

**Staff Contact:  
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(707) 449-5140**

**TITLE: RICE-McMURTRY DEVELOPMENT AGREEMENT AMENDMENT**

**REQUEST: RECOMMEND THE CITY COUNCIL APPROVE THE RICE-McMURTRY DEVELOPMENT AGREEMENT AMENDMENT**

**RECOMMENDED ACTION: RECOMMEND THE CITY COUNCIL REAFFIRM THE RICE-McMURTRY ENVIRONMENTAL IMPACT REPORT (EIR) AND ADOPT THE ADDENDUM TO THE EIR, AND APPROVE THE RICE-McMURTRY DEVELOPMENT AGREEMENT AMENDMENT**

**APPLICATION INFORMATION**

**APPLICATIONS AND FILE NO.** Reaffirmation of the Environmental Impact Report  
Adoption of the EIR Addendum  
Development Agreement Amendment  
File No. 14-071

**RICE-McMURTRY DEVELOPMENT AGREEMENT INFORMATION**

**APPLICANTS & PROPERTY OWNERS:** Western Pacific Housing, also known as D.R. Horton (Cheyenne); Standard Pacific Homes (Knoll Creek); and Rogers Ranch, LLC (Rogers Ranch)

**GENERAL LOCATION:** North of Vaca Valley Parkway  
West of Browns Valley Road and Shelton Lane  
Both Sides of McMurtry Lane  
South of Standfill Lane

**SITE AREA:** Approximately 175 Acres

**BACKGROUND INFORMATION**

Cheyenne Planned Development (Western Pacific – DR Horton)

The Cheyenne at Browns Valley Subdivision was originally approved in 2005 as the Reynolds Ranch Subdivision, which consists of 221 lots on approximately 150-acres of land located west of Shelton Lane and Browns Valley Road and stretches from the existing PG&E transmission lines on the north, to McMurtry Lane on the south. The development consists of 15 one-acre lots, 41 lots with a minimum size of 20,000 square feet (RE-20), and 165 lots with a minimum size of 10,000 square feet (RE-10). Since 2005, 3 homes have been constructed on the one-acre lots,

and 61 homes have been constructed on the RE-10 lots. Homes have yet to be built on the RE-20 lots. This is largely due to the need of an upper pressure water reservoir and booster pump station to serve the lot with pad elevations above 222 feet.

#### Knoll Creek Planned Development (Standard Pacific Homes)

The Knoll Creek development is located on the south side of McMurtry Lane, west of Browns Valley Road, and east of the City of Vacaville Caliguiri Open Space Preserve. Originally approved in 2007, the approved tentative map consisted of 38 residential lots on 22.66 acres. In 2013, the 22.66 acre parcel was split into two: Parcel 1, which is comprised of the northeast portion of the parcel, was retained by the property owner for the development of 21 single-family lots. Parcel 2, which encompasses the southwest portion of the parcel, was dedicated to the City as permanent open space. The property owner elected not to develop the 17 lots located on Parcel 2 due to the significant cost to develop this area, which included costs for an upper zone water system, significant grading improvements, and large walls and drainage structures. The minimum lot size for the remaining 21 lots is 10,000 square feet, and all the pad elevations are below 222.

#### Rogers Ranch Planned Development (Rogers Ranch LLC, Rob Wood)

The Rogers Ranch development consists of 29 residential lots on a 12.97-acre parcel located on the north side of McMurtry Lane to the west of the Cheyenne residential development. The proposed residential lots range between 12,000 square feet and 17,510 square feet. This development is dependent on the construction of an upper zone water reservoir and booster pump station.

### **PREVIOUS ACTIONS**

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April 2004 – The City Council certified the Environmental Impact Report for the Rice-McMurtry Project Area and approved the General Plan Amendment, Planned Development, Annexation, Zone Change and Development Agreement.

May 2004 – The City Council approved Ordinance 1716 approving the Development Agreement between the City and the owners of the Reynolds Ranch, Knoll Creek, and Rogers Ranch properties.

September 2004 – The Rice-McMurtry Annexation was approved by LAFCO subject to conditions of approval.

January 2005 – Certification of Completion filed for the Rice-McMurtry Annexation Area which includes the Reynolds Ranch, Rogers Ranch, Knoll Creek and Caliguiri Preserve properties.

March 2005 – The Reynolds Ranch and Rogers Ranch Vesting Tentative Maps, and the Knoll Creek Tentative Map were approved.

November 2005 – The Planning Commission approved house plans for the 10,000 square foot lots within the Cheyenne Development.

December 2005 – The Cheyenne at Browns Valley Final Map was approved, and construction commenced shortly thereafter.

January 2013 – The Knoll Creek project was split into two parcels. Parcel 1 was retained by the property owner for the development of 21 single-family lots, while Parcel 2 was dedicated to the City as permanent Open Space.

November 2013 – A status update pertaining to the Rice-McMurtry Development Agreement amendment was presented to the Planning Commission.

December 2013 – The Planning Commission voted to recommend approval of the new Cheyenne at Browns Valley Planned Development Modification, House Plan Modification and Model Home Complex, and reaffirmation of the previous Rice-McMurtry Annexation and Residential Development Project Environmental Impact Report. The PD Modification requires final approval from the City Council, thus the Planning Commission’s action was a recommendation. The PD Modification will be forwarded to City Council for action at the same hearing as the proposed Development Agreement Amendment.

April 2014 – The City Council amended the Rice-McMurtry Development Agreement only to extend the term of the Agreement to September 12, 2014 to allow additional time for the City and Developers to negotiate the terms of the amended Development Agreement.

## **PROJECT DESCRIPTION**

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The project proposal is to amend the existing Development Agreement between the City of Vacaville and Western Pacific Housing, Inc, Standard Pacific Homes, and Rogers Ranch, LCC (hereafter referred to as “Developers”) regarding the development of the real property commonly referred to as Reynolds Ranch (aka Cheyenne), Knoll Creek, and Rogers Ranch. This Agreement, known as the Rice-McMurtry Development Agreement, was approved for a term of 10 years in June 2004. In early 2014, the City Council granted a 3 month time-extension for the Development Agreement, extending the term to September 12, 2014, for the purpose of allowing additional time for the City and Developers to negotiate the provisions of the amended Agreement.

The City and the Developers have been meeting regularly since 2012 in an attempt to identify a way to re-start development within the Rice-McMurtry Development Area – the area generally located north of Vaca Valley Parkway, along both sides of Browns Valley Road. Projects within this development area have either stopped construction in recent years (Cheyenne) or have failed to begin site work due to economic conditions and lack of completed public infrastructure, which is a shared responsibility of all the development parties.

### **Amendment Provisions:**

The proposed amendment to the Development Agreement involves a comprehensive revision to the original document adopted in 2004. It is the intent of this amendment to identify milestones to ensure completion of public infrastructure in an orderly manner, and to more clearly delineate responsibilities of all the parties for their shares of the infrastructure costs. The following topics describe some of the substantive amendments proposed to the Rice-McMurtry Development Agreement:

1. Section 1A: This section states that the amended Development Agreement will not become effective until the Developers sign infrastructure and subdivision improvement

agreements. These documents will be prepared and executed at the time the Developers sign the final amended Development Agreement.

2. Section 1B: The Developers request that the Agreement be extended by 10 years from the effective date of the amended Development Agreement. In addition, this section states that the Developer's obligations will survive termination of the Term if the developer has obtained a final map for his or her property.
3. Section 3D: The Developers request to extend the term of the Tentative Maps and other Planning entitlements (i.e., Planned Development approvals) to correspond to the 10-year term of the amended Development Agreement. This approach has been used on other recent Development Agreements.
4. Section 3F: The Developers propose a schedule for the City's review and processing of project submittals. This includes a provision for the hiring of outside consultants hired and paid for by the Developers, if necessary, to meet these schedules.
5. Section 3G: The Developers request that the three residential projects be granted all their Planned Growth Allocations of building permits as part of the Development Agreement Amendment.
6. Section 3H: This section proposes to extend the area in which the Developers shall be required to place existing above-ground utilities underground.
7. Section 3K: This section identifies the need for two benefit districts. The City is required to create a benefit district for the Allison Lift Station. The Developers are required to fund and to create one or more benefit districts for the infrastructure improvements costs. This benefit district will be created with help from the City.
8. Section 3L: This section specifies that the developments shall be required to annex into Ridgeview Park maintenance district.
9. Section 5F: This section requires the Developers to execute new subdivision improvement agreements to secure the timely construction of on-site and off-site infrastructure and the new Zone 2 water tank and booster pump station. In addition, this section requires the Developers to provide the City with performance, labor and materials, and warranty bonds to ensure the financing and quality of these improvements.
10. Section 5G: This section identifies the obligations of each Developer for the construction of on-site infrastructure, and their share of off-site infrastructure. Exhibit F-1 is included in the Agreement, specifying the construction obligations for each party. Additionally, section 5G sets forth the City's right to use eminent domain in the event that any Developer is unable to obtain the necessary property interests to complete off-site improvements, and building permit triggers related to that process.
11. Section 5N: This section requires the developers to pay for the per-unit cost for the City to obtain water supply for this development area. This cost is typically included in all Development Agreements.
12. Section 5P: This section addressed the requirement the construction of a Zone 2 Water Tank and Booster Pump Station prior to the issuance of building permits for lots with pad heights above 222-feet in elevation. The Developer of the Cheyenne Subdivision

(Western Pacific Housing) is required to construct the Zone 2 Water System, which must be completed no later than at the completion of the 177<sup>th</sup> unit within the development, or four years from the date of the City's approval of the Zone Water Tank and Booster Pump plans. The Developers are still negotiating the funding of the Zone 2 water system, and the timing of each Developer's fair share funding contribution.

13. Section 5Q: This section requires the Developers to pay their fair share of sewer infrastructure costs prior to issuance of future building permits (not including permits for model homes), or at the time of final map. This section also requires the City to use its best effort to establish a benefit district for the Allison Lift Station, and to construct the improvement.
14. Section 5R: This section establishes construction schedules for specific off-site roadway improvements and other associated infrastructure improvements. This section also identifies how many building permits may be issued upon completion of each improvement. Permits for lots with pad heights exceeding 222 feet in elevation may not be issued until the Zone 2 Water Tank and Pump Station are completed.
  - a. Upon commencement of Shelton Lane reconstruction, 11 building permits for model homes within the Cheyenne and Knoll Creek Subdivisions may be issued. This section also includes a provision that permits the issuance of these permits in the event the Developer is unable to acquire the necessary property to construct the improvements by a specified time. This scenario requires the Developer to submit funds to the City, permitting the City to acquire the required property.
  - b. Upon completion of the reconstruction of Shelton Road, 45 building permits for Cheyenne and 4 building permits for Knoll Creek or Rogers Ranch may be issued.
  - c. Upon completion of Browns Valley Road improvements, 45 building permits for Cheyenne and 15 permits for Knoll Creek or Rogers Ranch may be issued. This section also includes a provision that permits the issuance of these permits in the event the Developer is unable to acquire the necessary property to construct the improvements by a specified time. This scenario requires the Developer to submit funds to the City, permitting the City to acquire the required property.
  - d. Upon reconstruction and widening of McMurtry Lane, 23 building permits for Cheyenne and 7 permits for Knoll Creek or Rogers Ranch may be issued.

Upon the completion of Shelton Lane, Browns Valley Road, and McMurtry Lane improvements, and continued compliance with the terms of the amended and restated Development Agreement and conditions of approval, there will be no further restrictions on the issuance of building permits for Cheyenne, Knoll Creek, or Rogers Ranch.

15. Section 6E: This section permits the Developers to request time extensions to perform obligations under the amended and restated Development Agreement in the event that the task has been delayed due to City's failure to comply with the amended Development Agreement through no fault of the Developers.

## **PROJECT ANALYSIS**

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### **COMPLIANCE WITH ADOPTED PLANS AND ORDINANCES**

#### **1. Development Agreements**

Division 14.17 of the Land Use & Development Code, Development Agreements, states:

*Prior to the public hearing, the applicant shall submit a letter to the City indicating agreement with the provisions of the proposed development agreement. If the applicant does not concur with all provisions, the letter shall specify the areas of disagreement and Indicate the reasons for such disagreement”.*

At time of publication of this report, two letters had been submitted:

- Mr. Rob Wood, representing Rogers Ranch LLC, submitted a letter stating his disagreement with the proposed Agreement. He believes the agreement should contain clear timelines for approval of plans, the beginning of construction, and funding of the Zone 2 Water Tank and Booster Pump. The letter has been attached as Exhibit C.
- Mr. Daniel Doporto, of Jarvis Fay Doporto & Gibson, LLP, representing Western Pacific Housing, Inc. and D.R. Horton, Inc., submitted a letter stating disagreement with Section 5.G.(4)a.iv. of the proposed Agreement. The letter has been attached as Exhibit D.

Standard Pacific Homes had not yet submitted a letter stating their position on the proposed Development Agreement amendment.

If agreement between the parties is not reached, the City could consider options such as letting the Agreement expire or amending the Agreement with only the parties that agree to the amendments and letting the agreement expire as to the other party(ies), so long as the burden is not increased nor rights reduced with respect to the developer opposing the amendments. Staff recommends that the Planning Commission forward the draft Development Agreement Amendment to the City Council for action, and will provide an update to the Commission on any additional input received from the applicants.

#### **2. Consistency with General Plan Policy 2.3 – I 23**

The project is located within the Rice-McMurtry development area. Design and development criteria for this area are identified in Policy 2.3 – I 23 of the General Plan Land Use Element. This General Plan policy identifies several required on-site and off-site public improvements, including:

- There is no requirement to install curbs, gutters, and sidewalks along the east side of Shelton Lane and the north, south, and east sides of Browns Valley Road unless dictated by new development on these properties.
- Public streets must conform with adopted City Standards.
- Perimeter fencing along Browns Valley Road, Shelton and McMurtry Lanes shall be open in nature, such as three-rail or split-rail wood.
- A public pedestrian, bicycle, and/or equestrian trail system shall connect the developments.

- The landscaped pedestrian and equestrian trail along the Shelton Lane frontage shown on the Concept Plan shall be incorporated into the Reynolds Ranch subdivision plans and a similar amenity shall be included in all new development along the west side of Browns Valley Road.
- Browns Valley Road shall be designed and constructed to provide an interim minimum pavement width of thirty-two (32) feet. The minimum ultimate pavement width shall be no less than forty (40) feet with separated sidewalks and landscaping on both sides.  
Additional right-of-way and pavement width may be required as the properties fronting on Browns Valley Road develop. The City Engineer may approve an interim roadway width and configuration prior to the development of the properties fronting on Browns Valley Road.
- Infrastructure master plans for sewer, water, storm drain, and traffic improvements shall be prepared prior to or in conjunction with the processing of subdivision maps for all development within Rice – McMurtry Area.
- Prior to the approval of any subdivision applications, the developers shall assure that all required domestic water supply and distribution systems, wastewater collection and treatment facilities, storm water management facilities, and roadway segment and intersection improvements will be incorporated into the final project plans.
- A landscaped buffer shall be provided around the perimeter of each residential area adjacent to open space for aesthetics as well as fire protection.

The terms of the Development Agreement implement these General Plan standards.

## **PROJECT REVIEW**

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The proposed Development Agreement Amendment is intended to address unfinished infrastructure improvements (i.e., reconstruction and widening of roadways) to allow the completion of this development area. The Agreement also provides an opportunity to ensure timing requirements for the installation of these improvements, in a manner that will provide a clear identification of responsibilities for each party to the Agreement. The City believes the proposed amendment language will provide an improved Agreement, and will provide assurance that the Developers will complete their portions of the project in a timely manner.

Specific items of note for the proposed Agreement Amendment include:

Zone 2 Water Reservoir: The reservoir will be constructed by the Cheyenne developer, with reimbursement from other developers through a Benefit District. The Developer must have the Zone 2 Water Tank and Booster Pump completed by the time their 177<sup>th</sup> building permit is issued, or no later than 4 years from the date of the Development Agreement.

However, as previously noted, the Developer of Rogers Ranch has expressed his belief that the proposed Agreement amendment does not adequately address the requirements to ensure timely completion of the Zone 2 reservoir. He indicates the Agreement should 1.) include a construction start date for the Zone 2 Water System, and 2.) require that the Developers place the funds for this project in escrow as a requirement of the Agreement.

Roadway Construction Issues: The Amended Development Agreement would provide for:

- Shelton Lane: Construction will begin no later than 90 days after approval of the Amended and Restated Agreement, and will be completed by November 2014. Once construction has begun, the developers may receive up to 11 building permits, for model homes only. Following completion of the street improvements, the developers would be eligible to receive up to an additional 49 building permits for new homes (45 Cheyenne; 4 Knoll Creek / Rogers Ranch).
- Browns Valley Road: Construction will begin by December 2014 and will be complete by June of 2015. Once the construction is complete, the developers may receive up to an additional 60 building permits (45 Cheyenne; 15 Knoll Creek / Rogers Ranch). The Browns Valley Road improvements will include an off-street pedestrian / bike path to provide non-vehicular access from Cheyenne to the existing sidewalk/path in Browns Valley.
- McMurtry Lane: Developers build the full widening adjacent to their projects, but an interim widening for the full length of the street is required to be completed no later than August 2015. Completion of this work will allow the developers to receive building permits for up to 30 additional homes (23 Cheyenne; 7 Knoll Creek / Rogers Ranch).

The proposed Development Agreement Amendment provides an improved set of milestones and requirements for each developer to meet. Without the Agreement, the developers would each individually proceed with development, but the agreement provides a coordinated process that City staff believes will ensure completion of the needed facilities and improve the neighborhood.

Many issues raised at the neighborhood meetings will be addressed by the commencement of construction on these projects, including completion of street work, provision of better pedestrian access to the area, installation of landscaping along streets, and eventually improvement of water pressure by construction of the new water reservoir.

Other issues will be addressed through either the pending Planned Development Modification (heard by Planning Commission in December 2013), such as commencement of home construction in Cheyenne and better maintenance within the subdivision. Other items are being addressed by the builder, including repairs to existing fences and other product warranty issues.

Staff believes that the proposed Development Agreement Amendment is an improvement to the existing Development Agreement. While some issues remain to be resolved between the parties, staff recommends that the Planning Commission direct staff to continue discussions with the applicants on the outstanding issues related to the Zone 2 reservoir and any other issues addressed at the hearing, and allow staff to present a final version of the Amendment to the City Council for action.

## **NEIGHBORHOOD MEETINGS**

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Two neighborhood meetings have been held to discuss development proposals within the Rice-McMurtry Development Area. The first meeting, held on October 23, 2013, was intended to review and discuss the proposed house plans for The Reserve at Browns Valley subdivision (aka Rancho Rogelio), and the proposed new house plans for the remaining vacant lots owned by DR Horton within the Cheyenne subdivision. The proposed house plans for both subdivisions were well received at this meeting. However, the meeting served to highlight numerous concerns related to these unfinished subdivisions:

- Timing of zone 2 water reservoir: Some residents commented that they did not believe their water pressure was adequate and hope that the additional reservoir will improve that situation.
- Timing of back-up landscaping along Shelton Lane: No landscaping was ever installed in this area since the road was never widened as planned, thus neighbors expressed that this promised improvement left them with an unsightly edge to the project.
- Timing of landscaping on Whispering Ridge: Since homes were never completed along the entire length of Whispering Ridge the landscaping was never completed, and many residents commented on how unsightly the street looks without the back-up landscaping.
- Traffic impact caused by eastbound/northbound traffic on Browns Valley Road: Concern was expressed that the build-out of the area would cause additional traffic on Browns Valley Road into the unincorporated areas.
- Downstream drainage impacts: Residents raised concerns that increased runoff from new development could cause a flooding impact to areas east of Browns Valley Road.
- Fences are falling down: This was a concern related to both the back-up fencing along Whispering Ridge and within the subdivision.
- Timing of start of homes is important: Quick start to construction was important to residents.
- City is not maintaining public landscaping: This was a comment regarding existing public landscaped areas along roadways and along open space areas behind the custom home lots at the north edge of the development area.
- Lack of timing requirements for construction of infrastructure.
- No access provided to parks in existing neighborhoods / Browns Valley Road is dangerous.
- Plotting of 1 and 2-story homes compared with prior approval: Since the Cheyenne subdivision was only partially completed; this was an issue of concern to existing homeowners within the project.
- Timing for construction of the school.

The second meeting, held on June 4, 2014, reviewed the proposed amendments to the Rice-McMurtry Development Agreement. Approximately 30 persons attended the meeting. The concerns expressed at this meeting were similar to the concerns received at the October meeting, but also included the following issues:

- The condition of the existing wood fences within the subdivision both along Whispering Ridge Drive and within the Cheyenne subdivision.
- Lack of weed abatement on the vacant lots. This item was raised regarding areas along the open space trails and also along the sidewalks adjacent to un-built lots within the subdivision.
- The poor condition of the sidewalks within the subdivision (*sidewalks within the subdivision are private improvements not maintained by the City*)
- Cross lot drainage and flooding with the developed portion of the development.
- Maintenance of the fire road / recreational path within the open space. Comments were that the pavement on this path was experiencing significant deterioration.

- Landscaping and/or weed abatement along the rear slopes of the 1-acre custom lots fronting the PG&E transmission lines. These areas are within the property lines of the custom home lots, but are also within a landscape easement that is maintained by the LLD for the subdivision..
- On-going costs of the CFD. Some residents mentioned that they pay costs for emergency services through the CFD but have a very low rate of calls for service to their neighborhood.
- Possibility of gating the community. Some residents are interested in placing gates at the entrances to the Cheyenne subdivision. Gates could not be placed on Whispering Ridge since it is a public street. Staff explained that there is an application process by which requests for gates on private streets can be reviewed, but that there are significant design constraints to doing this since the private streets in the project were not constructed with adequate space to provide gates.
- Neighborhood Identification Signs: Signs have not been installed as originally expected by some residents. They asked that these identification signs be installed near the Browns Valley / Whispering Ridge intersection.
- Water Pressure in existing homes. Neighbors asked if the existing homes would experience worse water pressure when construction begins on new homes.

## **ENVIRONMENTAL REVIEW**

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### **Reaffirmation of the Rice-McMurtry Annexation and Residential Development Project Environmental Assessment and Adoption of the Rice-McMurtry Annexation and Residential Development Project EIR Addendum**

The City certified an Environmental Impact Report for the Rice-McMurtry Annexation and Residential Development Project (Rice-McMurtry Project) on April 27, 2004 (SCH# 2003072092). The Environmental Impact Report (EIR) for the Rice-McMurtry Project covered three contiguous/adjacent development projects including the Cheyenne Residential Subdivision Project (Cheyenne Subdivision or Project), the Rogers Ranch subdivision, and the Knoll Creek subdivision.

Analytical Environmental Services (AES), an environmental consulting firm, was hired by the City to review and evaluate the adequacy of the previously approved 2004 Rice-McMurtry Annexation and Residential Development Project Environmental Impact Report. It was determined that an Addendum to the 2004 EIR was required to address a change to the original project description as it pertains to the proposed Development Agreement Amendment. The Addendum, attached as Exhibit E, states the following conclusions:

- The Proposed modifications identified in the Addendum would not result in new significant impacts or an increase in the severity of environmental impacts described in the 2004 Final EIR, with implementation of mitigation identified in the 2004 Final EIR and in this Addendum.
- Circumstances under which the project would be undertaken have not resulted in substantial changes that would require major revisions of the 2004 Final EIR.
- No new findings of substantial importance indicate that new significant environmental impacts would be created, the severity of the environmental impacts previously identified

would increase, or that mitigation measures found to be infeasible for implementation in the Final EIR certified in 2004 would now be feasible.

Each project addressed in the 2004 Rice-McMurtry EIR continues to be required to comply with all applicable mitigation measures as adopted with the certified EIR. Staff recommends that the Planning Commission recommend that the City Council approve reaffirmation of the previous environmental assessment and the associated addendum as adequately addressing the impacts of the development.

## **RECOMMENDATION**

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By simple motion, that the Planning Commission recommend that the City Council reaffirm the 2004 Rice-McMurtry Annexation and Residential Development Project Environmental Impact Report and approve the associated Addendum, and approve the Amended and Restated Rice-McMurtry Development Agreement.

ATTACHMENTS:      Exhibit A – Location Map  
                            Exhibit B – Draft Development Agreement Amendment  
                            Exhibit C – Letter from Rogers Ranch LLC  
                            Exhibit D – Letter from Jarvis Fay Doportto & Gibson, LLP  
                            Exhibit E– Addendum to the 2004 Rice-McMurtry EIR



**RECORDING FEES EXEMPT  
PURSUANT TO  
GOVERNMENT CODE § 27383**

**RECORDING REQUESTED BY:  
CITY OF VACAVILLE**

**WHEN RECORDED MAIL TO:**

**Michelle Thornbrugh  
City Clerk  
City of Vacaville  
650 Merchant Street  
Vacaville, CA 95688**

**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF VACAVILLE  
AND WESTERN PACIFIC HOUSING, INC., STANDARD PACIFIC HOMES, AND  
ROGERS RANCH, LLC REGARDING THE DEVELOPMENT OF THE REAL  
PROPERTY  
COMMONLY REFERRED TO AS  
“REYNOLDS RANCH”, “KNOLL CREEK”, AND ROGER’S RANCH”**

**[MONTH] [DAY], 2014**

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BY AND BETWEEN THE CITY OF VACAVILLE  
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REGARDING THE DEVELOPMENT OF THE REAL PROPERTY  
COMMONLY REFERRED TO AS  
“REYNOLDS RANCH”, “KNOLL CREEK”, AND ROGER’S RANCH”**

**THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (hereinafter "Agreement") is entered into this [REDACTED] day of [REDACTED], 2014, by and between WESTERN PACIFIC HOUSING, INC., a Delaware Corporation (“Western Pacific”), STANDARD PACIFIC HOMES, a Delaware Corporation (“Standard Pacific”), ROGERS RANCH, LLC, a limited liability company (“Rogers”) and the CITY OF VACAVILLE, a municipal corporation ("City"), pursuant to the authority of §§ 65864 through 65869.5 of the California Government Code, and Division 14.17 of the Vacaville Municipal Code. Western Pacific, Standard Pacific and Rogers may each be referred to herein as a “Developer” and together as “Developers.” City and Developers may also each be referred to herein as a "Party," and collectively as the "Parties."

**RECITALS**

This Agreement is made with reference to the following facts:

**A.** In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California enacted §§ 65864 *et seq.* of the California Government Code (the "Development Agreement Legislation"). The Development Agreement Legislation authorizes City to enter into a development agreement for the development of property with any person having a legal or equitable interest in real property. City has authorized the undertaking of Development Agreements within the City of Vacaville and established procedures for entering into Development Agreements through the adoption of Division 14.17 of the Vacaville Municipal Code.

