

ORDINANCE NO. 2583

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS APPROVING
THE DEVELOPMENT AGREEMENT FOR THE DAVIS INNOVATION AND
SUSTAINABILITY CAMPUS PROJECT**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property;

WHEREAS, in accordance with the Development Agreement Statute, the City of Davis (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute;

WHEREAS, the Developer of the site desires to carry out the development for the Davis Innovation and Sustainability Campus Project ("Project") of the approximately 194-acre property located at the northeast corner of Mace Boulevard and County Road 32 (APNs 033-630-009 and 033-650-009) as described in the Development Agreement (the "Property") consistent with the General Plan, as amended, and the Development Agreement (the "Development Agreement"), and the vested entitlements referenced therein;

WHEREAS, the City Council of Davis adopted project entitlements for the Davis Innovation and Sustainability Project, including the General Plan Amendment with Baseline Project Features and Rezoning and Preliminary Planned Development;

WHEREAS, the City Council certified the Subsequent Environmental Impact Report (SCH. # 2014112012) and the Mitigation Monitoring and Reporting Program adopted therewith for the Aggie Research Campus, also known as the Davis Innovation and Sustainability Campus project;

WHEREAS, the Development Agreement will assure both the City and the Developer that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project;

WHEREAS, the Planning Commission held a duly noticed public hearing on June 10, 2020, on the Project entitlements, including the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public and made a recommendation to the City Council on the Project entitlements; and

WHEREAS, the City Council held a duly noticed public hearing on June 30, 2020 on the Project entitlements, including the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2.

This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to “Development Agreement Regulations”.

SECTION 3.

In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- A. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, in that it establishes certain development rights, obligations and conditions for the implementation of the Davis Innovation and Sustainability Campus Project;
- B. The Development Agreement is compatible with the uses authorized therein, and the regulations prescribed for, the general plan designations which will apply to the Property;
- C. The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- D. The Development Agreement will not be detrimental to the public health, safety and general welfare;
- E. The Development Agreement will not adversely affect the orderly development of the Property or the preservation of property values; and
- F. The Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

SECTION 4.

The foregoing findings and determinations are based upon the following:

- A. The Recitals set forth in this Ordinance, which are deemed true and correct;
- B. The City's General Plan, as amended;
- C. Resolution No. 20-109, adopted by the City Council on July 7, 2020 certifying the Aggie Research Campus SEIR (SCH. # 2014112012) and Mitigation Monitoring

and Reporting Program, which Resolution and exhibits are incorporated herein by reference as if set forth in full;

- D. The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 20-110 prior to adoption of this Ordinance;
- E. All City staff reports (and all other public reports and documents) prepared for the Planning Commission and City Council, relating to the Development Agreement and other actions and entitlements relating to the Property, including all attachments hereto;
- F. All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Amendment to the Development Agreement, and other actions relating to the Property; and
- G. All other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5.

The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject to the provisions of Section 6 hereof, and subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as approved by the City Council

SECTION 6.

The approval contained in Section 5 hereof is subject to and conditioned upon Resolution No. 20-110, adopted by the City Council approving the General Plan amendment, becoming effective, including approval of the General Plan Amendment by the voters, as required by Chapter 41 of the Municipal Code, the "Citizens' Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance."

SECTION 7.

Upon the effective date of this Ordinance, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Davis

SECTION 8.

The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 9.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 10.

This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; provided, however, that if the General Plan Amendment is approved at a later date, then the effective date of this Ordinance shall be the date on which the General Plan Amendment becomes effective.

INTRODUCED on the 7th day of July, 2020, and PASSED AND ADOPTED at a regular meeting of the City Council of the City of Davis this 21st day of July, 2020 by the following vote:

AYES: Arnold, Carson, Frerichs, Lee, Partida

NOES: None

Gloria J. Partida
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

**AGREEMENT
BY AND BETWEEN
THE CITY OF DAVIS, RAMCO ENTERPRISES, LLC,
BUZZ OATES, AND R&B DELTA III, LLC**
Relating to the Development of the Property Commonly Known as the
Davis Innovation and Sustainability Campus Project

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of July, 2020, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), RAMCO ENTERPRISES, LLC, a California Corporation, BUZZ OATES, a California Corporation, and R&B DELTA III, a California Limited Liability Company (individually “Landowner” and collectively “Landowners” and “Developer”). This Agreement is made pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California. This agreement refers to the City and the Developer collectively as the “Parties” and singularly as the “Party.”

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et seq.* of the *Government Code* which authorizes any city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

B. The Landowners own in fee certain real property(ies) described in Exhibit A attached hereto and incorporated herein by this reference and located in unincorporated Yolo County (herein the "Property") which the Developer seeks to annex into the City of Davis and develop as the Project (the “Project”). The Project, as proposed, would be an innovation center and includes development of: 1,510,000 square feet of office/R&D/laboratory space, 884,000 square feet of advanced manufacturing, up to 850 residential units, up to 100,000 square feet of support retail, and up to 160,000 square feet for a hotel and conference center. Hotel, conference center, and support retail square footage may flex among uses so long as the combined square footage does not exceed 260,000 square feet. Upon completion of the Project, the approximately

187-acre site would provide up to 2,654,000 square feet of commercial space, provide approximately 5,882 jobs, 49 acres of parks, greenways and agricultural transition area, and 2.75 miles of off-street biking and walking paths within the Project area. Developer has an equitable interest in the Property sufficient to be bound by this Development Agreement.

C. This Agreement is voluntarily entered into by Landowners in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

D. City has granted the Developer the following land use entitlement approvals for the Project (hereinafter “Project Approvals”) which are incorporated and made a part of this Agreement:

- (1) General Plan Amendment from Agriculture to Innovation Center #__
- (2) Rezoning and Preliminary Planned Development #__
- (3) Development Agreement #__ by and between the City of Davis and Developer.

City has also certified the Project’s Environmental Impact Report (SCH. # 2014112012), approved by Resolution No. 17-125, and the Subsequent Environmental Impact Report, approved by Resolution No. 20-109, and adopted the Mitigation Monitoring and Reporting Program combining relevant measures from both documents.

E. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements and public services, establish the orderly and measured build-out of the Project consistent with the desires of the City to support the research occurring at the University of California, Davis, attract and retain local businesses, and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

F. In exchange for the benefits to the City, the Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by *Government Code* §65864.

AGREEMENT

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

ARTICLE 1. General Provisions.

A. [Sec. 100] Property Description and Binding Covenants. The Property is that property described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. Developer represents that it has a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto.

B. [Sec. 101] Effective Date and Term. The effective date of this Agreement shall be the date the Ordinance adopting this Agreement is effective. The term of this Agreement (the “Term”) shall commence upon the effective date and shall extend for a period of thirty (30) years thereafter, unless said Term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties, subject to the provisions of Section 105 hereof. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 407 hereof.

If this Agreement is terminated by the City Council prior to the end of the Term, the City shall cause a written notice of termination to be recorded with the County Recorder within ten (10) days of final action by the City Council.

This Agreement shall be deemed terminated and of no further effect upon entry, after all

appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw or abrogate the City Council's approval of this Agreement or any material part of the Project Approvals.

C. [Sec. 102] Equitable Servitudes and Covenants Running With the Land. Any successors in interest to the City and the Developer shall be subject to the provisions set forth in *Government Code* §§ 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof, but a successor in interest shall be obligated and bound only with respect to the specific obligations assigned or transferred to it, as set forth in Section D.3 [Sec.103], below. Nothing herein shall waive or limit the provisions of Section D, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section D. In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement and this Agreement may be amended without the agreement or consent of such homeowner or tenant.

D. [Sec. 103] Right to Assign; Non-Severable Obligations.

1. Assignment to Affiliates. The Landowners shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its respective rights, interests and obligations under this Agreement to an affiliate of the respective Landowner ("Affiliate") without the prior express written consent of the City. An assignment to an Affiliate shall not be effective until (i) Affiliate acquires the affected interest of Landowner under this Agreement and (ii) Landowner delivers to City a copy of the Assumption Agreement pursuant to Section D.4, below, by which Affiliate assumes the applicable rights, duties and obligations of Landowner under this Agreement.

2. Assignment to Non-Affiliates. The Developer shall have the right to assign, in whole or in part, its rights, interests and obligations under this Agreement to a third party which is

not an Affiliate of Developer during the term of this Agreement only with the written approval of the City Manager. Approval shall not be unreasonably withheld, conditioned, or delayed provided:

(a) The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

(b) The proposed assignee has adequate experience with developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

Any request for City approval of an assignment shall be in writing and accompanied by a copy of the Assumption Agreement required by Section D.4 [Sec. 103], below. Such request shall also include certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If City receives a public records request for any information designated a "trade secret" City shall notify the assignee of such request prior to releasing the material in question to the requesting party. If the assignee directs the City not to release the material in question, the assignee shall indemnify the City for any costs incurred by City, including but not limited to staff time and attorney's fees, as a result of any action brought by the requesting party to obtain release of the information and/or to defend any lawsuit brought to obtain such information. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. The City may disapprove a request for assignment or ask for revisions to the Assumption Agreement if necessary to ensure the performance of the obligations described in this Agreement. The City shall act on a request for a proposed assignment by approving or disapproving such request within 30 days of receipt of such request.

3. Effect of Assignment. An assignee shall become a Party to this Agreement only with respect to the interest transferred to it pursuant to the assignment, and only to the extent set forth in the Assumption Agreement delivered to the City pursuant to Section D.1 or approved by the City pursuant to Section D.2, above. Upon an assignment, Developer shall only be released from the obligations and liabilities under this Agreement that are specifically assumed by the assignee via an Assumption Agreement with respect to the portion of the Property transferred, provided that Developer has provided the City with all information required pursuant to Sections D.1 and D.2, above, and, in the case of a non-Affiliate, the City has approved the assignment. Any obligations and liabilities of Developers under this Agreement, including, but not limited to, the Specific Development Obligations set forth in Article II, Section B [Sec. 201] of this Agreement, that are not expressly assumed by an assignee in an Assignment Agreement shall remain the responsibility of the Developer following assignment.

4. Assumption Agreement. In order for an assignment to be effective under this Agreement, Developer must provide to City, as specified in Sections D.1 and D.2 above, an executed and acknowledged assumption agreement (Assumption Agreement) in a form acceptable to the City. The Assumption Agreement shall include provisions regarding (i) the interest or portions of interest in one or more parcels associated with the Project proposed to be assigned by Developer, (ii) the obligations of Developer under this Agreement that the assignee will assume, and (iii) the proposed assignee's acknowledgement that such assignee has reviewed and agrees to be bound by all applicable provisions of this Agreement and all applicable City entitlements and approvals. The Assumption Agreement shall also include the name, form of entity and address of the proposed assignee. After being approved by the City, if required, the Assumption Agreement shall be recorded in the Official Records of the County of Yolo concurrently with the transfer of the affected interest of Developer under this Agreement, and a copy thereof shall be delivered to the City within three (3) days after consummation of the assignment.

5. Notwithstanding subsection 2 above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted without the City's consent, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of

trust or other security arrangement with respect to the Property (“Mortgagee”), or any portion thereof, shall not be considered an assignee of Developer under this Agreement unless said Mortgagee (i) acquires the affected interest of Developer encumbered by Mortgagee’s mortgage, deed of trust or other security arrangement, and (ii) delivers to City an Assumption Agreement assuming, from and after the date such Mortgagee acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement.

6. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any further subdivision or parcelization of the Property, in addition to the Parcel Map(s) identified in Recital D. The Parties recognize and acknowledge that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, the Project Approvals and this Agreement. Nothing in this Section shall be deemed to constitute or require City consent to an assignment that consists solely of a reorganization of the Developer’s business structure, such as (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City’s request for backup information, as applicable.

E. [Sec. 104] Notices. Formal written notices, demands, correspondence and communications between the City and the Developer shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal offices of the City and the Developer, as set forth in Article 8 hereof. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. The Developer shall give written notice to the City, at least thirty (30) days prior to the close of escrow, of any sale or transfer of any portion of the Property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given, and any other information

reasonably necessary for the City to consider approval of an assignment or any other action City is required to take under this Agreement.

F. [Sec. 105] Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the Parties, in accordance with the provisions of *Government Code* Sections 65867 and 65868.

G. [Sec. 106] Major Amendments and Minor Amendments.

1. Major Amendments. Any amendment to this Development Agreement which substantially affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property or the maximum height or maximum gross square footage; or (f) monetary contributions by Developer, shall be deemed a “Major Amendment” and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a Minor Amendment subject to Section 106(2) below. The City Manager or his or her delagee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 106(1) or a Minor Amendment subject to Section 106(2) below. The City Manager’s determination may be appealed to the City Council.

2. Minor Amendments. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Section 106(1), they shall effectuate such clarifications, minor changes or minor adjustments through a written Minor Amendment approved in writing by the Developer and City Manager. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

ARTICLE 2. Development of the Property.

A. [Sec. 200] Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Agreement, the Developer shall have a vested right to develop the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement and the Project Approvals attached hereto as Exhibit C and incorporated herein by reference, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement.

The Developer hereby agrees that development of the Project shall be in accordance with the Project Approvals, including the conditions of approval and the mitigation measures for the Project as adopted by the City, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Nothing in this section shall be construed to restrict the ability to make minor changes and adjustments in accordance with Section 106, *supra*. Nothing in this Agreement shall require Developer or Landowner to construct the Project or to pay fees for any portion of the Project that Developer or Landowner does not construct.

B. [Sec. 201] Specific Development Obligations. In addition to the conditions of approval contained in the Project Approvals, the Developer and the City have agreed that the development of the Property by the Developer is subject to certain specific development obligations, described herein and/or described and attached hereto as Exhibits E through L and incorporated herein by reference. These specific development obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement. Whenever the phrase “Developer commits,” “Developer has committed,” “Developer agrees,” or equivalent is used in Exhibits E through L, it shall be interpreted to indicate a binding obligation with the same legal meaning as “Developer shall.”

(1) Affordable Housing. The Developer shall comply with the affordable housing requirements as set forth in Exhibit E which shall demonstrate compliance with the current City Ordinance which is incorporated herein and vests for the duration of this Agreement. Affordable housing units shall be property tax exempt to the greatest extent permitted under hen applicable State and Federal law (Assembly Bill 1193, 2017.).

(2) Environmental Sustainability. The City and the Developer have agreed that climate change and environmental sustainability are critical issues for new developments. Developer shall comply with the Environmental Sustainability commitments set forth in Exhibit F.

(3) Transit, Transportation and Circulation. The Developer shall comply with and implement the measures identified in Exhibit G including but not limited to the obligation to create and implement a Transportation Demand Management plan which shall track and report performance to the City.

(4) Habitat and Agricultural Conservation. The Developer shall comply with the requirements as set forth in Exhibit H to preserve and enhance a diversity of native habitats and local agriculture in a manner consistent with the City's current Right to Farm Ordinance.

(5) Recreation and Wellness. The Developer shall comply with and implement the measures identified in Exhibit I to provide for the health and wellbeing of the community.

(6) Urban Forest and Landscape. The Developer shall comply with the requirements as set forth in Exhibit J to expand upon the urban forest, ensure the health and success of the onsite tree canopy, and to foster the use of native and drought tolerant species.

(7) Reimbursement for Property Taxes. Prior to issuance of building permit, Developer shall devise and implement a mechanism through which the City, Yolo County, and Davis Joint Unified School District will be assured compensation equivalent to their respective share of otherwise-required property taxes in the event that the Property is acquired or leased in whole or in part by an entity exempt from payment of property taxes. The mechanism for providing such assurance may be in the form of a covenant running with the land, establishment of an assessment district, or another approach subject to review and approval of the City Attorney.

C. [Sec. 202] Subsequent Discretionary Approvals. The Developers' vested right to develop pursuant to this Agreement may be subject to subsequent discretionary approvals for portions of the Project. In reviewing and acting upon these subsequent discretionary approvals, and except as set forth in this Agreement, the City shall not impose any conditions that preclude the development of the Project for the uses or the density and intensity of use set forth in this Agreement. Any subsequent discretionary approvals, except conditional use permits, shall become

part of the Project Approvals once approved and after all appeal periods have expired or, if an appeal is filed, if the appeal is decided in favor of the approval. The known subsequent approvals are set forth on Exhibit D, attached hereto and incorporated herein.

D. [Sec. 203] Development Timing. The Developer shall be obligated to comply with the terms and conditions of the Project Approvals and this Development Agreement at those times specified in either the Project Approvals or this Development Agreement. The parties acknowledge that the Developer cannot at this time predict with certainty when or the rate at which the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of the Developer, such as market conditions and demand, interest rates, competition and other factors. Because 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 provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of City and the Developer to hereby acknowledge and provide for the right of the Developer to develop the Project in such order and at such rate and times as the Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement. City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, the Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, (California Government Code § 65864 *et seq.*), City Council Resolution 1986-77 and this Development Agreement. The Developer will use its best efforts, in accordance with their business judgment and taking into consideration market conditions and other economic factors influencing the Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and with the Project Approvals.

Subject to applicable law relating to the vesting provisions of development agreements, Developer and City intend that except as otherwise provided herein, this Agreement shall, upon its effectuation, vest the Project Approvals against subsequent City resolutions, ordinances, growth control measures and initiatives or referenda, other than a referendum that specifically overturns

City's approval of the Project Approvals, that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, density and intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, initiative or referendum shall not apply to the Project Approvals and the Project. Developer and City acknowledge, however, that the General Plan Amendment # ___ will not take effect until such time as there is an affirmative vote of the electorate pursuant to Chapter 41 of the Davis Municipal Code, the Citizens' Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance. Notwithstanding any other provision of this Agreement, Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby.

E. [Sec. 204] Property Acquisition for Off-site Infrastructure. The Developer shall, in a timely manner as determined by City and consistent with the requirements of the Project and the conditions of approval of the Project, acquire the property rights necessary to construct or otherwise provide the public improvements contemplated by this Agreement and the Project Approvals. In any instance where the Developer is required to construct any public improvement on land to which neither the Developer nor the City has sufficient title or interest, including an easement or license determined necessary by the City, the Developer shall at its sole cost and expense provide or cause to be provided, the real property interests necessary for the construction of such public improvements. In the event the Developer is unable, after exercising all reasonable efforts as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time any final map is filed with the City, and upon the Developer's provision of adequate security for costs the City may reasonably incur, the City shall negotiate the purchase of the necessary real property interests to allow the Developer to construct the public improvements as required by this Agreement and, if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests. For the purposes of this Section, "reasonable efforts" shall include proof

that the Developer made a written offer to purchase the property interest at fair market value. The Developer shall pay all costs associated with such acquisition or condemnation proceedings including but not limited to attorneys' fees, expert witness fees, and jury awards of any kind. If and to the extent this section 204 conflicts with Section 66462.5 of the Subdivision Map Act, this section will control. Upon acquisition of the necessary interest in land, or upon obtaining a right of entry, either by agreement or court order, the Developer shall commence and complete the public improvements. This requirement shall be included, and, if necessary, detailed, in any subdivision improvement agreement entered into between the Developer and the City.

F. [Sec. 205]. Credits and/or Reimbursement for Dedication of Property or Construction of Infrastructure for "Oversizing". To the extent the Developer dedicates, funds or constructs public facilities that exceed the size or capacity required to serve the Property for the benefit of other properties or the City, the City shall enter into an agreement to reimburse the Developer, along with reasonable interest, to the extent of such benefit as determined by the City. The Developer may be reimbursed for oversizing: (1) under a separate agreement between the City and the Developer which will provide that if and when a particular property benefiting from the oversizing is developed, the City will require the benefiting property to reimburse the Developer its pro rata share of the costs of the oversizing, as set forth in the agreement. A written agreement under this provision shall have a term of no longer than twenty-five (25) years; or (2) as credits against impact fees that the Developer or the Project would otherwise be required to pay for the type of infrastructure (e.g. sewers, roads) or payments from impact fees paid by other properties developed in the City for the type of infrastructure. If the mitigation fees paid by other persons or entities, or the credit available from the impact fees to be paid by the Developer in the particular category of infrastructure, are insufficient to repay the Developer in full for the cost of oversizing, the Developer shall have no recourse against the City. Similarly, if the benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City; however, the Developer will retain all its rights against the benefiting property and its owners, if any. In no case shall the City reimburse the Developer from general funds of the City.

Whenever in this Agreement or in future reimbursement agreements, the City is making reimbursements to the Developer, the reimbursements shall be made on a quarterly basis.

G. [Sec. 206] Rules, Regulations and Official Policies.

1. For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of the ordinance enacted by the City Council approving this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement pursuant to Section 105 hereof. To the extent that any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Article 2, such future changes in the General Plan, zoning codes or such future rules, ordinances, regulations or policies shall be applicable to the Property.

(a) This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction

To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation on the part of the City, to participate in such regional or local

programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including the City, required by federal or state agencies).

(b) Nothing herein shall be construed to limit the authority of the City to adopt and apply codes, ordinances and regulations which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.

2. All project construction, improvement plans and final maps for the Project shall comply with the pertinent rules, regulations and design guidelines in effect at the time the construction, improvements plan or final map is approved. Unless otherwise expressly provided in this Agreement, all city ordinances, resolutions, rules regulations and official policies governing the design and improvement and all construction standards and specifications applicable to the Project shall be those in force and effect at the time the applicable permit is granted. Ordinances, resolutions, rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time the applicable permit approval for the construction of such improvements is granted. If no permit is required for the public improvements, the date of permit approval shall be the date the improvement plans are approved by the City or the date construction for the public improvements is commenced, whichever occurs first.

3. Uniform Codes Applicable. This Project shall be constructed in accordance with the provisions of the California Building Code, city standard construction specifications and details and Title 24 of the California *Code of Regulations*, relating to Building Standards, in effect at the time of submittal of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for the infrastructure improvements, such improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

4. The Parties intend that the provisions of this Agreement shall govern and control as to the procedures and the terms and conditions applicable to the development of the Property over any contrary or inconsistent provisions contained in Section 66498.1 *et seq.* of the

Government Code or any other state law now or hereafter enacted purporting to grant or vest development rights based on land use entitlements (herein "Other Vesting Statute"). In furtherance of this intent, and as a material inducement to the City to enter into this Agreement, the Developer agrees that:

(a) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use entitlements for the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

(b) The Developer waives, for itself and its successors and assigns, the benefits of any Other Vesting Statute insofar as they may be inconsistent or in conflict with the terms and conditions of this Agreement and land use entitlements for the Property obtained while this Agreement is in effect; and

(c) The Developer will not make application for a land use entitlement under any Other Vesting Statute insofar as said application or the granting of the land use entitlement pursuant to said application would be inconsistent or in conflict with the terms and conditions of this Agreement and prior land use entitlements obtained while this Agreement is in effect.

