



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Ordinance No. 1788 Entitled, “An Ordinance of the City Council of the City of Lodi Adopting a Development Agreement Pertaining to the Development of 257.76 Acres Located on the West Side of Lower Sacramento Road between Highway 12-Kettleman Lane and Harney Lane (Southwest Gateway) (Development Agreement GM-05-001)”

MEETING DATE: November 29, 2006 (Special City Council Meeting)

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1788.

BACKGROUND INFORMATION: Ordinance No. 1788 entitled, “An Ordinance of the City Council of the City of Lodi Adopting a Development Agreement Pertaining to the Development of 257.76 Acres Located on the West Side of Lower Sacramento Road between Highway 12-Kettleman Lane and Harney Lane (Southwest Gateway) (Development Agreement GM-05-001)” was introduced at the regular City Council meeting of November 15, 2006.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov’t Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov’t Code § 36937.**

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/jmp

Attachment

APPROVED: _____
Blair King, City Manager

ORDINANCE NO. 1788

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI ADOPTING A DEVELOPMENT AGREEMENT PERTAINING TO THE DEVELOPMENT OF 257.76 ACRES LOCATED ON THE WEST SIDE OF LOWER SACRAMENTO ROAD BETWEEN HIGHWAY 12-KETTLEMAN LANE AND HARNEY LANE (SOUTHWEST GATEWAY) (DEVELOPMENT AGREEMENT GM-05-001)

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. The properties subject to this Development Agreement include the following:

257.76 acres located on the west side of Lower Sacramento Road between Highway 12-Kettleman Lane and Harney Lane – Assessors Parcel Numbers 058-030-09, 058-030-03, 058-030-04, 058-030-05, 058-030-06, 058-040-01, 058-040-02, 058-040-04, 058-040-05, and 058-040-14.

SECTION 2. The applicant for the requested Development Agreement is as follows:

Frontier Community Builders

SECTION 3. The requested Development Agreement is summarized as follows:

Development Agreement GM-05-001 is an agreement between the City and the developer in which the developer agrees to provide certain benefits to the City in exchange for a vested right to proceed with the development consistent with the development approvals. The term of the Development Agreement is 15 years. The vested right the developer obtains is the ability to proceed with the development as approved and to avoid the imposition of new regulations on subsequent discretionary approvals (i.e. vesting tentative maps) for the development.

SECTION 4. The City Council hereby finds that the proposed Development Agreement is consistent with the General Plan land use designation and the zoning for the proposed Development.

SECTION 5. The City Council, by Resolution No. 2006-209, has certified the Lodi Annexation Environmental Impact Report for the proposed project.

SECTION 6. The City Council hereby adopts Ordinance No. 1788 approving the Development Agreement by and between the City of Lodi and Frontier Community Builders. Further, the City Council authorizes the City Manager to execute the Settlement Agreement between the City of Lodi, Citizens for Open Government, and Frontier Community Builders and incorporates its provisions into the Development Agreement as Exhibit K. In the event of a conflict between the Development Agreement and the Settlement Agreement, the terms of the Settlement Agreement shall control.

SECTION 7. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 8. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 10. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 29th day of November, 2006

SUSAN HITCHCOCK
Mayor

Attest:

RANDI JOHL
City Clerk

=====
State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1788 was introduced at a regular meeting of the City Council of the City of Lodi held November 15, 2006, and was thereafter passed, adopted, and ordered to print at a special meeting of said Council held November 29, 2006, by the following vote:

AYES: COUNCIL MEMBERS –
NOES; COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1788 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

Attn: City Clerk

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

DRAFT DOCUMENT

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF LODI

AND FRONTIER COMMUNITY BUILDERS, INC.

FOR FCB SOUTHWEST GATEWAY PROJECT

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**DEVELOPMENT AGREEMENT
FCB SOUTHWEST GATEWAY PROJECT**

This Development Agreement is entered into as of this ____ day of _____, 2006, by and between the CITY OF LODI, a municipal corporation ("City"), and, FRONTIER COMMUNITY BUILDERS, INC. ("Landowner"). City and Landowner are hereinafter collectively referred to as the "Parties" and singularly as "Party."

RECITALS

1. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864, et seq. (the "Development Agreement Statute"), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.
2. **Property.** Landowner holds a legal or equitable interest in certain real property located in the City of Lodi, County of San Joaquin, more particularly described in Exhibit A-1 attached hereto (the "Property"). Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by this Agreement.
3. **Project.** Landowner has obtained various approvals from the City (described in more detail in Recital 6 below) for a mixed use project known as FCB Southwest Gateway (the "Project") to be located on the Property.
4. **Public Hearing.** On October 25, 2006, the Planning Commission of the City of Lodi, acting pursuant to Government Code Section 65867, held a hearing to consider this Agreement and the Planning Commission action has been reported to the City Council.
5. **Environmental Review.** On _____, 2006, the City Council certified as adequate and complete, the Lodi Annexation Environmental Impact Report ("EIR") for the Southwest Gateway Project. Mitigation measures were required in the EIR and are incorporated into the Project and into the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.
6. **Project Approvals.** The following land use approvals (together the "Project Approvals") have been granted for the Property, which entitlements are the subject of this Agreement:

6.1. The EIR. The Mitigation Measures in the EIR are incorporated into the Project and into the terms and conditions of this Agreement (City Resolution No. _____);

6.2. A General Plan Amendment (the "General Plan"), (attached hereto as Exhibit B) approved by the City on _____, 2006 (City Resolution No. _____);

6.3. The Zoning of the Property (attached hereto as Exhibit B-1) approved by the City on _____, 2006 (City Ordinance No. _____);

6.4. The Large Lot Tentative Subdivision Map for the Project (attached hereto as Exhibit C-1) to be subsequently considered by the City through a noticed public hearing process. (The parties agree that the large lot subdivision map included herein is for illustrative purposes only and shall not be effective until approved through a notice public hearing process by the City. If approved by the City, the Large Lot Subdivision Map shall thereafter be included within the Project Approvals listed herein);

6.5. Reserved;

6.6. The Development Plan and Infrastructure Plan for the Project (attached hereto as Exhibit D), approved by the City on _____, 2006 by City Resolution No. _____;

6.7. The Growth Management Allocations, as required by Chapter 15.34 of the Lodi Municipal Code, as set forth in Exhibit E, approved by the City on _____, 2006 by City Resolution No. _____;

6.8. This Development Agreement, as adopted on _____, 2006 by City Ordinance No. _____ (the "Adopting Ordinance"); and,

6.9. The Annexation Approvals granted by San Joaquin County Local Agency Formation Commission as shown in Exhibit F attached hereto.

7. **Need for Services and Facilities.** Development of the Property will result in a need for municipal services and facilities, some of which will be provided by the City to such development subject to the performance of Landowner's obligations hereunder. With respect to water, pursuant to Government Code Section 65867.5, any tentative map approved for the Property will comply with the provisions of Government Code 66473.7.

8. **Contribution to Costs of Facilities and Services.** Landowner agrees to contribute to the costs of such public facilities and services as required herein to mitigate impacts on the community of the development of the Property, and City agrees to provide such public facilities and services as required herein to assure that Landowner may proceed with and

complete development of the Property in accordance with the terms of this Agreement. City and Landowner recognize and agree that, but for Landowner's contributions set forth herein including contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide certain facilities and services for development of the Property, Landowner would not and could not commit to provide the mitigation as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make contributions toward the cost of public improvements as herein provided to mitigate the impacts of development of the Property as development occurs.

9. **Development Agreement Resolution Compliance.** City and Landowner have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Resolution of the City of Lodi, as set forth in the City Council Resolution No. 2005-237 for the consideration and approval of the pre-annexation and development agreement.

10. **Consistency with General and Specific Plan.** Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City found that this Agreement satisfies the Government Code §65867.5 requirement of general plan consistency.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT

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

2. **Description of Property.** The property, which is the subject of this Development Agreement, is described in Exhibit A-1 and depicted in Exhibit A-2 attached hereto ("Property").

3. **Interest of Landowner.** The Landowner has a legal or equitable interest in the Property. Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by the Agreement.

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

5. Effective Date and Term.

5.1. Effective Date. The effective date of this Agreement ("Effective Date") is _____, 2006, which is the effective date of City Ordinance No. _____ adopting this Agreement.

5.2. Term. Upon execution, the term of this Agreement shall commence on the Effective Date and extend for a period of fifteen (15) years, unless said term is terminated, modified or extended by circumstances set forth in this Agreement. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect. Said termination of the Agreement shall not affect any right or duty created by City approvals for the Property adopted prior to, concurrently with, or subsequent to the approval of this Agreement nor the obligations of Sections 20, 24 or 25 of this Agreement. In the event that litigation is filed by a third party (defined to exclude City and Landowners or any assignees of Landowner) which seeks to invalidate this Agreement or the Project Approvals, the expiration date of this Agreement shall be extended for a period equal to the length of time from the time the summons and complaint and/or petition are served on the defendant(s) until the judgment entered by the court is final and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed four years.

