fact on a permanent basis mitigate for more than one category of environmental impact. In making such a determination, the City may consult or</p>	After construction	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>coordinate, as it deems appropriate, with Yolo County, the California Department of Conservation, the California Department of Fish and Game, and/or the U.S. Fish and Wildlife Service.</p> <p>If feasible, the land to be preserved may also be used to satisfy some or all of the obligations created by Mitigation Measures AG-1 (Provide Compensatory Agricultural Land Protection); Mitigation Measure BIO-7 (Conduct Preconstruction Surveys for Active Burrowing Owls and Implement the California Department for Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary), and Mitigation Measure BIO-9 (Compensate for Permanent Removal of Swainson’s Hawk Foraging Habitat).</p> <p>To comply with the ESA, final compensation requirements and mitigation ratios for the proposed project will be determined through consultation with the Corps and USFWS (including preparation of a biological opinion) before issuance of grading permits for the affected area. Because the precise compensation ratio depends upon a number of variables that will be determined by USFWS during this process, including quality of habitat, a specific performance standard is not available for the mitigation ratio. The City shall permit the new lake and canal edges to be considered as habitat for on-site restoration areas, if approved by the Corps of Engineers and the USFWS.</p>			
<p><b>Mitigation Measure BIO-6: Conduct a Preconstruction Survey for Northwestern Pond Turtles</b>—To avoid construction-related impacts on northwestern pond turtles, the developer will retain a qualified wildlife biologist to conduct a preconstruction survey for northwestern pond turtles no more than 48 hours before the start of construction. The wildlife biologist will look for adult northwestern pond turtles, in addition to nests containing northwestern pond turtle hatchlings and eggs. If a northwestern pond turtle is located in the construction area, the biologist will move the turtle to a suitable aquatic site, outside the construction area. If an active northwestern pond turtle nest containing either</p>	<p>No more than 48 hours prior to start of construction</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>

Mitigation Measure	Timing	Implementing Party	Monitoring Party
northwestern pond turtle hatchlings or eggs is found, the developer will consult DFG to determine and implement appropriate avoidance measures, which may include a “no-disturbance” buffer around the nest site until the hatchlings have moved to a nearby aquatic site.			
<p><b>Mitigation Measure BIO-7: Conduct Preconstruction Surveys for Active Western Burrowing Owl Burrows and Implement the California Department of Fish and Game Guidelines for Western Burrowing Owl Mitigation, if Necessary—</b>DFG (1995) recommends that preconstruction surveys be conducted to locate active western burrowing owl burrows in the construction work area and within a 250-foot-wide buffer zone around the construction area. The developer or its contractor will retain a qualified biologist to conduct preconstruction surveys for active burrows according to DFG’s <i>Staff Report on Burrowing Owl Mitigation</i> (California Department of Fish and Game 1995). The preconstruction surveys will include a breeding season survey and wintering season survey. If no western burrowing owls are detected, no further mitigation is required. If active western burrowing owls are detected, the developer will implement the following measures.</p> <ul style="list-style-type: none"> <li>■ Occupied burrows will not be disturbed during the breeding season (February 1 to August 31).</li> <li>■ When destruction of occupied burrows is unavoidable during the nonbreeding season (September 1 to January 31), unsuitable burrows will be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1 on protected lands approved by DFG. Newly created burrows will follow guidelines established by DFG.</li> <li>■ If owls must be moved away from the project site during the nonbreeding season, passive relocation techniques (e.g., installing one-way doors at burrow entrances) will be used instead of trapping, as described in the DFG guidelines. At</li> </ul>	Prior to construction, breeding season (February to August) and winter	Project proponent	City of West Sacramento



Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>least 1 week will be necessary to complete passive relocation and allow owls to acclimate to alternate burrows.</p> <ul style="list-style-type: none"> <li>■ If active western burrowing owl burrows are found and the owls must be relocated, the developer shall offset the loss of foraging and burrow habitat on the project site by acquiring and permanently protecting a minimum of 6.5 acres of foraging habitat per occupied burrow identified on the project site. The protected lands shall be located adjacent to the occupied western burrowing owl habitat on the project site or at another occupied site near the project site. If feasible, the land to be preserved may also be used to satisfy some or all of the obligations created by Mitigation Measure AG-1 (Provide Compensatory Agricultural Land Protection); Mitigation Measure BIO-5b (Compensate for Permanent of Giant Garter Snake Habitat); and Mitigation Measure BIO-9 (Compensate for Permanent Removal of Swainson’s Hawk Foraging Habitat). The City shall permit the use of the same offsite mitigation land for more than one purpose only where both the nature of the terrain and limitations on the use of the land ensure that the land can in fact on a permanent basis mitigate for more than one category of environmental impact. In making such a determination, the City may consult or coordinate, as it deems appropriate, with Yolo County, the USFWS, and/or the DFG.</li> </ul>			
<p><b>Mitigation Measure BIO-8: Avoid Disturbance of Tree-, Shrub-, and Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors and Conduct Preconstruction Nesting Bird Surveys</b>—To avoid and minimize impacts on nesting special-status and non-special-status migratory birds and raptors, the developer or its contractor will implement one or more of the following surveys and restrictions.</p> <ul style="list-style-type: none"> <li>■ If feasible, conduct all tree and shrub removal and grading (within annual</li> </ul>	<p>Prior to and during construction</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>grasslands) during the nonbreeding season (generally between August 16 and February 28) for most special-status and non-special-status migratory birds.</p>			
<ul style="list-style-type: none"> <li data-bbox="240 459 833 821">■ If construction activities are scheduled to occur during the breeding season for special-status and non-special-status migratory birds and raptors (generally between March 1 and August 15), a qualified wildlife biologist (with knowledge of the species to be surveyed) shall be retained to conduct the following focused nesting surveys prior to the start of construction and within the appropriate habitat.</li> <li data-bbox="240 837 833 1199">■ <b>Swainson’s Hawk, Cooper’s Hawk, and White-Tailed Kite.</b> Tree-nesting surveys for Swainson’s hawk, Cooper’s hawk, and white-tailed kite will be conducted before any construction disturbances occurring in or near suitable nesting habitat (valley oak riparian woodlands and areas supporting large oak or eucalyptus trees) within the construction work area and up to 500 feet outside the construction work area between March 1 and August 15.</li> <li data-bbox="240 1215 833 1535">■ <b>Loggerhead Shrike and Non-Special-Status Migratory Birds and Raptors.</b> Tree- and shrub-nesting surveys for loggerhead shrike and other non-special-status migratory birds and raptors shall be conducted prior to any tree and shrub trimming or removal activities within and immediately adjacent to the construction work area between March 1 and August 15.</li> <li data-bbox="240 1551 833 1850">■ <b>Northern Harrier.</b> Ground-nesting surveys for northern harrier and other ground-nesting non-special-status migratory birds shall be conducted before any construction disturbances occurring in annual grasslands and agricultural areas within and immediately adjacent to the construction work area between March 1 and August 15.</li> </ul>			
<p>The nesting surveys should be conducted within 1</p>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>week prior to initiation of construction activities that will occur in suitable habitat between March 1 and August 15. If no active nests are detected during these surveys, then no additional mitigation is required.</p> <p>If surveys indicate that special-status or non-special-status migratory bird or raptor nests are found in the survey area identified above for each species, a no-disturbance buffer shall be established around the site to avoid disturbance or destruction of the nest site until after the breeding season or after a qualified wildlife biologist determines that the young have fledged (usually late June to mid-July). The extent of these buffers shall be determined by the biologist (coordinating with DFG) and will depend on the level of noise or construction disturbance, line-of-sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors will be analyzed in order to make an appropriate decision on buffer distances. Suitable buffer distances may vary between species.</p> <p>If construction activities are scheduled to occur within an area that supports an active nest site or within an established no-disturbance buffer, construction will be delayed until after the breeding season or until the young have fledged (as determined by the biologist).</p>			
<p><b>Mitigation Measure BIO-9: Compensate for Permanent Removal of Swainson’s Hawk Foraging Habitat</b>—Ruderal grasslands and agricultural lands (grain fields) in the project area provide suitable foraging habitat for Swainson’s hawk. The nearest Swainson’s hawk nest site is located within 1 mile from the project area, resulting in a compensation ratio of 1:1 (1 acre replaced for every 1 acre removed). According to the Yolo County JPA’s Revised Swainson’s hawk Interim Mitigation Fee program (January 9, 2006), removal of foraging habitat for Swainsons’ hawk will be mitigated for at a 1:1 ratio (1 acre of Swainson’s hawk foraging habitat preserved for every 1 acre of foraging habitat lost) by either contributing to a mitigation fund or by establishing a suitable conservation easement. Developers</p>	Design phase	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>with projects removing 40 or more acres of Swainson's hawk foraging habitat do not qualify to pay into the JPA's mitigation fund and instead are responsible for locating and negotiating their own conservation easement. At a 1:1 ratio, the proposed project will require the purchase and management of a 587-acre conservation easement that provides suitable foraging habitat for Swainson's hawk. The developer will coordinate with the JPA to locate a suitable easement site that contributes to Yolo County's overall preserve design. The conservation easement will be subject to review and approval by DFG, the JPA, and an appropriate easement holder prior to acquisition. If possible, the Swainson's hawk foraging habitat conservation easement will be located on suitable agricultural lands that would provide joint compensation for the loss of prime farmland in the project area (see page 3.2-11).</p> <p>Any potential breeding habitat lost due to project development (i.e., cottonwoods, valley oaks, or willows) must be replaced at a minimum of 1:1 ratio onsite. Mitigation as an acreage-based habitat creation/restoration along the preserved riparian corridor. If feasible, the land to be preserved may also be used to satisfy some or all of the obligations created by Mitigation Measure AG-1 (Provide Compensatory Agricultural Land Protection), Mitigation Measure BIO-5b (Compensate for Permanent Loss of Giant Garter Snake Habitat), and Mitigation Measure BIO-7 (Conduct Preconstruction Surveys for Active Burrowing Owls and Implement the California Department for Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary). The use of the same offsite mitigation land for more than one purpose may be permitted subject to the approval of California Department of Fish and Game.</p> <p>A mitigation plan shall be in place prior to project implementation to ensure restoration activities ensue after construction and proper success criteria are established and approved by CDFG pursuant to Sections 3503 and 2081 of the Fish and Game Code.</p>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>The developer has previously paid mitigation fees for approximately 4.0 acres of the project site associated with the construction of a water storage tank and water main for the City on portions of the project site. The mitigation required will reflect this previous contribution.</p>			
<p><b>Mitigation Measure BIO-13a: Design Pumping Facilities Associated with the Constructed Water Features to Minimize the Potential for Fish Entrainment and Transport to the Deep Water Ship Channel</b>—Pumping facilities that convey stormwater from constructed water features to the Deep Water Ship Channel shall be designed to minimize the potential for fish entrainment and transport to the river. Design considerations may include the use of fish screens and/or pumps that minimize the potential for the passage of live fish. DFG will be consulted during the design phase of the pumping facilities to ensure that appropriate criteria are used in the design of the pumping facilities to minimize the transport of fish.</p>	Prior to construction	Project proponent	City of West Sacramento
<p><b>Mitigation Measure BIO-13b: Add Signage Along Chain of Lakes to Increase Public Awareness of the Consequences of Introducing Exotic Fish Species</b>—Signage shall be added to public access points leading to the chain of lakes to educate, and increase the awareness of, the public regarding the consequences of introducing exotic fish species to the project’s water features. In addition, signage shall include references to the appropriate California Fish and Game Code(s) governing species introductions and the transport of live fish. Signage shall be made a requirement of the design review standards for this development.</p>	After completion of construction	Project proponent	City of West Sacramento
<p><b>CULTURAL RESOURCES</b></p>			
<p><b>Mitigation Measure CR-2: Stop Work if Buried Resources Are Discovered Inadvertently</b>—The project proponent and the construction contractor will take the steps specified below during project construction. If buried cultural resources, such as chipped or ground stone, historic debris, building foundations, or human bone are discovered inadvertently during ground-disturbing activities,</p>	During construction	Project proponent and construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>work will stop in that area and within 100 feet of the find until a qualified archaeologist can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with the City of West Sacramento, the SHPO, and other appropriate agencies. In the event that human remains are encountered, Mitigation Measure CR-4 will be implemented immediately.</p>			
<p><b>Mitigation Measure CR-3: Stop Work in Event of Fossil Discovery</b>—The project proponent and the construction contractor will take the steps specified below during project construction. If a fossil or material that could be a fossil is inadvertently discovered during excavation operations for site development, work will cease in the immediate vicinity of the find. A qualified paleontologist will be called to the site to evaluate the find and determine the significance of the fossil, and the City of West Sacramento shall be notified at the same time. If it is determined to be potentially significant, the paleontologist will be given time to recover the fossil and other material from the site. The paleontologist shall submit the find to an appropriate museum or other repository for curation.</p>	During construction	Project proponent and construction contractor	City of West Sacramento
<p><b>Mitigation Measure CR-4: Comply with State Laws Relating to Native American Remains</b>—If human remains of Native American Origin are discovered during project construction, it will be necessary to comply with state laws relating to the disposition of Native American burials, which fall under the jurisdiction of the NAHC (PRC Section 5097). If any human remains are discovered or recognized in any location other than a dedicated cemetery, the City of West Sacramento will be contacted and there will be no further excavation or disturbance of the site, or any nearby area reasonably suspected to overlie adjacent human remains, until:</p> <ul style="list-style-type: none"> <li>■ the Yolo County coroner has been informed and has determined no investigation of the cause of death is required, or</li> <li>■ if the remains are of Native American</li> </ul>	During construction	Project proponent and construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
origin, the descendants of the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98 or the NAHC is unable to identify a descendant or the descendant fails to make a recommendation within 24 hours after being notified by the NAHC.			