5. This section shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions shall not conflict with the terms and conditions of this Agreement.

H. [Sec. 207]. Fees, Exactions, Conditions and Dedications.

1. Except as provided herein, the Developer shall be obligated to pay only those fees, in the amounts and/or with increases as set forth below, and make those dedications and improvements prescribed in the Project Approvals and this Agreement and any Subsequent Approvals. Unless otherwise specified herein, City-imposed development impact fees and sewer and water connection fees shall be due and payable by the Developer prior to the issuance of a

certificate of occupancy for the building in question. Certain impact fees and credits applicable to development of the Project shall be as set forth in Exhibit K, and paid in the manner specified.

2. Except as otherwise provided in this Agreement, as to the fees required to be paid, the Developer shall pay the amount in effect at the time the payment is made. The City retains discretion to revise such fees as the City deems appropriate, in accordance with applicable law. If the City revises such fees on a city-wide basis (as opposed to revising such fees on an *ad hoc* basis that applies solely to the Project), then the Developer shall thereafter pay the revised fee. The Developer may, at its sole discretion, participate in any hearings or proceedings regarding the adjustment of such fees. Nothing in this Agreement shall constitute a waiver by the Developer of its right to challenge such changes in fees in accordance with applicable law provided that the Developer hereby waives its right to challenge the increased fees solely on the basis of any vested rights that are granted under this Agreement and any tentative maps approved pursuant to this Agreement.

3. The City may charge and the Developer shall pay processing fees for land use approvals, building permits, and other similar permits and entitlements which are in force and effect on a citywide basis at the time the application is submitted for those permits, as permitted pursuant to California *Government Code* § 54990 or its successor sections(s).

4. Except as specifically permitted by this Agreement or mandated by state or federal law, the City shall not impose any additional capital facilities or development impact fees or charges or require any additional dedications or improvements through the exercise of the police power, with the following exception:

(a) The City may impose reasonable additional fees, charges, dedication requirements or improvement requirements as conditions of the City's approval of an amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; and

(b) The City may apply subsequently adopted development exactions to the Project if the exaction is applied uniformly to development either throughout the city or with a defined area of benefit that includes the Property if the subsequently adopted development exaction

does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. In the event that the subsequently adopted development exaction fulfills the same purpose as an exaction or development impact fee required by this Agreement or by the Project Approvals, the Developer shall receive a credit against the subsequently adopted development exaction for fees already paid that fulfill the same purpose.

5. Compliance with *Government Code* § 66006. As required by *Government Code* § 65865(e) for development agreements adopted after January 1, 2004, the City shall comply with the requirements of *Government Code* § 66006 pertaining to the payment of fees for the development of the Property.

6. Wastewater Treatment Capacity. The City and the Developer agree that there is capacity in the wastewater treatment facility to serve (1) existing residents and businesses that are already hooked up to the facility, (2) anticipated residents and businesses through build-out of the City's existing General Plan, and (3) the Project. The City and the Developer acknowledge and agree that reserving this capacity for the Project, such that sewer hookups shall be available at such time as they are needed as the Project builds out, is a material element of the consideration provided by the City to the Developer in exchange for the benefits provided to the City under this Agreement. The Parties recognize the availability of sufficient sewer capacity may be affected by regulatory or operational constraints that are not within the City's discretion. To the extent the availability of sewer capacity is within the City's discretion (e.g., whether to extend sewer service to areas *not* currently within the City's service area), the City shall not approve providing such capacity to areas currently outside the City's service area if this approval would prevent or delay the ability of the City to provide sewer hookups to the Project as the Project requires hook-ups or connections. This provision shall not affect the City's ability to provide sewer service within its service boundaries or within the existing City boundaries as they exist on the effective date of this Agreement, and as to such connections, the Parties requesting sewer service shall be connected on a first come first served basis. The Developer shall pay the applicable connection charge pursuant to that specified in Exhibit K of this Agreement at the time of building permit issuance. The Developer acknowledges that connection charge may increase substantially over time and that the cost to comply with the City's new NPDES permit, as they may be approved from time to time during the term of this Agreement, may be substantial.

I. [Sec. 208] Completion of Improvements. City generally requires that all improvements necessary to service new development be completed prior to issuance of building permits (except model home permits as may be provided by the Municipal Code). However, given the size of the Project and anticipated duration of development, the parties hereto acknowledge that some of the backbone or in-tract improvements associated with the development of the Property may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, all backbone or in-tract infrastructure improvements required to service such portion of the Property in accordance with the Project Approvals (e.g., pursuant to specific tentative map conditions or other land use approvals) shall be completed prior to issuance of any building permits within such portion of the Property. Provided, however, the Public Works Director may approve the issuance of building permits prior to completion of all such backbone or in-tract improvements if the improvements necessary to provide adequate service to the portion of the Property being developed are substantially complete to the satisfaction of the Public Works Director, or in certain cases at the discretion of the City, adequate security has been provided to assure the completion of the improvements in question.

ARTICLE 3. Obligations of the Developer.

A. [Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement, the Project Approvals and the subsequent discretionary approvals referred to in Section 202, if any, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary approvals or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Article 4 hereof.

B. [Sec. 301] Developer's Obligations. Except as otherwise provided herein, the Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Agreement and the Project Approvals.

C. [Sec. 302] City's Good Faith in Processing. Subject to the reserved discretionary approvals set forth in Section 201 and the provisions of Section 207(3) hereof, the City agrees that it will accept, in good faith, for processing, review and action, all complete applications for zoning, special permits, development permits, tentative maps, subdivision maps or other entitlements for use of the Property in accordance with the General Plan and this Agreement.

The City shall inform the Developer, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use in advance, and shall review said application and schedule the application for review by the appropriate authority.

ARTICLE 4. Default, Remedies, Termination.

A. [Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may, at its option:

1. Terminate this Agreement, in which event neither Party shall have any further rights against or liability to the other with respect to this Agreement or the Property; or
2. Institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement;

In no event shall either Party be liable to the other for money damages for any default or breach of this Agreement.

B. [Sec. 401] Developer's Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement unless such default is cured or this Agreement is terminated.

C. [Sec. 402] Annual Review. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1.

The City Manager shall provide thirty (30) days prior written notice of such periodic review to the Developer. Such notice shall require the Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him or her to be required in order to ascertain compliance with this Agreement. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by the Developer.

If, following such review, the City Manager is not satisfied that the Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council.

Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall the Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

D. [Sec. 403] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, pandemics, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, moratoria or similar bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

In the event litigation is initiated by any party other than Developer that challenges any of the approvals for the Project or the environmental document for those approvals and an injunction or temporary restraining order is not issued, Developer may elect to have the term of this Agreement tolled, i.e., suspended, during the pendency of said litigation, upon written notice to City from Developer. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate upon the earliest date on which either a final order is issued upholding the challenged approvals or said litigation is dismissed with prejudice by all plaintiffs. In the event a court enjoins either the City or the Developer from taking actions with regard to the Project as a result of such litigation that would preclude any of them from enjoying the benefits bestowed by this Agreement, then the term of this Agreement shall be automatically tolled during the period of time such injunction or restraining order is in effect

E. [Sec. 404] Limitation of Legal Actions. In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

F. [Sec. 405] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of

this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

G. [Sec. 406] Invalidity of Agreement.

1. If this Agreement shall be determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

2. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either Party in good faith determines that such provision is material to its entering into this Agreement, either Party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 400, subject, however, to the provisions of Section 407 hereof. If neither Party determines the provision to be material, that provision will be stricken and the remainder of the Agreement endure.

H. [Sec. 407] Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect the Developer's obligations to comply with the General Plan and the terms and conditions of any and all Project Approvals and land use entitlements approved with respect to the Property, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement.

ARTICLE 5. Hold Harmless Agreement.

A. [Sec. 500] Hold Harmless Agreement. The Developer hereby agrees to and shall hold the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from the Developer's or the Developer's contractors, subcontractors, agents or employees operations under this Agreement, whether such operations be by the Developer, or by any of the Developer's contractors,

subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's contractors or subcontractors.

In the event any claim, action, or proceeding is instituted against the City, and/or its officers, agents and employees, by any third party on account of the processing, approval, or implementation of the Project Approvals and/or this Agreement, Developer shall defend, indemnify and hold harmless the City, and/or its officers, agents and employees. This obligation includes, but is not limited to, the payment of all costs of defense, any amounts awarded by the Court by way of damages or otherwise, including any attorney fees and court costs. City may elect to participate in such litigation at its sole discretion and at its sole expense. As an alternative to defending any such action, Developer may request that the City rescind any approved land use entitlement. The City will promptly notify Developer of any claim, action, or proceeding, and will cooperate fully in the defense thereof.

B. Prevailing Wages. Without limiting the foregoing, Developer acknowledges the requirements of California *Labor Code* §1720, *et seq.*, and 1770 *et seq.*, as well as California *Code of Regulations*, Title 8, Section 1600 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects, as defined. If work on off-site improvements pursuant to this Agreement is being performed by Developer as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation under the contract in question is \$1,000 or more, Developer agrees to fully comply with such Prevailing Wage Laws. Developer understands and agrees that it is Developer's obligation to determine if Prevailing Wages apply to work done on the Project or any portion of the Project. Upon Developer's request, the City shall provide a copy of the then current prevailing rates of per diem wages. Developer shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work subject to Prevailing Wage Laws, and shall post copies at the Developer's principal place of business and at the Project site. Developer shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement from any claim or liability arising out of any failure or alleged failure by Developer to

comply with the Prevailing Wage Laws associated with any “public works” or “maintenance” projects associated with Project development.

ARTICLE 6. Project as a Private Undertaking.

A. [Sec. 600] Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between the Developer and the City is formed by this Agreement. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

ARTICLE 7. Consistency with General Plan.

A. [Sec. 700] Consistency With General Plan. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan, as amended by the General Plan Amendment approved as part of the Project Approvals.

ARTICLE 8. Notices.

A. [Sec. 800] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the Parties as set forth below.

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

City Manager
City of Davis
23 Russell Boulevard
Davis, CA 95616

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

Ramco Enterprises, Inc.
1450 Harbor Boulevard, suite B
West Sacramento, CA 95691

Attn: Dan Ramos

and

R&B Delta III
1200 Concord Avenue
Concord, CA 94520
Attn: Dana Parry

With a copy to:

Taylor & Wiley
500 Capitol Mall, Suite 1150
Sacramento, California 95814
Attn: Matthew S. Keasling

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

ARTICLE 9. Recordation.

A. [Sec. 900] When fully executed, this Agreement will be recorded in the official records of Yolo County, California. Any amendments to this Agreement shall also be recorded in the official records of Yolo County.

ARTICLE 10. Estoppel Certificates.

A. [Sec. 1000] Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such party to certify in writing that, to the knowledge of the certifying Party, (a) this Development Agreement is in full force and effect and a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting Party may designate a reasonable form of certificate (including a lender's form) and the Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City

Manager shall be authorized to execute any certificate requested by Developer hereunder. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, and other mortgages. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Developer to execute an estoppel certificate shall not be deemed a default, provided that in the event Developer does not respond within the required thirty (30) day period, City may send a second and final request to Developer and failure of Developer to respond within fifteen (15) days from receipt thereof (but only if City's request contains a clear statement that failure of Developer to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by Developer of the estoppel certificate and may be relied upon as such by City, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of City to execute an estoppel certificate shall not be deemed a default, provided that in the event City fails to respond within the required thirty (30) day period, Developer may send a second and final request to City, with a copy to the City Manager and City Attorney, and failure of City to respond within fifteen (15) days from receipt thereof (but only if Developer's request contains a clear statement that failure of City to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by City of the estoppel certificate and may be relied upon as such by Developer, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees.

B. ARTICLE 11. Provisions Relating to Lenders

A. [Sec. 1201] Lender Rights and Obligations.

1. Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement prior to the time the Lender obtains possession of all or any portion of the Property to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Developer or Developer's successors-in-interest, but such Lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which Lender holds an interest. Nothing in this Section shall be construed to

grant to a Lender rights beyond those of the Developer hereunder or to limit any remedy City has hereunder in the event of a breach by Developer, including termination or refusal to grant subsequent additional land use Approvals with respect to the Property.

2. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Developer and which remain unpaid as of the date such Lender takes possession of the Property or any portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive Approvals with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Developer hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the Developer hereunder or entitled to enforce the provisions of this Agreement against City unless and until such Lender or successor in interest qualifies as a recognized assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

3. Notice of Developer's Breach Hereunder. If City receives notice from a Lender requesting a copy of any notice of breach given to Developer hereunder and specifying the address for notice thereof, then City shall deliver to such Lender, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer have committed a breach, and if City makes a determination of non-compliance, City shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on Developer.

4. Lender's Right to Cure. Each Lender shall have the right, but not the obligation, for the same period of time given to Developer to cure or remedy, on behalf of Developer, the breach claimed or the areas of non-compliance set forth in City's notice. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of

this Agreement unless such Lender shall assume and perform all obligations of Developer hereunder.

5. Other Notices by City. A copy of all other notices given by City to Developer pursuant to the terms of this Agreement shall also be sent to any Lender who has requested such notices at the address provided to City pursuant to Section 1201(4) above.

B. [Sec. 1202] Right to Encumber. City agrees and acknowledges that this Agreement shall not prevent or limit the owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device. City acknowledges that any Lender may require certain interpretations of the agreement and City agrees, upon request, to meet with the owner(s) of the property and representatives of any Lender to negotiate in good faith any such request for interpretation. City further agrees that it shall not unreasonably withhold its consent to any interpretation to the extent such interpretation is consistent with the intent and purpose of this Agreement

ARTICLE 13. Entire Agreement.

A. [Sec. 1300] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of 114 pages and 13 Exhibits which constitute the entire understanding and agreement of the Parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement. Said exhibits are identified as follows:

- Exhibit A: Legal Description of the Property and Project Site
- Exhibit B: General Plan Amendment Resolution and Baseline Project Features
- Exhibit C: Project Discretionary Approvals
- Exhibit D: Subsequent Discretionary Entitlements
- Exhibit E: Affordable Housing Plan
- Exhibit F: Sustainability Features
- Exhibit G: Transit, Transportation and Circulation
- Exhibit H: Habitat and Agricultural Conservation
- Exhibit I: Recreation and Wellness
- Exhibit J: Urban Forest and Landscape
- Exhibit K: Impact Fees, Credits, and Municipal Financing

Exhibit L: Uncategorized Additional Community Benefits
Exhibit M: Applicable City Ordinances

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and Developer and Landowner have executed this Agreement as of the date set forth above.

“CITY”

CITY OF DAVIS

By: _____
Gloria Partida
Mayor

Attest: _____

Zoe Mirabile
City Clerk

APPROVED AS TO FORM:

Inder Khalsa
City Attorney

“DEVELOPER”

RAMCO ENTERPRISES LLC, a California limited liability company

By: _____

Daniel Ramos, Project Manager

BUZZ OATES, a California corporation

By: _____

R&B DELTA III, a California limited liability corporation

By: _____

_____ Dana Parry, President & CEO

EXHIBIT A
LEGAL DESCRIPTION AND PROJECT SITE MAP

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

R&B DELTA III, A CALIFORNIA LIMITED LIABILITY COMPANY

ALL THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, T. 8N., R. 3E., M. D.B. & M., LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 6, T. 8N., R. 3E., M.D.B. & M.; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID SECTION 6 TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE NORTHERLY ALONG THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 1815.00 FEET, TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING WESTERLY PARALLEL WITH THE SOUTHERLY BOUNDARY LINE OF SAID SECTION 6 TO THE WESTERLY LINE OF THE EASTERLY HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE SOUTHERLY ALONG SAID WESTERLY LINE OF THE EASTERLY HALF OF SOUTHWEST QUARTER OF SECTION 6, A DISTANCE OF 825 FEET, MORE OR LESS, TO A POINT ON A LINE PARALLEL WITH AND DISTANT 990 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF SAID SECTION 6; THENCE WESTERLY ALONG SAID PARALLEL WITH THE WESTERLY LINE OF SAID SECTION 6.

EXCEPTING THEREFROM ANY PORTION DEEDED TO THE COUNTY OF YOLO BY DEED DATED AUGUST 25, 1964 AND RECORDED IN BOOK 778 OF OFFICIAL RECORDS, PAGE 18, YOLO COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, CASINGHEAD GAS, ASPHALTUM AND OTHER HYDROCARBONS AND CHEMICAL GAS, NOW OR HEREAFTER FOUND, SITUATED OR LOCATED IN ALL OR ANY PART OR PORTION OF THE LANDS HEREINABOVE DESCRIBED AS RESERVED BY WILLIAM H. MADDOCKS, ET UX., BY DEED RECORDED JANUARY 26, 1981 IN BOOK 1458 OF OFFICIAL RECORDS, PAGE 296, YOLO COUNTY RECORDS.

ASSESSOR'S PARCEL NUMBER: 033-650-009

FRANK C. RAMOS AND JOANNE M. RAMOS TRUSTEES OF THE FRANK C. RAMOS AND JOANNE M. RAMOS FAMILY TRUST DATED SEPTEMBER 22, 2005, BUZZ OATES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND OATES ASSOCIATES INVESTORS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF YOLO, STATE OF CALIFORNIA AND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 7, OF TOWNSHIP 8 NORTH, RANGE 3 EAST, M.D.B. & M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 7; THENCE NORTH $89^{\circ} 56'20''$ EAST 50.00 FEET TO A POINT ON THE EASTERLY LINE OF MACE BOULEVARD SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF MACE BOULEVARD, SOUTH $00^{\circ} 20'30''$ EAST, 1,406.70 FEET TO A POINT ON THE CENTERLINE OF NEW COUNTY ROAD 32A; THENCE DEPARTING FROM SAID EASTERLY LINE OF MACE BOULEVARD, SOUTHEASTERLY ALONG THE CENTERLINE OF NEW COUNTY ROAD 32A, SOUTH $89^{\circ} 39'30''$ EAST 196.92 FEET; THENCE THROUGH A CURVE CONCAVE TO THE SOUTH WITH AN ARC LENGTH OF 428.84 FEET, RADIUS OF 600.00 FEET, INCLUDED ANGLE OF $40^{\circ} 57'05''$ AND CHORD OF SOUTH $69^{\circ} 51'58''$ EAST 419.77 FEET; THENCE SOUTH $49^{\circ} 23'25''$ EAST 167.44 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT WITH AN ARC LENGTH OF 1,009.26 FEET, RADIUS OF 1,000.00 FEET AND INCLUDED ANGLE OF $57^{\circ} 49'35''$; THENCE DEPARTING FROM SAID CENTERLINE OF NEW COUNTY ROAD 32A, SOUTH $17^{\circ} 13'00''$ EAST 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF UNION PACIFIC RAILROAD; THENCE NORTHEASTERLY ALONG SAID NORTHERLY LINE OF UNION PACIFIC RAILROAD, NORTH $72^{\circ} 47'00''$ EAST 975.77 FEET TO A POINT ON THE EASTERLY SIDE OF THE NORTHWEST QUARTER OF SAID SECTION 7; THENCE DEPARTING FROM SAID NORTHERLY LINE OF UNION PACIFIC RAILROAD, NORTH ALONG THE EASTERLY SIDE OF THE NORTHWEST QUARTER OF SAID SECTION 7, NORTH $00^{\circ} 20'54''$ WEST, 1597.65 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 7; THENCE WEST ALONG THE NORTHERLY SIDE OF SAID SECTION 7, SOUTH $89^{\circ} 56'20''$ WEST, 2,604.64 FEET TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER: 033-630-009

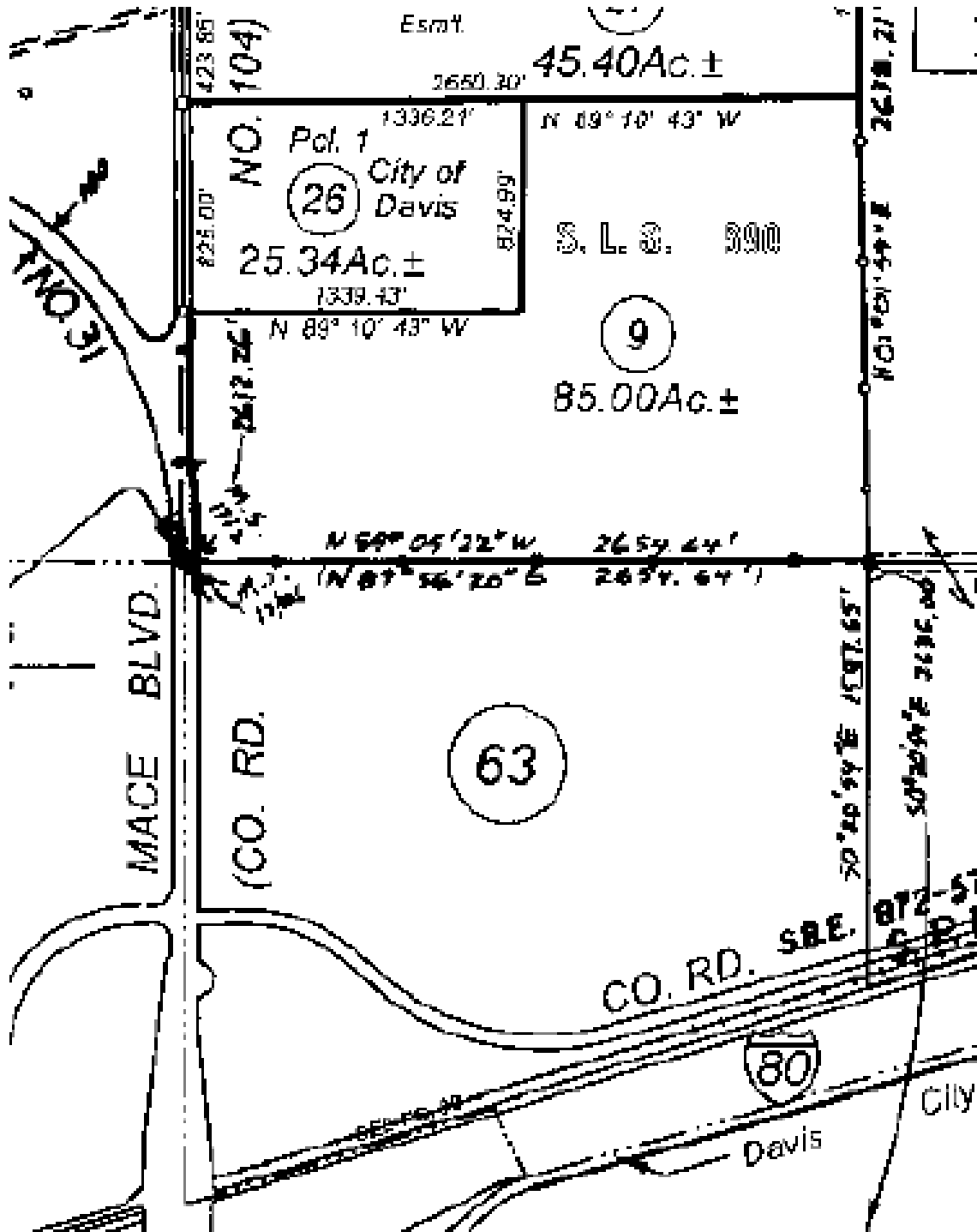


EXHIBIT B
GENERAL PLAN AMENDMENT RESOLUTION AND BASELINE PROJECT FEATURES

RESOLUTION NO. 20-110, 2020 SERIES

RESOLUTION OF THE CITY OF DAVIS STATING ITS INTENT TO AMEND THE CITY OF DAVIS GENERAL PLAN LAND USE ELEMENT TO ADD THE LAND USE CATEGORY “INNOVATION CENTER” AND TO AMEND THE CITY OF DAVIS LAND USE MAP TO REDESIGNATE THE PARCELS LOCATED ON THE NORTHEAST CORNER OF MACE BOULEVARD AND INTERSTATE 80 (General Plan Amendment #6-14)