5.3. Automatic Termination Upon Completion and Sale of Residential Lot. This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the Project Approvals for residential use, upon completion of construction and issuance by the City of a final occupancy permit for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Landowner to a bona-fide good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that all improvements, which are required to serve the lot, as determined by City, have been accepted by City. Termination of this Agreement for any such residential lot as provided for in this Section shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

6. Use of Property.

6.1. Vested Right to Develop. Landowner shall have the vested right to develop the Project in accordance with the terms and conditions of this Agreement, the Project Approvals, the City's existing policies, standards and ordinances (except as expressly modified by this Section 6.1 and Section 8.3) and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. Landowner's vested right to develop the

Property shall be subject to subsequent approvals; provided however, except as provided in Section 6.3, that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the uses, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, so long as Landowner is not in default under this Agreement. Notwithstanding the vested rights granted herein, Landowner agrees that the following obligations, which are presently being developed, shall apply to development of the Property:

- 6.1.1 Payment of a development fee for a proportionate share of the design and construction cost of the Highway 99 interchange project at Harney Lane.
- 6.1.2 Payment of Agricultural Land Mitigation fee, as identified in Mitigation Measure LU-2, pursuant to the ordinance and/or resolution to be adopted by the City of Lodi.
- 6.1.3 Payment of Electric Capital Improvement Mitigation fee (see Section 6.4.10) pursuant to the ordinance and/or resolution to be adopted by the City of Lodi.
- 6.1.4 Payment of development fee for proportionate share of the costs of designing and constructing a water treatment system and/or percolation system for treatment of water acquired from Woodbridge Irrigation District (see Section 6.4.4) pursuant to the ordinance and/or resolution to be adopted by the City of Lodi.

With regards to the fees identified in Sections 6.1.1, 6.1.2, 6.1.3, and 6.1.4 and these fees only, Landowner hereby consents to their imposition as conditions of approval on any discretionary or ministerial land use entitlement subsequently granted by the City including but not limited to issuance of building permits. City agrees that the fees payable by the Landowner pursuant to Sections 6.1.1, 6.1.2, 6.1.3 and 6.1.4 shall be adopted in conformance with applicable law, and shall apply uniformly to all new development on properties within the City that are zoned consistent with the Project Approvals, or apply uniformly to all new development on properties that are similarly situated, whether by geographic location or other distinguishing circumstances. Except for the fees identified in this Agreement including but not limited to the Project Approvals, Sections 6.1.1, 6.1.2, 6.1.3, 6.1.4 and 8.3, no other subsequently enacted development or capital fee shall be imposed as a condition of approval on any discretionary or ministerial decision. The Parties acknowledge and agree that the fees applicable to the development pursuant to the Project Approvals and this Agreement may be increased during the term of this Agreement provided that (1) such increases are limited to annual indexing (i.e. per the Engineering News Record Index, or the CPI, or other index utilized by the City) and as provided in current fee ordinances and (2) the increased fees are adopted in conformance with applicable law, apply uniformly to all new development on properties within the City that are zoned consistent with the Project Approvals, or apply uniformly to all new development on properties that are similarly situated, whether by geographic location or other distinguishing

circumstances. The initial adjustment shall be effective as of four years after the Effective Date of the Agreement and shall be calculated based on the difference in the applicable index from the numerical rate at the end of the month following the third year after the Effective Date and the numerical rate at the end of the month following the fourth year after the Effective Date. All subsequent increases shall be based on the annual change in the applicable index. Notwithstanding the preceding sentence, index adjustments to the fees set forth in Section 8.2, subsections 2, 3 and 4 shall be effective annually as set forth in the relevant ordinances and resolutions. Moreover, Landowner will be subject to the indexing called for above even if Landowner has filed a complete application for a Vesting Tentative Map and will not vest against such indexing until payment of the fees as called for in this Agreement.

6.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location and maintenance of on-site and off-site improvements, location of public utilities and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals. City acknowledges that the Project Approvals provide for the land uses and approximate acreages for the Property as set forth in Exhibit B-1 and Exhibit B-2.

6.3. Moratorium, Quotas, Restrictions or Other Growth Limitations.

Landowner and City intend that, except as otherwise expressly provided in this Agreement, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances and initiatives approved by the City Council or the electorate that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses or the right to receive public services as set forth in the Project Approvals; provided however Landowner shall be subject to rules, regulations or policies adopted as a result of changes in federal or state law (as provided in Section 7.3) which are or have been adopted on a uniformly applied, City-wide or area-wide basis, in which case City shall treat Landowner in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by the changes in federal or state law.

6.3.1 Allocations Under City Growth Management Program

a. Allocations Required Prior to Map Approval

Consistent with the City's Growth Management Program, which shall apply to the Project, except as otherwise provided herein, no tentative map for any portion of the Property shall be issued until such time as Landowner has obtained allocations for each residential unit within the area covered by such map, consistent with the Growth Management Ordinance (Ordinance 1521), codified as Section 15.34 of the City of Lodi Municipal Code.

b. Schedule of Allocation of Residential Units

The following schedule of residential unit allocations shall apply to the Project.

(i) Initial Allocation:

As of the Effective Date of this Agreement, the following number of residential units shall be initially allocated to the Project from the City's reserve of unused allocations ("Initial Allocation"):

300 Low Density units
300 High Density units (300 units shall be used to construct 300 apartment units adjacent to Highway 12/Kettleman Lane as shown in the Project Approvals)

Except for the requirement set forth in Section 6.3.1(a) above the Initial Allocation has been determined to be exempt from and in compliance with the provisions of the Growth Management Ordinance and Resolutions 91-170 and 91-171 (timing and point system requirements).

(ii) Subsequent Annual Allocations:

As of the Effective Date of this Agreement, Landowner shall be entitled to apply for future annual allocations in three-year increments, and on a rolling basis. Provided that Landowner otherwise complies with the City's Growth Management Program, Landowner shall be entitled to annual allocations set forth in Exhibit E ("Annual Allocations"). If Landowner elects in any year to request fewer allocations than provided for in Exhibit E or if the term of any allocation granted expires before it is used as part of obtaining a subdivision map, Landowner shall be entitled to receive, upon submission of a complete growth management allocation application, additional allocations after the eighth year of this Agreement and through the term of this Agreement including any extension thereto granted pursuant to Section 5.2. The total number of growth management allocations granted hereunder shall be limited to the number of residential units approved as part of the Project Approvals excluding any senior housing residential units. The use of such allocations shall be restricted to the year for which such allocations were made, consistent with the Growth Management Ordinance. Notwithstanding the foregoing, Landowner may request additional allocations, over and above those set forth in Exhibit "E", and City may grant such allocations in its discretion, provided such additional allocations are consistent with the City's Growth Management Allocation Program, Resolutions 91-170 and 91-171, subject to such additional community benefits and/or exactions negotiated upon such a request.

Landowner is not required to apply for such allocations on an annual basis. Landowner may instead comply with all development plan and related requirements under the Growth Management Ordinance and Resolutions 91-170 and 91-171 every third year, at which time

Landowner may apply for allocations for the next three-year period. After the expiration of the year for which an Annual Allocation was issued to Landowner, Landowner may submit a request and be issued by the City another Annual Allocation, such that Landowner may maintain, on a rolling basis, a number of allocations equal to three Annual Allocations. Except for allowing the Landowner this flexibility in terms of the number of years for which Landowner may apply, all requests for Annual Allocations must otherwise comply with the Growth Management Ordinance and Resolutions 91-170 and 91-171.

The requirement that Landowner apply for Annual Allocations does not alter the vested rights of the Project, specifically as to the General Plan and zoning designation of the Project.

(c) Growth Management Ordinance in full force and effect:

Except where otherwise specifically stated herein, nothing in this section 6.3.1 is intended to modify in any way the City's Growth Management Program, including its exemptions under Section 15.34.040 (e.g., for senior citizen housing).

Section 6.3.2 Future Growth Control Ordinances/Policies, Etc.

(a) One of the specific purposes of this Agreement is to assure Developer that, during the term of this Agreement no growth-management 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 Property in such a manner so as to the reduce the density of development , modify the permissible uses, or modify the phasing of the development as set forth in the Project Approvals.

(b) Therefore, the parties hereto agree that, except as otherwise expressly provided in the Project Approvals, Sections 6.1, 6.3.1 or 6.4 or other provision of this Agreement which expressly authorize 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 Sections 6.1, 6.3.1, or 6.4 herein or other provision of this Agreement which 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 (see Section 7.3).