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### **GEOLOGY, SOILS, AND SEISMICITY**

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<b>Mitigation Measure GEO-5: Implement the Corrective Actions Identified as Part of a Project-Specific Geotechnical Report</b> —The project applicant shall implement special engineering techniques identified in a project-specific geotechnical report, which may include using reinforced steel in foundations, using drainage control devices, and/or over-excavating and backfilling with non-expansive soil during construction activities to minimize the risk of structural loss, injury, or death. Proposed areas of development could also be supported on post-tensioned slab foundations designed to resist and/or span the expansive soil. The project applicant or its contractor will select one or more of the recommended measures in consultation with a qualified engineer and the city engineer before construction activities begin.	Design phase	Project proponent	City of West Sacramento
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### **HAZARDS and HAZARDOUS MATERIALS**

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<b>Mitigation Measure HAZ-1: Measures to Minimize Exposure of People and the Environment to Potentially Hazardous Materials</b> —To minimize the exposure of people and the environment to potentially hazardous materials, the following measures will be included in the construction specifications and project performance specifications, based on the City’s standard requirements that construction specifications include descriptions of the SWPPP, dust control measures, and traffic mobilization.	During construction	Project proponent	City of West Sacramento
<ul style="list-style-type: none"> <li>■ <i>Encounters with Contaminated Soil.</i> If</li> </ul>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>contaminated soil and/or groundwater are encountered during project construction, work will be halted in the area, and the type and extent of the contamination will be identified. A qualified professional, in consultation with the appropriate federal, state, and/or local regulatory agencies will then develop an appropriate method to remediate the contamination. If necessary, a remediation plan in conjunction with continued project construction will be implemented.</p> <p>Hazardous or contaminated materials may only be removed from the project site in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>1. All work is to be completed in accordance with the following regulations and requirements: <ul style="list-style-type: none"> <li>■ Chapter 6.5, Division 20, California Health and Safety Code.</li> <li>■ California Administration Code, Title 22, relating to Handling, Storage and Treatment of Hazardous Materials.</li> <li>■ Title 15 of the City of West Sacramento Municipal Code, Building and Construction.</li> <li>■ The Uniform Building Code, 1997 edition.</li> </ul> </li> <li>2. Coordination will be made with the EHD, and the necessary applications will be filed.</li> </ol> <p>All hazardous materials will be disposed of at an approved disposal site and will only be hauled by a current California registered hazardous waste hauler using correct manifesting procedures and vehicles displaying a current Certificate of Compliance. The contractor will identify by name and address the site where toxic substances are to be taken for disposal. No payment for removal and disposal services will be made without a valid certificate from the approved disposal site that the material was delivered.</p>			



Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>None of the aforementioned provisions will be construed to relieve the contractor from the contractor’s responsibility for the health and safety of all persons (including employees) and from the protection of property during the performance of the work. This requirement will be applied continuously and not be limited to normal working hours.</p>			
<ul style="list-style-type: none"> <li>■ <i>Hazardous Materials Handling.</i> The project applicant will ensure, through the enforcement of contractual obligations, that all contractors transport, store, and handle construction-related hazardous materials in a manner consistent with relevant regulations and guidelines, including those recommended and enforced by the U.S. Department of Transportation, the Yolo County Public Health Department (YCPHD), the RWQCB, and the West Sacramento Fire Department. The project applicant will also ensure that all contractors immediately control the source of any leak and immediately contain any spill utilizing appropriate spill containment and countermeasures. If required by any regulatory agency, contaminated media will be collected and disposed of at an offsite facility approved to accept such media. In addition, all precautions required by the RWQCB-issued NPDES construction activity storm water permits will be taken to ensure that no hazardous materials enter any storm drains or nearby waterways, which will reduce any potential impacts to less than significant.</li> </ul>			
<ul style="list-style-type: none"> <li>■ <i>Immediately Contain Spills, Excavate Spill-Contaminated Soil, and Dispose at an Approved Facility.</i> In the event of a spill of hazardous materials in an amount reportable to the West Sacramento Fire Department (as established by fire department guidelines), the contractor shall immediately control the source of the leak, contain the spill and contact the West</li> </ul>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
Sacramento Fire Department through the 9-1-1 emergency response number. If required by the fire department or other regulatory agencies, contaminated soils shall be excavated, treated and/or disposed of off-site at a facility approved to accept such soils.			
<b>Mitigation Measure HAZ-7: Stockpile and Sample Excavated Soils</b> —Soil generated by construction activities shall be stockpiled on site in a secure and safe manner and sampled prior to reuse or disposal at an appropriate facility.	During and after construction	Construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p><b>Mitigation Measure HAZ-8: Development and Implementation of a Construction Traffic Control Plan</b>—The construction contractor, in coordination with the City, will prepare a traffic control plan during the final stage of project design. The purpose of the plan is to:</p> <ul style="list-style-type: none"> <li>■ reduce, to the extent feasible, the number of vehicles (construction and other) on the roadways adjacent to the project;</li> <li>■ reduce, to the extent feasible, the interaction between construction equipment and other vehicles;</li> <li>■ promote public safety through actions aimed at driver and road safety; and</li> <li>■ ensure safety for bicyclists and pedestrians throughout the study area.</li> </ul>	<p>Prior to and during construction</p>	<p>Construction contractor in consultation with the City of West Sacramento</p>	<p>City of West Sacramento</p>
<p>The plan will include the following measures or the equivalent, as approved by the City.</p>			
<ul style="list-style-type: none"> <li>■ Provide through access for emergency vehicles at all times.</li> <li>■ Avoid use of rural roads for construction traffic. Construction traffic shall be routed as required in Mitigation Measure TRF-1.</li> <li>■ Maintain access for driveways and private roads. During nonworking hours, no driveway, house, or parking lot will be denied access to a public roadway.</li> <li>■ Maintain pedestrian and bicycle access and circulation during construction.</li> <li>■ Identify roadway segments or intersections that are at or approaching an LOS that exceeds local standards. Provide a plan to enable construction-generated traffic to avoid these locations at peak periods to the greatest extent possible, either by traveling different routes or by traveling at non-peak times.</li> <li>■ Provide for adequate parking for construction trucks and equipment within the designated staging areas throughout the construction period.</li> <li>■ Provide adequate parking for construction workers within the designated staging</li> </ul>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>areas.</p> <ul style="list-style-type: none"> <li>■ Restrict delivery of construction materials to the hours between 9:00 a.m. and 3:00 p.m. to avoid more congested morning and evening hours.</li> <li>■ Include flag persons wearing bright orange or red vests and using a slow/stop paddle as traffic controls on busy arterials and collectors,</li> <li>■ Coordinate with local transit providers regarding expected traffic disruptions along bus routes. Provide adequate lead time so that transit providers can develop temporary service changes and provide notice of changes to the public.</li> <li>■ Post construction warning signs in accordance with local standards or those set forth in the FHA Manual on Uniform Traffic Control Devices (2001) at entry points along the perimeter of the construction area and at any intersection that provides access to the construction area.</li> <li>■ Provide advance notice to local emergency service providers if lane closures occur, so they may determine alternative evacuation and emergency routes to maintain response times during construction periods.</li> <li>■ Provide written notification to contractors regarding appropriate routes to and from construction sites, and regarding weight and speed limits for local roads used to access construction sites.</li> <li>■ Post a sign at the construction site that provides the name and telephone number or email address of the City staff member to contact with complaints regarding construction traffic.</li> </ul>			
<p>The construction traffic control plan will be included in the construction specifications, implemented by construction contractor during all construction phases, and monitored by the project proponents and member agencies.</p>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<b>HYDROLOGY AND WATER QUALITY</b>			
<p><b>Mitigation Measure HYD-1a Dry Season Construction</b>—Where construction activity in a water body is unavoidable (e.g., realignment of the existing agricultural drainages to create the chain of lakes), and flows in the water body are seasonal, construction should be conducted during the dry season. This proposed mitigation is subject to additional conditions as a result of negotiations of the required permits from the Corps, the DFG, and the Central Valley RWQCB. In addition, following channel realignment, and wherever there is potential for erosion as determined by a qualified licensed engineer, the new channel should be lined with cobbles or other nonerosive materials to minimize the potential for turbidity generated from the channel itself.</p>	During and after construction	Project proponent and construction contractor	City of West Sacramento
<p><b>Mitigation Measure HYD-1b: Other Provisions for Work in Surface Waters</b>—Should dry season construction prove infeasible, or where year-round flows are present in the agricultural ditches, the contractor shall implement measures to protect surface water quality, such as flow diversions, impoundments (e.g., coffer dams), or other methods to avoid the direct exposure of surface water to sediment created as part of construction activity. As a performance standard, the measures shall maintain Basin Plan standards for turbidity, listed below.</p> <ul style="list-style-type: none"> <li>■ Where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU.</li> <li>■ Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20%.</li> <li>■ Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.</li> <li>■ Where natural turbidity is greater than 100 NTUs, increases shall not exceed 1%.</li> </ul> <p>Where the project has potential to result in elevated turbidity, monitoring shall be performed at least twice daily at upstream and downstream locations to determine whether the standards outlined above have been met. In the event that</p>	During construction	Construction contractor	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>they are not being met, the turbidity-generating activities shall cease until turbidity is within the identified limits, and construction methods or turbidity control measures shall be modified to ensure that turbidity limits continue to be met.</p>			
<p><b>Mitigation Measure HYD-3: Implement Best Management Practices for Golf Course Operation</b>—The golf course owner/operation shall design and implement best management practices based on the U.S. EPA’s guidance on Stormwater Management for Golf Courses, which include the following general approaches to help protect stormwater systems.</p> <ul style="list-style-type: none"> <li>■ Develop a documented stormwater management plan (as part of an overall environment management plan).</li> <li>■ Develop a spill prevention and clean-up plan for liquids, powders and solids; give staff training on this at least every two years.</li> <li>■ Undertake a program to monitor samples of water entering and leaving the course—water should be tested for nutrients, suspended solids, BOD, pesticides, pH, electrical conductivity and some heavy metals; this will require expert advice.</li> <li>■ Educate golf players about environmental issues that they may contribute to by providing informational signs in the clubhouse and on the course; experience has found that most players respond positively to improved environmental management, despite some changes to the golf course.</li> <li>■ Turf the sides of open stormwater drains to prevent soil erosion.</li> <li>■ Stencil signs on stormwater drains to indicate that they are not to receive solid or liquid waste.</li> <li>■ Reduce nutrient requirements by optimizing other turf health requirements, such as soil aeration, mowing timing and frequency, mowing height, sub-soil drainage and pest control (U.S.</li> </ul>	Design phase	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>Environmental Protection Agency 2005).</p> <p>As a performance standard, these measures will be selected to control pollutant discharges utilizing the best available technology that is economically achievable and best conventional pollutant control technology to reduce pollutants, and any more stringent controls necessary to meet water quality standards. The measures shall be submitted to the City of West Sacramento for review and concurrence.</p>			
<p><b>Mitigation Measure HYD-4: Develop and Implement a Master Drainage Plan</b>—The developer has submitted a master drainage plan to the City. The developer shall implement this master drainage plan. This plan addresses the following topics.</p> <ul style="list-style-type: none"> <li>■ A calculation of pre-development runoff conditions and post-development runoff scenarios using appropriate engineering methods. This analysis will evaluate potential changes to runoff through specific design criteria, and account for increased surface runoff.</li> <li>■ An assessment of existing drainage facilities within the project area, and an inventory of necessary upgrades, replacements, redesigns, and/or rehabilitation.</li> <li>■ A proposed maintenance program for the onsite drainage system.</li> <li>■ Standards for drainage systems to be installed on a project/parcel-specific basis.</li> <li>■ Proposed design measures to ensure structures are not located within 100-year floodplain areas.</li> </ul> <p>Drainage systems shall be designed in accordance with the City’s and other applicable flood control design criteria. As a performance standard, measures to be implemented from the Master Drainage Report shall provide for no net increase in peak stormwater discharge relative to current conditions, ensure that 100-year flooding and its potential impacts are maintained at or below current levels, and that people and structures are not exposed to additional flood risk.</p>	Design Phase	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>The project will implement measures provided in the drainage concept plan.</p> <p>Prior to approving specific development projects, the City will require project applicants to demonstrate their project is consistent with the recommendations and conclusions of the master drainage plan and will implement the measures identified in the plan. If the plan does not adequately address the drainage impacts of the specific development, the City will require applicants to prepare additional analysis and incorporate measures consistent with the scope and performance standards associated with the plan to ensure that drainage and flooding impacts are avoided.</p> <p>As provided in the drainage concept plan, stormwater infrastructure will be constructed in the Yarbrough area prior to onset of other developments, to collect runoff during and following construction, and to contain flows that could exceed the existing capacity of the drainage system.</p>			
<p><b>Mitigation Measure HYD-5a Implement Measures to Maintain Water Quality after Construction</b>—The following procedures are based on the California Storm Water Best Management Practice Handbooks. The project developer shall design infiltration systems into the project in order to reduce runoff and restore natural flows to groundwater. In addition, these infiltrations systems need to be natural systems such as biofilters and vegetative swales.</p> <p>Biofilters can be implemented in grass or vegetated swales as part of the project design. This will allow sediments and particulates to filter and degrade biologically. Biofilters are most effective when flows are slow with a shallow depth. Slow flow provides an opportunity for the vegetation to filter sediments and particulates.</p> <ul style="list-style-type: none"> <li>■ Structural source controls, such as covers, impermeable surfaces, secondary containment facilities, runoff diversion berms, and diversions to wastewater treatment plants, will be included in the project design.</li> </ul>	Design phase	Project proponent	City of West Sacramento



