

RECORDING REQUESTED BY:

City Clerk  
City of Stockton  
425 N. El Dorado St.  
Stockton, CA 95202

AND WHEN RECORDED MAIL TO:

City of Stockton  
425 N. El Dorado St.  
Stockton, CA 95202  
Attn: City Manager

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF STOCKTON  
AND  
FRENCH CAMP INVESTMENTS, LLC  
RELATING TO THE DEVELOPMENT KNOWN AS  
“TIDEWATER CROSSING”  
AT STOCKTON, CALIFORNIA**

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“TIDEWATER CROSSING”  
AT STOCKTON, CALIFORNIA**

**THIS DEVELOPMENT AGREEMENT (“Agreement”)** is entered into this \_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Stockton (“**City**” or “**Stockton**”), a municipal corporation of the State of California, and French Camp Investments, LLC, a California limited liability company (“**Developer**”), pursuant to the authority of California Government Code sections 65864 et seq. and Stockton Municipal Code (“**Code**”) Chapter 16, Division 16-525, Sections 16-525.010 through 16-525.190, inclusive. Developer and City are, from time to time, referred to individually as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the Parties.

A. 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 sections 65864 et seq. (the “**Development Agreement Statute**”) authorizing the City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. Pursuant to Government Code Section 65865(c), City has adopted Code Chapter 16, Division 16-525 establishing the procedures and requirements for the consideration of development agreements within the City. This Development Agreement has been processed, considered, and executed in accordance with those City rules and regulations set forth in Code Chapter 16.

C. Developer is a limited liability company, organized and existing under the laws of the State of California.

D. Developer has a legal interest in and proposes to develop that certain real property in the City of Stockton as shown on Figure 3.1 in the Master Development Plan attached hereto as Exhibit “A” (the “**Property**”) subject to compliance with all terms and conditions of the Master Development Plan and this Agreement, including the conditions of approval. At the time the Property was annexed to the City of Stockton, a condition of annexation was imposed, requiring the Developer to enter into a Development Agreement specifying the terms and

conditions under which the Property could be developed. The Property is more particularly described in the legal description of the Property attached hereto as Exhibit "B" and also incorporated herein by reference.

E. Pursuant to the California Environmental Quality Act (Public Resources Code §§21000 et seq.) ("CEQA") and the CEQA Guidelines (14 Cal. Code. Regs. §§15000 et seq.), City prepared and circulated a draft environmental impact report ("EIR") for the Project, which the City will certify contemporaneously with the approval of this Agreement.

F. Development of the Project will provide for orderly growth, consistent with the planning goals, policies, and other provisions of the City's General Plan and Development Code. Development of the Project is expected to take place in multiple phases as determined by Developer.

G. Development of the Project will necessitate the financing and/or construction of significant improvements that will not only benefit the Project, but will benefit the entire area within the Master Development Plan as well as other City and County areas. City recognizes that the success of the Project depends greatly upon the certainty and timing of Credits and/or Reimbursement of any Improvements installed by Developer, and also upon the certainty of building permits and sufficient water, sewer, and storm water capacity.

H. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

I. City desires to approve the Project, and finds and determines that the Project will result in the creation of a physical environment which will conform to and compliment the goals of the community and is consistent with the goals and policies of the City's General Plan.

J. City hereby finds and determines that this Development Agreement is consistent with the Stockton General Plan as amended.

K. In exchange for these benefits to City, together with the public benefits that will result from the development of the Project pursuant to this Agreement, and the Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with Approvals, the Project Approvals, Subsequent Approvals and this Agreement and the ordinances, resolutions, policies, and regulations of City in effect on the Effective Date of this Agreement, as hereinafter defined, pursuant to the terms and conditions contained in this Agreement. The parties shall cooperatively collect all documents mentioned in this recital and place them in a three ring binder to be maintained at all times by the City Clerk. Two true and correct conforming copies of the binder shall be prepared and given to the Developer and Planning Director of City respectively. The parties shall rely on the documents in the binder to determine the approvals granted by City and the ordinances, policies and regulations in effect at the Effective Date of the Agreement.

L. On \_\_\_\_\_, 2008, after conducting a duly noticed public hearing pursuant to Code Section 16.420.030, the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that this Agreement: i) is in the best interests of the City; ii) complies with the Development Code and other applicable ordinances and regulations; iii) is consistent with the general land uses, objectives, policies, and programs specified in the City of Stockton General Plan; iv) will not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare; v) complies with the conditions, requirements, restrictions and terms of 16.525.060; and vi) complies with the requirements of CEQA, and state and local CEQA Guidelines.

M. On \_\_\_\_\_, 2008, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-420.030 and made the same findings and determinations, which are set forth in Enacting Ordinance \_\_\_\_\_ approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto as Exhibit "C".

**NOW, THEREFORE**, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Code Chapter 16, Division 16-525, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

## **AGREEMENT**

### **Section 1. General Provisions.**

#### **1.1 Incorporation of Recitals.**

The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

#### **1.2 The Property.**

The Property is that real property shown on Exhibit "A" and is more particularly described in Exhibit "B".

#### **1.3 Covenants Running with the Land.**

Each and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a Party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. Provided however, notwithstanding anything to the contrary

above, if any such sale, assignment or transfer relates to a completed single-family residence, multi-family building or non-residential building which has been approved by the City for occupancy, the automatic termination provisions of Section 11.6 hereof shall apply thereto and the rights and obligations of Developer hereunder shall not run with respect to such portion of the Property sold, assigned or transferred and shall not be binding upon such purchaser, assignee or transferee.