6.4. Additional Conditions.

6.4.1. Timing of Dedications and Improvements of Parks other than DeBenedetti Park Landowner agrees to dedicate park land and complete construction of all the park improvements within the Southwest Gateway area as described and set forth in the Project Approvals at its sole cost and expense. The lists of the parks and park improvements contemplated herein are set forth in Exhibit "I" and "J". Landowner and City agree that the provision of land and the construction of all park facilities and installation of equipment within the Project boundaries will satisfy Landowner's Quimby Act obligations for the Southwest Gateway project as set forth in Lodi Municipal Code Chapter _____. Therefore, Landowner shall not be obligated to pay any additional park fees, other than the payments required pursuant to Section 6.4.8, and Landowner shall not be entitled to any credit for the value of the improvements constructed or equipment installed. The phasing of such improvements shall be in compliance with the **Phasing Schedule** included in Exhibit I.

With regards to the park improvements listed in Exhibit J, prior to approval by the City of the first tentative subdivision map, Landowner shall prepare plans and specifications for all park improvements included in the Southwest Gateway Project Approvals and submit those plans and specifications to the City for review and approval which approval will not be unreasonably

withheld provided that the plans and specifications contain all park improvements listed in Exhibit J and satisfy all applicable conditions of approval included in the Project Approvals. The Landowner shall construct the parks in compliance with the approved plans and specifications. The City will inspect improvements during construction. If improvements are of poor quality and/or do not meet the requirements of approved plans and specifications, the City will notify the Landowner in writing and the Landowner, at its sole cost, shall correct any errors or deficiencies. The Landowner shall construct the parks to the satisfaction of the City, which shall be defined as compliance with the approved plans and specifications.

6.4.2 Payment of Utility Exit Fees The Lodi Electric Utility is a city-owned and operated utility that provides electrical utility services for residential, commercial and industrial customers in Lodi. As the proposed project sites would be annexed to the City of Lodi, the Lodi Electric Utility would provide electrical utility services to the project site. To the extent that Landowner is assessed "exit fees," also known as "Cost Responsibility Surcharges," by Pacific Gas & Electric for its departing load, Landowner shall pay said fees when they are due. Landowner may, at its option and at its own cost, request a Cost Responsibility Surcharge Exemption from the California Energy Commission for any qualified departing load pursuant to Title 20, California Code of Regulations, Section 1395, et. seq. Forms for the exemption are available on-line at http://www.energy.ca.gov/exit_fees/documents/2004-02-18_PGE_EXEMP_APPL.PDF City makes no representation that Landowner is eligible for exemptions pursuant to these regulations. Landowner agrees to save, defend, indemnify and hold harmless City from any and all costs, judgments or awards owed to Pacific Gas & Electric arising out of or related to City's provision of electrical utility services to the project site.

6.4.3 Maintenance of Specified Public Improvements Landowner agrees to provide or pay for all park, median strip, and other landscaping maintenance and repairs for two years for lands dedicated by the Landowner to the City and accepted by the City. In the event that Landowner chooses to pay the City for the costs of maintenance and repair, the City shall provide an estimate of the annual costs and the Landowner shall pay the full amount within thirty calendar days after the City by U.S. Mail or email, transmits the estimate to the Landowner. If the amount paid to the City exceeds the actual amount incurred by the City plus reasonable staff costs to administer the contract, the City shall, within a reasonable period of time, refund the difference to the Landowner.

6.4.4 Water Treatment and/or Percolation Cost Landowner shall pay a fee based on the proportionate share of the costs of designing and constructing a water treatment system and/or percolation system for treatment of water acquired by the City from the Woodbridge Irrigation District. Landowner shall pay the fee as required under the fee program to be developed by the City, but in no event later than when water service connection for each residential, office and commercial unit is provided.

6.4.5 Utility Line Extension City is preparing a policy pursuant to which property developed will pay the actual costs of capital improvements necessary to extend utility services to a development. Landowner acknowledges that such an extension is necessary to implement the Project Approvals on the Property. Landowner agrees to pay the City, pursuant to the policy to be adopted by the City, the costs of the capital improvements necessary to extend utility services to the Property.

6.4.6 Payment for Park and Recreation Department Equipment

In addition to construction of any park and public works improvements required pursuant to the Project Approvals and this Agreement, Landowner shall pay One Hundred Thousand U.S. dollars (\$100,000) to the City for use to acquire equipment for the Lodi Parks and Recreation and Public Works Departments. The amount payable hereunder shall be paid based upon the following schedule of payments:

<u>Payment Due Date</u>	<u>Payment Amount</u>
1. Payment of \$100,000 for acquisition of parks equipment/ Lawnmower upon the effective date of this Agreement.	

6.4.7 Improvements to be Designed and Constructed by Landowner Within or Adjacent to the Project Boundaries

The Project Approvals require the installation of specified public and private improvements. Landowner shall, as specified in the Project Approvals, either design, engineer and construct the following improvements or pay the City the appropriate fee for the design, engineering and construction of said improvements. The obligations imposed on the Landowner herein shall be in addition to any other obligations set forth in this Agreement

In the event that any of Developer's improvements encroach upon any city facilities, property or rights of way, developer shall indemnify City against any and all expenses, including legal fees, incurred by the City to secure replacement facilities, property or rights of way.

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6.4.7.1 Surface Water Facilities

Transmission Main (Proportionate share of the total design, engineering and construction costs)
Storage Tank (Proportionate share of the total design, engineering and construction costs)

6.4.7.2 Water Supply Facilities

One new water well to cover proposed development within the Southwest Gateway area. The well will be installed in the Southwest Gateway area at the location identified in the Project

Approvals or approved by the City Engineer. The well shall be installed and operational on or before January 1, 2010 or earlier if otherwise required by the Water Master Plan.

6.4.7.3 Water Distribution Facilities

All water pipes and related infrastructure in all streets.
Any interim or temporary facilities as determined necessary by the Public Works Director.

6.4.7.4 Sewer Collection Facilities

All sewer pipes and related infrastructure in all streets.
Any interim or temporary facilities as determined necessary by the Public Works Director.

6.4.7.5 Recycled Water Facilities

All recycled water pipes and related infrastructure for irrigations systems located in or on streets, public and private school sites (to property boundary line only), places of assembly including but not limited to religious facilities (to property boundary line only), and high density residential sites.
Provide up to a maximum of \$50,000 to partially fund the City of Lodi Recycled Water Master Plan Study.

6.4.7.6 Storm Drainage Facilities

All stormwater pipes and related infrastructure in all streets and basins.
All stormwater detention basins, control structures, pumping facilities and appurtenant piping and controls.
Any interim or temporary facilities as determined necessary by the Public Works Director.

Developer will be entitled to apply for reimbursement under Lodi Municipal Code Chapter 16.40 for benefit received by undeveloped properties as a result of the construction of the improvements required by this paragraph. Without limiting in any manner, the City Council's future exercise of its legislative discretion in the public hearing called for by Chapter 16.40, the parties anticipate that the benefited properties will be those set forth in Exhibit J. The parties also expressly acknowledge the final determination of benefited properties shall be determined pursuant to process set forth in Chapter 16.40.

6.4.7.7 Streets and Roads

(i) Design and construct all streets within the Project Boundary as set forth in the Project Approvals.

- (ii) Dedicate land necessary for and design and install improvements including curb, gutter, sidewalk and landscaping on the west side of Lower Sacramento Road between Lodi Shopping Center and Harney Lane. The land dedicated and the improvements installed shall be consistent with Lodi standards and the Project Approvals.
- (iii) Dedicate land adjacent to the Project frontage which is necessary for expansion of Harney Lane between Legacy Estates Unit No. 1 and the western City sphere of influence boundary as established in the General Plan and as necessary to comply with the City standards and Project Approvals. In addition, in the event that City, in compliance with applicable laws, takes action to form an assessment district to pay the costs of design and construction of Harney Lane as described herein, Landowner agrees to cast all votes within the control of Landowner in favor of formation of the assessment district and to not protest the formation of the assessment district. In the event, that City elects not to create an assessment district or there are not sufficient votes cast in favor of the assessment district to allow its formation, Landowner shall, at its sole cost, design and construct the improvements to Harney Lane adjacent to the Property necessary to meet City standards and to comply with the Project Approvals.
- (iv) Payment of fees assessed for recent underground utility improvements related to Lower Sacramento Road pursuant to Lodi Resolution No. _____, dated December ____, 2006. The fee amount payable as of the Effective Date is \$460,700. The amount payable shall be increased consistent with the index provision of Lodi Resolution No. _____. The amount due is based on the proportionate share of demand for the improvements arising from the Project Approvals. The fee shall be paid no later than acceptance of the first tentative subdivision map for processing.
- (v) Dedication of necessary land, design and installation of transition roadway lane adjacent to the Property along Highway 12/Kettleman Lane.
- (v) Payment of Fair Share Costs for traffic mitigation measures that are not projects within the Streets & Roads Fee Program.