**B.** In 2005, City adopted and issued various land use approvals and permits, including but not limited to subdivision maps, planned development permits, and development agreements, with three developers to provide for development of the following properties, located adjacent to the northwestern boundary of the City of Vacaville, California, all of which is commonly known as the “Rice-McMurtry Area “, as generally shown in Exhibit A attached hereto and incorporated herein by reference:

<u>Property</u>	<u>Assessor's Parcel Number</u>	<u>Acres</u>
Reynolds Ranch	0105-200-160; 0105-210-040 0123-040-120; 0123-040-130	100.7 49
Knoll Creek	A portion of 0123-040-110	12.1
Rogers Ranch	0123-040-200	12.97

The Reynolds Ranch property described above is more particularly described on Exhibit B attached hereto and incorporated herein by this reference. The Knoll Creek property described above is more particularly described on Exhibit C attached hereto. The Rogers Ranch property described above is more particularly described on Exhibit D attached hereto and incorporated herein by this reference. Collectively, the Reynolds Ranch, Knoll Creek, and Rogers Ranch properties are referred to herein as the "Project Site" and development of the Project Site as provided in the Project Approvals (defined below), including this Agreement, is referred to herein as the "Project."

**C.** The purpose and goal of the 2005 Approvals (defined below) was to provide for development of the Project Site with three separate residential communities, including approximately 288 lots for single family residences with a rural feel and quality with such elements as non-standard public or private streets, low-level lighting, open space, roads, trails, and other public and private improvements, all as more particularly described in the Project Approvals and in the Subsequent Approvals as and when they are adopted, approved or issued, and certain off-site improvements to be constructed in connection therewith.

**D.** In 2005, Western Pacific acquired the Reynolds Ranch property and succeeded to R.W. Hertel & Son's interest in the Original Development Agreement (defined below) as it applied to the Reynolds Ranch property. Western Pacific re-named the Reynolds Ranch subdivision project and recorded the final map as "Cheyenne at Browns Valley" and commenced development pursuant to the 2005 approvals. To reflect Western Pacific's re-naming of the Reynolds Ranch subdivision project, the Reynolds Ranch property may be referred to herein as the "Reynolds Ranch/Cheyenne" property.

**E.** In 2008, the collapse of the housing market and the subsequent recession resulted in a severe reduction in the value of the all the properties in the Rice-McMurtry Area, making it infeasible for the property owners to continue to develop their respective properties consistent with the 2005 approvals. As a result, all development in the Rice-McMurtry Area was halted by the property owners by 2008.

**F.** In 2002, Bryant and Curtis Stocking entered into an option agreement with Donald and Margaret Young to purchase 26+/- acres of land now known as McMurtry Lane, the City of Vacaville water tank site, and the Rogers Ranch development property. In 2004, the City acquired the City's Zone 1 tank site by exchanging a portion

of City property. On January 26, 2005, Rob Wood acquired the option to purchase the remainder of the property from Bryant and Curtis Stocking, and later acquired the Rogers Ranch property, described above by its Assessors Parcel Number and more particularly described in Exhibit D, attached hereto and incorporated herein by reference.

**G.** On February 14, 2013, Williamsburg Ventures, LLC, Standard Pacific Homes' predecessor in interest with respect to the Knoll Creek property, entered into a land donation agreement with the City of Vacaville for the donation of the property identified as "Parcel 2" on Exhibit A of the Land Donation Agreement (the "Parcel 2 Property") resulting in the reduction in allowable dwelling units from 38 units to a total of 21 dwelling units on the Knoll Creek Property, and reducing the total number of allowable units on the overall Project Site to 271.

**H.** On March 17, 2013, Standard Pacific Homes acquired the Knoll Creek property, described above by its Assessor's Parcel Number and more particularly described in Exhibit C, attached hereto and incorporated herein by reference.

**I.** The Parties now desire to modify the 2005 Approvals to make continued development of their respective properties financially feasible, allow Developers to complete development of the Project Site, secure for City the public benefits from development of the Project Site as contemplated in the 2005 Approvals, and set forth their understandings concerning the vesting of certain components of the Vacaville General Plan and the Planned Development Permits ("PD") for the Project. In executing this Agreement, Developers recognize that the use and development of all or part of the Project Site may be subject to the grant of certain Subsequent Approvals which are hereinafter defined and identified to the extent that they are known at the time this Agreement was adopted. Developers recognize that Subsequent Approvals are subject to review by the City's planning staff, public hearings and discretionary approval by the appropriate decision-making body in accordance with the terms and conditions of this Agreement and the City of Vacaville Land Use and Development Code, and may be subject to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000, *et seq.*, the "CEQA Guidelines", 15 California Code of Regulations §§ 15000 *et seq.*, and City's local policies and guidelines (hereinafter collectively referred to as "CEQA"), to the degree not already environmentally reviewed by existing documents such as the Environmental Impact Report developed and certified for the 2005 Approvals.

**J.** City acknowledges that Developers' agreements to make the commitments herein further the City's efforts for development of the Project Site, and such commitments constitute a material factor in City's willingness to approve this Agreement. City also acknowledges that it is willing to provide Developers with the undertakings contained in this Agreement because City has determined that development of the Project Site will provide public benefits that could not be obtained without vested approval of large-scale development including, without limitation, needed community open space, increased tax revenues, coordinated planning of development,

installation of both on and off-site public infrastructure, creation of additional needed local employment opportunities, creation of additional housing opportunities, the payment of school mitigation fees as determined by the Vacaville Unified School District, and the payment of Community Benefit Contribution as provided for herein.

**K.** In exchange for the special benefits to City described in this Agreement, together with other public benefits that will result from the development of the Project Site, the Parties now desire to set forth their understandings concerning the vesting of Developers' rights to develop their respective properties within the Project Site in accordance with the modified project approvals, including this Agreement. Developers will receive by this Agreement certain assurances concerning the conditions under which they may proceed with development of their respective properties and, therefore, desire to enter into this Agreement.

**L.** It is the intent of the City Council in approving this Agreement that the existing residents of Vacaville and the City's General Fund will not bear any of the short or long-term costs resulting from any development of the Project Site. Developers shall ensure that the full cost to construct and equip facilities, to operate municipal facilities, and to provide services to the Project Site shall be borne by the properties within the Project Site through direct financial contributions such as the payment of development impact fees and the payment of the Community Benefit Contribution and through funding mechanisms such as Public Safety Districts, Mello-Roos Community Facilities Districts, Lighting and Landscaping Districts, Assessment Districts, and/or Benefit Districts.

**M.** Developers have secured or will secure various environmental and land use approvals, entitlements, and permits relating to the development of the Project Site. In 2005, the City issued the following approvals (the "2005 Approvals") applicable to the Project Site:

(1) EIR. In 2005, the City Council adopted Resolution 2004-29, certifying the environmental impact report, entitled the "Rice McMurtry Project Final Environmental Impact Report", No. EIR-04-048, State Clearinghouse No. 2003072092, which evaluated the potential environmental impacts of development of the entire Rice-McMurtry Area, including the Project Site (the "EIR"), adopted certain Statements of Overriding Considerations, and adopted findings and a mitigation monitoring program (the "Mitigation Monitoring Program").

(2) General Plan Amendment. Following review and recommendation by the City Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council, by Resolution 2004-39, approved an amendment to the City's General Plan.

(3) Planned Development Permits ("PD Permits").

a. After a duly noticed public hearing the City Planning Commission approved a tentative map and PD permit for Knoll Creek (Resolution

No. 04-134), providing City land use regulations and development criteria relating to partial development of the Project Site.

- b. Following review and recommendation by the City Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved vesting tentative maps and PD Permits for Reynolds Ranch/Cheyenne (Resolution No. 2005-37), and Rogers Ranch (Resolution No. 2005-38), providing City land use regulations and development criteria relating to the development of the Project Site.

(4) Zone Change. Following review and recommendation of the City Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council, by Resolution 2004-39, approved the rezoning of the Rice-McMurtry Area, including the Project Site (the "Zone Change").

(5) Original Development Agreement. On March 30, 2004, following a duly noticed public hearing, the City Planning Commission, by Resolution No. 04-048, made the appropriate findings required by Division 14.17 of Vacaville Municipal Code, and recommended that the City Council approve that certain Development Agreement By And Between R.W. Hertel & Sons, Inc., Bryant Stocking And Richard Lamphere Regarding The Development of The Real Property Commonly Referred To As "Reynolds Ranch", "Knoll Creek", And "Rogers Ranch" (the "Original Development Agreement"). On May 11, 2004, the City Council adopted Ordinance No. 1716, approving and authorizing the execution of the Original Development Agreement. By its terms, the Original Development Agreement took effect on June 11, 2004 (the "Original Effective Date"), and was recorded on July 7, 2004 as document number 200400093310.

**N.** On [MONTH] [DAY], 2014, after a duly noticed public hearing, the City Council took the following actions (the "Additional Approvals"):

(1) By Resolution [REDACTED], approved and adopted an addendum to the EIR which memorialized the City's determination that the EIR adequately addressed the proposed modifications to the PD Permits and the proposed amendments to the Original Development Agreement and made all of findings required by CEQA;

(2) By Resolution [REDACTED], approved and adopted modifications to the Reynolds Ranch/Cheyenne PD Permit (the "Modified Cheyenne PD Permit");

(3) By Ordinance [REDACTED], made all of the findings required by Division 14.17 of the Vacaville Municipal Code, including but not limited to finding that the provisions of this Agreement are consistent with the General Plan, and approved and adopted amendments to the Original Development Agreement, which amendments were effected by and contained in this Agreement.

Together, the 2005 Approvals and the Additional Approvals are referred to herein as the "Project Approvals."

**O.** Applications for land use approvals, entitlements, and permits other than the Project Approvals that are necessary to or desirable for the development of the Project and which are consistent with the Project (collectively, the "Subsequent Approvals") have been or will be made by Developer. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, design review approvals (including site plan, architectural and landscaping plan approvals), improvement agreements, deferred improvement agreements and other agreements relating to the Project, use permits, grading permits, building permits, lot line adjustments, sewer and water connections, certificates of occupancy, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), preliminary and final development plans, rezonings, encroachment permits, and any amendments to, or repealing of, any of the foregoing.

**NOW, THEREFORE**, in consideration of the premises, covenants and provisions set forth herein, the parties agree as follows:

## **AGREEMENT**

### **SECTION 1. EFFECTIVE DATE AND TERM**

**A. Effective Date.** This Agreement shall become effective on the thirty-first (31st) day following the adoption by the City Council of the ordinance approving this Agreement, or upon receipt of the certified results of a referendum election upholding this Agreement, whichever is later (the "Effective Date"); provided, however, that this Agreement shall not become effective unless and until Developers and City have executed this Agreement, the improvement agreements and subdivision improvement agreements described in subsections (1), (3) and (5) of Section 5.F below.

**B. Term.** This Agreement shall commence upon the Effective Date and shall remain in effect for a term of ten (10) years ("Term"), unless said Term is terminated, modified, or extended pursuant to Division 14.11 of the City of Vacaville Municipal Code, as expressly set forth in this Agreement, or by the mutual written agreement of the parties.

(1) **Survival of Obligations.** Upon the termination or expiration of this Agreement as provided herein, neither party shall have any further right or obligation with respect to the Project Site under this Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Agreement. Unless specifically set forth herein, the termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement), except that, for any project that has recorded an approved final map in conformance with the Subdivision Map

Act and Division 14.11 of the City of Vacaville Municipal Code, the obligations of this Agreement shall continue to apply to such project until implementation of the Project Approvals is complete, including, but not limited to, payment of Community Benefit Contribution, payment of development impact fees, annexation into Community Facility District #10 (Cheyenne at Browns Valley Police and Fire Services), payment of the water annexation fee, and other obligations established by this Agreement.

**C. Termination of Agreement.** This Section is intentionally omitted.

**D. Definitions.**

**“Developer”** shall mean, with respect to the Reynolds Ranch/Cheyenne property described in Exhibit B hereto, Western Pacific; with respect to the Knoll Creek property described in Exhibit C hereto, Standard Pacific Homes; and with respect to the Rogers Ranch Property described in Exhibit D hereto, Rogers Ranch LLC; and shall also include all of their respective successors-in-interest to their respective properties.

**“Developers”** shall mean all of the three developers, collectively.

**“Director”** shall mean the City of Vacaville Director of Community Development or his or her designee.

**“Director of Public Works”** shall mean the City of Vacaville Director of Public Works or his designee.

**“Phase I – Interim Water System”** shall include main zone and upper pressure zone improvements described as “Phase I” in the EIR prepared for the Rice-McMurtry Project Area including the dedication by Rogers Ranch LLC of the approximately 12.5 acre site for a Zone 1 water tank and the conveyance by Western Pacific of the 3.99 acre parcel for the Zone 2 water tank. These improvements will provide interim service to homes below or proximate to elevation 222 from the main Zone. Upon completion of the upper pressure zone system, the interim water system will be converted to be served from the upper pressure zone.

**“Rice - McMurtry Project Area”** shall include any or all of the three separate properties that are parties to the development within the Rice – McMurtry Project Area known as Reynolds Ranch, Knoll Creek, and Rogers Ranch, as more particularly shown on Exhibit A.

**SECTION 2. PROPERTY SUBJECT TO THIS DEVELOPMENT AGREEMENT.**

All of the property described in Exhibit B (Reynolds Ranch/Cheyenne Property), Exhibit C (Knoll Creek Property), and Exhibit D (Rogers Ranch Property) shall be subject to this Agreement.

### **SECTION 3. OBLIGATIONS OF CITY**

**A. No Conflicting Enactments; Protection From Moratoria; Exemption From Planned Growth Ordinance; Exception For Development Limitation Due To Lack Of Infrastructure Or Inability Of City To Provide Public Services; Timing Of Project Construction And Completion.** Neither City nor any agency of City shall enact any ordinance, resolution, rule, procedure or other measure that relates to the rate, timing or sequencing of development of the Project Site. Except as specifically provided herein to the contrary and in accordance with the purpose of the Development Agreement Legislation, the development agreement provisions of Division 14.17 of the Vacaville Municipal Code, and in consideration of the benefits derived by City as recited herein, no future modification of City's codes or ordinances, or adoption of any code, ordinance, regulation or other action that purports to limit the rate of development over time or alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall apply to the Project Site. However, this Subsection shall not limit City's right to insure that Developers timely construct and provide all necessary infrastructure to serve proposed development as a condition of issuance of any City permit, approval or other land use entitlement sought by Developers for the Project Site. Further, except for extensions granted by the mutual written agreement of the parties or pursuant to Section 9 of this Agreement relating to permitted delays, Developers shall install required infrastructure improvements in accordance with this Agreement and the Project Approvals.

In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the parties hereto to avoid that result by acknowledging that Developers shall have the right to develop the Project Site in such order and at such rate and at such times as Developers deem appropriate within the exercise of their respective and subjective business judgment. Developers shall provide City with periodic updates of development projections to ensure that City will have information necessary to comply with its obligations set forth in this Agreement. However, this Subsection shall not limit City's right to impose requirements concerning the timing or commencement of construction when related to the need for infrastructure or utilities as a condition of permits or upon approval of other entitlements sought by Developers.

**B. Vested Elements.** Certain actions of City identified below (the full enactments of which are incorporated herein by reference thereto), are declared binding and not subject to change except if specifically stated to the contrary in other Sections of this Agreement. Such actions are hereinafter referred to herein as the "Vested Elements."

No part of the Vested Elements may be revised or changed during the Term hereof without the consent of the owner of the portion of the Project Site to which the change

applies (or that would be affected by any reduction or decrease in rights or increase in burdens caused by such change), unless expressly stated to the contrary in other Sections of this Agreement. The foregoing notwithstanding, applications for permits, entitlements, and other approvals shall be subject to such changes in the General Plan, the Vacaville Municipal Code, the zoning codes, and other rules, regulations, ordinances and official policies hereinafter adopted (and in effect at the time of the application) that do not conflict with the Vested Elements or materially deprive a Developer of the benefits thereof.

The Vested Elements shall be effective against, and shall not be amended by, any subsequent ordinance or regulation, whether adopted or imposed by the City Council or through the initiative or referendum process. The Vested Elements are:

(1) The General Plan, approved by the City Council on August 21, 1990, as amended in 1999 or as later amended before or concurrent with the approval of this Agreement, including that General Plan Amendment approved by City immediately prior to the approval of this Agreement.

(2) The Modified PD Permit.

(3) The Zone Change.

(4) Mitigation measures adopted by City for the Project.

(5) Parcel map waivers, tentative parcel maps, tentative subdivision maps, vesting tentative parcel maps, vesting tentative subdivision maps, use permits, design review approvals and other zoning entitlements or discretionary reviews granted with respect to portions of the Project Site, subject to the provisions of Subsection C below.

(6) Fee schedules and rates as follows:

(a) Fee schedules and rates for processing discretionary permit applications and all traffic, sewer, and park development impact fees shall be those in effect as of the Original Effective Date, except that annual increases as provided for in the enabling ordinance for each such application or development impact fee shall apply. Such fee schedules and rates shall be considered part of the Vested Elements.

(b) Sewer and water connection fees and building permit and inspection fees shall not be part of the Vested Elements and shall be those sewer and water connection fees and building permit and inspection fees in effect at such time as a complete building permit application is submitted for each dwelling unit authorized by this Agreement.

**C. Subdivision And Parcel Maps.** Developers shall have the right from time to time to file applications for subdivision maps, parcel map waivers and/or parcel maps

with respect to some or all of the Project Site in order to reconfigure the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular phase of the Project Site or to lease, mortgage or sell a portion of the Project Site. All such subdivision maps shall not be approved unless City finds each to be consistent with the Vacaville General Plan. Nothing herein contained shall be deemed to authorize Developers to subdivide or use the Project Site, or any portion thereof, for purposes of sale, lease or financing in any manner that conflicts with the provisions of the Subdivision Map Act, Government Code §§ 66410 *et seq.*, or with the Vacaville Municipal Code; nor shall this Agreement prevent City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not preclude or materially burden or delay a Developer's realization of the rights conferred under the Vested Elements.

**D. Term Of Subdivision Maps And Use Permits.** The term of any parcel map waiver, tentative parcel map, tentative subdivision map, vesting tentative parcel map or vesting tentative subdivision map (for purposes of this subsection "tentative map"), relating to the Project Site, or any part thereof, the term of any subdivision improvement agreement related to development of the Project Site, or any portion thereof, and the term of any use permit, design review approval, building permit, or other zoning entitlement or discretionary approval for development of any portion of the Project Site, including but not limited to the Modified PD Permit, shall be extended to run concurrently with the Term of this Agreement. In no event shall the term of tentative map or other related discretionary approval, including but not limited to the Modified PD Permit, be for a term longer than the life of this Agreement without the amendment of this Agreement.

**E. Applicable Subdivision And Safety Regulations; No Conflicting Enactments.** Except as expressly provided in the conditions of approval of an entitlement, every parcel map waiver, tentative parcel map, tentative subdivision map, design review application, use permit or other discretionary permit application shall be processed in accordance with the laws, ordinances, rules and regulations in effect on the date that the application therefor is determined by City to be complete. Further, nothing herein contained shall be deemed to prevent City from amending the laws, ordinances, uniform codes, rules or regulations pertaining to or imposing health and safety, fire protection, mechanical, electrical, grading and/or building requirements or other requirements that would be defined as "ministerial" under the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* pertaining to new construction or development in the City, including the Project, when such amendments are enacted or adopted prior to the issuance of a building permit for the Project (or portion thereof), in which case such amendment shall apply to the Project (or portion thereof).

Except as set forth above, City shall not impose upon the Project (whether by Subsequent Approval or other action by City or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually referred to as a "City Law") that reduces the development

rights granted to Developers by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to reduce the development rights provided hereby if such City Law would accomplish any of the following results in a manner inconsistent with or more restrictive than the Project Approvals or Subsequent Approvals consistent with the Project Approvals, either by specific reference to the Project or as part of a general enactment that applies to or affects construction or development in the City:

(1) Limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings or other improvements. However, this provision shall not require City to increase the density of allowable development on the Project Site to offset or compensate for a reduction in density resulting from state or federal laws including, but not limited to, laws relating to airport safety or wetlands, species or habitat protection, preservation or restoration. The foregoing provision is not intended to limit Developers' legal rights against state or federal authorities imposing such laws, but is intended to disallow suit against City due to the impact of such laws upon the Project and to free City from any obligation to increase the density of development, whether commercial or residential or otherwise, in one area of the Project Site due to reduction in available, developable lands in other areas of the Project Site other than as set forth in the Planned Development Permit. City, however, agrees to cooperate with Developers in Developers' attempts to mitigate or minimize the impacts from such reductions in density on the over-all development of the Project Site. As used in the preceding sentence, City's duty to "cooperate" with Developers does not include the obligation to contribute financially to such attempts by Developers;

(2) Change any land uses or other permitted uses of the Project Site;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all necessary infrastructure adequate to serve such development or construction is constructed or provided by Developers, unless otherwise expressly provided for in this Agreement;

(4) Enforce or apply any City Law to the Project not otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to substantially similar types of development projects and project sites with similar land use designations; the foregoing notwithstanding, City shall be allowed to establish zones of benefit, rate zones, benefit districts, assessment districts or similar financing mechanisms, which may apply to the Project Site, so long as the costs associated with such zones, districts or mechanisms are (i) uniformly applied to all similar uses within the affected zone, district or area, and (ii) not exclusively imposed upon or assessed against the Project; or

(5) Require the obtainment of additional discretionary permits or approvals by City other than those required by applicable law or which City is required to impose by

the authority of the state or federal government or of special districts or agencies that are not subject to the authority of City and whose jurisdiction extends to the Project Site.

**F. Review And Processing Of Project Applications And Plans.**

(1) City shall use its best efforts to commit the necessary time and resources of City staff to work with the Developers on the timely processing of the necessary applications for entitlements needed for the Project.

(2) City shall meet with any of the Developers or all of the Developers at such Developer's or Developers' written request and at a time mutually acceptable to the parties prior to a Developer's submission of said applications in an effort to address Developer's questions so that Developer's applications, when submitted, will be accurate and complete. Upon submission by a Developer of an application determined to be complete by City in its sole discretion, together with appropriate processing fees, City shall diligently process the application. If City is unable to timely process any such application, or upon request by a Developer, City shall engage outside consultants to aid in such processing, provided Developer promptly pays all of City's actual costs plus City's standard administrative overhead charge of fifteen percent (15%) related to the retention of such outside consultants, which may include an advanced deposit reasonably deemed appropriate by City. In this regard, Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and Developer shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor.

(3) If City denies an application, City shall specify the reasons therefore.

(4) Upon submission by a Developer of any improvement plans or architectural plans for City review and approval, City shall use its best efforts to complete such review according to the following schedule, assuming the resubmitted plans are complete and do not include significant changes or additions:

a. Completion of first plan check review within six (6) weeks of submission by Developer.

b. Completion of second plan check within three (3) weeks of submission by Developer.

c. Completion of third plan check, if necessary, within three (3) weeks of submission by Developer.

If City is unable to timely review any improvements plans or architectural plans according to the foregoing schedule, and upon written request by a Developer, City shall engage outside consultants to aid in such review, provided Developer promptly pays all of City's actual costs plus City's standard administrative overhead charge of

fifteen percent (15%) related to the retention of such outside consultants, which may include an advanced deposit reasonably deemed appropriate by City.

**G. Relationship And Integration With City's Planned Growth Ordinance;**

**Building Permit Allocations.** As provided in the Original Development Agreement, City hereby confirms that Developers have been allocated and reserved building permits under City's Planned Growth Ordinance (Division 14.05 of the Vacaville Municipal Code) as set forth below, which allocations shall apply automatically and shall not require any formal request by any Developer provided that Developers remain in compliance with the remaining terms and conditions of this Agreement:

- (1) Western Pacific: Two hundred twenty-one (221) building permits for the Reynolds Ranch/Cheyenne property;
- (2) Standard Pacific: Twenty-one (21) building permits for the Knoll Creek property; and
- (3) Rogers: Twenty-nine (29) building permits for the Rogers Ranch property.

**H. Undergrounding Of Public Utilities.** The City will, to the extent reasonably possible, and at no cost to the City, exercise its authority with Pacific Gas and Electric ("PG&E"), American Telephone & Telegraph ("AT&T") and Comcast of California/Massachusetts/Michigan/Utah, Inc. ("Comcast") to place their lines and equipment underground within the Project Site so as to minimize the Developers' costs of undergrounding utilities. Developers shall, at no cost to City, underground all the utilities in this subsection along the western frontage of Browns Valley Road from northern border of the Glen Eagle project to the northern border of Cheyenne and along McMurtry Lane in front of Reynolds Ranch/Cheyenne development. The undergrounding of public utilities in accordance with this Section shall be included in the Benefit District funded and formed by the Developers pursuant to Section 3(K), below.

**I. Coordination Of Construction Of Off-site Improvements.** Developers acknowledge that certain off-site improvements may be necessary to support development of the Project Site or may be required as environmental or other mitigation measures in connection with development of the Project Site.

**J. Environmental Mitigation.** To the extent permitted by law, City shall not impose upon the Project any mitigation measures other than those specifically imposed by the Project Approvals, the Mitigation Monitoring Program adopted concurrently with the Project Approvals, as authorized by the Vacaville Municipal Code or the Specific Plan. City shall not impose additional mitigation measures on the basis that the EIR fully analyzes the environmental impacts of the Project, thereby alleviating the need for additional environmental review except in the circumstances described in Section 21166 of CEQA. To the extent permitted by law, City shall, in connection with any Subsequent Approval, adopt Statements of Overriding Consideration recognizing the specific

economic, social and other benefits of the Project that outweigh and make infeasible any additional mitigation measures.

**K. Benefit Districts.**

(1) City shall create a Benefit District, in accordance with the Subdivision Map Act and Division 14.15 of the Vacaville Municipal Code, for the purposes of facilitating reimbursement to City and, to the extent allowed under Section 5.G.(1) b below to Western Pacific, of the costs of constructing the Allison Lift Station and such associated improvements necessary or desirable to serve the Project Site and creating such Benefit District.

(2) Developers shall fund, and Developers and City shall take, all actions necessary to create one or more Benefit Districts in accordance with the Subdivision Map Act and Division 14.15 of the Vacaville Municipal Code for the purpose of establishing mechanisms to reimburse each Developer that constructs improvements that benefit private property owned by others, including, but not limited to, private property owned by other developers. City shall not unreasonably withhold approval of such Benefit Districts. Such improvements shall include, without limitation, all sewer, water and storm drain infrastructure, facilities and equipment, including the undergrounding of existing telecommunications facilities pursuant to Section 3H, above; streets, sidewalks, street lights, traffic signals, landscaping and medians; and all other public utilities and public infrastructure, that benefit private property owned by others. The process for formation of the Benefit District(s) set forth in this subsection 3.K.(2) shall be initiated and completed to the point the item is fully prepared for presentation to the City Council prior to the issuance of any building permit(s) applied for by any of the Developers after the Effective Date of this Amended and Restated Development Agreement.

**L. Lighting and Landscaping Districts.** The City and Developers will cooperate in creating a Lighting and Landscaping District to fund the on-going maintenance of any publicly owned lands or improvements, including but without limitation, landscaping, storm water detention basins, parks, trails, and open space. The Developers shall annex into the existing Ridgeview Park maintenance district for the maintenance of the neighborhood City park.

