

## ORDINANCE NO. 2020-0022

Adopted by the Sacramento City Council

May 19, 2020

### **Approving the Third Amendment to Development Agreement for Delta Shores Project # P06-197**

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

#### **Section 1. Background.**

The City and M & H Realty Partners VI L.P., a California limited partnership ( "**M&H Realty**" ), are parties to the *Development Agreement for Delta Shores Project # P-06-197*, which is designated as City Agreement No. 2009-0060 (the "**Original Agreement**"); and the *First Amendment to Development Agreement for Delta Shores Project*, which is designated as City Agreement No. 2009-0060-1 (the "**First Amendment**"). M&H Realty subsequently assigned interests in the Original Agreement, as amended by the First Amendment, to three Delaware limited-liability companies: M&H VI Projects, LLC; Delta Shores Wetlands, LLC; and Delta Shores Detention PONDS, LLC (together with M&H Realty, the "**Landowners**"). The City and the Landowners are parties to the *Second Amendment to Development Agreement for Delta Shores Project # P-06-197*, which designated as City Agreement No. 2019-1714 (the "**Second Amendment**") The Original Agreement, the First Amendment, and the Second Amendment collectively constitute the "**Development Agreement.**"

#### **Section 2. Incorporation of Amendment.**

This ordinance incorporates the *Third Amendment to Development Agreement for Delta Shores Project # P-06-197*, a copy of which is attached to this ordinance as Exhibit A (the "**Third Amendment**").

#### **Section 3. Hearing before the Planning and Design Commission.**

On April 23, 2020, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning and Design Commission conducted a noticed public hearing on an application to amend the Development Agreement. During the hearing, the Planning and Design Commission received and considered evidence and testimony. After the hearing concluded, the Planning and Design Commission forwarded to the City Council a recommendation to approve the proposed Third Amendment.

#### **Section 4. Hearing before the City Council; Findings.**

On May 19, 2020, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the City Council conducted a noticed public hearing on the application to amend the Development Agreement. During the hearing, the City Council received and considered evidence and testimony concerning the proposed Third Amendment. Based on the

information in the application and the evidence and testimony received at the hearing, the City Council hereby finds as follows:

- (a) The Third Amendment is consistent with the City's General Plan and South Area Community Plan.
- (b) Without the Third Amendment, the Landowners would be unlikely to proceed with development of the property subject to the Third Amendment in the manner proposed.
- (c) The Landowners will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.
- (d) The Landowners will participate in all programs established or required under the general plan and all of its approving resolutions (including any mitigation-monitoring plan) and has agreed to the financial participation required under the applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public.
- (e) The Landowners have made commitments to a high standard of quality and has agreed to all applicable land-use and development regulations.
- (f) The property subject to the proposed Third Amendment is within an area for which the local flood-management agency has made adequate progress (as defined in California Government Code section 65007) on the construction of a flood-protection system that, for the area intended to be protected by the system, will result in flood protection equal to or greater than the urban level of flood protection in urban areas for property located within a flood-hazard zone, as demonstrated by the *SAFCA Urban Level of Flood Protection Plan and Adequate Progress Baseline Report* and the *SAFCA Adequate Progress Toward an Urban Level of Flood Protection Engineer's Report*, each accepted by the City Council on June 21, 2016 (Resolution No. 2016-0226), and the *SAFCA 2019 Adequate Progress Annual Report* accepted by the City Council on October 22, 2019 (Resolution No. 2019-0398).

## **Section 5. Approval and Authorization.**

The City Council hereby approves the Third Amendment and authorizes the Mayor to sign it on the City's behalf on or after the effective date of this ordinance.

## **Table of Contents:**

Exhibit A: *Third Amendment to Development Agreement for Delta Shores Project # P-06-197*

Adopted by the City of Sacramento City Council on May 19, 2020, by the following vote:

Ayes: Members Ashby, Carr, Guerra, Hansen, Harris, Jennings, Schenirer, Warren and Mayor Steinberg

Noes: None

Abstain: None

Absent: None

Attest: **Mindy Cuppy** Digitally signed by Mindy Cuppy  
Date: 2020.05.27 17:03:21 -07'00'  
Mindy Cuppy, City Clerk

*The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.*

Passed for Publication: May 12, 2020

Published: May 15, 2020

Effective: June 18, 2020

### **Third Amendment to Development Agreement for Delta Shores Project # P06-197**

This *Third Amendment to Development Agreement for Delta Shores Project # P-06-197*, dated April 21, 2020, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation and charter city (the “**City**”); and M & H Realty Partners VI L.P., a California limited partnership, the original Landowner; M&H VI Projects, LLC, a Delaware limited-liability company; DELTA SHORES WETLANDS, LLC, a Delaware limited-liability company; and DELTA SHORES DETENTION PONDS, LLC, a Delaware limited-liability company—each an assignee of the original Landowner under separate assignment-and-assumption agreements (collectively, the “**Landowners**”). The Landowners own the parcels described in Exhibit A to this third amendment, which pertains only to those parcels.