6.4.7.8 Sewer Trunk Facilities

Realignment to location approved by City and reconstruction of Domestic Trunk and Industrial Trunk Lines that presently cross the Property.
Pursuant to Lodi Resolution No. 2004-29, pay existing reimbursement obligations which presently total \$300,206.43 related to the Harney Lane Sewer Lift Station and Trunk Line. The amount payable shall be paid upon submission of the first tentative subdivision map which covers in part any portion of parcels 058-040-01, 058-040-02, 058-040-04, 058-040-05 or 058-040-14.

6.4.8 DeBenedetti Park Construction

Within six years of the Effective Date of this Agreement, Landowner shall pay the City Eight Million U.S. dollars (\$8,000,000) for the design, engineering and construction of DeBenedetti

Park as set forth in the _____ plan. Landowner may satisfy part or all of this obligation through the provision of services necessary to design and construct DeBenedetti Park provided that (1) Landowner requests and obtains advance written approval from the City for any design or construction services provided which said approval shall include an agreed upon value of said services, and (2) Landowner complies with all applicable laws including but not limited to laws requiring payment of prevailing wages for any construction services or actions.

Landowner acknowledges that City will enter into contracts to design and construct DeBenedetti Park. As consideration for City's agreement to authorize satisfaction of this obligation, Landowner agrees to the following payment schedule:

1. Not later than three (3) years after the approval of this Agreement by the City Council, Landowner shall pay the City two million U.S. Dollars (\$2,000,000). In the event, that any party other than the City or Landowner file a litigation challenging the approval by the City of the Project Approvals, the payment specified herein shall be due not later than four (4) years after the approval of this Agreement by the City Council. Landowner's failure to pay the amount required herein shall be considered a material default of this Agreement.
2. Not later than five years after the approval of this Agreement by the City Council, Landowner shall pay the City an additional three million U.S. Dollars (\$3,000,000). Landowner's failure to pay the amount required herein shall be considered a material default of this Agreement.
3. No later than six years after the approval of this Agreement by the City Council, Landowner shall either (1) pay the City an additional three million U.S. Dollars (\$3,000,000) or (2) provide a letter of credit payable to the City or other form of security acceptable to the City in an amount equal to \$3,000,000. The letter of credit or other form of security shall be subject to review and approval as to form by the City Attorney. Landowner further acknowledges that the City may choose to obtain financing for the design and construction costs of DeBenedetti Park and Landowner agrees that the letter of credit or other form of security provided for herein shall be required to be in a form that is necessary to assist the City in obtaining financing at competitive market interest rates. City agrees that Landowner may substitute a letter of credit, in a form reasonably acceptable to the City Attorney, for a lesser amount upon satisfaction of a portion of the total obligation set forth herein. Upon delivery of such replacement letter of credit and its approval as to form by the City Attorney, the City will release and convey to Landowner the prior letter of credit. City further agrees that the other form of security may be in the form of a promissory note and deed of trust secured by a portion of the Property which has a value equal to a minimum of \$3,000,000.. The outstanding principal balance set forth in the Promissory Note shall not accrue interest. Notwithstanding anything to the contrary set forth herein, the entire outstanding payment obligation required pursuant to this section shall be payable in full upon the sale or other Transfer of the Property

encumbered by the Deed of Trust ("Restricted Property") or (ii) the occurrence of an Event of Default as specified in the Promissory Note or Deed of Trust.

The Deed of Trust shall be recorded against the Restricted Property subordinate only to such liens as City may approve in writing. The City will not unreasonably withhold consent to subordinate the Promissory Note and Deed of Trust to construction financing for the Project provided that the principal amount of such construction financing does not exceed seventy-five percent (75%) of the appraised fair market value of the Project and the Restricted Property, and provided further that the senior lender agrees to provide reasonably adequate protections to City, including reasonable notice and cure rights in the event of default, and an agreement that if, prior to foreclosure of the senior loan, the City takes title to the Restricted Property and cures the default, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City.

The parties further agree that if the final \$3,000,000 payment required herein has not been paid by or before the end of the eighth year after approval of this Agreement by the City Council, the City may require payment pursuant to the terms of the letter of credit or other form of security provided and may foreclose on the deed of trust and promissory note.

6.5 Annexation

The ability to proceed with development of the Property pursuant to the Project Approvals shall be contingent upon the annexation of the Property into the City. Pending such annexation, Landowner may, at its own risk, process tentative parcel maps and tentative subdivision maps and improvement or construction plans and City may conditionally approve such tentative maps and/or improvement plans in accordance with the Entitlements, provided City shall not approve any final parcel map or final subdivision map for recordation nor approve the issuance of any grading permit for grading any portion of the Property or building permit for any structure within the Property prior to the annexation of the Property to the City.

City shall use its best efforts and due diligence to initiate such annexation process, obtain the necessary approvals and consummate the annexation of the Property into the City, including entering into any annexation agreement that may be required in relation thereto, subject to the City's review and approval of the terms thereof. Landowner shall be responsible for the costs reasonably and directly incurred by the City to initiate, process and consummate such annexation, the payment of which shall be due in advance, based on the City's estimate of such cost, and thereafter as and when the City provides an invoice(s) for additional costs incurred by City therefore in excess of such estimate.

7. Applicable Rules, Regulations, Fees and Official Policies.

7.1. Rules Regarding Permitted Uses Except as provided in this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use, the rate timing and sequencing of development, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land shall be those in force on the Effective Date of this Agreement. Except as provided in Section 8.2, this Agreement does not vest Landowner's rights to pay development impact fees, exactions and dedications, processing fees, inspection fees, plan checking fees or charges.

7.2. Rules Regarding Design and Construction. The Project has been designed as a Planned Development pursuant to Chapter 17.33 of the Lodi Municipal Code. Design, improvements and construction standards shall be as set forth in Project Approvals including the Development Plan, and shall be vested for the term of this Agreement. Unless otherwise provided within the Development Plan or expressly provided in this Agreement, all other ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project and to public improvements to be constructed by the Landowner shall be those in force and effect at the time the applicable permit approval is granted.

7.3. Changes in State or Federal Law. This Agreement shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations. These changes may include any increase in an existing fee or imposition of a new fee that are necessary for the City or Landowner to comply with changes in State or Federal laws or regulations, including but not limited to sewer, water and stormwater laws or regulations.

7.4. Uniform Codes Applicable. Unless otherwise expressly provided in this Agreement, the Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for infrastructure improvements, such improvements will be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the start of construction of such infrastructure.

8. Existing Fees, Newly Enacted Fees, Dedications, Assessments and Taxes.

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

8.2. Existing Fees, Exactions and Dedications Landowner shall be obligated to provide all dedications and exactions and pay all types of fees as required for the types of development authorized by the Project Approvals as of the Effective Date of this Agreement. With regards any fees applicable to residential development, the Parties agree that the fees shall be payable at the earliest time authorized pursuant to the Government Code Section 66007 as it exists as of the Effective Date of this Agreement. The specific categories of fees payable are listed below. The dedication and exaction obligations and fee amounts payable shall be those obligations and fee amounts applicable (indexed as set forth hereinbelow) as of the date that the Landowner's application for the applicable vesting tentative map is deemed complete. For any development for which the Landowner has not submitted a vesting tentative map, the dedication and exaction obligations and fee amounts payable shall be those obligations and fee amounts applicable (indexed as set forth hereinbelow) as of the date the final discretionary approval for that development is granted by the City.

Standard City Development Impact Fees Payable by the Landowner include:

1. Development Impact Fees (Lodi Municipal Code Chapter 15.64)
2. San Joaquin County Regional Transportation Impact Fee (Lodi Municipal Code Chapter 15.65)
3. County Facilities Fee (Lodi Municipal Code Chapter 15.66)
4. San Joaquin County Multi-Species Habitat Conservation and Open Space Development Fee (Lodi Municipal Code Chapter 15.68)

Any existing fees may be increased during the term of this Agreement provided that such increases are limited to annual indexing (i.e. per the Engineering News Record Index, or the CPI, or other index utilized by the City) and as provided in current fee ordinances. The initial adjustment shall be effective as of four years after the Effective Date of the Agreement and shall be calculated based on the difference in the applicable index from the numerical rate at the end of the month following the third year after the Effective Date and the numerical rate at the end of the month following the fourth year after the Effective Date. All subsequent increases shall be based on the annual change in the applicable index. Notwithstanding the preceding sentence, index adjustments to the fees set forth in subsections 2, 3 and 4 of this section shall be effective annually as set forth in the relevant ordinances and resolutions. Moreover, Landowner will be subject to the indexing called for above even if Landowner has filed a complete application for a Vesting Tentative Map and will not vest against such indexing until payment of the fees as called for in this Agreement.