**SECTION 4. MATERIAL OBLIGATIONS OF DEVELOPERS; TERMINATION FOR BREACH OF SUCH OBLIGATIONS**

Notwithstanding anything to the contrary herein contained, the Term of this Agreement shall be subject to termination by City (but not by Developers) for failure on the part of Developers to achieve the objectives stated below, subject to the provisions of this Agreement that relate to permitted delays and delaying causes. Developers' performance in achieving these objectives shall be considered and evaluated as part of the process of annual review provided for in this Agreement. The objectives to be achieved by Developers are:

**A. Community Facilities District (“CFD”) Formation.** A single Community Facilities District (“CFD”) has been formed for the Project Site commonly known as Community Facilities District #10 (Cheyenne at Browns Valley Police and Fire Services). The purpose of the CFD is to provide a funding mechanism to pay for the full cost of City fire protection and police protection services for the Project Site, including the on-going costs for all salaries and benefits for the additional police and fire personnel required to serve the Project Site. For background information purposes, as of the Effective Date, the Reynolds Ranch/Cheyenne property has already been annexed into the CFD #10, and Standard Pacific is currently in the process of annexing the Knoll Creek property into the CFD #10. All Developers understand and agree that assessments for the CFD will increase at a rate of the Consumer Price Index (CPI) for the San Francisco Bay Area per year.

**B. Commencement of Construction of Phase I Infrastructure.** This section has been intentionally omitted.

**C. Privately Funded Maintenance.** Prior to the recordation of any Final Map, the Developer seeking to record such Final Map shall establish a maintenance entity acceptable to the Community Development and Public Works Directors to provide funding for the maintenance, repair and replacement (if necessary) by private contractors of private improvements including but not limited to, private streets, private landscaping, private storm drainage, private street lighting and private fire protection buffer.

**D. Annexation.** The Parties to this Agreement acknowledge that the Developers completed the annexation process and the Developers’ respective Properties were annexed to the City in accordance with the provisions of the Original Development Agreement.

**SECTION 5. DEVELOPERS' OBLIGATIONS FOR WHICH CITY MUST ALLOW DEVELOPERS RIGHT TO CURE DEFAULT.**

**A. No Obligation To Develop.** Developers shall have no obligation to initiate or complete development of any phase of the Project Site within any period of time except (i) as provided in this Agreement, (ii) the obligations otherwise stated in a separate agreement or undertaking that is part of the Vested Elements or that is entered into in connection with any community facilities or assessment district creation or financing, (iii) conditions for commencement of construction stated in any use permit, design review approval or entitlement or approval for construction of specific improvements on a specific parcel, or (iv) as provided in the Subdivision Map Act (Gov’t. Code §§ 66400 et. seq.) or Divisions 14.11 (“Subdivisions”) or 14.12 (“Dedications and Improvements”) of the Vacaville Municipal Code, as applied to subdivision improvement agreements.

**B. General Rights and Obligations.**

(1) As consideration for City entering into this Agreement, Developers agree that they will comply with all Project Approvals and Subsequent Approvals. The parties acknowledge that the execution of this Agreement by City is a material consideration for Developers' acceptance of, and agreement to comply with, the terms and conditions of the Project Approvals and Subsequent Approvals.

(2) Developers shall construct all on-site and off-site infrastructure improvements in a timely manner in accordance with the applicable conditions of approval, the applicable improvement agreements and any approved Project Infrastructure Schedule established by City and Developers pursuant to subsection 5.B.(3), below. City shall review the plans of all infrastructure improvements including, but without limitation to, the phasing or sequencing of water lines, sewer lines, storm drainage lines, joint trenches, paving, street and intersection improvements and the construction of buildings prior to initiating construction of each phase of development. The City Engineer may impose additional on-site and off-site improvements or other measures such as but without limitation traffic control and access, emergency access, and storm water management as may be needed to protect the health, safety, welfare, and convenience of surrounding properties.

(3) At the time of submittal of a Developer's subdivision improvement plans, such Developer shall also submit a construction schedule identifying the timing and sequencing of infrastructure improvements and what measures will be in place to ensure that there will be minimal disruption to surrounding properties. Such measures will be reviewed and approved by the City Engineer and, if applicable, coordinated with developments on such surrounding properties.

**C. Processing Charges, Development Impact Fees Applicable To Project Site.**

(1) All fees, fee schedules and rates, including but not limited to development impact fees, shall apply to the Project Site as set forth in Section 3.B.6 of this Agreement.

(2) Development Impact Fees Etc., Defined. For purposes hereof, "development impact fees" shall include all charges, levies and impositions that are or would be so categorized under applicable California law as of the date of commencement of the Term of this Agreement but do not include, nor does this Agreement limit City's ability to impose upon the Project Site, "special taxes," special assessments or maintenance district assessments, zones of benefit, rates or surcharges that are imposed on one or more areas of the City to finance area-specific public services, facilities or infrastructure.

(3) Limitation on Development Impact Fees. The Project Site shall not be subject to any Development Impact Fee enacted after the Original Effective Date

unless: (a) it applies on a City-wide basis (although zones of benefit may be designated by City with charges allocated among the properties within such zone based upon the benefit received by such properties; and (b) is not, directly or in practical effect, targeted against or limited to the Project Site, any portion thereof or the use to which the Project Site is put unless such fee is imposed and used to mitigate an impact caused by the development of the Project Site.

(4) Processing Costs. Except to the extent that processing costs are Vested Elements, nothing herein contained shall exempt a Developer from paying processing costs imposed by City for the processing of such Developer's applications, including such funds as may be necessary to hire consultants and conduct studies required to develop the Project, subject to the provisions of this Section. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, City shall consult with the Developer that has submitted the application or applications, to seek mutually agreeable terms regarding: (a) the scope of work to be performed by such consultant; (b) the projected costs associated with such work; and (c) the particular consultant engaged to conduct such work.

(5) Change in Amount of Development Impact Fees. If the amount of any of City's development impact fees is reduced or eliminated by a legislative, executive, or judicial action of a state or federal agency, such action shall not relieve Developers of their obligations to pay such fee in the same manner and in the same amount required hereunder irrespective of such state or federal action.

**D. Impact Mitigation; No Cost To City.** Developers shall construct or install all public improvements (including, without limitation, landscaping) necessary to provide public services in support of development of the Project Site as generally described in the applicable Planned Development Permit, without cost or expense to City.

**E. Developer Procures Financing For Major Infrastructure.** Developers shall obtain any and all funding needed to construct on-site and off-site streets and intersection improvements and "backbone improvement work" (specifically, sewer collection systems, water distribution systems, and storm water management systems) on the Project Site without cost to City. City agrees to assist in Developers' creation of a Benefit District or Districts as may be needed to provide reimbursement to Developers for any costs that may benefit other private property owners. City shall not unreasonably withhold approval of such Benefit District or Districts.

**F. Assurances Concerning On-Site and Off-Site Improvements.** Upon approval by City of the Modified Cheyenne PD Permit and this Agreement, City and Developers shall take the following steps to assure satisfactory completion of on-site and off-site improvements required by the Modified PD Permit and this Agreement:

(1) On or before the Effective Date of this Agreement, City and Western Pacific shall execute a mutually agreeable subdivision improvement agreement ("SIA") to provide for completion of all on-site and off-site improvements required by the

Modified Cheyenne PD Permit for the Reynolds Ranch/Cheyenne subdivision and this Agreement, except for the construction of the Zone 2 Water Tank and Booster Pump Station improvements required under Section 5.P below which shall be subject to a separate SIA pursuant to Section 5.F(3) below. The SIA required by this Section 5.F(1) shall be in substantially the form of Exhibit G-1 hereto, and shall replace and supersede that certain Subdivision Improvement Agreement entered into by City and Western Pacific Housing, Inc. on March 3, 2006, a copy of which is attached hereto as Exhibit E.

(2) On or before the Effective Date of this Agreement, Western Pacific shall provide to City performance, labor and material, and warranty bonds (the "New Bonds"), to secure Western Pacific's satisfactory completion of the work described in the SIA required by the preceding Section 5.F.(1), as provided by and in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3, which New Bonds shall replace the following bonds issued by Arch Insurance Company and currently held by City, referred to herein as the "Existing Bonds":

- a. Subdivision Bond – Faithful Performance  
No. SU5018488, dated December 12, 2005
- b. Subdivision Bond  
No. SU5017060, dated September 7, 2005

Copies of the Existing Bonds are attached hereto as Exhibit E. Upon City's and Western Pacific's execution of the SIAs, and concurrent with Western Pacific's provision of the New Bonds, City shall relinquish and release the Existing Bonds.

(3) On or before the Effective Date of this Agreement, Western Pacific and City shall execute a mutually-agreeable improvement agreement to provide for completion of the Zone 2 Water Tank and Booster Pump Station in accordance with the requirements of Section 5.P below, which improvement agreement shall be in substantially the form of Exhibit G-2 hereto.

(4) On or before the Effective Date of this Agreement, Western Pacific shall provide to City performance, labor and material, and warranty bonds to secure Western Pacific's satisfactory completion of the Zone 2 Water Tank and Booster Pump Station improvements in accordance with the requirements of Section 5.P below and the improvement agreement required by the preceding Section 5.F.(3), which bonds shall be in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3.

(5) On or before the Effective Date of this Agreement, City and Standard Pacific shall execute a mutually agreeable improvement agreement to provide for the construction of Standard Pacific's portion of on-site and off-site improvements set forth in Exhibit F-1, in substantially the form of the improvement agreement attached hereto as Exhibit H. Additionally, Standard Pacific shall be responsible for the construction

of on-site and off-site improvements required to complete development of the Knoll Creek property and shall provide written assurance thereof in a form acceptable to City as a condition of filing the final subdivision maps or parcel maps for the Knoll Creek Property. Such assurance shall be in the form of a written subdivision improvement agreement entered into in accordance with procedures established pursuant to City ordinance (which shall include the posting of a bond or other surety acceptable to City provided as therein).

(6) On or before the Effective Date of this Agreement, Standard Pacific shall provide to City performance, labor and material, and warranty bonds (the "SP Bonds"), to secure Standard Pacific's satisfactory construction of the on-site and off-site improvements required by Exhibit F-1 of this Agreement and the improvement agreement required by the preceding Section 5.F.(5), as provided by and in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3.

(7) Provided that the other Developers have completed their respective off-site improvements set forth in Exhibit F-1, then prior to filing a final map or parcel map for the Rogers Ranch property, Rogers shall pay to City the full amount of the Rogers Ranch property's share of the costs of all off-site improvements required to complete development of the Rogers Ranch property and as set forth in Exhibit F-1, which payment City shall use to reimburse each Developer eligible for reimbursement for construction of such off-site improvements in accordance with Section 3.K. Additionally, Rogers shall be responsible for the construction of all on-site improvements required to complete development of the Rogers Ranch property, and shall provide written assurance thereof in a form acceptable to City as a condition of filing the final subdivision maps or parcel maps for the Rogers Ranch property. Such assurance shall be in the form of a written subdivision improvement agreement entered into in accordance with procedures established pursuant to City ordinance and shall also include the posting of bonds in substantial conformance with the requirements of Government Code sections 66499, 66499.1, 66499.2, and 66499.3, or other surety acceptable to City provided as therein.

(8) All standards for construction of the surface streets, storm drains, sanitary sewers, curbs, gutters, sidewalks and utilities, the terms of contracts for provision thereof and other terms and conditions applicable to the work of construction as well as for dedication of property interests required to be dedicated shall be those standard conditions established by City through its Public Works Department and Community Development Department, as may be adopted and amended from time to time, that is in effect generally throughout the City when a Developer seeks to develop a portion or portions of the Project Site.

(9) Contemporaneous with the Effective Date of this Agreement, Western Pacific and Standard Pacific shall provide to City separate letters of acknowledgement and understanding that City will exercise its rights to collect the security posted by Western Pacific and Standard Pacific under subdivisions (2), (4) and (6) of this Section

5.F, in the event that Developers fail to satisfy the requirements of the improvement agreements and subdivision improvement agreements described in subsections (1), (3) and (5) of this Section 5.F.

**G. Infrastructure Construction: Dedication Of Land, Rights of Way And Easements.**

- (1) Each Developer shall pay the full costs of all on-site infrastructure for its portion of the Project Site. Each Developer shall construct, or fund the construction of its proportionate share of, the following off-site infrastructure necessary to serve the Project Site, as provided in Exhibit F-1 hereto, subject to any oversizing requirements deemed appropriate by City. Developers shall construct the off-site infrastructure improvements described in Exhibit F-1 in accordance with the development schedule set forth in Exhibit F-2 hereto. Except for the improvements to Shelton Lane described in Section 5.G.1.c and Section 5.R.4 below, to the extent that a Developer has previously constructed or will construct any such off-site infrastructure, such Developer shall be entitled to reimbursement for costs incurred in excess of its fair share, through a Benefit District formed pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code.
  - a. The Parties acknowledge that as of the Effective Date, the Reynolds Ranch/Cheyenne Developer has already acquired and dedicated to City the land, and provided funds for the improvement plans, for the Allison Lift Station; has already completed the Brown's Valley Rice Lane Gravity Sewer Line, the Allison Sewer Pipeline, and the Waterline Upsizing; and has already acquired and dedicated to City the land required for the Zone 2 Water Tank and Booster Pump Station.
  - b. Developers shall pay their fair shares and the City shall construct the Allison Lift Station in accordance with Section 5.Q below. The Allison Lift Station shall be included in a separate Benefit District (the "ALS Benefit District") to be formed by City to facilitate reimbursement to the City and, to the extent that Western Pacific's contributions exceed its fair share and are not exhausted by the credits described below, reimbursement to Western Pacific. The Reynolds Ranch/Cheyenne Developer shall receive ALS Benefit District credit for contributions to the development of the Allison Lift Station including the costs for the preliminary design, design, and land acquisition. The Reynolds Ranch/Cheyenne Developer shall use the ALS Benefit District credit against the number of existing homes already developed by the Reynolds Ranch/Cheyenne Developer as of the Effective Date of this Agreement. If ALS Benefit District credit remains, the Reynolds/Cheyenne Developer may use the remaining credit against future ALS Benefit District payments. If Reynolds/Cheyenne

Developer's ALS Benefit District credit is less than the ALS Benefit District payment due for the number of existing homes already developed by the Reynolds Ranch/Cheyenne Developer as of the Effective Date of this Agreement, the Reynolds/Cheyenne Developer must pay the difference with the first building permit for the next home constructed on the Reynolds Ranch/Cheyenne property.

- c. As provided in Exhibit F-1, Developers shall construct the Zone 2 Water Tank and Booster Pump Station in accordance with Section 5.P below, and shall construct Shelton Road in accordance with Section 5.R.(4) below.
  - d. By way of background and not as a Developer obligation under this Agreement, the Parties understand that the Rancho Rogelio developer is conditioned to construct the Rice-McMurtry Detention Pond in accordance with that project's entitlements;
  - e. As provided in Exhibit F-1, Developers shall construct Browns Valley Road in accordance with Section 5.R.(5) below in conformance with plans approved by City.
  - f. As provided in Exhibit F-1, Developers shall complete the McMurtry Lane improvements and the McMurtry Lane/South Horse Creek Culvert in accordance with Section 5.R.(8) below, in conformance with plans approved by City.
  - g. As provided on Exhibit F-1, Developers shall construct Bent Tree Way in accordance with Section 5.R.(9) below, in conformance with plans approved by the City.
- (2) To the extent that any Developer defaults on its infrastructure improvement obligation(s) set forth in the preceding Section 5.G.(1) and the attached Exhibit F-1, and in addition to any of City's enforcement rights provided by this Agreement and upon 10 business days written notice to City, any other Developer shall have the right to assume such infrastructure improvement obligation(s) of the defaulting Developer and satisfy the infrastructure improvements obligation(s), subject to reimbursement by the Benefit District; provided, however, that if the defaulting Developer has not deposited in to the Benefit District account its share of the costs of such improvements, a Developer assuming a defaulting Developer's construction obligation(s) shall be entitled to reimbursement by the defaulting Developer of all costs reasonably incurred by the assuming Developer to satisfy the defaulting Developer's infrastructure improvement obligation(s).
- (3) With the exception of Shelton Lane, all on-site and off-site improvements set forth above are subject to reimbursement through one or more Benefit Districts to be formed at no cost to City pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code for costs determined to be in excess of Developers' fair share. Any oversizing shall be reimbursed to the eligible Developer in accordance with the provisions of City's Benefit

District Ordinance (Division 14.15 of the Vacaville Municipal Code); however, the term of any such reimbursement period shall be that term approved by the City Council with its approval of the applicable Benefit District. In order to fund the construction of on-site "backbone" infrastructure, a Developer may utilize those financing mechanisms deemed appropriate by City in its sole discretion and reasonable judgment, which financing mechanisms shall not involve or require the payment of any City funds for such improvements.

- (4) Each Developer shall dedicate, without compensation, deduction, or credit, road rights-of-way, utility and other easements, and the fee title to a well site or sites required for development of its portion of the Project Site in accordance with the Vested Elements. City shall cooperate with Developers and use its best efforts to bring about construction of the infrastructure required for the development contemplated in the Vested Elements that is beyond a Developer's control, including county, state, or federal participation in such construction and, when appropriate, as determined by City in its sole discretion, through the exercise of the power of eminent domain so long as funds are available therefor without cost or expense to City, either from bond sales proceeds, cash payments, or any combination thereof.
- a. If, after exercising reasonable, good faith efforts, any Developer responsible for construction of infrastructure improvements under Exhibit F-1 of this Agreement ("Responsible Developer") that is unable to obtain third party property interests necessary to construct such infrastructure improvements may notify City in writing of Developer's inability to obtain such property interests. Upon City's receipt of such notice from the Responsible Developer City shall have ten (10) business days to make a written determination that Responsible Developer has used reasonable, good faith efforts to obtain necessary third party property interests. If no written determination is provided, the Responsible Developer will be deemed not to have made reasonable good faith efforts in accordance with this Section. In the event no written determination is provided within the 10 business day period, the Responsible Developer may request in writing to meet and confer with City to address City's concern about the Responsible Developer's acquisition efforts. City and Developer shall make every effort to complete the meet and confer within ten (10) business days of City's receipt of the written request. During the meet and confer process all parties shall act in good faith to resolve the conflict.
- i. Within thirty (30) days of receipt of written notice of City's good faith determination, the Responsible Developer shall deposit with City sufficient funds, as reasonably determined by City, for City to acquire such property interests through the exercise of

its eminent domain power at no cost to City ("Acquisition Funds"). Upon Responsible Developer's deposit of such funds, City shall have twenty four (24) months to acquire possession of the property necessary to construct the infrastructure improvements and to grant Responsible Developer access to the property to permit construction of such infrastructure improvements. If City does not acquire possession of and grant Responsible Developer access to such property within such 24-month period, then not later than thirty (30) days after the end of the 24-month period, City shall return the full amount of Responsible Developer's deposit to Responsible Developer less any amounts expended to acquire the property necessary within the 24-month period and Responsible Developer shall be relieved of the obligation to complete such infrastructure improvements. If City elects to exercise its power of eminent domain as provided in this Section 5.G.(4) a, all time periods established by this Agreement for the construction of such infrastructure improvements shall be extended for a period of time equal to the period from the date of the Responsible Developer's written notice to City of Developer's inability to obtain the necessary property interests to the date that City provides to Developer, in writing, access to the property sufficient to permit construction of such infrastructure improvements.

- ii. Each time the balance of the Acquisition Funds has declined to \$50,000 by reason of withdrawals by the City to pay for costs of acquisition, Responsible Developer shall deposit within ten (10) days after written demand from City to deposit an additional \$25,000 or such greater amount necessary to bring the Acquisition Funds up to \$50,000.
- iii. If at any time City decides that it will not exercise its power of eminent domain to acquire such property interests and the property interests have not otherwise been acquired, then upon receipt of written notice of City's decision, which will not be unreasonably delayed or withheld, Responsible Developer shall immediately be relieved of the obligation to complete such infrastructure improvements.
- iv. Costs of acquisition shall include but not be limited to all amounts paid to the property owner for acquisition of the property interest necessary, including but not limited to any out-of-court settlement amount that may be higher than the appraisal amount, any and all City staff costs and expert and consultant costs incurred throughout the acquisition process,

overhead costs, noticing costs, costs and payments incurred for attorneys fees, expert witness fees including appraisers, court costs; litigation expenses; relocation costs, costs and fees charged by acquisition agents; any court awards including but not limited to compensation for the value of the property taken, interest on the award, interest for immediate possession of the property taken, as well as payment of sanctions, if any, awarded to the owner of the property being taken, court costs awarded to the owner or payable to the Court; court costs, if any awarded to the owner for abandonment or dismissal or all or any part of any condemnation action, recordation fees, damages, claims or sanctions resulting from a decision not to proceed with a condemnation action, and any other cost or expense paid or incurred by City related to or arising from City's attempt to acquire such property interests as set forth in this Agreement.

**H. Developers Funding of Infrastructure Shortfalls.** In the event a public agency responsible for making certain area-wide infrastructure improvements lacks sufficient funds to complete such improvements that are required to be constructed as part of the Vested Elements, including, but not limited to, sewer, water, roadway and intersection improvements, and/or storm drain facilities needed to serve the Project Site, each Developer shall have the option of proceeding with the development of such improvements, provided that a Developer choosing to exercise such option has procured a source of funds, reasonably acceptable to City, that is sufficient to make up the shortfall in funding for such improvements.

**I. No Mineral Exploitation; Water Rights; Closure And Transfer of Existing Water Wells And Water System.**

(1) No portion of the surface and no portion of the Project Site lying within five hundred (500) feet of the surface of the land may be utilized for extraction of oil, gas, hydrocarbon or any other mineral, metal, rock or gravel or any activities associated with or ancillary to any such activities. Nothing herein contained shall be deemed to prevent or restrict exploitation and/or extraction of such minerals and other substances below a plane lying five hundred (500) feet below the surface of the land so long as all such activities conducted within the boundaries of the Project Site are confined to a level below said elevation; and nothing in this Subsection shall be deemed to prevent movement or export of rock, gravel or earth as part of grading activity undertaken in connection with development allowed under the Vested Elements.

(2) No portion of the Project Site may be utilized for the placement of water wells or the extraction of water by any Developer or any successor in interest. Provided this Agreement is in effect and Developers have secured the benefits of the Project, City shall have the sole and exclusive right to all water, rights in water, or the placement of wells and use of water underlying the Project Site, whether above or below five hundred

(500) feet of the surface and this provision shall constitute a transfer of all such water rights to City effective upon the Effective Date of this Agreement.

(3) Prior to the issuance of building permits for the development within the Knoll Creek and Rogers Ranch properties, all existing private wells on such properties shall be abandoned and sealed in accordance with Solano County requirements and Department of Water Resources Bulletin prior to the issuance of the first building permit. Any private well actively used for a residential or agricultural use shall be permitted to remain in use until such time as the site work for such properties is completed.

**J. Dedications Of Greenbelts, Buffers, Open Space, Parks, Landscaped Areas, And Trails Lying Within The Project Site.**

(1) Greenbelts, buffers, open space areas, parks, landscaped areas, fire protection buffer zones, bicycle trails, and other trails and access points as generally shown on the Planned Development and shown on the Subdivision Final Maps lying within the Project Site (not covered by any of the foregoing sections) shall be dedicated to City by grant or irrevocable offer of dedication in a form and manner acceptable to the City Attorney, as a condition precedent to the recording of a final subdivision map for the portion of the Project Site which such item(s) are to be located; provided, however, that City shall have no obligation to accept such dedications. Greenbelts, buffers and open space areas may include wetlands, storm water detention basins, fire protection buffer zones, landscaping, and decorative planting areas that do not interfere with greenbelt, buffer and open space uses. Developer shall be responsible for any and all approvals, permits, or other entitlements required by any County, State, or Federal Agency with jurisdiction over any sensitive habitat or resources on the Project Site.

(2) As a condition of acceptance of such dedications by City, Developer shall propose and demonstrate to City's reasonable satisfaction a method or mechanism acceptable to City to maintain said greenbelts, buffers, open space areas, parks, landscaped area, fire protection buffer zones, and trails for their respective portions of the Project Site.

(3) The Developers acknowledge that the City will not grant park credit for open space dedicated to the City, for any trails, or for the storm water detention facilities.

(4) All new development within the Project Site will annex into the Ridgeview Neighborhood Park Assessment District.

**K. Dedicated Property Shall Be Unencumbered.** All real property or interests in land offered for dedication by Developers to City shall be free and clear of all liens, encumbrances, and clouds on title other than recorded easements or restrictions that do not interfere with or preclude the use of such property for its intended purpose as reasonably determined by City. Each Developer shall furnish a copy of a recent title report verifying these measures prior to approval or acceptance of any dedications.

**L. Developer To Provide Projections For Development Of The Project.** In order to facilitate the timely development of the Project Site, each Developer shall provide City with reports of its projected timetable for the design, construction and completion of the Project on its property as approved in the applicable Modified PD Permit and this Agreement ("Development Projections") within ninety (90) days of the Effective Date of this Agreement and each time there is a material change in a Developer's anticipated progress in developing the Project. In addition, each Developer shall provide Development Projections with the documentation Developer is required to provide City in conjunction with the "Annual Review," as defined in Subsection 10.B of this Agreement.

**M. Abandonment of Septic Systems.** Prior to the approval of the first subdivision map for the Knoll Creek and Rogers Ranch properties, Standard Pacific and Rogers Ranch, respectively, shall demolish all private septic systems, including cesspools, tanks, and leech fields, in accordance City and Solano County requirements. Tanks shall be cleaned and contents disposed of in accordance with all applicable regulations. Any private septic system actively used for a residential use shall be permitted to remain in use until such time as a grading permit is issued for the property on which such septic system is located.

**N. Acquisition of Domestic Water Supply to Serve Project.** Each Developer agrees to pay \$2,523 per dwelling unit as payment in full for the cost of acquiring additional domestic water to serve the residential uses contemplated by the Project. This cost is in addition to the standard water service connection fee assessed at the issuance of a building permit. This cost shall be adjusted annually on March 1, beginning in 2015, based on the Consumer Price Index for the Engineering News Record (ENR) Construction Cost Index for 20 cities, using San Francisco as a baseline for this adjustment.

**O. Completed Infrastructure Analyses.** The EIR concluded that there is adequate domestic water supply, wastewater treatment capacity, storm water runoff capacity, and public roads available to serve all development anticipated in the Rice – McMurtry Project Areas provided certain mitigations or improvements are constructed. Conceptual domestic water, wastewater, and storm water collection and distribution systems were analyzed and traffic study completed in the EIR. The Parties acknowledge that the ultimate development of the property through the approval of subdivision maps and Civil Improvement Plans may result in changes or improvements to the storm drain, sanitary sewer, and domestic water systems and public streets that were analyzed in the EIR. The following infrastructure analyses have been completed to support the development of infrastructure on the Project Site:

(1) The Reynolds Ranch Drainage Study and Detention Storage Evaluation has been prepared by West Yost and Associates (Technical Memorandum No. 1, No. 2 and No. 3, dated December 7, 2004, January 25, 2005 and June 6, 2006 respectively)) that identifies the proposed on-site and off-site storm water drainage system needed to

support the proposed development. A Benefit District shall be formed to reimburse and/or fund developers for any over-sizing of the storm water collection system needed to support future development. The Developers shall be responsible for their respective fair shares of all costs associated with the preparation and formation of the Benefit District which costs shall be incorporated and made a part of the Benefit District. A Lighting and Landscaping District will be established to fund on-going maintenance of the storm water detention and conveyance system.