**1.4 Effective Date.**

This Agreement shall become effective upon the thirtieth (30<sup>th</sup>) day following the adoption by the City Council of Ordinance No. \_\_\_\_\_ approving this Agreement (the “**Effective Date**”).

**1.5 Term.**

The term of this Agreement shall commence upon the Effective Date and shall extend for twenty (20) years, until \_\_\_\_\_ or \_\_\_\_\_ (\_\_\_\_\_) days following the “Project Build-out” as hereinafter defined, whichever is earlier. This Agreement may be extended by the mutual consent of the parties hereto. For purposes of this Agreement, “Project Build-out” shall mean the date on which the permit final inspection (or comparable instrument) is completed for the last Project improvement or residential home or other structure to be constructed pursuant to the Master Development Plan as it may be amended pursuant to this Agreement. Following the expiration of said term, except as otherwise provided for in this Agreement, this Agreement shall be deemed terminated and of no further force and effect. However, Developer’s right to receive reimbursement as provided herein for infrastructure improvements and City’s promise to form or impose reimbursement mechanisms shall survive the term of this Agreement until full reimbursement is received by Developer. Notwithstanding any other provision of this Agreement, Developer’s obligations with respect to the Property to be developed, as set forth in this Agreement and the Conditions of Approval, including, but not limited to, all dedications of land or other exactions, shall survive the expiration or termination of this Agreement, unless such obligations are expressly waived in writing by City.

**1.6 Extension of Term Upon Legal Challenge**

If any litigation affecting the Property is filed challenging any of the approvals granted pursuant to this Agreement (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of validity and binding nature of this Agreement, the term of this Agreement shall be extended for the period of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or final entry of judgment, and the Developer and City shall execute an amendment to this Agreement setting forth the period of any such extension and may record a notice to such effect. The extension of time shall not be applicable if the Developer is the plaintiff or petitioner in the litigation unless a court of competent jurisdiction orders an extension.

**Section 2. Definitions.** In this Agreement, unless the context otherwise requires:

**2.1 Allocations.**

All necessary building permits and related municipal services required to serve the contemplated uses in the Project.

**2.2 Areas of Benefit.**

Those areas that are benefited by the construction of infrastructure or other improvements (other than land owned or controlled by Developer). This shall be determined by an engineer's report prepared by Developer and reviewed and approved by City.

**2.3 City or Stockton.**

"City" or "Stockton" shall mean the City of Stockton.

**2.4 City Laws.**

The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of the Project. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

**2.5 Common Improvements.**

Those infrastructure improvements and land that may be constructed or dedicated by the Developer or by Developer group and therefore subject to Credit and/or Reimbursement which is covered in section 5.11 of this Agreement. Common Improvements are listed on **Exhibit "D"** which is attached hereto.

**2.6 Credits.**

An entitlement to be excused from paying fees because Developer constructed certain Common Improvements described in Exhibit \_\_\_\_\_ or improvements which are not Common Improvements instead of paying a fee. The amount of the credit for construction of a specific Common Improvement shall be equal to the cost of the Common Improvement as depicted in the City's capital improvement plan and set forth in Exhibit \_\_\_\_\_ of this category "Amount of Development Impact Fee Reimbursement" and "Amount of Tidewater Crossing Project Fee Reimbursement".

**2.7 Developer.**

French Camp Investments, LLC is a California limited liability company and includes Developer's assignees and/or successors-in-interest.

**2.8 Director.**

The Director shall mean the Director of Community Development for City.

**2.9 Effective Date.**

“Effective Date” shall have that meaning set forth in Section 1.4 of this Agreement.

**2.10 Exactions.**

All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, the Project under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

**2.11 Existing City Law.**

The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project, including those addressing the density and intensity of use, design, improvement, construction, and building standards, occupancy and specifications applicable to the Project and all on-site, off-site and off-tract improvements and appurtenances in connection therewith, in force upon the Effective Date of this Agreement (as defined in Section 1.4 above).

**2.12 Financing Plan**

Any City approved community facilities district, integrated financing district, assessment district, landscape and lighting district or any other financing district or entity; revenue bonds and other debt financing; area of benefit facility fee; development, impact, mitigation, planning, environmental and processing fees; monitoring program fees; stand-by charges; developer advances; and other means of financing (including, but not limited to, Federal, State, regional and local funding sources); to be applied, formed, adopted or secured by the City and approved by the Developer in the implementation of the facilities and services identified in the Master Development Plan.

**2.13 Planning Documents**

The Master Development Plan and the EIR, approved for this Project, including all conditions and mitigation measures, and this Agreement and such amendments to this Agreement as may, from time to time, be approved pursuant to Section 6.1.

**2.14 Project.**

The densities, intensities and uses of the Property as described in and depicted on the Project Approvals.

### **2.15 Project Approvals.**

The legislative and quasi-judicatory approvals by Stockton, including but not limited to the General Plan Amendment, Master Development Plan, and any subsequent tentative or final maps submitted to the City.

### **2.16 Project Build-out.**

“Project Build-out” shall have that meaning set forth in Section 1.5.