8.3. New Development Impact Fees, Exactions and Dedications.

Landowner agrees to pay the development fees identified in Section 6.1, including specifically subsections 6.1.1 through 6.1.4, of this Agreement. With regards any fees applicable to residential development, the Parties agree that the fees shall be payable at the earliest time authorized pursuant to the Government Code Section 66007 as it exists as of the Effective Date of this Agreement.

Except as expressly provided herein, Landowner shall not be obligated to pay or provide any development impact fees, connection or mitigation fees, or exactions adopted by City after the Effective Date of this Agreement. Notwithstanding this limitation, Landowner may at its sole discretion elect to pay or provide any fee or exaction adopted after the Effective Date of this Agreement.

8.4. Fee Reductions To the extent that any fees payable pursuant to the requirements of Sections 8.1 are reduced after the operative date for determining the fee has occurred, the Landowner shall pay the reduced fee amount.

9. Community Facilities District. Formation of a Community Facilities District for Public Improvements and Services.

9.1. Inclusion in a Community Facilities District. Landowner agrees to cooperate in the formation of a Community Facilities District pursuant to Government Code Section 53311 et seq. to be formed by the City. The boundaries of the area of Community Facilities District shall be contiguous with the boundaries of the Property excluding the portion of land zoned for commercial or office development. Landowner agrees not to protest said district formation and agrees to vote in favor of levying a special tax on the Property in an amount not to exceed \$600 per year per single family attached or detached residential dwelling units and \$175 per year for each attached multi-family rental unit as adjusted herein. The special tax shall be initiated for all residential dwelling units for which a building permit is issued, and shall commence to be levied beginning the subsequent fiscal year after the building permit is issued. Landowner acknowledges that the 2007-2008 special tax rate for the units in the Project will not exceed \$600 per single-family attached or detached dwelling unit and \$175 per year for each attached multi-family rental unit and that the special tax shall increase each year by 2% in perpetuity. A vote by Landowner against the levying of the special tax or a vote to repeal or amend the special tax shall constitute an event of default under this Agreement.

9.2. Use of Community Facilities District Revenues Landowner and City agree that the improvements and services that may be provided with the special tax levied pursuant to Section 9.1 may be used for the following improvements and services:

- a. Police protection and criminal justice services;

- b. Fire protection, suppression, paramedic and ambulance services;
- c. Recreation and library program services;
- d. Operation and maintenance of museums and cultural facilities;
- e. Maintenance of park, parkways and open space areas dedicated to the City;
- f. Flood and storm protection services;
- g. Improvement, rehabilitation or maintenance of any real or personal property that has been contaminated by hazardous substances;
- h. Purchase, construction, expansion, improvement, or rehabilitation of any real or tangible property with useful life of more than five years; and,
- i. Design, engineering, acquisition or construction of public facilities with a useful life of more than five years including:
 1. Local park, recreation, parkway and open-space facilities,
 2. Libraries,
 3. Childcare facilities,
 4. Water transmission and distribution facilities, natural gas, telephone, energy and cable television lines, and
 5. Government facilities.

Landowner and City agree that Property does not presently receive any of these services from the City and that all of these services are new services.

9.3. Community Facilities District for Residential Property - Financing.

In addition to the funding provided as part of the Community Facilities District identified in Section 9.1, City acknowledges that Landowner may desire to finance the acquisition or construction of a portion of the improvements described in Section 8.2 through the Community Facilities District. The costs associated with the items identified in Section 8.2 shall be in addition to the annual cost imposed to comply with Section 9.1. The following provisions shall apply to any to the extent that the Landowner desires to fund any of the improvements set forth in Section 8.2 through the Community Facilities District:

9.3.1 Issuance of Bonds. City and Landowner agree that, with the consent of Landowner, and to the extent permitted by law, City and Landowner shall use their best efforts to cause bonds to be issued in amounts sufficient to achieve the purposes of this Section.

9.3.2 Payment Prior to Issuance of Bonds. Nothing in this Agreement shall be construed to preclude the payment by an owner of any of the parcels to be included within the CFD of a cash amount equivalent to its proportionate share

of costs for the improvements identified in Section 8.2, or any portion thereof, prior to the issuance of bonds.

9.3.3 **Private Financing.** Nothing in this Agreement shall be construed to limit Landowner's option to install the improvements through the use of private financing.

9.3.4 **Acquisition and Payment.** City agrees that it shall use its best efforts to allow and facilitate monthly acquisition of completed improvements or completed portions thereof, and monthly payment of appropriate amounts for such improvements to the person or entity constructing improvements or portions thereof, provided City shall only be obligated to use CFD bond or tax proceeds for such acquisitions.

10. **Processing of Subsequent Development Applications and Building Permits**
Subject to Landowner's compliance with the City's application requirements including, specifically, submission of required information and payment of appropriate fees, and assuming Landowner is not in default under the terms and conditions of this Agreement, the City shall process Landowner's subsequent development applications and building permit requests in an expeditious manner. In addition, City agrees that upon payment of any required City fees or costs, City will designate or retain, as necessary, appropriate personnel and consultants to process Landowner's development applications and building permit requests City approvals in an expeditious manner.

11. **Reserved**

11. **Amendment or Cancellation.**

11.1. **Modification Because of Conflict with State or Federal Laws.** In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or State law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with the Municipal Code and this Agreement.

11.2. **Amendment by Mutual Consent.** This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law and the Municipal Code.

11.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Section 12.2, any amendments to this Agreement which do not relate to (a) the term of the Agreement as provided in Section 5.2; (b) the permitted uses of the Property as provided in Sections 6.2 and 7.1; (c) provisions for reservation or dedication of land; (d) the location and maintenance of on-site and off-site improvements; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings or (g) monetary contributions by Landowner as provided in this Agreement shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto.

11.4. Amendment of Project Approvals. Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; (e) monetary contributions by the Landowner; (f) the location and maintenance of on-site and off-site improvements; or (g) any other issue or subject not identified as an "insubstantial amendment" in Section 12.3 of this Agreement, shall require an amendment of this Agreement. Such amendment shall be limited to those provisions of this Agreement, which are implicated by the amendment of the Project Approval. Any other amendment of the Project Approval(s) shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

11.5. Cancellation by Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of the Municipal Code. Any fees paid pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12. Term of Project Approvals. Pursuant to California Government Code Section 66452.6(a), the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

13. Annual Review.

13.1. Review Date. The annual review date for this Agreement shall occur either within the same month each year as the month in which the Agreement is executed or the month immediately thereafter.

13.2. Initiation of Review. The City's Planning Director shall initiate the annual review by giving to Landowner written notice that the City intends to undertake such review. Within thirty (30) days of City's notice, Landowner shall provide evidence to the Planning Director to demonstrate good faith compliance with the Development Agreement. The burden of proof, by substantial evidence of compliance, is upon the Landowner. The City's

failure to timely initiate the annual review is not deemed to be a waiver of the right to do so at a later date; accordingly, Landowner is not deemed to be in compliance with the Agreement by virtue of such failure to timely initiate review.

13.3. Staff Reports. City shall deposit in the mail to Landowner a copy of all staff reports, and related Exhibits, concerning contract performance at least three (3) days prior to any annual review.

13.4. Costs. Costs reasonably incurred by the City in connection with the annual review shall be paid by Landowner in accordance with the City's schedule of fees and billing rates in effect at the time of review.

13.5. Non-compliance with Agreement; Hearing. If the Planning Director determines, on the basis of substantial evidence, that Landowner has not complied in good faith with the terms and conditions of the Agreement during the period under review, the City Council, upon receipt of any report or recommendation from the Planning Commission, may initiate proceedings to modify or terminate the Agreement, at which time an administrative hearing shall be conducted, in accordance with the procedures of State law. As part of that final determination, the City Council may impose conditions that it considers necessary and appropriate to protect the interest of the City.

13.6. Appeal of Determination. The decision of the City Council as to Landowner's compliance shall be final, and any Court action or proceeding to attack, review, set aside, void or annul any decision of the determination by the Council shall be commenced within thirty (30) days of the final decision by the City Council.

14. Default. Subject to any applicable extension of time, failure by any party to substantially perform any term or provision of this Agreement required to be performed by such party shall constitute a material event of default ("Event of Default"). For purposes of this Agreement, a party claiming another party is in default shall be referred to as the "Complaining Party," and the party alleged to be in default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of such Event of Default unless such Complaining Party first gives notice to the Party in Default as provided in Section 15.1.1, and the Party in Default fails to cure such Event of Default within the applicable cure period.

14.1. Procedure Regarding Defaults.

14.1.1. Notice. The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

14.1.2. Cure. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

14.1.3. Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14.1.4. Notice of Default. If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot, practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if: (a) the cure shall be commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within ninety (90) days after the first notice of default is given.