Mitigation Measure	Timing	Implementing Party	Monitoring Party
<ul style="list-style-type: none"> <li>■ Parking spaces can be designed of pervious materials, such as turf block or unit pavers on sand, crushed aggregate, or concrete under tires only, to reduce runoff.</li> <li>■ In order to reduce erosion and retain water onsite, organic amendments can be incorporated into disturbed sites after construction and the soil will be covered after revegetation.</li> <li>■ Designated trash storage areas can be covered to protect bins from rainfall.</li> </ul>			
<p>The measures shall be selected to attenuate the increase in flows from the project site and improve water quality in site runoff to the maximum extent possible, and shall represent the best available technology that is economically achievable. All measures shall be subject to the review and approval of the City.</p>			
<p><b>Mitigation Measure HYD-5b: Develop Management Plan for Chain of Lakes and Other Onsite Water Features</b>—The project developer shall prepare and implement a plan for management of the chain of lakes and other onsite water features, subject to review and approval by the City of West Sacramento, to ensure that water quality standards and beneficial uses of these water bodies are met. This plan may address, but not be limited to:</p> <ul style="list-style-type: none"> <li>■ manipulation of the hydroperiod to allow for appropriate plant growth,</li> <li>■ other vegetation and sediment management activities, such as periodic vegetation and sediment removal every 5–10 years,</li> <li>■ control of water residence time and periodic flushing of the water features,</li> <li>■ source control of contaminants reaching the water bodies,</li> <li>■ measures to reduce the potential for vector transmissions (e.g., mosquitoes),</li> <li>■ measures to ensure that groundwater does not become contaminated, and</li> <li>■ other measures as necessary.</li> </ul>	Design phase	Project proponent	City of West Sacramento
<p>The measures identified in the management plan</p>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>shall meet relevant public health standards and water quality objectives, including those of the Central Valley RWQCB Basin Plan. Implementation of the management plan shall become a requirement of the approval of the project. Monitoring shall be completed under the requirements set forth by the Central Valley RWQCB Basin, with the actual monitoring plan prepared by a licensed engineer with direct experience with land and water feature management.</p>			
<p><b>Mitigation HYD-10a: Coordinate with WSAFCA and Reclamation District 900 Regarding Levee Condition and Maintenance Needs</b>—The City or project applicant shall coordinate with WSAFCA and Reclamation District 900 staff to determine the current status of the levee condition and obtain recommendations regarding needed maintenance. Based on this, the following mitigation measures shall be implemented, as necessary.</p>	Prior to construction	Project proponent	City of West Sacramento
<p><b>Mitigation HYD-10b: Participate in Levee Evaluation Study</b>—The project applicant shall participate on a fair-share basis in a levee evaluation study to determine the integrity of the levees protecting the project area and to determine the possibilities of flooding due to a failure in the levee. The applicant’s fair share shall be provided through the construction of flood management improvements, other mitigation measures, or the payment of an in-lieu flood-protection fee in accordance with Chapter 15.50 of the West Sacramento Municipal Code. The levee evaluation study shall include boring analyses consistent with the most current principles of the Corps. Development within 500 feet of the toe of a levee shall not proceed until the completion of the levee evaluation study.</p>	Prior to construction	Project proponent	City of West Sacramento
<p><b>Mitigation HYD-10c: Implement Measures for Flood Protection</b>—Based on the results of the previous mitigation measures, the project applicant shall implement the flood protection improvement measures identified by the Levee Evaluation Study, elevate all living areas above the projected 200-year flood level elevation, or</p>	Design phase	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>pay the “in lieu” fee established by the City pursuant to Chapter 15.50 of the West Sacramento Municipal Code. Levee improvement and protection measures shall be designed and implemented to provide for ongoing performance, operation, and maintenance of flood protection facilities, including:</p> <ul style="list-style-type: none"> <li>■ constructing levee cutoff walls, seepage berms, relief wells, stability berms, slope regarding and revetment, and new sections of levee, or conducting any other construction that will be determined by technical studies performed for the WSAFCA in coordination with the DWR and Corps;</li> <li>■ monitoring levee conditions and ongoing operation and maintenance as needed to ensure levee integrity and necessary flood protection;</li> <li>■ making improvements to address identified erosion sites or to protect against the future erosion of levee embankments and supporting foundation;</li> <li>■ dedicating to Reclamation District 900 a minimum 50-foot permanent easement adjacent to the landside levee toe for flood fighting and operational maintenance of the levee, together with additional easements that will be determined based on actual flood-protection-related facilities (i.e., seepage berms, relief wells, etc.) within the project determined by the final site-specific design;</li> <li>■ maintaining or, as necessary, improving access for levee and bank protection maintenance activities;</li> <li>■ maintaining or improving flood conveyance capacity and reliability;</li> <li>■ limiting the vulnerability of new structures, riparian vegetation, and other improvements (e.g., trails, overlooks, etc.) along the river corridor, to damage caused by major floods and, more commonly, high stage river flows;</li> <li>■ designing riverfront development to</li> </ul>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>minimize or avoid impacts on the flood control system and flood conveyance facilities;</p> <ul style="list-style-type: none"> <li>■ ensuring that flood protection facilities protecting the entire project site meet federal, state, and local standards for levee certification, including the City’s 200-year level of protection, and that the local flood control jurisdiction has the ability to fully maintain and repair all flood protection infrastructure;</li> <li>■ assessing cross-flooding potential between leveed subbasins and, where needed, upgrading or constructing additional cross levees or drains to ensure that potential future levee breaches in one subbasin do not cascade through and flood an adjacent subbasin, particularly urban basins; and</li> <li>■ evaluating, in a project-specific geotechnical report, any proposed project excavation beyond 10 feet in depth and within 500 feet of a levee toe for its possible effect on under-seepage potential (the project applicant shall implement any special engineering techniques identified in the report to minimize the risk of under seepage).</li> </ul>			
<p>As a performance standard, levees will be improved and maintained so that they meet all federal, state, and local standards.</p>			
<p><b>Mitigation Measure HYD 10d: Implement Measures for Disclosure and Insurance—</b>  Construction of the project will place persons at risk in that they will be living behind a levee protection system designed for a particular level of flood protection. New information may result in changes to the recognized level of flood protection, and, in any event, the potential exists for a flood event that is greater than what is expected in the designed level of protection.</p> <p>The applicant shall include in all sales documents, for both developed and undeveloped land, information stating that the development area is protected from flooding by levees and encouraging buyers to educate themselves on the</p>	<p>Prior to Recordation of Final Maps</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>status of flood protection. In the event that the rated level of flood protection is brought into question by levee evaluation studies, the applicant shall so inform potential buyers and direct them to City sources or other sources that can provide up to date information.</p> <p>The applicant or developer shall provide all buyers of developed land 3 years of prepaid flood insurance at the maximum level available as part of any sale.</p>			