### **2.17 Reimbursements.**

The Credit which is due Developer that has not been satisfied by applying the Credit to the obligation to pay fees. Developer shall be made whole by City Reimbursing Developer as provided in Section 5.11.

### **2.18 Subsequent Approvals.**

Those approvals necessary to implement the Project Approvals that have not been conferred as of the Effective Date of this Agreement.

## **Section 3. Obligations of Developer and City.**

### **3.1 Obligations of Developer.**

In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement and Project Approvals in all material respects. The Parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer’s acceptance of, and agreement to comply with, the terms and conditions of this Agreement and Approvals. Developer shall only make those dedications, and otherwise be subject to those conditions/exactions, which are expressly set forth in or provided for in this Agreement, or in the Project Approvals.

### **3.2 Obligations of City.**

In consideration of Developer entering into this Agreement, City agrees that it will comply with this Agreement, and with all Project Approvals, and will process, in accordance with the terms of this Agreement, and if consistent with this Agreement and applicable state law. At the request of Developer, City shall use its best efforts to take all actions reasonably necessary to establish one or more Areas of Benefit.

## **Section 4. General Development of Project and Parcel.**

### **4.1 The Project.**

Developer shall have the right, but not the obligation, to develop the Project in accordance with the Master Development Plan, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement, and City shall have the right to control development of the Project in accordance with the provisions of the Master Development Plan, this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. Except as otherwise specified in this Agreement, the Master Development Plan, and the applicable Existing City Laws shall control the overall design, development and construction of the Project, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Project, the density and intensity of use, maximum height and maximum and minimum size of buildings, the number of parking spaces and all mitigation measures required in order to minimize or eliminate adverse environmental impacts and other adverse impacts of the Project. In accordance with the purpose of the Master Development Plan, the specific land uses and specific development standards for the Project have been determined on a site-by-site basis.

### **4.2 Permitted Uses and Subsequent Approvals.**

The Project's permitted uses, the density and intensity of use, provisions for reservations or dedication of land for public purposes and location of public improvements, location of public utilities, and other terms and conditions of development applicable to the Project, shall be those set forth in this Agreement and the Project Approvals, and any amendments thereto, as further defined below.

Notwithstanding any provision of this Agreement to the contrary, City shall have the right to the extent mandated by law, or regional, state or federal plans and regulations, to enact rules, regulations, standards, official policies, conditions, ordinances, or resolutions necessary to protect the citizens of the City from an immediate adverse health or safety risk.

### **4.3 Applicable Laws and Standards.**

Notwithstanding any change in any Existing City laws including, but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to the Project are set forth in the Master Development Plan, the Existing City Laws (regardless of future changes in those laws) and this Agreement. The Project is entitled to be built and occupied and Developer has the right to complete the Project, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement. The Master Development Plan includes Development Standards, Design Guidelines and Regulations (the "**Development Regulations**") which provide for the location, arrangement, development and use of the parcels within the Project. Should the Development Regulations conflict with similar regulations contained in the Existing City Laws, the Development Regulations shall take precedence. When any issue, condition or situation arises or

occurs that is not covered or provided for in the Development Regulations, those provisions in the Existing City Laws which are most similar to the issue, condition or situation as determined by the Director, or his designee, shall apply, subject to this Agreement. Notwithstanding any other language or implication to the contrary in this Agreement, all construction shall comply with all provisions of, Chapter 14, Uniform Codes, of the Stockton Municipal Code, including, but not limited to, the Uniform Building Code, and the various related mechanical, electrical, plumbing, and fire codes as the same may be applicable at the time of application for the relevant permit.

#### **4.4 Processing and Approvals.**

Upon submission by Developer of any and all necessary and required applications for Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested Approval to the extent that it complies with applicable Law and this Agreement. Such Approvals shall include, but not be limited to:

- (a) building permits;
- (b) the adoption or amendment of any tentative or final subdivision or parcel maps;
- (c) the issuance of Use Permits;
- (d) architectural and site plan reviews;
- (e) site clearance or demolition permits;
- (f) grading plans and permits;
- (g) landscape plans;
- (h) certificates of occupancy, or their equivalent, whether temporary or final.

#### **4.5 Treatment of Public Facility Fees.**

For the first \_\_\_\_\_ years of the Project, or as otherwise extended as provided for in Section 1.6 herein, the Developer shall only pay those facility fees at the rate adopted by the City Council prior to the Effective Date of this Agreement. At the end of the first \_\_\_\_\_ years of the Project, or as otherwise extended as provided for in Section 1.6 herein, the Project shall be responsible for and the Developer shall pay those facility fees at the then rate adopted by the City Council and as otherwise revised, amended or increased by the City Council and for the remaining term of the Project. To the extent Developer agrees to any modification in fees, Developer is subject to the modified fees.