14.1.5. Legal Proceedings. Subject to the foregoing, if the Party in Default fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings pursuant to this Agreement or, in the event of a material default, terminate this Agreement. Upon the occurrence of an Event of Default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Agreement, or in the City's regulations if any governing development agreements, expressly including the remedy of specific performance of this Agreement.

14.1.6. Effect of Termination. If this Agreement is terminated following any Event of Default of Landowner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement

shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

15. Estoppel Certificate. Either Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties; (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (c) to the knowledge of the certifying Party 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 thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. City Manager of City shall be authorized to execute any certificate requested by Landowner. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

16. Mortgagee Protection; Certain Rights of Cure.

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

16.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 17.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon, authorized by the Project Approvals or by this Agreement, unless Mortgagee agrees to and does construct or complete the construction of improvements, or guarantees such construction of improvements, or pays, performs or provides any fee, dedication, improvements or other exaction or imposition as required by the Project Approvals.

16.3. Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Landowner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by City that Landowner has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in the City's notice. City, through its City Manager, may extend the cure period provided in Section 15.1.2 for not more than an additional sixty (60) days upon request of Landowner or a Mortgagee.

17. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

18. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

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

20. Attorneys' Fees and Costs in Legal Actions By Third Parties to the Agreement and Continued Permit Processing. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action. Landowner shall reimburse City on an equal basis for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding and shall pay any attorneys fees and costs that may be awarded to the third party or parties. The City agrees that in the event an action at law or in equity to challenge the validity of the Project Approvals is filed by a third party other than by a state or federal agency, the City will continue to process and approve permit applications that are consistent with and comply with the Project Approvals unless a court enjoins further processing of permit applications and issuance of permits.

21. **Transfers and Assignments.** From and after recordation of this Agreement against the Property, Landowner shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner and assumption by the assignee of such assignment in the form attached hereto as Exhibit G, and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner," with all rights and obligations related thereto, with respect to such conveyed property. Prior to recordation of this Agreement, any proposed assignment of this Agreement by Landowner shall be subject to the prior written consent of the City Manager on behalf of the City and the form of such assignment shall be subject to the approval of the City Attorney, neither of which shall be unreasonably withheld.

22. **Agreement Runs with the Land.** Except as otherwise provided for in Section 15 of this Agreement, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property; (a) is for the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

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

24. **Indemnification.** Landowner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for (1) any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Landowner, or any actions or inactions of Landowner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Property and the Project, provided that Landowner shall have no indemnification obligation with respect to the gross negligence or willful misconduct of City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement

agreement or maintenance bond) and (2) any additional mitigation required, including but not limited to payment of any mitigation fees that may be imposed, as a result of a lawsuit filed by a third party challenging or seeking to invalidate the Project Approvals.

25. Insurance.

25.1. Public Liability and Property Damage Insurance. At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than two million (\$2,000,000) dollars and a deductible of not more than fifty thousand (\$50,000) dollars per claim. The policy so maintained by Landowner shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

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

25.3. Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Landowner shall furnish City satisfactory evidence of the insurance required in Sections 26.1 and 26.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Landowner performing work on the Project.

26. Excuse for Nonperformance. Landowner and City shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, condemnation, requisition, laws, orders of governmental, civil, military or naval authority, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Party claiming the extension of time to perform. The Party claiming such extension shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

27. **Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Landowner and, the City and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

28. **Notices.** All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

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

CITY OF LODI
City Manager
P.O. Box 3006
Lodi, CA 95241-1910

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

FRONTIER COMMUNITY BUILDERS, INC.

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

29. **Form of Agreement; Recordation; Exhibits.** Except when this Agreement is automatically terminated due to the expiration of the Term of the Agreement or the provisions of Section 5.3 (Automatic Termination Upon Completion and Sale of Residential Lot), the City shall cause this Agreement, any amendment hereto and any other termination of any parts or provisions hereof, to be recorded, at Landowner's expense, with the county Recorder within ten (10) days of the effective date thereof. Any amendment or termination of this Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement consists of ___ pages and ___ Exhibits, which constitute the entire understanding and agreement of the parties.

30. **Further Assurances.** The Parties agree to execute such additional instruments and to undertake such actions as may be necessary to effectuate the intent of this Agreement.

31. **City Cooperation.** The City agrees to cooperate with Landowner in securing all permits which may be required by City. In the event State or Federal laws or regulations enacted after the Effective Date, or action of any governmental jurisdiction, prevent delay or

preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended, or suspended as may be necessary to comply with such State and Federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

IN WITNESS WHEREOF, the City of Lodi, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attested to by its City Clerk under the authority of Ordinance No. _____, adopted by the City Council of the City of Lodi on the _____ day of _____, 2006, and Landowner has caused this Agreement to be executed.

"CITY"

CITY OF LODI,
a municipal corporation

By: _____
Name: Blair King
Its: City Manager

"LANDOWNER"

FRONTIER COMMUNITY BUILDERS, INC.

By: _____
Name:
Its:

ATTEST:

City Clerk

APPROVED AS TO FORM:

D. Stephen Schwabauer
City Attorney

EXHIBIT LIST

Exhibit A-1:	Legal Description of the Property
Exhibit A-2:	Diagram of the Property
Exhibit B:	General Plan Land Use Map
Exhibit B-1:	Zoning Map for Project Site
Exhibit C-1:	Large Lot Tentative Subdivision Map
Exhibit C-2:	Reserved
Exhibit D:	Development Plan and Infrastructure Map for the Property
Exhibit E:	Growth Management Allocations
Exhibit F:	Annexation Approvals
Exhibit G:	Form of Assignment
Exhibit H:	Schedule of Improvements
Exhibit I:	Park Improvements
Exhibit J:	Required Park Amenities

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of San Joaquin, City of Lodi, and is described as follows:

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EXHIBIT A-2
DIAGRAM OF THE PROPERTY

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EXHIBIT C-1

Large Lot Tentative Subdivision Map

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EXHIBIT C-2

Reserved

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EXHIBIT D
DEVELOPMENT PLAN AND INFRASTRUCTURE MAP FOR THE PROPERTY

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EXHIBIT E

**SOUTHWEST GATEWAY PROJECT
GROWTH MANAGEMENT ALLOCATION TABLE**

Applicable Date	Allocation
Effective Date of Development Agreement	300 Low Density units (Reserve) 300 High Density units (Reserve)
Within the Calendar Year One Year after Effective Date	59 Low Density units 75 Medium Density units
Within the Calendar Year Two Years after Effective Date	59 Low Density units 29 Medium Density units
Within the Calendar Year Three Years after Effective Date	59 Low Density units 28 Medium Density units
Within the Calendar Year Four Years after Effective Date	59 Low Density units 28 Medium Density units
Within the Calendar Year Five Years after Effective Date	59 Low Density units
Within the Calendar Year Six Years after Effective Date	59 Low Density units
Within the Calendar Year Seven Years after Effective Date	58 Low Density units
Within the Calendar Year Eight Years after Effective Date	58 Low Density units

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EXHIBIT F
ANNEXATION APPROVALS

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EXHIBIT G

FORM OF ASSIGNMENT

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Attn: City Clerk

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

**ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO FRONTIER COMMUNITY BUILDERS WESTSIDE
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this _____ day of _____, 200_ ____, by and between Frontier Community Builders, a _____ corporation (hereinafter "Developer"), and _____, a _____ (hereinafter "Assignee").

RECITALS

1. On _____, 2006, the City of Lodi and Developer entered into that certain agreement entitled "Development Agreement By and Between The City of Lodi and Frontier Community Builders, Inc. related to the development known as Frontier Community Builders Southwest Gateway Project (hereinafter the "Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the

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Subject Property in the Official Records of San Joaquin County on _____,
2006, as Instrument No. ____-_____.

2. Developer intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit A-1 and Exhibit A-2, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

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

ASSIGNMENT AND ASSUMPTION

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

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

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

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

4. The Notice Address described in Section 28 of the Development Agreement for the Developer with respect to the Assigned Parcel shall be:

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

DEVELOPER:

ASSIGNEE:

a _____

a _____

By: _____
Print Name:
Title: Division President

By: _____
Print Name: _____
Title: _____

EXHIBIT H
SCHEDULE OF IMPROVEMENTS

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EXHIBIT I

PARK IMPROVEMENTS

Westside/Southwest Gateway Development Agreement
Basin/Park Area Summary

Westside Annexation

Location	Basin (1), acres	Park		Total, acres
		Net (2), acres	Gross, acres	
A	2.9	1.6	1.6	4.5
B		2.1	2.1	2.1
C	8.2	5.4	6.1	14.3

Southwest Gateway Annexation

Location	Basin (1), acres	Park		Total, acres	
		Net (2), acres	Gross, acres		
D	5.9	1.5	1.5	7.4	(3)
E	6.7	2.4	2.4	9.1	(4)
F	4.8	1.5	1.5	6.3	
G		2.2	2.2	2.2	
H		2	2	2	
Open Space on Century Blvd.		0	0	0	(5)

- (1) Westside Annexation area basin calculations not approved.
The basin area numbers are subject to change.
- (2) Net area measured from street right of way.
Area requirements are exclusive of bike and ped routes.
- (3) Park to be located at the southwest end of designated area.
- (4) Park to be located at the south end of designated area.
- (5) Two slivers of open space are shown on Century Blvd.
Neither area provides sufficient space for park facilities.