WHEREAS, the City of Davis General Plan establishes parameters for consideration of a General Plan Amendment to change the land use designation from agricultural to an urban land use category; and

WHEREAS, the City of Davis has been studying and planning for a business/innovation park from 2008 to the present in the year, 2020; and

WHEREAS, the Davis General Plan contains the following policy, “LU-H1 University-Related Research Parks should include sophisticated land use planning, high quality architectural and landscape design, building flexibility, a variety of amenities and environmental controls”; and

WHEREAS, amending the General Plan Land Use Element to create a new land use designation of “Innovation Center” that provides for a combination of residential and specific non-residential uses in the same zone to foster the vision of an innovation center in the City of Davis; and

WHEREAS, the Innovation Center designation will provide the city with another tool to encourage economic development and the creation of jobs within the city of Davis in the areas deemed suitable; and

WHEREAS, Measure R the “Citizens Right to Vote on Future Use of Open Space and Agricultural Lands” affords residents an opportunity to participate in decisions affecting compact growth, agricultural preservation and provision of an adequate supply of housing to meet the internal needs of the community; and

WHEREAS, the General Plan Amendment is appropriate in that it is compatible and consistent with existing General Plan policies; and

WHEREAS, the General Plan Amendment will not adversely impact the health, safety or general welfare of the city of Davis; and

WHEREAS, the property located at the northeast corner of Mace Boulevard and Interstate 80 (Assessor’s Parcel Numbers (APNs) 033-630-006, -009, -011, and -012; 033-650-009, and -026), and are herein designated as “affected properties”; and

WHEREAS, the Planning Commission held a public hearing on June 10, 2020 to receive comments and consider the proposed amendment; and

Resolution No. 20-110

WHEREAS, the City Council held a public hearing on June 30, 2020 to receive comments and consider the proposed amendment; and

WHEREAS, Environmental Impact Report SCH #2014112012 March 2020 adequately assesses the impacts of this General Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS:

Section 1 – Land Use Text Changes. The land use category “Innovation Center” is hereby amended to the City of Davis General Plan Land Use Element as shown on Exhibit A, to this resolution.

Section 2 – Land Use Map. The City of Davis General Plan Land Use Plan is hereby amended with the change of the affected properties from a designation of “Agriculture” to those land uses as shown on the attached map, Exhibit B, to this resolution.

Section 3 – Baseline Project Features. The Baseline Project Features for the applications, as established by Chapter 41 of the City of Davis Municipal Code, are included as Exhibit C to this Resolution.

BE IT FURTHER RESOLVED by the City Council of the City of Davis that the General Plan Land Use Element shall be amended as shown on Exhibit A, and the General Plan Land Use Map shall be amended as shown on the map attached as Exhibit B of this resolution.

PASSED AND ADOPTED by the City Council of the City of Davis on this 7th day of July, 2020 by the following vote:

AYES: Arnold, Carson, Frerichs, Lee, Partida

NOES: None



Gloria J. Partida
Mayor

ATTEST:



S. Mirabile, CMC
City Clerk

EXHIBIT A

Davis Innovation & Sustainability Campus – Proposed General Plan Land Use Designation

V. Innovation Center

Intent: To provide sites for an array of technology companies conducting research and development activities, such as product development, engineering, sales and administration, as well as ancillary light manufacturing and wholesale uses, and to provide adjacent housing and supportive uses to serve the housing needs of center employees. It is the desire of the City of Davis to advance technology sector employment activities, and provide adequate space in which to allow for the growth and evolution of such companies so as to respond to advancements in technology, changing market demands and to capitalize on new opportunities. It is the intent to holistically design these innovation center spaces to encourage interaction and crosspollination between individuals and companies, emphasizing the concept of “live, work, play.” It is also the intent of the City of Davis to foster collaboration and the transfer of technology between University of California, Davis and the Innovation Centers.

The Innovation Center shall be of adequate size to accommodate numerous users and be designed so as to create a campus-like environment. The research park shall be characterized by superior site planning, architectural and landscape architectural design, traffic management, and environmental controls. In order to achieve this goal, planned development zoning and design guidelines shall be utilized. It is the intent that an Innovation Center will maximize the internalization of trips by incorporating a mix of uses, developing many of its own support services and featuring proximate freeway access to minimize impacts on the local roadway system.

Allowable Uses: Offices (including, but limited to headquarters, business, professional and medical), light industrial, research and development, light manufacturing, laboratory, and warehousing (as an ancillary use), provided they meet City standards regarding pollution, health and safety factors. Residential –Medium and High Density, including a variety of housing types, unit sizes, prices and rents, designs, and architecture diversity. Onsite housing is intended to serve the needs of a diverse Innovation Center workforce. Retail uses shall be limited to support commercial uses, which may include lodging, conference space, restaurant, fitness and other convenience services. Said uses should not compete with the downtown and neighborhood shopping centers and shall be appropriately limited in size to achieve the objective of serving the Innovation Center and reducing the need for offsite vehicular trips. Related amenities and green spaces serving the research park are encouraged.

Prohibited Uses: Major retail or highway commercial; heavy manufacturing; exclusive distribution and exclusive warehousing.

Floor Area Ratio: Innovation Center development should achieve a fifty percent floor area ratio (0.5 FAR) taking into consideration the unique needs of a diversity of industry types.

Size: A single Innovation Center shall not exceed 250 acres.

Resolution No. 20-110

Policies:

Policy LU S.1 Innovation Center should include sophisticated land use planning, a complementary mix of uses to foster innovation, high quality architectural and landscape design, building flexibility, a variety of amenities and environmental controls.

Policy LU S.2 An Innovation Center should include residential units to, in collaboration with existing housing supply, accommodate sufficient employees so as not to negatively impact the jobs/housing balance of the City. All housing should be designed and priced to accommodate the diverse needs of an Innovation Center workforce.

Policy LU S.3 A maximum of ten percent of the non-residential square footage may be commercial use provided that the commercial is supportive of the Innovation Technology Center businesses and residents, and that it does not cause significant negative impacts or disturbance of the overall business environment.

EXHIBIT B

LAND USE MAP

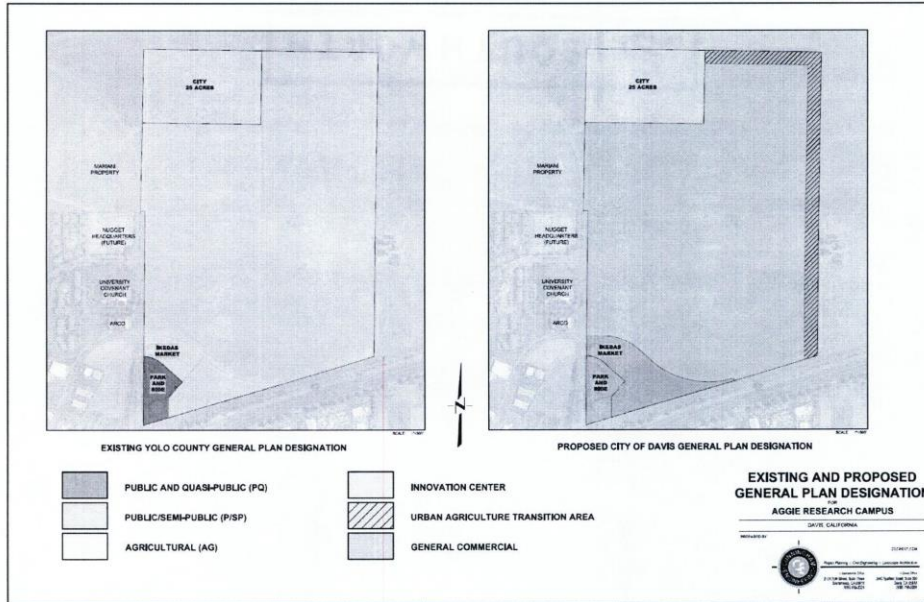
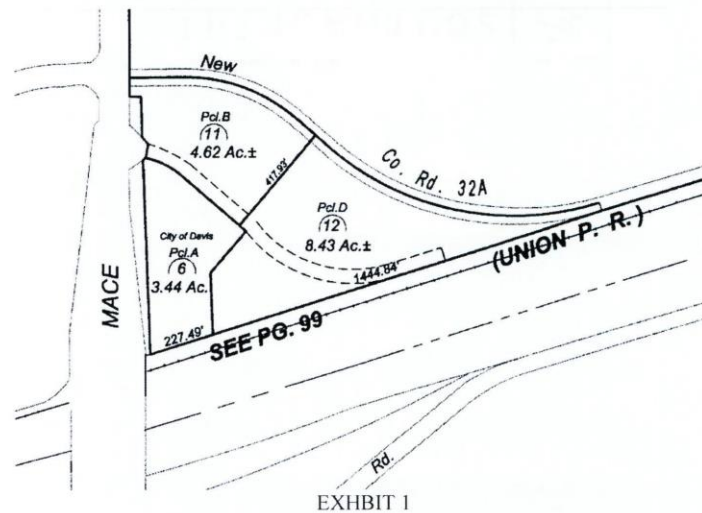


EXHIBIT C

BASELINE PROJECT FEATURES

Mace Triangle – Baseline Project Features

Exhibit 1 (shown below) is a depiction of the properties that make up the Mace Triangle.



Purpose

The purpose of annexation of the Mace Triangle properties is to prevent the creation of a county island, should the Davis Innovation & Sustainability Campus (DISC) be annexed to the city of Davis. Development of the Mace Triangle will support the development of the DISC properties.

Land Use Summary

The Mace Triangle property will have 2 land uses assigned to it. The City of Davis Water Tank property and the Caltrans park and ride lot (Parcel 6) will be designated Public Semi Public as both of those uses are infrastructure in nature and the property is publicly owned. The Ikeda's Fruit Market property (Parcel 11) and the vacant property (Parcel 12) will be have a land use of use designation of General Commercial, consistent with the City of Davis General Plan. General Commercial provides for a wide array of commercial service uses, such as, automotive sales and repair, building materials, office, and similar service oriented commercial uses as well as retail stores. Conditionally allowable uses include service stations, motels, restaurants, commercial recreation, limited convenience retail uses, public storage, moderate size community retail stores, warehouses and similar uses.

DAVIS INNOVATION AND SUSTAINABILITY CAMPUS

BASELINE PROJECT FEATURES

Project Goals

The purpose of the (DISC or Project) is to provide an approximately twenty-five-year inventory of land strategically located and designed to accommodate future growth of the science, technology and advanced manufacturing sectors within the City of Davis. Development of the DISC will allow Davis to retain, grow and capitalize upon the cutting-edge research and intellectual capital being fostered at U.C. Davis at a site located in close proximity to the University and Downtown Davis, adjacent to Capital Corridor Rail and Interstate 80, where adequate infrastructure including intercontinental fiber optic lines can easily be extended, and that is surrounded by preserved agricultural lands along its undeveloped borders. The DISC's goals include providing a full-range of complementary uses, including housing to accommodate the workforce, while embodying principles of environmental sustainability. The Project responds to a request that was issued by the City Council in 2014 and is the culmination of nearly two decades of City planning efforts. The City Council's goals for the development include the capture of business growth and the achievement of fiscal and economic benefits for the City General Fund and the community.

Land Use Summary

The DISC will provide a mix of land uses that work holistically to create a research and technology innovation campus. DISC proposes a mix of office, laboratory, and research and development (R&D) space; advanced manufacturing to prototype and build products; rental and for-sale, high-density housing designed to accommodate the Project's workforce; accessory commercial/retail space; a hotel and conference center; a transit plaza; parks, greenbelts and open spaces; and parking areas designed to accommodate the generation of renewable energy. An illustrative draft land use and site plan depicting the location of the proposed land uses, along with proposed roadways and connections to adjacent areas, is included.

Resolution No. 20-110

DISC Land Uses		
Land Use Type	Estimated Acres	Maximum Size
Office, Laboratory, R&D	44.7	1,510,000 square feet
Advanced Manufacturing	57.2	884,000 square feet
Residential	27.4	850 units
Ancillary Retail ¹	NA	100,000 square feet
Hotel and Conference Center	6	160,000 square feet
Parks, Plazas and Green Spaces	49.2 ²	
Total Commercial Innovation	101.9	2,654,000 square feet
Total Project	±193.8 ²	
<p>¹ Ancillary Retail occurs predominantly within Office, R&D, multi-family buildings and any of the 100,000 square feet allotted for Retail may be utilized as Office, R&D dependent on demand.</p> <p>² Includes a proposed 6.8-acre easement on adjacent City-owned property to be used for agricultural buffer, drainage and habitat. That easement has not been granted. If the City rejects the easement, City acknowledges that these acreages will be modified as necessary and will reduce the Total Project acreage to ±185 acres.</p>		

Development of DISC will include only the identified use types and is required to be configured in a manner generally consistent with the Baseline Features Site Plan (attached). A floor area ratio (FAR) is the ratio of the floor area of a building to the land on which it is built, and is calculated to ensure that developable land is used efficiently. DISC shall achieve a minimum floor area ration (FAR) of 0.4 at Phase 1, 0.5 at Phase 2, 0.6 at Phase 3, and no less than 0.7 at full buildout.¹ Although some flexibility within

¹ Progressively increasing FAR minimums are intended to ensure that, at buildout, the Project exceeds the City goal of 0.5 FAR. Uses that are science and innovation related and meet the intent of the Campus will be included in calculation of FAR, including but not limited to, greenhouses and test fields.

Resolution No. 20-110

the site will be allowed in terms of the siting of specific use types, building and exterior spaces as well as their design (e.g., orientation, floorplates, building footprints), the use types discussed in this document will not be allowed to be substantially modified nor will maximum square footage be exceeded.

A more detailed discussion of each land use type and sequencing of development with site features is included near the end of this document.

Key Project Commitments

The Project is subject to numerous commitments established in the Development Agreement between the City of Davis and the Developer as well as through mitigation measures as specified in the environmental review of the project. Specific components of the Development Agreement required by these Baseline Project Features are the following:

Housing

- Rental and for-sale housing shall be provided to accommodate a range of incomes and needs.
- All housing shall be medium- and high-density with a minimum median density of 30 units per acre. No single-family detached housing will be permitted.
- Housing will be designed and construction timed to meet the housing needs of the DISC workforce.
- Commercial development shall precede housing construction; there must be 200,000 square feet of job space before any homes are constructed. Housing construction will be contingent upon the construction of commercial space at a ratio of one home per 2,000 square feet of nonresidential space. This linkage between the development of housing and the creation of jobs will maximize opportunities for DISC employee occupancy of the housing and reduce traffic impacts.
- DISC residences will not be dormitory-style housing but may include such housing types as micro units, studios, one-to-three-bedroom apartments, ownership cooperative housing, co-housing, condos and townhomes. No home will include more than three bedrooms.
- Parking associated with multifamily housing will be unbundled, meaning that it is paid for separately from rent. Tenants will be able to avoid these parking costs, and reduce traffic impacts, if they choose a car-free lifestyle.

Affordable Housing

- DISC housing shall accommodate a diversity of incomes on-site.

Resolution No. 20-110

- The project will provide for no less than 153 affordable housing units using the methods that are identified in the City's Affordable Housing Ordinance and subject to Council approval. The percentage of affordable units exceeds city requirements.
- At least 103 multi-family units of the Project's affordable housing unit commitment will be constructed on-site in inclusive locations near parks and/or transit.
- An additional 25 for-sale units located onsite will be designated for those buyers meeting Yolo County's definition of moderate income.
- To foster the development of onsite affordable units at the earliest feasible time, any onsite affordable housing project shall be exempted from the requirement of commercial development being a condition precedent and from the units being subject to the 1 unit to 2,000 square feet requirement.

Sustainability

- The Project shall meet and exceed Title 24, Cal Green Tier 1, or the equivalent State Code as may be amended or replaced from time to time, and will utilize the City of Davis' Residential Energy Reach Code standards. The Reach Code aims to promote energy efficiency within the City of Davis through the use of energy-efficient building standards and is intended to ensure LEED Gold equivalency or better. In addition, the Project shall be constructed in accordance with the provisions of the California Building Code and City of Davis ordinances in effect at the time that building permit applications are complete, including those relating to energy efficiency requirements thereby ensuring that as Davis's building standards increase in sustainability features, so too will the Project.
- Project's electricity demand shall be fueled by 100% clean energy either generated onsite or purchased from a 100% renewable program such as Valley Clean Energy's "UltraGreen" program.
- In furtherance of the commitment to utilize 100% renewable energy, the installation of photovoltaics or future renewable energy technology will be required on all new housing and commercial buildings with a few exceptions such as greenhouses, to the greatest extent practicable.
- Housing units will be all-electric, not include natural gas, and comply with the City's Residential Energy Efficiency "Reach" Green Building Code.
- DISC will achieve net zero electricity for outdoor lighting.

Resolution No. 20-110

- Utilize only non-potable (well or recycled) water for all common landscaping areas managed by the Master Owners Association.
- Infrastructure to accommodate reclaimed water, i.e. "purple pipe," shall be installed in anticipation of future service. Additionally, the reuse of residential greywater will be permitted based on builder or homeowner preference subject to City approval.
- Native and drought tolerant plants shall predominate the plant palette. Valley Oaks or other local native oak species will be significantly incorporated into the agricultural buffer area.
- Runoff shall be captured and conveyed onsite in a series of bioswales intended to filtrate and clean the run-off and maximize groundwater recharge.
- No less than 1,800 trees will be planted on the site for shading and carbon benefits. The maintenance and growth of all onsite trees will be monitored by a third-part arborist and failure to meet tree obligations (i.e. number and shading requirements) will be subject to penalty.
- Trees planted in parking areas or street-adjacent shall use structured soil or suspended substrate to allow successful tree root development. Developer shall size pavement treatment areas to accommodate the anticipated sizes of the various tree varieties that will be planted.
- Compliance with these sustainability provisions will be monitored, measured and verified by the Master Owners Association with outcomes submitted to the City in biennial reports.

Transit

- In coordination with Unitrans and Yolobus, enhance and/or relocate the existing bus stops located on Mace Boulevard for improved use by DISC employees and residents.
- A centralized plaza will serve as a connection point for multi-modal transportation including shuttles with connections to Amtrak and UC Davis, on-site shuttles, paratransit and micromobility (e.g. bike, skateboard, and scooter share services). The plaza will be designed to accommodate local and regional bus service so that the local and regional transit agencies have an option to either provide service at the plaza or via existing routes to transit stops along Mace Blvd.
- Land will be reserved to widen the right-of-way on Mace Blvd. to accommodate a potential express bus lane or other future transportation needs.

Resolution No. 20-110

- DISC will participate in, and establish, a fair-share funding mechanism for, a shuttle program with connections to the Amtrak train station, UC Davis, and other destinations.
- A Transportation Demand Management (TDM) Plan will be adopted and implemented requiring specific targeted reductions in vehicle use. A designated TDM manager will report directly to the Master Owners Association and to the City to track progress on actions to improve mobility and reduce traffic impacts.

Roadways

- DISC will construct and/or contribute funding to improve the capacity, functionality, and safety of Mace Blvd. and, in particular, at the intersections of Mace and Alhambra Dr. and at Mace and 2nd Street if studies show such improvements are needed to address traffic generated by the Project.
- DISC will fund the development of a “traffic calming” plan for local streets identified in the environmental analysis.
- DISC will fund the creation of a comprehensive Mace Boulevard Corridor Plan to improve bicycle and pedestrian travel and transit in the vicinity of the Project.
- DISC will construct safety improvements at County Roads 32A and 105 at the crossing of the UPRR tracks.

Bicycle and Pedestrian

- DISC will construct a grade-separated bicycle and pedestrian crossing of Mace Boulevard connecting to local and regional trails.
- A minimum of 2.75 miles of publicly accessible bike lanes and walking paths will be provided on-site at DISC.
- DISC will construct a new bike trail connection between Mace Blvd and Harper Junior High School along the inside of the Mace Curve, thereby improving bicycle safety to schools and the site and the DISC site.
- Two bicycle maintenance and repair kiosks will be provided on-site.

Agricultural Land and Wildlife Conservation

- By the full build-out of DISC, the developer will have purchased conservation easements protecting local agricultural lands amounting to twice the acres converted to urbanized uses, thereby ensuring their preservation as farmland. The specific locations would be subject to city approval and must comply with the City’s agricultural land mitigation ordinance as in effect at Project approval.