#### **4.6 Additional Fees.**

Except as provided for in this Agreement, and as specifically referenced in Section 4.5 herein, for the first \_\_\_\_\_ years of the Project, or as otherwise extended as provided for in Section 1.6 herein, the City may not impose any further or additional fees, taxes, or assessments on the Project, whether through the exercise of the police power, the taxing power, or any other means provided that:

- (a) City may charge Developer processing fees for land use approvals, building permits, plan checks and other similar fees for permits and entitlements which are in force and effect on a City-wide basis at the time application is submitted for those permits.
- (b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects on a City-wide or area-wide basis, as defined below, these fees may be imposed on the Project, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.
- (c) Fee increases in existing Public Facilities Fees based on annual increases in the Construction Cost Index adopted pursuant to a City Council resolution may be imposed on the Project, which fees shall be consistent with fees imposed on other properties within the City or area similarly situated.
- (d) Developer shall pay for any new fees the City adopts for existing projects on a City-wide basis if enacted for health or safety reasons.
- (e) Developer shall pay for any new fees enacted as a result of federal, state, or regional requirements if adopted on a City-wide basis.
- (f) Developer shall pay for increases in existing Public Facilities Fees enacted as a result of the City's adoption of the 2035 General Plan.

#### **4.7 Changes in Fees and Construction Costs.**

If any subsequent change in local ordinance, state law or by court decision any City-wide fee applicable to this Project (including, but not limited to, school fees) to be reduced or eliminated, or a subsequent change in local City-wide ordinance, state law or by court decision change building and/or construction requirements so that those requirements make building and/or construction less expensive to the Developer, then the subsequent change shall apply to this Agreement; provided, however, that no such change shall apply to this Agreement with respect to facilities already financed, under construction or constructed.

#### **4.8 Other Governmental Agencies**

Developer and the City shall reasonably cooperate with each other in obtaining such additional permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Property as may be required for the development of the Project. Reasonable cooperation includes, but is not limited to, responding to reasonable requests for information in a timely manner, attendance at meetings and providing City determinations that are relevant to obtaining such additional permits or approvals. Developer will be responsible for all costs of obtaining such additional permits and approvals. Developer shall be entitled to request that the City support Developer in obtaining such additional permits and approvals for the Project. Developer shall have the primary responsibility for securing such permits and approvals.

#### **4.9 Large Lot Parcel Maps.**

Developer shall be entitled to Large Lot Parcel Maps for the purposes of subdividing the Project into parcels for the purposes of phasing, leasing, financing, construction or sale. The only conditions that may be imposed upon such Large Lot Parcel Maps upon recordation shall be the provision of legal access easements consistent with the circulation routes as shown in the Master Development Plan, common usage easements, common facilities and any applicable mitigation measures. This Section 4.9 is subject to California Government Code §66411.1.

### **Section 5. Specific Criteria Applicable to Development of the Project.**

#### **5.1 Application of New City Laws.**

Nothing herein shall prevent City from applying to the Project new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not materially interfere with the development of the Project as contemplated herein. Without limiting the generality of the foregoing, any action or proceeding of City that has any of the following effects on the property within the Project shall, without limiting the possibility that other actions or proceedings may be inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement or may materially interfere with the development of the Project as contemplated herein, be considered in conflict with this Agreement and the Existing City Laws:

- (a) Limiting or reducing the density or intensity of all or any part of the Project, or otherwise requiring any reduction in the square footage or total number of buildings and other improvements, including, but not limited to, the parking spaces;
- (b) Limiting the timing of the development of the Project or the number of phases of the Project in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan; or

- (c) Limiting the location of building sites, grading or other improvements on the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan.

## **5.2 Future Growth Control Ordinances/Policies, Etc.**

- (a) One of the specific purposes of this Agreement is to assure Developer that no growth-ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to the Project, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws of the City by any method or name which would alter in any way City's General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City that may stop, delay, or affect the rate, timing or sequence of development. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete the Project.
- (b) Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision or any other City action, or any initiative or referendum voted on by the public, which would be applicable to the Project and which would affect in any way the rate of development, construction and build out of the Project, or limit the Project's ability to receive any other City service shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.
- (c) City, through the exercise of either its police power or its taking power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of the Project except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Nothing herein prohibits the Project from being subject to a (i) City-wide bond issue, (ii) City-wide special or general tax, or (iii) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within the Project and does not distinguish between developed and undeveloped parcels.
- (d) This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals, public facilities fees and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other

similar permits and entitlements which are in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement.

- (e) Notwithstanding subdivision (b), the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:
  - (1) A failure to do so would place the residents of the Project or the immediate community, or both, in a condition dangerous to their health or safety, or both.
  - (2) The condition or denial is required in order to comply with state or federal law.

### **5.3 Community Facilities District and/or Mello Roos.**

City agrees to use its best efforts to form a Community Facilities District and/or to adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq.) for the purpose of financing some or all of the public capital facilities and services necessary for development of the Project. City may require Developer to form one or more Community Facilities Districts for the purpose of financing police, fire, parks, library, and general government services required by the Project.

### **5.4 Land Use Entitlements.**

(a) Allocations. As of the Effective Date, the Project shall be entitled to a total Allocation that will authorize the construction of the total square footage of buildings in the Project Approvals, as applicable to the Project and Subsequent Approvals as allowed hereunder.

(b) Sewer and Storm Drain. City unconditionally grants to Developer full Allocations including, but not limited, to equivalent dwelling unit hook up capacity for wastewater treatment and storm water facilities. The City shall issue such Allocations upon demand of Developer without any conditions, impositions, restrictions, limitations, or encumbrances, other than those items expressly allowed by this Agreement. Except as unambiguously and expressly provided for in another provision of this Agreement, any other condition, imposition, restriction, limitation, or encumbrance shall be deemed to conflict with this Agreement if it would either prevent or increase the cost of developing the Property.