(2) Sanitary sewer studies have been prepared by West Yost and Associates ("Rice-McMurtry Area Sewer Service Plan", dated December 2006 and "Allison Parkway Lift Station Expansion Project Final Preliminary Design Report" dated February 2006), at the request of Western Pacific, that verify the sizing, phasing, and location of all on-site and off-site components of the sanitary sewer collection system. A Benefit District shall be formed to reimburse the Developers for any over-sizing of the sanitary sewer lines needed to support future development. The City shall form a separate Benefit District for the expansion of the Allison Parkway Sewer Lift Station. The Developers shall be responsible for their respective fair shares of all costs associated with the preparation and formation of the Benefit District which costs shall be incorporated and made a part of the Benefit District.

(3) An analysis has been prepared by Nolte and Associates ("Rice McMurtry Water Service Area Master Plan and Tank Siting Study" dated March 2005) at the request of Western Pacific, that identifies the sizing, phasing, and location of the on-site and off-site domestic water supply and distribution system. A Benefit District shall be formed to reimburse the Developers for any over-sizing of the domestic water system needed to support future development. The Developers shall be responsible for their respective fair shares of all costs associated with the preparation and formation of the Benefit District which costs shall be incorporated and made a part of the Benefit District.

**P. Zone 2 Water Tank and Booster Pump Station.** The majority of the Project Site is within a Zone 2 water service area. As such, a new water storage reservoir and distribution system will be needed to serve the Project Site. The issuance of building permits for the lots above elevation 222 is contingent upon completion of the construction of the booster pump station, reservoir and associated transmission facilities (hereafter, the Zone 2 Water System and Booster Pump Station), in conformance with plans approved by City.

(1) Developers have completed or shall, as provided in Exhibit F-1, complete the following:

- a. Developers shall pay all costs associated with the land acquisition, pre-design, environmental, geotechnical, design, and construction of a Zone 2 Water Tank and Booster Pump Station and all other water system improvements as determined by City to be necessary to serve the Project Site;

- b. Developers shall complete construction of the Zone 2 Water Tank and Booster Pump Station in conformance with plans submitted by Developers and approved by City.
- c. Developers shall complete construction of the Zone 2 Reservoir and booster pump station not later than the earlier of occupancy of the 177<sup>th</sup> unit in the Reynolds Ranch/Cheyenne subdivision, or four (4) years from the date of City's approval of the Zone 2 Water Tank and Booster Pump Station plans.
- d. Developers shall prepare and include in all home purchase documents forms for buyer acknowledgement of the construction and operation of the five million gallon (5 mg) McMurtry Reservoir and 0.5 mg upper zone reservoir located near the west side of the developments.

(2) Upon completion of the Zone 2 Water Tank, Booster Pump Station and distribution system, all units within the Project Site shall be connected to the Zone 2 system. Facilities used in the Main Zone system shall be converted to use in the Zone 2 system or otherwise abandoned or demolished by the Developer as required by the Director of Public Works.

**Q. Sewer Collection System.**

(1) Development in the Rice-McMurtry area will trigger the need to install new and/or upgrade or upsize existing wastewater collection infrastructure and improve, modify, or expand the Allison lift station as identified in the EIR, the West Yost Associates Technical Memorandum prepared for this development ("Impacts of the Proposed Rice – McMurtry Development on the City of Vacaville Sanitary Sewer Facilities"), and the Allison Parkway Lift Station Expansion Project Final Preliminary Design Report .

(2) Western Pacific has previously funded the Allison Parkway Lift Station Expansion Project Final Preliminary Design Report used by City to determine the nature and extent of any required improvements, modifications, or expansion of the existing wastewater collection system, including but without limitation the Allison Lift Station, to accommodate the development within the Rice McMurtry Area, including but not limited to the Project Site, funded engineering pre-designs and designs for modifications to and expansion of the Allison Lift Station, and acquired and dedicated to City sufficient land to complete the modifications to and expansion of the Allison Lift Station and associated infrastructure sufficient to accommodate proposed development in the Rice McMurtry Area.

(3) Developers shall fund their respective fair shares of the costs of construction of the improvements, modifications, or expansion of the Allison Lift Station

and associated infrastructure, subject to credit for all prior contributions to such costs, including but not limited to Developers' prior contributions as they relate to the preliminary design, design, land acquisition, and construction of the Allison Lift Station. City shall form a Benefit District to fund the update of the Allison Lift Station improvement plans, for the construction of the Allison Lift Station and associated improvements, and to facilitate appropriate reimbursements, and City shall be responsible for construction of the Allison Lift Station and associated improvements.

(4) Portions of the Project have or utilize sewer lines installed by the Browns Valley Sewer Assessment District or other wastewater facilities. Any development utilizing such sanitary sewer system shall pay its pro-rata share of the costs for the installation and operation of such sewer system.

(5) Each Developer shall pay its proportionate share of the cost of the Sewer Collection System improvements, including the Allison Lift Station improvements, prior to issuance of any future building permits for production homes on its property (excluding building permits for model homes) or at time of final map if so designated in an approved benefit district. Payment of a Developer's proportionate share of such costs shall satisfy such Developer's obligations relating to the Sewer Collection System improvements and City shall issue building permits for such Developer as otherwise provided in this Agreement. Payment of the proportionate share of the cost of the Sewer Collection System improvements by a Developer shall be deemed to fully satisfy such Developer's Sewer Collection System obligations. Developers shall fund and participate in the formation of a Benefit District pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code to reimburse Developers for costs of Sewer Collection System improvements benefitting land outside the Project Site, including the costs of up-sizing any pipes and except for the Allison Lift Station improvements, which shall be subject to a separate Benefit District.

(6) City shall use reasonable efforts to form a separate Benefit District to fund the construction of the Allison Lift Station and associated improvements and facilitate reimbursement to City of eligible costs, and to construct the Allison Lift Station and associated improvements. City shall not delay or withhold the issuance of building permits in the event City fails to complete or is delayed in its completion of the Allison Lift Station improvements.

#### **R. Roadway and Intersection Improvements.**

(1) Developers will be responsible for all traffic and circulation system related mitigation measures identified in the Final EIR and this Agreement. Consistent with Section 5.G.1 above, and except for the improvements to Shelton Lane described in Section 5.R.4 below, to the extent that a Developer has incurred or will incur costs associated with any off-site roadway and infrastructure improvements described in this Section 5.R, such Developer shall be entitled to reimbursement for costs incurred in excess of its fair share, through a Benefit District to be formed at no cost to City pursuant to this Agreement and Division 14.15 of the Vacaville Municipal Code.

(2) Developers shall pay the full cost of any new internal and external roadway and intersection improvements that are necessary to accommodate the new development.

(3) As provided in Exhibit F-1 hereto, Developers shall complete plan lines of the improvements to the widening of Browns Valley Road from Vaca Valley Parkway to Shelton Lane. The plan line shall include both new horizontal and vertical alignments of the two lane collector road in a 60 foot right of way. The plan lines shall show all proposed traffic lanes; intersections and needed transitions to existing and proposed lanes; shoulders on the east side, curb and gutter on the west side; sidewalks or trails on the west side; and a Class 1 bike path on west side of the street. This plan line shall also include exhibits identifying any needed right of way from each adjacent property owner in the road alignments.

(4)

a. As provided in Exhibit F-1 hereto, Developers shall complete the improvements to Shelton Lane in conformance with the plans approved by the City. Developers shall commence construction of such Shelton Lane improvements not later than ninety (90) days following the Effective Date of this Agreement and City's approval of all required plans. To date, the City has issued 62 building permits within the Reynolds Ranch/Cheyenne subdivision. Upon Developer's commencing such Shelton Lane construction work, and subject to complying with Section 5.P. above with respect to lots above elevation 222, and submitting the appropriate application, City shall issue up to five (5) additional building permits to the Reynolds Ranch/Cheyenne Developer and up to six (6) building permits to the Knoll Creek Developer, all eleven (11) of which shall be for the limited purpose of constructing model homes on the Reynolds Ranch/Cheyenne property and the Knoll Creek property. As part of such Shelton Lane improvements, Developer shall reconstruct drainage ditches and driveway aprons along east side as necessary to conform and to drain properly. Design speed for the reconstruction shall be based on 35 MPH as a minimum. To the extent this can be increased without significant impact, it should be considered. Upon Developers' completion of the Shelton Lane improvements and subject to complying with Section 5.P, above with respect to lots above elevation 222, and submitting the appropriate applications, City shall issue up to forty-five (45) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision and up to four (4) additional building permits to Standard Pacific and Rogers, collectively, for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions.

b. Notwithstanding the foregoing Section 5.R.(4), if after a determination of good faith, the Responsible Developer deposits funds with City pursuant to Section 5.G.(4).a.i above for City to acquire property interests necessary to complete the Shelton Lane improvements required by this Section 5.R.(4)a, and City fails to grant to the Responsible Developer, within six months

of such deposit, sufficient access to the property to enable the Responsible Developer construct the Shelton Lane improvements described in Section 5.R.(4) above then within five (5) business days of a written request from the applicable Developer and subject to complying with Section 5.P, above with respect to lots above elevation 222, City shall issue up to five (5) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision, and up to six (6) building permits to Standard Pacific and Rogers, collectively, for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions, all eleven (11) of which shall be for the limited purpose of constructing model homes on the Reynolds Ranch/Cheyenne property and the Knoll Creek property and such building permits issued pursuant to this Section 5.R.(4)b shall substitute for and replace the building permits to be made available for model home dwelling units under the preceding Section 5.R.(4)a.

c. Notwithstanding the foregoing Section 5.R.(4)a, if the Responsible Developer deposits funds with City pursuant to Section 5.G.(4)a.i above for City to acquire property interests necessary to complete the Shelton Lane improvements required by this Section 5.R.(4)a, and City fails to grant to the Responsible Developer, within ten (10) months of such deposit, sufficient access to the property to enable the Responsible Developer construct the Shelton Lane improvements described in Section 5.R.(4)a above then not later than five (5) business days of a written request from the applicable Developer and subject to complying with Section 5.P, above with respect to lots above elevation 222, City shall issue up to forty-five (45) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision, and up to four (4) additional building permits to Standard Pacific and Rogers, collectively, for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions, and such building permits issued pursuant to this Section 5.R.(4)c. shall substitute for and replace the building permits to be made available for non-model home dwelling units under the preceding Section 5.R.(4)a.

(5) As provided in Exhibit F-1 hereto, Developers shall be responsible for installing all improvements to Browns Valley Road. Developer shall commence construction of such improvements not later than December 1, 2014 and be completed no later than June 1, 2015. Construction shall conform to plans approved by City, and shall include reconstructed drainage ditches and driveways along the east side of Browns Valley Road, as necessary to conform and to drain properly., Developers shall construct the west side Brown's Valley Road frontage (Frontage West), including the telecommunications line undergrounding along the Frontage West as described in Section 3.H above, and the Browns Valley Road Reconstruction (Center Section), in conformance with plans approved by City. These improvements shall also include a pedestrian path and bicycle path or sidewalk that connects the Project Site to the pedestrian pathways on Browns Valley Road near Vaca Valley Parkway allowing the residents in the new developments within the Rice – McMurtry area to have off-street

access to the Ridgeview Park, which shall be dedicated to the City and constructed to City standards as generally shown on the Planned Development. The path shall be a minimum of ten feet wide and paved to the satisfaction of the City Engineer. An interim or permanent five (5) foot sidewalk along the west side of the street shall be constructed across the 'Hillview' Property. Landscaping along west side of Browns Valley Road is deferred until future development adjoining Browns Valley Road is developed. Upon Developers' completion of the Browns Valley Road improvements in conformance with the plans approved by the City and subject to complying with Section 5.P, above with respect to lots above elevation 222, completion of the improvements described in Section 5.R.(4)a above, and submitting the appropriate applications, the City shall issue up to forty-five (45) additional building permits to Western Pacific for construction of dwelling units in the Reynolds Ranch/Cheyenne subdivision and up to fifteen (15) additional building permits to Standard Pacific or Rogers for construction of dwelling units in the Knoll Creek or Rogers Ranch subdivisions.

a. Notwithstanding the foregoing Section 5.R.(5), if the Responsible Developer deposits funds with City pursuant to Section 5.G.(4).a.i above for City to acquire property interests necessary to complete the Browns Valley Road improvements required by Section 5.R.(5), and City fails to grant to the Responsible Developer, within ten (10) months of such deposit, sufficient access to the property to enable the Responsible Developer construct the Browns Valley Road improvements described in Section 5.R.(5) above, then upon Developers submitting the appropriate application(s), and subject to complying with Section 5.P, above with respect to lots above elevation 222' and completion of the improvements described in Section 5.R.(4)a above, City shall issue up to forty-five (45) additional building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision and up to fifteen (15) additional building permits to Standard Pacific or Rogers for construction of dwelling units within the Knoll Creek or Rogers Ranch subdivisions; and such building permits issued pursuant to this Section 5.R.(5)(a) shall substitute for and replace the building permits to be made available under the preceding Section 5.R.(5). Nothing in this Section 5.R.(5).a is intended to limit the discretion of the City's Director of [Public Works or Community Development] to issue the building permits described herein earlier than ten months from the Responsible Developer's deposit or prior to completion of the Browns Valley Road improvements, provided that the Responsible Developer has commenced construction of such improvements in a timely manner under this Agreement, as determined by the Director of [Public Works or Community Development].

(6) As provided in Exhibit F-1 hereto, Developers shall be responsible for the construction and total costs of improvements to the intersection of Browns Valley Road and McMurtry Lane, and the intersection of Browns Valley Road and Whispering Ridge Drive, including any transitional lanes and improvements between the two intersections on Browns Valley Road as may be necessary to comply with City standards, in conformance with plans approved by the City.

(7) As provided in Exhibit F-1 hereto, Developers shall complete the preparation of plan lines of the improvements to the widening of McMurtry Lane from Browns Valley Road to the existing western terminus of the road. The plan lines shall include both new horizontal and vertical alignments of the two lane road (40 foot curb to curb in a 60 foot right of way). The plan lines shall show all proposed traffic lanes; curb, gutter, and sidewalks; on-street bike path on each side of the street; and intersections and needed transitions to existing and proposed roads. The plan lines shall also include exhibits identifying all needed right of way from each adjacent property owner in the road alignments.

(8) As provided in Exhibit F-1 hereto, Developers will be responsible for improving McMurtry Lane to an interim widening of 28-feet. Each Developer will be financially responsible for the improvements to the centerline of the road along their Project frontage. Developers will improve McMurtry to a 28-foot wide standard where frontage is owned by others, east of the Project Site. Developers will install the forty foot (40') McMurtry Lane improvements fronting on the Reynolds Ranch/Cheyenne, Knoll Creek, and Rogers Ranch properties. The McMurtry Lane improvements described in this Section 5.R.(8) shall include the McMurtry Lane/South Horse Creek Culvert. Upon Developers commencing such McMurtry Lane construction work and subject to complying with Section 5.P, above with respect to lots above elevation 222, and submitting the appropriate applications, City shall issue up to twenty-three (23) building permits to Western Pacific for construction of dwelling units within the Reynolds Ranch/Cheyenne subdivision and up to a total of seven (7) building permits to Standard Pacific and Rogers for construction of dwelling units within the Knoll Creek and Rogers Ranch subdivisions. Provided that City has approved all applicable plans, Developers shall complete construction of such improvements by **September 2015** as set forth in the applicable Subdivision Improvement Agreements. Upon Developers' completion of Shelton Lane, Browns Valley Road, and McMurtry Lane construction work and continued compliance with the terms of this Agreement, as reasonably determined by the Director of Public Works, there shall be no further restrictions on the issuance of building permits to Developers for the Reynolds Ranch/Cheyenne, Knoll Creek, and Rogers Ranch properties.

(9) As provided on Exhibit F-1, Developers shall construct all improvements to Bent Tree Way, including utilities determined by the Director of Public Works to be necessary to serve the Zone 2 Water Tank and Booster Pump Station, in conformance with plans approved by City.

(10) All public interior streets shall be designed and constructed in accordance with the City standard specifications for streets, including right-of way widths, street sections, construction standards, and materials.

(11) Any private streets shall be constructed in accordance with the standard specifications for street construction and materials. Right-of-way widths for the private interior streets shall be fifty (50) feet with a minimum pavement width of thirty-two (32) feet, measured curb-face to curb-face. Either rolled curbs or low-profile, angled curbs

are acceptable. Other design specifications shall be approved as a part of the Planned Development. All private streets shall be designated as such on each final subdivision map. Home buyers shall be provided with appropriate disclosure statements identifying the private streets and acknowledging that the City bears no responsibility for maintenance or repairs or liability for any occurrence on such private streets. Any damage to any private street within the Project Area caused by emergency vehicles or by City repair or maintenance activities shall be restored as close as practical to its original condition. The City will not be responsible for a perfect match to any non-standard improvements.

**S. Fire Protection.**

(1) Developers shall comply with all applicable requirements of the Vacaville Fire Department Development Standards for New Construction Adjacent to Open Lands Where Wildfire is a Threat.

(2) All residential units within the Project Site shall have residential fire sprinklers.

(3) Developers shall contribute a pro-rata share of the costs for relocating the Fire Station 73 to reduce the emergency response times as determined by the Fire Chief. The Community Benefit Contribution will fund this contribution.

**T. Vacaville Unified School District Mitigation Fees.** Developers agree to pay to Vacaville Unified School District ("VUSD) a school mitigation fee which may exceed the statutory fee established by the State Allocation Board. The amount of the fee shall be established by the City Council based, in part, on its review of "Justification Report for School Facilities Fees 2004-2008" prepared by VUSD. This fee shall automatically be annually adjusted by the change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index on January 1st of each year. Developers agree to pay this mitigation fee prior to the issuance of a building permit and shall provide to City evidence of fee payment.

**U. Community Benefit Contribution.** Developers agree to pay a Community Benefit Contribution of \$7,224 (as of the Effective Date) for each unit at the time building permits are issued for each dwelling unit within the Project Site. The Community Benefit Contribution shall automatically be adjusted by the percentage change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index on January 1<sup>st</sup> of each year for the Term hereof. Such funds shall be used by City for capital improvements and/or acquisition of lands that the City Council considers to be of community-wide benefit.

**V. Drainage Mitigation.** Developers shall be responsible for the payment of all City Storm Water Conveyance and Detention fees. A credit shall be given toward the Detention portion of the required fees for any on-site detention basins.

**SECTION 6. DEFAULT, REMEDIES, TERMINATION OF AGREEMENT.**

**A. Notice Of Default And Liability.** Subject to extensions of time mutually agreed to in writing by the Parties or as otherwise provided herein, material failure or delay by any party to perform any term or provision of this Agreement constitutes a default hereunder. Upon the occurrence of such default, the Party alleging such default shall give the other Parties written notice thereof, specifically stating that it is a notice of default under this Agreement, specifying in detail the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured, and giving a reasonable time that shall be not less than thirty (30) days measured from the date of personal service or delivery by certified mail of the written notice of default. During any such cure period or during any period prior to notice of default, the Party charged shall not be considered in default for the purpose of terminating this Agreement or instituting legal proceedings.

If a dispute arises regarding any other claim of default under this Agreement, the Parties shall continue to perform their respective obligations hereunder, to the maximum extent practicable irrespective of such dispute. Notwithstanding anything to the contrary, no default hereunder in the performance of a covenant or obligation with respect to a particular lot or parcel shall constitute a default as to other portions of the Project Site, and any remedy arising by reason of such default shall apply only to such lot or parcel. Any liability occasioned by such default shall be the responsibility of the owner(s) of the lot or parcel involving such default.

**B. Remedies.** Upon expiration of the cure period referenced above, if the default remains uncured, or if such cure cannot be accomplished within such cure period and the defaulting Party has not commenced such cure during such period and diligently prosecuting such cure thereafter, the non-defaulting Party may, at its option, give notice of intent to terminate this Agreement pursuant to Government Code Section 65868, or pursue such other remedies as may be available to such Party only as to the defaulting Party or Parties. Notice of intent to terminate shall be by certified mail, return receipt requested. Upon delivery by City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days in accordance with Government Code Sections 65867 and 65868 and Vacaville Municipal Code § 14.17.218.030. After considering the evidence presented, the City Council shall render its decision to terminate or not terminate this Agreement. If the City Council decides to terminate this Agreement, City shall give written notice thereof to the defaulting Party or Parties.

Evidence of default of this Agreement may also be taken during the regular annual review of this Agreement as described below. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of annual review) made by City against a Developer, or any person who succeeds a Developer with respect to any portion of the Project Site, shall be based upon written findings supported by evidence in the record as provided by Vacaville Municipal Code §§ 14.17.218.030. Notwithstanding any other provision of this Agreement to the contrary,

remedies for a default by a Developer or its successor of any of its obligations hereunder shall not be limited and City shall have the right to institute legal proceedings to enforce such obligations as set forth herein and in the Vested Elements, including, but not limited to, the obligation to indemnify, defend, and hold harmless City. Such remedies shall include those available at law or in equity that may be needed to enforce defaults such as the failure to pay fees, taxes, monetary exactions or assessments levied against the Project Site to pay for the cost of improvements whether levied pursuant to of this Agreement or the obligations otherwise stated in a separate agreement or undertaking under the Vested Elements or which is entered into in support of any community facilities or assessment district financing. City shall have the right to exercise such remedies as may be available at law or in equity to enforce the conditions stated in any use permit, design review approval, zoning approval, entitlements for use or entitlements for construction of specific improvements on a specific parcel, or as are provided in the Subdivision Map Act (Gov't Code §§ 66400 et. seq.) or City's subdivision ordinance as applied to subdivision improvement agreements. In addition to the right to give notice of intent to terminate this Agreement, Developers shall have the right to institute legal proceedings to enforce this Agreement in the event of a default by City.

**C. No Waiver.** Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default by the other Party shall not operate as a waiver of any default or of any rights or remedies of such Party; nor shall it deprive such Party of its right to institute and maintain any action or proceeding it may deem necessary to protect, assert or enforce any such rights or remedies.

**D. Judicial Review.** Any purported termination of this Agreement for alleged default shall be subject to review in the Superior Court of the County of Solano pursuant to Code Of Civil Procedure § 1094.5(c).

**E. Defaults By City.** If City does not accept, review, approve or issue development permits, entitlements or other land use or building approvals, if any, for use in a timely fashion as provided in this Agreement or defaults in the performance of its obligations under this Agreement, including but not limited to its obligations under Section 3.F.(4) and Exhibit F-1, then Developers (or any owner of the Project Site, or portion thereof, to which such default applies) shall have the rights and remedies provided herein or available in law or in equity, including, without limitation, the right to seek from the Director of Public Works (or his or her designee) an extension for the performance of Developer's obligation related thereto and specific performance under the appropriate circumstances, which request shall not be unreasonably denied.

**F. Obligation And Default Limited To Affected Parcel.** Notwithstanding anything to the contrary herein contained, when an obligation or duty hereunder to be performed, or a default has occurred, only with respect to a particular lot or parcel, such obligation or duty and any remedy or right of termination arising hereunder as a result of such

failure to perform shall apply solely to such lot or parcel and shall affect only the owner and/or the holders of the interest therein. No obligation, duty or liability will be imposed against or apply to any other parcel or portion of the Project Site for which no default has occurred.

**G. Copies Of Default Notices.** Each Developer shall have the right to request in writing copies of notice of default given to the owner of any other portion of the Project Site. City and/or the owners of other portions of the Project Site to whom such request has been made shall honor such request and provide such notice in the manner and to the address specified in the request. City shall be entitled to recover from the person making the request City's reasonable cost of complying with such request.

## **SECTION 7. ANNUAL REVIEW.**

Good faith compliance by each Developer with the provisions of this Agreement shall be subject to annual review pursuant to Government Code § 65865.1 and Chapter 14.17.218.010 of the Vacaville Municipal Code, utilizing the following procedures:

**A. Submission By Developers; Result Of Failure To Submit.** Review shall be conducted by City's Director of Community Development or his/her designee ("Director"), upon a submission made by a Developer of a draft report, accompanied by the fee therefor, on behalf of all of the Project Site pursuant to Vacaville Municipal Code § 14.17.218.010 not less than forty-five (45) days nor more than sixty (60) days prior to the anniversary date of this Agreement. The Director may refer the review to the Planning Commission pursuant to Vacaville Municipal Code § 14.17.218.010E. Should a Developer fail to submit the annual draft report in a timely manner and City does not notify such Developer of such failure within ninety (90) days following the anniversary date, then the annual review of such Developer's compliance with this Agreement shall be deemed to have been satisfactorily completed for that year only.

**B. Showing Required.** During review, each Developer shall be required to demonstrate to City Developer's good faith compliance with the provisions of this Agreement and provide such documentation or evidence related thereto as the Director may reasonably request.

**C. Notice Of Staff Reports, Opportunity To Respond.** Not less ten (10) days prior to the conduct of any such review, the Director shall deliver to each Developer a copy of any publicly-available City staff reports and documentation that will be used or relied upon by City in conducting the review. Each Developer shall be permitted an opportunity to respond to the Director's evaluation of that Developer's performance by written and oral testimony at a public hearing to be held before the Director, if the Developer elects to conduct such a hearing.

**D. Director's Findings: Appeal.** At the conclusion of the review, the Director shall make written findings and determinations on the basis of substantial evidence, whether or not each Developer or its successors have complied in good faith with the terms and

conditions hereof. Any determination by the Director of a failure of compliance shall be subject to the notice requirements and cure periods stated in Section 7, above. Any interested person may appeal the decision of the Director directly to the City Council, provided such appeal is filed and received by the City Clerk within ten (10) calendar days after the Director has rendered his or her decision in writing or issued a Certificate of Compliance. The appeal shall otherwise be governed by the provisions of the Vacaville Municipal Code, as amended from time to time.

**E. Notice Of Termination.** If the Director determines that a Developer (or other person, firm or entity owning the Project Site, or portion thereof) has not complied with the terms and conditions hereof, and after expiration of any cure period, the Director may recommend to the City Council that City give notice of termination or modification of this Agreement as it applies to such Developer as provided in Government Code §§ 65867 and 65868 and Vacaville Municipal Code § 14.17.218.030. If the Director recommends termination of this Agreement, such termination shall apply only to that portion of the Project Site (if less than all) affected by the failure to comply, subject to the provisions of Section 7, above. If the Director recommends a modification of this Agreement, the modification shall similarly apply only to that portion of the Project Site (if less than all) affected by the failure to comply.

**F. Notice Of Compliance.** Upon a Developer's request, City shall provide such Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by the Director as to any year for which the annual review has been conducted or waived and such Developer has been found or deemed to be in compliance with the provisions of this Agreement. Any Developer or any person owning a portion of the Project Site will have the right to record such notice at his or her own expense.

## **SECTION 8. MITIGATION MONITORING.**

Compliance with the various mitigation measures that are determined to apply to the Project Site, consistent with the EIR and the terms of this Agreement, shall be determined as follows:

**A. Permits And Approvals.** Compliance with those mitigation measures that are affected by and pertain to any development application or proposal for which approval is requested shall be considered and determined in connection with the processing of such application or proposal. The foregoing requirement does not require comprehensive monitoring for all mitigation measures specified in the Specific Plan during City's consideration of such application or proposal but shall only involve consideration and review of compliance of those mitigation measures that are directly related to the application or proposal under consideration.

**B. Annual Review.** City will review each Developer's compliance with the applicable mitigation measures no less often than annually at the time of the annual review of this Agreement is conducted. The draft report regarding each Developer's

compliance with such measures shall be initially prepared by each Developer and submitted to the Director for his/her review.