Resolution No. 20-110

- The portion of the Mace Drainage Channel the DISC site will be restored and enhanced utilizing native riparian vegetation while maintaining its drainage conveyance function.
- A diversity of native habitats shall be disbursed and managed throughout the site, primarily within the agricultural buffer and along the channel, including but not limited to riparian, California oak savanna, and native prairie grasslands. The agricultural buffer shall include areas densely vegetated and sparsely vegetated to accommodate nesting and foraging opportunities for a variety of species.
- Artificial burrowing owl dens will be installed in the agricultural buffer in consultation with a qualified biologist.

Fiber Optic Broadband Internet

- In Phase 1 of the project, DISC will obtain the rights and extend fiberoptic or comparable internet infrastructure to the site that is critically needed to attract and support research and technology endeavors.
- Other users, including the City of Davis, will be allowed to connect to the internet network and extend service into the City under terms to be negotiated.

Financing

- DISC will form an owners' association and/or financing district to pay for the maintenance and upkeep of all publicly accessible park, greenbelt and open spaces.
- A Property Business Improvement District (PBID) will be pursued by the City to improve local commuter transit services and its formation will be supported by DISC.
- DISC will commit to participation in financing mechanisms, including but not limited to, a community facilities district, that could help pay for roadway improvements near Mace Boulevard, in East Davis and in other locations deemed appropriate by the City. DISC agrees to negotiate the terms of such financing to the City's satisfaction prior to issuance of building permits for any residential units. In addition, the DISC project will contribute Roadway Impact Fees and construction taxes for such purposes.

Measurement and Verification

- The DISC developer will establish a Master Owners Association which reports to the City biennially and is responsible for measurement,

Resolution No. 20-110

verification and assuring compliance with Project baseline features, sustainability obligations and mitigation measures.

Land Uses – Explained

Principal Innovation Uses:

Office, Laboratory and Research & Development

Office, Laboratory and Research and Development (R&D) uses will occur in a series of clustered commercial buildings. These innovation uses will predominantly occur in the core area, near the transit plaza, and be clustered around shared courtyards. This land use type is intended to allow for a variety of uses including, but not limited to, corporate headquarters, biological research, collaborative think tanks, laboratories, software design, and other office-based innovation uses.

Advanced Manufacturing

Research, Prototyping and Manufacturing uses in individual or clustered buildings shall occur predominantly at peripheral locations of the Project along the eastern edge. These innovation uses will typically be surrounded by areas identified as flex zone which may accommodate parking and photovoltaics but will also allow for an outdoor area that may be needed as an extension of the underlying research, prototyping and manufacturing uses. This area is intended to allow for a variety of uses including, but not limited to: large-scale research; light manufacturing; crop sciences; assembly of products, including but not limited to electrical, pharmaceutical, biomed, food products and devices; and associated warehousing and distribution.

Innovation Support Uses:

Housing

A maximum of 850 units of housing designed to accommodate the needs of the DISC worker shall be permitted onsite. The housing will be a mix of rental and for-sale with a density range of 15 to 50 units per acre. Residential units will range from studio to three-bedroom. Product types will be multi-family, condominiums or townhomes. The construction of housing will be contingent upon and slightly trail the construction of commercial space and units should become available as jobs are created.

Support Retail

Support retail uses, up to a maximum of 100,000 square feet, shall be permitted within the core area of the Project site. Support retail will predominantly, but not exclusively, occur on the ground floor of office or multi-family residential buildings. A variety of onsite retail uses including, but not limited to, a coffee shop, restaurant, fitness center, childcare center, electronics store, or maintenance and repair shops would be intended for the convenience of DISC residents and workers and to reduce off-site vehicle trips.

Open Space and Parks

Open space, greenbelts, courtyards and parks, including the agricultural buffer area, will comprise approximately 49 acres or one-fourth of the DISC site. The open space and park areas will include programmed and passive gathering spaces, miles of new pedestrian and bicycle trails and facilities, sports fields, and vegetated landscape buffers.

Roadways and Circulation

The proposed circulation system for the DISC site consists of new local streets, a centralized transit plaza, and a system of pedestrian and bicycle paths that will connect the site to the surrounding neighborhoods, Downtown Davis and UC Davis. This system will provide enhanced connectivity for pedestrians, bicyclists, transit riders, and automobiles via new multi-modal roadway connections and linkages to existing greenways and bike paths.

The circulation framework at DISC is a modified grid network of streets, which will, at a minimum, connect with Mace Boulevard at three locations and County Road 32A at two new intersections. The gateway into the Project is along an extension of Alhambra; this entryway is separated from heavy truck traffic which will primarily enter from 32A. Pedestrian and bicycle connections will occur from the west primarily at a new grade-separated crossing of Mace Boulevard adjacent to the canal.

Parking

No more than 4,772 parking stalls may be created parking for commercial uses and residential shall not exceed 850 spaces. All commercial parking areas shall include infrastructure to accommodate the installation of photovoltaics and the accommodation of electric vehicle charging. City and Developer shall seek to further reduce on-site parking through the development of a Transportation Demand Management Plan, with the target being 4,340 total parking stalls, which reflects a nearly 25 percent reduction.

Resolution No. 20-110

Sequencing Development of the Project Site

Several Project mitigation measures are tied to development phases which are identified in the environmental analysis as follows:

Phase	Commercial SF	Residential Units
1	540,000	270
2	700,000	350
3	700,000	230
4	714,000	0

Backbone infrastructure, including roadways and utilities necessary for the development, shall be provided as needed. Early infrastructure improvements shall include roadway connections to both Mace Boulevard and County Road 32A.

Several Project features shall be sequenced to ensure that the site is developed in a feasible and logical order consistent with the following:

- Roadways extending Alhambra Boulevard onto the Project site and connecting to County Road 32A shall be constructed in Phase 1 creating a circulation loop.
- Transit improvements along Mace Boulevard, including lane dedication, shall be installed and enhance at Phase 1, concurrent with initial development. The onsite transit plaza shall be constructed no later than Phase 2.
- The central park located on Mace Boulevard and the off-grade crossing of Mace Boulevard shall be constructed in Phase 2.
- Improvements to the Mace Drainage Channel, the accompanying east/west class 1 bike trail and the parks south of the channel will be commenced in Phase 2.
- The agricultural buffer and associated peripheral bicycle and pedestrian trail shall be constructed in segments concurrent with adjacent development. The peripheral trail and bike path will be completed in Phase 3.
- The hotel and conference center are not associated with any phase but, rather, shall not be constructed until adequate demand to support additional hotel space is demonstrated, through a third-party economic report, to the satisfaction of the City.

Baseline Project Features: Implementation

The DISC must be developed consistent with these Baseline Project Features, which may not be substantially changed without approval by the voters of the City. The Planning Commission and/or Zoning Administrator will review compliance with these Baseline Project Features as they consider applications for Final Planned Development, Tentative Subdivision Map, approval of Design Guidelines, implementation of sustainability plans, and the required annual Development Agreement implementation review. Additional DISC project requirements, including but not limited to, the imposed mitigation measures set forth in the Mitigation Monitoring and Reporting Plan and commitments in the Development Agreement, are not Baseline Project Features and may be modified by the City Council. In addition, minor changes to the Project can be anticipated during the course of this multiple year build out. Such changes, often the result of detailed engineering, sustainability obligations, or changes in surrounding conditions, may be implemented without voter approval if they are substantially consistent with the Baseline Project Features and they do not materially alter the character of the Project (See, Resolution 06-40 Establishing Criteria to Determine What Constitutes a Significant Project Modification or Change Requiring a Subsequent Measure J Vote).

Resolution No. 20-110

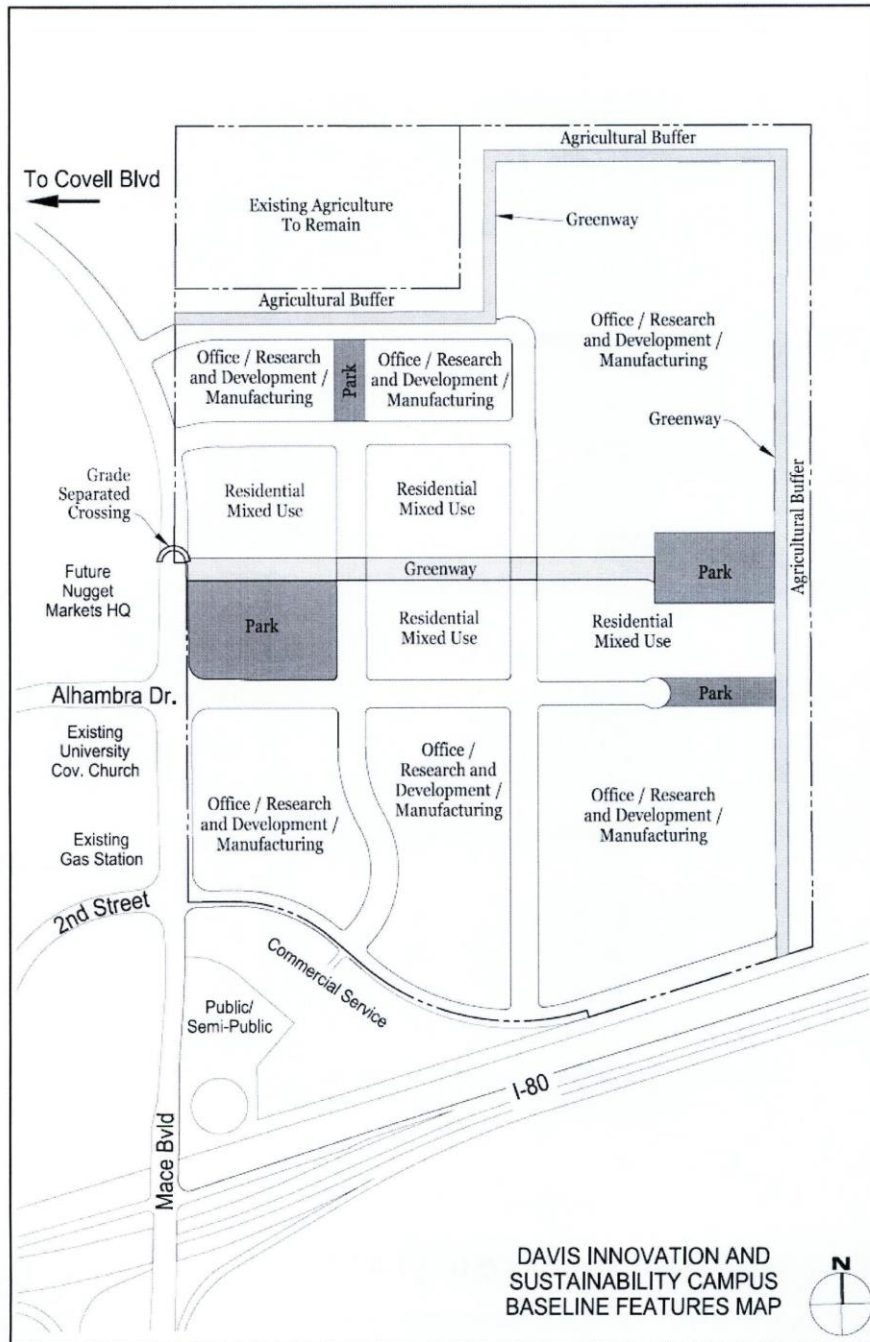


EXHIBIT C
PROJECT DISCRETIONARY APPROVALS

- (1) General Plan Amendment # GPA 6-14
 -
- (2) Rezoning and Preliminary Planned Development # PD 4-14
 -
- (3) Development Agreement #DA 2-14 by and between the City of Davis and Developer.
 -

**EXHIBIT D
SUBSEQUENT DISCRETIONARY ENTITLEMENTS**

Following City Council approval of the Project and a successful ballot initiative, the following discretionary approvals and actions by the City are also required to implement the Project:

- Tax-share Agreement and Annexation;
- Tentative Subdivision Map(s);
- Final Planned Development;
- Site Plan and Architectural Review;
- Conditional Use Permits, where applicable;
- Design Review, where applicable; and
- Complete other processing as required.

EXHIBIT E
AFFORDABLE HOUSING PLAN

To fulfill its obligation to provide affordable housing as a condition of developing any housing within the Davis Innovation and Sustainability Campus, Developer shall comply with the City of Davis's affordable housing ordinance, as currently contained in Davis Municipal Code Article 18.05, which is attached to this exhibit and incorporated by reference and which will remain applicable to the Project for the term of this Agreement.

Compliance with City Ordinance

Pursuant to this agreement, as market rate residential development is proposed, the Project will be obligated to provide for affordable housing units in a manner consistent with the current City ordinance (Davis Municipal Code Article 18.05) which will vest for the project for the term of this Agreement. Any residential development onsite thereafter will be subject to the then current affordable ordinance. The number of affordable units and affordability mix required will be determined based upon 18.05.050(a) for ownership units, and 18.05.060(a) or (b) for rental units, regardless of whether subsection (b) is extended in ordinance past May 31, 2020.

Assurance of 153 Affordable Units

Though, pursuant to City Ordinance, the number of required affordable units is determined based upon a percentage of the units with those percentages varying depending on the type of market rate housing proposed, Developer is committed to providing, through those means afforded in the Ordinance, for 153 affordable housing units, eighteen percent of the overall housing units. The commitment to 153 units exceeds the Project's obligation under the Ordinance.

Commitment to Onsite Affordable Housing

To ensure a diversity of housing affordability within the Project, Developer commits to constructing at least 128 of its affordable units onsite. The onsite affordable housing units will include 103 affordable rental units and 25 for-sale housing units. The 103 multifamily units will provide an affordability mix of 60% low and 40% very low income. The ownership housing will be affordable to moderate income households.

The 103 affordable rental units may be located in one, all-affordable project or distributed throughout mixed-income buildings. If an exclusively affordable building accommodates all 103 units, that building shall be located in manner inclusive to the site and proximate to community amenities such as parks, transit connections and/or regional bicycle pathways. Developer may work with an affordable housing developer of its choosing subject to City review to confirm that the selected affordable housing developer has demonstrated a track record of successful project delivery and management. Regardless of whether the 103 units are provided in one location or are dispersed in mixed-income apartments throughout the site, construction on all of the onsite multifamily affordable units shall commence prior to issuance of the 150th market rate residential building permit in Phase 2.

The ownership affordable housing opportunity shall be affordable to moderate income households as defined in the Ordinance. These units will provide a limited equity opportunity while retaining their affordability upon resale. The 25 units may be built in one project or be constructed as the housing associated with each phase builds out. The for-sale affordable units shall commence construction no later than Phase 2.

Manner of Fulfilling the Obligation

The precise affordable housing obligation will be determined as project-level housing projects are proposed at the Project site. The type of structure and/or residential units proposed will dictate the percentage of affordable units that must be provided. It is anticipated that the calculation will be made each time a housing project is proposed onsite, which may be one or more applications per Project phase. As such, the affordable housing obligation may be fulfilled over time by numerous entities as each segment of DISC housing is proposed.

Developer may, alternatively, elect to fulfill the Project's cumulative affordable housing obligation (or a portion thereof) and allow subsequent home builders to avail themselves of credits. For instance, if Developer elects to construct 103 affordable housing units onsite in Phase 1, those units could fulfill the affordable housing obligation of subsequent market rate projects located on-site.

To expedite the development of affordable housing, if a housing project is proposed onsite that is exclusively affordable, that project is not subject to the requirement to develop commercial prior to housing or in any way tied to the development of commercial square footage as a condition precedent.

Developer's affordable housing contribution shall not be less than 153 units and at least 128 units must be constructed onsite. For the remainder of the affordable housing required of DISC which shall be no less than an additional 25 units, Developer and its successors-in-interest may elect to fulfill the affordable housing obligations through, but not limited to, any of the following methods which excludes the payment of in-lieu fees:

- Onsite construction;
- Acquisition and recordation of permanent affordability restrictions on existing housing units within the City,
- Provision of a land dedication site,
- Project individualized program, and/or
- Alternative manner such as a pledge to the City of a continuing revenue source for achieving affordable housing goals.

Affordable Housing Ordinance Applicable to the Project Site

For Davis Municipal Code, Article 18.05, see Exhibit M.

EXHIBIT F SUSTAINABILITY COMMITMENTS

In recognition of the City's declaration of a climate emergency (RESOLUTION 19-023), the Developer and the City have agreed to the following Sustainability Commitments. These commitments are a means for mandating, implementing and maintaining Project features that are designed to address and mitigate identified environmental concerns, including but not limited to impacts to global climate change, and to ensure sustainability for the life of the Project. Future development at DISC will demonstrate compliance with these commitments through sustainability implementation plans.

Measurement and Verification

Critical to the success of the Davis Innovation and Sustainability Campus is its ability to demonstrate continuous advancements in site sustainability during buildout and into campus operations. Many of the Sustainability Commitments are designed to gradually increase site sustainability and further reduce Project impacts over time, such as improved air quality, reduced carbon emissions, greater electrical efficiency and reduced single-occupancy vehicle travel. These Sustainability Commitments will work in tandem with Project mitigation measures to reduce Project-related environmental impacts. To ensure accurate tracking and reporting, Developer will establish a Master Owners Association which reports to the City and is responsible for measurement, verification and compliance with Project sustainability obligations and mitigation measures.

Energy Efficiency and Usage

The Developer is committed to minimizing carbon emissions by maximizing clean energy production onsite and to implementing a program within the Project to ensure that all structures consume 100 percent renewable electricity. In furtherance of this pledge, the Developer commits as follows:

- Buildings shall be designed to incorporate passive heating and cooling so as to reduce overall energy demands.
- To achieve a Project that is fueled by 100% clean energy, Developer commits all structures, residential and non-residential, to purchase power from solely renewable sources such as Valley Clean Energy's "UltraGreen" 100% renewable program or its equivalent, to offset any electric deficit.
- In furtherance of the commitment to utilize 100% renewable energy, the installation of photovoltaics or future renewable energy technology will be required on every conducive structure; e.g. greenhouses would not be conducive, to the greatest extent practicable. City and Developer agree that if, during the term of this Agreement, technological advancement or shifts in renewable energy generation render the commitment to install PV on all structures superfluous, the obligation will be waived.
- Project will enter into a power purchase agreement with Valley Clean Energy (or another electric utility company under reasonable economic terms) to which it will sell and distribute all electricity generated onsite. This arrangement will ensure that all power generated onsite which is not used onsite is utilized locally. Valley Clean Energy shall have a right of first refusal for the power purchase agreement which they shall exercise within 45 calendar days

- All onsite residential units will be all-electric and not include natural gas.
- Achieve net zero for outdoor lighting through the use of onsite photovoltaics or similar technology.
- In anticipation of improved solar connected energy storage, the Project shall be designed and pre-wired for future microgrid capacity and energy storage.
- Commercial buildings shall be all-electric for the building envelope, i.e. those functions servicing the common areas such as HVAC systems and water heaters. Natural gas may be provided to the building and made available to meet the needs of individual tenants.

Recycling and Waste Disposal

- All buildings and facilities will participate in a mandatory, site-wide, recycling program that will be managed by the Master Owners Association. Building maintenance staff will be trained in best practices for maximizing commercial recycling and will emphasize paper and cardboard recycling.
- All common areas that include disposal options managed by the Master Owners Association will include solid waste disposal cans, recycling cans, and compost bins.

Housing

Housing at DISC is included to maximize the environmental benefits of mixed-use development. The inclusion of housing and an overall complementary mix of uses reduces the number and distance of Project-related vehicular trips, encourages walking and bicycle trips, reduces air quality impacts and reduces the overall carbon footprint of the Project. To further increase the sustainability benefits of onsite housing, the Developer commits as follows:

- Housing will be medium- and high-density with a range of 15-50 units per acre. No single-family detached housing will be permitted.
- Housing will be designed to meet the housing needs of the workforce and will not resemble student-oriented housing found elsewhere in the City. No unit will be greater than three bedrooms.
- Housing construction will be directly linked to the development of commercial space at a ratio of one home per 2,000 square feet of nonresidential space. This linkage will correlate the availability of housing with the creation of jobs which will maximize DISC employee occupancy of the housing. This correlation between commercial and housing units shall not apply to affordable housing units developed onsite.
- To further minimize transportation emissions and enhance the active live-work-play environment of the Project, the applicant and the MOA shall ensure an introduction and establishment of a relationship between commercial tenants and the then active builders of on-site housing and/or leasing companies. Establishing a direct relationship between employers and purveyors of onsite housing will maximize the number of project housing units occupied by individuals working onsite. Applicant will further encourage the occupancy of onsite housing by DISC employees by providing incentives to commercial users such as offering a reduction in the annual MOA fee based upon the number of employees living onsite. The applicant shall describe the specific actions taken to comply with this provision and report on the outcome of these efforts as part of the annual Development Agreement review.
- Housing will be all-electric and utilize the Residential Energy Reach Code.

- To provide an opportunity for a car-free lifestyle, parking associated with multifamily rental housing will be unbundled. Multifamily rental units will be charged for parking separate from rent.

Mitigation Measures

The Project shall comply with Mitigation Measures identified in the Approved Mitigation Monitoring Reporting Plan.

Implementation

Concurrent with the approval of a Final Planned Development and Site Plan and Architectural Review for any structure located at DISC, a Sustainability Implementation Plan shall ensure compliance with these Sustainability Guiding Principles to the satisfaction of the City.