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AGREEMENT
TO AMEND DRAFT DEVELOPMENT AGREEMENTS
AND REFRAIN FROM CHALLENGING LAND USE PROJECTS

THIS AGREEMENT is made this 15th day of November 2006 by and between the City of Lodi (City), a California General Law city, represented by the City Manager and City Attorney with the limited authority as described in Section 1.A; Citizens for Open Government, an unincorporated association (Citizens); and Frontiers Community Builders (Developer) a dba of Frontier Land Companies, a California Corporation. The Parties agree as follows:

1. Recitals.

A. The parties to the Agreement.

The City of Lodi ("City") is a General Law city governed by a five-member city council. For all purposes herein and during all times during the negotiation of this Agreement the City Manager and City Attorney have represented the City. However in this Agreement and at all times during the negotiation of the Agreement the City Manager and/or City Attorney have lacked the capacity or legal authority to bind the City of Lodi and/or the City Council. The parties understand that throughout the negotiation and in executing this Agreement the City Manager and City Attorney can only recommend to the City Council that it take certain actions. All authority and discretion remains with the City Council over whether the City Council will approve or disapprove of this Agreement. The City Council is scheduled to hear the Project at a duly noticed public hearing scheduled for November 15, 2006 or thereafter.

Citizens is an unincorporated association that has commented on the development proposed by Developer. The "Project" or "Projects" referred to herein is as defined in the Development Agreements for the "FCB Westside Project" and the "FCB Southwest Gateway Project" with all Project Approvals described therein. Citizens desire to have certain mitigation measures and clarifications added to the Development Agreements negotiated between City and Developer that in the opinion of Citizens will further the interest of the City and the interest of the public. If these amendments are added to the draft Development Agreements in the form of this Agreement, which shall be an exhibit to the Development Agreements, then Citizens will support the Project, will not make negative comments about the Project's EIR or the Project at any City Council or other public hearings, and will not subsequently challenge the certification of the EIR or the Project Approvals, directly or indirectly.

Ann Cerney shall be the sole spokesperson for Citizens and make these statements at the City Council hearing.

Developer, a private entity, is the applicant for the Development Agreements and Project Approvals described therein. The term "Developer" includes all related entities of Developer and their successors in interest.

B. The parties agree that the Development Agreements contain commitments for major infrastructure and amenities that will result in public benefits for the City.

C. Although Citizens are not fully satisfied with all aspects of the Project and EIR, it has balanced the benefits of the Project, including the changes to the draft Development Agreements as set forth in this Agreement, against the adverse effects of the Projects and has concluded that the Projects, separately or combined, are substantially more beneficial to the City than detrimental.

2. Modification of Development Agreements.

The parties agree that the draft Development Agreements, scheduled to be considered by the City Council at the public hearing on November 15, 2006 or thereafter are to be hereby amended by and through this Agreement, which shall be attached to the Development Agreements as Exhibit "K".

A. Mitigation For Agricultural Conversion Impacts of Project

1) Developer shall obtain permanent easements to be held by the City or other qualified entity (e.g., Central Valley Farmland Trust) limiting the use of San Joaquin County real property to agricultural uses and related activities as are permitted from time to time under the agricultural zoning laws of the County ("Agricultural Conservation Easements"). In providing mitigation for impacts to agricultural land, Developer shall adhere to the terms of the final adopted San Joaquin County Agricultural Mitigation Ordinance, now under consideration by the San Joaquin County Board of Supervisors. (See November 14, 2006 draft Ordinance.)

2) At a minimum, and notwithstanding the terms of the final, adopted County Ordinance, the Agricultural Conservation Easements shall be recorded on a 1:1 acre (conserved:developed) ratio against an aggregate total of up to 240 acres of prime agricultural land under the control of the Developer (i.e., the 240 acres, more or less, contained within FCB Southwest Gateway Project) involving one or more parcels of land - though not necessarily contiguous - with each mitigation acre located within San Joaquin County and zoned for agricultural uses ("Protected

Properties"). If mitigation lands are located in the Primary Zone of the San Joaquin Delta that lies within the County, the mitigation ratio shall be on a 2:1 acre (conserved:developed) basis. However, if prior to the Developer's compliance with this agricultural mitigation requirement, the San Joaquin Board of Supervisors excludes land within certain areas of the County (e.g., the Primary Zone of the Delta) from being used for agricultural mitigation purposes, the parties agree that those lands would be excluded from being used for mitigation purposes under this Agreement.

3) At a minimum, and notwithstanding the terms of the final, adopted County Ordinance, the Agricultural Conservation Easements may only apply to Protected Properties that are not encumbered by: (a) any other perpetual open space conservation easement or deed restriction or (b) any other perpetual agriculture mitigation easement or deed restriction. The cost of obtaining the Agricultural Conservation Easements shall rest with the Developer. The Protected Properties must be subject to permanent restrictions on use to ensure the availability of agricultural production capacity by limiting non-agricultural development that is inconsistent with agriculture uses and related activities. In accordance with the County's November 14, 2006, draft Mitigation Ordinance section 9-1080.3, subdivision (e)(1), the Developer shall pay an administrative fee to cover the costs of administering, monitoring and enforcing the farmland conservation easement in an amount to be determined by the qualified entity that will hold the conservation easement. If the City holds the Agricultural Conservation Easements, the City will monitor the Protected Properties subject to the easements biannually through its Planning Commission to ensure compliance with the requirements of this provision. If the City is selected to hold the Agricultural Conservation Easements, Developer will pay City at least \$10,000 to compensate the City for monitoring cost/contingencies in connection with the Agricultural Conservation Easements.

4) The Agricultural Conservation Easements shall be recorded in the applicable ratio(s) against a minimum of each acre to be developed (or more) within any phased Final Subdivision Map of each Project prior to the date the first residential building permit is issued to Developer for any such phase.

5) City shall notify Citizens and the City of which site(s) are selected to meet the requirements of this provision 30 days prior to the recordation of any Agricultural Conservation Easements pursuant to this Agreement. If both Citizens and the City agree, the mitigation ratio applicable to mitigation lands outside of the Delta Primary Zone may be reduced if the Developer proposes to obtain conservation easements that, in the judgment of both Citizens and the City, have a greater mitigation value than lands that could otherwise be used as mitigation for agricultural impacts of the Projects under this provision.

B. Home Building, Energy and Conservation Features within the Project

1) Developer shall become a California Green Builder prior to the construction of the homes within the Projects. The California Green Builder program requires that all homes are at least 15% more energy efficient than currently mandated by Title 24 in California and meet guidelines for energy efficiency set by the US Environmental Protection Agency. The homes within the Projects may contain a variety of energy efficient features and alternative energy features such as high efficient insulation, high performance windows, high efficient heating and cooling equipment, cool roofing, radiant barriers, awnings, overhangs, daylighting and qualified lighting.

2) Developer's status as a California Green Builder requires Developer to implement water conservation features that save 20,000 gallons per home per year. Developer shall provide front yard landscaping using weather based irrigation controllers and drip irrigation and may utilize other water conservation features such as high efficiency fixtures and efficient plumbing technologies, products and materials. Developer also agrees to use weather based irrigation controllers in front yards, parks and common areas.

3) Developer shall make available solar power features and electrical car charging stations or outlets that homeowners within the Projects may elect to purchase as part of that homeowner's option package.

4) Developer agrees that at least 50% of the construction site waste shall be recycled or otherwise diverted from landfill disposal.

5) Developer shall use only EPA approved natural gas fireplaces, fireplace inserts, woodstoves or pellet stoves when such fireplaces are installed. Developer will comply with all federal, state and local laws and regulations pertaining to the installation of wood burning fireplaces.

6) Developer will encourage landscape maintenance companies to use electric-powered equipment.

7) Shade trees will be planted where appropriate throughout the Project and located to shade paved areas and to protect dwellings from energy consuming environmental conditions.

8) Developer agrees to comply with the California Green Builder program that ultimately applies to high density residential units. Currently a pilot program exists that is substantially similar to the low density program, with the exception of the 20,000 gallon per home per year in water conservation.