**SECTION 9. APPLICABLE LAWS; ATTORNEYS' FEES; PERMITTED DELAYS; EFFECT OF SUBSEQUENT LAWS.**

**A. Applicable Law/Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either Party to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonable in-house counsel fees of City at private rates prevailing in Solano County), court costs, expert fees, and such other costs as may be fixed by the court.

**B. Permitted Delays.** Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Excusable Delay" as hereinafter defined. For purposes hereof, Excusable Delay shall include delay beyond the reasonable control of the Party claiming the delay (despite the good faith efforts of such Party) including, but not limited to (i) acts of God, (ii) civil commotion, (iii) riots, (iv) strikes, picketing or other labor disputes, (v) shortages of materials or supplies, (vi) damage to work in progress by reason of fire, floods, earthquake or other catastrophes, (vii) failure, delay or inability of the other Party to act, (viii) as to Developers only, the failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Project Site including, by way of example only, the lack of water to serve the Project Site, or any part thereof due to drought; (ix) delay caused by governmental restrictions imposed or mandated by other governmental entities, (x) enactment of conflicting state or federal laws or regulations, (xi) judicial decisions or similar basis for excused performance; or (xii) litigation brought by a third party attacking the validity of this Agreement or any of the approvals, permits, ordinances, entitlements or other actions necessary for development of the Project Site or any portion thereof; provided, however, that any Party claiming an Excusable Delay shall promptly notify the other Party (or Parties) of any such delay as soon as possible after the same has been ascertained by the Party delayed.

**C. Effect Of Subsequent Laws.** If any governmental or quasi-governmental agency other than City adopts any law, statute, or regulation or imposes any condition (collectively "Law") after the date of execution of this Agreement that prevents or precludes a Party from complying with one (1) or more provisions of this Agreement, and such provision is not entitled to the status of a vested right against such new Law, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended to the extent necessary to comply with such Law. Immediately after the Parties have knowledge about the enactment of any such Law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Developers shall have the right to contest such Law in a court of law and seek a declaration that such Law does not affect or diminish

the provisions hereof. If any such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

**SECTION 10. COOPERATION OF CITY; PROCESSING OF PERMITS.**

**A. Other Governmental Permits.** City shall cooperate with Developers in their efforts to obtain other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project Site or portions thereof (such as, for example, but not by way of limitation, LAFCO jurisdiction over annexation, public utilities or utility districts and agencies having jurisdiction over wetlands and air quality issues). City shall, from time to time, at the request of a Developer, join with such Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency, so long as the action of that nature will not involve the expenditure of City funds or the use of extensive staff time or expose City, in its sole judgment, to any legal liability. Permits and approvals required from other agencies may necessitate amendments to this Agreement and/or to one or more of the approvals or other approvals granted by City. City shall not unreasonably withhold its approval of amending this Agreement in order to comply with such governmental mandate.

**SECTION 11. MORTGAGEE PROTECTION**

The Parties hereto agree that this Agreement shall not prevent or limit a Developer's, right to encumber the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing for development of all or any portion of the Project Site. City acknowledges that the lenders providing such financing may require this Agreement to be interpreted and modified and agrees upon request, from time to time, to meet with Developers and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any person holding a mortgage or deed of trust on all or any portion of the Project Site made in good faith and for value (a "Mortgagee") shall be entitled to the following rights and privileges:

**A. Impairment Of Mortgage Or Deed Of Trust.** Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Project Site made in good faith and for value.

**B. Notice Of Default To Mortgagee.** The Mortgagee of any mortgage or deed of trust encumbering the Project Site, or any part thereof, which Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by a Developer in the performance of such Developer's obligations under this Agreement.

**C. Right Of Mortgagee To Cure.** If City timely receives a written request from a Mortgagee requesting a copy of any notice of default given to a Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within fifteen (15) days of (i) the date the notice of default was sent to such Developer, or (ii) the date of receipt of Mortgagee's request, whichever is later. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period permitted under this Agreement, plus an additional sixty (60) calendar days if, in order to cure such default, it is necessary for the Mortgagee to obtain legal possession of the property (e.g. seeking the appointment of a receiver); provided, however, that during the cure period permitted under this Agreement, City receives from Mortgagee written notice stating the need to obtain legal possession of the property.

**D. Liability For Past Defaults Or Obligations.** Any Mortgagee, including the successful bidder at a foreclosure sale, who takes title and possession of the Project Site, or any part thereof, pursuant to such foreclosure, shall take the Project Site, or part thereof, subject to the provisions of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of a Developer arising prior to acquisition of title to all or any portion of the Project Site by such Mortgagee. In no event shall any such Mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate until all fees and other monetary obligations due under this Agreement have been paid to City.

## **SECTION 12. TRANSFERS AND ASSIGNMENTS.**

**A. Right To Assign.** Each Developer shall have the right to sell, assign or transfer its rights to any portion of the Project Site. All of its rights, duties and obligations under this Agreement with respect to the portion of the Project Site so transferred or assigned shall pass to the party acquiring fee simple title to such portion of the Project Site so transferred. "Developer" shall mean the entities so identified herein and such successors thereto as may be identified as being entitled to such designation in a notice of transfer provided for below. Reference to successors from time to time herein shall not imply that the word "Developer" does not include such designated successors in other instances.

**B. Release Upon Transfer.** Upon sale, transfer or assignment, in whole or in part, of a Developer's right and interest to all or any portion of the Project Site, such Developer shall be released from its obligations hereunder with respect to the portion so conveyed provided: (i) such Developer (or transferee) was not in default of this Agreement at the time of conveyance, (ii) such Developer provided to City prior written notice of such transfer, and (iii) with respect to sale or transfer of any lot that has not been fully improved, the transferee executes and delivers to City a written assumption agreement in which (A) the name and address of the transferee is set forth, and (B) the transferee expressly assumes the obligations of the transferring Developer under this Agreement as to the portion of the Project Site conveyed; provided further, however, that such transferring Developer shall not be relieved of any obligation for dedication or conveyance of land required to be conveyed or dedicated pursuant to the Vested

Elements. Failure to deliver a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement. Nothing herein contained shall be deemed to grant to City discretion to approve or deny any such transfer except as otherwise expressly provided herein.

**C. Approval; Right Of Amendment; Supplements Establishing Specific Rights And Restrictions; Review.** City's grant of the various approvals and consents referred to herein shall not constitute amendment hereof, nor shall the actions taken by City staff to implement the provisions hereof (e.g. the granting of minor modifications to approved plans, the Vested Elements or any other approval granted hereunder) shall constitute an amendment hereof.

No owner of less than all of the Project Site shall have the right to seek or consent to the amendment of the provisions hereof, to make an election hereunder, to terminate this Agreement or to enter into an agreement to rescind any provisions hereof in a manner that is binding upon, increases the burdens upon or reduces the rights of the owners of other portions of the Project Site, save and except for that portion that is owned in fee simple by said owner.

**D. No Third Parties Benefited.** No third party who is not a successor or permitted assign of a Party hereto or who has not become a Party by duly adopted amendment hereof may claim the benefits of any provision hereof.

**E. Covenants Run With The Land.** All of the terms, provisions, covenants, conditions, rights, powers, duties and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project Site or any portion thereof or interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assigns. All other provisions of this Agreement shall be enforceable during the Term hereof as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the California Civil Code. Each covenant to do or refrain from doing some act on the Project Site hereunder or with respect to any City-owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

## **SECTION 13. GENERAL PROVISIONS**

**A. Incorporation Of Recitals.** The recitals set forth above, and all defined terms set forth in such Recitals and in the introductory paragraph preceding the Recitals, are incorporated herein as though set forth in full.

**B. Limitation On Effect Of Agreement.** Except as expressly provided for in this Agreement to the contrary, each Developer and the Project Site are subject to all rules, regulations, ordinances, procedures, standards, uniform codes, requirements, costs, exactions and processes of City applicable to development of property within City as the same are in effect at the time each Developer seeks any land development approval including, but not limited to, subdivision of all or any portion of the Project Site, design review, zoning changes, building permits, or construction of on or off-site improvements or infrastructure.

**C. Covenants.** The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site, and the burdens and benefits of this Agreement shall bind and inure to all estates and interests in the Project Site and all successors in interest to Developers. From and after the date that certificates of occupancy have been issued for all buildings and improvements to be constructed on a parcel within the Project Site, such parcel shall not be burdened with the obligations of any Developer under this Agreement. This provision shall not, however, affect any separate covenants, conditions and restrictions that specifically pertain or apply to such parcel or the use thereof.

**D. Amendment Of Agreement.** This Agreement may be amended from time to time by mutual consent of the parties or their successors in interest, in accordance with the provisions of Government Code Section 65867 and 65688, and Division 14.17 of the Vacaville Municipal Code, provided that:

(a). **Procedural Exemptions.** Any amendment to this Agreement which does not relate to the Term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, the conditions, terms, restrictions and requirements relating to subsequent discretionary approvals of City, or monetary exactions of a Developer, shall be considered an "Administrative Amendment". The Director is authorized to execute Administrative Amendments on behalf of City and no action by the City Council (e.g. noticed public hearing) shall be required before the parties may enter into an Administrative Amendment. However, if in the judgment of the Director or any member of the City Council, a noticed public hearing on a proposed Administrative Amendment would be appropriate, the Planning Commission shall conduct a duly noticed public hearing to consider whether the Administrative Amendment should be approved or denied. The Vested Elements may not be amended except by amendment of this Agreement; provided, however, that in the case of amendments affecting portions of the Project Site, only the consent of the owner of such portion shall be required so long as the amendment does not

diminish the rights appurtenant to or increase the burdens upon any other portion of the Project Site.

(b). Exemption For Amendments Of City Land Use Regulations. Any amendment of City land use regulations including, but not limited to, the General Plan, Specific Plan, if applicable, and Zoning Ordinances, shall not require amendment of this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved by the City subject to the established procedures of the Municipal Code so long as such amendment is consistent with this Agreement.

**E. Project Is A Private Undertaking.** The developments proposed to be undertaken by Developers on the Project Site are private developments. Except for that portion thereof to be devoted to public improvements to be constructed by a Developer in accordance with the Vested Elements, City shall have no interest in, responsibility for, or duty to third persons concerning any of said improvements, and Developers shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developers contained in this Agreement.

**F. Hold Harmless; Indemnification of City.** Developers shall hold and save City, its officers and employees, harmless and indemnify them of and from any and all claims, losses, costs, damages, injuries or expenses (including, but not limited to, attorney fees, expert witness and consultant fees, and other costs of litigation) arising out of or in any way related to injury to or death of persons or damage to property that may arise by reason of development of those portions of the Project Site owned by Developers pursuant to this Agreement or by any action or activity by City, whether caused by joint negligence of the City, its officers or employees; provided, however, that the foregoing hold harmless and indemnity shall not include indemnification against: (i) suits and actions brought by Developer by reason of City's default or alleged default hereunder, or (ii) suits and actions arising from the willful misconduct of City, its officers and employees.

**G. Cooperation In The Event Of Legal Challenge.** In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a Party to this Agreement challenging the validity of any Project Approval or Subsequent Approval, the Parties shall cooperate in defending such action or proceeding. City shall promptly notify each Developer of any such action against City. If City fails to cooperate with Developers, or any of them, in the defense of such action, Developers or the affected Developer shall not thereafter be responsible for City's defense. The Parties shall use their best efforts to select mutually agreeable legal counsel to defend such action, and Developers shall pay the fees and expenses for such legal counsel and any expert witnesses. Developers' obligations to pay for legal counsel and expert witness fees shall not extend to fees incurred on an appeal initiated by City unless otherwise authorized by Developers. In the event City and Developers are unable to select mutually agreeable legal counsel to defend such action or proceeding, each Party may select its own legal counsel at its own expense.

**H. Notices.** Any notice or communication required hereunder between the Parties shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto, and any person or entity who acquires a portion of the Project Site, may at any time, by giving ten (10) days written notice to the other Party hereto, designate a different address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their respective addresses set forth below:

If to City, to:

Community Development Director  
City of Vacaville  
650 Merchant Street  
Vacaville, California 95688

With a copy to:

City Attorney  
City of Vacaville  
650 Merchant Street  
Vacaville, California 95688

If to Western Pacific, to:

Western Pacific Housing, Inc.  
5050 Hopyard Road, Suite 180  
Pleasanton, CA 94588  
Attention:

With a copy to:

**[Counsel]**

If to Standard Pacific Homes, to:

Standard Pacific Homes  
3825 Hopyard Rd, Suite 275  
Pleasanton, CA 94588  
Attention:

With a copy to:

[Counsel]

If to Rogers Ranch, LLC, to:

Rogers Ranch, LLC  
403 Davis Street, Suite A.  
Vacaville, CA 95688  
Attention:

With a copy to:

John Gardner  
Fitzgerald Abbott & Beardsley LLP  
1676 N. California Blvd.,  
Walnut Creek, CA 94596

**I. No Joint Venture Or Partnership.** Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any joint venture or partnership between City and Developers or any individual Developer.

**J. Severability.** If any provision of this Agreement is held to be invalid, void or unenforceable by a court of law but the remainder of this Agreement can be enforced without failure of material consideration to any party, then this Agreement shall remain in full force and effect, unless amended or modified in writing by mutual consent of the parties. If any material provision of this Agreement is held invalid, void or unenforceable, however, the owner of any portion of the Project Site affected by such holding shall have the right, in its sole and absolute discretion, to terminate this Agreement as it applies to such portion of the Project Site, upon providing written notice of such termination to City.

**K. Interpretation.** To the maximum extent possible, this Agreement shall be construed to provide binding effect to the Vested Elements, to facilitate use of the Project Site as therein contemplated and to allow development to proceed upon all of the terms and conditions applicable thereto, including, without limitation, public improvements to be constructed and public areas to be dedicated.

**L. Completion Or Revocation.** Upon completion of performance by the Parties or termination of this Agreement, a written statement acknowledging such completion or termination, signed by the appropriate agents of City and each Developer, shall be recorded in the Office of the Recorder of the County of Solano, California.

**M. Estoppel Certificate.** Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying such written amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, the nature and amount of any such default. A Party receiving a request hereunder shall execute and return such certificate or provide a written response explaining why it will not do so within thirty (30) days following the receipt thereof. Each Party acknowledges that such a certificate may be relied upon by third parties acting in good faith. A certificate provided by City with respect to any portion of the Project Site shall be in recordable form and may be recorded with respect to the affected portion of the Project Site at the expense of the requesting Party.

**N. Construction.** All Parties have been represented by counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement hereof. Captions and section headings are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they apply.

**O. Counterpart Execution.** This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart.

**P. Time.** Time is of the essence of each and every provision hereof.

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

"CITY"

CITY OF VACAVILLE, a  
municipal corporation

Approved as to form:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Attorney

**"WESTERN PACIFIC"**

Western Pacific, Inc.  
a Delaware corporation

Approved as to form:

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

**"STANDARD PACIFIC"**

Standard Pacific Homes, Inc.  
a [STATE] corporation

Approved as to form:

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

**"ROGERS RANCH, LLC"**

Rogers Ranch, LLC.  
a [STATE] corporation

Approved as to form:

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

- Attachments:
- Exhibit A: Rice-McMurtry Area
  - Exhibit B: Reynolds Ranch/Cheyenne Property (Legal Description)
  - Exhibit C: Knoll Creek Property (Legal Description)
  - Exhibit D: Rogers Ranch Property (Legal Description)
  - Exhibit E: Subdivision Improvement Agreement entered into by City and Western Pacific Housing, Inc. on March 3, 2006; Subdivision Bond No. SU5018488, dated December 12, 2005; and Subdivision Bond No. SU5017060, dated September 7, 2005
  - Exhibit F-1: Allocation of Infrastructure Construction Obligations
  - Exhibit F-2: Anticipated Off-Site Infrastructure Construction Schedule
  - Exhibit G-1: Form of Subdivision Improvement Agreement between City and Western Pacific Housing relating to Reynolds Ranch/Cheyenne Subdivision.

Exhibit G-2: Form of Subdivision Improvement Agreement between City and Western Pacific Housing relating to Zone 2 Water Tank and Booster Pump Station

Exhibit H: Form of Subdivision Improvement Agreement between City and Standard Pacific related to Knoll Creek Subdivision

Rob Wood  
Rogers Ranch, LLC  
403 Davis Street, Suite A  
Vacaville, CA 95688

City of Vacaville  
Planning Commission  
650 Merchant Street  
Vacaville, CA 95688

June 11, 2014

**Re: Discussion Regarding Amended – Restated DA, Reynolds/Knoll Creek/Rogers Ranch**

Dear Planning Commission Members,

Pursuant to staff's request, I am pleased to provide you with an update from Rogers Ranch perspective of the efforts made to amend the aforementioned Development Agreement.

In general this agreement is better than the existing agreement that was crafted in haste ten years ago. It does provide for specific areas of infrastructure responsibilities with timelines and enforcement triggers with the city's ability to withhold building permits should certain milestones not be met.

There is one exception; the proposed amended Development Agreement does not adequately address the construction timelines and assurances for the construction of the Zone 2 water tank as required. In short, Rogers is the only property that cannot develop without the tank. The intent of the tank project is to convert all three developments to the Zone 2 to relieve that demand from the current Zone 1.

The original DA provided that the city would form a Benefit District and construct the water tank, obviously that has not been done. The proposed amended DA provides that Horton will build the tank and the city and developers will form the BD. While Horton claims that the assurance to build the Zone 2 tank will be their bond, that is not an adequate remedy should a breach occur.

The developers have met and agreed verbally to fully fund the tank project based on current engineer estimates. This concept is good and potentially provides assurance that the project will be constructed. However, it will require a side agreement that has yet to be crafted to provide for an escrow account with instructions.

Additionally, the proposed DA must provide for the Zone 2 construction start timelines and should be treated with equal weight as compared to the other infrastructure priorities staff has imposed by limiting building permits in the event of a breach. By way of example, if the tank is required to be completed by occupancy of 177, a reasonable start time should be at 130 permits issued. The DA should also address the city's timelines to adequately provide for plan review and approval of the tank project.

Rogers Ranch has complied with every request and condition imposed by the city. We have done so in reliance of the representations made in the COA's and the DA. Without adequate assurances that this project will be built timely, we unfortunately would not be in a position to support this amended DA as proposed.

Respectfully Submitted,



Rob Wood

Fred Buderl  
Community Development Department  
City of Vacaville  
City Hall  
650 Merchant Street  
Vacaville, CA 95688

June 12, 2014

Dear Mr. Buderl,

On behalf of Western Pacific Housing, Inc. and D. R. Horton, Inc. (collectively, "Horton"), and pursuant to 14.17.214.010 of the City of Vacaville Municipal Code, we are submitting this letter to the City to identify the remaining areas of disagreement between Horton and the City with respect to the proposed Amended and Restated Development Agreement By and Between the City of Vacaville and Western Pacific Housing, Inc., Standard Pacific Homes, Inc., and Rogers Ranch, LLC, Regarding the Development of the Real Property Commonly Referred to as "Reynolds Ranch," "Knoll Creek," and "Rogers Ranch" (referred to herein as the "Amended DA"). This letter is based on our review of the City's June 10, 2014 draft, which we understand will be attached to the Staff Report provided to the Planning Commission for the Commission's June 19 meeting.

We are pleased to report that, as between Horton and the City, there is only one (1) remaining area of disagreement, which is explained below. In addition, we understand that one or both of the other developers has proposed that some additional language be included in the Amended DA relating to the provision of developer funding for the Zone 2 Water Tank & Booster Pump Station. As explained below, Horton has no objection to this proposal.

Horton has appreciated the time and effort put into negotiating the terms of the proposed Amended DA by City Staff and the City Attorney's office and by the other developers and their respective counsel. While our negotiations have taken some time, Horton believes that it has been time well-spent because, with a reasonable resolution of the few remaining issues, both the City and the developers will be able to proceed with development in the Rice-McMurtry Area in a manner and on a schedule that will benefit the City, the developers, the existing residents of the Rice-McMurtry area, and the broader community.

Horton is in agreement with all of the terms of the proposed Amended DA that has been presented to the Planning Commission for consideration, except for the following:

Section 5.G.(4).a.iv. – This section of the current draft of the proposed Amended DA would make certain developers responsible for all costs incurred by the City in obtaining any third-party property interests necessary to complete certain off-site improvements. Such costs are defined in this section as the "costs of acquisition." While Horton does not object to paying all reasonable costs incurred by the City to acquire such property interests, the current definition of "costs of acquisition" is, in Horton's view, unreasonably broad, for two reasons. First, it would require developers to pay "relocation costs," a term that is not defined in the Amended DA, and therefore is unreasonably vague. Second, it would

Fred Buder  
June 12, 2014  
Page 2

require developers to pay any sanctions awarded against the City and its agents for intentional bad faith or bad acts performed during the condemnation process. As noted above, Horton is willing to pay all actual, reasonably incurred costs; however, it cannot agree to pay costs resulting from willful bad acts or misconduct that may be performed by the City's agents or representatives.

Section 5.P.(2). – We understand that one or both of the other developers has proposed adding language to Section 5.P that would require the developers to execute a three-party agreement to provide for their joint funding of the Zone 2 Water Tank & Booster Pump Station. Horton has no objection to including such a requirement in the Amended DA.

Horton welcomes the opportunity to answer questions or provide additional information regarding the foregoing, and looks forward to meeting with the Planning Commission on June 19.

Very truly yours,

JARVIS, FAY, DOPORTO & GIBSON, LLP

/s/

Daniel P. Doport

cc: Dean Mills, D.R. Horton

---

ADDENDUM TO THE 2004 FINAL EIR

**CITY OF VACAVILLE**

RICE MCMURTRY  
ANNEXATION AND RESIDENTIAL  
DEVELOPMENT PROJECT

**JANUARY 2014**

LEAD AGENCY:

City of Vacaville  
Community Development Department  
650 Merchant Street  
Vacaville, California 95688



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ADDENDUM TO THE 2004 FINAL EIR

**CITY OF VACAVILLE**

RICE MCMURTRY  
ANNEXATION AND RESIDENTIAL  
DEVELOPMENT PROJECT

**JANUARY 2014**

LEAD AGENCY:

City of Vacaville  
Community Development Department  
650 Merchant Street  
Vacaville, California 95688



PREPARED BY:

Analytical Environmental Services  
1801 7th Street, Suite 100  
Sacramento, CA 95811  
(916) 447-3479  
[www.analyticalcorp.com](http://www.analyticalcorp.com)



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# SECTION 1.0

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## INTRODUCTION

### 1.1 BACKGROUND

On April 27, 2004 the City of Vacaville certified a Final Environmental Impact Report (EIR) for the Rice-McMurtry Annexation and Residential Development Project (Rice-McMurtry Project). Due to interrelated infrastructure requirements, the 2004 Final EIR for the Rice-McMurtry Project covered three contiguous/adjacent development projects including the Cheyenne Residential Subdivision Project (Cheyenne Subdivision or Project), which at the time was referred to as the “Reynolds Ranch Residential Subdivision Project.” The City found that, notwithstanding disclosure of the significant impacts and the accompanying mitigation within the EIR, pursuant to Section 15093 of the California Environmental Quality Act (CEQA) Guidelines the benefits of the project as revised outweigh the adverse impacts, and the Rice-McMurtry Project was approved in accordance with the provisions of CEQA.

The original proposal for the 150-acre Cheyenne Subdivision, as analyzed within the 2004 EIR, consisted of 221 single family lots of various sizes including 10,000 square feet (sf), 20,000 sf, and 1 acre lots. All interior streets were proposed to be private and to be owned and maintained by the Cheyenne Home Owner's Association, with the exception of Whispering Ridge Drive and Bent Tree Lane which were to be dedicated to the City as public roadways. Project implementation included improvements to the adjacent off-site McMurtry Lane and Browns Valley Road which serve the neighboring Knoll Creek, Rogers Ranch, and Rancho Rogelio projects, as well as the adjacent Vacaville Unified School District property, and the nearby Hill View project.

To date, 66 lots and homes in the Cheyenne Subdivision have been sold and are currently occupied, and 155 lots remain to be improved with single family detached homes. Additionally, since the Cheyenne Subdivision tentative and final subdivision maps were approved, the project applicant has completed the following public and private improvements:

- Construction of all public streets (Whispering Ridge Road, Bent Tree Lane) in the subdivision, including curb, gutter and sidewalk, and all utility infrastructure including water lines, wastewater lines, and storm drainage and interim drainage facilities;
- Construction of off-site public water and wastewater lines in Browns Valley Road;
- Construction of water lines in McMurtry Lane;
- Contribution of funding for design of, and acquisition of land for, the proposed Allison wastewater lift station;

- Construction of all private streets, including curb, gutter and sidewalk and all required utility infrastructure;
- Installation of private landscaping and fencing adjacent to common areas;
- Dedication of open space to the City; and
- Installation of fire maintenance road.

The development and improvements to date occurred in compliance with the existing Planned Development Permit (PDP) as amended by the Planning commission on March 1, 2005 and existing Development Agreement (DA) entered into by the City and applicant in May 2004. In 2008, the collapse of the housing market and the subsequent recession resulted in a severe reduction in the value of the all the properties in the Rice-McMurtry Area, making it infeasible for the property owners to continue to develop their respective properties consistent with the 2005 approvals. As a result, all development in the Rice-McMurtry Area was halted. As part of its current development application, the applicant is proposing modifications to the conditions of approval of the PDP and DA to make continued development of the property financially feasible, allow developers to complete development of the project site, and secure for the City the public benefits from development of the project site as contemplated in the 2005 approvals. These modifications, referred herein as “Proposed Modifications”, are detailed in **Section 2.0** of this addendum and summarized below.

- Extend the term of the DA, which is set to expire in May 2014, for seven years from the date of approval of the amended DA;
- Allow additional house models to be offered in the Cheyenne Subdivision;
- Modify timing requirements to construct certain public road improvements and construction of certain interim improvements, due to short- and long-term decreases in anticipated traffic levels, rather than construction of ultimate improvements;
- Modify the requirements relating to the construction of the Zone 2 Water System and the Alison Lift Station;
- Modify obligations with respect to the Con Span Bridge proposed within the Rodgers Ranch Property; and
- Removal of a proposed storm water detention basin within the Cheyenne Subdivision. This detention basin has been determined to be unnecessary, because the Cheyenne project will be served by a larger detention basin to be installed on the neighboring Rancho Rogelio property. Use of the off-site detention basin on the Rancho Rogelio property was included as an option under the existing PDP.

## 1.2 PURPOSE OF THE ADDENDUM

As defined in CEQA Guidelines Section 15164, the purpose of an addendum to an EIR is to determine whether, after certification of an EIR, minor changes to a project require additional environmental review before further action can be taken by the lead agency. Section 15164(a) of the CEQA Guidelines states

that the lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the following conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred:

- Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
  - The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative

This Addendum to the 2004 Final EIR for the Rice-McMurtry Project (Addendum) supports the determination that the Proposed Modifications described in **Section 3.0** do not meet these conditions. Therefore, no subsequent or supplemental EIR is necessary pursuant to Section 15162 of the CEQA Guidelines, and an addendum is the proper vehicle to document these facts and conclusions. Pursuant to Section 15164 of the CEQA Guidelines, it is intended that this Addendum, together with the 2004 Final EIR and the entire record supporting that EIR, will be used by the decision makers in their consideration of the Proposed Modifications to the PDP and DA.