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<b>LAND USE</b>			
<b>Mitigation Measure LU-1: Update the Southport Framework Plan</b> —To ensure that the potential impacts on infrastructure and public services related to proposals for increases in the density of development in Southport, the City will update the Southport Framework Plan, including re-evaluating the development strategy and the provisions of infrastructure and public services necessary to support increased development in Southport.	Prior to construction	City of West Sacramento	City of West Sacramento
<b>Mitigation Measure LU-2: Reduce Lot Size to Lower End of LR Range</b> —The City shall require that any subdivision or subdivision of the lands designated LR that adjoin the excluded areas shown on the Land Use Plan for this project contain lots not less than half an acre in area.	Prior to construction	City of West Sacramento	City of West Sacramento
<b>NOISE</b>			
<b>Mitigation Measure NOI-1a: Employ Noise-Reducing Construction Practices</b> —The project applicant shall employ noise-reducing construction practices so that construction noise does not exceed 45 dBA Leq or 65 dBA Lmax between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 5:00 p.m. and 8:00 a.m. on weekends and holidays. Measures that can be used to limit noise include: <ul style="list-style-type: none"> <li>■ limiting construction operations to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 5:00 p.m. on weekends and holidays;</li> <li>■ locating equipment as far a practical from noise sensitive uses;</li> <li>■ requiring that all construction equipment powered by gasoline or diesel engines have sound-control devices that are at least as effective as those originally provided by the manufacturer and that all equipment be operated and maintained to minimize noise generation;</li> <li>■ prohibiting gasoline or diesel engines from having unmuffled exhaust;</li> <li>■ selecting haul routes that affect the fewest</li> </ul>	During construction	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>number of people;</p> <ul style="list-style-type: none"> <li>■ using noise-reducing enclosures around noise-generating equipment; and</li> <li>■ constructing barriers between noise sources and noise sensitive land uses or taking advantage of existing barrier features (terrain, structures) to block sound transmission.</li> </ul>			
<p><b>Mitigation Measure NOI-1b: Disseminate Essential Information to Residences and Implement a Complaint/Response Tracking Program</b>—Before construction begins, the construction contractor shall notify residences within 500 feet of the construction areas of the construction schedule in writing. The construction contractor will designate a noise disturbance coordinator who will be responsible for responding to complaints regarding construction noise during the full term of construction. The coordinator will determine the cause of the complaint and will ensure that reasonable measures are implemented to correct the problem. A contact telephone number for the noise disturbance coordinator will be conspicuously posted on construction site fences and will be included in the written notification of the construction schedule sent to nearby residents. The noise disturbance coordinator shall submit to the City of West Sacramento Planning Division a weekly summary of any noise complaints that have been received. The summary shall include, but is not limited to, the name of the complainant and their location, the nature of their complaint, and the action being taken to address the complaint.</p>	Prior to and during construction	Construction contractor	City of West Sacramento
<p><b>Mitigation Measure NOI-3: Construct Noise Barriers Between Roadways and Residents or Provide Other Design Features Such that Traffic Noise Does Not Exceed 60 Ldn in Outdoor Use Areas</b>—The project applicant shall construct noise barriers along Jefferson Boulevard, Village Parkway, and Southport Parkway such that traffic noise in primary outdoor use areas at residences does not exceed 60 L<sub>dn</sub>. A preliminary analysis indicates that barriers 6 to 8 feet high will reduce traffic noise to 60 L<sub>dn</sub> or less.</p>	Prior to construction	Project Proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
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Once the tentative map and roadway alignments are finalized, the project applicant shall prepare a report identifying final wall heights and materials necessary to reduce noise at outdoor residential use areas to 60 L<sub>dn</sub> or less. The walls shall be required conditions of approval for all tentative maps that contain any primary outdoor use area that is exposed to more than 60 L<sub>dn</sub> abutting Jefferson Boulevard, Village Parkway, and Southport Parkway. The walls shall conform to the requirements of the Southport Framework Plan Design Guidelines for walls along arterial streets.

As an alternative to the construction of sound walls, the project applicant may prepare a noise attenuation report detailing alternative means to ensure that noise levels do not exceed City standards along the following roadways:

- Jefferson Boulevard from Bevan Road to Southport Parkway,
- Jefferson Boulevard south of Southport Parkway,
- Southport Parkway from Jefferson Boulevard to Marshall Road, and
- Village Parkway, east of Jefferson Boulevard.

The report shall provide sufficient construction and site design modifications, or other alternative features, to meet the minimum City standards as shown in Table 3.10-11 below.

**Table 3.10-11. City of West Sacramento General Plan and Noise Ordinance Noise-Level Performance Standards for Transportation Sources**

Land Use	Outdoor Activity Areas <sup>1</sup> L <sub>dn</sub> /CNEL, dBA	Interior Spaces L <sub>dn</sub> /CNEL, dBA	Interior Spaces L <sub>eq</sub> , dBA <sup>2</sup>
Residential	60 <sup>3</sup>	45	--
Transient lodging	60 <sup>3</sup>	45	--
Hospitals,	60 <sup>3</sup>	45	--



Mitigation Measure	Timing	Implementing Party	Monitoring Party
nursing homes			
Theaters, auditoriums, music halls	--	--	35
Churches, meeting halls	60 <sup>3</sup>	--	40
Office buildings	--	--	45
Schools, libraries, museums	--	--	45
Playgrounds, neighborhood parks	70	--	45

<sup>1</sup> Where the location of outdoor activity areas is unknown, the exterior noise level standard shall be applied to the property line of the receiving land use.

<sup>2</sup> As determined for a typical worst-case hour during period of use.

<sup>3</sup> Where it is not possible to reduce noise in outdoor activity areas to 60 dB L<sub>dn</sub>/CNEL or less using a practical application of the best available noise-reduction measures, an exterior noise level of up to 65 dB L<sub>dn</sub>/CNEL may be allowed, provided that practical exterior noise-level reduction measures have been implemented and that interior noise levels are in compliance with this table. An exterior noise level of 70 dB L<sub>dn</sub>/CNEL shall be allowed in the triangle specific plan area and the Washington specific plan area.

Source: City of West Sacramento 2000

This report shall be prepared by a qualified acoustical consultant and, as implied above, will evaluate potential traffic noise impacts on proposed sensitive receptors. The report must be reviewed and approved by the City Community Development staff before a building permit will be issued. The design of project buildings,