(c) Water. City grants to Developer full Allocations for equivalent dwelling unit hook up capacity for water facilities contingent on the construction of necessary plant and infrastructure facilities. City shall use its best efforts and due diligence to timely construct each portion of the plant and infrastructure facilities to serve the level of demand created by the new development.

(d) Vested Rights. Developer's vested rights to water, sewer and storm water facilities/services does not amount to a reservation. City has discretion on how to serve the Project, but City must serve the Project upon Developer's demand.

(e) Plant Expansion. City shall use its best efforts and due diligence to timely finance and construct each portion of the plant and infrastructure facilities to serve the level of demand created by the Project and as otherwise agreed herein.

### **5.5 Delta Water Supply Project**

Developer agrees to pay for its fair share of the Delta Water Supply Project through increases in the water connection fee and/or participating in an assessment district.

### **5.6 Processing of Building Permits.**

City agrees to use its best efforts to expeditiously to process all building permit applications.

### **5.7 Allowable Heights, Size and Bulk Within the Project.**

Developer shall have the right, subject to the standards specified in this Agreement and the Master Development Plan, to alter the height, size and bulk of buildings so long as the maximum height, size and bulk for the Project is consistent with the Master Development Plan.

### **5.8 Infrastructure. [Reserved]**

Subject to provisions of applicable law, Developer and City agree that when, and to the extent, Developer's entitled to any form of reimbursement by other developers in connection with Developer's financing, construction and installation of infrastructure which exceeds the requirements of the Project and/or the City is requesting over sizing, then, and in such event, the City will cooperate with Developer by conditioning land use approvals and entitlements for such other developers upon appropriate reimbursement to Developer consistent with the Subdivision Map Act at Government Code Section 66485 et seq., and with City's existing Area of Benefit ordinance pursuant to Code Section 16-\_\_\_\_\_.

### **5.9 Compliance with the California Environmental Quality Act.**

The Resolution of the City Council for the City of Stockton Certifying the Tidewater Crossing Master Development Plan Final nvironmental Impact Report as adequate was certified by the City Council on \_\_\_\_\_(SCH \_\_\_\_\_); City Council Resolution No.\_\_\_\_\_(\_\_\_\_\_). Except as required by the California Environmental Quality Act as it may be amended from time to time or by other state law, no subsequent environmental impact report, supplement to an environmental impact report, addendum to an environmental impact report, or other type of additional environmental review shall be required of any Subsequent Approval concerning the Project.

### **5.11 Credits and Reimbursements.**

(a) Credits and Reimbursements shall be pursuant to the Public Facilities Fees Administrative Guidelines, except as modified by this Agreement. If a conflict exists between the Public Facilities Fees Administrative Guidelines and this Agreement, the terms of this Agreement regarding Credits and Reimbursements controls.

(b) City shall provide for each building permit to be entitled to the maximum application of Credit. At a minimum, City agrees to capital facility account inter-fee transfers so that the Credit held by Developer can apply to satisfy the fee obligations from unrelated fee accounts. If after all Credits have been applied, Developer has not been fully reimbursed for the Common Infrastructure then Developer shall be reimbursed through the collection of fees from the issuance of other permits until the entire Credit is exhausted.

(c) If at Project Build-Out Developer is still owed Credit, City shall disburse to Developer each calendar month all fees collected in each account where Developer holds a Credit and is entitled to Reimbursement.

(d) If at Project Build-Out and after all Credits have been given, the City still owes Developer for infrastructure, City shall disburse a cash Reimbursement to Developer. To the extent a particular Public Facilities Fee fund has insufficient monies at that time, an intra-fund loan shall be made from one fund to another to complete the Reimbursement.

(e) At such time as Developer has been made whole through either Credits, Reimbursements or from a combination of Credits and Reimbursements then City shall have no further obligation under this section.

## **Section 6. Amendment and Termination.**

### **6.1 Amendment or Cancellation.**

Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in Government Code Sections 65867, 65867.5, and 65868 and Code Section 16-525.120. This Agreement and the approvals granted pursuant hereto, and any other related approvals, grants, entitlements, or agreements may, from time to time, be amended or modified in the following manner:

(a) Administrative Amendments. Upon the written request of Developer for an amendment or modification to the Agreement or other related approvals or entitlements, the City Administrator or his designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the City's General Plan, and applicable provisions of the City's zoning and subdivision regulations and other regulations, policies, and standards in effect as of the Effective Date of this Agreement. If the City Administrator or his designee finds that the proposed amendment is both minor and consistent with this Agreement, the General Plan, and the applicable provisions of the City zoning and subdivision regulations and other regulations,

the City Administrator or his designee may approve the proposed amendment without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals subject to further CEQA review.

(b) Non-Administrative Amendments. Any request by Developer for an amendment or modification to this Agreement or other related approvals or entitlements which are determined not to be minor by the City Administrator or his designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Any such approved amendment or modification shall be reflected in an amendment to this Agreement and/or its pertinent exhibits.

## **6.2 Recordation.**

Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Developer. Failure to record shall not affect the validity of any amendment, termination or cancellation.