### 1.3 ORGANIZATION OF ADDENDUM

The purpose of this Addendum is to describe the proposed modifications to the PDP and DA and provide sufficient evidence to support the decision not to prepare a subsequent or supplemental EIR. The scope of this Addendum is limited to the environmental topics analyzed in the 2004 Final EIR. An addendum need not analyze or reanalyze alternatives to the proposed project.

This addendum is organized into the following sections:

- Section 1.0 – Introduction
- Section 2.0 – Description of Proposed Modifications
- Section 3.0 – Environmental Setting, Impacts, and Mitigation Measures
- Section 4.0 – CEQA Considerations
- Section 5.0 – Addendum Preparation
- Section 6.0 – Addendum Acronyms
- Section 7.0 – Addendum References

## **1.4 INCORPORATION BY REFERENCE**

As discussed in Section 1.7 of the 2004 Final EIR, Section 15150 of the State CEQA *Guidelines* allows incorporation by reference of “...all or portions of another document which is a matter of public record or is generally available to the public.” In addition to the applicable documents listed in Section 1.7 of the 2004 Final EIR, this Addendum incorporates by reference the portions of the 2006 Mitigated Negative Declaration (MND) for the Rancho Rogelio Subdivision (City of Vacaville, 2006) that relate to the proposed regional detention basin. This includes the description of the environmental setting of the Rancho Rogelio project site and discussion of impacts and mitigation measures applicable to the construction and operation of the regional detention basin. All documents are available for public review and inspection at the City of Vacaville, 650 Merchant Street, Vacaville, California.

## **SECTION 2.0**

---

### **DESCRIPTION OF PROPOSED MODIFICATIONS**

#### **2.1 INTRODUCTION**

This section presents a description of the proposed modifications to the conditions of the existing Planned Development Permit (PDP) and existing Development Agreement (DA) (Proposed Modifications). The project location is presented in **Section 2.2** and project objectives are provided in **Section 2.3**. An overview of the Proposed Modifications is presented in **Section 2.3**. Section and agency approvals are listed in **Section 2.4**.

#### **2.2 PROJECT LOCATION**

The project area covered by the 2004 Final EIR is referred to as the Rice-McMurtry area in this Addendum. The Rice-McMurtry area is located immediately west of Browns Valley Road within the northern most portion of the City of Vacaville. This location corresponds to an unsectioned area within Township 6N, Range 1W of the "Allendale, California" U.S. Geological Survey (USGS) 7.5 minute topographic quadrangle. The Rice-McMurtry area consists of four sub-areas: (1) Cheyenne Subdivision (previously referred to as Reynolds Ranch), (2) Rogers Ranch Subdivision, (3) Knoll Creek Subdivision, and (4) City of Vacaville Open Space, also known as Caligiuri Park and Preserve (Figure 2-2 of Volume I of the 2004 Final EIR). The specific project covered by this Addendum is the Cheyenne Subdivision. The area subject to the PDP and DA as shown in Figure 3-1 of Volume I of the 2004 Final EIR has not changed with the exception that certain areas have been developed consistent with the existing PDP and DA.

#### **2.3 PROJECT OBJECTIVES**

The project objectives are described in Section 3.4 of Volume I of the 2004 Final EIR and remain unchanged with the Proposed Modifications.

#### **2.4 OVERVIEW OF PROPOSED AMENDMENTS TO PLANNED DEVELOPMENT PERMIT AND DEVELOPMENT AGREEMENT**

As described in **Section 1.1**, the applicant is proposing modifications to the conditions of the existing PDP and DA. These Proposed Modifications relate primarily to extending the term of the DA for seven years from the date of approval of the proposed Amended DA and to modifying the timing and/or funding

mechanisms of certain off-site improvements as described below. No modifications to the land use designations, zoning, annexation boundaries, development, residential densities, or utilities described in Section 3.0 of the 2004 Final EIR are proposed.

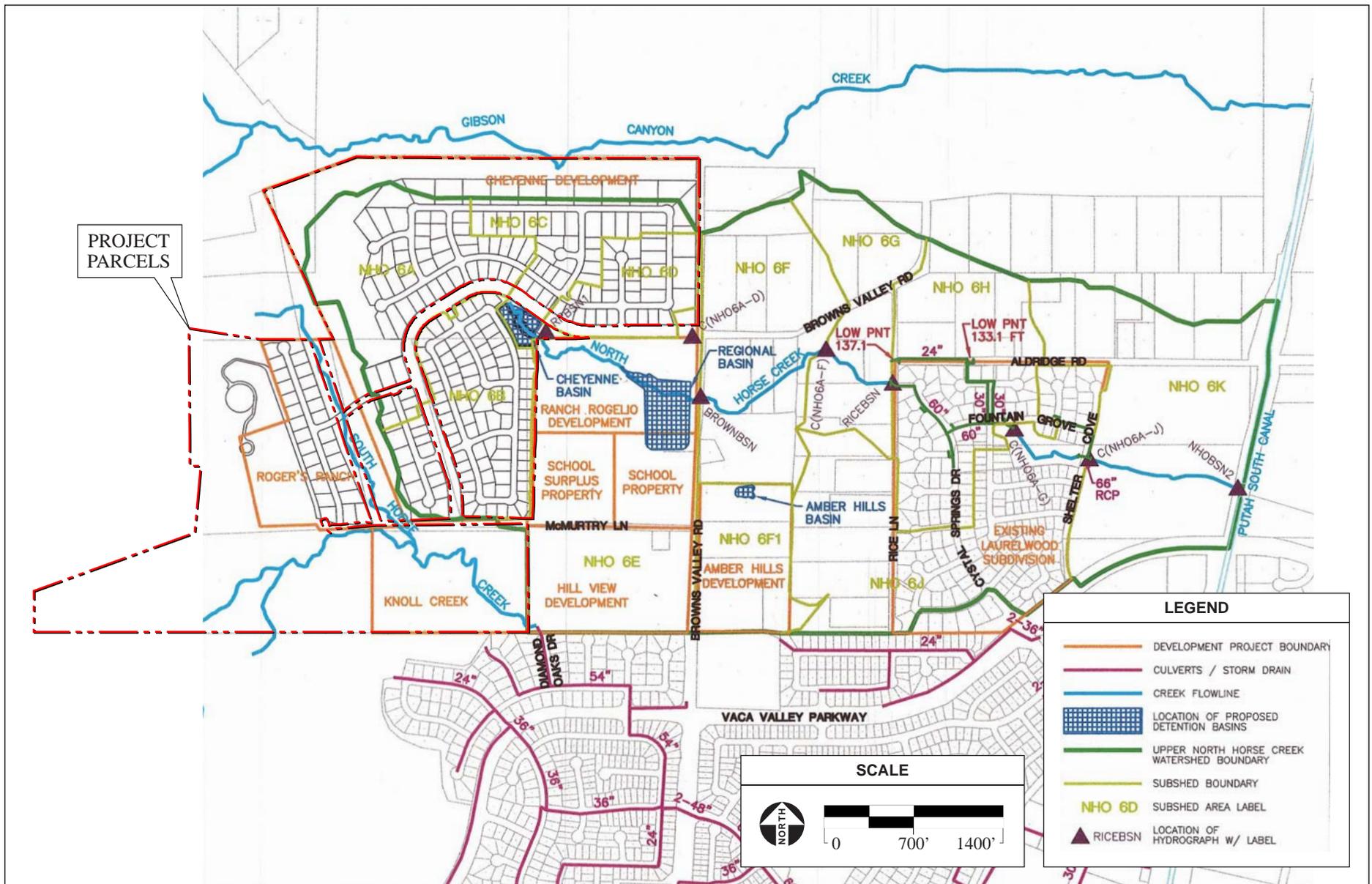
## PROPOSED MODIFICATION REGARDING USE OF THE REGIONAL DETENTION BASIN

The existing approvals require that each subdivision within the Rice-McMurtry Project detain its respective increase in storm water flows onsite. As described in Section 3.5.3 of the 2004 Final EIR, the existing design for the Cheyenne Subdivision included a detention pond that would collect, detain, and convey most of the Project's post-development stormwater flows to the east into the existing stormwater course (see Figure 3-4 of the 2004 Final EIR). Due to limitations imposed by USACE environmental permitting, the detention basin would not be sized to provide sufficient storage to maintain pre-development run-off levels. As a result, the project applicant proposes that it contribute its fair share of construction costs to the regional detention basin proposed to be constructed within the Rancho Rogelio subdivision located just south of the project site (**Figure 1**). The regional basin has been sized to accommodate the anticipated storm water flows from the Cheyenne Subdivision. Potential environmental impacts resulting from the construction and operation of the regional stormwater detention basin were evaluated in the 2006 Mitigated Negative Declaration for the Rancho Rogelio Subdivision (2006 MND; City of Vacaville, 2006), which as described in **Section 1.4** has been incorporated by reference into this Addendum.

## PROPOSED MODIFICATIONS TO THE TIMEING OF IMPROVEMENTS

### BROWNS VALLEY ROAD

The existing approvals require Browns Valley Road to be widened between Vaca Valley Parkway and Shelton Lane; however, current development projections for the area have substantially reduced the anticipated traffic levels in the foreseeable future. As a result, expected near-term traffic levels no longer justify the immediate construction of an arterial roadway. Consequently, the applicant proposes to delay the widening of Browns Valley Road until subsequent development projects are proposed that would require construction of the ultimate improvements to maintain City thresholds for acceptable LOS. Specifically, the applicant proposes that the present structural section be preserved, and a deep overlay section be constructed to bring the road to a collector level Traffic Index (T.I.), with a completed width of 32 feet (all widening to be improved on the west side). As required by the existing DA, the City will establish a benefit assessment district consisting of the Cheyenne, Rogers Ranch, Knoll Creek, Rancho Rogelio, Amber Hills and Hill View subdivisions, as well as the Vacaville Unified School District, to fund the construction, and the applicant would contribute its proportionate share of the costs for such improvements as determined through the benefit assessment district process.



**Figure 1**  
Proposed Drainage Plan

## SHELTON LANE

Shelton Lane is currently a two-lane rural residential collector street connecting the unincorporated Solano County properties to the north to the City-maintained portion of Shelton Lane and to Browns Valley Road. Under the existing approvals, the applicant is required to reconstruct Shelton Lane along the frontage of the Cheyenne Subdivision, which requires the dedication of the applicant's property and acquisition of right of way from third party property owners to the east, in the unincorporated County. The applicant proposes that it instead prepare and submit civil plans and profile drawings to correct the existing deficient road conditions and deposit with the City sufficient funds to complete the necessary improvements, allowing the City to construct the improvements at such time as the City determines it is appropriate.

## PROPOSED MODIFICATIONS TO THE FUNDING MECHANISMS FOR IMPROVEMENTS

### MCMURTRY LANE

The existing approvals require each subdivision within the Rice-McMurtry Project with frontage on McMurtry Lane to construct the improvements on its portion of the road. The project applicant has already constructed a partial pavement section from the intersection of Whispering Ridge Road to Browns Valley Road, including a portion of McMurtry Lane that does not front the Cheyenne Subdivision (McMurtry Lane provides secondary access to the Cheyenne subdivision). Similar to Browns Valley Road, the applicant proposes that the width of 28 feet and present structural section be preserved and a deep overlay section be constructed such that the total pavement section meet the standard for a collector level T.I. Because this improvement would benefit all the projects within the area, the applicant requests that it also be included in the benefit assessment district to be formed by the City pursuant to the existing DA. The applicant would repair any existing pavement failures and contribute its proportionate fair share of the costs as determined through the benefit assessment district process.

### ZONE 2 WATER TANK

The existing approvals require the utilization of both the Zone 1 and Zone 2 water systems. Since a Zone 2 water system did not exist at the time of the existing approvals, the DA requires that the developers of the Cheyenne, Knoll Creek, and Rogers Ranch subdivisions acquire or dedicate land, develop civil plans, and construct a new Zone 2 water system including a pump station and a .55 million-gallon water storage tank. This requirement was recommended in the 2004 Final EIR as Mitigation Measure 5.11-4(A). The applicant has already acquired the property for the Zone 2 tank, prepared civil engineering designs, and dedicated the necessary easements. The applicant proposes that the City cooperate to update design and value-engineer the .55 million-gallon tank and facilities, in order to service the lots in the Zone 2 area.

### ALLISON LIFT PUMP STATION

The existing DA requires the developer of the Cheyenne Subdivision to acquire the necessary land and pay for the civil engineering designs of the proposed Allison Lift Pump station, and to construct the proposed facilities and dedicate them to the City. This requirement was recommended in the 2004 Final EIR as Mitigation Measure 5.11-1(A) (2). To date, the applicant has acquired the land and dedicated it to the City, and paid for the designs of the facilities. However, because these facilities are intended to benefit other properties in the area, the applicant requests that 1) these facilities be included in the benefit district which the City will form pursuant to the existing DA (and the proposed Amended DA); 2) the City construct the lift station; and 3) the applicant be reimbursed for costs that it has already incurred in excess of its fair share for these facilities.

## **2.5 REGULATORY REQUIREMENTS, PERMITS, AND APPROVALS**

The Proposed Modifications would not require any additional approvals beyond adoption of the amended PDA and DA.

## SECTION 3.0

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### ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES

#### 3.1 INTRODUCTION

This section is organized by environmental topics corresponding to those discussed in Section 5.0 of Volume I of the 2004 Final EIR: Land Use Consistency, Traffic and Circulation, Air Quality, Noise, Biological Resources, Hydrology and Water Quality, Cultural Resources, Geology and Soils, Public Services, and Utilities. Within each topic subsection, a brief summary of the Environmental Setting is provided to the extent necessary to allow analysis of the Proposed Modifications followed by Impacts and Mitigation Discussions. The Impacts discussion summarizes each impact identified for the previous project in the 2004 Final EIR in italics, followed by a comparison with the impact that would result from the Proposed Modifications. The mitigation discussion provides a brief summary of any updates/changes to the mitigation measures identified in the 2004 Final EIR if warranted by the Proposed Modifications. Page numbers in parentheses indicate the location of information in Volume I of the 2004 Final EIR.

#### 3.2 LAND USE CONSISTENCY

##### SETTING

###### ON SITE USES

Since the approval of the Rice-McMurtry Project in April 2004, the project area has been annexed into the City of Vacaville and the City has approved the land use designations and zoning described in Section 3.5.1 of Volume I of the 2004 Final EIR (see Figure 5.2-4 and 5.2-5 of Volume I of the 2004 Final EIR).

As described in **Section 1.1**, to date, 66 lots and homes in the Cheyenne Subdivision have been sold and are currently occupied by third party purchasers. As of the date of this Addendum, 155 lots remain to be improved with single family detached homes. Additionally, since the Cheyenne Subdivision tentative and final subdivision maps were approved, the project applicant has completed several public and private improvements outlined in the original PDP and DA.

###### VICINITY USES

Current land uses in the vicinity of the Cheyenne Subdivision are consistent with those described in Section 5.2.2 of Volume I of the 2004 Final EIR. Adjoining land to the north and west of the Cheyenne Subdivision are currently used for rural residential development, cattle grazing, and undeveloped land.

The area east of the Cheyenne Subdivision has rural residential development, while the area south of the Cheyenne Subdivision contains several residential subdivisions and public open space. The Rancho Rogelio Subdivision, approved by the City in 2006, is located immediately south of the Cheyenne Subdivision. As approved, the Rancho Rogelio Subdivision will include the construction of 40 single-family residential lots and a 4.72-acre regional stormwater detention basin capable of retaining 16.1-acre feet of stormwater runoff. The regional stormwater detention basin was sized to accommodate the anticipated stormwater flows from the Cheyenne Subdivision.

## IMPACTS AND MITIGATION MEASURES

### LAND USE COMPATIBILITY (IMPACT 5.2-1 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that surrounding residential and open space land uses are typically compatible with the proposed residential land uses of the Rice-McMurtry Project. Additionally, although the Rice-McMurtry Project has the potential to result in various environmental impacts, land use conflicts associated with these impacts are considered minor and would not result in long term compatibility issues that cause significant human health concerns. Therefore, the Rice-McMurtry Project would result in a less than significant compatibility impact. No mitigation was determined to be necessary (pp 5.2-16).*

The Proposed Modifications would not involve any change in land use from what was previously approved in the existing DA and PDP and, therefore, would not result in new significant land use compatibility impacts that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### CONSISTENCY WITH THE SOLANO COUNTY GENERAL PLAN (IMPACT 5.2-2 OF 2004 FINAL EIR)

*As stated within the 2004 Final EIR, once approved, the Rice-McMurtry area and associated development would not be subject to the County General Plan or zoning ordinance. All land use control would be assigned to the City of Vacaville. However, the 2004 Final EIR went on to conclude that the Rice-McMurtry Project would not conflict with Chapter 2: Planning Framework (Community Buffers section), Chapter 3: Agricultural and Open Space Land Use (Conflicting Land Uses section), or Chapter 5: Residential Land Use (Residential Land Use Proposals section) since the proposed development would not eliminate “essential” agricultural lands. Additionally, the Rice-McMurtry Project would be considered consistent with Policy 10 of this Chapter since a majority of affected residents are in favor of the annexation. Therefore, the Rice-McMurtry Project would result in a less than significant impact. No mitigation was determined to be necessary (pp 5.2-17).*

As described in the 2004 Final EIR, now that the Rice-McMurtry area has been annexed into the City of Vacaville it is no longer subject to the Solano County General Plan. Therefore, implementation of the Proposed Modifications would not result in new significant impacts associated with consistency with the Solano County General Plan that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

**CONSISTENCY WITH THE LAFCO ANNEXATION STANDARDS (IMPACT 5.2-3 OF 2004 FINAL EIR)**

*The 2004 Final EIR concluded that the Rice-McMurtry Project would be considered consistent with the Solano Local Agency Formation Commission (LAFCo) Standards and, therefore, the Rice-McMurtry Project would result in a less than significant impact. No mitigation was determined to be necessary (pp 5.2-18).*

As described in the 2004 Final EIR, now that the Rice-McMurtry area has been annexed into the City of Vacaville it is no longer subject to the LAFCo Annexation Standards. Therefore, implementation of the Proposed Modifications would not result in new significant impacts associated with LAFCo Annexation Standards that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

**CONSISTENCY WITH THE CITY OF VACAVILLE GENERAL PLAN (IMPACT 5.2-4 OF 2004 FINAL EIR)**

*The 2004 Final EIR concluded that the Rice-McMurtry Project was generally consistent with the City of Vacaville General Plan, with the exception of the City's Land Use Element Residential Area policies. The Rice-McMurtry Project was considered partially inconsistent with the City's Land Use Element Residential Area policies because the Rice-McMurtry Project would not include a mix of 80 percent single family and 20 percent moderate density units. Mitigation measures to reduce the potential significant impact to a less-than-significant level are provided in the EIR (pp. 5.2-20).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP. As described in **Section 2.0**, Browns Valley Road, McMurtry Lane, and Shelton Lane would ultimately be built to meet General Plan Standards at such time as the City determines it is appropriate. Therefore, these Proposed Modifications would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

The 2006 MND concluded that the development of the regional detention basin within the Rancho Rogelio Subdivision is consistent with the City of Vacaville General Plan land use designation of Estate Residential and, as designed and conditioned, would implement the General Plan Land Use designation and the development guidelines established for the Rice McMurtry area. Therefore, with the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, proposed use of the regional stormwater drainage facility would not result in a substantial increase in the severity of significant impacts associated with the General Plan previously identified in the 2004 Final EIR.

### CONSISTENCY WITH THE COMPREHENSIVE ANNEXATION PLAN (IMPACT 5.2-5 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the Rice-McMurtry Project is consistent with the Comprehensive Annexation Plan and, therefore, the Rice-McMurtry Project would result in a less than significant impact. No mitigation was determined to be necessary (pp 5.2-18).*

Now that the Rice-McMurtry area has been annexed into the City of Vacaville, it is no longer subject to the City's Comprehensive Annexation Plan. Therefore, implementation of the Proposed Modifications would not result in new significant impacts associated with the City's Comprehensive Annexation Plan that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

## 3.3 TRAFFIC AND CIRCULATION

### SETTING

No significant changes to the transportation circulation system that would serve the project have occurred since the 2004 EIR. Local access to the Rice-McMurtry area continues to be provided primarily via Browns Valley Road and McMurtry Lane. Interstate 80 (I-80), Interstate 505 (I-505), Vaca Valley Parkway, and Browns Valley Road provide regional access.

### EXISTING TRANSPORTATION FACILITIES

The 2004 Final EIR assessed the impacts of the Rice-McMurtry Project to the existing roadway network. A Traffic Impact Analysis (TIA) was conducted and included as Appendix C of Volume I of the 2004 Final EIR. The study roadway network consisted of the following intersections:

1. Vaca Valley Parkway/Crocker Drive/East Monte Vista Avenue
2. Browns Valley Road/Wrentham Drive
3. Browns Valley Parkway/Allison Drive
4. Allison Drive/East Monte Vista Avenue
5. Browns Valley Parkway/East Monte Vista Avenue
6. Allison Drive/I-80 EB Off-Ramp/Nut Tree Parkway
7. Vaca Valley Parkway/I-505 NB Ramps
8. Leisure Town Road/I-80 EB Ramps
9. Leisure Town Road/I-80 WB Ramps
10. Browns Valley Road/Shelton Lane 3 5
11. Browns Valley Road/McMurtry Lane 3
12. Browns Valley Road/Vaca Valley Parkway 4
13. Vaca Valley Parkway/I-505 SB Ramps

## EXISTING TRAFFIC CONDITIONS

Traffic conditions were assessed following the guidelines established by the City and traffic impacts were evaluated using intersection level of service (LOS) calculations for the evening (4:00 to 6:00 PM) peak hour. The City traffic model was used to forecast PM peak hour turning movements at the study intersections. The results of the intersection LOS calculations indicated the following intersections operated under unacceptable conditions (operating conditions did not meet general plan requirements) prior to the addition of traffic generated by the Rice McMurry Project:

1. Vaca Valley Parkway/Crocker Drive/East Monte Vista Avenue
2. Browns Valley Road/Wrentham Drive
3. Allison Drive/East Monte Vista Avenue
4. Browns Valley Parkway/East Monte Vista Avenue
5. Allison Drive/I-80 EB Ramp/Nut Tree Parkway
6. Leisure Town Road/I-80 EB Ramps
7. Leisure Town Road/I-80 WB Ramps

Intersection operations were assessed in 2010-2011 throughout the City for the *Vacaville General Plan and ECAS Draft EIR* (October 2013) (General Plan EIR). The October 2013 General Plan EIR traffic impact assessment indicates that operations have improved to acceptable conditions at the above study intersection since the 2004 Final EIR, with the exception of Allison Drive/East Monte Vista Avenue. The improvement in roadway operations is attributable to the reduced growth associated within the economic downturn and roadway improvements constructed since the completion of the 2004 Final EIR. Consistent with the 2004 Final EIR, no mitigation has been identified for the Allison Drive/East Monte Vista Avenue intersections. The results of the 2010-2011 intersection operations assessment indicate that current conditions are consistent with those anticipated in the 2004 Final EIR.

## CUMULATIVE TRAFFIC CONDITIONS

The 2004 Final EIR assessed the cumulative environment by assessing the impact of project-generated traffic on the local roadway network under the General Plan 2025 planning horizon. The 2004 EIR identified that the following study roadway intersections would operate under unacceptable conditions under year 2025 conditions prior to the addition of traffic generated by the Rice-McMurtry Project:

1. Allison Drive/East Monte Vista Parkway
2. Browns Valley Parkway/East Monte Vista Avenue
3. Allison Drive/I-80 EB Off-Ramp/Nut Tree Parkway
4. Leisure Town Road/I-80 Eastbound Off-Ramp

The October 2013 General Plan EIR indicates that intersection operations are generally improved compared to the 2025 projections utilized in the 2004 Final EIR. These improved operations are directly related to a lower baseline traffic projection compared to those utilized in the 2004 Final EIR.

## IMPACTS AND MITIGATION MEASURES

### EXISTING PLUS APPROVED PLUS PROJECT AND CUMULATIVE INTERSECTION (IMPACTS 5.3-1 AND 5.3-2 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that the addition of traffic associated with the operation of the Rice-McMurtry project would result in near-term significant impacts to the Leisure Town Road/I-80 eastbound and westbound (WB) ramps and Leisure Town Road/ I-80 WB Ramps and the Allison Drive/I-80 EB Off-Ramp/Nut Tree Parkway intersection during year 2025 conditions. Mitigation measures to reduce the potential significant impacts to a less-than-significant level were provided in the EIR (pp. 5.3-17).*

The Proposed Modifications would not alter the number of units being develop as described in the 2004 Final EIR. Accordingly, these Proposed Modifications would not result in the generation of additional vehicle traffic beyond what was previously assessed in the 2004 Final EIR and associated TIA. As described above, the October 2013 General Plan EIR traffic impact assessment indicates that operations have improved at the study area intersections since the 2004 Final EIR. Implementation of the Proposed Modifications to the PDP and DA would not result in an increase in the severity of the significant near-term or cumulative impacts to the study roadway network previously identified in the 2004 Final EIR. No additional mitigation is warranted.

The Proposed Modifications include delay of the timing of the implementation of roadway improvements to Browns Valley Road and Shelton Lane. The study intersections along these roadways were found to operate at an acceptable LOS during the near-term and cumulative year 2025 conditions in the 2004 EIR. In addition, the Proposed Modification to develop Browns Valley Road at a collector status is consistent with the recommended future improvements identified in the General Plan. No future improvements were identified for Shelton Lane in the General Plan. Therefore, no mitigation measures were recommended for either Browns Valley Road or Shelton Lane. Accordingly, the delay in the implementation of the ultimate improvements to Browns Valley Road and Shelton Lane would not increase the severity of significant impacts identified in the 2004 Final EIR, nor would the modifications result in new significant impacts that were not addressed in the 2004 Final EIR if a timing mechanism for the ultimate improvements to the two roadways are incorporated into the Proposed Modifications.

### LOCAL CIRCULATION IMPACTS (IMPACT 5.3-3 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that the addition of a fourth approach to an existing "T" intersection within 60 feet of an existing residential driveway and the potential for impediment of traffic flow of Browns Valley Road from traffic entering the project would significantly impact local circulation*

*patterns. Mitigation measures to reduce the potential significant impacts to a less-than-significant level were provided in the EIR (pp. 5.3-20).*

The Proposed Modifications would not alter the approach to the intersection of Browns Valley Road and Shelton Lane. The TIA conducted for the 2004 EIR assumed the existing lane configuration of Browns Valley Road and Shelton Lane, and did not assume that the facilities would be upgraded to their General Plan classifications. Therefore, the delay in timing of the proposed improvements to these roadways as a result of the Proposed Modifications would not alter the conditions under which the impact was analyzed in the 2004 Final EIR. With the incorporation of mitigation recommended within the 2004 Final EIR, implementation of the Proposed Modifications would not result in the increase in the severity of significant impacts identified in the 2004 Final EIR, nor would the modifications result in new significant impacts that were not addressed in the 2004 Final EIR. No additional mitigation is warranted.