EXHIBIT G
TRANSIT, TRANSPORTATION AND CIRCULATION

Transit Features and Enhancements

The Project shall implement a Transportation Demand Management Plan (TDM plan) with measurable results to promote a shift away from single occupancy vehicle (SOV) use and incentivize a mode shift to bicycling, public transit, private transit, or carpool and to determine which traffic mitigations are needed at each phase of Project development. As discussed in the Subsequent EIR and imposed through mitigation measures 3-72(a)&(b), prior to, or concurrent with, adoption of the Final Planned Development, Developer shall finalize a TDM plan acceptable to the City which shall include, in part, the following:

- Developer will adopt and implement a Transportation Demand Management (TDM) Plan with a designated TDM manager that reports directly to the City.
- Prior to the commencement of construction of each phase, a traffic study shall be prepared which measures in- and out-flow from the Project and identifies traffic patterns. This analysis will be shared with the City to determine which traffic mitigation measures are necessary to accommodate each phase of development. This will also serve to inform the City on mode share and to trigger the need for increased transit services.
- Developer will work with Yolobus and Unitrans to maximize transit ridership with an objective to increase the frequency and capacity of bus service as the Project develops. Developer commits to provide sites for bus stop relocation along the Project frontage on Mace Boulevard and to enhance the bus stops with benches and coverings, to the extent those features are desired by the transit agencies. Developer shall also work with Yolobus and Unitrans to relocate bus stops along the frontage and internal to the project, inclusive of benches and coverings where determined necessary in coordination with Yolobus and Unitrans as the project builds out during the various phases.
- Developer shall collaborate and coordinate with Yolobus and Unitrans on the design and location of the transit plaza.
- DISC will fund and build new and improved bus stops with lighting, passenger shelters, and real time transit information signage on both sides of Mace Boulevard.
- Developer commits to reserve land along its Mace Boulevard frontage for expansion of the right-of-way to accommodate future transportation needs, which may include bus rapid transit, as determined by the City.
- The Project shall be designed to accommodate internal, local and regional transit. It will include a centralized multi-use pedestrian plaza, which will serve as a designated connection point for multi-modal transportation including corporate shuttles with connection to Amtrak and UC Davis, future on-site shuttles, and micromobility alternatives (e.g. bike-, skateboard-, and scooter-share services). The plaza will be a minimum of 0.6-acres and may increase up to 2-acres based upon final project design and in response to needs expressed by local transit agencies. It is anticipated that, when the Project reaches critical mass, local and regional bus service may also choose to provide direct bus service to the plaza, therefore the plaza will be designed to accommodate this mode share as well which may necessitate dedication of managed lanes within portions of the project site to accommodate unimpeded transit circulation.

- Developer will participate in and contribute toward an electric shuttle service running weekdays from the AM to PM peaks, connecting commuters from DISC and 2nd Street to UC Davis and the Amtrak station. Developer will work in good faith with City to develop a permanent funding mechanism for said shuttle through which DISC shall contribute its fair share obligation. If the City pursues formation of a Property Based Improvement District (PBID) to, in part, fund the ongoing shuttle service, Developer will work collaboratively with the City in furtherance of the effort. Said PBID shall, in conjunction with the City, establish the appropriate shuttle route and pursue improved direct access from the Amtrak station to 2nd Street.
- DISC will contribute a share of the local costs to build carpool lanes on I-80 between Richards Boulevard and West Sacramento. The Project will also contribute funding for improved I-80 on-ramps and nearby intersections if needed.

Bicycle and Pedestrian Connectivity

- To ensure safe connection for bicyclists and pedestrians to across Mace Boulevard, Developer will construct a grade separated multi-use crossing of Mace Boulevard connecting to the existing local and regional trails system.
- Develop a minimum of 2.75 miles of publicly accessible bike lanes and walking paths on-site. A portion of this trail will be constructed with the internal fifty feet of the agricultural buffer and will be dedicated to the City in fee once constructed; an approximately 0.5-mile portion is aligned with the Mace Drainage Channel and will be located within an area in which the City holds a maintenance easement. City will work cooperatively with Developer to expand the easement area to accommodate public access and recreation.
- Build the connection of the existing bike trail on Mace Blvd to East Covell Boulevard along the inside of the curve connecting the two roadways, thereby improving bicycle safety to schools and the site.
- In collaboration with City and DJUSD, construct a bicycle connection from the grade-separated crossing of Mace Boulevard to the City's existing trail system located south and east of Harper Middle School.
- For off-site bicycle improvements, Developer shall be responsible for construction of the bike trail or lane. Additional components of bicycle and walking trails such as shading or lighting shall be the responsibility of the City.
- Developer will provide for bicycle parking spots, as is required by Davis Municipal Code 40.25A. Developer estimates that the total bicycle parking spots within the Project will range from 2,000-2,150 spots.

Parking Lots and Internal Streets

To further incentivize a mode shift towards bicycling, public transit, private transit, or carpool, to reduce the heat island effect, and to reduce visual and aesthetic impacts, Developer shall implement the following features in its parking areas and/or along the Project's internal roadway system:

- All streets and surface-level parking shall utilize low-impact development (LID) features, such as bioswales, to capture and filter runoff and to maximize groundwater recharge. Piping of runoff will be discouraged and only utilized when necessary.

- All parking surfaces or street-adjacent sidewalks utilizing tree shading shall use structured soil or suspended substrate to allow successful tree root development. Developer shall size pavement treatment area to accommodate the tree varietal's intended tree size.
- Landscaping shall provide 80% shading of pedestrian walkways and off-street Class I bike paths. 50% parking lot shading shall be achieved through either shade trees or photovoltaic arrays. These requirements shall be demonstrated at building permit for PV or shall be achieved within 15 years of planting for areas shaded by trees. Failure to meet shading requirements shall be considered a code violation and subject to penalty until remedied.
- To the extent Developer removes parking lot shade trees installed by Developer in parking areas to accommodate replacement with photovoltaic arrays that meet parking lot shading requirements, Developer shall not be subject to payment of tree mitigation fees for removal.
- Parking preference and priority will be given to high occupancy vehicles (HOV) and electric vehicles (EV). Aside from handicap parking, only HOV and EV parking shall be allowed adjacent to buildings. All stalls designated for EV will have charging stations pre-installed. Installation of Level 2 stations is preferred unless specified reasons are provided by the applicant to the City to justify the use of Level 1 charging stations. In addition, as specified in Section G of this agreement, this Project shall be constructed in accordance with the provision of the California Building Code and City of Davis ordinances in effect at the time that building permits are granted, including those relating to EV charging requirements.
- All commercial and residential parking areas shall be EV ready, equipped with infrastructure to allow for the installation of EV charging stations as demand grows.
- All housing shall include one Level 2 EV charger per unit or, if a multifamily building is parked at a ratio of less than 1:1, one Level 2 EV charger per parking stall. Townhomes, if built to accommodate two vehicles, will be prewired to allow for the installation of a second charger.
- Parking associated with multi-family housing will be unbundled to incentivize a car-free lifestyle.
- To the extent that, and at such time as, the market will bear charges for parking associated with commercial uses at the Project Site, Developer commits to implement a paid parking program and utilize at least fifty percent of parking revenue to implement and enhance project-related TDM measures after retiring all costs associated with construction of the garage.
- Installation of Level 2 stations is preferred unless specified reasons are provided by the applicant to the City to justify the use of Level 1 charging stations. In addition, as specified in Section G of this agreement, this Project shall be constructed in accordance with the provision of the California Building Code and City of Davis ordinances in effect at the time that building permits are granted, including those relating to EV charging requirements.

In furtherance of sustainability goals, City commits to work with Developer in good faith to accommodate site drainage and roadway design in a manner emphasizing open air conveyance and groundwater recharge. In this context good faith means not rejecting proposals outright due to noncompliance with traditional City roadway or other infrastructure standards. The City does have ultimate, decision making and approval authority relative to the proposed designs and standards. This language is intended to recognize that proposals shall be considered that may deviate from

standards, while furthering sustainability goals but does not compel the City to approve but rather consider in good faith.

EXHIBIT H
HABITAT AND AGRICULTURAL CONSERVATION

1. Right to Farm and Farmland Preservation. The Project shall be subject to the City's Right to Farm and Farmland Preservation Ordinance (Municipal Code 40A.) which will vest for the term of this Agreement and which commits Developer to the following:

- - A. Agricultural Mitigation Requirements. Developer shall preserve agricultural land at minimum ration of 2:1. At full build-out, Developer shall have purchased agricultural conservation easements over 326 to 342 acres of local agricultural lands depending on the final design of the onsite Agricultural Buffer area, thereby ensuring their preservation in compliance with City Ordinance and subject to City approval. Compliance with agricultural mitigation may be achieved in phases as the project develops over time and portions are developed.

- - B. Agricultural Buffer Requirements. Developer shall provide a minimum one-hundred-fifty-foot agricultural buffer separating urbanized uses from adjacent agricultural operations in compliance with City Ordinance. At full buildout, Developer will establish an approximately 22.6 to 24-acre agricultural buffer separating the DISC from active agricultural operations depending on its final location and configuration. The agricultural buffer shall comply with dedication requirements outlined in the City Ordinance.

- - i. Mace 25. Developer has proposed to purchase an easement over approximately 6.8 acres of adjacent City-owned property which, if approved by the City, Developer intends to utilize as a portion of the agricultural buffer for the Project. The City has not granted said easement to the Developer nor does approval of Project entitlements or the effectuation of this Agreement in any way bind the City to grant the easement.

- - If pursued, the fair market value of the easement will be determined by a third-party appraisal with an appraiser approved by the City. Developer's use of the easement area would be limited to those uses consistent with City Ordinance and the intent of Measure O. At Developer's expense, this easement area has been analyzed pursuant to the California Environmental Quality Act, recognizing, however, that such analysis in no way commits the City to granting said easement.

The Mace 25 had previously been analyzed in the MRIC EIR for urbanization but, in the revised Project and Subsequent EIR, this parcel retains an agricultural land use designation and will not be developed with urban uses. As proposed and analyzed, the 6.8-acre easement area would comprise a portion of the Project's agricultural buffer and would include drainage conveyance features, over 4 acres of native habitat and open spaces in an area designed to exclude pedestrian activity, and approximately 2.25-acres of greenway with pedestrian access and recreational trails.

Developer acknowledges that, although City has analyzed the Project with the inclusion of the proposed easement area, such analysis and/or the grant of entitlements reflecting

such an easement area shall not constitute approval nor commit the City to grant of the easement. Despite any Project entitlements, City reserves the right not to grant Developer the requested easement.

In response to robust public dialogue, City has determined and Developer acknowledges that no easement shall be granted unless the City analyzes its future use of the Mace 25, and finds the easement to be compatible with said future use. Given the diversity of positions on the appropriate, highest and best use of the site, City is committed to studying and discussing potential future use in a public process, which is likely to be the General Plan update but could be a lesser public planning effort such as the Mace Boulevard Corridor planning effort, or other process.

Developer agrees that, at the conclusion of said future planning effort, if the City determines that the Mace 25 will be utilized for a land use that is inconsistent with the provision of an agricultural buffer easement, Developer will modify its Project Site design to accommodate the agricultural buffer on its property in a manner consistent with code standards (see Exhibit M). City acknowledges that such redesign may require a minor modification to proposed building alignment and proposed on-site roadway alignment and will result in less acreage of developable land within the Project Site. City commits that any necessary changes to the Project Site design to accommodate the realignment of the agricultural buffer onto the Developer's property will not be considered a significant modification from the Baseline Features as approved by the electorate and would not require a subsequent vote to effectuate the change. Conversely, if after a public planning process, it is determined by the City that the proposed agricultural buffer easement is compatible with the long-term use of the Mace 25, City may enter into good faith negotiations with Developer as to the appropriate size, design and fair market value for an agricultural buffer easement. Developer recognizes that should the City ultimately agree to enter into good faith negotiations for the agricultural buffer easement, the fair market value will be determined through an appraiser that values the agricultural easement area's existing zoning at the time of appraisal and a commercial land use value. The midpoint between those two values will serve as the agricultural easement purchase price and said easement purchase funds shall go back into the Measure O Open Space Program Fund. Nothing in this Agreement commits either party to effectuating the easement.

2. Mace Drainage Channel. Developer has committed to restore and enhance the portion of the Mace Drainage Channel ("MDC") onsite utilizing native riparian vegetation while maintaining its drainage conveyance function. An access easement currently exists along the MDC to accommodate City maintenance activities within the channel. Developer commits to preserve, not impede and enhance that access easement across and along the MDC, extending from Mace Boulevard to the eastern edge of the Project site, thereby ensuring a continued and improved connection from Mace Boulevard to the existing access easement on the adjacent property located east of the Project site. The MDC's primary function is to convey stormwater runoff from east Davis; maintenance of this function has been and will remain with the City of Davis. City will work cooperatively with Developer to enhance the MDC while protecting its drainage function;

such enhancement may include conversion to a more native state with a bench for riparian plantings or realignment resulting in meandering.

3. Clayton Ranch Detention Capacity. Stormwater for much of east Davis flows through the MDC and eventually into the Causeway north of the railroad tracks. During prolonged 100-year storm events, the water in the Causeway can rise above the flap gate that releases MDC flows, thereby temporarily preventing the MDC from discharging into the Causeway. Due to this infrequent occurrence, the City has a flood easement over a portion of the adjacent agricultural property.

The Environmental Impact Report (EIR) and Subsequent EIR identify a potential for the Project to produce an increase in the volume of water that backs up at this location during large storm events. To mitigate for any additional volume during flood events, the EIR analyzed installation of a pump or increasing water detention capacity on an adjacent property identified as the Clayton Ranch, which is where flooding associated with such an event already occurs. The EIR indicates that increasing detention capacity is the preferred option for mitigating any increased volume. Increasing capacity had been proposed and analyzed in a manner that would not degrade the agricultural value of the property nor prohibit its ongoing use for the production of feed for cattle or any other form of dry farming consistent with the current use. Furthermore, if Developer were to export the fill material from the proposed detention area to the Project site and receive a benefit from that materials, City would assess fair market value for the import material.

Nevertheless, in response to concern raised by the County of Yolo and members of the community, City and Developer agree that increasing storage capacity through excavation is no longer the preferred means for addressing increased volumes associated with the Project. Developer commits to not pursuing increasing drainage storage capacity through excavation of Clayton Ranch or other City property.

EXHIBIT I
RECREATION AND WELLNESS

To establish a diversity of publicly accessible areas in which to enjoy nature, recreate and gather with neighbors and coworkers, Developer makes the following recreational commitments at DISC:

- Developer will construct no less than 12 acres of parks and 10.5 acres of green belts, including 7.5-acres the inner fifty feet of the Agricultural Buffer area, in a manner substantially consistent with City Park and Greenbelt requirements and in locations corresponding with the Open Space Plan (Subsequent EIR, Figure 3-5).
- Developer will retain ownership of park and greenbelt spaces and, accordingly, shall be responsible to construct and maintain all onsite parks and open spaces, relieving the City of a considerable financial burden.
- Developer will grant and record a public access and recreation easement to City for these spaces to ensure public use of the park and greenbelt spaces in a manner equivalent with public use of City parks.
- Programming of the parks will be determined collaboratively by Developer and City recognizing the unique nature of the Project site to ensure it meets the needs of residents and onsite workers. This may include a playground, picnic facilities with adequate shading, public art, and appropriate measures to protect park users from nearby roadways. Sports fields will be included to accommodate both local athletic leagues and onsite leagues and may include such features as spectator seating, dugouts, and fencing. If so desired by the City during the programming of onsite parks, lighting for the sports field shall be included, installed and paid for by Developer. All programming which may result in impacts not previously contemplated shall be subject to appropriate environmental review prior to action and implementation.
- Developer shall install art in publicly accessible communal spaces including but not limited to the Oval Park and Transit Plaza.
- The Project will include a peripheral trail that fully encircles the site which will predominately accommodate the daily recreational needs of DISC residents and employees, and which will also be open to use by the public at large. Developer will grant the City fee title or an access easement to the inner 50 feet for the agricultural buffer area (approximately 7.5 acres) which will include a portion of the peripheral trail system and include a walking path and a class 1 bike trail. The remainder of the trail along the Project's southern and western borders will be included within landscaped setbacks.
- A Class 1 bike trail will parallel the Mace Drainage Channel, be serviced by an off-grade crossing of Mace Blvd, connect with the City's exiting trail infrastructure located to the west and with an easement located east of the Project site, thereby enhancing regional bicycling connections.

EXHIBIT J
URBAN FOREST AND LANDSCAPE

Landscaping, Water Conservation

To reduce Project demand on groundwater and potable water the Developer commits to the following measures:

- Native and drought tolerant plants shall predominate the plant palette. A diversity of native habitats shall be disbursed and managed throughout the site, primarily within the agricultural buffer and along the channel, including but not limited to riparian, California oak savanna, and native prairie grasslands.
- Turf will be strongly discouraged and utilized only in areas programmed for activities such as the main Oval park.
- Developer shall engage with Tree Davis, the Center for Land Based Learning, the Davis Arboretum, or other local expert(s) to design and manage its open and landscaped buffer areas. The adoption of design guidelines and landscape plans for buffer areas will be subject to City review and approval.
- Developer will install recycled “purple pipe” infrastructure which will convey non-potable water for use in all landscaping. Developer will convert this system to reclaimed water if and when such service is made available.
- Developer shall permit and allow for the reuse of residential greywater.
- All runoff will be captured, conveyed and detained onsite in a series of bioswales intended to filtrate and clean the run-off and maximize groundwater recharge.
-

Tree Commitments:

- The Project site will include a minimum of 1,800 trees.
- Developer shall engage with Tree Davis, the Center for Land Based Learning, the UC Davis Arboretum, or other local expert to assist with design, selection of species, and management of trees and all landscaped areas of the Project site.
- Prior to construction of landscape areas, Developer will submit formal landscape plans for City review and approval.
- Landscaping shall provide 80% shading of pedestrian walkways and off-street Class I bike paths that are not otherwise shaded by photovoltaics or other renewable energy generation.
- Developer will utilize best practices for tree planting and root establishment. Specifically, Developer commits to the use of structured soils or suspended substrate to allow successful tree root development, to the satisfaction of the City’s Urban Forest Manager.
- When planting in parking areas or along paved walkways, Developer will size pavement treatment area to adequately accommodate the tree varietal’s intended size.

- Planting practice and ongoing tree health shall be subject to 3rd party verification by the City's Urban Forest Manager or a mutually agreed upon arborist. The maintenance and growth of all onsite trees will be biennially monitored by a third-party arborist who will provide recommendations to improve tree health such as pruning, mulch and irrigation practices. Inspection, maintenance and replacement costs shall be borne by the Developer or services district. Compliance with arborist recommendations is mandatory and failure to comply shall be considered a violation of project entitlements and subject to penalty. If, five years from the original date of planting, a tree is not growing at its anticipated rate or is otherwise showing signs of failure, that tree will be identified by the Urban Forest Manger or arborist who, at his or her discretion, may require tree replacement at Developer's expense.
- Attainment of shading requirements shall be demonstrated within 15 years of planting. Failure to meet shading requirements shall be considered a code violation and subject to penalty until remedied through additional plantings.
- Any removal of an established tree will be authorized in accordance with the then current Tree Planting, Preservation and Protection Ordinance. Any proposed tree removal wherein the desired removal is to accommodate the installation of photovoltaic solar array or other comparable renewable energy technology shall not be subject to a tree mitigation fee or other payment to the tree preservation fund.

EXHIBIT K
IMPACT FEES, CREDITS, AND
MUNICIPAL FINANCING MECHANISMS

Notwithstanding the general provisions of Section 207 of this Agreement and the Municipal Code, the specific impact fees and connection fees shall be paid by the Project as modified in this Exhibit K. All other fees, connection fees, and payments shall be subject to the general provisions of Section 207 and the Municipal Code.

1. Quimby Act Obligation and Park Impact Fees

Developers' Quimby Act and park impact fee obligations shall be deemed satisfied through the following commitments:

Developer shall provide no less than 12 acres of land on-site meeting the City's definition of park space and 3 acres of greenbelt. Developer shall grant the City a public access and recreation easement on the entire acreage intended to fulfill the Project's park and greenbelt obligation. The Project's Quimby Act obligation is for 11.14 acres. Developers land commitment along with the irrevocable public access and recreation easements shall be deemed to fulfill the Quimby Act obligation and the City's greenbelt requirements.

Developer shall construct the publicly accessible parks and greenbelts at locations substantially consistent with the Open Space Plan (SEIR, Figure 3-5) to standards equal to or exceeding City standards for public recreational spaces. Developer and City will collaboratively determine the appropriate programming for all park areas. Design and landscaping plans shall be reviewed by City for consistency with standards. Developer will be required to construct and fully program parks within the timeframes identified in the Baseline Project Features and provide what is commonly known as 'turn key' parks; having paid for and installed all components of the park space. Furthermore, Developer, through the master owners' association, shall be responsible for the ongoing upkeep and maintenance of the on-site parks and greenbelts. Based upon these commitments, City shall deem developers park fees fulfilled.

2. Roadway Impact Fees

Over the course of Project buildout, Developer will be required to pay considerable Roadway Impact Fees. The City retains the discretion to apply the Roadway Impact Fees contributed by Developer to specific public roadway improvements, as the City may determine appropriate. Recognizing the geographic location of the Project and the need to address existing and potential future traffic problems in the area, the City commits to make Mace Boulevard improvements and other roadways proximate to the Project Site a priority for expenditure of Roadway Impact Fees generated by Developer. This agreement will complement actions and funding commitments by the Developer, such as the implementation of a Transportation Demand Management Plan, to mitigate the potential impacts on vehicle miles traveled, bicycle and pedestrian facilities, and transit operations identified in the SEIR for the project.

3. Commitment to Pursue Financing Opportunities in Good Faith

City and Developer agree that the Project will require considerable initial costs associated with the provision of infrastructure, which will also include enhancing or expanding many existing off-site facilities. In recognition of these Project-borne costs and the financial and economic benefits of the Project that extend beyond the boundary of the Project site, City commits to work with Developer in good faith to provide fee credits where appropriate and will pursue financing opportunities and/or utilize public financing mechanisms which are or may become available. Such mechanisms may include, but shall not be limited to, the following:

- a. State and Federal Grant Opportunities;
- b. Establishment of Mello-Roos/Community Facilities District(s) which shall include:
 - i. A perpetual services tax on developed properties for municipal services;
 - ii. An infrastructure facilities CFD for facilities which are required to be constructed as a condition of approval of the project,
- c. Imposition of Transfer Fees; and/or
- d. Pursuit of other Municipal Financing Tools such as:
 - i. Bond Opportunities for Land Development (BOLD); and/or
 - ii. Statewide Community Infrastructure Program (SCIP).

EXHIBIT L
UNCATEGORIZED ADDITIONAL COMMUNITY BENEFITS

1. Sales Tax Place of Sale

To the extent permitted by federal, state, and local law and upon approval of the Project, Developer shall designate the Project Site as the “Place of Sale” for the purposes of designating the retail sales location and calculating the sales tax obligations for the Property. A covenant or other instrument acceptable to the City Manager and City Attorney shall be recorded on the Property recognizing this commitment.