## **Section 7. Legal Actions.**

### **7.1 Default, Enforcement, Violation**

City and Developer may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default; to enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; or to obtain any remedies consistent with the purpose of this Agreement. Provided, however, that this Agreement creates no obligation in the Developer to develop the Project or to develop the Project at any given rate, and therefore, City shall not have the right to seek specific performance or any other legal remedy of the Developer with respect thereto nor to seek specific performance to compel construction of any improvements. Any legal actions hereunder shall be initiated in the Superior Court of the County of San Joaquin, State of California, or in the Federal District Court in the Eastern District of California.

### **7.2 Limitations on Actions and Third Party Beneficiaries.**

City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action. In the event any legal action or special proceeding is commenced by any person or entity, other than a party, challenging this Agreement or any provision herein, Developer and City agree to cooperate with each other in good faith to defend said lawsuit, each party to be liable for its own legal expenses and costs. Notwithstanding the foregoing, City may elect to tender the defense of any

lawsuit filed by a third person or entity to Developer, and, in such event, Developer shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, attorneys' fees and expenses of litigation ordered to the prevailing party or parties in said litigation. Developer shall not settle any lawsuit on grounds which include, but are not limited to, non-monetary relief, without the consent of the City. City shall act in good faith and shall not unreasonably withhold consent to settle. In the event litigation is filed but such litigation is directed at another use, such as a big box use, then City and Developer shall work cooperatively to sever the approvals concerning this Project from the pending litigation

## **Section 8. Estoppel Certificate.**

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within forty-five (45) days following the receipt thereof. The Director shall have the right to execute on behalf of City and certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting parties, and as to such other information reasonably requested by the requesting party. Developer shall be entitled to one estoppel certificate per year without any fee being assessed by City. For any additional estoppel certificates requested in a single year, City may charge Developer a reasonable fee directly related to the actual cost to prepare the certificate.

## **Section 9. Periodic Review of Compliance.**

### **9.1 Annual Review.**

City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement and the Master Development Plan pursuant to Government Code Section 65865.1 and Code Section 16-525.110.

### **9.2 Developer's Submission.**

Within thirty (30) days of Developer's receipt of the written request of City made not more than once each year at least sixty (60) days prior to the anniversary date of this Agreement, Developer shall submit to City a letter setting forth Developer's good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Developer to enable City

to undertake the review of Developer's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-525.110.

### **9.3 Finding of Compliance.**

The City shall review the Developer's submission to ascertain whether it contains sufficient information to determine whether Developer has complied in good faith with the terms of this Agreement. Upon receipt of the submission, City shall conduct a review of the good faith compliance by Developer with the terms of this Agreement. If City finds good faith compliance by Developer with the terms of this Agreement, the Director shall, upon request by Developer, provide to Developer written confirmation of such finding.

### **9.4 Finding of Noncompliance.**

If City, on the basis of substantial evidence, finds that Developer has not complied in good faith with the terms of this Agreement, City shall specify in writing to Developer the respects in which Developer has failed to comply. Developer shall have a reasonable time from receipt of said notice to comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Developer to adequately bring its performance into good faith compliance with the terms of this Agreement. Upon a finding of noncompliance and Developer's failure to correct or remedy the default within a reasonable time, which in no event shall be less than thirty (30) days from receipt of notice, City may modify or terminate this Agreement pursuant to the provision of Ordinance No. \_\_\_\_ of the City of Stockton.

## **Section 10. Permitted Delays**

### **10.1 Permitted Delays.**

In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

## **Section 11. Events of Default, Remedies, Termination, Attorneys' Fees.**

### **11.1 Events of Default.**

Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure of

either party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within thirty (30) days following notice of default from the other party, whether such failure is of a nature that can be cured within such thirty (30) day period; or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

## **11.2 Remedies.**

Upon the occurrence of an Event of Default, the non-defaulting Party may: (i) bring any proceeding in the nature of declaratory relief, specific performance, injunctive relief or mandamus, or (ii) the non-defaulting Party shall have the right to terminate this Agreement pursuant to Government Code Section 65868 and any regulations of City implementing said Government section, or (iii) bring any action at law or in equity as may be permitted in order to recover all damages necessary to compensate the non-defaulting Party for all the detriment proximately caused by the defaulting Parties. Failure to perform as provided for in this agreement., or any other obligations or undertakings hereunder, or otherwise arising out of an event of default, or which in the ordinary course of things that will likely to result therefrom. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City regulations implementing said sections by the City within thirty (30) calendar days.

Following consideration of the evidence presented in said review before the City and an additional 30-day period to cure, either Party alleging the default by the other Party or member of Developer may institute legal proceedings or may give written notice of termination of this Agreement to the other Party.

## **11.3 Waiver, Remedies Cumulative.**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

## **11.4 Default by City.**

In the event City does not accept, review, approve, or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the Parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided for in Section 11.2.

### **11.5 Effect of Termination.**

If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to the Project that have been approved or concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.

### **11.6 Termination Upon Completion of Development.**

This Agreement shall terminate upon the expiration of the term or when the Property has been fully developed and all of Developer's and City's obligations in connection therewith are satisfied, or for any reason in accordance with this Agreement, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney and substantially as set forth in Exhibit "D", that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s), or any on any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

## **Section 12. Mortgagee Protection: Certain Rights of Cure.**

### **12.1 Mortgagee Protection.**

This Agreement shall be superior and senior to any lien placed upon the Project, or any portion thereof, including the lien of any Mortgagee. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgagee made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Project, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

### **12.2 Mortgagee Not Obligated.**

Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Project to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, the Master Development Plan or otherwise under City Laws.

