RESOLUTION NO. 2020-0328

Adopted by the Sacramento City Council

October 13, 2020

Approving a Standard-Form Agreement for Assignment of Delta Shores Impact Fees

BACKGROUND

A. Exhibit A to this resolution is the standard form of an Agreement for Assignment of Delta Shores Fee Credits. The standard form serves two purposes: it implements the updated Delta Shores Public Facilities Finance Plan (dated September 2019 and approved by the City Council on September 24, 2019, by Resolution No. 2019-0378), as amended; and it promotes efficiency and uniformity in the administration of the Delta Shores Impact Fee (Sacramento City Code, sections 18.56.1010 to 18.56.1060).

B. In many instances, an Agreement for Assignment of Delta Shores Fee Credits will involve amounts that exceed the City Manager’s contracting authority under the Sacramento City Code, so most of them will require the City Council’s review and approval.

C. Bringing each Agreement for Assignment of Delta Shores Fee Credits to the City Council for separate approval would require City staff to expend substantial resources and would add unnecessarily to the City Council’s agenda.

D. Authorizing the City Manager to sign the standard form on the City’s behalf will avoid unnecessary expenditures of staff resources and shorten agendas.

BASED ON THE FOREGOING RECITALS, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The Background statements are true.

Section 2. The standard-form Agreement for Assignment of Delta Shores Fee Credits, attached as Exhibit A, is hereby approved.

Section 3. The City Manager and the City Manager’s designees are hereby authorized to sign and deliver, on the City’s behalf, the standard-form Agreement for Assignment of Delta Shores Fee Credits when use of it is appropriate.
Section 4. Changes to the standard form must be approved by a resolution, except as follows: the City Manager and the City Manager’s designees, with the approval of the City Attorney, may approve minor, non-substantive changes needed solely to conform the standard form to a particular transaction.

Section 5. The City Manager may, if desired, bring an Agreement for Assignment of Delta Shores Fee Credits to the City Council for separate review and approval.

Section 6. Exhibit A is part of this resolution.

Table of Contents:
   Exhibit A - Agreement for Assignment of Delta Shores Fee Credits

Adopted by the City of Sacramento City Council on October 13, 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  
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.
Agreement for Assignment of Delta Shores Fee Credits

This Agreement for Assignment of Delta Shores Fee Credits, dated [________], 20[__], for reference, is between the CITY OF SACRAMENTO, a California municipal corporation and charter city (the “City”); M&H REALTY PARTNERS VI, L.P., a California limited partnership (“M&H”); and [FULL NAME OF ASSIGNEE], [type of entity, e.g., a California limited-liability company] (“Short Name”).

Background

A. The City and M&H are parties to an Acquisition, Reimbursement, and Credit Agreement dated August 18, 2020 (City Agreement No. 2020-2502), (the “ARC Agreement”) under which (1) M&H agreed to construct specified public improvements; (2) the City agreed to acquire the improvements from M&H; and (3) the City agreed to reimburse Developer for the eligible costs of the improvements by providing credits against, and cash reimbursement from, the Delta Shores Impact Fee in accordance with chapter 18.56, article X, of the Sacramento City Code and the ARC Agreement.

B. Section 5 of the ARC Agreement authorizes M&H to assign the fee credits issued to it under the ARC Agreement to any person or entity if specified conditions are satisfied. Among those conditions is a requirement that M&H and each assignee of fee credits enter into a written assignment agreement, approved by the City, by which the assignee agrees to be subject to the ARC Agreement with respect to the fee credits.

C. M&H desires to assign a portion of its fee credits to [Short Name], and the City, in turn, is willing to consent to that assignment as set forth below.

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

1. Assignment. M&H hereby assigns to [Short Name] all M&H’s rights to, and interests in, the following fee credits issued under section 4.3 of the ARC Agreement (the “Assigned Credits”), and the City hereby consents to that assignment subject to the terms and conditions set forth in this agreement:

<table>
<thead>
<tr>
<th>Type of Fee Credits</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Infrastructure</td>
<td>$____________</td>
</tr>
<tr>
<td>Backbone Infrastructure</td>
<td>$____________</td>
</tr>
<tr>
<td>Public Facilities</td>
<td>$____________</td>
</tr>
<tr>
<td>Other: Describe Type</td>
<td>$____________</td>
</tr>
</tbody>
</table>

2. Applicability of ARC Agreement. [Short Name]’s rights to use and redeem the Assigned Credits are subject to sections 4 and 5 of the ARC Agreement as if [Short Name] were a party to the ARC Agreement.
3. **Policies and Procedures.** The Assigned Credits are subject to any policies and procedures the City adopts or amends, other than policies and procedures that have the effect of reducing the Reimbursement Amounts described in section 4.2 of the ARC Agreement. M&H and [Short Name] may appeal any changes to the policies and procedures to the Sacramento City Council.