2. Fiber optic Broadband Internet

Developer shall obtain the rights and extend fiber optic or comparable internet infrastructure to the Project Site; technology that is critical to attract and support research and technology endeavors. Developer shall size and construct conduit to accommodate future expansion of fiber optic broadband services to locations that extend beyond the boundary of the Project Site. Location and size of the conduit shall be subject to approval of the City as part of improvement plans. Developer will allow other users, including the City, to connect to the internet network and extend service into the City under terms to be negotiated. There shall be no cost to the City for extending service for municipal purposes or for a municipal network managed by the City.

3. Land-Secured Financing District for Public Services.

Developer agrees to participate in a land-secured financing district such as a Community Facilities District for the market rate ownership housing, to provide an ongoing revenue source to the City for municipal services. Developer and City commits that the revenue generated by said assessment or tax be no less than \$250,000 annually at buildout of the market rate ownership housing and be utilized to fund services that are directly supportive of transit services, roadway repair and maintenance, roadway, bicycle and pedestrian safety and other community amenities. The district shall be established by the City Council prior to issuance of first building permit for for-sale housing.

4. Shuttle Route Study

Developer agrees to contribute \$50,000 to fund a study of a potential transit route and phased implementation plan that could serve to connect Davis, Woodland, UC Davis, and other local areas. The scope of the study will be coordinated with the City of Davis, YoloBus and Unitrans.

5. Hotel Conference Center Market Study

At such time the market demand supports the construction of a hotel on the Project site, Developer shall fund a conference center market demand and feasibility study. The scope of the study shall be coordinated with the City Manager and completed prior to the hotel being approved for construction.

6. Apprenticeship Programs

- Developer commits to engage with organized labor groups regarding apprenticeships and other programs at the Project.

EXHIBIT M
APPLICABLE CITY ORDINANCES

Article 18.05 AFFORDABLE HOUSING

18.05.010 Purposes of article—Findings.

The city council finds and determines:

- (a) The city has a goal to provide a range of housing for its local workers and has chosen to take action to ensure that affordable housing is constructed and maintained within the City of Davis.
- (b) Housing purchase prices in Davis are generally higher than the rest of the region, particularly Woodland and West Sacramento.
- (c) Rents in Davis have been rising and the majority of new apartments are four-bedroom units which are not suitable for most families. Small, very low income households have trouble finding affordable unassisted housing, and larger households of any income level have difficulty finding affordable units.
- (d) Federal and state funds for the construction of new affordable housing are limited.
- (e) In order to meet the city's fair share of the regional housing need for very low, low and moderate income households, the city included implementing policies within the housing element of the general plan to provide for such housing.
- (f) General plan implementing policies require that, to the extent feasible, for sale residential developments should provide for housing units that are affordable to very low income households, low income households and moderate income households as part of the development, with tiered requirements that are reduced or eliminated for housing products that are more affordable by design. General plan policies also require that affordable ownership units include a means for sustained affordability, maintaining them as affordable units into the unforeseeable future.
- (g) General plan implementing policies also require that, to the extent feasible and subject to existing law, rental housing developments with five to nineteen units shall provide fifteen percent of the units to low income households and ten percent to very low income households; and in rental housing developments with twenty or more units that twenty-five percent of the units be affordable to low income households and ten percent of the units be affordable to very low income households. General plan policies also require that affordable rental units remain affordable in perpetuity. (Ord. 2418 § 1, 2013)

18.05.020 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Affordable housing means affordable ownership housing or affordable rental housing.

Affordable ownership housing is housing affordable, based upon mortgage payments or carrying charges paid by a member of a limited equity housing cooperative, to low, very low or moderate income households. No more than thirty-five percent of the targeted household income shall be applied to housing expenses, which shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner fees, as applicable and adjusted for household size. In the case of the

limited equity cooperative, the total monthly carrying charges for its members shall not exceed thirty-five percent, and the carrying charges shall include all monthly housing costs minus utilities.

Affordable rental housing is housing affordable, based upon monthly rent, to low, very low or moderate income households, adjusted for household size. Affordable rental housing payments are approximately thirty percent of gross monthly target income less utilities.

Community based mutual housing association means a nonprofit tax exempt corporation that may develop, own or manage housing units. Association membership includes nonresident and community members. Resident members shall constitute a majority of the shareholders of the corporation. Each member has one shareholder vote. The corporation is governed by an elected volunteer board of directors representative of the association membership. Members shall have no equity interest in the project. Residents pay a one-time membership fee to be used to defray the cost of constructing the housing units. This fee is refundable with nominal interest when residents leave the association. Residents must be members of the association, pay the membership fee and meet resident selection criteria established by the association.

Community based nonprofit-controlled rental housing means rental housing owned and operated by an organization with 501(c)(3) status, that is either based in Yolo County, or has a board of directors that includes a minimum of thirty percent representation of Yolo County residents.

Complete environmental review means that the land has had all environmental reviews completed on the site to satisfy local requirements, state CEQA requirements, and the national NEPA requirements; resulting in no significant findings that could inhibit development on the site. Any reported findings on the site must be cleared prior to deeding the site for land dedication to the city.

Density bonus means entitlement to build additional residential units above the maximum number of units permitted pursuant to existing general plan, applicable specific plan and zoning designations. Density bonus units may be constructed only in the development where the units of affordable housing are located. "City density bonus" means a bonus of units awarded to a developer pursuant to this article. "State density bonus" means a bonus of units awarded to a developer pursuant to [Government Code](#) Section 65915 et seq.

Developer means the owner of record and his or her successors in interest.

Development means one or more projects or groups of projects of residential units constructed in a contiguous area. A development need not be limited to an area within an individual parcel, or subdivision plat.

Exempt condominiums are residential ownership units in a condominium development that is predominantly composed of stacked air space units not having separate ownership parcels. Townhouse or single-family developments are not considered "exempt condominiums" under this definition, even if they are subdivided as condominium units.

Family means an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.

Feasible means capable of being financed, demonstrating the required financing (if any) meets lenders investment standards with respect to the project's loan to value (LTV), debt coverage ratio (DCR), and return on asset (ROA), based on the prevailing interest and discount rates supported in the required appraisal for a like property. Feasible projects should be sustainable projects, taking

into account the cost of construction and ongoing maintenance of the project, in addition to the site's essential services.

Household means “family” as defined in this section. This article shall not apply to households in which any member is claimed as a dependent for federal income tax purposes by a person or persons residing outside of the household unit unless such person or persons who reside outside the household qualify as very low, low or moderate income persons or families.

Limited equity housing cooperative means a housing cooperative organized pursuant to California [Health and Safety Code](#) Section 33007.6 and Business and Professional Code Section 11003.4. A limited equity housing cooperative is owned by a nonprofit corporation or nonprofit housing sponsor. Resident-owners own the cooperative as an undivided whole, rather than individual units, but each has the exclusive right to occupy a specific unit within the cooperative.

Low income means a household earning a gross income of no greater than eighty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis city council annually.

Low target income means that the average income of residents of low income units will be sixty-five percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis city council annually.

Moderate income means a household earning a gross income of no greater than one hundred twenty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis city council annually.

Moderate target income means that the average income of residents of moderate income units will be one hundred percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis city council annually.

Ownership units means housing units which provide an ownership opportunity including, but not limited to, single-family units, condominiums, land trusts, and cooperatives, except in circumstances where the unit is converted to rental use.

Permanently affordable means affordable in perpetuity and subject to an agreement between the developer and the city to maintain affordability. Such agreement shall be recorded to the property.

Rental units means housing units which provide a rental opportunity including, but not limited to, multifamily units (excluding condominiums and cooperatives), duplexes (two units on one lot), triplexes, or four-plexes on single-family residential zoned property. Single-family units may be converted to rental units for the purposes of this article.

Resident controlled nonprofit housing corporation means a housing corporation established to manage for-sale or rental housing projects designated for very low, low or moderate income households in which the majority of households have formed a nonprofit housing corporation. Residents need not have equity interest in such projects.

Self-help housing means mutual self-help housing constructed for very low, low, and moderate income families in which a group of prospective homebuyers shall provide labor to assist in the construction of their units. The intent of this program is to transform the hours of labor into equity (“sweat equity”) to reduce the purchase price of the unit.

Stacked condominiums are residential ownership units in a condominium development that is predominantly composed of stacked air space units not having separate ownership parcels. Townhouse or single-family developments are not considered “stacked condominiums” under this definition, even if they are subdivided as condominium units.

Student housing cooperative means a nonprofit housing organization owned and/or controlled by students.

Sustained affordability means that the affordable housing obligation being produced to meet the requirements of this ordinance is done so in a manner that maintains the affordability provided into the unforeseeable future, with minimal loss in affordability.

Vertical mixed use development means mixed-use structures that vertically integrate residential dwelling units above the ground floor with unrelated non-residential uses on the ground floor, including office, restaurant, retail, and other nonresidential uses. For purposes of this article, vertical mixed use does not include structures that vertically integrate uses ancillary to residential units, such as resident parking, laundry rooms, community rooms, or common space on the ground floor with the residential units above.

Very low income means a household earning a gross income of no greater than fifty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis city council annually.

Very low target income means that the average income for residents of very low income units will be forty percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis city council annually. (Ord. 2418 § 1, 2013; Ord. 2443 § 1, 2015; Ord. 2545 § 2, 2019)

18.05.030 Applicability of article.

This article is enacted pursuant to the general police power of the city and is for the purpose of providing affordable housing in Davis consistent with the general plan. (Ord. 2418 § 1, 2013)

18.05.040 Provision of affordable housing.

(a) **Affordable housing plan.** The developer shall submit, concurrently with or prior to the submission of an application for the first discretionary approval for a development, an application as provided by the city describing a proposed affordable housing plan, which shall provide a program to provide affordable housing in accordance with this article and the intended method for implementing such a program. The developer may submit an application under this article at any time subject to staff’s, the planning commission’s, or the city council’s discretion to deny the application on the sole basis of lack of timeliness. Any application resubmitted by a developer to amend an affordable housing plan after it has been approved by the city shall be deemed a new application for the development. Before any agreements between parties or transfer of land is made, all agreements, the affordable housing plan and budget for the provision of affordable housing pursuant to this article shall be approved by the city, in order to ensure that the affordable housing to be developed pursuant to the affordable housing plan will be economically sustainable over time, in accordance with the required duration of affordability for the affordable housing. Projects not requesting financial assistance from the city are not subject to a budget review. This review will allow for updated construction cost changes at the time of construction, which will again require

review and approval by staff. These reviews also provide the city opportunity to act as an active partner to projects where local funds are requested.

(b) **Approval process of affordable housing plans.** The approval process for affordable housing plans will include the following steps:

(1) Submission of the affordable housing plan as part of the project application submitted to the community development and sustainability department. Staff shall then refer the affordable housing plan to the social services commission. All plans, including proposals for payment of in-lieu fees, will be heard before the commission. Substantial amendments to affordable housing plans should also be considered by the commission.

(2) The social services commission will hold a duly noticed public hearing, where the plan shall be considered, if the application for the development is not going to be scheduled for a public hearing at the planning commission and/or city council. If the application for the development will be scheduled for a public hearing at the planning commission and/or city council, the social services commission will consider the affordable housing plan at a regular or special meeting of the commission. The commission will review the plan for compatibility with this article, adopted city affordable housing goals, and currently identified city housing needs.

(3) After motion for approval or denial is given by the social services commission regarding the proposed affordable housing plan, it is then heard publicly before the planning commission and reviewed for their motion on the plan, if the planning entitlements requested by the project require this step. If the planning entitlements being requested do not require this step, then the social services commission's decision on the affordable housing plan is final, but, as is true with decisions of the planning commission, can be appealed to the city council through the city's appeal process as outlined in Article 40.35 of the Davis Municipal Code.

(4) If the project is requesting planning approvals that require a city council hearing, the recommendations of both the social services commission, as well as the planning commission shall be included in the report to the city council.

(c) **Building permit issuance.** No building permit shall be issued for any new residential unit unless the development containing such unit has received all approvals required with the standards and procedures provided for by this article. The location and type of proposed affordable housing in a development shall be disclosed in writing by each seller to each subsequent purchaser of lots or units within the development, until all the affordable housing units are completed.

(d) **Competitive contracting.** In circumstances where local, state, or federal funds are being used to assist in the development of the project, an open bidding process shall be carried out that adequately addresses the requirements of all funding sources involved. In agreement with this requirement, the developer shall be aware of regulations accompanying all funding sources used for the development, and shall comply with the regulations from pre-construction and throughout the life of the development. Copies of all contracts that are requested for viewing by the city shall be submitted in a timely manner. The city may request evidence of open procurement and compliance with any and all government funding regulations on a project at any time. If the city believes the project to be out of compliance with the intent of this article and/or the regulations of the project's funding sources, the city has the ability to sanction the project developers for their conduct, including fining the project or withdrawing funding.

(e) **Development agreement.** The city shall use the development agreement of the development to ensure that the developer adheres to the requirements and intent of this article by detailing within the agreement the sanctions involved if the developer does not comply with the requirements of this article during the construction process.

(f) **Rounding provisions.** Where the total affordable units required by this article call for a one-half affordable unit or greater portion, it shall require the provision of one full affordable unit (for example, a requirement of one and one-half shall actually require two units). The results of such rounding shall also be used in the calculation for in-lieu fee payments, where provided as an option.

(g) **Buyer/tenant selection and screening.** Buyer/tenant selection and screening shall be carried out by the developer, owner, city, or by the designated responsible party, at the sole expense of the developer. Included in the affordable housing plan submitted by the developer, shall be a proposed marketing plan with an estimated timeline of events, which must be approved by the city and shall adhere to the city's buyer/tenant selection and screening guidelines.

The City of Davis will monitor the buyer selection and screening process through required monthly reports, and through the ability to review any and all files regarding the process at any time that city staff requests to do so. The City of Davis will possess the ability to halt any sale or break any lease of an affordable unit at its discretion, for reasons to include, but not restricted to, the following: if the buyer selection and screening process was not strictly adhered to, or if the buying household is found not to meet the guidelines of qualification, as specified in the guidelines. (Ord. 2418 § 1, 2013)

18.05.050 Ownership development affordable housing standards.

A developer of residential ownership developments consisting of five or more units shall provide in each development, to the extent feasible, affordable housing for very low, low and moderate income households, as set forth in an affordable housing plan approved by the city, in accordance with the requirements of this section.

The approval process for affordable housing plans will adhere to that which is required by Section [18.05.040\(b\)](#).

The price of all affordable ownership housing units will be calculated based on payments to be made by the buyer that make up no more than thirty-five percent of the gross monthly target income level designated for a specific unit and shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner fees, as applicable and adjusted for household size. Percentages allowed for the qualifying of the mortgage loan shall be determined by the lender or lenders involved with the income-qualified household.

A developer may, at his or her option, provide affordable rental units to meet the requirements of this section, pursuant to state law, provided that such rental units must comply with the affordable housing standards for rental units in Section [18.05.060](#) of this article, and as adopted by the city.

To the maximum extent feasible, each developer must meet the ownership affordable unit requirement as it pertains to the project, as set forth below:

(a) **Standard ownership affordable housing requirements.** Any development that is comprised in whole or in part of ownership units shall comply with the following requirements, which shall be included in the development's affordable housing plan.

(1) Affordable Housing Requirements, by Residential Product Type.

- (A) For projects comprised of market rate single-family detached ownership units on lots larger than five thousand square feet in area, the developer must provide for a number of affordable housing units equivalent to twenty-five percent of the total units being developed, including the affordable units, by means of one of the methods set forth in this section.
 - (B) For projects comprised of market rate single-family detached ownership units on lots smaller than five thousand square feet in area, the developer must provide for a number of affordable housing units equivalent to fifteen percent of the total units being developed, including the affordable units, by means of one of the methods set forth in this section.
 - (C) For projects comprised of market rate single-family attached ownership units, the developer must provide for a number of affordable housing units equivalent to ten percent of the total units being developed including the affordable units, by means of one of the methods set forth in this section.
 - (D) For projects comprised of market rate stacked condominiums or ownership units within vertical mixed-use development, the developer must provide for a number of affordable housing units equivalent to five percent of the total units being developed including the affordable units, by means of one of the methods set forth in this section.
 - (E) Exempt projects as identified in Section [18.05.080](#) have no affordability requirements except as provided therein.
 - (F) For developments that are comprised of more than one residential product type, the affordable housing obligation shall be calculated for each product type separately and then aggregated, before rounding, provided, however, if a development is comprised of ownership and rental product types, the affordable housing obligations for the ownership and rental units shall be calculated and applied separately.
- (2) Affordable Housing Requirements, by Project Size.
- (A) Exempt projects pursuant to Section [18.05.080](#).
 - (B) Projects Totaling Five or Greater Units for Purchase.
 - (i) The required affordable units must be provided through: on-site construction of affordable ownership or rental units, acquisition and recordation of permanent affordability restrictions on existing housing units within the city, provision of a land dedication site, and/or through payment of in-lieu fees, as further defined in subsections (b) through (f).
 - (ii) The on-site construction of affordable ownership or rental units may be fulfilled through the on-site development of affordable units for purchase or rental, in conformance with all that is stated in subsection (b).
 - (iii) The land dedication option shall be fulfilled by the developer by making an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review that can accommodate the affordable housing requirement for the project. The land dedication shall be in conformance with all that is stated in subsection (c), entitled land dedication.

(iv) The option of purchase and placement of permanent affordability restrictions on existing housing units within the city is only available when determined to be appropriate by the city council in its sole discretion, and must be in conformance with all that is stated in subsection (e).

(v) The payment of in-lieu fees to fulfill part or a project's entire affordable housing requirement is subject to city council review and must be in conformance with all that is stated in subsection (f), entitled in-lieu fees.

(C) Projects Totaling Two Hundred One Ownership Units or More. The required affordable units shall be provided through the following methods, as more specifically described in subsections (b) through (f):

(i) On-site construction of affordable ownership units;

(ii) On-site construction of accessory dwelling units for rental to fulfill up to half of the requirement;

(iii) Through payment of in-lieu fees for no more than fifty percent of the affordable housing obligation of the project, if approved by the city council;

(iv) Provision of a land dedication site; and/or

(v) On-site construction of affordable rental units, if the developer voluntarily requests to satisfy its requirements through this alternative.

(3) Project Individualized Program.

(A) The developer may meet the city's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements. The affordable units must, at a minimum, meet the same income targets specified in the standard ownership affordable housing provisions.

(i) A project individualized program shall be developed by the developer and city staff, taken action on by the social services commission, and if the main project application requires, heard before the planning commission for decision.

(ii) If the main project is requesting planning entitlements that require city council approval, it shall then be heard before the city council for final decision.

(iii) If the main project does not require a city council hearing, the planning commission's or the social services commission's determination may be appealed to the city council by any member of the public.

(B) The project individualized program is not intended to allow exception to a public input and review process. The project individualized program is intended to be viewed thoroughly and scrutinized in public forums, allowing for input and competition from the public, other community-based nonprofits, staff, and at a minimum, the social services commission. The public hearing at the social services commission shall be noticed to all community-based housing nonprofits in the area, to the greatest extent possible, regardless of their involvement in the project. This public hearing shall scrutinize the project based on the following criteria:

(i) Need for government subsidy;

(ii) Sustainability of the project and its services;

- (iii) Community need of the project type based on recent needs assessments and recent projects completed;
- (iv) Uniqueness/innovation of the proposed project;
- (v) Overall benefits and drawbacks of the project;
- (vi) Project's compliance with the standards as outlined within the affordable housing Sections [18.05.010](#) through [18.05.070](#) of the Davis Municipal Code.

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to change the project. If the social services commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his or her affordable housing requirement through a land dedication process. This decision may be altered at either the planning commission or city council public hearing, if the project requires review by either of these deciding bodies. Decision of either the social services commission or the planning commission to direct the developer to do a land dedication to meet his or her affordability requirement, may be appealed to the city council.

(b) **On-site construction of affordable units for ownership developments.** When a developer constructs on-site affordable ownership or rental units to satisfy its obligations under this article, the units shall be constructed in conformance with the requirements of this subsection (b).

- (1) **Density Bonus.** A one-for-one city density bonus shall be awarded for construction of on-site affordable units meeting the requirements for a state density bonus.
- (2) **Housing Mix.** The developer must provide a mix of two- and three-bedroom units, with a minimum of fifty percent of the units as three-bedroom units and in a combination of unit types as approved within the affordable housing plan through the appropriate review process. Smaller and larger unit sizes shall be provided as an option, based on local housing needs and project character, as approved during the affordable housing plan review process.
- (3) **Price of Affordable Ownership Units.** The affordable ownership units will be affordable to moderate income households, households with incomes ranging from eighty percent of area median income to one hundred twenty percent of area median income, with the average affordability targeted at households with incomes at one hundred percent of area median income, the moderate target income.

The community development and sustainability director shall determine the maximum sales price for these units on an annual basis. The community development and sustainability director shall propose annual adjustments to the maximum purchase prices based on changes in the area median income, as determined by the U.S. Department of Housing and Urban Development. This price shall be reviewed annually for adoption by the city council.

- (4) **Rent for Affordable Rental Units.** The affordable rental units will be leased at an affordable rent to low and very low income households. The average affordable price for each size category of affordable rental units, based on number of bedrooms, shall not exceed the low target income, sixty-five percent of median income. The maximum income level served shall not be greater than eighty percent of area median income. The developer shall offer affordable rental units in each size categories to multiple income levels to ensure that the rental units achieve the required average target income. For example, if three-bedroom units are offered to

families at eighty percent of median income, the same number of three-bedroom units must be offered to households at fifty percent of area median income, making the average rent for the unit type sixty-five percent of area median income. Lower rents or an average that meets the same affordability target can be approved through the affordable housing plan review process.

(5) Buyer/Tenant Selection and Screening. Please refer to Section [18.05.040\(g\)](#) for the selection and screening requirements applicable to affordable units.

(6) Owner-Occupancy Restrictions. Any person who purchases a designated ownership affordable unit pursuant to this article shall occupy that unit as his or her principal personal residence for as long as he or she owns the affordable unit. Such occupancy shall commence within six months following completion of the purchase. The purchases shall comply with the provisions of Sections [18.04.020](#) through [18.04.060](#), inclusive, of this Code.