#### LOCAL CIRCULATION IMPACTS FROM PROJECT CONSTRUCTION (IMPACT 5.3-4 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that the trenching of underground utilities within the existing Browns Valley Road right-of-way, street improvements from City Limits to Shelton Lane, and street improvements on Browns Valley Road that do not meet current City Standards would significantly impact local circulation patterns during project construction. A mitigation measures to reduce the potential significant impacts to a less-than-significant level was provided in the EIR (pp. 5.3-20).*

As discussed in Section 1.1, utility installations, including those within the existing Browns Valley Road right of way, have been completed and therefore the requested modifications would not increase the severity of the impacts identified within the 2004 Final EIR or result in the identification of new significant impacts not assessed in the 2004 Final EIR relating to their installation. The PDP and DA incorporate requirements to develop project roadways in accordance with City Standards and therefore the Proposed Modifications in the timing of development would not result in an increase in the severity of impacts identified in the 2004 Final EIR, nor would the modifications result in new significant impacts that were not addressed in the 2004 Final EIR. No additional mitigation is warranted.

#### MITIGATION

The City should require the Modified DA to include timing mechanisms for the ultimate build out of Browns Valley Road and Shelton Lane. Incorporation of this timing mechanism would ensure implementation of the Proposed Modifications would not increase the severity of impacts identified in the 2004 Final EIR, nor would the modifications result in new significant impacts that were not addressed in the 2004 Final EIR.

## 3.4 AIR QUALITY

### SETTING

The Rice-McMurtry area is located within the Sacramento Valley Air Basin (SVAB). The SVAB continues to be designated “nonattainment” for state and national ozone standards and for the state PM<sub>10</sub> standard (Air Resources Board, 2012). The project area is in “attainment” or unclassified with respect to all other state and federal ambient air quality standards. The 2004 Final EIR identified ozone, CO, and PM<sub>10</sub> as the major pollutants of concern in the project area. Since NO<sub>2</sub> emissions are primarily a concern as an ozone precursor, NO<sub>2</sub> was evaluated for its contribution to elevated ozone concentrations. No substantial changes have occurred in air quality attainment or emission sources since the certification of the 2004 Final EIR.

As described in the 2004 Final EIR, schools, hospitals, convalescent homes, residential areas, and recreational uses are considered to be relatively sensitive to poor air quality. Besides the residences constructed in accordance with the existing DA and PDP, no substantial changes have occurred regarding sensitive receptors since the certification of the 2004 Final EIR.

### IMPACTS AND MITIGATION MEASURES

#### GENERATION OF CONSTRUCTION-RELATED EMISSIONS (IMPACT 5.4-1 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that construction of the Rice-McMurtry Project would have a potentially significant impact on regional air quality. Mitigation measures to reduce the potential significant impacts to a less-than-significant level were provided in the EIR (pp. 5.4-15).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in any additional construction beyond what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant air quality impacts during construction previously identified in the 2004 Final EIR.

The 2006 MND concluded that, with the implementation of suggested mitigation measures, the development of the regional stormwater drainage facility would have a less-than-significant effect on regional air quality. Therefore, with the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, proposed use of the regional stormwater drainage facility would not result in new significant impacts to air quality or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

**GENERATION OF OPERATIONS-RELATED EMISSIONS (IMPACT 5.4-2 OF 2004 FINAL EIR)**

*The 2004 Final EIR concluded that operation of the Rice-McMurtry Project would result in an exceedance of the YSAQMD's threshold for ROG emissions. Mitigation measures to reduce the potential significant impacts to a less-than-significant level were provided in the EIR (pp. 5.4-20).*

The Proposed Modifications would not result in any operation emissions beyond what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of air quality impacts during operation previously identified in the 2004 Final EIR. No additional mitigation is warranted.

**CUMULATIVE GENERATION OF CARBON MONOXIDE EMISSIONS (IMPACT 5.4-3 OF 2004 FINAL EIR)**

*The CO analysis completed in support of the 2004 Final EIR found that even at the most impacted intersections, CO concentrations would be less than the state and federal 1-hour and 8-hour ambient standards at the closest sensitive receptors. Since the screening analysis was conducted for the worst case intersection, and because that analysis found that there would be no CO impacts, additional screening analyses were not conducted. Consequently, the 2004 Final EIR concluded that the Rice-McMurtry Project would cause less-than-significant impact and is not cumulatively considerable. No mitigation was determined to be necessary (pp. 5.4-20).*

The Proposed Modifications would not result in an increase in vehicle trip generation during operation beyond what was previously approved in the existing DA and PDP and, therefore, would not result in new significant impacts regarding CO emissions that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

**GENERATION OF OTHER CRITERIA POLLUTANTS (IMPACT 5.4-4 OF 2004 FINAL EIR)**

*The 2004 Final EIR concluded that the Rice-McMurtry Project would have lead emissions which are considered negligible and, therefore, the Rice-McMurtry Project would result in a less-than-significant impact. No mitigation was determined to be necessary (pp 5.4-22).*

The Proposed Modifications would not result in any increase in lead emissions beyond what was previously approved in the existing DA and PDP and, therefore, would not result in new significant air quality impacts associated with lead emissions that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

**GENERATION OF OPERATIONS-RELATED ODORS (IMPACT 5.4-5 OF 2004 FINAL EIR)**

*The 2004 Final EIR concluded that the construction and operation of the Rice-McMurtry Project would result in a less-than-significant impact related to odors. No mitigation was determined to be necessary (pp 5.4-22).*

The Proposed Modifications would not result in any increase in odors beyond what was previously approved in the existing DA and PDP and, therefore, would not result in new significant odor impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### 3.5 NOISE SETTING

As discussed in the 2004 Final EIR, existing noise environment is considered quiet with the primary source of ambient noise being traffic on local streets, particularly along the eastern border where Browns Valley Road intersects with either McMurtry Lane or Shelton Lane. Besides construction completed in accordance with the existing DA and PDP, no substantial changes have occurred in the noise environment since the certification of the 2004 Final EIR.

The project area underlies the eastbound downwind pattern for air traffic operating at Travis Air Force Base (AFB), so experiences occasional overflights by C-5 and other aircraft. The 2002 noise contour map prepared for Travis AFB indicates that the Rice-McMurtry area continues to be outside the 60 dB CNEL contour, so noise from Travis AFB operations would not be considered substantial in that context (Solano County, 2002). Similar to the 1995 Air Installation Compatible Use Zone (AICUZ) map referenced in the 2004 Final EIR. The 2002 noise contour map does not show the location of the 55 dB Community Noise Equivalent Level (CNEL) contour.

The Nut Tree Airport is also located nearby, and noise contours were prepared for that airport in 1993 as part of the Airport Master Plan. The noise contour map for future operations (2011) shows that the Rice-McMurtry area is located outside the 55 dB CNEL contour, so noise from Nut Tree Airport operations would not be considered substantial in that context. No new noise contour maps have been produced for the Nut Tree Airport since the certification of the 2004 Final EIR.

As described in the 2004 Final EIR, residential areas, hospitals, and nursing homes are considered to be noise sensitive areas. Besides the residences constructed in accordance with the existing DA and PDP, no substantial changes have occurred regarding sensitive receptors since the certification of the 2004 Final EIR.

### IMPACTS AND MITIGATION MEASURES

#### CONSTRUCTION NOISE LEVELS (IMPACT 5.5-1 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that the construction of the Rice-McMurtry Project would result in a potentially significant impact regarding noise. Mitigation measures to reduce the potential significant impacts to a less-than-significant level were provided in the EIR (pp. 5.5-16).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in any additional construction beyond what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant construction noise impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that the development of the regional stormwater drainage facility would have a less-than-significant effect on noise levels. Therefore, with the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry Project, construction of the regional stormwater drainage facility would not result in new significant impacts to ambient noise levels or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### NOISE LEVELS FROM ON SITE ACTIVITIES (IMPACT 5.5-2 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that the operation of the Rice-McMurtry Project would result in a less-than-significant impact regarding noise. No mitigation was determined to be necessary (pp 5.5-17).*

The Proposed Modifications would not result in any operational noise beyond what was previously approved in the existing DA and PDP and, therefore, would not result in new significant noise impacts that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### EXISTING AND CUMULATIVE TRAFFIC NOISE LEVELS (IMPACT 5.5-3 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that the operation of the Rice-McMurtry Project would result in a potentially significant cumulative impact regarding noise. Mitigation measures to reduce the potential significant impacts to a less-than-significant level were provided in the EIR (pp. 5.5-17).*

The Proposed Modifications would not result in any operation noise beyond what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### NUT TREE AIRPORT NOISE LEVELS (IMPACT 5.5-4 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that noise from individual aircraft operations at the Nut Tree Airport is not expected to be substantial; therefore the noise associated with Nut Tree Airport operations is expected to result in a less-than-significant impact. No mitigation was determined to be necessary (pp 5.5-20).*

The Proposed Modifications would not result in any increase in sensitive receptors beyond what was previously approved in the existing DA and PDP and, therefore, would not result in new significant impacts from Nut Tree Airport noise levels that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### TRAVIS AIR FORCE BASE NOISE LEVELS (IMPACT 5.5-5 OF 2004 FINAL EIR)

*The 2004 Final EIR determined that noise from individual aircraft operations at the Travis Air Force Base is not expected to be substantial; therefore the noise associated with Travis Air Force Base operations is expected to result in a less-than-significant impact. No mitigation was determined to be necessary (pp 5.5-20).*

The Proposed Modifications would not result in any increase in sensitive receptors beyond what was previously approved in the existing DA and PDP and, therefore, would not result in new significant impacts from Travis AFB noise levels that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

## 3.6 BIOLOGICAL RESOURCES

### SETTING

Besides construction completed in accordance with the existing DA and PDP, no substantial changes have occurred to the biological resources setting since the approval of the Final EIR in 2004. As described in the 2004 Final EIR, and confirmed through the review of recent aerial imagery, the vegetation community types characterized are as follows: annual grassland; orchard /rowcrop; oak savannah; and urbanized. The water resources present in the study area are intermittent and ephemeral streams and swales, a seep, and a seasonal pond. As described in **Section 1.1**, since the Cheyenne Subdivision tentative and final subdivision maps were approved, the project applicant has completed 66 homes and other public and private improvements in accordance with the existing DA and PDP, including storm drainage and interim drainage facilities.

Although no special-status species have been observed during field surveys, the analysis completed for the 2004 Final EIR determined that the following six species have a medium or high potential to occur on site: Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); Swainson's hawk (*Buteo swainsoni*); burrowing owl (*Athene cunicularia hypugaea*); mountain plover (*Charadrius montanus*); white-tailed kite (*Elanus leucurus*); and small-footed myotis bat (*Myotis ciliolabrum*). Updated lists of regionally occurring special-status plant and animal species were compiled based upon a review of pertinent literature, reconnaissance-level site assessments, informal consultation with the U.S. Fish and Wildlife Service, and the results of a CNDDDB query of all reported occurrences of special-status species within the "Sacramento West, California" USGS 7.5 minute topographic quadrangle map and the surrounding 8 quadrangle maps. Based on the review of updated species lists and aerial imagery, it was determined that no new state or federally listed species have been identified within the five-mile radius of the project site that were not included in the analysis conducted for the 2004 Final EIR.

A Final Administrative Draft of the HCP was released in August of 2012 and is currently undergoing revisions. The Solano County Water Agency anticipates that the final version of the HCP will be

completed and made available to the public during late spring or summer of 2014 (Solano County Water Agency, 2014).

## IMPACTS AND MITIGATION MEASURES

### SPECIAL STATUS SPECIES (IMPACT 5.6-1 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project could result in detrimental impacts to special status species or degradation of their habitats. Species determined to have the potential to be impacted included the Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); Swainson's hawk (*Buteo swainsoni*); burrowing owl (*Athene cunicularia hypugaea*); mountain plover (*Charadrius montanus*); white-tailed kite (*Elanus leucurus*); and small-footed myotis bat (*Myotis ciliolabrum*). Mitigation measures to reduce the potentially significant impacts to a less-than-significant level are provided in the EIR (pp. 5.6-20).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that, with the implementation of suggested mitigation measures, the development of the regional stormwater drainage facility would have a less-than-significant effect on special status species and their habitats. Therefore, with the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, use of the regional stormwater drainage facility would not result in new significant impacts to special status species or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### NESTING BIRDS (IMPACT 5.6-2 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project could result in detrimental impacts to nesting habitat directly by tree removal and indirectly by noise, vibration, and other construction-related disturbance. Mitigation measures to reduce the potentially significant impacts to a less-than-significant level are provided in the EIR (pp. 5.6-22).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in new significant impacts to nesting birds or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that, with the implementation of suggested mitigation measures, the development of the regional stormwater drainage facility would have a less-than-significant effect on nesting birds. Therefore, with the implementation of the measures included within the adopted mitigation

monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, proposed use of the regional stormwater drainage facility would not result in new significant impacts to nesting birds or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### WATERS OF THE UNITED STATES (IMPACT 5.6-3 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project could result in detrimental impacts to Waters of the United States by eliminating portions of North Horse Creek and the alteration of existing creek channels. Mitigation measures to reduce the potentially significant impacts to a less-than-significant level are provided in the EIR (pp. 5.6-23).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts to waters of the U.S. previously identified in the 2004 Final EIR.

The 2006 MND concluded that, with the implementation of suggested mitigation measures, the development of the regional stormwater drainage facility would have a less-than-significant effect on waters of the U.S. Therefore, with the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, the use of the regional stormwater drainage facility would not result in new significant impacts to waters of the U.S. or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### IMPACTS TO TREES (IMPACT 5.6-4 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project would result in detrimental impacts to trees directly by the removal of mature trees for grading activities and indirectly by potential root severing, root compaction, and limb removal resulting from grading and other construction activities. Mitigation measures to reduce the potential significant impacts to a less-than-significant level are provided in the EIR (pp. 5.6-25).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that there are no trees within the Rancho Rogelio project site that meet the City's criteria for preservation; therefore, the development of the regional stormwater drainage facility would have a less-than-significant effect on trees. With the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry Project, use of the regional

stormwater drainage facility would not result in new significant impacts to waters of the U.S. or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CONFLICTS WITH THE HCP/NCCP (IMPACT 5.6-5 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project could conflict with some of the proposed goals and conservation criteria of the Solano Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), which had not yet been adopted. Mitigation measures to reduce the potential significant impacts to a less-than-significant level are provided in the EIR (pp. 5.6-28).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in an increase in the potential for conflict previously identified in the 2004 Final EIR.

At the time the 2006 MND was adopted, the City was actively participating in the development of the Solano Multispecies HCP. As described in the 2006 MND, the agreement between the City and the Solano County Water Agency for water service stipulates that in the interim period before the HCP is adopted, no jurisdiction will approve a project with potential impact to federally listed species until clearance has been obtained from the affected federal agencies. As described above, the 2006 MND concluded that the BRA did not identify the presence or potential presence of any federally-listed species on the site. Because the 2006 MND and BRA concluded that no federally-listed species occur on the site, clearance was not required to be obtained from federal agencies for the development of the regional stormwater detention facility. Therefore, with the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, use of the regional stormwater drainage facility would not result in a substantial increase in the severity of conflicts with the HCP/NCCP previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE IMPACTS TO BIOLOGICAL RESOURCES (IMPACT 5.6-6 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project and other development projects in the General Plan sphere of influence would result in cumulative impacts to biological resources in Vacaville. Mitigation measures to reduce the cumulative impacts to biological resources are provided in the EIR (pp. 5.6-29); however, the cumulative impact of loss of open space and habitat is still considered significant and unavoidable.*

The Proposed Modifications would have similar cumulative impacts to biological resources as analyzed in the 2004 Final EIR, and therefore, would not result in an increase in the severity of cumulative impacts to biological resources. With the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, implementation of the Proposed Modifications would not result in new significant cumulative impacts to biological resources or

a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### 3.7 DRAINAGE AND WATER QUALITY

#### SETTING

##### REGIONAL SURFACE WATER

No substantial changes have occurred in regards to regional surface water since the certification of the 2004 Final EIR. The Rice-McMurtry area is located in the upper northwestern area of the 150-square-mile Ulatis Creek Watershed. Mountains and flat alluvial valleys characterize the terrain of the Ulatis Creek Watershed. The Ulatis Creek Watershed is drained by a series of major stream courses that discharge into the Cache Slough and ultimately into the Sacramento River. The major stream courses, which drain to the Cache Slough, include Alamo Creek, Ulatis Creek, Horse Creek, Gibson Canyon Creek, Sweeny Creek, and McCune Creek. The Rice-McMurtry area lies within the Horse Creek watershed and the Gibson Canyon Creek watershed.

##### FLOODING

No substantial changes have occurred in regards to regional floodplains since the certification of the 2004 Final EIR. The Rice-McMurtry area continues to be identified by FEMA to be in Zone X, which is an area outside of the 100-year flood plain that has a 0.2 percent chance of annual flood (FEMA, 2009).

##### DRAINAGE

The major stream courses in the City of Vacaville, including those that drain the Rice-McMurtry area and vicinity, are generally in their natural state and alignment. During major storms such as a 10-year event, channel capacities may be exceeded, leading to localized flooding. Regional detention basins are located throughout the City to reduce the flow in creeks and prevent adverse impacts as a result of flooding. Currently, 17 regional detention basins exist within the City; 6 are proposed to be developed by the City; and 4 new detention basins, including the basin proposed to be used by the modified project, are proposed as part of upcoming development projects (City of Vacaville, 2013). New development projects are required to reduce post-development peak flow and runoff volume to at or below pre-project conditions (City of Vacaville, 2013).

In the Rice-McMurtry area, the existing conditions are the same as what was analyzed in the 2004 Final EIR, with the exception of the construction that has been completed in accordance with the existing DA and PDP.

As described in **Section 4.2**, the approved Rancho Rogelio Subdivision is located immediately south of the Rice-McMurtry area and includes the development of a 4.72-acre regional stormwater detention basin

capable of retaining 16.1-acre feet of stormwater runoff. The regional stormwater detention basin was sized to accommodate the anticipated stormwater flows from the Cheyenne Subdivision.

## WATER QUALITY

### Surface Water Quality

No substantial changes have occurred in regards to surface water quality since the certification of the 2004 Final EIR. Water quality within the watershed is primarily influenced by surrounding land uses. In the Rice-McMurtry area, the water quality is influenced by the sediment-laden runoff from the surrounding hills. Downstream of the Rice-McMurtry area, water quality in the existing watercourses is dominated by urban land uses. Possible constituents associated with urban land uses, and the surrounding hillsides include: sediment, heavy metals, petroleum hydrocarbons, fertilizers, and pesticides. Since the 2004 Final EIR, additional waterways downstream of the project site have been listed on the State Water Resources Control Board (SWRCB) 303(d) list of impaired waterways. Ulati Creek has been listed for chlorpyrifos and diazinon. Suisun Slough has been listed for diazinon. Putah Creek has been listed for boron. And Delta Waterways (northwestern portions) have been listed for electrical conductivity (U.S. Environmental Protection Agency (USEPA), 2014 and SWRCB, 2010). Since the 2004 Final EIR, the Sacramento River has been delisted for diazinon.

### Urban Runoff Quality

No substantial changes have occurred in regards to urban runoff quality since the certification of the 2004 Final EIR. During the seasonal dry period, pollutants contributed by vehicle exhaust, vehicle and tire wear, spills, and atmospheric fallout accumulates within the watershed. Precipitation during the early portion of the wet season displaces these pollutants into the storm water runoff that can result in elevated pollutant concentrations in the initial wet weather runoff. Urban runoff from the project site today is similar to what was analyzed in the 2004 Final EIR.

## IMPACTS AND MITIGATION MEASURES

### FLOODING HAZARD (IMPACT 5.7-1 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that development of the Rice-McMurtry Project would produce increased peak runoff flows from the project area which could exceed the capacity of downstream drainage facilities and increase the downstream flooding hazard resulting in a potentially significant impact. Mitigation measures to reduce the impact to a less-than-significant level are provided in the EIR (pp. 5.7-12).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in new significant impacts or a substantial increase

in the severity of significant impacts associated with flooding hazards previously identified in the 2004 Final EIR.

As described in the 2006 MND, a drainage study and detention storage evaluation report, Technical Memorandum No.2, was completed by West Yost & Associates on January 25, 2005 to determine the required detention storage that would be necessary to mitigate the increase in runoff resulting from development of the Cheyenne Subdivision and the build out of the areas west of Browns Valley Road. Without mitigation, the increase in peak flows resulting from development of the Cheyenne Subdivision project during the 10- and 100- year storm events would be about 60 and 70 cubic feet per second (cfs), respectively. The increase in peak flows resulting from build out of the areas west of Browns Valley Road would be about 100 cfs during the 10-year storm events and 130 cfs during the 100-year storm. The study concludes that in order to mitigate the increase in peak flow resulting from development west of Browns Valley Road, one of two options must be adopted:

1. Each project west of Browns Valley Road must provide detention storage sufficient to reduce post-development peak flows from each individual project to 90 percent of pre-development peak flows.
2. Construct a regional detention basin that would meet the mitigation requirement of all of the proposed development projects west of Brown Valley Road. The regional detention basin must have 18 acre-feet of detention storage, not including freeboard requirements.

As described in **Section 3.4**, due to limitations imposed by U.S. Army Corps of Engineers (USACE) environmental permitting, a detention basin was not able to be constructed onsite with sufficient capacity to limit post-development runoff to pre-development levels. As a result, the project applicant proposes that it contribute its fair share of construction costs to the regional detention basin proposed to be constructed within the Rancho Rogelio subdivision located just south of the Cheyenne Subdivision. At 16.1 acre feet, the regional detention basin was sized to accommodate the anticipated 10- and 100- year design flows from the Cheyenne Subdivision and, therefore, fulfills the requirements of Mitigation Measure 5.7-1(B) of the 2004 Final EIR. With the development of the regional detention basin and implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, implementation of the Proposed Modifications would not result in new significant impacts or a substantial increase in the severity of significant impacts associated with flooding hazards previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### WATER QUALITY DEGRADATION (IMPACT 5.7-2 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that development of the Rice-McMurtry Project would potentially conflict with local water quality standards. The 2004 Final EIR concluded that the change in surface water runoff from the Rice-McMurtry Project would result in water quality degradation, which would be considered a potentially significant impact. Mitigation measures to reduce the impact to a less-than-significant level are provided in the EIR (pp. 5.7-16).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts associated with water quality previously identified in the 2004 Final EIR.

The 2006 MND concluded that the development of the regional stormwater drainage facility would have a less-than-significant effect on water quality. Therefore, with the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, proposed use of the regional stormwater drainage facility would not result in new significant impacts to water quality or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE FLOODING HAZARD (IMPACT 5.7-3 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project and other development projects in the General Plan sphere of influence would result in cumulative impacts to flooding hazard in Vacaville as a result of increased peak flow to creeks in the vicinity. Mitigation measures to reduce the cumulative impacts to flooding hazard are provided in the EIR (pp. 5.7-18).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the expansion of the project footprint previously approved in the existing DA and PDP and, therefore, would not result in new significant cumulative impacts or a substantial increase in the severity of significant cumulative impacts associated with flooding hazards previously identified in the 2004 Final EIR.

As described above, the 16.1-acre foot regional detention basin to be developed within the Rancho Rogelio Subdivision is sized to accommodate the anticipated 10- and 100- year design flows from the Cheyenne Subdivision. In accordance with City standards, new developments would be required to be protected from 100-year storms and to provide facilities to accommodate localized runoff. As shown in **Figure 1**, a preliminary plan to expand the regional detention basin by approximately 11 acre feet, for a total capacity of 25 acre feet, has been proposed to accommodate all of the proposed development projects west of Brown Valley Road. The regional detention basin will be funded by the Rice McMurtry Assessment District. In addition, the developer is required to participate in the Browns Valley / Rice-McMurtry Reimbursement District, which is intended to help fund water, sewer, and storm drain and road improvements in the immediate vicinity.

With the development of the regional detention basin and implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, implementation of the Proposed Modification regarding stormwater drainage would not result in new significant cumulative impacts or a substantial increase in the severity of significant cumulative impacts associated with flooding hazards previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### CUMULATIVE WATER QUALITY DEGRADATION (IMPACT 5.7-4 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project and other development projects in the General Plan sphere of influence would result in cumulative impacts to water quality in Vacaville. Mitigation measures to reduce the cumulative impacts to flooding hazard are provided in the EIR (pp. 5.7-19).*

The Proposed Modifications would have a similar impact to cumulative impacts on water quality as analyzed in the 2004 Final EIR. Therefore, with the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, implementation of the Proposed Modifications would not result in new significant cumulative impacts or a substantial increase in the severity of significant cumulative impacts associated with water quality previously identified in the 2004 Final EIR. No additional mitigation is warranted.

## 3.8 CULTURAL RESOURCES

### SETTING

The existing setting for cultural resources, including the ethnographic context, historic context, and prehistoric resources for the Rice-McMurtry area were originally described and analyzed in the 2004 Final EIR. Besides construction completed in accordance with the existing DA and PDP, no significant changes to the Rice-McMurtry area have occurred since the 2004 Final EIR.

Since the adoption of the 2004 Final EIR, no new cultural resources or sites have been identified within the project site or in the vicinity of the site, including the proposed location of the regional detention basin. However, due to the prehistory and history of Vacaville, it is possible that undiscovered archaeological or historic resources could be disturbed by excavation during construction of the Rice-McMurtry Project and regional detention basin.

### IMPACTS AND MITIGATION MEASURES

#### MCMURTRY CULTURAL SITE (IMPACT 5.8-1 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project could cause a potentially significant impact to the McMurtry Cultural Site resulting from maintenance activities causing future disturbance in the City Open Space parcel. Mitigation measures to reduce the potential significant impacts to a less-than-significant level are provided in the EIR (pp. 5.8-5).*

The Proposed Modifications do not include any development within the City Open Space parcel; however, as described in the 2004 Final EIR, any future disturbance of the City Open Space parcel due to maintenance activities could cause a potentially significant impact. With the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project,

implementation of the Proposed Modifications would not result in an increase in the severity of significant impacts to the McMurtry Cultural Site previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### UNDISCOVERED ARCHAEOLOGICAL RESOURCES (IMPACT 5.8-2 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that, due to the complex history and prehistory of the area, it is possible that the development of the Rice-McMurtry Project could result in the disturbance of undiscovered archaeological or historical resources by excavation activities during construction. Mitigation measures to reduce the potential significant impacts to a less-than-significant level are provided in the EIR (pp. 5.8-6).*

Ground disturbing activities and the overall extent of disturbed and developed areas within the Cheyenne Subdivision would be reduced under the Proposed Modifications; therefore, the potential for significant impacts to undiscovered archaeological resources within the Cheyenne Subdivision would be less than originally analyzed in the 2004 Final EIR.

The 2006 MND concluded that, with suggested mitigation measures incorporated, the development of the regional stormwater drainage facility would have a less-than-significant effect on cultural resources. Therefore, with the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, use of the regional stormwater drainage facility would not result in new significant impacts to undiscovered archaeological resources or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE CULTURAL RESOURCES IMPACTS (SECTION 6.3.6 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that, with the implementation of mitigation measures to reduce potential significant impacts to the McMurtry Cultural Site and undiscovered archaeological resources, the Rice-McMurtry Project would result in a less than significant cumulative impact to cultural resources and would not be cumulatively considerable (pp. 6-4).*

With the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, the Proposed Modifications would not result in an increase in the severity of cumulatively considerable significant impacts to cultural resources previously identified in the 2004 Final EIR. No additional mitigation is warranted.