4. **Fee Credits Do Not Run with the Land.** The fee credits issued to M&H under the ARC Agreement do not run with the “Property” identified in the ARC Agreement. The City will not allow the use of any fee credits by any subsequent purchaser or encumbrancer of any portion of the Property unless the subsequent purchaser or encumbrancer is a party to a separate assignment agreement to which M&H and the City are also parties.

5. **Disputes Over the Assigned Credits.**

   (a) If any dispute arises between M&H and [Short Name] over who is legally entitled to the Assigned Credits, then the City may disallow use of the Assigned Credits and withhold any redemption of the Assigned Credits for cash until one of the following occurs:

   (1) M&H and [Short Name] have entered into a settlement agreement, in a form approved by the City Attorney, that (A) specifies the legal ownership of the Assigned Credits and the manner in which the Assigned Credits may be used or redeemed; and (B) obligates M&H and [Short Name] to indemnify, defend, protect, and hold the City harmless if the City complies with the settlement agreement.

   (2) Either M&H or [Short Name] has obtained, from a court with jurisdiction over the dispute, an order that (A) is binding on them and on the City and (B) determines who is legally entitled to the Assigned Credits.

   (b) If litigation arises with respect to the Assigned Credits, then, whether or not the City is named as a party to that litigation, M&H and [Short Name] shall indemnify, defend, protect, and hold the City and the City’s officers, employees, and agents harmless from all liabilities, claims, demands, damages, or costs (including reasonable attorneys’ fees and costs) that arise from, or are related to, the Assigned Credits and the City’s obligations under this agreement with respect to the Assigned Credits.

6. **Assignments.** [Short Name] may not assign or otherwise transfer this agreement or any interest in it without the City’s prior written consent, which the City shall not withhold, delay, or condition unreasonably. An assignment or other transfer made contrary to this section 6 is void. This section 6 does not apply to assignments of fee credits under section 4 above.

7. **Notices.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 7 to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other
manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided by this section 7.

**If to the City:**

City of Sacramento  
Infrastructure Finance  
New City Hall  
915 I Street, Fifth Floor  
Sacramento, California 95814  
Attention: Sheri Smith, Manager

**If to the M&H:**

M&H Realty Partners VI, LP  
425 California Street, 10th Floor  
San Francisco, CA 94104  
Attention: Peter Merlone

**With a copy to——**

Gregory D. Thatch  
1730 I Street, Suite 220  
Sacramento, CA 95811

8. **Binding effect.** This agreement binds and inures to the benefit of the parties’ predecessors and successors-in-interest.

9. **Severability.** If a court with jurisdiction rules that any provision of this agreement is invalid, unenforceable, or contrary to law or public policy, then the parties want the court to interpret this agreement as follows:

   (a) by modifying the provision to the minimum necessary to make it enforceable or, if that modification is not permitted by law, by disregarding the provision;

   (a) by holding that the rest of the agreement will remain in effect as written;

   (b) by holding that the provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and

   (c) by holding the entire agreement unenforceable if modifying or disregarding the unenforceable provision would result in the failure of an essential purpose of this agreement.

10. **Waiver.** A party’s failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party’s waiver of another party’s breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.
11. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.

12. **Attorneys’ fees.** The parties shall bear their own costs and attorneys’ fees incurred in connection with this agreement.

13. **No third-party beneficiaries.** This agreement is solely for the benefit of the City, M&H, and [Short Name]. It is not intended to benefit any third parties.

14. **Effective date.** This agreement is effective on the date all parties have signed it, as indicated by the dates in the signature blocks below.

15. **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Delivery of a signed counterpart may be accomplished by email transmission of a pdf file as follows:

   - For delivery to the City, <<email>>
   - For delivery to M&H, <<email>>
   - For delivery to [Short Name], <<email>>

16. **Integration and modification.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

   *(Signature Page Follows)*
City of Sacramento

By: ______________________________
    Leyne Milstein, Assistant City
    Manager, for Howard Chan, City
    Manager
    Date: _______________, 20__

Attest:

By: ______________________________
    City Clerk

Approved as to Form

By: ______________________________
    Senior Deputy City Attorney

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

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

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

By: ______________________________
    Scott A. McPherson, Executive
    Managing Director
    Date: _______________, 20__

[Short Name]

By: ______________________________
    Signature

______________________________
    Print name

______________________________
    Print title

Dated: _______________, 20__