(7) Sustained Affordability. Restrictions shall be placed on the affordable housing units produced, in order to ensure a measure of sustained affordability. In an effort to maintain the greatest number of units as affordable for the greatest period of time, one of the following restrictions shall be adhered to:

(A) Appreciation Capped at Three Percent per Year plus a Three-Quarters of a Percent Maintenance Credit for Necessary Maintenance Costs of the Unit. The unit appreciates based on the average annual increase in Yolo County Area Median Income—Three percent, plus an additional three-quarters percent as a credit for maintenance costs of the unit. This restricts the total appreciation of an ownership unit to a maximum of three and three-quarters percent, compounded annually.

(B) Affordability Covenant. In order to qualify as affordable rental units pursuant to this subsection, such units shall be maintained in perpetuity as affordable units. The owner of the rental units shall enter into an agreement with the city to ensure the continued affordability of these affordable rental housing units in perpetuity. This agreement shall be recorded.

(C) Alternative Proposal. Any other program that proves its ability to provide for sustainable affordability, as approved by staff, the social services commission, and other public governing bodies as required by the individual project. Proposing an alternative method for sustained affordability must be justified based on current market trends and/or other prevailing circumstances.

(8) Right of First Refusal. All affordable ownership units constructed after January 1, 2005, shall deed to the City of Davis a permanent right of first refusal on the property, allowing the city the ability to either purchase the unit, or designate an appropriate buyer for the unit at its resale. The deed restriction shall allow the city to designate a third party to carry out its right of first refusal, and shall also allow for a one percent fee to be taken from the real estate transaction in order to pay for the costs of carrying out the right of first refusal.

(9) Resale Report. The owners of all affordable for-sale units that include a resale restriction or were constructed after January 1, 2005, shall be required to clear all resale reports completed on these units prior to the close of escrow on the resale of each unit. The findings of the resale inspection that are required to be addressed cannot be transferred to the household purchasing the affordable unit.

(c) **Land dedication.** When a developer makes a land dedication in order to satisfy the requirements of this article, it shall comply with the following requirements:

The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review, which can accommodate the land dedication requirement for the project in its entirety. The land dedicated shall be of sufficient size to make the development of the required affordable units economically feasible, no less than two acres. The density of development for the purpose of calculating the acreage to be dedicated under this section shall be fifteen units per acre. The proposed use of such land must be consistent with the general plan. The city may approve, conditionally approve, or reject such an offer of dedication. If the city rejects such an offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this article and approved by the city.

The dedicated site shall be economically feasible to develop, of sufficient size to build the required number of affordable units, and physically suitable for development of the required affordable units prior to dedication of the land. The dedicated site shall also have appropriate general plan designation and zoning to accommodate the required units, be fully improved with infrastructure, frontage improvements (i.e., curb, gutter, walk), paved street access, utility (i.e., water, gas, sewer, and electric) service connections stubbed to the property lines, and other such off-site improvements as may be necessary for development of the required affordable units or required by the city.

The developer must identify the land to be dedicated at the time the developer applies for a pre-zoning or zoning amendment, but in no event later than the application for the tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section.

(1) **Density Bonus.** A one-for-one city density bonus shall be awarded for land dedication on the basis of fifteen units per net acre.

(2) **Housing Types on Dedicated Land.** Housing built on land provided by dedication for affordable housing shall be permanently affordable. The city shall adopt a resolution establishing a process whereby property dedicated to the city pursuant to this section may be conveyed to third parties who shall enter into an agreement with the city to produce affordable housing within a specified period of time. The city shall consult with the social services commission, nonprofit corporations, affordable housing organizations, and developers in designing this process. Housing on land dedicated pursuant to this section may consist of any of the following:

- (A) Resident controlled nonprofit housing corporation;
- (B) Community based mutual housing association;
- (C) Community based nonprofit controlled rental housing;
- (D) Student housing cooperative;
- (E) Limited equity housing cooperative;
- (F) Public housing;
- (G) Land trust;
- (H) Self-help housing;
- (I) Other forms of nonprofit housing containing a permanent affordability provision.

(3) Price of Units. The average affordable price for each size category of units on land dedication sites shall not exceed the low target income, sixty-five percent of median income. The maximum income level served by any of the units located on a land dedication site shall not be greater than eighty percent of area median income. The developer shall offer affordable rental units in each size categories to multiple income levels to ensure that the rental units achieve the required average target income. For example, if three-bedroom units are offered to families at eighty percent of median income, the same number of three-bedroom units must be offered to households at fifty percent of area median income, making the average rent for the unit type sixty-five percent of area median income. Lower rents or an average that meets the same affordability target can be approved through the plan review process.

(4) Buyer/Tenant Selection and Screening. Please refer to Section [18.05.040\(g\)](#) for the selection and screening requirements applicable to affordable units.

(5) Owner-Occupancy Restrictions. Any person who purchases a designated affordable unit pursuant to this article shall occupy that unit as his or her principal personal residence for as long as he or she owns the affordable unit. Such occupancy shall commence within six months following completion of the purchase. The purchases shall comply with the provisions of Sections [18.04.020](#) through [18.04.060](#), inclusive, of this Code.

(d) **Options for small developments.** Small developments of fifteen ownership units or fewer, and totaling no greater than thirty-eight bedrooms in the development, that are not otherwise exempt pursuant to Section [18.05.080](#), that are located within the core area and are found to meet a specified community goal, can request to fulfill the affordable housing requirement through one of the following options, which shall be considered during the review process of the development's affordable housing plan:

(1) Construction Subsidy. City staff will work with the developer to provide financial assistance to be used in the construction of the affordable unit(s) required on-site, in order to assist in ensuring the project's feasibility. The developer shall present a pro forma (for the affordable units) to staff showing the necessary amount of construction assistance needed through supplemental city funds, in order to make the project economically feasible. The project will require the standard review process, and the necessary funding approval from the city council.

(2) Combination of On-Site Construction and In-Lieu Fees. The affordability requirement may be fulfilled through a combination that includes the on-site development of a portion of the required affordable units, with the remaining amount of the affordability requirement fulfilled through in-lieu fees paid in accordance with subsection (f) of this section. The exact split of the combination shall be determined during the review of the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

(e) **Acquisition and recordation of permanent affordability restrictions on existing housing units.** As an alternative to constructing affordable housing within a development project or providing for affordable housing through the payment of in-lieu fees, the affordability requirement may be fulfilled through the provision of off-site units being purchased/acquired and placed permanently into the city's affordable housing program through the recordation of affordability deed restrictions, subject to discretionary approval by the city council following review of the project's affordable housing plan. The city council may determine in its sole discretion whether this alternative is appropriate on a case-by-case basis. These units are required to have recorded

permanent affordability deed restrictions recorded against them, in a form consistent with the affordability restrictions that are recorded against on-site affordable units constructed pursuant to the requirements of this affordable housing ordinance. In its review of an affordable housing plan that provides affordable housing pursuant to this option, the city council will consider the following:

- (1) The condition and usable life of the units;
- (2) Potential displacement of existing residents;
- (3) The location and size of the proposed affordable units relative to disbursement of units throughout the city and local housing needs;
- (4) Long-term ownership and maintenance of the units; and
- (5) The level of affordability offered by the proposed alternative.

Any units provided under this option must ensure a unit life of no less than thirty years and may require rehabilitation prior to qualifying. Sale or long-term rental of these units would be at the sole expense and responsibility of the project developer, unless otherwise approved by the city council.

(f) **In-lieu fees.** As an alternative to constructing on-site affordable housing within a development as required by this article, the affordability requirement may be fulfilled through the payment of in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis, provided that the payment of in-lieu fees has been approved by the city council following review of the project's affordable housing plan. The city council will review a request for payment of in-lieu fees taking into consideration the following:

- (1) Project gross and net density;
- (2) Project size;
- (3) Economic or planning feasibility of affordable unit provision by another means within the development;
- (4) Projected housing costs of the project's market rate housing/overall housing affordability of the project; and
- (5) Accomplishment and tradeoffs of other local policy objectives, including smart growth principles, accessibility, energy efficiency, etc.

A payment plan may be approved by the city council in the event that the developer does not have the necessary funds available for payment; however, the majority of in-lieu fees shall be paid prior to the issuance of the certificate of occupancy on any of the market rate units. In addition to the standard in-lieu fee, the city maintains the right to adopt an in-lieu fee for use in future resource-pooled projects. This special in-lieu fee would apply to projects within a specific project area where the fee is intended to be used towards a planned resource-pooled project. (Ord. 2418 § 1, 2013; Ord. 2443 §§ 2, 3, 2015; Ord. 2545 § 3, 2019)

18.05.060 Rental development affordable housing standards.

A developer of rental housing developments containing twenty or more units shall provide, to the maximum extent feasible, at least twenty-five percent of the units as affordable housing for low income households and at least ten percent of the units as affordable housing for very low income households. A developer of rental housing developments containing between five and nineteen units, inclusive, shall provide, to the maximum extent feasible, fifteen percent of the units to low income households and ten percent to very low income households. Residential projects consisting of fewer than five market rate

units will not be required to produce affordable units. Such housing shall be provided either by the construction of units on-site or by land dedication.

The approval process for affordable housing plans will adhere to that which is required by Section [18.05.040](#)(b). Affordable rental units shall rent to low income households at not more than thirty percent of eighty percent (thirty percent of eighty percent is twenty-four percent) of area median income, and to very low income households at not more than thirty percent of fifty percent of area median income, adjusted for family size.

To the maximum extent feasible, each developer must meet the affordability requirement as it pertains to the project, as set forth below:

- (a) **Standard rental affordable housing requirements.** Except as set forth in subsection (b) of this section, all requirements listed under the respective category must be adhered to and included within the project's affordable housing plan.
 - (1) Exempt Projects Pursuant to Section [18.05.080](#). No affordability requirements except as provided therein.
 - (2) Projects Totaling Five to Nineteen Units for Rent.
 - (A) A number equivalent to fifteen percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low income households, households with gross incomes at or below eighty percent of area median income for Yolo County.
 - (B) A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low income households, households with gross incomes at or below fifty percent of area median income for Yolo County.
 - (C) The complete number of required affordable units must be constructed on-site.
 - (D) The on-site construction shall be in conformance with all that is stated in subsection (c), entitled on-site construction of affordable units for rent.
 - (3) Projects Totaling Twenty or Greater Units for Rent.
 - (A) A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low income households, households with gross incomes at or below eighty percent of area median income for Yolo County.
 - (B) A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low income households, households with gross incomes at or below fifty percent of area median income for Yolo County.
 - (C) This requirement may be fulfilled through either on-site construction as stated in subsection (c) of this section or land dedication detailed in subsection (d), as long as the minimum amount of land is provided to make the site economically feasible.
 - (4) Vertical Mixed-Use Development. Unless exempt under Section [18.05.080](#), in projects comprised of vertical mixed-use units, a number equivalent to five percent of the total units, bedrooms, or beds being developed including the affordable units, bedrooms, or beds, shall be

developed and made affordable to low income households, households with gross incomes at or below eighty percent of area median income for Yolo County.

(5) Project Individualized Programs for Rental Housing.

(A) The developer may meet the city's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements. The affordable units must, at a minimum, meet the same income targets specified in the standard rental affordable housing requirements as set forth in subsection (a)(2) and (3).

(i) A project individualized program shall be developed by the developer and city staff, taken action on by the social services commission, and, if the main project application requires, heard before the planning commission for decision.

(ii) If the main project is requesting planning entitlements that require city council approval, the project individualized program shall then be heard before the city council for final decision.

(iii) If the main project does not require a city council hearing, the planning commission's or the social services commission's determination may be appealed to the city council by any member of the public.

(B) The project individualized program is not intended to allow exception to a public input and review process. The project individualized program is intended to be viewed thoroughly and scrutinized in public forums, allowing for input and competition from the public, other community-based nonprofits, staff, and, at a minimum, the social services commission. The public hearing at the social services commission shall be noticed to all community-based housing nonprofits in the area, to the greatest extent possible, regardless of their involvement in the project. This public hearing shall scrutinize the project based on the following criteria:

(i) Need for government subsidy; and

(ii) Sustainability of the development and its services; and

(iii) Community need of the project type based on recent needs assessments and recent projects completed; and

(iv) Uniqueness/innovation of the proposed project; and

(v) Overall benefits and drawbacks of the project; and

(vi) Development's compliance with the standards as outlined within this article.

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to change the project. If the social services commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his or her affordable housing requirement through a land dedication process.

This decision may be altered at either the planning commission or city council public hearing, if the project requires review by either of these deciding bodies.

Decision of either the social services commission or the planning commission to

direct the developer to do a land dedication to meet his or her affordability requirement, may be appealed to the city council.

(b) **Alternative rental affordable housing requirements.** Until May 31, 2020, the city council may, at its discretion, approve alternative affordable housing requirements on a project specific basis that provide for a lesser percentage of the total units to be provided as affordable housing, or provide for affordable housing in an alternative manner, including, but not limited to, providing affordable housing by bedroom or individual bed, or pledging to the city a continuing payment of funds to be submitted to the city at least annually for the purpose of furthering the city's affordable housing goals and objectives, in an amount as deemed appropriate by the city council. Except as provided below, if the affordable housing is provided by generating units, bedrooms or beds, there shall be a requirement of fifteen percent affordable units, bedrooms or beds. The affordability mix shall have a target of five percent low, five percent very low and five percent extremely low recognizing that the number of units, bedrooms, or beds may be adjusted up or down based on the income and rent levels proposed. In considering whether to approve alternative affordable housing requirements pursuant to this subsection (b), the city council will consider the following factors in determining whether to approve such alternative requirements:

- (1) Whether the market rate component and/or the affordable component of the proposed development is anticipated to meet a specific housing need as identified in the city's housing element or general plan policies; and
- (2) Whether the market rate units are anticipated to provide housing to low or moderate-income households through the incorporation of design components that will encourage greater affordability including reduced units sizes and reduced utility costs; and
- (3) The extent to which the proposed development furthers other land use goals of the city, including, but not limited to, reductions in the need for private vehicles and the encouragement of development consistent with the Metropolitan Transportation Plan/Sustainable Communities Strategy adopted for the Sacramento Region by the Sacramento Area Council of Governments; and
- (4) Whether the proposed market rate development includes unusually high infrastructure costs or other cost burdens as conditions to the development of the project; and
- (5) Whether the proposed affordable housing component may be partially funded by public subsidy or other public financing from a source other than the city; and
- (6) Whether the affordable component is provided on a bed or bedroom basis, that encourages greater integration of the affordable and market rate components of the project; and
- (7) Whether any or all of the affordable housing is provided at a deeper level of affordability (such as extremely low income housing, as defined in California [Health and Safety Code](#) Section 50106); and
- (8) Whether the application for the proposed development was submitted to the city for consideration prior to the adoption of AB 1505; and
- (9) Whether the developer is proposing to pledge to the city a continuing revenue source that will assist the city in satisfying one or more specific affordable housing goals of the city, in an amount that the city council deems is sufficient to provide a significant benefit in furtherance of the city's affordable housing goals; and

(10) The total percentage of affordable units provided under these alternative rental-housing requirements may be adjusted up or down based on the income and rent levels provided or the size of the overall project. The council therefore may, at its discretion, approve alternative affordable housing requirements under this subsection that provides less than fifteen percent affordable units if the project provides a higher percentage of units to the lowest income levels (extremely low and very low). Further, the council may, at its discretion, require a higher total percentage for larger market rate projects that have greater economies of scale, or require a lesser percentage for smaller projects that have lesser economies of scale.

(c) **On-site construction of affordable units for rent.** A developer of a development containing twenty or more units may meet the rental affordable housing requirement by constructing twenty-five percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households. A developer of a development containing between five and nineteen units, inclusive, may meet the rental affordable housing requirement by constructing fifteen percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households.

(1) **Criteria for On-Site Construction.** Affordable housing units constructed on-site shall include a mix of unit sizes, dispersed throughout the entire development, as approved by the director of the department of community development, based on the local housing needs of unit sizes. Affordable housing units shall not be clustered together in any building, complex or area of the development. Affordable housing units constructed on-site shall be constructed using the same building materials and including equivalent amenities as the market rate units.

(2) **Affordability Agreement.** In order to qualify as affordable units pursuant to this section, such units shall be maintained in perpetuity as affordable units. The developer shall enter into an agreement with the city to ensure the continued affordability of all affordable rental housing units in perpetuity. This agreement shall be recorded.

(3) **Density Bonus.** A one-for-one city density bonus shall be awarded for the construction of on-site affordable units.

(4) **Annual Monitoring.** Affordable units must be managed by the developer or his or her agent. Each developer shall submit an annual report to the city identifying which units are affordable units, the monthly rent, vacancy information for each affordable unit for the prior year, gross annual incomes for the households of each affordable unit during the prior year, and other information as required by city staff. This annual monitoring shall include the inspection of ten percent of the on-site affordable units. Inspection reports created by an acceptable third party and completed within the same city fiscal year will be accepted in-lieu of city staff performing the on-site inspection, for that given monitoring year.

(5) **Affordable Rents.** Affordable rents shall be determined annually on a city-wide basis by city staff based upon the area median income and utility allowances for Yolo County, as determined by the Federal Department of Housing and Urban Development, the State Department of Housing and Community Development, and the Yolo County housing authority. If these agencies do not provide the information, the City of Davis will determine monthly rent amounts based on thirty percent of the targeted household's gross monthly income.

(6) **Tenant Selection and Screening.** Please refer to Section [18.05.040\(g\)](#) for the guidelines of this section.

(d) **Land dedication.** A developer may, as an alternative to constructing the affordable rental units on-site, make an irrevocable offer of dedication to the city of sufficient land to meet the total affordable rental housing units required pursuant to this section.

(1) **Credit.** The density of development for the purpose of calculating the acreage to be dedicated under this section shall be twenty units per net acre for multifamily residential use.

(2) **Procedure—General Plan Consistency.** The developer shall identify the land to be dedicated at the time the developer applies for a pre-zone or zoning amendment, but in no event later than the application for tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section. The proposed land use of such land must be consistent with the general plan. The city may approve, conditionally approve or reject such offer of dedication. If the city rejects such offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this section and identified by the city.

(3) **Characteristics and Minimum Size.** The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review, which can accommodate the land dedication requirement for the development in its entirety. The land dedicated shall be of sufficient size to make the development of the required affordable units economically feasible, no less than two acres.

(4) **Density Bonus.** A one-for-one city density bonus shall be awarded for dedication under this section on the basis of twenty units per net acre.

(5) **Housing on Dedicated Land.** Housing built on land dedicated for affordable housing shall be permanently affordable. The city shall adopt a resolution establishing a process whereby property dedicated to the city pursuant to this section may be conveyed to third parties who shall enter into an agreement with the city to produce affordable housing within a specified period of time. The city shall consult with the social services commission, nonprofit corporations, affordable housing organizations and developers in designing this process. Housing on land dedicated pursuant to this section may consist of any of the housing types listed in Section [18.05.050\(b\)\(2\)](#) of this article.

(e) **Options for small developments.** Small developments of fifteen rental units or fewer, and totaling no greater than thirty-eight bedrooms in the project, that are located within the core area, that are not otherwise exempt pursuant to Section [18.05.050](#), and are found to meet a specified community goal, can request to fulfill the twenty-five percent affordable housing requirement through one of the following options, as approved during the review process of the project's affordable housing plan.

(1) **Construction Subsidy.** City staff will work with the developer to provide financial assistance to be used in the construction of the affordable unit(s) required on-site, in order to assist in ensuring the project's feasibility. The developer shall present a pro forma (for the affordable units) to staff showing the necessary amount of construction assistance needed through supplemental city funds, in order to make the project economically feasible. The project will require the standard review process, and the necessary funding approval from the city council.

(2) **Combination of On-Site Construction and In-Lieu Fees.** The affordability requirement may be fulfilled through a combination that includes the on-site development of a portion of the required affordable units, with the remaining amount of the affordability requirement fulfilled through in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis. The exact split of the combination shall be determined during the review process for the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

(3) **In-Lieu Fees.** In the event that the developer cannot accommodate options (1) and (2) within the proposed project, the affordability requirement may be fulfilled through the payment of in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis. A payment plan may be approved by the social services commission in the event that the developer does not have the necessary funds available for payment; however, the majority of in-lieu fees shall be paid prior to the issuance of the certificate of occupancy on any of the market rate units. In addition to the standard in-lieu fee, the city maintains the right to adopt an in-lieu fee for use in future resource-pooled projects. This special in-lieu fee would apply to projects within a specific project area where the fee is intended to be used towards a planned resource-pooled project. (Ord. 2418 § 1, 2013; Ord. 2525 § 2, 2018; Ord. 2544 § 2, 2018; Ord. 2545 §§ 4, 5, 2019; Ord. 2550 § 2, 2019; Ord. 2561 § 2, 2019)

18.05.070 Fees.

The city council may, by resolution, establish fees and deposits for processing of applications as required by this article. (Ord. 2418 § 1, 2013)

18.05.080 Exemptions from affordable housing requirements.

- (a) Residential developments consisting of fewer than five units are exempt from the requirements of this article.
- (b) The city council may, at its discretion, exempt residential developments that are located within the boundaries of the city's Core Area Specific Plan and constructed as stacked condominium or as part of a vertical mixed-use development from the requirements of this article, provided that in order to receive such exemption the developer shall submit to the city an individualized affordable housing plan that provides a commitment to the creation of affordable housing in the city, either through development of on-site affordable units, payment of in-lieu fees, or another mechanism deemed appropriate by the city council. The individualized affordable housing plan that may be approved under this subsection is not required to provide affordable housing at a specific percentage or level, but shall provide affordable housing at a level as deemed appropriate by the city council, taking into account the desire to ensure that all residential development contribute to the creation of affordable housing as well as the desire to encourage and help to ensure the feasibility of vertical mixed-use and stacked condominium development within the boundaries of the city's Core Area Specific Plan.
- (c) The requirements of this article may be adjusted or waived if the developer demonstrates to the satisfaction of the city council that there is not a reasonable relationship between the impact of a proposed residential project and the requirements of this article, or that applying the requirement of this article would take property in violation of the United States or California Constitutions.