## **3.9 GEOLOGY AND SOILS**

### **SETTING**

Besides construction completed in accordance with the existing DA and PDP, no substantial changes have occurred in geology and soils since the certification of the 2004 Final EIR. As described in the 2004

Final EIR, the soils on the portions of the Rice-McMurtry area that are to be graded and developed consist primarily of clays, clay loam, and gravelly loam. Soils on the steep hills on the west side of the Rogers Ranch consist of loam, while soil on the south side of the Caligiuri Reserve area consists of cobbly clay loam. There are many shallow landslides on moderately steep and steep slopes within the Rice-McMurtry area, as well as at the locations of over-steepened slopes such as roadcuts and along the incised ephemeral stream. Although the Rice-McMurtry area does not lie in or adjacent to a designated Alquist-Priolo active fault zone area, the Rice-McMurtry area does lie within a Seismic Hazard Zone. Earthquakes have occurred in the past, and the potential exists in the future for significant seismic activity.

## IMPACTS AND MITIGATION MEASURES

### SLOPE FAILURE (IMPACT 5.9-1 OF 2004 FINAL EIR)

*Because some of the proposed housing lots are situated on steep slopes, the 2004 Final EIR concluded that the development of the Rice-McMurtry Project could result in property damage or bodily injury from slope failure. Mitigation Measures to reduce the impacts to a less-than-significant level are provided in the 2004 Final EIR (pp.5.9-9).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the construction of any structures beyond those previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that the potential for the development of the regional stormwater drainage facility to expose people or structures to adverse effects regarding landslides is less than significant. Therefore, with the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, the use of the regional stormwater drainage facility would not result in new significant impacts regarding slope failure or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### SEISMIC ACTIVITY (IMPACT 5.9-2 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice-McMurtry Project could potentially expose people or structures to adverse effects from seismic risks. Mitigation Measures to reduce the impacts to a less-than-significant level are provided in the 2004 Final EIR (pp.5.9-10).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in the construction of any structures beyond those previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that the potential for the development of the regional stormwater drainage facility to expose people or structures to adverse effects regarding strong seismic activity is less than significant. Therefore, with the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, the use of the regional stormwater drainage facility would not result in new significant impacts regarding slope failure or a substantial increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CONFLICTS WITH ORDINANCES (IMPACT 5.9-3 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the Rice-McMurtry Project would conflict with Chapter 14.19.240 of the City's grading ordinance and Division 14.09 of the zoning ordinance (Title 14 of the Land Use & Development Code) because it would require the grading of slopes greater than 25 percent. Mitigation Measures to reduce the impacts to a less-than-significant level are provided in the 2004 Final EIR (pp.5.9-11).*

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in any additional grading beyond what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR.

The 2006 MND concluded that the development of the regional stormwater drainage facility would not conflict with any applicable land use plan, policy, or regulation. Therefore, with the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, the use of the regional stormwater drainage facility would not result in an increase in the severity of significant impacts previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE GEOLOGY AND SOILS IMPACTS (SECTION 6.3.7 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that because the Rice-McMurtry Project is designed to comply with the City of Vacaville's Land Use and Development Code Division 14.19 Grading Ordinance and the development or grading shall be geologically stable and safe as documented through geologic and soils engineering analysis to the satisfaction of the City Engineer and the Building Official (section 14.09.101.100), the Rice-McMurtry Project would result in a less-than-significant cumulative impact and is not cumulatively considerable (pp. 6-4).*

With the implementation of the measures included within the adopted mitigation monitoring programs for the Rice-McMurtry and Rancho Rogelio Projects, the Proposed Modifications would not result in an increase in the severity of cumulatively considerable significant impacts in regards to geology and soils previously identified in the 2004 Final EIR. No additional mitigation is warranted.

## 3.10 PUBLIC SERVICES

### SETTING

#### FIRE PROTECTION SERVICES

No substantial changes have occurred in fire protection services since the certification of the 2004 Final EIR. The City of Vacaville Fire Department (VFD) provides fire protection services and emergency medical services to the City and unincorporated Solano County surrounding the City. The VFD is organized into two divisions: the Operations Division and the Support Services Division. The Operations Division is responsible for fire fighting, emergency rescue and medical response, and hazardous materials response. VFD currently has 73 employees, of which 65 are firefighters and emergency response personnel.

VFD provides these services through four fully-staffed fire stations that are located strategically throughout the City. The following stations are staffed 24-hours a day, 7-days a week (staffing numbers):

- Station 71 – 111 South Orchard Avenue (6 personnel)
- Station 72 – 2001 Ulatis Drive (5 personnel)
- Station 73 – 650 Eubanks Court (3 personnel)
- Station 74 – 1850 Alamo Drive (5 personnel)

#### LAW ENFORCEMENT

No substantial changes have occurred to City of Vacaville police protection services since the certification of the February 2004 Final EIR. The City of Vacaville Police Department (VPD) provides law enforcement services within the City through three divisions: Administrative Services Division, Investigative Services Divisions, and the Field Operations Division. VPD operates out of a central station located at 660 Merchant Street; however, there is also a Family Resource Center located at 312 Cernon Street, Suite D and four Youth Services Offices located at the Vacaville High School, Will C. Wood High School, Vaca Pena Middle School, and Willis Jepson Middle School. VPD has 103 sworn law enforcement officers and 58 full-time civilian employees.

#### PUBLIC SCHOOLS

No substantial changes have occurred in the Vacaville Unified School District (VUSD) since the certification of the February 2004 Final EIR. The Rice-McMurtry Project is located within the VUSD service area. School facilities operated by VUSD include twelve elementary schools (K-6), four middle schools, and six high schools.

## RECREATION

No substantial changes have occurred to the facilities maintained by the City of Vacaville Parks and Recreation Department since the certification of the February 2004 Final EIR. The City of Vacaville owned and maintains 7 community parks, 25 neighborhood parks, and 1 regional park. Additionally, 20 Open Space areas are located within the City (City of Vacaville, 2013).

## IMPACTS AND MITIGATION MEASURES

### PUBLIC SAFETY – EXISTING & CUMULATIVE (IMPACT 5.10-1 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the development of the Rice McMurtry Project would result in an increase for police and fire services and would be considered a potentially significant impact. Mitigation measures to reduce the impact to a less-than-significant level are provided in the EIR (pp. 5.10-9).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts to police and fire services previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### SCHOOLS – EXISTING & CUMULATIVE (IMPACT 5.10-2 OF 2004 FINAL EIR)

*Development of the Rice-McMurtry Project is anticipated to increase the number of students in the VUSD by approximately 218. The 2004 Final EIR concluded that the additional students from the Rice-McMurtry Project would result in a potentially significant impact. A mitigation measure included in the Final EIR, providing school mitigation fees to the VUSD, would reduce the impact to a less-than-significant level (pp. 5.10-10).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in the severity of significant impacts to schools previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### PARKS AND RECREATION – EXISTING AND CUMULATIVE (IMPACT 5.10-3 OF 2004 FINAL EIR)

*The Rice-McMurtry Project includes the development of a trail system providing access to existing City of Vacaville Open Space. The 2004 Final EIR concluded that the trail included within the Rice-McMurtry Project would result in a beneficial effect on the surrounding community and no negative impacts would occur. ). No mitigation was determined to be necessary (pp 5.10-10).*

The Proposed Modifications do not propose the removal of the multi-use trail and, therefore, would not result in an increase in the severity of significant impacts to parks and recreation previously identified in the 2004 Final EIR. No additional mitigation is warranted.

## 3.11 UTILITIES

### SETTING

#### WASTEWATER

As described in the 2004 Final EIR, the project site, prior to initial development, was located within an area planned for sewer service via the City of Vacaville wastewater collection and treatment system. The project site is currently connected to the City collection and treatment system. Onsite and offsite improvements, undertaken during initial development constructed as part of the Rice-McMurtry Project; included an internal network of 12-inch sewer mains buried underneath the residential road system and off-site ties into the existing City sewer system at the Glen Eagle Ranch subdivision sewer main and the Laurel Wood subdivision main. Wastewater generated within the project site and the surrounding City is treated at the Easterly Wastewater Treatment Plant (WWTP). The average dry weather flow (ADWF) capacity specified in the discharge permit for the EWWTP is defined in the NPDES permit as the average daily flow over three consecutive dry weather months (e.g., July, August, and September). There is no permit limit for the annual average flow, so the ADWF is used to define plant capacity. EWWTP flows are reported monthly. A 2004 expansion increased the ADWF capacity of the EWWTP to 15 million gallons per day (MGD) in response to growth projections of the City's 1990 General Plan. Current flows to the EWWTP are approximately 10 MGD (City of Vacaville, 2013b). The plant is presently being upgraded to provide tertiary level treatment by 2015.

#### WATER SUPPLY

The City water system consists of surface water treatment facilities, groundwater wells, pump stations, storage reservoirs, and distribution infrastructure. The City water system receives its water supply from several sources, including Lake Berryessa reservoir (U.S. Bureau of Reclamation Solano Project), State Water Project water from the North Bay Regional (NBR) water treatment plant (WTP), and groundwater from local city wells. The project site is currently connected to the City water supply distribution system. Onsite and offsite improvements, undertaken during initial development constructed as part of the Rice-McMurtry Project; included an internal network of 12-inch water mains buried underneath the residential road system and a public 12-inch pipeline within Browns Valley Road.

### IMPACTS AND MITIGATION MEASURES

#### WASTE WATER COLLECTION SYSTEM FLOWS (IMPACT 5.11-1 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that anticipated wastewater from the Rice-McMurtry Project would result in a potentially significant impact to the existing wastewater collection system conveying wastewater from the project site to the terminus of existing infrastructure and ultimately the Easterly Wastewater Treatment Plant (EWWTP). Mitigation measures included in the Final EIR providing funding for off-site wastewater collection system improvements and funding mechanisms to construct these improvements would reduce the impact to a less-than-significant level (pp. 5.11-18).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated wastewater flows from those included within the 2004 Final EIR. Proposed off-site downstream wastewater collection system improvements documented as Phase I Improvements, including in the 2004 Final EIR as mitigation, have been constructed pursuant to the existing PDP and DA, with the exception of the proposed improvements to the Allison Parkway Lift Station. The Proposed Modifications postpone the construction of improvements to the Allison Parkway Lift Station until warranted by surrounding approved projects and establishes a fair share payment program with the City through the creation of a Benefit District. To date, as included in the existing PDP and DA, the applicant has acquired the land and dedicated it to the City, and paid for the designs of the lift station improvements.

No environmental impacts would occur with the approval of the Proposed Modifications as the creation of a Benefit District is proposed under 2004 Final EIR Mitigation Measure 5-11-1 (c). With the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, implementation of the Proposed Modifications would not result in new significant impacts or a substantial increase in the severity of significant impacts to wastewater collection systems previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### WASTEWATER TREATMENT PLANT FLOWS (IMPACT 5.11-2 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that anticipated wastewater from the Rice-McMurtry Project would result in a less than significant impact to treatment capacities at the EWWTP. No mitigation was determined to be necessary (pp. 5.11-23).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated wastewater flows from those included within the 2004 Final EIR. Therefore, as described in the 2004 Final EIR, buildout of the Rice-McMurtry Project would increase the ADWF to EWWTP by approximately 0.11 MGD. As described above, the EWWTP currently has a permitted treatment capacity of 15 MGD ADWF and current flows to the EWWTP are approximately 10 MGD ADWF. Therefore, the expanded EWWTP has an available ADWF capacity of 5 MGD which, as assumed in the 2004 Final EIR, is adequate to accommodate the increase in wastewater flows generated by the Rice-McMurtry Project and a less-than significant impact would occur. Implementation of the Proposed Modifications would not result in new significant impacts to the EWWTP that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### WATER SUPPLY DEMAND (IMPACT 5.11-3 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the City has adequate capacity to meet the increased water demand; however, supplying water to the project site would necessitate system improvements and is therefore*

*considered to be a potentially significant impact. Mitigation measures included in the 2004 Final EIR would reduce the impact to a less-than-significant level (pp. 5.11-24).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated water demands from those included within the 2004 Final EIR.

Implementation of the Proposed Modifications would not result in new significant impacts to water supply that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### WATER PRESSURE DEMANDS (IMPACT 5.11-4 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that the Rice-McMurtry Project would result in a potentially significant impact due to inadequate pressure at a portion of the development area, as a number of development pads within the Rice-McMurtry Project are proposed above the 222 feet in elevation, above the maximum water pressure service range. Mitigation measures included in the Final EIR provided funding for the development of a separate upper pressure zone to provide adequate pressure to portions of the Rice-McMurtry Project would reduce the impact to a less-than-significant level (pp. 5.11-28).*

The proposed off-site water supply connections included in the 2004 Final EIR as mitigation have been constructed pursuant to the existing PDP and DA for building pads below a 222 foot elevation. The Proposed Modifications include the postponement of the construction of the upper Zone 2 water system until a fair share payment program with the City through the creation of a Benefit District is established. To date, as included in the existing PDP and DA, the applicant has acquired the land, prepared civil engineering designs, and dedicated the land to the City.

No environmental impacts would occur with the approval of the Proposed Modifications as the creation of a Benefit District would establish a fair share payment program to provide for previously analyzed off-site improvements, including the development of the new upper Zone 2 water system (2004 Final EIR Mitigation Measure 5.11-4). Pursuant to the Proposed Modifications, the issuance of building permits for the lots above elevation 222 remains contingent upon completion of the construction of the booster pump station, distribution system, and reservoir. With the implementation of the measures included within the adopted mitigation monitoring program for the Rice-McMurtry Project, implementation of the Proposed Modifications would not result in new significant impacts or a substantial increase in the severity of significant impacts to wastewater collection systems previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE WASTEWATER COLLECTION SYSTEM FLOWS (IMPACT 5.11-5 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that because a funding mechanism for the necessary collection system improvements with citywide benefit has been established, the cumulative increase in flows from the Rice-McMurtry Project is considered a less-than-significant impact. No mitigation was determined to be necessary.*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated wastewater flows from those included within the 2004 Final EIR.

Implementation of the Proposed Modifications would not result in new significant cumulative impacts to wastewater collection system that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted (pp. 5.11-35).

#### CUMULATIVE WASTEWATER TREATMENT PLANT FLOWS (IMPACT 5.11-6 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that because a the City collects development impact fees for the purpose of funding treatment plant improvements needed to accommodate cumulative growth and specific improvements are identified and scheduled by the City through periodic master planning and design activities, the cumulative increase in flows from the Rice-McMurtry Project is considered a less-than-significant impact. No mitigation was determined to be necessary (pp. 5.11-35).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated wastewater flows from those included within the 2004 Final EIR.

Implementation of the Proposed Modifications would not result in new significant cumulative impacts to the Easterly WWTP that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE WATER DISTRIBUTION FACILITY DEMAND (IMPACT 5.11-7 OF 2004 FINAL EIR)

*The 2004 Final EIR concluded that because funding mechanisms for water distribution system improvements with citywide benefit have been established, the generation of additional water demand and the need for improvements to the existing water distribution system as a result of the Rice-McMurtry Project is considered a less-than-significant impact. No mitigation was determined to be necessary. (pp. 5.11-36)*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated water demand from those included within the 2004 Final EIR. Implementation of the Proposed Modifications would not result in new significant cumulative impacts to wastewater distribution facilities that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

#### CUMULATIVE WATER SUPPLY DEMAND (IMPACT 5.11-8 OF 2004 FINAL EIR)

*The water supply assessment conducted by the City of Vacaville (SB610 Water Supply Assessment Report) concluded that there is sufficient water supply from the existing sources to meet the increased*

*water demand from the Rice-McMurtry Project under a variety of delivery conditions; therefore, this is considered a less-than-significant impact. No mitigation was determined to be necessary (pp. 5.11-36).*

The Proposed Modifications would not result in a change in the number of residential units or housing densities from what was previously approved in the existing DA and PDP and, therefore, would not result in an increase in estimated water demand from those included within the 2004 Final EIR. Implementation of the Proposed Modifications would not result in new significant cumulative impacts to water supply that were not previously identified in the 2004 Final EIR. No additional mitigation is warranted.

### **3.12 ADDITIONAL CEQA IMPACTS**

Since the certification of the 2004 Final EIR, the CEQA guidelines have been revised to incorporate two additional environmental resources to be considered during the environmental review process. These resources have been incorporated into the environmental review checklist included as Appendix G of the most recent version of the CEQA Guidelines. Forestry resources have been incorporated into the environmental review of agricultural resources and a new section of the environmental checklist was developed to address greenhouse gas emissions (GHGs). As stated in Section 5.6 of Volume I of the Final EIR, the Rice-McMurtry project site encompasses annual grasslands, orchards/ rowcrops, oak savannah, and urbanized areas. Accordingly, implementation of the Proposed Modifications would not result in the alteration of forested lands to non-forested lands and therefore would not result in new significant impacts not identified in the 2004 Final EIR. Additionally, while GHG emissions would result from the construction and operation of the Cheyenne Subdivision, the Proposed Modifications would not result in an increase in construction activities or increase in emissions sources compared to those assessed in the 2004 Final EIR. Therefore, GHG emissions would remain consistent with the 2004 project description and no new significant impacts would result from the implementation of the Proposed Modifications. No additional mitigation is warranted.

## SECTION 4.0

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### OTHER CEQA CONSIDERATIONS

#### 4.1 INTRODUCTION

The following discussions address the cumulative impacts, growth inducing impacts, unavoidable adverse impacts, and effects not found to be significant for the proposed Rice McMurtry project. See **Section 3.0, Environmental Setting, Impacts, and Mitigation Measures** for detailed discussions of these impacts by issue area.

#### 4.2 CUMULATIVE

The cumulative setting in the 2004 Final EIR was based on development anticipated under the City of Vacaville 1990 General Plan (as amended through November 1999) and Comprehensive Annexation Plan 2001-2015 (adopted October 2001), as well as the development of the McMurtry Reservoir and Laurel Woods Subdivision Project which were proposed at the time. Since the approval of the Rice-McMurtry Project, the McMurtry Reservoir and Laurel Woods Subdivision projects have been completed. As described in **Sections 1.0 and 2.0**, the collapse of the housing market and subsequent recession resulted in a substantial reduction in the anticipated level of development in the City of Vacaville and the surrounding areas. However, growth that has occurred has been consistent with the General Plan and no new conditions have occurred since certification of the 2004 Final EIR that would require an update of the cumulative setting.

As described in **Section 3.0**, the Proposed Modifications would not result in a substantial increase in the severity of cumulative impacts previously identified in the 2004 Final EIR.

#### 4.3 GROWTH INDUCING EFFECTS

The Proposed Modifications related to modifying the timing and/or funding mechanism of road and utility improvements would not result in any direct or indirect growth inducement beyond what was previously approved in the existing PDP and DA and, therefore, would not result in new significant indirect effects or a substantial increase in the severity of effects associated with growth inducement previously identified in the 2004 Final EIR. The regional detention basin proposed within Rancho Rogelio Subdivision is intended to relieve localized and downstream flooding related to existing and approved projects in the vicinity, including the Cheyenne Subdivision and therefore would not result in any indirect growth inducement.

#### **4.4 UNAVOIDABLE ADVERSE IMPACTS**

As described in **Section 3.0**, the Proposed Modifications would not result in any new significant and unavoidable adverse impacts beyond those previously identified in the 2004 Final EIR.

#### **4.5 EFFECTS FOUND NOT TO BE SIGNIFICANT**

As required by CEQA, the 2004 Final EIR and Addendum focus on expected significant or potentially significant environmental effects (*CEQA Guidelines Section 15143*). An Initial Study was prepared for the Rice-McMurtry Project to identify issues to be evaluated in the EIR. Issues that were identified within the Initial Study as being less than significant were not evaluated in the EIR. Some of the impacts analyzed in the 2004 Final EIR were considered to be less than significant, requiring no mitigation. Other impacts, (i.e., those which are considered to be potentially significant or significant) were reduced to a level that is less than significant with the implementation of the proposed mitigation measures.

As described in **Section 3.0**, the Proposed Modifications would not result in increasing the severity of impacts previously identified in the 2004 Final EIR as less than significant and no new mitigation is warranted as a result of the requested modifications to the PDP and DA.

# SECTION 5.0

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## CONCLUSIONS

### 5.1 CONCLUSIONS

An Addendum to the Final EIR prepared for the Rice-McMurtry Annexation and Residential Development Project is the appropriate form of environmental documentation for addressing the modifications to the existing Planned Development Permit (PDP) as amended by the Planning commission on March 1, 2005 and existing Development Agreement (DA) entered into by the City and applicant in May 2004. A Subsequent EIR pursuant to CEQA Guidelines, Section 15162 is not being prepared for the following reasons:

- a. The Proposed Modifications identified in this Addendum would not result in new significant impacts or an increase in the severity of environmental impacts described in the 2004 Final EIR, with implementation of mitigation identified in the 2004 Final EIR and in this Addendum. This determination is based on the information contained in **Section 3.0** of this Addendum, which analyzes modifications to the project and in the existing setting and information that has become available since certification of the Final EIR in 2004, described in **Section 2.0** of this Addendum;
- b. Circumstances under which the project would be undertaken have not resulted in substantial changes that would require major revisions of the 2004 Final EIR. This determination is based on the information contained in **Section 3.0** of this Addendum, which analyzes modifications to the project and in the existing setting and information that has become available since the certification of the Final EIR in 2004, described in **Section 2.0** of this Addendum. The analysis in **Section 3.0** identifies that many of the assumptions supporting the conclusions relating to the significance of impacts identified in the 2004 Final EIR, have been confirmed by the passage of time; and
- c. No new findings of substantial importance indicate that new significant environmental impacts would be created, the severity of the environmental impacts previously identified would increase, or that mitigation measures found to be infeasible for implementation in the Final EIR certified in 2004 would now be feasible.

## **SECTION 6.0**

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### **ADDENDUM PREPARATION**

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## SECTION 7.0

### ADDENDUM ACRONYMS

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ADWF	Average dry weather flow
AFB	Air Force Base
AICUZ	Air Installation Compatible Use Zone
ANSI	American National Standards Institute
AP	Alquist-Priolo Earthquake Fault Zones Act
APN	Assessor's Parcel Number
CAP	Comprehensive Annexation Plan
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CFP	California Fully Protected Species
CFS	Cubic feet per second
CNDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CO	Carbon Monoxide
CWA	Clean Water Act
DA	Development Agreement
Db	Decibel
EIR	Environmental Impact Report
EWWT	Easterly Wastewater Treatment Plant
FEMA	Federal Emergency Management Agency
GHG	Greenhouse Gas
HCP/NCCP	Solano Habitat Conservation Plan/Natural Community Conservation Plan
LAFCo	Solano local Agency Formation Commission
LOS	Level of Service
MGD	million gallons per day
MND	Mitigated Negative Declaration
NBR	North Bay Regional
PDP	Planned Development Permit
PM <sub>10</sub>	particulate matter less than 10 microns in diameter
PM <sub>2.5</sub>	particulate matter less than 2.5 microns in diameter
ROG	reactive organic gases
Sf	Square-feet
SO <sub>2</sub>	Sulfur Dioxide
SVAB	Sacramento Valley Air Basin
SWRCB	State Water Resources Control Board
T.I.	Traffic Index
TIA	Traffic Impact Analysis
USACE	U.S. Army Corps of Engineers
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service

USGS	U.S. Geological Survey
VFD	City of Vacaville Fire Department
VPD	City of Vacaville Police Department
VUSD	Vacaville Unified School District
WB	Westbound
WTP	Water treatment plant
WWTP	Wastewater Treatment Plant
YSAQMD	Yolo-Solano Air Quality Management District's

## SECTION 8.0

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### ADDENDUM REFERENCES

- Air Resources Board (CARB), 2012. Ambient Air Quality Standards. Available online: <http://www.arb.ca.gov/research/aaqs/aaqs2.pdf>. Accessed January 2014.
- Applied Engineering and Geology, Inc., 2003. Geologic Resources Reconnaissance Survey, Rice McMurtry Annexation and Development. Report prepared for Analytical Environmental Services. Sacramento, California.
- California Governor's Office of Planning & Research (OPR), 2003. State of California General Plan Guidelines. Available online: [http://opr.ca.gov/docs/General\\_Plan\\_Guidelines\\_2003.pdf](http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf). Accessed January 2014.
- City of Vacaville, 2006. Mitigated Negative Declaration for the Rancho Rogelio Subdivision. Included within the City of Vacaville Planning Commission's Staff Report dated June 6, 2006.
- City of Vacaville, 2007. General Plan Chapter 10 Noise Element. Available online: <http://www.ci.vacaville.ca.us/modules/showdocument.aspx?documentid=255>. Accessed January 2014.
- City of Vacaville, 2013. City of Vacaville General Plan and Energy and Conservation Action Strategy Draft EIR. October 25, 2013. Available online at: <http://www.vacavillegeneralplan.org/documents/>. Accessed on January 2, 2014.
- City of Vacaville, 2013b. Information regarding City of Vacaville Sewer/Wastewater. Available online at <http://www.ci.vacaville.ca.us/index.aspx?page=233>. Accessed January 15, 2014.
- Department of Conservation, 2007. Watershed Browser: Elmira pws. Available online at: [http://www.conservation.ca.gov/dlrp/watershedportal/WatershedBrowser/Pages/WatershedBrowser.aspx?idnum=05511.10&mode=sr&name=Elmira%20\(spws\)&height=undefined&width=undefined](http://www.conservation.ca.gov/dlrp/watershedportal/WatershedBrowser/Pages/WatershedBrowser.aspx?idnum=05511.10&mode=sr&name=Elmira%20(spws)&height=undefined&width=undefined). Accessed on January 2, 2014.
- Department of Water Resources (DWR), 2004. Bulletin 118 – Update 2003: California's Groundwater. Available online at: <http://www.water.ca.gov/groundwater/bulletin118/bulletin118update2003.cfm>. Accessed on January 2, 2014.
- Federal Emergency Management Agency (FEMA), 2009. Flood Insurance Rate Map Number 06095C0163E FIRMette. Available at: <http://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1>. Effective May 4, 2009. Accessed on January 2, 2014.

- Hickman, J. C., editor, 1993. The Jepson Manual, Higher Plants of California. University of California Press, Berkeley, California. 1,400 pp.
- Solano County, 2002. Travis Air Force Base Land Use Compatibility Plan. Adopted by Solano County Airport Land Use Commission June 13, 2002. Available online: <http://www.co.solano.ca.us/civicax/filebank/blobdload.aspx?blobid=3929>. Accessed January 2014.
- Solano County Water Agency, 2014. Solano County Multispecies Habitat Conservation Plan: Final Administrative Draft. Accessed January 10, 2014. Available online at: [http://www.scwa2.com/conservation\\_habitat\\_finaladmindraft.aspx](http://www.scwa2.com/conservation_habitat_finaladmindraft.aspx).
- State Water Resources Control Board (SWRCB), 2010. 2010 Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report). Available online at: [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml). Accessed on January 2, 2014.
- United States Environmental Protection Agency (USEPA), 2014. California 303(d) Listed Waters for Reporting Year 2004. Available online at: [http://ofmpub.epa.gov/waters10/attains\\_impaired\\_waters.impaired\\_waters\\_list?p\\_state=CA&p\\_cycle=2004](http://ofmpub.epa.gov/waters10/attains_impaired_waters.impaired_waters_list?p_state=CA&p_cycle=2004). Accessed on January 15, 2014.
- Western Regional Climate Center, 2009. Annual Climate Summary. Available online: <http://www.wrcc.dri.edu/cgi-bin/cliMAIN.pl?ca9200>. Accessed January 2014.