Mitigation Measure	Timing	Implementing Party	Monitoring Party
structures, and site plans will reflect the recommendations of the approved report. If the City adopts more stringent noise standards in the future, noise reports prepared after the time of adoption shall reflect those higher standards.			
<b>RECREATION</b>			
<p><b>Mitigation Measure REC-1: Meet Park Master Plan Standards</b>—The project proponent will undertake one or a combination of the following measures:</p> <p><b>a) Provide Additional Park Facility Capacity:</b> The project proponent shall provide a minimum of 22.4 acres of community park facilities that conform to the Parks Master Plan standards and guidelines. All facilities shall be completed prior to approval of any tentative map, or as specified in an approved development agreement or subdivision improvement agreement.</p> <p><b>b) Update the City’s Park Master Plan and Park Impact Fee Study to Include the Additional Population Demand by the Project:</b> The project proponent will fund an update to the City’s Park Master Plan and the Park Impact Fee Study to include capital improvements to meet the additional demand for park and recreation facilities generated by population added by the project. The project proponent or developer shall pay park impact fees at the updated rate prior to issuance of building permits. Credit for facilities that conform to the update Parks Master Plan will be provided at the updated fee rate.</p>	Prior to issuance of building permits and approval of any tentative map	Project Proponent	City of West Sacramento
<b>TRAFFIC AND TRANSPORTATION</b>			
<p><b>Mitigation TRF-1: Designate Construction Routes</b>—The City shall require construction traffic to avoid Davis Road, Bevan Road, Gregory Avenue, and Burrows Road. Construction traffic to the site shall be directed to Jefferson Boulevard, Southport Parkway, and Village Parkway (if completed at the time of Yarbrough construction). Construction traffic routes will be determined at the preconstruction conference, where the contractors will be notified of city-</p>	Prior to construction	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>designated routes. Before the start of work, the prime contractor shall submit traffic control plan(s) for approval by the City. These plans must include construction traffic routes along Jefferson Boulevard, Southport Parkway, or Village Parkway, and shall not include routes on Davis Road, Bevan Road, Gregory Avenue, or Burrows Road. In addition, the traffic control plans shall require the contractor to advise construction crews and delivery vehicles of these limitations and shall post both the routes of access and the streets prohibited from access with necessary direction signs, subject to City approval of type and location. Access to the designated routes shall be subject to the grant of an encroachment permit by the City.</p>			
<p><b>Mitigation Measure TRF-8: Provide Free Right-Turn Lane on WB Approach to Gateway Drive</b>—As a condition of approval of any tentative map within the project or as prescribed in an approved development agreement, the proponent shall contribute their fair share of the cost of adding a free right-turn lane on the WB Gateway Drive approach to the Jefferson Boulevard/Devon Avenue/Gateway Drive intersection. The traffic mitigation fee for this project, calculated as the fair share of this improvement in light of other projects within the Southport Framework Plan, shall be determined by the City prior to approval of the first tentative map within the project. The improvement shall be installed prior to approval of the first final map within the project or pursuant to the terms of an approved subdivision improvement agreement or approved development agreement.</p>	<p>Prior to approval of any tentative map</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>
<p><b>Mitigation Measure TRF-9: Provide Free Right-Turn Lane on WB Linden Road</b>—As a condition of approval of any tentative map within the project or as described in an approved development agreement, the proponent shall contribute their fair share of the cost of adding a free right-turn lane on the WB Linden Road approach to the Jefferson Boulevard/Linden Road intersection. The traffic mitigation fee for this project, calculated as the fair share of this improvement in light of other projects within the Southport Framework Plan, shall be</p>	<p>Prior to approval of any tentative map</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>determined by the City prior to approval of the first tentative map within the project. The improvement shall be installed prior to approval of the first final map within the project or pursuant to the terms of an approved subdivision improvement agreement or approved development agreement.</p>			
<p><b>Mitigation Measure TRF-10: Install Traffic Signal at Jefferson Boulevard/Davis Road Intersection and Reconstruct for Left-Turn and Through/Right-Turn Lanes</b>—As a condition of approval of any tentative map within the project or as described in an approved development agreement, the proponent shall contribute their fair share of the cost of installing a traffic signal at the Jefferson Boulevard/Davis Road intersection and reconstructing the intersection so that the NB approach has a left-turn lane and a through/right-turn lane and the SB approach has a left-turn lane, through lane, and a through/right-turn lane. The traffic mitigation fee for this project, calculated as the fair share of this improvement in light of other projects within the Southport Framework Plan, shall be determined by the City prior to approval of the first tentative map within the project. The improvement shall be installed prior to approval of the first final map within the project or pursuant to the terms of an approved subdivision improvement agreement or approved development agreement.</p>	<p>Prior to approval of any tentative map</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>
<p><b>Mitigation Measure TRF-11: Install Traffic Signal at Jefferson Boulevard/Bevan Road Intersection and Reconstruct for Left-Turn and Through/Right-Turn Lanes</b>—As a condition of approval of any tentative map within the project or as described in an approved development agreement, the proponent shall contribute their fair share of the cost of installing a traffic signal at the Jefferson Boulevard/Bevan Road intersection and reconstructing the intersection so that the NB approach has a left-turn lane, through lane, and a through/right-turn lane and the SB approach has a left-turn lane, through lane and a through/right-turn lane. The improvement of Bevan Road shall extend as far as the project site. The traffic mitigation fee for this project, calculated as the fair share of this improvement in light of other projects</p>	<p>Prior to approval of any tentative map</p>	<p>Project proponent</p>	<p>City of West Sacramento</p>

Mitigation Measure	Timing	Implementing Party	Monitoring Party
within the Southport Framework Plan, shall be determined by the City prior to approval of the first tentative map within the project. The improvements shall be installed prior to approval of the first final map within the project or pursuant to the terms of an approved subdivision improvement agreement or approved development agreement.			
<b>Mitigation Measure TRF-12: Install traffic Signal at Jefferson Boulevard/Southport Parkway Intersection and Reconstruct for Left-Turn Lane, Through Lane and Right-Turn Lane</b> — As a condition of approval on the first tentative map approved within the project, the applicant shall be required to install a traffic signal at the Jefferson Boulevard/Southport Parkway intersection and reconstruct the intersection so that the NB approach has a left-turn lane, through lane, and a through/right-turn lane; the SB approach has a left-turn lane, through lane, and a right-turn lane; and the EB approach has a left-turn lane and through/right-turn lane. The City may enter into a reimbursement agreement with the applicant such that other projects that impact this intersection may reimburse the applicant their fair share of this improvement. The improvement shall be installed prior to approval of the first final map within the project.	Prior to approval of first final map	Project proponent	City of West Sacramento
<b>Mitigation Measure TRF-18: Add Additional Left-Turn Lane on 15<sup>th</sup> Street</b> —Prior to approval of any tentative map within the project, the proponent shall contribute their fair share of the cost of adding a second left-turn lane on the WB 15 <sup>th</sup> Street approach to the Jefferson Boulevard/15 <sup>th</sup> Street intersection. The traffic mitigation fee for this project, calculated as the fair share of this improvement in light of other projects within the Southport Framework Plan, shall be determined by the City prior to approval of the first tentative map within the project. The improvement shall be installed when warranted	Prior to issuance of building permits	Project proponent	City of West Sacramento
<b>UTILITY SYSTEMS</b>			
<b>Mitigation Measure US-5a: Water Model Update</b> —The applicant shall participate in the updating of the City's water model to determine	Design phase and during	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p>the capacity of existing and proposed infrastructure needed to serve the project plus buildout of the General Plan.</p> <p>The applicant shall implement the recommended measures identified by the water model, including the installation of any or all of the above items at the size indicated by the model.</p>	construction		
<p><b>Mitigation Measure US-5b: Fair Share Exactions for Water Supply Extension</b>—Prior to approval of any final tract map for the Yarbrough Project, the City shall update the Water Master Plan to determine the project’s fair share of water trunk line extension and construction of sufficient water supply reservoirs to serve the Southport area. The City shall impose impact fees or other exactions with approval of any tentative map as necessary to finance shared improvements such as, but not limited to, the extension of lines and construction of reservoirs. This requirement may be met by the developer’s agreement to construct the necessary facilities.</p> <p>The Water Master Plan Update, the resultant identification of infrastructure needs, and overall cost shall be based on the development approved in the Southport Framework Plan area at the time the first final tract map is submitted to the City.</p>	Prior to approval of any tract map	Project proponent	City of West Sacramento
<p><b>Mitigation Measure US-7a: Coordinate with SRCSD Regarding Capacity of Wastewater Treatment and Lower Northwest Interceptor</b>—As part of the approval, the City shall ensure that the project applicant demonstrates that they have coordinated with and will meet the requirements of SRCSD regarding the treatment capacity and phasing of wastewater facilities to serve the project. The SRCSD has indicated that they will have adequate wastewater treatment capacity for the project, assuming adequate infrastructure for delivery (Armstrong pers. comm.). However, because the SRCSD accommodates its customers on a “first-come, first-serve” basis, the project applicant must commence coordination, including service demand specific information, in a timely fashion to secure a service agreement with the SRCSD.</p>	Prior to construction	Project proponent	City of West Sacramento
<p><b>Mitigation Measure US-7b: Implement Pump</b></p>	Prior to	Project	City of West