To receive an adjustment or waiver, the developer must request it when applying for first approval of the residential development, or through submittal of a draft affordable housing plan to the city. The matter shall be considered before the city council within thirty days. In making the finding or determination, the city council may assume the following: (1) the developer is subject to the inclusionary housing requirements in this article; (2) availability of any incentives, affordable financing, or subsidies; and (3) the most economical affordable housing product in terms of construction, design, location, and tenure. For purposes of a taking determination, the developer has the burden of providing economic and financial documentation and other evidence necessary to establish that application of this article would constitute a taking of the property without just compensation.

If it is determined that the application of the provisions in this article would constitute a taking, the inclusionary requirements for the residential development shall be modified to reduce the inclusionary housing obligations to the extent and only to the extent necessary to avoid a taking. If it is determined that no taking would occur by application of this article, the requirements of the article remain applicable and no approvals for the residential project shall be issued unless the developer has executed an affordable housing plan pursuant to the requirements of this article. (Ord. 2418 § 1, 2013; Ord. 2545 § 6, 2019)

40A.01.050 Agricultural buffer requirement.

(a) In addition to the right to farm deed restriction and notice requirement, the city has determined that the use of property for agricultural operations is a high priority. To minimize future potential conflicts between agricultural and nonagricultural land uses and to protect the public health, all new developments adjacent to designated agricultural, agricultural reserve, agricultural open space, greenbelt/agricultural buffer, Davis greenbelt or environmentally sensitive habitat areas according to the land use and open space element maps shall be required to provide an agricultural buffer/agricultural transition area. In addition, development limits or restricts opportunities to view farmlands. Public access to a portion of the agricultural buffer will permit public views of farmland. Use of nonpolluting transportation methods (i.e., bikes), and use of the land to fulfill multiple policies including, but not limited to, agricultural mitigation and alternative transportation measures meets the policy objectives of the Davis general plan. The agricultural buffer/agricultural transition area shall be a minimum of one hundred fifty feet measured from the edge of the agricultural, greenbelt, or habitat area. Optimally, to achieve a maximum separation and to comply with the five-hundred-foot aerial spray setback established by the counties of Yolo and Solano, a buffer wider than one hundred fifty feet is encouraged.

(b) The minimum one-hundred-fifty-foot agricultural buffer/agricultural transition area shall be comprised of two components: a fifty-foot-wide agricultural transition area located contiguous to a one-hundred-foot-wide agricultural buffer located contiguous to the agricultural, greenbelt, or habitat area. The one-hundred-fifty-foot agricultural buffer/transition area shall not qualify as farmland mitigation pursuant to Article 40A.03 of this chapter.

(c) The following uses shall be permitted in the one-hundred-foot agricultural buffer: native plants, tree or hedge rows, drainage channels, storm retention ponds, natural areas such as creeks or drainage swales, railroad tracks or other utility corridors and any other use, including agricultural uses, determined by the planning commission to be consistent with the use of the property as an agricultural buffer. There shall be no public access to the one-hundred-foot agricultural buffer unless otherwise permitted due to the nature of the area (e.g., railroad tracks). The one-hundred-foot agricultural buffer shall be developed by the developer pursuant to a plan approved by the community services director or designee. The plan shall include provision for the establishment, management and maintenance of the area. The plan shall incorporate adaptive management concepts and include the use of integrated pest management techniques. The property shall be dedicated to the city in fee title, or, at the discretion of the city, an easement in favor of the city shall be recorded against the property, which shall include the requirements of this article.

(d) The following uses shall be permitted in the fifty foot agricultural transition area: bike paths, community gardens, organic agriculture, native plants, tree and hedge rows, benches, lights, trash enclosures, fencing, and any other use determined by the planning commission to be of the same general character as the foregoing enumerated uses. There shall be public access to the fifty-foot agricultural transition area. The fifty-foot agricultural transition area shall be developed by the developer pursuant to a plan approved by the community services director or designee. Once the area is improved, approved, and accepted by the community services department, the land shall be dedicated to the city.

(e) The city reserves its right to form a special benefit assessment district, or other applicable district as is permitted under state law, and to maintain the agricultural buffer and transition area once the land is improved, dedicated, and annexed. (Ord. 1823 § 1; Ord. 2300 § 2, 2007; Ord. 2390 § 3, 2012)

Article 40A.03 FARMLAND PRESERVATION

40A.03.010 Purpose and findings.

- (a) The purpose of this chapter and this article is to implement the agricultural land conservation policies contained in the Davis general plan with a program designed to permanently protect agricultural land located within the Davis planning area for agricultural uses.
- (b) Since 1995 the city has required agricultural mitigation for development projects that would change the general plan designation or zoning from agricultural land to nonagricultural land and for discretionary land use approvals that would change an agricultural use to a nonagricultural use, and the city council finds that this chapter and this article are necessary for the following reasons: California is losing farmland at a rapid rate; Yolo and Solano County farmland is of exceptional productive quality; loss of agricultural land is consistently a significant impact under CEQA in development projects; the Davis general plan has policies to preserve farmland; the city is surrounded by farmland; the Yolo and Solano County general plans clearly include policies to preserve farmland; the continuation of agricultural operations preserves the landscape and environmental resources; loss of farmland to development is irreparable and agriculture is an important component of the city's economy; and losing agricultural land will have a cumulatively negative impact on the economy of the city and the counties of Yolo and Solano.
- (c) It is the policy of the city to work cooperatively with Yolo and Solano counties to preserve agricultural land within the Davis planning area, as shown in the “planning area” map found in the Davis general plan, beyond that deemed necessary for development. It is further the policy of the city to protect and conserve agricultural land, especially in areas presently farmed or having Class 1, 2, 3, or 4 soils.
- (d) The city council finds that some urban uses when contiguous to farmland can affect how an agricultural use can be operated, which can lead to the conversion of agricultural land to urban use.
- (e) The city council further finds that by requiring adjacent mitigation for land being converted from an agricultural use and by requiring a one hundred fifty foot buffer, the city shall be helping to ensure prime farmland remains in agricultural use. (Ord. 2300 § 1, 2007)

40A.03.020 Definitions.

Adjacent mitigation. Agricultural mitigation land that is required to be located at the non-urbanized perimeter of a project.

Advisory committee. The City of Davis open space and habitat commission shall serve as the advisory committee.

Agricultural land or farmland. Those land areas of the county and/or city specifically designated and zoned as agricultural preserve (A-P), agricultural exclusive (A-E), or agricultural general (A-I), as those zones are defined in the Yolo County zoning ordinance; those land areas designated and zoned exclusive agriculture (A-40), as defined in the Solano County zoning ordinance; those lands in agricultural use; those lands designated in the city’s general plan as agricultural (A); and those land areas of the City of Davis specifically designated and zoned as agricultural (A), agricultural planned development, or urban reserve where the soil of the land contains Class 1, 2, 3, or 4 soils, as defined by the Soil Conservation Service.

Agricultural mitigation land. Agricultural land encumbered by a farmland deed restriction, a farmland conservation easement, or such other farmland conservation mechanism acceptable to the city.

Agricultural use. Use of land for the purpose of producing food, fiber, or livestock for commercial purposes.

Easement stacking. Placing a conservation easement on land previously encumbered by a conservation easement of any nature or kind.

Farmland conservation easement. The granting of an easement over agricultural land for the purpose of restricting its use to agricultural land. The interest granted pursuant to a farmland conservation easement is an interest in land which is less than fee simple.

Farmland deed restriction. The creation of a deed restriction, covenant or condition which precludes the use of the agricultural land subject to the restriction for any nonagricultural purposes, use, operation or activity. The deed restriction shall provide that the land subject to the restriction will permanently remain agricultural land.

Non-urbanized perimeter. The agricultural land that borders the edge(s) of land that is, or is proposed to be, designated or zoned as non-agricultural land.

Priority open space acquisition areas. Areas designated by the city council by resolution as priorities for acquisition as open space.

Qualified conservation easement appraiser. A state certified appraiser who: (1) has conducted and prepared written appraisals on at least three agricultural conservation easement projects in the Central Valley in the past five years following the Uniform Standards of Professional Appraisal Practice and (2) has completed at least one course on the appraisal of conservation easements offered by a member organization of the appraisal foundation.

Qualifying entity. A nonprofit public benefit 501(c)(3) corporation operating in Yolo County or Solano County for the purpose of conserving and protecting land in its natural, rural, or agricultural condition. The following entities are qualifying entities: Yolo Land Conservation Trust and Solano Farm and Open Space Trust. Other entities may be approved by the city council from time to time.

Remainder mitigation. Required agricultural mitigation land that is not required to be located at the non-urbanized perimeter of a project.

Small project. A development project that is less than forty acres in size. A small project does not include one phase or portion of a larger project greater than forty acres that is subject to a master, specific, or overall development plan. (Ord. 2300 § 1, 2007)

40A.03.025 Agricultural land mitigation requirements.

(a) The city shall require agricultural mitigation as a condition of approval for any development project that would change the general plan designation or zoning from agricultural land to nonagricultural land and for discretionary land use approvals that would change an agricultural use to a nonagricultural use.

(b) The city has determined that effectively locating mitigation lands provides increased protection of agricultural lands threatened with conversion to non-agricultural uses. Requirements and incentives are established in this article to direct mitigation to areas that are under threat of conversion. In recognizing the importance of the location of mitigation, the city has identified two

general categories of agricultural mitigation: (1) adjacent mitigation; and (2) remainder mitigation. For every applicable development project, the determination as to whether a combination of adjacent and remainder mitigation shall be required or whether only remainder mitigation shall be required shall be based on site specific factors, as specified in this article. Adjacent mitigation is addressed in Section 40A.03.030; remainder mitigation is addressed in Section 40A.03.035.

(c) Total mitigation for a development project shall not be less than a ratio of two acres of protected agricultural land for each acre converted from agricultural land to nonagricultural land. Location based factors (credits) for remainder mitigation contained in Section 40A.03.035 may result in ratios greater than 2:1. (Ord. 2300 § 1, 2007)

40A.03.030 Requirements for adjacent land mitigation.

(a) **Mitigation along the non-urbanized perimeter.** All new development projects adjacent to agricultural land that are subject to mitigation under this article shall be required to provide agricultural mitigation along the entire non-urbanized perimeter of the project. The required adjacent mitigation land shall be a minimum of one-quarter mile in width, as measured from the outer edge of the agricultural buffer required in Section 40A.01.050. Certain land uses listed in Section 40A.03.030(e) are exempt from the adjacency requirement.

(b) **Satisfaction of adjacent agricultural mitigation.** Adjacent agricultural mitigation shall be satisfied by:

(1) Granting a farmland conservation easement, a farmland deed restriction, or other farmland conservation mechanism to or for the benefit of the city and/or a qualifying entity approved by the city. Mitigation shall only be required for that portion of the land which no longer will be designated agricultural land, including any portion of the land used for park and recreation purposes.

(2) Mitigation credit for required adjacent mitigation is shown in the table below.

Required Adjacent Mitigation

Location of mitigation land	Credit factor
Required minimum adjacent mitigation	1 times the number of acres protected

(3) If more than the required 2:1 mitigation acreage is required to create the adjacent mitigation land, no more than twice the project acreage shall be required to satisfy the mitigation requirements of this chapter. If more than twice the project acreage is required to satisfy the minimum one-quarter mile requirement, the configuration of the mitigation land shall be determined by the city council. In determining the configuration of the mitigation land, the city council shall consider factors such as, but not limited to, the following: (A) the shape of the mitigation land; (B) the quality of the soil in the mitigation land; (C) contamination of the mitigation land; (D) whether the mitigation land is in common ownership or owned by multiple owners; (E) fragmentation from other agricultural lands or connectivity to agricultural land; and (F) the existing use of the mitigation land.

- (4) The Davis planning area includes clusters of rural residential parcels that, due to their size and spacing, preclude commercial farming operations. For purposes of this article, a “cluster of rural residential parcels” shall mean a group of parcels where the majority of parcels have an existing residential structure and an average size of less than ten acres. If the required adjacent mitigation land includes a cluster of existing rural residential parcels, the city council may treat the cluster of rural residential parcels as part of the development project and allow the required adjacent mitigation land to be located on the outside edge of the cluster of rural residential parcels. If the city council chooses to do so, that decision shall not increase the total amount of adjacent mitigation required by the development project.
- (c) **Exclusion of agricultural buffer from adjacent mitigation.** The land included within the agricultural buffer required by Section 40A.01.050(c) shall not be included in the calculation for the purposes of determining the amount of land that is required for mitigation.
- (d) **Alternative mitigation proposals.** The city council may approve mitigation that does not meet the adjacency requirement if an alternative mitigation proposal meets the intent of this chapter and would have extraordinary community benefits. Alternative mitigation proposals may be approved if the following three factors are present, and the city council makes appropriate findings:
- (1) The alternative mitigation is threatened by demonstrated growth pressure equal to or greater than that faced by areas adjacent to the project site. Demonstrated growth pressure shall be established by a comparison of current land value of the alternative site and the adjacent site. Valuation analysis shall be prepared by an independent certified appraiser; and
 - (2) The alternative mitigation is strategically located and provides one or more of the following: (A) protects a locally unique resource, (B) provides connectivity between existing protected or agricultural lands, (C) due to its location provides protection of other lands and resources in the Davis planning area and/or (D) located within a city-identified priority open space acquisition area; and
 - (3) The alternative mitigation is of a size that facilitates protection of the targeted resource and its long term management.
- (e) **Exemptions.** The following land uses are exempt from the adjacent mitigation requirements of this article, but not the remaining provisions:
- (1) The following projects, so long as they are not a part of a larger development project: permanently affordable housing, public schools, and public parks.
 - (2) That portion of a development project abutting land already protected by permanent conservation easements or by some other form of public ownership that guarantees adjacent lands will not be developed for urban uses.
 - (3) That portion of a development project abutting a limited access public road such as Interstate 80 or State Highway 113.
 - (4) Small projects, as defined in Section 40A.03.020. (Ord. 2300 § 1, 2007)

40A.03.035 Requirements for remainder land mitigation.

- (a) **General.** Remainder mitigation is mitigation land that is not required to be located at the non-urbanized perimeter of a project. Remainder mitigation may be located anywhere within the Davis planning area, subject to approval by the city council, in accordance with Section 40A.03.050.

Incentives shall be provided for locating the remainder mitigation in areas targeted for protection by the city as shown in the table below.

- (b) **Satisfaction of remainder mitigation.** Remainder mitigation shall be satisfied by:
 - (1) Granting a farmland conservation easement, a farmland deed restriction, or other farmland conservation mechanism to or for the benefit of the city and/or a qualifying entity approved by the city. Mitigation shall only be required for that portion of the land which no longer will be designated agricultural land, including any portion of the land used for park and recreation purposes.
 - (2) The following credits shall be applied to remainder mitigation land:

Remainder Mitigation	
Location of mitigation land	Credit factors
Adjacent to city limits and within ¼ mile of the city limits, excluding any land required as adjacent mitigation land.	2 times the number of acres protected
Adjacent to the required minimum adjacent mitigation land, if applicable	1 times the number of acres protected
Within city designated priority open space acquisition areas.	1 times the number of acres protected
Elsewhere in the Davis planning area	0.2 times the number of acres protected
Total	Mitigation acreage, as adjusted by the credit factors for adjacent mitigation (see Section 40A.03.030) and remainder mitigation (above), must total two times the acreage changed to nonagricultural. If the calculation of credit factors results in actual mitigation that is less than 2:1, additional acreage within the Davis planning area shall be secured to satisfy the total mitigation ratio requirement.

Location and configuration of the mitigation land must be approved by the city council, in accordance with the factors specified in Section 40A.03.035(a).

- (3) In lieu of conserving land as provided above, up to fifty percent of the remainder mitigation requirement may be satisfied by the payment of a fee based upon the fair market value of acquiring a farmland conservation easement or farmland deed restriction located adjacent to the city limits, subject to the following:
 - (A) For the purpose of establishing the in lieu fee, a qualified conservation easement appraiser shall establish the fair market value by conducting an appraisal of the required minimum adjacent mitigation land for the project. If no adjacent mitigation land is

required for a project, the in-lieu fee shall be based on recent land transactions for properties located on and/or near the city limits. Appraisal costs shall be paid for by the developer or project applicant, and the qualified conservation easement appraiser shall be under contract with the city.

(B) The in lieu fee shall include a ten percent administrative fee to cover the city's costs to implement mitigation.

(C) The in lieu fee shall include an inflator that takes into account the inflation of property values and shall include a standard assumption for the time it takes the city to acquire property for agricultural mitigation. The inflator shall be calculated based on a three-year average of the House Price Index (HPI) for the Sacramento Metropolitan Statistical Area compiled by the Office of Federal Housing Enterprise Oversight. The inflator shall be based on the three most recent years for which HPI data are available and shall be based on an assumption that the city will spend the in lieu fee within three years from the payment date.

(D) The in lieu fee option must be approved by the city council.

(E) The in lieu fee, paid to the city, shall be used for farmland mitigation purposes, with priority given to strategically located lands with prime agricultural soils and high habitat value.

(c) **Exclusion of agricultural buffer from mitigation land.** The land included within the agricultural buffer required by Section 40A.01.050(c) shall not be included in the calculation for the purposes of determining the amount of land that is required for mitigation.

(d) It is the intent of this article that the city shall work in a coordinated fashion with the habitat conservation objectives of the Yolo County Natural Heritage (NCCP/HCP) program. It is the intent of this article to not allow stacking of easements, except easements covering riparian corridors that may be subject to agricultural and habitat easements and that do not generally exceed five percent of the total area on any particular easement of agricultural mitigation land shall be permitted. (Ord. 2300 § 1, 2007)

40A.03.040 Comparable soils and water supply.

(a) The remainder agricultural mitigation land shall be comparable in soil quality with the agricultural land whose use is being changed to nonagricultural use.

(b) The agricultural mitigation land shall have adequate water supply to support the historic agricultural use on the land to be converted to nonagricultural use and the water supply on the agricultural mitigation land shall be protected in the farmland conservation easement, the farmland deed restriction or other document evidencing the agricultural mitigation. (Ord. 2300 § 1, 2007)

40A.03.045 Home sites.

Agricultural mitigation lands shall not be permitted to have a new home site. (Ord. 2300 § 1, 2007)

40A.03.050 Lands eligible for remainder mitigation.

This section shall only apply to remainder mitigation.

- (a) The agricultural mitigation land shall be located within the Davis planning area as shown in the Davis general plan. In making their determination to accept or reject proposed mitigation land, the following factors shall be considered by the city council:
- (1) The lands shall be compatible with the Davis general plan and the general plans of Yolo and Solano counties.
 - (2) The lands shall include agricultural land similar to the acreage, soil capability and water use sought to be changed to nonagricultural use.
 - (3) The lands shall include comparable soil types to that most likely to be lost due to proposed development.
 - (4) The property is not subject to any easements, contamination, or physical conditions that would legally or practicably preclude modification of the property's land use to a nonagricultural use.
 - (5) The easement configuration(s) would be grossly irregular such that it precludes efficient agricultural operation or bisects existing farm irrigation systems and does not protect other natural resources, such as stream corridors.
- (b) The advisory committee shall recommend to the city council acceptance of agricultural mitigation land of twenty acres or more by a qualifying entity and/or the city, except that it may consider accepting smaller parcels if the entire mitigation required for a project is less, or when the agricultural mitigation land is adjacent to larger parcels of agricultural mitigation land already protected. Contiguous parcels shall be preferred.
- (c) Land previously encumbered by a conservation easement of any nature or kind is not eligible to qualify as agricultural mitigation land. (Ord. 2300 § 1, 2007)

40A.03.060 Requirements of instruments—Duration.

- (a) To qualify as an instrument encumbering agricultural mitigation land, all owners of the agricultural mitigation land shall execute the instrument.
- (b) The instrument shall be in recordable form and contain an accurate legal description setting forth the description of the agricultural mitigation land.
- (c) The instrument shall prohibit any activity which substantially impairs or diminishes the agricultural productivity of the land, as determined by the advisory committee.
- (d) The instrument shall protect the existing water rights and retain them with the agricultural mitigation land.
- (e) The applicant shall pay an agricultural mitigation fee equal to cover the costs of administering, monitoring and enforcing (including legal defense costs) the instrument in an amount determined by city council. The fee shall include development of a property baseline report and monitoring plan.
- (f) The city shall be named a beneficiary under any instrument conveying the interest in the agricultural mitigation land to a qualifying entity.
- (g) Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the city in perpetuity. Except as provided in subsection (h) of this section, the qualifying entity or the city shall not sell, lease, or convey any interest in agricultural mitigation land which it shall acquire.

(h) If judicial proceedings find that the public interests described in Section 40A.03.010 of this chapter can no longer reasonably be fulfilled as to an interest acquired, the interest in the agricultural mitigation land may be extinguished through sale and the proceeds shall be used to acquire interests in other agricultural mitigation land in Yolo and Solano counties, as approved by the city and provided in this chapter.

(i) If any qualifying entity owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the city.

(j) The instrument conveying the interest in the agricultural mitigation land shall be recorded at the same time as any final map for the development project is recorded or at such other time as required as a condition of approval. (Ord. 2300 § 1, 2007)

40A.03.070 City of Davis farmland conservation program advisory committee.

(a) The Davis open space and habitat commission shall serve as the Davis farmland conservation advisory committee.

(b) It shall be the duty and responsibility of the open space and habitat commission to exercise the following powers:

(1) To recommend the areas where mitigation zones would be preferred in the Davis planning area;

(2) To promote conservation of agricultural land in Yolo and Solano counties by offering information and assistance to landowners and others;

(3) To recommend tentative approval of mitigation proposals to city council;

(4) To certify that the agricultural mitigation land meets the requirements of this chapter;

(5) Any denial from the advisory committee may be appealed to city council.

(c) The open space and habitat commission shall ensure all lands and easements acquired under this article are properly monitored and shall review and monitor the implementation of management and maintenance plans for these lands and easement areas.

(d) All actions of the open space and habitat commission shall be subject to the approval of the Davis city council. (Ord. 2300 § 1, 2007)

40A.03.080 Reporting.

Periodically, community services department staff shall provide to the advisory committee reports delineating the activities undertaken pursuant to the requirements of this chapter and an assessment of these activities. The report shall list and report on the status of all lands and easements acquired under this chapter. (Ord. 2300 § 1, 2007; Ord. 2390 § 3, 2012)