#### **Background**

The City and the Landowners are parties to the following agreements (collectively, the “**Development Agreement**”):

- The *Development Agreement for Delta Shores Project # P-06-197*, which is designated as City Agreement No. 2009-0060 and was recorded with the Sacramento County Clerk/Recorder on February 27, 2009, in Book 20090227 at Page 0082.
- The *First Amendment to Development Agreement for Delta Shores Project*, which is dated October 6, 2010; is designated as City Agreement No. 2009-0060-1; and was recorded with the Sacramento County Clerk/Recorder on October 18, 2010, in Book 20101018 at Page 1169.
- The *Second Amendment to Development Agreement for Delta Shores Project # P-06-197*, which is dated November 21, 2019; is designated as City Agreement No. 2019-1714; and was recorded with the Sacramento County Clerk/Recorder on November 26, 2019, as Document No. 201911260667.

Section 5.D of the Development Agreement specifies that development of the property by the Landowners is subject to the Special Conditions specified in Exhibit C. Section II.B of Exhibit C requires that the landowners implement an Inclusionary Housing Plan and execute an Inclusionary Housing Agreement in compliance with the City’s Mixed Income Housing Policy. The Inclusionary Housing Plan is referenced in Exhibit C-1 to the Development Agreement. As used in this paragraph, the terms “Inclusionary Housing Plan,” “Mixed Income Housing

Ordinance,” and “Inclusionary Housing Agreement” have the meanings given them in Section I of the Development Agreement.

After execution of the Development Agreement, the Sacramento City Council enacted Ordinance No. 2015-0029 (the “**Mixed Income Housing Ordinance**”), which replaced the requirement in Sacramento City Code chapter 17.712 that owners of certain residential developments prepare an “inclusionary housing plan” and execute an “inclusionary housing agreement” with a requirement that owners of residential developments either pay a “housing impact fee” or prepare a “mixed income housing strategy.”

Under the Mixed Income Housing Ordinance, owners of residential projects that are already subject to an inclusionary housing plan have the option to comply with an approved inclusionary housing plan or to comply with the Mixed Income Housing Ordinance. The Landowners have elected to comply with the Mixed Income Housing Ordinance by preparing a mixed income housing strategy. This third amendment replaces references in the Development Agreement to the “Inclusionary Housing Plan,” “Inclusionary Housing Ordinance,” and “Inclusionary Housing Agreement” with references to the Mixed Income Housing Ordinance.

***With these background facts in mind, the City and the Landowners agree as follows:***

**1. Amendments to Section I.** Section I (Definitions) of the Development Agreement is hereby amended as follows:

- (a) By deleting the definitions of “Inclusionary Housing Plan,” “Inclusionary Housing Ordinance,” and “Inclusionary Housing Agreement.”
- (b) By adding the following definitions:
  - **Mixed Income Housing Ordinance:** Title 17, Chapter 17.712 of the City Code, entitled “Mixed Income Housing,” and as said ordinance may be amended from time to time.
  - **Mixed Income Housing Strategy:** the plan prepared by LANDOWNER and approved by the City Council by its resolution as part of the Land Use Entitlements, that specifies the percentage, number, type, location and phasing of development of housing affordable to very low and low income households for compliance with the Inclusionary Housing Ordinance, as more particularly described in Exhibit C and Exhibit C-1.
- (c) By revising the definition of “Land Use Entitlement” to read as follows:
  - **Land Use Entitlement:** the plans, ordinances, resolutions, maps, plan review, design review, preservation review, and permits and approvals that have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which is set out in Exhibit B. The Land Use Entitlements include the Plans, this Agreement, the Tentative Maps and their conditions of approval, Zoning Map, the mixed income housing strategy, the Mitigation Measures, Design

Guidelines, and all other official actions in furtherance of Project approval, including modifications to the City Code as set out in this Agreement, as well as modifications and amendments to the Plans and Land Use Entitlements subsequent to the Effective Date as set out in any Subsequent Approval.

2. **Amendment to Exhibit C, Section II.C.** Section II.C (Inclusionary Housing Requirements) of Exhibit C to the Development Agreement is hereby amended to read as follows:

**Mixed Income Housing Ordinance Requirements.** CITY has enacted a mixed income housing ordinance, as set forth in Chapter 17.712 of the Sacramento City Code (enacted by Ordinance No. 2015-0029). To the extent that the Property is subject to the Policy, certain Land Use Entitlements for the Property will contain conditions which implement the mixed-income housing ordinance, including but not limited to conditions requiring a mixed income housing strategy. The mixed income housing strategy, where applicable, is attached to this Exhibit C as Exhibit C-1, and incorporated herein by this reference. The requirements specified in the mixed income housing strategy shall be implemented by LANDOWNER.