C. New Urbanism neighborhood design.

Developer believes that the Project's current land use plans promote the principles of New Urbanism that include neighborhoods that are walkable, interconnected, that include pedestrian friendly streetscapes; bicycle friendly design elements; well integrated, highly visible, and publicly accessible open spaces. Developer is also committed to designing the specific components of the Projects to include housing and structural forms that are visually interesting, well modulated, constructed of high quality materials, proportionate to their surroundings, and a range of housing types, sizes and affordability.

D. Pedestrian Transit and Bicycle Infrastructure: Developer agrees to implement the following measures:

1) Provide pedestrian enhancing infrastructure that includes: sidewalks and pedestrian paths, direct pedestrian connections, street trees to shade sidewalks, pedestrian safety designs/infrastructure, street lighting and/or pedestrian signalization and signage, and

2) Provide bicycle-enhancing infrastructure that includes: bikeways/paths connecting to a bikeway system as well as secure bike parking.

E. Lodi Eastside: The Projects' requirement for investment in Lodi's eastside community as set forth in the FCB Westside Development Agreement is hereby amended to require that any units which are selected by the Developer to be rehabilitated or replaced and which are currently at affordable rents for persons or families of low income shall remain affordable for persons of low income.

F. Water Supply: Additional entitlements for urban development within the Project area (i.e., subdivision maps, parcel maps, building permits, etc.) shall not be granted for any dwellings within the Project area after total water use exceeds the projected safe groundwater yield of the Project area until additional water sources (e.g., W.I.D. groundwater recharge or water treatment) are available. According to the Westside-Southwest Gateway Project Water Supply Assessment (July 2006) ("WSA"), a total 347 acre feet of groundwater per year may be supplied by groundwater from the Project area (approximately 347 acre feet per year for Southwest Gateway) and the total projected water demand is 887 acre feet per year. The purpose of this provision is to ensure that water use by the Project does not exceed the projected increase in safe groundwater yield attributable to annexation of the Project area into the City until additional water sources (e.g., W.I.D. groundwater recharge or water treatment) are available. (See WSA, Figure 5-4.)

G. Agricultural Conflicts: Developer shall strive to phase development in a manner that will reduce land use conflicts with lands currently in agricultural use to the west of the Projects. To the extent feasible, Developer will generally develop the Projects in an east to west direction.

H. Challenges:

1) No Challenge by Citizens/Cerney: This Agreement will not become effective in the event that Citizens and/or Ann Cerney: (1) file any legal action challenging the City's certification of the EIR; (2) file any legal action challenging the City's approval of the Project's land use approvals, including the amendments to the West Side Facilities Master Plan; (3) file any legal action challenging the San Joaquin Local Agency Formation Commission's compliance with CEQA; (4) file any legal action challenging the San Joaquin Local Agency Formation Commission's approval of the annexation of the territory to the City of Lodi; (5) qualify a referendum petition to require an election concerning one or more of the Project's legislative approvals, or (6) violate the terms or the spirit of this Agreement in any other manner.

2) Challenge by Third Party:

a. The amendments to the Development Agreements called for in this Agreement will become partially ineffective as set forth below in the event that any other party: (1) files any legal action challenging the City's certification of the EIR; (2) files any legal action challenging the City's approval of the Project's land use approvals; (3) files any legal action challenging the San Joaquin Local Agency Formation Commission's compliance with CEQA; (4) files a legal action challenging the San Joaquin Local Agency Formation Commission's approval of the annexation of the territory to the City of Lodi; or, (5) qualifies a referendum petition to require an election concerning one or more of the Project's legislative approvals.

b. If an event triggers a partial invalidity as called for above, the ratio of number of acres to be mitigated per Section 2.A. and the fee reimbursement due Citizens per Section 3.C. will be reduced by 50%. Moreover, Citizens' statute of limitations to file an action challenging the City's certification of the EIR and/or land use approvals will be tolled for thirty (30) days from the limitations period established by CEQA. City and Developer grant a second conditional and limited tolling of the statute of limitations to file an action challenging City's certification of the EIR. This conditional and limited tolling will only arise upon a legal challenge by a third party to LAFCO's determination on the EIR and/or

annexation and Citizens' time to file an action shall extend for only thirty (30) days after the third party files its action.

c. In the event that dismissals with prejudice are filed with any applicable Court before answers are filed in the third party litigation then Citizens will dismiss any subsequent actions and the terms of this Agreement shall be fully restored.

3. Miscellaneous.

A. Ann Cerney, as the sole representative of Citizens, shall appear at all appropriate City Council hearings and express support for the approval of this Agreement, and nonopposition to the City Council's approval of the Projects and certification of the EIR.

B. Citizens represents and warrants that Ann Cerney has authority to execute this Agreement on behalf of Citizens and is authorized to speak on behalf of the organization at all Lodi City Council and other public meetings.

C. Developer conditionally agrees to pay \$40,000 to Citizens to reimburse Citizens for attorney fees expended in the negotiation and executing of this Agreement and to reimburse members of the Citizens for extraordinary time and effort expended in this process. The distribution of the money shall be at the sole discretion of Citizens. The payment of these fees shall be due and payable thirty (30) days after the last day to take any of the actions described in Section 2.F.1).

D. If the public benefits included in this Agreement are not adopted by the City Council, Citizens' support for approval of this Agreement and nonopposition to the City Council's approval of the Projects and certification of the EIR will be withdrawn and its previously stated objections will be renewed. City and Developer agree not to assert an exhaustion of administrative remedies defense as to those issues specifically raised and exhausted at hearings regarding the Projects if litigation ensues and this agreement becomes null and void, or partially invalid, under this Agreement.

4. Independent Effect; Effective Date of Agreement.

Only Section 3.A and 3.B of the Agreement shall be immediately effective and binding upon Citizens and Developer. The remainder of this Agreement shall only become effective upon the City Council approval of the amendments to the draft Development Agreements that are described in Section 2. Notwithstanding any other provision herein to the contrary, because of the nature of the mitigation measures

set forth herein (e.g., ratio of 1:1 acres for agriculture mitigation), the parties agree that this Agreement shall be effective as stand-alone resolutions of their disputes as to each Project and/or both Projects, regardless of whether the Projects are considered and approved by the City Council separately, concurrently, or otherwise.

5. Agreement Not to Sue or Circulate a Referendum Petition.

If the amendments to the Development Agreements called for in this Agreement are adopted by the City Council, Citizens agrees that neither it nor its individual members shall sue the City or the San Joaquin Local Agency Formation Commission over the sufficiency of the EIR or the land use/annexation decisions by these public agencies. Further neither Citizens nor its members shall encourage or give assistance to any others to challenge the Developer's project either administratively or judicially. Moreover, neither Citizens, nor its members, will encourage, indirectly assist or actually circulate a petition to place a referendum on the ballot to force an election about one or more the Projects' legislative approvals.

6. Notices

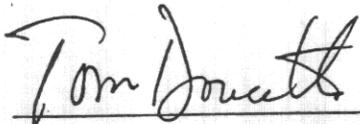
For purposes of communications pursuant to this Agreement or notices and copies required under this Agreement, the contact information for each Party is as follows:

<p><u>Citizens for Open Government</u></p> <p>Ann Cerney 45 Hunter Square Plaza Stockton, CA 95202-2703</p> <p>Telephone (209) 948-9463 Fax (209) 948-0706 Email acerney@inreach.com</p>	<p><u>Frontiers Community Builders</u></p> <p>Tom Doucette 10100 Trinity Parkway, Suite 420 Stockton, CA 95219</p> <p>Telephone (209) 957-8112 Fax (209) 957-3618 Email: tdoucette@fcbhomes.com</p>
<p>Osha Meserve Adams Broadwell Joseph & Cardozo 1225 8th Street, Suite 550 Sacramento, California 95814</p> <p>Telephone (916) 444-6201 Fax (916) 444-6209 Email omeserve@adamsbroadwell.com</p>	<p>George Gibson 10100 Trinity Parkway, Suite 420 Stockton, CA 95219</p> <p>Telephone (209) 444-2802 Fax (209) 957-3618 Email ggibson@fcbhomes.com</p>

<p><u>City of Lodi</u></p> <p>Steve Schwabauer P.O. Box 3006 Lodi, CA 95240</p> <p>Telephone (209) 333-6701 Fax (209) 333-6807 Email sschwabauer@lodi.gov</p>	
<p>Blair King P.O. Box 3006 Lodi, CA 95240</p> <p>Telephone (209) 333-6700 Fax (209) 333-6807 Email bking@lodi.gov</p>	

7. Counterparts.

This agreement may be executed in counterparts.

 11/15/06

Frontier Community Builders
By: Tom Doucette, President

City of Lodi
By: Blair King, City Manager


Citizens for Open Government
By: Ann Cerney

11/15/06

Approved as to form


City Attorney