Mitigation Measure	Timing	Implementing Party	Monitoring Party
<p><b>Station Improvements and Wastewater Infrastructure Planning and Design Guidelines</b>—The City will ensure the project applicant implements recommended improvements to the Largo pump station that will benefit development of the area. The applicant will also implement the guidelines for the planning and design of the wastewater infrastructure to serve the project that have been identified by Carlson, Barbee &amp; Gibson, Inc., in the <i>Preliminary Yarbrough Master Sewer Study</i> (Carlson et al. 2005).</p>	construction	proponent	Sacramento
<p><b>Mitigation Measure US-8: Construction Recycling</b>—The project shall implement construction recycling measures to reduce the amount of construction waste disposed of at the landfill including, but not limited to:</p> <ul style="list-style-type: none"> <li>■ identifying construction materials to be recycled including, but not limited to, concrete, lumber, metal and cardboard;</li> <li>■ setting up a means of containment to hold separated material or a process to deliver unsorted material to sorting facility;</li> <li>■ instructing onsite contractors to comply with recycling measures; and</li> <li>■ arranging for delivery of material to the appropriate recycling facility on a regular basis to avoid storage of large amounts of recycling on the project site.</li> </ul> <p>Commercial, multi-family, and residential communities shall designate space to accommodate appropriate recycling opportunities. The construction waste mitigation provisions shall be incorporated into the development agreement for this project.</p>	Prior to and during construction	Project proponent	City of West Sacramento
<b>CUMULATIVE IMPACTS</b>			
<p><b>Mitigation CE-13: Convert One Through Lane Into a Free-Right Turn Lane at Jefferson Boulevard/US 50 Ramp Intersection</b>—Convert a through lane into a free-right turn lane on the northbound approach to Jefferson Boulevard/US 50 ramp intersection. This will allow for two northbound free-right turns and a westbound free-right turn. As a condition of the building permit,</p>	Prior to issuance of building permit	Project proponent	City of West Sacramento

Mitigation Measure	Timing	Implementing Party	Monitoring Party
the project proponent will contribute a fair proportion of the cost of the improvements as a traffic mitigation fee.			
<b>Mitigation CE-14: Provide Second Left-Turn Lane at Jefferson Boulevard/15<sup>th</sup> Street Intersection</b> —Install a second left-turn lane on the westbound approach to the Jefferson Boulevard/15th Street intersection. As a condition of the building permit, the project proponent will contribute a fair proportion of the cost of the improvements as a traffic mitigation fee.	Prior to issuance of building permit	Project proponent	City of West Sacramento
<b>Mitigation CE-15: Provide Free Right-Turn Lanes to the Jefferson Boulevard/Lake Washington Boulevard Intersection</b> —Add a free right-turn lane to the eastbound and westbound Lake Washington Boulevard approaches to the Jefferson Boulevard/Lake Washington Boulevard Intersection and to the southbound Jefferson Boulevard approach to the intersection. As a condition of the building permit, the project proponent will contribute a fair proportion of the cost of the improvements as a traffic mitigation fee.	Prior to issuance of building permit	Project proponent	City of West Sacramento
<b>Mitigation Measure CE-16: Provide Free Right-Turn Lanes on Southport Parkway at Lake Washington Boulevard</b> —Add a free right-turn lane on both the eastbound and westbound Southport Parkway approaches to the Southport Parkway/Lake Washington Boulevard intersection. As a condition of the building permit, the project proponent will contribute a fair proportion of the cost of the improvements as a traffic mitigation fee.	Prior to issuance of building permit	Project proponent	City of West Sacramento
<b>Mitigation Measure CE-17: Provide Second Left-Turn Lane and Free Right-Turn Lane at Jefferson Boulevard/Southport Parkway Intersection</b> —Add a second left-turn lane on the eastbound Southport Parkway approach and add a free right-turn lane to the westbound Village Parkway approach to the Jefferson Boulevard/Southport Parkway Intersection. As a condition of the building permit, the project proponent will contribute a fair proportion of the cost of the improvements as a traffic mitigation	Prior to issuance of building permit	Project proponent	City of West Sacramento



Mitigation Measure	Timing	Implementing Party	Monitoring Party
fee.			
<b>Mitigation Measure CE-18: Install Traffic Signal at the Southport Parkway/Marshall Road Intersection; Add Second Through Lane to Northbound Southport Parkway</b> —Install a traffic signal at the Southport Parkway/Marshall Road intersection and add a second through lane to the northbound Southport Parkway approach. As a condition of the building permit, the project proponent will contribute a fair proportion of the cost of the improvements as a traffic mitigation fee.	Prior to issuance of building permit	Project proponent	City of West Sacramento
Note: Tables from the draft EIR referenced in the preceding mitigation measures are provided following this table.			

## **EXHIBIT M**

### **Comprehensive Financing Agreement**

Prior to the issuance of the first final map for the Project, Landowner shall enter into a Comprehensive Financing Agreement with the City that identifies Landowner's financial obligations towards financing the construction of infrastructure and/or operation and maintenance costs of those infrastructure, including which infrastructure, if any, will be eligible for credits or reimbursements. The Comprehensive Financing Agreement shall also identify the timing with which Landowner shall be required to satisfy such financial obligations. The Comprehensive Financing Agreement shall be subject to the review and written approval of the City, and shall include the financing of the following infrastructure: the South River Road Bridge, Transit/Transportation, Sewer, Water, Drainage, and Levee Improvements.

**EXHIBIT N**

**Form of Assignment**

OFFICIAL BUSINESS  
Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of West Sacramento  
1110 West Capitol Avenue  
West Sacramento, CA 95691  
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED  
FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
RELATIVE TO YARBROUGH**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (the "Landowner"), and \_\_\_\_\_, a \_\_\_\_\_ (the "Assignee").

**RECITALS**

1. On \_\_\_\_\_, 200\_\_, the City of West Sacramento and Landowner entered into that certain agreement entitled Development Agreement by and between The City of West Sacramento and Relative to the Development known as Yarbrough (the "Development Agreement"). Pursuant to the Development Agreement, Landowner agreed to develop certain property more particularly described in the Development Agreement (the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Yolo County on \_\_\_\_\_, 200\_\_, as Instrument No. 200\_-\_\_\_\_\_.

2. Landowner intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel \_\_\_\_\_, and more particularly identified and described in Exhibit A and Exhibit B, attached hereto and incorporated herein by this reference (the "Assigned Parcel").

3. Landowner desires to assign and Assignee desires to assume all of Landowner's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

**ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, Landowner and Assignee hereby agree as follows:

1. Landowner hereby assigns, effective as of Landowner's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel. Landowner retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Landowner.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Landowner as the "Landowner" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in Section 28.4 of the Development Agreement for the Landowner with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

LANDOWNER:

ASSIGNEE:

\_\_\_\_\_  
a \_\_\_\_\_

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_