3. **New Exhibit C-1.** Exhibit C-1 of the Development Agreement is hereby replaced with the new Exhibit C-1 attached to this third amendment.
4. **All Other Terms Remain in Force.** Except as amended by sections 1, 2, and 3 above, all terms of the Development Agreement remain in full force.
5. **Effective Date.** This third amendment takes effect on the effective date of the ordinance that approves it (Gov. Code, § 65868; Sacramento City Code, §§ 18.16.120 & 18.16.130).
6. **Recording.** Either party may record this third amendment with the Sacramento County Clerk/Recorder.
7. **Counterparts.** The parties may execute this third amendment in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
8. **Entire Agreement.** This third amendment sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all parties. This third amendment will control if any conflict arises between it and the Development Agreement.

*(Signature Pages Follow)*

**City of Sacramento**

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

Darrell Steinberg

Mayor

Date: \_\_\_\_\_, 2020

Approved as to Form  
Sacramento City Attorney

Attest

Sacramento City Clerk

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

Joseph Cerullo

Senior Deputy City Attorney

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

Signature

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

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

By: Merlone/Hagenbuch VI Inc., a California  
Corporation, its General Partner

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

Signature

Scott A. McPherson

Print Name

Executive Managing Director

Print Title

Date: April 8, 2020

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

Signature

Print Name

Print Title

Date: \_\_\_\_\_, 2020


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

By: M&H VI Investments, LLC, a Delaware  
limited-liability company, its sole member

By: M & H Realty Partners VI L.P., a  
California limited partnership, its sole  
member

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

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

By:   
Signature  
Scott A. McPherson  
Print Name  
Executive Managing Director  
Print Title  
Date: April 8, 2020


By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Print Title  
Date: \_\_\_\_\_, 2020

**Delta Shores Wetlands, LLC,  
a Delaware limited-liability company**

By: M & H Realty Partners VI L.P., a California  
limited partnership, its sole member

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

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

By:   
Signature  
Scott A. McPherson  
Print Name  
Executive Managing Director  
Print Title  
Date: April 8, 2020

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Print Title  
Date: \_\_\_\_\_, 2020



**Delta Shores Detention Ponds, LLC,  
a Delaware limited-liability company**

By: M & H Realty Partners VI L.P., a California  
limited partnership, its sole member

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

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

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

Scott A. McPherson  
Print Name

Executive Managing Director  
Print Title

Date: April 8, 2020

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

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

\_\_\_\_\_  
Print Title

Date: \_\_\_\_\_, 2020

**[Attach Certificates of Acknowledgment – Civil Code § 1189]**

PARCEL 1 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20121121, PAGE 1708, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 2 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20121121, PAGE 1708, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS, BELOW A DEPTH OF 100 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED PROPERTY EXCEPTED IN QUITCLAIM DEED DATED JANUARY 19, 1960, RECORDED JANUARY 20, 1960 IN BOOK 3980 OF OFFICIAL RECORDS, PAGE 661, EXECUTED BY LESTER C. HUNT AND MARTHA HUNT, HIS WIFE, TO CALIFORNIA PACIFIC TITLE COMPANY, SACRAMENTO DIVISION, A CORPORATION, AND MODIFIED BY DEED DATED FEBRUARY 15, 1960, RECORDED MARCH 25, 1960 IN BOOK 4024 OF OFFICIAL RECORDS, PAGE 939, EXECUTED BY SAID PARTIES, AND AS CONVEYED BY DEED DATED MARCH 18, 1960, RECORDED MARCH 25, 1960, IN BOOK 4024 OF OFFICIAL RECORDS, PAGE 940, EXECUTED BY CALIFORNIA PACIFIC TITLE COMPANY, SACRAMENTO DIVISION, A CORPORATION TO LESTER C. HUNT AND MARTHA E. HUNT, HIS WIFE, AS JOINT TENANTS.