### **12.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure.**

If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice of an Event of Default or determination of noncompliance given to Developer. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

### **Section 13. Assignment.**

#### **13.1 Assignment and Assumption.**

Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein by exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action. Express written assumption by such purchaser, assignee or transferee, to the satisfaction of the City Attorney, of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred, shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assumption Agreement attached hereto as Exhibit "E" and incorporated herein by this reference or such other form as may be approved by the City Attorney.

#### **13.2 Release Upon Transfer.**

Upon the sale, transfer or assignment of Developer's rights and interests under this Section of this Agreement, Developer shall be released from its obligations pursuant to this Agreement with respect to the Project or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Developer's obligations.

**Section 14. Notices.**

Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party’s mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

<b>CITY:</b>	<b>CITY OF STOCKTON</b>
	425 North El Dorado Street
	Stockton, California 95202
	Attention: City Manager
	Facsimile No.: (209) 937-7149
<i>With a copy to:</i>	City Attorney, City of Stockton
	425 North El Dorado
	Stockton, California 95202
	Facsimile No.: (209) 937-8898
<b>DEVELOPER:</b>	French Camp Investments, LLC
	3400 East Eight Mile Road, Suite A
	Stockton, CA 95212
	Attention: Matt Arnaiz
	Facsimile No.: (209) 931-9741
<i>With a copy to:</i>	

Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile transmission, on the date of receipt as shown on written transmission verification.

**Section 15. Indemnification.**

Developer hereby agrees to, and shall indemnify and hold the City, its elective and appointive council, boards, commissions, officers, agents, and employees harmless from any liability for damages or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer’s, or their contractors’, subcontractors’, agents’, or employees’ operations under this Agreement, whether such operations by Developer, or by any of Developer’s contractors, subcontractors, or by any one or

more person directly or indirectly employed by, or acting as agent for Developer, or any of their contractors or subcontractors. Developer agrees to and shall defend the City and its elective and appointive council, boards, commissions, officers, agents and employees from any suits or actions at law or in equity for all damage caused, or alleged to have been caused, by reason of any of the aforesaid operations. Notwithstanding anything in this Section 15 to the contrary, Developer shall have no obligation to indemnify, defend or hold harmless the City, its elected or appointed council, boards, commissions, officers, agents and employees (“Indemnified Parties”) for, from or against the negligence or intentional misconduct of any Indemnified Party.

## **Section 16. Miscellaneous Provisions.**

### **16.1 Negation of Partnership.**

The parties specifically acknowledge that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Developer, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

### **16.2 Consent(s).**

Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 15.2 as a “**consent**”) is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

### **16.3 Project Approvals Independent.**

All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to the Project, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

#### **16.4 Not a Public Dedication.**

Nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Developer shall have the right to prevent or prohibit the use of the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by this Agreement except for those areas designated in the Master Development Plan or implementing project approvals as public easements.

#### **16.5 Implementation of Development.**

Developer agrees to proceed in good faith and in a reasonable and diligent manner to implement development of the Project in accordance with the Project Approvals and the terms and conditions of the Agreement, and agrees to make prompt payment of fees and costs as set forth in the Conditions of Approval.

#### **16.6 Severability.**

Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

#### **16.7 Entire Agreement.**

This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements and understandings, written or oral, between the parties hereto pertaining to the subject matter hereof.

#### **16.8 Construction of Agreement.**

The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to “**person**” shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

## **16.9 Enforceability.**

City agrees that unless this Agreement is amended or canceled pursuant to the provisions of Section 6, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, Master Development Plan, zoning ordinance, subdivision ordinance or building regulation adopted by the City which changes, alters, or amends the rules, regulations and policies applicable to the development of the Property at the time of approval of this Agreement, as provided by Government Code Section 65866. Nothing herein shall be construed to limit the authority of the City to fix the amount of fees for general application upon other projects in the City which may otherwise be lawfully imposed by the City upon such projects.

## **16.10. Waiver of Protests.**

As a material condition of this Agreement, Developer agrees that it hereby waives and forever forfeits any right which it may have to protest any of the following:

- (a) The application, amount or propriety of any fee, dedication, or other execution expressly set forth in this Agreement, including, but not limited to, any protest which may have been available to Developer under California Government Code sections 66000-66020;
- (b) Inclusion of the Property and/or Project in any Benefit Assessment District, Area of Benefit, Landscaping and Lighting District, Maintenance District, or any other special district expressly provided for in this Agreement; and
- (c) Any other Condition of Approval expressly provided for in this Agreement.

## **16.11 Further Assurances; Covenant to Sign Documents.**

Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

## **16.12 Governing Law.**

This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

## **16.13 Time.**

Time is of the essence of this Agreement and of each and every term and condition hereof.

#### **16.14 Dispute Costs and Fees.**

In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to this Agreement, the prevailing party shall be entitled to an award of its attorneys', investigators', expert witness' and consultants' fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.

#### **16.15 Insurance.**

Before commencing work pursuant to any City-approved permit or other entitlement relating to the Project, and not later than the execution of a Subdivision Improvement Agreement between Developer and City, as the case may be, Developer shall obtain the insurance required under this Section.

(a) Compensation Insurance. Developer shall maintain workers' compensation insurance for all persons employed at Project Site. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for their respective employees. Developer agrees to indemnify the City for damage resulting from their failure to take out and maintain such insurance.