TOGETHER WITH

PARCEL 1 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20130725, PAGE 1062, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 2 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20130725, PAGE 1062, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL LEGAL GAS RIGHTS OF WAY 500 FEET BENEATH THE SURFACE OF SAID LAND SUBJECT TO THE CONDITION THAT GRANTOR CANNOT ENTER UPON SUBJECT PROPERTY FOR DRILLING PURPOSES OR FOR ANY PURPOSES CONNECTED WITH EXPLORING OR DEVELOPING SAID MINERALS RIGHTS, AS RESERVED IN THE DEED EXECUTED BY HARRY M. TONKIN AND DALTON G. FELDSTEIN, AS TRUSTEES OF THE FREEPORT LIQUIDATING TRUST, RECORDED JUNE 29, 1984, IN BOOK 84 06 29, PAGE 1677, OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS, BELOW A DEPTH OF 100 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED PROPERTY EXCEPTED IN QUITCLAIM DEED DATED JANUARY 19, 1960, RECORDED JANUARY 20, 1960, IN BOOK 3980 OF OFFICIAL RECORDS, PAGE 661, EXECUTED BY LESTER C. HUNT AND MARTHA HUNT, HIS WIFE, TO CALIFORNIA PACIFIC TITLE COMPANY, SACRAMENTO DIVISION, A CORPORATION, AND MODIFIED BY DEED DATED FEBRUARY 15, 1960, RECORDED MARCH 25, 1960, IN BOOK 4024 OF OFFICIAL RECORDS, PAGE 939, RECORDED MARCH 25, 1960, IN BOOK 4024 OF OFFICIAL RECORDS, PAGE 940, EXECUTED BY CALIFORNIA PACIFIC TITLE COMPANY, SACRAMENTO DIVISION, A CORPORATION TO LESTER C. HUNT AND MARTHA E. HUNT, HIS WIFE, AS JOINT TENANTS.

TOGETHER WITH

LOTS 1 THROUGH 20, LOTS 22 THROUGH 25, LOT A AND LOT B INCLUSIVE, OF "FINAL MAP OF DELTA SHORES PHASE 1 SUBDIVISION NO. P06-197", IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 392, PAGE 0001 OF TRACT MAPS, IN THE OFFICE OF THE COUNTY OF RECORDER OF SAID COUNTY.

TOGETHER WITH

PARCEL A, PARCEL B, PARCEL C AND PARCEL D AS DESCRIBED IN THAT GRANT DEED TO M & H REALTY PARTNERS VI L.P., A CALIFORNIA LIMITED PARTNERSHIP DATED MAY 5, 2019 RECORDED IN DOCUMENT NO. 201905141227 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.



TOGETHER WITH,

PARCEL 1 AS DESCRIBED IN THAT GRANT DEED TO M & H REALTY PARTNERS VI L.P., A CALIFORNIA LIMITED PARTNERSHIP DATED NOVEMBER 2, 2018 RECORDED IN DOCUMENT NO. 201811020929 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

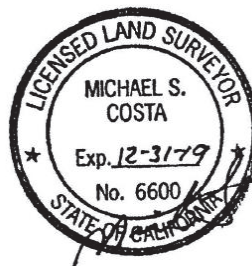
TOGETHER WITH

PARCEL ONE AND PARCEL FIVE AS DESCRIBED IN THAT GRANT DEED TO M & H REALTY PARTNERS VI L.P., A CALIFORNIA LIMITED PARTNERSHIP DATED JUNE 30, 2016 RECORDED IN BOOK 20160630, PAGE 1120 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH

PARCEL 3 AS SHOWN ON THAT CERTIFICATE FOR LOT LINE ADJUSTMENT RECORDED IN BOOK 20130725, PAGE 1062, SITUATE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL LEGAL GAS RIGHTS OF WAY 500 FEET BENEATH THE SURFACE OF SAID LAND SUBJECT TO THE CONDITION THAT GRANTOR CANNOT ENTER UPON SUBJECT PROPERTY FOR DRILLING PURPOSES OR FOR ANY PURPOSES CONNECTED WITH EXPLORING OR DEVELOPING SAID MINERALS RIGHTS, AS RESERVED IN THE DEED EXECUTED BY HARRY M. TONKIN AND DALTON G. FELDSTEIN, AS TRUSTEES OF THE FREEPORT LIQUIDATING TRUST, RECORDED JUNE 29, 1984, IN BOOK 84 06 29, PAGE 1677, OFFICIAL RECORDS.



**EXHIBIT C-1**  
**MIXED INCOME HOUSING STRATEGY**

THE MIXED INCOME HOUSING STRATEGY FOR THE PROJECT DATED AS OF \_\_\_\_\_, 2020,  
AND APPROVED BY THE CITY COUNCIL ON \_\_\_\_\_, 2020, BY RESOLUTION NO. 2020-  
\_\_\_\_\_ IS ATTACHED AS EXHIBIT C-1 AND INCORPORATED IN THIS THIRD AMENDMENT BY THIS  
REFERENCE.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On April 8, 2020 before me, Barbara A. Davies, Notary Public, personally appeared Scott A. McPherson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Barbara A. Davies (Seal)