(b) Public Liability and Property Damage Insurance. Developer shall maintain public liability insurance in an amount not less than \$1,000,000.00 for injuries (including death) to any one person and subject to the same limit of any one occurrence.

(c) Evidence of Insurance. Developer shall furnish City, concurrently with the execution of this Agreement, satisfactory evidence of the insurance required. Developer shall also provide evidence that the carrier is required to give the City at least ten (10) days prior written notice of the cancellation or reduction in coverage of a policy.

#### **16.16 Recordation.**

Within ten (10) days after the City of Stockton enters into this Agreement, or as soon thereafter as legally possible, the City Clerk shall cause this Agreement to be recorded with the County Recorder. If the parties to the Agreement or their assigns or their successors-in-interest amend or cancel the Agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the Agreement, the City Clerk shall cause notice of such action to be recorded with the County Recorder.

#### **16.17 Public Interest.**

City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety, and general welfare.

#### **16.18 Authority.**

The persons who have executed this Agreement represent that they have been authorized to do so by the party on whose behalf each person is signing. All documents to be delivered under this Agreement shall be executed by an authorized person. Each party represents that it is authorized to enter into this Agreement and to perform all obligations of that party contained in this Agreement.

#### **16.18 Automatic Tentative Map Extensions.**

Pursuant to Section 66452.6 of the California Government Code, any tentative map that is approved by the City shall automatically be extended for a period coterminous with the term of this Agreement. In the event this Agreement is cancelled, the map shall continue in effect for twelve (12) months from the date of cancellation or the expiration date, whichever is later. Thereafter, the tentative map approval shall be considered to have expired as provided for in Government Code §66452.6(d). In the event that the Agreement is cancelled, the Developer may exercise all rights allowed by the Subdivision Map Act with respect to the extension of any tentative map.

#### **16.19 Priority of Enactment.**

In the event of conflict between this Agreement, the Planning Documents and the City Laws, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) this Agreement; (2) the Planning Documents; and (3) the City Laws. In the event of a conflict between two or more of the foregoing documents, the language of that document which is superior in priority as provided above shall govern.

#### **16.20 Acquisition of Necessary Property Interests for Public Facilities and Improvements.**

If Developer is required by the Planning Documents to construct offsite improvements on lands not owned by either Developer or the City, Developer agrees to make a good faith effort to acquire the necessary property interest for the construction of these offsite improvements. Developer shall commence its good faith efforts to acquire the necessary property interests immediately upon the effective date of this Agreement or within 30 days of being informed by the City that such offsite improvements are required to implement the Planning Documents. If Developer is, using commercially reasonable efforts, unable to acquire the necessary property interests one year before the offsite improvement is required to be constructed, the City shall acquire the necessary property interests by such means as are available to it, including eminent domain.

**16.21 Compliance with Government Code Section 65867.5.**

In accordance with the requirements of California Government Code Section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of California Government Code Section 66473.7.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**(“City” or “Stockton”)**

**(“Developer”)**

CITY OF STOCKTON,  
a municipal corporation  
of the State of California

French Camp Investments, LLC  
a California limited liability company

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

By: \_\_\_\_\_  
Matt Arnaiz

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

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

EXHIBIT "A"

THE PROJECT

EXHIBIT "B"

LEGAL DESCRIPTION

EXHIBIT "D"  
NOTICE OF TERMINATION

THIS NOTICE OF TERMINATION is given this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the City of Stockton ("City") for the benefit of French Camp Investments, LLC, a California limited liability company, (hereinafter "Owner").

1. On \_\_\_\_\_, 200\_, the City of Stockton and French Camp Investments, LLC, entered into entered into a Development Agreement, approved by Ordinance \_\_\_\_\_ ("Agreement"), relative to the development known as Tidewater Crossing ( "Subject Property").

2. Owner has fully performed all its duties with respect to that portion of the Subject Property, which portion of the Subject Property is identified and described in Exhibit "A," attached hereto and incorporated herein by this reference ("Released Property"). Pursuant to Section 11.6 of the Agreement, the Development Agreement is no longer in effect with respect to the Released Property.

CITY OF STOCKTON

By:

City Manager

NOTE: SIGNATURE MUST BE NOTARIZED

EXHIBIT "E"

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter "this Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between French Camp Investments, LLC, a California limited liability company (hereinafter called "Owner") and \_\_\_\_\_, (hereinafter called "Assignee").

RECITALS

A. On \_\_\_\_\_, 200\_, the City of Stockton and Owner entered into a Development Agreement, approved by Ordinance \_\_\_\_\_ (hereinafter "Agreement"), relative to the development known as Tidewater Crossing (hereinafter "Subject Property").

B. Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

C. Owner desires to assign all of its interests, rights and obligations under the Agreement with respect to the Assigned Parcel(s).

D. Assignee desires to assume all Owner's rights and obligations under the Agreement with respect to the Assigned Parcel(s).

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

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

2. Assignee hereby assumes all of the burdens and obligations of Owner under the

Agreement, and agrees to observe and fully perform all of the duties and obligations of Owner under the Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall become substituted for Owner as the “Developer” under the Agreement with respect to the Assigned Parcel(s).

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.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

ASSIGNOR / OWNER

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

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

ASSIGNEE

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

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